ASSOCIATION DES ASSUREURS DU RWANDA (ASSAR) v. LETA Y'U RWANDA (MIFOTRA)

[Rwanda URUKIKO RW'IKIRENGA – RS/PIL/SPEC 00001/2019/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Rukundakuvuga., J.) 19 Kamena 2020]

Amategeko agenga imiburanishirize y'imanza zihariye – Ikirego kigamije kurengera inyungu rusange – Uruhare rwa Leta mu birego birebana n'inyungu rusange – Ikirego kirebana n'inyungu rusange kigomba kuba kigamije ko hubahirizwa uburenganzira bw'abandi bantu aho kwita ku kibazo bwite cy'urega n'ubwo urega yaba afite inyungu ku kiregerwa, izo nyungu agomba kuba azisangiye n'abandi bantu. – Muri ibi birego Leta ihamagazwa mu rubanza gutanga ibitekerezo; ntihamagazwa nk'umuburanyi ushobora kugira ibyo aryozwa cyangwa aca urundi ruhande.

Amategeko agenga imiburanishirize y'imanza zihariye – Ikirego kigamije kurengera inyungu rusange – Ibigize inyungu rusange – Inyungu rusange iba iyo hari igikorwa cyabaye cyangwa kitabaye kikavutsa abantu benshi uburenganzira bwabo cyangwa se kikabagiraho ingaruka mbi, gikosorwa hatanzwe ikirego mu rukiko rubifitiye ububasha.

Incamake y'ikibazo: Association des Assureurs du Rwanda (muri uru rubanza rikaba riri bwitwe ASSAR) yatanze ikirego mu Rukiko rw'Ikirenga irega Leta y'u Rwanda (MIFOTRA) isaba gutegeka ko imbogamizi zose zituma hadashyirwaho umushahara fatizo (SMIG/Minimum Wage) mu Rwanda zikurwaho kubera ko Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, mu ngingo ya 68 riteganya ko umushahara fatizo (SMIG/Guaranteed Minimum Wage) ushyirwaho n'Iteka rya Minisitiri ufite umurimo mu nshingano ze n'andi mategeko y'umurimo yaribanjirije yabiteganyaga ariko ko bitigeze bikorwa, ntihanasobanurwa impamvu yumvikana ituma bidakorwa. Isobanura ko isanga kuba umushahara fatizo utariho ari ikibazo kibangamiye inyungu rusange z'abanyarwanda kandi bikaba binyuranye n'ingingo ya 49 n'iya 121 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu mwaka wa 2015.

Habanze gusuzumwa ikibazo kijyanye no kuba ASSAR yarareze Leta y'u Rwanda. Kuri iyi ingingo, ASSAR ivuga ko Leta igomba kuba umuburanyi muri uru rubanza kubera ko ikiregerwa ari ikibazo cy'inyungu rusange kandi ikaba ariyo ishinzwe kubungabunga imibereho y'abantu.

Naho, Intumwa ya Leta ikavuga ko ubusanzwe muri bene ibi birego, Leta itazamo nk'umuburanyi ahubwo itanga ibitekerezo, ariko mu gihe Urukiko rwasanga Leta atari umuburanyi muri uru rubanza, rwakwifashisha ibitekerezo byayo.

Inshuti y'Urukiko nayo ivuga ko ibirego birebana no kurengera inyungu rusange bitagomba kugira ubiregwa, bityo, Leta yafatwa nk'ije gutanga ibitekerezo.

Nyuma yo gukemura ikibazo kijyanye no kumenya uburyo Leta ifatwa muri uru rubanza, iburanisha ryibanze gusa ku kibazo cyo kumenya niba iki ikirego gikwiye kwakirwa ngo gisuzumwe hakurikije ibiteganyijwe n'Itegeko.

ASSAR, ivuga ko kuba kugeza ubu mu Rwanda nta mushahara fatizo uhari, ari ikibazo kibangamiye inyungu rusange z'abanyarwanda muri rusange ndetse by'umwihariko ku ruhande runini rw'igice cy'abanyarwanda aribo ibigo bikora umwuga wo gucuruza ubwishingizi kandi ko kubera ibura ry'akazi, umukozi ushaka akazi aba adafite ubushobozi bwo kumvikana

n'umukoresha umushahara, ibyo bikamugiraho ingaruka mbi kuko ashobora guhabwa umushahara w'intica ntikize kuko nta mushahara fatizo uriho, iki akaba ari ikindi kigaragaza ko iki kibazo kibangamiye inyungu rusange

Intumwa ya Leta ivuga ko kuba Iteka rigena umushahara fatizo (SMIG/Minimum Wage) ritarajyaho bitabangamiye inyungu rusange z'abanyarwanda kuko kugeza ubu nta cyuho kiri mu mategeko (legal vacuum) kubera ko mu rubanza rwaciwe, Urukiko rw'Ikirenga rwatanze umurongo kuri iki kibazo aho rwagennye umushahara fatizo, Urukiko rw'Ikirenga rukaba rwarabishingiye ku kuba rufite ububasha bwo kwitwara nk'Umushingamategeko mu gihe nta tegeko rihari. Akomeza avuga ko amafaranga ya pansiyo atangwa hashingiwe ku Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga riteganya amafaranga y'ubwiteganyirize bwa pansiyo n'ay'ibyago bikomoka ku kazi ahabwa uwiteganyirije atagombwa kujya munsi.

Inshuti y'Urukiko ivuga ko kuvuga ko nta mushahara fatizo uriho mu Rwanda atari ukuri kuko kuva mu mwaka wa 2012, Urukiko rw'Ikirenga rwashyizeho umushahara fatizo ndetse no mu mwaka wa 2016 uravugururwa hashingiwe ku biciro biri ku isoko.

Ku birebana n'inyigo yashyizwe ku mugereka w'ikirego, Urega avuga ko iyo inyigo igaragaza ko nta mushahara fatizo uhari, kuko MIFOTRA yakoresheje iyo nyigo ishaka gukemura ikibazo kijyanye n'umushahara fatizo kandi kandi ko mbere y'uko iregera Urukiko yari yaragerageje gushaka uburyo ikibazo kijyanye n'igenwa ry'umushahara fatizo cyakemuka ariko birananirana.

Intumwa ya Leta ivuga ko urega atagaragaza inyigo yakozwe n'abahanga igaragaza uburemere bw'ikibazo kuko inyigo yashize ku mugereka wayo itashingirwaho kuko ikorwa itari igamije kugaragaza uburemere bwo kutagira umushahara fatizo mu gihugu n'ingaruka byagira cyangwa ikintu gifatika yakoze kugira ngo ikibazo kijyanye no gushyiraho umushahara fatizo gikemuke. Kuruhande rw'Inshuti y'Urukiko, nayo ivuga ko raporo urega ashingiraho yakozwe na Minisiteri ifite umurimo mu nshingano zayo mu gihe iyo raporo itagaragaza uburemere bwo kuba nta mushahara fatizo uhari

Incamake y'icyemezo: 1. Mu birego birebana n'inyungu rusange, Leta ihamagazwa mu rubanza gutanga ibitekerezo; ntihamagazwa nk'umuburanyi ushobora kugira ibyo aryozwa cyangwa aca urundi ruhande.

2. Ikirego kirebana n'inyungu rusange kigomba kuba kigamije ko hubahirizwa uburenganzira bw'abandi bantu aho kwita ku kibazo bwite cy'urega, n'ubwo urega yaba afite inyungu ku kiregerwa, izo nyungu agomba kuba azisangiye n'abandi bantu.

3. Inyungu rusange iba iyo hari igikorwa cyabaye cyangwa kitabaye kikavutsa abantu benshi uburenganzira bwabo cyangwa se kikabagiraho ingaruka mbi, gikosorwa hatanzwe ikirego mu rukiko rubifitiye ububasha.

4. Intego zibanzweho mu nyigo yashyizwe ku mugereka w'ikirego ntabwo zigamije kugaragaza uburemere bwo kuba nta mushahara fatizo uriho, ahubwo zasuzumaga ibyashingirwaho hagenwa umushaharafatizo mu byiciro bitandukanye by'imirimo kandi ntinagaragaza ingaruka ziterwa no kutagira umushahara fatizo. Bityo kuba iyo inyigo itagaragaza ibyo byose, iba itujuje ibisabwa n'Itegeko

Ikirego nticyakiriwe.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 49 n'iya 121.

Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigena umurimo mu Rwanda, ingingo ya 2 n'iya 3.

Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 68 n'iya 80.

Itegeko No 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'imirimo n'iz'ubutegetsi, ingingo ya 12.

Itegeko Nº 005/2015 ryo kuwa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo, ingingo ya 27.

Minimum wage-fixing machinery convention, 1928 n° 26" yashyizweho umukono mu mwaka wa 1976.

Iteka rya Perezida N°069/01 ryo ku wa 13/04/2018 ryongera amafaranga ya pansiyo n'ay'ibyago bikomoka ku kazi, ingingo ya 2.

Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n'ibinyabiziga.

Imanza zifashishijwe:

Nyetera Jean Baptiste v. CORAR, RCAA 0202/07/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 09/04/2009

SORAS AG Ltd v. Umuhoza Pacifique n'Abandi, RCAA 0049/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016

Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236

Inyandiko z'Abahanga:

Albert Ruturi & Another v. Minister for finance and others, (2002) IK.LR 61 (Kenya) and Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General) 2012 SCC 45 (2012) 2 S.C.R 524.

Something in which the public as a whole has a stake (…), Blacks Law Dictionary, Nineth Edition, p. 1350.

Wadehra, Basant Lal. Public Interest Litigation: A Handbook, with Model PIL Formats. Universal Law Publishing, 2009, p. 46.

A Study on the Establishment and the Determination of the Minimum Guarantee Wage (MGW/SMIG) per Occupational Categories, Last Version, July 2018.

Urubanza

I. IMITERERE Y'IKIBAZO

[1] Association *des* Assureurs du Rwanda (ASSAR) yatanze ikirego mu Rukiko rw'Ikirenga irega Leta y'u Rwanda (MIFOTRA), isaba gutegeka ko imbogamizi zose zituma hadashyirwaho umushahara fatizo (*SMIG/Minimum Wage*)[1] mu Rwanda zikurwaho kuko isanga kuba utariho ari ikibazo kibangamiye inyungu rusange z'abanyarwanda.

[1] *Salaire Minimum Interprofessionnel Guaranti*

[2] ASSAR ivuga ko ingingo ya 2[2] y'Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigena umurimo mu Rwanda mu gace kayo ka 27 isobanura icyo umushahara fatizo aricyo, ikavuga ko ari umushahara muto wemewe n'itegeko hashingiwe kuri buri cyiciro cy'umurimo, ko icyo gisobanuro cyenda gusa n'icyatanzwe n'Umuryango Mpuzamahanga wita ku murimo (*International Labor Organization*) aho wavuze ko umushahara fatizo (*SMIG/Minimum Wage*) ari amafaranga umukozi ahembwa yayakoreye mu gihe runaka, kandi ayo mafaranga akaba atagomba kugabanywa n'amasezerano ayo ariyo yose y'umurimo.

[3] ASSAR inavuga ko Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo, mu ngingo ya 68 riteganya ko umushahara fatizo (*SMIG/Guaranteed Minimum Wage*) ushyirwaho n'Iteka rya Minisitiri ufite umurimo mu nshingano ze, kandi ko n'andi mategeko y'umurimo yabanjirije iririho ubu, nk'ingingo ya 76 y'Itegeko N° 13/2009 ryo ku wa 27/05/2009 ndetse n'ingingo ya 83 y'Itegeko N° 51/2001 ryo ku wa 30/12/2001, nayo yateganyaga ko Minisiteri ifite umurimo mu nshingano zayo ariyo yari ifite inshingano yo gushyiraho uwo mushahara fatizo, ariko ko bitigeze bikorwa ntihanasobanurwe impamvu yumvikana ituma bidakorwa.

[4] ASSAR ivuga ko usibye n'Itegeko rigenga umurimo ku rwego rw'Igihugu riha Minisiteri ifite umurimo mu nshingano zayo ububasha bwo gushyiraho umushahara fatizo, hari n'amasezerano mpuzamahanga yitwa "*Minimum wage-fixing machinery convention, 1928 n° 26*" u Rwanda rwashyizeho umukono mu mwaka wa 1976 nayo ateganya mu ngingo yayo ya mbere ko ibihugu byiyemeje kuyashyiraho umukono byiyemeje kuyabungabunga kandi bigashyiraho umushahara fatizo hashingiwe ku byiciro by'imirimo biri muri ibyo bihugu.

[5] ASSAR ikomeza isobanura ko kuba nta mushahara fatizo uriho mu Rwanda, kandi itegeko ribiteganya binyuranye n'ingingo ya 49 n'iya 121 z'Itegeko Nshinga rya Repubulika y'u Rwanda ryo ku wa 04/06/2003 ryavuguruwe mu mwaka wa 2015 iteganya ko umunyarwanda wese afite inshingano yo kubaha Itegeko Nshinga, ko kandi abayobozi babifite mu nshingano bashyira mu bikorwa amategeko bakoresheje amateka, isanga ari ikibazo gikomeye cy'inyungu rusange, ikaba ariyo mpamvu yahisemo gutanga ikirego mu Rukiko rw'Ikirenga isaba ko imbogamizi izo arizo zose ziriho zikurwaho, umushahara fatizo ugashyirwaho.

[6] Urubanza rwaburanishijwe mu ruhame ku wa 19/05/2020, ASSAR ihagarariwe na Me Butare Emmanuel na Me Umugwaneza Claudine hari na Leta y'u Rwanda (MIFOTRA) ihagarariwe na Me Kabibi Spéciose.

[7] Nyuma yo gusuzuma ubusabe bw'Ishuri ry'Amategeko rya Kaminuza y'u Rwanda (*School of Law*) burebana no kuba Inshuti y'Urukiko (*Amicus Curiae*) muri uru rubanza, mu rwego rwo gutanga ibitekerezo, no kumva ko abahagaririye ASSAR n'uhagariye Leta y'u Rwanda bemera ko iryo shuri ryakwemererwa kuba Inshuti y'Urukiko kuko amategeko abiryemerera, Urukiko rwemeje ko iryo shuri ryujuje ibisabwa, bityo ubusabe bwaryo bukaba bwemewe.

[8] Urukiko rwasuzumye kandi ikibazo kijyanye no kuba ASSAR yarareze Leta y'u Rwanda mu gihe ingingo ya 80, igika cya 4 y' Itegeko N˚30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'inkiko ivuga gusa ko muri izi manza, iburanisha rikorwa hari uhagarariye Leta. Kuri iyi ngingo, Me Kabibi Spéciose avuga ko ubusanzwe muri bene ibi birego, Leta itazamo

[2] Ubundi n'ingingo ya 3y'Itegeko n° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo

nk'umuburanyi ahubwo itanga ibitekerezo, ko ariko ashingiye ku buryo abahagarariye ASSAR basobanura ikirego, asanga basa nk'aho barega Leta, asaba Urukiko kutakira ikirego cya ASSAR, ko ariko mu gihe Urukiko rwasanga Leta atari umuburanyi muri uru rubanza, rwakwifashisha ibitekerezo byayo.

[9] Me Butare Emmanuel we avuga ko impamvu Leta yazanywe muri uru rubanza ari ukubera ko ikiregerwa ari ikibazo kijyanye n'inyungu rusange, kandi Leta ikaba ariyo ishinzwe kubungabunga imibereho y'abantu, ko ari nayo mpamvu Umushingamategeko yateganyije ko muri bene izi manza, Leta igomba kuba ihagarariwe. Me Umugwaneza Claudine we asobanura ko kuba ikibazo cy'ishyirwaho ry'umushahara fatizo kireba MIFOTRA, Leta itari kuza mu rubanza gutanga ibitekerezo gusa kuko byari kuba binyuranyije n'ingingo ya 13 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[10] Me Sebucensha Leonard uhagarariye Ishuri ry'Amatgeko yavuze ko ibirego birebana no kurengera inyungu rusange bitagomba kugira ubiregwa kuko bibaye bityo, byaba ari nko kugaragaza ko hari ugomba gusubiza uburenganzira bw'urega, ko ahubwo Leta yafatwa nk'ije gutanga ibitekerezo.

[11] Nyuma yo kumva impande zose kuri iki kibazo, Urukiko rwarihererey e rufata icyemezo ko Leta iza muri uru rubanza gutanga ibitekerezo, ko itaza nk'umuburanyi ushobora kugira ibyo aryozwa cyangwa aca urundi ruhande.

[12] Nyuma yo gukemura ikibazo cy'Ishuri ry'amategeko cyo kwemererwa kuba Inshuti y'Urukiko (*Amicus curiae*) n'ikijyanye no kumenya uburyo Leta ifatwa muri uru rubanza, Urukiko rwemeje ko iburanisha ryibanda gusa ku kibazo cyo kumenya niba ikirego cya ASSAR gikwiye kwakirwa ngo gisuzumwe hakurikije ibiteganyijwe n'ingingo ya 80 y'Itegeko Nº 30/2018 ryavuzwe haruguru.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

[13] Rushingiye ku biteganyijwe n'ingingo ya 80 y'Itegeko No. 30/2018 ryavuzwe haruguru kandi rumaze kubona imyanzuro ya ASSAR no kubona ibitekerezo byayitanzweho n'uhagarariye Leta y'u Rwanda, Urukiko rurasanga ibibazo bigomba gusuzumwa ari ibi bikurikira:

a. Kumenya niba ikirego cya ASSAR kigaragaza inyungu rusange zemewe iharanira n'aho ikomora mu mategeko ishingiro ry'uburenganzira iharanira

b. Kumenya niba inyigo ASSAR yashyize ku mugereka w'ikirego cyayo yujuje ibiteganyijwe n'ingingo ya 80, igika cya 2 y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'inkiko.

Urukiko rugiye gusuzuma ibyo bibazo kimwe ku kindi.

a. Kumenya niba ikirego cya ASSAR kigaragaza inyungu rusange zemewe iharanira n'aho ikomora mu mategeko ishingiro ry'uburenganzira iharanira

[14] Me Kabibi Speciose, uhagarariye Leta y’u Rwanda, avuga ko n’ubwo bikwiye ko Iteka rigena umushara fatizo (*SMIG/Minimum Wage*) rijyaho kubera ko Itegeko ryabitegetse, kuba ritarajyaho bitabangamiye inyungu rusange z’abanyarwanda nk’uko ASSAR ishaka kubyumvikanisha kubera impamvu zikurikira:

- Nta cyuho kiri mu mategeko (legal vacuum) bitewe no kuba uwo mushahara fatizo udahari kubera ko Urukiko rw’Ikirenga mu rubanza RCAA 0049/14/CS rwaciwe ku wa 25/11/2016, rwemeje ko umushahara fatizo ari amafaranga ibihumbi bitatu (3.000 Frw) ku munsi. Ibyo Urukiko rw’Ikirenga rukaba rwarabishingiye ku kuba rufite ububasha bwo kwitwara nk’Umushingamategeko mu gihe nta tegeko rihari.

- Atanga urugero mu bijyanye no kugena indishyi zikomoka ku mpanuka n’ibindi, ko amafaranga 3.000 yemejwe n’Urukiko rw’Ikirenga ashingirwaho n’ibigo by’ubwishingizi mu kugena indishyi.

- Naho ku bijyanye na pansiyo, asobanura ko iyo babona amafaranga ya pansiyo ari munsi ya 13.000 Frw, azamurwa akajya kuri 13.000Frw kugira ngo hirindwe ko uri muri pansiyo ajya munsi y’umurongo w’ubukene. Ibyo bakaba babishingira ku Iteka rya Perezida Nº 31/01 ryo ku wa 25/08/2003 rishyiraho uburyo bwo kwishyura indishyi ku bubabare bw'umubiri buturutse ku mpanuka zitewe n’ibinyabiziga riteganya ko amafaranga y’ubwiteganyirize bwa pansiyo n’ay’ibyago bikomoka ku kazi ahabwa uwiteganyirije adashobora kujya munsi y’ibihumbi cumi na bitatu (13.000 Frw) ku kwezi.

[15] Me Kabibi Speciose yakomeje avuga ko ashingiye ku bisobanuro yatanze, asanga nta nyungu rusange zihungabanywa no kuba hatarajyaho Iteka rigena umushahara fatizo kuko ibishingirwaho mu kuwugena bihari. asobanura ko ubundi umushahara fatizo ujyaho ku bakozi bahembwa, hagamijwe ko abakozi badahembwa umushahara utuma bajya munsi y’umurongo w’ubukene.

[16] Agaragaza ko ubushakashatsi ku bakora n’abashomeri (Labour Force Survey) bwakozwe mu mwaka wa 2018, bwagaragaje ko impuzandengo y’umushahara uhembwa abakora ku kwezi ari amafaranga 56.982 (Average monthly salary from paid employment) naho ubushakashatsi bwa “*The Fifth Integrated Household Living Conditions Survey”* (EICV5) ku mibereho y’ingo bwo bugaragaza ko hakenerwa byibura amafaranga angana na 159.375 ku mwaka kugira ngo uyahembwa abe atari munsi y’umurongo w’ubukene. Ubu bushakashatsi bukaba bugaragaza ko mu Rwanda abakorera umushahara bahembwa amafaranga atari munsi y’umurongo w’ ubukene (poverty line).

[17] Asoza avuga ko ashingiye kuri ibyo bisobanuro byose, asanga nta kibazo gifite ingaruka ku bantu muri rusange giterwa n’uko Iteka rigena umushahara fatizo ritarajyaho, ko ahubwo binagaragara neza ko imbaraga zo guciririkanya hagati y’abashaka akazi n’abagatanga (*force of demand and supply*) ubwazo zishyiriraho umushahara fatizo ujyanye n’akazi umuntu yakoze kandi ujyanye n’igihe. Bityo akavuga ko kuba Iteka ritarajyaho atari ikibazo kibangamiye inyungu rusange z’abanyarwanda.

[18] Me Umugwaneza Claudine avuga ko kuba kugeza ubu mu Rwanda nta mushahara fatizo uhari, ari ikibazo kibangamiye inyungu rusange z’abanyarwanda muri rusange ndetse

by’umwihariko ku ruhande runini rw’igice cy’abanyarwanda aribo ibigo bikora umwuga wo gucuruza ubwishingizi. Akomeza avuga ko inyungu rusange zibangamiwe zigaragarira mu kuba Itegeko N° 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda mu ngingo yaryo ya 68 riteganya ko umushahara fatizo ushyirwaho n’Iteka rya Minisitiri ufite umurimo mu nshingano ze, kandi Itegeko ry’umurimo rikaba rimaze guhinduka inshuro eshatu zose, ariko kugeza ubu umushahara fatizo ukaba utarashyirwaho.

[19] Ku bijyanye n’ ingaruka zikomoka ku kuba nta mushahara fatizo uriho mu Rwanda, Me Umugwaneza Claudine avuga ko bibangamira mu buryo bukomeye inyungu rusange z’ibigo bitanga serivisi z’ubwishingizi, kuko kuba uwo mushahara kugeza ubu udahari, byatumye inkiko zitandukanye harimo n’Urukiko rw’Ikirenga, zigenda zishyiraho amafaranga ashingirwaho mu kugenera abaregera indishyi zikomoka ku mpanuka.

[20] Atanga urugero ku rubanza RCAA 0202/07/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 09/04/2009 hagati ya Nyetera Jean Baptiste na CORAR aho muri urwo rubanza, mu gika cya 78, Urukiko rw’Ikirenga rwemeje ko umushahara fatizo rwawugereranyiriza ku mafaranga 2.500 Frw ku munsi. Mu rundi rubanza RCAA 0049/14/CS rwaciwe n’Urukiko rw’Ikirenga ku wa 25/11/2016 hagati ya SORAS AG Ltd na Umuhoza Pacifique, Izabayo Sylvie, Niyoyita Jacques, aho mu gika cya 27 n’icya 28 rwemeje ko kugeza ubu nta tegeko rishyiraho umushahara fatizo (SMIG), ariko ko hari imanza zagiye zicibwa zemeza amafaranga yafatwa nk’umushahara fatizo, ndetse narwo rwemeza ko hafatwa 3.000 Frw.

[21] Asobanura kandi ko mu bigo by’ubwishingizi, abantu batanga imisanzu ikaba ari nayo ikurwamo amafaranga y’indishyi zihabwa abakoze impanuka zikomoka ku binyabiziga. Ibarwa ry’izo ndishyi rishingiye ku mafaranga yemejwe n’Urukiko rw’Ikirenga rikaba riteye ikibazo kuko ridafite aho rishingiye (*base de calcul*), ahubwo ashingiye ku bushishozi bw’Urukiko.

[22] Akomeza avuga kandi ko no mu Itegeko Nº 005/2015 ryo ku wa 30/03/2015 rigenga imitunganyirize y’ubwiteganyirize bwa pansiyo mu ngingo ya 27 hateganyijwe ko amafaranga ya pansiyo y'izabukuru, ay'ubumuga cyangwa ay'imburagihe adashobora kujya munsi ya mirongo itanu ku ijana (50%) y'umushahara fatizo wose w'ukwezi ugenwa n’Iteka rya Minisitiri ufite umurimo mu nshingano ze. Akavuga ko ibyo byumvikanisha ko mu gihe cyose uwo mushahara utarajyaho bizagira ingaruka ku rwego rushinzwe gutanga amafaranga ya pansiyo, cyangwa se ku muntu ugenewe kuyahabwa kuko bitoroshye kumenya ingano yayo.

[23] Me Butare Emmanuel yongeyeho ko *Labor Force Survey* (2018) uhagarariye Leta yashingiyeho mu bisobanuro bye, igaragaza ko abantu badafite akazi ari 15.2%, inagaragaza umubare w’abarangije kaminuza badafite akazi, ibyo bikumvikanisha ko kubera ibura ry’akazi, umukozi ushaka akazi aba adafite ubushobozi bwo kumvikana n’umukoresha umushahara, ibyo bikamugiraho ingaruka mbi kuko ashobora guhabwa umushahara w’intica ntikize kuko nta mushahara fatizo uriho, iki akaba ari ikindi kigaragaza ko iki kibazo kibangamiye inyungu rusange.

[24] Mu izina ry’inshuti y’Urukiko (*amicus curiae*), Me Sebucensha Leonard avuga ko amasosiyeti y’ubucuruzi kimwe n’izindi sosiyeti ziharanira inyungu zayo n’iz’abanyamuryango bayo, ko asanga ikirego cya ASSAR kidaharanira inyungu rusange kuko abanyarwanda bose badafite inyungu mu masosiyeti y’ubwishingizi. Yanavuze kandi ko ikirego kigamije inyungu

rusange ari ikirego gitangwa mu rukiko rubifitiye ububasha kigamije kurengera inyungu z'abantu bose muri rusange, anatanga ingero z'uburyo inkiko zitandukanye zakemuye ikibazo kijyanye no kumenya ushobora kwemererwa gutanga ikirego cy'inyungu rusange.[3]

[25] Me Sebucensha Leonard avuga kandi ko n'ubwo Minisiteri y'umurimo yahawe inshingano yo gushyiraho umushahara fatizo, kuba kugeza ubu ritarashyirwaho bitari ukwica amategeko, harimo n'ingingo z'Itegeko nshinga zavuzwe na ASSAR cyangwa amasezerano mpuzamahanga yasinywe n'u Rwanda kuko itegeko ritigeze rigena igihe ntarengawa iryo Teka rigomba kuba ryashyizweho kandi Leta itagomba kotswa igitutu kuko gushyiraho iryo Teka bisaba ibintu byinshi bigomba kwitonderwa.

[26] Me Sebucensha Leonard avuga kandi ko ibyo ASSAR ivuga ko nta mushahara fatizo uriho mu Rwanda atari ukuri kuko kuva mu mwaka wa 2012, Urukiko rw'Ikirenga rwashyizeho umushahara fatizo ndetse no mu mwaka wa 2016 uravugururwa hashingiwe ku biciro biri ku isoko nk'uko bigaragara mu manza RCAA 0202/07/CS, RCAA 0003/11/CS, RSOCAA 0112/10/CS, RCAA 0049/14/CS.

UKO URUKIKO RUBIBONA

[27] Ingingo ya 80 y'Itegeko N° 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'Inkiko, iteganya ko "umuntu ku giti cye cyangwa urwego rwa Leta, umutwe wa Politiki, isosiyeti y'ubucuruzi, umuryango utegamiye kuri Leta n'ishyirahamwe bifite ubuzima gatozi ashobora gutanga ikirego gisaba kubungabunga cyangwa gukuraho imbogamizi zibangamiye inyungu rusange z'igihugu, umutungo kamere wacyo, abagituye cyangwa igice cyabo. Urega agomba kugaragaza mu mwanzuro we inyungu rusange zemewe aharanira (…).

[28] Mu gusesengura ibikubiye mu gice cy'ingingo ya 80 yavuzwe haruguru, turasanga ari ngombwa kubanza kumenya icyo inyungu rusange zemewe bivuze kuko umushingamategeko atabisobanuye. Abahanga mu mategeko kimwe n'Inkiko basesenguye icyo kibazo bagaragaje ibisabwa kugira ngo ikirego gisaba kubungabunga cyangwa gukuraho imbogamizi zibangamiye inyungu rusange z'igihugu gishobore kwakirwa, bikaba aribyo bigomba gushingirwaho hasuzumwa niba ASSAR ihagarariye inyungu rusange zemewe muri uru rubanza.

[29] Inyungu rusange yumvikana nk'ikintu abaturage muri rusange bafitemo inyungu.[4] Muri urwo rwego kandi, umuhanga mu mategeko witwa Wadehra, Basant Lal**.** asobanura ko urubanza rurebana n'inyungu rusange ari urubanza rugamije inyungu rusange. Ni urubanza rugamije guharanira uburenganzira bw'abantu benshi, bashobora kugera ku mamiliyoni, cyangwa gukosora igikorwa cyose kibi cyabangamiye abo bantu. Avuga kandi ko urubanza rurebana n'inyungu rusange rugomba gushingira ku mpamvu enye z'ingenzi:

a. Kuba hari igikorwa cyabaye, kuba hari igikorwa kitabaye cyangwa imiterere y'ibintu uko biri;

[3] *Albert Ruturi & Another v. Minister for finance and others, (2002) IK.L. R 61 (Kenya) and Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General) 2012 SCC 45(2012) 2 S.C.R 524*

[4] *Something in which the public as a whole has a stake (…), Blacks Law Dictionary, Nineth Edition, p. 1350*

b. Icyo gikorwa kibi kikaba cyaratumye abantu benshi bavutswa uburenganzira bwabo cyangwa kikabagiraho ingaruka mbi;

c. Uburenganzira buharanirwa hagamijwe ko bwubahirizwa cyangwa ko icyo gikorwa kibi gikosorwa, binyuze mu kirego cyatanzwe mu nkiko zibifitiye ububasha;

d. N'umuntu ugamije inyungu z'abantu benshi cyangwa ishyirahamwe ry'abantu bahagarariye abagizweho ingaruka.

Avuga kandi ko ihame ntakuka rigenga urubanza rurebana n'inyungu rusange ari uko ruba rugamije ko hubahirizwa uburenganzira bw'abandi bantu aho kwita ku kibazo bwite cy'urega. N'ubwo urega yaba afite inyungu ku kiregerwa, izo nyungu agomba kuba azisangiye n'abandi bantu. Umwanzuro w'urubanza utanzwe ugomba kugirira inyungu igice kinini cy'abantu aho kuba itsinda ryabo.[5]

[30] Urukiko rurasanga kandi ibivugwa n'umuhanga Wadehra, Basant Lal ku bijyanye n'impamvu z'ingezi zishingirwaho mu rubanza rurebana n'inyungu rusange ari nabyo byemejwe n'Urukiko rw'Ikirenga rwa Canada mu rubanza *Canadian Council of Churches v. Canada (Minister of Employment and Immigration),* [1992] 1 S.C.R. 236, aho urwo Rukiko rwemeje ko kwemera ko hari impamvu yo guha umuntu ububasha bw'umuburanyi urengera inyungu rusange, byaba bitewe n'uburemere bw'uburenganzira rusange cyangwa gushaka kubahiriza amahame y'Itegeko nshinga ryo muri 1982 (*Constitution Act, 1982)*[6], rimwe na rimwe ntibivuga kwemerera bisesuye ubwo burenganzira abantu bose bifuza kugira icyo baregera. Hagomba kubaho gushyira mu gaciro mu kubahiriza uburenganzira bwo kuregera inkiko ndetse no kubungabunga umutungo wazo. Inkiko ntizigomba kuremererwa n'umutwaro w'ubwinshi butari ngombwa bw'imanza zidafite ishingiro cyangwa zidakenewe zitangwa n'amashyirahamwe abigiranye umutima mwiza ariko agamije gukurikirana ibibazo byayo bwite.[7]

[31] Ku birebana n'ikirego cya ASSAR, nk'uko bigaragara mu mwanzuro wayo no mu nyandiko ziri muri dosiye, ASSAR ni ishyirahamwe rifite ubuzima gatozi kandi nk'uko ingingo ya 4 mu gace ka 1, 2 n'aka 4 y'amategeko shingiro yaryo ibiteganya, ASSAR ifite intego yo guteza imbere umwuga w'ubwishingizi, kurengera inyungu z'abanyamuryango zifitanye isano n'umwuga wabo, guhagararira abanyamuryango imbere y'inzego za Leta kimwe n'izindi nzego zarengerwamo inyungu rusange.

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[5] *Wadehra, Basant Lal. Public Interest Litigation: A Handbook, with Model PIL Formats. Universal Law Publishing, 2009, pg 46, "Public interest litigation (or social action or class action litigation as it is various called) means a litigation which serves public interest. It is a litigation which vindicates a right of a large number of people, perhaps millions, or redresses a wrong done to them. For the existence of a public interest litigation, four conditions are necessary: Some action, inaction or state of affairs; Which causes the deprivation of a right of large number of people, or causes a large number of people to suffer a similar wrong; The right is sought to be enforced or the wrong redressed, through a petition to the appropriate courts; By a public spirited person or an association of person acting on behalf of those injured.*
In public interest litigation, the sine qua non is that it must be for the enforcement of rights of others not the individual grievances of the petitioner. Even if the petitioner is interested in the matter, it must be an interest which he/she shares with other members of the public. The relief, if granted must benefit large section of society not a handful of individuals.

[6] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236 (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/835/index.do)*

[7] *Ibidem*

[32] Urukiko rurasanga igikwiye kumvikana mu ngingo ya 4 imaze kuvugwa mu gika kibanziriza iki, ni uko ASSAR ari ishyirahamwe riharanira inyungu z'abanyamuryango bayo, aho kuba inyungu z'abanyarwanda muri rusange, ibyo kandi bikanashimangirwa n'ibivugwa na Me Umugwaneza Claudine uyiburanira aho yasobanuye ko kuba nta mushahara fatizo uhari bigira ingaruka zikomeye ku bigo bitanga serivisi z'ubwishingizi kuko byatumye inkiko ziwushyiraho zishingiye ku bushishozi bwazo, nta bipimo bifatika zishingiyeho, atanga ingero z'imanza zaciwe n'Urukiko rw'Ikirenga nk'urubanza RCAA 0202/07/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 09/04/2009 rwemeje ko umushahara fatizo ari 2.500 Frw n'urubanza RCAA 0049/14/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 25/11/2016 rwemeje ko umushahara fatizo ari 3.000 Frw.

[33] Urukiko rusanga kandi na Banki Nkuru y'u Rwanda mu ibaruwa yandikiye MIFOTRA ku wa 14/11/2016 yarashimangiye ko kutagira umushahara fatizo bibangamiye ibigo by'ubwishingizi, aho yasobanuye ko kuba Minisitiri ufite umurimo mu nshingano ze atarashyiraho iteka rigena umushahara fatizo mu Rwanda bibangamiye ibigo by'ubwishingizi cyane cyane ku bijyanye no kwishyura indishyi zikomoka ku binyabiziga zitangwa hashingiwe ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RCAA 0202/07/CS rwo ku wa 09/04/2009 rwemeje amafaranga 2500 ku munsi, ndetse n'izindi nkiko zigenda zigena amafaranga ari hejuru.

[34] Ku byo Me Umugwaneza Claudine avuga y'uko ASSAR ihagarariye inyungu rusange z'abanyarwanda ashingiye ku kuba indishyi zikomoka ku mpanuka zatewe n'ibinyabiziga Ibigo by'ubwishingizi byishyura ziva mu misanzu yatanzwe n'abanyarwanda, Urukiko rurasanga ibi bisobanuro atanga ataribyo bigaragaza ko ihagarariye inyungu rusange zemewe, kuko nk'uko byasobanuwe n'Uhagarariye Leta y'u Rwanda kimwe n'Inshuti y'Urukiko, atari abanyarwanda bose bafite ibinyabiziga ku buryo batanga imisanzu mu bigo by'ubwishingizi, ahubwo ari igice gito cy'abanyarwanda cyane ko nta n'ikimenyetso ASSAR yatanze kigaragaza ko abishingiwe baba barayigejejeho ikibazo kirebana no kuba nta mushahara fatizo wagenwe n'Iteka rya Minisitiri ufite umurimo mu nshingano ze.

[35] Ku bivugwa n'abahagarariye ASSAR ko kuba nta mushahara fatizo uriho bigira ingaruka ku rwego rushinzwe gutanga amafaranga ya pansiyo no ku muntu ugenewe kuyihabwa, hashingiwe ku ngingo ya 27 y'Itegeko[8] Nº 005/2015 ryo ku wa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo, iteganya ko amafaranga ya pansiyo y'izabukuru, ay'ubumuga cyangwa ay'imburagihe agenwa hashingiwe ku mushahara fatizo, Urukiko rurasanga, uretse kubivuga mu magambo, ASSAR itagaragaza uko izo ngaruka ziteye bitewe n'uko nta mushahara fatizo washyizweho n'Iteka rya Minisitiri ufite umurimo mu nshingano ze. Ikindi kandi, n'iyo haba hari impungenge ko abafata pansiyo bashobora guhabwa amafaranga make kuko nta mushahara fatizo uriho wagena amafaranga atagibwa hasi, Urukiko rusanga icyo kibazo cyarakemuwe n'Iteka rya Perezida N˚069/01 ryo ku wa 13/04/2018 ryongera amafaranga ya pansiyo n'ay'ibyago bikomoka ku kazi atangwa n'Ikigo cy'ubwiteganyirize mu Rwanda, mu

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[8] Ingingo ya 7 y' Itegeko Nº 005/2015 ryo kuwa 30/03/2015 rigenga imitunganyirize y'ubwiteganyirize bwa pansiyo iteganya ko ku muntu witeganyiriza uvugwa mu gika cya 2 cy'ingingo ya 5 y'iri tegeko, umushahara ubarirwaho umusanzu ntushobora kujya munsi y'umushahara fatizo kandi ntushobora kwiyongera birenze mirongo itatu ku ijana (30%) mu gihe cy'imyaka itatu (3).

Ingingo ya 27 y'iryo Tegeko nayo ikavuga ko amafaranga ya pansiyo y'izabukuru, ay'ubumuga cyangwa ay'imburagihe ntashobora kujya munsi ya mirongo itanu ku ijana (50%) y'umushahara fatizo wose w'ukwezi ugenwa n'Iteka rya Minisitiri ufite umurimo mu nshingano ze.

ngingo yaryo ya 2 aho ivuga ko amafaranga y'ubwiteganyirize bwa pansiyo n'ay'ibyago bikomoka ku kazi adashobora kujya munsi y'ibihumbi cumi na bitatu (13.000 Frw) ku kwezi.

[36] Ku byo ASSAR ivuga ko ikirego cyayo kigamije kurengera inyungu rusange kubera ko ishyirwaho ry'umushahara fatizo n'Iteka rya Minisitiri ufite umurimo mu nshingano biri mu rwego rwo kubahiriza Itegeko rigengamurimo n'amasezerano mpuzamahanga u Rwanda rwasinye, ndetse ko kutabyubahiriza binyuranyije n'Itegeko nshinga, Urukiko rurasanga koko ingingo ya 68 y'Itegeko Nº. 30/2018 ryavuzwe haruguru iteganya ko Minisitiri ufite umurimo mu nshingano ze agomba gushyiraho iryo Teka, ariko nk'uko Inshuti y'Urukiko yabivuze, iryo Tegeko ntabwo rigena igihe ntarengwa ibyo bigomba kuba byakozwemo, kandi nk'uko bigaragara muri dosiye, hari imirimo MIFOTRA yakoze igamije gushyiraho iryo Teka kandi na ASSAR yagizemo uruhare.`

[37] Dushingiye ku bisobanuro byatanzwe mu bika bibanziriza iki, Urukiko rurasanga mu kirego ASSAR yashyikirije uru Rukiko isaba gutegeka ko imbogamizi izo arizo zose zituma hatajyaho umushahara fatizo (*SMIG/Minimum Wage*) mu Rwanda zivaho, itagaragaza inyungu rusange zemewe iharanira nk'uko biteganywa n'ingingo ya 80 y'Itegeko N˚ 30/2018 ryavuzwe haruguru.

b. Kumenya niba inyigo ASSAR yashyize ku mugereka w'ikirego cyayo yujuje ibiteganyijwe n'Ingingo ya 80, igika cya 2, y'Itegeko Nº 30/2018 ryo ku wa 02/06/2018 rigenga ububasha bw'inkiko

[38] Me Kabibi Speciose avuga ko ikirego cya ASSAR kitagaragaza inyigo yakozwe n'abahanga igaragaza uburemere bw'ikibazo ivuga, uburyo ASSAR yagerageje kugikemura yifashishije inzego za Leta bikananirana, n'ingaruka kutacyitaho byateye. Akomeza avuga ko inyigo ASSAR yashyize ku mugereka w'ikirego cyayo ivuga ko yakozwe na Minisiteri y'abakozi baLeta n'umurimo (MIFOTRA) ari umushinga w'inyigo ugaragaza imishahara iri ku isoko ijyanye n'inzego z'umurimo zitandukanye, *practices* zihari mu kugena umushahara fatizo n'umusaruro mbumbe w'imbere mu gihugu, umushahara fatizo mu kugabanya ubusumbane bw'inyungu, ubukene n'ibindi. Agaragaza ko iyo nyigo itashingirwaho kuko ikorwa itari igamije kugaragaza uburemere bwo kutagira umushahara fatizo mu gihugu n'ingaruka byagira. Asaba Urukiko kutakira ikirego cya ASSAR kuko kitubahirije ibiteganywa n'ingingo ya 80 igika cya 2 y'Itegeko n˚ 30/2018 ryavuzwe haruguru.

[39] Me Kabibi Speciose avuga kandi ko ASSAR itagaragaza ikintu gifatika yakoze kugira ngo ikibazo kijyanye no gushyiraho umushahara fatizo gikemuke, ko iterekana niba hari ubushakashatsi yakoze ku kutagira umushahara fatizo, ngo igaragaze ingaruka byateye abanyarwanda n'icyatuma bikemuka, asoza yongera gusaba Urukiko kutakira ikirego cyatanzwe na ASSAR kuko kitubahirije ibiteganywa n'Itegeko.

[40] Mu kuvuguruza ibyavuzwe na Me Kabibi Speciose, Me Butare Emmanuel avuga ko inyigo yakozwe na Minisiteri ifite umurimo mu nshingano zayo igaragaza ko nta mushahara fatizo uhari, aho mu iriburiro hagaragara ikibazo gihari n'ibibazo biterwa no kuba nta mushahara fatizo, ko byumvikana ko MIFOTRA yakoresheje iyo nyigo ishaka gukemura ikibazo kijyanye n'umushahara fatizo. Asobanura ko yaba Leta y'u Rwanda ndetse n'Inshuti y'Urukiko bose bemera ko nta mushahara fatizo uhari, bakanavuga ko Minisiteri bireba ikibyigaho, ko ariko

ushingiye ku gihe Itegeko ry'umurimo ryateganyirije ko hagomba gushyirwaho umushahara fatizo ntibikorwe, asanga MIFOTRA itarabihaye ubwihutire.

[41] Mu kumwunganira, Me Umugwaneza Claudine avuga ko inyigo ijyanye n'umushahara fatizo yakozwe na Minisiteri y'abakozi ba Leta n'umurimo ubwayo mu kwezi kwa 7/2018, kandi ko ku rupapuro rwa 33 rwayo hagaragara ko umushahara fatizo wagakwiye kuba amafaranga 1.400 ku munsi, banagaragaza akamaro ko kugira umushahara fatizo aho bavuga ko ari ukurandura ubukene n'ibindi bibazo bivugwa muri iyo nyigo, ko iyo nyigo igaragaza uburyo amategeko y'umurimo atandukanye yateganyaga ishyirwaho ry'umushahara fatizo n'uburyo n'icyo umaze mu iterambere ry'Igihugu n'abaturage muri rusange, akaba asanga iyo nyigo ihagije mu kugaragaza uburemere bw'ikibazo cy'uko nta mushahara fatizo uriho mu Rwanda.

[42] Me Umugwaneza Claudine avuga kandi ko mbere y'uko ASSAR ifata icyemezo cyo gutanga ikirego mu Rukiko rw'Ikirenga, yari yarageragejje gushaka uburyo ikibazo kijyanye n'igenwa ry'umushahara fatizo cyakemuka ariko birananirana, ko ibyo bigaragazwa n'amabaruwa atandukanye yandikiwe Minisiteri ifite umurimo mu nshingano zayo, arimo ibaruwa Banki Nkuru y'u Rwanda nk'umugenzuzi w'ibigo by'ubwishingizi, yandikiye Minisitiri w'Abakozi ba Leta n'Umurimo ku wa 14/11/2016, imugaragariza ko kuba nta mushahara fatizo urashyirwaho (SMIG/MGW) kandi ari inshingano Minisiteri ayobora ihabwa n'Itegeko ry'umurimo bituma inkiko zishyiraho amafaranga ashingirwaho mu kugena indishyi zihabwa abagiriye ibyago mu mpanuka zatewe n'ibinyabiziga byishingiwe, bikaba bigira ingaruka zikomeye ku bigo bitanga serivisi z'ubwishingizi mu Rwanda

[43] Me Umugwaneza Claudine asobanura kandi ko Minisiteri y'abakozi ba Leta n'umurimo yasubije iyo baruwa ku wa 23/01/2017, aho mu gika cya 2 yavuze ko ishyirwaho ry'umushahara fatizo ritegereje ivugururwa ry'Itegeko Nº 13/2009 ryo ku wa 27/05/2009 ryagengaga umurimo mu Rwanda. Avuga ko n'ubwo iyo baruwa yatangaga icyizere, ariko Itegeko rigenga umurimo mu Rwanda ryatangajwe mu Igazeti ya Leta ku wa 30/08/2018, hakaba hashize igihe cy'umwaka n'ubundi ikibazo cy'umushahara fatizo kitarakemuka, kandi ingingo ya 68 y'iryo Tegeko iteganya ko Iteka rya Minisitiri ufite umurimo mu nshingano ze ariryo rigena umushahara fatizo.

[44] Asobanura kandi ko hari indi baruwa yandikiwe MINECOFIN ku wa 05/06/2019, imenyeshwa MIFOTRA ndetse na MINIJUST aho ASSAR yongeye kugaragaza ikibazo gikomeye iterwa no kuba nta mushahara fatizo uhari mu Rwanda. Bityo ko kuba ASSAR yarageragejje kugeza icyo kibazo mu nzego zitandukanye, ariko kugeza ubu kikaba kitarakemuka, ASSAR isanga Urukiko rw'Ikirenga arirwo rwakemura icyo kibazo.

[45] Mu myanzuro yabo, Me Serugo Jean Baptiste na Me Sebucensha Leonard bavuga ko ASSAR ishingira kuri raporo yakozwe na Minisiteri ifite umurimo mu nshingano zayo mu gihe iyo raporo itagaragaza uburemere bwo kuba nta mushahara fatizo uhari, ko iyo raporo itakozwe mu rwego rwo kugaragaza ko nta mushahara fatizo uhari. Basobanura ko iyo raporo itafatwa nk'iyakozwe n'abahanga, banagaragaza ko kugira ngo bihure n'ibiteganywa n'ingingo ya 80 y'Itegeko N° 30/2018 ryavuzwe haruguru, raporo igomba gukorwa n'umuntu ufite ubumenyi mu kibazo kigomba kwigwa, bityo ko raporo yatanzwe na ASSAR itujuje ibisabwa mu ngingo ya 80 yavuzwe haruguru.

[46] Bakomeje bibutsa ko ingingo ya 80 y'Itegeko N°30/2018 ryavuzwe haruguru iteganya ko inyigo yomekwa ku mwanzuro w'urega mu birego bijyanye n'inyungu rusange hagaragazwa uko yagerageje gukemura ikibazo n'inzego za Leta zibishinzwe bikananirana.

Aha bavuga ko amabaruwa atandukanye ASSAR yatanze nk'ikimenyetso cy'uburyo yagerageje gukemura ikibazo cy'igenwa ry'umushahara fatizo, atafatwa nk'ikimenyetso kibyemeza. Basobanura ko kuba Banki Nkuru y'u Rwanda, nk'ishinzwe kugenzura ibigo by'ubwishingizi yarandikiye MIFOTRA ku kibazo cyo gushyiraho umushahara fatizo, cyangwa kuba ASSAR yarandikiye MINECOFIN ikagenera kopi MIFOTRA na MINIJUST, ataribyo bigaragaza ko ASSAR ubwayo yagerageje gukemura ikibazo cy'ishyirwaho ry'umushahara fatizo n'urwego rubishinzwe, arirwo MIFOTRA, bikananirana. Bahereye kuri ibyo basaba Urukiko kutakira ikirego cya ASSAR kuko cyitujuje ibisabwa n'amategeko.

UKO URUKIKO RUBIBONA

[47] Ingingo ya 80 y'Itegeko N° 30/2018 ryavuzwe haruguru iteganya ko urega [......]. Agomba gushyira ku mugereka w'imyanzuro inyigo yakozwe n'abahanga igaragaza uburemere bw'ikibazo avuga, uburyo yagerageje kugikemura yifashishije inzego za Leta bikananirana n'ingaruka kutabyitaho byagira.

[48] Urukiko rusanga inyigo ivugwa muri iyi ngingo ifite ibice bine biyiranga Umushingamategeko yifuje ko bigomba kuyigaragaramo kugira ngo ikirego cyakirwe:

a. Kuba yarakozwe n'umuhanga

b. Kuba igaragaza uburemere bw'ikibazo urega avuga;

c. Kugaragaza ko urega yagerageje gukemura ikibazo aregera yifashishije inzego za Leta bikananirana;

d. Kugaragaza ingaruka kutabyitaho bifite cyangwa byagira ku nyungu rusange aharanira.

[49] Urukiko rusanga kandi buri cyose mu bice bivugwa mu gika kibanziriza iki, gifite impamvu zumvikana cyashyiriweho, zigomba kubahirizwa n'utanga ikirego:

a. Inyigo igomba gukorwa n'umuhanga. Ibi bivuze ko igikenewe atari inyigo iyo ari yo yose. Ni inyigo ahubwo ikozwe kinyamwuga, yakozwe n'umuntu ubifitemo ubuzobere, ishingiye ku makuru afite gihamya kandi igamije kumvikanisha koko ikibazo kiriho ngo kibonerwe igisubizo.

b. Kuba agaragaza uburemere bw'ikibazo urega avuga. Ibi bivuze ko iyo nyandiko itagarukira ku kuvuga ikibazo gusa, ahubwo igomba kugaragaza mu buryo bwa gihanga uburemere gifite (ubunini bwacyo) ugereranyije n'inyungu rusange uwayiteguye ashaka kurengera.

c. Kugaragaza ko urega yagerageje gukemura ikibazo aregera yifashishije inzego za Leta bikananirana. Ibi bisobanuye ko urega agaragaza uburyo we ubwe cyangwa abo ahagarariye bagerageje uko bashoboye ngo ikibazo gikemuke bifashishije inzego za Leta, nyamara bikananirana.

d. Kugaragaza ingaruka kutabyitaho bifite cyangwa byagira. Ingaruka zivugwa aha si izo urega yibwira ko zabaho kuko ariko abitekereza gusa. Ahubwo zigomba gushingira ku

isesengura ry'ibintu no ku ngero zifatika zerekana ko ibibazo ashaka gukemura bigira, ku rugero runaka, ingaruka mbi ku nyungu rusange urega agamije kurengera.

[50] Dosiye y'uru rubanza igaragaza ko inyigo ASSAR yashyize ku mugereka w'ikirego cyayo ivuga ko yakozwe na MIFOTRA, ariyo mu kwezi kwa Nyakanga 2018 ikaba isuzuma ishyirwaho n'igenwa ry'umushahara fatizo ku byiciro by'umurimo.[9] Iyo nyigo ikaba yari igamije gukora ubushakashatsi ku rwego rw'Igihugu ku birebana no gushyiraho no kubara umushahara fatizo ku byiciro by'imirimo no gutegura umushinga w'iteka rya Minisitiri riteganya umushahara fatizo kuri buri cyiciro cy'umurimo cyagaragajwe. Hashingiwe ku ngero zitandukanye ndetse n'izihuriweho zerekana inzira zifashishwa mu kugena umushahara fatizo, intego ubwo bushakashatsi bwibanzeho zikaba ari izi zikurikira:

i) Gukora ubushakashatsi bucukumbuye ku miterere y'imishahara mu mirimo itandukanye ku Isoko ry'Umurimo mu Rwanda hitabwa ku byiciro by'imirimo;

ii) Gusesengura uburyo butandukanye bukoreshwa ubu mu kugena umushahara fatizo ku isi;

iii) Gukora ubushakashatsi bugereranya umushahara fatizo n'ibindi bigereranyo bishingiye ku mushahara n'umusaruro nk'umusaruro mbumbe w'imbere mu gihugu ku muturage (*GDP per capita*), umusaruro mbumbe w'imbere mu gihugu ku mukozi

iv) Gusesengura ingaruka z'umushahara fatizo ku isaranganya ry'umutungo, ku igabanuka ry'ubukene, ku busumbane bw'umutungo, ku nzego z'imirimo;

v) Hashingiwe ku bizaba byagaragajwe n'ubushakashatsi ku mushahara fatizo, gutegura umushinga w'iteka rya Minisitiri rigena umushahara fatizo hakurikijwe ibyiciro by'imirimo mu Rwanda.

[51] Mu gusesengura inyandiko yavuzwe haruguru ASSAR yashyikirije Urukiko, Urukiko rurasanga iyi nyandiko igaragara nk'inyandiko yari itararangira ngo itangazwe kuko ku mpapuro zayo zibanza, hari aho ibice bimwe bitujujwe aribyo, *Disclaimer, Inquiries, Acknowledgments, Abstract*, ibi bikaba byafatwa y'uko iyi nyigo yari ikiri umushinga nk'uko uhagarariye Leta abivuga. Ikindi ni uko iyi nyigo igaragaza ku rupapuro rwayo rwa mbere amagambo 'Minisiteri y'Abakozi ba Leta n'Umurimo', *Ministry of Public Service and Labor'*. Me Butare Emmanuel asubiza ikibazo cyo kumenya umuhanga wakoze iyi nyigo, yavuze ko ari MIFOTRA, ibi Urukiko rukaba rubona bidahagije kugira ngo rwemeze ko inyigo yakozwe n'umuhanga uteganyijwe n'ingingo ya 80 y'Itegeko N^{o}. 30/2018.

[52] Urukiko rurasanga kandi intego zibanzweho mu nyigo yavuzwe haruguru zitari zigamije kugaragaza uburemere bwo kuba nta mushahara fatizo uriho mu Rwanda, ahubwo zasuzumaga ibyashingirwaho hagenwa umushaharafatizo mu byiciro bitandukanye by'imirimo. Iyo nyigo kandi ntinagaragaza ingaruka ziterwa no kutagira umushahara fatizo haba muri rusange, cyangwa by'umwihariko ku bigo by'ubwishingizi, kuko aribyo ASSAR ivuga ko aricyo gice cy'abaturage iharanira inyungu zacyo. Nk'uko Urukiko rwabigaragaje mu bika bibanza, ASSAR ivuga gusa ko kuba nta mushahara fatizo uriho bituma hakoreshwa uwashyizweho n'Urukiko rw'Ikirenga, bikayitera

[9] *A Study on the Establishment and the Determination of the Minimum Guarantee Wage (MGW/SMIG) per Occupational Categories, Last Version, July 2018*.

igihombo, ariko ntisobanure uko icyo gihombo giteye, ingano yacyo n'ingaruka kigira kuri ibyo bigo. Iyo ijya gukoresha inyigo kuri icyo kibazo, byashoboraga kwereka Urukiko uburemere bwacyo ndetse n'impamvu kigomba gukemurwa kugirango kitabagamira inyungu z'igice cy'abaturage (i.e. ibigo by'ubwishingizi) ASSAR iharanira ndetse n'abaturage muri rusange cyane cyane abafata ubwishingizi muri ibyo bigo. Kuba rero inyigo yatanzwe na ASSAR itagaragaza ibyo byose, turasanga itujuje ibisabwa n'ingingo ya 80 y'Itegeko N^{o}. 30/2018 ryavuzwe haruguru.

[53] Ku birebana n'ibyakozwe na ASSAR mu gukemura ikibazo cyo kutagira umushahara fatizo yifashishije inzego za Leta bikananirana, dosiye y'urubanza yerekana ko mbere yuko Itegeko No. 66/2018 rigenga umurimo ritangazwa, Banki Nkuru y'u Rwanda yandikiye MIFOTRA ibaruwa yo ku wa 14/11/2016 ivuga ko kutagira umushahara fatizo bibangamiye ibigo by'ubwishingizi, kuko indishyi zikomoka ku mpanuka zatewe n'ibinyabiziga zitangwa hashingiwe ku murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RCAA 0202/07/CS rwo ku wa 09/04/2009 rwemeje amafaranga 2500 ku munsi, ndetse n'izindi nkiko zigenda zigena amafaranga ari hejuru. Mu ibaruwa yo ku wa 23/01/2017, MIFOTRA yasubije Banki Nkuru y'u Rwanda iyimenyesha ko ishyirwaho ry'Iteka rigena umushahara fatizo ritegereje isohoka ry'Itegeko rishya rigenga umurimo risimbura Itegeko N^{o}. 13/2009 ry ku wa 27/05/2009. Itegeko N^{o}. 66/2018 ryo ku wa 30/08/2018 rigenga umurimo mu Rwanda ryatangajwe ku itariki ya 06/09/2018, ariko mbere y'aho, ku wa 27/07/2018, MIFOTRA yari yandikiye ASSAR n'ibigo by'ubwishingizi ibitumira mu nama ngwishwanama ku mushinga w'Iteka rya Minisitiri rishyiraho umushahara fatizo, iyo nama yagombaga kuba ku wa 06/08/2018. Nyuma y'aho, ku itariki ya 29/08/2018, Umuyobozi wa ASSAR yandikiye MIFOTRA avuga ko ashingiye ku nama ngishwanama bakoranye na MIFOTRA kuwa 06/08/2018, ashimira Minisitiri ufite umurimo mu nshingano ze kuba yarabagejejeho umushinga w'Iteka rigena umushahara fatizo, asaba ko muri iryo Teka hagira ibintu bimwe byajya ku mugereka waryo aribyo: ibyiciro by'imirimo hakurikijwe ibikorwa mbonezabukungu; umushahara fatizo kuri buri kiciro; umubare w'iminsi y'akazi mu kwezi; abakozi bakora mu rwego rw'imirimo yanditse ariko batarebwa n'Iteka rya Minisitiri.

[54] Bigaragara kandi ko ku wa 05/06/2019, Umuyobozi wa ASSAR yandikiye MINECOFIN ibaruwa ayigezaho umushinga w'Itegeko ryerekeye indishyi zikomoka ku mpanuka ziterwa n'ibinyabiziga, anavuga ko imwe mu mbogamizi ibigo bitanga serivisi z'ubwishingizi bihura nazo ari izamuka ry'indishyi zigenwa mu bushishozi bw'Urukiko kuko nta mushahara fatizo uriho.

[55] Urukiko rurasanga isesengura ry' amabaruwa yavuzwe mu bika bibanziriza iki, rigaragaza ko mbere y'itangazwa ry'Itegeko rishya rigenga umurimo mu Rwanda, nta kigaragaza ko ASSAR hari icyo yakoze ubwayo ngo igeze kuri MIFOTRA, nk'urwego rushinzwe gushyiraho Iteka rigena umushahara fatizo, ikibazo cyo kuba uwo mushahara fatizo utariho n'ingaruka cyagira. Nyuma y'uko Itegeko rishya ritangarijwe, ibaruwa ASSAR yandikiye MIFOTRA ku wa 29/8/2018 yari iyo kuyishimira ko yayigejejeho umushinga w'Iteka rya Minisitiri rishyiraho umushahara fatizo inatanga ibitekerezo kubyashyirwa ku mugereka w'iryo Teka.

[56] Rushingiye kubyavuzwe mu bika bibanza, Urukiko rurasanga usibye ibaruwa imwe ASSAR yandikiye MIFOTRA ku wa 27/7/2018 iyishimira ko yayohereje umushinga w'Iteka rya Minisitiri rigena umushahara fatizo ikanatanga ibyo yifuzaga ko byashyirwa ku mugereka w'iryo Teka, nta yindi baruwa yagejeje kuri MIFOTRA yerekeye ishyirwaho ry'umushahara fatizo. Mu gusobanura ko ASSAR yagize icyo ikora kugirango ikibazo cy'umushahara fatizo gikemuke bikananira, ASSAR ihera ku ibaruwa yanditswe na Banki Nkuru y'u Rwanda ku wa

14/11/2016, ngo kuko ariyo ishinzwe kugenzura ibigo by'ubwishingizi. Aha Urukiko rurasanga icyo gisobanuro kidahagije kuko Banki Nkuru y'u Rwanda atariyo mu buranyi muri uru rubanza usabwa kugaragaza icyo yakoze kugirango ikibazo gikemuke. Ni muri urwo rwego kandi ASSAR itakwitwaza ibaruwa yandikiye MINECOFIN ku wa 05/06/2019 kuko, usibye n'uko iyo baruwa itasabaga MINECOFIN ishyirwaho ry'umushahara fatizo, ahubwo yayohererereza imishinga y'amategeko yerekeye indishyi z'imvune z'umubiri, nta cyayibuzaga kwandikira Minisiteri ibishinzwe ariyo MIFOTRA.

[57] Urukiko rurasanga MIFOTRA yaratangiye gahunda yo gushyiraho Iteka rya Minisitiri rigena umushahara fatizo kandi ASSAR ikaba yarabimenyeshejwe ikanatanga ibitekerezo byayo, bityo ikaba itabona aho ihera ivuga ko MIFOTRA ntacyo yakoze cyangwa itahaye iki kibazo ubwihutirwe, cyane cyane ko n'Itegeko N°66/2018 rigenga umurimo ritigeze riteganya igihe ntarengwa iryo Teka rigomba kuba ryagiyeho.

[58] Rushingiye ku bisobanuro byatanzwe haruguru, Urukiko rurasanga kuba mu gihe cyo gutanga ikirego gisaba kubungabunga cyangwa gukuraho imbogamizi ASSAR ivuga ko zibangamiye inyungu rusange, itarashoboye kugaragaza inyungu rusange zemewe iharanira, kandi ikaba itaratanze inyigo yakozwe n'umuhanga igaragaza uburemere bwo kuba nta mushahara fatizo uhari, icyo yabikozeho igamije gushaka uburyo icyo kibazo cyakemuka bikananirana n'ingaruka cyateye ku banyarwanda muri rusange, no ku bigo bw'ubwishingizi by'umwihariko, ikirego cyayo kitagomba kwakirwa kubera ko kitujuje ibiteganywa n'itegeko.

III. ICYEMEZO CY'URUKIKO

[59] Rwemeje ko ikirego cyatanzwe na Association des Assureurs du Rwanda (ASSAR) kitakiriwe kubera ko kitujuje ibiteganywa n'amategeko.