# RE N.J

[Rwanda URUKIKO RUKURU – RPA0787/15/HC/KIG (Kaliwabo P.J, Mukakalisa na Kabagambe, J.) 10 Ukwakira 2015]

*Amategeko mpanabyaha – Gusambanya umwana – Ubusobanuro bw'ingingo ya 190 n'iya 165 y'Itegeko Ngenga N$^{o}$01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana – Kuba ingingo ya 190 y'Itegeko Ngenga N$^{o}$01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ikoresha ijambo "gusambanya umwana" mu mwanya w'ijambo "gusambanya ku gahato" rivugwa mu ngingo ya 165 y'iri Tegeko Ngenga ntibihindura ko umwana atasambanyijwe ku gahato, kuko afatwa nk'udafite ubushobozi bwo kwifatira ibyemezo kubyerekeye imibonano mpuzabitsina, bikaba nabyo byitwa gusambanywa ku ngufu.*

*Amategeko mpanabyaha – Uburenganzira bwo gukuramo inda n'inyungu zabyo – Umwana wasambanyijwe afite uburenganzira ndetse n'inyungu zo gukuramo inda atwite mu gihe ikomoka ku gusambanywa ku gahato.*

**Incamake y'ikibazo:** N.J yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko umwana we w'imyaka 13 witwa I.C yahabwa uburenganzira bwo gukuramo inda kuko yayitewe n'umuntu wamufashe kungufu amaze kumuha inzoga. Urukiko Rwisumbuye rwa Nyarugenge rwanze icyifuzo cya N.J, rushingiye ku kuba nta rubanza nshinjabyaha rwarirwarahamije icyo cyaha ukekwa. Urukiko rwavuze kandi ko binashoboka ko umuntu atwara inda ntawamusambanyije ndetse ko nta kimenyetso N.J yagaragaje cyerekana ko I.C abangamiwe n'inda atwite.

N.J yajuririye Urukiko Rukuru avuga ko imibonano mpuzabitsina yakorewe umwana we nta kundi yakwitwa uretse ugusambanywa ku gahato, ko umucamanza adasobanura ubundi buryo bwakoreshejwe kugira ngo asame inda atwite.

Ubushinjacyaha bwo buvuga ko ingingo ya 165 y'Itegeko Ngenga rihana ibyaha mu Rwanda yemerera umugore watwaye inda asambanyijwe ku gahato uburenganzira bwo gusaba ko avanamo iyo nda, ko iyi ngingo itareba umwana wasambanyijwe, bityo ikaba itahuzwa n'ingingo ya 190 y'Itegeko Ngenga rivuzwe haruguru.

**Incamake y'icyemezo:** 1. Kuba ingingo ya 190 y'Itegeko Ngenga N$^{o}$01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana ikoresha ijambo 'gusambanya umwana' mu mwanya w'ijambo 'gusambanya ku gahato rivugwa mu ngingo ya 165 y'iri Tegeko Ngenga ntibihindura ko umwana atasambanyijwe ku gahato, kuko afatwa nk'udafite ubushobozi bwo kwifatira ibyemezo kubyerekeye imibonano mpuzabitsina, bikaba nabyo byitwa gusambanywa ku ngufu.

2. Umwana wasambanyijwe afite uburenganzira ndetse n'inyungu zo kuvanamo inda atwite kuko inda atwite iba ikomoka ku gusambanywa ku gahato. Bityo, umwana wareze afite uburenganzira bwo gukuramo inda.

**Ubujurire bufite ishingiro.**
**Urubanza rujuririrwa ruvanyweho.**
**I.C ahawe uburenganzira bwo gukuramo inda.**
**Amagarama aherera ku isanduku ya Leta.**

**Amategeko yashingiweho:**
Itegeko ngenga N$^{o}$01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, ingingo ya 165 n'iya 190.
Inyongera ku Masezerano Nyafurika ku burenganzira bwa Muntu n'abantu ku burenganzira bw'abagore muri Afrika, 2003, ingingo ya 14 (2) C.

**Nta manza zifashishijwe.**

# Urubanza

# I. IMITERERE Y'URUBANZA

[1] I.C w'imyaka 13 y'amavuko avuga ko afite inda yatewe n'uwitwa Nizeyimana Bruce ngo wamusambanije ku gahato amaze kumuha inzoga. Umubyeyi we N.J yatanze ikirego mu Rukiko Rwisumbuye rwa Nyarugenge asaba ko I.C yahabwa uburenganzira bwo kuvanamo inda yatewe ku gahato, ko kandi iyi nda ibangamiye ubuzima bwa I.C. Urukiko Rwisumbuye rwa Nyarugenge rwanze icyifuzo cya N.J, rushingiye ku kuba nta rubanza nshinjabyaha rwari rwahamya Nizeyimana ko yasambanije ku gahato I.C, ko binashoboka ko umuntu atwara inda ntawamusambanije, ko kandi nta kimenyetso N.J yagaragaje cyerekana ko I.C abangamiwe n'inda atwite.

[2] Kuwa 08/10/2015, N.J yajuriye avuga ko imibonano mpuzabitsina yakorewe I.C w'imyaka 13 y'amavuko nta kundi yakwitwa uretse ugusambanywa ku gahato, ko umucamanza adasobanura ubundi buryo bwakoreshejwe kugira ngo I.C asame inda atwite.

[3] Ubushinjacyaha bwo buvuga ko ingingo ya 165 y'Itegeko Ngenga rihana ibyaha mu Rwanda yemerera umugore watwaye inda asambanijwe ku gahato uburenganzira bwo gusaba ko avanamo iyo nda, ko iyi ngingo itareba umwana wasambanijwe, ngo iyo ngingo ikaba itahuzwa n'ingingo ya 190 y'Itegeko ngenga rivuzwe haruguru.

[4] Urukiko rurasuzuma:

- Igitekerezo cy'Ubushinjacyaha cyo kuba ingingo ya 165 y'Itegeko Ngenga rihana ibyaha mu Rwanda kitareba umwana wasambanijwe;
- Niba I.C yarasambanijwe ku gahato;
- Niba I.C yakwemererwa kuvanamo inda atwite.

# II. ISESENGURA RY'URUBANZA

✓ **Igitekerezo cy'Ubushinjacyaha ku burenganzira bwo gukuramo inda kuri I.C.**

[5] Umushinjacyaha yavuze ko kutaryozwa icyaha cyo gukuramo inda kuvugwa mu ngingo ya 165(1$^{o}$) y'Itegeko Ngenga N$^{o}$01/2012/OL ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana, kareba umugore watewe inda yakoreshejwe imibonano mpuzabitsina ku ngufu, ko bitadukanye n'icyaha cyo gusambanya umwana giteganywa n'ingingo ya 190 y'itegeko ngenga ryavuzwe akaba abona ar'ibyaha bibiri bitandukanye, ko gusambanya umuntu ku ngufu bitakwitiranywa no gusambanya umwana. Igitekerezo cye akaba aruko iyi ngingo itareba I.C w'imyaka 13 wasambanyijwe agaterwa inda.

[6] Uburenganzira I.C asaba bushingiye ku kuba yarasambanyijwe ari umwana w'imyaka 13 byitwa icyaha cyo gusambanya umwana nk'uko giteganywa n'ingingo ya 190 y'itegeko ngenga rishyiraho igitabo cy'amategeko ahana ibyaha mu Rwanda iteganya ko*: "*Gusambanya umwana ni imibonano mpuzabitsina yose cyangwa ishingiye ku gitsina ikorewe umwana uko yaba ikozwe kose n'icyaba cyakoreshejwe cyose". Ibi nibyo I.C ashingiraho asaba ko inda atwite ivamo ashingiye ku ngingo ya 165 y'Itegeko Ngenga ryavuzwe, iteganya impamvu zitandukanye zituma umugore utwite ashobora kwemererwa ko inda atwite ivamo, kimwe muri byo akaba aruko umugore yaba yaratwaye inda atayishaka kubera gukoreshwa imibonano mpunzabitsina ku ngufu.

[7] Ijambo [Umugore] mu Kinyarwanda, [Woman] mu cyongereza, [Femme] mu gifaransa ryagiye rigarukwaho n'Umushinjacyaha agaragaza mu ngingo yavuzwe haruguru hatavugwamo umwana wasambanyijwe ahubwo ko ari umugore, akaba abona bivuze ko uhabwa uburenganzira bwo gukuramo inda ari umuntu mukuru wasambanyijwe ku ngufu wenyine.

[8] Urukiko rurasanga urwo rujijo rukurwaho no kuba icyo byombi bihuriyeho aruko uwasambanijwe aba nta bushake yabigizemo. Ku birebana n'umwana, iyo afite imyaka iri munsi ya 18 afatwa nk'udafite ubushobozi bwo kwifatira ibyemezo kubyerekeye n'imibonano mpuzabitsina, bikaba nabyo byitwa gusambanywa ku ngufu [viol]. Kuba ingingo ya 190 y'Itegeko Ngenga ryavuzwe ikoresha ijambo "gusambanya umwana" mu mwanya w'ijambo "gusambanya ku gahato" rivugwa mu ngingo ya 165 y'iri Tegeko ngenga ntibihindura ko umwana atasambanijwe ku gahato, kuko nta bushake aba yabigizemo.

[9] Ibimaze kuvugwa bishimangirwa n'umurongo ngenderwaho w'Igihugu cy'u Rwanda w'uburyo igikorwa cy'abemerewe gukuramo inda kigenda washyizweho na Ministeri y'ubuzima *[National Protocol for operationalization of exemptions for arbotion in penal code 2012], aho k*u rupapuro rwa 9 handitse ko abagore bato *[young women]* bari munsi y'imyaka 18 batwaye inda byitwa gusambanya umwana mu buryo buteganywa n'ingingo ya 190 y'Itegeko Ngenga rishyiraho igitabo cy'amategeko ahana nabo bagomba gufatwa nk'abasambanyijwe ku ngufu[1].

✓ **Kumenya niba I.C yarasambanyijwe ku gahato no gusuzuma niba byaba impamvu yo kwemererwa gukuraho inda.**

[10] N.J kimwe n'abamwunganira bavuga ko banenga icyemezo cy'Urukiko Rwisumbuye rwa Nyarugenge cyo kuba I.C yaravukijwe uburenganzira bwo kuvanamo inda yatewe ku gahato ngo kuko Urukiko rutakagombye gutegereza igihe uwasambanije I.C azahamwa n'icyaha, mu gihe ntawushidikanya ku myaka y'amavuko ya I.C. Bavuga kandi ko nta muntu ushidikanya ku kuba I.C atwite kuko byagaragajwe na raporo ya muganga, ndetse baboneraho kwerekana urupapuro rugaragaza ko I.C yasuzumiwe mu bitaro bya Muhima kuwa 27/10/2015, aho Dr Kajeneza Delphine yagaragaje ko I.C atwite inda y'ibyumweru 18 n'iminsi 3.

[11] Abunganira N.J bavuze kandi ko banenga icyemezo cy'urukiko rubanza, aho rwavuze ko umugore ashobora gutwita inda nta muntu wamusambanije, ariko ngo rukaba rutaragaragaje ubundi buryo I.C yaba yarasamye inda atwite. Bavuze ko uburenganzira N.J

[1] *Young women under the age 18, who become pregnant are also considered as child defilement according to article 3 of Law N$^{o}$54/2011 of 14/12/2011 relating to the rights and the protection of children and article 190 of the penal code, and should be treated as rape cases*.

asabira umwana we I.C abwemererwa n'ingingo ya 165 y'Itegeko Ngenga rihana ibyaha mu Rwanda, ndetse n'amasezerano mpuzamahanga urwanda rwashyizeho umukono.

[12] Urukiko rurasanga hakurikijwe ingingo ya 190 y'itegeko ngenga ryavuzwe n'ingingo ya 217 iteganya ko umwana ari umuntu wese utarageza ku myaka cumi n'umunani (18) y'amavuko uretse mu gihe andi mategeko abiteganya ukundi.

[13] Kuba bigaragara ko I.C yavutse ku itariki ya 12/07/2002 nk'uko bigaragazwa n'icyemezo cy'amavuko cyatanzwe n'Umunyamabanga Nshingwabikorwa w'Akagari ka Kicukiro kuwa 20/08/2015, akaba afite imyaka 13 y'amavuko.

[14] Kuba I.C yarasambanijwe, bigaragazwa na raporo ya muganga aho avuga ko I.C atakiri isugi kandi ko atwite[2]. Iyi raporo iravuguruza kandi imvugo y'Urukiko rubanza aho rwavuze ko umuntu ashobora gutwita atasambanijwe, akaba ataragaragaje ubundi buryo bwaba bwarakoreshejwe kugira ngo I.C abe atwite inda asabira kuvanamo.

[15] Urukiko rushingiye ku myaka y'amavuko ya I.C, no kuri raporo ya muganga yavuzwe haruguru, rurasanga igikorwa yakorewe ari icyaha cyo gusambanya umwana nk'uko biteganywa n'ingingo ya 190 y'Itegeko Ngenga ryavuzwe haruguru, mu yandi magambo akaba ari ugusambanywa ku gahato.

[16] Urukiko rurasanga ingingo ya 165 y'itegeko N°01/2012 ryo kuwa 02/05/2012 rishyiraho igitabo cy'amategeko ahana iteganya ko nta buryozwacyaha ku mugore no ku muganga wakuyemo inda bitewe n'imwe mu mpamvu zikurikira: 1° **kuba umugore yatwaye inda atayishaka kubera gukoreshwa imibonano mpuzabitsina ku ngufu (…)**; Ukutaryozwa icyaha kuvugwa mu gace ka mbere, aka 2° n'aka 3° tw'igika cya mbere cy'iyi ngingo kwemerwa gusa iyo **nyirugusaba gukurwamo inda yagaragarije muganga icyemezo cy'urukiko rubifitiye ububasha cyemeza kimwe mu bivugwa muri utwo duce**.

[17] Rurasanga kandi ingingo ya 14(2)C y'Amasezerano y'ingereka ku masezerano y'Afurika y'uburenganzira bw'ikiremwamuntu n'ubw'abaturage yerekeye uburenganzira bw'abagore muri Afurika , u Rwanda rwashyizeho umukono, kandi rukemeza ko akoreshwa mu Rwanda mu Iteka rya Perezida N°05/01 ryo kuwa 03/05/2012 rikuraho ukwifata kwa Repubulika y'u Rwanda ku iyubahirizwa ry'ingingo ya 14.2.c, iteganya ko ibihugu bigomba guharanira uburenganzira bw'imyororokere, by'umwihariko bikemerera abaganga gukuramo inda mu gihe bigaragara ko habayeho gusambanywa ku gahato[3].

[18] Urukiko rukaba rusanga N.J afite uburenganzira bwo gusabira I.C ko yakwemererwa gukuramo inda kuko bigaragara ko yasambanyijwe afite imyaka 13 y'amavuko, kandi ugusambanya umwana uko byaba byakozwe kose bifatwa nko gusambanywa ku gahato, kuko nta bushake bw'umwana mu gikorwa cy'imibonano mpuzabitsina.

- ✓ **Kubyerekeye inyungu I.C afite zo gusaba kwemererwa gukuramo inda.**

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[2] *Examination form in case of alleged rape or other sexual offence, made by Kacyiru Police Hospital on 07/30th /2014: pregnancy positive, hymen not intact, multiple old tears*.

[3] Art. 14 (2) C *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: States Parties shall take all appropriate measures to protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. http://www.achpr.org/fr/instruments/women-protocol/ consulté le 28/10/2015.*

[19] N.J yasobanuriye Urukiko ko I.C abangamiwe n'inda atwite ngo kuko yatumye adasubira mu ishuri, ndetse ngo uyu mwana akaba atayishimiye kugeza ubwo ashaka kuyivanamo akoresheje imiti yishakiye ishobora no guhitana ubuzima bwe. Urukiko rwabajije I.C (wari watumijwe ngo atange amakuru) niba ari icyifuzo cye cyo kuvanamo inda atwite n'impamvu ibimutera, asobanura ko abangamiwe n'iyo nda ngo kuko imutera ipfunwe muri bagenzi be kandi ikaba itamwemerera gukomeza ishuri. Avuga kandi ko yasambanijwe n'uwitwa Bruce wabanje kumuha inzoga yitwa "coffee", ngo akaba yarasambanijwe yataye ubwenge kubw'iyo nzoga.

[20] Hashingiwe ku kigero cy'umwana I.C ufite imyaka 13, akaba yiga mu mwaka wa gatanu w'amashuli abanza, nta gushidikanya ko gutwita byamuteye ipfunwe muri bagenzi be nk'uko abivuga kuko akiri muto, bigashimangirwa no kuba yarageragеje kuyikuriramo nk'uko nyina yabivuze mw'iburanisha. Urukiko rurasanga kandi bigoye I.C w'imyaka 13 y'amavuko gufata inshingano z'ububyeyi ugereranyije n'imyaka y'ubukure 21 iteganywa n'amategeko mbonezamubano aho umuntu ashobora kuba yaba umubyeyi ndetse n'imyaka 18 yemerera umuntu kuba yakwifatira ibyemezo kubyerekeye n'imibonano mpuzabitsina nk'uko biteganywa n'andi mategeko.

[21] Urukiko rurasanga kandi, impamvu yo kuba I.C acyeneye gukomeza amasomo ye nayo yumvikana kuko akiri umunyeshuri mu mwaka wa gatanu w'amashuri abanza, kubyara no kurera umwana we bikaba byamubangamira mu ishuli ndetse bikanabangamira n'ubuzima bwe bw'ejo ahazaza.

[22] Urukiko rurasanga I.C w'imyaka 13 y'amavuko afite uburenganzira ndetse n'inyungu zo kuvanamo inda atwite nk'uko byasabwe na nyina N.J kuko iyi nda atwite ikomoka ku gusambanywa ku gahato nk'uko byasobanuwe. Urukiko rurasanga kandi, nk'uko byemejwe na muganga Kajeneza Delphine wamusuzumye kuwa 27/10/2015, inda I.C asaba kuvanamo itarageze ku byumweru 22 bivugwa muri "National Protocol for operationalization of exemptions for abortion in penal code 2012".

[23] Nk'uko byifujwe na N.J n'abamwunganira, Urukiko rurasanga igikorwa cyo kuvanamo inda I.C atwite kigomba gukorwa n'ibitaro bya polisi bikorera Kacyiru kuko bibifitiye ubushobozi, kandi iki cyemezo kikaba kigomba guhita kimenyeshwa umuyobozi w'ibi bitaro kugira ngo inda ivanwemo itarageza ku byumweru 22 nk'uko byasobanuwe haruguru.

## III. ICYEMEZO CY'URUKIKO

[24] Rwemeje ko ubujurire bwa N.J bufite ishingiro;

[25] Rwemeje ko imikirize y'urubanza RP0561/15/TGI/NYGE ihindutse mu ngingo zarwo zose;

[26] Rwemeje ko I.C yemerewe gukuramo inda atwite;

[27] Rutegetse ibitaro bya Police bikorera Kacyiru mw'izina ry'umuyobozi wabyo gukora igikorwa cyo gukuramo inda I.C atwite kandi bigakorwa mbere yuko inda ikwiza ibyumweru 22;

[28] Rutegetse ko iki cyemezo gihita kimenyeshwa umuyobozi w'ibitaro bya polisi bikorera kacyiru;

[29] Rutegetse ko amagarama y'urubanza aherera ku isanduku ya Leta kuko ikirego cyatanzwe mu nyungu y'umwana.