Re. URUGAGA RW’ABAVOKA MU RWANDA (2)

[Rwanda URUKIKO RW’IKIRENGA – RS/INTL/SPEC 00001/2020/SC– ((Ntezilyayo, P.J., Hitiyaremye, Cyanzayire, Rukundakuvuga na Muhumuza, J.) 23 Ukwakira 2020]

Itegeko Nshinga – Ikirego gisaba isobanurampamo – Ibisabwa kugira ngo ikirego cyakirwe – Utanga ikirego agomba kubanza kugaragaza inyungu ashaka kurengera, zishobora kuba inyungu bwite cyangwa inyungu rusange, kugaragaza ko ingingo y’itegeko asabira isobanurampamo iteje impaka mu myumvire yayo, ko hari imanza cyangwa ibyemezo by’ubutegetsi bivuguruzanya ku bisobanuro by’ingingo y’itegeko, cyangwa ko hari amagambo ari mu itegeko atera urujijo ku buryo yahabwa ibisobanuro bitandukanye bivuguruzanya, kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka – Kuba itegeko riteje impaka mu myumvire yaryo ntibyitwa impaka iyo hari icyemezo cy'urukiko ku rwego rwa nyuma cyatanze umurongo ku kibazo ababuranyi bagaragaza ko giteye urujijo.

Incamake y’ikibazo: ENSafrica Rwanda Ltd (ENSafrica) yandikiye Urugaga rw’Abavoka, irusaba kuyitangira ikirego gisaba isobanurampamo ry’ingingo ya 5, igika cya mbere-1°, y’Itegeko n°37/2012 ryo ku wa 09/11/2012 nk’uko yahinduwe n'ingingo ya mbere y’Itegeko n°02/2015 ryo ku wa 25/2/2015, rishyiraho umusoro ku nyongeragaciro. Iki cyifuzo kikaba gifitanye isano ya hafi n’urubanza rwatangiriye mu Rukiko rw’Ubucuruzi, ENSafrica ifitanye n’Ikigo cy’imisoro n’amahoro (RRA), isaba gukurirwaho umusoro ku nyongeragaciro (TVA) yaciwe, ivuga ko yawuciwe mu buryo bunyuranije n’amategeko. Muri urwo rubanza yaratsinzwe itegekwa kwishyura umusoro wari wemejwe na RRA mu gihe cy’ubwumvikane.

Nyuma yo kwakira icyifuzo cya ENSafrica no kugisuzuma, Urugaga rw’Abavoka rwandikiye Perezida w’Urukiko rw’Ikirenga rusaba isobanurampamo ry’ingingo ya 5, igika cya mbere-1º, y’itegeko n°37/2012 ryavuzwe. Mu gusobanura ikirego cyarwo, Urugaga rw’Abavoka ruvuga ko mu gihe ingingo ya 5 igika cya mbere-1° y’itegeko ryo mu 2012 yateganyaga urutonde rw’ibintu n'imirimo bifatwa nk’ibyoherejwe mu mahanga, bityo bigasoreshwa ku ijanisha rya zeru, by’umwihariko ikavugamo imirimo ikorerwa mu mahanga ariko ingingo ya mbere igika cya mbere-1° y'itegeko ryo mu 2015 nta gisobanuro cyangwa ingero itanga ry'ibifatwa nk'ibintu cyangwa serivisi bifatwa nk'ibyoherejwe mu mahanga. Bivuze ko umushingamategeko atigeze atanga igisobanuro cya serivisi yoherejwe mu mahanga (*exported services*) kandi byari ngombwa kugira ngo hatabaho urujijo cyangwa imyumvire itandukanye ku byari bimaze guhindurwa, by’umwihariko igihe serivisi ifatwa nk’iyoherejwe mu mahanga.

Rukomeza ruvuga ko kudatanga igisobanuro cyeruye cya serivisi yoherejwe mu mahanga ari ikibazo kuko serivisi atari ikintu gifatika (*tangible*), ikaba itandukanye n’ibintu bifatika byambuka umupaka kuko byo kugenzura aho byoherejwe byoroha. Runavuga ko ukurikije aho isi igeze uyu munsi, serivisi zishobora guhabwa umuntu utuye mu mahanga bitabaye ngombwa ko utanga serivisi yambuka umupaka ngo ajye mu mahanga, ko ibi byatuma habaho imyumvire itandukanye kuri iyi ngingo aho bamwe bashobora kuvuga ko imirimo yoherejwe mu mahanga ari iyakorewe mu mahanga, abandi bakaba bavuga ko ari iyakorewe/yahawe ababarizwa mu bihugu by’amahanga.

Rushingiye ku masezerano mpuzamahanga ashyiraho isoko rusange ry’umuryango w’Afurika y’Iburasirazuba, Urugaga rw’Abavoka ruvuga ko igisobanuro gihabwa imirimo yoherejwe mu

mahanga (*exported services*) muri ayo masezerano mpuzamahanga kigaragaza neza ko imirimo yoherejwe mu mahanga ishobora kuba iyakorewe mu mahanga cyangwa iyakorewe abantu babarizwa mu bindi bihugu.

Urugaga rw'Abavoka ruvuga na none ko imyumvire itandukanye kuri iyi ngingo yagaragaye mu byemezo bitandukanye by'ubutegetsi ndetse n'inkiko, nk'aho Ikigo cy'Igihugu cy'Imisoro n'Amahoro (RRA) mu bihe bitandukanye, cyagiye cyemera ko imirimo yakorewe mu Rwanda ikorewe ababarizwa mu mahanga, yoherejwe mu mahanga (*exported*), nyamara kikanga indi byakozwe mu buryo bumwe cyangwa bisa kandi nta mpamvu ifatika ishingiweho, ruvuga ko ibi ari nako bimeze mu byemezo by'Inkiko ENSafrica yabayemo umuburanyi.

Urugaga rw'Abavoka ruvuga ko ubu busabe bw'isobanurampamo buri mu rwego rw'imwe mu mirongo ngenderwaho yashyizweho n'Urukiko rw'Ikirenga, aho rwasobanuye ko mu bigenderwaho hemezwa ko ingingo ikeneye isobanurampamo, harimo kuba hari imanza cyangwa ibyemezo by'ubutegetsi bivuguruzanya ku bisobanuro by'ingingo y'itegeko, bityo bakaba basanga Urukiko rw'Ikirenga rukwiye gutanga isobanurampamo ry'iyo ngingo kuko mu ishyirwa mu bikorwa ryayo hagiye habaho imyumvire itandukanye ku rwego rwa RRA ndetse no ku rwego rw'inkiko.

Uhagariye Leta y'u Rwanda avuga ko igitekerezo cya Leta y'u Rwanda kigomba kureberwa mu murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza rwaciye mu mwaka wa 2017, aho rwavuze ko kugira ngo hasabwe isobanurampamo ry'ingingo y'itegeko hagomba kuba hari ibyemezo bivuguruzanya byafashwe, kandi hagamijwe inyungu rusange. Avuga ko ibyemezo byakwitwa ko bivuguruzanya igihe Komiseri Mukuru yafata icyemezo kimwe ku musoreshwa runaka, akongera agafatira undi musoreshwa ikindi cyemezo kivuguruzanya n'icyo yafatiye uwa mbere kandi bahuje ibibazo.

Uhagarariye Leta y'u Rwanda anavuga ko Urugaga rw'Abavoka rutagaragaza ko itegeko ryavuzwe haruguru ritumvikana ku bijyanye n'icyo ryashyiriweho, kuko ryanditse mu buryo bumwe n'ubwo ayaribanjirije yari yanditsemo. Avuga ko icyo iyo ngingo yerekana ari uko ibintu na serivisi byoherejwe mu mahanga bisoreshwa ku ijanisha rya zeru, mu gihe ibitoherejwe mu mahanga, ni ukuvuga imirimo na serivisi byagurishijwe mu gihugu byo bitarebwa n'iyi ngingo. Avuga kandi ko iyo ngingo irushaho kumvikana neza iyo uyisomeye hamwe n'izindi ngingo, cyane cyane ingingo ya 2(7) y'Itegeko nº 37/2012 ryavuzwe, isobanura imirimo ikorewe mu Rwanda.

Incamake y'icyemezo: 1. Utanga ikirego agomba kubanza kugaragaza inyungu ashaka kurengera, zishobora kuba inyungu bwite cyangwa inyungu rusange, kugaragaza ko ingingo y'itegeko asabira isobanurampamo iteje impaka mu myumvire yayo, ko hari imanza cyangwa ibyemezo by'ubutegetsi bivuguruzanya ku bisobanuro by'ingingo y'itegeko, cyangwa ko hari amagambo ari mu itegeko atera urujijo ku buryo yahabwa ibisobanuro bitandukanye bivuguruzanya, kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka.

2. Kuba itegeko riteje impaka mu myumvire yaryo ntibyitwa impaka iyo hari icyemezo cy'urukiko ku rwego rwa nyuma cyatanze umurongo ku kibazo ababuranyi bagaragaza ko giteye urujijo.

Ikirego gisaba isobanurampamo ry'ingingo y'itegeko nticyakiriwe.

Amategeko yashingiweho:
Itegeko Nshinga rya Republika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 95.
World Trade Organization General Agreement on Trade in services (GATS), ingingo ya 1.
Protocol on establishment of East African Community Common Market, ingingo ya 16.
Organisation for Economic Cooperation and Development (OECD).
Itegeko nº 30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ingingo ya 65 n'iya 79.
Itegeko nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 9.
Itegeko n°37/2012 ryo ku wa 09/11/2012 nk'uko ryahinduwe n'Itegeko n° 02/2015 ryo ku wa 25/2/2015, rishyiraho umusoro ku nyongeragaciro, ingingo ya 5 n'iya 1.

Imanza zifashishijwe:
Re Urugaga rw'Abavoka, RS/SPEC/00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga ku wa 28/04/2017.

Urubanza

I. IMITERERE Y'URUBANZA

[1] Ku wa 10 Ukuboza 2019, ENSafrica Rwanda Ltd ("ENSafrica" muri uru rubanza) yandikiye Urugaga rw'Abavoka, irusaba kuyitangira ikirego gisaba isobanurampamo ry'ingingo ya 5, igika cya mbere 1°, y'Itegeko n°37/2012 ryo ku wa 09/11/2012 nk'uko yahinduwe n'ingingo ya mbere y'itegeko n° 02/2015 ryo kuwa 25/2/2015, rishyiraho umusoro ku nyongeragaciro. ENSafrica ni ikigo gitanga ubufasha mu by'amategeko mu bakiriya bacyo, muribo hakaba harimo abantu cyangwa ibigo bibarizwa hanze y'u Rwanda (*non-residents*).

[2] Ubu busabe bwa ENSAfrica bukaba bufitanye isano ya hafi n'urubanza rwatangiriye mu Rukiko rw'Ubucuruzi, ENSafrica irega Ikigo cy'imisoro n'amahoro (RRA), isaba gukurirwaho umusoro ku nyongeragaciro (TVA) yaciwe ungana na 53.157.360 Frw, ivuga ko yawuciwe mu buryo bunyuranije n'amategeko.

[3] Nyuma yo gutanga ikirego, ENSafrica na RRA bagaragaje ubushake bwo kumvikana Urukiko rurabibemerera, RRA igabanya umusoro uva kuri 53.157.360 Frw ugera kuri 29.261.826 Frw ariko ENSafrica ntiyanyurwa bituma ikomeza urubanza. Mu miburanire yayo, ENSafrica yasobanuye ko ari ikigo gifite ubuzima gatozi, cyanditswe muri RDB, gikora imirimo ijyanye no gutanga serivisi mu by'amategeko ku bantu batandukanye, cyane cyane ababarizwa hanze y'u Rwanda. Yagaragaje ko imirimo yakoze kuva mu kwezi kwa Nyakanga kugeza mu Ugushyingo 2017 yari mu cyiciro cya exported services, ikaba yaragombaga gusoreshwa ku ijanisha rya zeru hashingiwe ku ngingo ya 5, igika cya mbere 1° y'itegeko n°37/2012 ryo ku wa 09/11/2012, nk'uko yahinduwe n'ingingo ya mbere y'itegeko n°02/2015 ryo kuwa 25/2/2015 rishyiraho umusoro ku nyongeragaciro.

[4] Ku wa 20/03/2019, Urukiko rw'Ubucuruzi rwaciye urubanza RCOM 01492/2019/TC rwemeza ko ikirego cyatanzwe na ENSafrica gifite ishingiro kuri bimwe, ko umusoro ENSafrica yasabye ko wakurwaho utagomba kuvaho, ahubwo ugomba kugabanywa, ruyitegeka kwishyura umusoro ku nyongeragaciro (TVA) n'ibihano, uhwanye na 22.814.510 Frw, rwemeza ko ikirego

kiregera kwiregura cyatanzwe na RRA gifite ishingiro, rutegeka ENSafrica guha RRA indishyi z'ibyakozwe ku rubanza zihwanye na 600.000 Frw.

[5] Mu gufata icyemezo, Urukiko rwashingiye ku kuba hari inyemezabwishyu (*factures*) ENSafrica itishyuriye TVA kandi imirimo yakorewe abishyuye izo factures bari bayikeneye mu Rwanda cyangwa yarabagiriye akamaro mu Rwanda, nkuko biteganywa mu ngingo ya 2 agace ka 7(d)[1], y'itegeko N°37/2012 ryo ku wa 09/11/2012, rishyiraho TVA, bityo izo serivisi zikaba zaragombaga gusoreshwa. Rwashingiye kandi ku kuba rwarasanze hari inyemezabwishyu zimwe serivisi zazo zoherejwe mu mahanga, ku buryo izo serivisi zagombabaga gusoreshwa ku ijanisha rya zeru.

[6] ENSafrica yajuririye urwo rubanza mu Rukiko Rukuru rw'Ubucuruzi, ivuga ko ijurijwe no kuba Urukiko rw'Ubucuruzi rwarirengagije ibisobanuro byayo, ngo kuko rwafashe icyemezo rushingiye ku ngingo y'itegeko idafite aho ihuriye n'ikibazo cyari mu rubanza rujuririrwa, kuba rwarivuguruje ku cyemezo rwafashe no kuba ENSafrica yarategetswe gutanga indishyi kandi Urukiko rwaremeje ko ikirego cyayo gifite ishingiro kuri bimwe. RRA nayo yatanze ubujurire bwuririye ku bwa ENSafrica isaba ko Urukiko Rukuru rwasubizaho inyemezabwishyu Urukiko rubanza rwakuye mu zigomba gusoreshwa TVA, inasaba indishyi z'ibyagiye ku rubanza.

[7] Ku wa 04/12/2019, Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00350/2019/HCC, rwemeza ko ubujurire bwatanzwe na ENSafrica nta shingiro bufite, ruvuga ahubwo ko umusoro ENSafrica yaciwe utagombaga kugabanywa n'Urukiko rw'Ubucuruzi, ruyitegeka kwishyura umusoro wa TVA ungana na 29.261.826 Frw nkuko wari wemejwe na RRA mu gihe cy'ubwimvikane.

[8] Urukiko Rukuru rw'Ubucuruzi rwavuze ko igisobanuro cy'imirimo yoherejwe mu mahanga itagomba gucibwa TVA, kitagomba gushingira ku kuba uwakorewe iyo mirimo ari mu mahanga, ahubwo ko hagomba kurebwa aho imirimo yakorewe uwo muntu yoherejwe ngo imugirire akamaro, ruvuga ko ENSafrica yagiye ikorera serivisi abanyamahanga, izo serivisi zigomba kubagirira akamaro mu Rwanda, bityo ko zagombaga kwishyurirwa TVA ariko ntibikorwe, runasobanura ko indishyi ENSafrica yaciwe zashingiye ku makosa yakoze yo kudaca TVA kuri serivisi yahaye abakiriya bayo, no kuba ariyo nyirabayazana w'imanza.

[9] Nyuma yo kwakira ubusabe bwa ENSafrica no kubusuzuma, Urugaga rw'Abavoka rwandikiye Perezida w'Urukiko rw'Ikirenga rusaba isobanurampamo ry'ingingo ya 5, igika cya mbere 1º, y'itegeko n°37/2012 ryavuzwe, ikirego gihabwa nomero RS/INTL/SPEC 00001/2020/SC.

[10] Mu gusobanura ikirego cyarwo, Urugaga rw'Abavoka ruvuga ko mu mwaka wa 2015, Inteko Ishinga Amategeko Umutwe w'Abadepite, yatoye itegeko nº 02/2015 ryo ku wa 25/02/2015 rihindura kandi ryuzuza itegeko n° 37/2012 ryo kuwa 09/11/2012 rishyiraho umusoro ku nyongeragaciro. Mu ngingo zahinduwe n'Itegeko ryo mu 2015, Urugaga rwibanze ku ngingo ya 5, igika cya mbere1º, y'itegeko n° 37/2012 ryo kuwa 09/11/2012 kugira ngo rugaragaze ishingiro ry'isobanurampamo ENSafrica yasabaga ko Urugaga ruyigereza mu Rukiko rw'Ikirenga.

[1] Iyi ngingo mu gace ka 7(d) ivuga ibyerekeranya n'imirimo ifatwa nk'ikorewe mu Rwanda iyo uyikora nta cyicaro afite mu Rwanda ahubwo akakigira ahandi kandi abo iyo mirimo ikorerwa bayikenera cyangwa ikabagirira akamaro mu rwanda

[11] Ingingo ya gatanu, igika cya mbere, y'Itegeko ryo mu 2012 yateganyaga ibi bikurikira ibintu na serivisi bikurikira bisoreshwa ku ijanisha rya zeru:

1º ibintu n'imirimo byoherejwe mu mahanga:

a. ibintu byoherejwe mu mahanga bifitiwe ibimenyetso byemewe na Komiseri Mukuru;
b. imirimo y'ubwikorezi n'indi mirimo ijyana nabwo ifitanye isano no kohereza ibintu mu mahanga bivugwa mu gace ka a) k'iyi ngingo;
c. imirimo y'ubwikorezi bw'ibintu binyura mu Rwanda bigana mu mahanga harimo n'imirimo ijyana na bwo;
d. lisansi y'indege;
e. imirimo ikorerwa mu mahanga;
f. ibintu bikoreshwa mu ndege ziva mu Rwanda zijya mu Mahanga.

2º Ibintu bigurishirizwa mu maduka adasoreshwa, nk'uko biteganywa n'itegeko rigenga za gasutamo.

[12] Urugaga rw'Abavoka rwerekana ko itegeko ryo mu 2015, mu ngingo yaryo ya mbere 1º, ryahinduye iyo ngingo mu buryo bukurikira: ibintu na serivisi bikurikira bisoreshwa ku ijanisha rya zeru:

1. ibintu na serivisi byoherejwe mu mahanga;
2. amabuye y'agaciro yacurujwe ku isoko ry'imbere mu gihugu;
3. imirimo y'ubwikorezi mpuzamahanga bw'ibintu byinjira mu Rwanda n'imirimo y'ubwikorezi bw'ibintu binyura mu Rwanda bigana mu mahanga, harimo n'imirimo ijyana na bwo;
4. ibintu bigurishirizwa mu maduka adasoreshwa, nk'uko biteganywa n'itegeko rigenga za gasutamo.

[13] Urugaga rw'Abavoka ruvuga ko mu gihe ingingo ya 5 igika cya mbere 1° y'itegeko ryo mu 2012 yateganyaga urutonde rw'ibintu n'imirimo bifatwa nk'ibyoherejwe mu mahanga, bityo bigasoreshwa ku ijanisha rya zeru, by'umwihariko ikavugamo "imirimo ikorerwa mu mahanga", ingingo ya mbere igika cya mbere 1° y'itegeko ryo mu 2015 nta gisobanuro cyangwa ingero itanga ry'ibifatwa nk'ibintu cyangwa serivisi bifatwa nk'ibyoherejwe mu mahanga.

[14] Urugaga rw'Abavoka rukomeza ruvuga ko ikibazo gihari ari uko mu guhindura ingingo ya 5 y'itegeko rishyiraho TVA ryo muri 2012, havugwa gusa ko ibintu na serivisi byoherejwe mu mahanga bisoreshwa ku ijanisha rya zeru, umushingamategeko atigeze atanga igisobanuro cya serivisi yoherejwe mu mahanga (*exported services)* kandi byari ngombwa kugira ngo hatabaho urujijo cyangwa imyumvire itandukanye ku byari bimaze guhindurwa, by'umwihariko igihe serivisi ifatwa nk'iyoherejwe mu mahanga. Ruvuga ko kudatanga igisobanuro cyeruye cya serivisi yoherejwe mu mahanga ari ikibazo kuko serivisi atari ikintu gifatika (*tangible*), ikaba itandukanye n'ibintu bifatika byambuka umupaka kuko byo kugenzura aho byoherejwe byoroha. Runavuga ko ukurikije aho isi igeze uyu munsi, serivisi zishobora guhabwa umuntu utuye mu mahanga bitabaye ngombwa ko utanga serivisi yambuka umupaka ngo ajye mu mahanga, ko ibi byatuma habaho

imyumvire itandukanye kuri iyi ngingo aho bamwe bashobora kuvuga ko imirimo yoherejwe mu mahanga ari iyakorewe mu mahanga, abandi bakaba bavuga ko ari iyakorewe/yahawe ababarizwa mu bihugu by'amahanga.

[15] Urugaga rw'Abavoka ruvuga ko aha ariho ENSafrica isanga hakwiye kurebwa amasezerano mpuzamahanga yerekeye ubucuruzi bwa serivisi bwambukiranya imipaka u Rwanda rwasinye rukanayemeza, muri ayo masezerano bakavugamo *General Agreement on Trade in Services (GATS)* yo mu 1995 ya *World Trade Organization/Organisation Mondiale du Commerce (OMC)*, yerekeye ubucuruzi mpuzamahanga bwa serivisi hagati y'ibihugu, hamwe n'Amasezerano mpuzamahanga ashyiraho isoko rusange ry'Umuryango w'Afurika y'Iburasirazuba *(Protocol on the establishment of the East African Community common Market)*, nayo u Rwanda rwasinye rukanayemeza. Bavuga ko amasezerano ya *GATS*, mu ngingo yayo ya mbere, avuga ko serivisi zambukiranya imipaka/zoherejwe mu mahanga (internationally traded services) bivuze serivisi zitanzwe n'umuntu wo mu gihugu kimwe zigatangirwa mu kindi gihugu cyangwa serivisi zitangiwe mu gihugu kimwe zigahabwa umuntu uri mu kindi gihugu.

[16] Urugaga rw'Abavoka ruvuga ko ibiteganywa n'ingingo ya mbere ya *GATS* ari nabyo bisubirwamo mu ngingo ya 16.2 [a et b] y'Amasezerano mpuzamahanga ashyiraho isoko rusange ry'umuryango w'Afurika y'Iburasirazuba, ko igisobanuro gihabwa imirimo yoherejwe mu mahanga (*exported services*) muri ayo masezerano mpuzamahanga yombi kigaragaza neza ko imirimo yoherejwe mu mahanga ishobora kuba iyakorewe mu mahanga cyangwa iyakorewe abantu babarizwa mu bindi bihugu.

[17] Urugaga rw'Abavoka ruvuga na none ko imyumvire itandukanye kuri iyi ngingo yanagaragaye mu byemezo bitandukanye by'ubutegetsi ndetse n'inkiko, nk'aho Ikigo cy'Igihugu cy'Imisoro n'Amahoro (RRA) mu bihe bitandukanye, cyagiye cyemera ko imirimo yakorewe mu Rwanda ikorewe ababarizwa mu mahanga, yoherejwe mu mahanga (*exported*), nyamara kikanga indi byakozwe mu buryo bumwe cyangwa bisa kandi nta mpamvu ifatika ishingiweho, ruvuga ko ibi ari nako bimeze mu byemezo by'Inkiko ENSafrica yabayemo umuburanyi.

[18] Urugaga rw'Abavoka rwemeza ko ubusabe bwa ENSafrica bufite ishingiro, ngo kuko nta gisobanuro cya serivisi (imirimo) yoherejwe mu mahanga umushingamategeko yatanze, ko hari ukuvuguruzanya kugaragara mu byemezo bitandukanye byagiye bifatwa na RRA n'ibyafashwe n'inkiko ku byerekeye iyoherezwa rya serivisi mu mahanga (kwemeza ko serivisi zoherejwe mu mahanga cyangwa zitoherejwe mu mahanga), aho habayeho kwemera ko serivisi zakorewe abanyamahanga zikorewe mu Rwanda zoherejwe mu mahanga nyamara izindi zisa nazo cyangwa zakozwe mu buryo bumwe, ntizemerwe.

[19] Urubanza muri uru Rukiko rwaburanishijwe mu ruhame kuwa 22/09/2020, Urugaga rw'Abavoka mu Rwanda ruhagarariwe na Me Basomingera Albert, Me Nzafashwanayo Dieudonné na Me Bizimana Emmanuel, hari na Me Kabibi Speçiose uhagarariye Leta y'u Rwanda.

[20] Abahagarariye Urugaga rw'Abavoka, bashingiye ku ngingo ya 79 y'itegeko Nº 30/2018 ryo kuwa 02/06/2018 rigena ububasha bw'inkiko, bagaragaje ko ENSafrica ifite inyungu bwite n'inyungu rusange zo gutanga ikirego gisaba isobanurampamo ry'ingingo ya 5, igika cya mbere 1° y'itegeko n°37/2012 ryo kuwa 09/11/2012, nk'uko yahinduwe n'ingingo ya mbere y'itegeko n°02/2015 ryo ku wa 25/2/2015 rishyiraho umusoro ku nyongeragaciro, kugira ngo abantu bakora

mu byo gutanga serivisi, bazikorera abantu cyangwa ibigo byo hanze y'u Rwanda, bave mu rujijo ruri ku myumvire y'iyo ngingo, haba ku ruhande rw'abasora, urwa RRA n'urw'Inkiko.

[21] Uhagarariye Leta y'u Rwanda, Me Kabibi Speçiose nta kibazo yagaragaje ku bijyanye n'inyungu z'ababuranyi ahubwo yibanze ku kugaragaza ko itegeko ryavuzwe nta rujijo riteye ku buryo ryakenera isobanurampamo.

[22] Ikibazo cyabanje gusuzumwa n'icyo kumenya niba ikirego gisaba isobanurampamo ry'ingingo ya 5, igika cya mbere 1°, y'itegeko N°37/2012 ryavuzwe cyatanzwe n'Urugaga rw'Abavoka cyubahirije ibisabwa n'itegeko kugirango cyakirwe.

II. IKIBAZO KIGIZE URUBANZA N'ISESENGURA RYACYO

1. **Kumenya niba ikirego gisaba isobanurampamo ry'ingingo ya 5, igika cya mbere1° y'itegeko n°37/2012 ryo kuwa 09/11/2012, nk'uko yahinduwe n'ingingo ya mbere y'itegeko n° 02/2015 ryo ku wa 25/2/2015 rishyiraho umusoro ku nyongeragaciro, cyubahirije ibisabwa n'itegeko kugirango cyakirwe.**

[23] Abahagarariye Urugaga rw'Abavoka, bavuga ko isobanurampamo basaba rishingiye ku kuvuguruzanya kugaragara mu byemezo bitandukanye byagiye bifatwa na RRA n'inkiko ku byerekeye iyoherezwa rya serivisi mu mahanga, aho habayeho kwemera ko serivisi zakorewe abanyamahanga zikorewe mu Rwanda, zoherejwe mu mahanga, nyamara izindi zisa nazo cyangwa zakozwe mu buryo bumwe ntizifatwe nkizoherejwe mu mahanga. Bavuga ko muri dosiye zimwe na zimwe, banatangiye ingero bifashishije imbonerahamwe ku byemezo bya RRA, RRA yemeye ku rwego rw'ubujurire kwa Komiseri Mukuru, ko imirimo yakozwe na ENSafrica ari *exported services* mu gihe izindi dosiye zagombye gutegereza igihe cyo kugerageza kumvikana ikirego cyarageze mu Rukiko. Bavuga kandi ko uretse no ku rwego rwa RRA ubwarwo, iryo vuguruzanya ryanagaragaye hagati y'Urukiko rw'Ubucuruzi na RRA ndetse no hagati y'urwo Rukiko n'Urukiko Rukuru rw'Ubucuruzi ku gisobanuro gikwiye iyo ngingo, aho mu myumvire y'Urukiko Rukuru rw'Ubucuruzi *exported services* bitavuze gusa imirimo yoherejwe hanze nk'uko Urukiko rw'Ubucuruzi rwari rwabyemeje ku mirimo imwe, ko ahubwo imirimo yakorewe abantu bari mu mahanga *itafatwa* nka *exported services* iyo yabagiriye akamaro mu Rwanda.

[24] Abahagarariye Urugaga rw'Abavoka bavuga ko ubu busabe bw'isobanurampamo buri mu rwego rw'imwe mu mirongo ngenderwaho yashyizweho n'Urukiko rw'Ikirenga mu rubanza RS/SPEC/00001/2017/SC rwaciwe kuwa 28/04/2017 ku kirego cyari cyatanzwe n'Urugaga rw'Abavoka, aho rwasobanuye ko mu bigenderwaho hemezwa ko ingingo ikeneye isobanurampamo, harimo kuba hari imanza cyangwa ibyemezo by'ubutegetsi bivuguruzanya ku bisobanuro by'ingingo y'itegeko, bityo bakaba basanga Urukiko rw'Ikirenga rukwiye gutanga isobanurampamo ry'iyo ngingo kuko mu ishyirwa mu bikorwa ryayo hagiye habaho imyumvire itandukanye ku rwego rwa RRA ndetse no ku rwego rw'inkiko.

[25] Bavuga kandi ko kwivuguruza bitakabaye bireberwa mu manza nyinshi kuko bishobora no kuba mu cyemezo kimwe, ko basanga Urukiko rw'Ikirenga rutakwiyambura ububasha bwo gutanga isobanurampamo risabwa rushingiye ku kuba Urukiko Rukuru rw'Ubucuruzi rwaratanze umurongo, ngo kuko Urukiko rw'Ikirenga ruri hejuru y'Urukiko Rukuru rw'Ubucuruzi kandi ibyemezo by'uru akaba atari itegeko ko izindi nkiko zibyubahiriza.

[26] Naho ku bijyanye n'ibisobanuro bya *exported services*, Urugaga rw'Abavoka ruvuga ko ibyo bisobanuro binashingiye ku mahame mpuzamahanga *(internationaly accepted principles)* yerekeye TVA nk'uko ari mu nyandiko za *Organisation for Economic Cooperation and Development (OECD)* zitandukanye, u Rwanda akaba ari umunyamuryango wa *OECD Development Centre* ku buryo kuba Urukiko rw'Ikirenga rwashingira ku nyandiko zayo mu gusobanura ingingo ya 5 igika cya mbere 1 y'Itegeko rishyiraho TVA, byaba bikwiye. Urugaga ruvuga ko inyandiko za OECD zagiye zishingirwaho n'inkiko zo mu bindi bihugu zashimangiye ko amahame zigarukaho yemewe ku rwego mpuzamahanga, ndetse ko byaba ari ukutareba kure Urukiko ruramutse ruyirengagije mu gihe atavuguruza amategeko y'igihugu runaka.

[27] Me Kabibi Speçiose uhagariye Leta y'u Rwanda avuga ko igitekerezo cya Leta y'u Rwanda kigomba kureberwa mu murongo watanzwe n'Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC 00001/2017/SC rwaciwe ku wa 28/04/2017, aho rwavuze ko kugira ngo hasabwe isobanurampamo ry'ingingo y'itegeko hagomba kuba hari ibyemezo bivuguruzanya byafashwe, kandi hagamijwe inyungu rusange. Asobanura ko amategeko ateganya ko umusoreshwa utishimiye umusoro yaciwe ajuririra kwa Komiseri Mukuru wa RRA. Iyi ikaba ari inzira y'ubujurire isanzwe yo mu rwego rw'ubutegetsi igamije kugira ngo Komiseri Mukuru asuzume niba umukozi wabaze umusoro ataribeshye cyangwa atumvise itegeko uko ritari, anavuga ko hari indi nzira y'ubujurire yashyizweho yitwa gukemura ikibazo mu bwumvikane mu bijyanye n'imisoro (*Amicable settlement*), ko ibyemezo byafatwa bivuye muri iyo nzira bitafatwa nk'ibyemezo bivuguruzanya. Avuga ko ibyemezo byakwitwa ko bivuguruzanya igihe Komiseri Mukuru yafata icyemezo kimwe ku musoreshwa runaka, akongera agafatira undi musoreshwa ikindi cyemezo kivuguruzanya n'icyo yafatiye uwa mbere kandi bahuje ibibazo.

[28] Me Kabibi Speçiose anavuga ko Urugaga rw'Abavoka rutagaragaza ko itegeko ryavuzwe haruguru ritumvikana ku bijyanye n'icyo ryashyiriweho, kuko ryanditse mu buryo bumwe n'ubwo ayaribanjirije yari yanditsemo. Avuga ko icyo iyo ngingo yerekana ari uko ibintu na serivisi byoherejwe mu mahanga bisoreshwa ku ijanisha rya zeru, mu gihe ibitoherejwe mu mahanga, ni ukuvuga imirimo na serivisi byagurishijwe mu gihugu byo bitarebwa n'iyi ngingo. Avuga kandi ko iyo ngingo irushaho kumvikana neza iyo uyisomeye hamwe n'izindi ngingo, cyane cyane ingingo ya 2 (7) y'Itegeko nº 37/2012 ryavuzwe, isobanura imirimo ikorewe mu Rwanda. Muri iyo ngingo ya 2 (7) mu gace kayo ka d, hateganyijwe ko iyo uwatanze serivisi nta cyicaro afite mu Rwanda ariko abo iyo serivisi ikorerwa bayikeneye cyangwa ikabagirira akamaro mu Rwanda, iyo serivisi yakozwe ifatwa nk'iyakorewe mu Rwanda. Avuga ko ibi bishatse kwerekana ko utanga serivisi ashobora kuba atabarizwa mu Rwanda ndetse n'uhabwa serivisi akaba atabarizwa mu Rwanda, ariko uhabwa serivisi akaba ayikeneye mu Rwanda cyangwa se iyo serivisi ikaba yamugiriye akamaro mu Rwanda, bikitwa ko iyo serivisi yatangiwe mu Rwanda ku buryo inasoreshwa ku ijanisha rya 18% kuko iba itoherejwe mu mahanga.

[29] Avuga rero ko mu gihe hakozwe isesengurwa ry'ingingo ya 5(1) n'iya 2 (7) (d)] z'itegeko nº 37/2017 ryavuzwe, ikibazo cyo kumenya serivisi ifatwa nk'iyakorewe mu mahanga cyabonerwa igisubizo bitabaye ngombwa kwiyambaza amahame ya OECD, n'ibyemezo by'Inkiko zo mu mahanga, cyangwa se isobanurampamo.

UKO URUKIKO RUBUBONA

[30] Ingingo ya 79, igika cya 2, y'itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko iteganya ko urega agomba kugaragaza mu mwanzuro we inyungu zihariye cyangwa inyungu rusange zemewe aharanira n'aho impaka zishingiye.

[31] Iyi ngingo yumvikanisha ko utanga ikirego agomba kubanza kugaragaza inyungu ashaka kurengera, zishobora kuba inyungu bwite cyangwa inyungu rusange. Agomba nanone kugaragaza ko ingingo y'itegeko asabira isobanurampamo iteje impaka mu myumvire yayo, ni ukuvuga ko hari imanza cyangwa ibyemezo by'ubutegetsi bivuguruzanya ku bisobanuro by'ingingo y'itegeko, cyangwa ko hari amagambo ari mu itegeko atera urujijo ku buryo yahabwa ibisobanuro bitandukanye bivuguruzanya, kandi bikaba biri mu nyungu rusange ko ayo magambo asobanuka. Ibi akaba ari nako byari byarasobanuwe mu rubanza RS/SPEC/00001/2017/SC rwaciwe n'Urukiko rw'Ikirenga kuwa 28/04/2017[2].

[32] Ku birebana n'uru rubanza, Urukiko rusanga ibijyanye n'inyungu nta mpaka biteje, kuko uwasabye isobanurampamo afite inyungu zihariye zijyanye n'imirimo akora, bikaba bidakeneye gukorwaho isesengura. Rusanga ahubwo ari ngombwa gusuzuma niba ingingo ya 5 igika cya mbere 1°, y'itegeko n°37/2012 ryo kuwa 09/11/2012 nk'uko yahinduwe n'ingingo ya mbere y'itegeko n° 02/2015 ryo kuwa 25/2/2015, rishyiraho umusoro ku nyongeragaciro basaba ko isobanurwa, hari impaka iteje ku buryo yakenera isobanurampamo.

[33] Urukiko rusanga iyo mu myandikire y'itegeko ubwaryo hari ibitumvikana hiyambazwa amahame agenga isesengura ry'itegeko hashingiwe ku busumbane bwayo (hierarchy of laws) n'igihe yakorewe, ibyemezo by'inkiko ndetse n'inyandiko z'abahanga mu mategeko, nkuko biteganywa n'ingingo ya 9 y'itegeko nº 22/2018 ryo ku wa 29/04/2018, ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi.

[34] Ku bijyanye n'ubusumbane bw'amategeko, ingingo ya 95 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, iteganya ko amategeko asumbana mu buryo bukurikira: 1° Itegeko Nshinga; 2° Itegeko Ngenga; 3° amasezerano mpuzamahanga yemejwe n' u Rwanda; 4° itegeko risanzwe; 5° amateka, kandi ko nta tegeko rivuguruza iririsumba. Hashingiwe kuri ibyo rero, Urukiko rusanga hari amasezerano u Rwanda rwashyizeho umukono ashobora gutanga ibisobanuro by'inyongera ku mirimo/serivisi yoherejwe mu mahanga bivugwa mu ngingo ya 5 y'itegeko ryavuzwe haruguru isabirwa isobanurampamo mu gihe haba hari uwaba adasobanukiwe ibyo iyo ngingo ishaka kuvuga.

[35] Urukiko rusanga kandi ababuranyi bagaragaza ubwabo ko hari uburyo ingingo yashobora kumvikanamo hifashishijwe amahame ari mu masezerano mpuzamahanga cyane cyane aya GATS n'ashyiraho isoko rusange ry'Umuryango w'Afurika y'Iburasirazuba, ku gisobanuro gihabwa imirimo yoherejwe mu mahanga (*exported services*), kuko ayo masezerano ari mu mategeko u Rwanda rugenderaho nkuko biteganywa n'Itegeko Nshinga mu ngingo yavuzwe mu gika kibanziriza iki, bityo akaba atari ngombwa ko hiyambazwa inzira y'isobanurampamo mu gihe ikibazo bavuga ko bafite gishobora gukemuka hakoreshejwe inzira zisanzwe zo gusobanura amategeko.

[2] Reba igika cya 25 n'icya 26 by'urwo rubanza.

[36] Urukiko rusanga kandi ibivugwa n'abarega ko habaye ivuguruzanya ku byemezo byafashwe, haba ku rwego rwa RRA ndetse no mu nkiko, bidashoboka kuko icyo bita impaka zishingiye ku gisobanuro cy'imirimo yoherejwe mu mahanga, cyacyemuwe n'Urukiko Rukuru rw'Ubucuruzi mu rubanza rwabaye itegeko nk'uko nabo babyiyemerera. Kuba hari ibisobanuro Urukiko rwatanze bitandukanye n'ibyari byatanzwe na RRA ubwabyo ntibishobora kwitwa ivuguruzanya kuko ari ibisanzwe ko igihe umusoreshwa yaba atanyuzwe n'icyemezo cyafashwe n'urwego runaka, aba yemerewe kubishyikiriza Urukiko rukabifataho umwanzuro, kandi umwanzuro ufashwe ku rwego rwa nyuma ukaba itegeko kuri bose.

[37] Urukiko rusanga kandi ibyo ababuranyi bavuga ko habaye ivuguruzanya ku myumvire y'iyi ngingo hagati y'Urukiko rw'Ubucuruzi n'Urukiko Rukuru rw'Ubucuruzi nabyo atari byo, kuko ari ibisanzwe ko Urukiko ruri hejuru rukosora ururi munsi yarwo kuko ariyo mpamvu inkiko zisumbana. Byakwitwa ko habaye ivuguruzanya mu gihe Urukiko rwaciye urubanza ku rwego rwanyuma rwafashe ibyemezo bitandukanye ku bibazo bisa, nyamara akaba atari ko byagenze muri uru rubanza kuko abarega batagaragaza ko hari ibyemezo bitandukanye Urukiko Rukuru rw'Ubucuruzi rwafashe ku bibazo bisa n'iki.

[38] Urukiko rusanga iyo Urukiko rwaciye urubanza ku rwego rwanyuma rwafashe umurongo ku kibazo runaka, ruba rumaze impaka kuri icyo kibazo ku buryo nta sobanurampamo riba rigikenewe. Ibyo abarega bavuga ko Urukiko Rukuru rw'Ubucuruzi rudatanga umurongo ngenderwaho sibyo, kuko mu micire y'imanza ishingiye ku byemezo byafaswe n'inkiko (precedents), iyo Urukiko ruciye urubanza, umurongo rufashe uba ugomba kubahirizwa muri rwo no mu nkiko ziri munsi yarwo[3]. Itegeko rikaba ahubwo riteganya ko utishimiye umurongo wafashwe ku kibazo runaka kandi akaba yifuza ko uwo murongo wahinduka mu nyungu z'imanza zizakurikira, abiregera mu Rukiko rw'Ikirenga nkuko biteganywa mu ngingo ya 65 y'itegeko n°30/2018 ryo ku wa 02/06/2018 rigena ububashwa bw'inkiko.

[39] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ingingo y'itegeko Urugaga rw'Abavoka rusaba ko ikorerwa isobanurampamo nta impaka iteje, kuko ishobora gusobanurwa hakurikijwe amahame asanzwe agenga isobanurwa ry'amategeko, hakaba hari n'igisobanuro cyatanzwe n'Urukiko Rukuru rw'Ubucuruzi kitaravuguruzwa kugeza ubu. Kubera izo mpamvu, Urukiko rusanga ikirego gisaba isobanurampamo ry' ingingo ya 5, igika cya mbere 1° y'itegeko n°37/2012 ryo kuwa 09/11/2012, nk'uko yahinduwe n'ingingo ya mbere y'itegeko N°02/2015 ryo kuwa 25/2/2015 rishyiraho umusoro ku nyongeragaciro, kidashobora kwakirwa ngo gisuzumwe kuko kitubahirije ibisabwa n'itegeko.

III. ICYEMEZO CY'URUKIKO

[40] Rwemeje ko ikirego cyatanzwe n'Urugaga rw'Abavoka gisaba isobanurampamo ry'ingingo ya 5, igika cya mbere 1° y'itegeko n°37/2012 ryo kuwa 09/11/2012, nk'uko yahinduwe n'ingingo ya mbere y'itegeko n°02/2015 ryo ku wa 25/2/2015 rishyiraho umusoro ku nyongeragaciro, kitakiriwe.

[3]Reba Urubanza RS/INCONST/SPEC 00002/2019/SC, igika cya 32 n'icya 33.