

Re. MURANGWA

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC
00001/ 2019/SC – (Rugege, P.J., Nyirinkwaya, Cyanzayire,
Hitiyaremye, Rukundakuvuga, J.) 29 Ugushyingo 2019]

Itegeko Nshinga – Gudatandukanya abantu – Nubwo abantu bagomba kureshya imbere y'amategeko, kubatandukanya cyangwa kubashyira mu byiciro ntabwo buri gihe biba ivangura, kuko iyo hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose) gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa.

Itegeko Nshinga – Ikirego gisaba kwemeza ko ingingo cyangwa Itegeko rinyuranye n'Itegeko Nshinga – Uwatanze ikirego mu manza zisaba kvanaho ingingo z'itegeko zinyuranye n'itegeko nshinga, agomba kugaragaza ko itegeko cyangwa ingingo binyuranye n'Itegeko Nshinga mu buryo buziguye cyangwa butaziguye.

Incamake y'ikibazo: Nyuma yaho hatangarijwe mu Igazeti ya Leta N° 44 yo ku wa 29/10/2018, Itegeko N° 75/2018 ryo ku wa 07/09/2018, rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage, Murangwa yatanze ikirego mu Rukiko rw'Ikirenga avuga ko ingingo zaryo za 16, iya 17, iya 19 n'iya 20, zinyuranyije n'ingingo za 15, 16, 34 n'iya 35 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavugururwe mu mwaka wa 2015. Urukiko rw'Ikirenga mbere y'uko ruburanisha rwasabye abifuza gutanga ibitekerezo muri uru rubanza nk'inshuti z'urukiko (Amicus Curiae) kandi babifitiye ubumenyi ko babisaba; nyuma Urukiko rwemereye Ishuli ry'Amategeko rya Kaminuza y'u Rwanda

(School of Law), Transparency International Rwanda, Me Dieudonne Nzafashwanayo, Me Twiringiyemungu Joseph na Ntibaziyaremye Innocent kuba' inshuti z'urukiko.

Ingingo ziregerwa zikaba ziri mu byiciro bitatu:

Iki cyiciro cya mbere kigizwe n'ingingo ebyiri, iya 16 na 17, aho urega agaragaza ko ibyo ingingo ya 16 iteganya binyuranyije n'Itegeko Nshinga kuko uretse no kuba ikandamiza icyiciro kimwe cyiswe icy'inyubako zo guturamo, avuga ko iyo ngingo iteganya umusoro munini kandi aricyo kidafite ubushobozi ukigereranyije n'icyiciro cy'ubucuruzi, n'inganda, cyo gishyirirwaho umusoro muto kandi abanyenganda aribo bafite ubushobozi ku buryo ibyo bishobora kubangamira gahunda ya Leta yo gutuza neza abanyarwanda, akomeza avuga ko niba nk'igihe umuntu yiyemeje kubaka amazu yo guturamo, undi akubaka amazu y'ubucuruzi naho undi akubaka amazu y'inganda, bese bagombye gufatwa nk'abashoramari ku buryo kubazanamo ibice ugamije kubashyiraho nta kintu na gito bisobanuye kandi abantu bareshya imbere y'amategeko, ahubwo ko buri wese yagombye gusora hagendewe ku cyo yinjiza. Yongeraho ko ingingo ya 17 mu bika byayo byose yuzuzanya n'iya 16, nayo ikavangura abantu ishingiyeye ku byiciro by'ubukungu n'umutungo, ku buryo izo ngingo zombi zitarashyeshya abantu imbere y'amategeko ndetse zitanabarengera kimwe nk'uko Itegeko Nshinga ribiteganya mu ngingo zaryo za 15 na 16.

Ishuri ry'Amategeko rya Kaminuza y'u Rwanda risobanura ko ibiteganywa n'ingingo ya 16 binyuranye n'ihame ryo kubaka Leta iharanira imibereho myiza y'abaturage no gushyiraho uburyo bukwiye kugira ngo bagire amahirwe angana mu mibereho yabo, kuko iyo ngingo iteganya gusoresha umusoro munini inzu yo guturamo aho gusoresha umusoro munini inzu

z'ubucuruzi ari nazo zitanga inyungu nyinshi kandi ko kuba iyo ngingo iteganya umusoro munini ku mazu yo guturamo bizaca intege abayubaka kandi hari abantu benshi bagikeneye amacumbi, ubwabyo bikaba bitanajyanye na gahunda ya Leta yo gukemura ikibazo cy'amacumbi.

Transparency International Rwanda ivuga ko izo ngingo zigaragaramo ivangura kandi ko iyo usomye ingingo ya 16 usanga umushingamategeko yaratekerezaga ku guteza imbere ishoramari, ariko ko bitari ngombwa gutandukanya inzu z'ubucuruzi n'izo guturamo, kuko yirengagije imibereho y'abanyarwanda benshi bakeneye gutura ndetse n'inshingano za Leta zo gutuza buri munyarwanda, aho Leta yiyemeje korohereza buri muntu gutunga inyubako.

Inshuti y'Urukiko Ntibaziyaremye Innocent, ivuga ko umusoro ku nzu ikodeshwa utagombye gutandukana n'umusoro ku nzu y'ubucuruzi, kuko buri wese ariyo "business" aba yarahisemo. Akomeza avuga ko umusoro wagombye kugenda ugabanuka hakurikijwe gusaza kw' inzu (amortissement), kandi uwo musoro ukabarwa nyuma y'uko nyiri iyo nzu arangije kwishyura imyenda yafashe agura ikibanza cyangwa acyubaka, cyangwa se agaciro k'umutungo kakagenwa nyuma yo gukurwamo umwenda nyiri umutungo yafashe yubaka kugeza urangiye.

Leta y'u Rwanda ivuga ko nta vangura rishingiye ku bukungu kuko icyashyizwe mu byiciro n'imitungo (inyubako) atari abantu kandi ko inyubako imwe nyirayo yagenewe guturamo nk'icumbi rye, hamwe n'inyubako ziyunganira mu kibanza cyagenewe guturwamo n'umuryango umwe zisonewe umusoro, mu gihe izindi nyubako z'ubucuruzi n'inganda nta n'imwe isonewe, ariyo mpamvu izindi nyubako zo guturamo umuntu yaba afite zafatwa nka prestige/luxury .

Inshuti y'Urukiko Me Twiringiyemungu Joseph avuga ko umusoro wose washyizweho uba wubahirije amategeko kuko uba washyizweho n'Itegeko riteganywa uzawakwa n'uburyo azawakwa, ku buryo kunenga umusoro ko udakurikije Itegeko Nshinga bigoye kuko ujyaho ku bw'Itegeko Nshinga. Avuga ko amategeko atari ngombwa ko buri gihe areba abantu bose.

Icyiciro cya kabiri kigizwe n'ingingo ya 19 ivuga ku bijyanye n'igipimo cy'umusoro utangwa ku butaka burenga ku bipimo fatizo bw'ikibanza urega avuga ko inyuranyije n'ingingo ya 15 y'Itegeko Nshinga. Kuri iyi ngingo avuga ko hagendewe ku kuba ubutaka bw'u Rwanda buhererekanywa mu buryo bwinshi butandukanye bigaragara ko hari ukutareshyeshya ababonye ubutaka mbere na nyuma y'uko Itegeko rirergerwa rijyaho.

Ishuli ryigisha amategeko muri Kaminuza y'u Rwanda rivuga ko ingingo ya 19 inyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 15 kuko gushyiraho ku buryo butandukanye ibibanza hashingiwe gusa ko igihe usora yakiboneye atari impamvu ifatika yatuma habaho iryo tandukaniro. Naho ku birebana n'ikibanza cyabonetse mbere cyangwa nyuma y'ikurikizwa ry'Itegeko, bavuga ko ihame ryo kudasubira inyuma kw'itegeko (non-rétroactivité de la loi) nk'impamvu zo gutandukanya ba nyir'ibibanza, itareberwa igihe ikibanza cyaguriwe cyangwa cyatangiwe gukoreshwa ahubwo yareberwa igihe uburenganzira ku kibanza bwatangiriye (igihe ubwo butaka bwatangiyeye gukoreshwa).

Transparency International Rwanda, ivuga ko ibiteganywa niyo ngingo biteye ikibazo ku baturage, cyo kumenya uko bizajya bigenda ku waguze cyangwa uwazunguye ubutaka n'uwari usanzwe abutunze, niba azajya abanza kubugabanya; ndetse hakibazwa n'impamvu umushingamategeko avangura utunze ubutaka n'uzabutunga ejo, ufite bunini n'ufite buto. Ko uyu

musoro bawufata nk'umusoro gihano unyuranye n'amahame y'amategeko.

Me Twiringiyemungu Joseph avuga ko kuba iyo ingingo igena umusoro ku bipimo by'inyongera ari ibintu bisanzwe, atanga urugero rw'umusoro ku mushahara aho uhembwa 100.000 Frw no muni asora 20%, naho urengeje agasoreshwa 30%, ko rero urengeje ibipimo biteganywa n'itegeko aba agomba kwirengera ingaruka kuri uwo murengera. Ku birebana nuko ingingo ya 19 ivuga ko uwo musoro utareba abari basanganywe ibibanza mbere y'uko itegeko rijyaho, avuga ko ibyo bijyanye n'ihame ry'uburenganzira umuntu aba yarabonye mbere y'uko itegeko rijyaho budashobora guhungabanywa, ko itegeko rishya ridashobora kwambura umuntu ibintu yari atunze mbere y'uko rijyaho.

Leta y'u Rwanda ivuga ko kuba harabaye gutandukanya ibyiciro by'abantu barebwa n'ibipimo bitandukanye by'umusoro bitafatwa nko kwica ihame ry'uko abantu bareshya imbere y'amategeko, mu gihe hari impamvu ifatika kandi ifitiwe ibisobanuro (legitimate and rational purpose). Yongeraho ko kuvuga kandi ko ihame ryo kureshya imbere y'amategeko rishamikiyeho andi mahame nko kuba abantu bagomba gufatwa kimwe iyo bari mu bihe bimwe (equal treatment in equal circumstances), kudafatwa byanze bikunze mu buryo bumwe (Preferential treatment), cyangwa se ibyiciro bitandukanye by'abantu bigira amategeko yihariye (Specificity and special rules).

Icyiciro cya gatatu kigizwe n'ingingo ya 20, ivuga ku birebana n'igipimo cy'umusoro utangwa ku kibanza kidakoreshwa, uwatanze ikirego avuga ko iyo ngingo ibangamiye ibiteganywa n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga kuko iteganya umusoro w'inyongera ya 100% ku butaka bwitwa ko

budakoreshwa hatitawe ku kureba niba nyirabwo abifitiye ubushobozi, bityo asanga uyu musoro ari umurengeza kandi ko uzananira benshi. Akomeza avuga ko hashingiwe k' uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka ari ntavogerwa (fundamental rights), ndetse hanashingiwe no ku mahame agenderwaho mu gushyiraho umusoro, asanga ingingo ya 20 inyuraniye n'uburenganzira bugenwa n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga.

Ishuli ryigisha amategeko muri kaminuza y'u Rwanda rivuga ko ingingo ya 19 n'ya 20 zimeze nk'aho zirimo guhana kuko imwe yongeraho 50%, indi ikongeraho 100%, ibi bikaba binyuranye n'amahame rusange agenga amategeko kuko umuntu ahanwa kuko atakoze ibyo amategeko amutegeka cyangwa yakozze ibyo amategeko amubuza, hakibazwa icyo umuturage yaba yakozze cyangwa atakoze mu biteganywa n'itegeko kugira ngo ahanwe. Ko kandi ibyo binyuranyije n'amahame agenga imibereho myiza y'abaturage, kandi ko umuturage ariwe uzikorera umutwari w'umusoro, kuko uwasoreye ikibanza najya kugurisha azawongeraho ndetse n'ukodesha azongeraho uwo musoro, bitume ubuzima buhenda kandi ko Leta idashobora kugeza abantu kuri "social justice" abaturage badafite uburenganzira ku mutungo, badahabwa amahirwe angana, batanarushya imbere y'amategeko.

Inshuti y'Urukiko Me Dieudonne Nzafashwanayo, avuga ko ibiteganywa n'iyi ngingo ya 20 binyuranye n'Itegeko Nshinga, kuko ivangura umuntu ufite ikibanza gikoreshwa n'ufite ikibanza kidakoreshwa usabwa kwishyura umusoro w'inyongera kandi ko inazitira uburenganzira buteganyijwe mu ngingo ya 34 n'ya 35 z'Itegeko Nshinga kuko umuntu ashobora kwamburwa ubutaka mu gihe ananiwe kwishyura umusoro, ko rero ishyirwaho ryayo rititaye ku ngaruka izagira ku batunze

ubutaka badakoresha. Akomeza avuga ko bitari ngombwa gushyiraho iyo ngingo mu rwego rwo gukemura ikibazo cy'abatunga ibibanza byinshi bagamije kuzabigurisha ku giciro kinini (speculation), kuko icyo kibazo gikemurwa n'ingingo ya 58 y'Itegeko ry'Ubutaka.

Inshuti y'urukiko Transparency International Rwanda, ivuga ko ingingo ya 20 ibangamiye amahame y'uburenganzira ku mutungo bwite w'ubutaka, kuko umusoro uteganywa n'iyi ngingo uteye ikibazo ku muturage ufite amikoro make, bavuga ko basanga umubera umusoro gihano ku kibanza cyangwa ubutaka adakoresha bitewe no kubura amikoro, kandi ko natabasha kwishyura uwo musoro ibyo atunze birimo n'ubwo butaka bizatezwa cyamunara hishyurwa umusoro, bityo akaba yambuwe uburenganzira ku mutungo buteganywa n'Itegeko Nshinga.

Ntibaziyaremye Innocent avuga ko bidakwiye guca umusoro wa 100% ku kibanza cyose kidakoreshwa kuko hari impamvu nyinshi zishobora gutuma kitarubatswe, cyane cyane kubura amikoro. Akomeza avuga ko hari igihe umuntu ufite ubutaka bumutunze bugashyirwa mu miturire ahita abusorera kandi butakivamo ibimutungana ndetse agahita agira n'umutwaro wo kubusorera ku buryo ashobora no kugera ubwo aburaga abana bakabwanga kuko buriho imisoro batashobora kwishyura.

Leta y'u Rwanda ivuga ko ingingo ya 20 itabangamiye uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka buteganywa n'Itegeko Nshinga, kuko iyo ngingo yaje gutandukanya abantu bakoresha ubutaka icyo bwagenewe n'abatabukoresha, bugakomeza kubaho butanahawe ufite ubushake n'ubushobozi bwo kubukoresha, mu gihe igihugu gikeneye gutera imbere kibyaza umusaruro ubutaka buto gifite.

Incamake y'icyemezo: 1. Uwatanze ikirego mu manza zisaba kuvanaho ingingo z'itegeko zinyuranye n'itegeko Nshinga, agomba kugaragaza ko itegeko cyangwa ingingo zinyuranye n'Itegeko Nshinga mu buryo buziguye cyangwa butaziguye.

2. Nubwo abantu bagomba kureshya imbere y'amategeko, kubatandukanya cyangwa kubashyira mu byiciro ntabwo buri gihe byakwitwa ivangura, kuko iyo hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose) gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa.

3. Nubwo ingingo ya 20 y'Itegeko N° 75/2018 itanyuranye n'Itegeko Nshinga, imyandikire yayo ikwiye kuzuzwa hagashyirwamo ibirebana n'igihe ubutaka bwamara budakoreshwa bukabona gusoreshwa umusoro w'inyongera, no kuba umusoro w'inyongera utatangwa igihe bigaragara ko hari impamvu yumvikana ituma budakoreshwa.

Ingingo ya 16 n'iya 17 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, ntizinyuranyije n'ingingo ya 15 n'iya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

Ingingo ya 19 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

Ingingo ya 20 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage

**ntinyuranyije n'ingingo ya 34 n'iya 35 z'Itegeko
Nshinga.**

Amategeko yashingiweho:

Ayo mu Rwanda:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003
ryavuguruwe mu 2015, ingingo ya 164

Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa
muntu ryo mu mwaka wa 1948, ingingo ya 7 n'iya 17

Amasezerano Mpuzamahanga ku burenganzira
Mbonezamubano n'ubwa Politiki yo mu mwaka wa
1966, ingingo ya 26

African Charter on Human and Peoples' Rights, ingingo 14.

Ayo mu mahanga:

European Convention on Human Rights, Protocol No. 1,
ingingo ya 1

American Convention on Human Rights, ingingo. 21

Imanza zifashishijwe:

Re AKAGERA BUSINESS GROUP (ABG),
RS/SPEC/0001/16/CS rwaciwe n'Urukiko rw'Ikirenga
ku wa 23/09/2016

Izo mu mahanga:

Supreme Court of the United States, *Regan v. Taxation with
Representation of Wash.*, 461 U.S. 540.

Madden v. Kentucky, 309 U.S. 83, 87-88 (1940)

Supreme Court of United States, *BELL'S GAP RAILROAD
COMPANY v. PENNSYLVANIA*, 134 U.S. 232
(1890).

Supreme Court of the United States, *Nordlinger v. Hahn*, June
18, 1992, 112 S. Ct. (1992).

Communication N° 172/1984 S.W.M. Broeks v The
Netherlands (views adopted on 9 April 1987) in UN
Doc. GOAR, A/42/40 P.150.

Inyandiko zabahanga:

Erwin Chemerinsky, In Defense of Equality: A Reply to
Professor Westin, 81 MICH. L. REV. 575, 578 n.17
(1983)

Levell, P., Roantree, B., & Shaw, J.). Mobility and the Lifetime
Distributional Impact of Tax and Transfer Reforms,
2016, p32.,

Urubanza

I. MITERERE Y'URUBANZA

[1] Murangwa Edward yatanze ikirego mu Rukiko rw'Ikirenga avuga ko nyuma y'uko hatangarijwe mu Igazeti ya Leta N° 44 yo ku wa 29/10/2018, Itegeko N° 75/2018 ryo ku wa 07/09/2018, rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage, yarisomye agasanga ingingo zaryo za 16, iya 17, iya 19 n'iya 20, zinyuranyije n'ingingo za 15, 16, 34 n'iya 35 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe mu mwaka wa 2015. Avuga ko yatanze ikirego yisunze ingingo ya 43 y'Itegeko Nshinga rya Repubulika y'u Rwanda igira iti: "Ubutegetsi bw'Ubucamanza ni bwo murinzi w'uburenganzira n'ubwisanzure bwa muntu".

[2] Ingingo Murangwa Edward aregera ko zinyuranyije n'Itegeko Nshinga ni enye (4), ziri mu byiciro bitatu: icyiciro

cya mbere kigizwe n'ingingo ebyiri (2): iya 16 na 17 z'Itegeko N° 75/2018 ryavuzwe haruguru. Ingingo ya 16 iteganya ko: igipimo cy'umusoro ku nyubako gishyizweho kuri rimwe ku ijana (1%) by'agaciro ku isoko k'inyubako yagenewe guturwamo, zeru n'ibice bitanu ku ijana (0,5%) by'agaciro ku isoko k'inyubako ku nyubako z'ubucuruzi, zeru n'igice kimwe ku ijana (0,1%) by'agaciro ku isoko k'inyubako zagenewe inganda, iz'ibigo by'ubucuruzi bito n'ibiciriritse n'izagenewe ibindi bikorwa bitavuzwe muri iyi ngingo. Naho ingingo ya 17 iteganya ko: uretse igipimo cy'umusoro cya zeru n'igice kimwe ku ijana (0,1%), ibipimo by'umusoro bigenwa n'ingingo ya 16 y'iri tegeko bigenda bizamuka mu buryo bukurikira:

1° ku nyubako zo guturamo, igipimo cy'umusoro kigenda kizamuka mu buryo bukurikira:

- a) zeru n'ibice makumyabiri na bitanu ku ijana (0,25%) kuva ku mwaka wa mbere nyuma y'uko iri tegeko ritangiye gukurikizwa;
- b) zeru n'ibice mirongo itanu ku ijana (0,50%) kuva ku mwaka wa kabiri nyuma y'uko iri tegeko ritangiye gukurikizwa;
- c) zeru n'ibice mirongo irindwi na bitanu ku ijana (0,75%) kuva ku mwaka wa gatatu nyuma y'uko iri tegeko ritangiye gukurikizwa;
- d) rimwe ku ijana (1%) kuva ku mwaka wa kane nyuma y'uko iri tegeko ritangiye gukurikizwa;

2° ku nyubako z'ubucuruzi, igipimo cy'umusoro kigenda kizamuka mu buryo bukurikira:

- a) zeru n'ibice bibiri ku ijana (0.2%) by'agaciro k'inyubako ku isoko gikoreshwa ku mwaka wa mbere nyuma y'uko iri tegeko ritangiye gukurikizwa;
- b) zeru n'ibice bitatu ku ijana (0.3%) ku mwaka wa kabiri iri tegeko ritangiye gukurikizwa;
- c) zeru n'ibice bine ku ijana (0.4%) ku mwaka wa gatatu iri tegeko ritangiye gukurikizwa;
- d) zeru n'ibice bitanu ku ijana (0.5%) ku mwaka wa kane iri tegeko ritangiye gukurikizwa.

Inyubako zigeretse zo guturwamo zifite kuva ku magorofa ane, habariwemo n'ari munsu y'ubutaka, zigabanyirizwa ibipimo by'umusoro ku kigero cya mirongo itanu ku ijana (50%) by'igipimo gisanzwe".

[3] Murangwa Edward avuga ko ibyo ingingo ya 16 iteganya binyuranyije n'Itegeko Nshinga kuko uretse no kuba ikandamiza icyiciro kimwe cyiswe icy'inyubako zo guturamo, iyo ngingo igiteganyiriza umusoro munini kandi aricyo kidafite ubushobozi ukigereranyije n'icyiciro cy'ubucuruzi, n'inganda, cyo gishyirirwaho umusoro muto kandi abanyenganda aribo bafite ubushobozi. Avuga ko n'ingingo ya 17 n'uduka twayo twose yuzuzanya n'ya 16, nayo ivangura abantu ishingiyeye ku byiciro by'ubukungu n'umutungo, ku buryo asanga izo ngingo zombi zitareshyeshya abantu imbere y'amategeko ndetse zitanabarengera kimwe nk'uko Itegeko Nshinga ribiteganya mu ngingo zaryo za 15 na 16.

[4] Icyiciro cya kabiri cy'ikirego kigizwe n'ingingo ya 19 y'Itegeko N° 75/2018 ryavuzwe haruguru, iteganya ko:

"Igipimo cy'umusoro cyagenwe n'Inama Njyanama y'Akarere kuri buri metero kare y'ubutaka hashingiwe ku biteganywa mu ngingo ya 18 y'iri tegeko¹ cyiyongeraho mironko itanu ku ijana (50%) asorerwa ubutaka burenga ku bipimo fatizo by'ikibanza cyagenewe inyubako. Ibipimo fatizo by'ikibanza cyagenewe inyubako bigenwa n'iteka rya Minisitiri ufite imiturire mu nshingano ze. Igipimo cy'umusoro cy'inyongera kivugwa mu gika cya mbere cy'iyi ngingo ntikireba ikibanza gitunzwe n'uwakibonye mbere y'uko iri tegeko ritangira gukurikizwa". Murangwa avuga ko ibyo ingingo ya 19 iteganya mu gika cya mbere n'icya gatatu binyuranyije n'ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose bareshya imbere y'amategeko kandi ko Itegeko ribarengera ku buryo bumwe, kuko hagendewe kukuba ubutaka bw'u Rwanda buhererekanywa mu buryo bw'inshi butandukanye nko mu mpano, mu izungura, mu kuraga, mu kugura no kugurisha, bigaragara ko hari ukutareshyesha ababonye ubutaka mbere na nyuma y'uko Itegeko N° 75/2018 riregerwa rijyaho.

[5] icyiciro cya gatatu kigizwe n'ingingo ya 20 y'Itegeko N° 75/2018 ryavuzwe haruguru, ivuga ku birebana n'igipimo cy'umusoro utangwa ku kibanza kidakoreshwa, iteganya ko: "Ikibanza cyose kidakoreshwa gicibwa umusoro w'inyongera w'ijana ku ijana (100%) urenga ku gipimo cy'umusoro kivugwa mu ngingo ya 18 y'iri tegeko". Murangwa avuga ko ibyo

¹ Ingingo ya 18 ivuga ku birebana n'igipimo cy'umusoro ku kibanza, muri aya magambo: "Igipimo cy'umusoro ku kibanza kiri hagati ya zero (0) n'amafaranga y'u Rwanda magana atatu (300 FRW) kuri metero kare. Inama Njyanama y'Akarere igena umusoro wishyurwa kuri metero kare y'ubutaka ishingiyeye ku bipimo fatizo n'ibindi bikurikizwa bigenwa n'iteka rya Minisitiri ufite imisoro mu nshingano ze".

ingingo ya 20 iteganya bibangamiye ibiteganywa n'ingingo ya 34 n'iya 35 z'Itegeko Nshinga, ziteganya ko uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka ari ntavogerwa, kandi abanyarwanda ari wo mutungo wa mbere w'Igihugu, uwa kabiri ukaba ubutaka batuyeho, bakoreraho, kandi bukaba bubatunze, ko rero kuba iyo ngingo iteganya umusoro w'inyongera ya 100% ku butaka bwitwa ko budakoresha hatitawe ku kureba niba nyirabwo abifitiye ubushobozi, agasanga uyu musoro ari umurengera kandi ko uzananira benshi.

[6] Ingingo ya 34 iteganya ko: "buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko". Naho ingingo ya 35 igateganya ko: " Umutungo bwite w'ubutaka n'ubundi burenganzira ku butaka bitangwa na Leta. Itegeko rigena uburyo bwo kubutanga, kubuherekanya no kubukoresha".

[7] Uhagarariye Leta y'u Rwanda avuga ko ibivugwa ko ingingo ya 16 n'iya 17 z'Itegeko N° 75/2018 ryo ku wa 07/09/2018, ryavuzwe haruguru, bibangamiye ihame ryo kurindwa ivangura riteganywa n'Itegeko Nshinga, ataribyho kuko uyu musoro ari umusoro ku mutungo kandi icyashyizwe mu byiciro akaba ari imitungo (inyubako) atari abantu, kandi ko kuba inyubako zashyirwa mu byiciro kugira ngo zisoreshwe, atari ivangura rishingiye ku bukungu.

[8] Ku ngingo ya 19, avuga ko itabangamira ihame ryo kureshya imbere y'amategeko riteganywa n'ingingo ya 15

y'Itegeko Nshinga ndetse n'ihame ryo kurindwa ivangura riteganywa n'ingingo ya 16 y'Itegeko Nshinga kuko ingingo ya 19 yaje gushimangira andi mahame y'amategeko, cyane cyane ihame ry'uburenganzira ku butabera buboneye ndetse n'uko itegeko ridashobora gusubira inyuma (La non-rétroactivité de la loi).

[9] Uhagarariye Leta y'u Rwanda akomeza avuga ko ingingo ya 20 itabangamiye uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka (fundamental rights) buteganywa n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga nkuko Murangwa abivuga, kuko iyo ingingo ya 20 yaje gutandukanya abantu bakoresha ubutaka icyo bwagenewe n'atabukoresha, bugakomeza kubaho butanahawe ufite ubushake n'ubushobozi bwo kubukoresha, mu gihe igihugu gikeneye gutera imbere kibyaza umusaruro ubutaka buto gifite.

[10] Mbere yo gukomeza iburanisha mu mizi, Urukiko rwasanze, kubera uburemere bw'ibibazo bizasuzumwa muri uru rubanza, ari ngombwa ko abantu n'ibigo cyangwa imiryango itegamiye kuri Leta bifuzaga gutanga ibitekerezo muri uru rubanza nk'inshuti z'urukiko (Amicus Curiae) kandi babifitiye ubumenyi, babisaba binyujijwe ku Bwanditsi bw'Urukiko rw'Ikirenga, bakanatanga n'imyanzuro yabo.

[11] Nyuma yo kubona inyandiko zinyuranye z'abashaka kuba muri uru rubanza nk'inshuti z'urukiko (Amicus Curiae) mu rwego rwo gutanga ibitekerezo, Urukiko rwarazisesenguye maze rwemeza ko aba bakurikira aribo bujuje ibisabwa akaba aribo bagomba kwitaba urukiko mu iburanisha ry'uru rubanza nk'inshuti z'urukiko (Amicus Curiae), aribo: Ishuri ry'Amategeko rya Kaminuza y'u Rwanda (School of Law), Transparency International Rwanda, Me Dieudonne

Nzafashwanayo, Me Twiringiyemungu Joseph na Ntibaziyaremye Innocent, maze bakora imyanzuro ikubiyemo ibitekerezo ku kirego cya Murangwa Edward nkuko biri bugaragazwe.

[12] Urubanza rwaburanishijwe ku wa 1/11/2019, Murangwa Edward yunganiwe na Me Rugemintwaza Jean Marie Vianney na Me Bahati Vedaste, Leta ihagarariwe na Me Cyubahiro Fiat na Me Ntarugera Nicolas, Ishuri ry'Amategeko rya Kaminuza y'u Rwanda (School of Law) rihagarariwe na Turatsinze Emmanuel, Bagabo Faustin na Habimana Pie, Transparency International Rwanda ihagarariwe n'Umuyobozi wayo Ingabire Marie Immaculée yunganiwe na Me Habumuremyi Anglebert, hari kandi Me Dieudonne Nzafashwanayo, Me Twiringiyemungu Joseph na Ntibaziyaremye Innocent.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

Kumenya niba ingingo ya 16 n'ya 17 z'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, zinyuranyije n'ingingo ya 15 n'ya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[13] Murangwa Edward n'abamwunganira bavuga ko Itegeko Nshinga rya Repubulika y'u Rwanda, mu ngingo ya 10, igika cya 5, handitse amagambo akurikira: “Leta y'u Rwanda yiyemeje kubaka Leta iharanira imibereho myiza y'abaturage no gushyiraho uburyo bukwiye kugira ngo bagire amahirwe angana mu mibereho yabo”, naho mu gika cya 6 bandika ko: “Leta y'u Rwanda yiyemeje gushaka buri gihe umuti w'ibibazo binyuze

mu nzira y'ibiganiro n'ubwumvikane busesuye". Bavuga ko ibyo aya mahame ateganya bishimangirwa n'ibiteganywa n'ingingo ya 15 y'Itegeko Nshinga ivuga ko abantu bose bareshya imbere y'amategeko kandi barengerwa ku buryo bungana, naho ingingo ya 16 ikavuga ko abanyarwanda bavuka kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana, nta vangura iryo ari ryo ryose².

[14] Basobanura ko ibiteganywa n'ingingo ya 16 n'ya 17 z'Itegeko N° 75/2018 ryo ku wa 07/09/2018 ryavuzwe haruguru binyuranyije n'amahame remezo ateganywa n'Itegeko Nshinga, mu ngingo ya 15 n'ya 16 zavuzwe haruguru, kuko uretse no kuba izo ngingo ziregerwa zikandamiza icyiciro kimwe cyiswe icy'inyubako zo guturamo, inagiteganyiriza umusoro munini kandi icyo cyiciro kigizwe n'abadafite ubushobozi ugereranyije n'abagize icyiciro cy'ubucuruzi n'inganda, bafite ubushobozi, ariko cyo kigashyirirwaho umusoro muto, ku buryo ibyo bishobora kubangamira gahunda ya Leta yo gutuza neza abanyarwanda.

[15] Bavuga ko niba umuntu yiyemeje kubaka amazu yo guturamo, undi akubaka amazu y'ubucuruzi naho undi akubaka amazu y'inganda, bose bagombye gufatwa nk'abashoramari ku buryo kubazanamo ibice ugamije kubasoresha nta kintu na gito bisobanuye kandi abantu bareshya imbere y'amategeko, ahubwo ko buri wese yagombye gusora hagendewe ku cyo yinjiza,

² Abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Ivangura iryo ari ryo 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, birabujijwe kandi bihanwa n'amategeko.

kuko uwubatse umudugudu munini wo guturamo yakunguka kurusha uwubatse uruganda rwe ruto.

[16] Murangwa Edward n’abamwunganira bakomeza bavuga ko mu ngingo ya 17, umushingamategeko yerekanye uburyo umusoro uzagenda wiyongera buri mwaka, ariko ko atigeze agaragaza impamvu azaheraho yongera umusoro, ko icyari kuba cyiza cyari kugaragaza ayo umuntu azunguka ku mwaka wa mbere no ku mwaka wa kabiri, ku buryo iyo nyungu ariyo yaherwaho umusoro wongerwa, naho ubundi ibyo yakoze ntaho bitaniye no gukenesha abaturage.

[17] Turatsinze Emmanuel, Bagabo Faustin na Habimana Pie, mu izina ry’Ishuri ryigisha amategeko muri Kaminuza y’u Rwanda (University of Rwanda/ School of Law) bavuga ko ibyo Leta yakora byose bitubahirije ihame ryo kubaka Leta ihananira imibereho myiza y’abaturage byaba binyuranye n’Itegeko Nshinga.

[18] Basobanura ko ibiteganywa n’ingingo ya 16 binyuranye n’ihame ryo kubaka Leta ihananira imibereho myiza y’abaturage no gushyiraho uburyo bukwiye kugira ngo bagire amahirwe angana mu mibereho yabo, kuko iyo ngingo iteganya gusoresha umusoro munini inzu yo guturamo aho gusoresha umusoro munini inzu z’ubucuruzi ari nazo zitanga inyungu nyinshi. Bavuga ko kuba uwubatse inzu yo guturamo aba yarubatse kugirango igire icyo imwinjiriza, n’inzu y’ubucuruzi nayo ikaba yarubatswe kugirango ikodeshwe, basanga nta mpamvu zihari zifatika mu gusoresha ku buryo butandukanye ayo mazu cyane cyane ko abayubaka baba bagamije ko hari icyo azabinjiriza. Bavuga kandi ko kuba iyo ngingo iteganya umusoro munini ku mazu yo guturamo bizagabanya/ bizaca intege abayubaka kandi hari abantu benshi bagikeneye amacumbi, ubwabyo bikaba

bitanajyanye na gahunda ya Leta yo gukemura ikibazo cy'amacumbi.

[19] Bavuga ko ubusanzwe uburyo bwo gusoresha bugomba guhura n'uburenganzira bw'abasoreshwa aribo abaturatione, n'uko igihugu gisaranganya umutungo wacyo, ku buryo umusoro utagombye kuremerera abaturatione, ariko ko mu busesenguzi bakoze basanze umusoro w'inzu yagenewe inyubako yo guturamo ukubye inshuro ebyiri uw'ubucuruzi, ugakuba inshuro 10 uw'inganda, ku buryo ihame ryo kuba abaturatione bafite amahirwe angana, bahabwa uburenganzira bungana ridahura n'iryo tegeko; ko rero umusoro utagombye kumvikana nk'uburyo bwo gushaka amafaranga gusa ahubwo wagombye kuba uburyo Leta yifashisha mu kubungabunga imibereho myiza y'abaturatione. Bavuga kandi ko kuba mu isobanura mpamvu ry'iryo tegeko bavuga ko ari ugushyigikira iterambere ry'imijyi n'inganda, iyo mpamvu yaba idahagije kuko uyu musoro n'ubwo uzaremerera abubaka amazu akodeshwa, utazabuza bake kubaka maze ahubwo bikazabera umutwaro abakodesha, kandi ko inyubako z'ubucuruzi n'inganda zitateza imigi imbere mu gihe abantu badafite aho batuye.

[20] Bavuga ko ikindi kiboneka mu isobanura mpamvu ari uko icyatumye uwo musoro ushyirwaho ari uko mu Karere u Rwanda ruherereyemo, arirwo rufite umusoro uri hasi, ugereranyije n'ibindi bihugu; ibi akaba nta kuri kurimo kuko mu bihugu byo mu karere u Rwanda ruza ku mwanya wa kane mu bukungu n'ibyinjizwa n'umuturage (GDP), ku buryo kuzamura umusoro kandi bigaragara ko ibyo umuturage yinjiza ari bike bituma atakaza ubushobozi bwo kugira ibyo aha. Batanga urugero rw'Igihugu cya Kenya aho umuturage yinjiza 1507

USD ku mwaka mu gihe mu Rwanda ari 780 USD ku mwaka, bivuze rero ko isobanura mpamvu y’iri tegeko itari ukuri.

[21] Bakomeza bavuga ko abantu bari mu cyiciro kimwe cyangwa bafite icyo bahuriyeho bagomba gucibwa umusoro ungana, ndetse ko bidakwiye gucibwa umusoro umwe ku bantu batari mu rwego rumwe, mu gihe usohesha atagaragaje impamvu ikomeye yo gutandukanya abantu.

[22] Ku biteganywa n’ingingo ya 17, bavuga ko ari ishyira mu bikorwa ibiteganywa n’ingingo ya 16, ku buryo kuba ibiri muri iyo ngingo ya 16 binyuranye n’Itegeko Nshinga, n’ingingo ya 17 yavaho kuko ibyo ishyira mu bikorwa bidahwitse. Banzura bavuga ko izo ngingo zombi zinyuranye n’ingingo ya 15 n’iya 16 z’Itegeko Nshinga kuko zivangura abasohesha, kandi ibyo ziteganywa bikaba bihabanye n’ihame ry’uko Leta ifite inshingano yo guteza imbere imibereho myiza y’abaturage.

[23] Ingabire Marie Immaculée n’umwunganira mu izina rya Transparency International Rwanda, bavuga ko ingingo ya 16 n’iya 17 z’Itegeko N° 75/2018 ryavuzwe haruguru, zaregawe ko zigaragaramo ivangura hagati y’abafite inyubako zitwa izo guturamo n’abafite inyubako z’ubucuruzi, basanga ari iby’ukuri, kuko zinyuranyije n’amahame y’Itegeko Nshinga. Basobanura ko iyo usomye ingingo ya 16 usanga umushingamategeko yaratekerezeza ku guteza imbere ishoramari, ariko ko bitari ngombwa gutandukanya inzu z’ubucuruzi n’izo guturamo, kuko yirengagije imibereho y’abanyarwanda benshi bakeneye gutura ndetse n’inshingano za Leta zo gutuza buri munyarwanda, aho Leta yiyemeje korohereza buri muntu gutunga inyubako. Ko rero umusoro uteganywa n’iyo ngingo ari mwinshi ku buryo ubangamiye imibereho myiza y’abaturage na politiki y’Igihugu y’imiturire

yagiyeho mu mwaka wa 2015³, bikaba binyuranye n’ingingo ya 10,50 y’Itegeko Nshinga.

[24] Bavuga kandi ko ibiteganywa n’ingingo ya 17 bihujwe n’ibivugwa mu ngingo ya 16 yavuzwe mu gika kibanziriza iki, bivuze ko nayo igaragaramo ivangura kandi ibangamiye imibereho myiza y’abaturage kuko igaragaza uko uwo musoro uzatangwa, ariyo mpamvu basaba ko mu gihe ingingo ya 16 yaba ivanyweho, n’iya 17 yavaho kuko ntacyo yaba ishingiyeho, ariyo mpamvu zombi zigomba kuvanwaho. Bavuga kandi ko kuba Umushingamategeko yarateganyije ko umusoro uzajya wishyurwa mu byiciro, ubwabyo ari ikimenyetso ko nawe yabonye ko ari munini ugereranyije n’amikoro y’abanyarwanda, ibyo bakaba ntacyo byafashije abanyarwanda, icyiza kwari ukureka kuwuca.

[25] Ntibaziyaremye Innocent avuga ko umusoro ku nzu ikodeshwa utagombye gutandukana n’umusoro ku nzu y’ubucuruzi, kuko buri wese ariyo “business” aba yarahisemo. Akomeza avuga ko umusoro wagombye kugenda ugabanuka hakurikijwe ubwisazire bw’inzuzi (amortissement), kandi uwo musoro ukabarwa nyuma y’uko nyiri iyo nzu arangije kwishyura imyenda yafashe agura ikibanza cyangwa acyubaka, cyangwa se agaciro k’umutungo kakagenwa nyuma yo gukurwamo umwenda nyiri umutungo yafashe yubaka kugeza urangiye. Avuga kandi ko umusoro ku nzu wagombye kujyana n’ubwisazire bwayo “amortissement”, kuko nko mu myaka 100, umuntu ashobora kuba yishyuye umusoro uruta agaciro k’inzuzi asorera, ariyo mpamvu abona ko uwo musoro ari umurengerwa wagora abaturage.

³ Reba Ministry of Infrastructure, National Housing Policy, 2015

[26] Avuga kandi ko umutungo umwe utagombye kubarirwa imisoro myinshi (umusoro ku butaka, umusoro ku nyungu z'ubukode, umusoro ku mutungo, kuko imisoro myinshi yica umusoro (beaucoup d'impôts tuent l'impôt). Asanga inzu ubwayo ari umutwaro (charges) itari ikwiye kubarirwa umusoro mu buryo buteganywa n'Itegeko N°75/2018, ahubwo hasoreshwa icyo yinjiza, dore ko hari n'inzu ya kabiri ishobora kubakwa mu rwego rwo gufasha abatishoboye, nk'iy'umwana yubakiye ababyeyi nyuma yo kurangiza amashuri barimazeho utwabo bamwishyurira, nawe akabubakira inzu nziza nk'inyiturano ariko ntibadikweho kugira ngo itazazungurwa n'abandi.

[27] Uhagarariye Leta y'u Rwanda avuga ko ibivugwa ko ingingo ya 16 n'ya 17 z'Itegeko N° 75/2018 ryo ku wa 07/09/2018, ryavuzwe haruguru, zibangamiye ihame ryo kurindwa ivangura riteganywa n'Itegeko Nshinga, ataribyho kuko uyu musoro ari umusoro ku mutungo kandi icyashyizwe mu byiciro ari imitungo (inyubako) atari abantu, kandi ko kuba inyubako zashyirwa mu byiciro kugira ngo zisoreshwe, atari ivangura rishingiye ku bukungu. Avuga kandi ko n'ubwo byafatwa nko gushyira abantu mu byiciro (kuko aribo bishyura uwo musoro) nanone bitafatwa nko kuvangura, cyane cyane iyo ibyo byiciro byashyizweho hagamijwe kugera ku ntego yumvikana, igaragarira buri wese, ishingiyeye ku mategeko kandi ibyashyingiweho bikaba bifite ireme mu nyungu rusange.

[28] Avuga kandi ko ibivugwa ko inyubako zo guturamo zasoreshejwe umusoro munini ugereranyijwe n'inyubako z'ubucuzi ndetse n'iz'inganda kandi abafite inyubako zo guturamo aribo bafite amikoro make nabyo bidakwiye guhabwa ishingiro kubera impamvu zikurikira: a) Nta bushakashatsi

ubivuga yakoze bwerekana ko abafite inzu zo guturamo bafite amikoro make ugereranyije n'abafite inyubako z'ubucuruzi. b) Kabone n'ubwo abafite inyubako zo guturamo baba aribo bafite amikoro make koko, nabyo ntibyaba impamvu yo kuvuga ko iri soresha rivangura kubera ko habaho uburyo bwinshi bw'isoresha (proportional, progressive and regressive) hakurikijwe politike y'imisoro, ubukungu n'iterambere igihugu cyifuza.

[29] Uhagarariye Leta y'u Rwanda yibutsa ko inyubako imwe nyirayo yageneye guturamo nk'icumbi rye, hamwe n'inyubako ziyunganira mu kibanza cyagenewe guturwamo n'umuryango umwe zisonewe umusoro (ingingo ya 12), mu gihe izindi nyubako z'ubucuruzi n'inganda nta n' 'imwe isonewe, ariyo mpamvu izindi nyubako zo guturamo umuntu yaba afite zafatwa nka *prestige/luxury*, ikimenyetso kigaragaza ko ari umukungu, ku buryo atafatwa nk'ufite amikoro make.

[30] Me Twiringiyemungu Joseph avuga ko umusoro wose washyizweho uba wubahirije amategeko kuko uba washyizweho n'Itegeko riteganya uzawakwa n'uburyo azawakwa, ku buryo kunenga umusoro ko udakurikije Itegeko Nshinga bigoye kuko ujjaho ku bw'Itegeko Nshinga. Avuga ko amategeko atari ngombwa ko buri gihe areba abantu bose, atanga urugero rw'Itegeko ry'umurimo ko ritareba abantu bose ahubwo ko rireba abakora umurimo wa Leta gusa.

[31] Avuga ko amategeko y'umusoro akena ibyiciro hagendewe kuri politiki ishaka kugerwaho, ko urebye nk'ingingo ya 21 y'Itegeko N° 16/2018 rishyiraho umusoro ku musaruro, ivuga ko umusaruro w'ubuhinzi utazasorerwa kugera kuri 20.000.000Frw, ariko nka Avoka iyo abonye umusaruro wa 12.000.000Frw awusorera mu gihe umuhinzi atawusorera, kandi

ibyo bikaba bitafatwa nk'ivangura, bityo akaba abona ingingo ya 16 n'iyari itanyuranyije n'Itegeko Nshinga.

UKO URUKIKO RUBIBONA

[32] Mu gusesengura ikibazo cyo kumenya niba ingingo ya 16 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 inyuranye n'Itegeko Nshinga mu ngingo yaryo ya 15 n'iyari 16, hagomba guzususwa mbere na mbere uko izo ngingo zumvikana n'itandukaniro hagati yazo. Nk'uko byavuzwe mu rubanza RS/SPEC/0001/16/CS rwaciwe n'uru Rukiko kuwa 23/09/2016⁴, ingingo ya 15 n'iyari 16 z'Itegeko Nshinga zifitanye isano ku buryo gusobanura icyo zishatse kuvuga uzitandukanyije, bigoye. Nk'uko byasobanuwe kandi muri urwo rubanza, ingingo ya 15 ivuga ko abantu bose bareshya imbere y'amategeko kandi bakarengerwa n'amategeko mu buryo bumwe. Ni ukuvuga ko hatagomba kubaho ivangura rituma abantu batarengerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakabugize. Naho ingingo ya 16 ikomerezaho ivuga uburyo gutandukanya abantu bifatwa nk'ivangura kandi ko bitemewe n'Itegeko Nshinga. Izi ngingo zombi zafatwa nk'izikubiyemo ihame rimwe ririmo uduce tubiri dufitanye isano.

[33] Ingingo z'amasezerano mpuzamahanga u Rwanda rwashyizeho umukono, nazo zigaragaza ko ihame ryo kureshya imbere y'amategeko no kurindwa ivangura zigize ihame rimwe. Hari ingingo ya 7 y'Itangazo ry'Umuryango w'Abibumbye ku burenganzira bwa muntu, Universal Declaration of Human

⁴ Urubanza RS/SPEC/0001/16/CS AKAGERA BUSINESS GROUP (ABG), para 15.

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 ku burenganzira Mbenezamubano n’ubwa 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*”.

[34] Mu buryo bworoshye, ihame ry’uko abantu bareshya imbere y’amategeko rivuze ko abantu bafatwa kimwe imbere y’itegeko, nta busumbane cyangwa ivangura. Ndetse n’itegeko rigiyeho rigafata kimwe abo rireba. Uwitwa Erwin Chemerinsky abisobanura mu magambo akurikira : “*Things that are alike should be treated alike, and things that are unlike should be treated unlike in proportion to their unalike*”⁵. Ibintu bimeze kimwe bifatwa kimwe, naho ibintu bitandukanye bifatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo.

[35] Nubwo abantu bagomba kureshya imbere y’amategeko, kubatandukanya cyangwa kubashyira mu byiciro ntabwo buri gihe biba ivangura. Gutandukanya abantu cyangwa ibyiciro

⁵ Erwin Chemerinsky, In Defense of Equality: A Reply to Professor Westin, 81 MICH. L. REV. 575, 578 n.17 (1983)

by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose). Muri icyi cyerekezo, Akanama k'Umuryango w'Abibumbye (Human Rights Committee) kavuze ko: *“The right to equality before the law and 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 26⁶”*. Mu kinyarwanda bisobanuye ko uburenganzira bwo kureshya imbere y'amategeko no kurengerwa n'amategeko mu buryo bungana nta vangura, ntibivuze ko gufata abantu mu buryo butandukanye buri gihe biba ari ivangura. Gutandukanya abantu bishingiye ku mpamvu zumvikana kandi zisobanutse ntabwo ari ivangura ribujijwe n'ingingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki.

[36] Nubwo gufata abantu mu buryo butandukanye byemewe nk'uko bivugwa mu gika kibanziriza iki, kubatandukanya hashingiye ku mpamvu ziteganywa n'ingingo ya 16⁷ y'Itegeko Nshinga byo ntibyemewe. Akanama k'Umuryango w'Abibumbye nako, ntikemera ko gutandukanya abantu byashingira ku mpamvu zivugwa mu ngingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira Mbenezamubano n'ubwa Politiki. Ibyo byavuzwe mu rubanza

⁶ Communication No 172/1984 S.W.M. Broeks v The Netherlands (views adopted on 9 April 1987) in UN Doc. GOAR, A/42/40 P.150, para 13

⁷ 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.

Muller and Engelhard v Namibia aho kagize kati: “A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26. A different treatment based on one of the specific grounds enumerated in Article 26, clause 2 of the Covenant, however, places a heavy burden on the State party to explain the reason for the differentiation⁸”.

[37] Ingingo ya 16 y’Itegeko N° 75/2018 ryo ku wa 07/09/2018, ishyiraho igipimo cy’umusoro ku nyubako yagenewe guturwamo gitandukanye n’igipimo cy’umusoro ku nyubako z’ubucuruzi, ndetse kinatandukanye n’igipimo cy’umusoro ku nyubako zagenewe inganda, iz’ibigo by’ubucuruzi n’izagenewe ibindi bikorwa bitavugwa muri iyo ngingo. Urukiko rusanga hakurikijwe imiterere y’ingingo ya 16 ivugwa muri iki gika, hari itandukaniro ku gipimo cy’umusoro ku nyubako rishingiye ku cyo inyubako igenewe gukorerwamo (guturamo, ubucuruzi, inganda n’ibindi). Uburanira Leta yavuze ko iri tandukaniro rishingiye ku kuba Leta ishaka guteza imbere inyubako z’ubucuruzi kurusha uko bimeze ku nyubako zo guturamo.

[38] Nk’uko byasobanuwe mu rubanza RS/SPEC/0001/16/CS⁹ rwaciye n’uru Rukiko kuwa 23/09/2016, kureshya imbere y’amategeko no kutavangura ntibivuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura. Gutandukanya abantu cyangwa gushyiraho ibyiciro by’abantu bishobora kuba ngombwa bitewe n’ikigambiriwe,

⁸ HRC, Muller and Engelhard v Namibia (Communication No. 919/00), para 6.7

⁹ Urubanza No RS/SPEC/0001/16/CS AKAGERA BUSINESS GROUP (ABG)

hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose). Muri uru rubanza, gutandukanya igipimo cy'umusoro bishingiye ku kuba Leta ishaka guteza imbere inyubako z'ubucuruzi kurusha inyubako zo guturamo nk'uko uyihagarariye yabivuze mu iburanisha.

[39] Mu birebana n'imisoro, umushingamategeko afite ubwisanzure bwo gushyira abasoreshwa mu byiciro cyane cyane ko ari mu mwanya mwiza kurusha inkiko, wo kumenya ibyo abaturage na Leta bakeneye akabiheraho ashiraho ibyiciro n'igipimo cy'isoresha, ibyo akaba abyemerewe, keretse bigaragaye ko byakozwe hashingiwe ku ivangura rigamije gukandamiza bamwe. Ibi bisa n'ibyavuzwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika mu rubanza *Regan v. Taxation with Representation of Wash*, aho rwavuze ko: *“The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might*

support it”¹⁰. Ku birebana n’impamvu yo guteza imbere inyubako zagenewe ubucuruzi n’inganda, Urukiko rusanga yumvikana kandi ntaho inyuranye n’amategeko cyane ko uwatanze ikirego n’inshuti z’Urukiko zishyigikiye ibitekerezo bye, batagaragaza ko icyari kigamijwe ari ukuvangura abasoreshwa hagamijwe gukandamiza abafite inyubako zagenewe guturwamo.

[40] Mu nyungu rusange, Leta ishobora gutandukanya abasoreshwa igamije kugira icyiciro iteza imbere, no guca intege ibidakenewe ariko bigakorwa hirindwa ivangura no gutandukanya abantu hatsikamirwa bamwe. Ibi byagarutsweho n’Urukiko rw’Ikirenga rwa Leta Zunze z’Amerika mu rubanza **BELL'S GAP RAILROAD COMPANY v. PENNSYLVANIA** mu magambo akurikira: *“It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional*

¹⁰ Supreme Court of the United States, *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540. See also *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940)

*prohibition*¹¹. Ibi bigaragaza ko gushyiraho itandukaniro cyangwa ibyiciro mu gusoresha bisanzweho kandi ubwabyo bikaba bitanyuranyije n'Itegeko Nshinga, keretse bikozwe hashingiwe ku ivangura rivugwa mu ngingo ya 16 y'Itegeko Nshinga mu buryo bugaragara.

[41] Ku birebana n'ibyo Murangwa Edward n'inshuti z'Urukiko zishyigikiye ibitekerezo bye bavuze ko gushyiraho igipimo cy'umusoro kinini ku nyubako zo guturamo hari abo bizabangamira mu buryo butandukanye, Urukiko rusanga iki atari ikibazo cyakemurwa hagenzurwa ko amategeko atanyuranyije n'Itegeko Nshinga, ahubwo byareberwa mu rwego rwo gushyiraho gahunda (politiki) rusange bikaba biri mu bubasha bwa Leta. Ibitekerezo kuri iyo gahunda, ibigomba kunozwa kuriyo, ibitameze neza n'ibindi bijyanye nayo bigashyikirizwa urwego rwayishyizeho kuko arirwo rufite ububasha bwo kuyifataho umwanzuro. Inkiko zifite ububasha bwo guca imanza, n'izindi nzego za Leta zikagira ububasha bwazo zihabwa n'Itegeko Nshinga n'andi mategeko.

[42] Mu rwego rwo kubahiriza ihame ry'uko inzego z'Ubutegetsi bwa Leta uko ari butatu (Ubutegetsi Nshingamategeko, Nyubahirizategeko n'Ubutegetsi bw'Ubucamanza) butandukanye kandi buri butegetsi bwigenga (*separation of powers*)¹², Urukiko ntirushobora gufata icyemezo cy'uko itegeko rinyuranyije n'Itegeko Nshinga rushingiye gusa ko hari imyumvire itandukanye, hari ibyo abantu banenga, cyangwa ibitanoze mu itegeko cyangwa mu ngingo zaryo

¹¹ Supreme Court of United States, *BELL'S GAP RAILROAD COMPANY v. PENNSYLVANIA*, 134 U.S. 232 (1890)

¹² Ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015

zisabirwa kuvanwaho. Utanga ikirego, agomba kugaragaza ko itegeko cyangwa ingingo zaryo ziteganya ibyiciro zinyuranye n'Itegeko Nshinga mu buryo buziguye cyangwa butaziguye. Ku birebana n'uru rubanza, Urukiko rusanga igipimo cy'umusoro ku nyubako cyarashyizweho mu rwego rwo gushyira mu bikorwa gahunda rusange ya Leta (public policy). Ibi ni nabyo byavuzwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika mu rubanza *Tax Commissioners v. Jackson*: *“It is not the function of this Court in cases like the present to consider the propriety or justness of the tax, to seek for the motives or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified”*¹³.

[43] Ku birebana no kuba ingingo ya 16 y'Itegeko N°75/2018 ryo ku wa 07/09/2018 yaba igaragaramo ivangura, Itegeko Nshinga mu ngingo yaryo ya 16 rigaragaza urutonde rw'impamvu zishobora gutuma habaho ivangura. Muri rusange, ivangura ni ugutandukanya abantu hagamijwe kuvutsa amahirwe bamwe no gutonesha abandi. Ku birebana n'uru rubanza, hari umusoro ku nzu zo guturamo, iz'ubucuruzi n'inganda. Muri ibi byiciro, nta na kimwe gishingiye kuri imwe mu mpamvu ivangura rishobora gushingiraho nkuko zivugwa mu Itegeko Nshinga.

[44] Nubwo ingingo ya 16 igaragaza urutonde rw'icyo ivangura rishobora gushingiraho, yongeraho amagambo “no ku rindi vangura iryo ariryo ryose”. Murangwa Edward ntagaragaza ko hari ikindi kintu cyaba cyarashyirahwe hashyirwaho ibyo byiciro ku buryo byaba ivangura. Nk'uko

¹³ U.S. Reports: *Tax Commissioners v. Jackson*, 283 U.S. 527 (1931)

k'inzu ubwayo n'agaciro k'ubutaka yubatseho nyamara hari umusoro w'ubukode bw'ubutaka wihariye, ibirebana n'inzu zubatswe ku nguzanyo itaramara kwishyurwa, inzu zubakiwe ababyeyi, ibirebana n'inzu zubatswe ariko zidakoresheya cyangwa zidashobora gukoresheya biturutse ku mpamvu zihariye bikaba byagorana kubona amafaranga yo kuzisorera, ikibazo kirebana no kuba umusoro ku nyubako wakwa hashingiwe ku gaciro kari ku isoko hatitawe ku busaze bwayo (depreciation).

[47] Murangwa Edward asaba ko ingingo ya 17 ivaho kuko ishyira mu bikorwa iya 16 kandi nayo avuga ko inyuranye n'Itegeko Nshinga. Urukiko rurasanga kuba ibikubiye muri iyo ngingo byagumaho cyangwa byavaho bitewe nuko ingingo ya 16 ishyirwa mu bikorwa inyuranye n'Itegeko Nshinga, ibyo byareberwa mu rwego rw'imyandikire y'amategeko, ntabwo ari ikibazo cyo kunyuranya n'Itegeko Nshinga.

[48] Ibyo ingingo ya 17 iteganya birebana nuko ibipimo by'umusoro ku nyubako bizagenda bizamuka mu byiciro, nta na hamwe binyuranye n'Itegeko Nshinga, ahubwo ni uburyo umushingamategeko yashyizeho bworohereza abasoreshwa gutanga umusoro mushya, bagatangira batanga uri ku rugero rwo hasi, bikazamuka nyuma hakurikijwe uko byagenwe n'iyi ngingo. Urukiko rusanga umusoro ku nyubako washyirwaho hubahirijwe ihame ryo gufata abantu ku buryo bumwe riteganywa n'ingingo ya 15 y'Itegeko Nshinga, ntacyabuza ko utangwa mu buryo bwagenwe n'ingingo ya 17 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage.

Kumenya niba ingingo ya 19 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego

z'imategekere y'Igihugu zegerejwe abaturage, inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[49] Murangwa Edward n'abamwunganira bavuga ko ingingo ya 19 ivuga ku gipimo cy'umusoro utangwa ku butaka burenga ku bipimo fatizo by'ikibanza, iteganya ko: "Igipimo cy'umusoro cyagenwe n'Inama Njyanama y'Akarere kuri buri metero kare y'ubutaka hashingiwe ku biteganywa mu ngingo ya 18 y'iri tegeko¹⁴ cyiyongeraho mirongo itanu ku ijana (50%) asorerwa ubutaka burenga ku bipimo fatizo by'ikibanza cyagenewe inyubako. Ibipimo fatizo by'ikibanza cyagenewe inyubako bigenwa n'iteka rya Minisitiri ufite imiturire mu nshingano ze. Igipimo cy'umusoro cy'inyongera kivugwa mu gika cya mbere cy'iyi ngingo ntikireba ikibanza gitunzwe n'uwakibonye mbere y'uko iri tegeko ritangira gukurikizwa".

[50] Bavuga ko ibiteganywa n'iyi ngingo binyuranyije n'ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose bareshya imbere y'amategeko kandi ko itegeko ribarengera ku buryo bumwe, cyane cyane ko bizwi ko ubutaka bw'u Rwanda buhererekanywa mu buryo bwinshi butandukanye nko mu mpano, mu izungura, mu ndagano, mu kugura no kugurisha, ku buryo bigaragara ko hari ukutareshyeshya ababonye ubutaka mbere na nyuma y'uko hajyaho Itegeko N° 75/2018 rirergerwa.

¹⁴ Ingingo ya 18 ivuga ku birebana n'igipimo cy'umusoro ku kibanza, muri aya magambo: "Igipimo cy'umusoro ku kibanza kiri hagati ya zero (0) n'amafaranga y'u Rwanda magana atatu (300 FRW) kuri metero kare. Inama Njyanama y'Akarere igena umusoro wishyurwa kuri metero kare y'ubutaka ishingiyeye ku bipimo fatizo n'ibindi bikurikizwa bigenwa n'iteka rya Minisitiri ufite imisoro mu nshingano ze".

[51] Bakomeza batanga ingero zigaragaza uburyo iyo ngingo inyuranyije n'Itegeko Nshinga, nk'urugero rw'umwana wahawe impano y'ubutaka akabwandikwaho mu mwaka wa 2018, iyi ngingo itarakurikizwa, na mugenzi we wabuhawe akabwandikwaho mu mwaka wa 2019, iyi ngingo imaze gutangira gukurikizwa. N'ubwo ubutaka babuhawe n'ababyeyi babo ndetse bungana mu buso, aba bana bombi ntibuzasora kimwe, ku buryo uwabuhawe mu mwaka wa 2019 azajya asora hiyongereyeho 50% ivugwa mu gika cya kabiri cy'ingingo ya 19, bikaba byumvikana ko iri tegeko ritabarengera mu buryo bumwe nk'uko bisabwa n'ingingo ya 15 y'Itegeko Nshinga.

[52] Bavuga ko urundi rugero rurebana n'umutungo wacungwaga n'umuntu urera abana batari bageza ku myaka y'ubukure, umutungo wanditswe kuri uwo urera abo bana (guardian), ku buryo igihe nikigera buri mwana akandikwaho umutungo we (nyuma ya 2019), iri tegeko ryaratangiye gukurikizwa, buri mwana azaba agomba gutanga umusoro wa 50% ubarwa ku buso burenga ku bwagenwe ku kibanza, mu gihe bagenzi babo bari bafite imyaka y'ubukure mbere y'uko iri tegeko rikurikizwa, 50% y'umusoro w'inyongera utabareba, ku buryo bigaragara ko iri tegeko ritabareshyeshya kandi ritabarengera mu buryo bumwe nk'uko ingingo ya 15 y'Itegeko Nshinga yavuzwe haruguru ibiteganyaga.

[53] Basoza bavuga ko ibyo ingingo ya 19 iteganyaga, bijyanye no kuvuga ko itegeko ritareba uwabonye ubutaka mbere yaryo kandi iyo risohotse rireba buri wese, umuntu yakeka ko kuvuka mbere biguha uburenganzira buruta ubw'abandi banyarwanda.

[54] Turatsinze Emmanuel, Bagabo Faustin na Habimana Pie, mu izina ry'Ishuri ryigisha amategeko muri Kaminuza y'u Rwanda (University of Rwanda/ School of Law) bavuga ko

ingingo ya 19 yasabiwe kuvanwaho inyuranyije n’Itegeko Nshinga mu ngingo yaryo ya 15 kuko gusoresha ku buryo butandukanye ibibanza hashingiwe gusa ko igihe usora yakiboneye atari impamvu ifatika yatuma habaho iryo tandukaniro.

[55] Ku birebana n’ikibanza cyabonetse mbere cyangwa nyuma y’ikurikizwa ry’Itegeko, bavuga ko ihame ryo kudasubira inyuma kw’itegeko (rétroactivité de la loi) ishingirwaho n’Intumwa ya Leta nk’impamvu zo gutandukanya ba nyir’ibibanza, itareberwa igihe ikibanza cyaguriwe cyangwa cyatangiwe gukoreshwa ahubwo yareberwa igihe uburenganzira ku kibanza bwatangiye (igihe ubwo butaka bwatangiye gukoreshwa).

[56] Ingabire Marie Immaculée n’umwunganira mu izina rya Transparency International Rwanda, bavuga ko ibiteganywa n’ingingo ya 19, biteye ikibazo ku baturage, cyo kumenya uko bizajya bigenda ku waguze cyangwa uwazunguye ubutaka n’uwari usanzwe abutunze, niba azajya abanza kubugabanya; ndetse hakibazwa n’impamvu umushingamategeko avangura utunze ubutaka n’uzabutunga ejo, ufite bunini n’ufite buto.

[57] Bavuga ko iyi ngingo igaragaza ivangura hagati y’abatunze ubutaka buto n’ubunini, kandi ko gutunga ubutaka bunini bitaba ikibazo, hatarebwe uko nyirabwo yabubonye, aho guca umusoro ubutunze. Ko rero uyu musoro bawufata nk’umusoro gihano unyuranye n’amahame y’amategeko kuko umuntu ahanwa iyo hari icyo ategetswe gukora atakoze cyangwa yakoze icyo abujijwe.

[58] Uhagarariye Leta y’u Rwanda avuga ko ingingo ya 19 itabangamira ihame ryo kureshya imbere y’amategeko

riteganywa n'ingingo ya 15 y'Itegeko Nshinga ndetse n'ihame ryo kurindwa ivangura riteganywa n'ingingo ya 16 kuko ingingo ya 19 yaje gushimangira andi mahame y'amategeko, cyane cyane ihame ry'uburenganzira ku butabera buboneye ndetse n'uko itegeko ridashobora gusubira inyuma (La non-rétroactivité de la loi).

[59] Asobanura ko kuba harabaye gutandukanya ibyiciro by'abantu barebwa n'ibipimo bitandukanye by'umusoro bitafatwa nko kwica ihame ry'uko abantu bashesya imbere y'amategeko, mu gihe hari impamvu ifatika kandi ifitiwe ibisobanuro (legitimate and rational purpose). Avuga kandi ko ihame ryo kureshya imbere y'amategeko rishamikiyeho andi mahame nko kuba abantu bagomba gufatwa kimwe iyo bari mu bihe bimwe (equal treatment in equal circumstances), kudafatwa byanze bikunze mu buryo bumwe (Preferential treatment), cyangwa se ibyiciro bitandukanye by'abantu bigira amategeko yihariye (Specificity and special rules).

[60] Me Twiringiyemungu Joseph avuga ko kuba ingingo ya 19 igena umusoro ku bipimo by'inyongera ari ibintu bisanzwe, atanga urugero rw'umusoro ku mushahara aho uhembwa 100.000 Frw no munsu asora 20%, naho urengeje agasoresha 30%, ko rero urengeje ibipimo biteganywa n'itegeko aba agomba kwirengera ingaruka kuri uwo murengera. Ku birebana nuko ingingo ya 19 ivuga ko uwo musoro utareba abari basanganywe ibibanza mbere y'uko itegeko rijyaho, avuga ko ibyo bijyanye n'ihame ry'uburenganzira umuntu aba yarabonye mbere y'uko rijyaho budashobora guhungabanywa, ko itegeko rishya ridashobora kwambura umuntu ibintu yari atunze mbere y'uko rijyaho.

UKO URUKIKO RUBIBONA

[61] Ingingo ya 19 ikubiyemo ibitekerezo bikurikira: (1) hazajyaho igipimo fatizo cy'ikibanza cyagenewe inyubako¹⁵; (2) abafite ubutaka butarenga icyo gipimo fatizo bazajya basora hagati ya 0- 300Frw kuri metero kare imwe; (3) igice cy'ubutaka burenga ku gipimo fatizo kizajya gisoreshwa nk'ikibanza gifite ubuso butarenga igipimo fatizo hiyongereyeho (50%); (4) inyongera ya 50% ntireba ababonye ibibanza mbere y'uko itegeko N°75/2018 ryo ku wa 07/09/2018 risohoka mu igazeti ya Leta ku wa 29/10/2018.

[62] Hakurikijwe ibivugwa na Murangwa Edward watanze ikirego, igice cy'ingingo ya 19 giteje ikibazo ni ikirebana no kuba igice cy'ubutaka burenga ku gipimo fatizo kizajya gisoreshwa hiyongereyeho (50%), no kuba iyo nyongera ya 50% itareba ababonye ibibanza mbere y'uko Itegeko N°75/2018 ryo ku wa 07/09/2018 risohoka mu igazeti ya Leta. Aha niho urega ahera avuga ko iyi ngingo idafata abantu kimwe kuko asanga iteganya umusoro utandukanye ku bibanza binganya ubuso, no kuba iteganya ko ababonye ibibanza biruta ibiteganywa n'igipimo fatizo mbere y'uko Itegeko N°75/2018 rijyaho batazatanga umusoro w'inyongera ya 50%, naho abazabibona nyuma bakazasabwa gutanga uwo musoro w'inyongera.

[63] Ikibazo kibazwa hano ni icyo kumenya niba iryo tandukaniro ryafatwa nk'aho rinyuranye n'ihame ryo kureshya imbere y'amategeko riteganywa n'ingingo ya 15 y'Itegeko Nshinga. Ni ukuvuga, niba gusoresha abafite ibibanza birengeje igipimo fatizo cyagenwe 50 % y'umusoro w'inyongera ku usoreshwa ibibanza bitarengeje igipimo no kuba ababonye

¹⁵ Kizashyirwaho n'Iteka rya Minisitiri

ibibanza mbere y'Itegeko badasora uwo musoro w'inyongera binyuranyije n'ingingo ya 15 y'Itegeko Nshinga.

[64] Nk'uko byagarutsweho mu bika byo hejuru, gutandukanya abantu byakozwe ku mpamvu yumvikana, isobanutse kandi ishingiyeye ku mategeko ntibifatwa nko kudafata abantu kimwe imbere y'amategeko. Haba mu ngingo ya 19, no mu Itegeko N° 75/2018 ryo ku wa 07/09/2018 muri rusange nta mpamvu n'imwe igaragara yaba yarashingiweho hashyirwaho umusoro w'inyongera ku bibanza birengeje igipimo fatizo. Ibyo uhagarariye Leta mu rubanza yavuze ko iryo tandukaniro ryashyizweho hagamijwe gukangurira abantu kubaka ku butaka butarengeje igipimo fatizo kizaba cyashyizweho no kubahiriza ihame ry'uko itegeko ridasubira inyuma, nta gaciro byahabwa kuko kudasubira inyuma kw'itegeko bivuze kutishyuzwa imisoro uhereye mbere yuko itegeko risohoka. Kuba abantu basoreshwa imisoro mishya ku mitungo bari basanganywe mbere y'uko itegeko risohoka ntabwo binyuranyije n'ihame rusange ry'uko itegeko ridasubira inyuma.

[65] Ingingo ya 10 y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda iteganya ko: "ubutaka bw'umuntu ku giti cye bugizwe n'ubutaka atunze ku buryo bw'umuco cyangwa ubw'amategeko yanditse. Ubwo butaka abutunze y arabuhawe n'ubuyobozi bubifitiye ububasha, ubwo yaguze, yahawe impano, umurage, izungura, umunani, ingurane cyangwa isaranganya. [...]". Iyi ngingo igaragaza inzira umuntu anyuramo kugirango abone ubutaka. No ku birebana no kubona ubutaka bwagenewe inyubako, inzira zivugwa mu ngingo ya 10 nizo zifashishwa. Igihe habaye iherekanya ry'ikibanza kirengeje ibipimo fatizo rishingiyeye kuri imwe mu mpamvu zivugwa muri iyi ngingo kandi

rigakorwa nyuma yuko itegeko N° 75/2018 ryo ku wa 07/09/2018 risohoka, nibwo habaho umusoro w'inyongera ya 50%.

[66] Ingingo ya 19 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 iteganya ko ibipimo fatizo by'ikibanza cyagenewe inyubako bigenwa n'iteka rya Minisitiri ufite imiturire mu nshingano ze. Iri teka rivugwa mu ngingo ya 19 rishobora kugena ibipimo fatizo by'ikibanza cyagenewe inyubako biri hasi y'ibyari byaragenwe mbere y'uko rijyaho. Ibi bivuze ko ubusumbane ku bipimo fatizo by'ikibanza cyo kubakamo, bwaba butewe n'uburyo amategeko yagiye ahinduka kuri iyo ngingo. Ihererekanya ryose ryakorwa ku kibanza gifite ibipimo biruta ibiteganywa n'iryo teka, kandi bikurikije amategeko yakoreshwaga igihe nyiracyo yakibonaga, ryatuma ubonye ikibanza yishyura inyongera ya 50% biturutse ku mpamvu atagizemo uruhare, ahubwo byaba bitewe n'ukuntu amategeko yagiye asimburana.

[67] Naho ku bazabona ibibanza hakurikijwe ibipimo bizashyirwaho n'iteka rya Minisitiri rivugwa mu ngingo ya 19 y'Itegeko N°75/2018 ryo ku wa 07/09/2018, byaba binyuranye ku buryo bugaragarira buri wese n'ihame ry'uko abantu bashesha imbere y'amategeko, igihe hari ibibanza binganya ibipimo, biherereye mu gace kamwe, byegeranye, bigasoreshwa ku buryo butandukanye, bimwe bisabwa kwishyurirwa inyongera ya 50% ku buso burenga ku bipimo fatizo biturutse gusa ku kuba nyir'ikibanza yarakibonye nyuma cyangwa mbere y'uko Itegeko N° 75/2018 ryo ku wa 07/09/2018 risohoka mu igazeti ya Leta.

[68] Mu rubanza Nordlinger v. Hahn rujya kumera nk'uru rwaciwe n'Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe

z’Amerika, uwareze yasabaga kuvanaho itegeko rigena ko ababonye inzu nyuma y’iryo tegeko bazajya bazisorera umusoro wo hejuru ugereranije n’abari bazisanganywe, umubare munini w’Abacamanza baciye urwo rubanza bemeje ko ibyo bitafatwa nk’aho itegeko ritareshyeshya abantu. Umucamanza John Paul Stevens, we yitandukanije na bagenzi be avuga ko gusoresha abantu ku buryo butandukanye ushingiye gusa ku gihe baboneye amazu asoreshwa bidakwiye. Yagize ati: “[...] *it is irrational to treat similarly situated persons differently on the basis of the date they joined the class of property owners. [...] Similarly, situated neighbors have an equal right to share in the benefits of local government. It would obviously be unconstitutional to provide one with more or better fire or police protection than the other; it is just as plainly unconstitutional to require one to pay five times as much in property taxes as the other for the same government services. In my opinion, the severe inequalities created by Proposition 13 are arbitrary and unreasonable and do not rationally further a legitimate state interest*¹⁶ [...]”. Uru Rukiko, rwemeranya n’ibyvuzwe n’Umucamanza Stevens, mu gusoresha ibibanza byagenewe inyubako, igipimo cy’umusoro kigomba kuba kimwe ku bibanza bingana, biherereye ahantu hamwe hatitawe ku gihe ababifite babiboneye. Ibi nibyo byaba byubahirije ihame ry’uko abantu bashesha imbere y’amategeko.

[69] Urukiko rusanga kuba Itegeko N° 75/2018 ryo ku wa 07/09/2018 ryarashyizeho umusoro ku bibanza byagenewe inyubako, nta kibazo kibirimo kuko nk’uko biteganywa mu ngingo ya 3 n’iya 18 z’iryo Tegeko, umusoro ku bibanza byagenewe inyubako ari hamwe mu haturuka imari n’umutungo

¹⁶ Supreme Court of the United States, Nordlinger v. Hahn, June 18, 1992, 112 S. Ct. (1992).

bikorehwa n'inzeho z'ibanze zegerejwe abatwage. Urukiko rusanga igipimo cy'umusoro kigomba kuba kimwe, uwarengeje igipimo fatizo ku kibanza agasora menshi kuko n'ubuso busoreshwa ari bunini. Ibi kandi bijyanye n'ihame rikorehwa mu gusoresha rivuga ko ingano y'umusoro ijyana n'ubwinshi cyangwa ubunini bw'igisoreshwa. (*Vertical equity, is the principle that those with higher income, or higher ability to pay, should pay a greater amount of tax*)¹⁷.

[70] Urukiko ruherye ku bisobanuro byatanze mu bika bibanziriza iki, rusanga ishyingiraho ry'umusoro w'inyongera uteganywa n'ingingo ya 19 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abatwage, ridafata abantu ku buryo bumwe nta mpamvu zisobanutse, ibyo bikaba binyuranye n'ihame ry'uko abantu bese bareshya imbere y'amategeko riteganywa n'ingingo ya 15 y'Itegeko Nshinga, bityo iyo ngingo ikaba nta gaciro ifite hashingiwe ku ngingo ya 3 y'Itegeko Nshinga ivuka ko itegeko ryose rinyuranyije n'Itegeko Nshinga nta gaciro rigira.

Kumenya niba ingingo ya 20 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abatwage, inyuranyije n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga rya Repubulika y'u Rwanda

[71] Murangwa Edward n'abamwunganira bavugaga ko ingingo ya 20 ivugaga ku birebana n'igipimo cy'umusoro utangwa ku kibanza kidakorehwa, iteganyaga ko: "Ikibanza cyose

¹⁷ Levell, P., Roantree, B., & Shaw, J.). *Mobility and the Lifetime Distributional Impact of Tax and Transfer Reforms*, 2016, p32.

kidakoreshwa gicibwa umusoro w'inyongera w'ijana ku ijana (100%) urenga ku gipimo cy'umusoro kivugwa mu ngingo ya 18 y'iri tegeko"; inyuranye n'ibiteganywa n'ingingo ya 34 n'iya 35 z'Itegeko Nshinga, ziteganya ko buri muntu afite uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka, kandi ko ubwo burenganzira ari ntavogerwa, ikaba ikwiye kuvaho.

[72] Basobanura ko abanyarwanda ari wo mutungo wa mbere w'Igihugu, naho uwa kabiri ukaba ubutaka batuyeho, bakoreraho, kandi bukaba bubatunze, ko rero kuba iyo ngingo iteganya umusoro w'inyongera wa 100% ku butaka bwitwa ko budakoreshwa hatitawe ku kureba niba nyirabwo abifitiye ubushobozi, bigaragara ko uwo musoro ari umurengera kandi ko uzananira benshi. Bavuga ko kuba Murangwa Edward yatanze ikirego bitavuze ko ashyigikiye ko uwo musoro utajyaho kuko yemera ko umusoro ariyo nkomoko y'Iterambere ry'Igihugu, nk'uko bigaragara mu ngingo ya 18 y'Itegeko ryavuzwe haruguru rigena inkomoko y'umutungo w'inzego z'ibanze, kandi ko kuba umusoro muri iri tegeko warazamuwe kuri 0-300Frw kuri metero kare mu gihe mu Itegeko ryahozeho wari kuva kuri 0-80 Frw kuri metero kare, nabyo nta kibazo abifiteho, ahubwo ko ikibazo agifite ku nyongera ya 100% ku butaka bwitwa ko budakoreshwa hatitawe ku mpamvu yatumye nyirabwo atabukoresha, niba yari abifitiye ubushobozi, kuko hari uba afite ikibanza ariko yarabuze uko acyubaka.

[73] Bakomeza bavuga ko kuba umusoro wari wazamuweho 300%, bitari ngombwa ko wongera kuzamukaho 100%, hatitawe ku mpamvu umuntu adakoresha ikibanza. Ku birebana n'ibisobanuro by'uburanira Leta atanga ko uwo musoro wagiyeho mu rwego rwo kurwanya abigwizaho imitungo,

Murangwa Edward n'abamwunganira bavuga ko atari bwo buryo bubereye abanyarwanda bwagombaga gukoreshwa, cyane cyane ko hari amabwiriza avuga ko utazakoresha ubutaka icyo bwagenewe azabwamburwa, ibyo ubwabyo bikaba bikumira ukwigwizaho imitungo, cyane cyane ko amikoro y'abanyarwanda azwi.

[74] Bakomeza bavuga ko abantu bari muri izo ngero zitanzwe hejuru, bazageraho bakabura ubwishyu bw'uwo musoro, noneho hagakurikizwa ingingo ya 44 y'Itegeko rigenga ubutaka mu Rwanda irebana no guhagarika amasezerano y'ubukode burambye, iteganya ko : "mu gihe ukodesha ubutaka ku buryo burambye atubahirije inshingano ze zikubiye mu masezerano y'ubukode burambye, zitandukanye n'ibivugwa mu ngingo ya 38 y'iri tegeko¹⁸ umukode ashobora, nta yindi mihango akurikije, guhagarika amasezerano y'ubukode abanje gutanga integuza yanditse y'iminsi cumi n'itanu (15) y'akazi"; bityo abo baturage bose bakazisanga ubutaka bwabo babwambuwe bitewe n'igihe bazaba bamaze batishyura umusoro.

[75] Basobanura ko ibyo bavuga bishimangirwa n'ibiteganywa n'Itegeko Nshinga, aho riteganya ko uburenganzira ku mutungo ari ntavogerwa kandi burengerwa n'Itegeko Nshinga mu ngingo yaryo ya 34 n'iya 35. Iya 34

¹⁸ Ingingo ya 38 irebana n'inshingano yo gutanga inzira ku butaka bw'undi bukomoka ku miterere y'ahantu, iteganya ko: "Nyir'ubutaka ntagomba kubangamira uburenganzira bw'abandi. Kubera iyo mpamvu ntashobora: 1° kwima abaturanyi be inzira y'amaguru igera mu kwabo mu gihe nta handi bashobora kunyura. icyakora, ku zindi nzira, bikorwa ku bwumvikane hagati y'impande zombi; 2° kubuza ko amazi y'amasoko atemba ku bwa kamere anyura mu butaka bwe; 3° kubuza abandi kuvoma ku iriba riri ku butaka bwe, keretse ashoboye kwerekana ko iryo riba ari we ubwe wariyifukuriye.

iteganya ko : "buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko". Naho ingingo ya 35 igateganya ko: " Umutungo bwite w'ubutaka n'ubundi burenganzira ku butaka bitangwa na Leta. Itegekorigena uburyo bwo kubutanga, kubuhererekanya no kubukoresha".

[76] Bavuga kandi ko amahame ashingirwaho mu gusoresha (fundamental principles of taxation) harimo ubushobozi bw'usoresha, ukubasha gusora (ability to pay), n'umusoro usobanutse (tax certainty), ibyo akaba ari ingenzi mu rwego rwo kugira ngo abasora babashe gusora babishoboye kandi babikunze. Ko rero hashingiwe ko uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka ari ntavogerwa (fundamental rights), hagashingirwa no kuri ayo mahame agenderwaho mu gushyiraho umusoro, basanga gushyiraho ingingo ya 20 y'Itegeko ryavuzwe haruguru, yongera umusoro wa 100% ku butaka bwitwa ko budakoreshwa, hatitawe ku mpanvu zitera kutabukoresha, ibangamiye kandi inyuranije n'uburenganzira bugenwa n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga, ndetse n'uburenganzira uko buvugwa mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono (*universal declaration of human rights, art.17 1. Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property*). Bityo, akaba asaba Urukiko rw'Ikirenga ko mu bushishozi bwarwo n'ububasha ruhabwa n'Itegeko, rwakuraho iyo ingingo ya 20 bitewe n'uko ibangamiye ibiteganywa n'Itegeko Nshinga.

[77] Basoza basaba Urukiko rw'Ikirenga ko mu gusuzuma ikirego Murangwa Edward yatanze, mu bushishozi bwarwo, rwazahuza ingingo zaregewe, n'imibereho bwite y'umuryango nyarwanda, uruhare rw'umutungo utimukanwa mu muryango nyarwanda, uko umuryango nyarwanda wafataga umutungo w'ubutaka amategeko yanditse atarajyaho, n'ibishushanyo mbonera bitarakorwa, ndetse n'ingaruka zo kwakwa ubutaka cyangwa umutungo utimukanwa byagira ku mbaga y'abanyarwanda yananirwa gutanga 100% by'umusoro wiyongera ku musoro usanzwe utangwa.

[78] Turatsinze Emmanuel, Bagabo Faustin na Habimana Pie, mu izina ry'Ishuri ryigisha amategeko muri Kaminuza y'u Rwanda (University of Rwanda/ School of Law) bavuga ko Itegeko Nshinga mu mahame yaryo rigusha cyane ku mibereho myiza y'abaturage, cyane cyane ingingo ya 10 ivuga ku kubaka Leta iharanira imibereho myiza y'abaturage kandi bakagira amahirwe angana, Leta ikaba ifite inshingano zo kugira ngo abaturatione babeho neza nk'uko biteganyijwe mu mategeko no mu masezerano mpuzamahanga. Bavuga kandi ko raporo ya Politiki y'imiturire yagaragaje ko 83% batanzwe no gukodesha, hakibazwa igihe umusoro uzaba uzamutse ingaruka bizagira ku banyarwanda kuko buri wese ufite inzu ikodeshwa azongera ibiciro, hatirengagijwe ko iyo umusoro uremereye umuturage biremerera na Leta kuko hatangira kubaho guhisha umutungo, kandi bikaba bizwi ko iyo umusororeshwa yorohewe n'umusoro bimworohera kuwutanga.

[79] Bavuga ko ingingo ya 19 n'ya 20 zimeze nk'aho zirimo guhana kuko imwe yongeraho 50%, indi ikongeraho 100%, ibi bikaba binyuranye n'amahame rusange agenga amategeko kuko umuntu ahanwa kuko atakoze ibyo amategeko amutegeka

cyangwa yakoze ibyo amategeko amubuza, hakibazwa icyo umuturage yaba yakoze cyangwa atakoze mu biteganywa n’itegeko kugira ngo ahanwe. Ko kandi ibyo binyuranyije n’amahame agenga imibereho myiza y’abaturage, kandi ko umuturage ariwe uzikorera umutworo w’umusoro, kuko uwasoreye ikibanza najya kugurisha azawongeraho n’ukodesha azongeraho uwo musoro, bitume ubuzima buhenda.

[80] Bavuga ko imisoro iri mu bifasha Leta kugira ngo yuzuze inshingano yo kwita ku mibereho myiza y’abaturage, ariko ko idashobora kugeza abantu kuri “social justice” abaturage badafite uburenganzira ku mutungo, badahabwa amahirwe angana, batareshya imbere y’amategeko.

[81] Dieudonne Nzafashwanayo, Inshuti y’Urukiko, avuga ko ibiteganywa n’ingingo ya 20 y’Itegeko N° 75/2018, ryavuzwe haruguru, binyuranye n’ibiteganywa n’ingingo ya 15 n’iya 16 z’Itegeko Nshinga, ko iyo ngingo ivangura umuntu ufite ikibanza gikoreshwa n’ufite ikibanza kidakoreshwa usabwa kwishyura umusoro w’inyongera ungana na 100%. Avuga kandi ko iyo ngingo ya 20 izitira uburenganzira buteganyijwe mu ngingo ya 34 n’iya 35 z’Itegeko Nshinga kuko umuntu ashobora kwamburwa ubutaka mu gihe ananiwe kwishyura umusoro, ko rero ishyirwaho ryayo rititaye ku ngaruka izagira ku batunze ubutaka badakoresha.

[82] Asobanura ko Leta ibinyujije mu gushyiraho amategeko, yemerewe kuzitira cyangwa gukumira uburenganzira buteganyijwe mu ngingo ya 15, 16, 34 n’iya 35 z’Itegeko Nshinga binyuze mu kwaka abaturage umusoro kugirango ibashe gukora, ariko ko asanga ingingo ya 20 ataricyo igamije kuko iyo iza kuba aricyo igamije, yari guteganywa uwo musoro bijyananye n’ubushobozi bw’abasora. Akomeza avuga ko bitari

ngombwa gushyiraho iyo ngingo mu rwego rwo gukemura ikibazo cy'abatunga ibibanza byinshi bagamije kuzabigurisha ku giciro kinini (speculation), kuko icyo kibazo gikemurwa n'ingingo ya 58 y'Itegeko ry'Ubutaka iteganya ko umuntu yamburwa ubutaka iyo atabukoresha nta mpamvu yumvikana.

[83] Akomeza avuga ko ikibazo cyo kugena umusoro kiri mu byakemuwe n'Urukiko rw'Afrika rushinzwe kurengera uburenganzira bwa muntu, kandi ibyo rwemeje bigahura n'ibitekerezo by'Umuhanga Adam Smith mu gitabo yise *An Inquiry into the Nature and Causes of the Wealth of Nations*¹⁹, bemeje ko umusoro ujyaho kugira ngo ubutegetsu bubashe gukora ibyo abaturage bakeneye kandi umusoro ukagenwa hagendewe ku bushobozi bw'abaturage; ariyo mpamvu asanga umusoro uteganywa mu ngingo ya 20 hatarakurikijwe ibyo bitekerezo.

[84] Avuga kandi ko ufite ubutaka bushobora kwitwa ko budakoreshwa kubera amabwiriza ya “master plan” ariko bidaturutse kuri nyirabwo, kandi ko ingingo ya 20 itagombaga guteganya ibyo kuvuga ko ufite ubutaka budakoreshwa azabwamburwa, mu gihe ingingo ya 58, agace ka 3 na 4 igaragaza ubutaka umuntu atamburwa kubera kutabukoresha ndetse n'aho bugomba kuba buherereye. Avuga kandi ko umushingamategeko ashobora gukoresha umusoro mu kurwanya imyitwarire ariko ko umusoro udashobora kugira *caractere confiscatoire* cyangwa ngo ube umutwari ku musoreshwa.

[85] Avuga ko Leta ishobora gushyiraho umusoro ifite icyo igamije gikurikije amategeko, kandi igakoresha uburyo

¹⁹ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Lausanne, 2007, p. 639

bugereraniye kugirango intego igamijwe igerweho. Ko Urukiko ruramutse rwitaye kuri ayo mahame rwazasanga ingingo ya 20 isabirwa kuvanwaho, yatuma hari abatakaza uburenganzira ku mutungo bitewe no kunanirwa kwishyura umusoro.

[86] Ingabire Marie Immaculée mu izina rya Transparency International Rwanda nk'inshuti y'urukiko, avuga ko muri rusange umusoro awemera kuko ugarukira abatwariye, ariko ko utagomba kubangamira imibereho myiza yabo. Avuga ko ingingo ya 20 y'Itegeko N° 75/2018, ryavuzwe haruguru, ibangamiye amahame y'uburenganzira ku mutungo bwite w'ubutaka, kuko umusoro uteganywa n'iyo ngingo uteye ikibazo ku mutwariye ufite amikoro make, aho umubera umusoro gihano ku kibanza cyangwa ubutaka adakoresha bitewe no kubura amikoro, kandi ko natabasha kwishyura uwo musoro ingaruka zizaba ko ibyo atunze birimo n'ubwo butaka bizatezwa cyamunara hishyurwa umusoro bityo akaba yambuwe uburenganzira ku mutungo buteganywa n'ingingo ya 34 y'Itegeko Nshinga.

[87] Asobanura ko umusoro uteganyijwe mu ngingo ya 20 umushingamategeko yawugize nk'igihano gihanitse cya 100% atitaye ku mpamvu ubutaka butubatswe, ku buryo ibyo iyo ngingo iteganywa bibangamiye imibereho myiza y'abatwariye, cyane cyane urubyiruko kuko iyo umuntu abonye amafaranga agura ikibanza agategereza ko abona andi akubaka, uyu musoro rero ukaba uzatuma atubaka kuko n'ayo yabitse azayishyura umusoro. Bavuga kandi ko uwo musoro uzakenesha abatwariye kuko umuntu naramuka atawutanzwe, ubutaka bwe bukagurishwa, azasubira mu badatwariye, bigatuma abatwariye batakaza imitungo yabo, ku buryo abenshi bazisanga mu cyiciro cya mbere cy'ubudehe.

[88] Akomeza avuga ko abantu badafite inzu yo guturamo kenshi biterwa n’uko baba badafite amikoro, ko rero Umushingamategeko ashiraho iyi ngingo atigeze abatekerezaho, cyangwa ngo atekereze ku muntu waguze ikibanza, aho *master plan* igiriyeho ikahashyira inzu zigeretse (etages), umuturage akabura ubushobozi bwo kubaka iyo isabwa, bivuze ko icyo kibanza kizaguma aho agisorera 100%, kandi ko byazageraho bigatanga icyuho cya ruswa mu nzego z’ibanze. Avuga kandi ko umushingamategeko atitaye ku mpamvu zituma umuntu atubaka kandi ari nyinshi cyane, zigiyeye ziterwa n’ibibazo binyuranye. Asoza asaba ko ingingo 20 yaregewe yawanwaho.

[89] Inshuti y’Urukiko, Ntibaziyaremye Innocent avuga ko umusoro wa 100% ucibwa ikibanza cyose kidakoreshwa ataribyo kuko hari impamvu nyinshi zishobora gutuma kitarubatswe, cyane cyane kubura amikoro. Akomeza avuga ko hari igihe umuntu ufite ubutaka bumutunze bugashyirwa mu miturire ahita abusorera kandi butakivamo ibimutungana ndetse agahita agira n’umutwaro wo kubusorera ku buryo ashobora no kugera ubwo aburaga abana bakabwanga kuko buriho imisoro batashobora kwishyura.

[90] Uhagarariye Leta y’u Rwanda avuga ko ingingo ya 20 itabangamiye uburenganzira ku mutungo utimukanwa n’uburenganzira ku butaka buteganywa n’ingingo ya 34 n’iya 35 z’Itegeko Nshinga, kuko iyo ngingo ya 20 yaje gutandukanya abantu bakoresha ubutaka icyo bwagenewe n’abatabukoresha, bugakomeza kubaho butanahawe ufite ubushake n’ubushobozi bwo kubukoresha, mu gihe igihugu gikeneye gutera imbere kibyaza umusaruro ubutaka buto gifite. Avuga kandi ko iyo ikibanza gikoreshwa (cyubatswe), cyacibwa

umusoro muke bitewe nuko kigenda gita agaciro (recognition of depreciation), bitandukanye n'ikibanza kitubatse kuko bizwi ko kidata agaciro (depreciated), ahubwo gishobora kongererwa agaciro, ariyo mpamvu ibi byiciro byombi bidashobora gucibwa umusoro ungana.

[91] Asobanura ko ingingo ya 20 itabangamiye uburenganzira ku mutungo utimukanwa n'uburenganzira ku butaka, buteganywa n'Itegeko Nshinga, kuko kuba abantu bacibwa umusoro bitavuze ko bambuwe uburenganzira ku mutungo bwite, ko umutungo wabo wavogerewe cyangwa se ko wahungabanyijwe. Avuga ko n'ubwo byafatwa gutyo, iryo hame ubwaryo rivuga ko « umutungo bwite ushobora guhungabanywa n'inyungu rusange mu buryo bukurikije amategeko», kandi bizwi ko umusoro ubereyeho inyungu rusange kuko ariwo uteza imbere igihugu, bityo, kuba umutungo w'umuntu wasoreshwa umusoro uteganyijwe n'amategeko kugira ngo igihugu kigere ku iterambere, kibone ibikorwa remezo n'ibindi, abanyagihugu bose bafitemo inyungu, bidakwiye gufatwa nko kubangamira uburenganzira ku mutungo bwite cyangwa umutungo bwite w'ubutaka. Yanzura avuga ko hashingiwe kuri ibyo bisobanuro atanze, asanga ingingo ya 20 yaregewe itanyuranyije n'Itegeko Nshinga.

UKO URUKIKO RUBIBONA

[92] Ikibazo gisuzumwa muri iki gice kijyanye no kumenya niba umusoro w'inyongera w'ijana ku ijana (100%) uteganyijwe ku kibanza kidakoreshwa waba ubangamiye cyangwa unyuranye n'ihame ry'uko umuntu afite uburenganzira ku mutungo muri rusange akanagira uburenganzira ku mutungo w'ubutaka by'umwihariko.

[93] Ingingo ya 34 y'Itegeko Nshinga ivuga iti: “buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cyeye cyangwa uwo asangiye n'abandi. Umutungo bwite, uw'umuntu ku giti cyeye cyangwa uwo asangiye n'abandi ntuvogerwa. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko”. Naho iya 35 ikavuga ko: “umutungo bwite w'ubutaka n'ubundi burenganzira ku butaka bitangwa na Leta. Itegeko rigena uburyo bwo kubutanga, kubuhererekanya no kubukoresha”. Izi ngingo zombi zishyiraho amahame abiri yuzuzanya. Iya mbere rirebana n'uburenganzira ku mutungo bwite, irya kabiri rikavuga ku burenganzira ku mutungo w'ubutaka.

[94] Aya mahame agarukwaho n'amasezerano mpuzamahanga atandukanye, hari Universal Declaration of Human Rights, art. 17 (Everyone has the right to own property, alone as well as in association with others and no one shall be arbitrarily deprived of his or her property)²⁰, European Convention on Human Rights, Protocol No. 1, art. 1²¹; American Convention on Human Rights, art. 21, African Charter on Human and Peoples' Rights, art. 14²².

²⁰ Article 17, Universal Declaration of Human Rights

²¹ *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties*

²² *Everyone has the right to property. No one shall be deprived of his property except in the public interest and in accordance with the law (and upon payment of just compensation*

[95] Ingingo ya 20 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage ivuga ako: *“ikibanza cyose kidakoreshwa gicibwa umusoro w'inyongera w'ijana ku ijana (100%) urenga ku gipimo cy'umusoro kivugwa mu ngingo ya 18 y'iri tegeko”*. Iyo ngingo iteganya igipimo cy'umusoro ku kibanza kiri hagati ya zero (0) n'amafaranga y'u Rwanda magana atatu (300 FRW) kurimetero kare.

[96] Ingingo ya 39 igika cya mbere y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda iteganya ko: *“Umuntu wese utunze ubutaka, agomba kubukoresha neza kandi mu buryo bwongera agaciro kabwo no kububyaza umusaruro akurikije kamere yabwo n'icyo bwagenewe. [...]*”. Iyi ngingo ya 39 igaragaza ko utunze ubutaka afite inshingano zo kubukoresha neza no kububyaza umusaruro. Mu gihe utunze ikibanza ariko atagikoresha aba anyuranyije n'ibiteganywa n'iyi ngingo ya 39 kuko ubutaka buba bugomba gukoreshwa keretse hari impamvu yumvikana, isobanutse kandi ishingiye ku mategeko.

[97] Urukiko rusanga umusoro w'inyongera w'ijana ku ijana (100%) urenga ku gipimo fatizo cy'umusoro, uturuka ku kuba abafite ubutaka baba batubahirije iyo nshingano. Gukoresha ubutaka no kububyaza umusaruro bishingiye ku mpamvu z'inyungu rusange igamije iterambere nyaryo mu by'ubukungu n'imibereho myiza y'imbaga y'Abanyarwanda bose. Ibi bihuye n'ibiteganywa n'ingingo ya 3 y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda iteganya ko: *“Ubutaka buri mu murage rusange w'imbaga y'Abanyarwanda bose: abakurambere, abariho ubu ndetse n'abazavuka mu gihe kiri imbere. Uretse uburenganzira abantu bemerewe, Leta ni yo*

yonyine ifite ububasha bw'ikirenga mu gucunga ubutaka bwose buherereye mu mbibi z'umupaka w'Igihugu, ubwo burenganzira ibukoresha ku mpamvu z'inyungu rusange igamije iterambere nyaryo mu by'ubukungu n'imibereho myiza hakurikijwe uburyo buteganywa n'amategeko. [...]"

[98] Igisobanuro cya Leta ko ikigamijwe hashyirwaho umusoro w'inyongera ku bibanza bidakoreshe ari uguca intege abagura ibibanza badakoresha, bashaka kubibika ngo bazabonemo inyungu yo hejuru, Urukiko rusanga iyo mpamvu yumvikana kandi itanyuranye n'Itegeko Nshinga, ijyanye na politike yo gukoresha neza ubutaka buke igihugu gifite no kububuyaza umusaruro mu nyungu rusange

[99] Ku birebana no kuba hari abatazabasha kwishyura umusoro w'inyongera w'ijana ku ijana (100%) bigatuma ubutaka butezwa cyamunara ku girango hishyurwe uwo musoro nk'uko byavuzwe na Murangwa na bamwe mu nshuti z'Urukiko, icyo kibazo cyareberwa mu buryo bwa rusange uko bigenda mu gihe umusoresha atabashije kwishyura umusoro. Nk'uko biteganywa n'ingingo ya 63 na 64 z'Itegeko N° 026/2019 ryo ku wa 18/09/2019 rigena uburyo bw'isoresha, iyo umusoresha atishyuye mu gihe giteganywa n'iryo tegeko, Ubuyobozi bw'imisoro bushobora gufatira umutungo wimukanwa cyangwa utimukanwa w'umusoresha, uri mu maboko ye cyangwa y'undi muntu ugategwa cyamunara. No mu gihe hari utishyuye ku neza umusoro ku butaka mu gihe kigenwa n'itegeko, hashobora kwifashishwa inzira yo kwishyura uwo musoro hatezwa cyamunara umutungo w'umusoresha ushobora no kuba ubutaka busoresha. Ibi, Urukiko rusanga atari ukubangamira uburenganzira

bw'umusoreshwa ku mutungo we ahubwo ari uburyo bwo kwishyura umusoro busanzwe bukoreshwa.

[100] icyangombwa nuko guteza cyamunara atari ikintu kigomba kuba byanze bikunze (inevitable consequences) bitewe n'ibiteganywa n'ingingo ya 20 iregerwa. Nta n'ubushakashatsi bwakozwe bugaragaza ko abadakoresha ibibanza batunze abenshi muri bo babiterwa no kubura ubushobozi cyangwa se niba babibitse bagamije kuzunguka cyane mu gihe kizaza (speculation).

[101] Ingingo ya 31 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage iteganya ko: "Inama Njyanama y'Akarere bireba ntishobora kuvanaho umusoro ku mutungo utimukanwa uretse mu bihe bikurikira: 1°umusoreshwa atanze inyandiko y'ibarura ry'umutungo we igaragaza ko yazahajwe n'imyenda ku buryo kugurisha umutungo asigaranye mu cyamunara ntacyo byatanga; 2°umusoreshwa agaragaje ko adafite ubushobozi bwo kwishyura umusoro ku mutungo utimukanwa. Usaba kuvanirwaho umusoro ku mutungo utimukanwa yandikira urwego rusoresha. Iyo urwo rwego rusanze icyifuzo cy'umusoreshwa gifite ishingiro, rukorera raporo urwego rw'imitegekere y'Igihugu rwegerejwe abaturage bireba, narwo rukayishyikiriza Inama Njyanama y'Akarere kugira ngo ibifateho icyemezo. Gusiba umusoro ku mutungo utimukanwa ntibikorwa ku musoreshwa wagaragaweho kunyereza imisoro". Ibikubiye muri iyi ngingo, bigaragaza ko Leta yatekereje k'udafite amikoro yo kwishyura umusoro ku mutungo utimukanwa. N'ufite ubutaka buvugwa mu ngingo ya 20 utabasha gutanga umusoro biturutse ku mpamvu ziteganywa

n'ingingo ya 31 y'Itegeko N° 75/2018 ryavuzwe haruguru, nawe yasaba kuwusonerwa. Ibi biravanaho impungenge zagaragajwe n'urega na bamwe mu Nshuti z'Urukiko, ko hari abatazabasha kwishyura uwo musoro umutungo wabo ugategwa cyamunara biturutse ku kubura amikoro.

[102] Ku bivugwa na Murangwa ko umusoro w'injongera w'ijana ku ijana (100%) uteganywa mu ngingo ya 20, waba uri ku gipimo cyo hejuru, Urukiko ruributsa ibyo rwavuze mu rubanza RS/SPEC/0001/16/CS rwaciwe n'uru Rukiko ku wa 23/09/2016 aho rwagize ruti: "Urukiko ntirwavuga ko itegeko rinyuranyije n'Itegeko Nshinga rushingiye gusa ku kuba mu myumvire yarwo icyo itegeko ryari rigamije cyagerwaho hakoreshejwe ubundi buryo. Umuburanyi unenga itegeko agomba kugaragaza ko inzira umushingamategeko yahisemo itumvikana, idasobanutse cyangwa se ko, ushyize mu gaciro, iyo nzira ntaho ihuriye n'itego itegeko ryashyiriweho. Ibi bijyanye n'ihame ry'uko inzego z'ubutegetsi bwa Leta zitandukanye kandi ko zigenga zikanubahana"²³. Uyu murongo wafashwe, Urukiko rusanga wakomeza gutyo no muri uru rubanza, rukaba rutasuzuma niba icyo gipimo cy'umusoro ari umurenge cyangwa kiri hasi nk'uko byagarutseweho n'urega na bamwe mu Nshuti z'Urukiko, ngo rubihuze no kunyuranya n'Itegeko Nshinga kuko ibirebana n'ingano y'igipimo cy'umusoro biri mu bubasha n'ubushishozi bw'Inteko Ishinga Amategeko²⁴.

²³ Urubanza RS/SPEC/0001/16/CS, AKAGERA Business, p.29.

²⁴ Reba ingingo ya 164 y'Itegeko Nshinga iteganya ko: Umusoro ushyirwaho, uhindurwa cyangwa ukurwaho n'itegeko. Nta sonerwa cyangwa igabanywa ry'umusoro rishobora gukorwa mu gihe bidateganywa n'itegeko.

[103] Muri rusange, utunze ikibanza cyagenewe inyubako afite uburenganzira busesuye bwo kugikoresha. Mu gihe yasabwa kwishyura umusoro w'inyongera kuko atagikoresheje, ntawishyure ku neza, ukishyuzwa ku ngufu, ntibyafatwa nko kubangamira uburenganzira buri muntu afite bwo gukoresha ubutaka bwe hakurikijwe ibiteganywa n'itegeko. Ibiteganywa n'ingingo ya 1 ya Protocol No 1 to the European Convention on Human Rights, ni urugero rwiza rugaragaza ko kwishyura umusoro bitagomba kwitiranywa no kubangamira uburenganzira bw'umuntu ku mutungo. Iyo ngingo igira iti: *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”*.

[104] Nk'uko byasobanuwe hejuru, ishyirwaho ry'umusoro w'inyongera w'ijana ku ijana (100%) ku kibanza kitubatse, bijyanye no kuba utunze ubutaka aba atubahirije inshingano yo kububya umusaruro no kubukoresha ibyo bwagenewe. Kuba hari abatabasha kwishyura uwo musoro, basaba kuwusonerwa mu gihe bujuje ibisabwa n'ingingo ya 31 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage. Naho kuba uwo musoro waba uri ku gipimo kiri hejuru, ntibyafatwa nk'aho Itegeko riwushyiraho rinyuranye n'Itegeko Nshinga. Kubera izi mpamvu, Urukiko rusanga ingingo ya 20 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari

n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage itanyuranye n'ingingo ya 34 n'ya 35 z'Itegeko Nshinga.

[105] Nubwo ingingo ya 20 y'Itegeko N° 75/2018 rimaze kuvugwa itanyuranye n'Itegeko Nshinga nkuko byasobanuwe, Urukiko rusanga imyandikire yayo yakuzuzwa hagashyirwamo ibirebana n'igihe ubutaka bwamara budakoreshwa bukabona gusoreshwa umusoro w'inyongera, no kuba umusoro w'inyongera utatangwa igihe bigaragara ko hari impamvu yumvikana ituma budakoreshwa nk'uko bimeze ku ingingo ya 58 y'Itegeko N° 43/2013 ryo kuwa 16/06/2013 rigenga ubutaka mu Rwanda ivuga ku birebana n'ubutaka bushobora kwamburwa nyirabwo.

III. ICYEMEZO CY'URUKIKO

[106] Rwemeje ko ikirego cyatanzwe na Murangwa Edward gifite ishingiro kuri bimwe.

[107] Rwemeje ko ingingo ya 16 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage, itanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[108] Rwemeje ko ingingo ya 16 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego z'imitegekere y'Igihugu zegerejwe abaturage itanyuranyije n'ingingo ya 16 y'Itegeko Nshinga.

[109] Rwemeje ko ingingo ya 17 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzego

z'imitegekere y'Igihugu zegerejwe abaturage, itanyuranyije n'ingingo ya 15, n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[110] Rwemeje ko ingingo ya 19 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage, inyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, bityo iyo ngingo ya 19 ikaba nta gaciro igifite nk'uko biteganywa n'ingingo ya 3 y'Itegeko Nshinga.

[111] Rwemeje ko ingingo ya 20 y'Itegeko N° 75/2018 ryo ku wa 07/09/2018 rigena inkomoko y'imari n'umutungo by'inzeho z'imitegekere y'Igihugu zegerejwe abaturage itanyuranyije n'ingingo ya 34 n'iya 35 z'Itegeko Nshinga.

[112] Rutegetse ko uru rubanza rutangazwa mu igazeti ya Leta.