The Legal Aid Forum

INYANDIKO IKUBIYEMO IBISOBANURO KU MATEGEKO AGENGA IRANGIZWA RY'IMANZA MU RWANDA

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Iriburiro

Iyi nyandiko iravuga ku irangizwa ry'ibyemezo by'Inkiko mu Rwanda; uko rikorwa, abarikora ndetse n'amategeko bikurikiza.

Gutsinda urubanza mu rukiko ubwabyo ntibihagije kugira ngo umuntu abe yabonye ubutabera, uwatsinze urubanza agomba guhabwa ibyo urukiko rwategetse. Gushyira mu bikorwa icyemezo cy'urukiko niyo ntambwe ya nyuma kandi y'ingezi kugira ngo umuntu abe abonye ubutabera koko.

Irangizwa ry'ibyemezo by'Inkiko mu Rwanda rikorwa hashingiwe by'umwihariko kw'Itegeko N°21/2012 ryo kuwa 14/06/2012 ryerekeye Imiburanishirize y'Imanza z'Imbonezamubano, iz'Ubucuruzi, iz'Umurimo n'iz'Ubutegetsi ndetse n'Itegeko N°12/2013 ryo kuwa 22/03/2013 rigenga Umurimo w'Abahesha b'Inkiko.

Irangizwa ry'imanza mu Rwanda ryagiye rigaragaramo ibibazo cyane cyane kubirebana no kutubahiriza igihe cyateganyijwe kugira ngo urubanza rube rwarangijwe kuruhande rw'Abashesha b'inkiko ndetse no gukora amakosa mukurangiza urubanza cyane cyane kubirebana no guteza cyamunara. Byagiye bigaragara kandi ko abatsinzwe mu manza nabo binangira kurangiza ku neza imanza batsinzwemo.

Amahame remezo mu irangizwa ry'imanza

Irangiza ry'imanza rigamije guha uwatsinze ibintu afitiye uburenganzira bwo guhabwa, akabibona ubwabyo cyangwa akabona ingurane.

Ibintu byimukanwa n'ibitimukanwa by'urimo umwenda ni ingwate rusange y'abo abereyemo umwenda, haseguriwe uburenganzira bamwe baba bafite bwo kwishyurwa mbere y'abandi n'ubushingiye ku bugwate.

Urubanza rurangizwa ku neza n'uwatsinzwe atabikora rukarangizwa ku ngufu za Leta (ku gahato). Irangiza ry'urubanza rikorwa ku bushake iyo urimo umwenda awishyuye atagombye kubihatirwa.

Urubanza rugomba kurangizwa mu gihe no mu buryo byemewe n'amategeko.

Abantu bagomba kubaha ibyemezo by'Inkiko; kutubaha ibyemezo by'inkiko bihanwa n'amategeko.

Abahesha b'Inkiko bagomba kubahwa mu gihe bakora akazi kabo ko gushyira mu bikorwa ibyemezo by'inkiko. Ibikorwa by'umuhesha w'inkiko mu rwego rw'akazi ashinzwe bifatwaho ukuri keretse igihe biteshejwe agaciro n'inkiko.

Imanza zaciriwe mu Rwanda zishobora kurangirizwa mu ifasi ya Repubulika y'u Rwanda yose, n'ubwo irangiza ryazo ritabera mu ifasi y'urukiko rwaciye izo manza.

Umucamanza ashobora gutegeka ko icyemezo cy'urukiko kirangizwa by'agateganyo n'ubwo urubanza rwaba rugikomeza (execution provisoire).

Ibigomba kubahirizwa kugira ngo urubanza rurangizwe

Uwatsinze urubanza agomba kubanza kubona matolewo (icarubanza/copie de judgment).

Uwatsinze urubanza agomba kubanza guteza kashe mpuruza kuri matolewo mbere y'uko ayijyanira umuhesha w'inkiko amusaba kumurangiriza urubanza. Urukiko rwaciye urubanza ninarwo ruteraho kashe mpuruza. Cyakora ku birebana n'ibyemezo by'Abunzi urwego rufite ububasha bwo guteraho kashe mpuruza ni urukiko rw'ibanze rw'aho iyo komite y'abunzi ikorera. Kashe mpuruza iterwa kuri matolewo gusa iyo urubanza rwamaze kuba itegeko. Urubanza ruba itegeko iyo ubujurire butagishoboka; ni ukuvaga ko cyagiye cy'ubujurire cy'ukwezi kiba cyarangiye cyangwa urubanza rukaba rwaraciwe kurwego rwanyuma n'urukiko. Icyemezo cy'abunzi nacyo giterwaho kashe mpuruza iyo igihe cy'ukwezi, uhereye igihe ababuranyi/abafitanye ikibazo bamenyesherejweho imyanzuro y'abunzi, kirangiye ntawajuriye cyangwa ngo aregerere urukiko.

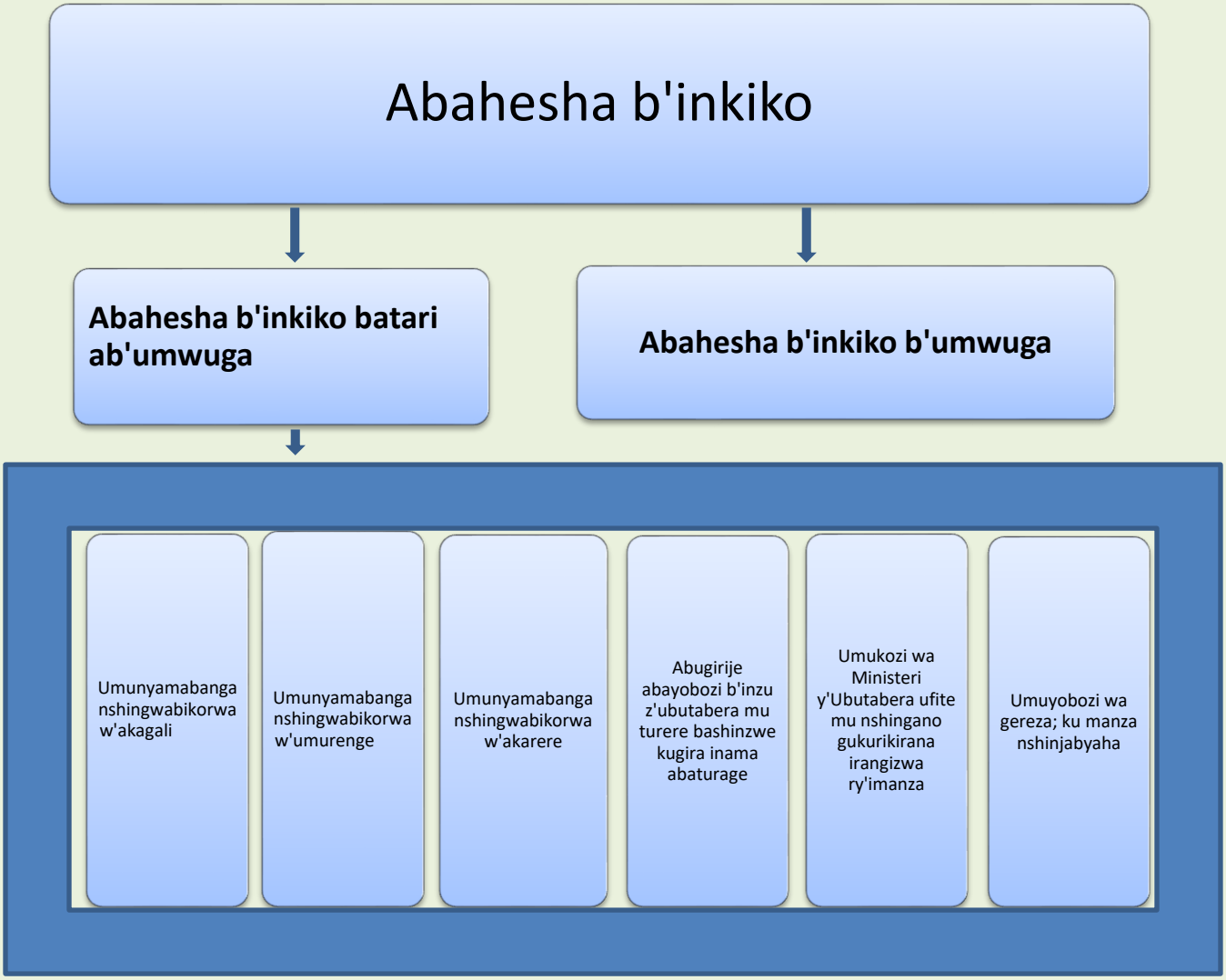
Ninde ufite ububasha byo kurangiza urubanza?

Abahesha b'inkiko nibo bonyine bemerewe kurangiza imanza. Abahesha b'inkiko barimo ibice bibiri:

1. Abahesha b'inkiko b'umwuga;
2. Abahesha b'inkiko batari ab'umwuga.

Umuhesha w’inkiko w’umwuga ni umuhesha w’inkiko wabigize umwuga. Abahesha b’inkiko b’umwuga bashyirwaho n’iteka rya Ministeri w’Ubutabera kandi bakorera mu rugaga.

Umuhesha w’inkiko utari uw’umwuga ni umukozi wa Leta ufite imirimo ashinzwe uhabwa n’itegeko ububasha bwo kuba umuhesha w’inkiko mu gihe akiri muri uwo murimo.



Ububasha bw'abahesha b'inkiko

Abahesha b'inkiko b'umwuga

Abahesha b'inkiko b'umwuga bafite ububasha busesuye bwo gukorera mu gihugu hose kandi bemerewe kurangiza imanza/ibyemezo byose mu gihe byujuje ibyangombwa amategeko asaba.

Abahesha b'inkiko batari ab'umwuga

Umuhesha w'inkiko	**Ububasha bushingiye ku ifasi**	**Aho ububasha bw'umuhesha w'inkiko bugarukira**
Umunyamabanga nshingwabikorwa w'Akagali	Imbibi z'Akagali ayobora	Yemerewe kurangiza gusa imanza zaciwe n'inkiko Gacaca kimwe n'ibyemezo bya Komite z'abunzi.
Umunyamabanga nshingwabikorwa w'Umurenge	Imbibi z'Umurenge ayobora	Yemerewe kurangiza gusa imanza n'ibyemezo byafashwe n'inkiko z'ibanze, inkiko zisumbuye, inkiko Gacaca n'ibyemezo bya Komite z'abunzi.
Umunyamabanga nshingwabikorwa w'Akarere	Imbibi z'Akarere abereye Umunyamabanga nshingwabikorwa	Yemerewe kurangiza gusa imanza n'ibyemezo byafashwe n'inkiko z'ibanze, inkiko zisumbuye, inkiko Gacaca n'ibyemezo bya Komite z'abunzi.
Uwungirije umuyobozi w'Inzu y'Ubutabera (MAJ) mu Karere	Imbibi z'Akarere akoreramo	Barangiza imanza zose. Cyakora bemerewe gusa kurangiza imanza z'abatishoboye.
Umukozi wa Minisiteri y'Ubutabera ufite mu nshingano gukurikirana irangizwa ry'imanza	Mu gihugu hose	Yemerewe kurangiza imanza zose.

Umuyobozi wa gereza.	Gereza ayobora	Arangiza imanza z'abafungwa ashinzwe zerekeye ifunga n'ifungura.

Umuhesha w'inkiko agomba gukorera buri muntu wese umwitabaje. Ariko ntashobora kwirangiriza urubanza, kubikorera uwo bashakanye cyangwa abo bafitanye isano mu miryango kugeza ku gisanira cya kane (4).

Umuhesha w'inkiko ntashobora kandi kurangiza urubanza rurimo isosiyete, ishyirahamwe cyangwa koperative afitemo imigabane cyangwa abereye umunyamuryango, cyangwa ngo arangize urubanza rurimo isosiyete, ishyirahamwe cyangwa koperative uwo bashakanye cyangwa abo bafitanye isano mu miryango kugeza ku gisanira cya kane (4) bafitemo imigabane cyangwa babereye abanyamuryango.

Igihembo cy'abahesha b'inkiko

Abahesha b'inkiko b'umwuga barahembwa mu kazi kabo ko kurangiza imanza.

Nk'uko Iteka rya Minisitiri Nº 003/08.11 ryo ku wa 11/02/2014 rigena ibiciro fatizo by'imirimo y'abahesha b'inkiko b'umwuga ribiteganya, amafaranga menshi umuhesha w'inkiko w'umwuga yahebwa ku rubanza ni amafaranga ibihumbi magana atanu y'u Rwanda (500,000Frw). Mu gihe harangizwa urubanza ku gahato, ibihembo by'imirimo y'umuhesha w'inkiko w'umwuga, byishyurwa n'uwo ayikoreye. Ibyo bihembo bigomba kongerwa ku gaciro k'ibyo uwo akorera yishyuza. Iyo habaye cyamunara, ibyo bihembo bikurwa mu mafaranga avuye muri iyo cyamunara.

Mbere yo kurangiza urubanza, umuhesha w'inkiko w'umwuga abanza kugirana amasezerano yanditse n'umwiyambaje, yerekana umubare w'amafaranga y'igihembo cy'umurimo n'uburyo azishyurwa. Ayo masezerano agomba kuba ashingiye ku giciro fatizo kigenwa n'iteka rya Minisitiri rivugwa haruguru.

Abahesha b'inkiko batari ab'umwuga ntibahembwa mu kazi kabo ko kurangiza imanza. Ni ukuvaga ko umuturage usabye umuhesha w'inkiko utari uw'umwuga kumurangiriza urubanza nta mafaranga ayo ariyo yose agomba gusabwa.

Igihe imanza, ibyemezo cyangwa inyandiko ziriho kashe mpuruza birangirizwa

Igihe uwatsinzwe agomba kurangiriza urubanza

Uwatsinzwe urubanza agomba kubahiriza icyemezo cy'urukiko/abunzi (gukora cyangwa gutanga ibyo urukiko/abunzi bategetse) ku neza kandi mu gihe no mu buryo biteganywa muri icyo cyemezo cy'urukiko/abunzi. Cyakora kuba muri icyo cyemezo cy'urukiko/abunzi ntagihe ntarengwa uwatsinzwe agomba kuba yashyiriye mu bikorwa icyemezo cy'urukiko/abunzi kigaragaramo ntibivuga ko uwatsinzwe yituriza ngo areke gushyira mu bikorwa icyo cyemezo. Mu gihe atajuriye, uwatsinzwe asabwa buri gihe gushyira mu bikorwa icyemezo cy'urukiko vuba bishoboka kandi ku neza.

Iyo umuburanyi watsinzwe atarangiije urubanza rwe ku neza rurangizwa ku gahato hafatirwa ibintu bye bigatezwa cyamunara. Akaryozwa kandi ikiguzi cy'imirimo yakozwe mu kururangiza.

Igihe ntarengwa cyo kurangiza imanza, ibyemezo cyangwa inyandiko ziriho kashe mpuruza ku muhesha w'inkiko

Umuhesha w'inkiko agomba kuragiza urubanza mu gihe kitarengeje amezi atatu (3) uhereye umunsi abisabiwe n'uwatsinze urubanza. Bityo rero, mugihe umuturage agiye gubasa ko arangirizwa urubanza akwiye kureba ko ubusabe bwe bwanditswe mu gitabo cyabugenewe kandi ko n'itariki ubusabe bwinjiriyeho yanditswe.

Umuhesha w'inkiko utubahirije igihe cy'amezi 3 giteganyijwe n'amategeko mu kurangiza urubanza ashobora kuregwa n'uwasabye kumurangiriza urubanza. Iyo amakosa amuhamye umuhesha w'inkiko ahanishwa ihazabu mbonezamubano y'amafaranga y'u Rwanda kuva ku bihumbi makumyabiri (20,000Frw) kugeza ku bihumbi ijana (100,000Frw), bitabujije ko yanacibwa indishyi z'akababaro zikwiye umuburanyi warenganyijwe n'iryo kosa n'ibindi bihano biteganywa n'amategeko.

Ifatira

Ifatira ry'agateganyo

Icyemezo cyo gufatira by'agateganyo gitangwa na Perezida w'urukiko iyo hari impamvu zikomeye zatera gutinya ko urimo umwenda yarigisa cyangwa akonona ibintu bye byimukanwa cyangwa yizera ko ari bwo buryo bwiza bwo kwemeza nyir'umwenda kwishyura. Ifatira

ry’agateganyo rita agaciro iyo ridakurikiwe, mu masaha mirongo ine n’umunani (48), n’ikirego cy’iremezo gishyikirijwe urukiko rubifitiye ububasha.

Ifatirabwishyu

Iyo umuburanyi watsinzwe atarangiije urubanza rwe ku neza mu gihe cyategetswe, rurangizwa ku gahato hafatirwa ibintu bye bigatezwa cyamunara. Akaryozwa kandi ikiguzi cy’imirimo yakozwe mu kururangiza.

Buri fatirabwishyu ryo kurangiza urubanza ku gahato ribanzirizwa n’icyemezo gihatira kwishyura gitanzwe n’umuhesha w’inkiko mu gihe kingana nibura n’amasaha makumyabiri n’ane (24) kirimo imenyesha ry’inyandikompesha y’icyishyuzwa niba ritarigeze rikorwa.

Ibintu bibujijwe gufatirwa

Igice cy’ibintu byimukanwa gishobora gutuma ufatirwa yaba umutindi nyakujya akabera umutwaro abandi baturage ntigishobora gufatirwa. Muri urwo rwego, ibintu bikurikira ntibishobora gufatirwa:

1° ibiryamwamo n’ibyambarwa bya ngombwa kuri nyir’ugufatirwa n’umuryango we;

2° ibikoresho bya ngombwa mu murimo ubeshejeho umuntu, mu mwuga cyangwa mu murimo nyir’ugufatirwa n’urugo rwe babura ntibabeho;

3° bibiri bya gatatu (2/3) by’ibiribwa bitunze nyir’ugufatirwa n’umuryango we;

4° igice cy’umushahara amategeko y’umurimo avuga ko kidafatirwa na kimwe cya gatatu (1/3) cya pansiyo y’umuntu utagira ikindi yiyambaza cyatuma abaho.

Kudafatira inzu umutindi nyakujya atuyemo

Nta wufatira inzu umutindi nyakujya atuyemo na kimwe cya kabiri (½) cya hegitari cy’ubutaka buhingwa gitunga uwafatiriwe n’urugo rwe babura ntibabeho, keretse biramutse bigaragajwe ko afite ibindi cyangwa ashoboye kubibona atagizwe umutindi nyakujya ngo abere umuzigo uvunanye rusange w’abaturage ari uko yabuze epfo na ruguru.

Icyamunara

Guteza cyamunara bikorwa n'umuhesha w'inkiko cyangwa undi muntu wabiherewe ububasha na Minisitiri ufite ubutabera mu nshingano ze.

Ibintu byafatiriwe ntibishobora kugurishwa cyamunara mbere y'iminsi itanu (5) cyamunara itangajwe. Mbere yo guteza cyamunara umutungo wimukanwa cyangwa utimukanwa ufite agaciro kari hejuru ya miliyoni eshatu (3.000.000) z'amafaranga y'u Rwanda, umuhesha w'inkiko agomba kwiyambaza impuguke mu igenagaciro ry'umutungo. Amafaranga y'igihembo cy'impuguke yemezwa na Perezida w'urukiko watanze icyemezo cya cyamunara kandi akurwa mu mafaranga ya cyamunara.

Icyamunara gikoreshwa mu ijwi riranguruye n'umukozi ugenewe kugurisha ibyafatiriwe cyamunara kandi ababiguze bakishyura ako kanya. Ikintu kirimo kugurishwa mu cyamunara gihabwa utanze amafaranga menshi kurusha abandi.

Iyo bigaragaye ko ibintu byafatiriwe biramutse bigurishijwe byahabwa igiciro gikabije kuba munsi y'agaciro nyakuri, umuhesha w'inkiko, abisabwe n'uwafatiriye cyangwa urimo umwenda, ashobora gusaba ko cyamunara ishyirwa ku wundi munsi.

Uvuga ko ibintu byafatiriwe byose cyangwa bimwe muri byo ari ibye, ashobora kubuza kubigurisha, abyandikira Perezida w'Urukiko rwaciye urubanza cyangwa akabivuga mu magambo mu bwanditsi bw'urukiko, bikamenyeshwa uwafatiriye n'uwafatiriwe ibintu n'umukozi ushinzwe kugurisha ibintu cyamunara nibura mbere y'uko igurisha rirangira, kandi akerekana n'ibimenyetso bigaragaza ko ibyo bintu ari ibye; atabikora uko ntibigire agaciro. Mu gihe kitarenze amasaha mirongo ine n'umunani (48), ashyikiriza ikirego cye Urukiko rw'Ibanze rw'aho icyamunara kigomba kubera hakurikijwe uburyo busanzwe butangwamo ikirego.

Irangizwa ry'urubanza ry'agateganyo

Umucamanza ashobora gutegeka ko icyemezo cy'urukiko kirangizwa by'agateganyo n'ubwo urubanza rwaba rugikomeza (execution provisoire). Irangiza ry'urubanza ry'agateganyo rishobora gutegekwa gusa, bisabwe n'umwe mu baburanyi, ku bintu byose byatsindiwe cyangwa

ku gice cyabyo, iyo basanga iryo rangiza ry'urubanza ritabaye bishobora kwangiriza ku buryo budasubirwaho umuburanyi usabye ko urubanza rurangizwa by'agateganyo. Urubanza rutegeka irangiza ry'agateganyo rugomba kugaragaza igihombo kidasubirwaho uwarisabye yagira aramutse atabyemerewe.

Iyo urukiko rwemeje irangiza ry'urubanza ry'agateganyo, rushobora gutegeka umuburanyi usabye ko rurangizwa by'agateganyo, gutanga ingwate ihagije kugira ngo ihwane n'ibisubizwa n'indishyi. Ingwate yatanzwe n'uwasabye irangiza ry'urubanza ry'agateganyo, isubizwa nyirayo igihe nyir'ukwishyuzwa atanze iye.

Irangiza ry'agateganyo rishobora gukorwa n'iyo ryaba ritategetswe n'urukiko, ku byemezo by'abacamanza bigomba kurangizwa by'agateganyo ubwabyo, cyane cyane:

1° ibyemezo ku birego byihuta;

2° ibirego by'agateganyo bitanzwe n'umwe mu baburanyi;

3° ibirego bisaba indezo no kurera abana mu gihe cy'urubanza rw'ubutane;

4° imanza zemeza igihombo;

5° ibyemezo by'urukiko bitegeka ko hafatwa ibyemezo by'agateganyo mu gihe cy'iburanisha.

Irangizwa ry'urubanza ry'agateganyo ribujijwe:

1° mu byerekeye amafaranga yose y'ibyakozwe mu rubanza;

2° mu byerekeye imimerere y'abantu;

3° mu byerekeye ibintu bitimukanwa, iyo ari byo biburanwa;

4° mu byerekeye ibindi bintu n'ibihe byateganyijwe n'itegeko.

Kurangiza ibyemezo by'Abunzi

Icyemezo cyafashwe n'Abunzi gishobora kubahirizwa ku bwumvikane, bisabwe n'urebwa n'icyo kibazo ubifitemo inyungu.

Iyo umwe mu bafitanye ikibazo yanze kubahiriza icyemezo cyafashwe n'Abunzi, umuburanyi bibangamiye ashobora gusaba ko gishyirwa mu bikorwa ku gahato. Icyo gihe, asaba Perezida w'Urukiko rw'Ibanze, mu magambo cyangwa mu nyandiko, nta garama ritanzwe, gushyira kashe mpuruza kuri iyo nyandikomvugo y'Abunzi.

Perezida w'Urukiko rw'Ibanze ashyira kashe mpuruza kuri icyo cyemezo cya Komite y'Abunzi iyo kitagishoboye kujuririrwa cyangwa kuregerwa mu rukiko. Icyemezo cy'Abunzi b'Akagali kiba kitagishoboye kujuririrwa iyo hashize igihe cy'ukwezi, uhereye igihe ababuranyi/abafitanye ikibazo bamenyesherejweho icyo icyemezo, kandi ntawajuriye kurwego rw'Abunzi b'Umurenge. Icyemezo cy'Abunzi b'Umurenge gishyirwa mu bikorwa iyo hashize igihe cy'ukwezi, uhereye igihe ababuranyi/abafitanye ikibazo bamenyesherejweho icyo icyemezo, kandi ntawaregeye mu rukiko icyo cyemezo.

Perezida w'Urukiko rw'Ibanze ntashobora kwanga gushyiraho kashe mpuruza keretse gusa mu gihe ibikubiye mu cyemezo cyangwa ishyirwa mu bikorwa ryacyo binyuranyije n'amategeko ndemyagihugu. Icyo gihe, amenyesha mu nyandiko icyemezo cye Komite y'Abunzi kugira ngo Abunzi bafashe icyemezo bakosore ibyerekeranye n'ayo mategeko ndemyagihugu atubahirijwe.

Impaka zishingiye ku irangiza ry'ibyemezo by'inkiko/abunzi

Impaka zishingiye ku irangiza ry'urubanza ryaba riri gukorwa cyangwa ryararangiye zikemurwa n'urukiko rwaruciye bwa nyuma mu gihe kitarenze iminsi cumi n'itanu (15) guhera igihe urukiko rwakiriye ikirego. Bene izo manza ntizijuririrwa.

Impaka zose zivutse ku irangiza ry'ibyemezo bya Komite y'Abunzi zikemurwa n'Inteko ya Komite y'Abunzi yafashe icyo cyemezo mu rwego rwa mbere. Mu gihe Abunzi bari bagize Inteko yasuzumye icyo kibazo badashoboye kuboneka, ikibazo cyerekeranye n'irangizwa ry'icyemezo gishyikirizwa iyo Komite, kigasuzumwa n'indi nteko yatoranyijwe mu buryo buteganywa n'itegeko rigenga Abunzi.

Ibibazo byose byerekeye imihango y'ifatira bivutse mu gihe cy'ifatira bikemurwa n'icyemezo cya Perezida w'Urukiko rw'ibanze cyangwa Perezida w'urukiko rw'ubucuruzi mu gihe harangizwa urubanza rwaciwe n'inkiko z'ubucuruzi.

Iyo urubanza/icyemezo cy’urukiko kidasobanutse, ubifitemo inyungu atanga ikirego gisaba gusobanura cyangwa gukosora amakosa ari mu rubanza. Icyo kirego gitwangwa mu urukiko rwaciye urwo rubanza bigasuzumwa n‘umucamanza waruciye. Iyo bidashobotse rushyikirozwa undi mucamanza.