Re FEMINIST ACTION DEVELOPMENT AMBITION (FADA)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC00004/2023/SC (Mukamulisa, J.P., Cyanzayire, Hitiyaremye, Kalihangabo na Kazungu, J.) 26 Mata 2024

Itegeko Nshinga – Uburenganzira bwo kudahungabanywa k'umuntu – Kugira ngo habeho guhutaza uburenganzira bwo kudahungabanywa k'umuntu, hagomba kuba habayeho ibikorwa ibyo ari byo byose bivogera umubiri w'umuntu bigamije kuwugirira nabi bikozwe mu buryo bunyuranyije n'amategeko.

Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo y'itegeko inyuranyije n'Itegeko Nshinga – Kugira ngo uwatanze ikirego avuge ko ingingo runaka y'itegeko inyuranye n'Iteko Nshinga, agomba kubanza kugaragariza Urukiko aho iyo ngingo aregera ihurira n'Itegeko Nshinga.

Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo y'itegeko inyuranyije n'Itegeko Nshinga – Imigirire inyuranyije n'ibyo itegeko riteganya, ibaye iriho, ntikosorerwa mu kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga mu gihe itegeko ubwaryo nta kibazo rifite.

Incamake y'ikibazo: Feminist Action Development Ambition (FADA) yatanze ikirego mu Rukiko rw'Ikirenga isaba kwemeza ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, inyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo zaryo, iya 13 yerekeye ubudahungabanywa bw'umuntu, iya 15 yerekeranye no kureshya imbere y'amategeko, n'iya 16 irinda ivangura iryo ariryo ryose. Iyo ngingo iregerwa iteganya ko umuntu wese ukora ibiterasoni mu ruhame aba akoze icyaha.

FADA ivuga ko impamvu yatanze iki kirego ari ukubera imbogamizi igenda ihura nazo ziri mu mategeko, aho bamwe mu bakobwa n'abagore mu Rwanda bajya bahura n'ikibazo cyo gukurikiranwaho icyaha cyo gukora ibiterasoni mu ruhame giteganyijwe muri iyo ngingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, kubera ko ari ab'igitsina gore, mu gihe ibikorwa nk'ibyo iyo byakozwe n'ab'igitsina gabo bo batabikurikiranwaho nk'icyaha. Ibi bikaba binyuranye n'Itegeko Nshinga mu ngingo zaryo, iya 13, iya 15 n'iya 16.

Mbere yo gusuzuma ikibazo cyayo, Urukiko rwabanje gusuzuma niba FADA ifite inyungu muri uru rubanza maze rwemeza ko iyifite nk'umuryango ufite ubuzimagatozi kandi ufite mu nshingano zawo kurwanya ihohoterwa iryo ari ryo ryose rishingiye ku gitsina n'ivangura.

Ku kibazo cyabanje gusuzumwa muri uru rubanza, kijyanye no kuba ibikubiye mu ngingo ya 143 y'Itegeko ryavuzwe haruguru rinyuranyije n'ingingo ya 13 y'Itegeko Nshinga, FADA ivuga ko iyo uhuje ibiteganywa nizo ngingo zombi usanga guhanira umuntu gukora ibiterasoni mu ruhame bitewe n'uko yambaye bibangamira uburenganzira bw'igitsina gore, ndetse bikaba bihungabanya ubudahungabanywa bwe n'uburenganzira busesuye bwo kwisanzura ku mubiri we.

FADA ikomeza ivuga ko uretse kuba iri tegeko rihutaza umuntu bitewe n'uko riteganya ko gukora ibiterasoni mu ruhame ari icyaha, ritigeze rinateganya ibisobanuro by'icyo ibiterasoni n'urukozasoni ari cyo kandi iryo jambo ridasobanutse neza. Ivuga kandi ko ibi bituma ibikorwa bimwe bifatwa nk'ibiterasoni kuri bamwe ariko ntibifatwe gutyo ku bandi, hakabaho gushidikanya mu ikurikirana ry'icyo cyaha no kutubahiriza uburenganzira bwo kutavogerwa k'umuntu.

Leta y'u Rwanda muri uru rubanza, ivuga ko ibyo FADA ivuga nta shingiro bifite kubera ko Leta y'u Rwanda ari igihugu kiyemeje kugendera ku mategeko, gishingiye ku iyubahirizwa ry'uburenganzira bwa muntu, ku bwisanzure no ku ihame ry'uko Abanyarwanda bose bareshya imbere y'amategeko, n'iry'uburinganire hagati y'abagore n'abagabo nk'uko biteganywa n'Itegeko Nshinga.

Ikomeza ivuga ko asanga guhana uwakoze icyaha cyo gukora ibiterasoni mu ruhame, bitavuze ko ubudahungabanywa bwe buba butubahirijwe mu gihe aba yakurikiranywe mu buryo bukurikije

amategeko. Ku kibazo FADA ivuga ko itegeko ritasobanuye ijambo ibiterasoni icyo ari cyo, Leta y'u Rwanda ivuga ko icy'ingenzi ari uko ari ukuba ari igikorwa kibangamiye rubanda hashingiwe ku muco runaka w'igihugu kandi kikaba kinyuranyije n'umuco wacyo, ko nta munyarwanda wananirwa kumenya icyo ibiterasoni ari cyo. Isoza ivuga ko uburenganzira n'ubwisanzure bwa muntu bugira aho butangirira n'aho bugarukira, ko butagomba kubangamira abandi cyangwa kunyuranya n'uburere n'umuco biranga abanyarwanda. Nta muntu n'umwe ufite uburenganzira bwo kwambara ubusa cyangwa kwambara imyambaro igaragaza ubwambure mu ruhame ku buryo bibangamira uburenganzira n'ubwisanzure bw'abandi.

Ku kibazo kijyanye no kumenya niba ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranye n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, Urega avuga ko iyo barebye imikoreshereze y'iyo ngingo, basanga mu bantu bagiye bakurikiranwaho icyaha cyo gukora ibiterasoni mu ruhame, haragiye hakurikiranwa abakobwa hashingiwe uko bambaye mu ruhame kuruta uko byakorwaga ku bagabo cyangwa abahungu, bagasanga hakurikijwe ingingo iregerwa, abagore aribo barebwa cyane nyamara batagomba kuvangurwa n'abasaza babo bakoze ibintu bimeze kimwe. Yatanze urugero avuga ko umukobwa cyangwa umugore ugaragaye yakuye ishati atambaye ku gice cyo hejuru yahanwa, mu gihe umugabo wakoze nka byo atabihanirwa. Bityo, akaba asaba ko iyo ngingo ikurwaho kubera ko ihana gukora ibiterasoni mu ruhame muri ubu buryo, inyuranyije n'Itegeko Nshinga kuko mu gihe cyo kuyishyira mu bikorwa, idafata abagabo n'abagore mu buryo bumwe, cyangwa ngo bareshye imbere y'amategeko iyo iri gushyirwa mu bikorwa.

Leta y'u Rwanda ivuga ko Urega atenenga iyo ngingo iregerwa ya 143 mu myandikire yayo ahubwo icyo yibandaho ari ishyirwa mu bikorwa ryayo, aho bagaragaza ko hari abakurikiranywe hashingiwe kuri iyo ngingo, n'abatarakurikiranywe. Ivuga kandi ko urebye uburyo ingingo ubwayo yanditse, abona ntaho yigeze isumbanya umugore n'umugabo, bityo agasanga idakwiye gukurwaho kuko ntaho inyuranyije n'ingingo ya 15 y'Itegeko Nshinga. Ivuga ko u Rwanda ari igihugu kigendera ku mategeko kandi cyiyemeje kurwanya ivangura iryo ari ryo ryose nk'uko biteganyijwe mu Itegeko Nshinga ryarwo bityo, rukaba rutashyiraho itegeko rivangura abagabo n'abagore, ko rero ingingo yaregewe ntaho inyuranyije n'ingingo ya 16 y'Itegeko Nshinga kuko nta vangura iryo ari ryo ryose riyigaragaramo.

Incamake y'icyemezo: 1. Kugira ngo habeho guhutaza uburenganzira bwo kudahungabanywa k'umuntu, hagomba kuba habayeho ibikorwa ibyo ari byo byose bivogera umubiri w'umuntu bigamije kuwugirira nabi bikozwe mu buryo bunyuranyije n'amategeko.

2. Kugira ngo uwatanze ikirego avuge ko ingingo runaka y'itegeko inyuranye n'Iteko Nshinga, agomba kubanza kugaragariza Urukiko aho iyo ngingo aregera ihurira n'Itegeko Nshinga. Bityo, ikirego cya FADA nta shingiro gifite kuko itabashije kugaragariza Urukiko aho guhana icyaha cyo gukora ibiterasoni mu ruhame giteganywa n'ingingo aregera ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, bihurira n'uburenganzira bw'ubudahungabanywa bw'umuntu buteganyijwe mu ngingo ya 13 y'Itegeko Nshinga.

3. Imigirire (*pratique*) inyuranyije n'ibyo itegeko riteganya, ibaye iriho, ntikosorerwa mu kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga mu gihe itegeko ubwaryo nta kibazo rifite.

Ikirego gisaba kwemeza ko ingingo y'itegeko inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda; nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu wa 2003 ryavuguruwe kugeza ubu, ingingo ya 13, 15 n'iya 16.

Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu (*Universal Declaration of Human Rights*), ryo mu mwaka wa 1948, ingingo ya 7.

Amasezerano Mpuzamahanga ku burenganzira mbonezamubano n'ubwa Politiki (International Covenant on Civil and Political Rights, 1966), aho ingingo yaryo ya 26

Amasezerano Mpuzamahanga yerekeye uburenganzira bwa muntu na politiki, ingingo ya 2 n'iya 3.

Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore yo ku wa mbere Gicurasi 1980 yemejwe n'Iteka rya Perezida N° 431/16 ryo ku wa 10/11/1981, ingingo ya 3.

Amasezerano Nyafurika y'Uburenganzira bwa muntu n'ubw'Abaturage, ingingo ya 4, 91 n'iya 127.

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 143.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 72.

Imanza zifashishijwe:

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

Urubanza N° 13 of 2014 [2021] UGCC, Centre for Domestic Violence Prevention and Others n'Intumwa Nkuru ya Leta, rwaciwe n'Urukiko rw'Ikirenga rwa Uganda ku wa 13 Kanama 2021.

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

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku itariki ya 04/07/2023, Feminist Action Development Ambition, FADA muri uru rubanza, yatanze ikirego mu Rukiko rw'Ikirenga isaba kwemeza ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranyije n'ingingo ya 13, iya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda (Itegeko Nshinga muri uru rubanza).

[2] FADA isobanura ko, nk'umuryango utari uwa Leta, mu mirimo yayo ya buri munsi, igenda ihura n'imbogamizi ziri mu mategeko, aho bamwe mu bakobwa n'abagore mu Rwanda bajya bahura n'ikibazo cyo gukurikiranwaho icyaha cyo gukora ibiterasoni mu ruhame giteganywa n'ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi rikuzuzwa kugeza ubu kubera ko ari ab'igitsina gore, mu gihe ibikorwa nk'ibyo iyo byakozwe n'ab'igitsina gabo bo batabikurikiranwaho nk'icyaha. Ivuga ko hari n'igihe bakurikiranwa habayeho gucishiriza bitewe n'amaso areba cyane cyane ibirebana n'imyambarire.

[3] Yanzura ivuga ko ibi binyuranye n'Itegeko Nshinga mu ngingo zaryo, iya 13 yerekeye ubudahungabanywa bw'umuntu, iya 15 yerekeranye no kureshya imbere y'amategeko, n'iya 16 irinda ivangura iryo ariryo ryose, ko iyo ariyo mpamvu yatumye itanga ikirego isaba kwemeza ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru inyuranyije n'Itegeko Nshinga.

[4] Urubanza rwaburanishirijwe mu ruhame ku itariki ya 11/03/2024, FADA ihagarariwe na Uwingabe Murenzi Assna yunganiwe na Me Karangwa Olivier afatanyije na Me Umwari Sylvie, naho Leta y'u Rwanda ihagarariwe na Me Batsinda Aline, habanza gusuzumwa ikibazo cyo kumenya niba FADA ifite inyungu muri uru rubanza.

1. Ku bijyanye no kumenya niba FADA ifite inyungu mu rubanza

[5] Nyuma yo kumva ibisobanuro by'uwatanze ikirego asobanura inyungu afite mu rubanza n'iby'Intumwa ya Leta ivuga ko nta nyungu uwatanze ikirego afite, Urukiko rwafatiye icyemezo mu ntebe mu buryo bukurikira:

a. Ingingo ya 72, igika cya mbere, y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko umuntu ku giti cye, ikigo cyangwa umuryango ufite ubuzimagatozi bashobora kuregera Urukiko rw'Ikirenga basaba kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga iyo babifitemo inyungu.

b. Mu rubanza rubanziriza urundi RS/INCONST/SPEC00001/2022/SC rwaciwe n'Urukiko rw'Ikirenga ku itariki ya 16/12/2022, haregamo Murangwa Edward, Urukiko rwasobanuye ko mu gusuzuma inyungu z'urega hagomba kurebwa ibintu bikurikira, kuba hariho kimwe muri byo bikaba byihagije kugira ngo Urukiko rwemeze ko urega afite inyungu:

- Niba hari itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba urega cyangwa icyiciro abarizwamo by'umwihariko ku buryo afite inyungu ku giti cye zo gutanga ikirego. Urugero ni nk'Itegeko rireba abanyamakuru, abaganga, abarimu, n'abandi;
- Niba itegeko riregerwa ko rinyuranyije n'Itegeko Nshinga rireba abaturage bose muri rusange ku buryo rishobora kugira ingaruka ku burenganzira bwabo, ibyo bikaba ari byo bihesha umuntu uwo ari we wese rishobora kuzagiraho ingaruka, inyungu zo kuriregera ko rinyuranyije n'Itegeko Nshinga;
- Niba uwatanze ikirego ari umwavoka, uyu akaba mu nyungu z'ubutabera, yemerewe gutanga ikirego mu rwego rwo guteza imbere amategeko cyangwa uburenganzira bw'abarebwa n'iryo tegeko, kabone nubwo we ku giti cye nta nyungu yaba afite muri icyo kirego.

c. Ku birebana n'uru rubanza, ingingo ya 4 y'Amategeko Shingiro ya FADA, iteganya ko kimwe mu byo igamije ari ukurwanya ihohoterwa iryo ari ryo ryose rishingiye ku gitsina n'ivangura. Mu nyandiko yayo itanga ikirego, FADA ivuga ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ibangamira abantu b'igitsina gore, bityo ikaba iyiregera ko inyuranye n'Itegeko Nshinga.

d. Urukiko rwasanze, nk'umuryango ufite ubuzimagatozi kandi ufite mu nshingano zawo kurwanya ihohoterwa iryo ari ryo ryose rishingiye ku gitsina n'ivangura, FADA ifite inyungu muri uru rubanza kubera ko mu byo ishingiraho iregera ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 yavuzwe haruguru inyuranyije n'Itegeko Nshinga, harimo kuba ibangamira uburenganzira bw'abaturage iharanira, rutegeka ko iburanisha rikomeza.

[6] Ku bijyanye n'urubanza mu mizi, Urukiko rwasuzumye ibibazo bikurikira:

- Kumenya niba ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranyije n'ingingo ya 13 y'Itegeko Nshinga;
- Kumenya niba ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

2. Kumenya niba ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranyije n'ingingo ya 13 y'Itegeko Nshinga

[7] Uwingabe Murenzi Assna uhagarariye FADA, yunganiwe na Me Karangwa Olivier na Me Umwari Sylvie, bavuga ko iyo uhuje ibikubiye mu ngingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, n'ibiteganywa n'ingingo ya 13 y'Itegeko Nshinga, usanga guhanira umuntu gukora ibiterasoni mu ruhame bitewe n'uko yambaye bibangamira uburenganzira bw'igitsina gore. Urugero batanga ni uguhanira umuntu kwambara umwenda ubonerana, umwenda mugufi cyangwa se umuhambiriye. Bavuga ko ibyo bihungabanya ubudahungabanywa bwe n'uburenganzira busesuye bwo kwisanzura ku mubiri we, kandi iyo ngingo ya 13 y'Itegeko Nshinga yarateganyije ko Leta ifite inshingano zo kumwubaha, kumurinda no kumurengera.

[8] Bakomeza bavuga ko, uretse kuba iri tegeko rihutaza umuntu bitewe n'uko riteganya ko gukora ibiterasoni mu ruhame ari icyaha, ritigeze rinateganya ibisobanuro by'icyo ibiterasoni n'urukozasoni ari cyo kandi iryo jambo ridasobanutse neza. Bongeraho ko ibi bituma ibikorwa bimwe bifatwa nk'ibiterasoni kuri bamwe ariko ntibifatwe gutyo ku bandi, hakabaho gushidikanya mu ikurikirana ry'icyo cyaha no kutubahiriza uburenganzira bwo kutavogerwa k'umuntu. Bavuga ko ibyo biteye inkeke kubera ko, bitewe n'imyumvire y'ugena icyo ibiterasoni ari cyo, umuntu umwe ashobora gukurikiranwa undi ntakurikiranwe, bikaba byazamo amarangamutima.

[9] Bavuga nanone ko uburenganzira bwo kudahungabanywa kw'ikiremwamuntu ari uburenganzira bw'ibanze bwa muntu burinzwe n'Itegeko Nshinga, akaba ari uburenganzira burinda abantu kugirirwa nabi ku mubiri cyangwa mu mutwe. Bagaragaza ko guhanira umuntu icyitwa gukora ibiterasoni mu ruhame, nabyo bitasobanuwe neza, bishobora guhonyora ubwo burenganzira mu buryo butandukanye.

[10] Bavuga kandi ko amategeko ahana ibiterasoni akunze guhana ibyo abantu bashobora kwitiranya n'ubwambure, bitewe n'uburyo bambaye; nyamara umuntu afite uburenganzira ntayegayezwa bw'uburyo atwara cyangwa yambika umubiri we (*Body Autonomy*). Bakomeza bavuga ko gufata ibiterasoni nk'icyaha bigira ingaruka zikomeye mu gutuma umuntu ashobora gutinya kwigaragaza mu bwisanzure, kubera kugira ubwoba bwo gufatwa azira ko umwambaro we ubonerana ku bice runaka, cyangwa ugarukiye ahantu runaka mu burebure. Ibi bikaba ari bimwe mu byatumye hari abantu bagezwa mu nkiko, kubera gukekwaho gukora icyaha cy'ibiterasoni.

[11] Barangiza basobanura ko ibivuzwe haruguru bihura neza n'ibyo Urukiko rw'Ikirenga muri Uganda rwafasheho umwanzuro ku itariki ya 13 Kanama 2021, mu rubanza N° 13 of 2014 [2021] UGCC 20 rwari hagati ya "*Centre for Domestic Violence Prevention and Others*" n'Intumwa Nkuru ya Leta, aho rwemeje ko kuba hari itegeko rihana gukora urukozasoni mu ruhame ariko rikaba ridasobanura icyo kwerekana urukozasoni / "*indecent show*" ari cyo, binyuranyije n'Itegeko Nshinga.

[12] Me Batsinda Aline uhagarariye Leta y'u Rwanda, avuga ko ibivugwa n'abarega ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru inyuranyije n'ingingo ya 13 y'Itegeko Nshinga nta shingiro bifite. Asobanura ko u Rwanda ari igihugu cyiyemeje kubaka Leta igendera ku mategeko, ishingiye ku iyubahirizwa ry'uburenganzira bwa muntu, ku bwisanzure no ku ihame ry'uko Abanyarwanda bose bareshya imbere y'amategeko, n'iry'uburinganire hagati y'abagore n'abagabo nk'uko biteganywa n'Itegeko Nshinga. Avuga kandi ko u Rwanda ari kimwe mu bihugu byashyize umukono ku Itangazo Mpuzamahanga ryerekeye uburenganzira bwa muntu, runiyemeza kuryubahiriza, ko ndetse n'amategeko ashyirwaho agendera muri uyu murongo. Yongeraho ko ingingo ya 29 y'iryo Tangazo iteganya ko umuntu afite uburenganzira n'ubwisanzure, ariko ikanatanga inshingano kuri rubanda, ko rero uburenganzira n'ubwisanzure bwe bimusaba kubahiriza uburenganzira n'ubwisanzure bw'abandi hubahirizwa umuco, ituze rya rubanda mu gihugu gifite demokarasi[1].

[1] "*L'article 29 rappelle que l'individu exerce des droits, jouit de libertés, mais a également des devoirs envers la communauté. Par ailleurs, ses droits et libertés peuvent être limités par la nécessité de garantir les droits et libertés d'autrui, ou pour satisfaire aux exigences de la morale, de l'ordre public et du bien-être général dans une société démocratique*".

[13] Akomeza avuga ko asanga guhana uwakoze icyaha cyo gukora ibiterasoni mu ruhame, bitavuze ko ubudahungabanywa bwe buba butubahirijwe mu gihe aba yakurikiranywe mu buryo bukurikije amategeko. Ku bivugwa ko itegeko riteganya ibyaha n'ibihano muri rusange ritasobanuye icyo ibiterasoni ari cyo, avuga ko icy'ingenzi ari ukuba ari igikorwa kibangamiye rubanda hashingiwe ku muco runaka w'igihugu kandi kikaba kinyuranyije n'umuco wacyo, ko nta munyarwanda wananirwa kumenya icyo ibiterasoni ari cyo. Avuga ko, uretse n'ibyo, umwanditsi R. Garraud (3e éd. T.V, Paris 1924) yasobanuye ko bitakoroha gusobanura ibigize icyo cyaha, ko ahubwo bigomba guharirwa ubushishozi bw'umucamanza, ko rero bitagendera ku marangamutima nk'uko uwatanze ikirego abivuga.

[14] Arangiza asobanura ko uburenganzira n'ubwisanzure bwa muntu bugira aho butangirira n'aho bugarukira, ko butagomba kubangamira abandi cyangwa kunyuranya n'uburere n'umuco biranga abanyarwanda. Yongeraho ko nta muntu n'umwe ufite uburenganzira bwo kwambara ubusa cyangwa kwambara imyambaro igaragaza ubwambure mu ruhame ku buryo bibangamira uburenganzira n'ubwisanzure bw'abandi, ibintu byanakururira imyifatire mibi ureba iyo myambarire ishobora no kumugusha mu cyaha.

UKO URUKIKO RUBIBONA

[15] Ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko umuntu wese ukora ibiterasoni mu ruhame aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igihano cy'igifungo kitari munsi y'amezi atandatu (6) ariko kitarenze imyaka ibiri (2).

[16] Ingingo ya 13 y'Itegeko Nshinga iteganya ko umuntu ari umunyagitinyiro kandi ari indahungabanywa, ko kandi Leta ifite inshingano yo kumwubaha, kumurinda no kumurengera (*The human person is sacred and inviolable. The State has the obligation to have respect for, protect and defend the human person*).

[17] Uwatanze ikirego anenga ingingo aregera ko inyuranyije n'ingingo y'Itegeko Nshinga imaze kuvugwa ibintu bibiri:

a. Kuba itubahiriza ubudahungabanywa bw'umuntu;
b. Kuba gukora ibiterasoni bitarasobanuwe n'itegeko, bikaba bishobora kuvutsa abakurikiranyweho icyo cyaha uburenganzira bwo kudahungabanywa.

A. Ibyerekeranye n'ubudahungabanywa bw'umuntu

[18] Ku birebana n'igisobanuro cy'ubudahungabanywa bw'umuntu, mu nkoranyamagambo y'amuga y'amategeko, abahanga mu mategeko Serge Guinchard na Thierry Debard[2], basobanura ko ari ihame ryerekana ko kizira kugirira nabi umuntu ku mubiri, akaba ari yo mpamvu hariho amategeko ahana ateganya ibyaha ku wabikora n'ay'imbonezamubano ateganya indishyi ku wakorerwa ibyo byaha (*L'inviolabilité du corps humain est un principe selon lequel il ne saurait être porté atteinte à la personne humaine en son corps. De ce principe, exprimant le caractère sacré du corps humain, découle en droit pénal, les infractions contre les personnes (homicide, coups et blessures, …) et en droit civil, l'obligation de réparer les dommages corporels*) […][3].

[19] Mu nyandiko yitwa "*Inviolability and Privacy: The Castle, The Sanctuary, and The Body*", umuhanga mu mategeko witwa Linda C. McClain yanditse, yasobanuye ubudahungabanywa nk'uburyo

[2] Serge Guinchard, Thierry Debard, Lexique des termes juridiques, Dalloz, 2020.
[3] Serge Guinchard, Thierry Debard, Lexique des termes juridiques, Dalloz, 2020.

bwo kudashobora guhutazwa, uburyo bwo gufatwa nk'umunyagitinyiro utagomba gutukwa, gukorerwa icyaha, cyangwa se guhohoterwa. Ibyo bisobanuro birebewe hamwe, byumvikanisha ko umuntu ari umunyagitinyiro kandi agomba kurindirwa umutekano. (*What is inviolability? Common definitions of the quality of being inviolable are not to be violated, to be kept sacredly free from profanation, infraction, or assault, and impregnable to assault or trespass. Such definitions suggest both an association with sacredness and an association with security against violation or other incursions*)[4].

[20] Ibisobanuro bimaze gutangwa, biragaragaza neza ko ari ikizira gukorera umuntu ibikorwa bimubabaza ku mubiri, ko bibujijwe kuvogera umubiri w'umuntu ugamije kumugirira nabi, Leta ikaba ifite inshingano zo kurinda ko byababo. Mu rwego rwo kubahiriza iyo nshingano, za Leta harimo n'iy'u Rwanda, zifata ingamba zose zigamije kubikumira harimo no gushyiraho amategeko ahana, ateganya ibyaha byose bishobora gukorerwa umubiri w'umuntu n'ibihano byabyo ndetse n'indishyi zagenerwa uwabikorerwa. Ni muri urwo rwego nko mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, mu gice cya II, Interuro ya mbere, Umutwe wa mbere n'uwa II, hateganyijwemo ibyaha bya jenoside, ibyaha byibasiye inyokomuntu n'ibyaha by'intambara, ibyaha by'ubwicanyi, ibyo gukubita cyangwa gukomeretsa, kubabaza umubiri no gukuramo inda[5].

[21] Ingingo iteganya ubudahungabanywa bw'umuntu, tuyisanga kandi no mu ngingo ya 4 y'Amasezerano Nyafurika y'Uburenganzira bwa muntu n'ubw'Abaturage, iteganya ko ubuzima bw'umuntu ari indahungabanywa, ko buri muntu wese afite uburenganzira bw'uko ubuzima bwe bugomba kubahwa haba ku mubiri no mu mutwe, ubwo burenganzira akaba ntawe ushobora kubumuvutsa. (*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right*).

[22] Mu bikorwa bibangamira uburenganzira buvugwa mu ngingo ya 4 y'Amasezerano Nyafurika y'Uburenganzira bwa muntu n'ubw'abaturage, mu nyandiko yitwa "*Major African Legal Instruments*" yanditswe n'uwitwa Sheila B Keetharuth[6], ashingiye ku byemezo binyuranye byafashwe na Komisiyo Nyafurika y'Uburenganzira bwa Muntu n'ubw'Abaturage, yerekanye ibi bikurikira :

- Kuraswa bikozwe n'abapolisi (*Shootings by police officers*),
- Kwicwa biturutse ku rubanza rufifitse (*Executions based on the authority of a defective trial*),
- Kwimwa ibiribwa n'imiti, gutwika abaturage no kubakorera iyicarubozo (*Denial of food and medicine attention, burning people in sand and subjecting them to torture*),
- Ubwicanyi, kurigisa abantu bikozwe n'abantu batazwi, ariko Leta ikaba itarashoboye kugerageza kubikumira no kubikoraho iperereza igihe byabaye (*Killings, disappearances, assassination by unknown people, which the government did not attempt to prevent or investigate afterwards*),
- Gutsemba umubare munini w'abaturage byakozwe n'izahoze ari ingabo z'u Rwanda (ex FAR) n'ubundi bwicanyi bushingiye ku bwoko runaka bwakozwe nta rubanza rubaye (*Massacre of a large number of Rwandan villagers by the Rwandan armed*

[4] Linda C. McClain, Inviolability and Privacy: The Castle, The Sanctuary, and The Body, in 7 Yale Journal of Law & The Humanities 195 (1995). Boston University School of Law Scholarly Commons at Boston University School of Law. Available at: https://scholarship.law.bu.edu/faculty_scholarship/2889. Consulté ce 19/04/2024 à 15h50.
[5] Reba ingingo kuva ku ya 91 kugeza ku ya 127.
[6] Sheila B Keetharuth, Major African legal instruments, P.175-176, https://addis.unfpa.org/en/resources/major- african-legal-instruments. Consulté ce 17/04/2024 à 15h50.

forces and the many reported extrajudicial executions for reasons of their membership of a particular ethnic group[7]).

[23] Muri uru rubanza, kugira ngo uwatanze ikirego avuge ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru inyuranye n'ingingo ya 13 y'Itegeko Nshinga, agomba kugaragaza neza aho ingingo y'itegeko asaba ko yakurwaho ihurira bya nyabyo n'ubudahungabanywa bw'umuntu buteganywa mu ngingo y'Itegeko Nshinga imaze kuvugwa. Ibi ni nabyo byemejwe n'Urukiko rw'Ikirenga rwa Canada (Bedford c. Canada (P.G.), [2013] 3 R.C.S. 1101, paragraphe 76) aho rwasobanuye ko uwatanze ikirego agomba kwerekana aho itegeko aregera rihurira n'ibyo yangirijwe nta kugenekereza[8].

[24] Ibisobanuro bimaze kugaragazwa birerekana ko kugira ngo habeho guhutaza uburenganzira bwo kudahungabanywa k'umuntu, hagomba kuba habayeho ibikorwa ibyo ari byo byose bivogera umubiri w'umuntu bigamije kuwugirira nabi bikozwe mu buryo bunyuranyije n'amategeko, uwatanze ikirego akaba yarasabwaga kugaragariza urukiko aho guhana icyaha cyo gukora ibiterasoni mu ruhame giteganywa n'ingingo aregera bihurira (*lien de causalité*) n'uburenganzira buvugwa mu ngingo ya 13 y'Itegeko Nshinga iteganya ubudahungabanywa bw'umuntu, ibyo akaba atarashoboye kubigaragaza.

b. Ibyerekeranye no kudasobanuka kw'icyaha cyo gukora ibiterasoni

[25] FADA yatanze ikirego ivuga ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru itumvikana kuko icyaha cyo gukora ibiterasoni mu ruhame buri wese acyumva ukwe bigatuma bamwe bakurikiranwa kuri icyo cyaha abandi ntibagikurikiranweho, ibyo bikabangamira ingingo ya 13 y'Itegeko Nshinga. Harebwe igisobanuro cy'ubudahungabanywa bw'umuntu buteganywa muri iyo ngingo cyatanzwe haruguru, Urukiko rurasanga uwatanze ikirego atagaragaza uburyo kutumvikana kw'icyaha giteganywa mu ngingo aregera bituma umuntu agirirwa nabi ku mubiri cyangwa se akorerwa ibindi bikorwa bitandukanye bibangamira ubudahungabanywa bwe.

[26] Ku birebana n'urubanza rwaciwe ku itariki ya 13/08/2021 n'Urukiko rushinzwe kurengera Itegeko Nshinga rwa Uganda, haburana Centre for Domestic Violence Prevention and Others n'Intumwa Nkuru ya Leta[9] FADA yatanze ishyigikira ikirego cyayo, Urukiko rurasanga urwo rubanza rudahura n'ibyo iregera ku mpamvu ikurikira. Muri urwo rubanza, uwari watanze ikirego yavugaga ko ingingo ya 2[10] n'iya 13[11] z'Itegeko ribuza ibiterasoni (Anti- Pornography Act) zinyuranye n'Itegeko

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[7] 27/89, 46/91, 99/93, Organisation Mondiale contre la Torture and Association Internationale des Juristes Démocrates, Comité International des Juristes (CIJ), Union Interafricaine des Droits de l'Homme v Rwanda, 10th Annual Activity Report [in Compilation 1994–2001, IHRDA, Banjul 2002, pp. 320–324]. "*These communications were filed before the 1994 genocide [against Tutsi], but were decided afterwards, in 1996–1997*", cité par Sheila B Keetharuth, Major African legal instruments, p. 176.

[8] "*La norme du lien de causalité suffisant n'exige pas que la mesure législative ou autre reprochée à l'État soit l'unique ou la principale cause du préjudice subi par le demandeur, et il y est satisfait par déduction raisonnable, suivant la prépondérance des probabilités (Canada (Premier ministre)*" c. Khadr, 2010 CSC 3, [2010] 1 R.C.S. 44, par. 21). "*L'exigence d'un lien de causalité suffisant tient compte du contexte et s'attache à l'existence d'un lien réel, et non hypothétique. […]*". https://decisions.scc-csc.ca/scc-csc/scc-csc/fr/item/13389/index.do. Consulté ce 25/05/2024 à 15h50.

[9] Constitutional petition n° 13 of 2014) [2021] UGCC 20.

[10] "*Pornography means any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement*".

[11] "*(1) A person shall not produce, traffic in, publish, broadcast, procure, import, export, sell or abet any form of pornography. (2) A person who produces or participates in the production of, or traffics in, publishes, broadcasts, procures, imports, exports or in any way abets pornography contrary to subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred currency points or imprisonment not exceeding ten years or both".*

Nshinga rya Uganda mu ngingo ya 28(12)12[12] n'iya 44(c)[13]. Mu kwemeza ko ingingo zari zaregewe zinyuranye n'Itegeko Nshinga rya Uganda, Urukiko rwavuze ko mu gusobanura icyo ibiterasoni ari cyo, amagambo yakoreshejwe mu ngingo ya 2 y'Itegeko ribuza ibiterasoni adasobanutse neza mu kugaragaza ikitabujijwe n'ikibujijwe ku buryo umuntu yakirinda. Rwakomeje ruvuga ko amagambo adasobanura neza ikibujijwe atuma itegeko ridakoreshwa uko bikwiye cyangwa ngo atume hakumirwa icyari kigamijwe rishyirwaho (…*the Act does not provide what amounts to 'indecent show' and the threshold over which an action can be measured to determine whether it falls within the ambit of 'indicent show'. An imprecise statement of the prohibited conduct may lead to inconsistent enforcement of the law, uncertain application of the law or failure to preclude conduct that it was intended to prohibit*)[14]. Nyuma y'ibyo bisobanuro, rwemeje ko izo ngingo zinyuranye n'Itegeko Nshinga rya Uganda mu ngingo zaryo, iya 28(12) iteganya ko kugira ngo icyaha kibeho n'igihano cyacyo, kigomba kuba giteganyijwe n'itegeko (principe de la légalité des infractions et des peines), n'iya 44(c) iteganya uburenganzira ku butabera buboneye.

[27] Nk'uko byasobanuwe haruguru, ibimaze kuvugwa bitandukanye n'ibyo FADA iregera muri uru rubanza, kuo yo ivuga ko kuba icyaha giteganywa n'ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru kitumvikana, bibangamira ubudahungabanywa bw'umuntu buteganywa mu ngingo ya 13 y'Itegeko Nshinga.

[28] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga mu gihe uwatanze ikirego atashoboye kugaragariza Urukiko uburyo ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru inyuranye n'ingingo ya 13 y'Itegeko Nshinga, ikirego cye kuri iyi ngingo nta shingiro gifite.

3. Kumenya niba ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranye n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga.

[29] Uwingabe Murenzi Assna uhagarariye FADA, yunganiwe na Me Karangwa Olivier na Me Umwari Sylvie, bavuga ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ihana gukora ibiterasoni mu ruhame inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, iteganya ko abantu bose bareshya imbere y'amategeko kandi itegeko ribarengera ku buryo bumwe; kubera ko mu gushyira mu bikorwa ingingo ya 143 imaze kuvugwa haruguru, usanga itegeko rihana cyane ab'igitsina gore kurusha ab'igitsina gabo.

[30] Basobanura ko iyo barebye imikoreshereze y'iyo ngingo, basanga mu bantu bagiye bakurikiranwaho icyaha cyo gukora ibiterasoni mu ruhame, haragiye hakurikiranwa abakobwa hashingiwe ku ko bambaye mu ruhame kuruta uko byakorwaga ku bagabo cyangwa abahungu, bagasanga hakurikijwe ingingo iregerwa, abagore aribo barebwa cyane nyamara batagomba kuvangurwa na basaza babo bakoze ibintu bimeze kimwe. Bakavuga ko ibi ari ikibazo kuko iri tegeko ridafata abantu mu buryo bumwe kandi nyamara bareshya imbere y'amategeko nk'uko biteganywa n'ingingo ya 15 y'Itegeko Nshinga.

[31] Bavuga ko, hifashishijwe iyi ngingo y'itegeko, umukobwa cyangwa umugore ugaragaye yakuye ishati atambaye ku gice cyo hejuru yahanwa, mu gihe nyamara umugabo wakoze nka byo atabihanirwa. Batanga urugero rw'uwitwa Mugabekazi Liliane wagaragaye yambaye imyenda ibonerana mu gitaramo agafatwa agafungwa, ubu akaba akurikiranywe kuri iki cyaha cyo gukora ibiterasoni mu ruhame,

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[12] "*Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law*".
[13] "*Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms—…(c) the right to fair hearing*".
[14] Constitutional petition N° 13 of 2014) [2021] UGCC 20, paragraph 53.

bakavuga ko iri ari ivangura ryamukorewe kandi nyamara ribujijwe n’ingingo ya 16 y’Itegeko Nshinga n’Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore u Rwanda rwashyizeho umukono[15].

[32] Mu gushyigikira ibitekerezo byabo, bashingira ku rubanza rwa Effie Krokos yaburanaga n'Ubuyobozi bw’Umujyi wa Loveland muri Leta ya Colorado, bavuga ko yatsindiye indishyi zingana na 50.000USD nyuma yo gusohorwa muri stade by'amaherere kubera ko yakuyemo ishati yari yambaye amabere ye akagaragara. Bavuga ko Urukiko rwemeje ko ahabwa indishyi kuko uburenganzira bwe bwahutajwe ubwo yafatwaga agasohorwa muri stade kuko yakuyemo imyenda yo hejuru ari umukobwa, mu gihe nyamara abagabo bari bakuyemo amashati bo ntawabakozeho[16].

[33] Bavuga kandi ko n’ubwo ikibazo cyari cyatangiye ari Effie Krokos ukurikiranyweho kutambara hejuru amabere ari hanze, iki kibazo cyatumye bigaragara neza ko hariho ukutareshyeshya abantu imbere y’amategeko kw’abagabo n’abagore iyo bigeze mu guhana ibyaha byerekeye urukozasoni.

[34] Bavuga ko bashingiye kuri ibyo, ingingo y’itegeko ihana gukora ibiterasoni mu ruhame muri ubu buryo, inyuranyije n’Itegeko Nshinga kubera ko mu gihe cyo kuyishyira mu bikorwa, idafata abagabo n’abagore mu buryo bumwe, cyangwa ngo bareshye imbere y’amategeko iyo iri gushyirwa mu bikorwa, bityo bakaba basaba ko yakurwaho kubera ko ihutaza uburenganzira bwa muntu ku birebana no kureshya imbere y’amategeko no kudakorerwa ivangura.

[35] Me Batsinda Aline uhagarariye Leta y’u Rwanda avuga ko FADA itanenga ingingo ya 143 y’Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange mu myandikire yayo ugereranyije n’ingingo ya 15 y’Itegeko Nshinga, ko ahubwo icyo bibandaho ari ishyirwa mu bikorwa ryayo, aho bagaragaza ko hari abakurikiranywe hashingiwe kuri iyo ngingo, n’abatarakurikiranywe. Avuga ko urebye uburyo ingingo ubwayo yanditse, abona ntaho yigeze isumbanya umugore n’umugabo, bityo agasanga idakwiye gukurwaho kuko ntaho inyuranyije n’ingingo ya 15 y’Itegeko Nshinga.

[36] Avuga kandi ko u Rwanda ari igihugu kigendera ku mategeko kandi cyiyemeje kurwanya ivangura iryo ari ryo ryose nk’uko biteganyijwe mu Itegeko Nshinga ryarwo, ko kandi u Rwanda ari kimwe mu bihugu byashyize umukono ku Masezerano Mpuzamahanga yerekeye uburenganzira bwa muntu na politiki (*Pacte international relatif aux droits civils et politiques*), aya masezerano, mu ngingo yayo ya 2.1 n’iya 3, akaba asobanura ko ibihugu birebwa na yo byiyemeje kubahiriza uburenganzira bwose buteganyijwe muri yo ku babituyemo bose nta vangura iryo ari ryo ryose, kandi byiyemeje kubahiriza uburinganire hagati y’Abagabo n’Abagore[17], bityo rukaba rutashyiraho itegeko rivangura abagabo n’abagore, ko rero ingingo yaregewe ntaho inyuranyije n’ingingo ya 16 y’Itegeko Nshinga kuko nta vangura iryo ari ryo ryose riyigaragaramo.

[37] Ku bijyanye n’urubanza rwagarutsweho rw’uwitwa Mugabekazi Liliane wagaragaye yambaye imyenda ibonerana mu gitaramo agafungwa ubu akaba akurikiranywe ku cyaha cyo gukora ibiterasoni mu ruhame, Me Batsinda Aline avuga ko imyambarire y’uwo mukobwa ubwayo yari iteye isoni, ari nayo mpamvu amafoto ye abantu bose bakomeje kuyagarukaho.

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[15]Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore yo ku wa mbere Gicurasi 1980 yemejwe n’Iteka rya Perezida Nº 431/16 ryo ku wa 10/11/1981.

[16]https://www.scribd.com/document/434016630/Effie-Krokos-Settlement-Agreement

[17]Article 2.1: “*Les Etats parties au présent Pacte s'engagent à respecter et à garantir à tous les individus se trouvant sur leur territoire et relevant de leur compétence les droits reconnus dans le présent Pacte, sans distinction aucune, notamment de race, de couleur, de sexe, de langue, de religion, d'opinion politique ou de toute autre opinion, d'origine nationale ou sociale, de fortune, de naissance ou de toute autre situation.”* Article 3: “*Les Etats parties au présent Pacte s'engagent à assurer le droit égal des hommes et des femmes de jouir de tous les droits civils et politiques énoncés dans le présent Pacte*.”

[38] Arangiza avuga ko, ashingiye ku bisobanuro yatanze, asanga ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu ntaho inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda mu ngingo zaryo, iya 13, iya 15 n'iya 16 ku buryo yakurwaho.

UKO URUKIKO RUBIBONA

[39] Ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose bareshya imbere y'amategeko, ko kandi amategeko abarengera ku buryo bumwe. Naho iya 16 igateganya ko abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Iyo ngingo iteganya kandi 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'imibereho, 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.

[40] Ingingo isabirwa gukurwaho uwatanze ikirego avuga ko inyuranye n'ingingo z'Itegeko Nshinga zimaze kuvugwa, ni iya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko umuntu wese ukora ibiterasoni mu ruhame aba akoze icyaha. Iyo abihamijwe n'urukiko ahanishwa igihano cy'igifungo kitari munsi y'amezi atandatu (6) ariko kitarenze imyaka ibiri (2).

[41] Kugira ngo bimenyekane niba muri iyi ngingo hagaragamo kutareshya imbere y'amategeko n'ivangura rishingiye ku gitsina, bityo ikaba inyuranyije n'ingingo ya 15 kimwe n'iya 16 z'Itegeko Nshinga nk'uko uwatanze ikirego abivuga, ni ngombwa kubanza gusobanura uburyo izo ngingo zumvikana. Nk'uko byasobanuwe mu rubanza RS/SPEC/0001/16/CS rwaciwe n'uru Rukiko ku itariki ya 23/09/2016 haburana Akagera Business Group (ABG)[18], ingingo ya 15 n'iya 16 z'Itegeko Nshinga zifitanye isano ku buryo bigoye gusobanura icyo zishatse kuvuga uzitandukanyije. Nk'uko byasobanuwe kandi muri urwo rubanza, ingingo ya 15 ivuga koabantu bose bareshya imbere y'amategeko kandi bakarengerwan'amategeko mu buryo bumwe. Ni ukuvuga ko hatagombakubaho ivangura rituma abantu batarengerwa mu buryo bumwecyangwa batagira uburenganzira aho bakabugize. Naho ingingoya 16 ikomerezaho ivuga uburyo gutandukanya abantu bifatwank'ivangura kandi ko bitemewe n'Itegeko Nshinga. Izi ngingo zombi zafatwa nk'izikubiyemo ihame rimwe ryo kudasumbanyaabantu mu byo bemerewe cyangwa babujijwe ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko.

[42] Ihame ryo kureshya imbere y'amategeko no kudakorerwa ivangura, turisanga mu Masezerano Mpuzamahanga u Rwanda rwashyizeho umukono, muri yo hakaba hari aya akurikira:

i. Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu (*Universal Declaration of Human Rights*), ryo mu mwaka wa 1948, aho ingingo yaryo ya 7 iteganya ko abantu bose bareshya imbere y'amategeko kandi ko barengerwa na yo nta vangura iryo ari ryo ryose. Iyo ngingo ibivuga itya mu magambo y'icyongereza: "*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*".

ii. Amasezerano Mpuzamahanga ku burenganzira Mbonezamubano n'ubwa Politiki (*International Covenant on Civil and Political Rights, 1966*), aho ingingo yaryo ya 26 na yo iteganya ko abantu bose bareshya imbere y'amategeko, kandi ko barengerwa na yo mu buryo bungana nta vungura iryo ari ryo ryose. Ibivuga itya mu rurimi

[18] Icyegeranyo cy'ibyemezo by'inkiko, V. 2, 2017, P.1.

rw'icyongereza: "*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*". By'umwihariko ku birebana n'uburinganire hagati y'umugabo n'umugore, ingingo ya 3 iteganya ko ibihugu byemeye aya Masezerano byiyemeje kubahiriza uburenganzira bungana bw'umugabo n'umugore mu gukoresha uburenganzira bwose mbonezamubano n'ubwa politiki buvugwa (*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant*).

iii. Amasezerano mpuzamahanga agamije gukumira ivangura iryo ariryo ryose rikorerwa abagore (*Convention on the Elimination of All Forms of Discrimination against Women*), mu ngingo yayo ya mbere avuga ko iryo vangura ari irishingiye ku gutandukanya umugore n'umugabo hagamijwe kuburizamo uburenganzira mu bya politike, ubukungu, umuco n'ibindi (*For the purposes of the present Convention, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*), ingingo ya 15.1. y'ayo masezerano igateganya ko ibihugu byayashyizeho umukono byiyemeje kureshyeshya abagore n'abagabo (*States Parties shall accord to women equality with men before the law*)[19].

iv. Amasezerano yitwa aya Maputo (*Maputo Protocol*), ateganya mu ngingo yayo ya 8 (f) ko abagore n'abagabo bareshya imbere y'amategeko kandi bagomba kurindwa ku buryo bungana, kandi amategeko akabarengera kimwe. Ivuga ko Ibihugu byemera aya masezerano bifite inshingano yo kuvugurura amategeko n'imigirire bisanzweho bigaragaramo ivangura mu rwego rwo guteza imbere no kurinda uburenganzira bw'umugore (*Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure: … (f): reform of existing discriminatory laws and practices in order to promote and protect the rights of women*)[20].

[43] Nk'uko bimaze kugaragazwa haruguru, ihame ry'uko abantu bareshya imbere y'amategeko rivuze ko abantu bafatwa kimwe imbere y'amategeko, nta busumbane cyangwa ivangura iryo ari ryo ryose, ndetse n'itegeko rigiyeho rigafata kimwe abo rireba. Harebwe ingingo ya 15 n'iya 16 z'Itegeko Nshinga ndetse n'Amasezerano Mpuzamahanga yavuzwe haruguru, ubona ko u Rwanda rwiyemeje kugendera kuri iryo hame.

[44] FADA yatanze ikirego, yo isanga ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru itubahiriza iryo hame, kuko ngo icyaha cyo gukora ibiterasoni mu ruhame gikurikiranwa ku bantu b'igitsigore gusa, cyakorwa n'ab'igitsina gabo ntibagikurikiranweho, bityo igasanga nta kurengerwa kimwe hagati y'abagabo n'abagore kugaragara muri iyi ngingo, ndetse ko iyo ngingo igaragaramo ivangura rikorerwa abagore, ari nayo mpamvu isaba ko yateshwa agaciro.

[45] Ku birebana n'ibigenderwaho kugira ngo itegeko riteshwe agaciro, mu rubanza RS/INCONST/SPEC00001/2022/SC, haburana Murangwa Edward hari n'Intumwa ya Leta, uru Rukiko

[19] U Rwanda rwashyize umukono kuri aya masezerano ku itariki ya 02/03/1981.
[20] U Rwanda rwashyize umukono kuri aya masezerano ku itariki ya 25/06/2004.

rwasobanuye ko imigirire (*pratique*) inyuranyije n'ibyo itegeko riteganya itakosorerwa mu kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga mu gihe itegeko ubwayo nta kibazo rifite[21].

[46] Iby'uko itegeko ridateshwa agaciro n'uburyo rikurikizwa, ko ahubwo harebwa ibyo riteganya, mu rubanza rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhinde haburana "*The Collector of Customs, Madras na Nathella Sampathu Chetty and another*", urwo Rukiko rwemeje ko kuba itegeko ubundi ridateye ikibazo ryakoreshwa nabi atari byo byatuma riteshwa agaciro, nk'uko itegeko ridafite agaciro ridashobora gukizwa n'uko ryakoreshejwe neza. (*The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise, invalid as being unreasonable cannot be saved by its being administered in a reasonable manner*)[22].

[47] Muri urwo rwego kandi, mu rubanza rwaciwe n'Urukiko Rukuru rwa Tanzania (*The High Court of Tanzania*), Rev. Christopher Mtikila aburana n'Intumwa Nkuru ya Leta, 1995 TLR 31, urwo Rukiko rwavuze ko kugira ngo hemezwe ko itegeko runaka ribangamiye uburenganzira bw'ibanze, harebwa ingingo y'itegeko hatarebererwa uburyo iyo ngingo ishyirwa mu bikorwa (*In order to determine whether a particular law is repugnant or inconsistent with the fundamental right, it is the provision of the Act that must be looked at and not the manner in which the power under the provision is actually exercised. Inconsistency or repugnancy does not depend upon the exercise of the power by virtue of the provisions in the Act but on the nature of the provisions themselves*)[23].

[48] Ku birebana n'uru rubanza, icyo uwatanze ikirego anenga ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, ni uko ngo mu kuyishyira mu bikorwa hagaragaramo ivangura hagati y'abantu b'igitsina gabo n'ab'igitsinagore, aho icyaha cyo gukora ibiterasoni mu ruhame gikurikiranwa ku bantu b'igitsina gore nyamara ab'igitsina gabo ntibagikurikiranweho, akavuga ko nta kureshya guhari, ko ahubwo ari ivangura rikorerwa ab'igitsina gore.

[49] Urukiko rurasanga uburyo iyo ngingo yanditse nta vangura iryo ari ryo ryose riyigaragaramo kuko iteganya ko umuntu wese ukora ibiterasoni mu ruhame aba akoze icyaha. Ibi bikaba byumvikanisha ko icyo cyaha gishobora gukurikiranwa ku muntu w'igitsina gore nk'uko cyakurikiranwa no ku w'igitsina gabo. Kuba mu mikoreshereze yayo ari ho uwatanze ikirego abona ikibazo, ibyo sibyo byatuma asaba ko yateshwa agaciro avuga ko inyuranye n'Itegeko Nshinga nk'uko byemejwe no mu manza zagagajwe haruguru; uretse ko nta n'ikimenyetso na kimwe yahaye urukiko cyerekana ko hari umuntu w'igitsina gabo wagaragayeho icyaha cyo gukora ibiterasoni mu ruhame ntagikurikiranweho kubera ko gusa ari uw'igitsina gabo.

[50] Urugero rw'ingingo y'itegeko igaragaramo ivangura hagati y'umugaro n'umugore, ni nk'iya 354 y'Itegeko Teka N° 21/77 ryo ku wa 18/08/1977 rishyiraho igitabo cy'amategeko ahana ibyaha ryakurikizwaga mu Rwanda yateganyaga ko umugore uzahamwa n'icyaha cy'ubusambanyi azahanishwa igifungo kuva ku kwezi kumwe kugeza ku mwaka umwe, mu gihe umugabo wahamwe n'icyo cyaha we azahanishwa igifungo kuva ku kwezi kumwe kugeza ku mezi atandatu n'ihazabu y'amafaranga igihumbi cyangwa kimwe gusa muri ibyo bihano. Muri iryo tegeko, biragaragara neza ko harimo ivangura ndetse no kutareshya hagati y'umugabo n'umugore, kubera ko iyo babaga bakoze icyaha kimwe, umugore yahabwaga igihano kiremereye, nyamara umugabo agahabwa icyoroheje. Iyo ngingo yaregewe Urukiko rw'Ikirenga rwemeza ko inyuranyije n'Itegeko Nshinga.[24]

[21]RS/INCONST/SPEC00001/2022/SC rwaciwe ku itariki ya 22/12/2023, igika cya 110.

[22]The Collector of Customs, Madras vs Nathella Sampathu Chetty and Others, on 25 September, 1961, p. 25. https://indiankanoon.org/doc/1193965/, Consulté ce 18/04/2024 à 10h00.

[23]Rev. Christopher Mtikila vs Attorney General [1995] TLR 31. Cited in Raymond Paul Kanegene and Bob Chacha Wangwe vs The Attorney General, p. 20. https://tanzlii.org/akn/tz/judgment/tzhc/2020/4032/eng@2020-11-26/source.pdf. Consulté ce 25/04/2024 à 13h00.

[24]Reba urubanza n° RS/Inconst/Pén.0001/08/CS rwaciwe ku itariki ya ku wa 26/09/2008 harega Murorunkwere Spéciose

[51] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, uburyo yanditse kandi yumvikana ntaho inyuranyije n'ingingo ya 15 kimwe n'iya 16 z'Itegeko Nshinga, bityo no kuri iyi ngingo ikirego cyatanzwe na FADA kikaba nta shingiro gifite.

III. ICYEMEZO CY'URUKIKO

[52] Rwemeje ko ikirego cyatanzwe na Feminist Action Development Ambition (FADA) isaba kwemeza ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu inyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda; nta shingiro gifite.

[53] Rwemeje ko ingingo ya 143 y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange nk'uko ryahinduwe kandi ryujujwe kugeza ubu, itanyuranyije n'ingingo ya 13, iya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda.