

## Re. KABASINGA N'UNDI

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00005/2020/CS - RS/INCONST/SPEC 00006/2020/CS – (Mukamulisa, P.J., Cyanzayire, Hitiyaremye, Muhumuza na Rukundakuvuga, J.) 12 Gashyantare 2020]

*Itegeko inshinga –Itegeko rihana ibyaha – Itegeko rihana rigomba kwandikwa mu buryo busobanutse kandi butarimo urujijo – Si inshingano y'umucamanza kugena ibikorwa bigize icyaha bigomba guhanwa, ahubwo ibyo ni inshingano y'umushingamategeko – Itegeko rigomba kwandikwa ku buryo buri wese ashobora kumenya imbibi z'icyemewe n'ikibujijwe, n'ingaruka z'ibihano igihe ahoze ikibujijwe, kugirango ashobore kucyirinda (predictability) – Itegeko niryo rigena icyaha (igikorwa gihanwa) n'igihano gihanishwa..*

*Itegeko Inshinga – Urubanza rutabera (fair trial) – Igihano ntayegayezwa – Kuba uwahamwe n'icyaha adashobora kujuririra igihano yahawe kugira ngo kigabanywe hashingiye ku mpamvu nyoroshyacyaha binyuranyije n'ihame ry'uburenganzira ku butabera buboneye n'iry'ubwisanzure bw'umucamanza mu kugena igihano gikwiye.*

*Itegeko Nshinga – Ubwisanzure n'ubwigenge bw'umucamanza – Igihano ntayegayezwa – Umucamanza afite ubwisanzure bwo kuburanisha no guca imanza mu nzira n'uburyo biteganywa n'amategeko, akabikora nta gitutu icyo aricyo cyose cyaba icy'inzego za Leta, n'icy'abandi – Nta wavuga ko umucamanza yigenga mu gutanga igihano mu gihe agomba gutanga igihano ntayegayezwa kitajyanye n'uburemere bw'icyaha, uburyo cyakozwemo, n'igihe hari impamvu nyoroshyacyaha zikomeye zari gutuma agabanyirizwa igihano.*

*Itegeko Nshinga – Ubutabera buboneye – Imbibi ku bwisanzure bwo gutangaza ibitekerezo – N'ubwo umucamanza ashobora gufata icyemezo atitaye ku byatangajwe, ababuranyi n'abandi baturage bo bashobora gutekereza ko yabigendeyeho, bigatuma icyemezo cyose yafata kitakirwa neza, kandi ihame ari uko ubutabera butagomba gutangwa gusa ahubwo bugomba no kugaragara ko bwatanzwe.*

**Incamate y'ikibazo:** Kabasinga na Niyomugabo buri wese yaregeye Urukiko rw'Ikirenga avuga ko zimwe mu ngingo z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015. Ibirego byabo byahurijwe mu kirego kimwe kuko hari ingingo bahurizaho.

Abarega bavugaga ko ingingo ya 92, n'ingingo ya 133 igika cya 3 ari nayo bahurizaho, z'iryo tegeko riteganyaga ibyaha n'ibihano muri rusange, zibuzaga umucamanza kugabanyaga igihano kubera impamvu nyoroshyacyaha, zikabaga zibangamiye ihame ryo kugira uburenganzira ku butabera buboneye riteganywa mu ngingo ya 29 y'Itegeko Nshinga, ndetse n'ihame ry'ubwisanzure bw'umucamanza riteganywa n'ingingo ya 151 y'iryo Tegeko.

Kabasinga anavugaga ko igika cya 4 cy'ingingo ya 84 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, kitagaragaza ibihe umucamanza ashobora guhana cyangwa kudahana icyitso iyo bireba uwashyiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane, bikabaga bibangamiye ihame ry'uburenganzira ku butabera buboneye. Avugaga kandi ko ibivugwa mu ngingo ya 271 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ko umuntu wese uhimba,

ukoresha cyangwa ukwirakwiza mu buryo ubwo ari bwo bwose impapuro zivunjwamo amafaranga, aba akoze icyaha, nabyo bibangamiye ihame ry'uburenganzira ku butabera buboneye.

Indi ngingo agaragaza ko inyuranyije n'Itegeko Nshinga, ni iya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange avuga ko ibangamiye ubwisanzure bwo gutangaza ibitekerezo, bityo ikaba inyuranyije n'ingingo ya 38 y'Itegeko Nshinga.

Ku ngingo ijyanye no kumenya niba, kuba igika cya 4 cy'ingingo ya 84 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, kitagaragaza ibihe umucamanza ashobora guhana cyangwa kudahana icyitso iyo bireba uwashyiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane, bibangamiye ihame ry'uburenganzira ku butabera buboneye rivugwa mu ngingo ya 29 y'Itegeko Nshinga, Kabasinga avuga ko Umushingamategeko atagaragaje niba abo bantu bahanwa nk'ibitso cyangwa niba badahanwa, ibi bigaterwa no kuba yaravuze ko umucamanza ashobora kutabahana, bivuga ko ashobora no kubahana, akaba kandi atari we ukwiye kubyimenyera.

Ikindi ni uko uburyo iyi ngingo yanditse bunyuranyije n'ihame ry'uko amategeko ahana agomba kuba asobanutse, atagenekereza, kandi adateye urujijo. Mu gihe ateye urujijo, abayavugwamo ntibamenya niba bagomba kwirinda kuba ibyitso by'abo bashakanye cyangwa abo bafitanye amasano kugera ku gisanira cya kane. Asoza avuga kandi ko inyuranyije n'ingingo ya 2 agace ka mbere y'iryo Tegeko, kuko iha umucamanza urubuga rwo kuba yafata umwanzuro ashatse, ushobora kurenganya cyangwa kubererekerwa uwo acira urubanza kubera imiterere y'Itegeko. Kubera izi mpamvu zose akaba asaba Urukiko ko iyi ngingo ikurwaho cyangwa rugategeka ko ihindurwa ikandikwa mu buryo budatye urujijo.

Leta y'u Rwanda ivuga ko ingingo ya 2, igika cya mbere, agace ka 5 y'iryo tegeko riteganya ibyaha n'ibihano muri rusange isobanura ufatwa nk'icyitso uwo ariwe, ko ari umuntu wafashije uwakoze icyaha mu bikorwa bitegura ikorwa ry'icyaha mbere. Bisobanuye ko uwashakanye n'uwakoze icyaha akamubera icyitso, kimwe n'abo bafitanye amasano kugera ku gisanira cya kane iyo bamubereye icyitso, bashobora guhanwa mu buryo buteganywa n'ingingo ya 84 y'Itegeko ryavuzwe haruguru. Umushingamategeko yavuze ko urukiko rushobora kubasonera ibihano bigenewe ibyitso hashingiwe ku mikorere y'icyaha, ubwo bushishozi bwo kumenya niba basonerwa cyangwa bahanwa bukaba bwarahariwe umucamanza, ibi bikaba ntaho binyuranyije n'ingingo ya 29, agace ka kane y'Itegeko Nshinga.

Ku kibazo kijyanye no kumenya niba kubuza kugabanya ibihano kubera impamvu nyoroshyacyaha nk'uko biteganyijwe mu ngingo ya 92 n'ingingo ya 133 igika cya 3 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange binyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga, Kabasinga asobanura ko izi ngingo zituma umuntu wakoze ibyo byaha atabona ubutabera buboneye, mu gihe adashobora kugabanyirizwa igihano kabone n'ubwo haba hari impamvu nyoroshyacyaha, ndetse zikamwima uburenganzira bwo kujuririra igihano gusa mu gihe yahamwe n'icyaha, bikaba rero bibangamiye uburenganzira bw'uregwa bwo guhabwa ubutabera buboneye. Akomeza avuga ko muri izo ngingo usanga ububasha bw'umucamanza bugarukira gusa ku kureba niba uregwa ahamwa n'icyaha, kuko igihano cyo kiba giteganyijwe n'itegeko, ibi bikaba bivuguruzwa ingingo ya 49 y'itegeko riteganya ibyaha n'ibihano muri rusange, iteganya ibyo umucamanza ashingiraho atanga igihano. Ikindi ni uko ziniga ubwisanzure bw'umucamanza bwo gushyira mu gaciro mu gihe cyo kugena igihano, zikanabangamira ubwigenge bwe mu guca imanza zitabera, kuko zimubuza kugereranya ibyatuma atanga igihano gito cyangwa kinini.

Kubera izo mpamvu zimaze kuvugwa, asaba Urukiko rw'Ikirenga kwemeza ko izo ngingo zombi zinyuranyije n'Itegeko Nshinga, rukanategeka ko zivanwaho.

Niyomugabo nawe avuga ko ingingo ya 133 igika cya 3 y'itegeko ryavuzwe haruguru iteganya igihano ntayegayezwa ku cyaha cyo gusambanya umwana utarageza ku myaka 14, kabone n'iyi haba hari impamvu nyoroshyacyaha, byazatuma atabona ubutabera buboneye yemererwa n'Itegeko Nshinga kubera ko izitira umucamanza ntashobore kumugabanyiriza igihano ndetse ikaba inyuranye n'ihame ry'uko abantu bose bareshya imbere y'amategeko bakaba bagomba gufatwa kimwe, bityo akaba asaba ko ikwiye gukurwaho.

Leta y'u Rwanda ivuga ko isanga nta mpamvu yo kubyisobanuraho kuko Urukiko rw'Ikirenga rwabifasheho icyemezo mu rubanza RS/INCONST/SPEC 00003/2019/SC ndetse runatanga inama ku zindi ngingo zifite ikibazo kimwe ariko zitaregowe.

Muri uru rubanza hasuzumwe kandi ikibazo kijyanye no kumenya niba ibivugwa mu ngingo ya 271 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 29 y'Itegeko Nshinga. Kabasinga asobanura ko iyi ngingo ifite ibikorwa bitatu kandi buri cyose kikaba kigize icyaha ukwacyo, aribyo byo guhimba impapuro mvunjwafaranga, kuzikoresha no kuzikwirakwiza. Imyandikire y'iyi ngingo isa n'ubuza ikoresha ry'impapuro mvunjwafaranga mu Rwanda, ndetse n'ikwirakwiza ryazo, hakaba hakwiye gutandukanywa uwazikwirakwije mu buryo bunyuranyije n'amategeko n'uwabikoze mu nyungu z'ikigo akorera. Mu bikorwa bigize iki cyaha haburamo ubushake bwo kugikora (*intention de nuire*).

Leta y'u Rwanda isobanura ko nta kibazo kiri mu myandikire y'iyi ngingo ya 271 kubera ko guhimba impapuro mvunjwafaranga, kuzikoresha zahimbwe, no kuzikwirakwiza zahimbwe mu buryo ubwo aribwo bwose, biba bigize icyaha. Bivuze ko izi mpapuro zifite uburyo zikoreshwamo bwemewe n'amategeko, kunyuranya nabyo akaba aribyo bigize icyaha giteganywa n'iyi ngingo. Kuvuga ko iyi ngingo inyuranyije n'ingingo ya 29 y'Itegeko Nshinga sibyo, kuko ibigize icyaha aribyo kuba icyaha cyagambiriwe, cyashyizwe mu bikorwa kandi gihanwa n'amategeko, bigomba kuba byuzuye kugirango umuntu afatwe nk'uwakoze icyaha.

Ku ngingo yo kumenya niba ingingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 38 y'Itegeko Nshinga, Kabasinga avuga ko ibigize icyaha kuvugwa muri iyi ngingo ari ugutangaza ibitekerezo ugamije kuyobya umucamanza cyangwa umutangabuhama, ariko iyi ngingo ntisobanura aho ibyo bitekerezo bitangarizwa. Ntibisobanutse niba bigomba gutangazwa imbere mu rubanza, nyamara ibyo umucamanza ashingiraho aca urubanza ari ibintu bidatangazwa na rubanda, umuntu ku giti cye cyangwa ibitangamakuru, kuko ashingira ku nyandiko n'ibindi bimenyetso afite muri dosiye. Bivuze ko umucamanza adashobora kuyobya n'ibyatangajwe mu buryo ubwo ari bwo bwose bitavugizwe mu iburanisha.

Akomeza avuga ko iyi ngingo ikumira buri muntu kuvuga cyangwa gutanga igitekerezo cye ku gikorwa cyabaye, mu gihe kiri gukurikiranwa mu nkiko, kugira ngo bitazitwa ko yari agamije kuyobya umucamanza, kandi nyamara uwo umucamanza ari we ukwiye kwirinda gutwarwa cyangwa gushingira ku byo yumvise ahandi hatari mu iburanisha cyangwa muri dosiye. Iyi ngingo ibangamiye itangamakuru kuko ibikorwa byinshi bigize ibyaha cyangwa se bikurikiranwa mu nkiko bikunze kwandikwaho n'itangamakuru. Iyi ngingo yatuma kandi abayobozi ndetse n'inzego z'umutekano zirinda gutanga ibiganiro bifite aho bihuriye n'ibikorwa bishobora gukurikiranwa mu nkiko, ndetse bishobora no kubuza abakorera abandi ubuvugizi gutangaza

ndetse no kugaragaza uko bumva ibintu kugira ngo bitazitwa ko bari bagamije kuyobya umucamanza cyangwa abatangabuhamya.

Leta y'u Rwanda ivuga ko iyi ngingo ya 256 idateye impungenge, kuko utangaje inkuru ku rubanza ruri mu rukiko ariko rutaracibwa adafatwa nk'ushaka kuyobya, keretse bigaragajwe n'inzego zishinzwe kugenza ibyaha ko aribyo yari agamije. Ntaho inyuranyije n'ingingo ya 38 y'Itegeko Nshinga, kuko itavugaga abanyamakuru, kandi nabo bakaba basanzwe bagaragaza ibitekerezo byabo ku manza zikiburanishwa ntibakurikiranweho icyaha cyo gushaka kuyobya umutangabuhamya cyangwa umucamanza, kuko biba bigaragara ko ataricyo kigamijwe.

**Incamake y'icyemezo:** 1. Itegeko mpanabyaha rigomba kwandikwa mu buryo busobanutse kandi butarimo urujijo kandi rikandikwa ku buryo buri wese ashobora kumenya imbibi z'icyemewe n'ikibujijwe, n'ingaruka z'ibihano igihe akoze ikibujijwe, kugirango ashobore kucyirinda (predictability), bityo igika cya 4 cy'ingingo ya 84 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange kitubahirije ihame ry'uko ibyaha n'ibihano bigomba kugenwa n'itegeko, bityo kikaba kibangamiye ihame ry'uburenganzira ku butabera buboneye riteganyijwe mu ngingo ya 29 agace ka kane y'Itegeko Nshinga.

2. Kuba uwahamwe n'icyaha adashobora kujuririra igihano yahawe kugira ngo kigabanywe hashingiye ku mpamvu nyoroshyacyaha binyuranyije n'ihame ry'uburenganzira ku butabera buboneye n'iry'ubwisanzure bw'umucamanza mu kugena igihano gikwiye kuko mu manza mpanabyaha, Umucamanza afite inshingano zo gutanga igihano gishingiye ku mikorere y'icyaha, ku myitwarire n'imibereho y'uwigikoze, ku muryango cyakorewemo no ku wagikorewe.

3. Nta wavuga ko umucamanza yigenga mu gutanga igihano mu gihe agomba gutanga igihano ntayegayezwa kitajyanye n'uburemere bw'icyaha, uburyo cyakoze, n'igihe hari impamvu nyoroshyacyaha zikomeye zari gutuma agabanyirizwa igihano.

4. N'ubwo umucamanza ashobora gufata icyemezo atitaye ku byatangajwe, abaturanyi n'abandi baturage bo bashobora gutekereza ko yabigendeyeho, bigatuma icyemezo cyose yafata kitakirwa neza, kandi ihame ari uko ubutabera butagomba gutangwa gusa ahubwo bigomba no kugaragara ko bwatanzwe.

**Igika cya 4 cy'ingingo ya 84 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange kinyuranyije n'ingingo ya 29 agace ka kane y'Itegeko Nshinga kikaba nta gaciro gifite hashingiye ku biteganywa n'ingingo ya 3 y'Itegeko Nshinga;**

**Igice cy'ingingo ya 92 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, kigira kiti: “kidashobora kugabanywa kubera impamvu nyoroshyacyaha”, kinyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga; icyo gice kikaba nta gaciro gifite;**

**Igika cya 3 cy'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, agace kavuga ko iyo gusambanyaga umwana byakorewe ku mwana uri muni y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, kanyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga; ako gace kakaba nta gaciro gifite; Ingingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, itanyuranyije n'Itegeko Nshinga;**

**Ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, itanyuranyije n'Itegeko Nshinga.**

**Amategeko yashingiweho:**

- Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 3, 29, 38 n'ya 151.
- Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana mu ingingo ya 257, 326, 477 n'ya 478.
- Itegeko –Teka n° 21/77 ryo ku wa 18 AOOUT 1977 rishyiraho igitabo cy'amategeko ahana.
- Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 2, 3, 49, 84, 92, 133, 256 n'ya 271.
- Itegeko n° 48/2017 ryo ku wa 23/09/2017 rigenga Banki Nkuru y'u Rwanda, ingingo ya 48.
- Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 62.
- Itegeko n° 09/2004 ryo ku wa 29/04/2004 ryerekeye imyitwarire mu kazi k'ubucamanza, ingingo ya 4 n'ya 5.
- Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage<sup>8</sup> (Charte Africaine des Droits de l'Homme et des Peuples), u Rwanda rwemeje n'Itegeko n° 10/1983 ryo ku wa 01/07/1983, agatangazwa mu igazeti ya Leta yo ku wa 01/07/1983, ingingo ya 7.
- Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, u Rwanda rwemeje burundu n'Itegeko n° 8/75 ryo ku wa 6 Gashyantare 1975, agatangazwa mu igazeti ya Leta mu 1975, ingingo ya 10,15 n'ya 19.
- Amasezerano mpuzamahanga yerekeye uburenganzira bwa muntu, u Rwanda rwemeje ku wa 18/09/1962, ingingo ya 11.

**Imanza zifashishijwe:**

- Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019.
- R. v. Beaugard, rwaciwe n'Urukiko rw'Ikirenga rwa Canada.
- Cullen v. Toibin rwaciwe n'Urukiko rw'Ikirenga rwo muri Ireland.
- Kelly v O'Neill<sup>41</sup> rwaciwe n'Urukiko rw'Ikirenga rwa Ireland.
- DPP v Independent Newspapers (Irl) Ltd,<sup>42</sup> rwaciwe n'Urukiko rw'Ikirenga rwa Ireland.
- Attorney-General for England and Wales v Times Newspapers Ltd rwaciwe n'Urukiko rw'Ubujurire mu Bwongereza.
- Worm v. Austria, 29 August 1997, Application 22714/93, 25 EHRR 454, par.50.
- The Sunday Times v. United Kingdom, 26 April 1979, Series A No. 30, 14 EHRR 229, par. 63.
- Dagenais v. Canadian Broadcasting Corp., No 23403, 1994: January 24, 1994, December 8, P.5.
- Bridges v. California, 314 US 252 (1941); Pennekamp v. Florida, 328 US 331 (1946); Craig v. Harney 331 US 367 (1946); Wood v. Georgia 370 US 375 (1962).
- South Africa Supreme Court of Appeal: The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others (425/2017) [2017] ZASCA 97 (21 June 2017), at para.37.
- South Africa Supreme Court of Appeal: Midi Television v Director of Public Prosecutions (Western Cape) 2007 (3) SA 318 (SCA) at para 19.

Nebraska Press Association v. Hugh Stuart: (1976) 427 US 539.

Reliance Petrochemicals v. Proprietor of Indian Express<sup>56</sup> rwaciwe n'Urukiko rw'Ikirenga rwo mu Buhinde.

John D. Pennekamp v. State of Florida<sup>57</sup> rwaciwe n'Urukiko rw'Ikirenga rwo muri Amerika.

### **Inyandiko z'abahanga zifashishijwe:**

Santerre Christine, Étude franco-canadienne du principe légaliste: le processus qualitatif et interprétatif du texte pénal. In: Revue internationale de droit comparé. Vol. 68 N°4, 2016, p.4.

Canadian Fondation for Children, Youth and the Law c. Canada (Procureur Général), [2004] 1 S.C.R. 76, 2004 SCC 4, Note 14, Par. 16.

R. c. Nova Scotia Pharmaceutical Society, 9 Juillet 1992, no 22473, p.3-4.

Déc. n° 96-377 DC du 16 juillet 1996, cons. No 3 et s., citée par Bertrand de Lamy (Professeur de Droit à L'Université de Toulouse I), Cahiers du Conseil Constitutionnel N o 26 (Dossier la Constitution et le droit Pénal)- Aout 2009, p. 12.

See Mukong v. Cameroon, views adopted by the UN Human Rights Committee on 21 July 1994, No .458/1991, para. 9.7.

SIRACUSA Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984).

Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized international mandates, op. cit., p. 3.

Cited by Law Commission of India, 20 Report on trial by media, Free speech and Fair trial under Criminal procedure code 1973, August 2006, p. 12 & 13.

## **Urubanza**

### **I. IMITERERE Y'URUBANZA**

[1] Kabasinga Florida yaregeye Urukiko rw'Ikirenga arusaba kwemeza ko:

- a. Ingingo ya 84 igika cya 4, ingingo ya 92, ingingo ya 133 igika cya 3, ingingo ya 271 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 29 y'Itegeko Nshinga.
- b. Ingingo ya 92 kimwe n'ingingo ya 133 igika cya 3 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 151 y'Itegeko Nshinga.
- c. Ingingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 38 y'Itegeko Nshinga.

Ikirego cye cyanditswe kuri RS/INCONST/SPEC 00006/2020/SC.

[2] Niyomugabo Ntakirutimana nawe yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 133 igika cya 3 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyanya

ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 29 n'ya 151 z'Itegeko Nshinga. Ikirego cye cyanditswe kuri RS/INCONST/SPEC 00005/2020/SC.

[3] Ibyo birego byombi byahurijwe mu rubanza rumwe kubera isano bifatanye, byandikwa kuri RS/INCONST/SPEC 00005/2020/SC - RS/INCONST/SPEC 00006/2020/SC, iburanishwa ryabyo rishyirwa ku wa 12/01/2021.

[4] Kuri icyo tariki, iburanisha ry'urubanza ryabereye mu ruhamu, Kabasinga Florida yitabye yunganiwe na Me Mugabonabandi Jean Maurice, Niyomugabo Ntakirutimana ahagarariwe na Me Kayirangwa Marie Grâce na Me Gabiro David, Leta y'u Rwanda ihagarariwe na Me Cyubahiro Fiat afatanyije na Me Batsinda Aline.

[5] Ibibazo byagaragajwe n'abarega byashyirwa mu byiciro 2 by'ingenzi:

- a. Ingingo abarega bavugaga ko zibangamiye ihame ryo kugira uburenganzira ku butabera buboneye rivugwa mu ngingo ya 29 y'Itegeko Nshinga, n'ihame ry'ubwisanzure bw'umucamanza mu kugena igihano rivugwa mu ngingo ya 151 y'Itegeko Nshinga.
- b. Ingingo umwe mu barega avugaga ko ibangamiye ihame ry'ubwisanzure bw'itangazamakuru, kugaragaza ibitekerezo no guhabwa amakuru, rivugwa mu ngingo ya 38 y'Itegeko Nshinga.

[6] Mu cyiciro cya mbere hagaragaramo ingingo enye arizo:

- a. Ingingo ya 84, igika cya 4, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ritangaza ibyaha n'ibihano muri rusange Kabasinga Florida avugaga ko inyuranyije n'ingingo ya 29<sup>1</sup> y'Itegeko Nshinga, icyo ngingo ikaba irebana no guhana icyitso igihe bireba uwashyiranywe n'uwakoze icyaha cyangwa uwo bafatanye isano kugera ku rwego rwa kane (4).
- b. Ingingo ya 92 n'ya 133 igika cya 3 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 rimaze kuvugwa, abarega bavugaga ko zinyuranyije n'ingingo ya 29 y'Itegeko Nshinga, ku bijyanye no kutabona uburenganzira bwo kugabanyirizwa igihano ku wakoze ibyaha bivugwa muri icyo ngingo kabone n'icyo haba hari impamvu nyoroshyacyaha. Bavugaga kandi ko icyo ngingo zinyuranyije n'ingingo ya 151<sup>2</sup> y'Itegeko Nshinga ku bijyanye n'ubwisanzure bw'umucamanza mu kugena igihano.

Ikibazo kireba ingingo ya 133 igika cya 3 nicyo gihuriweho n'abarega bombi Kabasinga Florida na Niyomugabo Ntakirutimana.

- c. Ingingo ya 271 Kabasinga Florida avugaga ko inyuranyije n'ingingo ya 29 y'Itegeko Nshinga, ngo kuko itagaragaza ibikorwa bigize icyaha cyo guhimba impapuro zivunjamwo amafaranga, kuzikoresha cyangwa kuzikwirakwiza.

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<sup>1</sup> "Buri muntu wese afite uburenganzira ku butabera buboneye, burimo uburenganzira bwo: 1°.....; 4° kudakurikiranwa, kudafatwa, kudafungwa cyangwa kudahanirwa ibyo yakoze cyangwa atakoze, icyo amategeko y'Igihugu cyangwa amategeko mpuzamahanga atabifataga nk'icyaha igihe byakorwaga. Ibyaha n'ibihano bijyanye na byo biteganywa n'amategeko; 5°....."

<sup>2</sup> Ubucamanza bugengwa n'amahame akurikira: ..... abacamanza bakurikiza itegeko kandi bakora umurimo wabo w'ubucamanza mu bwigenge kandi batavugirwamo n'ubutegetsi cyangwa ubuyobozi ubwo ari bwo bwose

[7] Mu cyiciro cya kabiri hagaragaramo ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, ihana utangaza ibitekerezo agamije kuyobya icyemezo cy'umucamanza cyangwa umutangabuhama. Kabasinga Florida avuga ko iyo ngingo inyuranyije n'ingingo ya 38 y'Itegeko Nshinga, yerekeye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru.

[8] Ibibazo bimaze kuvugwa nibyo byasuzumwe muri uru rubanza, hakurikijwe ibyiciro birimo.

## **II. IBIBAZO BIRI MU RUBANZA N'ISESENGURA RYABYO**

**A. Ingingo abarega bavuga ko zibangamiye ihame ryo kugira uburenganzira ku butabera buboneye n'ihame ry'ubwisanzure bw'umucamanza mu kugena ibihano**

**A.1. Kumenya niba, kuba igika cya 4 cy'ingingo ya 84 y'Itegeko n°68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, kitagaragaza ibihe umucamanza ashobora guhana cyangwa kudahana icyitso iyo bireba uwashyingiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane, bibangamiye ihame ry'uburenganzira ku butabera buboneye rivugwa mu ngingo ya 29 y'Itegeko Nshinga**

### **a. Ibisobanuro bitangwa na Kabasinga Florida**

[9] Kabasinga Florida n'umwunganira bavuga ko igika cya 4 cy'ingingo ya 84<sup>3</sup> kinyuranye n'agace ka kane k'ingingo ya 29 y'Itegeko Nshinga gateganywa ko igikorwa gihanwa iyo giteganyijwe n'amategeko ahana. Ibyo babishingira ku mpamvu zikurikira:

- a. Icyo gika cya kane ntigisobanura igihe uwashakanye n'uwakoze icyaha akamubera icyitso, kimwe n'abo bafitanye amasano kugera ku gisanira cya kane, bahanwa. Umushingamategeko ntiyagaragaje niba abo bantu bahanwa nk'ibitso cyangwa niba badahanwa, ibi bigaterwa no kuba yaravuze ko umucamanza ashobora kutabahana, bivuga ko ashobora no kubahana.
- b. Uko gushobora cyangwa kudashobora kubahana niho hateye ikibazo, kuko binyuranyije cyane n'amahame agenderwaho mu manza nshinjabyaha yo gufata igikorwa nk'igihanwa cyangwa ikidahanwa mu mategeko. Ibyo byagira ingaruka nini ku mitangire y'ubutabera buboneye, kuko igika cya kane cy'ingingo ya 84 kitamurikira umucamanza igihe agomba guhana abavugwa muri icyo gika n'igihe atagomba kubahana, akaba kandi atari we ukwiye kubyimenyera.

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<sup>3</sup> Ingingo ya 84 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, igira iti: Umufatanyacyaha ahanwa nk'uwakoze icyaha.

Icyitso ntigihanwa kimwe n'uwakoze icyaha keretse igihe:

1 ° itegeko ribiteganywa ukundi;

2 ° umucamanza abona ko uruhare rw'icyitso mu gukora icyaha rungana cyangwa ruruta urw'uwakoze icyaha.

Icyitso gishobora gukurikiranwa n'ubwo icyaha kitashoboye gukurikiranwa ku wagikoze kubera impamvu zimureba ku giti cye nk'urupfu, uburwayi bwo mu mutwe cyangwa kutamenyekana.

Icyakora, iyo abantu bavugwa mu gace ka 5 d), aka 5 e) n'aka 5 f) tw'ingingo ya 2 y'iri tegeko ari uwashyingiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane (4) bashobora gusonerwa n'urukiko ibihano bigenewe icyitso.



- c. Uburyo iyi ngingo yanditse bunyuranyije n'ihame ry'uko amategeko ahana agomba kuba asobanutse, atagenekereza, kandi adateye urujijo. Mu gihe ateye urujijo cyangwa agenekereje, abuzabantu kugera ku butabera buboneye kuko nko mu ngingo ya 84 yavuzwe haruguru, abantu bayivugwamo batamenya niba bagomba kwirinda kuba ibyitso by'abo bashakanye cyangwa abo bafitanye amasano kugera ku gisanira cya kane, mu gihe batazi niba babihanirwa cyangwa batabihanirwa.
- d. Imiterere y'ingingo ya 84, igika cya 4, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, inanyuranyije n'ingingo ya 2, agace ka mbere y'iryo Tegeko<sup>4</sup>, kuko iha umucamanza urubuga rwo kuba yafata umwanzuro ashatse, ushobora kurenganya cyangwa kubererekera uwo acira urubanza kubera imiterere y'Itegeko.

[10] Kabasinga Florida n'umwunganira bongeraho ko icyo asaba Urukiko ari uko iyo ngingo yakurwaho kuko inyuranyije n'Itegeko Nshinga, ariko ko bibaye ngombwa Urukiko rwategeka ko ihindurwa ikandikwa mu buryo budateye urujijo.

### **b. icyo Intumwa za Leta zibivugaho**

[11] Abahagarariye Leta y'u Rwanda bavugaga ko ibivugwa n'urega nta shingiro bifite kubera impamvu zikurikira:

- a. Ingingo ya 2, igika cya mbere, agace ka 5° y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange isobanura ufatwa nk'icyitso<sup>5</sup> uwo ariwe. Hashingiwe kuri icyo ngingo, habaho icyitso ari uko hari uwakoze icyaha, kandi hari icyaha cyakozwe giteganywa n'amategeko. Umuntu yitwaga icyitso cy'uwakoze icyaha ari uko yamufashije mu bikorwa bitegura ikorwa ry'icyaha mbere.
- b. Hashingiwe kuri icyo gisobanuro, uwashakanye n'uwakoze icyaha akamubera icyitso, kimwe n'abo bafitanye amasano kugera ku gisanira cya kane iyo bamubereye icyitso, bashobora guhanwa mu buryo buteganywa n'ingingo ya 84 y'Itegeko ryavuzwe haruguru. Umushingamategeko yavuze ko urukiko rushobora kubasonera ibihano bigenewe ibyitso hashingiwe ku mikorere y'icyaha, ubwo bushishozi bwo kumenya niba basomerwa cyangwa bahanwa bukaba bwarahariwe umucamanza, ibi bikaba ntaho binyuranyije n'ingingo ya 29, agace ka kane, y'Itegeko Nshinga.

<sup>4</sup> icyaha: igikorwa kibujijwe n'itegeko cyangwa kwanga gukora igitegetswe ku buryo bihungabanya umutekano mu bantu kandi hari itegeko ribiteganyiriza igihano.

<sup>5</sup> icyitso: umuntu wafashije uwakoze icyaha mu byagiteguye bigaragarira muri kimwe mu bikorwa bikurikira:

- a utuma hakorwa icyaha akoresheje igihembo, isezerano ry'igihembo, iterabwoba, agakabyo k'ubutegetswe cyangwa k'ububasha cyangwa amabwiriza agamije gukoresha icyaha;
- b ufasha uwakoze icyaha mu byagiteguye, mu byoroheje imikorere yacyo cyangwa mu byakinonosoye kandi yarabikoze abizi, cyangwa uwashishikaje uwakoze icyaha;
- c utuma undi akora icyaha akoresheje imbwirwaruhame, urusaku rushishikaza cyangwa iterabwoba, bibereye ahantu hateraniye abantu barenze babiri (2), inyandiko, ibitabo cyangwa ibindi byanditswe n'icapiro, biguzwe cyangwa bitangiwe ubuntu cyangwa byatangarijwe ahantu hateraniye abantu benshi, amatangazo amanitse cyangwa yeretswe rubanda;
- d uwahishe uwakoze icyaha, umufatanyacyaha cyangwa uwahishe icyitso kugira ngo ataboneka cyangwa adafatwa, umufasha kwihisha cyangwa gucika cyangwa umuha aho kwihisha cyangwa uwamufashije guhisha ibintu byakoreshejwe cyangwa byagenewe gukoreshwa icyaha;
- e uwahishe abizi ikintu cyangwa ibikoreshe byakoreshejwe cyangwa byagenewe gukoresha icyaha;
- f uwiba, uhisha cyangwa wonona nkana ku buryo ubwo aribwo bwose ibintu byagombye gufasha kugenza icyaha, gutahura ibimenyetso cyangwa guhana abakoze icyaha.

## UKO URUKIKO RUBIBONA

[12] Ingingo ya 84 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 rimaze kuvugwa, isobanura uburyo icyitso gihanwa; mu gika cyayo cya kane, igateganya irengayobora igihe uwabaye icyitso ari uwashyingiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane (4). icyo gika kigira giti: icyakora, iyo abantu bavugwa mu gace ka 5 d), aka 5 e) n'aka 5 f) tw'ingingo ya 2 y'iri tegeko ari uwashyingiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane (4) bashobora gusonerwa n'urukiko ibihano bigenewe icyitso.

[13] Abantu bavugwa mu duce twa 5 d), 5 e) na 5 f) tw'ingingo ya 2 y'iri tegeko ni aba bakurikira:

d. Uwahishe uwakoze icyaha, umufatanyacyaha cyangwa uwahishe icyitso kugira ngo ataboneka cyangwa adafatwa, umufasha kwihisha cyangwa gucika cyangwa umuha aho kwihisha cyangwa uwamufashije guhisha ibintu byakoreshejwe cyangwa byagenewe gukoreshwa icyaha;

e. Uwahishe abizi ikintu cyangwa ibikoresho byakoreshejwe cyangwa byagenewe gukoresha icyaha;

f. Uwiba, uhisha cyangwa wonona nkana ku buryo ubwo aribwo bwose ibintu byagombye gufasha kugenza icyaha, gutahura ibimenyetso cyangwa guhana abakoze icyaha;

[14] Ibiteganyijwe mu gika cya 4 cy'ingingo ya 84, byumvikanisha ko iyo ukoze ibikorwa bivugwa mu duce twa 5 d), 5 e) na 5 f) tw'ingingo ya 2 tumaze kuvugwa ari uwashyingiranywe n'uwakoze icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane (4) bashobora guhanwa cyangwa bagasonerwa ibihano. Ikibazo Kabasinga Florida yagejeje ku Rukiko, akaba ari uko umushingamategeko atamurikiye neza umucamanza ngo amenye igihe agomba guhana uwabaye icyitso uvugwa muri icyo gika cya kane cy'ingingo ya 84, n'igihe atamuhana. Agaragaza ko ibyo bibangamiye ihame ry'uko amategeko ahana agomba kuba asobanutse, atagenekereje kandi adateye urujijo, bikaba byagira ingaruka ku burenganzira bwa buri muntu ku butabera buboneye buteganywa mu ngingo ya 29 y'Itegeko Nshinga, by'umwihariko mu gace kayo ka 4.

[15] Mu gusubiza iki kibazo Kabasinga Florida yagejeje ku Rukiko, ni ngombwa gusuzuma niba ibiteganyijwe mu gika cya 4 cy'ingingo ya 84 yavuzwe haruguru bidasobanutse ku buryo byabangamira uburenganzira ku butabera buboneye buteganywa mu gace ka 4 k'ingingo ya 29 y'Itegeko Nshinga imaze kuvugwa.

[16] Amagambo "bashobora gusonerwa n'urukiko ibihano" bigenewe icyitso yakoreshejwe mu gika cya 4 cy'ingingo ya 84, yumvikanisha nk'aha umucamanza ububasha bwo guhana n'ubwo gusonerwa ibihano, ariko ingingo ntigaragaze igihe akoresha ubwo bubasha bwo guhana, cyangwa gusonerwa igihano. Ibyo bashobora gutuma abantu babiri bakoze ibikorwa bimwe, bagejwe imbere y'abacamanza babiri batandukanye, umwe ashobora guhanwa undi ntahanwe, bitewe n'uko buri mucamanza ariwe wigenere ibyo ashingiraho (*critère d'appréciation*) mu kwemeza igikorwa kigize icyaha gihanwa n'igikorwa gusonerwa igihano. Ese ibi binyuranyije n'ihame ryo kudahana igihe nta tegeko ribiteganyije riteganyijwe mu gace ka 4 k'ingingo ya 29 y'Itegeko Nshinga?

[17] Igika cya mbere cy'ingingo ya 3 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyije icyaha n'ibihano muri rusange, giteganyije ko nta muntu ushobora guhanwa kubera gukora

ikibujijwe cyangwa kwanga gukora igitegetswe bitari icyaha hakurikijwe amategeko y'igihugu cyangwa mpuzamahanga mu gihe byakorwaga. Ibivugwa muri iki gika, bijyanye n'ihame rusange ryemewe mu mategeko, rivuga ko nta cyaha kibaho, nta n'igihano gitangwa, iyo bitateganyijwe n'itegeko (*Nullum crimen, nulla poena, sine lege = principe de la légalité des infractions et des peines*). Iri hame riboneka mu masezerano mpuzamahanga anyuranye, by'umwihariko amasezerano mpuzamahanga u Rwanda rwashyizeho umukono.

[18] Ingingo ya 11(2) y'Amasezerano mpuzamahanga yerekeye uburenganzira bwa muntu, u Rwanda rwemeje ku wa 18/09/1962, ihura neza n'ingingo ya 3 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 yavuzwe mu gika kibanza<sup>6</sup>. Ihura kandi n'ingingo ya 15(1) y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, u Rwanda rwemeje burundu n'Itegeko N° 8/75 ryo ku wa 6 Gashyantare 1975, agatangazwa mu igazeti ya Leta muri uwo mwaka<sup>7</sup>, kimwe n'ingingo ya 7(2) y'Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage<sup>8</sup> (*Charte Africaine des Droits de l'Homme et des Peuples*), u Rwanda rwemeje n'Itegeko n° 10/1983 ryo ku wa 01/07/1983, agatangazwa mu igazeti ya Leta yo ku wa 01/07/1983.

[19] Ihame riteganyijwe mu ngingo ya 3 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018, ndetse no mu masezerano mpuzamahanga amaze kuvugwa, ni ryo riteganyijwe mu ngingo ya 29, agace ka 4, y'Itegeko Nshinga, rikaba ari kimwe mu bigize uburenganzira ku butabera buboneye. Iri hame ribuzza guhanira umuntu ibikorwa itegeko ritateganyije nk'ibyaha, ryasobanuwe n'abahanga mu mategeko ndetse n'inkiko zinyuranye.

[20] Umuhanga mu mategeko Bertrand de Lamy, asobanura ko ihame ry'uko ibyaha n'ibihano bigomba kugenwa n'itegeko, rishingiye ku bintu bibiri by'ingenzi: kuba itegeko ari ryo ryonyine rifite ububasha bwo kugena uburenganzira bwo guhana, no kuba iri hame ari uburyo bwo gutuma hatabaho kudafata kimwe abagomba guhanwa; buri wese agashobora kumenya imbibi z'icyemewe n'ikibujijwe (*Le principe légaliste, ainsi affirmé, repose sur deux fondements particulièrement solides: l'un, politique, tenant à la souveraineté de la loi, expression de la volonté générale, et qui, seule, a la légitimité permettant d'asseoir le droit de punir; l'autre, plus philosophique, fait de la légalité criminelle le moyen d'assurer la mise en œuvre du libre arbitre, d'éviter l'arbitraire et de garantir l'égalité devant la répression en avertissant chacun des frontières du permis et de l'interdit*)<sup>9</sup>.

[21] Umuhanga mu mategeko Christine Santerre asobanura ko, ihame ry'uko ibyaha n'ibihano bigomba kugenwa n'itegeko, risaba ko itegeko rigena icyaha n'ibikigize byose, ni ukuvuga igikorwa kibujijwe n'igihano (*ce principe de la légalité des délits et des peines suborne l'existence d'une infraction à un texte de loi, lequel doit prévoir l'ensemble des composantes de celle-ci, c'est-à-dire la conduite prohibée et la peine*)<sup>10</sup>. Asobanura kandi ko iryo hame rishingiye ku bintu bibiri:

<sup>6</sup> Nul ne sera condamné pour des actions ou omissions qui, au moment où elles ont été commises, ne constituaient pas un acte délictueux d'après le droit national ou international.

<sup>7</sup> Nul ne sera condamné pour des actions ou omissions qui ne constituaient pas un acte délictueux d'après le droit national ou international au moment où elles ont été commises.....

<sup>8</sup> Nul ne peut être condamné pour une action ou une omission qui ne constituait pas, au moment où elle a eu lieu, une infraction légalement punissable.

<sup>9</sup> Bertrand de Lamy (Professeur de Droit à L'Université de Toulouse I), Dérives et évolution du principe de la légalité en droit pénal français : contribution à l'étude des sources du droit pénal français par Diffusion numérique : 4 mars 2010, n°2 (<https://id.erudit.org/iderudit/039334ar>)

<sup>10</sup> Santerre Christine, Étude franco-canadienne du principe légaliste: le processus qualitatif et interprétatif du texte pénal. In: Revue internationale de droit comparé. Vol. 68 N°4, 2016, p.4.

icya mbere ni ugufasha umuturage kumenya ibikorwa bibujijwe n'ingaruka z'ibihano igihe bitubahirijwe. Icyamba kabiri ni ugushyira imbibi ku bubasha ntavogerwa bw'abashinzwe gushyira mu bikorwa amategeko, no kubuza ko amategeko adasobanutse aha inkiko ububasha bugari mu gusobanura itegeko (*Deux fondements de ce principe: le premier vise à formuler au citoyen un avertissement raisonnable afin qu'il soit avisé des conduites proscrites et des conséquences pénales en cas du non-respect de la loi. La clarté et la précision du texte de loi exigées par le principe légaliste assurent ainsi au justiciable une juste connaissance des interdits pénaux. Le second fondement vise à limiter le pouvoir discrétionnaire des personnes chargées de l'application de la loi. Il s'agit d'éviter que des textes flous laissent aux tribunaux un vaste pouvoir d'interprétation*)<sup>11</sup>.

[22] Muri urwo rwego kandi, Urukiko rw'Ikirenga rwa Canada rwasobanuye ko itegeko ridasobanutse rituma umuturage atamenya ko ibyo agiye gukora bihanwa. Rituma kandi akazi k'abashinzwe kurishyira mu bikorwa kagorana, kimwe n'akazi k'abacamanza igihe bagomba kwemeza ko icyaha cyakozwe; rikanatuma habaho impungenge ko abashinzwe kurishyira mu bikorwa bagira ububasha bwinshi budafite imbibi (*une règle de droit imprécise empêche le citoyen de se rendre compte qu'il s'aventure sur un terrain où il s'expose à des sanctions pénales. De même, elle complique la tâche des responsables de son application et des juges lorsqu'ils sont appelés à déterminer si un crime a été commis. Elle suscite également la crainte que les responsables de son application disposent d'un pouvoir discrétionnaire trop grand*)<sup>12</sup>.

[23] Urwo Rukiko rwasobanuye kandi ko kuba amategeko ahana agomba kuba asobanutse bishingira ku ihame ry'uko abatwaga bagomba kumenya mbere y'igihe icyo babujijwe, kandi ububasha ntavogerwa bw'abashyira mu bikorwa amategeko bukagira aho bugarukira. Itegeko ryemezwa ko rinyuranyije n'Itegeko Nshinga iyo ridasobanutse ku buryo ntawe ushobora kumva icyo rishatse kuvuga hakurikijwe ibishingirwaho mu isesengura ry'amategeko (*La théorie de l'imprécision repose sur la primauté du droit, en particulier sur les principes voulant que les citoyens soient raisonnablement prévenus et que le pouvoir discrétionnaire en matière d'application de la loi soit limité. L'avertissement raisonnable aux citoyens comporte un aspect formel - la connaissance même du texte - et un aspect de fond - la conscience qu'une certaine conduite est assujettie à des restrictions légales. ... La théorie de l'imprécision peut donc se résumer par la proposition suivante: une loi sera jugée d'une imprécision inconstitutionnelle si elle manque de précision au point de ne pas constituer un guide suffisant pour un débat judiciaire, c'est-à-dire pour trancher quant à sa signification à la suite d'une analyse raisonnée appliquant des critères juridiques*)<sup>13</sup>.

[24] Urukiko rurinda Iremezo ry'Itegeko Nshinga rwo mu Bufaransa narwo rwasobanuye ko Umushingamategeko agomba gusobanura ibyaha mu buryo bwumvikana kandi budateye urujijo, kugira ngo hataba gufata ibyemezo bidafite icyo bishingiyeho (... *qu'il en résulte la nécessité pour le législateur de définir les infractions en termes suffisamment clairs et précis pour exclure l'arbitraire*)<sup>14</sup>.

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<sup>11</sup> Ibid., p.6-7.

<sup>12</sup> Canadian Fondation for Children, Youth and the Law c. Canada (Procureur Général), [2004] 1 S.C.R. 76, 2004 SCC 4, Note 14, Par. 16.

<sup>13</sup> R. c. Nova Scotia Pharmaceutical Society, 9 Juillet 1992, no 22473, p.3-4.

<sup>14</sup> Cons. const., 20 janv. 1981, n° 80-127 DC. Lire en ligne: (<https://www.doctrine.fr/d/CONSTIT/1981/CONSTEXT000017665953>).

[25] Rwasobanuye kandi ko Umushingamategeko agomba kwandika itegeko mu buryo umucamanza, usabwa kudasobanura itegeko rihana mu buryo bwagutse, adafata icyemezo kizagaragara nk'aho kidafite icyo gishingiyeho (*le législateur doit rédiger la loi « dans des conditions qui permettent au juge, auquel le principe de légalité impose d'interpréter strictement la loi pénale, de se prononcer sans que son appréciation puisse encourir la critique d'arbitraire*)<sup>15</sup>.

[26] Mu bisobanuro bitangwa n'abahanga mu mategeko ndetse n'ibyemezo by'inkiko binyuranye ku bijyanye n'ihame ry'uko ibyaha n'ibihano bigomba kugenwa n'itegeko, riteganyijwe mu ngingo ya 29 agace ka 4 y'Itegeko Nshinga, humvikanamo ibitekerezo by'ingenzi bikurikira:

- a. Itegeko niryo rigena icyaha (igikorwa gihanwa) n'ibikigize byose, ni ukuvuga igikorwa kibujijwe n'igihano;
- b. Si inshingano y'umucamanza kugena ibikorwa bigize icyaha bigomba guhanwa, ahubwo ibyo ni inshingano y'umushingamategeko;
- c. Itegeko rihana rigomba kwandikwa mu buryo busobanutse kandi butarimo urujijo, kugirango hatabaho gufata ibyemezo bigaragara nk'aho bidashingiye ku bintu bisobanutse, kandi bitareba abantu bose mu buryo bumwe (*pour éviter l'arbitraire*);
- d. Itegeko rigomba kwandikwa ku buryo buri wese ashobora kumenya imbibi z'icyemewe n'ikibujijwe, n'ingaruka z'ibihano igihe akoze ikibujijwe, kugirango ashobore kucyirinda (*predictability*).

[27] Urukiko ruhuje ibimaze kuvugwa n'ibiteganyijwe mu ngingo ya 84, igika cya 4, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyia ibyaha n'ibihano muri rusange, rusanga:

- a. Iyi ngingo ivuga ko umucamanza ashobora gusonera igihano kigenewe icyitso uwashyiringanywe n'uwo akomeye icyaha cyangwa uwo bafitanye isano kugera ku rwego rwa kane (4), ariko ntigaragaze imyitwarire igize icyaha ku bamaze kuvugwa ishobora gutuma bahanwa nk'ibitso, n'imyitwarire ishobora gutuma haba ubusonerwe bw'igihano.
- b. Kuba itegeko ritagena imyitwarire ihanirwa, ni ukuvuga ibikorwa bigize icyaha, bituma umucamanza ariwe wigena impamvu zatuma ahana cyangwa asonera umuntu igihano, kandi bitari mu nshingano ze, ahubwo ari inshingano z'Umushingamategeko.
- c. Ibyo bishobora gutuma kandi abacamanza batandukanye bafata mu buryo butandukanye abantu bakoze ibikorwa bimwe/bagize imyitwarire imwe, kuko itegeko ritasobanuye mu buryo bwumvikana kandi budateye urujijo ushobora guhanwa n'ushobora gusonerwa igihano.
- d. Abantu bavugwa mu ngingo ya 84, igika cya 4, badashobora kumenya mbere y'igihe, bahereye ku byanditse mu itegeko, imyitwarire ibujijwe bagomba kwirinda kugirango itabaviramo guhanwa, kuko igenwa na buri umucamanza mu bushishozi bwe.

[28] Urukiko rusanga, hashingiwe ku bisobanuro bimaze gutangwa, igika cya 4 cy'ingingo ya 84 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyia ibyaha n'ibihano muri rusange

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<sup>15</sup> Déc. n° 96-377 DC du 16 juillet 1996, cons. N° 3 et s., citée par Bertrand de Lamy (Professeur de Droit à L'Université de Toulouse I), Cahiers du Conseil Constitutionnel N° 26 (Dossier la Constitution et le droit Pénal)- Aout 2009, p. 12.

kitubahiriye ihame ry'uko ibyaha n'ibihano bigomba kugenwa n'itegeko, bityo kikaba kibangamiye ihame ry'uburenganzira ku butabera buboneye riteganyijwe mu ngingo ya 29 agace ka kane y'Itegeko Nshinga. Urukiko rurasanga icyo gika nta gaciro gifite hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko Nshinga.

[29] Harebwe amateka y'iyi ngingo, bigaragara ko Itegeko –Teka N° 21/77 ryo ku wa 18 Aout 1977 rishyiraho igitabo cy'amategeko ahana ryahinduwe n'Itegeko Ngenga n° 01/2012/OL ryo ku wa 02/05/2012, mu ngingo yaryo ya 257, ryateganyaga ko uzahisha umuntu azi neza ko yakozwe icyaha cy'ubugome cyangwa icyaha gikomeye, cyangwa azi ko ashakishwa n'ubucamanza kubera icyo cyaha, cyangwa uzamuhungisha ngo adafatwa cyangwa ataboneka cyangwa uzamufasha mubyo kwihisha cyangwa gucika, azahanwa nk'icyitso cy'icyaha gikulikiranywe. Iyo ngingo yateganyaga kandi ko abatabihanirwa ari uwashakanye na nyiri icyaha cy'ubugome cyangwa gikomeye, ababyeyi be, abavandimwe be cyangwa abo bashyingiranye kugarukira ku rwego rwa kane rukubiyemo. Iyo ngingo yaje guhindurwa n'Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana mu ngingo yaryo ya 478. Iyo ngingo yagiraga iti: Mu bihe byateganyijwe mu ngingo ya 477<sup>16</sup> y'iri tegeko ngenga, urukiko rushobora gusonera igihano cyari gikwiye abafitanye isano n'uwakoze icyaha, uwo bashyingiranywe, ababyeyi be cyangwa abo mu muryango we kugeza ku rwego rwa kane.

[30] Mu ivugurura ry'igitabo cy'amategeko ahana ryakozwe mu mwaka wa 2018, iyo ngingo ntiyahindutse cyane. Mu nyandiko Urukiko rwabonye, y'ikiganiro cyatanze n'umukozi wa Komisiyo ishinze ivugurura ry'amategeko ku mushinga w'Itegeko ryo mu 2018 riteganyira ibyaha n'ibihano muri rusange rivugurura Itegeko Ngenga N° 01/2012/OL ryo ku wa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, basobanuraga ko igishya kiri mu mushinga ari uko uwashyingiranywe n'uwakoze icyaha adasonerwa buri gihe igihano iyo yabaye icyitso cy'uwo bashyingiranywe. Iyo nyandiko yavugaga ko asonerwa gusa iyo yabimuhishe (bagomba kuba barashatse kuvuga « yamuhishe »), yahishe ibyo yibye cg yononnye ibimenyetso byari gutuma hagenzwa icyaha cyakozwe n'uwashyingiranywe. Mu bindi bihe (utuma hakorwa icyaha akoresheje igihembo, utanga ibikoresho bigamije gukoreshwa icyaha, uwashishikariye gukora icyaha, utuma undi akora icyaha akoresheje imbwirwaruhamwe), uwashyingiranywe wabaye icyitso ntasonerwa. Ibikorwa inyandiko yavugaga ko byasonerwa ni nabyo bigaragara mu duce twa 5 d), 5 e) na 5 f) twavuzwe mu gika cya 2 cy'uru rubanza, tw'ingingo ya 2 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru; ariko ingingo yakomeje kwandikwa nk'uko yari isanzwe

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<sup>16</sup> Umuntu wese, uretse uwakoze icyaha cyangwa icyitso cye:

1° uhisha abizi, ibintu cyangwa ibikoresho byakoreshejwe cyangwa byagenewe gukoreshwa icyaha cy'ubugome cyangwa icyaha gikomeye, kijyanye n'umudendezo w'igihugu, ibikoresho cyangwa inyandiko byabonetse bikomotse kuri bene icyo cyaha cy'ubugome cyangwa gikomeye;

2° ushwanyaguza, wiba, uhisha cyangwa uhindura nkana inyandiko zose zashoboye gufasha kuzamura icyaha cy'ubugome cyangwa gikomeye, gutahura ibimenyetso cyangwa guhana abakoze icyaha kijyanye n'umudendezo w'igihugu; ahanwa nk'uwakoze icyaha cyo guhisha nk'uko kivugwa mu ngingo ya 326 y'Itegeko Ngenga.

imeze mu itegeko ryavuguruwe. I bivugwa muri icyo nyandiko bisa kandi n'ibigaragara mu mategeko ahana y'ibihugu bitandukanye nka Vanuatu<sup>17</sup>, Leta ya Nevada<sup>18</sup>, Cameroun<sup>19</sup>

Urukiko rusanga, niba ibikubiye muri icyo nyandiko aribyo byari bigamijwe hashyirwaho igika cya kane cy'ingingo ya 84, byaragombaga kwandikwa ku buryo busobanutse.

[31] Urukiko ruratanga inama ko ingingo ya 84 igika cya 4 yakwandikwa neza ikagaragaza, mu buryo busobanutse, icyo umushingamategeko yari agamije ayishyiraho, igahuzwa n'ibiteganyijwe mu ngingo ya 29 agace ka 4 y'Itegeko Nshinga.

**A.2. Kumenya niba kubuza kugabanya ibihano kubera impamvu nyoroshyacyaha nk'uko biteganyijwe mu ngingo ya 92 n'ingingo ya 133 igika cya 3 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange binyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga.**

**a. Ibisobanuro bitangwa na Kabasinga Florida**

[32] Kabasinga Florida n'umwunganira bavugaga ko ingingo ya 92 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange<sup>20</sup>, n'ingingo ya 133 igika cya gatatu y'iryo Tegeko<sup>21</sup>, binyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga, kubera impamvu zikurikira:

a. Izo ngingo uko ari 2 zinyuranyije n'ingingo ya 29 kuko zituma umuntu uhanirwa icyaha cya Jenoside cyangwa cyo gusambanya umwana utarageza ku myaka 14 atabona ubutabera buboneye, mu gihe adashobora kugabanyirizwa igihano kabone n'ubwo haba hari impamvu nyoroshyacyaha.

b. Uwahamwe n'icyaha giteganyijwe n'imwe muri izo ngingo bimwima uburenganzira bwo kugabanyirizwa igihano mu gihe hari impamvu nyoroshyacyaha, ndetse bikamwima uburenganzira bwo kujuririra igihano gusa mu gihe yahamwe n'icyaha, bikaba rero

<sup>17</sup> Art.34. Accessory after the fact:

[66] An accessory after the fact shall mean a person who, knowing or having reasonable cause to suspect that another person has committed a criminal offence, shelters such person or his accomplice from arrest or investigation, or has possession of or disposes of anything taken, misappropriated or otherwise obtained by means of the offence or used for the purpose of committing the offence.

[67] Subsection (1) shall have no application to any ascendant, descendant, sibling or the spouse of the person sheltered.

[68] An accessory after the fact shall be punished as a principal offender.

<sup>18</sup> NRS 195.030 Accessories:

[67] Every person who is not the spouse or domestic partner of the offender and who, after the commission of a felony, destroys or conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony.

2. Every person who is not the spouse, domestic partner, brother or sister, parent or grandparent, child or grandchild of the offender, who, after the commission of a gross misdemeanor, harbors, conceals or aids such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a gross misdemeanor or is liable to arrest, is an accessory to the gross misdemeanor.....

<sup>19</sup> SECTION 100: Accessory after the Fact:

[71] An accessory after the fact shall mean a person who after the commission of a felony or misdemeanour shelters an offender or his accessories from arrest or from Investigation, or who has custody of or disposes of anything taken, misappropriated or otherwise obtained by means of the offence.

[72] This Section shall not apply as between husband and wife.

<sup>20</sup> Umuntu wese ukoze kimwe mu bikorwa bivugwa mu ngingo ya 91 y'iri tegeko (iyi ngingo itanga igisobanuro cy'icyaha cya Jenoside) aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha.

<sup>21</sup> Iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha.

bibangamiye uburenganzira bw'uregwa bwo guhabwa ubutabera buboneye, kuko butangirira mu iperereza, bukageza umuntu ahamwe n'icyaha agahabwa igihano.

c. Kuba umuntu yabuzwa kimwe mu bigize inzira zimaze kuvugwa, aba yimwe ubutabera n'itegeko ryagombaga kumurengera. Ibi bikaba byaremejwe n'Urukiko rw'Ikirenga rw'u Rwanda rwifashishije inyandiko z'abahanga ndetse n'ibyemezo by'inkiko zo mu bindi bihugu zasuzumye ikibazo gifitanye isano n'iki, aho rwagize ruti:” Urukiko rusanga mu manza nshinjabyaha, uburenganzira ku butabera buboneye butangirana n'ibikorwa by'iperereza, bugakomereza ku bikorwa by'ikurikiranacyaha, iby'iburanisha n'itangwa ry'ibihano ku byaha biteganyijwe n'amategeko ahana. Bivuze ko n'ibirebana n'isuzumwa ry'impamvu nyoroshyacyaha n'ibihano biri mu gice cy'iburanisha, nabyo bigomba kubahiriza amahame agize ubutabera buboneye kuri izo ngingo”.

d. Iyo urebye ingingo ya 49, igika cya mbere, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, usangamo ibyo umucamanza akurikiza mu gutanga igihano<sup>22</sup>, ku buryo kunyuranya nabyo byaba ari ukunyuranya n'ibigize uburenganzira ku butabera buboneye mu itangwa ry'igihano.

e. Mu gusesengura ingingo ya 92 na 133 igika cya 3, usanga ububasha bw'umucamanza bugarukira gusa ku kureba niba uregwa ahamwe n'icyaha, kuko igihano cyo kiba giteganyijwe n'itegeko, ibi bikaba bivuguruza ingingo ya 49 iteganyira ibyo umucamanza ashingiraho atanga igihano. N'ubwo ibyaha bivugwa mu ngingo zombi ari ibyaha bikomeye kandi bikwiye koko guhanwa ku buryo bukomeye, ntihabura impamvu nyoroshyacyaha zatuma uwabikoze agabanyirizwa ibihano.

f. N'ubwo igihugu cyiyemeje gukumira no kurwanya Jenocide, icyo cyaha kiramutse kigaragaye ku munyarwanda cyangwa umunyamahanga, ubwe akishyikiriza ubutabera, cyangwa se mu gihe akurikiranywe agafasha inzego z'iperereza kumenya abacuze uwo mugambi batari bazwi, ntihabura kugabanyirizwa igihano kubera umusanzu aba atanze mu butabera. Icyaha cya Jenocide gikorwa rwihishwa ku buryo kubona abatangabuhamya bigorana, umucamanza bikaba bitamworohera kumenya ukuri.

g. Ku bireba icyaha cyo gusambanya umwana uri muni y'imyaka 14, n'ubwo byumvikana ko ari icyaha abantu benshi bumva ko kitakwihanganirwa, n'umucamanza uca bene izo manza aba yumva uburemere bwazo, ku buryo bidakwiye gukuraho ko hashobora kubaho impamvu zabanjirije icyaha, izagikurikiye cyangwa izagiherekeje, zagabanyira ubukana bwacyo ku buryo uwagikoze yagabanyirizwa igihano mu bushishozi bw'Urukiko.

h. Izi ngingo ziniga kandi ubwisanzure bw'umucamanza bwo gushyira mu gaciro mu gihe cyo kugena igihano, zikanabangamira ubwigenge bwe mu guca imanza zitabera, kuko zimubuza kugereranya ibyatuma atanga igihano gito cyangwa kinini. Guha umucamanza igihe cyo gutekereza ku guhamya umuntu icyaha cyangwa kumugira umwere, ukamubuza gutekereza ku gihano gikwiranye n'ibikorwa byakozwe, ni ukumwambura ubwisanzure no kwambura abaturanyi uburyo bashyirirweho bwo kubona ubutabera buboneye.

i. Izi ngingo zinaburizamo ubwigenge bw'umucamanza buteganywa n'ingingo ya 4 n'iya 5 z'Itegeko n° 09/2004 ryo ku wa 29/04/2004 ryerekeye imyitwarire mu kazi

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<sup>22</sup> Umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo.



k'ubucamanza<sup>23</sup>. Ibi byashimangiwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC 00003/2019/SC, mu gika cya 35, aho rwagize ruti: "Ihame ry'ubwigenge bw'umucamanza mu kazi ke, rijyana n'ihame ry'ubwigenge bw'Urwego rw'Ubucamanza. Rifatwa nk'ubwisanzure umucamanza afite bwo kuburanisha no guca imanza mu nzira n'uburyo biteganywa n'amategeko, akabikora nta gitutu icyo aricyo cyose cyaba icy'inzego za Leta, n'icy'abandi ».

j. Ubwigenge bw'umucamanza kwasobanuwe no mu rubanza R. v. Beauregard, rwaciwe n'Urukiko rw'Ikirenga rwa Canada, mu magambo akurikira: « *The core of the principle of judicial independence is the complete liberty of the judge to hear and decide the cases that come before the court; no outsider, be it Government, pressure group, individual or even another judge should interfere, or attempt to interfere, with the way in which a judge conducts a case and makes a decision* ».

[33] Ashingiye ku mpamvu zimaze kuvugwa, Kabasinga Florida asaba Urukiko rw'Ikirenga kwemeza ko ingingo ya 92 n'ya 133 igika cya 3 zinyuranyije n'Itegeko Nshinga, rukanategeka ko zivanwaho.

#### **b. Ibisobanuro bitangwa na Niyomugabo Ntakirutimana**

[34] Niyomugabo Ntakirutimana n'abamuhagarariye basobanura ko kuba ingingo ya 133 igika cya 3 y'itegeko ryavuzwe haruguru iteganya igihano ntayegayezwa ku cyaha cyo gusambanya umwana utarageza ku myaka 14, kabone n'iyi haba hari impamvu nyoroshyacyaha, byazatuma atabona ubutabera buboneye yemererwa n'Itegeko Nshinga mu ngingo yaryo ya 29 mu rubanza afite mu Rukiko rw'Ubujurire. Bavuga ko muri urwo rubanza akurikiranyweho icyaha cyo gusambanya umwana utarageza ku myaka 14, inkiko zikaba zidashobora kumugabanyiriza igihano kuko umucamanza azitiwe n'ingingo ya 133 igika cya 3.

[35] Niyomugabo Ntakirutimana n'abamuhagarariye bongeraho ko iyi ngingo ikwiye gukurwaho kuko idaha umucamanza ubwinyagamburiro bwo kuba yagabanya igihano, ndetse ikaba inyuranye n'ihame ry'uko abantu bose bareshya imbere y'amategeko bakaba bagomba gufatwa kimwe. Ibindi bavuga bihura n'ibyagarutseweho na Kabasinga Florida.

#### **c. Icyo Intumwa za Leta zibivugaho**

[36] Abahagarariye Leta y'u Rwanda bavuga ko basanga nta mpamvu yo kubyisobanuraho kuko Urukiko rw'Ikirenga rwabifasheho icyemezo mu rubanza RS/INCONST/SPEC 00003/2019/SC, mu bika byarwo bya 39<sup>24</sup> na 40<sup>25</sup>, ndetse runatanga inama ku zindi ngingo zifite ikibazo kimwe ariko zitaregwe.

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<sup>23</sup> Umucamanza yigenga mu kazi ke. Asuzuma, mu bwisanzure, ibirego yashyikirijwe kandi akabifataho ibyemezo, atitaye ku bamushyiraho igitugu. Mu manza yaregwe, umucamanza agomba kwirinda ikintu cyose cyatuma afata ibyemezo byaba binyuranyije n'imiburanishirize yagenwe n'amategeko. Ategetswe guca urubanza akurikije amategeko.

<sup>24</sup> Igika cya 39 hashingiye ku bisobanuro bitanzwe mu bika bibibanziye iki, ibiteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ko iyo gusambanya umwana byakurikiye no kubana nk'umugabo n'umugore, igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, binyuranye n'ingingo ya 151,5 y'Itegeko Nshinga iteganya ko abacamanza bakora umurimo wabo w'ubucamanza mu bwigenge, kuko babujijwe gushingira ku mpamvu nyoroshyacyaha batanga igihano gikwiye.

<sup>25</sup> Igika cya 40: hari izindi ngingo ziteganywa ibihano bidashobora kugabanywa, Urukiko rukaba nta cyemezo rwazifataho kuko zitaregwe. Leta yazisuzuma ikareba niba zidakwiye guhindurwa kugirango zihuzwe n'ibivugwa muri uru rubanza.

## UKO URUKIKO RUBIBONA

[37] Urukiko rurasanga ikibazo gisa n'iki cyarasuzumwe mu rubanza RS/INCONST/SPEC00003/2019/SC rwaciwe ku wa 04/12/2019, mu kirego Kabasinga Florida yari yashyikirije uru Rukiko arusaba kwemeza ko ingingo ya 133, agace kayo ka 4 karebana no gusambanya umwana bigakurikirwa no kubana nk'umugabo n'umugore, inyuranyije n'ingingo ya 29 n'ya 151 z'Itegeko Nshinga. Itandukaniro rihari gusa, ni uko ubu Kabasinga Florida na Niyomugabo Ntakirutimana baregera ingingo ya 133 igika cya 3, n'ingingo ya 92 ku bireba Kabasinga Florida, ariko ibibazo bagaragaza ni bimwe, aribyo kuba izo ngingo zinyuranyije n'amahame y'uburenganzira ku butabera buboneye, n'ubwigenge bw'umucamanza mu kugena igihano.

[38] Muri urwo rubanza, Urukiko rwasanze ibiteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ko iyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore, igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, binyuranye na rimwe mu mahame agize uburenganzira ku butabera buboneye rivuga ko umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo, rwemeza ko inyuranye n'ingingo ya 29 y'Itegeko Nshinga.

[39] Urukiko rwasanze kandi, ibiteganywa n'ingingo ya 133 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ko iyo gusambanya umwana byakurikiwe no kubana nk'umugabo n'umugore, igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, binyuranyije n'ingingo ya 151( 5°) y'Itegeko Nshinga iteganya ko abacamanza bakora umurimo wabo w'ubucamanza mu bwigenge, kuko babujijwe gushingira ku mpamvu nyoroshyacyaha batanga igihano gikwiye.

[40] Mu gika cya 40 cy'urwo rubanza, Urukiko rwagaragaje ko hari izindi ngingo ziteganywa ibihano bidashobora kugabanywa, ariko rukaba ntacyo rwazivugaho kuko zitaregewe; rutanga inama ko Leta yazisuzuma, zigahindurwa kugira ngo zihuzwe n'ibivugwa muri urwo rubanza. Uru Rukiko rurasanga ingingo ya 92 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018, igice cyayo kigira kiti “kidashobora kugabanywa kubera impamvu nyoroshyacyaha”; n'ingingo ya 133 igika cya 3, agace kavuga ko iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, ziri mu zivugwa mu gika cya 40 cy'urubanza RS/INCONST/SPEC 00003/2019/SC. Urukiko rusanga rero, uduce tw'izo ngingo tumaze kuvugwa, natwo tunyuranyije n'amahame y'uburenganzira ku butabera buboneye n'ubwigenge bw'umucamanza mu kugena igihano, hashingiwe ku bisobanuro byatanzwe mu rubanza RS/INCONST/SPEC 00003/2019/SC bitari ngombwa kugarukaho kuko ikibazo kivugwaho ari kimwe, bityo tukaba tunyuranyije n'ingingo ya 29, n'ya 151 z'Itegeko Nshinga.

[41] Urukiko ruributsa inama yari yatanzwe mu rubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe ku wa 04/12/2019, ivuga ko izindi ngingo ziteganywa ibihano bidashobora kugabanywa, Urukiko rutagize icyo ruvugaho kuko zitaregewe, Leta yazisuzuma zigahindurwa kugira ngo zihuzwe n'ibivugwa muri urwo rubanza.

**A.3. Kumenya niba ibivugwa mu ngingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ko “Umuntu wese uhimba,**

**ukoresha cyangwa ukwirakwiza mu buryo ubwo ari bwo bwose impapuro zivunjwamo amafaranga, aba akoze icyaha”, binyuranyije n’ingingo ya 29 y’Itegeko Nshinga**

**a. Ibisobanuro bitangwa na Kabasinga Florida**

[42] KABASINGA Florida n’umwunganira batanga ibisobanuro bikurikira:

a. Ingingo ya 271<sup>26</sup> y’Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange, ifite ibikorwa bitatu kandi buri cyose kikaba kigize icyaha ukwacyo. Ibyo bikorwa ni uguhimba impapuro mvunjwafaranga, gukoresha impapuro mvunjwafaranga, no gukwirakwiza impapuro mvunjwafaranga.

b. Igikorwa cya mbere kigize icyaha cyo guhimba impapuro mvunjwafaranga nta kibazo giteye kuko guhimba inyangirakwiza iyo ari yo yose ari icyaha. Ibikorwa bindi bibiri nibyo byanditse mu buryo bubangamira Itegeko Nshinga, kuko gukoresha gusa impapuro mvunjwafaranga atari icyaha. Umushingamategeko akaba yaragombaga gutandukanya abakoresha impapuro mvunjwafaranga zihimbye kandi babizi, n’abazikoresha mu buryo bwemewe n’amategeko.

c. Imyandikire y’iyi ngingo isa n’ibuza ikoreshwa ry’impapuro mvunjwafaranga mu Rwanda, ndetse n’ikwirakwiza ryazo, hakaba hakwiye gutandukanywa uwazikwirakwije mu buryo bunyuranyije n’amategeko n’uwabikoze mu nyungu z’ikigo akorerera. Mu bikorwa bigize iki cyaha kandi, haburamo ubushake bwo gukora icyaha (*intention de nuire*). Inyangirakwiza zitandukanye z’ababanyaga mu mategeko zigaragaza ko kugira ngo habeho icyaha, uwagikoze agomba kuba yagize umutima mubi wo kwangiza cyangwa gukora ibikorwa bitemewe, bigamije kubuza umudendezo sosiyete, azi neza ko icyo akoze gifite ingaruka mbi ku wo gikorewe, ari byo byitwa *dol spécial*.

d. Hashingiwe ku ngingo ya 2, agace ka mbere, y’Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, mu gutanga inyito y’icyaha umushingamategeko aba akwiye kugaragaza igikorwa avuga ko kigize icyaha. Iyo ngingo ivuga ko icyaha ari igikorwa kibujijwe n’itegeko, cyangwa kwanga gukora igitegetswe ku buryo bihungabanya umutekano w’abantu.

e. Ingingo ya 271 y’Itegeko n° 68/2018 ryo ku wa 30/08/2018 ibangamiye ingingo ya 29 y’Itegeko Nshinga, kuko urukiko rutatanga ubutabera buboneye mu gihe ibikorwa bigize icyaha bitagaragaza icyo bibangamiyeho sosiyete.

[43] Ashingiwe ku mpamvu zimaze kuvugwa, Kabasinga Florida asaba Urukiko kwemeza ko ingingo ya 271 y’Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange inyuranyije n’ingingo ya 29 y’Itegeko Nshinga, ikaba yakurwa mu mategeko y’u Rwanda cyangwa ikandikwa ukundi.

**b. Icyo Intumwa za Leta zibivugaho**

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<sup>26</sup> “Umuntu wese uhimba, ukoresha cyangwa ukwirakwiza mu buryo ubwo ari bwo bwose impapuro zivunjwamo amafaranga, aba akoze icyaha. Iyo abihamijwe n’urukiko, ahanishwa igifungo kitari muni y’imyaka itatu (3) ariko kitarenze imyaka itanu (5) n’ihazabu y’amafaranga y’u Rwanda yikubye inshuro kuva kuri ebyiri (2) kugeza ku icumi (10) z’agaciro k’amafaranga y’amahimbano”.

[44] Abahagarariye Leta y'u Rwanda bavuga ko nta kibazo kiri mu myandikire y'ingingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 kubera impamvu zikurikira:

a. Guhimba impapuro mvunjwafaranga, gukoresha izo mpapuro mvunjwafaranga zahimbwe, no gukwirakwiza izo mpapuro mvunjwafaranga zahimbwe mu buryo ubwo aribwo bwose, biba bigize icyaha. Impapuro mvunjwafaranga zifite uburyo zikoreshwamo bwemewe n'amategeko, kunyuranya nabyo akaba aribyo bigize icyaha giteganywa n'ingingo ya 271 y'Itegeko ryavuzwe haruguru. Gukoresha impapuro mvunjwafaranga no kuzikwirakwiza mu buryo buteganywa n'itegeko, bikaba bitashyirwa mu itegeko riteganywa ibyaha n'ibihano.

b. Ingingo ya 48 y'Itegeko n° 48/2017 ryo ku wa 23/09/2017 rigenga Banki Nkuru y'u Rwanda, iteganywa ko iyi Banki ariyo ifasha mu gukora no gushyira ku isoko inyandiko mvunjwafaranga za Leta, bikaba bidakorwa n'umuntu ku giti cye. Iyo hagize ubikora aba akoze icyaha kibangamiye sosiyete nyarwanda nk'uko biteganywa mu ngingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange.

c. Kuvuga ko iyo ngingo inyuranyije n'ingingo ya 29 y'Itegeko Nshinga sibyo, kuko ibigize icyaha aribyo kuba icyaha cyagambiriwe, cyashyizwe mu bikorwa kandi gihanwa n'amategeko, bigomba kuba byuzuye kugirango umuntu afatwe nk'uwakoze icyaha. Kuvuga rero ko mu bigize icyaha giteganywa n'ingingo ya 271 yavuzwe haruguru, haburamo ubushake, sibyo kuko ujya guhimba, gukoresha cyangwa gukwirakwiza impapuro mvunjwafaranga, aba yabigambiriye akanabishyira mu bikorwa.

### **UKO URUKIKO RUBIBONA**

[45] Interuro ya mbere y'Ingingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 igira iti: umuntu wese uhimba, ukoresha cyangwa ukwirakwiza mu buryo ubwo ari bwo bwose impapuro zivunjwamo amafaranga, aba akoze icyaha.

[46] Kabasinga Florida avuga ko iyo usomye iyi ngingo, usanga umushingamategeko ataratandukanyije abakoresha impapuro mvunjwafaranga zihimbye kandi babizi, n'abazikoresha mu buryo bwemewe n'amategeko.

[47] Iyi ngingo iboneka mu cyiciro cya mbere cy'umutwe wa kane w'Itegeko n° 68/2018 ryo ku wa 30/08/2018, cyitwa kwigana no guhindura ibimenyetso by'amafaranga. Inyito y'umutwe wa kane ni ibyaha bihungabanya ubwizere bw'igihugu, naho inyito y'ingingo ya 271 ikaba guhimba impapuro zivunjwamo amafaranga, kuzikoresha cyangwa kuzikwirakwiza. Ibi bihujwe n'ibikubiye mu nteruro ya mbere y'ingingo ya 271, birumvikanisha ko icyo umushingamategeko yashatse guhana, ari icyaha cyo guhimba impapuro zivunjwamo amafaranga, ugakoresha cyangwa ugakwirakwiza izo mpapuro zivunjwamo amafaranga zahimbwe. Koko rero, ntabwo umushingamategeko yari guteganywa mu bikorwa bihanwa, igikorwa cyo gukoresha no gukwirakwiza impapuro zivunjwamo amafaranga, zakozwe mu buryo bwubahirije amategeko.

[48] Urukiko rwarebye uko ingingo zihana icyaha gisa n'iki mu bindi bihugu zanditse, rusanga hari amategeko agaragaza mu buryo butomoye ko hahanwa guhimba impapuro zivunjwamo amafaranga, gukoresha no gukwirakwiza izo mpapuro zivunjwamo amafaranga zahimbwe. Ibyo

bihugu ni nka Burkinafaso<sup>27</sup>, Gabon<sup>28</sup>, Sénégal<sup>29</sup>, Cote d'ivoire<sup>30</sup>( muri ibi Bihugu byose, hari ingingo ihana uhimba, hakaba n'indi yihariye ihana ukoresha cyangwa ukwirakwiza ibyahimbwe ari nayo yerekanywe hano).

[49] Urukiko rurasanga ikibazo kigaragazwa na Kabasinga Florida ku bijyanye n'ingingo ya 271 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange, kidakwiye gushakirwa mu kuba yaba inyuranyije n'Itegeko Nshinga, ahubwo cyaba ari ikibazo cy'imyandikire ishobora kunozwa kugira ngo yumvikane kurushaho. Urukiko rukaba rusanga rero, iyi ngingo itanyuranyije n'ingingo ya 29 y'Itegeko Nshinga. Urukiko ruratanga ahubwo inama ko mu gihe cyo kuvugurura itegeko, iyi ngingo yakwandikwa mu buryo bwumvikana kurushaho ku bayikoresha.

## **B. Ingingo Kabasinga Florida avuga ko ibangamiye ihame ry'ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru**

### **a. Kumenya niba ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 38 y'Itegeko Nshinga**

#### **a. Ibisobanuro bitangwa na Kabasinga Florida**

[50] Kabasinga Florida n'umwunganira bavuga ko ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange inyuranyije n'Itegeko Nshinga bashingiye ku mpamvu zikurikira:

a. Ibigize icyaha kivugwa mu ngingo ya 256 ni ugutangaza ibitekerezo ugamije kuyobya umucamanza cyangwa umutangabuhama, ariko iyo ngingo ntisobanura aho ibyo bitekerezo bitangarizwa. Ntibisobanutse niba bigomba gutangazwa imbere mu rubanza, nyamara ibyo umucamanza ashingiraho aca urubanza ari ibintu bidatangazwa na rubanda, umuntu ku giti cye cyangwa ibitangazamakuru, kuko ashingira ku nyandiko n'ibindi bimenyetso afite muri dosiye. Mu mahame ashingirwaho mu guca imanza, umucamanza aca urubanza adashingiye ku byo aruziho, yaba ibyo yasomye cyangwa yumvise bitangazwa, ibyo bigashimangira ko adashobora kuyobya n'ibyatangajwe mu buryo ubwo ari bwo bwose bitavugiwe mu iburanisha.

b. Ingingo ya 151(5) y'Itegeko Nshinga iteganyanya ko abacamanza bakurikiza itegeko kandi bakora umurimo wabo mu bwigenge, batavugirwamo n'ubutegetsi cyangwa ubuyobozi ubwo ari bwo bwose. Kuba Itegeko Nshinga riteganyanya ko umucamanza atavugirwamo n'ubutegetsi cyangwa ubuyobozi, byumvikana ko n'umuturage atamuvugiramo.

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<sup>27</sup> Article 253, al 1 code pénal de 1996:

Est puni des peines prévues aux articles 250, 251 et 252, selon les distinctions qui y sont portées, quiconque participe à l'émission, l'utilisation, l'exposition, la distribution, l'importation de signes monétaires contrefaits, falsifiés, altérés ou colorés ».

<sup>28</sup> Art. 230 code pénal de 2019:

[100] Quiconque aura contrefait, falsifié, altéré ou détruit des billets de banque ou pièces de monnaie ayant cours légal au Gabon, ou participé à l'émission ou à l'exposition desdites pièces ou billets contrefaits, falsifiés ou altérés ou à leur introduction sur le territoire gabonais, sera puni de la réclusion criminelle à perpétuité ».

<sup>29</sup> Article 120, al. 1 code penal de 1965:

[101] Quiconque aura participé à l'émission, l'utilisation, l'exposition, la distribution, l'importation ou l'exportation de signes monétaires contrefaits, falsifiés, altérés ou colorés sera puni des peines prévues aux articles ci-dessus, selon les distinctions qui y sont portées ».

<sup>30</sup> Article 293-2, al. 1 code penal de 1981:

Est passible des peines prévues ci-dessus selon les distinctions susvisées, celui qui participe à l'émission, l'utilisation, l'exposition, la distribution, l'importation ou l'exportation des signes monétaires contrefaits, falsifiés, altérés ou colorés ».

c. Ku bijyanye no kuba ibyangajwe byayobya umutangabuhama, ntibyashoboka harebwe igisobanuro cy'ubuhama giteganyijwe n'ingingo ya 62 y'Itegeko n° 15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo. Iyo ngingo iteganya ko ubuhama ari ibivugwa mu rukiko n'umuntu wabibonye cyangwa wabyumvise ubwe ku byerekeye ikiburanwa. Niba rero ubuhama ari ibyo umuntu yibonye cyangwa yiyumviye ubwe, umushingamategeko ntakwiye guterwa impungenge n'uko hari umuntu uzumva ibintu bitangazwa na rubanda cyangwa na radio ngo abikoreshe mu butabera nk'ubuhama.

d. Kubuza abantu kugira ibyo batangaza mu itangazamakuru cyangwa mu biganiro bitewe n'uko bumva ibyabaye, byaba bibangamiye ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buteganyijwe mu ngingo ya 38 y'Itegeko Nshinga.

e. Ingingo ya 256 y'Itegeko ryavuzwe haruguru ikumira buri muntu kuvuga cyangwa gutanga igitekerezo cye ku gikorwa cyabaye, mu gihe kiri gukurikiranwa mu nkiko, kugira ngo bitazitwa ko yari agamije kuyobya umucamanza, kandi nyamara uwo mucamanza ari we ukwiye kwirinda gutwarwa cyangwa gushingira ku byo yumvise ahandi hatari mu iburanisha cyangwa muri dosiye.

f. Iyi ngingo ibangamira n'itangazamakuru kuko ibikorwa byinshi bigize ibyaha cyangwa se bikurikiranwa mu nkiko bikunze kwandikwaho n'itangazamakuru. Umunyamakuru watangaza inkuru ku kibazo kiri mu nkiko, ashobora kutagira ubwisanzure buhagije mu gihe nta buryo bwo kumenya ibyitwa ko biyobya umucamanza cyangwa umutangabuhama.

g. Iyi ngingo yatuma kandi abayobozi ndetse n'inzego z'umutekano zirinda gutanga ibiganiro bifite aho bihuriye n'ibikorwa bishobora gukurikiranwa mu nkiko, ndetse bishobora no kubuza abakorera abandi ubuvugizi gutangaza ndetse no kugaragaza uko bumva ibintu kugira ngo bitazitwa ko bari bagamije kuyobya umucamanza cyangwa abatangabuhama.

h. Kuba umutururwanda yatangaza uko atekereza ibintu bifite aho bihuriye n'ibibazo biri mu nkiko, ndetse n'itangazamakuru uko ryabitangaza kose, ntibyatumama umucamanza cyangwa umutangabuhama bahindura umurongo bakwiye gufata ku mwanzuro batanga cyangwa ku buhama batanga, kandi si ngombwa ko ibyangajwe n'abandi bantu bihura n'icyemezo cy'urukiko cyangwa n'ubuhama butangwa. Urega atanga urugero ku rubanza rwatambutse mu itangazamakuru, n'abantu bakarutangaho ibitekerezo bitandukanye, aho ibitangazamakuru byavugaga ko itsinda ry'abakobwa bakubise mugenzi wabo, bagamije kumwica, bakanamwangiza imyanya ndangagitsina. Nyamara mu rubanza hakaba nta na hamwe byagaragaye ko uwo mukobwa yangijwe imyanya ndangagitsina.

[51] Kabasinga Florida n'umwunganira bavugaga ko bashingiye ku mpamvu zavuzwe haruguru, basanga ingingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 38 y'Itegeko Nshinga, bakaba basaba Urukiko ko yakurwa mu mategeko ahana ibyaha mu Rwanda.

## **b. icyo Intumwa za Leta zibivugaho**

[52] Abahagarariye Leta y'u Rwanda bavuga ko ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 idateye impungenge, kuko utangaje inkuru ku rubanza ruri mu rukiko ariko rutaracibwa adafatwa nk'ushaka kuyobya, keretse bigaragajwe n'inzego zishinzwe kugenza ibyaha ko aribyo yari agamije.

[53] Bavuga ko ntaho iyo ngingo inyuranyije n'ingingo ya 38 y'Itegeko Nshinga, kuko itavuga abanyamakuru, kandi nabo bakaba basanzwe bagaragaza ibitekerezo byabo ku manza zikiburanishwa ntibakurikiranweho icyaha cyo gushaka kuyobya umutangabuhamya cyangwa umucamanza, kuko biba bigaragara ko ataricyo kigamijwe. Urugero rw'urubanza rw'itsinda ry'abakobwa bakubise mugenzi wabo hagatangazwa ibintu byinshi mu itangazamakuru bitagira aho bihuriye n'ukuri, rugaragaza ko ingingo ya 256 yavuzwe itanyuranyije n'iya 38 y'Itegeko Nshinga kuko ibitari ukuri abanyamakuru batangaje, bitafashwe nko kuyobya umucamanza cyangwa abatangabuhamya mu gihe atari cyo cyari kigamijwe hatangazwa izo nkuru.

### UKO URUKIKO RUBIBONA

[54] Ingingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange iteganyaga ko umuntu wese utangaza ibitekerezo agamije kuyobya abatangabuhamya cyangwa icyemezo cy'umucamanza mbere y'uko urubanza rucibwa, aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kuva ku mwaka umwe (1) kugeza ku myaka ibiri (2) n'ihazabu y'amafaranga y'u Rwanda kuva kuri miliyoni imwe (1.000.000 FRW) kugeza kuri miliyoni ebyiri (2.000.000 FRW).

[55] Icyaha giteganyijwe mu ngingo imaze kuvugwa, kiri mu byaha bivugwa mu cyiciro cya 5 cy'umutwe wa 3 w'Itegeko N° 68/2018 ryo ku wa 30/08/2018, cyerekeye gutambamira imigendekere myiza y'ubutabera. Ibyaha bigamije gutambamira imigendekere myiza y'ubutabera bihabwa inyito zitandukanye bitewe n'ibihugu. Mu bihugu bikoresha common law<sup>31</sup>, hari ibyo bita *contempt of court* bigaragara mu mategeko y'u Rwanda n'ubwo byose bidahabwa iryo zina, bisobanurwa mu byiciro bitatu bukurikira:

a. Ibyaha bikorewe mu rukiko, birimo imyitwarire ituma iburanisha ritagenda neza, bikabangamira imigendekere myiza y'ubutabera. [*contempt in the face of the court (contempt in facie curiae), which comprises conduct that deliberately disrupts or obstructs court proceedings and is prejudicial to the course of justice*]<sup>32</sup>. Ibi byafatwa nk'ibyaha bibereye mu iburanisha (délits d'audience) bivugwa mu ngingo ya 80 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbenezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

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<sup>31</sup> In common law jurisdictions, contempt of court has traditionally been classified as either in facie curiae (in front of the court) or ex facie curiae (outside the court). Examples include yelling in the court room, publishing matters which may prejudice the right to a fair trial ("trial by media"), or criticisms of courts or judges which may undermine public confidence in the judicial system ("scandalizing the court") .....

The common law doctrine of contempt of court does not exist in civil law jurisdictions in such a broad, encompassing sense, but there are undoubtedly functional equivalents, particularly in matters relating to freedom of expression; Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized international mandates, London, United Kingdom, 29-30 November 2000, p 1-2 (<https://www.article19.org/data/files/pdfs/publications/freedom-of-expression-and-internet-regulation.pdf>).

<sup>32</sup> Law Reform Commission of Ireland, Contempt of Court and other Offences and Torts Involving the Administration of justice, 2016, p. 11 (<https://www.lawreform.ie/news/issues-paper-on-contempt-of-court-and-other-offences-and-torts-involving-the-administration-of-justice.644.html>)

b. Ibyaha byo gutesha agaciro urukiko, gutangaza ibintu bitari byo ku rukiko cyangwa ku mucamanza bishobora gutuma abantu batara icyizere urwego rw'ubucamanza (scandalizing the court, making or publishing untrue allegations about a court or judge that would undermine public confidence in the judiciary)<sup>33</sup>. Bene ibi byaha biboneka mu Itegeko n° 68/2018 ryo ku wa 30/08/2018, mu cyiciro cy'ibyaha byitwa gutesha agaciro ubutabera no gusagarira abakora mu nzego z'ubutabera.

c. Ibyaha byo kwivanga mu migendekere myiza y'ubutabera, hakoreshejwe gutangaza ibirebana n'urubanza rukiburanishwa mbere y'uko ricibwa (*sub judice contempt*<sup>34</sup>, *publishing prejudicial material about pending court proceedings that would interfere with the administration of justice*<sup>35</sup>). Ibiteganyijwe mu ngingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018, bihura n'ibivugwa muri iki cyiciro.

[56] Nyuma y'ibi bisobanuro rusange, Urukiko rurasuzuma niba ibivugwa mu ngingo ya 256 yavuzwe haruguru bibangamiye ihame ry'ubwisanzure bwo gutangaza ibitekerezo riteganyijwe mu ngingo ya 38 y'Itegeko Nshinga. Iyi ngingo igira iti: ubwisanzure bw'itangazamakuru, ubwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru buremewe kandi bwubahirizwa na Leta. Ubwisanzure bwo kugaragaza ibitekerezo n'ubwo guhabwa amakuru ntibugomba kubangamira ituze rusange rya rubanda n'imyifatire mbonezabupfura, ukurengera urubwiruko n'abana, n'uburenganzira bw'umwengihugu bwo kugira icyubahiro n'agaciro, ubwo kutagira uwivanga mu mibereho ye bwite n'iy'umuryango we. Uko ubwo bwisanzure bukoreshwa n'iyubahirizwa ryabwo biteganywa n'amategeko.

[57] Muri urwo rwego, hifashishijwe inyandiko zinyuranye, hararebwa niba ihame ry'ubwisanzure bwo gutangaza ibitekerezo ari ihame ndakuka (*absolu*), cyangwa niba ari ihame rifite imbibi rigarukiraho (limitations), izo arizo n'uburyo zisobanurwa n'izindi nkiko kimwe n'abahanga mu mategeko, hanyuma hasuzumwe niba ibiteganyijwe mu ngingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 birebwa cyangwa bitarebwa n'izo mbibi.

[58] Ihame ry'ubwisanzure bwo gutangaza ibitekerezo ryagiye rigarukwaho n'amasezerano mpuzamahanga anyuranye u Rwanda rwashyizeho umukono akinjizwa mu rwego rw'amategeko Iguhugu kigenderaho, by'umwihariko Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya politiki, mu ngingo yayo ya 19<sup>36</sup>.

[59] Nk'uko bigaragara mu ngingo ya 38 y'Itegeko Nshinga kimwe no mu ngingo ya 19 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya

<sup>33</sup> Law Reform Commission of Ireland, Contempt of Court and Other Offences and Torts Involving the Administration of Justice, op. cit, p. 11.

<sup>34</sup> Sub judice contempt", or contempt in connection with pending proceedings, relates to publications concerning pending proceedings that are intended to interfere with the administration of justice"; Ibid., p. 11.

<sup>35</sup>Ibid., p. 11.

<sup>36</sup> Art. 19:

b) Nul ne peut être inquiété pour ses opinions.

c) Toute personne a droit à la liberté d'expression; ce droit comprend la liberté de rechercher, de recevoir et de répandre des informations et des idées de toute espèce, sans considération de frontières, sous une forme orale, écrite, imprimée ou artistique, ou par tout autre moyen de son choix.

d) L'exercice des libertés prévues au paragraphe 2 du présent article comporte des devoirs spéciaux et des responsabilités spéciales. Il peut en conséquence être soumis à certaines restrictions qui doivent toutefois être expressément fixées par la loi et qui sont nécessaires:

Au respect des droits ou de la réputation d'autrui;

A la sauvegarde de la sécurité nationale, de l'ordre public, de la santé ou de la moralité publique.



politiki, ubwisanzure bwo gutangaza ibitekerezo si ihame ndakuka; rifite imbibi. Ingingo ya 38 y'Itegeko Nshinga igaragaza uburenganzira iryo hame ritagomba kubangamira, ikongeraho ko uburyo ubwo bwisanzure bukoreshwa n'iyubahirizwa ryabwo bigenwa n'amategeko. Ingingo ya 19,3 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, iteganya ko ubwisanzure bwo gutangaza ibitekerezo bugira ibyo bugomba kubahiriza, bukaba bugomba kugira aho bugarukira mu buryo buteganywa n'itegeko kandi buri ngombwa mu rwego rwo kubahiriza uburenganzira bw'abandi.

[60] Hakurikijwe aya masezerano mpuzamahanga, kugabanya ubwisanzure bwo gutangaza ibitekerezo bigomba kuba biteganyijwe n'itegeko, bikaba bigamije imwe mu mpamvu zifite ireme zivugwa mu mu ngingo ya 19 (3), kandi biri ngombwa mu rwego rwo kurengera iyo mpamvu (*Under the ICCPR, restrictions must meet a strict three-part test*<sup>37</sup>. *First, the interference must be provided for by law. Second, the interference must pursue one of the legitimate aims listed in Article 19 (3). Third, the interference must be necessary to secure that aim*). Ibi byanagarutswaho mu mahame ya SIRACUSA yerekeye imbibi n'irengayobora ku biteganyijwe mu masezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, mu ngingo yayo ya 10 (*Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation..... pursues a legitimate aim, and is proportionate to that aim*)<sup>38</sup>

[61] Mu burenganzira bw'abandi buvugwa mu ngingo ya 19, 3 (a) nk'imwe mu mpamvu zifite ireme ishobora gutuma habaho gushyira imbibi ku bwisanzure bwo gutangaza ibitekerezo, humvikanamo uburenganzira ku butabera buboneye, burimo n'uburenganzira ku rubanza ruboneye (*The "rights of others" referred to in Article 19(3) (a) undoubtedly includes rights linked to the administration of justice, such as the right to a fair trial and the presumption of innocence*)<sup>39</sup>.

[62] Ibijyanye n'imbibi zishyirwa ku bwisanzure bwo gutangaza ibitekerezo mu rwego rwo kurengera uburenganzira ku butabera buboneye, byagiye bisobanurwa n'izindi nkiko mu buryo bukurikira:

a. Mu rubanza Cullen v. Toibin rwaciwe n'Urukiko rw'Ikirenga rwo muri Ireland, hemejwe ko uburenganzira bwo gutangaza ibitekerezo buteganywa n'Itegeko Nshinga ry'icyo Gihugu, butari ndakuka. Bukaba bushobora kutubahirizwa mu rwego rwo kurengera uburenganzira ku butabera buboneye. Urwo rubanza rusobanura kandi ko inkuru zitangajwe mu gihe urubanza rukirimo kuburanishwa, zishobora kubangamira uburenganzira ku rubanza ruboneye; kubera iyo mpamvu, bikaba byaba ngombwa kugabanya ubwisanzure bwo gutangaza ibitekerezo hagamijwe kurengera uburenganzira ku rubanza ruboneye no kwimakaza ubutabera buboneye (*The right to freedom of expression is also protected by Article 40.6.1° of the Constitution of Ireland. This right is not absolute, however, and is subject to limitation. For example, the right may be restricted so as to uphold the right to a fair trial of an accused person and to protect the administration of justice. In cases where a prejudicial publication has been made, this clearly has the potential to impede an accused person's right to a fair trial. Therefore, it*

<sup>37</sup> See Mukong v. Cameroon, views adopted by the UN Human Rights Committee on 21 July 1994, N°.458/1991, para. 9.7.

<sup>38</sup> Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized international mandates, op. cit., p. 3.

<sup>39</sup> SIRACUSA Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984).

*may be necessary to restrict the right to freedom of expression so as to protect the right to a fair trial and to maintain the administration of justice. Freedom of the press can, however, only be restricted where this is necessary for the administration of justice*)<sup>40</sup>

b. Mu rubanza Kelly v O'Neill<sup>41</sup> rwaciwe n'Urukiko rw'Ikirenga rwa Ireland, Urukiko rwasobanuye ko ubwisanzure bwo gutangaza ibitekerezo atari ndakuka, ko bushobora gushyirwaho imbibi mu manza zirebana no kubangamira imigendekere myiza y'ubutabera (*the court stated that the protection of freedom of expression is not absolute and may, ....., be subject to limitation in line with public order and the common good, which applies to cases concerning contempt*).

c. Na none mu rubanza DPP v Independent Newspapers (Irl) Ltd,<sup>42</sup> rwaciwe n'urwo Rukiko, hasobanuye ko mu manza zirebana n'ibyaha byo kwivanga mu migendekere myiza y'ubutabera, ikibazo ari ukumenya niba ibyatangajwe byari bigamije kwivanga mu migendekere myiza y'ubutabera, cyangwa gutuma abantu bakeka ko habaye kwivanga (*the Supreme Court (Dunne J) explained that the test for sub judice contempt is whether the material published was intended to interfere with the administration of justice, or created the perception of such interference*). Naho mu rubanza Attorney-General for England and Wales v Times Newspapers Ltd rwaciwe n'Urukiko rw'Ubujurire mu Bwongereza, hasobanuye ko imanza zirebana n'ibyaha byo kwivanga mu migendekere myiza y'ubutabera, ari uburyo bwo gukumira imanza ziciriwe mu itangazamakuru; itangazamakuru rikaba ritagomba kuvuga ku manza zikiburanishwa mu buryo bushobora kuyobya abatangabuhamya cyangwa abaca imanza (*Sub judice contempt developed as another means to protect the administration of justice, by preventing a "trial by media". The media should not attempt to "prejudge" the issues in a certain case in a way that would influence would-be witnesses or jurors*)<sup>43</sup>.

d. Mu rubanza Worm v. Austria<sup>44</sup>, Urukiko rw'Umuryango w'Ubumwe bw'u Burayi ku bijyanye n'uburenganzira bwa muntu, rwasobanuye ko kutubahiriza ubwisanzure bwo gutangaza amakuru byari ngombwa mu rwego rwo kurengera uburenganzira ku butabera buboneye, no kwimakaza icyizere rubanda bagomba kugira mu migendekere y'ubutabera (*the interference with freedom of expression was "necessary in a democratic society" in order to protect the right to a fair trial and to maintain public confidence in the administration of justice.....*).

e. Mu rubanza Sunday Times v. United Kingdom<sup>45</sup>. Urukiko rw'Umuryango w'Ubumwe bw'u Burayi ku bijyanye n'uburenganzira bwa muntu rwasobanuye kandi ko, mu gihe ibibazo biri mu rubanza bivuzwe mu buryo bugamije gutuma abantu babyifatiraho umwanzuro mbere y'uko urubanza rucibwa, bishobora gutuma batakaza icyizere bafitiye inkiko (*If the issues arising in litigation are ventilated in such a way to lead the public to form its own conclusion thereon in advance, it may lose its respect for and confidence in the courts*).

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<sup>40</sup> Cullen v Toibín [1984] ILRM 577 at 582, referred to in Contempt of Court and Other Offences and Torts involving the Administration of Justice, op. cit., p. 53.

<sup>41</sup> 1999] IESC 81, [2000] 1 IR 354, at 374.

<sup>42</sup> [2005] IEHC 353, [2006] 1 IR 366, at paragraph 34.

<sup>43</sup> Attorney-General for England and Wales v Times Newspapers Ltd [1974] AC 273 at 300; referred to in Contempt of Court and Other Offences and Torts involving the Administration of Justice, op. cit, p. 52.

<sup>44</sup> 29 August 1997, Application 22714/93, 25 EHRR 454, par.50.

<sup>45</sup>The Sunday Times v. United Kingdom, 26 April 1979, Series A No. 30, 14 EHRR 229, par. 63.

f. Urukiko rw'Ubujurire rwa New Zealand, mu rubanza Gisborne Herald Co. Ltd. v. Solicitor General<sup>46</sup>, rwasobanuye ko igihe ubwisanzure bwo gutangaza ibitekerezo n'uburenganzira ku rubanza ruboneye bidashobora kubahirizwa byombi, igikwiye ari ukuba hagabanyijwe ubwisanzure bwo gutangaza ibitekerezo kugirango hashobore kubaho urubanza ruboneye (...*The present rule is that, where on conventional analysis freedom of expression and fair trial rights cannot both be fully assured, it is appropriate in our free and democratic society to temporarily curtail freedom of media expression so as to guarantee a fair trial*).

g. Urukiko rw'Ikirenga rwa Canada, rwasobanuye ko icyemezo cyo kubuza gutangaza inkuru gishobora gufatwa iyo ari ngombwa mu rwego rwo gukumira ko habaho kubangamira mu buryo bugaragara kandi bukomeye imigendekere myiza y'urubanza, kandi icyo cyemezo kikaba kiri buramire ibirenze ingaruka cyagira ku bo gifatiwe (... *A publication ban should only be ordered when:*

(a) *Such ban is necessary in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and*

(b) *The salutary effects of the publication ban outweigh the deleterious effects to freedom of expression of those affected by the ban*)<sup>47</sup>.

h. Muri Leta Zunze Ubumwe z'Amerika, ububasha bwo guhana icyaha cyo kwivanga mu migendekere myiza y'ubutabera hakoreshejwe gutangaza ibitekerezo bukoreshwa gake cyane. Umurongo rusange ni uko icyo cyaha gihanwa igihe hari impungenge ko habaho kubangamira mu buryo bugaragara kandi bukomeye imigendekere myiza y'ubutabera (*the power of the courts to punish for contempt by publication is extremely limited. The general rule is that a publication cannot be punished for contempt unless there is a "clear and present danger" to the administration of justice*<sup>48</sup>. *The test requires that "the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished*)<sup>49</sup>.

Uretse muri Leta Zunze Ubumwe z'Amerika na Canada, hari ibindi Bihugu byemeje ko kugirango habeho gukurikirana icyaha cyo kwivanga mu migendekere myiza y'ubutabera, ibyatangajwe bigomba kuba bibangamiye mu buryo bugaragara kandi bukomeye imigendekere y'urubanza. Ibyo ni nka England and Wales (*the test for sub judice contempt in section 2(2) of the Contempt of Court Act 1981 is that there is "a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced"*); New Zealand (*the test for "publication" is whether there is a "real risk" that the publication will interfere with the right to a fair trial*<sup>50</sup>); na South Africa (*the Supreme Court of Appeal held that "a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the*

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<sup>46</sup> [1995] 3 NZLR 563; referred to in Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized international mandates, o. cit., p. 10.

<sup>47</sup> Dagenais v. Canadian Broadcasting Corp., N° 23403, 1994: January 24, 1994, December 8, P.5.

<sup>48</sup> Bridges v. California, 314 US 252 (1941); Pennekamp v. Florida, 328 US 331 (1946) Craig v. Harney 331 US 367 (1946); Wood v. Georgia 370 US 375 (1962).

<sup>49</sup> Bridges v. California, Ibid., p. 263.

<sup>50</sup> New Zealand Law Commission, Issues Paper on Contempt in Modern New Zealand (IP36 2014) at paragraph 4.9 (<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP36.pdf>).

*administration of justice is demonstrable and substantial and there is a real risk that the prejudice may occur if the publication takes place)*<sup>51</sup>.

[63] Mu bimaze kugaragazwa biteganyijwe n'Itegeko Nshinga, Amasezerano mpuzamahanga, hamwe n'ibisobanuro byagiye bitangwa by'umwihariko n'inkiko ku bijyanye n'imbibi zemewe ku ihame ry'ubwisanzure bwo gutangaza ibitekerezo, humvikanamo ibintu by'ingenzi bikurikira:

- a. Ubwisanzure bwo gutangaza ibitekerezo si ihame ndakuka; rifite imbibi;
- b. Imbibi ku ihame ry'ubwisanzure bwo gutangaza ibitekerezo zigomba kugenwa n'itegeko;
- c. Gushyira imbibi ku bwisanzure bwo gutangaza ibitekerezo bigomba kuba ari ngombwa mu rwego rwo kubahiriza uburenganzira bw'abandi, kandi bigamije impamvu zifite ireme. Mu burenganzira bw'abandi bufatwa nk'imwe mu mpamvu zifite ireme, harimo uburenganzira ku butabera buboneye, burimo n'uburenganzira ku rubanza ruboneye;
- d. Bigomba kandi kuba ari ngombwa mu rwego rwo kurengera iyo mpamvu;
- e. Gushyira imbibi ku bwisanzure bwo gutangaza ibitekerezo bigomba no kuba ari ngombwa mu rwego rwo kwimakaza icyizere rubanda bagomba kugira mu migendekere y'ubutabera;
- f. Ibyatangajwe ku rubanza rukiburanishwa si ko byose bikurikiranwa. Biba ngombwa gukurikirana icyaha cyo kwivanga mu migendekere myiza y'ubutabera, mu rwego rwo kurengera uburenganzira ku rubanza ruboneye, iyo ibyatangajwe bibangamiye mu buryo bugaragara kandi bukomeye imigendekere myiza y'urubanza.

[64] Urukiko, ruhuje ibi bitekerezo by'ingenzi n'ibiteganywa mu ngingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ritaganyaye ibyaha n'ibihano muri rusange, mu rwego rwo gusuzuma niba ibyo iteganyaye birebwa cyangwa bitarebwa n'imbibi zishyirwa ku bwisanzure bwo gutangaza ibitekerezo, rusanga:

- a. Ingingo ya 256 y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ishyira imbibi ku bwisanzure bwo gutangaza ibitekerezo iyo ibyo bitekerezo bigamije kuyobya abatangabuhamya cyangwa icyemezo cy'umucamanza mbere y'uko urubanza rucibwa.
- b. Umuntu utangaza ibitekerezo agambiriye kuyobya umutangabuhamya cyangwa icyemezo cy'umucamanza, aba agamije kubangamira imigendekere myiza y'ubutabera n'uburenganzira ku rubanza ruboneye.
- c. Kubangamira imigendekere myiza y'ubutabera n'uburenganzira ku rubanza ruboneye, ari imwe mu mpamvu zifite ireme zishobora gutuma biba ngombwa gushyira imbibi ku bwisanzure bwo gutangaza ibitekerezo.

Urukiko rusanga icyakora, ibitekerezo byose byatangajwe ku rubanza rukiburanishwa bitakurikiranwa hashingiwe ku biteganywa n'iyi ngingo, kuko kugirango bikurikiranwe, hagomba kugaragazwa ko uwabatangaje yari agambiriye kuyobya kandi ko ibyatangajwe bibangamiye mu buryo bugaragara kandi bukomeye imigendekere myiza y'urubanza.

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<sup>51</sup> South Africa Supreme Court of Appeal: *The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others* (425/2017) [2017] ZASCA 97 (21 June 2017), at para.37; and South Africa Supreme Court of Appeal: *Midi Television v Director of Public Prosecutions (Western Cape)* 2007 (3) SA 318 (SCA) at para 19.

[65] Ku bijyanye n'ibivugwa na Kabasinga Florida ko umucamanza aca urubanza ashingiye ku byo afite muri dosiye, akaba adashobora kuyobywa n'ibyatangajwe mu buryo ubwo ari bwo bwose bitavugiwe mu iburanisha, Urukiko rurabisubiza rwifashishije izindi manza zagize icyo zibivugaho. Hari inkiko zagaragaje ko umucamanza adashobora kuyobywa n'ibyatangajwe, ariko hakaba n'izindi zavuze ko bishoboka.

[66] Imanza zagaragaje ko umucamanza adashobora kuyobywa n'ibyatangajwe zirimo:

a. Urubanza rwaciye n'Urukiko Rukuru rwo mu Bwongereza, *Vine Products Ltd. v. MacKenzie & Co. Ltd*<sup>52</sup>, rwavuze ko abacamanza b'umwuga baba bafite amahugurwa ahagije ku buryo, mu gihe bafata icyemezo, badashobora kuyobywa n'ibyatangajwe ku rubanza (*It has generally been accepted that professional judges are sufficiently well equipped by their professional training to be on their guard against allowing [a prejudging of the issues] to influence them in deciding the case*).

b. Urubanza *Akinrinsola v. Attorney-General of Anambra State*<sup>53</sup> rwaciye n'Urukiko rwo muri Nigeria, rukemeza ko ibifatwa nk'icyaha cyo kwivanga mu migendekere myiza y'ubutabera mu rubanza rurimo abacamanza batari ab'umwuga, ari gake byafatwa bityo mu rubanza rurimo abacamanza b'umwuga (*a statement that was regarded as contempt in a jury trial would rarely be contempt in a trial by judge-alone*).

c. Urubanza *Nebraska Press Association v. Hugh Stuart*<sup>54</sup>, aho Urukiko rw'Ikirenga rwa Amerika rwemeje ko, icyemezo cyafashwe n'umucamanza w'Urukiko rwo hasi cyo guhagarika inyandiko y'itangazamakuru ku rubanza rwari rukiburanishwa ku mpamvu y'uko cyayobya abacamanza (batari ab'umwuga), ntacyo gishingiyeho (*the American Supreme Court vacated a prior-restraint order passed by the trial Judge in a multiple murder case while that case was pending, on the ground that the view of the trial Judge that Jurors are likely to be influenced by the press publications, was speculative*).

d. Urubanza *Attorney General v. BBC*<sup>55</sup>, rwaciye n'Urukiko rw'Ubujurire rwo mu Bwongereza, umacamanza akavuga ko abacamanza b'umwuga bahuguwe badashobora kuyobywa ku buryo bworoshye n'ibyatangajwe (*Lord Denning in the Court of Appeal had observed that professionally trained Judges are not easily influenced by publications*).

[67] Imanza zagaragaje ko umucamanza ashobora kuyobywa n'ibyatangajwe zirimo izi zikurikira:

a. Urubanza *Reliance Petrochemicals v. Proprietor of Indian Express*<sup>56</sup> rwaciye n'Urukiko rw'Ikirenga rwo mu Buhinde, rwemeza ko nta tandukaniro hagati y'umucamanza w'umwuga n'utari uw'umwuga ku bijyanye no kuba bayobywa n'ibyatangajwe ku rubanza rukiburanishwa (*No distinction is, in our judgment, warranted that comment on a pending case or abuse of a party may amount to contempt when the case is triable with the aid of a Jury and not when it is triable by a Judge or Judges*).

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<sup>52</sup> 1965] 3 All ER 58, referred to in Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized international mandates, op.cit., p. 11.

<sup>53</sup> (1980) 2 NCR 17, referred to in Background Paper on Freedom of Expression and Contempt of Court for the International Seminar Promoting Freedom of Expression with three specialized International Mandates p.11.

<sup>54</sup> *Nebraska Press Association v. Hugh Stuart*: (1976) 427 US 539.

<sup>55</sup> *Attorney General v. BBC*: 1981 A.C 303 (HL), p.312

<sup>56</sup> *Reliance Petrochemicals v. Proprietor of Indian Express* : 1988(4) SCC 592.

b. Ibisobanuro byatanzwe na Justice Frankfurter (concurrent opinion) mu rubanza *John D. Pennekamp v. State of Florida*<sup>57</sup> rwaciwe n'Urukiko rw'Ikirenga rwo muri Amerika:

- Ubucamanza ntibushobora gukora neza mu gihe itangazamakuru ryakora ibintu bigamije kubangamira urubanza ruburanishwa (*The Judiciary could not function properly if what the press does is reasonably calculated to disturb the judicial judgment in its duty and capacity to act solely on the basis of what is before the Court*).
- Nta mucamanza wagombye kuyobywa, abizi, n'ibindi bitari ibyo yabonye cyangwa yumvise mu Rukiko. icyakora, abacamanza nabo ni abantu bashobora kuyobywa bidaturutse ku bushake bwabo, akazi kabo kakaba katagombye kubangamirwa n'ibitangazwa n'abadafite icyo bitayeho. Ikiba kigamijwe mu guhana icyaha cyo kwivanga mu migendekere myiza y'ubutabera, si ukurengera umucamanza nk'umuntu ahubwo ni ukurengera umurimo akora (*No Judge fit to be one is likely to be influenced consciously, except by what he sees or hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human and we know better than did our forbears how powerful is the pull of the unconscious and how treacherous the rational process ... and since Judges, however stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print. The power to punish for contempt of court is a safeguard not for Judges as persons but for the functions which they exercise. It is a condition of that function - indispensable in a free society - that in a particular controversy pending before a court and waiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertone of extraneous influence. In securing freedom of speech, the Constitution hardly meant to create the right to influence Judges and Jurors*).

c. Mu rubanza *Attorney General v. BBC: 1981 A.C 303 (HL)*<sup>58</sup> rwavuzwe haruguru, Lord Dilhorne ntiyemeranyijwe n'igitekerezo cya Lord Denning cy'uko abacamanza b'umwuga badashobora kuyobywa n'ibyatangajwe, asobanura ko bidashobora kubayobya babishaka, ariko ko nta muntu ushobora kuvana mu bwenge bwe ibyo yabonye, yumvise cyangwa yasomye, bishobora kumuyobya atabigizemo ubushake (*It is sometimes asserted that no Judge will be influenced in his Judgment by anything said by the media and consequently that the need to prevent the publication of matter prejudicial to the hearing of a case only exists where the decision rests with laymen. This claim to judicial superiority over human frailty is one that I find some difficulty in accepting. Every holder of a Judicial Office does his utmost not to let his mind be affected by what he has seen or heard or read outside the Court and he will not knowingly let himself be influenced in any way by the media, nor in my view will any layman experienced in the discharge of Judicial duties. Nevertheless, it should, I think, be recognized that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it*).

[68] Ibyavuzwe na Justice Frankfurter na Lord Dilhorne byagiye binagarukwaho na zimwe muri Komisiyo zishinzwe kuvugurura amategeko, zikongeraho ko guhana icyaha cyo kwivanga mu

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<sup>57</sup> John D. Pennekamp v. State of Florida (1946) 328 US 331.

<sup>58</sup> Attorney General v. BBC: 1981 A.C 303 (HL), p. 335

migendekere myiza y'ubutabera binagamije kurengera uburyo abaturage babona ukutabogama mu ibyemezo bifatwa n'abacamanza:

a. Komisiyo ishinzwe kuvugurura amategeko ya New South Wales muri Australia yasobanuye ko umucamanza ashobora kuyobywa atabizi – n'ibyo yabonye, yumvise cyangwa yasomye -, kandi ko ari ngombwa gukumira ikibazo cyo kuba abantu batekereza ko umucamanza yabogamye (first, it is always possible that a Judicial officer may be subconsciously influenced; and secondly, it is just as important to protect the public perception of Judges' impartiality as to protect against risk of bias)<sup>59</sup>.

b. Komisiyo ishinzwe kuvugurura amategeko muri Canada nayo yasobanuye ko n'ubwo muri rusange abacamanza badashobora kugira ikibayobya, ariko ko hadakwiye kwirengagizwa ko byanashoboka, kandi guhana icyaha cyo kwivanga mu migendekere myiza y'ubutabera binafite akamaro kanini ko abaturage batekereza ko umucamanza yabogamye (*while Judges may generally be impervious to influence, the possibility of such influence could not be ruled out altogether, and that in the case of Judicial officers, the sub-judice rule served an important function of protecting public perception of impartiality*)<sup>60</sup>.

[69] Ibimaze kuvugwa binagarukwaho n'Intumwa yihariye y'Umuryango w'Abibumbye ku byerekeye ubwisanzure bwo gutangaza ibitekerezo (*The UN Special Rapporteur on Freedom of Expression and Opinion*), ku kibazo yari yashyikirijwe kireba abitwa Mrs. Bernadette na Mr. Michael McKevitt baharaniraga ubwigenge bwa Ireland, ibitangazamakuru bikandika ko bafite aho bahuriye na bombe yatewe ikica abantu bagera kuri 29 kandi na Polisi itaragira icyo ibabaza. Intumwa yihariye y'Umuryango w'Abibumbye yagaragaje ko ibyatangajwe n'itangazamakuru byatumye nta muntu n'umwe ushobora kwakira icyemezo cyagaragaza ko Bernadette na Michael McKevitt ari abere. Byatumye nabo bumva ko nibakurikiranwa, nta kizere ko bagira uburenganzira ku rubanza ruboneye(*....In the case of Bernadette and Michael McKevitt, the media have created a situation where almost no one in Ireland is prepared to countenance the possibility that they may be innocent.....They create such certainty of their guilt in the minds of the public that, if these persons are even actually charged and tried, they have no hope of obtaining a fair trial*)<sup>61</sup>.

[70] Ibireba by'umwihariko kuyobya abatangabuhamya, byavuzwe mu rubanza rwa Attorney General v. Mirror Newspapers (*The premature publication of evidence may have a tendency to influence the evidence of witnesses or potential witnesses*)<sup>62</sup>.

[71] Mu manza no mu nyandiko zavuzwe mu bika bibanza, hagaragaramo ibitekerezo bitatu by'ingenzi. Icyamba mbere ni abavuga ko umucamanza w'umwuga adashobora kuyobywa n'ibyatangajwe hanze y'iburanisha, icyamba kabiri ni abavuga ko bishoboka. Icyamba gatatu ni abavuga ko n'ubwo muri rusange umucamanza w'umwuga ashobora kutita ku byatangajwe mu gihe afata

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<sup>59</sup> The New South Wales Law Commission in its Discussion Paper (2000) (No.43) on 'Contempt by Publication, para

<sup>60</sup> Canadian Law Reform Commission, Contempt of Court: Offences against Administration of Justice {Working Paper 20, 1977, p 42-43} and Report 17 (1982) at p 30), cited by Law Commission of India, 20 Report on trial by media, free speech and fair trial under criminal procedure code 1973, August 2006, p.57 (<https://lawcommissionofindia.nic.in/reports/rep200.pdf>).

<sup>61</sup> Cited by Law Commission of India, 20 Report on trial by media, Free speech and Fair trial under Criminal procedure code 1973, August 2006, p. 12 & 13.

<sup>62</sup> Attorney General v Mirror Newspapers Ltd [1980] 1 NSWLR 374; Referred to in civil Trials Bench Book, Contempt Generally([https://www.judcom.nsw.gov.au/publications/benchbks/civil/contempt\\_generally.html#p10-0360](https://www.judcom.nsw.gov.au/publications/benchbks/civil/contempt_generally.html#p10-0360))

icyemezo, ariko ko bishobora kumuyobya atabizi; hakaba n'ikibazo cy'uko ababonye cyangwa abumvise ibyangajwe bashobora gukera ko yabigendeyeho, bigatuma badaha agaciro icyemezo cyose cyafatwa, bikagira ingaruka mbi ku migendekere myiza y'ubutabera. Urukiko rwemeranya n'iki gitekerezo cya nyuma.

[72] Koko rero, umucamanza w'umwuga agomba guca urubanza mu buryo abona bukwiye akurikije ibyavugiye mu iburanisha n'ibyo afite muri dosiye, atitaye ku byo yabonye cyangwa yumvise byatangajwe. icyakora, nawe ni umuntu kandi mu miterere ya buri muntu, ibyinjiye mu bwenge bwe bishobora kugira ingaruka mu byiyumviro bye atabigizemo uruhare. N'ubwo kandi muri rusange umucamanza ashobora gufata icyemezo atitaye ku byatangajwe, abaturanyi n'abandi baturage bo bashobora gutekereza ko yabigendeyeho, bigatuma icyemezo cyose yafata kitakirwa neza. Kandi rero, nk'uko byavuzwe na Komisiyo ishinzwe kuvugurura amategeko ya New South Wales(Australia)<sup>63</sup>, igendeye ku ihame ryemejwe mu rubanza *R v. Sussex Justices: Ex parte McCarthy: 1924 (1) KB 256* rikaba rikigenderwaho, ubutabera ntubugomba gutangwa gusa bigomba no kugaragara ko bwatanzwe ("*Justice should not only be done, it should manifestly and undoubtedly be seen to be done*").

[73] Urukiko rurasanga rero, hashingiwe ku mategeko no ku masezerano mpuzamahanga u Rwanda rwasinye, hashingiwe kandi ku bisobanuro byose byatanzwe hifashishijwe by'umwihariko ibyemezo byafashwe n'inkiko, ibiteganyijwe mu ngingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange byemewe nk'imbibi zigamije impamvu ifite ireme ku ihame ry'ubwisanzure bwo gutangaza ibitekerezo, bikaba rero bitabangamiye iryo hame, bityo bikaba bitanyuranyije n'ingingo ya 38 y'Itegeko Nshinga.

## ICYEMEZO CY'URUKIKO

[74] Rwemeje ko ikirego cyatanzwe na Kabasinga Florida gifite ishingiro kuri bimwe.

[75] Rwemeje ko ikirego cyatanzwe na Niyomugabo Ntakirutimana gifite ishingiro.

[76] Rwemeje ko igika cya 4 cy'ingingo ya 84 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange kinyuranyije n'ingingo ya 29 agace ka kane y'Itegeko Nshinga, kiba nta gaciro gifite hashingiwe ku biteganywa n'ingingo ya 3 y'Itegeko Nshinga.

[77] Rwemeje ko igice cy'ingingo ya 92 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, kigira kiti: "kidashobora kugabanywa kubera impamvu nyoroshyacyaha", kinyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga; icyo gice kikaba nta gaciro gifite.

[78] Rwemeje ko igika cya 3 cy'ingingo ya 133 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyira ibyaha n'ibihano muri rusange, agace kavuga ko iyo gusambanya umwana byakorewe ku mwana uri muni y'imyaka cumi n'ine (14), igihano kiba igifungo cya burundu kidashobora kugabanywa kubera impamvu nyoroshyacyaha, kanyuranyije n'ingingo ya 29, n'iya 151 z'Itegeko Nshinga; ako gace kakaba nta gaciro gafite.

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<sup>63</sup> The New South Wales Law Commission in its Discussion Paper (2000) (No.43) on 'Contempt by Publication', <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Other-Publications/Discussion-Papers/DP43>, p.70.



[79] Rwemeje ko ingingo ya 271 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, itanyuranyije n'Itegeko Nshinga.

[80] Rwemeje ko ingingo ya 256 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, itanyuranyije n'Itegeko Nshinga.

[81] Rutegetse ko uru rubanza rutangazwa mu igazeti ya Leta ya Repubulika y'u Rwanda.