ISHYAKA RIHARANIRA DEMOKARASI NO KURENGERA IBIDUKIKIJE MU RWANDA (DGPR) v. LETA Y'U RWANDA (2)

[Rwanda URUKIKO RW'IKIRENGA – RS/SPEC/0002/15/CS (Rugege, P.J.; Nyirinkwaya, Mukanyundo, Hatangimbabazi, Munyangeri N., Hitiyaremye, Gakwaya, Karimunda M. na Nyirandabaruta. J.) 8 Ukwakira 2015]

Itegeko Nshinga – Ivugururwa ry'Itegeko Nshinga – Kurega Leta y'u Rwanda – Nta cyabuza ko Leta iregwa kugirango yisobanure ku bijyanye n'ibyo inzego zayo zifitiye ububasha zemerewe n'ibyo zitemerewe guhindura mu Itegeko Nshinga – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 4 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 193.

Itegeko Nshinga – Ivugururwa ry'ingingo ya 101 – Igisobanuro cy'ingingo ya 192 ku birebana n'ivugururwa ry'iyi ngingo – Itegeko Nshinga rya Repubulika y'u Rwanda ntiribuza ko ingingo yaryo ya 101 irebana na manda za Perezida wa Repubulika ihindurwa hashingiwe ku biteganywa n'ingingo ya 193 y'Itegeko Nshinga – Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 4 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingingo ya 2 – Amasezerano Nyafurika kuri Demokarasi, amatora n'imiyoborere myiza, ingingo ya 23.

Incamake y'ikibazo: Ishyaka GREEN PARTY ryatanze ikirego mu Rukiko rw'Ikirenga risaba ko ingingo ya 101 y'Itegeko Nshinga itahinduka. Umunsi wa mbere w'iburanisha ntabwo iburanisha ryabaye kuko ishyaka GREEN PARTY ritari rifite umwunganizi mu mategeko maze iburanisha ryimurirwa ku yindi tariki. Mbere y'uko iburanisha riba, Mukamusoni Antoinette, wunganira GREEN PARTY, yatanze imyanzuro y'inyongera. Ikindi kandi ni uko Centre for Human Rights Law Firm Ltd yandikiye Urukiko rw'Ikirenga isaba kuza muri uru rubanza nk'inshuti y'urukiko, igashyigikira ikirego cyatanzwe n'Ishyaka GREEN PARTY cyo gusaba Urukiko ko rwakwemeza ko ihindurwa ry'ingingo ya 101 y'Itegeko Nshinga irebana na manda za Perezida wa Repubulika ritemewe.

Ku munsi w'iburanisha, Urukiko rwabanje gusuzuma icyifuzo cya Centre for Human Rights Law Firm Ltd cyo kuba inshuti y'urukiko muri uru rubanza, rumaze kubisuzuma rwemeza ko icyo cyifuzo kitemewe. Iburanisha ryarakomeje hasuzumwa inzitizi y'iburabubasha yatanzwe n'abahagarariye Leta. Urukiko ruca urubanza rubanziriza urundi rwemeza ko iyo nzitizi nta shingiro ifite, ko uru Rukiko rufite ububasha bwo kuburanisha ikirego rwashyikirijwe na GREEN PARTY.

Iburanisha mu mizi ryakomeje ku itariki ya 23/09/2015; GREEN PARTY iburana ivuga ko Itegeko Nshinga ritemera ko ingingo yaryo ya 101 ivuga kuri manda ya Perezida wa Repubulika ihinduka, naho abahagarariye Leta baburana bavuga ko Leta itagombaga kuregwa muri uru rubanza, naho ku birebana n'ingingo ya 101 y'Itegeko Nshinga bavuga ko nta cyabuza ko yahinduka.

Incamake y'icyemezo: 1. Nta cyabuza ko Leta iregwa kugirango yisobanure ku bijyanye n'ibyo inzego zayo zibifitiye ububasha zemerewe n'ibyo zitemerewe guhindura mu Itegeko Nshinga, mu gihe urega avuga ko hari ingingo y'Itegeko Nshinga idashobora guhindurwa, bigahuzwa no kuba inzego za Leta arizo zifite ububasha bwo gutangiza ivugurura ry'Itegeko Nshinga ryose cyangwa ingingo zaryo zimwe na zimwe.

2. Itegeko Nshinga rya Repubulika y'u Rwanda ntiribuza ko ingingo yaryo ya 101 irebana na manda za Perezida wa Repubulika ihindurwa hashingiwe ku biteganywa n'Ingingo ya 193 y'Itegeko Nshinga. Itegeko Nshinga kandi riramutse rivuguruwe ntibyabangamira amahame ya demokarasi mu gihe ibitekerezo byashyirwamo ari iby'abaturage, kandi ivugururwa rigakorwa binyuze mu nzira ziteganywa n'amategeko.

Ikirego cya GREEN PARTY nta shingiro gifite.
Itegeko Nshinga rya Repubulika y'u Rwanda ntiribuza ko ingingo yaryo ya 101 yavugururwa mu duce twayo twose.
Ingwate y'amagarama yatanzwe na GREEN PARTY ihwanye n'ibyakozwe muri uru rubanza.

Amategeko yashingiweho:
Itegeko Nshinga rya Repubulika y'u Rwanda ryo kuwa 4 Kamena 2003 nk'uko ryavuguruwe kugeza ubu, ingingo za 2, 101, 193.
Amasezerano Nyafurika kuri Demokarasi, amatora n'imiyoborere myiza, ingingo ya 10(2) n'iya 23.

Nta manza zifashishijwe.

Inyandiko z'abahanga zifashishijwe:
S. Holmes, "Precommitment and the paradox of Democracy" in J. Elster & R. Slagstad (Eds), Constitutionalism and Democracy (1988) at 231.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ishyaka Riharanira Demokarasi no Kurengera ibidukikije mu Rwanda (Democratic Green Party of Rwanda), [muri uru rubanza rikaba riri bwitwe GREEN PARTY mu magambo magufi], ryatanze ikirego mu Rukiko rw'Ikirenga rivuga ko hari abantu bandika amabaruwa bakayashyikiriza Inteko Ishinga Amategeko basaba ko ingingo ya 101 y'Itegeko Nshinga yahinduka, Umukuru w'Igihugu akiyamamariza kuyobora Igihugu igihe cyose nta manda imuzitira gukomeza kuyobora.

[2] Mu kirego cyaryo, Ishyaka GREEN PARTY ryasabye ko iyo ngingo ya 101 y'Itegeko Nshinga itahinduka. Iburanisha ry'urubanza ryari ryashyizwe ku itariki ya 8/07/2015, kuri uwo munsi urubanza ntirwaburanishwa bitewe nuko Ishyaka GREEN PARTY ritari rifite Avoka uriburanira. GREEN PARTY yasabye ko urubanza rusubikwa mu gihe cy'amezi atandatu kugirango ishake avoka uzayiburanira, ariko Urukiko rusanga icyo gihe cyose kidakenewe, iburanisha ryarwo ryimurirwa ku itariki ya 29/07/2015.

[3] Hagati aho, ku itariki ya 23/07/2015, mu izina ry'Ishyaka GREEN PARTY, Me Mukamusoni Antoinette yatanze imyanzuro y'inyongera ku kirego cyatanzwe n'iryo shyaka. Ku itariki ya 24/07/2015, Centre for Human Rights Law Firm Ltd yandikiye Urukiko rw'Ikirenga isaba kuza muri uru rubanza nka "amicus curiae", igashyigikira ikirego cyatanzwe n'Ishyaka GREEN PARTY cyo gusaba Urukiko ko rwakwemeza ko ihindurwa ry'ingingo ya 101 y'Itegeko Nshinga irebana na manda za Perezida wa Repubulika ritemewe.

[4] Ku itariki ya 29/07/2015, urubanza rwarasubukuwe, GREEN PARTY ihagarariwe n'umuyobozi wayo Habineza Frank, yunganiwe na Me Mukamusoni Antoinette, naho Leta y'u Rwanda ihagarariwe na Me Rubango Epimaque, Me Mbonera Théophile hamwe na Me Malala Aimable, Intumwa za Leta. Kuri uwo munsi, Urukiko rwabanje gusuzuma ubusabe bwa Centre for Human Rights Law Firm Ltd bwo kuba "amicus curiae" muri uru rubanza, rumaze kubisuzuma rwemeza ko ubwo busabe butemewe. Iburanisha ryakomeje hasuzumwa inzitizi y'iburabubasha yatanzwe n'abahagarariye Leta, ku itariki ya 09/09/2015, Urukiko ruca urubanza rubanziriza urundi rwemeza ko iyo nzitizi nta shingiro ifite, ko uru Rukiko rufite ububasha bwo kuburanisha ikirego rwashyikirijwe na GREEN PARTY.

[5] Iburanisha mu mizi ryakomeje ku itariki ya 23/09/2015, GREEN PARTY ihagarariwe n'umuyobozi wayo Habineza Frank, yunganiwe na Me Mukamusoni Antoinette, naho Leta y'u Rwanda ihagarariwe na Me Rubango Epimaque hamwe na Me Mbonera Théophile, Intumwa za Leta. GREEN PARTY yaburanye ivuga ko Itegeko Nshinga ritemera ko ingingo yaryo ya 101 ivuga kuri manda ya Perezida wa Repubulika ihinduka, abahagarariye Leta baburana bavuga ko Leta itagombaga kuregwa muri uru rubanza, naho ku birebana n'ingingo ya 101 y'Itegeko Nshinga bavuga ko nta cyabuza ko yahinduka.

II. IBIBAZO BIGIZE URUBANZA

- **Kumenya niba Leta y'u Rwanda itaragombaga kuregwa muri uru rubanza.**

[6] Me Mbonera Théophile, Intumwa ya Leta, avuga ko ikirego cyatanzwe mu Rukiko rw'Ikirenga kirebana no gusesengura ingingo z'Itegeko Nshinga, GREEN PARTY yatanze ariko ko itagaragaza icyo Leta y'u Rwanda yakoze gituma iregwa. Akomeza avuga ko gusobanura Itegeko Nshinga muri rusange, binyura mu nzira ziteganywa n'ingingo ya 96 yaryo kandi ko kurisobanura bidasaba kurega Leta.

[7] Me Rubango Epimaque, Intumwa ya Leta, avuga ko mu zindi manza zijyanye no gusobanura amategeko anyuranye n'Itegeko Nshinga, Leta iza mu rubanza atari umuburanyi uregwa, asoza asaba ko uru Rukiko rwatanga umurongo ugaragaraza niba Leta yaregwa muri bene izi manza cyangwa niba yatumizwa, igatanga ibisobanuro mu gihe bikenewe.

[8] Habineza Frank, Umuyobozi wa GREEN PARTY avuga ko ishyaka ayoboye ryahisemo kurega Leta y'u Rwanda kuko ibikorwa byo gusaba ko ingingo ya 101 y'Itegeko Nshinga yahindurwa byatangijwe na bamwe mu bayobozi bakuru bari muri Leta, harimo Abaminisitiri na bamwe mu Badepite n'Abasenateri, kandi Leta ikaba ntacyo yakoze ngo yamagane ibyo bikorwa bya bamwe mu bayigize ahubwo ihitamo kwicecekera.

[9] Me Mukamusoni Antoinette uburanira GREEN PARTY avuga ko impamvu Leta y'u Rwanda yarezwe ari uko igikorwa idashaka ihita igihagarika, nyamara abaturage bafata imodoka bakava mu mpande zitandukanye z'Igihugu berekeza ku cyicaro cy'Inteko Ishinga Amategeko, bagaca kuri Police ahantu hose ntibahagarike, ariyo mpamvu Leta yarezwe kuko itabashije gukumira ibikorwa byose bijyanye no guhindura Itegeko Nshinga.

UKO URUKIKO RUBIBONA

[10] Mu Rwanda, guhindura Itegeko Nshinga ntibishoboka mu gihe inzego za Leta zibifitiye ububasha zitabigizemo uruhare. Ingingo ya 193 y'Itegeko Nshinga ivuga ku birebana n'inzira zikoreshwa mu kurihindura, igaragaza inzego za Leta zifite ububasha bwo

gutangiza ivugurura ry'Itegeko Nshinga. Iyi ngingo igira iti: "ububasha bwo gutangiza ivugurura ry'Itegeko Nshinga bufitwe na Perezida wa Repubulika bimaze kwemezwa n'Inama y'Abaminisitiri; bufitwe kandi na buri Mutwe w'Inteko Ishinga Amategeko binyuze mu itora ku bwiganze bwa bibiri bya gatatu (2/3) by'amajwi y'abawugize. Ivugururwa ryemezwa ritowe ku bwiganze bwa bitatu bya kane (3/4) by'amajwi y'abagize buri mutwe w'Inteko Ishinga Amategeko. [….]".

[11] Mu gihe urega avuga ko hari ingingo y'Itegeko Nshinga idashobora guhindurwa, bigahuzwa no kuba inzego za Leta arizo zifite ububasha bwo gutangiza ivugurura ry'Itegeko Nshinga ryose cyangwa ingingo zaryo zimwe na zimwe, Urukiko rurasanga nta cyabuza ko Leta iregwa kugirango yisobanure ku bijyanye n'ibyo inzego zayo zibifitiye ububasha zemerewe n'ibyo zitemerewe guhindura mu Itegeko Nshinga. Bityo Leta y'u Rwanda ikaba yaragombaga kuregwa ngo yisobanure ku biyireba. Nk'uko byemejwe mu rubanza rubanziriza urundi, ikibazo nyamukuru muri uru rubanza ni ugusesengura Itegeko Nshinga hakamenyekana niba koko bibujijwe ko ingingo ya 101 yaryo yahindurwa, Perezida wa Repubulika akaba yakwiyamamariza kuyobora igihugu manda zirenze ebyiri. Kuba GREEN PARTY yarareze ivuga ko hari aho Leta ihuriye n'ibikorwa biganisha ku guhindura Itegeko Nshinga by'umwihariko ingingo yaryo ya 101, Urukiko rurasanga nabyo bishimangira ko nta kibuza ko Leta yaregwa, ikiregura ku byo iregwa, ahubwo hagasuzumwa niba bifite ishingiro.

[12] Uretse kuba Leta y'u Rwanda yararezwe ngo yisobanure ku byo inzego zayo zemerewe mu guhindura Itegeko Nshinga, mu birego bisa nk'icyatanzwe na GREEN PARTY, Leta iba igomba kuza mu rubanza byanze bikunze kuko impaka ziba zishingiye ku burenganzira bwa rubanda cyangwa ku nyungu z'abenegihugu muri rusange. By'umwihariko, mu manza zirebana n'Itegeko Nshinga, Leta igomba kuzizamo nk'ihagarariye abaritoye, ikagaragaza mu izina rya rubanda aho ihagaze mu myumvire y'ingingo zaryo zimwe na zimwe cyangwa zose. Muri bene izi manza kandi, icyemezo cy'urukiko ntikireba gusa abatanze ikirego, kinareba abandi bose barebwa n'Itegeko Nshinga Leta n'abanegihugu ihagarariye barimo. Ibi nabyo byashingirwaho mu kuzana Leta mu rubanza.

➢ **Kumenya niba Itegeko Nshinga rya Repubulika y'u Rwanda ritemera ko ingingo yaryo ya 101 irebana na manda za Perezida wa Repubulika yahindurwa.**

[13] Habineza Frank, umuyobozi wa GREEN PARTY avuga ko ingingo ya 101 y'Itegeko Nshinga idashobora guhindurwa ngo Perezida abe yakwiyamamariza manda zirenze ebyiri kuko iyo ngingo ivuga ko Perezida wa Repubulika atorerwa manda y'imyaka irindwi, akaba afite kandi n'uburenganzira bwo kongera kwiyamamaza inshuro imwe gusa. Asanga kuba Itegeko Nshinga rivuga ko yakongera kwiyamamaza inshuro imwe gusa bisobanutse, ntawahindura Itegeko Nshinga ngo hemezwe ko yakwiyamamaza inshuro zirenze ebyiri.

[14] Habineza Frank avuga ko ingingo ya 193 y'Itegeko Nshinga abantu bakunze guheraho basaba ko ingingo ya 101 ihindurwa, idatanga uburenganzira bwo guhindura manda za Perezida wa Repubulika ahubwo ko iyo ngingo yemera ko habaho "referendum" ku birebana gusa no ku ndeshyo ya manda aho kuba ku mubare wa manda. Akomeza avuga ko guhindura Itegeko Nshinga byabangamira demokarasi n'amahoro kuko mu bindi bihugu aho Itegeko Nshinga ryagiye rihindurwa bya hato na hato umutekano wagiye uhungabana, ko no mu Rwanda abantu bashobora kugwa muri uwo mutego.

[15] Habineza Frank akomeza avuga ko asaba uru Rukiko ko rwaca urubanza rukemeza ko ingingo ya 193 y'Itegeko Nshinga idatanga uburenganzira bwo guhindura ingingo yaryo ya 101, asoza asaba Urukiko ko rwategeka ko ibikorwa byo guhindura Itegeko Nshinga byahagarara ndetse rukazafata icyemezo cyo guhagarika Komisiyo ishinzwe kunganira Inteko Ishinga Amategeko mu ivugururwa ry'Itegeko Nshinga.

[16] Me Mukamusoni Antoinette uburanira GREEN PARTY avuga ko Inteko Ishinga Amategeko ariyo yatoye Itegeko Nshinga ririho, n'abaturage bakaba aribo baryemeje bakaba batahindukira ngo basabe ko ryahindurwa. Akomeza avuga ko ingingo ya 101 y'Itegeko Nshinga ishobora guhindurwa gusa ku birebana n'indeshyo ya manda kandi ko ntawakwitwaza ko hari abanyarwanda bashaka ko ihinduka kuko icyo abaturage bashaka cyose atariko bacyemererwa cyane cyane mu gihe kinyuranyije n'amategeko.

[17] Me Mukamusoni Antoinette avuga ko umushingamategeko yashyizeho manda ebyiri azi impamvu abikoze zirimo kwirinda ko habaho guhirika ubutegetsi no kumena amaraso. Akomeza avuga ko hashyizweho manda ebyiri z'imyaka irindwi zidashobora kongerwa mu rwego rwo kwirinda ko Perezida ugiyeho agakora nabi agundira ubutegetsi.

[18] Me Mbonera Théophile, Intumwa ya Leta avuga ko ingingo ya 193 igaragaza uburyo "referendum" yakorwamo, agace kayo ka nyuma kakavuga ko nta mushinga w'ivugururwa ry'iyo ngingo ushobora kwakirwa ngo usuzumwe. Avuga ko iyi ngingo ya 193 ariyo yonyine idashobora guhindurwa naho izindi ngingo zirimo iya 101 nta kibuza ko zihindurwa mu gihe binyuze mu buryo buteganywa n'Itegeko Nshinga.

[19] Me Mbonera Théophile akomeza avuga ko guhindura Itegeko Nshinga ntaho bihuriye no kubangamira demokarasi kuko asanga demokarasi ari ubutegetsi bw'abaturage, ari nabo bagena uko bazabaho. Avuga ko ingingo ya 101 y'Itegeko Nshinga iramutse ihinduwe binyuze muri "referendum" ari abaturage babigizemo uruhare byaba binyuze muri demokarasi kuko referendumu ikorwa n'abaturage.

[20] Me Rubango Epimaque, Intumwa ya Leta avuga ko ikirego cyatanzwe na GREEN PARTY nta shingiro gifite kuko Itegeko Nshinga rijyaho rigamije kugira ibyo rikemura kandi rigamije guteza rubanda imbere, nta cyabuza ko rivugururwa ngo rihuzwe n'ibihe. Akomeza avuga ko uburyo ababuranira GREEN PARTY basobanura ingingo ya 101 y'Itegeko Nshinga atari bwo, kuko asanga iyo ngingo ya 101 ivuga ku birebana na manda za Perezida wa Repubulika uko zingana ndetse n'indeshyo yazo, ko kandi iyo ngingo yavugururwa binyuze mu nzira ziteganywa n'ingingo ya 193.

[21] Me Rubango Epimaque avuga ko ingingo ya 101 n'iya 193 z'Itegeko Nshinga ziteganya muri rusange ko Perezida wa Repubulika atorerwa manda ebyiri z'imyaka irindwi, kandi ko ingingo irebana na manda ishobora kuvugururwa ariko bigakorwa mu buryo bwa "referendum" nkuko biteganywa n'ingingo ya 193. Asoza avuga ko ntaho biteganijwe ko Itegeko Nshinga ritavugururwa, ko ahubwo iry'u Rwanda rimaze kuvugururwa inshuro eshatu kandi byanyuze mu nzira ziteganywa n'amategeko, ko rero nta cyabuza ko n'andi mavugururwa yakorwa mu gihe abashyiraho Itegeko Nshinga, aribo baturage, basanze ari ngombwa.

UKO URUKIKO RUBIBONA

[22] Ishyaka GREEN PARTY rivuga ko nubwo abaturage benshi bagejeje ku Nteko Ishinga Amategeko ubusabe ko Ingingo ya 101 y'Itegeko Nshinga yavugururwa kugira ngo Perezida wa Repubulika ashobore kwiyamamaza nyuma yuko manda ye irangiye, ubwo busabe ntibugomba kwemerwa kuko ibyo basaba bibujijwe n'iyo ngingo ya 101. Nibyo koko no muri demokarasi icyo abaturage basabye cyose ntibivuze ko byanze bikunze bagihabwa cyangwa bakemererwa n'ubutegetsi, cyane cyane iyo kinyuranije n'amategeko. Nkuko umuhanga Steven Holmes yabivuze: "Democracy is never simply the rule of the people but always the rule of the people within certain pre-determined channels according to the pre-arranged procedures…."[1] bivuga ko demokarasi itagomba gufatwa nk'ubutegetsi bwa rubanda gusa, ahubwo igomba gufatwa nk'ubutegetsi bwa rubanda hakurikijwe inzira zemeranijweho mbere. Muri uru rubanza, Urukiko rurasuzuma ishingiro ry'ibivugwa na GREEN PARTY ko guhindura ingingo ya 101 y'Itegeko Nshinga byaba binyuranyije n'ibyemeranijweho mu Itegeko Nshinga kabone n'iyo byaba bisabwe na rubanda, cyangwa ko byaba bibangamiye amahame ya demokarasi igihugu kigenderaho.

[23] Ingingo ya 101 y'Itegeko Nshinga ivuga ko "Perezida wa Repubulika atorerwa manda y'imyaka irindwi. Ashobora kongera gutorwa inshuro imwe. Nta na rimwe umuntu yemerewe gutorerwa manda zirenze ebyiri (2) ku mwanya wa Perezida wa Repubulika".

[24] Ingingo ya 101 ivugwa mu gika kibanziriza iki, ikubiyemo ibitekerezo bitatu. Icya mbere kirebana n'indeshyo ya manda ya Perezida wa Repubulika, Itegeko Nshinga ryagennye ko ingana n'imyaka irindwi. Icya kabiri kirebana n'umubare wa manda, Itegeko Nshinga ryemeje ko ari ebyiri. Igitekerezo cya gatatu kirebana no kuba manda za Perezida wa Repubulika ku muntu umwe zidashobora kurenga ebyiri.

[25] Itegeko Nshinga ryo kuwa 04 Kamena 2003 Igihugu cy'u Rwanda kigenderaho ubu, ntiryemerera Perezida wa Repubulika gutorerwa indi manda mu gihe yaba yaramaze gutorerwa manda ebyiri. Ibi nibyo bikubiye mu nteruro ya nyuma y'ingingo ya 101 yaryo. Kuba nta na rimwe umuntu yemerewe gutorerwa manda zirenze ebyiri (2) ku mwanya wa Perezida wa Repubulika birebwa hashingiwe ku ngingo ya 101 y'Itegeko Nshinga rikoreshwa ubu (en vigueur/ in force). Mu gihe Itegeko Nshinga rikimeze uko riteye ubu, ntawushobora kwiyamamariza manda zirenze ebyiri.

[26] Itegeko Nshinga risobanura uko rishobora kuvugururwa. Ibi bigaragara mu bice byaryo bya nyuma, mu nteruro ya XI igira iti "Ibyerekeye ivugururwa ry'Itegeko Nshinga". Nta handi muri iri Tegeko Nshinga rivuga ku byerekeye ingingo z'Itegeko Nshinga zavugururwa cyangwa zitavugururwa, cyangwa se uburyo zavugururwamo. Ingingo ya 193 y'Itegeko Nshinga niyo ngingo isobanura uko Itegeko Nshinga rishobora kuvugururwa. Igira iti "ububasha bwo gutangiza ivugurura ry'Itegeko Nshinga bufitwe na Perezida wa Repubulika bimaze kwemezwa n'Inama y'Abaminisitiri; bufitwe kandi na buri Mutwe w'Inteko Ishinga Amategeko binyuze mu itora ku bwiganze bwa bibiri bya gatatu (2/3) by'amajwi y'abawugize. Ivugururwa ryemezwa ritowe ku bwiganze bwa bitatu bya kane (3/4) by'amajwi y'abagize buri mutwe w'Inteko Ishinga Amategeko. Ariko iyo iryo vugururwa ryerekeye manda ya Perezida wa Repubulika, ubutegetsi bwa demokarasi

[1] S. Holmes "*Precommitment and the paradox of Democracy*" in J. Elster & R. Slagstad (Eds), Constitutionalism and Democracy (1988) at 231, available at https://books.google.com/books?hl=en&lr=&id=WeedJnRFvVcC&oi=fnd&pg=PA195&dq=%E2%80%9CPrecommitment+and+the+paradox+of+Democracy%E2%80%9D+&ots=gjzInRoktk&sig=TnTQp-4Vbfr-rLwXP9Izp2cWEZQ#v=onepage&q=%E2%80%9CPrecommitment%20and%20the%20paradox%20of%20Democracy%E2%80%9D&f=false

ishingiye ku bitekerezo binyuranye cyangwa ku bwoko bw'ubutegetsi buteganyijwe n'iri Tegeko Nshinga cyane cyane ku butegetsi bwa Leta bushingiye kuri Repubulika n'ubusugire bw'Igihugu, rigomba kwemezwa na referendumu, rimaze gutorwa na buri Mutwe w'Inteko Ishinga Amategeko. […]. Nta mushinga w'ivugurura ry'iyi ngingo ushobora kwakirwa".

[27] Ingingo ya 193 ivugwa mu gika kibanziriza iki, igaragaza inzira zikoreshwa mu kuvugurura Itegeko Nshinga. By'umwihariko igika cyayo cya nyuma, kinavuga ko nta mushinga w'ivugurura ry'ingingo ya 193 ushobora kwakirwa. Ibi byerekana ko kuvugurura Itegeko Nshinga bitabujijwe, ndetse ubwaryo rigena inzira zikoreshwa mu kurivugurura. Ikibujijwe, ni uguhindura inzira zikoreshwa mu kuvugurura Itegeko Nshinga nk'uko zagenwe mu ngingo yaryo ya 193. Impamvu yo kubuza ko iyi ngingo yahinduka irumvikana. Inzira zo guhindura Itegeko Nshinga ntizigomba kuba zoroshye, bitabaye gutyo ryajya rivugururwa n'igihe bitari ngombwa bikaba byahungabanya ubuzima n'umudendezo by'Igihugu. Uburyo bwo kuvugurura Itegeko Nshinga buraremereye kuko bisaba ubwiganze bw'amajwi budasanzwe (super majorities) kugira ngo ingingo yaryo ibe yavugururwa n'Inteko Ishinga Amategeko. Ku bivugwa mu ngingo ya 193, igika cya gatatu, ubwo buryo buremerezwa kurushaho kubera uburemere bw'ibikubiyemo, bigasaba ko uretse n'ubwo bwiganze bw'amajwi habaho no kujyana ikibazo ku baturage ngo bagaragaze amahitamo yabo hakoreshejwe referendumu. Ibi ariko ntibivuze ko izo ngingo ari ntayegayezwa, zidashobora guhindurwa.

[28] Ku birebana n'ivugurura ryerekeye manda ya Perezida wa Repubulika, ingingo ya 193 iteganya ko rigomba kwemezwa na "referendum", rimaze gutorwa na buri Mutwe w'Inteko Ishinga Amategeko. Itegeko Nshinga ubwaryo ryemera ko hashobora kubaho ivugurura ryerekeye manda ya Perezida wa Repubulika, rigena n'uburyo iryo vugurura rikorwamo. Urukiko rurasanga ntaho ingingo ya 193 y'Itegeko Nshinga iteganya ko ivugururwa ku birebana n'umubare wa manda ridashoboka cyangwa se ko ribujijwe, icyo iyi ngingo yemera muri rusange, ni ivugurura rirebana na manda ya Perezida wa Repubulika. Ibyo bishobora kuba indeshyo ya manda cyangwa se bikaba umubare wa manda Perezida wa Repubulika ashobora kwiyamamariza. Ibyo ishyaka GREEN PARTY rivuga ko ingingo ya 193 irebana n'indeshyo ya manda atari umubare wa manda, ntabwo bivugwa muri iyo ngingo, GREEN PARTY ikaba itagaragaza aho ibishingira. Nta n'ubwo byumvikana ukuntu Itegeko Nshinga ryazitira abenegihugu ubuziraherezo kandi ari ngombwa mu buzima ko ahagaragaye kwibeshya hakosorwa, ibitakijyanye n'igihe bikavugururwa[2].

[29] GREEN PARTY ivuga ko ingingo ya 101 y'Itegeko Nshinga iramutse ihinduwe byaba bibangamiye amahame ya demokarasi bikaba byanahungabanya umutekano w'igihugu. Nibyo koko, u Rwanda ni Igihugu kigendera ku mahame ya demokarasi. Ingingo ya mbere y'Itegeko Nshinga ivuga iti: "Leta y'u Rwanda ni Repubulika yigenga kandi ubutegetsi bwose ni yo buturukaho, ishingiye kuri demokarasi, igamije guteza imbere abaturage kandi ntishingiye ku idini. Ishingiro rya Repubulika ni Ubutegetsi bwa rubanda, butangwa na rubanda kandi bukorera rubanda". Kimwe mu biteganywa n'ingingo ivugwa muri iki gika, n'uko Leta y'u Rwanda ishingiye kuri demokarasi.

[2] Ibitekerezo biri mu gika cya 28 bisa n'ibyigeze kuvugwa na Thomas Jefferson wabaye Perezida wa Leta Zunze Ubumwe z'Amerika wavuze ko abantu bafite uburenganzira bwo guhindura amategeko n'inzego kugirango bigendane n'igihe. Yabivuze muri aya magambo : "*A generation may bind itself as long as its majority continues inlife; when that has disappeared, another majority is in place, holds all the rights and powers their predecessors once held and may change their laws and institutions to suit themselves. Nothing then is unchangeable but the inherent and unalienable rights of man*".Thomas Jefferson to John Cartwright, 1824. ME 16:48.

[30] Ingingo ya 2, igika cya gatatu, y'Itegeko Nshinga isobanura uko demokarasi ikoreshwa. Ivuga iti: "[….] Ubutegetsi bw'Igihugu ni ubw'imbaga y'Abanyarwanda, bakoresha ubwabo binyuze muri referendumu cyangwa binyuze ku babahagarariye". Imbaga y'Abanyarwanda niyo ifite ububasha bwo gutanga ubutegetsi, ikanihitiramo uko itegekwa binyuze mu bayihagarariye cyangwa se binyuze muri "referendum".

[31] Mu gihe imbaga y'Abanyarwanda yaba ihisemo guhindura Itegeko Nshinga binyuze muri "referendum", cyangwa se mu zindi nzira ziteganywa n'ingingo ya 193 yaryo bitewe n'ingingo zihindurwa, ntibyafatwa nko kubangamira amahame ya demokarasi, ahubwo rubanda iramutse ibibujijwe nibyo byaba binyuranye na demokarasi kuko abaturage baba bambuwe uburenganzira bahabwa n'Itegeko Nshinga bwo kugena uko bategekwa.

[32] Urukiko rusanga atari Itegeko Nshinga rya Repubulika y'u Rwanda gusa riteganya ko rishobora kuvugururwa. Amategeko Nshinga y'ibihugu hafi ya byose ku isi ateganya uburyo avugururwa. Amasezerano Nyafurika kuri Demokarasi, Amatora n'Imiyoborere (African Charter on Democracy, Elections and Governance)[3] yumvikanyweho n'ibihugu by'Afurika, ntabuza ivugurura ry'Amategeko Nshinga, ahubwo ateganya mu ngingo yayo ya 10(2) ko mu gihe habayeho kuvugurura Itegeko Nshinga, bigomba gushingira ku bwumvikane bw'abenegihugu binyuze muri "referendum" igihe bibaye ngombwa. Iyo ngingo ibivuga muri aya magambo "State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum". Ikigaragara muri aya masezerano, ni uko kuvugurura Itegeko Nshinga bitabujijwe. Icyo ibihugu byiyemeje, ni uko mu gihe habayeho kuvugurura Itegeko Nshinga byashingira ku bwumvikane bw'abenegihugu, bibaye ngombwa bigakorwa binyuze muri "referendum". Ibi ntibitandukanye n'ibiteganywa n'ingingo ya 193 y'Itegeko Nshinga rya Repubulika y'u Rwanda.

[33] Icyo Amasezerano Nyafurika kuri Demokarasi atemera, ni uguhindura itegeko Nshinga bikozwe mu buryo bubangamira amahame ya demokarasi yo guhererekanya ubutegetsi. Ingingo ya 23 y'ayo masezerano irondora ibyo ibihugu bigize umuryango w'Ubumwe bw'Afurika (African Union), harimo n'u Rwanda, byiyemeje ku byerekeranye no gufata, kugundira, cyangwa guhindura ubutegetsi bitemewe. Iyo ngingo igira iti "State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1) Any putsch or coup d'etat against a democratically elected government.

2) Any intervention by mercenaries to replace a democratically elected government.

3) Any replacement of a democratically elected government by armed dissidents or rebels.

4) Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or

5) Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government".

---

[3] Itegeko Nº 47/2009 ryo kuwa 30/12/2009 ryemerera kwemeza burundu Amasezerano Nyafurika kuri Demokarasi, Amatora n'Imiyoborere yemejwe n'Inama Rusange ya munani y'Umuryango w'Afurika Yunze Ubumwe yabereye i Addis Ababa muri Ethiopia kuwa 30 Mutarama 2007. Reba Igazeti ya Leta ya Repubulika y'u Rwanda N° 4 bis yo ku wa 25/01/2010.

[34] Ubu buryo bwo guhindura ubutegetsi bubujijwe n'ayo masezerano buvugwa hejuru ntaho buhuriye n'ibyo GREEN PARTY ivuga ko biteganywa gukorwa mu Rwanda. Agace gashobora kumvikana ko hari aho gahuriye n'uru rubanza ni aka gatanu kavuga ko kimwe mu bibujijwe ari uguhindura Itegeko Nshinga cyangwa andi mategeko mu buryo bunyuranije n'amahame ya demokarasi agenga imihindurire y'ubutegetsi.

[35] Icy'ingenzi muri ayo mahame ya demokarasi, ni uguha abenegihugu ubwisanzure busesuye mu gushyiraho cyangwa guhindura ubutegetsi binyuze mu matora cyangwa "referendum". Mu byo GREEN PARTY ivuga ko birimo gutegurwa birebana no guhindura Itegeko Nshinga, ntiharimo guhindura ubutegetsi bitanyuze muri izo nzira za demokarasi. Ahubwo yo ivuga ko gukoresha "referendum" bibangamira demokarasi, ibyo bikaba bitandukanye n'ibyo Umuryango w'Afurika Yunze Ubumwe, harimo n'u Rwanda, wiyemeje. Ku bireba u Rwanda, mu gihe ingingo ya 101 y'Itegeko Nshinga ivuga kuri manda za Perezida wa Repubulika yaba ihindutse, ntibivuga ko hari uwakumirwa mu kwiyamamariza umwanya wa Perezida wa Repubulika ndetse ntibivanaho ipiganwa rinyuze mu matora, bikaba byaba byubahirije amahame asanzwe agenderwaho mu bihugu bikurikira inzira ya demokarasi mu miyoborere y'abenegihugu.

[36] Amategeko Nshinga y'ibihugu bitandukanye ku isi ateganya uko avugururwa igihe bibaye ngombwa agahuzwa n'igihe, abaturage bakagena uko bayoborwa binyuze muri "referendum" cyangwa mu babahagarariye. No mu Rwanda, kuba Itegeko Nshinga rishobora kuvugururwa nta gitangaje. Nk'uko abaturage b'ibindi bihugu bafite uburenganzira bwo guhindura Itegeko Nshinga ryabo, n'abaturage b'u Rwanda nibo bonyine bafite ububasha bwo kugena uko bayoborwa binyuze muri "referendum" cyangwa mu babahagarariye.

[37] Hakurikijwe rero ibyasobanuwe mu bika bibanziriza iki, Urukiko rw'Ikirenga rurasanga Itegeko Nshinga rya Repubulika y'u Rwanda ritabuza ko ingingo yaryo ya 101 irebana na manda za Perezida wa Repubulika ihindurwa hashingiwe ku biteganywa n'Ingingo ya 193 y'Itegeko Nshinga. Itegeko Nshinga kandi riramutse rivuguruwe ntibyabangamira amahame ya demokarasi mu gihe ibitekerezo byashyirwamo ari iby'abaturage, kandi ivugururwa rigakorwa binyuze mu nzira ziteganywa n'amategeko.

III. ICYEMEZO CY'URUKIKO

[38] Rwemeje ko ikirego rwashyikirijwe n'Ishyaka Riharanira Demokarasi no Kurengera Ibidukikije mu Rwanda (DEMOCRATIC GREEN PARTY OF RWANDA) nta shingiro gifite;

[39] Rwemeje ko Itegeko Nshinga rya Repubulika y'u Rwanda ritabuza ko ingingo yaryo ya 101 yavugururwa mu duce twayo twose;

[40] Ruvuze ko ingwate y'amagarama yatanzwe n'Ishyaka DEMOCRATIC GREEN PARTY OF RWANDA ihwanye n'ibyakozwe muri uru rubanza.