# NTIBAJYINAMA v. UBUSHINJACYAHA

[Rwanda URUKIKO RW'IKIRENGA– RPAA0078/15/CS (Rugege, P.J., Gakwaya na Mukandamage, J.) 01 Kamena 2018]

*Itegeko Nshinga – Inshingano za Leta mu guteza imbere ubuzima bwiza – Ikigaragaza ko leta yakoze inshingano zayo z'ibanze mu kubahiriza uburenganzira ku buzima bwiza – Kuba leta yarashizeho amavuriro, abakozi n'ibikoresho ndetse ikohereza abaturage kubona ubuvuzi buhendutse hakoreshejwe ubwisungane mu kwivuza (mutuelle de santé) bigaragaza ko Leta yujuje inshingano zayo z'ibanze – Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, ingingo ya 45.*

*Amategeko agenga imiburanishirize y'imanza nshinjabyaha – Uburenganzira bwo kunganirwa – kunganirwa kw'abaregwa ibyaha bihanishwa igihano cy'igifungo cya burundu badashobora kubiyishyurira – Mu nyungu z'ubutabera no kubungabunga uburenganzira bwo kunganirwa imbere y'amategeko no ku butabera buboneye muri rusange, abaregwa ibyaha bihanishwa igihano kiremereye cy'igifungo cyaburundu badashobora kwiyishyurira ababunganira, Leta izajye ibageneraababunganira cyangwa ibashakire abafatanyabikorwabashobora gutanga ababunganira mu mategeko. Igihe ibyobitaragerwaho, abagenzacyaha n'abashinjacyaha bakwiye kubisaba Urugaga rw'Abavoka.*

*Amategeko mpanabyaha – Impamvu nyoroshyacyaha – Kwemera icyaha mu bujurire – Kuba uregwa yemeye icyaha mu buryo budashidikanywaho mu bujurire bwa mbere n'ubwa kabiri akanagisabira imbabazi, kandi n'imibereho yabayemo yo guhangayika no kwiheba yarabaye intandaro yo guhitamo kwihekura, bikwiye kumubera impamvu nyoroshyacyaha – Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 71, 76, 77, 78.*

*Amategeko agenga ububasha bw'inkiko – Ububasha bw'Urukiko rw'Ikirenga – Inama itangwa n'Urukiko rw'Ikirenga – Inama Urukiko rw'Ikirenga rugira inzego za leta zibishinzwe kongera gusuzuma ingingo z'itegeko zijyanye n'icyaha cyo kwihekura – Itegeko-Ngenga Nº01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ntiritandukanya icyaha cyo kwihekura n'ubwicanyi busanzwe kuko byose bihanishwa igifungo cya burundu kandi rikaba ritagaragaza ingano umwana wishwe agomba kuba atarengeje – Imiterere y'icyaha cyo kwihekura cyane cyane ku bakobwa n'abagore bamaze kubyara itandukanye n'ubwicanyi busanzwe kuko akenshi icyaha cyo kwihekura kiterwa no kwiheba, guhangayikishwa no kutazashobora kurera uwo mwana ibi bikaba byamutera guhungabana, mu gihe icyaha cy'ubwicanyi gikoranwa ubugome bukabije, akenshi buba bugamije inyungu kubabukora, urwango, ivangura rikabije n'izindi mpamvu. Bityo icyaha cyo kwihekura kumubyeyi umaze igihe gito abyaye nticyafatwa nk'icyaha cy'ubugome bukabije gihanishwa igifungo cya burundu, ahubwo hakabayeho igihano kigereranije ushize mu gaciro n'ibihe icyo cyaha kiba cyakorewemo n'uwagikoze;Urukiko rurasaba inzego za leta zibishinzwe kongera gusuzuma ingingo z'itegeko zijyanye n'icyaha cyo kwihekura mu buryo gisobanurwa n'imihanire yacyo.*

**Incamake y'ikibazo:** Ntibajyinama yakurikiranywe n'ubushinjacyaha icyaha cyo kwihekura mu Rukiko Rwisumbuye rwa Nyagatare, nyuma yuko agiye kwa muganga atwite akabwirwa yuko umwana ameze nezaariko aho kuguma ku bitaro aritahira,ajyeze mu rugo abyarira mu ibasi maze ajugunya umwana mu musarani,maze urwo rukiko rumuhamya icyo cyaha ahanishwa igihano cy'igifungo cya burundu.

Yajuririye mu Rukiko Rukuru urugereko rwa Rwamagana asaba kuganyirizwa igihano kuko yemera icyaha akanagisabira imbabazi. Urwo rukiko rwemeza koadashobora kugabanyirizwa igihano, kuko

ukwemera kwe kutuzuye kandi gushidikanywaho kuko atemera ko yihekuye abigambiriye. Muri izi nkiko zibanza Ntibajyinama yaburanye atunganiwe.

Yongeye ajurira mu Rukiko rw'Ikirenga avuga ko yahanishijweigihano cya burundu kandi yaremeye icyaha akanagisabira imbabazi ariko urukiko ntirwabiha agaciro, akaba asabakoyagabanyirizwa igihano yahawe.

Mu iburanisha, umuryango mpuzamahanga udaharanira inyungu wita kuburenganzira bw'abagore n' abakobwa witwa "*Women's LinkWorldwide*" wasabye Urukiko rw'Ikirenga kuza mu rubanza nk'inshuti y'Urukiko "*amicus curiae*" kugirango ugire ibyo usobanura birebana narwo, ukanageza ku Rukiko ibyanditswe n'abahanga n'imanza zaciwe muri aka karere no ku rwego mpuzamahanga ku bibazo bisa n'ibirugaragaramo, Urukiko rw'Ikirenga rwemeza ko ubusabe bw'inshuti y'urukiko bwemerewe.

Mu Rukiko rw'Ikirenga yaburanye yunganiwe n'umunyamategeko, maze Ntibajyinama yireguyeavugako mu rukiko rubanza yahakanye icyaha ariko mu bujurire aracyemera asaba kugabanyirizwa igihano yahawe n'inkiko zibanza kandi ko icyamuteye kwihekura aruko akimara gutwita yahuye n'ibibazo byuko yari imfubyi, aho yakoraga bakaba baramwirukanye kuburyo nta mafaranga yari afite yo kumutunga no kwivuza ibyo byose akaba aribyo byatumye ajugunya umwana yari yabyaye mu musarani.

Umwunganirayasobanuye ko uwo yunganira yahakanye icyaha kuko nta mufasha mu mategeko yari afite ariko nyuma yokubona umwunganiziakamugira inama byatumye yemera icyaha ndetse akanasobanura neza imikorere yacyo. Akomeza avuga ko asaba yuko agabanyirizwa igihano yari yahawe cya burundu kikagera kumyaka icumi hashingiwe ku mpamvu nyoroshyacyaha zishingiye ku bibazo uwo yunganira yahuye nabyo.

Women's Link (inshuti y'urukiko) ihawe umwanya kugirango igire icyo ivuga, yavuze ko abakobwa n'abagore bahura n'ibibazo binyuranye bituma bafata ibyemezo bidakwiye,bimwe muri ibyo bibazo,ni nko kuba batwita bakiri bato, kuba bakomoka mu byaro badasobanukiwe, kuba badashobora kubona ubufasha mu rwego rw'ubuzima n'ubuvuzi, gucibwa mu miryango bakomokamo no gufatwa ku ngufu. Yasabye urukiko kuzita by'umwihariko ku mibereho y'uregwa kuko yari atuye mu cyaro, atarize amashuri, akaba atarabonye ubufasha mu buzima bujyanye n'imyororokere kandi akazita cyane cyane ku kuba atarigeze abona umwunganira mu nkikozabanje, bityo rukamugabanyiriza igihano yahanishijwe mu nkiko zibanza.

Inshuti y'urukiko ikomeza ivuga ko uburenganzira ku buvuzi busobanura koabakobwa n'abagore babona "services'' za ngombwa mu gihe cyogutwita no mu gihe cyo kubyara, byaba bitabonetse bigafatwank'ivangura kuko gutwita ari umwihariko wabo bonyine, ibyo bakenerabikaba bidakenerwa n'abagabo, bityo isanga uburenganzira ku buvuzi bw'uregwa butarubahirijwe kuko amikoro ye yatumye adashobora kubona service z'ubuvuzi amaze kugira ibise, bikaba byarashyize mu makuba ubuzima bwe n'ubw'umwana yari atwite. Ikomeza ivuga ko hari isano hagati y'uburenganzira ku buzima bw'abagoren'abakobwa n'ibyaha baregwa bishingiye ku gitsina n'imyirorokere, ibyaha bakora byo kwihekura no gukuramo inda babiterwa ahanini no kuba ise w'umwana amwihakana cyangwa yanga gufasha uwo bamubyaranye, iyo gutwita byaturutse ku gusambanywa, umugore aba mu bukene bukabije, akeka ko yakwirukanwa mu ishuri no gutakaza akazi bitewe no gutwita, no kuba umugore ubyaye yibanaahezwa mu muryango.

Ubushinjacyaha buvuga ko bimwe mu bivugwa n'inshuti y'urukiko nta shingiro bifite, ko amategeko n'umuconyarwanda biha agaciro ubuzima bwa muntu muri rusange, ndetseby'umwihariko bigaha n'agaciro ubuzima bw'umwana. Avuga kandi ko mu muco nyarwanda hatabamo kwihekura no

kuvanamo inda nko mugihe habayeho gutwita igitsina cy'umwana umuntu adashaka,umwana yavukanye ubumuga cyangwa ari nyamweru (albinos), gutwita no kubyara impanga, cyangwa se umwana ufite ibibazoby'ubuzima, ko hari naho kwihekura cyangwa kuvanamo indabishingira kuri politiki y'igihugu igamije kuringaniza imbyaro ku buryo ibyo bidafatwa nk'icyaha, ariko atariko bimeze mu Rwanda.Yanzura avuga ko nubwo mbere uregwa yaburanaga ahakana icyaha, ariko ukwemera kwe mu Rukiko rw'Ikirenga kutateshwa agaciro, bityo busanga ko yahabwa igihano kitari munsi y'imyaka makumabyiri (20) nk'uko biteganywa n'amategeko.

**Incamake y'icyemezo:**1.Kuba leta yarashizeho amavuriro, abakozi n'ibikoresho ndetse ikohereza abaturage kubona ubuvuzi buhendutse hakoreshejwe ubwisungane mu kwivuza (mutuelle de santé) bigaragaza ko leta yujuje inshingano zayo zibanze zo kugeza ku baturage ubuzima bwiza, bityo Ntibyajyinama nk'umuturage, icyo yasabwaga kugirango ubwo burenganzira ku buzima bwe bwiza bugerweho kwari ukugana ivuriro agahabwa serivisi zihatangirwa ariko kuba yaravuye mu bitaro atasezerewe ntibyafatwa nkaho leta itakoze inshingano zayo

2. Mu nyungu z'ubutabera no kubungabunga uburenganzira bwo kunganirwa imbere y'amategeko no ku butabera buboneye muri rusange, abaregwa ibyaha bihanishwa igihano kiremereye cy'igifungo cyaburundu badashobora kwiyishyurira ababunganira, Leta izajye ibageneraababunganira cyangwa ibashakire abafatanyabikorwabashobora gutanga ababunganira mu mategeko. Igihe ibyobitaragerwaho, abagenzacyaha n'abashinjacyaha bakwiye kubisaba Urugagarw'Abavoka

3. Kuba uregwa yaraburanye atunganiwe mu nkiko zibanza kandi yararegwaga icyaha gihanishwa igihano gikomeye cy'igifungo cya burundu, ntiyagize amahirwe yo gusobanurirwa ingaruka z'icyo cyaha mu rwego rw'amategeko, inyungu zo kwemera icyaha ku buryo bwuzuye kandi budashidikanwaho, kutunganirwa kw'uregwa kwagize uruhare mu kutamenya ibyo uregwa ashobora kuvuga byafasha urukiko kumva neza imiterere y'ikibazo n'ibigomba gusuzumwa kugirango afatirwe icyemezo gikwiye.

4. Uregwa yemeye icyahamu buryo budashidikanywaho mu Rukiko Rukuru no mu Rukiko rw'Ikirenga, akagisabira imbabazi, kandi n'imibereho yabayemo yoguhangayika no kwiheba yarabaye intandaro yo guhitamo kwihekura, bikwiye kumubera impamvu nyoroshyacyaha.Bityo agomba kugabanyirizwa igihano kikagera ku gifungo cy'imyaka icumi (10).

5. Urukiko rw'Ikirenga rutanga inama ku miterere y'ingingo irebana n'icyaha cyo kwihekura iri mu Itegeko-Ngenga Nº 01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana aho ridatandukanya icyaha cyo kwihekura n'ubwicanyi busanzwe kuko byose bihanishwa igifungo cya burundu kandi rikaba ritagaragaza ingano umwana wishwe agomba kuba atarengeje. Imiterere y'icyaha cyo kwihekura cyane cyane ku bakobwa n'abagore bamaze kubyara itandukanye n'ubwicanyi busanzwe kuko akenshi icyaha cyo kwihekura kiterwa no kwiheba, guhangayikishwa no kutazashobora kurera uwo mwana ibi bikaba byamutera guhungabana, mu gihe icyaha cy'ubwicanyi gikoranwa ubugome bukabije, akenshi buba bugamije inyungu kubabukora, urwango, ivangura rikabije n'izindi mpamvu. Bityo icyaha cyo kwihekura kumubyeyi umaze igihe gito abyaye nticyafatwa nk'icyaha cy'ubugome bukabije gihanishwa igifungo cya burundu, ahubwo hakabayeho igihano kigereranije ushize mu gaciro n'ibihe icyo cyaha kiba cyakorewemo n'uwagikoze.Urukiko rurasaba inzego za leta zibishinzwe kongera gusuzuma ingingo z'itegeko zijyanye n'icyaha cyo kwihekura mu buryo gisobanurwa n'imihanire yacyo.

**Ubujurire bufite ishingiro.**

**Imikirize y'urubanza RPA 0001/2015/HC/RWG ihindutse ku birebana n'igihano.**
**Uregwa ahanishijwe igifungo cy'imyaka icumi(10).**
**Amagarama y'urubanza aherereye kuisanduku ya Leta kuko uregwa aburanana afunze.**

**Amategeko yashingiweho:**

Itegeko Nshinga rya Repubulika y'u Rwanda ryo muri 2003 ryavuguruwe muri 2015, ingingo ya 45.

Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ingingo ya 71, 76, 77, 78.

Itegeko Nº30/2013 ryo kuwa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha, ingingo ya 39.

**Imanza zifashishijwe:**

Uwamahoro v Ubushinjacyaha rwciwe n'Urukiko rw'Ikirenga kuwa 11/03/20176, RPA 0087/12/CS rwaciwe n'Urukiko rw'Ikirenga kuwa 11/03/2016;

Batamuliza v Ubushinjacyaha, RPA 0207/12/CS, rwaciwe n'Urukiko rw'Ikirenga kuwa 17/06/2016;

Ubushinjacyaha vs Muhindakazi,Wambui Kariuki vs Republic, S vs Muhungu HB11/2005, R. vs Lisa Gore.

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] Uru rubanza rwatangiriye mu Rukiko Rwisumbuye rwa Nyagatare, Ubushinjacyaha bukurikiranyeho Ntibajyinama Esther icyaha cyo kwihekura. Urukiko rwaciye urubanza RP0231/014/TGI/NYG kuwa 28/11/2014, rumuhamya icyaha, rumuhanisha igifungo cyaburundu.

[2] Ntibajyinama Esther yajuririye urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yemera icyaha, asaba kugabanyirizwa igihano. Urukiko rwajuririwe rwaciye urubanza RPA0001/2015/HC/RWG kuwa 30/04/2015, rwemeza ko ubujurire bwe nta shingiro bufite, ko igihano yahawe kigumyeho.

[3] Urukiko Rukuru rwavuze ko Ntibajyinama Esther adashobora kugabanyirizwa igihano hashingiwe kukwemera icyaha kuko ukwemera kwe kutuzuye kandi gushidikanywaho. Rwasobanuye ko atemera ko yishe umwana abigambiriye, nyamara yaragiye kwa muganga akabwirwa ko umwana ameze neza, aho kuguma mu bitaro agatoroka, yagera mu rugo akabyarira mu ibase, akajya kujugunya umwana mu musarani.

[4] Rwasobanuye kandi ko kuvuga ko yishe umwana kubera ko uwamuteye inda yari yamwihakanye kandi nta bushobozi afite bigatuma akora icyaha atagambiriye, bidafite ishingiro, bityo ko adashobora kugabanyirizwa igihano kuko aterekana ukwicuza kandi akaba atavugisha ukuri.

[5] Ntibajyinama Esther ntiyishimiye imikirize y'urwo rubanza rwaciwe n'Urukiko Rukuru, yarujuririye mu Rukiko rw'Ikirenga kuwa 25/05/2015, avuga ko yahawe igihano cya burundu kandi yaraburanye yemera icyaha asaba imbabazi, Urukiko ntirubihe agaciro, asaba kugabanyirizwa igihano yahawe n'Urukiko Rukuru. Ubwo bujurire bwanditswe kuri RPAA0078/15/CS.

[6] Iburanisha ry'urubanza mu mizi ryabaye kuwa 04/12/2017, Ntibajyinama Esther yunganiwe na Me Mukiza Bizimana Silas, Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric, Umushinjacyaha ku rwego rw'Igihugu. Ku itariki ya 11/12/2017, Umuryango mpuzamahanga udaharanira inyungu wita kuburenganzira bw'abagore n'abakobwa witwa "*Women's Link Worldwide*" wandikiye Urukiko rw'Ikirenga usaba ko wakwemererwa kuza muri uru rubanza nk'inshuti y'Urukiko "*amicus curiae*", ukagira ibyo usobanura birebana narwo, ukanageza ku Rukiko ibyanditswe n'abahanga n'imanza zaciwe muri aka karere no ku rwego mpuzamahanga ku bibazo bisa n'ibirugaragaramo.

[7] Kuwa 05/01/2018, Urukiko rwafashe icyemezo cyo gupfundura iburanisha, Ntibajyinama Esther n'Ubushinjacyaha bakagira icyo bavuga ku busabe bwa *"Women's Link Worldwide"* bwo kuza mu rubanza nk'inshuti y'urukiko *"amicus curiae"*. Kuwa 22/01/2018, Urukiko rwafashe icyemezo cyo kwemerera "*Women's Link Worldwide*" kuza mu rubanza nk'inshuti y'Urukiko.

[8] Iburanisha ryabaye kuwa 30/04/2018, Ntibajyinama Esther yunganiwe na Me Mukiza Bizimana Silas, *Women's Link Worldwide* ihagarariwe n'Umuyobozi wayo Viviana Waisman, Advocate Lydia Munyiva Muthiani na Me Kabasinga Florida, naho Ubushinjacyaha buhagarariwe na Munyaneza Nkwaya Eric,Umushinjacyaha ku rwego rw'Igihugu.

# II. ISESENGURA RY'IKIBAZO KIGIZE URUBANZA

**Kumenya niba Ntibajyinama Esther yagabanyirizwa igihano**

[9] Ntibajyinama Esther avuga ko mu rukiko rubanza yaburanye ahakana icyaha ariko mu bujurire aracyemera ndetse avugisha ukuri ku mikorere yacyo, asaba ko yagabanyirizwa igihano yahawe n'inkiko zabanje.

[10] Asobanura ko icyamuteye kwihekura ari uko akimara gutwita yahuye n'ibibazo binyuranye kuko yari impfubyi, ndetse ko naho yakoraga bari baramwirukanye ku buryo nta mafaranga yari afite yo kumutunga no kwivuza. Avuga ko yagiye kwa muganga kwisuzumisha kuko yari atwite bamubwira kujya kugura imiti muri farumasi, ariko kuko ntabushobozi yari afite, yafashe icyemezo cyo gutaha mu rugo, agezeyo abyara umwana amujugunya mu musarani.

[11] Me Mukiza Bizimana Silas, wari umwunganiye, yavuze ko mu nkiko zabanje Ntibajyinama Esther yaburanye ahunga uruhare rwebitewe nuko atari afite umufasha mu mategeko, ndetse akaba yaraburanye atunganiwe, ko nyuma yo kuganira nawe byatumye yemera icyaha ndetse asobanura neza imikorere yacyo.

[12] Avuga kandi ko hari izindi mpamvu nyoroshyacyaha zishingiye kubibazo Ntibajyinama Esther yahuye nabyo nko kuba ari impfubyi, nyuma yo gutwita akaba yarahahamutse abura umugira inama kuko yabaga wenyine n'uwamuteye inda aramutererana bituma ata ubwenge, byongeyeye kandi akaba atarigeze yivuza neza nyuma yogutwita kubera kubura ubushobozi. Akomeza asaba ko uwo yunganira yagabanyirizwa igihano yari yahawe, kikagera ku myaka icumi (10) hashingiwe ku biteganywa n'ingingo ya 77, agace ka 3 na 78z'Itegeko Ngenga Nº 01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana.

[13] Viviana Waisman, Umuyobozi wa *Women's Link Worldwide*, avuga ko mu kugena ibihano kuri Ntibajyinama Esther, Urukiko rwazitaku ruhurirane rw'ibibazo binyuranye abakobwa n'abagore bahuranabyo, bigatuma bafata ibyemezo bidakwiye. Bimwe muri ibyo bibazo, ni nko kuba batwita bakiri bato, kuba bakomoka mu byaro badasobanukiwe, kuba badashobora kubona ubufasha mu rwego rw'ubuzima n'ubuvuzi, gucibwa mu miryango bakomokamo no gufatwa ku ngufu. Yavuze kandi ko Urukiko rwazita by'umwihariko kumibereho y'uregwa kuko yari atuye mu cyaro, atarize amashuri, akaba atarabonye ubufasha mu buzima bujyanye n'imyororokere.

[14] Akomeza avuga ko uburenganzira ku buvuzi busobanura ko abakobwa n'abagore babona "services'' za ngombwa mu gihe cyo gutwita no mu gihe cyo kubyara, byaba bitabonetse bigafatwa nk'ivangura kuko gutwita ari umwihariko wabo bonyine, ibyo bakenera bikaba bidakenerwa n'abagabo. Asaba ko mu gusesengura urubanza, Urukiko rwazita ku mibereho n'amikoro bya Ntibajyinama Esther kimwe n'abandi bafite ibibazo nk'ibye.

[15] Yasabye kandi ko mu kugena ibihano kuri Ntibajyinama Esther, Urukiko rwazita ku kuba atarigeze abona umwunganira mu nkiko zabanje, ndetse hakarebwa niba nta burwayi bwo mu mutwe uregwa yari afite igihe yakoraga icyaha bitewe n'ihungabana no kwiheba. Yasoje avuga ko mu rwego rwo kubahiriza amategeko, Urukiko rwazasuzuma niba igihano Ntibajyinama Esther yahanishijwe kitari mu rugero rudakwiye hagendewe ku bibazo by'abakobwa n'abategarugori bahura nabyo.

[16] Advocate Lydia Munyiva Muthiani, uhagarariye Women's Link, yavuze ko hashingiwe ku Itegeko Nshinga rya Repubulika y'u Rwandano ku masezerano mpuzamahanga atandukanye, asanga uburenganzira ku buvuzi bwa Ntibajyinama Esther butarubahirijwe, ko amikoro ye yatumye adashobora kubona "services'' z'ubuvuzi amaze kugira ibise, bikaba byarashyize mu makuba ubuzima bwe n'ubw'umwana yari atwite, kubera ko yabyaye mu buryo atifuzaga ndetse nta bufasha bundi yari afite. Akomeza avuga ko hari isano hagati y'uburenganzira ku buzima bw'abagore n'abakobwa n'ibyaha baregwa bishingiye ku gitsina n'imyirorokere, ko ibyaha bakora byo kwihekura no gukuramo inda babiterwa ahanini no kuba ise w'umwana amwihakana cyangwa yanga gufasha uwo bamubyaranye, iyo gutwita byaturutse ku gusambanywa, iyo umugore aba mu bukene bukabije, iyo akeka ko yakwirukanwa mu ishuri no gutakaza akazi bitewe no gutwita, no kuba umugore ubyaye yibana, ahezwa mu muryango.

[17] Akomeza avuga ko uburenganzira ku buzima bwiza, binasobanura ko hatangwa ubufasha n'inyigisho ku birebana n'igitsina n'imyororokere, amakuru ajyanye nabyo, kubona ubufasha n'inyigisho zirebana no kuringaniza urubyaro ndetse no kuba abagore bashobora kubona ibitunga abana nyuma yo kubyara. Avuga kandi ko kubahiriza ububurenganzira, bikumira ibyaha ku bagore n'abakobwa bikagabanya n'impfu z'abana.

[18] Asoza avuga ko hashingiwe ku mategeko mpuzamahanga no ku mategeko y'u Rwanda, Urukiko rwazirikana ko abakobwa n'abagore batuye mu cyaro bahura n'ibibazo igihe batwite n'igihe cyo kubyara bishobora no gutuma batakaza ubuzima, kugira umuvuduko ukomeye w'amaraso n'ibise bishobora kuza igihe kitaragera no kuba umuntu yajya ku bise nta wundi muntu bari kumwe. Izo ngorane zose zikabazigira ingaruka ku bagore b'abakene batashoboye kwiga cyangwa se bakaba barize amashuri make, kandi akenshi nta kazi bafite.

[19] Me Kabasinga Florida avuga ko Ntibajyinama Esther yaciriwe urubanza hirengagijwe amahame agenga uburenganzira ku butabera buboneye, kuko yaburanye adafite umwunganizi mu mategeko, ko

nta n'iperereza ryigeze rikorwa ngo hamenyekane niba uregwa nta bibazo by'ihungabana no kwiheba gukabije yagize. Akomeza asaba ko Urukiko rwazasuzuma niba Ubugenzacyaha n'Ubushinjacyaha bwarubahirije inshingano yo gushaka ibimenyetso bishinja n'ibishinjura.

[20] Avuga kandi ko inkiko zabanje zafashe icyemezo zitabanje kugaragarizwa impamvu zabanjirije icyaha n'izagikurikiye kandi zarizihari kuko iyo umuntu akoze icyaha, mu kumuhana harebwa uko yariasanzwe yitwara hashingiwe ku biteganywa n'ingingo ya 71 y'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, ndetse Ntibajyinama Esther akaba yaraburanye atunganiwe bitewe no kubura ubushobozi kandi yararegwaga icyaha gikomeye.

[21] Uhagarariye Ubushinjacyaha atangira avuga ko bimwe mu bivugwa n'inshuti z'urukiko nta shingiro bifite, ko amategeko n'umuco nyarwanda biha agaciro ubuzima bwa muntu muri rusange, ndetse by'umwihariko bigaha n'agaciro ubuzima bw'umwana. Avuga ko mu muco nyarwanda hatabamo kwihekura no kuvanamo inda nko mu gihe habayeho gutwita igitsina cy'umwana umuntu adashaka, umwana yavukanye ubumuga cyangwa ari nyamweru (albinos), gutwita no kubyara impanga, cyangwa se umwana ufite ibibazo by'ubuzima, ko hari naho kwihekura cyangwa kuvanamo inda bishingira kuri politiki y'igihugu igamije kuringaniza imbyaro ku buryo ibyo bidafatwa nk'icyaha, ariko atariko bimeze mu Rwanda.

[22] Uhagarariye Ubushinjacyaha akomeza avuga ko mu mategeko u Rwanda rugenderaho nta vangura rigaragaramo, ko umukobwa n'umugore wagize ikibazo giturutse ku mikoro make no ku miterere ye karemano bitafatwa nk'ivangura kuko hari n'abagabo bihekura. Avuga ko hari gahunda nyinshi Leta yashyizeho zifasha abagore n'abakobwa kubona ''services'' ku buzima, ndetse zinagamije kugabanya umubare w'abana bapfa bavuka. Akomeza avuga ko Ntibajyinama Esther yakoze icyaha yatekereje, ko atabitewe no kutabona uburenganzira ku buzima kuko yafashe icyemezo cyo gutoroka ibitaro ntawumwirukanye. Avuga ko nta kibazo cy'ivangura rishingiye kugitsina n'ibisa nabyo nk'ubukene no kutamenya gusoma kuri Ntibajyinama Esther; kandi ko kuba adashyigikiwe cyangwa se atishoboye, ntibyamubera impamvu yo kwihekura.

[23] Uhagarariye Ubushinjacyaha avuga kandi ko Ntibajyinama Esther yaciriwe urubanza amahame agenga uburenganzira ku butabera buboneye yubahirijwe yose, ko uregwa yamenyeshejwe icyaha aregwa, amenyeshwa n'uburenganzira bwe bwo kuburanishwa yunganiwe. Asanga kuba atari afite umwunganizi byaratewe n'ubushake bwe kuko abazwa mu bugenzacyaha yabyibukijwe, we agasubiza ko yiteguye kwisubiriza no kwiburanira.

[24] Yanzura avuga ko nubwo mbere Ntibajyinama Esther yaburanaga ahunga icyaha, ukwemera kwe mu Rukiko rw'Ikirenga kutateshwa agaciro, akaba yahabwa igihano kitari munsi y'imyaka makumabyiri (20) nk'uko biteganywa n'amategeko ku muntu wemeye icyaha mu buryo budashidikanywaho ndetse agasaba imbabazi.

[25] Dosiye y'urubanza igaragaza ko Ntibajyinama Esther yahamwe n'icyaha cyo kwihekura mu Rukiko Rwisumbuye rwa Nyagatare, ahanishwa igifungo cya burundu, ajuririra urwo rubanza mu Rukiko Rukuru, Urugereko rwa Rwamagana avuga ko yemera icyaha asaba kugabanyirizwa ibihano ariko igihano yahawe kigumaho kuko rwasanze ukwemera kwe kutuzuye kandi gushidikanywaho.

[26] Ntibajyinama Esther yajuriye mu Rukiko rw'Ikirenga asaba kugabanyirizwa ibihano hashingiwe ku mpamvu nyoroshyacyaha yo kuba aburana yemera icyaha. Urukiko rurasanga nta mpaka zihari

kubirebana no kuba Ntibajyinama Esther yarakoze icyaha cyo kwihekura giteganywa n'ingingo ya 143 y'Itegeko-Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 ryavuzwe haruguru. Nk'uko kandi biteganywa n'iyo ngingo, igihano cy'icyaha cyo kwihekura, ni igifungo cya burundu.

[27] Ingingo ya 76 n'iya 77 z'Itegeko Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana, zemera ko urukiko rushobora kugabanya ibihano ruhereye ku mpamvu zoroshya uburemere bw'icyaha rwahaye agaciro kandi rwasobanuye, zaba izakibanjirije, izagiherekeje cyangwa se izagikurikiye. Ntibajyinama Esther n'umwunganira, abahagarariye umuryango *Women's Link Worldwide* wemerewe kuza mu rubanza nk'inshuti y'urukiko bagaragaza impamvu zinyuranye basaba ko zakwitabwaho hasuzumwa icyemezo gikwiye cyafatirwa Ntibajyinama Esther.

[28] Uburyo Ntibajyinama Esther yasobanuyemo imikorere y'icyaha, nibwo Urukiko Rukuru, Urugereko rwa Rwamagana, rwahereyeho ruvuga ko ukwemera kwe kutuzuye. Nyamara biragaragara mu myanzuro y'ubujurire no mu nyandiko mvugo y'iburanisha muri urwo Rukiko ko Ntibajyinama Esther yasobanuye ko yasabwe kujya kugura imiti muri farumasi, abonye ko ari nta mafaranga yo kuyigura, ko ntawundi wamufasha, ari mu nzu akodesha kandi adafite akazi, ko atari afite ibyo gushyiramo umwana, ko ntacyo kumutunga nyuma yo kubyara, yumva biramurenze, nibwo yasubiye mu rugo abyarira mu ibase, umwana amuta mu musarane. Ntabwo Urukiko Rukuru, Urugereko rwa Rwamagana rwagaragaje ikindi yagombaga kuvuga gitandukanye n'ibi yavuze ku bijyanye n'imikorere y'icyaha. Urukiko rw'Ikirenga, ruhereye ku byavuzwe na Ntibajyinama Esther rurasanga yaremeye icyaha atagamije kujijisha Urukiko cyangwa kugira ibyo ahisha ngo yerekane ko ari umwere, ku buryo ukwemera icyaha kwe kutari kwemerwa ngo kumubere impamvu nyoroshyacyaha.

[29] Dosiye y'urubanza igaragaza kandi ko haba mu Rukiko Rwisumbuye rwa Nyagatare, haba no mu Rukiko Rukuru, Urugereko rwa Rwamagana Ntibajyinama Esther yaburanye atunganiwe nk'umuntu waregwaga icyaha cyo kwihekura kandi gihanishwa igifungo kiremereye cya burundu, ntiyagize amahirwe yo kubona umwunganira washoboraga kumusobanurira ingaruka mu rwego rw'amategeko z'icyaha yarezwe, inyungu zo kwemera icyaha, ndetse no gusobanurirwa ukwemera icyaha kuzuye kandi kudashidikanywaho icyo aricyo n'ibikugize kugirango mu gihe yaba ahisemo kwemera icyaha, abihuze n'ibiteganywa n'amategeko. Urukiko rw'Ikirenga rurasanga uko kutunganirwa kwa Ntibajyinama Esther nako kwaragize uruhare rwo kutamenya ibyo uregwa ashobora kuvuga byafasha urukiko kumva neza imiterere y'ikibazo n'ibigomba gusuzumwa kugirango afatirwe icyemezo gikwiye.

[30] Dosiye y'urubanza igaragaza nanone ko mu mwanzuro w'ubujurire mu Rukiko rw'Ikirenga, no mu iburanisha muri uru Rukiko ryo kuwa 04/12/2017, Ntibajyinama Esther yongeye kwemera icyaha, agisabira imbabazi, asobanura ko yagiye kwa muganga agasuzumwa akabwirwa ko umwana ameze neza, bigeze nijoro arataha nyuma azakubyarira mu rugo umwana amujugunya mu musarani. Yakomeje asobanura ko yihekuye bitewe n'ibibazo binyuranye yari afite nko kuba ari impfubyi yirera, kutagira amafaranga yo kwishyura kwa muganga nta n'ubwishingizi bwo kwivuza yari afite, aho yakoraga baramwirukanye. Ibi bigaragaza ko yemera icyaha aregwa mu buryo budashidikanywaho, bityo ukwemera icyaha kwe mu bujurire mu Rukiko rw'Ikirenga ku kaba ari impamvu yoroshya ububi bw'icyaha cyo kwihekura aregwa.

[31] Nk'uko byagaragaye kandi mu iburanisha muri uru Rukiko, Ntibajyinama Esther yagiye agaruka ku buzima bubi yari abayemo bwo kutagira ababyeyi, kutagira umufasha, guterwa inda atiteguye, uyimuteye akamutererana, kwirukanwa ku kazi n'umukoresha amaze kumenya ko Ntibajyinama Esther atwite, kwibana mu nzu n'ibindi. Urukiko rurasanga iyo mibereho yabayemo yarabaye intandaro yo

guhangayika no kwiheba bigatuma ahitamo kwihekura, ibyo nabo bikaba bikwiye kumubera impamvu nyoroshyacyaha. Uyu kandi ni nawo murongo wafashwe n'Urukiko rw'Ikirenga mu rubanza RPA0087/12/CS rwa Uwamahoro Spéciose n'Ubushinjacyaha rwaciwe kuwa 11/03/2016, no mu rubanza RPA0207/12/CS rwa Batamuliza Clémence n'Ubushinjacyaha rwaciwe kuwa 17/06/2016. Kuri ibi, Urukiko rwemeranywa n'ibivugwa n'abahagariye *Women's Link Worldwide* muri uru rubanza ko guhezwa no kudafashwa ku bakobwa n'abagore batwaye inda, cyane cyane abaturuka mu miryango itishoboye, n'abibana batereranywe ntabufasha, bishobora gutuma biheba bakaba bakora ibyaha bitandukanye nko gukuramo inda no kwica umwana babyaye.

[32] Ku birebana n'iyubahirizwa ry'uburenganzira ku buzima bwiza byabyukijwe n'abahagarariye Inshuti y'Urukiko, Urukiko rusanga icyo kibazo kitagaragara muri uru rubanza. Ingingo ya 21 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu2015 ivuga ko : « abanyarwanda bose bafite uburenganzira bwo kugira ubuzima bwiza ». Naho iya 45 ikavuga ko : « Leta ifite inshingano zo gukangurira abenegihugu ibikorwa bigamije ubuzimabwiza no kubafasha kubigeraho. Buri Munyarwanda afite inshingano zo kwitabira ibikorwa bigamije ubuzima bwiza ». Ingingo ya 14 y'Amasezerano ya Maputo yo ku wa 11 Nyakanga 2003 yerekeranyeno kurengera uburenganzira bw'abagore muri Africa (The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa)[1], yashyizweho umukono n'u Rwanda, iteganya koibihugu byayashyizeho umukono byiyemeje kubahiriza no guteza imbere uburenganzira ku buzima bushingiye ku gitsina n'imyororokere y'umugore mu buryo buvugwa muri iyo ngingo[2].

[33] Ibikubiye mu ngingo z'Itegeko Nshinga n'Amasezerano Mpuzamahanga avugwa mu gika kibanziriza iki u Rwanda rwashyizeho umukono, bigaragaza ko u Rwanda nk'Igihugu, rufite ubushake bwo kuteza imbere no kubungabunga uburenganzira kubuzima bw'abakobwa n'abagore harimo n'ubuzima bushingiye ku gitsina n'imyororokere. Inshingano ya Leta ikaba iyo gukangurira abenegihugu ibikorwa bigamije ubuzima bwiza no kubafasha kubigeraho, naho inshingano y'abaturage ikaba iyo kwitabira ibikorwa bigamije ubuzima bwiza. Ku birebana n'inshingano ya Leta yogukangurira abenegihugu ibikorwa bigamije ubuzima bwiza no kubafasha kubigeraho, Urukiko ntirwakwemeza aho Leta igeze iyuzuza kuko bidakenewe muri uru rubanza. Ikidashidikanywaho nuko hari ibyagezweho nko kubaka amavuriro no kuyabonera abakozi n'ibikoresho bijyanye n'amikoro y'igihugu, no gukangurira abatwite kugana ibigo by'ubuzima igihe batwite kugira ngo bakurikiranwe n'abaganga, no kubyarira kwa muganga.

[34] Ku bijyanye n'uru rubanza, dosiye igaragaza ko Ntibajyinama Esther yagiye kwa muganga kwipimisha kuko atwite. Intambwe ya mbere yo kubahiriza uburenganzira ku buzima, Leta ikaba yarayiteye ishyiraho amavuriro, abakozi n'ibikoresho ndetse no korohereza abaturage kubona ubuvuzi buhendutse hakoreshejwe ubwisungane mu kwivuza (mutuelle de santé). Ntibajyinama Esther nk'umuturage, icyo yasabwaga kugirango uburenganzira ku buzima bwe bugerweho, kwari ukugana

[1]Yemejwe n'Iteka rya Perezida N°11/1/ ryo ku wa 24 Kamena 2004.

[2]1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
a) the right to control their fertility;
b) the right to decide whether to have children, the number of children and the spacing of children;
c) the right to choose any method of contraception;

ivuriro, agahabwa serivisi zihatangirwa. Urukiko rurasanga nta kigaragaza ko inshingano y'ibanze za Leta ku buzima bwiza itazubahirije.

[35] Dosiye y'urubanza igaragaza kandi ko Ntibajyinama Esther yagiye kwa muganga yijyanye akaza kuvayo nyuma ya saa tanu n'igice z'ijoro (23h30) adasezerewe (cote ya 26). Urukiko ntirwakwemeza koibyo avuga ko nta mafaranga yari afite yo kugura imiti no kwivuza atari ukuri, kuko bishoboka ko yatinye ko azabyara ntabone amafaranga yo kwishyura ibitaro bitewe nuko nta bwishingizi bw'ubuzima yari afite. Ariko kandi, nta kimenyetso kigaragaza ko yimwe imiti na serivisi zitangirwa kwa muganga bitewe no kubura amafaranga yo kwishyura no kutagira ubwishingizi bw'ubuzima, Urukiko rukaba rutakwemeza ko Leta yateshutse ku nshingano yogufasha abatishoboye kubona ubuvuzi bakeneye, bigatuma Ntibajyinama Esther yihekura.

[36] Ku bivugwa n'abahagarariye "*Women's Link Worldwide*" ko kutabonera abakobwa n'abagore ibyangombwa bakenera mu gihe cyo gutwita no kubyara ko byafatwa nk'ivangura rishingiye ku miterere yabo, Urukiko rurasanga byaba ari ivangura mu gihe abagore n'abakobwa hari ibyo bimwe biturutse ku miterere yabo ishingiye ku gitsina. Mu rubanza rwa Ntibajyinama, abahagarariye "*Women's Link Worldwide*" ntibagaragaza ko ibyo bavuga ko atabonye, byatewe no kuba yarabibuze cyangwa akabyimwa bitewe nuko ari umugore cyangwa umukobwa. Urukiko rukaba rero ntaho rwahera rwemeza ko yihekuye bitewe no gukorerwa ivangura cyangwa se ko hari uburenganzira yavukijwe hashingiwe ku ivangura yaba yarakorewe.

[37] Dosiye y'urubanza igaragaza na none ko Ntibajyinama Esther igihe yari kwa muganga, yapimwe akabwirwa ko umutima w'umwana uteraneza. Ibi bigaragaza ko mu gufata icyemezo cyo kuva kwa muganga akajya kubyarira mu rugo, yari yashyize ubuzima bwe mu kaga kashoboraga no gutuma atakaza ubuzima bitewe no kubura abamufasha kubyara babifitiye ubumenyi. Urukiko rurasanga imyumvire ya Ntibajyinama Esther yo gutoroka ibitaro akajya kubyarira mu rugo yarabitewe no kuba atarasobanukiwe n'ingaruka zashoboraga gukurikiraho, cyangwa se akaba yari azizi ariko icyatumye atoroka ibitaro kikaba cyari kimuremereye kurusha kubyarira mu rugo. Ibi, Urukiko ntirwabyirengagiza ngo rumufate nk'uwakoze icyaha mu buryo busanzwe, ahubwo afite icyabimuteye kirenze kugira ubushake bwo gukora icyaha nubwo ibyo bidatuma agihanagurwaho.

[38] Ku birebana n'ikibazo cy'uburenganzira bwa Ntibajyinama Esther ku butabera buboneye cyavuzweho na Me Kabasinga Florida, dosiye y'urubanza igaragaza ko uretse mu Rukiko rw'Ikirenga, ahandi hose Ntibajyinama Esther yaburanye atunganiwe. Mu ibanzwa rye mu Bugenzacyaha agifatwa (cote ya 10), hagaragara ikibazo yabajijwe kibazwa abafashwe bose: "Ingingo ya 39 y'Itegeko Nº30/2013 ryo ku wa 24/5/2013 ryerekeye imiburanishirize y'imanza z'inshinjabyaha iguha uburenganzira bwo kubazwa ufite ukunganira mu rwego rw'amategeko. Waba ufite ukunganira cyangwa uremeragusubiza utamufite?". Ntibajyinama Esther yasubijengo: "Ndisubiriza". Nyamara, ntabwo bigaragara ko yamenyeshejweko niba adashoboye kumwiyishyurira, Urugaga rw'Abavoka rwamufasha bisabwe n'Umugenzacyaha cyangwa Umushinjacyaha nk'uko biteganywa n'iyo ngingo ya 39. Mu Bushinjacyaha nahoNtibajyinama Esther yamenyeshejwe uburenganzira bwo kunganirwa, abazwa niba yemera kubazwa adafite umwunganizi mu mategeko (cote 24) ariko ntiyamenyeshejwe ko ashobora gushakirwa umwunganizi. Mu nkiko zibanza, ikibazo cy'ubwunganizi nticyagarutsweho. Birashoboka ko kuri Ntibajyinama Esther kimwe n'abandi nkawe baba bafite ubwo burenganzira ariko kubera kubura amikoro yo kwiyishyurira umwunganizi, bigatuma ubwo burenganzira budakoreshwa. Ibi bigira ingaruka zikomeye zo kuba uregwa atabasha kwiregura no kuburana mu buryo bwuzuye nk'ufite umwunganizi.

[39] Byaba byiza ko buri muntu wese ukekwaho icyaha aburana yunganiwe, yaba atabashije kwishyura umwunganizi, Leta ikamumwishyurira. Birumvikana ko bitewe n'amikoro adahagije, Leta idashobora kwishyurira ababikeneye bose. Urukiko rurasanga ariko mu nyungu z'ubutabera no kubungabunga uburenganzira bwo kunganirwa imbere y'amategeko no ku butabera buboneye muri rusange, abaregwa ibyaha bikomeye bihanishwa igifungo cya burundu badashobora kubiyishyurira, Leta yajya ibagenera abunganizi mu mategeko cyangwa ikabashakira abafatanya bikorwa bashobora gutanga abunganizi mu mategeko. Igihe ibyo bitaragerwaho, abagenzacyaha n'abashinjacyaha bakwiye gukoresha ingingo ya 39 y'Itegeko ryavuzwe haruguru kugirango Urugaga rw'Abavoka rufashe abaregwa batishoboye kuva bagifatwa.

[40] Mu kwanzura, Urukiko rurasanga Ntibajyinama Esther yahanwa hitawe ku mpamvu nyoroshyacyaha zasobanuwe mu bika bibanziriza iki ndetse hakitabwa no ku nyungu z'uregwa hakurikijwe uburyo yakozemo icyaha. Ibi kandi bihura n'ibiteganywa n'ingingo ya 71y'Itegeko Ngenga N°01/2012/OL ryo ku wa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ivuga ko: "Umucamanza atanga igihano akurikije uko uhanwa yakoze icyaha, ashingiye ku mpamvu zabimuteye, uko uwakoze icyaha yari asanzwe yitwara, uburyo icyaha cyakozwemo n'imibereho ye bwite", kugabanya ibihano bigakorwa hashingiwe ku ngingo ya 78 y'icyo gitabo ivuga ko: "Igihe hari impamvu zoroshya uburemere bw'icyaha, ibihano bigabanywa ku buryo bukurikira: 1° igihano cyo gufungwa burundu cyangwa cya burundu y'umwihariko gisimbuzwa igihano cy'igifungo kitari munsi y'imyaka icumi (10)". Urukiko ruhereye kuri iyi ngingo no ku mpamvu nyoroshyacyaha zasobanuwe hejuru, rurasanga Ntibajyinama Esther agomba kugabanyirizwa igihano kikagera ku gifungo cy'imyaka icumi(10).

## Ingingo y'Itegeko irebana n'icyaha cyo kwihekura

[41] Mbere yo gusoza, Urukiko rurasanga ari ngombwa kugira icyo ruvuga ku miterere y'ingingo y'Itegeko irebana n'icyaha cyo kwihekura n'aho gitadukaniye n'ubwicanyi busanzwe. Ingingo ya 143 y'Itegeko-Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rishyiraho Igitabo cy'amategeko ahana ivuga ngo: "Kwihekura ni ubwicanyi bukorewe umwana wabyaye cyangwa uwo ubereye umubyeyi mu buryo bwemewe n'amategeko. Kwihekura bihanishwa igifungo cya burundu". Mu cyongereza, iyo ngingo ivuga ngo: "A person who kills his/herbiological or adopted child shall commit infanticide. Infanticide shall be punished by life imprisonment". Mu gifaransa ivuga ngo: "L'infanticide est le meurtre commis par une personne sur son enfant biologique ou adoptif. L'infanticide est punissable d'un emprisonnement à perpuité'' itegeko ridashyiraho ikigero umwana wishwe agomba kuba agezeho cyangwa atararenza. Ni ukuvuga ko umubyeyi, yaba umugore cyangwa umugabo wishe umwana we w'imyaka mirongo itanu nawe aba akoze icyaha cyo kwihekura. Ibi niko byagenze mu rubanza rw'*Ubushinjacyaha na Muhindakazi Didacienne* wahamijwe icyaha cyo kwihekura kuko yishe umwana we w'imyaka 28[3]. Mu bindi bihugu nk'ibyo mu burayi aho iyi nyito ya ''infanticide'' yaturutse, itegeko rigena igihe umwana wishwe agomba kuba atarengeje nk'amezi cumi n'abiri (12) cyangwa imyaka ibiri (2) kandi icyo cyaha kikaba kireba umugore wishe umwana, ntikireba umugabo wishe umwana. Nko mu Bwongereza kugira ngo umuntu wishe umwana ahamwe n'icyaha cyo kwihekura, uwo mwana wishwe agomba kuba atarengeje amezi cumi n'abiri (12)[4]. Uku ni nako bimeze mu mategeko ya Canada[5], Kenya[6]na Uganda[7].

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[3]Urubanza RP 00090/16/TGI/NGOMA, Ubushinjacyaha vs Muhindakazi Didacienne

[4]Infanticide Act, 1938 (United Kingdom) Sections 1(1) to (3):

"(1) Where **a woman** by any wilful act or omission causes the death of her child being a **child under the age of twelve months**, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully

[42] Urukiko rusanga igihano cyo gufungwa burundu ku mugore wakoze icyaha cyo kwihekura kiremereye cyane hitawe ku buryo n'ibihe icyaha gikorwamo. Urebye nko mu bihugu bimwe na bimwe, ibihano kuri iki cyaha biri munsi cyane y'ibiteganywa n'Itegeko rishyiraho Igitabo gihana mu Rwanda. Nko mu rubanza rwa *Wambui Kariuki v Republic*[8], Urukiko rw'Ubujurire rwo mu gihugu cya Kenya rwagabanije igihano kugeza ku mwaka umwe n'igice ku mugore wariwishe umwana we utagejeje amezi 12 kuko urukiko rwa mbere rutarirwasuzumye ubuzima bukomeye uwarezwe yari abayemo harimo no kutagira ubushobozi bwo kurera abandi bana yareraga wenyine (single mother). Muri Zimbabwe, mu rubanza rwa *S v Mhungu* HB11/2005,[9] uregwa yaburanye yemera icyaha cyo kwica uruhinja yari amaze kubyara, ku rwego rwa mbere ahanishwa igifungo cy'imyaka ibiri (2). Mu bujurire, umucamanza yibanze ku mibereho ye n'izindi mpamvu nyoroshyacyaha nko kuba yari umukobwa w'imyaka makumyabiri (20) gusa, uwamuteye inda akaba yaramutaye, nta kazi agira, nta n'andi mikoro afite, afite abandi bana babiri arera, no kuba bwari ubwa mbere aguye mu cyaha. Igihano cy'imyaka ibiri (2) yariyahawe cyasubitsweho amezi makumyabiri (20) mu gihe cy'imyakaitanu (3). Biragaragara ko guhana bene uyu mubyeyi wihanukiriye ntacyo bifasha abagore baba bahungabanye cyangwa ngo bibuze abandi bashobora kugwa muri icyo cyaha.

[43] Hakurikijwe uko Itegeko riteye, icyaha cyo kwihekura mu Rwanda ntaho gitandukaniye n'ubundi bwicanyi buhanwa n'Itegeko-Ngenga Nº01/2012/OL ryo kuwa 02/05/2012 rihana ibyaha ryavuzwe haruguru, kuko igihano cya burundu ni nacyo kigenerwa abakoze icyaha cy'ubuhotozi n'ubundi bwicanyi. Ni ukuvuga ko uburemere bufatwankaho ari bumwe. Umwihariko w'icyaha cyo kwihekura ukaba ari uko ubwicanyi buba bwakorewe umwana wabyaye cyangwa uwo ubereye umubyeyi. Nyamara, imiterere y'icyaha cyo kwihekura, cyane cyane ku bakobwa n'abagore bakimara kubyara, itandukanye n'ubwicanyi busanzwe, burimwo ubugome bukabije, akenshi buba bugamije inyungu ku babukora, urwango, ivangura rikabije, n'izindi mpamvu. Mu bihugu byinshi, icyaha cyo kwihekura ntigihabwa uburemere nk'ubuhabwa icyaha cy'ubuhotozi. Dufashe urugero rwo mu Bwongereza, mu rubanza rwa R. v. Lisa Gore Urukiko rw'ubujurire rw'icyo gihugu rwasobanuye ko infanticide ari icyaha gitandukanye n'ubuhotozi, ko hatagomba kugaragazwa umugambi wo kwica, ko cyashyizweho nk'icyaha cyoroheje ugereranije n'ubwicanyi busanzwe kubera ibihe kiba cyakozwemo, n'ikibitera.[10]

[44] Urukiko rusanga umugore umaze amezi agera ku icyenda atwite, yamara kubyara akica uwo yabyaye, akenshi mu gihe kitarenze amasaha mirongo ine n'umunani (48) amaze kubyara (icyo abahanga bita *neonaticide* mu rurimi rw'icyongereza), atabiterwa n'ubugome ahubwo akenshi biterwa

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recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, [if] the circumstances were such that but for this Act the offence would have amounted to murder [or manslaughter], she shall be guilty of felony, to wit of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child."

[5]Criminal Code of Canada, 1948 as amended in 1955, Section 233.

[6]Section 210, Kenya Penal Code

[7]Section 213 Uganda Penal Code, Cap. 120, 1950.

[8]Beatrice Wambui Kariuki vs Republic [2005] eKLR

[9]Uru rubanza ruvugwaho mu nyandiko ya Mary Clausina OUNDO: "A critical analysis of the judicial Response to the crime of Infanticide", kuri page 37-38; iboneka kuri https://searcwl.ac.zw/index.php

[10]**R. v. Lisa Gore (Deceased) [2007] EWCA Crim 2789**. Lady Justice Hallet yaravuze ati: "We are satisfied that Parliament intended to create a new offence of infanticide…If the criteria in sub-section (1) are fulfilled, the mother who kills her child does not have to face an indictment of murder. She faces a lower grade criminal charge, namely infanticide**."**

no kwiheba, guhangayikishwa no kutazashobora kurera uwo mwana, cyangwa se uko guhangayika kukaba kwamutera ihungabana ryo mu mutwe. Kubera izo mpamvu, kwihekura k'umubyeyi umaze igihe gito abyaye ntibyagafashwe nk'icyaha cy'ubugome bukabije gihanishwa igifungo cya burundu, ahubwo hakabayeho igihano kigereranije ushyize mu gaciro n'ibihe icyo cyaha kiba cyakorewemo, n'uwagikoze. Muri make, ni byiza ko habaho guhuza igihano n'imiterere y'icyaha cyo kwihekura (proportionality). Urukiko rurasaba inzego za Leta zibishinzwe kongera gusuzuma ingingo z'itegeko zijyanye n'icyaha cyo kwihekura mu buryo gisobanurwa n'imihanire yacyo. Itegeko rihana icyaha cyo kwihekura muri Zimbabwe ryafasha mu gusuzuma uko iryo mu Rwanda ryavugururwa. Rivuga ngo:

"48(1) Any woman who, within six months of the birth of her child, causes its death(a) intentionally; or(b) by conduct which she realizes involves a real risk to the child's life;at a time when the balance of her mind is disturbed as a result ofgiving birth to the child, shall be guilty of infanticide and liable toimprisonment for a period not exceeding five years.

48(2) Where a woman is charged with the murder of her child committed within six months of the child's birth and it is proved that she caused the child's death at a time when the balance of her mind was disturbed as a result of giving birth to the child, she shall not be found guilty of murder but may be found guilty of infanticide if the evidence establishes that she committed that crime.

48(3) For the purposes of this section, in determining whether or not the balance of a woman's mind was disturbed as a result of giving birth to a child, regard shall be taken to any pressure or stress from which she suffered arising out of any one or more of the following circumstances or considerations.(a) the effects which the birth had, or which she believed it would have, on her social, financial or marital situation;(b) the difficulties which were created, or which she believed would be created, in caring for the child in the social, financial or marital situation in which the child was born;(c) the difficulties which she had, or which she believed she would have, in caring for the child due to her inexperience or incapacity;(d) any other relevant circumstance or consideration, whether based on the psychological effects on the woman's mind arising from the birth itself, or otherwise.

48(4) For the avoidance of doubt it is declared that nothing in this section precludes: (a) a woman from being charged with the murder of her child and, subject to subsection (2), from being convicted of and punished for that crime; or (b) a court from returning a special verdict in terms of section 29 of the Mental Health Act [Chapter 15:12] (No. 15 of 1996) in respect of a woman charged with causing the death of her child."[11]

Urukiko rusanga iri tegeko rikubiyemo impamvu zituma ababyeyi bihekura bisa n'ibyo mu Rwanda ku buryo ryafasha mu gusuzuma iryacu mu rwego rwo kurivugurura.

## III. ICYEMEZO CY'URUKIKO

[45] Rwemeje ko ubujurire bwa Ntibajyinama Esther bufite ishingiro.

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[11] Section 48 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] (Zimbabwe 2004)

[46] Rwemeje ko imikirize y'urubanza RPA0001/2015/HC/RWG rwaciwe kuwa 30/04/2015 n'Urukiko Rukuru, Urugereko rwa Rwamagana rujuririrwa, ihindutse ku birebana n'igihano Ntibajyinama Esther yari yahawe.

[47] Ruhanishije Ntibajyinama Esther igifungo cy'imyaka icumi (10).

[48] Rutegetse ko amagarama y'urubanza aherera ku Isanduku ya Leta kuko uregwa aburana afunze.