

Re NGENDAHAYO KABUYE

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00004/2021/SC – (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya, Hitiyaremye na Karimunda, J.) 10 Gashyantare 2023]

Itegeko Nshinga – Ikirego kigamije kuvanaho itegeko cyangwa ingingo inyuranyije n'Itegeko Nshinga – Inshuti y'urukiko – Usaba kuba inshuti y'urukiko agomba kuba adasubiramo gusa imvugo z'abaturanyi ahubwo agomba kuba afite ubunararibonye buhagije hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa.

Itegeko Nshinga – Ihame ryo kureshya imbere y'amategeko n'iryo kutavangura – Kuba uwapfakaye adakwiye kugereranywa n'abandi bazungura, ntibyakwitwa ko ari ivangura cyangwa kutareshya imbere y'amategeko kuko aba yabuze uwo bari bafatanyije urugo, basangiye inshingano zarwo, akaba agomba kuzikomeza wenyine ndetse akaba yaragize uruhare mu gushaka umutungo, mu gihe abandi nta ruhare baba barabigizemo.

Itegeko Nshinga – Uburenganzira ku mutungo – Uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z'inyungu rusange kandi hubahirijwe amategeko – Ntawakwemeza ko afite uburenganzira ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze, atari byo yizera kuzabona mu gihe kizaza.

Amategeko agenga umuryango – Izungura – Itangira ry'izungura – Izungura ry'abashyingiranywe bakavanga umutungo ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa – Uburenganzira bw'abazungura busobanuka neza iyo izungura ritangiye, hakamenyekana abazungura nyakuri n'uburyo bazakurikirana.

Incamake y'ikibazo: Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga arusaba kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1^o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 nk'uko ryavugururwe mu 2015 kubera ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine, akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, akavuga ko binyuraniye n'ihame ry'uko abantu bose bareshya imbere y'amategeko nk'uko riteganywa n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryavuzwe haruguru.

Asobanura ko ingingo zavuzwe haruguru zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryavuzwe haruguru, kubera ko zateje amakimbirane mu muryango ashobora no kuba intandaro y'ibindi byaha bikomeye nk'ubwicanyi aho kuwurengera kuko ziha uburenganzira umupfakazi bwo kugumana umutungo wose, izungura rikazaba ari uko apfuye cyangwa yongeye gushaka kandi akanemererwa kuzungura nyakwigendera.

Asoza avuga ko izo ngingo zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye kandi kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye, akanavuga ko kwambura bamwe uburenganzira bwo kuzungura, asanga ari ukubambura uburenganzira ku mutungo kandi kuzungura ari bumwe mu burenganzira bw'ibanze.

Abahagarariye Leta y'u Rwanda bavuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitanyuranye n' ingingo ya 15 y'Itegeko Nshinga kuko zidasumbanya abazungura. Uwapfakaye ntasigarana imitungo y'uwo bari barashyingiranywe wapfuye nk'umuzungura, ahubwo ayisigarana nka nyirayo kuko izungura riba ritarafunguka. Ikindi ni uko iyo ngingo ya 76 (1°) nta vangura iryo ariryo ryose iteza kubera ko iyo umwe mu bashakanye apfuye, uwapfakaye ahabwa n'iyi ngingo ishingano zo kurera abana yabyaranye n'uwo bari barashyingiranywe ndetse n'abo batabyaranye.

Basoza bavuga ko umushingamategeko washyizeho itegeko ryavuzwe yari agamije kurengera cyane cyane uwapfakaye, bitewe n'uko iyo umwe mu bashakanye yapfuye, usigaye cyane cyane umugore yahitaga aterwa hejuru, akavanwa mu mitungo yashakanye na nyakwigendera nyamara bari barasezeranye ivangamutungo. Kuba hari abana batavutse ku bashyingiranywe bashobora guhemukirwa n'uwapfakaye, nabyo umushingamategeko yabitekerejeho, aho amuha izo nshingano zo kurera abana be n'ab'uwapfuye bemewe n'amategeko.

Abahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko, bavuga ko iyo usesenguye izo ngingo zavuzwe haruguru usanga bivuguruzwa ihame ryo kugira uburenganzira n'ububasha bungana ku bashyingiranywe bahisemo ivangamutungo rusange nk'uburyo bw'imicungire y'umutungo wabo kuko muri iryo vangamutungo bumvikana gushyira hamwe umutungo wabo wose, ko kandi buri wese aba afite uburenganzira kuri kimwe cya kabiri cy'umutungo basangiye bombi.

Basoza bavuga ko ingingo ebyiri zaregewe ko zinyuranye n'Itegeko Nshinga, zifite ikibazo kuko iyo uwapfakaye yegukanye umutungo wose akawukoresha uko ashatse kandi hari abandi bazungura, bibangamira ihame ryo kureshya imbere y'amategeko rivugwa mu ngingo ya 15 y'Itegeko Nshinga.

Incamake y'icyemezo: 1. Usaba kuba inshuti y'urukiko agomba kuba adasubiramo gusa imvugo z'abaturanyi ahubwo agomba kuba afite ubunararibonye buhagije hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa.

2. Kuba uwapfakaye adakwiye kugereranywa n'abandi bazungura, ntibyakwitwaga ko ari ivangura cyangwa kutareshya imbere y'amategeko kuko aba yabuze uwo bari bafatanyije urugo, basangiye inshingano zarwo, akaba agomba kuzikomeza wenyine ndetse akaba yaragize uruhare mu gushaka umutungo, mu gihe abandi nta ruhare baba barabigizemo.

3. Uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z'inyungu rusange kandi hubahirijwe amategeko. Ntawakwemeza ko afite uburenganzira ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze, atari byo yizera kuzabona mu gihe kizaza.

4. Uwapfakaye asigarana umutungo wose, izungura rigatangira iyo yongeye gushaka cyangwa apfuye, ateganyirizwa ingano y'umutungo atemerewe gutanga cyangwa kuraga, agahabwa ibihano iyo atuzura inshingano yahawe zo kurera abana yasigiwe na nyakwigendera mu rwego rwo gukumira no kugabanya amakimbirane ashingiye ku izungura.

5. Izungura ry'abashyingiranywe bakavanga umutungo ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa. Uburenganzira bw'abazungura busobanuka neza iyo izungura ritangiye, hakamenyekana abazungura nyakuri n'uburyo bazakurikirana.

Ikirego gisaba kwemeza ko ingingo z'itegeko zinyuranyije n'Itegeko Nshinga, nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubilika y'u Rwanda ryo ku wa 4/06/2003 nk'uko ryavuguruwe mu 2015, ingingo ya 10, 15, 16, 17, 18 n'ya 34.

Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo mu mwaka wa 1948, ingingo ya 7 n'ya 17.

Article 1 of Protocol n° 1 to the European Convention on Human Rights.

Article 239, the National Civil (Code) Act, 2017 (2074).

Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturage yemejwe ku wa 27/06/1981, ingingo ya 3 n'ya 14.

Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 2.

Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura, ingingo ya 8, 49, 51, 52, 55, 56, 57, 59, 73, 75, 76, 83-87, n'ya 94-99.

Itegeko N° 22/99 ryo ku wa 12 Ugushyirahamwe 1999 ryuzuzanya Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyirahamwe igice cya gatanu cyerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura.

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Application no. 34369/97), Thlimmenos v. Greece (Strasbourg 6 April 2000, para 72.

Application n° 69498/01, Pla et Puncernau c. Andorre (2004), Para 26.

Application n° 28369/95, Bourimi v. the Netherlands, (2000), Para.35

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Requête no 1513/03, Draon c. France, (6 octobre 2005), para. 68.

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Urubanza

I. IMITERERE Y'URUBANZA

[1] Me Ngendahayo Kabuye yatanze ikirego mu Rukiko rw'Ikirenga asaba kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 nk'uko ryavugururwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

[2] Izo ngingo enye (4) urega asaba Urukiko rw'Ikirenga kwemeza ko zinyuranyije n'Itegeko Nshinga, zikubiye mu byiciro bibiri bikurikira:

- icyiciro cya mbere kigizwe n'ingingo ya 8, igika cya 2 hamwe n'ingingo ya 76 (1°). Ingingo ya 8, igika cya 2 iteganya ko iyo uburyo bw'ivangamutungo rusange ku bashakanye busheshwe kubera urupfu rw'umwe mu bari barashyingiranywe, umutungo wegukanwa n'uwapfakaye kugeza igihe izungura rikorewe. Iya 76 (1°) yo iteganya ko abashyingiranywe bafitanye amasezerano y'ivangamutungo rusange bazungurwa mu buryo bukurikira: iyo umwe apfuye usigaye yegukana umutungo wose akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko.
- icyiciro cya kabiri kigizwe n'ingingo ya 52, igika cya 3 hamwe n'ingingo ya 75. Ingingo ya 52, igika cya 3 iteganya ko izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyingirwa, keretse iyo itegeko ribiteganywa ukundi. Iya 75 iteganya ko uwapfakaye afite uburenganzira bwo kugira uruhare mu izungura ry'umutungo wasizwe n'uwo bari barashyingiranywe; Uwapfakaye uhamagawe mu izungura, azungurana mu buryo bungana n'abazungura bo ku rwego rwa mbere.

[3] Me Ngendahayo Kabuye avuga ko akurikije ibiteganywa n'izo ngingo zavuzwe haruguru, abona zinyuranyijije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavugururwe mu 2015¹, kuko byagaragaye ko iyo umwe mu bashyingiranywe apfuye, hakaboneka abandi bana abo babyeyi badahuriyeho ndetse n'abandi bazungura muri rusange, umubyeyi usigaye yishingikiriza izo ngingo maze akikubira imitungo wenyine, akigizayo abo bazungura cyane cyane iyo atabafiteho inshingano zo kubarera. Avuga ko hari n'igihe aba afite izo nshingano ariko ntazuzuzwe nk'uko bikwiriye, bigateza amakimbirane mu murungano ndetse hakavuka imanza za hato na hato.

¹ Ingingo ya 15 iteganya ko abantu bose barashyamba imbere y'amategeko kandi barengerwa ku buryo bungana. Iya 18 yo ivugako umuryango niwo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Mu gika cya gatatu ikavugako ko Leta ishyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

Iya 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 utavogerwa. Uburenganzira ku mutungo ntubuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko.

[4] Avuga kandi ko mu manza zitandukanye abo bazungura bagiye batsindwa, umupfakazi akikubira umutungo wenyine, kandi ihame ari uko abantu bose bareshya imbere y'amategeko, ndetse Leta ikaba ariyo igomba kurengera abana, bakagira uburenganzira ku mutungo wasizwe n'umubyeyi wabo no gukumira amakimbirane mu muryango.

[5] Iburanisha ry'uru rubanza ryabaye ku wa 13/01/2022, Me Ngendahayo Kabuye, yunganiwe na Me Umulisa Kayigamba Alice afatanyije na Me Serugo Jean-Baptiste, naho Leta y'u Rwanda ihagarariwe n'intumwa zayo, Me Kayitesi Petronille hamwe na Me Ntwali Emile.

[6] Iburanisha ritangiye, Urukiko rwabanje gufata icyemezo ku busabe rwashyikirijwe n'Umuryango Nyarwanda uharanira uburenganzira bw'umwana n'umugore (HAGURUKA) uhagarariwe na Umuhiza Ninette, ukaba warasabye kwemererwa kuba Inshuti y'Urukiko (*Amicus Curiae*) muri uru rubanza. Urukiko rwasanze nta kintu gishya kivugwa n'uwo Muryango gitandukanye n'ibyagaragajwe n'umwe mu baburanyi cyatuma wemererwa kuba Inshuti y'Urukiko kugira ngo uzarwunganire mu guca urubanza. Rwabishingiye ku murongo rwatanze ku kibazo nk'iki mu rubanza rwa *Democratic Green Party of Rwanda*, aho rwasobanuye ko kugira ngo umuntu cyangwa umuryango bemerewe kuba Inshuti y'Urukiko, hagomba kuba hari icyo bagaragaza ko barwunganira kandi gitandukanye n'ibivugwa n'ababuranyi². Rwanzuye ko umuryango Haguruka utemerewe kuba Inshuti y'Urukiko muri uru rubanza.

[7] Iburanisha ryarakomeje, ababuranyi bajya impaka ku kibazo cyo kumenya niba Ngendahayo Kabuye afite inyungu zo gutanga ikirego kirebana no kwemeza ko ingingo ya 8, igika cya 2, iya 52, igika cya 3, iya 75 n'iya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura, zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[8] Mu rubanza rubanziriza urundi rwaciwe ku wa 18/02/2022, Urukiko rushingiye ku murongo rwatanze mu rubanza RS/INCONST/SPEC 00002/2018/SC rwa Mugisha Richard, rwasanze Ngendahayo Kabuye nk'Avoka ufite uruhare muri sosiyete rwo guteza imbere amategeko, kandi nk'umunyarwanda urebwa n'ibiteganywa n'itegeko aregera, afite inyungu zo gutanga ikirego gisaba kwemeza ko zimwe mu ngingo z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyiranywe, impano n'izungura, zinyuranyije n'Itegeko Nshinga, kabone n'ubwo byaba bigaragara ko nta nyungu zihariye agifitemo.

[9] Ku wa 12/04/2022, iburanisha ryarakomeje Ngendahayo Kabuye yunganiwena Me Umulisa Kayigamba Alice na Me Serugo Jean-Baptiste, Leta y'u Rwanda ihagarariwe n'intumwa zayo: Me Kayitesi Petronille na Me Kabibi Spéciose; naho Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko) rihagarariwe na Uwineza Odette na Dr Turamwishimiye Marie Rose.

[10] Kuri uwo muni, hasuzumwe ubusabe bw'Ishuri ry'Amategeko rya Kaminuza y'u Rwanda bukubiye mu nyandiko yo ku wa 08/04/2022, bwo kuba inshuti y'urukiko muri uru rubanza. Urukiko rwasanze iryo shuri ryujuje ibisabwa, byatuma ryemererwa kuba Inshuti yarwo muri uru rubanza birimo kuba usaba kuba inshuti y'urukiko adasubiramo gusa imvugo z'ababuranyi ahubwo agomba kuba afite ubunararibonye buhagije, hamwe no kuba akora ubushakashatsi ku bibazo bijyanye n'ikirimo kuburanwa, bityo rwemeza ko Ishuri ry'Amategeko rya Kaminuza y'u Rwanda riguma mu rubanza nk'inshuti y'urukiko.

² Reba urubanza RS/SPEC/0002/15/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/09/2015 haburana Democratic Green Party of Rwanda, igika cya 5.

[11] Me Kabibi Spéciose, uhagarariye Leta y'u Rwanda, yasabye ko iburanisha risubikwa kugira ngo babanze basesengure neza imyanzuro ivuguruye yatanzwe n'abahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, kuko bayibonye bakererewe. Urukiko rwimuye iburanisha, ababuranyi bamenyeshwako rizasubukurwa ku wa 19/09/2022, ariko uwo munsu ntirwaburanyishwa kubera ko abahagarariye Leta y'u Rwanda bari mu mahugurwa, iburanisha ryimurirwa ku wa 22/11/2022.

[12] Kuri icyo tariki, iburanisha ryakomeje Me Ngendahayo Kabuye yunganiwe na Me Umulisa Kayigamba Alice, Leta y'u Rwanda ihagarariwe n'intumwa zayo: Me Kayitesi Petronille na Me Kabibi Spéciose, Ishuri ry'Amategeko rya Kaminuza y'u Rwanda rihagarariwe na Uwineza Odette na Dr Turamwishimiye Marie Rose.

[13] Ababuranyi bagiye impaka ku kibazo cyo kumenya niba ingingo enye (4) zavuzwe haruguru zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda. Naho ku bijyanye n'ikibazo cyo kumenya niba ingingo ya 8, igika cya 2; iya 52, igika cya 3; iya 75 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zibangamiye ishyirwa mu bikorwa ry'izindi ngingo zirebana n'izungura ndetse n'andi mategeko mboneza mubano, Urukiko rwemeje ko kitasuzumwa kubera ko atari ikibazo gisaba Urukiko kwemeza ko itegeko rinyuranyije n'Itegeko Nshinga³.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

1. Kumenya niba ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015

[14] Ngendahayo Kabuye avugaga ko ingingo ya 8, igika cya 2, y'Itegeko n° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura n'ya 76 (1°) zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu 2015, kuko zisumbanya abafite uburenganzira ku mutungo w'uwafuye.

[15] Akomeza asobanura ko ingingo ya 15 y'Itegeko Nshinga ivugaga ko abantu bose bareshya imbere y'amategeko kandi itegeko rikabarengera kimwe, nyamara Umushingamategeko akaba yarafashe uburenganzira bufitwe n'abantu benshi akabwegurira uwafakaye, akaba yaramurengeye ariko akibagirwa abandi, kubera ko afite uburenganzira ahabwa n'itegeko bwo kuzungura, akagira n'uburenganzira ku mutungo yari asangiye n'uwo bashyingiranywe wafuye.

[16] Avugaga kandi ko izo ngingo zibangamiye uburenganzira bwo kureshya imbere y'amategeko buteganywa mu ngingo 15 y'Itegeko Nshinga, kuko zitanga uburenganzira bw'umurenge ku mufakazi kuko afite uburenganzira akomora ku masezerano yagiranye na nyakwigendera mu ishyingirwa, ko niba ari amasezerano y'ivangamutungo rusange, uwafakaye afite 50% y'umutungo wose, niba ari ivangamutungo w'umuhahano, uwafakaye afite umutungo we bwite akongera akagira 50% y'umutungo w'umuhahano, byaba ivanguramutungo risesuye, uwafakaye akaba afite umutungo we bwite kuko aribyo yahisemo. Asanga kongera kumugira umuzungura w'uwo bari barashyingiranywe ari ukumuha uburenganzira bw'umurenge ugereranyije n'abandi bazungura.

[17] Ngendahayo Kabuye anavugaga ko uko gusumbanya abantu ari byo byatumye atanga ikirego kugira ngo agaragarize Urukiko rw'Ikirenga ko ingingo zavuzwe haruguru zinyuranye n'Itegeko Nshinga cyane cyane mu ngingo yaryo ya 15 kuko n'ingingo ya 10, agace ka 5°, y'iryo Tegeko

³ Iyi ngingo iteganywa ko Urukiko rw'Ikirenga ari rwo rufite ububasha bwo kuburanisha ibirego byerekeranye no kwemeza ko itegeko rinyuranyije n'Itegeko nshinga, ikanasobanura uburyo bene ibyo birego bitangwa.

Nshinga iteganya ko 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 ingingo ya 16 yaryo ikavuga ko abanyarwanda bavuka kandi bagakomeza kugira uburenganzira n'ubwisanzure bungana, nta vangura iryo ari ryo ryose.

[18] Avuga kandi ko ihame ryo kureshya imbere y'amategeko risobanura ko amategeko akurikizwa kimwe ku bantu bose kandi ku buryo bumwe, ko kubahiriza amategeko bidashobora gukorwa ku buryo bunyuranye ku bintu bisa, ibyo bikavuga ko mu gihe hari abantu batandukanye bafite uburenganzira bahabwa n'itegeko, bidashoboka ko bamwe babuhabwa abandi bakabubuzwa.

[19] Yongeraho ko iri hame ridateganyijwe mu Itegeko Nshinga gusa, kuko riboneka no mu ngingo ya 7 y'Itangazo Mpuzamahanga ryerekeye uburenganzira bwa muntu, mu ngingo ya 2 (1) y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'imbenezamubano no mu bya politiki, mu ngingo ya 2 y'Amasezerano mpuzamahanga yerekeye uburenganzira mu by'ubukungu, imibereho myiza n'umuco, ndetse no mu ngingo ya 2 y'Amasezerano Nyafurika yerekeye uburenganzira bwa muntu n'ubw'abaturage. Avuga kandi ko uwitwa Erwin Chemerinsky asobanura iryo hamwe mu magambo akurikira: "*Things that are alike should be treated alike, and things that are unlike should be treated unlike in proportion to their unalikehood*".⁴ Mu kinyarwanda bikaba bivuze ko ibintu bimeze kimwe bifatwa kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo.

[20] Me Umulisa Kayigamba Alice, wunganira Ngendahayo Kabuye, avuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru, ziha uwapfakaye uburenganzira bwo gusigarana umutungo wose ariko ko byagaragaye ko uwapfakaye awukoresha uko ashaka, akawugurisha, cyangwa akabeshaho neza abana be yabyaranye na nyakwigendera, naho abo nyakwigendera yabyaye hanze ntabiteho.

[21] Me Kayitesi Petronille, uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubilika y'u Rwanda kuko zidasumbanya abazungura. Avuga ko kureshya imbere y'amategeko bivuze gufata kimwe abantu bari mu buryo no mu bihe bimwe, ko kandi hashingiwe ku ngingo ya 8, igika cya 2 yavuzwe haruguru, uwapfakaye adasigarana imitungo y'uwo bari barashyingiranywe wapfuye nk'umuzungura, ahubwo ayisigarana nka nyirayo kuko izungura riba ritarafunguka.

[22] Avuga kandi ko n'ingingo ya 76 (1°) y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa itanyuranye n'iya 15 y'Itegeko Nshinga kuko nta vangura iryoariryo ryose iteza kubera ko iyo umwe mu bashakanye apfuye, uwapfakaye ahabwa n'iyi ngingo ishingano zo kurera abana yabyaranye n'uwo bari barashyingiranywe ndetse n'abo batabyaranye.

[23] Me Kabibi Speciose, nawe uhagarariye Leta y'u Rwanda, ashimangira ko ingingo ebyiri zimaze kuvugwa zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga, kuko abantu batari mu bihe bimwe badashobora kureshyeshywa, ko kandi nta wigeze wamburwa uburenganzira bwo kuzungura. Yongeraho ko umushingamategeko washyizeho itegeko ryavuzwe yari agamije kurengera cyane cyane uwapfakaye, bitewe n'uko iyo umwe mu bashakanye yapfaga, usigaye cyane cyane umugore yahitaga aterwa hejuru, akavanwa mu mitungo yashakanye na nyakwigendera nyamara bari barasezeranye ivangamutungo. Akomeza avuga ko kuba hari abana batavutse ku bashyingiranywe bashobora guhemukirwa n'uwapfakaye, nabyo umushingamategeko yabitekerejeho, ariyo mpamvu yahaye uwapfakaye ishingano zo kurera abana be n'ab'uwapfuye bemewe n'amategeko.

⁴ Chemerinsky, Erwin, In defense of equality: A reply to Professor Westen, Mich. L. Rev. 81 (1982): 575.

[24] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda ryaje mu rubanza nk'Inshuti y'Urukiko, bavuga ko iyo usesenguye igika cya 2 cy'ingingo ya 8 y'Itegeko N° 27/2016 ryagarutsweho haruguru n'ingingo ya 76 (1°), usanga bivuguruza ihame ryo kugira uburenganzira n'ububasha bungana ku bashyingiranywe bahisemo ivangamutungo rusange nk'uburyo bw'imicungire y'umutungo wabo kuko muri iryo vangamutungo bumvikana gushyira hamwe umutungo wabo wose, ko kandiburi wese aba afite uburenganzira kuri kimwe cya kabiri cy'umutungo basangiyebombi (*Undivided half interest*).⁵

[25] Bakomeza bavuga ko ihame ryo kungana k'uburenganzira n'ububasha abashyingiranywe bagira mu gihe bahisemo ivangamutungo rusange, rigira inkurikizi ku ruhare buri wese agomba kubona igihe habaye iseswa ry'amasezerano yo gushyingirwa ku mpamvu zitandukanye harimo n'urupfu. Basaza bavuga ko ingingo ebyiri zaregwe ko zinyuranye n'Itegeko Nshinga zifite ikibazo kuko iyo uwapfakaye yegukanye umutungo wose akawukoresha uko ashatse kandi hari abandi bazungura, bibangamira ihame ryo kureshya imbere y'amategeko rivugwa mu ngingo ya 15 y'Itegeko Nshinga.

UKO URUKIKO RUBIBONA

[26] Mbere yo gusuzuma niba ingingo ya 8, igika cya 2 n'iya 76, (1°) z'Itegeko N° 27/2016 ryo kuwa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'Itegeko Nshinga nk'uko urega abivuga, ni byiza kubanza gusobanura amwe mu mahame ashimangirwa muri iryo Tegeko Nshinga kandi ajyanye n'uru rubanza, ni ukuvuga ihame ryo kureshya imbere y'amategeko n'iryo kutavangura.

Ihame ryo kureshya imbere y'amategeko n'iryo kutavangura

[27] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015, iteganya ko abantu bose barashya imbere y'amategeko. Itegeko ribarengera ku buryo bumwe. Ibikubiye muri iyi ngingo biraza guhinwa mu bice bikurikira, hakoreshwe ihame ryo kureshya imbere y'amategeko.

[28] Ingingo ya 16 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04 Kamena 2003 ryavuguruwe mu 2015 ivuga ko abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Ivugura 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. Ibisobanuwe muri iyi ngingo biraza kugarukwaho mu bice bikurikirika nk'ihame ryo kutavangura.

[29] Amahame yo kureshya imbere y'amategeko no kutavangura ateganywa no mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono. Urugero ni ingingo ya 7 y'Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo mu mwaka wa 1948, ivuga ko abantu bose barashya imbere y'amategeko kandi barengerwa kimwe n'amategeko nta vangura iryo ari ryo ryose⁶ (*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*).

⁵ Thomas M. Featherston, Jr. Separate Property or community Property: An introduction to marital property law in community property States, Texas: Baylor University, School of Law, 2016, P.4.

⁶ Assembly, UN General, Universal declaration of human rights, UN General Assembly 302.2 (1948): 14-25.

[30] Hari kandi ingingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira Mbonezamubano n'ubwa Politiki⁷ yo mu 1966, iteganya ko abantu bose bareshya imbere y'amategeko, ko kandi barengerwa kimwe n'amategeko nta vangura iryo ari ryo ryose (*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*).

[31] Ingingo ya 3 y'Amasezerano Nyafurika y'Uburenganzira bwa Muntu n'Abaturage yemejwe ku wa 27/06/1981, nayo iteganya ko abantu bose bareshya imbere y'amategeko kandi itegeko rikabarengera ku buryo bumwe (*Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law*)⁸.

[32] Amahame yibukijwe haruguru yasobanuye kandi n'abahanga mu mategeko, inkiko hamwe n'izindi nzego zirebwa n'uburenganzira bwa muntu. Inkoranyamagambo y'uburenganzira bwa muntu isobanura ko ihame ryo kureshya imbere y'amategeko ryumvikanisha ko itegeko rirengera abantu bose nta kubavangura (*Le principe d'égalité devant la loi suppose que la loi protège tout le monde sans discrimination*)⁹. Ivangura ryo risobanurwa nko gutandukanya abantu ushingiyeye ku bintu bitemewe (*La discrimination est définie comme une différenciation des personnes ou des situations, sur la base d'un ou plusieurs critère(s) non légitime(s)*)¹⁰. Ihame ryo kutavangura risobanuye rero kwirinda gutandukanya abantu nta mpamvu.

[33] Ibisobanuro bitangwa n'abahanga mu mategeko bihura n'ibyemejwe n'inkiko. Mu rubanza rw'Akagera Business Group rwaciwe n'uru Rukiko ku wa 23/09/2016, Urukiko rwagaragaje ko ingingo ya 15 n'ya 16 z'Itegeko Nshinga zifitanye isano ku buryo mu kuzisobanura zidakwiye gutandukanywa. 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 Nshinga¹¹.

[34] Ibijyanye n'uko amahame yavuzwe haruguru agomba kureberwa hamwe, byanavuzwe mu rubanza rwa Rev. Christopher Mtikila n'abandi¹² baburanye na Tanzania, rwaciwe n'Urukiko Nyafurika rushinzwe uburenganzira bwa muntu n'abaturage, aho urwo Rukiko rwasobanuye ko ihame ryo kudakorerwa ivangura rifitanye isano n'iryo kureshya imbere y'amategeko (*...the right not to be discriminated against is related to the right to the equal protection by the law...*). Ibi kandi urwo Rukiko rwanabishimangiye mu zindi manza zakurikiyeho.¹³

[35] Na none kandi, Akanama kagenzura iyubahirizwa ry'uburenganzira bwa muntu k'Umuryango w'Abibumbye¹⁴ nako kavuze ko kudakorerwa ivangura, kureshya imbere y'amategeko no kurengerwa

⁷ International Covenant on Civil and Political Rights/Pacte International des droits civils et politiques

⁸ African (Banjul) Charter On Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

⁹ Dictionnaire des droits de l'Homme, sous la direction de Joël Andriantsimbazovina, Hélène Gaudin, Jean-Pierre Maguénaud, Stéphane Rials et Frédéric Sudre, Presses Universitaires de France, 2008, p.284.

¹⁰ Dictionnaire de Droit International Public, sous la direction de Jean Salmon, Bruylant, Bruxelles, 2001, p.344.

¹¹ Urubanza RS/SPEC/0001/16/CS, Akagera Business Group, rwaciwe ku itariki ya 23/09/2016, igika cya 29. Urwo rubanza ruvugwa kandi mu rubanza RS/INCONST/SPEC 00001/2019/SC, Murangwa Edward, rwaciwe ku wa 29/11/2019, igika cya 32.

¹² Application 011/2011, Rev.Christopher Mtikila v. United Republic of Tanzania, par. 119.

¹³ Application 001/2014 - APDH v. Republic of Cote d'Ivoire, par.146, Application 022/2017 Harold Muthali v. Malawi, par.81.

¹⁴ United Nations Human Rights Committee/Comité des Nations-Unies sur les droits de l'homme.

n'amategeko mu buryo bumwe nta vangura, bigize ihame rimwe shingiro kandi rusange ryerekeye kurinda no kurengera uburenganzira bwa muntu: *"Non discrimination, together with equality before the law and equal protection of the law without discrimination, constitute a basic and general principle relating to the protection of human"*.¹⁵

[36] Hashingiwe ku bisobanuro byatanzwe haruguru, biragaragara ko ihame ryo kureshya imbere y'amategeko rijyana n'iryo kutavangura, kandi ayo mahame yombi akaba afitanye isano. Kubera iyo mpamvu, agomba gusomerwa hamwe kuko yombi ahuriza ku kintu cy'ingenzi cyo kudasumbanya abantu mu byo betemewe cyangwa babujijwe nta mpamvu, ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko.

Kudafata kimwe abantu cyangwa itsinda ry'abantu byafatwa buri gihe nko kutubahiriza ihame ryo kureshya imbere y'amategeko n'iryo kutavangura?

[37] Mu gushaka igisubizo cy'iki kibazo, ni byiza kureba nanone uko inkiko zitandukanye n'izindi nzego zikemura ibibazo bijyanye n'uburenganzira bwa muntu hamwe n'inyandiko z'abahanga mu mategeko zagiye zikivugaho.

[38] Mu rubanza rwa Marckx aburana n'Ububirigi, Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu rwagaragaje ko hemezwa ko habayeho kunyuranya n'ihame ryo kutavangura, iyo: a) Abantu bari mu bihe bimwe bafashwe mu buryo butandukanye; b) iyo uko kubatandukanya kudashingiye ku mpamvu yumvikana kandi ishyize mu gaciro; cyangwa iyo c) impamvu yashingiweho n'uburyo bwakoreshejwe ntaho bihuriye. Rwabivuze muri aya magambo: *"a violation of the principle of non-discrimination arises if: a) equal cases are treated in a different manner; b) a difference in treatment does not have an objective and reasonable justification; or c) if there is no proportionality between the aim sought and the means employed"*.¹⁶

[39] Nanone mu rubanza rw'Akagera Business Group rwavuzwe mu gika cya 33 cy'uru rubanza, uru Rukiko rwasobanuye ko kureshya imbere y'amategeko no kutavangura bitavuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura. Gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (*legitimate or rational purpose*).¹⁷

[40] Akanama k'Umuryango w'Abibumbye kavuze ko uburenganzira bwo kureshya imbere y'amategeko no kurengera n'amategeko mu buryo bungana nta vangura, budasobanura ko gufata abantu mu buryo butandukanye buri gihe biba ari ivangura. Ibi kabisobanuye mu rubanza rwa Muller and Engelhard baburana na Namibia muri aya magambo: *"The Committee reiterates its constant jurisprudence that the right to equality before the law and to the equal protection of the law without any discrimination does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26"*.¹⁸

[41] Ibyasobanuwe n'ako Kanama bihura n'ibyasesenguwe n'Urukiko rushinzwe iyubahirizwa ry'uburenganzira bwa muntu mu bihugu bya Amerika yo hagati n'iyepfo (*Inter American Court of*

¹⁵ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/GEN/1/Rev.1 at 26 (1994).

¹⁶ Application n°6833/74, Marckx v. Belgium, 13 June 1979, para.48.

¹⁷ Reba urubanza RS/SPEC/0001/16/CS, haburana Akagera Business Group, op.cit, par 18. Urwo rubanza rwanagarutsweho mu rundi rubanza RS/INCONST/SPEC 00001/2019/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019 haburana Murangwa Edward, igika cya 35.

¹⁸ HRC, Muller and Engelhard v Namibia (Communication N°. 919/00), para 6.7. Uru rubanza rwanagarutsweho mu rubanza RS/INCONST/SPEC 00001/2019/SC rwaciwe ku wa 29/11/2019 haburana Murangwa Edward, igika cya 36.

Human Rights), aho rwavuze ko kubera ko ihame ry'ubutegetsi y'amategekako n'iryo kutavungura bishingiye ku bumwe bw'inyoko muntu bigendanye n'agaciro k'abantu bose, gutandukanya abantu ubwabyo bidafatwa nk'ivungura kuko uburyo bwose bwo gutandukanya abantu butagira ingaruka ku gaciro kabo nk'abantu, bitewe n'uko habaho gutandukanya abantu mu mategekako ariko bitanyuranye n'ihame ry'ubutegetsi. (*Precisely because equality and non-discrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in legal treatment are in themselves offensive to human dignity. There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate the principle of justice*).¹⁹

[42] Urwo Rukiko runasobanura ko ahubwo kudafata abantu kimwe bikozwe na Leta ikabashyira mu byiciro ikurikije ibintu bibatandukanya bidakwiye gufatwa nko kubavungura mu gihe uko gushyira abantu mu byiciro bifite impamvu yumvikana kandi uburyo bwakoreshejwe bukaba bugamije kugera kuri iyo mpamvu (*It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule...*)^{20[2]}.

[43] Mu rubanza rwa *Thlimmenos v. Greece*, Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera Uburenganzira bwa Muntu rwagarutse ku bimaze kuvugwa, ruvuga ko Leta zifatwa nk'izarenze ku ngingo ya 14 y'Amasezerano ibuzaza ivungura, iyo zafashe mu buryo butandukanye abantu bari mu bihe bimwe kandi nta mpamvu yumvikana zitanga. Rwabisobanuye mu magambo akurikira: "*The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification*".

[44] Urundi rubanza rwagize icyo ruvuga kuri iki kibazo ni urwa Tanganyika Law Society n'abandi²¹, aho Urukiko Nyafurika rushinzwe Uburenganzira bwa muntu n'abaturage, rwasobanuye ko ibyemezo by'inkiko ku bijyanye n'imbago zishobora kuba ku burenganzira byerekana ko, mu bihugu bigendera kuri demokarasi, ari ngombwa ko hashyirwaho imbibi ku burenganzira bw'abantu, kandi ko ubwo burenganzira bugomba kugarukira mu mbago z'ibikenewe kandi bikwiye, bigahuzwa n'akamaro bizagira (*The jurisprudence regarding the restrictions on the exercise of the rights has developed the principle that, the restrictions must be necessary in a democratic society; they must reasonably proportionate to the legitimate aim pursued...*).²²

[45] Urukiko rw'Ikirenga rwa Canada, mu rubanza rwa *Andrews c. Law Society of British Columbia*, rwavuze ko kuba itegeko ryatandukanya abantu runaka bitavuze buri gihe ko bigomba gutera ubusumbane kuko hari igihe n'itegeko rishobora gufata abantu ku buryo bumwe nyamara bikarangira biteye ubusumbane bukabije (*Le point de vue selon lequel "les personnes qui se trouvent dans une situation identique doivent être traitées de façon identique" n'entraînera pas nécessairement l'égalité, pas plus que toute distinction ou différence de traitement ne produira forcément une inégalité.... Il faut cependant reconnaître dès le départ que toute différence de traitement entre des individus dans la loi ne produira pas forcément une inégalité et, aussi, qu'un traitement identique peut fréquemment engendrer de graves inégalités*)²³.

¹⁹ I-A Court H.R., Proposed Amendment to the Naturalization Provision of the Constitution of Costa Rica, Advisory Opinion OC 4/84 of Jan 19, 1984, series A N° 4, p.104-106 paras 56-57.

²⁰ Idem.

²¹ Application no. 34369/97), *Thlimmenos v. Greece* (Strasbourg 6 April 2000, para 72).

²² Application 011/2011-Rev. *Christopher Mtikila v. United Republic of Tanzania* (merits), para 106.1.

²³ *Andrews c. Law Society of British Columbia* - [1989] 1 RCS 143 - 1989-02-02, para. 52: rwabishingiye ku byavuzwe n'umucamanza Frankfurter, ko yari umunyabwenge cyane umuntu wavuze ko nta busumbane bukabije bukenze gufata

[46] Mu isesengura zagiye zikora, mu manza zinyuranye, inkiko zimwe zasobanuye ku buryo bwihariye ibijyanye n'impamvu Leta isabwa kuba ifite cyangwa inyungu igomba kurengera, kugira ngo itaza gufatwa nk'aho yatandukanyije cyangwa yavanguye abantu ntacyo ishingiyeho, cyangwa se ko yakoresheje uburyo butajyanye n'itego yihaye. Zinagaragaza uburyo inkiko zigenzura ko Leta cyangwa inzego zayo zubahirije amategeko.

[47] Mu rubanza rwa Murat Vural na Turkey, Urukiko rw'Uburayi rushinzwe uburenganzira bwa muntu rwasobanuye ko mu gihe Urukiko rusuzuma ikibazo cy'iyubahirizwa ry'uburenganzira bwa muntu, rugomba gusuzuma urubanza rwose, by'umwihariko rukaba rugomba kuzengura niba imbago zashyizwe ku burenganzira zijyanye n'itego Leta ikurikiranye, rukareba kandi niba impamvu itanga zifite ishingiro kandi zihagije (*In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient"*).²⁴

[48] Urwo Rukiko rwongeye kubishimangira no mu rubanza Olsson yaburanye na Suède, aho rwavuze ko ku bijyanye by'umwihariko n'impamvu zishingiye ku mibereho y'abaturage, ari ngombwa kureba niba Leta yarafashe icyemezo yabanje gushishoza neza kandi ishingiye ku mpamvu zifite ireme kandi zumvikana (*En ce qui concerne les raisons sociales impérieuses, la Cour vérifie, non seulement si l'État concerné a usé de son pouvoir d'appréciation en bonne foi, mais également si les raisons avancées sont pertinentes et suffisantes*).²⁵

[49] Urukiko rw'Ikirenga rw'igihugu cy'Uburundi, mu rubanza Morarjee aburana na Union of India, narwo rwemeje ko kuvuga ko umuntu yafashwe bitandukanye n'abandi gusa ubwabyo bidahagije kugira ngo byitwe ko yakorewe ivangura, ahubwo ubivuga agomba kugaragaza ko yafashwe bitandukanye n'abandi bari mu cyiciro kimwe na we, kandi nta mpamvu yumvikana (*An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made*)²⁶.

[50] Mu rubanza rwa Uwinkindi Jean, Urukiko rw'Ikirenga rwasobanuye ko gushyira abantu mu byiciro bigomba gukorwa hagamijwe kugera ku ntego yumvikana, igaragarira buri wese inashingiye ku mategeko kandi ibyashingiweho bikaba bifite ireme mu nyungu rusange.²⁷

[51] Nk'uko byavuzwe haruguru, usibye inkiko zinyuranye zagiye zisobanura ihame ryo kureshya imbere y'amategeko n'iryo kutavangura, abahanga mu mategeko nabo batanze ibisobanuro kuri ayo mahame. Daniel Lochak avuga ko ihame ryo kureshya imbere y'amategeko, rikwiye kumvikana nk'ihame ryo kutavangura, ridahatira gufata abaturage mu buryo busa, ahubwo ribuza uburyo butandukanye bwo gufata abantu mu buryo budakurikije amategeko, ni ukuvuga budashingiye ku itandukaniro riri hagati y'abantu (*Le principe d'égalité, qu'il convient d'interpréter plutôt, désormais, comme un principe de non-discrimination, n'impose plus de traiter tous les membres de la société de façon inégale, mais il proscrie les différences de traitement illégitimes, c'est-à-dire non justifiées par des différences de situation*).²⁸

abantu mu buryo bumwe kandi batareshya (*C'était un homme sage celui qui a dit qu'il n'y avait pas de plus grande inégalité que l'égalité de traitement entre individus inégaux*).

²⁴ Application n°. 9540/07, Murat Vural v. Turkey, of 21/01/2015, para. 64.

²⁵ Requête n° 10465/83, Olsson c. Suède, (24 Novembre 1988) n° 130 (A), para. 68.

²⁶ Morarjee Rajkotia & Ors vs Union of India & Ors case n° 46 of 1965, on 4 February, 1966, para 8.

²⁷ Reba urubanza n° RS/INCONST/PEN 0005/12/CS rwaciye ku wa 22/02/2013, igika cya 16.

²⁸ Danièle Lochak, Les minorités et le droit public français. Du refus des différences à la gestion des différences. Alain Fenet; Gérard Soulier. Les minorités et leurs droits depuis 1789, L'Harmattan, pp.111-189, 1989.

[52] Undi muhanga, Olivier Jouanjan asobanura ko gushaka byanze bikunze gufata abantu kimwe bishobora ahubwo kubyara kubatandukanya bikomeye haba mu buzima busanzwe cyangwa mu mibereho y’abantu ku buryo byanavamo kubavangura (*Une identité formelle de traitement peut induire une différence substantielle, réelle, sociale et, le cas échéant, une discrimination*).²⁹

[53] André Viola nawe yifashishije ibyavuzwe na M. Pelissier, yasobanuye ko kureshya imbere y’amategeko bidashingiye gusa ku kuba abantu bafatwa kimwe, ahubwo binashingiye no mu kugereranya ababa bagomba kureshya imbere y’amategeko kuko kudafata kimwe abantu bigaragara ko batandukanye aribwo buringanire (*Comme le souligne M. Pélissier, l’égalité n’est pas seulement une identité de traitement, elle est la qualité d’un rapport entre deux termes déclarés comparables. Par conséquent, une différence de traitement à la mesure d’une différence de situation constitue une relation d’égalité*)³⁰.

[54] Umuhanga mu mategeko Cécile Barrois de Sarigny we asobanura ko Abacamanza iyo basuzuma ihame ryo kureshya imbere y’amategeko barireba mu buryo bwagutse, ibyo bigatuma mu igenzura bakora birinda gusimbura inzego za Leta ku bijyanye n’uburyo nyabwo bwo kugera ku ntego zigamijwe (*Les juges appréhendent la norme d’égalité prise dans sa généralité, ce qui les conduit à opérer un contrôle distancié garantissant qu’ils ne substituent pas leur propre appréciation à celle des pouvoirs publics quant au meilleur moyen de parvenir aux objectifs visés*)³¹.

[55] Akomeza avuga ko uko kwiha intera mu igenzura, bijyanye n’imiterere y’ihame ryo kureshya imbere y’amategeko kuko usanga ibyemezo by’inkiko birifata nk’ihame ridakakaye, kuko ritabuza Umushingamategeko cyangwa urwego rushyiraho amabwiriza, gushaka ibisubizo bitandukanye ku bantu bari mu bihe bitandukanye, kabone niyo rwakwiringagiza ihame ryo kureshya imbere y’amategeko rugamije kurengera inyungu rusange, icyangombwa akaba ari uko, uko gutandukanya abantu bijyanye n’itego igamijwe kandi iri mu murongo w’itegeko (*Cette prise de distance se traduit dans la formulation même du principe d’égalité, lequel est présenté par la jurisprudence comme un principe « en creux » qui « ne s’oppose pas » à ce que le législateur ou ... l’autorité investie du pouvoir réglementaire règle de façon différente des situations différentes ni à ce qu’il déroge à l’égalité pour des raisons d’intérêt général pourvu que, dans l’un comme l’autre cas, la différence de traitement qui en résulte soit en rapport direct avec l’objet de la norme qui l’établit*).³²

[56] Uwo muhanga asobanura kandi ko ibyo bitanga urwinyagamburiro ruhagije ku nzego za Leta kuko arizo ziba zigomba gushyira abantu mu byiciro bitandukanye, ndetse zikagaragaza inyungu rusange irengerwa, umucamanza akaba agomba kureba gusa niba ibyakozwe byari ngombwa, akanareba ishingiro ry’iyo nyungu rusange ivugwa, akanagenzura niba koko ibyo byaba impamvu yo gutuma abantu badafatwa kimwe (*La marge de manœuvre des pouvoirs publics est dans ce cadre garantie. C’est à eux qu’il appartient de caractériser des catégories différentes ou de définir les exigences de l’intérêt général, le juge appréciant seulement la pertinence des catégories ou des considérations d’intérêt général avancées, ainsi que la cohérence du choix d’une différence de traitement*)³³.

[57] Nyuma y’ibisobanuro byatanzwe haruguru ku bijyanye n’amahame ateganyijwe mu ngingo ya 15 n’iyo bijyana ya 16 z’Itegeko Nshinga, hari ibintu by’igenzi biyakubiyemo:

- Abantu bari mu bihe cyangwa mu byiciro bimwe, bafatwa kimwe;

²⁹ Jouanjan, Olivier, Logiques de l’égalité, Titre VII 1 (2020): 1-8.

³⁰ Viola, André, La loi doit être la même pour tous: vers la fin d’un principe républicain, (2005): 601-618.

³¹ Barrois de Sarigny, Cécile. "Le principe d’égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d’État." Titre VII 4.1 (2020): 18-25.

³² Ibidem

³³ Barrois de Sarigny, Cécile. "Le principe d’égalité dans la jurisprudence du Conseil constitutionnel et du Conseil d’État., Op.cit, p.20.

- Iyo badafashwe kimwe nta mpamvu ifite ireme kandi yumvikana, byitwa ivangura;
- Leta ishobora gutandukanya abantu cyangwa ibyiciro by'abantu ariko ntibiyitwe kubangamira ihame ryo kureshya imbere y'amategeko cyangwa iryo kutavangura;
- Kugira ngo bishoboke, Leta igomba kuba ifite impamvu yumvikana, ifite ireme kandi ikurikije amategeko, kandi ikaba igamije inyungu rusange z'abaturage.

[58] Ibisobanuro bimaze gutangwa byumvikanisha rero ko Leta, mu byemezo ifata cyangwa mu mategeko ishyiraho, ishobora kugira ibyo igenera abantu cyangwa ibyiciro by'abantu ishaka kurengera by'umwihariko, ariko ntibigenere abandi. Ibyo ntibifatwa nk'ivangura, ahubwo ni ugutandukanya abantu cyangwa kubashyira mu byiciro bitandukanye ku mpamvu zumvikana, zishingiye kuri gahunda Leta yihaye n'intego ishaka kugeraho.

Ku bijyanye n'uru rubanza

[59] Nk'uko byibukijwe haruguru, ikibazo kigomba gukemurwa ni icyo kumenya niba ingingo ya 8, igika cya mbere n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zinyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Ngendahayo Kabuye watanze ikirego, avuga ko izo ngingo zivangura abazungura, kubera ko ziha uwafakaye uburenganzira bw'umurenge, zigaheza abandi bazungura.

[60] Mu gusuzuma ibyo urega avuga kuri izi ngingo, ni ngombwa gusubiza amaso inyuma, hakarebwa impamvu yatumye hashyirwaho Itegeko rimaze kuvugwa, n'icyo ryari rigamije. Mu bice byabanje haruguru, hasobanuwe ko impamvu y'itegeko igomba kuba yumvikana, ifite ireme kandi ishingiyeye ku mategeko.

[61] Nk'uko biboneka mu isobanurampamvu y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru, mbere y'uko rijyaho ryatanzweho ibitekerezo n'abantu b'ingeri zitandukanye. Risobanura kandi ko ibyo bitekerezo byagaragaje ko itegeko ryari risanzwe ryo mu 1999³⁴ ryatezaga ibibazo byinshi, ku buryo kubikemura byagombaga gutuma ingingo nyinshi zaryo zihinduka, ari yo mpamvu, aho guhindura ingingo zimwe z'iryo tegeko, byabaye ngombwa ko hajyaho irishya. Mu bibazo byinshi byaterwaga n'ishyirwa mu bikorwa ry'itegeko ryariho, harimo iby'ingenzi bikurikira:

- kuba ritateganyaga uburyo bwo kuzungura ku bana b'abakobwa basigaye ababyeyi babo bamaze gupfa mbere y'uko rishyirwa mu bikorwa;
- kuba ritariyeze riteganyaga urupfu mu mpamvu zisesa uburyo bw'amicungire y'umutungo w'abashyirwanywe, ku buryo umuntu yibazaga niba ubwo buryo bwagumaho kandi umwe mu bashyirwanywe atakiriho. Ibi byateraga urujijo mu gihe cyo kuzungura ugasanga benshi baritanyaga uburenganzira bwo kuzungura n'uburenganzira uwafakaye akomora ku buryo bw'amicungire yari yarahisemo;
- kuba Itegeko risanzwe ritateganyaga kuzungurana kw'abashakanye.

[62] Nanone kandi, impamvu yatumye ingingo z'iryo Tegeko zaregewe zijyaho ishimangirwa mu nyandikomvugo y'inama y'inteko rusange y'Inteko Ishinga Amategeko, Umutwe w'Abadepite³⁵ no muri raporo z'inama za Komisiyo ya politiki, uburinganire n'ubwuzuzanye bw'abagore n'abagabo mu iterambere ry'igihugu³⁶, mu gihe hasuzumwaga umushinga w'iryo Tegeko.

³⁴ Itegeko N° 22/99 ryo ku wa 12 Ugushyirwa 1999 ryuzuzanya Igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyirwanywe, impano n'izungura.

³⁵ Reba inyandikomvugo yo ku wa 15/11/2013.

³⁶ Inama zabaye guhera 03-26/06/2014.

[63] Izo nyandikomvugo na raporo zigaragaza ko mbere yo gutangira gusuzuma uwo mushinga w'itegeko, abagize Komisiyo bakoze ingendo mu gihugu, bahura n'abaturage bahagarariye abandi, hagamijwe gukusanya ibitekerezo bizafasha mu kuwusuzuma. Izo nyandiko zigaragaza ko ibi byakozwe nyuma yo kubona ko Itegeko N° 22/99 ryo ku wa 12 Ugushyirahamwe 1999 ryamaze kuvugwa ryari rifite ingingo zirenga 50% zitakijyanye n'igihe, ari yo mpamvu abagize iyo Komisiyo basanze ari ngombwa gushyiraho itegeko rishya aho guhindura izo ngingo.

[64] Abagize Inteko Ishinga amategeko bagaragaje kandi ko mu rwego rwo kurinda uwapfakaye kwandavura no kugira imibereho mibi ugereranyije n'uko yari abayeho uwo bari barashakanye akiriho, mu gihe umwe mu bashyingiranywe barasezeranye ivangamutungo rusange apfuye, usigaye agomba kwegukana umutungo wose, kubera ko yari awusangiye na nyakwigendera, kandi akaba asigaranye wenyine inshingano z'urugo bari bafatanyije.

[65] Basanze kandi hari ikibazo cy'uko iyo umwe mu bashakanye apfuye, uwapfakaye nta burenganzira yari afite bwo kumuzungura, kandi aba yaragize uruhare mu gushaka umutungo w'urugo rwabo, iyo akaba ari imwe mu mpamvu yatumye Itegeko ryari risanzwe rihinduka. Basobanuye ko, ku bashyingiranywe banasezeranye ivangamutungo rusange, abana bakwiye kuzungura nyuma y'uko ababyeyi bombi batakiriko, bityo izungura ryabo rikaba rigomba gutangira ari uko bombi batakiriko cyangwa uwapfakaye yongeye gushyingirwa.

[66] Ibiboneka mu isobanurampamvu ryavuzwe haruguru no mu nyandikomvugo y'imirimu y'Inteko Ishinga Amategeko bihura kandi n'ibitekerezo byatanze na zimwe mu nzego za Leta mu gihe hategurwaga umushinga w'itegeko wavuzwe haruguru. Mu nyandiko iri muri dosiye y'urubanza yateguwe na Minisiteri y'uburinganire n'iterambere ry'umuryango (MIGEPROF), hasobanurwa ko ku bashyingiranywe bagahitamo ivangamutungo rusange, uwapfakaye akwiye kwegukana imitungo yose kugira ngo imusazishe neza hashingiwe ku ruhare aba yaragize mu gushaka iyo mitungo mu gihe amasezerano yo gushyingirwa yari akiriho, cyane cyane ko iyo mitungo ari iy'abashakanye, atari iy'abazungura babo.

[67] Urwego rw'igihugu rushinzwe kugenzura iyubahirizwa ry'uburinganire n'ubwuzuzanye bw'abagore n'abagabo mu iterambere ry'igihugu (*Gender Monitoring Office*), narwo rwateguye inyigo iri muri dosiye y'urubanza, ku ngaruka z'uburinganire ku Itegeko N° 22/99 ryo kuwa 12/11/1999 ryavuzwe haruguru, rusanga mu gihe umwe mu bashyingiranywe apfuye, usigaye akwiye kwegukana umutungo wose, kugira ngo awugireho uburenganzira busesuye.

[68] Nk'uko byakomeje gusobanurwa, ingingo zaregwe z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru, zaje zirengera by'umwihariko uwapfakaye kubera impamvu ryasobanuye nazo zibukijwe haruguru, rimuha itandukaniro n'abandi bazungura, kuko aba yabuze uwo bari basangiye inshingano, nyamara akaba agomba kuzikomeza wenyine. Byasobanuye kandi haruguru, ko uwapfakaye adakwiye kugereranywa n'abandi bazungura, kuko we aba yaragize uruhare mu gushaka umutungo w'urugo, mu gihe abandi nta ruhare baba barabigizemo, Umushingamategeko akaba yarashatse kurinda uwapfakaye impagarara zajyaga zivuka uwo bashakanye amaze gupfa, zitewe n'abo mu muryango babaga bifuzaga kugira uruhare ku mutungo uwapfuye yasize.

[69] Uwo mwihariko uhabwa uwapfakaye ugarukwaho kandi n'abahanga mu by'amategeko Yvaine Bufferan Lanore na Virginie Larribau, aho basobanura ko ubuzima bw'abashyingiranywe butarangirana n'urupfu rw'umwe, ko ikiba cyabayeho ari uko umwe mu bashyingiranywe yapfuye undi agasigara wenyine, bikaba bitandukanye n'ubutane bw'abashyingiranywe. Bavuga ko iyo umwe mu bashyingiranywe apfuye, ubuzima bushingiye kuri iryo shyiringanwa bukomeza, naho gutandukana byo, bigasiga gusa amasano ashingiye kuri rya shyiringanwa ryigeze kubaho (*La qualité d'époux ne disparaît pas pour autant, avec le décès, le conjoint devenant simplement le conjoint survivant. Contrairement au divorce, le décès laisse intacte cette qualité d'époux. C'est pourquoi,*

*par-delà le décès et la dissolution du mariage, on constate, non seulement la survie de certains effets du mariage ou de l'alliance créée par le mariage)*³⁷

[70] Abahanga mu mategeko Bernard Beignier & Sarah Torricelli-Chrifi bavuga ko hari itandukaniro hagati y'uwapfakaye n'abandi bazungura bakomoka k'uwapfuye. Bavuga ko abakomoka kuri nyakwigendera badafite uburenganzira ku izungura, ko ahubwo bafite ubwo kugira uruhare ku izungura, bityo bakaba bagabana umutungo usigaye w'uwo bakomokaho, naho amategeko yo muri iki gihe akaba yaragiye atera imbere ku buryo kuri ubu, uburenganzira bw'uwapfakaye bujyanye no kugira ngo akomeze abeho mu buzima yari asanzwe abayemo. Igitekerezo cy'ingenzi kiva kuri ubwo burenganzira ni uko abana bazungura mu by'ukuri nyuma y'uko usigaye mu bashakanye apfuye. (*Y-a-t-il une différence politique entre les droits des descendants et les droits du conjoint survivant? Oui, sans aucun doute. Les descendants, sans avoir un droit "à" l'héritage mais un droit "sur" l'héritage, ont vocation à se partager ce qui "reste" du patrimoine de leur auteur. Tandis que le droit contemporain a évolué pour faire des droits du conjoint un véritable droit "à" un maintien de son train et style de vie... Dès lors se profile une idée forte : les enfants n'héritent vraiment qu'au décès du dernier des conjoints*).³⁸

[71] Impamvu yatumye hajyaho ingingo z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe, zaregewe ko zinyuranye n'Itegeko Nshinga, imaze gusobanurwa mu bika bibanziriza iki. Urukiko rurasanga mbere yo gushyiraho iryo Tegeko, Umushingamategeko yarabanje kumva ibitekerezo by'abatwaga bikubiyemo ibibazo byariho byagombaga gushakirwa umuti, abona guhyiraho itegeko rigamije kubikemura no gukumira amakimbirane yo mu muryango muri rusange.

[72] Ibisobanuro byatanze haruguru bigaragaza impamvu ituma umupfakazi ahabwa umwihariko utandukanye n'uw'abandi bazungura. Urukiko rurasanga kuba Leta yarashyizeho ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryibukijwe haruguru, igamije kurengera by'umwihariko uwo mupfakazi, yari ifite impamvu yumvikana kandi ishingiyeye ku ntego ifite ireme, n'uburyo yakoresheje bukaba bujyanye n'itego yari igamije; bikumvikanisha ko nta vangura abandi bazungura bakorewe.

[73] Urukiko rurasanga kandi ibibazo Ngendahayo Kabuye avuga ko byavutse cyangwa bishobora kuvuka nyuma y'uko Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru ritangiye gushyirwa mu bikorwa, bigomba gutandukanywa no kuvuga ko iryo tegeko ubwaryo rinyuranye n'Itegeko Nshinga. Byongeye kandi, mu gihe bigaragaye ko nyuma yo kwegukana umutungo, uwapfakaye awukoresha nabi cyangwa ko atita ku nshingano Itegeko ryamuhaye, nk'uko Ngendahayo Kabuye abiburanisha, ubifitemo inyungu wese afite uburenganzira bwo kubitangira ikirego mu nkiko. Ingingo ya 76 (6°) y'Itegeko N° 27/2016 ryavuzwe haruguru yaje muri uwo murongo kubera ko iteganya ko iyo uwapfakaye ataye inshingano zo kurera abana bose cyangwa bamwe muri bo uwapfuye asize, yamburwa n'urukiko rubifitiye ububasha izo nshingano na kimwe cya kabiri (½) cy'umutungo wose, rukanagena ushinze kubarera no kubacungira umutungo kugeza igihe bagiriye imyaka y'ubukure.

[74] Muri urwo rwego kandi rwo gukumira ibibazo bishobora kuvuka bijyanye n'umutungo uwapfakaye aba yegukanye nyuma y'urupfu rw'uwo bari barashakanye, ingingo ya 49 y'iryo Tegeko N° 27/2016 ryo ku wa 08/07/2016 yateganyije ingano atemerewe gutanga cyangwa kuraga kuko uba ugenewe abazungura bazigamirwa (*réserve successorale*)³⁹.

³⁷ Buffelan-Lanore, Yvaine, and Virginie Larribau-Terneyre. Droit civil. Introduction Biens Personnes Famille. Sirey, 2013, p.737.

³⁸ Beignier, Bernard, and Sarah Torricelli-Chrifi. Libéralités et successions. Montchrestien, ed. Lextenso, 2015, p.223.

³⁹ Iteganya ko abashyiranywe bafite uburenganzira bwo gutanga impano ariko ntibagomba kurenza umugabane w'ibyo bashobora gutanga.

[75] Hashingiwe ku bisobanuro byatanzwe haruguru, Urukiko rurasanga ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura, zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

[76] N'ubwo ariko Urukiko rwemeje ko ingingo ya 8, igika cya 2 n'ya 76 (1°) zimaze kuvugwa zitanyuranyije n'Itegeko Nshinga, Leta ikaba kandi yarateganyije ingamba zigamije gukumira amakimbirane yavuka ashingiye ku mutungo wegukanywe n'uwapfakaye, Urukiko rurayigira inama y'uko mu rwego rwo kurushaho kunoza ibikubiye muri izo ngingo, hakwiye kongerwamo izindi ngamba zigamije kurinda no kubungabunga mirongo itanu kw'ijana (50%)⁴⁰ by'umutungo uwapfakaye asigarana nyuma y'urupfu rw'uwo bashakanye, kugeza igihe izungura rizatangirira.

2. Kumenya niba ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015

[77] Ngendahayo Kabuye avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 18 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko zateje amakimbirane mu muryango aho kuwurengera kuko ziha uburenganzira umupfakazi bwo kugumana umutungo wose yitwaje ko yasezeranye ivangamutungo rusange hirengagijwe ko atari we gusa ufite uburenganzira bwo kuzungura nyakwigendera.

[78] Akomeza avuga ko izo ngingo zabaye isoko y'amakimbirane y'urudaca mu miryango itandukanye, ashobora no kuba intandaro y'ibindi byaha bikomeye nk'ubwicanyi kandi ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda iteganya ko umuryango ari wo shingiro kamere y'imbaga y'Abanyarwanda ukaba ugomba kurengerwa na Leta.

[79] Me Umulisa Kayigamba Alice umwunganira avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zituma uwapfakaye agumana imitungo yose bigateza amakimbirane mu muryango. Asanga byari kuba byiza iyo izo ngingo zivuga ko iyo umwe mu bashakanye apfuye, hakorwa ibarura ku mitungo asize, hakanagenwa uburyo izacungwa n'ubwo nabyo bidaha abanyamuryango bose ubwisanzure kuko abana basizwe n'uwapfuye batarabyawe n'usigaye bakunda kuvutswa ubwisanzure mu muryango bahabwa n'ingingo ya 18 y'Itegeko Nshinga. Asaba Urukiko kuzemeza ko izo ngingo zinyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[80] Me Kayitesi Petronille, uhagarariye Leta y'u Rwanda avuga ko ingingo ya 18 y'Itegeko Nshinga iteganya ko umuryango, ishingiro kamere ry'imbaga y'abanyarwanda urengerwa na Leta, igaha uburenganzira n'inshingano ababyeyi bombi mu kurera abana babo, ndetse igateganya ubwisanzure bw'umuryango. Avuga ko ibiteganywa n'ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 byita ku nyungu z'uwapfakaye ndetse n'iz'abana bikaba bitanyuranyije n'ibitekerezo bivugwa mu ngingo ya 18 y'Itegeko Nshinga ahubwo biyishimangira kuko uburenganzira bw'uwapfakaye n'ubw'abana basizwe na nyakwigendera bwashigasiwe.

Hatitawe ku buryo bw'icungamutungo, umugabane w'ibishobora gutangwa ntushobora kurenga kimwe cya gatanu (1/5) cy'umutungo w'utanga iyo afite abana, bine bya gatanu (4/5) bikaba ibizungurwa bizigamirwa abana n'uwo bashyingiranywe. icyakora, iyo utanga impano nta bana afite ariko uwo bashyingiranywe akaba akiriho, umugabane w'ibishobora gutangwa ntushobora kurenga kimwe cya gatatu (1/3) cy'umutungo we, bibiri bya gatatu (2/3) bikagirwa ibizungura bizigamirwa uwo bashyingiranywe. Ibizungurwa bizigamirwa bibarwa bashingiye ku mutungo w'utanga havanywemo imyenda yari afite ku muni impano yatangwaga.

⁴⁰ Bihwanye n'uruhare uwo bashakanye yari afite ku mutungo

[81] Asoza avuga ko kuba itegeko ryaragennye ko abashyingiranywe bazungurwa bombi bamaze gupfa, cyangwa uwapfakaye ashatse, bitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga ahubwo bituma ubwisanzure bw'umuryango bugumaho, ntiburangirane n'urupfu rw'umwe mu bashyingiranywe.

[82] Me Kabibi Speciose, uhagarariye Leta y'u Rwanda yongeraho ko umushingamategeko yarengeye umuryango wose harimo abana hamwe n'uwapfakaye kubera ko kuba abashakanye barumvikanye ko n'iyi umwe yapfa undi azakomeza gusigarana umutungo wabo kandi agasigarana n'inshingano zo gutunga abo asigaranye, byubahirije amategeko. Asoza avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zitanyuranyije n'Itegeko Nshinga mu ngingo yaryo ya 18 kuko zirengera umuryango zikanatuma uwapfakaye adakurwa mu mitungo.

[83] Uwineza Odette na Dr Turamwishimiye Marie Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitari mu murongo wo kubungabunga ubusugire bw'umuryango nyarwanda kuko zishobora kuba impamvu y'amakimbirane ashingiye ku izungura ry'umutungo kubera ko umutungo uzungurwa wikubirwa n'uwapfakaye bigatuma uburenganzira bw'abandi bazungura bubangamirwa. Basanga izo ngingo zidahura n'ikigamijwe mu ngingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda nk'uko ryavugururwe muri 2015.

[84] Basoza bavuga ko ingingo zaregewe zikwiye kuvugururwa zigahuzwa n'umurongo wo kurengera uburenganzira bw'abazungura bose ariko na none hitawe ku kurengera mu buryo bwihariye uburenganzira bw'uwapfakaye, kuko ari bwo umuryango wasigasirwa bitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

UKO URUKIKO RUBIBONA

Ihame ryo kurengera umuryango

[85] Ihame ryo kurengera umuryango (*right to the protection of the family / droit à la protection de la famille*) rikubiye mu ngingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavugururwe mu mwaka wa 2015 iteganya ko umuryango, ni wo shingiro kamere ry'imbaga y'Abanyarwanda, urengerwa na Leta. Ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo. Leta ishahiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

[86] Ingingo ya 18 imaze kuvugwa mu gika kibanziriza iki, ikubiyemo ibitekerezo bine aribyo: i) umuryango nk'ishingiro kamere ry'imbaga y'abanyarwanda ugomba kurengerwa na Leta ii) ababyeyi bombi basangiye uburenganzira n'inshingano zo kurera abana babo iii) umuryango, by'umwihariko umwana na nyina, barengerwa na Leta ishahiraho amategeko n'inzego bikwiye, iv) Leta ifite inshingano zo kurengera ubwisanzure bw'umuryango.

[87] Iryo hame ryo kurengera umuryango riteganyijwe no mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono. Ingingo ya 16 y'Itangazo Mpuzamahanga ku burenganzira bwa muntu isobanura ko umugabo n'umugore bafite uburenganzira bwo gushyingiranwa no gukora umuryango nk'izingiro kamere umuryango w'abantu ushingiyeho, (*men and women have the right to marry and to create a family as the "natural and fundamental group unit" within society*).

[88] Ingingo ya 23, agace ka 1 y'Amasezerano Mpuzamahanga ku burenganzira mu by'imbenezamubano na politiki, ivuga ko umuryango ariwo shingiro ry'igihugu, ko ukwiye kurindwa

na Leta (*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*).

[89] Ingingo ya 18 (1,2) y'amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage nayo ivuga ko umuryango ariwo shingiro kamere kandi ukaba ishingiro ry'igihugu. Ugomba kurindwa na Leta kandi ikabungabunga ubusugire bwawo. Leta ifite inshingano zo kurengera umuryango kuko ariwo shingiro ry'umuco n'indangagaciro nyazo za sosiyete (*Family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community*).

[90] Ihame ryo kurengera umuryango ryagiye risobanurwa kandi n'abahanga mu mategeko. Lara Walker yavuze ko amasezerano y'Ibihugu by'Iburayi yerekeranye n'Uburenganzira bwa muntu arengera ubusugire bw'umuryango, bukubiyemo uburenganzira ababyeyi bafite ku bana babo n'uburenganzira bw'abana ku babyeyi babo, kubuza ko abana batandukanywa n'ababyeyi babo mu buryo butemewe n'amategeko, hakazamo n'uburenganzira bw'ababyeyi bwo kugarurirwa abana babo bajanywe bunyago (*In addition to the protection of the family, the European Convention on Human Rights protects the right to respect for family life. This includes the rights of parents to have custody and contact with their children, and the rights of children to be with their parents. The European Court of Human Rights helps to protect families from being unlawfully separated – including protecting the rights of parents to recover abducted children*)⁴¹.

[91] Ibijyanye n'ihame ryo kurengera umuryango nk'inshingano y'ibihugu hamwe n'imiryango mpuzamahanga ifite aho ihurira n'uburenganzira bwa muntu, byagiye kandi binasobanurwa n'inkiko mu manza zitandukanye hamwe n'abahanga mu mategeko.

[92] Mu rubanza John O. Miron na Jocelyne Valliere baburanye na Richard Trudel na Economical Mutual Insurance Company, Urukiko rw'Ikirenga rwa Canada rwavuze ko kubungabunga umuryango, ubwabyo bifite inyungu ikomeye cyane ku gihugu ko kandi gushyingiranwa ari umushinga ufiteye igihugu akamaro, kuko hatabayeho urugo ntihabeho umuryango, nta majyambere yababwo nta n'iterambere ryagerwaho (*the Protection of "family" is, one of the most important interests imaginable in our society, ...marriage is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress*)⁴².

[93] Na none mu rubanza Moore yaburanye na City of East Cleveland, Urukiko rw'Ikirenga rwa Leta Zunze Ubumwe z'Amerika rwavuze ko Itegeko Nshinga rigomba kurengera ubusugire bw'Umuryango kubera ko umuryango ushinze imizi mu mateka ndetse no mu muco w'igihugu (*the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in Nation's history and tradition*)⁴³.

[94] Umuhanga mu mategeko *Ivana Roagna* nawe yasobanuye ko ku bijyanye n'imibereho y'umuryango, ibyemezo by'inkiko zitandukanye mu bihugu by'Iburayi byagiye bigaragaza ko ingingo ya 8 y'amasezerano y'Ibihugu by'Iburayi yerekeranye n'Uburenganzira bwa muntu igaragaza

⁴¹ Walker, Lara, The impact of The Hague Abduction Convention on the rights of the family in the case-law of the European Court of Human Rights and the UN Human Rights Committee: the danger of Neulinger, *Journal of private international law* 6.3 (2010): 649-682.

⁴² See the case n° 22744, John O. Miron and Jocelyne Valliere v. Richard Trudel, William James Mc Isaac and the Economical Mutual Insurance Company vs. The Attorney General of Canada, the Attorney General for Ontario, the Attorney General of Quebec and the Attorney General of Manitoba, decided by the Supreme Court of Canada, on 25/05/1995.

⁴³ See the case n° 75-6289, Moore v. City of East Cleveland, U.S. Supreme Court, 431 U.S. 494 (1977), decided on May 31, 1977.

inshingano 2 z'ingenzi Leta iba igomba kubahiriza arizo : guha agaciro amasano abantu bafitanye mu muryango no kubungabunga uwo muryango, hagakurikiraho ishingano zitandukanye ibihugu biba bifite mu rwego rwo gushyira mu bikorwa ubusugire bw'uwo muryango (*When it comes to family life, the case-law indicates that two main types of obligations stem from Article 8 of the European Convention on Human Rights; the first is to give legal recognition to family ties; the second is to act to preserve family life. What follows is an overview of the positive obligations states bear in these two areas*)⁴⁴.

[95] Hashingiwe ku bimaze kuvugwa haruguru, Urukiko rurasanga amategeko atandukanye, ibyemezo by'inkiko n'abahanga mu mategeko, byarasobanuye agaciro k'umuryango n'impamvu ugomba kurindwa na Leta, bikaba bihura n'ibiteganywa n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda yavuzwe haruguru.

Ihame ryo kurengera umuryango n'uburenganzira bwo kuzungura

[96] Ingingo ya 17, agace ka 1, y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavugururwe mu 2015, iteganya ko uburenganzira bwo gushyingiranwa no kugira umuryango burengerwa n'amategeko.

[97] Ingingo ya 18 y'iryo Tegeko Nshinga yibukijwe haruguru, ivuga ko Umuryango ari wo shingiro kamere ry'imbaga y'Abanyarwanda ukaba urengerwa na Leta, ko ababyeyi bombi bafite uburenganzira n'inshingano zo kurera abana babo, Leta igashyiraho amategeko n'inzego bikwiye bishinzwe kurengera umuryango, by'umwihariko umwana na nyina, kugira ngo umuryango ugire ubwisanzure.

[98] Ingingo ya 2 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, mu gice cy'ibisobanuro by'amagambo, ivuga ko umuryango ari itsinda ry'abantu bafitanye isano hagati yabo ishingiyeye ko bamwe bakomoka ku bandi, ku mategeko cyangwa ku bushyingiranywe; rishobora kuba rigizwe n'ababyeyi, abana, ababakomokaho ndetse n'abo mu miryango y'abashyingiranywe nabo.

[99] Hashingiwe ku bimaze kuvugwa haruguru, ni ngombwa kureba uko ihame ryo kurengera umuryango ryumvikana mu gihe hasuzumwa ibijyanye n'izungura. Mu rubanza Pla et Puncernau baburanyemo na Andorre, Urukiko rw'Uburayi rushinzwe kurengera uburenganzira bwa muntu rwavuze ko ari ikintu kimaze kwemerwa ko uburenganzira bwo kuzungura hagati y'ababyeyi n'ababakomokaho bufitanye isano ya hafi n'imibereho y'umuryango irengerwa n'ingingo ya 8 y'Amasezerano y'Ubumwe bw'Ibihugu by'Uburayi ku burenganzira bwa muntu. Rwanavuze ko ibyerekeye izungura nta rage n'iherekanyamutungo uzungurwa ku bushake hagati y'abafitanye isano ya hafi, biba bishingiye ku mibereho yo mu muryango (*It is accepted that the right of succession between children and parents, and between grandchildren and grandparents, was so closely related to family life that it came within the sphere of Article 8 of the European Convention on Human Rights. It has thus considered that matters of intestate succession and voluntary dispositions between near relatives prove to be intimately connected with family life*).⁴⁵

[100] Urwo Rukiko rukomeza ruvuga ko imibereho y'umuryango itareba gusa imibanire y'abantu muri sosiyete cyangwa imibanire ishingiyeye ku muco, ko ahubwo ijyanye n'inyungu zishamikiye ku mutungo, nko gutunga abana no kubishyurira amashuri no kuzigamira imitungo izazungurwa (Family life does not include only social, moral or cultural relations, for example in the sphere of children's education; it also comprises interests of a material kind, as is shown by, *amongst other*

⁴⁴ Roagna, Ivana, Protecting the right to respect for private and family life under the European Convention on Human Rights. (2012), p.6.

⁴⁵ Application n° 69498/01, Pla et Puncernau c. Andorre (2004), Para 26.

things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate (*Réserve héréditaire*)⁴⁶.

[101] Mu rubanza rwa Bourimi na Netherlands, urwo Rukiko rwakomeje ruvuga ko n'ubwo ingingo ya 8 y'Amasezerano y'Ubumwe bw'Ibihugu by'Uburayi yerekeye uburenganzira bwa muntu itarengera uburenganzira bwo kuzungura nyirizina, ibibazo bijyanye n'izungura nta rage hagati y'ababyeyi n'ababakomokaho bijya mu birengerwa n'iyi ngingo, bitewe n'uko bifitanye isano n'imibereho y'umuryango (*Bien que l'article 8 de la Convention européenne de Droit de l'homme ne garantit pas en tant que tel un droit à hériter, la Cour a admis précédemment que les questions de succession ab intestat entre proches parents entrent dans le champ d'application de cette disposition, dans la mesure où elles représentent un aspect de la vie familiale*).⁴⁷

[102] Hashingiwe ku bimaze kuvugwa haruguru, n'ubwo amategeko yerekeye uburenganzira bwa muntu atarengera uburenganzira bwo kuzungura nk'uburenganzira bwihagije, ibijyanye n'izungura bishobora kureberwa mu ihame ryo kurengera umuryango kubera ko bireba uburenganzira bw'abanyamuryango bwo kuzungurana mu gihe umwe mu bawugize apfuye.

Ku bijyanye n'uru rubanza

[103] Nk'uko byibukijwe haruguru, mu kuvuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru⁴⁸ zinyuranyen'Itegeko Nshinga, Ngendahayo Kabuye abishingira ko nyuma y'urupfurw'umwe mubashakanye, uwapfakaye yegukana imitungo yose akayikoresha icyo ashaka; agasanga biteza umwiriyane mu muryango n'impaka za hatu na hatu, ariyo mpamvu avuga ko ingingo yaregeye zibangamiye ihame ryo kurengera umuryango.

[104] Impamvu yatumye hashyirwaho ingingo zaregowe ko zinyuranyije n'Itegeko Nshinga yasobanuwe mu bika bya 61-68 by'uru rubanza. Nanone kandi mu bika bya 72-73 by'uru rubanza, hibukijwe ko n'ubwo mu Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, mu ngingo yaryo ya 8, igika cya 2 n'iya 76 (1°), ryateganyije ko mu gihe umwe mu bashyingiranywe bakanasezerana ivangamutungo rusange apfuye, usigaye yegukana umutungo wose, ritagarukiye aho.

[105] Muri iryo Tegeko hari ingingo zinyuranye zigaragaza ko inyungu z'abandi bazungura zitaweho. Urugero n'uko inyungu z'abana zazirikanywe kuko Itegeko ryahaye uwapfakaye inshingano zo gukomeza kubitaho, baba abo yabyaranye na nyakwigendera cyangwa ababyawe na nyakwigendera wenyine. Byongeye kandi, iryo Tegeko ryateganyije ko izungura ritangira iyo uwapfakaye yongeye gushaka, rinateganya ibihano ku wapfakaye utuzuzza inshingano ze nk'uko bikubiye mu ngingo ya 76 (6°) yasobanuwe mu gika cya 69. Nk'uko nanone byibukijwe haruguru, iryo Tegeko ryateganyije ikigero cy'umutungo uwapfakaye atemerewe gutanga cyangwa kuraga nk'uko byasobanuwe mu ngingo ya 49 yavuzwe mu gika cya 70.

[106] Urukiko rurasanga ibimaze kuvugwa bigamije gukumira no kugabanya amakimbirane yajyaga avuka ashingiye ku izungura, mu rwego rwo kurengera ubumwe n'ubusugire bw'umuryango n'abawugize. Urukiko rurasanga kandi, nk'uko byibukijwe haruguru, Itegeko risobanura neza uko abafite uburenganzira bwo kuzungura bagenda bakurikirana mu gihe cyo kuzungura. Ikibazo cyari kuba iyo uwapfakaye yegukana umutungo wose nyuma y'urupfu rw'uwo bashakanye, ntihagire n'umwe mu bagize umuryango uzagira uburenganzira bwo kuzungura.

⁴⁶ Ibidem.

⁴⁷ Application n° 28369/95, *Bourimi v. the Netherlands*, (2000), Para.35

⁴⁸ Izi ngingo zasesenguwe mu gice cy'urubanza kirebana n'uburenganzira ku mutungo.

[107] Hashingiwe ku bisobanuro byose byatanzwe haruguru, Urukiko rurasanga ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015.

3. Kumenya niba ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura. zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015

[108] Ngendahayo Kabuye avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, kubera ko uwapfakaye ahabwa uburenganzira bwo kwikubira umutungo wenyine yitwaje ko yasezeranye ivangamutungo rusange, hakirengagizwa uburenganzira bw'abandi bazungura b'uwapfuye cyane cyane abana batabyawe n'uwapfakaye.

[109] Akomeza asobanura ko ingingo ya 34 y'Itegeko Nshinga ivuga ko buri muntu afite uburenganzira ku mutungo bwite, waba uwe ku giti cye cyangwa uwo asangiye n'abandi, ndetse ko umutungo bwite, uw'umuntu ku giti cye cyangwa uwo asangiye n'abandi utavogerwa, ko uburenganzira ku mutungo budahungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko. Avuga ko kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye, ko kwambura bamwe uburenganzira bwo kuzungura, asanga ari ukubambura uburenganzira ku mutungo kandi kuzungura ari bumwe mu burenganzira bw'ibanze (*fundamental rights*).

[110] Anavuga ko irangashingiro ry'Itegeko Nshinga rivuga ko abanyarwanda biyemeje kubaka Leta igendera ku mategeko, ishingiyeye ku iyubahirizwa ry'uburenganzira bwa muntu, ku bwisanzure no ku ihame ry'uko Abanyarwanda bose bareshya imbere y'amategeko n'iry'uburinganire hagati y'abagore n'abagabo, ko rero ibi bitagerwaho hariho bamwe bahezwa mu burenganzira bwabo bw'ibanze n'ingingo zimwe z'amategeko.

[111] Ngendahayo Kabuye avuga kandi ko amasezerano Mpuzamahanga atandukanye u Rwanda rwashyizeho umukono, arengera uburenganzira bw'ibanze ku mutungo, nk'ingingo ya 14 y'amasezerano Nyafurika yerekeye uburenganzira bwa muntu n'ubw'abaturage, ingingo ya 9 ya African Youth Charter, iya 5 y'Itangazo rya Pretoria (*Pretoria Declaration on Economic, Social and Cultural Rights in Africa rizwi nka "Pretoria Declaration "*).

[112] Akomeza avuga ko kutagira uburenganzira bungana ku mutungo w'uwapfuye ari ukwamburwa uburenganzira bw'ibanze kandi uwambuwe ubwo burenganzira akaba adashobora kugira imibereho myiza kubera ko adashobora kubona uburenganzira bwo kugira aho aba, uburenganzira bwo kubona ibimutunga, uburenganzira bwo kugira ubutaka (*right to land*), uburenganzira bwo kwivuzwa, uburenganzira bwo kwiga; uburenganzira ku mazi meza n'isuku.

[113] Me Umulisa Kayigamba Alice umwunganira avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zituma uwapfakaye yikubira imitungo yose akigizayo abandi bazungura cyane cyane iyo atabafiteho inshingano zo kubarera, ko kandi hari n'igihe aba afite inshingano zo kubarera ariko ntazuzuzwe nk'uko bisabwa ugasanga habaye amakimbirane mu muryango ndetse hakavuka imanza za hatu na hatu ari yo mpamvu bemeza ko izo ngingo zinyuranyije n'ingingo ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda.

[114] Me Kayitesi Pétronille, uhagarariye Leta y'u Rwanda, avuga ko ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga

rya Repubulika y'u Rwanda kuko zitambura abazungura uburenganzira ku mutungo ngo uhabwe uwapfakaye nk'uko Ngendahayo Kabuye abivuga, kuko n'ubwo uwapfakaye yegukana umutungo wose, agumana inshingano zo kurera abana yabyaranye na nyakwigendera n'ab'uwapfuye bemewe n'amategeko, bakazazungura igihe giteganywa n'amategeko kigeze.

[115] Me Kabibi Speciose, uhagarariye Leta y'u Rwanda, yongeraho ko kuba itegeko ryaragennye ko abashyingiranywe bazungurwa ari uko bombi bamaze gupfa, cyangwa uwapfakaye ashatse ntaho bibangamira ingingo ya 34 y'Itegeko Nshinga kuko umutungo w'abashyingiranywe ari uwabo bombi, atari uw'abazungura. Asanga rero uwo mutungo udakwiye kuvogerwa mu buryo ubwo ari bwo bwose mu gihe abashyingiranywe bafatanyije kuwushaka bakirihobaba bombi cyangwa umwe muri bo.

[116] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 8, igika cya 2 n'iya 76 (1^o) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 zibangamiye uburenganzira bw'abandi bazungura baba bafite ku mutungo uzungurwa kuko wikubirwa n'uwapfakaye bikaba binyuranye n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda. Basaba ko mu gihe izi ngingo zaba zitaravugururwa, Urukiko rw'Ikirenga rwatanga umurongo waba ugenderwaho kugira ngo uburenganzira bw'abazungura bose bwubahirizwe. Bavuga ko nk'aho itegeko riteganywa ko umupfakazi yegukana umutungo wose, hagenwa ko ahabwa inshingano zo kuwucunga ariko hakagaragazwa igihe ntarengwa yawucungamo hanyuma abazungura bose bakazawugabana.

UKO URUKIKO RUBIBONA

Ihame ryo kugira uburenganzira ku mutungo

[117] Ihame ryo kugira uburenganzira ku mutungo (*the right to property/ droit de propriété*) rikubiye mu ngingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015, iteganywa 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.

[118] Iryo hame kandi riteganyijwe mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono. Urugero ni ingingo ya 17 y'Itangazo Mpuzamahanga ku burenganzira bwa muntu iteganywa ko buri wese, byaba ari ku giti cye cyangwa afatanyije n'abandi, afite uburenganzira ku mutungo kandi ntawe ugomba kuwumubuzaho ubwo burenganzira (*Toute personne, aussi bien seule qu'en collectivité, a droit à la propriété. Nul ne peut être arbitrairement privé de sa propriété*)⁴⁹.

[119] Amasezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage, ateganywa mu ngingo ya 14, ko buri muntu afite uburenganzira ku mutungo. Uburenganzira ku mutungo ntibuhungabanywa keretse ku mpamvu z'inyungu rusange kandi hakurikijwe ibiteganywa n'amategeko (*Le droit de propriété est garanti. Il ne peut y être porté atteinte que par nécessité publique ou dans l'intérêt général de la collectivité, ce, conformément aux dispositions des lois appropriées*)⁵⁰.

[120] Uburenganzira ku mutungo bwanashimangiwe mu yandi masezerano areba ibihugu byo ku yindi migabane. Ingingo ya 1 y'amasezerano y'inyongera numero ya 1 ku Masezerano y'ibihugu bw'Iburayi ku burenganzira bwa muntu iteganywa ko umuntu wese afite uburenganzira ku mutungo we, ko ntawe ushobora kuwuvutswa keretse ku mpamvu z'inyungu rusange⁵¹ (*Every natural or legal*

⁴⁹ La Déclaration Universelle des Droits de l'Homme, article 17.

⁵⁰ La Charte Africaine des Droits de l'Homme et des Peuples, article 14.

⁵¹ Article 1 of Protocol n° 1 to the European Convention on Human Rights.

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).

[121] Mu nyandiko igamije gufasha kumva ingingo ya 1 y'Amasezerano y'inyongera numero ya 1 yavuzwe haruguru, hasobanurwa ko umutungo uvugwa muri ayo masezerano usobanuye ibintu binyuranye, birimo ibintu umuntu atunze (biens actuels), ibifite agaciro runaka birimo imyenda afitiwe n'abandi, iyo umuntu yizeye neza kuzishyurwa. Iyo nyandiko ikomeza isobanura ko umutungo ukubiyemo uburenganzira ku mutungo utimukanwa, uwimukanwa n'izindi nyungu zituruka ku mutungo umuntu afite (*La notion de « biens » figurant au premier alinéa de l'article 1 du Protocole N° 1 est une notion autonome, qui peut recouvrir tant des « biens actuels » que des valeurs patrimoniales, y compris des créances en vertu desquelles le requérant peut prétendre avoir au moins une « espérance légitime ». Les « biens » incluent les droits réels et les droits personnels. Ce terme englobe les immeubles et les biens meubles ainsi que les autres intérêts patrimoniaux*).⁵²

[122] Ingingo ya 21 y'Amasezerano y'Ibihugu by'Amerika ku burenganzira bwa muntu nayo ivuga ko buri muntu afite uburenganzira bwo gukoresha no kwinezeza mu mutungo we. Itegeko ariko rishobora gukuraho ubwo burenganzira iyo rigamije kurengera inyungu rusange... (*Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society...*).⁵³

[123] Ijambo umutungo ryasobanuwe mu rubanza rwa Ivcher-Bronstein na Peru aho Urukiko rushinzwe iyubahirizwa ry'uburenganzira bwa muntu mu bihugu bya Amerika yo hagati n'iy'epfo rwavuze ko umutungo ushobora gusobanurwa nk'ibintu byose umuntu ashobora gutunga harimo n'uburenganzira bwose bushobora gufatwa nk'umutungo w'umuntu harimo umutungo wimukanwa, utimukanwa, ufatika, udafatika cyangwa se ikindi kintu cyose bigaragara ko gifite agaciro (*Property can be defined as those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value*).⁵⁴

[124] Mu manza zacye, inkiko nazo zagiye zisobanura ihame ry'uburenganzira ku mutungo. Urugero ni urubanza Marckx yaburanyemo n'Ububirigi mu Rukiko rw'Ibihugu by'Iburayi rushinzwe kurengera uburenganzira bwa muntu. Ku bijyanye n'amategeko y'Ububirigi yerekeye abana babyawe n'umwe mu bashakanye byemewe n'amategeko, Urwo Rukiko rwavuze ko mu rwego rwo kubungabunga uburenganzira buri muntu afite ku mutungo, ingingo ya 1 y'amasezerano y'inyongera numero 1 yavuzwe haruguru, iteganya ko ibijyanye n'uburenganzira ku mutungo ari uburenganzira umuntu afite bwo gukoresha umutungo we uko abyumva, ko kandi kuva kera cyari ikintu cy'ingenzi cyane mu bijyanye n'uburenganzira ku mutungo (*En reconnaissant à chacun le droit au respect de ses biens, l'article 1 garantit en substance le droit de propriété. ...le droit de disposer de ses biens qui constitue un élément traditionnel fondamental du droit de propriété*).⁵⁵

[125] Mu rubanza rwa Hutten-Czapska v Poland, urwo Rukiko rwibukije ko ihame rikuru ku bijyanye n'uburenganzira ku mutungo, ari uko ari ntavogerwa (*peaceful enjoyment of property: usus, fructus, abusus*); ko iyo hari ikirego cy'uko ubwo burenganzira butubahirijwe, hagomba gusuzumwa niba ibyakozwe kuri uwo mutungo byarakurikije amategeko kandi ko byari bishingiye ku mpamvu

⁵² Guide sur l'article 1 du Protocole n° 1 à la Convention Européenne des droits de l'homme: Protection de la propriété, 2022, P.7

⁵³ American Convention on Human Rights, article 21.

⁵⁴ Ivcher Bronstein case vs Perou, Inter-American Court of Human Rights of February 6, 2001 (Merits, Reparations and Costs) para. 122.

⁵⁵ Marckx c. Belgique, arrêt du 13 juin 1979, Série A n° 31, op.cit, para 49.

zemewe kandi zumvikana (*Any interference with the enjoyment of a right or freedom must pursue a legitimate aim*).⁵⁶

[126] Inkiko mpuzamahanga zirimo Urukiko rw’Amerika ndetse n’urw’Afurika zishinzwe uburenganzira bwa muntu zagiye zigaragaza kenshi ko kugira uburenganzira ku mutungo bifasha abantu guharanira uburenganzira bwabo, bikarengera imiryango n’abaturage gakondo, bikanarengera n’abandi bantu bose bafite amateka yihariye abahuza n’umutungo wabo.⁵⁷

[127] Abahanga mu mategeko nabo batanze ibisobanuro bituma uburenganzira ku mutungo burushaho kumvikana. Muri urwo rwego, mu gitabo cyabo Property *Examples & Explanations*, Barlow Burke na Joseph Snoe bavuze ko uburenganzira ku mutungo atari uburenganzira buba hagati y’umuntu n’ikintu atunze, ko ahubwo aba ari n’uburenganzira buba hagati y’abantu ku bijyanye n’ikintu umuntu afiteho uburenganzira. Ubwo burenganzira bwe butuma akumira abandi batemerewe gukoresha icyo kintu, kugikodesha, kukibyaza umusaruro mu buryo bunyuranye, kukigurisha cyangwa se kugitanga. Ibi byose rero bishoboka gusa iyo umuntu afite uburenganzira busobanutse bihagije ku kintu ku buryo abandi bantu bose baba bagomba kubwubaha (*Property law is not about one person’s relationship to a thing. Instead, it is about relationship between and among persons with regard to a thing property permits one person to exclude another from using a thing; to use it personally to gain rents, profits or income from it; to sell it; or to give it by will to one relative and not another. All this is possible only when one’s relationship to property is clear insofar as others are bound to respect it*).⁵⁸

[128] John G. Sprankling mu gitabo cye Understanding Property Law nawe yashimangiye ko ubusanzwe “umutungo” aba ari uruhurirane rw’uburenganzira (*It is common to describe property as a bundle of rights*). Uburenganzira bwo gukumira abandi ku kintu, ubwo kugitanga, ubwo kugitunga no kugikoresha ndetse n’uburenganzira bwo kugikuraho (*The right to exclude; The right to transfer; The right to possess and use; and The right to destroy*).⁵⁹

[129] Hashingiwe ku bisobanuro byatanzwe haruguru, biragaragara ko uburenganzira umuntu afite ku mutungo bugomba kubahwa na buri wese, nyiri umutungo akaba awugiraho uburenganzira busesuye, kandi akaba ari ntawe ushobora kuwumuvutsa keretse ku mpamvu z’inyungu rusange kandi hubahirijwe amategeko.

Umuntu ashobora kwemeza ko afite uburenganzira ku mutungo ashingiye ku cyizere cyo kuzawutunga?

[130] Igisubizo kuri iki kibazo kiboneka mu manza zaciwe no bisobanuro bitangwa n’abahanga mu mategeko. Mu rubanza Marckx yaburanye n’Ububirigi, Urukiko rw’ibihugu by’Iburayi rushinzwe kurengera uburenganzira bwa muntu rwasobanuye ko ingingo ya 1 y’Amasezerano numero ya 1 y’Amasezerano y’ibihugu by’Iburayi ku burenganzira bwa muntu, yibanda ku kubahiriza uburenganzira bwa buri muntu ku mutungo we, ibi bikaba bigarukira ku mutungo umuntu atunze gusa kuko ubwo burenganzira butabarirwamo iby’imitungo azazungura cyangwa impano azahabwa (*l’article 1 du Protocole numéro 1 se borne à consacrer le droit de chacun au respect de "ses" biens*,

⁵⁶ Application n° 35014/97, *Hutten-Czapska v Poland [GC]* ECHR 2006-VIII, para 165.

⁵⁷ Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Series C N° 79, Inter-American Court of Human Rights, August 31, 2001; urubanza rwa Center for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples’ Rights, February 4, 2010; African Commission on Human and Peoples’ Rights v. Kenya, Application No. 006/2012, African Court on Human and Peoples’ Rights, May 26, 2017.

⁵⁸ Burke, D. Barlow, and Joseph A. Snoe. Property: Examples & Explanations. Wolters Kluwer, 2008, p 5.

⁵⁹ Sprankling, John G., Understanding property law, LexisNexis, 2012, p. 4.

*ne vaut par conséquent que pour des biens actuels et ne garantit pas le droit d'en acquérir par voie de succession ab intestat ou de libéralités).*⁶⁰

[131] Ibyo urwo Rukiko rwasobanuye rwongeye kubishimangira mu rubanza rwa Van der Mussele aho rwavuze ko uburenganzira buriho ari bwo bwonyine burengerwa n'ingingo ya 1 y'Amasezerano numéro 1 y'inyongera ku Masezerano y'ibihugu bw'Iburayi ku burenganzira bwa muntu, ko kandi iyi ngingo itarengera icyizere cy'umuntu cyo kuzatunga ibintu (*La Cour estime que seuls les droits actuels sont garantis par l'art.1 du Protocole additionnel et que les espérances d'acquérir certains biens ne jouissent pas de protection*).⁶¹

[132] Hari igihe umutungo wo mu gihe kizaza (*revenu futur*) urengerwa n'amategeko, nko mu gihe umuntu yawutsindiye cyangwa hari ibimenyetso bigaragaza ko hari umwenda wizewe afitiwe n'abandi. Hari n'igihe amategeko arengera icyizere gifite icyo gishingiyeho (*espérance légitime*). Kugira ngo ariko inkiko zemeze ko umuntu afite uburenganzira ku mutungo bushingiye ku bimaze kuvugwa, hagomba kuba hari ibimenyetso bifatika bigaragaza nta gushidikanya ko uburenganzira afite kuri ibyo bintu bugomba kurengerwa n'amategeko. Inkiko zabisobanuye muri aya magambo: *“Un revenu futur ne peut ainsi être considéré comme un bien que s'il a déjà été gagné ou s'il fait l'objet d'une créance certaine”*.⁶² *“Pour que l'espérance soit “légitime”, elle doit être plus qu'un simple espoir et se fonder sur une disposition juridique ou un acte juridique tel qu'une décision judiciaire portant sur l'intérêt patrimonial en question. Dans toute une série d'affaires, la Cour a jugé que les requérants n'avaient pas d'espérance légitime lorsque l'on ne pouvait considérer qu'ils possédaient de manière suffisamment établie une créance immédiatement exigible.”*⁶³

[133] Inkiko zanasobanuye ko icyo cyizere ubwacyo atari cyo gifatwa nk'umutungo ugomba kurengerwa, ko ahubwo igituma kirengerwa ari uko gishingiye ku burenganzira ku mutungo umuntu afite (*L'«espérance légitime» n'était pas en elle-même constitutive d'un intérêt patrimonial; elle se rapportait à la manière dont la créance qualifiée de «valeur patrimoniale» serait traitée en droit interne*).⁶⁴

[134] Ibyasobanuwe mu byemezo by'Inkiko byavuzwe haruguru bihura n'ibisobanuro bitangwa n'abahanga mu mategeko. Mariana Karadjova avuga ko umutungo ari icyo umuntu atunze. Yongeraho ko uburenganzira bwo kuzungura ari uburenganzira bushobora kuzabaho ariko umuntu atari yagira, kuko kugira ngo abugire hari ibyo agomba kuba yujuje, ko ariyo mpamvu bene ubwo burenganzira bushyirwa mu cyiciro cy'uburenganzira butari ubw'ibanze (...*Est considéré comme bien ce qui est déjà acquis. Les droits d'héritage sont plutôt potentiels. Ils ne sont pas encore acquis et dépendent d'un événement futur qui n'est pas déterminé dans le temps. La dépendance de ces droits de certaines conditions les place dans l'ordre des droits non-fondamentaux*).⁶⁵

[135] Monica Carss-Frisk nawe ashimangira ko itegeko ritarengera uburenganzira butarabaho, ko ingingo ya 1 y'Umugereka wa 1 w'amasezerano ikoresheya gusa iyo umuntu ashobora kugaragaza uburenganzira afite ku mutungo runaka atunze. Yongeraho ko iyo ngingo itarengera uburenganzira bwo kubona umutungo (*le droit d'acquérir une propriété à l'avenir n'est pas garanti. La protection*

⁶⁰ Marckx c. Belgique, arrêt du 13 juin 1979, op.cit, par.50.

⁶¹ Requête n° 8919/80, Van der Mussele, (23 novembre 1983), para. 48.

⁶² Requête n° 76639/11, Denisov c. Ukraine, (25 septembre 2018), para. 137.

⁶³ Requête n° 44912/98, Kopecky c. Slovaquie, (28 septembre 2004), para.49.

⁶⁴ Requête n° 1513/03, Draon c. France, (6 octobre 2005), para. 68.

⁶⁵ Mariana Karadjova, la protection du droit de propriété au niveau européen et son importance pour l'harmonisation des pratiques des cours constitutionnelles, Bulgarie, p.4, para 1.

*de l'article 1 du Protocole n° 1 ne s'applique que lorsqu'il est possible de faire valoir un droit sur le bien concerné. L'article 1 ne protège pas le droit d'acquérir un bien).*⁶⁶

[136] Ibisobanuro byatanzwe haruguru ku ihame ry'uburenganzira ku mutungo no ku burenganzira budashobora kwitiranywa n'uburenganzira ku mutungo, byumvikanisha ibintu by'ingenzi bikurikira:

- Umuntu wese afite uburenganzira ku mutungo;
- Ubwo burenganzira buzitirwa gusa n'inyungu rusange kandi hubahirijwe amategeko;
- Uburenganzira ku mutungo burengerwa n'itegeko ni ubujyanye n'ibintu biriho umuntu atunze;
- Itegeko ntirirengera uburenganzira bwo mu gihe kizaza/butarabaho;
- Uburenganzira ku izungura ubwabwo ntibufatwa nk'uburenganzira bw'ibanze ku mutungo.

Ku bijyanye n'uru rubanza

[137] Nk'uko byibukijwe haruguru, mu kuvuga ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zinyuranye n'Itegeko Nshinga, Ngendahayo Kabuye abishingira ku mpamvu y'uko asanga izo ngingo zituma uwapfakaye agira uburenganzira bwo kwikubira umutungo zikambura abandi bazungura uburenganzira bwo kuzungura.

[138] Ibikubiye muri izo ngingo nibyo bigiye gusesengurwa, bihuzwe na zimwe mu ngingo z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, hanarebwe igihe abazungura babobonera uburenganzira ku mutungo uba ugomba kuzungurwa, kugira ngo hasuzumwe niba koko ingingo zaregewe zinyuranyije n'ingingo ya 34 y'Itegeko Nshinga.

[139] Ingingo ya 8, igika cya 2, n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru zihuriza ku kuba, iyo umwe mu bashakanye barasezeranye ivangamutungo rusange apfuye, usigaye yegukana umutungo bari basangiye. Ingingo ya 76 1° yongeraho ibindi bisobanuro bitaboneka mu ngingo ya 8, igika cya 2, aho ivuga ko uwapfakaye wegukanye umutungo asigaragana inshingano yo kurera abana yabyaranye na nyakwigendera, n'ababyawe n'uwapfuye.

[140] Ingingo ya 51 iteganya ko kuzungura ari uguhabwa uburenganzira n'inshingano ku mutungo n'imyenda by'uwapfuye. Ingingo ya 52⁶⁷ y'iryo Tegeko, mu byo iteganya harimo ko izungura ry'uwapfuye ritangira iyo uzungurwa amaze gupfa. icyakora, iyo ngingo iteganya ko izungura ry'abashyiranywe barasezeranye ivangamutungo rusange ritangira ari uko bombi bapfuye cyangwa umwe yongeye gushyirirwa keretse iyo itegeko ribiteganyaga ukundi.

[141] Ingingo ya 55 iteganya ko guhera ku muni izungura ryatangiriyeho, umuzungura, yaba uzungura ku bw'irage cyangwa ku bw'itegeko yitwa umuzungura iyo abyemeye, naho ingingo ya 56⁶⁸

⁶⁶ Carss-Frisk, Monica. The right to property: A guide to the implementation of Article 1 of Protocol n° 1 to the European Convention on Human Rights. Council of Europe, 2001.

⁶⁷ Iraza kugarukwaho nyuma ku buryo burambuye

⁶⁸ Ingingo ya 56 iteganya ko "yamburwa nta mpaka uburenganzira bwo kuzungura, umuzungura wese: 1° wakatiwe n'inkiko kubera ko yishe abishaka cyangwa yagambiriye kwica uzungurwa; 2° wakatiwe n'inkiko kubera ko yabeshyeye cyangwa yatanzeho uzungurwa ubuhamya bw'ibinyoma bwashoboraga gutuma akatirwa n'inkiko igifungo nibura cy'amezi atandatu (6); 3° wataye nkana umwana we uzungurwa, wamugiriye igikorwa cy'urukozasoni, wamwangije imyanya ndangagitsina, wamusambanyije cyangwa wamushoye mu busambanyi. icyemezo cy'urukiko cyonyine kirahagije kugira ngo umuzungura wemewe n'itegeko wakoze kimwe mu byaha byavuzwe mu gika kibanziriza iki, avanwe mu bazungura.

n'ya 57⁶⁹ zigateganya impamvu zatuma habaho kwamburwa nta mpaka uburenganzira bwo kuzungura. Inkurikizi zo kwamburwa uburenganzira bwo kuzungura n'uko uwari ubufite avanwa mu mubare w'abazungura b'uwapfuye nk'uko biteganywa n'ingingo ya 59 y'iryo tegeko.

[142] Ingingo ya 73⁷⁰ iteganya urutonde rw'abazungura bahoraho, naho iya 75 igaha uwapfakaye uburenganzira bwo kuzungura uwo bari barashyingiranywe ikanasobanura uko azungura.

[143] Ingingo ya 76 (1^o) nk'uko yibukijwe haruguru, iha uwapfakaye uburenganzira bwo kwegukana umutungo iyo uwo basezeranye ivangamutungo rusange apfuye, akubahiriza inshingano yo kurera abana babo n'ab'uwapfuye bemewe n'amategeko. Ibika bikurikiraho bisobanura uko bigenda iyo abashyiranywe bombi bapfuye, bari bafitanye abana cyangwa batabafite. Binasobanura uko izungura rikorwa mu gihe uwapfakaye yongeye gushaka, yaba afitanye abana n'uwapfuye cyangwa se batabafitanye, n'igihe hari abana bakomoka k'uwapfuye.

[144] Ingingo ya 83-87 ziteganya uburyo imitungo izungurwa yegeranywa ndetse n'uburyo ibarurwa, inshingano y'inama ishinzwe iby'izungura, ushinzwe kwegeranya umutungo uzungurwa no kwishyura imyenda ikurwa mu mutungo uzungurwa. Mu gihe abazungura bamaze kuboneka ndetse n'umutungo uzungurwa wabonetse, ingingo ya 94-99 ziteganya uburyo uwo mutungo ugabanywa.

[145] Urukiko rurasanga ibikubiye mu ngingo zavuzwe haruguru byerekana ko n'ubwo izungura muri rusange ritangira nyakwigendera akimara gupfa, ntabwo mu by'ukuri icyo gihe umutungo uzungurwa uba wari wamenyekana, abawuzungura nabo baba bataramenyekana, ndetse icyo buri muzungura azegukana nacyo kiba kitaramenyekana ku buryo atabasha kukigiraho uburenganzira busesuye (*usus, fructus na abusus*). Ni ukuvuga rero ko igihe cyose izungura ritatangira, icyo abazungura baba bafite gusa ari icyizere cy'uko mu gihe kizaza bashobora kuzagira uburenganzira ku mutungo wasizwe na nyakwigendera, bitandukanye no kuba babufite muri ako kanya.

[146] Ikindi kandi, ku bijyanye n'abashakanye barasezeranye ivangamutungo rusange, hari umwihariko itegeko ryabageneye ugereranyije n'abandi bashyingiranywe bahisemo ubundi buryo bwo gucunga umutungo bafite, kuko nk'uko byibukijwe, iyo umwe apfuye, usigaye yegukana umutungo wose, izungura rigatangira ari uko abashakanye bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa.

[147] Ikiboneka mu bisobanuro Ngendahayo Kabuye yatanze, ni uko uburenganzira ku mutungo avuga ko butubahirijwe ari ubwo abazungura ba nyakwigendera, batari uwapfakaye, bizera kuzagira mu gihe cyo kuzungura. Nyamara nk'uko byasobanuwe mu bika byabanje, uburenganzira ku mutungo bujyanye n'ikintu cyangwa ibintu umuntu afite/atunze, itegeko rikaba ritarengera uburenganzira

⁶⁹ Naho iya 57 iteganya ko ashobora kwamburwa uburenganzira bwo kuzungura, umuzungura wese wemewe n'itegeko cyangwa uwahawe indagano wese: 1^o wacanye umubano wa kibyeyi n'uwapfuye igihe yari akiriho; 2^o wirengagije abigambiriye kandi yari ashoboye kwita k'uzungurwa mu gihe yari abikeneye; 3^o witwaje ubushobozi buke bw'uzungurwa, ari ubwo mu mutwe cyangwa ku mubiri, akiharira igice cyangwa ibizungurwa byose; 4^o warigishije nkana, wacagaguye cyangwa wangije irage rya nyuma ry'uwapfuye atabimwemereye, cyangwa wihaye uburenganzira agendeye ku irage ryavanweho cyangwa ryataye agaciro. Ufite uburenganzira bwo kuzungura wese ashobora, mu gihe kitarenze umwaka umwe (1) uhereye ku muni izungura ryatangiriyeho cyangwa ku muni yamenyeyeho imwe muri izi mpamvu, gusaba urukiko rubifitiye ububasha kwambura uburenganzira bwo kuzungura ugomba kuzungura cyangwa ugomba guhabwa indagano, wateje imwe mu mpamvu zavuzwe mu gika cya mbere cy'iyi ngingo. Ikirego gitangwa mu buryo bw'ibirego byihutirwa.

⁷⁰ Ivuga ko mu izungura hakurikizwa urutonde rukurikira: 1^o abana b'uwapfuye; 2^o se na nyina b'uwapfuye; 3^o abavandimwe b'uwapfuye basangiye ababyeyi bombi; 4^o abavandimwe b'uwapfuye basangiye umubyeyi umwe; 5^o ba sekuru na nyirakuru b'uwapfuye; 6^o ba se wabo, ba nyirasenge, ba nyirarume na ba nyina wabo b'uwapfuye. Haseguriwe ibiteganywa n'ingingo ya 41 y'iri tegeko, buri rwego rw'abazungura ruzitira izindi mu rutonde rw'izungura. Abana b'uwapfuye basangiye ababyeyi bombi bazungura mu gisekuru cya se n'icya nyina, naho abana bahuje umubyeyi umwe gusa bazungura mu gisekuru cy'umubyeyi wabo gusa

butarabaho. Ibi bisobanuye rero ko uburenganzira bw'abazungura bumenyekana nyuma y'uko izungura ritangiye, ari nabwo hamenyekana abazungura nyakuri n'uburyo bagenda bakurikirana.

[148] Ku bireba by'umwihariko izungura ry'abashyingiranywe bari barasezeranye ivangamutungo rusange, nk'uko byibukijwe haruguru, ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa. Ibyo bivuze ko mu gihe umwe mu bashyingiranywe yapfuye, uwapfakaye akaba akiriho cyangwa atarongerwa gushyingirwa, nta n'umwe mu bazungura wavuga ko yari yagira uburenganzira ku mutungo burengerwa n'ingingo ya 34 y'Itegeko Nshinga.

[149] Uretse ibisobanuro byatanzwe haruguru, Urukiko rurasanga nta n'aho bigaragara ko ingingo zaregewe ko zinyuranyije n'Itegeko Nshinga zambura bamwe uburenganzira bwo kuzungura nk'uko Ngendahayo Kabuye abivugaga, kubera ko nk'uko byagaragajwe haruguru, ingingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryibukijwe haruguru yerekana uko abazungura bo ku nzego zitandukanye bagenda bakurikirana mu kuzungura iyo igihe cy'izungura kigeze.

[150] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rusanga ingingo ya 8, igika cya 2 n'ya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015.

4. Kumenya niba ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015

[151] Ngendahayo Kabuye avugaga ko ingingo ya 52, igika cya 3 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavugururwe mu 2015.

[152] Akomeza avugaga ko umuryango ugizwe n'abantu benshi harimo umugabo n'umugore n'abana babakomokaho, ariko ko hashobora kubaho n'abana bavuka kuri umwe mu bashyingiranywe, hakaba n'abantu bafitanye amasano n'uwapfuye, nyamara ko abo bose itegeko ritabarengera kimwe. Asobanura ko kuba uwapfakaye ahabwa uburenganzira bwo kugumana umutungo wose nyuma y'urupfu rw'uwo bashyingiranywe, akawukoresha icyo ashaka kandi n'abandi bazungura bawukeneye, nyuma akaba umuzungura w'uwo bari barashyingiranywe, bigaragaza ko yahawe uburenganzira bw'umurengera ugereranyije n'abandi bazungura, akaba ari nabyo bikunda guteza amakimbirane mu muryango kandi ihame ari uko Leta ariyo igomba gukumira amakimbirane no kurengera umuryango. Asoza avugaga ko Leta igomba guha abazungura bose uburenganzira ku mutungo wasizwe n'umubyeyi wabo aho kugira ngo wikubirwe n'uwapfakaye wenyine.

[153] Me Umulisa Kayigamba Alice umwunganira, avugaga ko anenga itegeko ry'izungura kuba ryarateganyije ko iyo umwe mu bashakanye apfuye umutungo wose wegukanwa n'uwapfakaye, akaba yawugurisha cyangwa akawukoresha ikindi ashatse cyose, mu gihe abandi bazungura badafite uburenganzira kuri uwo mutungo. Avugaga kandi ko kuba mu mutungo uzungurwa haba harimo 50% y'umugore na 50% y'umugabo ariko umwe yapfa, usigaye bakamwongeraga mu bagomba kuzungura 50% y'uwapfuye, bigaragaza ko uwapfakaye ahabwa uburenganzira bw'umurengera ku mutungo wa nyakwigendera ugereranyije n'abandi bazungura, akaba aribyo biteza amakimbirane mu muryango. Ashingiye kuri izo mpamvu zose, yemeza ko ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zinyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015.

[154] Me Kayitesi Petronille avuga ko ingingo ya 52, igika cya 3 n'ya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe haruguru zitanyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga kuko zitavangura abazungura cyangwa ngo ziteze amakimbirane mu muryango, ahubwo zirinda uwapfakaye kugira imibereho mibi ugereranyije n'uko yari abayeho uwo bari barashakanye akiriho, cyane cyane ko agumana inshingano zo kurera abana babo n'ab'uwapfuye bemewe n'amategeko, bakazazungura igihe giteganywa n'amategeko kigeze.

[155] Akomeza avuga ko kuba ingingo ya 75 y'Itegeko ryavuzwe haruguru iha uburenganzira uwapfakaye bwo kugira uruhare mu izungura ry'umutungo wasizwe n'uwo bari barashyingiranywe, nta kibazo biteye, ko ahubwo iyi ngingo yari ngombwa cyane kuko bitumvikanaga ukuntu uwapfakaye yahezwaga mu izungura ry'umutungo w'uwo bashakanye kandi aba yaragize uruhare mu kuwushaka, ko rero nta vangura biteza kandi ntawe byagombye kubangamira kuko umutungo uba usanzwe ari uwe n'uwo bashyingiranywe.

[156] Me Kabibi Speciose yongeraho ko kuba uwapfakaye yagira uruhare rwo kuzungura 50% y'umutungo ntawe byagombye kubangamira, ko nta n'ivangura biteza kuko uwapfakaye nawe ari mu bafashwaga n'uwapfuye, ubwo burenganzira akaba ataragombaga kubwamburwa.

[157] Uwineza Odette na Dr Turamwishimiye Rose, bahagarariye Ishuri ry'Amategeko rya Kaminuza y'u Rwanda, bavuga ko ingingo ya 52, igika cya 3, y'Itegeko N° 27/2016 ryavuzwe haruguru iha uwapfakaye amahirwe aruta ay'abandi bazungura kuko ahabwa uburenganzira bwo kugumana umutungo ugomba kuzungurwa kandi itegeko ritashyizeho umurongo wo kuwucunga, bikaba bishobora kurangira abandi bazungura babuze icyo bazungura kuko uwapfakaye atabujijwe kuwugurisha cyangwa kuwutanga. Basanga ibyo binyuranyije n'ingingo ya 15, iya 18 n'ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavugururwe mu 2015. Banavuga ko kuba ingingo ya 75 y'Itegeko ryavuzwe haruguru yarahaye uwapfakaye uburenganzira bwo kuzungura mugenzi we ntaho bibangamiye ingingo z'Itegeko Nshinga zavuzwe haruguru.

UKO URUKIKO RUBIBONA

[158] Mbere yo gusuzuma niba ingingo ya 52, igika cya 3 n'ya 75 zavuzwe haruguru zinyuranyije n'Itegeko Nshinga, ni ngombwa kwibutsa ko ibisobanuro byatanze kuri amwe mu mahame y'Itegeko Nshinga avugwa muri uru rubanza, ni ukuvuga ihame ryo kureshya imbere y'amategeko rivugwa mu ngingo ya 15, iryo kurengera umuryango rivugwa mu ngingo ya 18 n'iryo kugira uburenganzira ku mutungo rivugwa mu ngingo ya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda, bishingirwaho no mu bice bigiye gukurikira.

[159] Nk'uko byasobanuwe haruguru, ingingo ya 52, igika cya 3 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa, ivuga igihe izungura ritangirira, ni ukuvuga nyuma y'urupfu rw'abashyingiranywe bombi cyangwa uwapfakaye yongeye gushaka, naho iya 75 igasobanura uburenganzira uwapfakaye afite bwo kuzungura, ndetse ikerekana uko azungura. Icyo Ngendahayo Kabuye agaragaza ko atishimiye ni ukuba asanga izo ngingo zihabwaga uwapfakaye uburenganzira bw'umurenge ugereranyije n'abandi bazungura.

[160] Ingingo zimaze kuvugwa zuzuzanya n'ingingo ya 8, igika cya 2 n'ya 76 (1°) zasuzumwe haruguru, z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryamaze kuvugwa. Mu bika bya 37- 58 by'uru rubanza, uru Rukiko rwasobanuye ko Leta, mu byemezo ifata cyangwa mu mategeko ishyingiraho, ishobora gufatira ingamba zihariye ibyiciro by'abantu batandukanye zigamije kubarengera, mu gihe ifite impamvu yumvikana kandi ikurikije amategeko kandi ntibitwe ivangura.

[161] Urukiko rurasanga impamvu yatumye uwafakaye ahabwa uburenganzira bwo kuzungura uwo bari barashakanye nk'uko biboneka mu ngingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe, yumvikana, ifite ireme kandi ikurikije amategeko, kuko, nk'uko isobanurampamvu y'iryo Tegeko ribigaragaza, Umushingamategeko yashatse gusiba icyuho cyari mu Itegeko N° 22/99 ryo ku wa 12 Ugushyingo 1999 ryuzuza igitabo cya mbere cy'urwunge rw'amategeko mbonezamubano kandi rishyiraho igice cya gatanu cyerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura ryariho. Muri iryo Tegeko, ntabwo uwafakaye yazaga mu bazungura b'uwo bari barashyingiranywe. Umushingamategeko yasanze nta kibuzwa uwafakaye kuzungura uwo bari barashyingiranywe, mu gihe bombi baba baragize uruhare mu gushaka umutungo w'urugo bari bafatanyije.

[162] Kurengera uwafakaye no kumuha uburenganzira bwo kuzungura uwo bari barashyingiranywe, si umwihariko w'u Rwanda. Ilie Urs yavuze ko mu mateka y'Abaroma, amategeko yagiye avugururwa ku buryo uyu munsu uwafakaye agira uburenganzira ku mitungo yasizwe n'uwo bashakanye wafufuye nk'uko biri mu ivugurura ry'amategeko y'izungura: "Nowadays, the surviving spouse has three distinctive succession rights: i) a general inheritance right, in competition with any of the classes of heirs ii) a special inheritance right over the movable goods and objects belonging to the household and over the wedding gifts; and iii) a temporary right of occupancy of the house."⁷¹

[163] Mu gihugu cya Nepal bateganyije ko uwafakaye wari ukibana na nyakwigendera ariwe uza ku mwanya wa mbere w'abagomba kumuzungura (*The order of preference of nearest heirs for succession shall be as follows :(a) Husband or wife living in the undivided family...*).⁷²

[164] Muri Sweden uwafakaye afatwa nk'umuzungura wa mbere, hanyuma agakurikirwa n'abana ba nyakwigendera. Umwana ukomoka kuri umwe mu bashakanye wafufuye mbere, utari uwo yabyaranye n'uwapfakaye, niwe wenyine ufite uburenganzira bwo gusaba uruhare rwe ku izungura nyuma y'urupfu rw'umubyeyi we. Usibye mu bihe bimaze kuvugwa, uwafakaye azungura umutungo wose wa nyakwigendera kabone n'ubwo yaba asize abana, ariko na none ntabwo aba yemerewe kuraga uwo mutungo kubera ko uba ugomba kuzazungurwa n'abazungura ba nyakwigendera, igihe uwafakaye nawe azaba amaze gupfa (*The surviving spouse is to be regarded as a preliminary heir, the children as reversionary heirs. Only a child of the deceased who is not a child of the surviving spouse, may claim his or her share after the death of the first spouse. The spouses inherit the entire estate even where Children exist. However, he or she may not dispose of it by will as it should be passed to the heirs of the previously deceased on his or her own death*).⁷³

[165] Abahanga mu by'amategeko bakomeza bavuga ko abana⁷⁴ basigarana gusa uburenganzira bwo gusaba ibibatunga, izungura rikazaba ari uko uwafakaye nawe afufuye (*The children are only entitled to a Pecuniary claim. This Claim is only enforceable after the death of surviving spouse*).⁷⁵

⁷¹ Urs, Ilie, The inheritance rights of the surviving spouse provided by the Romanian law, Revista de derecho (Valparaíso) XXXII (2009): 209-220.

⁷² Article 239, the National Civil (Code) Act, 2017 (2074).

⁷³ Miriam Anderson and Esther Arroyo i Amayuelas, The Law of Succession: Testamentary Freedom: European Perspectives (Editorial CSIC - CSIC Press, 2011), p.11. link:

https://books.google.rw/books?id=pwKY3_rsoVIC&printsec=frontcover&dq=Right+of+the+surviving+spouse+to+the+succession+of+the+deceased+spouse&hl=en&sa=X&redir_esc=y#v=onepage&q=surviving%20spouse&f=false

⁷⁴ Bakomoka ku babyeyi bombi.

⁷⁵ Miriam Anderson and Esther Arroyo i Amayuelas, The Law of Succession: Testamentary Freedom: European Perspectives, op.cit, p.11.

[166] Ibisobanuro bimaze gutangwa haruguru bigaragara ko, n'ubwo buri gihugu gihitamo uburyo bwacyo bwo gukemura ibibazo kiba gifite, uko amategeko yagiye atera imbere, uburenganzira ku mutungo bw'uwapfakaye bwagiye burushaho gushimangirwa hagamijwe kumurinda kubaho nabi ugereranyije n'ubuzima yari asanzwe abayemo uwo bashakanye akiriho, nyamara yaragize uruhare mu gushaka umutungo yari asangiye na mugenzi we. Hanibukijwe ko inshingano z'urugo yari asanzwe afatanyije n'uwo bashyingiranywe noneho azikomeza wenyine nyuma y'uko mugenzi we apfuye.

[167] Nyuma y'ibyo bisobanuro, Urukiko rurasanga:

- Ku bijyanye n'ihame ryo kureshya imbere y'amategeko
 - Kuba Umushingamategeko yarahaye umwihariko uwapfakaye wo gusigarana umutungo wose, hanyuma yaba yongeye gushaka cyangwa se nawe apfuye akaba ari bwo izungura ritangira, nta vangura biteye. No kuba Umushingamategeko yarahaye uwapfakaye uburenganzira bwo kuzungura uwo bari barashyingiranywe, nabyo ntaho bibangamiye ihame ryo kureshya imbere y'amategeko kubera ko nk'uko byibukijwe haruguru, icyari gutera ivangura n'uko abandi bazungura baba barambuwe uburenganzira bwo kuzazungura, kandi siko bimeze mu Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryavuzwe.
- Ku bijyanye n'ihame ryo kurengera umuryango
 - Urukiko rurasanga nk'uko byasobanuwe mu bika bya 99-101, kuba Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryarateganyije: i) ko uwapfakaye asigarana umutungo wose, izungura rigatangira iyo yongeye gushaka cyangwa apfuye ; ii) ingano y'umutungo atemerewe gutanga cyangwa kuraga kuko uba ugenewe abazungura bazigamirwa (réserve successorale) iii) ibihano ku wapfakaye utuzuzwa inshingano yahawe zo kurera abana yasigiwe na nyakwigendera, n'ibindi, byose bigamije gukumira no kugabanya amakimbirane yajyaga avuka ashingiye ku izungura, mu rwego rwo kurengera ubumwe n'ubusugire bw'umuryango n'abawugize. Bityo rero imvugo ya Ngendahayo Kabuye y'uko ingingo zaregewe zibangamiye ihame ryo kurengera umuryango, nta shingiro ifite.
- Ku bijyanye n'ihame ryo kugira uburenganzira ku mutungo
 - Urukiko rurasanga nk'uko byasobanuwe mu bika bya 140 na 145 by'uru rubanza, itegeko ntirirengera uburenganzira butarabaho ndetse umuntu ntashobora kwemeza ko abufite ku mutungo atarabona kubera ko ubwo burenganzira bujyanye n'ibintu umuntu atunze atari byo yizera kuzabona mu gihe kizaza.

[168] Nyuma y'ibimaze gusobanurwa haruguru, Urukiko rurasanga imvugo ya Ngendahayo Kabuye y'uko kuba umutungo uzungurwa wikubirwa n'uwapfakaye wenyine kubera ko izungura ry'abashyingiranywe ritangira ari uko bombi bapfuye cyangwa uwapfakaye yongeye gushyingirwa, no kuba uwapfakaye yarahawe uburenganzira bwo kuzungura nyakwigendera, binyuranyije n'ihame ryo kugira uburenganzira ku mutungo, nta shingiro ifite, kuko nk'uko byasobanuwe haruguru, uburenganzira bw'abazungura busobanuka neza nyuma y'uko izungura ritangiye, ari nabwo hamenyekana abazungura nyakuri n'uburyo bazakurikirana nk'uko biteganywa n'ingingo ya 75 y'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura.

[169] Hashingiwe ku bisobanuro byose byatanze, Urukiko rurasanga ingingo ya 52, igika cya 3 n'iya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura zitanyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshingira rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavugururwe mu 2015.

III. ICYEMEZO CY'URUKIKO

[170] Rwemeje ko ikirego cyatanzwe na Ngendahayo Kabuye gisaba kwemeza ko ingingo ya 8, igika cya 2, iya 52 igika cya 3, iya 75 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe impano n'izungura zinyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 4/06/2003 ryavuguruwe mu 2015, nta shingiro gifite.

[171] Rwemeje ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 15 y'Itegeko Nshinga.

[172] Rwemeje ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 18 y'Itegeko Nshinga.

[173] Rwemeje ko ingingo ya 8, igika cya 2 n'iya 76 (1°) z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 34 y'Itegeko Nshinga.

[174] Rwemeje ko ingingo ya 52, igika cya 3 n'iya 75 z'Itegeko N° 27/2016 ryo ku wa 08/07/2016 ryerekeye imicungire y'umutungo w'abashyingiranywe, impano n'izungura, zitanyuranyije n'ingingo ya 15, iya 18 n'iya 34 z'Itegeko Nshinga.