Re KAMANZI

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00002/2022/SC – (Mukamulisa, J. P., Nyirinkwaya, Cyanzayire, Muhumuza na Hitiyaremye, J.) 31 Werurwe 2023]

Itegeko Nshinga – Ihame ry'uko abantu bareshya imbere y'amategeko – Gutandukanya abantu – Nubwo abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse n'itegeko rigiyeho rikaba rigomba gufata kimwe abo rireba, kudafatwa kimwe cyangwa gushyirwa mu byiciro buri gihe cyose ntibyitwa ivangura mu gihe bikozwe hari impamvu zumvikana zishingiye ku ntego ifite ireme.

Itegeko Nshinga – Uburenganzira bwo kureshya imbere y'amategeko no kurindwa ivangura – Kuba abakurikiranyweho icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu mu miburanire yabo hari ibyo batemerewe byemererwa abandi, ntibyakwitwa ko ari ivangura bakorerwa cyangwa kutareshya n'abandi imbere y'amategeko bitewe n'uko bari mu cyiciro kihariye ndetse n'uburyo icyaha bakurikiranyweho cyakozwemo.

Itegeko Nshinga – Ubutabera buboneye – Ubutabera buboneye bugizwe n'uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko n'ubutabera bunogeye bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'abaturage.

Itegeko Nshinga – Uburenganzira ku butabera buboneye – Kuba mu miburanishirize y'imanza z'inshinjabyaha hateganyijwe impamvu zitandukanye ku bakatiwe n'Inkiko Gacaca n'abakatiwe n'inkiko zisanzwe kugira ngo bemererwe gusubirishamo imanza zabo ingingo nshya ntibivuze ko nta butabera buboneye buba bwatanzwe, mu gihe buri cyiciro kigomba kurebwa ukwacyo bitewe n'urukiko rwakiburanishije hashingiwe no ku bwoko bw'ibyaha gikurikiranyweho.

Incamake y'ikibazo: Kamanzi yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'Itegeko Nshinga rya Rupubulika y'u Rwanda mu ngingo zaryo, iya 15, iya 16 n'iya 29.

Yasobanuye ko kuba igika kimaze kuvugwa giteganya ko abakatiwe n'Inkiko Gacaca bemererwa gusubirishamo imanza zabo ingingo nshya iyo berekanye ko abo bashinjwaga kwica bakiriho gusa, ari ivangura ribakorerwa kandi itegeko ritabareshyeshya n'abandi kubera ko abakatiwe n'inkiko zisanzwe bo hari izindi mpamvu zateganyijwe n'itegeko bashobora gushingiraho basaba gusubirishamo imanza zabo ingingo nshya. Yavugaga kandi kuba yarabonye ibimenyetso byatuma asubirishamo ingingo nshya urubanza yaciriwe n'Urukiko Gacaca ariko itegeko rikamuzitira, ibyo bibangamira ubutabera buboneye yemererwa n'Itegeko Nshinga kuko adashobora kugaragaza akarengane ke.

Uhagarariye Leta y'u Rwanda muri uru rubanza avuga ko ikirego cya Kamanzi cy'uko ibiteganyijwe mu gika cya 4 cy'ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga basanga nta shingiro gifite, kuko ibiteganyijwe muri izo ngingo bigomba gusuzumwa hagereranywa umuntu n'abo bahuje icyiciro. Asobanura ko kuba iyi ngingo iteganya impamvu zo gusubirishamo imanza ingingo nshya ishingiye ku nkiko zaziciye nta vangura ririmo dore ko gushyira abantu mu byiciro atari ukubavangura, cyane cyane iyo ibyo byiciro byashyizweho hagamijwe kugera ku ntego yumvikana, igaragarira buri wese, ishingiye ku mategeko, kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange.

Akomeza avuga ko byari ngombwa ko icyo gika kibaho, kubera ko gusubirishamo ingingo nshya imanza zaciwe n'Inkiko Gacaca ku mpamvu ibonetse yose byaba ari ugutesha agaciro umurimo wakozwe n'izo nkiko, bikaba byahembera umwiryane mu banyarwanda. Asoza avuga ko icyo gika

cya 4 cy'ingingo ya 197 y'Itegeko ryavuzwe haruguru, cyaje kigamije kuziba icyuho, aho abakatiwe n'Inkiko Gacaca wasangaga bitabaza inkiko zisanzwe kugira ngo basubirishemo imanza zabo ingingo nshya bagamije kuzitesha agaciro batitaye ku mwihariko w'uburyo icyaha cya jenoside cyakozwemo.

Ku bijyanye n'ihame ryo kudakorerwa ivangura no kureshya imbere y'amategeko ryasuzumwe muri uru rubanza hagaragajwe ko gufata abantu mu buryo butandukanye bikozwe hari impamvu igaragara kandi yumvikana binagamije intego yemewe, bigakorwa mu buryo bufitanye isano n'ikigamijwe kugerwaho, byemewe.

Urukiko rwasanze abakurikiranyweho icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu barashyizwe mu cyiciro cyihariye bashyirirwaho n'Inkiko zihariye zababuranishije mu buryo bwihariye hakurikijwe intego yari igamijwe kugerwaho. Kuba rero mu miburanire yabo itandukanye n'iy'abakurikiranwaho ibyaha bisanzwe hari ibyo batemerewe byemererwa abandi bitewe n'uburyo icyaha cya Jenoside bakurikiranyweho cyakozwemo, Urukiko rwasanze atari ivangura ribakorerwa cyangwa kutareshya n'abandi imbere y'amategeko kubera ko bagize icyiciro cyihariye, rwanzura ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryavuzwe haruguru kitanyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga.

Ku bijyanye n'ihame ryo guhabwa ubutabera buboneye hasobanuwe ko ubutabera buboneye bushingiye ku biteganywa n'itegeko bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zikanabangamira uburenganzira bw'abaturage nta mpamvu ihari igaragara. Hari kandi n'ubutabera buboneye bushingiye ku migendekere y'urubanza ishingiye ku ruhererekane rw'ibigomba kubahirizwa hashingiwe ku mahame ateganywa n'amategeko cyangwa amasezerano mpuzamahanga.

Urukiko rwasanze abakatiwe n'Inkiko Gacaca mu migendekere y'imanza zabo nta burenganzira na bumwe mu buteganywa n'ingingo ya 29 y'Itegeko Nshinga kimwe n'amasezerano mpuzamahanga batabonye. Rwasanze kandi igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru uwatanze ikirego anenga, nta na hamwe ibuza cyangwa ngo ibangamire uburenganzira ukurikiranyweho icyaha cya Jenoside afite mu migenderekere y'urubanza rwe.

Incamake y'icyemezo: 1. Nubwo abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse n'itegeko rigiyeho rikaba rigomba gufata kimwe abo rireba, kudafatwa kimwe cyangwa gushyirwa mu byiciro buri gihe cyose ntibyitwa ivangura mu gihe bikozwe hari impamvu zumvikana zishingiye ku ntego ifite ireme.

2. Kuba abakurikiranyweho icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu mu miburanire yabo hari ibyo batemerewe byemererwa abandi, ntibyakwitwa ko ari ivangura bakorerwa cyangwa kutareshya n'abandi imbere y'amategeko bitewe n'uko bari mu cyiciro kihariye ndetse n'uburyo icyaha bakurikiranyweho cyakozwemo.

3. Ubutabera buboneye bugizwe n'uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko n'ubutabera bunogeye bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'abaturage.

4. Kuba mu miburanishirize y'imanza z'inshinjabyaha hateganyijwe impamvu zitandukanye ku bakatiwe n'Inkiko Gacaca n'abakatiwe n'inkiko zisanzwe kugira ngo bemererwe gusubirishamo imanza zabo ingingo nshya ntibivuze ko nta butabera buboneye buba bwatanzwe, mu gihe buri cyiciro kigomba kurebwa ukwacyo bitewe n'urukiko rwakiburanishije hashingiwe no ku bwoko bw'ibyaha gikurikiranyweho

Ikirego gisaba kwemeza ko ingingo y'itegeko inyuranyije n'Itegeko Nshinga, nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015, ingingo ya 15, 16 n'iya 29.

Itegeko Ngenga N° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga, ingingo ya 86.

Itegeko Ngenga N°16/2004 ryo ku wa 19/06/2004 ryagenaga imiterere, ububasha n'imikorere by'Inkiko Gacaca.

Itegeko Ngenga N° 40/2000 ryo ku wa 26 Mutarama 2001 rishyiraho Inkiko Gacaca kandi rigena imiterere y'ikurikirana ry'ibyaha bigize icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu, byakozwe hagati y'itariki y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994.

Itangazo Mpuzamahanga rirebana n'uburenganzira bw'Ikiremwamuntu, ingingo ya 10 n'iya 11.

Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu ryo mu mwaka wa 1948, ingingo ya 7.

Amasezerano nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage, ingingo ya 7.

Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya Politiki yo mu mwaka 1966, ingingo ya 26.

Amasezerano y'Ibihugu by'Iburayi ku burenganzira bwa muntu, ingingo ya 6 n'iya 14.

Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 197.

Itegeko N° 11/2007 ryo ku wa 16/03/2007 rigena kwimurira muri Repubulika y'u Rwanda imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, ingingo ya 1.

Imanza zifashishijwe:

Ngendahayo Kabuye, RS/INCONST/SPEC 00004/2021/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 10/02/2023.

Re Murangwa, RS/INCONST/SPEC 00001/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 16/12/2022.

Re Kabasinga, RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 04/12/2019.

Murangwa Edward, RS/INCONST/SPEC 00001/ 2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019.

Akagera Business Group, RS/SPEC/0001/16/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 23/09/2016.

Bimenyimana André, RS/INCONST/PEN/0001/13/CS rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 04/10/2013.

Kamanzi Anaclet, Urubanza rwaciwe n'Urukiko Gacaca rw'Umurenge wa Kigasha ku itariki ya 21/11/2006.

Kamanzi Anaclet, RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 rwaciwe n'Urukiko rwa Gisirikare ku itariki ya 18/03/1999.

L/Cpl Banamwana Alfred, RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 rwaciwe n'Urukiko rwa Gisirikare.

Case of Thlimmenos v. Greece (Application number 34369/97), Strasbourg 6 April 2000, §44.

Case of Coertzee v. the Government of the Republic of South Africa 1995 (4) SA 631 (CC).

Case of Carson and others v. The United Kingdom (Application number 42184/05), §61.

Case of Inze v. Austria (Application number 8695/79), Strasbourg 28 October 1987, &41.

Inyandiko z'Abahanga zifashishijwe:

National Service of Gacaca courts, Gacaca courts closing report, Kigali, June 18, 2012, p. 77.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 07/05/2022 Kamanzi Anaclet yatanze ikirego mu Rukiko rw'Ikirenga asaba gukuraho igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha avuga ko kinyuranyije n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015 (Itegeko Nshinga muri uru rubanza).

[2] Asobanura ko ku itariki ya 21/11/2006, yahamijwe icyaha cya Jenoside yakorewe Abatutsi n'Urukiko rw'Ubujurire rwa Gacaca rw'Umurenge wa Kigasha, aho rwemeje ko yari mu gitero cyishe umuryango wa Munyengango Augustin wari utuye muri Segiteri Kigasha, Komini Ngarama, Perefegitura ya Byumba.

[3] Avuga ko nyuma yo guhamwa n'icyo cyaha, ku itariki ya 25/04/2022, yabonye ibimenyetso bikurikira byatuma asubirishamo ingingo nshya urwo rubanza yaciriwe n'Urukiko Gacaca:

- Kopi y'urubanza RMP 3119/AM/KGL/NZF/98 – RP 0019/CG- CS/99 rwaciwe n'Urukiko rwa Gisirikare ku itariki ya 18/03/1999;
- Inyandiko zitandukanye ziri muri dosiye y'uru rubanza.

[4] Akomeza avuga ko izo nyandiko zigaragaza ko icyaha yahamijwe agakatirwa imyaka 25 cyakozwe n'abasirikare bari bafite ibirindiro (*position*) muri Segiteri ya Kigasha, kandi ko umwe muri abo basirikare witwa L/Cpl Banamwana Alfred yemeye icyaha, mu iburanisha no mu iperereza, akavuga ko babikoze bonyine nta musiviri bari kumwe.

[5] Asobanura ko ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, mu gika cyayo cya 4, hateganyijwe ko ku manza zaciwe n'Inkiko Gacaca, impamvu ishobora gutuma urubanza rusubirishwamo ingingo nshya ari impamvu imwe gusa: iyo uwakatiwe urubanza yerekanye ko uwo yashinjwaga kwica akiriho, ko izindi mpamvu 5 zivugwa mu gika cya mbere cy'iyi ngingo zirengera abahuye n'akarengane mu manza zaciwe n'inkiko zisanzwe gusa, abarenganyijwe n'Inkiko Gacaca bakaba batemerewe kurengerwa nazo.

[6] Avuga ko mu nyungu ze bwite, ndetse no mu nyungu rusange nk'umunyarwanda uharanira ubutabera bwuzuye n'iterambere ry'amategeko, atanze iki kirego kugira ngo asabe Urukiko rw'Ikirenga gukuraho igika cya nyuma (cya 4) cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, kuko kinyuranyije n'Itegeko Nshinga mu ngingo zaryo zikurikira:

- iya 15 iteganya ko abantu bose bareshya imbere y'amategeko;
- iya 16 ikumira ivangura iryo ariryo ryose;
- n'iya 29 iha buri muntu wese uburenganzira ku butabera buboneye.

[7] Iburanisha ryabereye mu ruhame ku itariki ya 18/01/2023, Kamanzi Anaclet ahagarariwe na Me Kayitana Evode, hari na Leta y'u Rwanda ihagarariwe n'Intumwa yayo Me Batsinda Aline, Urukiko rubanza gusuzuma ikibazo kirebana n'inyungu Kamanzi Anaclet afite mu rubanza.

[8] Nyuma yo kumva Me Kayitana Evode uhagarariye Kamanzi Anaclet avuga ko nk'undi munyarwanda wese, afite inyungu ko Itegeko Nshinga kimwe n'andi mategeko byakubahirizwa, ko ariko by'umwihariko nk'umuntu wakatiwe n'Inkiko Gacaca, ingingo yasabye ko yakurwaho imubangamiye;

[9] Rumaze kumva Me Batsinda Aline uhagarariye Leta y'u Rwanda, avuga ko Kamanzi Anaclet nta nyungu yihariye afite muri uru rubanza kubera ko, harebwe uburyo ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru iregerwa muri uru rubanza yanditse, ireba inyungu z'abanyarwanda bose muri rusange;

[10] Urukiko rwafatiye mu ntebe icyemezo gikurikira: rushingiye ku cyemezo cyafashwe mu rubanza rubanziriza urundi RS/INCONST/SPEC 00001/2022/SC rwaciwe ku itariki ya 16/12/2022[1], aho uru Rukiko rwemeje ko kuba mu rubanza harimo kimwe muri ibi bikurikira, byihagije kugira ngo Urukiko rwemeze ko urega afite inyungu:

- Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba urega cyangwa icyiciro arimo by'umwihariko ku buryo afite inyungu ku giti cye zo gutanga ikirego;
- Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba abaturage bose muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo, ibyo bikaba aribyo bihesha umuntu uwo ariwe wese rishobora kuzagiraho ingaruka, inyungu zo kuriregera ko rinyuranyije n'Itegeko Nshinga;
- Niba uwatanze ikirego ari umunyamwuga (*practictionner*), mu nyungu z'ubutabera, uyu akaba yemerewe gutanga ikirego mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko, kabone nubwo we nta nyungu ku giti cye yaba afite muri icyo kirego.

[11] Ku birebana n'uru rubanza, Urukiko rwasanze muri dosiye harimo urubanza rwaciwe n'Urukiko Gacaca rw'Umurenge wa Kigasha rwakatiye Kamanzi Anaclet igifungo cy'imyaka 25 nyuma yo kumuhamya kugira uruhare mu rupfu rw'umuryango wa Munyengango Augustin muri Jenoside yakorewe Abatutsi. Muri dosiye hagaragaramo kandi urubanza rwaciwe n'Urukiko rwa Gisirikare rwemeje ko L/Cpl Banamwana Alfred ahamwa n'icyaha cy'ubufatanyacyaha mu bwicanyi bwakorewe umuryango wa Munyengango Augustin.

[12] Hashingiwe kuri izo nyandiko no ku murongo watanzwe n'uru Rukiko wavuzwe haruguru, Urukiko rwasanze Kamanzi Anaclet afite inyungu itaziguye kandi ye bwite yo kuregera ingingo ya 197, igika cya 4, y'Itegeko N° 027/2019 ryavuzwe haruguru avuga ko imubangamiye mu gihe yaba ashaka gusubirishamo ingingo nshya urubanza rwamukatiye ku cyaha avuga ko cyahamye undi muntu kandi utarigeze amushinja ko bafatanyije.

[13] Urukiko rwakomeje iburanisha hasuzumwa ibibazo bikurikira:

- Kumenya niba igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga;
- Kumenya niba igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 29 y'Itegeko Nshinga.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

[1] Muri uru rubanza haburanagamo Murangwa Edward wasabaga ko ingingo zimwe na zimwe z'Itegeko Nº 12/2017 ryo ku wa 07/04/2017 rishyiraho Urwego rw'Igihugu Rushizwe Ubugenzacyaha rikanagena inshingano, ububasha, imitunganyirize n'imikorere byarwo, n'iz'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha zakurwaho kubera ko zinyuranyije n'Itegeko Nshinga.

1. Kumenya niba igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga

[14] Me Kayitana Evode uburanira Kamanzi Anaclet avuga ko ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose bareshya imbere y'amategeko, ko kandi itegeko ribarengera ku buryo bumwe. Akomeza avuga ko n'Amasezerano Mpuzamahanga u Rwanda rwashyizeho umukono nayo ateganya ubu burenganzira bwo kureshya imbere y'amategeko no gukumira ivangura iryo ariryo ryose. Atanga urugero rw'ingingo ya 26 y'Amasezerano Mpuzamahanga yerekeye uburenganzira mu by'imbonezamubano no mu bya Politiki (*Pacte international relatif aux droits civils et politiques*) iteganya ko abantu bose bareshya imbere y'amategeko kandi ko bafite uburenganzira bwo kurengerwa n'amategeko ku buryo bungana nta kuvangura. Iyo ngingo igakomeza ivuga ko kubera izo mpamvu, amategeko agomba kubuza ivangura iryo ariryo ryose kandi hagashyirwaho uburyo bungana kandi buhamye bwo kurinda abantu bose ivangura mu mimerere iyo ariyo yose.

[15] Avuga ko kuba ingingo ya 197, igika cya 4, y'Itegeko Nº 027/2019 ryavuzwe haruguru, iteganya ko abakatiwe n'Inkiko Gacaca batemerewe gusubirishamo imanza zabo ingingo nshya nk'abaciriwe imanza n'inkiko zisanzwe, asanga harimo akarengane kuko itegeko ritabarengera kimwe n'abaciriwe imanza n'izindi nkiko zisanzwe. Avuga ko asanga kandi ingingo imaze kuvugwa inyuranyije n'ingingo ya 16 y'Itegeko Nshinga iteganya ko abanyarwanda bose bagomba kugira uburenganzira n'ubwisanzure bingana, kuko Kamanzi Anaclet adafite uburenganzira bungana n'ubw'abandi bwo gusubirishamo urubanza ingingo nshya.

[16] Me Kayitana Evode avuga ko yemera ko ivangura rishobora kubaho mu mategeko iyo hari impamvu zikomeye zituma ribaho, ko ibi byanemejwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/PEN 0005/12/CS. Asobanura ko uru rubanza rwari rushingiye ku cyemezo cya ICTR (*International Criminal Tribunal for Rwanda*) cyo kohereza Uwinkindi Jean ngo akurikiranwe n'inkiko zo mu Rwanda, aho yagombaga kuburanishwa n'Urukiko Rukuru ku rwego rwa mbere hashingiwe ku ngingo ya mbere y'Itegeko N° 11/2007 ryo ku wa 16/03/2007 rigena kwimurira muri Repubulika y'u Rwanda imanza zivuye mu Rukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda. Uwinkindi Jean yahise aregera Urukiko rw'Ikirenga arusaba gukuraho iyo ngingo kuko inyuranyije n'Itegeko Nshinga, aho yavugaga ko ituma habaho ivangura igatuma aburanishwa n'Urukiko Rukuru ku rwego rwa mbere, bityo ntagire uburenganzira abandi bafite bwo kujurira.

[17] Akomeza avuga ko Urukiko rwanzuye ko gutandukanya abantu nta ruhande rubogamiweho, kandi ku mpamvu zumvikana, aribwo gusa bitakwitwa ivangura. Urukiko rwabivuze muri aya magambo: gushyira abantu mu byiciro ntabwo ari ukubavangura cyane cyane iyo ibyo byiciro byashyizweho hagamijwe kugera ku ntego yumvikana, igaragarira buri wese, ishingiye ku mategeko kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange.

[18] Asobanura ko iby'uko itegeko rishobora kuvangura abantu kandi byanavuzweho n'Akanama k'Umuryango w'Abibumbye Gashinzwe iyubahirizwa ry'Uburenganzira bwa Muntu (*United Nations Human Rights Committee*) mu mwanzuro kafashe mu nama yako ya 37, nako kavuze ku by'uko itegeko rishobora kuvangura abantu, aho kagize kati *"…the committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant".*

[19] Avuga ko asanga ariko ibiteganywa mu gika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru bidashobora kubonerwa ibisobanuro (*justification*) kuko nta mpamvu n'imwe yatuma akarengane ka bamwe gasuzumwa n'inkiko hanyuma ak'abandi ntigasuzumwe.

[20] Akomeza asobanura kandi ko ku byerekeranye n'uburenganzira bwo kureshya imbere y'amategeko no kurengerwa kimwe na yo, n'ibihugu by'amahanga bifite icyo bibuvugaho. Urugero atanga ni muri Canada, aho itegeko ryerekeye uburenganzira bwa muntu (*Canadian Charter of Rights and Freedoms*) riteganya mu cyiciro (*Section*) cya 15(1) ko abantu bose bareshya imbere y'amategeko kandi itegeko ribarengera kimwe nta vangura. Avuga ko mu gusobanura icyo uku kureshya imbere y'amatego no kurengerwa kimwe bivuga, Urukiko rw'Ikirenga rwa Canada mu rubanza "*Andrews v. Law Society of British Columbia"*, rwashimangiye ko nk'ihame, imvugo kurengerwa kimwe yumvikanisha ko abari mu mimerere imwe bagomba gufatwa kimwe.

[21] Ku birebana n'icyo ivangura aricyo, avuga ko urwo Rukiko rwasobanuye ko ivangura ari ugutandukanya abantu byaba bigambiriwe cyangwa bitagambiriwe, bishingiye ku mpamvu izo arizo zose, bigatuma bamwe batagira uburenganzira bungana n'ubw'abandi mu gihugu. Avuga ko rwabivuze muri aya magambo: "*Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which withholds or limits access to advantages available to other members of society*."

[22] Asoza avuga ko nk'uko bigaragara mu gika cya 4 cy'ingingo ya 197 y'Itegeko ryavuzwe haruguru asaba ko cyavanwaho, itegeko ryagennye ibyiciro bibiri by'abantu atari ukugira ngo abari muri buri cyiciro bitabweho kimwe, ahubwo ari ukugira ngo icyiciro kimwe gihabwe uburenganzira ikindi kibwimwe. Avuga ko abakatiwe n'inkiko zisanzwe bafite uburenganzira bwo gusubirishamo urubanza ingingo nshya, mu gihe abakatiwe n'Inkiko Gacaca bo ubwo burenganzira ntabwo bafite. Yanzura avuga ko iri ari ivangura kuko usibye no kutarengerwa kimwe n'itegeko, ahubwo kuri bamwe nta no kurengerwa naryo na gato guhari.

[23] Me Batsinda Aline uhagarariye Leta y'u Rwanda, avuga ko ikirego cya Kamanzi Anaclet cy'uko ibiteganyijwe mu gika cya 4 cy'ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryamaze kuvugwa binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga basanga nta shingiro gifite, kuko ibiteganyijwe muri izo ngingo bigomba gusuzumwa hagereranywa umuntu n'abo bahuje icyiciro.

[24] Asobanura ko ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru iteganya ibyiciro bibiri by'imanza zishobora gusabirwa gusubirishwamo ingingo nshya: imanza zaciwe n'Inkiko zisanzwe zishobora gusubirishwamo ingingo nshya hashingiwe ku biteganyijwe mu gika cya mbere, icya 2 n'icya 3, n'imanza zaciwe n'Inkiko Gacaca nazo zishobora gusubirishwamo ingingo nshya ariko hashingiwe ku biteganyijwe mu gika cya 4 cy'iyo ngingo.

[25] Akomeza avuga ko iyubahirizwa ry'amahame ateganyijwe mu ngingo ya 15 n'iya 16 z'Itegeko Nshinga, ryakorwa hagereranywa ibyemerewe abantu bafite imanza zaciwe n'inkiko zisanzwe zisabirwa gusubirishwamo ingingo nshya hagati yabo cyangwa se ibyemerewe abasaba gusubirishamo ingingo nshya imanza zaciwe n'Inkiko Gacaca nabo hagati yabo, kandi ko byakorwa hasuzumwa impamvu ziteganyijwe mu ngingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru.

[26] Asobanura ko kuba iriya ngingo iteganya impamvu zo gusubirishamo imanza ingingo nshya ishingiye ku nkiko zaziciye nta vangura ririmo, kandi ko ibi byanashimangiwe mu rubanza RS/INCONST/PEN 0005/12/CS rwavuzwe haruguru, aho mu gika cyarwo cya 16, Urukiko rw'Ikirenga rwemeje ko kuba hashobora kubaho amategeko agena ko abantu baburanishirizwa mu nkiko zitandukanye bakekwaho gukora ibyaha bisa, ko ubwabyo atari ivangura, ko ahubwo bishobora gukorwa hagamijwe kugera ku ntego yumvikana mu rwego rwo gutanga ubutabera bunoze.

[27] Akomeza asobanura ko gushyira abantu mu byiciro atari ukubavangura, cyane cyane iyo ibyo byiciro byashyizweho hagamijwe kugera ku ntego yumvikana, igaragarira buri wese, ishingiye ku

mategeko, kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange, ibyo bikaba bishimangira ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru kitanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 15 n'iya 16 kuko kireba icyiciro cyihariye.

[28] Yongeraho ko byari ngombwa ko icyo gika kibaho, kubera ko gusubirishamo ingingo nshya imanza zaciwe n'Inkiko Gacaca ku mpamvu ibonetse yose byaba ari ugutesha agaciro umurimo wakozwe n'izo nkiko, bikaba byahembera umwiryane mu banyarwanda, kubera ko hari ahagiye hagaragara akagambane mu manza zaciwe n'izo nkiko kugira ngo zisubirishwemo ingingo nshya mu nkiko zisanzwe hagamijwe gusa kurekura abo zakatiye.

[29] Akomeza asobanura ko impamvu y'igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryavuzwe haruguru urega asaba ko cyakurwaho, ari uko mu gihe cy'Inkiko Gacaca, hagiye hagaragara ubwumvikane hagati y'abahamwe n'icyaha cya jenoside, umuntu ubona ko ashinjwa kwica abantu benshi akishyiraho n'undi atishe agamije kugira uwo ahishira. Avuga ko iyo usesenguye uburyo icyaha cya jenoside cyakorwagamo, usanga urupfu rw'umuntu umwe rwaragizwemo uruhare n'abantu benshi, nk'aho nk'umuntu wagaragayeho igikorwa cyo kujya kuri bariyeri, bigoye kumenya umubare w'abantu bayiciweho, cyangwa mu gihe ahamwe n'icyaha cyo gushishikariza abantu kwica, kugambanira abishwe cyangwa kujya mu gitero, usanga urupfu rw'uwishwe muri icyo gihe rufitwemo uruhare n'abantu benshi kuko bose ibyo bakoraga byabaga bigambiriye ko yicwa. Avuga ko muri icyo gihe hatahanwa gusa uwamwishe nyirizina, ngo abandi bumve ko ari abere, ariyo mpamvu Itegeko Ngenga ryagengaga Inkiko Gacaca ryashyize abantu mu byiciro hashingiwe ku mikorere y'icyaha, ibyo byose bikaba bigamije kumvikanisha uburyo abakatiwe n'Inkiko Gacaca batagomba gushingira ku mpamvu zimwe n'abakatiwe n'inkiko zisanzwe mu gusubirishamo imanza zabo ingingo nshya.

[30] Uhagarariye Leta y'u Rwanda akomeza avuga ko mbere y'uko igika cya 4 cy'iriya ngingo gishyirwa mu itegeko, zimwe mu manza zaburanishijwe n'inkiko zisanzwe hasubirishwamo ingingo nshya imanza zaciwe n'Inkiko Gacaca, zagiye zigira abere abari barahamwe n'icyaha cya jenoside cyangwa zikabafungura mu buryo budasobanutse hirengagijwe umwihariko n'imiterere by'Inkiko Gacaca. Avuga ko hari aho inkiko zisanzwe zatesheje agaciro imanza zaciwe n'Inkiko Gacaca ku mpamvu y'uko hari undi muntu wahamijwe icyaha kizivugwamo, byongeye kandi anacyiregа, ariko nyamara hakirengagizwa ko umuntu umwe yashoboraga kwicwa n'igitero kirimo abantu benshi nk'uko byasobanuwe haruguru.

[31] Avuga ko urugero ari urugaragara nyine mu manza ebyiri Kamanzi Anaclet yerekana, arizo: urubanza rwaciwe n'Urukiko Gacaca rw'Umurenge wa Kigasha ku itariki ya 21/11/2006, hamwe n'urubanza RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99 rwaciwe n'Urukiko rwa Gisirikare ku itariki ya 18/03/1999, aho ibyaha yahamijwe mu rubanza rwaciwe n'Urukiko Gacaca bifitanye isano n'ibyaha L/Cpl Banamwana Alfred yahamijwe mu rubanza RMP 3119/AM/KGL/NZF/98-RP 0019/CG-CS/99.

[32] Asoza avuga ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, cyaje kigamije kuziba icyuho, aho abakatiwe n'Inkiko Gacaca wasangaga bitabaza inkiko zisanzwe kugira ngo basubirishemo imanza zabo ingingo nshya bagamije kuzitesha agaciro batitaye ku mwihariko w'uburyo icyaha cya jenoside cyakozwemo.

UKO URUKIKO RUBIBONA

[33] Ingingo ya 15 y'Itegeko Nshinga rya Repulika y'u Rwanda iteganya ko abantu bose bareshya imbere y'amategeko, ko itegeko ribarengera ku buryo bumwe, naho iya 16 yaryo igateganya ko ivangura iryo ariryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku

bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, bibujijwe kandi bihanwa n'amategeko.

[34] Ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, igika cyayo cya 4, ari nacyo urega asaba ko cyakurwaho avuga ko kinyuranye n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, iteganya ko ku bijyanye n'imanza zaciwe n'Inkiko Gacaca, gusubirishamo urubanza ingingo nshya byemerwa gusa iyo uwakatiwe urubanza yerekanye ko uwo yashinjwaga kwica akiriho. Ibi bikaba bisobanuye ko izindi mpamvu zose ziteganywa n'iyo ngingo[2] zitemewe mu gusubirishamo ingingo nshya ku wakatiwe n'Inkiko Gacaca.

[35] Ihame ryo kureshya imbere y'amategeko no kudakorerwa ivangura, si mu Itegeko Nshinga ry'u Rwanda turisanga gusa, rigaragara no mu Masezerano Mpuzamahanga u Rwanda rwashyizeho umukono. Twavuga nk'ingingo ya 7 y'Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu (*Universal Declaration of Human Rights*), ryo mu mwaka wa 1948, igira iti: "*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination*". Hari kandi n'ingingo ya 26 y'Amasezerano Mpuzamahanga arebana n'uburenganzira mu by'imbonezamubano no mu bya Politiki (*International Covenant on Civil and Political Rights, 1966*) igira iti: *"All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status"*.

[36] Ibirebana n'uburyo ingingo ya 15 n'iya 16 z'Itegeko Nshinga zigomba kumvikana, uru Rukiko rwabisobanuye mu rubanza RS/SPEC/0001/16/CS rwaciwe ku itariki ya 23/09/2016[3]. Urukiko rwavuze ko ingingo ya 15 n'iya 16 z'Itegeko Nshinga zifitanye isano ku buryo utasobanura icyo zishatse kuvuga uzitandukanyije. Rwasobanuye ko ingingo ya 15 ivuga ko abantu bose bareshya imbere y'amategeko kandi bakarengerwa n'amategeko mu buryo bumwe, bisobanuye ko hatagomba kubaho ivangura rituma abantu batarengerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakabugize, ingingo ya 16 igakomerezaho ivuga uburyo gutandukanya abantu bifatwa nk'ivangura kandi ko bitemewe n'Itegeko Nshinga. Izi ngingo zombi zafatwa nk'izikubiyemo ihame rimwe ryo kudasumbanya abantu mu byo bemerewe cyangwa babujijwe ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko. Ibi kandi uru Rukiko rwongeye kubishimangira mu rubanza RS/INCONST/SPEC 00004/2021/SC[4].

[37] Nk'uko bimaze kugaragazwa haruguru, ihame ry'uko abantu bareshya imbere y'amategeko rivuze ko abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse

---

[2] Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira:

1° ushinjwa amaze gucirwa urubanza rw'uko yishe umuntu, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishe atapfuye;

2° bamaze gucira ushinjwa urubanza ku cyaha yashinjwaga, hakaboneka urundi rubanza nk'urwo rwahannye undi muntu kandi rumuhanira icyo cyaha, izo manza zombi zivuguruzanya zikaba zigaragaje ko umwe mu bakatiwe yarenganye;

3° iyo habayeho ruswa muri urwo rubanza yemejwe n'urukiko kandi ikaba yaragize ingaruka ku mikirize yarwo;

4° iyo haciwe urubanza bashingiye ku mpapuro, ku buhamya cyangwa indahiro byaje kugaragaracyangwa kwemezwa n'urukiko ko ari ibihimbano nyuma y'icibwa ry'urwo rubanza;

5° iyo kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza nezaakarengane katewe n'urubanza rusabirwa gusubirwamo;

6° iyo urubanza rushingiye ku byakozwe mu iburanisha bikozwe mu izina ry'umuntu utarigeze atangaubwo bubasha mu buryo ubwo ari bwo bwose, cyangwa ngo yemere cyangwa yemeze ibyakozwe.

[3] Urubanza RS/SPEC/0001/16/CS, Akagera Business Group, igika cya 15.

[4] RS/INCONST/SPEC 00004/2021/SC rwaciwe ku itariki ya 10/02/2023 haburana NgendahayoKabuye, para. 36.

n'itegeko rigiyeho rikaba rigomba gufata kimwe abo rireba. Iryo hame ariko rishobora kugira irengayobora (*exception*) igihe hari impamvu zumvikana zishingiye ku ntego ifite ireme (*legitimate or rational purpose*) nk'uko n'uwatanze ikirego abyemera, ibi bikaba byarashimangiwe n'uru Rukiko mu rubanza RS/INCONST/SPEC 00001/ 2019/SC rwaciwe ku itariki ya 29/11/2019[5]. Muri urwo rubanza, Urukiko rushingiye ku byavuzwe n'umuhanga mu mategeko Erwin Hemerinsky, rwasobanuye ko ibigomba gufatwa kimwe ari ibimeze kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo (*Things that are alike should be treated alike, and things that are unalike should be treated unalike in proportion to their unalikeness*). Mu yandi magambo, abantu bagomba gufatwa kimwe, ariko hitawe ku byiciro byabo, ku buryo abantu bari mu byiciro bitandukanye batafatwa kimwe.

[38] Iri hame ry'uko kugira ngo byitwe ko hari ivangura cyangwa ukutareshyeshya abantu ari uko abantu bari mu cyiciro kimwe baba bafashwe mu buryo butandukanye kandi nta mpamvu yumvikana, ryanagarutsweho mu rubanza rwa Thlimmenos v. Greece rwaciwe n'Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera Uburenganzira bwa Muntu (*European Court of Human Rights*), aho rwavuze ko kugira ngo bifatwe ko igihugu cyarenze ku ngingo ya 14 y'Amasezerano ibuza ivangura[6], ari uko kiba cyafashe mu buryo butandukanye abantu bari mu byiciro bimwe kandi nta mpamvu yumvikana gitanga. Rwabivuze muri aya magambo mu rurimi rw'icyongereza: *"The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification".*[7]

[39] Mu rubanza rwa Carson and Others v. The United Kingdom, Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera Uburenganzira bwa Muntu, rushingiye ku zindi manza rwaciye, rwemeje ko gutandukanya abantu bihura n'igisobanuro cy'ingingo ya 14, ari mu gihe uko kutabafata kimwe biba bishingiye ku bintu runaka bibaranga. Byongeye kandi, kugira ngo bifatwe nk'ivangura, ni uko abo bantu badafashwe kimwe baba bari mu cyiciro kimwe, kandi bigakorwa nta ntego yumvikana ihari cyangwa nta sano iri hagati y'uko gutandukanya abantu n'ikigamijwe. Rwabivuze muri aya magambo mu rurimi rw'icyongereza: *"The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. Moreover, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Such a difference in treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. […]*[8]

[40] Nanone mu rubanza rwa Inze vs Austria, urwo Rukiko rwemeje ko ku birebana n'ingingo ya 14, byitwa ivangura, iyo gufata abantu mu buryo butandukanye bikozwe nta mpamvu ihari igaragara kandi yumvikana nta n'intego yemewe igamijwe cyangwa bigakorwa mu buryo budafitanye isano n'ikigamijwe kugerwaho. Rwavuze ko ibihugu bifite uburenganzira bwo gusesengura igihe ari ngombwa kudafata abantu kimwe mu itegeko, ibyo bigakorwa hitawe ku mateka yabyo. Rwabivuze muri aya magambo mu rurimi rw'icyongereza: "*For the purposes of Article 14, a difference of treatment is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and towhat extent differences in otherwise similar situations justify a*

[5] Urubanza RS/INCONST/SPEC 00001/ 2019/SC haburana Murangwa Edward rwaciwe ku wa29/11/2019, p.12, para. 35.
[6] The article 14 of European Convention on Human Rights reads: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such assex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.
[7] Case of Thlimmenos v. Greece (Application number. 34369/97), Strasbourg 6 April 2000, §44.
[8] Case of Carson and others v. The United Kingdom (Application number. 42184/05), §61.

different treatment in law; the scope of this margin will vary according to thecircumstances, the subject-matter and its background.”[9]

[41] Muri raporo yako, Akanama k’Umuryango w’Abibumbye gashinzwe kugenzura iyubahirizwa ry’uburenganzira bwa muntu (*United Nations Human Rights Committee*), kibukije ibyemezo byinshi kagiye gafata aho kemeje ko uburenganzira bwo kureshya imbere y’amategeko no kurengerwa nayo nta vangura iryo ariryo ryose budasobanuye ko kudafatwa kimwe buri gihe cyose byitwa ivangura. Kasobanuye ko gutandukanya abantu bishingiye ku mpamvu yumvikana bitagize ivangura ribujijwe mu ngingo ya 26 (Amasezerano Mpuzamahanga arebana n’uburenganzira mu by’imbonezamubano no mu bya Politiki). Kabivuze mu magambo akurikira mu rurimi rw’icyongereza: […] *“The Committee reiterates its constant jurisprudence that the right to equality before the law and to equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26).”*[10]

[42] Nyuma y’ibisobanuro rusange bimaze gutangwa ku birebana n’icyo kutareshya imbere y’amategeko ndetse n’ivangura bishatse kuvuga, ko atari buri gihe cyose kudafatwa kimwe byitwa ivangura ribujijwe n’amategeko, igisigaye ni ukureba niba igika cya 4 cy’ingingo ya 197 y’Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y’imanza z’inshinjabyaha, kigaragaramo ukutareshya imbere y’amategeko ndetse n’ivangura nk’uko uwatanze ikirego abivuga. Nk’uko byasobanuwe haruguru, iyo ngingo isobanura ko ku bakatiwe n’Inkiko Gacaca, gusubirishamo urubanza ingingo nshya byemerwa gusa iyo uwakatiwe urubanza yerekanye ko uwo yashinjwaga kwica akiriho, naho ku bakatiwe n’izindi nkiko hakaba hari izindi mpamvu ziteganyijwe muri iyo ngingo zishobora gutuma basaba gusubirishamo imanza zabo ingingo nshya.[11]

[43] Mu ngingo ya 197 y’Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, hagaragaramo ibyiciro bibiri: icyiciro cy’abaciriwe imanza bagakatirwa n’inkiko zisanzwe n’icyiciro cy’abakatiwe n’Inkiko Gacaca. Icyiciro uwatanze ikirego avuga ko cyakorewe ivangura ndetse akanongeraho ko hatabayeho gufatwa kimwe imbere y’amategeko, ni icy’abantu baburanishijwe bagakatirwa n’Inkiko Gacaca ukigereranyije n’icy’abakatiwe n’inkiko zisanzwe. Avuga ko itegeko ryagennye ibyo byiciro bibiri by’abantu atari ukugira ngo abari muri buri cyiciro bitabweho kimwe, ko ahubwo kwari ukugira ngo icyiciro kimwe gihabwe uburenganzira ikindi kibwimwe, kuko abakatiwe n’inkiko zisanzwe bafite uburenganzira bwo gusubirishamo imanza zabo ingingo nshya, mu gihe abakatiwe n’Inkiko Gacaca bo ubwo burenganzira ntabwo bafite.

[44] Kugira ngo ikibazo kiri muri uru rubanza kirusheho kumvikana neza, ni ngombwa kubanza kureba impamvu yatumye hajyaho Inkiko Gacaca, icyo zari zigamije zijya kujyaho n’imikorere yazo

---

[9] Case of Inze v. Austria (Application number. 8695/79), Strasbourg 28 October 1987, &41.

[10] Muller and Engelhard v. Namibia, Communication number 919/2000, adopted on 26 March 2002,para. 6.7.

[11] Reba ingingo ya 197, igika cya mbere, y’Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeyeimiburanishirize y’imanza z’inshinjabyaha iteganya ko Urubanza rushobora gusubirishwamo ingingo nshya kubera imwe mu mpamvu zikurikira:

1° ushinjwa amaze gucirwa urubanza rw’uko yishe umuntu, hanyuma hakaboneka ibimenyetso bihagije byemeza ko uwo bakeka ko yishe atapfuye;

2° bamaze gucira ushinjwa urubanza ku cyaha yashinjwaga, hakaboneka urundi rubanza nk’urworwahannye undi muntu kandi rumuhanira icyo cyaha, izo manza zombi zivuguruzanya zikaba zigaragaje ko umwe mu bakatiwe yarenganye;

3° iyo habayeho ruswa muri urwo rubanza yemejwe n’urukiko kandi ikaba yaragize ingaruka kumikirize yarwo;

4° iyo haciwe urubanza bashingiye ku mpapuro, ku buhamya cyangwa indahiro byaje kugaragara cyangwa kwemezwa n’urukiko ko ari ibihimbano nyuma y’icibwa ry’urwo rubanza;

5° iyo kuva aho urubanza ruciriwe, habonetse ikimenyetso gishya kimara impaka kigaragaza nezaakarengane katewe n’urubanza rusabirwa gusubirwamo;

6° iyo urubanza rushingiye ku byakozwe mu iburanisha bikozwe mu izina ry’umuntu utarigezeatanga ubwo bubasha mu buryo ubwo ari bwo bwose, cyangwa ngo yemere cyangwa yemeze ibyakozwe.

itandukanye n'iy'inkiko zisanzwe. Nyuma yo guhagarika Jenoside yakorwe Abatutsi mu mwaka wa 1994 igahitana abarenga miliyoni, kimwe mu bibazo byagombaga gushakirwa ibisubizo kandi mu buryo bwihutirwa, cyari icyo guca imanza z'abakekwagaho kuyigiramo uruhare kugira ngo abayirokotse babone ubutabera. Ibi ariko ntibyari byoroshye bitewe n'umubare munini w'abagombaga gucirwa imanza, aho abarenga 120.000 bari bafunzwe by'agateganyo, kandi n'urwego rw'ubutabera rukaba rwari rwarazahaye cyane.[12]

[45] Nubwo Guverinoma y'u Rwanda yari yarakoze umurimo ukomeye kugira ngo imanza zirebana na Jenoside yakorewe Abatutsi zicibwe, byagaragaye ko ku muvuduko imanza zacibwagaho icyo gihe, byari kuzatwara imyaka myinshi kugira ngo nibura haburanishwe gusa abari bakurikiranywe bafunze, hatirengagijwe ko hari n'abandi bari batarafatwa[13]. Ni muri rwo rwego byabaye ngombwa gushaka bundi buryo budasanzwe hagamijwe gukemura icyo kibazo, Inkiko Gacaca zivuka ubwo zifite imikorere yihariye itandukanye n'iy'inkiko zisanzwe kubera ko nazo zari zije zigamije gukemura ikibazo kidasanzwe[14].

[46] Harebwe irangashingiro ry'Itegeko Ngenga n° 16/2004 ryo ku wa 19/06/2004 ryagenaga imiterere, ububasha n'imikorere by'Inkiko Gacaca zari zishinzwe gukurikirana no gucira imanza abakoze ibyaha bya Jenoside n'ibindi byaha byibasiye inyoko muntu byakozwe hagati y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994[15], izo nkiko zari zifite intego zikurikira:

- Kugaragaza ukuri kuri Jenoside;
- Kwihutisha imanza za Jenoside;
- Guca umuco wo kudahana;
- Gushimangira ubumwe n'ubwiyunge bw'abanyawanda;
- Kugaragaza ubushobozi bw'umuryango nyarwanda mu kwikemurira ibibazo.

Kubera izo ntego umushingamategeko yari afite, byatumye abari bakurikiranyweho icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu, abaremera icyiciro cyihariye, abashyiriraho n'uburyo bw'imiburanishirize bwihariye ugereranyije n'icyiciro cy'abakurikiranyweho ibyaha bisanzwe.

[47] Umwihariko w'Itegeko Ngenga ryashyiragaho Inkiko Gacaca ryavuzwe haruguru nk'uko ryagiye rihindurwa kandi rikuzuzwa urigereranyije n'andi mategeko ahana ibyaha ndetse n'ayerekeye imiburanishirize y'imanza z'inshinjabyaha, ni uko ryo ryasobanuraga ubwaryo imiterere (*organisation*), imikorere (*fonctionnement*) n'ububasha (*compétence*) by'Inkiko Gacaca, ibyaha n'ababikurikiranyweho ndetse n'ibihano biteganyijwe. Mu yandi magambo, mu guca imanza zari mu bubasha bwazo, Inkiko Gacaca zakurikije imiburanishirize (*procédure*) yihariye iteganywa n'Itegeko Ngenga ryazishyiragaho itandukanye n'imiburanishirize y'imanza zisanzwe.

[48] Tugarutse ku kibazo kiri muri uru rubanza aho uwatanze ikirego avuga ko abaciriwe imanza n'Inkiko Gacaca bakorerwa ivangura ndetse n'itegeko rikaba ritabarengera kimwe n'abaciriwe imanza n'izindi nkiko kubera ko bo bemererwa gusubirishamo urubanza ingingo nshya berekanye gusa ko abo bashinjwaga kwica bakiriho, mu gihe abandi bo hari izindi mpamvu zituma bashobora kwemererwa gusubirishamo imanza zabo ingingo nshya, Urukiko rurasanga atari byo kubera ko, nk'uko byagaragajwe haruguru, ari abantu bakurikiranyweho ibyaha biri mu byiciro bitandukanye. Ku ruhande rumwe, abakurikiranyweho ibyaha bisanzwe, n'abakurikiranyweho ibyaha bya Jenoside

---

[12] Urwego rw'Igihugu Rushinzwe Inkiko Gacaca, Inkiko Gacaca mu Rwanda, Kamena 2012,urupapuro rwa 13.
[13] National Service of Gacaca courts, Gacaca courts closing report, Kigali, June 18, 2012, p. 77.
[14] Itegeko Ngenga N° 40/2000 ryo ku wa 26 Mutarama 2001 rishyiraho Inkiko Gacaca kandi rigena imiterere y'ikurikirana ry'ibyaha bigize icyaha cya Jenoside n'ibindi byaha byibasiye inyokomuntu,byakozwe hagati y'itariki y'itariki ya mbere Ukwakira 1990 n'iya 31 Ukuboza 1994.
[15] Iri Tegeko Ngenga ryasimbuye iryo mu mwaka wa 2001.

n'ibindi byaha byibasiye inyoko muntu ku rundi ruhande. Umushingamategeko yashatse ko ibyo byaha bikurikiranwa mu buryo butandukanye harebwe intego yari afite zagaragajwe haruguru mu gika cya 46 cy'uru rubanza, ibi akaba ari nabyo bisobanura impamvu ku birebana no gusubirishamo imanza ingingo nshya, buri cyiciro cyashyiriweho ibigomba kubahirizwa kugira ngo ubusabe bwakirwe.

[49] Urukiko rurasanga kandi ikibazo kimeze nk'ikiri muri uru rubanza aho inzira yo gusubirishamo imanza ku bari mu cyiciro cy'abaciriwe imanza n'Inkiko Gacaca zitandukanye n'iz'abaciriwe imanza n'inkiko zisanzwe ataribwo bwa mbere gishyikirijwe uru Rukiko. Mu rubanza RS/INCONST/PEN/0001/13/CS rwaciwe ku itariki ya 04/10/2013, uwitwa Bimenyimana André yatanze ikirego asaba ko ingingo ya 86, agace ka nyuma, y'Itegeko Ngenga N° 03/2012 ryo ku wa 13/06/2012 rigena imiterere, imikorere n'ububasha by'Urukiko rw'Ikirenga yateganyaga ko ibirebana no gusubirishamo imanza ku mpamvu z'akarengane bitareba imanza zaciwe n'Inkiko Gacaca, yakurwaho avuga ko yari inyuranyije n'ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 nk'uko ryari ryaravuguruwe ikirego gitangwa[16]. Urukiko rwasobanuye ko nta vangura ryabayeho kubera ko umushingamategeko ashyiraho ingingo ya 86 y'Itegeko Ngenga n° 03/2012 ryo ku wa 13/06/2012 rimaze kuvugwa, yari ashingiye cyane cyane ku mpamvu zatumye Inkiko Gacaca zishyirwaho, intego yazo n'icyo zari zagamije.[17] Iki gisobanuro akaba ari nacyo gitangwa no muri uru rubanza ku mpamvu yatumye mu ngingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha hashyirwamo igika cya kane kigena umwihariko ku manza zaciwe n'Inkiko Gacaca.

[50] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga ikirego cya Kamanzi Anaclet kigamije gusaba ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda nta shingiro gifite.

2. Kumenya niba igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda

[51] Me Kayitana Evode uhagarariye Kamanzi Anaclet avuga ko ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko "buri muntu wese afite uburenganzira ku butabera buboneye (...)burimo uburenganzira bwo gufatwa nk'umwere. Avuga ko n'ubwo iyi ngingo itarondoye ibikubiye mu butabera buboneye byose, ko agace ka gatanu (5°) kayo kavuga ko ntawe ugomba kuryozwa icyaha atakoze, ko iryo ariryo shingiro ryo guha uwakatiwe n'Urukiko uburenganzira bwo gusubirishamo urubanza ingingo nshya iyo zibonetse kugira ngo agirwe umwere atazavaho aryozwa icyaha atakoze.

[52] Asobanura ko icyo ubutabera buboneye aricyo n'ibibukubiyemo byasobanuwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC 00003/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 04/12/2014, aho rwasobanuye ko ubutabera buboneye bugizwe n'uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko (*procedural due process*) n'ubutabera buboneye bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'abaturage (*substantive due process*).

[53] Avuga ko ikibazo gisigaye ari icyo kumenya niba "uburenganzira bwo gusubirishamo urubanza ingingo nshya" ari bumwe mu bigize ubutabera buboneye. Asobanura ko mu rubanza rwavuzwe haruguru RS/INCONST/SPEC 00003/2019/SC, Urukiko rw'Ikirenga rwavuze ko mu

[16] Iyo ngingo yateganyaga ko abantu bose bangana imbere y'amategeko, ko itegeko ribarengera kuburyo bumwe nta vangura iryo ariryo ryose.
[17] Urubanza RS/INCONST/PEN/0001/13/CS, Bimenyimana André, igika cya 17.

manza z'inshinjabyaha, 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. Avuga ko ibi bisobanuye ko n'ibijyanye n'uburenganzira bwo kujurira kimwe n'ubwo gusubirishamo urubanza ingingo nshya biri mu gice cy'iburanisha, nabyo bikaba biri mu bigize uburenganzira ku butabera buboneye.

[54] Me Kayitana Evode akomeza avuga ko kuba impamvu zaba zihari zemewe n'itegeko zigaragaza ko urubanza rukwiriye gusubirishwamo kugira ngo ubutabera butangwe, ariko zikirengagizwa hashingiwe ku mpamvu y'uko icyaha umuntu yagihamijwe n'Inkiko Gacaca, byaba bihabanye n'ihame ry'ubutabera buboneye. Asaba ko igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru kivanwaho kugira ngo Kamanzi Anaclet kimwe n'abandi bumva bararenganyijwe n'Inkiko Gacaca bagire uburenganzira bumwe n'ubw'abandi banyarwanda bafite ibimenyetso byerekana ko barenganyijwe n'inkiko kandi itegeko rikaba ryerekana ko biri mu bituma urubanza rusubirishwamo ingingo nshya.

[55] Asobanura ko Urukiko rw'Ikirenga nta cyarubuza gukuraho ingingo runaka cyangwa ibice byazo mu gihe rusanze binyuranyije n'Itegeko Nshinga nk'uko rwabyemeje mu rubanza no RS/INCONST/PEN0001/07/CS, kuko nta ngaruka byagira ku ntego y'itegeko. Avuga ko ibi ari na ko n'izindi nkiko zo hanze zibibona, urugero atanga akaba ari urubanza Coertzee v. the Government of the Republic of South Africa 1995 (4) SA 631 (CC) rwaciwe n'Urukiko rw'Ikirenga rwo muri Afurika y'Epfo, aho urwo Rukiko rwavuze mu rurimi rw'Icyongereza ko, *"that the bad and the good may be separated without prejudice to the main objective of the statute and the purpose of legislature."*

[56] Mu gusoza, Me Kayitana Evode avuga ko asanga Kamanzi Anaclet nta butabera buboneye yahawe mu gihe yabonye ingingo nshya ituma urubanza rwe rusubirishwamo ingingo nshya, ariko itegeko rikamuzitira mu kugaragaza akarengane ke.

[57] Me Batsinda Aline uhagarariye Leta y'u Rwanda, avuga ko uburenganzira ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga ntaho buhuriye n'ubwo Kamanzi Anaclet avuga ko yabujijwe, ari bwo burenganzira bwo kujurira n'ubwo gusubirishamo urubanza ingingo nshya. Avuga ko uburenganzira bwo kujurira n'ubwo gusubirishamo urubanza ingingo nshya yari abufite igihe yaburanaga mu Nkiko Gacaca nk'uko biteganyijwe mu Itegeko Ngenga N˚ 16/2004 ryo ku wa 19/06/2004 rigena imiterere, ububasha n'imikorere by'Inkiko Gacaca nk'uko ryagiye rivugururwa rikanuzuzwa n'Amategeko Ngenga atandukanye, ko kandi yabukoresheje igihe yaburanaga mu Nkiko Gacaca.

[58] Ku birebana n'uburenganzira bwo gusubirishamo urubanza ingingo nshya buteganyijwe mu gika cya 4 cy'ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, Me Batsinda Aline avuga ko na bwo Kamanzi Anaclet abufite mu gihe yagaragaza impamvu iteganyijwe muri icyo gika, ko rero icyo gika ntaho kinyuranyije n'ingingo ya 29 y'Itegeko Nshinga.

UKO URUKIKO RUBIBONA

[59] Ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda igaragaza bimwe mu bigize ubutabera buboneye buri muntu wese afiteho uburenganzira. Ibyo ni ibi bikurikira:

- Uburenganzira bwo kumenyeshwa imiterere n'impamvu z'icyaha umuntu akurikiranyweho, kwiregura no kunganirwa;
- Gufatwa nk'umwere kugeza igihe urukiko rubifitiye ububasha rumuhamirije icyaha;
- Kuburanira imbere y'urukiko rubifitiye ububasha;

- Kudakurikiranwa, kudafatwa, kudafungwa cyangwa kudahanirwa ibyo yakoze cyangwa atakoze iyo amategeko y'Igihugu cyangwa amategeko mpuzamahanga atabifataga nk'icyaha igihe byakorwaga. Ibyaha n'ibihano bijyanye nabyo biteganywa n'amategeko;
- Kutaryozwa icyaha atakoze; uburyozwacyaha ni gatozi ku wakoze icyaha;
- Kudahanishwa igihano kiruta icyari giteganyijwe n'amategeko mu gihe yakoraga icyaha;
- Kudafungwa bitewe gusa no kutagira ubushobozi bwo kubahiriza inshingano ituruka ku masezerano;
- Kudakurikiranwa cyangwa kudahanirwa icyaha cyashaje. Icyakora icyaha cya jenoside, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara ntibisaza. […].

[60] Ku birebana n'ibigomba kubahirizwa mu rwego rwo gutanga ubutabera buboneye, uretse no mu Itegeko Nshinga, tubisanga no muri amwe mu masezerano mpuzamahanga akurikira:

- Amasezerano mpuzamahanga mu by'imbonezamubano na politiki (*Pacte international relatif aux droits civils et politiques*) aho ingingo ya 14 yayo irondora uburenganzira umuntu ukurikiranyweho icyaha agomba kuba afite;[18]
- Itangazo Mpuzamahanga rirebana n'uburenganzira bw'Ikiremwamuntu (*Universal Declaration of Human Rights*), aho ingingo ya 10 n'iya 11 zivuga ku burenganzira bw'ukekwaho icyaha;[19]
- Amasezerano nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage (*African Charter on Human and Peoples'Rights*) aho ingingo ya 7 yayo ivuga uburyo ukekwaho icyaha agomba gufatwa;[20]

---

[18]Article 14 stipule:

1. *"Tous sont égaux devant les tribunaux et les cours de justice. […]*
2. *Toute personne accusée d'une infraction pénale est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.*
3. *Toute personne accusée d'une infraction pénale a droit, en pleine égalité, au moins aux garanties suivantes :*
   - *a) A être informée, dans le plus court délai, dans une langue qu'elle comprend et de façon détaillée, de la nature et des motifs de l'accusation portée contre elle ;*
   - *b) A disposer du temps et des facilités nécessaires à la préparation de sa defense et à communiquer avec le conseil de son choix ;*
   - *c) A être jugée sans retard excessif ;*
   - *d) A être présente au procès et à se défendre elle-même ou à avoir l'assistance d'un défenseur de son choix ; si elle n'a pas de défenseur, à être informée de son droit d'en avoir un, et, chaque fois que l'intérêt de la justice l'exige, à se voir attribuer d'office un défenseur, sans frais, si elle n'a pas les moyens de le rémunérer ;*
   - *e) A interroger ou faire interroger les témoins à charge et à obtenir la comparution et l'interrogatoire des témoins à décharge dans les mêmes conditions que les témoins à charge ;*
   - *f) A se faire assister gratuitement d'un interprète si elle ne comprend pas ou ne parle pas la langue employéeà l'audience ;*
   - *g) A ne pas être forcée de témoigner contre elle-même ou de s'avouer coupable."*

[…]

[19] Article 10 states: *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. And Article 11 reads: Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. 2. No one shall be held guiltyof any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that wasapplicable at the time the penal offence was committed."*

[20] Article 7 of the Charter stipulates: *"1. Every individual shall have the right to have his cause heard. This comprises:*

- Amasezerano y'ibihugu by'Iburayi ku burenganzira bwa muntu (*European Convention on Human Rights*) aho ingingo ya 6 yayo ivuga uburyo ukurikiranyweho icyaha afatwa.[21]

[61] Mu gutanga igisobanuro cy'uburenganzira ku butabera buboneye, mu rubanza RS/INCONST/SPEC 00003/2019/SC[22], Urukiko rw'Ikirenga rwabusobanuye mu buryo bubiri: ubutabera buboneye bushingiye ku biteganywa n'itegeko (*substantive due process*), n'ubutabera buboneye bushingiye ku migendekere y'urubanza (*procedural due process*). Ubutabera buboneye bushingiye ku biteganywa n'itegeko bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zikanabangamira uburenganzira bw'abaturage nta mpamvu ihari igaragara, mu gihe ubutabera buboneye bushingiye ku migendekere y'urubanza bwo ari uruhererekane rw'ibigomba kubahirizwa mu migendekere yarwo hashingiwe ku mahame ateganywa n'amategeko cyangwa amasezerano mpuzamahanga. Ibi nibyo kandi byasobanuwe n'umuhanga mu mategeko Professor Erwin Chemerinsky muri aya magambo mu rurimi rw'icyongereza yifashishije urugero: *"Substantive due process asks the question of whether the government's deprivation of a person's life, liberty or property is justified by a sufficient purpose. Procedural due process, by contrast, asks whether the government has followed the proper procedures when it takes away life, liberty or property. Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation".*[23]

[62] Harebwe uburyo uwatanze ikirego agisobanura, Urukiko rurasanga ikibazo kiri muri uru rubanza ari ukumenya niba igika cya 4 cy'ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryavuzwe haruguru, kibuza abari mu cyiciro cy'abakatiwe n'Inkiko Gacaca kubona ubutabera buboneye (*Substantive due process*) nk'uko uwagitanze abivuga. Mu yandi magambo, ni ukureba niba iki gika hari uburenganzira kibuza abakatiwe n'Inkiko Gacaca mu migendekere y'imanza zabo mu rwego rwo kubona ubutabera buboneye.

[63] Hakurikijwe kandi uburyo uwatanze ikirego agisobanura, Urukiko rurasanga ikindi kibazo afite gifitanye isano n'uburenganzira bwo kureshya cyangwa gufatwa kimwe imbere y'inkiko, kubera ko avuga ko igika anenga kibuza ubutabera buboneye ku bakatiwe n'Inkiko Gacaca ngo kuko abari muri icyo cyiciro bemererwa gusubirishamo imanza zabo ingingo nshya iyo berekanye gusa ko abo bashinjwaga kwica bakiriho, mu gihe abari mu cyiciro cy'abakatiwe n'inkiko zisanzwe bo hari izindi mpamvu ziteganyijwe muri iyo ngingo zituma bashobora kubyemererwa.

[64] Kugira ngo itegeko cyangwa ingingo yaryo ibangamire ubutabera buboneye, harebwe igisobanuro cyatanzwe n'umuhanga mu mategeko Erwin Chemerinsky cyagarutsweho haruguru, Urukiko rurasanga riba rigomba gukuraho uburenganzira umuntu yari afite nk'uko bwarondowe

---

(a) the right to an appeal to competent national organs against acts of violating his Fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in Force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 2. No one may be condemned for an act or omission which did not constitute a legally punishable offenceat the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender."

[21] Article 6.1 of the Convention reads: *"In the determination of his civil rights and* obligations or of any criminal charge *against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may beexcluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

[22] RS/INCONST/SPEC 00003/2019/SC, Kabasinga Florida, igika cya 13.

[23] Professor Erwin Chemerinsky, Substantive Due Process, Touro Law Review: Vol. 15: No. 4,Article 15, P. 1. Available at: https://digitalcommons.tourolaw.edu/lawreview/vol15/iss4/15.

haruguru haba mu Itegeko Nshinga cyangwa mu masezerano mpuzamahanga, kandi ibyo bigakorwa nta mpamvu igaragara ihari.

[65] Ku birebana n'igika cya 4 cy'ingingo 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 uwatanze ikirego anenga avuga ko hari abo kibuza ubutabera buboneye, harebwe ibigomba kubahirizwa ku muntu ukekwaho icyaha mu rwego rw'imigendekere y'urubanza rwe, Urukiko rurasanga nta hantu na hamwe igika anenga kivuga ko hari ibyo abakatiwe n'Inkiko Gacaca batari bemerewe mu migendekere y'imanza zabo kugira ngo bahabwe ubutabera buboneye, cyangwa ko hari ibyo babujijwe nko gufatwa nk'umwere cyangwa se kutaryozwa icyaha batakoze nk'uko uwatanze ikirego abivuga.

[66] Ku birebana no gufatwa kimwe imbere y'inkiko, Urukiko rurasanga iki kibazo gisa n'icyasobanuwe haruguru ku birebana n'uburenganzira bwo kureshya imbere y'amategeko no kurindwa ivangura. Kureshya imbere y'inkiko bivuze ko abantu bari imbere y'inkiko zimwe bagomba kugira uburenganzira bumwe. Ibi bisobanuye ko abantu baburanira imbere y'inkiko zitandukanye, bitewe n'ubwoko bw'ibyaha bakurikiranyweho, atari ngombwa buri gihe ko bafatwa kimwe. Ibi ni nako byemejwe n'Akanama k'Umuryango w'Abibumbye gashinzwe iyubahirizwa ry'uburenganzira bwa muntu, ubwo kasobanuraga ingingo ya 14,1° y'Amasezerano mpuzamahanga mu by'imbonezamubano na politiki (*International covenant on civil and political rights*) kayihuza n'ubutabera buboneye. Kavuze ko kureshya imbere y'inkiko bigomba kumvikana ko ubwo burenganzira bureba abantu baburanira mu nkiko zimwe. Katanze urugero rw'uko hari ibyaha bidasanzwe biburanishwa mu buryo budasanzwe cyangwa bigashyirirwaho inkiko zidasanzwe, ariko ibyo bigakorwa kubera impamvu yumvikana. Kabivuze muri aya magambo mu rurimi rw'icyongereza: "*Equality before courts and tribunals also requires that similar cases are dealt with in similar proceedings. If, for example, exceptional criminal procedures or specially constituted courts or tribunals apply in the determination of certain categories of cases, objective and reasonable grounds must be provided to justify the distinction.*"[24]

[67] Nk'uko byasobanuwe haruguru mu ngingo irebana no kureshya imbere y'amategeko, Urukiko rurasanga kuba harashyizweho Inkiko Gacaca zikaburanisha abakekwagaho kugira uruhare muri Jenoside n'ibindi byaha byibasiye inyokomuntu, icyo kikaba ari icyiciro cyihariye gitandukanye n'icy'abakurikiranwaho ibindi byaha baburanishwa n'inkiko zisanzwe, ibyo biremewe. Kuba hari ibyemerewe abari mu cyiciro kimwe ntibyemererwe abari mu kindi, ibyo ntibivuze ko nta butabera buboneye buba bwatanzwe, kubera ko buri cyiciro kigomba kurebwa ukwacyo bitewe n'urukiko rwakiburanishije hashingiwe no ku bwoko bw'ibyaha gikurikiranyweho.

[68] Nk'uko byasobanuwe haruguru, kuba umushingamategeko yarashyizeho ibyiciro bibiri, icy'abakurikiranyweho ibyaha bya Jenoside n'ibindi byaha byibasiye inyokomuntu n'icy'abakurikiranyweho ibyaha bisanzwe, biremewe. Icyangombwa ni uko mu kubishyiraho hari hagamijwe intego yumvikana, kandi mu migendekere y'imanza zabo, uburenganzira bwose buteganywa n'amategeko bukaba bwarubahirijwe. Ibimaze kuvugwa bihura n'ibyemejwe n'Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera uburenganzira bwa muntu mu rubanza rwa Taxquet C. Belgique, aho rwasanze ibihugu bifite uburenganzira busesuye bwo guhitamo uburyo inkiko zabyo zubahiriza ibiteganywa n'ingingo ya 6[25]. Rwasanze inshingano yarwo ari ukureba niba inzira igihugu cyafashe iganisha ku ntego itanyuranye n'amasezero ku burenganzira bwa muntu mu icibwa ry'urubanza runaka bitewe n'umwihariko warwo. Muri make, Urukiko rureba niba mu kuburanisha urubanza harubahirijwe ihame ry'ubutabera buboneye. Rwabivuze muri aya magambo mu rurimi rw'igifaransa: "*En effet, les Etats contractants jouissent d'une grande liberté dans le choix des moyens*

[24] Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courtsand tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). §14.

[25] Ni ingingo y'Amasezerano y'Ibihugu by'Iburayi ku burenganzira bwa muntu iteganya ibigizeubutabera buboneye.

propres à permettre à leur système judiciaire de respecter les impératifs de l'article 6. La tâche de la Cour consiste à rechercher si la voie suivie a conduit, dans un litige déterminé, à des résultats compatibles avec la Convention, eu égard également aux circonstances spécifiques de l'affaire, à sa nature et à sa complexité. Bref, elle doit examiner si la procédure a revêtu, dans son ensemble, un caractère équitable."[26]

[69] Mu kwanzura, kuba ingingo ya 197 y'Itegeko N° 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iteganya impamvu zitandukanye ku bakatiwe n'Inkiko Gacaca n'abakatiwe n'inkiko zisanzwe kugira ngo bemererwe gusubirishamo imanza zabo ingingo nshya, aho igika cya 4 cy'iyo ngingo giteganya ko abari mu cyiciro cy'abakatiwe n'Inkiko Gacaca basabwa kugaragaza ko abo baregwa kuba barishe bakiriho gusa, mu gihe abari mu cyiciro cy'abakatiwe n'inkiko zisanzwe bo hari izindi mpamvu bashobora gushingiraho, Urukiko rurasanga ibyo atari imbogamizi ku butabera buboneye. Icya ngombwa ni uko mu migendekere y'imanza zabo, uburenganzira buteganywa n'ingingo ya 29 y'Itegeko Nshinga kimwe n'ubuteganywa n'amasezerano mpuzamahanga buba bwarubahirijwe.

[70] Hashingiwe ku bisobanuro byose bimaze gutangwa, Urukiko rurasanga igika cya 4 cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kitanyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015.

III. ICYEMEZO CY'URUKIKO

[71] Rwemeje ko ikirego cyatanzwe na Kamanzi Anaclet gisaba kwemeza ko igika cya kane (4) cy'ingingo ya 197 y'Itegeko Nº 027/2019 ryo ku wa 19/09/2019 ryerekeye imiburanishirize y'imanza z'inshinjabyaha kinyuranyije n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, nta shingiro gifite.

[72] Rwemeje ko icyo gika ntaho kinyuranyije n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga.

[26] Affaire Taxquet c. Belgique (Requête nimero 926/05), §84.