

Re GREAT LAKES INITIATIVE FOR HUMAN RIGHTS AND DEVELOPMENT (GLIHD)

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00001/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye na Karimunda) 24 Ukuboza 2021]

Itegeko Nshinga – Uburenganzira bwo kubaho – Ni uburenganzira shingiro bw'ikiremwanuntu ubundi burenganzira bwose bushingiyeho, bugomba kurindwa ku buryo nta muntu ushobora kubuvutswa mu buryo bunyuranyije n'amategeko – Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 12.

Itegeko Nshinga – Uburenganzira ku buzima bwiza – Kugira ubuzima bwiza ntibigarukira gusa kuba umuntu yumva atarwaye cyangwa se yumva nta bumuga afite ahubwo ni ukuba yumva ameze neza mu mubiri, mu mitekerereze no mu mibereho ye n'abandi.

Itegeko Nshinga – Uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe – Ibikorwa bibangamira uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe – Ni ibikorwa byose bibabaza umubiri nko kwica umuntu, kumukomeretsa byaba mu buryo bukomeye cyangwa bworohije, kumukorera ibikorwa by'iyicarubozo, kumushyira mu bikorwa by'ubucakara, kumusambanya ku gahato cyangwa se kumukorera irindi hohotera iryo ariryo ryose rishingiye ku gitsina, n'ibindi bikorwa byose bigamije kumutesha agaciro.

Itegeko Nshinga – Uburenganzira bwo kureshya imbere y'amategeko –Ivangura – Abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse n'itegeko rigiyeho rigafata kimwe abo rireba – Byitwa gutandukanya abantu hagamijwe kuvutsa amahirwe bamwe no gutonesha abandi, bigakorwa hashingiwe ku mpamvu zitumvikana.

Itegeko Nshinga – Uburenganzira bwo kubaha imibereho bwite y'umuntu – Ni uburenganzira umuntu wese afite bwo kwishyira akizana mu mibereho ye bwite, mu mibanire ye n'abandi ntawe umuvogereye cyangwa ngo yivange mu mibereho ye bwite mu buryo bunyuranyije n'amategeko, akabikora mu bwisanzure kandi ntacyo yikanga – Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 23.

Incamake y'ikibazo: Great Lakes Initiative for Human Rights and Development (GLIHD) yatanze ikirego mu Rukiko rw'Ikirenga irusaba kwemeza ko ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange zinyuranye n'ingingo za 12, 14, 15, 16, 21 na 23 z'Itegeko Nshinga, ndetse zikananyuranya n'amasezerano mpuzamahanga yerekeye uburenganzira bwa muntu kuko zibangamiye uburenganzira bw'abagore n'abakobwa, aho izo ngingo zitegeka ko, mu gihe byemewe n'amategeko, gukuramo inda bikorwa na muganga wemewe na Leta gusa, bityo zigakumira abandi bavuzi babihuguriwe.

Ikomeza ivuga ko izo ngingo kimwe n'ingingo ya 2 (3°) y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umugore cyangwa umukobwa inda zikwiye kwandikwa mu bundi buryo, ahanditse muganga wemewe na Leta hakongerwamo cyangwa undi muvuzi wabihuguriwe kandi wabihereye uburenganzira n'Ikigo cya Leta kibifitiye ububasha.

Muri uru rubanza hari Inshuti y'Urukiko ariyo Umuryango uharanira iterambere ry'ubuzima (*Health Development Initiative, HDI*) na Leta y'u Rwanda nayo ikaba yari ihagarariwe, aho ivuga ko izo ngingo zose zitagomba kwandikwa mu bundi buryo.

Ku kibazo cyabanje gusuzumwa muri uru Rukiko ni ikijyanye no kumenya niba ingingo ya 125, igika cya 2 n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryavuzwe haruguru zinyuranye n'uburenganzira bwo kubaho n'uburenganzira ku buzima bwiza buteganywa n'ingingo ya 12 n'ya 21

z'Itegeko Nshinga. Aha Urega asobanura ko ingingo ya 21 y'Itegeko Nshinga iteganya ko abanyarwanda bafite uburenganzira bwo kugira ubuzima bwiza kandi ku rwego rwo hejuru rushoboka nk'uko kandi bishimangirwa n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono.

Avuga ko amategeko mpuzamahanga yerekeye uburenganzira bwa muntu ateganya ko, mu rwego rwo kuzamura ireme ry'ubuzima bwiza, ibihugu bifite inshingano zo gushyiraho serivisi zerekeranye n'ubuzima bw'imyororokere zujuje ubuziranenge. Kugira ngo iyo nshingano yubahirizwe, bigasaba ko haboneka amakuru ahagije ku bijyanye n'ubuzima bw'imyororokere, ko habaho ibigo byita ku buzima bw'abantu, ko abakozi babihugurirwa kandi bakaba abanyamwuga, ndetse hakaboneka n'imiti y'ingenzi.

Urega asobanura ko kuba abana b'abakobwa basambanyijwe bagaterwa inda, itegeko ribategeka guhabwa serivisi yo gukurirwamo inda na muganga gusa, bibangamiye uburenganzira bwabo kuko uyu muganga aba ku bitaro gusa kandi abo bana nta bushobozi ndetse nta n'igihe cyo kugerayo bafite. Ikindi ni ukuba abandi baturage babonera serivisi z'ubuvuzi ku kigo nderabuzima aricyo cyegerejwe abaturage, ariko abagore n'abana b'abakobwa bo bagategekwa kubonera iyo serivisi ku bitaro, nabyo bibangamiye uburenganzira bwabo ku buzima bwiza.

Asoza avuga ko kuba iyo serivisi idatangirwa ku rwego rw'ubuzima rwegerejwe abaturage kuko aho nta baganga bahaba, ngo ibe yatangwa n'abaforomo n'ababyaza, bituma iyo serivisi itaboneka bigaca intege abagore n'abana b'abakobwa bigatuma bakuramo inda mu buryo butizewe kandi babyemerewe n'amategeko, bikongera n'ibyago ku bagore n'abakobwa kuko bashobora gupfa babyara.

Uhagarariye Leta avuga ko ingingo ya 123 n'ya 124 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru zirengera uburenganzira bwo kubaho, aho zigaragaza ihame ry'uko gukuramo inda cyangwa gukuriramo undi muntu inda bibujijwe kandi ko ari icyaha mu gihe ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'iryo Tegeko zo zikaba zerekana ibihe bidasanzwe umugore cyangwa umukobwa yemerewe gukurwamo inda na muganga wemewe na Leta, bityo zikaba ntaho zitanyuranye n'ingingo ya 12 n'ya 21 z'Itegeko Nshinga. Naho ku bijyanye n'Amasezerano Mpuzamahanga, uruhande rurega rushingiraho, akwiye gukurikizwa nk'andi mategeko kuko yemejwe n'u Rwanda, ariko ko amwe muri yo ateganya ko gukuramo inda biterwa n'impamvu zidasanzwe.

Ku birebana no kuba serivisi yo gukuramo inda ku bagore n'abakobwa babyemerewe idashobora gutangirwa ku bigo nderabuzima ngo itangwe n'abaforomo n'ababyaza, Uhagarariye Leta avuga ko gukuramo inda mu buryo bwizewe kandi bwemewe n'amategeko ntibishobora gukorerwa aho hantu ku nyungu z'abashaka iyo serivisi, kuko hari igihe bakenera ubutabazi bwo mu rwego rwo hejuru ntibabababonera.

Inshuti y'urukiko, ivuga ko iri tegeko rigenga ibyaha n'ibihano muri rusange rituma abashobora kubona serivisi zo gukuramo inda ari abagore bafite ubushobozi bwo kubona umuganga cyangwa bafite amikoro yo kuriha ingendo cyangwa amafaranga yo kwishyura kwa muganga. Ivuga kandi ko mu bindi bihugu, abakozi bashinzwe ubuzima batari abaganga bahuguwe, batanga serivisi zo gukuramo inda mu buryo bwizewe kandi bagakurikirana abarwayi nyuma yo kubaha iyo serivisi. Byongeye kandi n'amabwiriza mpuzamahanga y'ubuvuzi, na yo yemera ko abatanga serivisi z'ubuzima zoroheje bashobora kandi bakwiye kwemererwa gutanga serivisi zo gukuramo inda.

Ikomeza isobanura ko kubera inzitizi zibangamira gukuramo inda mu buryo bwizewe kandi bwemewe n'amategeko, abagore n'abakobwa benshi mu Rwanda bakuramo inda mu buryo butizewe bigashyira ubuzima bwabo mu kaga. Ivuga ko kubanza kwemererwa n'undi muntu gukuramo inda harimo n'undi muganga bikereza guhabwa ubuvuzi, bikaba byatuma serivisi yo gukuramo inda itangwa igihe kigenwa n'amategeko cyarenze bikagorana, ikiguzi cyo kuyikuramo kikiyongera, ndetse bikaba byanashyira ubuzima bw'umugore mu kaga gakomeye.

Ku birebana na serivisi zitangwa n'ababyaza n'abaforomo, HDI, Inshuti y'Urukiko, isobanura ko kuba abafaromo, ababyaza n'abafasha b'abaganga mu Rwanda bemerewe gutanga ubuvuzi ku mugore nyuma yo gukuramo inda, ari bwo buvuzi bwa ngombwa butangwa iyo umugore ahuye n'ibibazo biterwa no

gukuramo inda mu buryo butizewe cyangwa mu gihe inda itavuyemo mu buryo bwuzuye bifashishije uburyo bwo koza nyababyeyi mu gihembwe cya mbere kuva umugore asanye, nta mpamvu abo bakozi baboneka ku kigo nderabuzima batakwemererwa no gutanga serivisi zo gukuramo inda. Bityo, Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru ritari rikwiye kubakura mu bagomba gutanga iyo serivisi.

Ku kibazo cya serivisi yo gukuramo inda ikozwe na muganga wemewe na Leta aho kuba umuntu wese wize ibijyanye n'ubuvuzi, Urega avuga ko binyuranye n'uburenganzira bwo kudahunzabanywa ku mubiri no mu mutwe biteganywa n'ingingo ya 14 y'Itegeko Nshinga kubera ko bibangamira uburenganzira bw'abagore ndetse n'ubw'abakobwa aho bigabanya umubare w'abatanga iyo serivisi n'uw'abayihabwa.

Urega avuga ko Komisiyo Nyafurika y'Uburenganzira bwa Muntu n'ubw'Abaturage, ishingiyeye ku Masezerano ya Maputo, mu rwego rwo gushyira mu bikorwa ingingo zirebana no gutanga serivisi z'ubuvuzi zo gukuramo inda mu buryo bunoze, bwizewe kandi bwemewe n'amategeko zigaragara muri ayo masezerano, yashyizeho amabwiriza ngenderwaho ko ibihugu bitagomba gushyiraho imbogamizi cyangwa inzitizi ku bisabwa abavuzi bemerewe gutanga iyo serivisi y'ubuvuzi. Avuga ko Komisiyo yakomeje igaragaza ko, muri rusange kuba mu bihugu byinshi by'Afurika hari umubare udahagijye w'abaganga, abafasha b'abaganga, nk'ababyaza ndetse n'abandi bakozi bita ku buzima, bakagombye guhabwa amahugurwa kugira ngo nabo bajye bita ku bakeneye serivisi y'ubuvuzi yo gukuramo inda.

Uharariye Leta y'u Rwanda avuga ko kuri iyi ngingo, bigaragara ko Leta yahisemo ko ufite ubushobozi bwo gufasha umugore wifuzaga gukuramo inda ari umuganga (*medical doctor*) ufite ubumenyi bwemewe n'inzego zibifitiye ububasha. Ibi bivuze ko utari umuganga adashobora gutanga iyo serivisi kubera ingaruka z'ubuzima zishobora gukomoka mu gukurwamo inda mu gihe bikozwe n'undi muntu utari umuganga. Asoza avuga ko asanga ntaho igika cya 2 cy'ingingo ya 125 n'igika cya 3 cy'ingingo ya 126 z'Itegeko n° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru zinyuranyije n'ingingo ya 14 y'Itegeko Nshinga iteganya ibijyanye n'uburenganzira bwo kudahunzabanywa ku mubiri no mu mutwe.

Ikindi kibazo cyasuzumwe muri uru rubanza ni icyo kumenya niba ingingo ziteganyaga gukuramo inda bikozwe na muganga wemewe na Leta gusa binyuranye n'uburenganzira bwo kureshya imbere y'amategeko no kurindwa ivangura buteganyijwe mu ngingo ya 15 n'ya 16 z'Itegeko Nshinga no mu Masezerano mpuzamahanga. Kuri iki kibazo, Urega avuga ko imitangire y'iyi serivisi binyuranyije n'uburenganzira bwo kureshya imbere y'amategeko no kutavangurwa kw'abagore n'abakobwa muri rusange. Akomeza avuga ko ayo masezerano aha ibihugu inshingano zo kurandura impamvu iyo ariyo yose yatuma habaho ivangura kandi bigashyigikira uburenganzira bwo kureshya kuri bose harimo n'abagore.

Asoza asobanura ko kutareshya imbere y'amategeko n'ivangura babona mu ngingo zavuzwe haruguru ziregerwa ari uko serivisi y'ubuvuzi yo gukuramo inda umugore cyangwa umukobwa ubyemerewe n'amategeko bisabwa muganga wemewe na Leta gusa uboneka mu bitaro by'Akarere, bityo bikaba binyuranyije n'uburenganzira bwo kureshya imbere y'amategeko no kutavangurwa kw'abagore n'abakobwa muri rusange buteganywa mu Itegeko Nshinga. Bavuga ko hari ivangura rishingiyeye ku gitsina kuko hari serivisi y'ubuvuzi umuntu w'igitsina gabo abonera ku bigo nderabuzima bimwegereye, nyamara uw'igitsina gore akaba adashobora kuhabonera serivisi y'ubuvuzi yo gukurirwamo inda. Bavuga kandi ko hari irindi vangura no kutareshya rishingiyeye ku byiciro by'ubukungu kubera ko abagore n'abakobwa bifite aribo bashobora kubonera iyo serivisi ku bitaro bikuru ahaboneka muganga wemewe, mu gihe abatifuze badashobora kugerayo kubera ko bihenze cyane.

Uharariye Leta y'u Rwanda avuga ko uruhande rurega rutagaragaza ukutareshya imbere y'amategeko cyangwa ivangura rikorerwa abagore biri mu ngingo z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, uretse kubivugaga mu magambo no kugaragaza ingingo z'amasezerano mpuzamahanga u Rwanda rwasinye kandi rushyira mu bikorwa. Nti bagaragaza ibimenyetso byerekana icyo bita kutareshya mu mategeko cyangwa kuvangurwa kw'abashakaga guhabwa serivisi z'ubuzima

bw'imyororokere. Avuga kandi ko serivisi z'ubuvuzi zitandukanye zihabwa abagana ibitaro guhera ku mavuriro y'ibanze ibigo nderabuzima, ibitaro by'Uturere, ibitaro by'Intara n'ibitaro bikuru zashyizwe ku mugereka w'Iteka rya Minisitiri N° 20/39 ryo ku wa 29/01/2016 rigena ibikorwa by'ubuvuzi, kugira ngo bimenyekane kandi buri muntu ugana ibitaro amenye ko ari uburenganzira bwe guhabwa izo serivisi nta vangura cyangwa kutareshya mu mategeko Ibyo bikaba byarakozwe mu rwego rwo kugira ngo buri muntu wese nta vangura iryo ariryo ryose ugana amavuriro amenye serivisi ihatangirwa n'ikiguzi cyayo. Bityo, akaba asanga nta kutareshya mu mategeko cyangwa kuvangura uruhande rurega rugaragaza, ko kandi n'iyo byaba, byakorerwa iperereza uwaba yabigizemo uruhare akaba yabitangira indishyi kubera ko bene ibyo bikorwa bibarizwa mu mategeko mbonezamubano aho kuba mpanabyaha.

Urega yasabye ko muri uru Rukiko kandi hasuzumwa niba gukuramo inda biteganywa mu ngingo z'Itegeko rigenga ibyaha n'ibihano muri rusange binyuranye n'uburenganzira bwo kubaha imibereho bwite y'umuntu buteganywa n'Itegeko nshinga mu ngingo yaryo ya 23. Avuga ko iryo tegeko riteganywa ko muganga wemewe na Leta ariwe wenyine utanga serivisi y'ubuvuzi yo gukuriramo inda mu buryo bubonye umugore cyangwa umwana w'umukobwa ubyemerewe n'amategeko, ariko kugirango ayibone bimusaba kubanza guca ku kigo nderabuzima kwaka urupapuro rumwohereza ku bitaro (*transfer*), bikumvikana ko abakozi bose urwo rupapuro ruzaca mu ntoki bazaba bamenye icyo agiye kwivuzura kugera ageze ku bitaro, nabwo akaba agomba kubanza guhabwa serivisi y'ubujyanama bwimbitse mbere yo guhabwa serivisi yo gukuramo inda. Bivuze ko, muri izo ngendo zose bwa burenganzira bwe bwo kugirirwa ibanga kuri serivisi y'ubuvuzi yakorewe azaba yamaze kubutakaza kuko abantu benshi bazaba bazi serivisi ari gusaba kandi amakuru yakabaye ari hagati ye n'umuvura.

Uhagarariye Leta avuga ko Uhagarariye Leta y'u Rwanda avuga ko ihame ryo kurinda ibanga ry'amakuru akomoka ku murwayi cyangwa umuntu wese ugana ibitaro riteganywa n'Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi ndetse n'Iteka rya Minisitiri N° 002/MoH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda. Mu gihe muganga arenze ku mategeko ntagirire ibanga uwo ashinzwe kuvura, akurikiranwa maze akirengera ingaruka zabyo bityo, nta kunyuranya n'Itegeko Nshinga guhari hagati y'igika cya 2 cy'ingingo ya 125 n'igika cya 3 cy'ingingo ya 126 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru n'ingingo ya 23 y'Itegeko Nshinga ivuga ku burenganzira bwo kubaha imibereho bwite y'umuntu.

Incamake y'icyemezo: 1. Uburenganzira bwo kubaho ni uburenganzira shingiro bw'ikiremwaumuntu ubundi burenganzira bwose bushingiyeho, bugomba kurindwa ku buryo nta muntu ushobora kubuvutswa mu buryo bunyuranyije n'amategeko. Bityo, kwemerera ababyaza n'abafomoko cyangwa abafomokazi gukuramo inda kandi bigakorerwa ku bigo nderabuzima nk'uko Urega abyifuzaga, bishobora gushyira mu kaga ubuzima bw'abagore n'abakobwa bakenera guhabwa iyo serivisi kurusha uko byabafasha.

2. Kugira ubuzima bwiza ntibigarukira gusa kuba umuntu yumva atarwaye cyangwa se yumva nta bumuga afite ahubwo ni ukuba yumva ameze neza mu mubiri, mu mitekerereze no mu mibereho ye n'abandi. Bityo, ibikubiye mu ngingo ya 125, igika cya 2 n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, ari zimwe mu ngamba zigamije kurengera uburenganzira ku buzima bwiza ku bireba by'umwihariko ubuzima bw'imyororokere, igikorwa cyo gukuramo inda mu bihe bigenwa n'itegeko gishyirwa mu biganza by'umuganga ubifitiye ubumenyi n'ibikoresho bya ngombwa.

3. Ibikorwa bibangamira uburenganzira bwo kudahunzabanywa ku mubiri no mu mutwe ni ibikorwa byose bibabaza umubiri nko kwica umuntu, kumukomeretsa byaba mu buryo bukomeye cyangwa bworoheje, kumukorera ibikorwa by'iyicarubozo, kumushyira mu bikorwa by'ubucakara, kumusambanya ku gahato cyangwa se kumukorera irindi hohotera iryo ariryo ryose rishingiye ku gitsina, n'ibindi bikorwa byose bigamije kumutesha agaciro. Bityo, kuba umugore cyangwa umukobwa ukeneye serivisi yo gukurirwamo inda, bishobora kumuvuna ajya kuyishakira aho itegeko ryategetse, ntaho bihuriye n'uburenganzira bwo kudahunzabanywa ku mubiri no mu mutwe.

4. Abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse n'itegeko rigiyeho rigafata kimwe abo rireba. Byitwa gutandukanya abantu hagamijwe kuvutsa amahirwe bamwe no gutonesha abandi, bigakorwa hashingiwe ku mpamvu zitumvikana. Bityo, kuba serivisi yo gukurirwamo inda ku bakobwa n'abagore bashobora kuyibonera ku bitaro bikuru ahari muganga wemewe na Leta, si ikibazo cy'ivangura kuri bo, ahubwo ni ikibazo kireba abakenera serivisi za muganga no ku bindi bibazo bidakemukira ku bigo nderabuzima muri rusange.

5. Uburenganzira bwo kubaha imibereho bwite y'umuntu ni uburenganzira umuntu wese afite bwo kwishyira akizana mu mibereho ye bwite, mu mibanire ye n'abandi ntawe umuvogereye cyangwa ngo yivange mu mibereho ye bwite mu buryo bunyuranyije n'amategeko, akabikora mu bwisanzure kandi ntacyo yikanga. Bityo, kuba serivisi yo gukurirwamo inda ku bagore n'abakobwa babyemerewe itangwa na muganga wemewe na Leta gusa, ntaho bihuriye no kutubaha imibereho bwite y'umuntu.

Ikirego nta shingiro gifite.

Ingingo ya 125, igika cya kabiri n'iya 126, igika cya gatatu, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ntaho zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 12, 14, 15, 16, 21, 23 n'iya 61.

Itangazo mpuzamahanga ryerekeye uburenganzira bwa muntu ryo mu mwaka 1948, ingingo ya 3 n'iya 25.

Amasezerano mpuzamahanga mu by'imbonezamubano na politiki yo mu mwaka wa 1966, ingingo ya 6, 17 n'iya 26.

Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'Ubukungu, Imibereho Myiza n'Umuco (ICESCR), ingingo ya 12.

Amasezerano Mpuzamahanga agamije kurandura ivangura iryo ariryo ryose rishingiye ku bwoko yasinnye mu mwaka wa 1965, ingingo ya 5.

Amasezerano Mpuzamahanga agamije kurandura ivangura iryo ariryo ryose rikorerwa abagore, ingingo ya 2,11 n'iya 12.

Amasezerano Nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage, ingingo ya 6 n'iya 16.

Amasezerano y'in Yongera ku masezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage yerekeye uburenganzira bw'umugore yashyiriweho umukono i Maputo ku wa 11 Nyakanga 2003, ingingo ya 8 n'iya 14

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 107,123, 124, 125, 126, 155 n'iya 158.

Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango, ingingo ya 10.

Itegeko N° 21/05/2016 ryo ku wa 20/05/2016 ryerekeye ubuzima bw'imyorokere y'abantu.

Itegeko N° 46/2012 ryo ku wa 14/01/2013 rishyiraho urugaga nyarwanda rw'abakora imirimo ishamikiye ku buvuzi kandi rikagena imiterere, imikorere n'ububasha byarwo, ingingo ya 36.

Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi, ingingo ya 4.

Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umugore cyangwa umukobwa inda, ingingo ya 2.

Iteka rya Minisitiri N° 20/39 ryo ku wa 29/01/2016 rigena ibikorwa by'ubuvuzi.

Iteka rya Minisitiri N° 20/25 18/04/2012 rigena uko imyuga y'ubuforomo n'ububuyaza ikorwa.

Amategeko yo mu mahanga yashingiweho:

Amasezerano y'ibihugu by'Uburayi ku burenganzira bwa muntu, ingingo ya 2.

Imanza zifashishijwe:

Re Kabasinga Florida, RS/INCONST/SPEC 00003/2020/SC, rwaciwe n'Urukiko rw'Ikirenga kuwa 27/11/2020.

Re Murangwa Edward, RS/INCONST/SPEC 00001/2019/SC, rwaciwe n'Urukiko rw'Ikirenga kuwa 29/11/2019.

Akagera Business Group, RS/SPEC/0001/16/CS, rwaciwe n'Urukiko rw'Ikirenga kuwa 23/09/2016.

Thlimmenos v. Greece (Application n°. 34369/97), Strasbourg 6 April 2000.

The Prosecutor vs Jean-Paul Akayesu Case ICTR-96-4-T, § 504 (Trial judgement, 2 September 1998).

Case of Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, Application n° 47848/08, para. 130.

Öneryildiz v. Turkey, Application n°. 48939/99, para. 71.

Bărbulescu v. Romania, rwaciwe n'Urukiko rushinzwe kurengera Uburenganzira bwa Muntu rw'Ibihugu by'Iburayi, Application n°. 61496/08, para 71.

Francis Coralie Mullin vs The Administrator, Union Territory of Dheli and others rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhinde kuwa 13 Mutarama 1981.

Justice K S Puttaswamy (Rtd) vs Union of India. rwaciwe n'Urukiko rw'Ikirenga rw'Ubuhinde.

Inyandiko z'Abahanga zifashishijwe:

Paulin Basinga, Ann M. Moore, Susheela D. Singh, Elizabeth E. Carlin, Francine Birungi, and Fidele Ngabo, Abortion Incidence and Postabortion Care in Rwanda, in Rwanda Medical Journal / Revue Médicale Rwandaise, June 2012, Vol. 69 (2).

URUBANZA

I. IMITERERE Y'URUBANZA

[1] GLIHD ihagarariwe na Mulisa Tom yatanze ikirego mu Rukiko rw'Ikirenga irusaba kwemeza ko ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange zinyuranye n'ingingo za 12, 14, 15, 16, 21 na 23 z'Itegeko Nshinga, ndetse zikananyuranya n'amasezerano mpuzamahanga yerekeye uburenganzira bwa muntu kuko zibangamiye uburenganzira bw'abagore n'abakobwa, aho izo ngingo zitegeka ko, mu gihe byemewe n'amategeko, gukuramo inda bikorwa na muganga wemewe na Leta gusa, bityo zigakumira abandi bavuzi babihuguriwe.

[2] Bavuga ko izo ngingo kimwe n'ingingo ya 2 (3°) y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umugore cyangwa umukobwa inda zikwiye kwandikwa mu bundi buryo, ahanditse muganga wemewe na Leta hakongerwamo cyangwa undi muvuzi wabihuguriwe kandi wabihereye uburenganzira n'Ikigo cya Leta kibifitiye ububasha.

[3] Ingingo ya 125, igika cya 2, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, iteganyaga ko gukurirwamo inda bikorwa na muganga wemewe na Leta, naho ingingo ya 126, igika cya 3, yo igateganyaga ko usaba ko umwana afiteho ububasha bwa kibyeyi akurirwamo inda, abisaba umuganga wemewe na Leta yitwaje inyandiko y'ivuka igaragaza igihe umwana yavukiye.

[4] Leta y'u Rwanda yo ivuga ko ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange nta na hamwe zinyuranye n'Itegeko Nshinga cyangwa amasezerano mpuzamahanga u Rwanda rwasinye, bityo ko nta n'impamvu izo ngingo kimwe n'ingingo ya 2 (3°) y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 ryavuzwe haruguru zakwandikwa mu bundi buryo.

[5] Urubanza rwaburanishijwe mu ruhamwe ku itariki ya 18/10/2021, GLIHD ihagarariwe na Mulisa Tom yunganiwe na Me Twizeyimana Théophile afatanyije na Me Umulisa Vestine, hari Leta y'u Rwanda ihagarariwe na Me Kabibi Spéciose. Hari kandi n'inshuti y'Urukiko, HDI ihagarariwe na Me Garuka Christian.

[6] Muri uru rubanza, uwatanze ikirego yari yasabye Urukiko gusuzuma ibibazo bikurikira:

- Kumenya niba ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 12 hamwe n'ya 21 z'Itegeko Nshinga zivuga ku burenganzira bwo kubaho n'uburenganzira ku buzima bwiza.
- Kumenya niba ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 14 y'Itegeko Nshinga ivuga ku burenganzira bwo kudahungabanywa ku mubiri no mu mutwe.
- Kumenya niba ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 15 hamwe n'ya 16 z'Itegeko Nshinga zivuga ku burenganzira bwo kureshya imbere y'amategeko no kurindwa ivangura.
- Kumenya niba ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 23 y'Itegeko Nshinga ivuga ku burenganzira bwo kubaha imibereho bwite.
- Kumenya niba ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange, kimwe n'ingingo ya 2(3°) y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda, zigomba kwandikwa mu bundi buryo.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO

1. Kumenya niba ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 12 n'ya 21 z'Itegeko Nshinga zivuga ku burenganzira bwo kubaho n'uburenganzira ku buzima bwiza

[7] Mulisa Tom uhagarariye GLIHD n'abamwunganira bavuga ko ibiteganywa mu ngingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n'ibihano muri rusange, ko gukuramo inda mu buryo buteganywa n'amategeko bikorwa na muganga wemewe na Leta gusa haba ku mugore cyangwa ku mwana w'umukobwa, binyuranyije n'uburenganzira ku buzima bwiza nk'uko buteganywa mu Itegeko Nshinga ndetse no mu masezerano mpuzamahanga u Rwanda rwashyizeho umukono.

[8] Basobanura ko ingingo ya 21 y'Itegeko Nshinga iteganyanya ko abanyarwanda bose bafite uburenganzira bwo kugira ubuzima bwiza kandi ku rwego rwo hejuru rushoboka nk'uko kandi bishimangirwa n'amasezerano mpuzamahanga atandukanye u Rwanda rwashyizeho umukono. Bakomeza bavuga ko ingingo ya 14 y'Amasezerano y'Inyongera ya Maputo ku masezerano nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage, u Rwanda rwashyizeho umukono mu mwaka wa 2004, iha Leta inshingano zo kurengera no guteza imbere uburenganzira bw'abagore harimo n'ubuzima bwerekeranye n'imyororokere.

[9] Bavuga ko, mu rwego rwo kubungabunga uburenganzira bw'abagore ku buzima bw'imyororokere, ingingo ya 14 (2) y'Amasezerano amaze kuvugwa isaba u Rwanda nk'igihugu

cyayashyizeho umukono kugenzura ishyyirwa mu bikorwa ryayo hatangwa serivisi y'ubuvuzi yo gukuramo inda mu buryo bwemewe n'amategeko kandi buboneye. Bavuga ko ingingo ya 16 y'Amasezerano Nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage yemera ko buri muntu wese afite uburenganzira bwo kugira ubuzima bwiza mu buryo bushoboka, haba ku birebana n'imitekerereze ndetse no ku mubiri, bityo ikaba inategeka ibihugu gufata ingamba zishoboka mu kurengera ubuzima bw'abaturage babyo.

[10] Bavuga ko ari kimwe kandi n'ibiteganywa mu Masezerano Nyafurika arengera abana aho ateganya ko buri mwana afite uburenganzira bwo kugira imimerere ishoboka myiza yo ku buzima bwo ku mubiri, mu mutwe ndetse no mu myemerere, ibi bakabibanisha n'ibiteganywa n'amasezerano mpuzamahanga ku burenganzira bw'umwana asaba za leta gushyiraho ubufasha bushoboka kugira ngo buri mwana wese avurwe neza.

[11] Bakomeza bavuga ko uburenganzira bwo kugira ubuzima bwiza kandi bushimangirwa mu ngingo ya 12 (1) y'Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'Ubukungu, Imibereho Myiza n'Umuco (ICESCR), iteganya ko buri muntu wese afite uburenganzira bwo kugira ubuzima bwiza ku rwego rwo hejuru rushoboka ku mubiri ndetse no mu mutwe.

[12] Bavuga ko n'ubwo nta gisobanuro cy'ijambo « ubuzima bwiza » Itegeko Nshinga ritanga, Ishami ry'Umuryango w'Abibumbye ryita ku Buzima (WHO) ryatanze icyo gisobanuro nk'imimerere yuzuye ku mubiri, mu bwenge no mu mibereho myiza. Bakomeza bavuga ko bashingiye kuri icyo gisobanuro, kugira imibereho myiza bitavuze kuba nta byorezo cyangwa indwara biriho, ko ahubwo mu mibereho myiza harimo n'ibindi byose nk'ubuzima bw'imyorokere, guhabwa serivisi zerekeranye n'ubuvuzi bw'abagore, kuboneza urubyaro ndetse no kugira amakuru ku bijyanye na serivisi y'ubuzima yo gukurirwamo inda mu buryo bwemewe n'amategeko kandi bwizewe.

[13] Bavuga kandi ko amategeko mpuzamahanga yerekeye uburenganzira bwa muntu ateganya ko, mu rwego rwo kuzamura ireme ry'ubuzima bwiza, ibihugu bifite inshingano zo gushyiraho serivisi zerekeranye n'ubuzima bw'imyorokere zujuje ubuziranenge. Kugira ngo iyo nshingano yubahirizwe, bigasaba ko haboneka amakuru ahagije ku bijyanye n'ubuzima bw'imyorokere, ko habaho ibigo byita ku buzima bw'abantu, ko abakozi babihugurirwa kandi bakaba abanyamwuga, ndetse hakaboneka n'imiti y'ingenzi.

[14] Ku birebana n'uburenganzira ku buzima bwiza kandi, abahagarariye GLIHD bavuga ko Komite ikurikirana iyubahirizwa ry'amasezerano mpuzamahanga yerekeye uburenganzira mu by'ubukungu, imibereho myiza n'umuco yasesenguye ingingo ya 12 y'ayo masezerano ari nayo ihuye n'iya 21 y'Itegeko Nshinga, isanga kugira ngo ubwo burenganzira bwubahirizwe bisaba ibintu by'ingenzi bikurikira:

- Kuba abaturage bashobora kugera ku rwego rw'ubuvuzi (accessibility), ibi bigasobanura ko serivisi y'ubuvuzi ndetse n'imiti bigomba kubonekera ku rwego rw'ubuvuzi rwegerejwe abaturage.
- Kuba nta vangura (*non-discrimination*) mu guhabwa serivisi z'ubuvuzi. Ibi bisobanuye ko imiti na serivisi z'ubuvuzi bigomba guhabwa buri wese nta vangura ribayeho cyane cyane hitabwa ku matsinda y'abantu basanganywe ibibazo bitandukanye byaba ibijyanye n'amategeko cyangwa ibigaragarira buri wese (*the most vulnerable and marginalized sections of the population, in law or in facts*). Urugero: abana basambanyijwe, abagore n'abakobwa bafashwe ku ngufu n'abandi.
- Kuba abaturage bose bashobora kwishyura serivisi z'ubuvuzi (*affordability*). Ibi bisobanuye ko ibikorwa remezo by'ubuvuzi, imiti na serivisi z'ubuvuzi bigomba kuba bishobora kugerwaho na buri wese mu bushobozi bwe.

[15] Bashingiye ku bimaze kuvugwa haruguru, abahagarariye GLIHD basobanura ko kuba abana b'abakobwa basambanyijwe bagaterwa inda, itegeko ribategeka guhabwa serivisi yo gukurirwamo inda na muganga gusa, bibangamiye uburenganzira bwabo kuko uyu muganga aba ku bitaro gusa kandi abo bana nta bushobozi ndetse nta n'igihe cyo kugerayo bafite. Bongeraho ko kuba abandi baturage babonera serivisi z'ubuvuzi ku kigo nderabuzima aricyo cyegerejwe abaturage, ariko abagore n'abana b'abakobwa bemerewe gukuramo inda kubera impamvu zitandukanye nko gufatwa ku ngufu, gushyingirwa ku gahato n'izindi, bo bagategekwa kubonera iyo serivisi ku bitaro, nabyo bibangamiye uburenganzira bwabo ku buzima bwiza.

[16] Barangiza bavuga ko ibyategetswe mu ngingo ya 125, igika cya 2 n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange ko serivisi y'ubuvuzi yo gukuriramo inda umugore cyangwa umukobwa ubyemerewe n'amategeko bikorwa n'abaganga bemewe na Leta gusa bibangamiye uburenganzira bw'abagore n'abana b'abakobwa bwo kugira ubuzima bwiza buteganywa n'Itegeko Nshinga ndetse n'Amasezerano Mpuzamahanga kuko bituma iyo serivisi y'ubuvuzi itaboneka cyangwa ngo igerweho uko bikwiye kubera ko muganga wemewe na Leta aba ku bitaro gusa, mu gihe urwego rw'ubuvuzi rwegerejwe abaturage ari Ikigo Nderabuzima n'amashami yacyo (*postes de santé*). Bavuga ko kuba iyo serivisi idatangirwa ku rwego rw'ubuzima rwegerejwe abaturage kuko aho nta baganga bahaba, ngo ibe yatangwa n'abaforomo n'ababyaza, bituma iyo serivisi itaboneka bigaca intege abagore n'abana b'abakobwa bigatuma bakuramo inda mu buryo butizewe kandi babyemerewe n'amategeko, bikongera n'ibyago ku bagore n'abakobwa kuko bashobora gupfa babyara.

[17] Uhagarariye Leta y'u Rwanda avuga ko ingingo ya 123¹ n'ya 124² z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, zitangira zigaragaza ihame ry'uko gukuramo inda cyangwa gukuriramo undi muntu inda bibujijwe kandi ko ari icyaha, ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'iryo Tegeko zo zikaba zerekana ibihe bidasanze (*exceptions*) umugore cyangwa umukobwa yemerewe gukurwamo inda na muganga wemewe na Leta.

[18] Akomeza avuga ko ahereye ku biteganywa n'ingingo ya 12 y'Itegeko Nshinga iteganywa ko umuntu wese afite uburenganzira bwo kubaho, ko ntawe ushobora kuvutswa ubuzima mu buryo bunyuranyije n'amategeko, no ku ya 21 iteganywa ko abanyarwanda bose bafite uburenganzira bwo kugira ubuzima bwiza, asanga ntaho binyuranyije n'ibiteganyijwe mu ngingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganywa ibyaha n'ibihano muri rusange, kubera ko ibijyanye n'uburenganzira bwo kubaho birengerwa n'ingingo ya 123 n'ya 124 z'iryo tegeko.

[19] Uhagarariye Leta avuga kandi ko ku bijyanye n'Amasezerano Mpuzamahanga, uruhande rurega rushingiraho, akwiye gukurikizwa nk'andi mategeko kuko yemejwe n'u Rwanda, ariko ko amwe muri yo ateganywa ko gukuramo inda biterwa n'impamvu zidasanzwe. Atanga urugero rw'ingingo ya 14, igika cya 2, agace ka (c), y'Amasezerano y'inyongera ku masezerano Nyafurika ku burenganzira bwa muntu n'ubw'abaturage yerekeye uburenganzira bw'umugore yashyiriweho umukono i Maputo ku wa 11 Nyakanga 2003 iteganywa ko mu gihe abagore babyifuza bemerewe gukuramo inda babifashijwemo

¹ Iteganywa ko umuntu wese wikuyemo inda, aba ahoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'umwaka umwe (1) ariko kitarenze imyaka itatu (3) n'ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi ijana (100.000 Frw) ariko atarenze ibihumbi magana abiri (200.000 Frw).

² Iteganywa ko umuntu wese ukuramo undi muntu inda, aba ahoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'umwaka umwe (1) ariko kitarenze imyaka ibiri (2) n'ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi magana atatu (300.000 Frw) ariko atarenze ibihumbi magana atanu (500.000 Frw) cyangwa kimwe gusa muri ibyo bihano. Iyo gukuramo inda biteye ubumuga byemejwe n'umuganga ubifitiye ububasha, uwakoze icyaha ahanishwa igifungo kitari muni y'umwaka makumyabiri (20) ariko kitarenze imyaka makumyabiri n'itanu (25). Iyo gukuramo inda biteye urupfu, uwakuriwemo inda yaba yabyemeye cyangwa atabyemeye, uwakoze icyaha ahanishwa igifungo cya burundu.

[25] Ku bivugwa na Minisiteri y'Ubuzima, GLIHD ivuga ko yemeranya nayo ku birebana n'imfu n'ubumuga bikomoka ku gukuramo inda bikozwe mu buryo butizewe kandi ko byakumirwa mu gihe bikozwe n'abantu babifitiye ubumenyi. GLIHD ivuga ko ibi bishyigikira igitekerezo cyayo cy'uko ububasha bwahawe abaganga b'inzobere bwo gukuramo inda mu buryo bwizewe kandi bwubahirije amategeko, bwahabwa abakora mu bigo nderabuzima hagamijwe kwirinda izo mfu mu gihe abakeneye gukurirwamo inda badashoboye kubona abaganga b'inzobere kubera ubuke bwabo. Ku bw'ibyo isaba ko Minisiteri y'Ubuzima yaha amahugurwa abakora mu bigo nderabuzima mbere y'uko batangira gutanga izo serivisi, dore ko benshi muri bo bahuguwe ku birebana n'ubuvuzi burebana n'ingaruka zo gukuramo inda.

[26] GLIHD isobanura ko ibikorwa bigamije gukemura ibibazo bikomoka ku gukuramo inda bigizwe ahanini no gutanga ubuvuzi bwihutirwa, gutanga inama ku birebana n'igihe cyo gukurikiza umwana hagamijwe kwirinda gusama mu buryo butateguwe ku buryo byatuma habaho kongera gukuramo inda mu buryo butizewe. Ivuga ko kuba Ibitaro by'Akarere bifite abaganga b'inzobere bake, umurwayi ashobora kumara amasaha arenze abiri mbere yo gusuzumwa, ariyo mpamvu Minisiteri y'Ubuzima ikwiye guhugura abaforomo n'ababyaza ku birebana no gukuramo inda akaba aribo bajya batanga iyo serivisi.

[27] Ku birebana n'ibikoresho, GLIHD ivuga ko hari ibigo nderabuzima byo mu Ntara y'Iburengerazuba no mu Ntara y'Amajyepfo bifite ibikoresho byifashishwa mu gusuzuma uko umwana ameze mu nda ya nyina byatanzwe na Minisiteri y'Ubuzima ifatanyije na *Belgian Development Agency* (ENABEL). Naho ibikoresho byifashishwa mu gupima ubwoko bw'amaraso (*Blood group*) na *rhésus* nabyo biri mu bihabwa ibigo nderabuzima nk'uko bikubiye mu byiciro bya serivisi ibyo bigo bitanga byemejwe na Minisiteri y'Ubuzima. Ivuga kandi ko hari ibigo nderabuzima nk'icya Bigogwe mu Karere ka Nyabihu n'icya Gikonko mu Karere ka Gisagara byamaze kubona ibikoresho nkenerwa ku buryo umuntu ashobora kuhabonera serivisi nk'izitangirwa mu bitaro.

[28] Ku birebana n'ubufasha mu mategeko butangwa na Isange *One Stop Centre* ikorera ku rwego rw'Ibitaro, GLIHD ivuga ko ibyo ntaho biteganyijwe mu Iteka rya Minisitiri, ko uretse n'ibyo hari amakuru yizewe yatanzwe n'Urwego rw'Igihugu rw'Ubugenzacyaha, *Rwanda Bureau of Investigation* (RIB) ko hari gahunda yo kugeza izo serivisi ku rwego rw'ibigo nderabuzima.

[29] Ku kirego cyatanzwe na GLIHD, HDI, inshuti y'urukiko, ivuga ko n'ubwo hatewe intambwe mu birebana n'amategeko, u Rwanda rugifite imbogamizi nyinshi mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange mu gufasha abagore n'abakobwa gukuramo inda mu buryo bwizewe kandi bwemewe n'amategeko, kuko hashingiwe kuri iryo Tegeko no ku Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019, abaganga bemewe na Leta bonyine aribo bemerewe gukuriramo abantu inda mu buryo bwizewe kandi bwemewe n'amategeko, abandi bashinzwe ubuzima bw'imyororokere nk'ababyaza cyangwa abaforomo bo bakaba batabyemerewe.

[30] Igaragaza ko mu Rwanda abaganga ari bake kuko imibare iheruka gutangazwa na Minisiteri y'Ubuzima yerekana ko abaganga bakorerwa mu mavuriro ya Leta n'ayigenga ari 709 gusa, bivuze ko umuganga umwe yita ku baturage 15.510, kandi muri bo abemera gukuriramo abantu inda bakaba baherereye mu Mujyi wa Kigali no mu nkengeri zawo gusa. Ivuga ko iri tegeko rituma abashobora kubona serivisi zo gukuramo inda ari abagore bafite ubushobozi bwo kubona umuganga cyangwa bafite amikoro yo kuriha ingendo cyangwa amafaranga yo kwishyura kwa muganga. Ivuga kandi ko mu bindi bihugu, abakozi bashinzwe ubuzima batari abaganga bahuguwe, batanga serivisi zo gukuramo inda mu buryo bwizewe kandi bagakurikirana abarwayi nyuma yo kubaha iyo serivisi. Byongeye kandi n'amabwiriza mpuzamahanga y'ubuvuzi, na yo yemera ko abatanga serivisi z'ubuzima zoroheje bashobora kandi bakwiye kwemererwa gutanga serivisi zo gukuramo inda.

[31] Ikomeza isobanura ko kubera inzitizi zibangamira gukuramo inda mu buryo bwizewe kandi bwemewe n'amategeko, abagore n'abakobwa benshi mu Rwanda bakuramo inda mu buryo butizewe bigashyira ubuzima bwabo mu kaga. Itanga urugero rwa raporo yavuze ko inda zirenga kimwe cya kabiri zikurwamo mu Rwanda, zivanwamo mu buryo butizewe bikozwe n'abantu batabihuguwemo, nk'abavuzi ba gakondo, cyangwa na ba nyir'ubwite. Ivuga ko abagore bo mu cyaro bafite amikoro make aribo bari ku gipimo cyo hejuru cya 74% cy'abakuramo inda muri bene ubwo buryo, ugereranyije na 15% by'abagore bafite amikoro batuye mu Mujyi wa Kigali. Inagaragaza ko 40% by'inda zivanwamo ziteza ibibazo, muri zo 67% zakuwemo na ba nyir'ubwite, naho 61% zikurwamo n'abavuzi ba gakondo. Ivuga kandi ko n'ubwo nta mibare ihari igaragaza abana b'abakobwa bakuramo inda mu buryo butizewe mu Rwanda, Leta yasohoye raporo yerekana ko inda zitateganyijwe mu rubyiruko ari ikibazo gikomeye, iyo nayo ikaba ari impamvu ishobora gutuma bakuramo inda mu buryo butizewe.

[32] Ikomeza ivuga ko mu Nyandiko y'Umurongo ngenderwaho mu gukuramo inda mu buryo bwizewe, Ishami ry'Umuryango w'Abibumbye ryita ku buzima, World Health Organisation (WHO) ryasanze ibihugu bitagomba gusaba ko hagira undi muntu utanga uburenganzira bwo gukuramo inda usibye umugore bireba n'umukozi wo mu buvuzi umuha iyo serivisi. Isobanura ko WHO ivuga ko gukuramo inda bigomba gukorwa nta bukererwe, cyane cyane iyo ubuzima bw'umugore bubangamiwe haba ku mubiri cyangwa mu mutwe. Iashingira kuri ibyo bisobanuro ivuga ko kubanza kwemererwa n'undi muntu gukuramo inda harimo n'undi muganga bikereza guhabwa ubuvuzi, bikaba byatuma serivisi yo gukuramo inda itangwa igihe kigenwa n'amategeko cyarenze bikagorana, ikiguzi cyo kuyikuramo kikiyongera, ndetse bikaba byanashyira ubuzima bw'umugore mu kaga gakomeye.

[33] Kubera umubare muto w'abaganga bafite ubumenyi mu bijyanye n'ubuzima bw'imyororokere, HDI ivuga ko Komisiyo Nyafurika ishinzwe Uburenganzira bwa Muntu n'ubw'Abaturage yatanze igitekerezo rusange aho isobanura mu buryo burambuye imbibi z'ingingo ya 14 (2) y'Amasezerano y'i Maputo, yemera ko hari umubare muto w'abaganga bahuguwe, bityo ihamagarira ibihugu biyahuriyeho guhugura abatanga serivisi z'ubuzima zoroheje nk'ababyaza n'abandi bashinzwe ubuzima kugira ngo babashe gukuriramo abantu inda mu buryo bwizewe. Ubwo buryo nibwo butuma serivisi yo gukuramo inda ku bayikeneye itangwa vuba kandi ihenduka kuko itangirwa ku rwego rw'ibanze (Ibigi nderabuzima) aho abayikeneye batuye. Inatanga ingero z'Ibihugu muri Afurika nka Etiyopiya, Kenya, Afurika y'Epfo, Mozambique, Ghana, Senegali na Burukina Faso byemerera abatanga serivisi z'ubuzima zoroheje gukuriramo abantu inda, hakoreshajwe uburyo bwo koza nyababyeyi mu gihembwe cya mbere n'imiti ikuramo inda.

[34] Ku birebana na serivisi zitangwa n'ababyaza n'abaforomo, HDI isobanura ko kuba abaforomo, ababyaza n'abafasha b'abaganga mu Rwanda bemerewe gutanga ubuvuzi ku mugore nyuma yo gukuramo inda, ari bwo buvuzi bwa ngombwa butangwa iyo umugore ahuye n'ibibazo biterwa no gukuramo inda mu buryo butizewe cyangwa mu gihe inda itavuyemo mu buryo bwuzuye bifashishije uburyo bwo koza nyababyeyi mu gihembwe cya mbere kuva umugore asanye, nta mpamvu abo bakozi baboneka ku kigo nderabuzima batakwemererwa no gutanga serivisi zo gukuramo inda. HDI irangiza ivuga ko Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru ritari rikwiye kubakura mu bagomba gutanga iyo serivisi.

UKO URUKIKO RUBIBONA

Ku bijyanye n'uburenganzira bwo kubaho (right to life) buteganywa n'ingingo ya 12 y'Itegeko Nshinga

[35] Ingingo ya 12 y'Itegeko Nshinga, iteganya ko umuntu wese afite uburenganzira bwo kubaho, ko ntawe ushobora kuvutswa ubuzima mu buryo bunyuranyije n'amategeko. Ubu burenganzira tubusanga no mu masezerano mpuzamahanga anyuranye, harimo Itangazo mpuzamahanga ryerekeye

uburenganzira bwa muntu (*Universal Declaration of Human Rights*)⁴, Amasezerano mpuzamahanga mu by'imbenezamubano na politiki (*International covenant on civil and political rights*)⁵, Amasezerano nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage (*African charter on human and people's rights*)⁶, Amasezerano y'ibihugu by'Uburayi ku burenganzira bwa muntu (*European Convention on Human Rights*)⁷.

[36] Mu rwego rwo gushyira mu bikorwa Amasezerano y'Inyongera ya Maputo ku Masezerano Nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage, aho mu ngingo yayo ya 14.2(c), ibihugu byayashyizeho umukono harimo n'u Rwanda byiyemeje gufata ingamba zo kurinda uburenganzira bw'igitsina gore bwo gukuramo inda mu bihe biteganywa muri iyo ngingo⁸, mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, Leta y'u Rwanda yashyizemo ingingo ya 125 iteganya igihe nta buryozwacyaha bubaho ku wakuyemo inda⁹. Mu rwego rwo kugera kuri iyo ntego yo gufasha uwahuye n'ikibazo, mu gika cya kabiri cy'iyi ngingo n'icya gatatu cy'ingingo ya 126, umushingamategeko yateganyije ko gukuramo inda ku bari mu byiciro biteganyijwe muri izo ngingo bikorwa na muganga wemewe na Leta gusa. Ubwo buryo Umushingamategeko akaba yarabuhisemo kugira ngo ikigamijwe muri izo ngingo kigerweho neza nta zindi ngorane zivutse, n'izavuka zikabona uko zikemurwa mu buryo bwihuse mu rwego rwo kurengera ubuzima bw'abahabwa iyo serivisi nk'uko Minisiteri y'Ubuzima yabigaragaje mu nyandiko iri muri dosiye.

[37] Ishingiye kuri ubwo buryo Umushingamategeko yahisemo ko gukuramo inda umugore cyangwa umwana w'umukobwa ubyemerewe bikorwa na muganga wemewe na Leta gusa, GLIHD yatanze ikirego isaba ko ingingo ya 125, igika cya kabiri n'iya 126, igika cya gatatu, z'Itegeko ryavuzwe haruguru zibiteganywa zakurwaho ivuga ko zibangamiye uburenganzira bwo kubaho buteganywa n'ingingo ya 12 y'Itegeko Nshinga. Mu gukemura icyo kibazo, Urukiko rurasanga ari ngombwa kubanza gusobanura icyo ubwo burenganzira buvuga, no kureba niba koko, kuba muganga wemewe na Leta ariwe wenyine wemerewe gutanga serivisi yo gukuramo inda bibangamiye uburenganzira bwo kubaho ku bakeneye iyo serivisi.

[38] Mu gusobanura uburenganzira bwo kubaho burengerwa na Leta, Urukiko rw'Ibihugu by'Uburayi rushinzwe kurengera Uburenganzira bwa Muntu (*European Court of Human Rights*), mu rubanza rwa *Centre for Legal Resources on behalf of Valentin Câmpeanu c. Romania*¹⁰, rwasobanuye ko ingingo ya 2§1 y'Amasezerano y'Ibihugu by'Uburayi yerekeye uburenganzira bwa Muntu idategeka ibihugu kwirinda icyatuma ababituyemo bapfa mu buryo budasobanutse gusa, ko ahubwo inategeka ibyo bihugu gufata ingamba za ngombwa mu rwego rwo kurinda ubuzima bwabo. Mu rubanza rwa Öneri Yıldız

⁴ Article 3 of the Declaration reads: everyone has the right to life, liberty and security of person.

⁵ Article 6, 1° of the Covenant reads: every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

⁶ Article 4 of Charter stipulates: human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

⁷ Article 2§1 of the Convention reads: everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

⁸ States Parties shall take all appropriate measures to: [...] c. 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.

⁹ 1° kuba utwite ari umwana; 2° kuba uwakuriwemo inda yarakoreshejwe imibonano mpuzabitsina ku gahato; 3° kuba uwakuriwemo inda yarayitwaye nyuma yo kubanishwa n'undi nk'umugore n'umugabo ku gahato; 4° kuba uwakuriwemo inda yaratewe inda n'uwo bafitanye isano ya hafi kugera ku gisanira cya kabiri; 5° kuba inda ibangamiye ubuzima bw'utwite cyangwa ubw'umwana atwite. ⁹ (Ibi biteganywa n'ingingo ya 125, igika cya mbere, y'Itegeko n° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange).

¹⁰ Case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Application n° 47848/08, para.130. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.

c. Turquie¹¹, Urukiko rwasobanuye ko uburenganzira ku buzima buvugwa mu ngingo ya 2 butagarukira gusa ku mfu z'abantu zikomoka ku bakozi ba Leta bakoresha imbaraga z'umurengera, ahubwo inareba inshingano ibihugu bifite zo gufata ingamba za ngombwa mu rwego rwo kurinda ubuzima bw'abantu babituyemo. Iyo nshingano igomba kumvikana nk'igomba kubahirizwa mu bikorwa byose bya buri muni mu gihe hari icyashyira uburenganzira ku buzima mu kaga, cyane cyane nk'ibikorwa by'inganda bikunze gukurura ibyago, urugero nk'ibikorwa byo kubyaza umusaruro ubuhunikiro bw'imyanda.

[39] Mu gusobanura nanone icyo ijamba ubuzima rishatse kuvuga, mu rubanza rwaciwe n'Urukiko rw'Ikirenga rw'Ubihinde haburana uwitwa Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and others on 13 January, 1981,¹² rushingiye ku ngingo ya 21 y'Itegeko Nshinganyirye rw'Ubihinde, iteganya ko ntawe ushobora kwamburwa ubuzima bwe n'ukwishyira ukizana kwe uretse mu gihe byaba bikozwe mu buryo buteganyijwe n'amategeko (*No person shall be deprived of his life or personal liberty except according to procedure established by law*), rwasobanuye ko ijamba ubuzima rikwiye kumvikana nk'ikintu kirenze kubaho bisanzwe, ko kuvutsa umuntu ubuzima bigera no kumubangamira mu buryo bwose bwatuma yisanzura mu mibereho ye. Rwasobanuye ko itegeko ribuzza konona umubiri uwukuraho kimwe mu bice biwugize ari nabyo bituma umuntu abaho agashobora kubana n'abandi.

[40] Mu bisobanuro byatanze kandi n'Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira bwa muntu (*Human Right Committee*), ubwo kasobanuraga ingingo ya 6 y'Amasezerano mpuzamahanga mu by'imbonezamubano na politiki (*International covenant on civil and political rights*) yavuzwe haruguru ivuga ku burenganzira bwo kubaho, kasobanuye ko uburenganzira bwo kubaho ari ubutuma ntacyo umuntu yakwikanga cyamukururira urupfu rudasanze cyangwa rw'imburagihe, kandi akubaho yumva afite agaciro. Kavuze ko ingingo ya 6 iha ubwo burenganzira abantu bose nta vangura iryo ariryo ryose kugeza ndetse no ku bantu bakatiwe nyuma yo guhamwa n'ibyaha by'ubugome. Kabivuze muri aya magambo: *the right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.*¹³

[41] Nanone mu gusobanura icyo uburenganzira bwo kubaho bishatse kuvuga, Komisiyo Nyafurika y'uburenganzira bwa Muntu n'ubw'Abaturage, ubwo yatangaga ibisobanuro ku ngingo ya 4 y'Amasezerano Nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage¹⁴, yavuze ko ubwo burenganzira bugomba kumvikana mu buryo bugari, aho Leta ifite inshingano zo kurinda abaturage bayo

¹¹ *Case of Öneriyildiz v. Turkey, Application no. 48939/99, para. 71. In this connection, the Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. [...] The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites.*

¹² *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & ORS, P. 12. By the term life as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. N.B.: Aya magambo yavuye mu rubanza rwomuri USA, Munn v. Illinois, akoresha mu rubanza Kharak Singh v. State of Uttar Pradesh n'Urukiko rw'Ikirenga India mu rubanza Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & ORS narwo rurayakoresha rwemeranya n'umucamanza wo muri USA. (reba kuri p.12, <https://indiankanoon.org/doc/78536/>).*

¹³ *Human Rights Committee General, Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, §3.*

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf. Consulté le 02/12/2021.

¹⁴ *Supra*, réf. 6.

ku buryo ntacyahungabanya ubuzima bwabo bitewe n'ibikorwa by'abandi bantu cyangwa se kutagira igikorwa mu gihe bugarijwe n'akaga. Izo ngamba ni nko kurinda ibidukikije, gutanga ubufasha mu gihe abaturage bugarijwe n'ibiza, amapfa cyangwa indwara z'ibyorezo, no gutanga ubundi butabazi bwihutirwa¹⁵.

[42] Urukiko rurasanga uburenganzira bwo kubaho ari uburenganzira shingiro bw'ikiremwanuntu ubundi burenganzira bwose bushingiyeho, ingingo ya 12 y'Itegeko Nshinga ikaba iteganya ko ari uburenganzira bugomba kurindwa ku buryo nta muntu ushobora kubuvutswa mu buryo bunyuranyije n'amategeko. Mu rwego rwo kurinda ubwo burenganzira nk'uko Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira bwa Muntu kabitanzeho icyifuzo¹⁶, mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, hateganyijwemo ingingo ibuza kuba umuntu yakwambura undi ubuzima, aho yateganyije igihano kiremereye ku wabikora.¹⁷ Umushingamategeko yashatse kurengera ubwo burenganzira nanone ashyira muri iryo tegeko ingingo zibuza gukuramo inda¹⁸, kubera ko umwana wasamwe nawe aba afite uburenganzira mbonezamubano bwemererwa buri muntu¹⁹, gusa akaba yarashyizeho irengayobora yemera ko kuvanamo inda bishoboka mu bihe bivugwa mu ngingo ya 125, igika cya mbere, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange²⁰, kandi nabwo bigakorwa n'abaganga babifitiye ubumenyi kandi bafite ibyangombwa byose nkenerwa kugira ngo bidashyira mu kaga ubuzima bw'ukeneye gukuramo inda ku buryo bwanahatakarira.

[43] Ku bijyanye n'ingorane zikunze kuvuka mu gukuramo inda, ubushakashatsi bukubiye mu nyandiko yiswe "*Abortion incidence and postabortion care in Rwanda*" bwakozwe na Dr Basinga Paulin na begenzi be, bugaragaza ko mu mwaka wa 2009, mu Rwanda hari abagore n'abakobwa 25.727 bitaweho n'abaganga nyuma yo kugira ibibazo bikomeye bifitanye isano no gukuramo inda, 40 % byabo bikaba byarabaye ngombwa ko bakurikiranwa n'umuganga (*medical doctor*) kubera ibibazo bikomeye. Muri iyo nyandiko, abahanga bayikoze bavuga ko ingorane zivuka mu gukuramo inda zituruka ku bunararibonye buke bw'abatanga serivisi yo gukuramo inda cyangwa no kuba iyo serivisi itangirwa ahantu hadatunganye (*Complications may result, however, from procedures conducted by trained providers who have little experience or who work in unhygienic settings*) [...]. Basobanura ko mu Rwanda abaganga bakoresha uburyo bukurikira mu gukuramo inda: *surgical method (evacuation dilation and curettage), oral and vaginal administration of hormonal medication n'ubwa manual vacuum aspiration (MVA)*. Bavuga ko uburyo bukunze gukoreshwa n'Ibitaro by'Uturere kimwe n'Ibitaro by'Icyitegererezo (*district and referral hospitals*) ari ubwa *surgical method (evacuation dilation and curettage)*. Nyuma yo kubona ibibazo bivuka mu gukuramo inda, basaba ubuyobozi ko uburyo bwo kubikora byemewe n'amategeko bwanozwa, urugero hakemezwa ko muganga (*medical*

¹⁵ *Commission Africaine des Droits de l'Homme et des Peuples, Observation Générale n° 3 sur la Charte africaine des droits de l'homme et des peuples: Le droit à la vie (Article 4), §41 Le droit à la vie devrait être interprété au sens large. L'État a pour obligation positive de protéger les personnes et les groupes contre des risques réels et immédiats pour leur vie dus à l'action ou à l'inaction de tierces parties. Dans les cas où le risque ne procède pas d'une intention malveillante ou autre, les actions de l'État peuvent ne pas relever de la justice pénale. Ces actions comprennent, notamment, des mesures de prévention pour conserver et protéger l'environnement naturel et des interventions humanitaires en cas de catastrophes naturelles, de famines, des flambées de maladies infectieuses ou d'autres urgences.*

¹⁶ *Idem. §4. Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. It lays the foundation for the obligation of States parties to respect and to ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.*

¹⁷ Ingingo 107 y'iryo Tegeko iteganya ko umuntu wicaundi abishaka aba akoze icyaha, ko iyo abihamijwe n'urukiko ahanishwa igifungo cya burundu.

¹⁸ Ingingoya 123 n'ya 124 z'Itegeko N° 68/2018 ryoku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.

¹⁹ Ingingo ya 10 y'Itegeko N° 32/2016 ryo ku wa 28/08/2016 rigenga abantu n'umuryango igira iti: Umwana wasamwe afite uburenganzira mbonezamubano bwemererwa buri muntu apfa gusa kuvuka ari muzima. Umwana wasamwe afatwa nk'uwavutse igihe cyose hagamijwe inyungu ze.

²⁰ *Idem supra. réf. numero 9.*

doctor) ari we wenyine wemererwa kugena ko gukuramo inda bikorwa, kandi hakajyaho amabwiriza yerekana abakozi bo mu buvuzi bemerewe gutanga bene iyo serivisi n'ibigo by'ubuvuzi igomba gutangirwamo²¹.

[44] Ku birebana n'uburyo bwa surgical method nka bumwe mu bukunze gukoreshwa mu Rwanda nk'uko bimaze kugaragazwa haruguru, Umuryango mpuzamahanga wita ku buzima (WHO), mu nyandiko yitwa safe abortion: technical and policy guidance for health system, uvuga ko ari uburyo bubabaza cyane, ugatanga inama ko aho ubwo buryo bwaba bugikoreshwa hakorwa ibishoboka byose bugasimbuzwa ubwa *manual vacuum aspiration* mu rwego rwo kunoza uburyo abagore bakenera iyo serivisi bitabwaho, ko aho ubwo buryo butarashoboka, *surgical method* yakorwa n'abakozi babihuguriwe bihagije kandi bakagenzurwa neza²². Naho Patrick Adams mu nyandiko ye yitwa in Hospital across Africa, A Lack of post-abortion care, avuga ko ubushakashatsi bwagaragaje ko uburyo bwa dilation and curetage aribwo bufite ingaruka nyinshi, budatanga umusaruro kandi bubabaza ugereranyije n'uburyo bwa manual vacuum aspiration, ikindi kandi kuba busaba ko bukoreshwa n'umuganga ufite uburyo ashobora guhita abaga umugore cyangwa umukobwa wakuyemo inda bibaye ngombwa, burahenze cyane²³.

[45] Urukiko rurasanga ibimaze kuvugwa haruguru bigaragaza ko kwemerera ubu ababyaza n'abaforomo cyangwa abaforomokazi gukuramo inda kandi bigakorerwa ku bigo nderabuzima nk'uko uwatanze ikirego abyifuzwa, bishobora gushyira mu kaga ubuzima bw'abagore n'abakobwa bakenera guhabwa iyo serivisi kurusha uko byabafasha. Kubibemerera bisaba ko baba barahawe amahugurwa yihariye, hakajyaho n'amabwiriza yihariye abasaba gukuramo inda bakoresheje uburyo bwa vacuum aspiration na medical abortion, ndetse n'ibigo nderabuzima bakoreramo bigahabwa ibikoresho bijyanye n'iyiyo serivisi. Iki ariko akaba atari ikibazo cy'amategeko, ahubwo ari ikirebana n'ingamba zigomba gufatwa n'inzego zibishinzwe mu rwego kunoza imitangire ya serivisi yo gukuramo inda bigendanye n'amikoro y'Igihugu.

[46] Ku bivugwa n'urega bijyanye no guhugura abatanga serivisi z'ubuzima zoroheje nk'ababyaza n'abandi bashinzwe ubuzima kugira ngo babashe gukuriramo inda ababikeneye mu buryo bwizewe kandi bikorewe mu bigo nderabuzima, Urukiko rusanga, n'ubwo ibyo byakumvikana harebwe ingorane n'ibibazo bishobora kuvuka mu gutanga bene iyo serivisi nk'uko byasabanuwe haruguru, ariko bitakemurirwa mu kirego gisaba gukuraho ingingo z'amategeko ziteganywa ko iyo serivisi itangwa na muganga wemewe na Leta gusa, mu yandi magambo, ubifitiye ubushobozi n'ubumenyi, ahubwo ari ibyagezwa ku nzego zishinzwe gushyiraho ingamba mu bijyanye n'ubuzima, kuko kugeza ubu izo nzego zasanze muganga wemewe na Leta ariwe ufite ubumenyi buhagije bwo gutanga serivisi yo gukuramo inda mu buryo bwizewe. Gusaba Urukiko gutegeka ibigomba gukorwa mu rwego rw'ingamba na politiki zirebana n'urwego rw'ubuzima, byaba binyuranyije n'ihame ry'uko inzego z'ubutegetsi za Leta zitandukanye kandi zigenga zikanubahana (*separation of powers*)²⁴. Uyu akaba ari nawo murungo watanze n'uru Rukiko mu manza n° RS/SPEC/0001/16/CS, Akagera Business Group²⁵, na RS/INCONST/SPEC 00001/2019/SC²⁶.

²¹ Paulin Basinga, Ann M. Moore, Susheela D. Singh, Elizabeth E. Carlin, Francine Birungi, and Fidele Ngabo, *Abortion Incidence and Postabortion Care in Rwanda*, in *Rwanda Medical Journal/Revue Médicale Rwandaise*, June 2012, Vol. 69 (2).

²² *Safe abortion: technical and policy guidance for health systems Second edition*, p. 41, https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf

²³ Patrick Adams mu nyandiko ye yitwa in *Hospital across Africa, A Lack of post-abortion care*, NPR (Mar 2021) <https://www.npr.org/sections/goatsandsoda/2021/03/09/936206516/in-hospitals-across-africa-a-lack-of-post-abortion-care>.

²⁴ Ingingo ya 61 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavugururwe mu 2015.

²⁵ Urubanza RS/SPEC/0001/16/CS, Akagera Business Group, para. 29, rwaciwe ku itariki ya 23/09/2016.

²⁶ Urubanza RS/INCONST/SPEC 00001/2019/SC, MURANGWA Edward, para. 102, rwaciwe ku itariki ya 29/11/2019.

[47] Hashingiwe ku bisobanuro byose byatanzwe, Urukiko rurasanga GLIHD yatanze ikirego itarashoboye kurugaragariza uburyo kuba ingingo ya 125, igika cya 2 n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru ziteganywa ko serivisi yo gukuramo inda ku bagore no ku bana b'abakobwa babyemerewe itangwa na muganga wemewe na Leta gusa, bibangamiye uburenganzira bwo kubaho buteganywa n'ingingo ya 12 y'Itegeko Nshinga. Kubera iyo mpamvu, ikirego cyayo kuri iyi ngingo kikaba nta shingiro gifite.

Ku bijyanye n'uburenganzira bwo kugira ubuzima bwiza (right to good health) buteganywa n'ingingo ya 21 y'Iteko Nshinga

[48] Ingingo ya 21 y'Itegeko Nshinga, iteganywa ko abanyarwanda bose bafite uburenganzira bwo kugira ubuzima bwiza. Ubu burenganzira tubusanga kandi no mu masezerano mpuzamahanga anyuranye, harimo Itangazo mpuzamahanga ryerekeye uburenganzira bwa Muntu (*Universal Declaration of Human Rights*)²⁷, Amasezerano Mpuzamahanga agamije kurandura ivangura iryo ariryo ryose rishingiye ku bwoko yasinyawe mu mwaka wa 1965 (*International Convention on the Elimination of All Forms of Racial Discrimination*)²⁸, Amasezerano Mpuzamahanga arebana n'uburenganzira mu by'ubukungu, imibereho myiza n'umuco (*International Covenant on Economic, Social and Cultural Rights*)²⁹, Amasezerano Mpuzamahanga agamije kurandura ivangura iryo ariryo ryose rikorerwa abagore (*Convention on the Elimination of All Forms of Discrimination against Women*)³⁰, Amasezerano nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage (*African Charter on Human and Peoples' Rights*)³¹.

[49] Itegeko shingiro ryashyizeho umuryango mpuzamahanga w'ubuzima ryatanze igisobanuro cy'ubuzima bwiza ko ari ukuba umuntu yumva ameze neza mu mubiri, mu mitekerereze no mu mibereho ye n'abandi, ko kugira ubuzima bwiza bidasobanuye gusa kuba umuntu yumva atarwaye cyangwa se yumva nta bumuga afite³².

²⁷ Article 25, 1° reads: everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

²⁸ Article 5 (e) (iv) reads: in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... The right to public health, medical care, social security and social services.

²⁹ Article 12 reads: 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.

(b) The improvement of all aspects of environmental and industrial hygiene.

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases.

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

³⁰ Article 11 (1) (f) reads: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: ... The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

Article 12, 1° reads: States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

³¹ Article 16 reads: every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

³² The preamble defines health as state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

[50] Ku bijyanye n'uko uburenganzira ku buzima bwiza bugomba kumvikana, Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira mu by'ubukungu, imibereho myiza n'umuco (*Committee on Economic, Social and Cultural Rights*), ubwo kasobanuraga ingingo ya 12 y'Amasezerano Mpuzamahanga arebana n'ubukungu, imibereho myiza n'umuco yavuzwe haruguru, kanzuye ko uburenganzira buvugwa muri iyo ngingo butagarukira ku buvuzi buboneye gusa, ko ahubwo bugenda bukagera no ku bijyana nabwo nk'amazi meza n'isuku, ibiribwa biteguye neza kandi bifite akamaro, aho gutura heza, gukorera mu mwuka mwiza no kubona inyigisho zirebana n'ubuzima harimo n'uburebana n'imyororokere. Ikindi gikomeme ni uko abaturage bagomba kugira uruhare mu byemezo byose birebana n'ubuzima, haba ku rwego rw'aho batuye, ku rwego rw'igihugu no ku rwego mpuzamahanga.³³

[51] Mu nyandiko yiswe “*Ruling for Access, Leading court cases in developing countries on access to essential medicines as part of the fulfilment of the right to health*” yashyizwe ahagaragara n'Umuryango Mpuzamahanga wita ku buzima (WHO), abahanga bayanditse basobanuye ko kugira ngo byemezwe ko igihugu cyahutaje uburenganzira ku buzima bwiza, ari ngombwa kureba niba icyo gihugu nta bushobozi gifite cyangwa se niba ari ubushake bubura kugira ngo kirangize inshingano cyiyemeje mu ngingo ya 12. Bifatwa ko igihugu cyarenze ku nshingano zacyo iyo nta ngamba za ngombwa cyafashe kugira ngo umuntu wese agire uburenganzira ku buzima bwiza. Ingero zatanzwe n'Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira mu by'ubukungu, imibereho myiza n'umuco, ni ukuba nta politike yashyizweho ituma abantu bese bagira ubuzima bwiza, kutagena ingengo y'imari ihagije, kutagenzura uburyo uburenganzira ku buzima bwiza bwubahirizwa, no kutagira igikorwa mu rwego rwo kugabanya ubusumbane bw'ibikorwa remezo n'izindi serivisi zo mu rwego rw'ubuzima.³⁴

[52] Nk'uko byagarutsweho n'Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira mu by'ubukungu, imibereho myiza n'umuco, kugira ngo uburenganzira ku buzima bwiza bugerweho mu gihugu, ni ngombwa ko ibintu bikurikira by'ingenzi kandi bifitanye isano biba bihari, ariko nanone mu rugero rugendanye n'ubushobozi bwa buri gihugu:

- Kuba mu gihugu hari amavuriro ahagije kandi ubuvuzi bukora neza na serivisi muri ayo mavuriro zitangwa neza (*availability*);
- Kuba umuntu wese ashobora kugera ku mavuriro yose na serivisi ziboneka muri ayo mavuriro nta vangura iryo ariryo ryose (*accessibility*);

³³ CESCR General Comment No. 14: *The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4)*, § 11, the Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels. <https://www.refworld.org/pdfid/4538838d0.pdf>, consulté le 24/11/2021.

³⁴ Hans V. Hogerzeil, Melanie Samson and Jaume Vidal Casanova, “*Ruling for Access Leading court cases in developing countries on access to essential medicines as part of the fulfilment of the right to health*”, World Health Organization Department of Essential Drugs and Medicines Policy Geneva November 2004, p. 11, 12 “In determining which actions or omissions amount to a violation of the right to health, it is important to distinguish between the inability and the unwillingness of a State party to comply with its obligations under Article 12. However, a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations mentioned above. Violations of the obligation to fulfill occur through the failure of states to take all necessary steps to ensure the realization of the right to health. Examples quoted in General Comment No.14 include the failure to adopt or implement a national health policy designed to ensure the right to health for everyone; insufficient expenditure or misallocation of public resources; failure to monitor the realization of the right to health at a national level; and failure to take measures to reduce the inequitable distribution of health facilities, goods and services”. https://www.who.int/medicines/areas/human_rights/Details_on_20_court_cases.pdf?ua consulté le 24/11/2021.

- Kuba mu mavuriro yose na serivisi zitangirwamo harangwa n'imyifatire myiza ikwiye abakozi bo kwa muganga, mu mikorere yabo bakamenya kwita ku muntu wese bitaye ku kuntu ameze, urugero nk'umugore bakamenya uko bamufata, rubanda rugufi, n'ibindi byiciro by'ababagana. Bagomba kandi kugirira ibanga uje abagana, buri gihe bagashishikazwa no gutuma uje abakeneyeho serivisi agira ubuzima bwiza kurushaho (*acceptability*);
- Kuba mu mavuriro hatangirwa serivisi zifite ireme. Ibi bisobanuye ko kuri ayo mavuriro hagomba kuba hari abakozi b'abahanga babyigiye, haboneka imiti myiza n'ibikoresho bigezweho (quality)³⁵.

[53] Ibisobanuro bimaze gutangwa bigaragaza ko:

- mu biranga ubuzima bwiza harimo kuba umuntu yumva ameze neza mu mubiri, mu mitekerereze no mu mibereho ye n'abandi;
- uburenganzira ku buzima bwiza butagarukira ku buvuzi buboneye gusa, ko ahubwo bugenda bukagera no ku bijyana nabwo nk'amazi meza n'isuku, ibiribwa biteguye neza kandi bifite akamaro, aho gutura heza, gukorera mu mwuka mwiza no kubona inyigisho zirebana n'ubuzima harimo n'uburebana n'imyororokere;
- uburenganzira ku buzima bwiza bugendana no kuba mu gihugu gifite amavuriro ahagije kandi atanga serivisi mu buryo bunoze hagendewe ku bushobozi bwa buri gihugu;
- Bifatwa ko igihugu cyarenze ku nshingano zacyo iyo nta ngamba za ngombwa cyafashe kugira ngo umuntu wese agire uburenganzira ku buzima bwiza.

[54] Hashingiwe ku bimaze kuvugwa, Urukiko rurasanga ku bijyanye n'uburenganzira ku buzima bwiza, igihugu gifite inshingano zo gushyiraho politiki, amategeko n'amabwiriza bigenga ibigo by'ubuvuzi bya Leta n'iby'abikorera kugira ngo harengerwe ubuzima bw'abantu. Iyo inzego z'ubuvuzi zihari ndetse n'abakozi bazobereye bakaba bahari nk'uko GLIHD ibyivugira, inshingano z'igihugu ziba zisigaye ni ugusuzuma niba abaturage bose bahabwa serivisi kimwe hakurikijwe amahame yashyizweho, Leta ikaba yagira ibyo ibazwa ari uko ubuzima bw'umuturage bushyizwe mu kaga bitewe ni uko yangiwe guhabwa serivisi iriho kandi yari yemerewe.

[55] Ku bireba uru rubanza, bigaragara ko igihugu cyashyizeho ibitaro bihabwa n'abaganga bashobora gukuriramo inda abagore n'abakobwa mu buryo bunoze. Kuba iyo serivisi itangirwa ku bitaro kandi igatangwa n'abaganga aho gutangirwa ku Bigo Nderabuzima ngo itangwe n'ababyaza cyangwa abafomomo nk'uko uwatanze ikirego abyifuzaga, sibyo byafatwa nko kutubahiriza uburenganzira ku buzima bwiza. Byari gufatwa nko kutubahiriza ubwo burenganzira iyo serivisi iba yemewe n'amategeko ariko idatangwa na mba, itangirwa ahantu hadakwiye, itangwa n'abatabifitiye ubumenyi n'ubushobozi cyangwa byaragaragaye ko abayikinera ari benshi cyane ugereranyije n'abashinzwe gutanga iyo serivisi, ku buryo gutinda kuyihabwa bibagiraho ingaruka.

[56] Urukiko rusanga ahubwo ibikubiye mu ngingo ya 125, igika cya 2 n'ingingo ya 126, igika cya 3, z'itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyaga ibyaha n'ibihano muri rusange, ari zimwe mu ngamba zigamijwe kurengera uburenganzira ku buzima bwiza ku bireba by'umwihariko ubuzima bw'imyororokere, igikorwa cyo gukuramo inda mu bihe bigenwa n'itegeko gishyirwa mu biganza by'umuganga ubifitiye ubumenyi n'ibikoresho bya ngombwa. Nyuma y'ibyo bisobanuro, Urukiko rukaba rusanga GLIHD itarashoboye kurugaragariza uburyo kuba ingingo z'itegeko iregera zarateganyije ko serivisi yo gukuramo inda itangwa na muganga wemewe na Leta gusa binyuranyije

³⁵ CESCR General Comment No. 14: *The Right to the Highest Attainable Standard of Health (Art. 12) Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (Contained in Document E/C.12/2000/4), § 12,*

n'uburenganzira ku buzima bwiza buvugwa mu ngingo ya 21 y'Itegeko Nshinga, bityo ikirego cyayo kuri iyo ngingo kikaba nta shingiro gifite.

2. Kumenya niba ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganyanya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 14 y'Itegeko Nshinga ivuga ku burenganzira bwo kudahunyabanywa ku mubiri no mu mutwe

[57] Mulisa Tom uhagarariye GLIHD n'abamwunganira bavuga ko ibisabwa n'Itegeko riteganyanya ibyaha n'ibihano muri rusange ryavuzwe haruguru ko serivisi y'ubuvuzi yo gukurirwamo inda mu buryo bwemewe n'amategeko kandi bunozwe itangwa na muganga wemewe na Leta gusa aho kuba umuntu wese wize ibijyanye n'ubuvuzi, bibangamira uburenganzira bw'abagore ndetse n'ubw'abakobwa kubera ko bigabanywa umubare w'abatanga iyo serivisi n'uw'abayihabwa.

[58] Basobanura ko Ishami ry'Umuryango w'Abibumbye ryita ku Buzima ryagaragaje neza ko abafasha b'abaganga, nk'abaforomo n'abaforomokazi, ababyaza cyangwa se abandi bakozi bo mu mavuriro bashobora gutanga neza kandi mu buryo bwizewe serivisi zo gukuramo inda. Bavuga ko Komisiyo Nyafurika y'Uburenganzira bwa Muntu n'ubw'Abaturage, ishingiye ku Masezerano ya Maputo, mu rwego rwo gushyira mu bikorwa ingingo zirebana no gutanga serivisi z'ubuvuzi zo gukuramo inda mu buryo bunozwe, bwizewe kandi bwemewe n'amategeko zigaragara muri ayo masezerano, yashyizeho amabwiriza ngenderwaho ko ibihugu bitagomba gushyiraho imbogamizi cyangwa inzitizi ku bisabwa abavuzi bemerewe gutanga iyo serivisi y'ubuvuzi. Bavuga ko Komisiyo yakomeje igaragaza ko, muri rusange kuba mu bihugu byinshi by'Afurika hari umubare udahagije w'abaganga, abafasha b'abaganga, nk'ababyaza ndetse n'abandi bakozi bita ku buzima, bakagombye guhabwa amahugurwa kugira ngo nabo bajye bita ku bakeneye serivisi y'ubuvuzi yo gukuramo inda.

[59] Barangiza bavuga ko kuba abagore n'abakobwa bemerewe gukuramo inda bahura n'imbogamizi yo kujya ku bitaro bikuru ahashobora kuboneka muganga kubera ko biri kure yabo, usanga birangiye bagiye gukuramo inda mu buryo butaboneye, ibyo bigatuma bajya kwa muganga benda gupfa, byongeye kandi bagahanirwa icyaha cyo gukuramo inda, bakavugaga ko ibi bibahungabanywa ku mubiri no mu mutwe.

[60] Uhagarariye Leta y'u Rwanda avugaga ko kuri iyi ngingo, bigaragara ko Leta yahisemo ko ufite ubushobozi bwo gufasha umugore wifuza gukuramo inda ari umuganga (*medical doctor*) ufite ubumenyi bwemewe n'inzego zibifitiye ububasha. Ibi bivuze ko utari umuganga adashobora gutanga iyo serivisi kubera ingaruka z'ubuzima zishobora gukomoka mu gukurwamo inda mu gihe bikozwe n'undi muntu utari umuganga. Ibyo bikanashimangirwa ni uko mu ngingo ya 4 n'ya 7 z'Iteka rya Minisitiri N° 002/MoH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda hateganyijwe ko usaba gukurirwamo inda agomba kubanza gusuzumwa ko ari muzima mu buryo bwimbitse, kandi ko iyo nda igomba kuba itarengeje ibyumweru makumyabiri na bibiri (22) ndetse akabanza kugirwa inama ku ngaruka zo gukuramo inda.

[61] Avugaga kandi ko Iteka rya Minisitiri N° 002/MoH/2019 ryavuzwe haruguru risobanura ko umuganga wemewe na Leta ari umuntu ufite ubumenyi mu buvuzi bw'abantu, ufite nibura impamyabushobozi y'icyiciro cya kabiri cya Kaminuza mu ishami ry'Ubuvuzi kandi wemewe n'urwego rushinzwe kugenzura imirimo y'ubuvuzi mu Rwanda, ukorera mu kigo cy'ubuvuzi cya Leta cyangwa cyigenga. Ibi bisobanuye ko ugomba gufasha umuntu gukuramo inda agomba kuba yemera ingaruka zabyo kandi akaba afite ubumenyi buhagije bwo gukuramo inda.

[62] Asoza kuri iyo ngingo avugaga ko asanga ntaho igika cya 2 cy'ingingo ya 125 n'igika cya 3 cy'ingingo ya 126 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru zinyuranyije

n'ingingo ya 14 y'Itegeko Nshinga iteganya ibijyanye n'uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe.

UKO URUKIKO RUBIBONA

[63] Ingingo ya 14 y'Itegeko Nshinga iteganya ko umuntu wese afite uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe. Ntawe ushobora kwicwa urubozo, gukorerwa ibibabaza umubiri cyangwa ngo akorerwe ibikorwa by'ubugome, ibikorwa bidakwiye umuntu cyangwa bimutesha agaciro. Ntawe ushobora gukorerwaho igerageza atabyiyemereye. Uburyo bwo kubyemera kimwe n'ubw'iryo gerageza bugenwa n'itegeko. Ubu burenganzira tubusanga kandi no mu masezerano mpuzamahanga atandukanye harimo Itangazo mpuzamahanga ryerekeye uburenganzira bwa Muntu (*Universal Declaration of Human Rights*)³⁶, Amasezerano mpuzamahanga mu by'imbenezamubano na politiki (*International covenant on civil and political rights*)³⁷, Amasezerano y'Umuryango w'Ubumwe bw'Ibihugu bw'Uburayi (*The Charter of Fundamental Rights of the European Union*)³⁸, Amasezerano nyafurika y'uburenganzira bwa Muntu n'ubw'Abaturage (*African charter on human and people's rights*)³⁹.

[64] Ingingo ya 14 y'Itegeko Nshinga igaragaramo ibice bitatu by'ingenzi bikurikira:

- Kuba ntawe ugomba guhungabanywa ku mubiri no mu mutwe.
- Kuba ntawe ushobora kwicwa urubozo, gukorerwa ibibabaza umubiri cyangwa ngo akorerwe ibikorwa by'ubugome, ibikorwa bidakwiye umuntu cyangwa bimutesha agaciro.
- Kuba ntawe ushobora gukorerwaho igerageza atabyiyemereye.

[65] Ku birebana n'igice cya mbere, Akanama k'Umuryango w'Abibumbye gashinzwe uburenganzira bwa Muntu (*Human Rights Committee*), ubwo kasobanuraga ingingo ya 7 y'Amasezerano mpuzamahanga mu by'imbenezamubano na politiki yavuzwe haruguru, kavuze ko intego y'iyi ngingo ari ukurinda agaciro umuntu afite, haba ku mubiri cyangwa mu mutwe, ko ibihugu byose bitegetswe gushyiraho amategeko no gufata ibindi byemezo bya ngombwa mu rwego rwo kukumira ibikorwa bibujijwe mu ngingo ya 7, byaba bikozwe n'umuntu igihe ari mu kazi, yaba atari mu kazi cyangwa se bikozwe n'umuntu ku giti cye. Kavuze ko n'uwakwamburwa uburenganzira agomba gukomeza gufatwa mu buryo bumuhesheje icyubahiro gikwiye ikiremnamuntu. Kabivuze muri aya magambo:” *The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. The prohibition in article 7 is complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates*

³⁶ Article 5 states: no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

³⁷ Article 7 reads: no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

³⁸ The article 3 of the Charter reads: 1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law, the prohibition of eugenic practices, in particular those aiming at the selection of persons, the prohibition on making the human body and its parts as such a source of financial gain, the prohibition of the reproductive cloning of human beings.

³⁹ Article 5 of the Charter reads: every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment shall be prohibited.

that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.⁴⁰

[66] Ku birebana n’igice cya kabiri, ako Kanama kasobanuye ko ibiteganyijwe mu ngingo ya 7 y’Amasezerano yavuzwe haruguru bitagarukira ku bikorwa bibabaza umubiri gusa, ko ahubwo n’ibitesha ubwenge birebwa n’iyo ngingo. Ku bw’ako Kanama, ibibujijwe muri iyo ngingo biragenda bikagera no ku bihano by’umubiri ku muntu wakoze icyaha cyangwa bigamije gukosora. Kavuga ko by’umwihariko ari ngombwa gushimangira ko ingingo ya 7 irengera abana, abanyeshuri n’abarwayi bari mu mavuriro. Ako Kanama kabivuze muri aya magambo:” *The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. In the Committee’s view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.*⁴¹

[67] Ku birebana n’igice cya gatatu, ako Kanama nako kagarutse ku burenganzira umuntu afite bwo kudakorerwaho igerageza ry’imiti cyangwa ubundi bushakashatsi atabiyemereye, ko kandi ubwo burenganzira bugenda bukagera no ku muntu udashobora kwivugira cyangwa ufunze. Kabivuze muri aya magambo:” *Article 7 expressly prohibits medical or scientific experimentation without the free consent of the person concerned. The Committee notes that the reports of States parties generally contain little information on this point. More attention should be given to the need and means to ensure observance of this provision. The Committee also observes that special protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.*⁴²

[68] Mu rwego rwo kurinda ubwo uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe nk’uko Akanama k’Umuryango w’Abibumbye gashinzwe uburenganzira bwa Muntu kabitanzeho icyifuzo, mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n’ibihano muri rusange, hashyizwemo ingingo ya 112⁴³ n’iya 113⁴⁴ ziteganyaga kandi zigahana icyaha cy’iyicarubozo.

[69] Ku birebana n’aho uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe buva bukagera, Urukiko mpuzamahanga mpanabyaha rwashyiriweho u Rwanda (*International Criminal Tribunal for Rwanda*), mu rubanza rwa Akayesu Jean Paul, ubwo rwasobanuraga ingingo ya 2(2)(b)⁴⁵

⁴⁰ CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) Adopted at the Forty-fourth Session of the Human Rights Committee, on 10 March 1992. §2. <https://uniteforreporights.org/wp-content/uploads/2018/01/453883fb0.pdf> consulté le 1/12/2021.

⁴¹ Idem, § 5.

⁴² Idem, § 7.

⁴³ Iyo ngingo iteganyaga ko muri iri tegeko, iyicarubozo risobanura igikorwa icyo ari cyo cyose gitera uburibwe cyangwa ububabare haba ku mubiri cyangwa ku bwenge, gikorewe umuntu ku bushake hagamijwe kumushakaho amakuru cyangwa kuyashaka ku wundi muntu cyangwa ukwemera icyaha, kumuryoza igikorwa yakoze cyangwa cyakozwe n’undi muntu cyangwa akekweho kuba yarakoze, cyangwa kumukangisha cyangwa kumuhatira we ubwe cyangwa undi muntu, cyangwa kubera impamvu iyo ariyo yose ishingiyeye ku ivangura iryo ari ryo ryose.

Umuntu wese ukora kimwe mu byaha bivugwa mu gika cya mbere cy’iyi ngingo aba akoze icyaha. Icyaha cy’iyicarubozo ntigisaza.

⁴⁴ Umuntu wese uhamijwe n’urukiko gukora icyaha cy’iyicarubozo, ahanishwa igifungo kitari muni y’imyaka makumyabiri (20) ariko kitarenze imyaka makumyabiri n’itanu (25).

Iyo iyicarubozo riteye urukorewe indwara idakira, ubumuga buhoraho butuma atagira icyo yikorera, kubuza burundu umwanya w’umubiri gukora, gutakaza igice cy’umubiri gikomeye, urupfu cyangwa rikozwe n’umuntu ukora umurimo wa Leta mu mirimo ashinzwe, igihano kiba igifungo cya burundu.

⁴⁵ [...]2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: [...] (b). Causing serious bodily or mental harm to members of the group.

y'amategeko yarugengaga, rwavuze ko guhungabanya umuntu ku mubiri no mu mutwe bisobanuye ibikorwa byose by'iyicarubozo, byaba bikozwe ku mubiri cyangwa bigamije gutesha umuntu umutwe, ibikorwa bya kinyamaswa cyangwa bitesha agaciro, gusambanya ku ngufu, ihohotera rishingiye ku gitsina, itotezwa n'ibindi. Rwabivuze muri aya magambo: *For purposes of interpreting Article 2 (2)(b) of the Statute, the Chamber takes serious bodily or mental harm, without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.*⁴⁶

[70] Urukiko rurasanga ibikorwa bibangamira uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe ari ibikorwa byose bibabaza umubiri nko kwica umuntu, kumukomeretsa byaba mu buryo bukomeye cyangwa bworoheje, kumukorera ibikorwa by'iyicarubozo, kumushyira mu bikorwa by'ubucakara, kumusambanya ku gahato cyangwa se kumukorera irindi hohotera iryo ariryo ryose rishingiye ku gitsina, n'ibindi bikorwa byose bigamije kumutesha agaciro. Kuba rero umugore cyangwa umukobwa ukeneye serivisi yo gukurirwamo inda kugeza ubu atayibonera ku bigo nderabuzima nk'uko uwatanze ikirego abyifuza, bikaba bishobora kumuvuna kujya kuyishakira aho itegeko ryategetse ku mpamvu zasobanuwe haruguru mu gika cya 42 cyangwa se hagati aho akaba yahura n'ibindi bibazo, ntaho bihuriye n'uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe, kuko kugira ngo ibyo bibe, nk'uko bimaze kugusobanurwa, haba hari ibikorwa bibabaza umubiri byabaye bigamije guhungabanya ubwo burenganzira.

[71] Hashingiwe ku bisobanuro bimaze gutangwa haruguru bijyanye n'icyo uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe aricyo, Urukiko rurasanga GLIHD yatanze ikirego itarashoboye kurugaragariza uburyo kuba serivisi yo gukuramo inda ku bagore n'abakobwa babyemerewe bikorwa na muganga wemewe na Leta gusa, binyuranye n'ingingo ya 14 y'Itegeko Nshinga iteganya uburenganzira bwo kudahungabanywa ku mubiri no mu mutwe, bityo ikirego cyayo kuri iyo ngingo kikaba nta shingiro gifite.

3. Kumenya niba ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N°68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo za 15 na 16 z'Itegeko Nshinga zivuga ku burenganzira bwo kureshya imbere y'amategeko no kurindwa ivangura

[72] Mulisa Tom uhagarariye GLIHD n'abamwunganira bavuga ko ibiteganyijwe mu ngingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryavuzwe haruguru, ko serivisi y'ubuvuzi yo gukuriramo inda umugore cyangwa umukobwa ubyemerewe n'amategeko itangwa na muganga wemewe na Leta gusa, binyuranyije n'uburenganzira bwo kureshya imbere y'amategeko no kutavangurwa kw'abagore n'abakobwa muri rusange buteganywa mu ngingo ya 15⁴⁷ n'ya 16⁴⁸ z'Itegeko Nshinga ndetse no mu Masezerano Mpuzamahanga n'ayo mu Karere u Rwanda rwashyizeho umukono.

[73] Bakomeza bavuga ko hari n'ingingo z'amasezerano mpuzamahanga zikurikira zishimangira uburenganzira bwo kureshya no kutavangurwa imbere y'amategeko kuri buri wese:

- Ingingo ya 2 y'Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'Ubukungu, Imibereho Myiza n'Umuco (ICESCR).

⁴⁶ *The Prosecutor vs Jean-Paul Akayesu Case number. ICTR-96-4-T, § 504 (Trial judgement, 2 September 1998).*

⁴⁷ Iyongingiteganyako abantu bose bashesha imbere y'amategeko, ko itegeko ribarengera ku buryo bumwe

⁴⁸ Iyo ngingo iteganya ko: abanyarwanda bese bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. Ivangura iryo ari ryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, birabujijwe kandi bihanwa n'amategeko.

- Ingingo ya 2 n'ya 12 z'Amasezerano Mpuzamahanga yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore (CEDAW).
- Ingingo ya 2 y'Amasezerano Mpuzamahanga yerekeye Uburenganzira mu by'imbenezamubano na Politiki [ICCPR].
- Ingingo ya 14 y'Amasezerano y'Inyongera ya Maputo, n'
- Ingingo ya 18 y'Amasezerano ya Banjul zose zivuga ku burenganzira bwo kureshya no kutavangurwa imbere y'amategeko kuri buri wese.

[74] Bavuga ko by'umwihariko, aya masezerano aha ibihugu inshingano zo kurandura impamvu iyo ariyo yose yatuma habaho ivangura kandi bigashyigikira uburenganzira bwo kureshya kuri bose harimo n'abagore. Urugero, Komite y'Uburenganzira bwa Muntu yemera ko ibihugu byasinye ayo masezerano bigomba gutanga uburenganzira bungana nta vangura iryo ariyo ryo ryose. Bavuga ko Amasezerano ya Banjul ateganya ko "ibihugu bigomba kurandura ivangura iryo ari ryose rikorerwa abagore ndetse no kurinda uburenganzira bw'abagore n'ubw'abana nk'uko buteganywa mu Masezerano n'Amatangazo Mpuzamahanga.

[75] Bavuga kandi ko, nk'uko bikomeza bigarukwaho muri ayo Masezerano Mpuzamahanga ku burenganzira bwa muntu, kubahiriza uburenganzira bw'abagore bitagomba kugaragarira gusa mu biteganywa n'amategeko, ko ahubwo bigomba no kugaragarira mu bibakorerwa mu buzima bwa buri muni kugira ngo uko kureshya kubahirizwe.

[76] Bakomeza basobanura ko kutareshya imbere y'amategeko n'ivangura babona mu ngingo zavuzwe haruguru ziregerwa ari uko serivisi y'ubuvuzi yo gukuriramo inda umugore cyangwa umukobwa ubyemerewe n'amategeko bisabwa muganga wemewe na Leta gusa uboneka mu Bitaro by'Akarere, bityo bikaba binyuranyije n'uburenganzira bwo kureshya imbere y'amategeko no kutavangurwa kw'abagore n'abakobwa muri rusange buteganywa mu Itegeko Nshinga. Bavuga ko hari ivangura rishingiye ku gitsina kuko hari serivisi y'ubuvuzi umuntu w'igitsina gabo abonera ku bigo nderabuzima bimwegereye, nyamara uw'igitsina gore akaba adashobora kuhabonera serivisi y'ubuvuzi yo gukurirwamo inda. Bavuga kandi ko hari irindi vangura no kutareshya bigaragara muri izo ngingo rishingiye ku byiciro by'ubukungu kubera ko abagore n'abakobwa bifite aribo bashobora kubonera serivisi yo gukurirwamo inda ku bitaro bikuru ahaboneka muganga wemewe, mu gihe abatifite badashobora kugerayo kubera ko bihenze cyane.

[77] Banzura bavuga ko impamvu bemeza ko ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko ryavuzwe haruguru zigaragaramo ivangura no kutareshya bikorerwa abagore n'abana b'abakobwa bashaka serivisi y'ubuvuzi yo gukurirwamo inda, ari uko mu mategeko yo mu Rwanda nta bundi buvuzi busaba ko umuganga ariwe wemerewe gutanga serivisi y'ubuvuzi runaka gusa.

[78] Uhagarariye Leta y'u Rwanda avuga ko uruhande rurega rutagaragaza ukutareshya imbere y'amategeko cyangwa ivangura rikorerwa abagore biri mu ngingo z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru baregera, uretse kubivuga mu magambo no kugaragaza ingingo z'amasezerano mpuzamahanga u Rwanda rwasinye kandi rushyira mu bikorwa. Avuga ko abarega batagaragaza ibimenyetso byerekana icyo bita kutareshya mu mategeko cyangwa kuvangurwa kw'abashaka guhabwa serivisi z'ubuzima bw'imyorokere. Asobanura ko kureshya imbere y'amategeko cyangwa kutavangura abahabwa serivisi z'ubuvuzi, biteganywa mu ngingo ya 4 y'Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi aho ivuga ko nta muntu ugomba gukorerwa ivangura iryo ari ryo ryose mu bikorwa by'isuzumwa, ivurwa n'ibindi bikorwa byose bijyanye n'ubuvuzi.

[79] Avuga kandi ko serivisi z'ubuvuzi zitandukanye zihabwa abagana ibitaro guhera ku mavuriro y'ibanze (*health posts*), ibigo nderabuzima, ibitaro by'Uturere, ibitaro by'Intara n'ibitaro bikuru,

zashyizwe ku mugereka w'Iteka rya Minisitiri N° 20/39 ryo ku wa 29/01/2016 rigena ibikorwa by'ubuvuzi, kugira ngo bimenyekane kandi buri muntu ugana ibitaro amenye ko ari uburenganzira bwe guhabwa izo serivisi nta vangura cyangwa kutareshya mu mategeko. Ibyo bikaba byarakozwe mu rwego rwo kugira ngo buri muntu wese nta vangura iryo ariryo ryose ugana amavuriro amenye serivisi ihatangirwa n'ikiguzi cyayo. Arangiza avuga ko asanga nta kutareshya mu mategeko cyangwa kuvangura uruhande rurega rugaragaza, ko kandi n'iyo byaba, byakorerwa iperereza uwaba yabigizemo uruhare akaba yabitangira indishyi kubera ko bene ibyo bikorwa bibarizwa mu mategeko mbonezamubano aho kuba mpanabyaha.

UKO URUKIKO RUBIBONA

[80] Ingingo ya 15 y'Itegeko Nshinga, iteganya ko abantu bose bareshya imbere y'amategeko, itegeko ribarengera ku buryo bumwe. Naho iya 16 y'Itegeko Nshinga na none, igateganya ko ivangura iryo ariryo ryose cyangwa kurikwirakwiza byaba bishingiye ku bwoko, ku muryango cyangwa ku gisekuru, ku nzu, ku ibara ry'umubiri, ku gitsina, ku karere, ku byiciro by'ubukungu, ku idini cyangwa ukwemera, ku bitekerezo, ku mutungo, ku itandukaniro ry'umuco, ku rurimi, ku bukungu, ku bumuga bw'umubiri cyangwa ubwo mu mutwe no ku rindi vangura iryo ari ryo ryose, bibujijwe kandi bihanwa n'amategeko.

[81] Ingingo GLIHD isaba ko zakurwaho ivuga ko zinyuranye n'ingingo z'Itegeko Nshinga zimaze kuvugwa, ni ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Muri rusange izo ngingo ziteganya ko gukurirwamo inda ku mugore cyangwa umukobwa ubyemerewe bikorwa na muganga wemewe na Leta gusa.

[82] Kugira ngo byumvikane niba muri izi ngingo hagaragaramo kutareshya imbere y'amategeko cyangwa ivangura rishingiye ku gitsina no ku byiciro by'ubukungu nk'uko GLIHD yatanze ikirego ibivuga, bityo zikaba zinyuranyije n'ingingo ya 15 kimwe n'ya 16 z'Itegeko Nshinga, ni ngombwa kubanza gusobanura uburyo izo ngingo zumvikana. Nk'uko byasobanuwe mu rubanza rw'Akagera Business Group⁴⁹ rwaciwe n'uru Rukiko ku itariki ya 23/09/2016, ingingo ya 15 n'ya 16 z'Itegeko Nshinga zifitanye isano ku buryo mu kuzisobanura zidakwiye gutandukanywa. Nk'uko byasobanuwe kandi muri urwo rubanza, ingingo ya 15 ivuga ko abantu bose bareshya imbere y'amategeko kandi bakarengerwa n'amategeko mu buryo bumwe. Ni ukuvuga ko hatagomba kubaho ivangura rituma abantu batarengerwa mu buryo bumwe cyangwa kutagira uburenganzira aho bakabugize. Naho ingingo ya 16 ikomerezaho ivuga uburyo gutandukanya abantu bifatwa nk'ivangura kandi ko bitemewe n'Itegeko Nshinga. Izi ngingo zombi zafatwa nk'izikubiyemo ihame rimwe ryo kudasumbanya abantu mu byo bemerewe cyangwa babujijwe ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko.

[83] Ihame ryo kureshya imbere y'amategeko no kudakorerwa ivangura, si mu Itegeko Nshinga ry'u Rwanda turisanga gusa, rigaragara no mu Masezerano Mpuzamahanga u Rwanda rwashyizeho umukono. Twavugaga nk'ingingo ya 7 y'Itangazo mpuzamahanga ryerekeye uburenganzira bwa Muntu (*Universal Declaration of Human Rights*), ryo mu mwaka wa 1948⁵⁰, ingingo ya 26 y'Amasezerano Mpuzamahanga ku burenganzira mu by'imbonezamubano na Politiki (*International Covenant on Civil and Political Rights*, 1966)⁵¹. By'umwihariko ku birebana no kureshya hagati y'umugabo n'umugore,

⁴⁹ Urubanza RS/SPEC/0001/16/CS, Akagera Business Group, igika cya 29, rwaciwe ku itariki ya 23/09/2016.

⁵⁰ Article 7 states: *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination.*

⁵¹ *All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination*

ingingo ya 8 (f) y'Amasezerano y'Inyongera ya Maputo ku Masezerano Nyafurika ku burenganzira bwa Muntu n'ubw'Abaturage, iteganya ko abagore n'abagabo bareshya imbere y'amategeko kandi ko bagomba kurindwa ku buryo bungana kandi amategeko akabarengera kimwe. Ivuga ko Ibihugu byemera aya masezerano bifite inshingano yo kuvugurura amategeko n'imigirire bisanzweho bigaragaramo ivangura mu rwego rwo guteza imbere no kurinda uburenganzira bw'umugore (*“Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure: ... (f): reform of existing discriminatory laws and practices in order to promote and protect the rights of women”*)⁵².

[84] Nyuma yo gusobanura icyo kureshya imbere y'amategeko bivuze, kugira ngo ikibazo kiri muri uru rubanza kigamije kumenya niba ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zigaragaramo ivangura gisobanuke, ni ngombwa kandi gusobanura icyo ivangura ari cyo. Mu rubanza rw'Akagera Business Group⁵³ rwaciwe ku itariki ya 23/09/2016, uru Rukiko rwasobanuye ko muri rusange ivangura ari ugutandukanya abantu hagamijwe kuvutsa amahirwe bamwe no gutonesha abandi, bigakorwa hashingiwe ku mpamvu zitumvikana. Ku birebana n'ivangura rishingiye ku gitsina, amasezerano mpuzamahanga agamije gukumira ivangura iryo ariryo ryose rikorerwa abagore, mu ngingo yayo ya mbere ivuga ko iryo vangura ari irishingiye ku gutandukanya umugore n'umugabo hagamijwe kuburizamo uburenganzira mu bya politike, ubukungu, umuco n'ibindi (*For the purposes of the present Convention, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*)⁵⁴.

[85] Nk'uko bimaze kugaragazwa mu ngingo z'amategeko ndetse n'iz'amasezerano mpuzamahanga zavuzwe haruguru, ihame ry'uko abantu bareshya imbere y'amategeko rivuze ko abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, ndetse n'itegeko rigiyeho rigafata kimwe abo rireba. Mu rubanza rwa Murangwa Edward⁵⁵ rwaciwe n'uru Rukiko ku itariki ya 29/11/2019, rushingiye ku byanditswe n'umuhanga Erwin Chemerinsky, rwasobanuye ko ibigomba gufatwa kimwe ari ibimeze kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo. Mu yandi magambo, abantu bagomba gufatwa kimwe, ariko hitawe ku miterere yabo. Iri hame ry'uko kugira ngo byitwe ko hari ivangura cyangwa ukutareshyeshya abantu ari uko abantu bari mu cyiciro kimwe baba bafashwe mu buryo butandukanye kandi nta mpamvu yumvikana, ryanagarutsweho mu rubanza rwa *Thlimmenos v. Greece* rwaciwe n'Urukiko rw'Ibihugu by'Iburayi rushinzwe kurengera Uburenganzira bwa Muntu, aho rwavuze ko kugira ngo bifatwe ko igihugu cyarenze ku ngingo ya 14 y'Amasezerano ibuza ivangura, ari uko kiba cyafashe mu buryo butandukanye abantu bari mu byiciro bimwe kandi nta mpamvu yumvikana gitanga. Rwabivuze muri aya magambo: *“The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification.”*⁵⁶

[86] Nyuma y'ibisobanuro rusange bimaze gutangwa ku birebana no kutareshya imbere y'amategeko ndetse n'ivangura, igisigaye ni ukureba niba, ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya

on any ground such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵² U Rwanda rwashyize umukono kuri aya masezerano ku itariki ya 25/06/2004.

⁵³ Urubanza RS/SPEC/0001/16/CS, igika cya 22.

⁵⁴ U Rwanda rwashyize umukono kuri aya masezerano ku itariki ya 02/03/1981.

⁵⁵ Urubanza RS/INCONST/SPEC 00001/2019/SC, rwaciwe ku wa 29/11/2019, para. 35.

⁵⁶ *Case of Thlimmenos v. Greece (Application no. 34369/97), Strasbourg 6 April 2000.*

3, z'Itegeko n° 68/2018 ryavuzwe haruguru ziteganya ko gukurirwamo inda ku mugore cyangwa umukobwa ubyemerewe bikorwa na muganga wemewe na Leta gusa, ibyo ubwabyo ari ukutareshya imbere y'itegeko cyangwa ivangura kubera ko itegeko ryateganyije ko iyo serivisi itangwa na muganga wemewe na Leta gusa utaboneka ku bigo nderabuzima, bityo umugore cyangwa umukobwa uyikeneye akaba atayihabonera, nyamara uw'igitsinagabo ukeneye indi serivisi y'ubuvuzi we akaba ashobora kuyihabonera nk'uko uwatanze ikirego abivuga.

[87] Ku birebana n'ivangura rishingiye ku gitsina urega avuga ko rigaragara mu ngingo zavuzwe, hashingiwe ku ihame ryagarutsweho haruguru ko ibigomba gufatwa kimwe ari ibimeze kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo, Urukiko rurasanga kuba abantu b'igitsina gabo, hakurikijwe imiterere yabo, badashobora gutwita ngo babe bajya gusaba serivisi yo gukurirwamo inda, ntawavuga ko kuba ab'igitsinagore bakenera iyo serivisi bayiharerwa aho itegeko ryagennye, ni ukuvuga ku bitaro ahari muganga wemewe na Leta, hari ivangura ribakorerwa ugeranyije n'abadashobora gukenera iyo serivisi. icyo gitekerezo ni nacyo kigaragara mu rubanza rwa Kabasinga Florida⁵⁷ rwaciwe n'uru Rukiko, aho rwemeje ko hari icyaha cyateganyijwe ku bantu b'igitsinagore kidashobora gukorwa n'umugabo bitewe n'imiterere ye nk'umuntu udashobora gutwita ngo abyare, nk'uko biba ku mugore, kandi ko ibyo bitafatwa nk'ivangura.

[88] Ku kibazo cy'uko abagore cyangwa abakobwa bakenera serivisi yo gukurirwamo inda bifite aribo bashobora kubonera iyo serivisi ku bitaro bikuru ahaboneka muganga wemewe, mu gihe abatifite badashobora kugerayo kubera ko bihenze cyane, Urukiko rusanga iki atari ikibazo kireba abasaba serivisi zo gukuramo inda gusa ku buryo byafatwa nk'ivangura kuri bo, ahubwo kirareba abakenera serivisi za muganga no ku bindi bibazo bidakemukira ku bigo nderabuzima muri rusange. Igisubizo kuri icyo kibazo kikaba kitashakirwa mu kuvanaho ingingo z'amategeko, ahubwo cyashakirwa mu ngamba zo kwegera abaturage bose ubuvuzi batabonera ku bigo nderabuzima. Kutabona amikoro cyangwa ubushobozi kuri Leta bituma itabona abaganga bahagije ngo inabashyire no bigo nderabuzima, nticyakemurwa no guhindura ingingo z'Itegeko, cyane cyane ko n'uwatanze ikirego ubwe aniyemerera ko n'abaforomo kimwe n'ababyaza nabo ubwabo ari bake kubera amikoro yo kubabona adahagije.

[89] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga nta kutareshya imbere y'amategeko cyangwa ivangura bigaragara mu ngingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, bityo zikaba ntaho zinyuranyije n'ingingo ya 15 n'ya 16 z'Itegeko Nshinga. Kubera izo mpamvu rero, ikirego cye kuri iyo ngingo kikaba nta shingiro gifite.

4. Kumenya niba ingingo ya 125, igika cya 2, n'ingingo ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange zinyuranyije n'ingingo ya 23 y'Itegeko Nshinga ivuga ku burenganzira bwo kubaha imibereho bwite y'umuntu.

[90] Mulisa Tom uhagarariye GLIHD n'abamwunganira bavuga ko imibereho bwite y'umuntu, iy'umuryango we, urugo rwe cyangwa ubutumwa yohererezanya n'abandi bidashobora kuvogerwa mu buryo bunyuranyije n'amategeko, icyubahiro n'agaciro ke bikaba bigomba kubahirizwa. Bavuga ko mu gihe itegeko riteganya ibyaha n'ibihano muri rusange ryavuzwe haruguru riteganya ko muganga wemewe na Leta ariwe wenyine utanga serivisi y'ubuvuzi yo gukuriramo inda mu buryo buboneye umugore cyangwa umwana w'umukobwa ubyemerewe n'amategeko, bituma uwo mugore cyangwa umwana w'umukobwa ushaka iyo serivisi y'ubuvuzi bimusaba kubanza guca ku kigo nderabuzima kwaka urupapuro rumwohereza ku bitaro (*transfer*), bikumvikana ko abakozi bose urwo rupapuro ruzaca mu ntoki bazaba bamenye icyo agiye kwivuza kugera ageze ku bitaro, nabwo akaba agomba kubanza guhabwa serivisi y'ubujyanama bwimbitse mbere yo guhabwa serivisi yo gukuramo inda. Ku bw'ibyo, bakavugaga ko muri izo ngendo zose bwa burenganzira bwe bwo kugirirwa ibanga kuri serivisi y'ubuvuzi

⁵⁷ Urubanza RS/INCONST/SPEC 00003/2020/SC, § 27, rwaciwe ku itariki ya 27/11/2020.

yakorewe azaba yamaze kubutakaza kuko abantu benshi bazaba bazi serivisi ari gusaba kandi amakuru yakabaye ari hagati ye n'umuvura.

[91] Uhagarariye Leta y'u Rwanda avuga ko ihame ryo kurinda ibanga ry'amakuru akomoka ku murwayi cyangwa umuntu wese ugana ibitaro riteganywa n'Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi mu ngingo yaryo ya 8, igika cya 3 ndetse n'Ingingo ya 3, igika cya 3 (sic) y'Iteka rya Minisitiri N° 002/MoH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda, ikaba iteganya ko usaba gukurirwamo inda adasabwa gutanga ibimenyetso by'impamvu ashingiraho. Ibyo bivuze ko usaba gukurirwamo inda atagomba kubanza kubitangira ibimenyetso byerekana uburyo yayisamye.

[92] Akomeza avuga ko mu gihe muganga arenze ku mategeko ntagirire ibanga uwo ashinzwe kuvura, akurikiranwa maze akirengera ingaruka zabyo nk'uko biteganywa mu ngingo ya 13 n'iya 25 z'Itegeko N° 49/2012 ryo ku wa 22/01/2013 rigena ubwishingizi ku mwuga w'ubuvuzi. Yanzura avuga ko nta kunyuranya n'Itegeko Nshinga guhari hagati y'igika cya 2 cy'ingingo ya 125 n'igika cya 3 cy'ingingo ya 126 z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, n'ingingo ya 23 y'Itegeko Nshinga ivuga ku burenganzira bwo kubaha imibereho bwite y'umuntu.

UKO URUKIKO RUBIBONA

[93] Ingingo ya 23, igika cya mbere, y'Itegeko Nshinga iteganya ko imibereho bwite y'umuntu, iy'umuryango we, urugo rwe cyangwa ubutumwa yohererezanya n'abandi budashobora kuvogerwa mu buryo bunyuranyije n'amategeko, ko icyubahiro n'agaciro ke bigomba kubahirizwa. Ubu burenganzira tubusanga no mu masezerano mpuzamahanga anyuranye, harimo Itangazo mpuzamahanga ryerekeye uburenganzira bwa Muntu (*Universal Declaration of Human Rights*)⁵⁸, Amasezerano mpuzamahanga mu by'imbonezamubano na politiki (*International covenant on civil and political rights*)⁵⁹, Amasezerano y'ibihugu by'Iburayi ku burenganzira bwa Muntu (*European Convention on Human Rights*)⁶⁰.

[94] Ku birebana n'icyo uburenganzira ku buzima bwite bw'umuntu aricyo, mu rubanza Bărbulescu v. Romania⁶¹, Urukiko rushinzwe kurengera Uburenganzira bwa Muntu rw'Ibihugu by'Iburayi (*European Court of Human Rights*) rwasobanuye ko ari uburenganzira bugomba kureberwa mu buryo bugari, ko ingingo ya 8 y'Amasezerano y'ibihugu by'Iburayi ku burenganzira bwa Muntu irengera ukwishyira ukizana kwa muntu harimo no kubaho ntawivanze mu buzima bwe atabimwemereye. Uburenganzira ku buzima bwite bugomba gutuma umuntu akora mu bwisanzure yiteza imbere. Mu

⁵⁸ Article 12 of the Declaration reads: no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

⁵⁹ Article 17 of the Covenant reads: 1. no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.

⁶⁰ Article 8 of the Convention reads: 1. everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁶¹ Case of Bărbulescu v. Romania, Application no. 61496/08, § 71. The Court considers that the notion of private life may include professional activities, or activities taking place in a public context. Restrictions on an individual's professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others. It should be noted in this connection that it is in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity to develop relationships with the outside world. <https://hudoc.echr.coe.int/spa?i=001-177082>.

rubanza Justice K S Puttaswamy (Rtd) vs Union of India⁶² rwaciwe n’Urukiko rw’Ikirenga rw’Ubuhinde, rwasobanuye ko kugira ubuzima bwite ari ukuba umuntu ari ahantu ha wenyine ntawe umuvogera, n’ubwo uko kwishyira ukizana guterwa n’imibanire ye n’abandi. Rwabivuze muri aya magambo:” *Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. Yet the autonomy of the individual is conditioned by her relationships with the rest of society. Those relationships may and do often pose questions to autonomy and free choice...*”.

[95] Mu nyandiko yiswe “*Internet: Case-law of the European Court of Human Rights*”⁶³ yashyizwe ahagaragara n’ishami ry’ubushakashatsi ry’Urukiko rushinzwe kurengera Uburenganzira bwa Muntu rw’Ibihugu by’Iburayi (*Research Division*), batanze igisobanuro cy’ubuzima bwite buvugwa mu ngingo ya 8 y’Amasezerano y’Ibihugu by’Uburayi ku burenganzira bwa muntu (*European Convention on Human Rights*) yavuzwe haruguru. Bavuze ko ubuzima bwite bukubiyemo itumanaho bwite ririmo inzandiko, telefoni, imeyiri (*email*) n’ubundi buryo bw’itumanaho. Bakomeza bavuga ko uburenganzira ku buzima bwite bw’umuntu bugera no ku mafoto ye cyangwa amashusho bitagomba gushyirwa ku karubanda nyirabyo atabitangiye uruhushya, ko uwabikora yaba yivanze mu buzima bwite bw’umuntu. Icyo gisobanuro bakaba baragitanze bifashishije imanza zinyuranye zaciwe n’urwo Rukiko.

[96] Akanama k’Umuryango w’Abibumbye gashinzwe uburenganzira bwa Muntu (*Human Rights Committee*), ubwo kasobanuraga ingingo ya 17 y’Amasezerano mpuzamahanga mu by’imbenezamubano na politiki yavuzwe haruguru, kavuze ko iyo ngingo iha buri muntu uburenganzira bwo kuba ntawemerewe kwivanga mu buzima bwe bwite, mu muryango we no mu rugo rwe cyangwa mu butumwa yohererezanya n’abandi no kumutesha agaciro mu buryo bunyuranyije n’amategeko. Kavuze ko mu myumvire yako, ubwo burenganzira bugomba kurindwa ku buryo ntawabuhungabanya, byakorwa n’inzego za Leta cyangwa undi wese. Za Leta zasabwe gushyiraho amategeko no gufata izindi ngamba zose mu rwego rwo kurengera ubwo burenganzira. Kabivuze muri aya magambo:” *Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee, this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.*”⁶⁴

[97] Mu rwego rwo kurinda uburenganzira ku mibereho bwite y’abantu nk’uko iyo ngingo ibisaba, mu Itegeko N° 68/2018 ryo ku wa 30/08/2018 ritaganyanya ibyaha n’ibihano muri rusange, hashyizwemo

⁶² Writ Petition (Civil) n° 494 of 2012, §2. <https://indiankanoon.org/doc/127517806>.

⁶³ Division De La Recherche Research Division Internet: Case-law of the European Court of Human Rights, Updated: June 2015, p. 8. Private life includes the privacy of communications, which covers the security and privacy of mail, telephone, e-mail and other forms of communication; and informational privacy, including online information (*Copland v. the United Kingdom*, no. 62617/00, ECHR 2007-I). The concept of private life moreover includes elements relating to a person’s right to their image (*Sciacca v. Italy*, no. 50774/99, § 29, ECHR 2005-I). In other words, photographs or videos which contain a person’s image will fall within the scope of Article 8. In fact, the right to the protection of one’s image presupposes the individual’s right to control the use of that image, including the right to refuse publication thereof (*Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 96, ECHR 2012). This is relevant for the storing of images on communal or social websites. This is an area where the protection of the reputation and the rights of others takes on a special importance, as photos may contain highly personal or even private information about an individual or his or her family. The *Verlagsgruppe News GmbH and Bobi v. Austria* case (no. 59631/09, 4 December 2012) is interesting in this connection. Photos were taken in the course of a private event in the applicant’s apartment. They were taken with his agreement but were not meant for the eyes of outsiders (§ 86). They concerned his private life and were not essential to the offending article, so the claimant’s interest in the protection of his image prevailed (§§ 89-90). https://www.echr.coe.int/documents/research_report_internet_eng.pdf. Consulté le 01/12/2021.

⁶⁴ CCPR General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation Adopted at the Thirty-second Session of the Human Rights Committee, on 8 April 1988, §1. <https://www.refworld.org/docid/453883f922.html>. Consulté le 02/12/2021.

ingingo ya 155⁶⁵ iteganya kandi igahana icyaha cyo kwinjira aho umuntu atuye mu buryo butemewe, n'ingingo ya 156⁶⁶ iteganya kandi igahana icyaha cyo kumviriza ibiganiro, gufata amashusho cyangwa kubitangaza.

[98] Ku bivugwa n'uwatanze ikirego ko kuba serivisi yo gukuramo inda itangwa na muganga wemewe na Leta gusa nk'uko biteganywa n'ingingo z'itegeko aregera bihungabanya imibereho bwite y'umuntu bitewe n'inzira avuga binyuramo kugira ngo iyo serivisi itangwe, n'ubwo iyo nzira atariyo harebwe ibiteganywa n'ingingo ya 9 y'Itekarya Minisitiri n° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda⁶⁷, Urukiko rurasanga ibyo bitaba ari ukutubaha imibereho bwite y'umuntu hashingiwe ku bisobanuro byatanzwe haruguru, ahubwo ni ibanga ukeneye serivisi y'ubuvuzi agomba kugirirwa n'uwamuhaye iyo serivisi. Iryo banga rikaba ririndwa hakurikijwe ibiteganywa n'ingingo ya 36 y'Itegeko N° 46/2012 ryo ku wa 14/01/2013 rishyiraho urugaga nyarwanda rw'abakora imirimo ishamikiye ku buvuzi kandi rikagena imiterere, imikorere n'ububasha byarwo, iteganya ko abakora imirimo ishamikiye ku buvuzi n'abagize inzego z'Urugaga bose bagomba kugira ibanga ry'akazi ku bintu byose bamenye igihe bari mu mirimo bashinzwe cyangwa igihe bayikoraga ndetse bakarikomeza na nyuma yo kuva muri iyo mirimo. Ibyo kandi bireba undi muntu wese ugira uruhare mu mikorere y'Urugaga ku buryo ubwo ari bwo bwose. [...] Ibyo bishimangirwa kandi n'ingingo ya 158, igika cya mbere n'icya kabiri, y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange.⁶⁸ By'umwihariko, ingingo ya 10 y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 ryavuzwe haruguru, iteganya ko umuganga n'ikigo cy'ubuvuzi bakiriye umuntu usaba gukurirwamo inda bagomba kwita ku iyubahirizwa ry'uburenganzira bwo kugirirwa ibanga.

[99] Hashingiwe ku bimaze gusobanurwa haruguru, Urukiko rurasanga ingingo ya 23, igika cya mbere, y'Itegeko Nshinga, iha umunyarwanda n'undi muturarwanda wese uburenganzira bwo kwishyira akizana mu mibereho ye bwite, mu mibanire ye n'abandi ntawe umuvogereye cyangwa ngo yivange mu mibereho ye bwite mu buryo bunyuranyije n'amategeko atabimuhereye uburenganzira. Ibyo agomba kubikora mu bwisanzure kandi ntacyo yikanga. Hashingiwe kuri icyo gisobanuro kimwe n'ibindi byatanzwe haruguru, Urukiko rurasanga uwatanze ikirego atarashoboye kurugaragariza uburyo ingingo

⁶⁵ Uretse mu bihe biteganywa n'amategeko, umuntu wese winjira mu rugo, mu nzu, mu cyumba cyangwa mu icumbi ritwemo n'undi muntu, atabyemerewe n'uhatuye aba akoze icyaha. Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'amezi abiri (2) ariko kitageze ku mezi atandatu (6) n'ihazabu y'amafaranga y'u Rwanda atari muni y'ibihumbi magana atanu (500.000 FRW) ariko atarenze miliyoni imwe (1.000.000 FRW). Iyo kwinjira aho umuntu atuye byakoreshejwe ibikangisho, guca icyuho cyangwa gufunguza imfunguzo zidakoreshejwe na nyirazo, igihano kiba igifungo kitari muni y'imyaka itatu (3) ariko kitarenze imyaka itanu (5) n'ihazabu y'amafaranga y'u Rwanda arenze miliyoni imwe (1.000.000 FRW) ariko atageze kuri miliyoni ebyiri (2.000.000 FRW) cyangwa kimwe gusa muri ibyo bihano.

⁶⁶ Umuntu wese, ku bw'inabi, mu buryo ubwo ari bwo bwose, wivanga mu mibereho bwite y'undi akoresheje:

- 1° kumviriza cyangwa gutangaza amagambo abantu bavugiye mu muhezo atabihereye uruhushya;
- 2° gufata ifoto, amajwi cyangwa amashusho cyangwa kubitangaza nyirayo atabitungiye uruhushya; aba akoze icyaha.

Umuntu wese uhamijwe n'urukiko gukora kimwe mu bikorwa bivugwa mu gika cya mbere cy'iyi ngingo, ahanishwa igifungo kitari muni y'amezi atandatu (6) ariko kitarenze umwaka umwe (1) n'ihazabu y'amafaranga y'u Rwanda atari muni ya miliyoni imwe (1.000.000 FRW) ariko atarenze miliyoni ebyiri (2.000.000 FRW) cyangwa kimwe gusa muri ibyo bihano.

Iyo ibikorwa bivugwa mu gika cya mbere cy'iyi ngingo byabaye bene byo babibona kandi babizi, ntibabyamagane kandi bashoboraga kubyamagana, bifatwa nk'aho babyemeye.

Ibihano bivugwa mu gika cya 2 cy'iyi ngingo ni byo bihabwa umuntu, ku bw'inabi, usakaza hakoreshejwe uburyo ubwo ari bwo bwose, ifoto, amajwi n'amashusho, ifatamajwi cyangwa inyandiko yabonywe hakoreshejwe igikorwa kimwe mu bivugwa mu gika cya mbere cy'iyi ngingo.

⁶⁷ Iyo ngingo iteganya ko Umuntu wifuzaga kubona serivisi yo gukurirwamo inda afite uburenganzira bwo kugana ikigo cy'ubuvuzi cyabihereye uburenganzira yihitiyemo no guhabwa serivisi akeneye atabanje kubazwa urupapuro ruhamwohereza.

⁶⁸ Iyo ngingo iteganya ko Umuntu wese umena ibanga kandi ashinzwe kuribika, ku mpamvu z'akazi, z'umwuga cyangwa z'idini, yaba akiri mu kazi cyangwa yarakavuyemo, aba akoze icyaha.

Iyo abihamijwe n'urukiko, ahanishwa igifungo kitari muni y'umwaka umwe (1) ariko kitarenze imyaka ibiri (2) n'ihazabu y'amafaranga y'u Rwanda atari muni ya miliyoni ebyiri (2.000.000 FRW) ariko atarenze miliyoni eshatu (3.000.000 Frw).

z'itegeko aregera ziteganya ko serivisi yo gukurirwamo inda ku bagore no ku bakobwa babyemerewe itangwa na muganga wemewe na Leta gusa, inyuranyije n'ingingo ya 23 y'Itegeko Nshinga, ahubwo ibyo avuga birareba uburenganzira bwo kugirirwa ibanga, kandi nabyo nk'uko byasobanuwe, Urukiko rwasanze nta shingiro bifite. Kubera iyo mpamvu, ikirego cye kuri iyo ngingo kikaba nta shingiro gifite.

[100] Muri rusange, Urukiko rurasanga ikibazo cyari gifitwe n'uwatanze ikirego kandi cyasuzumwe muri uru rubanza, ari icy'ingorane abagore cyangwa abakobwa bashobora guhura nazo mu gihe badaherewe serivisi yo gukuramo inda ku Bigo Nderabuzima bibari hafi nk'uko uwatanze ikirego abivuga ashaka kubihuzira n'uburenganzira avuga buteganywa n'Itegeko Nshinga. Ikibazo gisa n'iki cyasuzumwe n'Urukiko rw'Ibihugu by'Uburayi rushinzwe uburenganzira bwa Muntu mu rubanza A, B and C v. Ireland, ubwo abagore bo muri icyo gihugu bavugaga ko uburenganzira bwabo ku buzima bubangamiwe no kuba batemerewe gukurira inda mu Bitaro byo muri Ireland. Urukiko rwasanze nta kibazo cy'uburenganzira ku buzima gihari kubera ko ntacyabuzaga abo bagore kujya gukuriramo inda mu bihugu bibyemera.⁶⁹ Uru Rukiko narwo rukaba rusanga nta nzitizi mu rwego rw'amategeko iriho ibuza abakobwa cyangwa abagore mu gihe bujuje ibisabwa n'amategeko kujya kwa muganga wemewe na Leta kugira ngo babakuriremo inda batifuza hakurikijwe ibiteganywa n'amategeko.

[101] Nyuma yo gusanga muri rusange ingingo ya 125, igika cya 2, n'ya 126, igika cya 3, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange ntaho zinyuranyije n'Itegeko Nshinga, Urukiko rurasanga nta mpamvu ihari yo gusuzuma ingingo irebana no kuba izo ngingo kimwe n'ingingo ya 2(3°) y'Iteka rya Minisitiri N° 002/MOH/2019 ryo ku wa 08/04/2019 rigena ibigomba kubahirizwa kugira ngo muganga akuriremo umuntu inda, zikwiye kwandikwa mu bundi buryo nk'uko uwatanze ikirego yari yabisabye.

III. ICYEMEZO CY'URUKIKO

[102] Rwemeje ko ikirego cyatanzwe na Great Lakes Initiative for Human Rights and Development (GLIHD) nta shingiro gifite.

[103] Rwemeje ko ingingo ya 125, igika cya kabiri n'ya 126, igika cya gatatu, z'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ntaho zinyuranyije n'Itegeko Nshinga rya Repubulika y'u Rwanda.

⁶⁹ A, B and C v Ireland, (CG) n° 25579/05, para 158 & 159, ECHR, 2010.