Re MUNYEMANA

[Rwanda URUKIKO RW'IKIRENGA – RS/INCONST/SPEC 00001/2023/SC (Ntezilyayo J.P., Hitiyaremye, Mukamulisa, Kalihangabo na Kazungu, J.) 16 Gashyantare 2024]

Itegeko Nshinga – Ihame ryo kureshya imbere y'amategeko no kutavangura – Ntawavuga ko yavanguwe mu gihe ibikorwa na kamere y'ibyo aregwa gukora n'ingaruka zabyo kuri sosiyete bitandukanye n'ibikorwa na kamere y'ibyo uwo yigereranya nawe yakoze, kuko bitahanwa kimwe.

Amategeko agenga imanza nshinjabyaha – Icyaha cyo gusambanya umwana – Itangwa ry'ibihano ku cyaha cyo gusambanya umwana – Uburemere bw'icyaha cyo gusambanya umwana ni imwe mu mpamvu zishingirwaho mu igenwa ry'igihano uwagikoze agomba guhanishwa – Nubwo ibihano bitangwa kuri icyo cyaha biremereye ntibiruta uburemere bwacyo n'ingaruka kigira ku mwana wasambanyijwe, n'izo kigira kuri sosiyete.

Incamake y'ikibazo: Munyemana yahamijwe icyaha cyo gusambanya umwana n'Urukiko Rwisumbuye rwa Karongi, ahanishwa igifungo cya burundu. Munyemana wari uhagarariwe na Me Kayitana yatanze ikirego mu Rukiko rw'Ikirenga arusaba gukuraho igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kuko binyuranyije n'amahame n'uburenganzira bwa muntu. Avuga ko binyuranyije n'amahame ateganyijwe mu ngingo ya 15, iya 16 n'iya 29 y'Itegeko Nshinga, kuko ibihano byateganyijwe ari umurengera ugereranyije n'ibihano biteganywa mu ngingo zindi z'amategeko zihana ibyaha by'ubugome bifite uburemere burenze ubw'icyaha cyo gusambanya umwana.

Asobanura ko yakatiwe igihano cy'igifungo cya burundu hashingiwe ku ngingo ya 133 (2) y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kuri ubu iyi ngingo ikaba yarahinduwe n'ingingo ya 4 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Akomeza avuga ko ibihano biteganyijwe muri iyo ngingo ya 4 binyuranyije n'amahame n'uburenganzira bwa muntu biteganywa n'ingingo ya 15, iya 16 n'iya 29 y'Itegeko Nshinga. Asoza avuga ko yatanze iki kirego mu nyungu ze bwite ndetse no mu nyungu rusange nk'umunyarwanda uharanira ubutabera bwuzuye n'iterambere ry'amategeko.

Uhagarariye Leta y'u Rwanda asobanura ko iyo urebye uburyo icyaha cyo gusambanya umwana gihanwa mu bihugu byinshi, usanga ibihano biteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 4 y'Itegeko N° 69/2019 yavuzwe haruguru, atari umurengera, akaba asanga uretse kuvuga gusa ko ibi bika binyuranye n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga ngo kubera ko biteganya ibihano biremereye, urega atagaragaza uburenganzira buba butubahirijwe.

Mu bibazo byasuzumwe muri uru rubanza, harimo ikibazo cyo Kumenya niba igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda. Aha Urega avuga ko iyo ngingo inyuranyije n'amahame ateganyijwe muri izo ngingo z'Itegeko Nshinga kubera ko iyo ngingo y'itegeko asabira gukurwaho iteganya ibihano bikakaye ku basambanya abana kurusha ibiteganyirizwa abantu bakora ibindi byaha bikomeye kurusha icyo gusambanya umwana. Ikindi ni uko guhanisha umuntu igifungo cya burundu kubera gukoza igitsina cye ku cy'umwana ntibyubahiriza ihame ry'uko uburemere bw'igihano bugomba gushingira ku buremere bw'icyaha.

Uhagarariye Leta y'u Rwanda avuga ko icyaha cyo gusambanya umwana kigira ingaruka zikomeye zitandukanye haba ku mitekerereze, imibanire, imyigire ndetse n'imikurire y'ubwonko bw'umwana kandi izo ngaruka zikanamukurikirana n'iyo yakuze. Ni icyaha kandi kigira ingaruka ku muryango

muri rusange, bityo ni icyaha kidakwiye gukinishwa cyangwa gupfobywa nk'uko Munyemana ashaka kubikora, kuko mu bihugu byinshi byo ku isi, iki cyaha gihanishwa ibihano bikomeye harimo igifungo cya burundu ndetse n'igihano cy'urupfu.

Certa Foundation nk'Inshuti y'Urukiko muri uru rubanza ihagarariwe na Me Kabasinga, ivuga ko gusambanya umwana ari icyaha gikomeye kivogera uburenganzira bwa muntu ku bagikorewe. Ibi ibivuga ishingiye ku masezerano mpuzamahanga arengera uburenganzira bwa muntu, arengera uburenganzira bw'umwana cyangwa aca burundu iavangura iryo ari ryo ryose rikorerwa abagore, ishingiye ku mategeko y'u Rwanda, ku manza zo hanze n'izo mu Rwanda ndetse ishingiye no ku bushakashatsi butandukanye bukorwa ku bijyanye n'uburenganzira bw'umwana. Ikomeza ivuga ko ibihano ku byaha byo gusambanya abana byarashimangiwe byimazeyo kubera ingaruka bisigira umwana wahohotewe, ndetse n'umuryango muri rusange. Isaba ko uru Rukiko rugomba gusesengura niba kuba itegeko ryarashyizeho ibihano bikomeye ku bakora icyaha cyo gusambanya abana, bivuguruza ihame ryo kungana imbere y'amategeko. Isoza ivuga ko Itegeko Nshinga mu ngingo yaryo ya 19 itegenya ko umwana wese afite uburenganzira bwo kurengerwa ku buryo bwihariye n'umuryango we, abandi banyarwanda na Leta, bitewe n'ikigero n'imibereho arimo nk'uko biteganywa n'amategeko. Kuba bakeneye kurengerwa byihariye kugirango ihohoterwa bakorerwa ricike ndetse bahabwe n'ubutabera mu buryo bwo guhana byimazeyo uwabahohoteye, ntawavuga ko itegeko rivangura ugereranyije n'ibindi byaha bishobora kubakorerwa nk'icyaha cyo gukomeretsa bikabije.

Ku kibazo kijyanye no kuba ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange unyuranyije n'ihame ry'ubutabera buboneye, Urega avuga ko nta butabera buboneye aba ahawe iyo uwakojeje igitsina cye ku gitsina cy'umwana, ahanishijwe igifungo cy'imyaka 20 cyangwa cya burundu, mu gihe uwamutemye amaguru n'amaboko ahanishwa igihano kitarenze imyaka 15. Ibi bivuze ko aba yahawe igihano gifite ubukana budahuye n'uburemere bw'icyaha yakoze.

Kuri iki kibazo, Uhagarariye Leta y'u Rwanda avuga ko kuba ibihano biremereye ntibivuga ko uwahanwe yimwe uburenganzira ku butabera buboneye cyangwa ngo yimwe uburenganzira ateganyirizwa n'Itegeko Nshinga. Ikindi ni uko Urega atagaragaza ko ibihano biteganyijwe muri iyo ngingo asaba ko yakurwaho bidashyira mu gaciro cyangwa ngo bibe bibangamiye uburenganzira bw'abaturage, akaba agaragaza gusa ko biremereye.

Inshuti y'Urukiko ivuga ko izi mpaka ziriho zishobora kugabanya ubukana bw'ihohoterwa rishingiye ku gitsina, ugereranyije n'ubundi buryo bwo kugira nabi. Isobanura ko mu gihe cyo guhangana n'icyaha cyo gukoresha imibonano mpuzabitsina ku gahato, bikwiye kutibanda gusa ku karengane gashobora kuba ku bakoze icyaha, bavuga ko igihano kidahuye n'uburemere bw'icyaha, kuko kwibanda ku bitekerezo by'uwakoze icyaha utitaye bihagije ku ngaruka zabaye ku wahohotewe, bishobora gutuma mu buryo butagambiriwe habaho imyumvire mu bantu yo gushyira imbere uburenganzira n'ibitekerezo by'abaregwa ibyaha bishingiye ku mibonano mpuzabitsina kuruta kwita ku mibereho y'abahohotewe.

Incamake y'icyemezo: 1. Ntawavuga ko yavanguwe mu gihe ibikorwa na kamere y'ibyo aregwa gukora n'ingaruka zabyo kuri sosiyete bitandukanye n'ibikorwa na kamere y'ibyo uwo yigereranya nawe yakoze, kuko bitahanwa kimwe.

2. Uburemere bw'icyaha cyo gusambanya umwana ni imwe mu mpamvu zishingirwaho mu igenwa ry'igihano uwagikoze agomba guhanishwa. Nubwo ibihano bitangwa kuri icyo cyaha biremereye ntibiruta uburemere bwacyo n'ingaruka kigira ku mwana wasambanyijwe, n'izo kigira kuri sosiyete.

Ikirego nta shingiro gifite.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015, ingingo ya 15, 16, 19 n'iya 29.

Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 14 n'iya 121.

Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 4.

Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, ingingo ya 49 n'iya 133.

Act Nº 4 of 1998, Sexual Offences Special Provisions Act, 1998, section 131.

The Sexual Offences Act, Nº 3 of 2006 of Kenya.

The Penal Code (amendment) Act, 2007, section 129.

Imanza zifashishijwe:

RS/INCONST/SPEC00004/2021/SC, Re Ngendahayo Kabuye rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2023.

RS/INCONST/SPEC00005/2020/CS - RS/INCONST/SPEC00006/2020/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 12/02/2021.

RS/INCONST/SPEC00004/2019/SC, Me Nzafashwanayo Dieudonné rwaciwe n'Urukiko rw'Ikirenga ku wa 24/07/2020.

RS/INCONST/SPEC00003/2019/SC, Kabasinga Florida rwaciwe n'Urukiko rw'Ikirenga ku wa 04/12/2019.

RS/INCONST/SPEC00001/2019/SC, Me Murangwa Edward rwaciwe n'Urukiko rw'Ikirenga ku wa 29/11/2019.

RS/INJUST/RP00003/2019/SC, Niyonsaba Eric n'Ubushinjacyaha rwaciwe n'Urukiko rw'Ikirenga ku wa 28/01/2022.

Inyandiko z'abahanga zifashishijwe:

Barry C. Feld and Donna M. Bishop, The Oxford Handbook of Juvenile Crime and Juvenile Justice (Oxford University Press, USA, 12 Jan 2012).

I. IMITERERE Y'URUBANZA

[1] Me Kayitana Evode ahagarariye Munyemana Dionize yatanze ikirego mu Rukiko rw'Ikirenga arusaba gukuraho igika cya 2, icya 3 n'icya 4 by'ingingo ya 4 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange (Igazeti Special yo ku wa 29/11/2019) kuko asanga binyuranye n'Itegeko Nshinga rya Repubulika y'u Rwanda (ryitwa Itegeko Nshinga muri uru rubanza), mu ngingo yaryo ya 15, iya 16 n'iya 29. Avuga ko Munyemana Dionize yahamijwe icyaha cyo gusambanya umwana n'Urukiko Rwisumbuye rwa Karongi mu rubanza RP 00335/2019/TGI/KNG rwaciwe ku wa 26/05/2020, ahanishwa igifungo cya burundu, rushingiye ku ngingo ya 133 (2) y'Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, kuri ubu iyi ngingo ikaba yarahinduwe n'ingingo ya 4 y'Itegeko N° 69/2019 ryavuzwe haruguru.

[2] Asobanura ko ibihano biteganywa n'ingingo ya 4 y'Itegeko N° 69/2019 ryavuzwe haruguru binyuranyije n'amahame n'uburenganzira bwa muntu biteganywa n'ingingo ya 15, iya 16 n'iya 29 y'Itegeko Nshinga, ko kandi ibyo bihano ari umurengera ugereranyije n'ibihano biteganywa mu ngingo zindi z'amategeko zihana ibyaha by'ubugome bifite uburemere burenze ubw'icyaha cyo gusambanya umwana. Avuga ko yatanze iki kirego mu nyungu ze bwite ndetse no mu nyungu rusange nk'umunyarwanda uharanira ubutabera bwuzuye n'iterambere ry'amategeko.

[3] Me Karemera Georges uhagarariye Leta y'u Rwanda avuga ko iyo urebye uburyo icyaha cyo gusambanya umwana gihanwa mu bihugu byinshi, usanga ibihano biteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 4 y'Itegeko N° 69/2019 yavuzwe haruguru, atari umurengera, akaba asanga uretse kuvuga gusa ko ibi bika binyuranye n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga ngo kubera ko biteganya ibihano biremereye, urega atagaragaza uburenganzira buba butubahirijwe.

[4] Iburanisha mu ruhame ryabaye ku wa 10/01/2024, Me Kayitana Evode ahagarariye Munyemana Dionize, naho Leta y'u Rwanda ihagarariwe na Me Karemera Georges. Urukiko rwabanje kwemeza ko ubusabe bwa Certa Foundation bwo kuza mu rubanza nk'inshuti y'Urukiko (*Amicus Curiae*), mu rwego rwo gutanga ibitekerezo, bwemewe. Rwemeje kandi ko urega afite inyungu zo gutanga ikirego rushingiye ku mirongo rwatanze mu manza zaciwe ku birego bisa n'iki.

[5] Nyuma yo gusuzuma ubusabe bw'ababuranyi ku birebana no guhuza ingingo y'itegeko yaregewe n'impinduka zabaye nyuma yo gutanga ikirego, Urukiko rwasanze ingingo ya 4 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange yaregerwaga, yarahinduwe n'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, maze iburanisha rikomeza hasuzumwa ibibazo bigize urubanza bikurikira:

a) Kumenya niba igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda;

b) Kumenya niba igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda;

c) Kumenya niba ibihano biteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange byagabanywa, no kumenya niba bihita bikoreshwa kuri Munyemana Dionize ndetse no ku bantu bose bahamwe n'iki cyaha batararangiza ibihano.

II. ISESENGURA RY'IBIBAZO BIGIZE URUBANZA

1. Kumenya niba igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga rya Repubulika y'u Rwanda

[6] Me Kayitana Evode uhagarariye Munyemana Dionize avuga ko ingingo ya 15 y'Itegeko Nshinga iteganya ko abantu bose bareshya imbere y'amategeko, itegeko ribarengera ku buryo bumwe. Iyi ngingo kandi ishimangirwa n'Amasezerano Mpuzamahanga yerekeye uburengazira mu by'imbonezamubano no mu bya Politiki u Rwanda rwashyizeho umukono ateganya ko abantu bose bareshya imbere y'amategeko kandi bafite uburenganzira bwo kurengerwa n'amategeko ku buryo bungana nta kuvangura. Akaba asanga ibiteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, kubera impamvu zikurikira:

a) Riteganya ibihano bikakaye ku basambanya abana kurusha ibiteganyirizwa abantu bakora ibindi byaha bikomeye kurusha icyo gusambanya umwana. Urugero, iyo Munyemana Dionize aza gutema umwana aregwa gusambanya, akamuca amaboko cyangwa amaguru yombi, yari

guhanishwa igifungo cy'imyaka itarenze 15 hashingiwe ku ngingo ya 121 (3) y'Itegeko riteganya ibyaha n'ibihano muri rusange ryavuzwe haruguru.

b) Guhanisha umuntu igifungo cya burundu kubera gukoza igitsina cye ku cy'umwana ntibyubahiriza ihame ry'uko uburemere bw'igihano bugomba gushingira ku buremere bw'icyaha. Iryo hame kandi rishimangirwa n'umuhanga Gregory S. Schneider mu nyandiko yise "*Sentencing Proportionality in the States*", rikanagarukwaho n'ikigo cyitwa Sentencing Advisory Council cyo mu gihugu cya Australia.

c) Mu bihugu by'amahanga hari aho usanga iki cyaha gihanishwa ibihano bito cyane ugereranyije n'ibiteganywa muri iyi ngingo. Urugero, muri Leta ya California yo muri Leta Zunze Ubumwe z'Amerika ntibirenza imyaka ine (4) ku cyaha cyo gusambanya umwana, mu gihe icyaha cyo kumuca amaboko cyangwa amaguru byo bihanishwa igifungo cya burundu.

[7] Me Karemera Georges uhagarariye Leta y'u Rwanda asobanura ko ingingo ya 15 y'Itegeko Nshinga ivuga ko abantu bose bareshya imbere y'amategeko, ko kandi itegeko ribarengera ku buryo bumwe; naho ingingo ya 16 yo ikavuga ku bijyanye no kurindwa ivangura ndetse no kuba abanyarwanda bafite uburenganzira n'ubwisanzure bingana, ko ivangura iryo ariryo ryose ribujijwe kandi rihanwa n'amategeko. Avuga ko igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, bitanyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, kubera impamvu zikurikira:

a) Buri gihugu kigira amategeko ahana agaragaza ibyaha n'ibihano, kandi mu kubigena harebwa ububi bw'icyaha n'ingaruka zacyo haba ku wagikorewe (*victim*) ndetse no kuri sosiyete muri rusange; hagamijwe guhana uwakoze icyaha, gukumira ibyaha (*deterrence*) no kugorora (*rehabilitation*).

b) Binyuze mu nzego zibifitiye ububasha cyane cyane Inteko Ishinga Amategeko, buri gihugu kigena uburemere bw'icyaha ndetse n'igihano gikwiriye icyo cyaha hagamijwe kugera ku ntego zo guhana, gukumira no kugorora.

d) Icyaha cyo gusambanya umwana kigira ingaruka zikomeye zitandukanye haba ku mitekerereze, imibanire, imyigire ndetse n'imikurire y'ubwonko bw'umwana kandi izo ngaruka zikanamukurikirana n'iyo yakuze. Icyo cyaha cyonona kandi kikamunga ubuzima bw'umwana ndetse kigira ingaruka ku muryango muri rusange, bityo icyaha nk'icyo kikaba gikwiye guhanishwa igihano kiremereye, mu rwego rwo guhana abagikoze no gukumira kugira ngo n'abashaka kugikora babe batinya igihano bashobora guhabwa.

e) Iyo urebye uburyo icyaha cyo gusambanya umwana gihanwa mu bihugu byinshi, usanga ibihano biteganywa atari umurengera. Urugero n'urwo mu bihugu 3 bigize Umuryango w'Ibihugu by'Iburasirazuba bw'Afurika (East African Community) Kenya, Uganda na Tanzania no mu bindi bihugu byinshi, aho usanga iki cyaha gihanishwa ibihano biri hejuru cyane:

i) Mu Gihugu cya Kenya, umuntu usambanyije umwana ufite imyaka 11 no munsi yaho ahanishwa igifungo cya burundu, naho iyo umwana afite hagati y'imyaka 12 na 15, ahanishwa igifungo kidashobora kujya munsi y'imyaka 20.

ii) Mu Gihugu cya Uganda, umuntu usambanyije umwana uri munsi y'imyaka 18 ahanishwa igifungo cya burundu, naho usambanyije umwana uri munsi y'imyaka 14, ahanishwa igihano cy'urupfu.

iii) Mu Gihugu cya Tanzania, umuntu usambanyije umwana uri munsi y'imyaka 14 ahanishwa igifungo cya burundu.

iv) Muri Leta ya California, imwe muri Leta zigize Leta Zunze Ubumwe z'Amerika, umuntu ufite nibura imyaka 18 usambanyije umwana ufite imyaka 10 no munsi yayo ahanishwa igifungo kiri hagati y'imyaka 25 n'igifungo cya burundu.

v) Mu gihugu cya Nigeria, Umuntu usambanyije umwana uri munsi y'imyaka 13 ahanishwa igifungo cya burundu.

vi) Muri Northern Ireland, umuntu usambanyije umwana uri munsi y'imyaka 13 ahanishwa igifungo cya burundu.

f) Ukurikije izo ngero zitandukanye, bigaragara ko icyaha cyo gusambanya umwana ari icyaha kidakwiye gukinishwa cyangwa gupfobywa nk'uko Munyemana Dionize ashaka kubikora, kuko mu bihugu byinshi byo ku isi, iki cyaha gihanishwa ibihano bikomeye harimo igifungo cya burundu ndetse n'igihano cy'urupfu.

g) Mu rubanza RS/INCONST/SPEC 00001/2019/SC, Urukiko rw'Ikirenga rwatanze igisobanuro cy'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, ushingiye kuri urwo rubanza usanga igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru, ntaho binyuranya n'amahame akubiye mu ngingo ya 15 n'iya 16 y'Itegeko Nshinga, kandi haba mu Rwanda cyangwa mu bindi bihugu, hateganyijwe ko icyaha cyo gusambanya umwana muto gifite uburemere bukomeye kurusha icyaha cyo gukubita no gukomeretsa urega yagarutseho abigereranya.

h) Kuba igihano cyaremerera uwakoze icyaha ntibikwiye gufatwa ko icyo gihano ari umurengera, cyangwa ko ingingo igiteganya inyuranye n'Itegeko Nshinga, kuko uburemere bw'igihano budashobora gupimwa cyangwa kugenwa n'umuntu ku giti cye, cyane cyane uwakoze icyaha, nk'uko Munyemana Dionize ashaka kubikora.

[8] Mu izina ry'Inshuti y'Urukiko (*amicus curiae*), Me Kabasinga Florida, uhagarariye Certa Foundation, ashingiye ku Masezerano mpuzamahanga y'Uburenganzira bw'Umwana (*Convention on the Rights of the Child*), Amasezerano nyafurika yerekeye uburenganzira n'imibereho myiza y'umwana, Amasezerano Nyafurika y'uburenganzira bwa muntu n'abaturage ya Banjul, Amasezerano nyafurika y'uburenganzira bwa muntu n'abaturage ku burenganzira bw'umugore muri Afurika (Maputo Protocol), Amasezerano mpuzamahanga y'uburenganzira mbonezamubano n'ubwa politiki (ICCPR), n'Amasezerano yerekeye guca burundu ivangura iryo ari ryo ryose rikorerwa abagore (CEDAW), amategeko atandukanye y'u Rwanda, imanza zo hanze ndetse n'izo mu Rwanda, ubushakashatsi butandukanye ndetse n'ibisobanuro bitangwa na UNICEF ku burenganzira bw'abana n'ingimbi, avuga ko:

a) Gusambanya umwana ari icyaha gikomeye kivogera uburenganzira bwa muntu ku bagikorewe (victims). Bivogera amahame shingiro y'uburenganzira bwa muntu (fundamental human rights) ku mwana wakorewe iryo hohoterwa, ku mibereho (*safety*) ku buzima bwe, nko kuba yakwandura ubwandu bw'agakoko gatera SIDA, cyangwa izindi ndwara zandurira mu mibonano mpuzabitsina, ndetse ko ashobora no guhura n'ingorane mu gihe cyo gutwita no kubyara.

b) Raporo yakozwe n'Urwego rw'Ubugenzacyaha mu Rwanda (RIB), igaragaza ubwiyongere bwa 27.9 % bw'imanza zakozweho iperereza ugereranyije imibare yo mu mwaka w'ingengo y'imari wa 2018/2019 (3.215) na 2019/2020 (4.013). Raporo imwe ivuga ko umubare w'abana wiyongereyeho gato bava ku 3.215 muri 2019 ukagera kuri 4.265 muri 2020. Imibare igaragaza ko 1.239 (29.1%) y'abahohotewe bari munsi y'imyaka 10 muri 2020, ko kandi 98 % by'izo manza, abahohotewe ari abakobwa.

c) Raporo yakozwe n'Ubushinjacyaha Bukuru yagaragaje ko ibyaha byo gusambanya abana byiyongereye kuva ku 1.819 mu mwaka wa 2013 bigera ku 3.793 mu mwaka wa 2020. Iyo raporo igaragaza neza ko icyo cyaha ari ikibazo gikomereye Leta y'u Rwanda gikeneye

gufatirwa ingamba zitajenjetse. Niyo mpamvu icyaha cyo gusambanya abana ndetse n'ibindi bikorwa by'ihohoterwa rishingiye ku gitsina, bigomba gufatwa nk'ihohoterwa ry'uburenganzira bwa muntu.

d) Abana b'abakobwa aribo bibasirwa cyane n'ibyo bikorwa bibi, kandi bakaba bakomeje gucecekeshwa, badashobora kubona uburenganzira bwabo no kurindwa nyuma y'ibi bintu bibi bakorerwa.

e) Gusambanya umwana ari icyaha gikomeye gitera n'ingaruka nyinshi zitandukanye nk'ihungabana (*Trauma*) n'akababaro ku basambanyijwe, ndetse ibyo bikabagiraho n'ingaruka kuri ejo habo hazaza, ku mishinga yabo, ku buzima bwabo, ku myigire yabo, ku bukungu bwabo ndetse no mu mibanire yabo n'abandi.

f) Abahuye n'ihohoterwa barahahamuka bakumva ko atari abagore buzuye, kuko baba bateshejwe agaciro ku rwego rwo gutakaza icyubahiro cyabo. Niyo mpamvu Guverinoma y'u Rwanda yateye intambwe intambwe mu gukumira no guca burundu ihohoterwa rishingiye ku gitsina, ishyiraho urwego rugamije gushyira mu bikorwa amategeko na politiki yo kurwanya no gukurikirana ihohoterwa rishingiye ku gitsina.

g) Habayeho iterambere ry'amategeko na politiki byerekana intambwe igaragara iganisha ku buringanire no gushyiraho uburyo bwiza bwo gukumira no kurwanya ihohoterwa rishingiye ku gitsina, aho ryagizwe icyaha gihanwa n'ibihano biremereye. Ni ngombwa kwerekana ingaruka zishobora guterwa no gukoresha imyumvire ibogamye ishingiye ku nshingano n'imico iranga igitsina mu bucamanza. Imyumvire ishingiye ku gitsina iyo ikoreshwa mu nzego z'ubutabera ishobora kugira ingaruka zikomeye ku burenganzira bw'ibanze bw'umugore, harimo uburinganire imbere y'amategeko, ubutabera buboneye,n'uburenganzira bwo gukemurirwa ibibazo mu buryo bunoze.

h) Ibihano ku byaha byo gusambanya abana byarashimangiwe byimazeyo kubera ingaruka bisigira umwana wahohotewe, ndetse n'umuryango muri rusange. Urukiko rukaba rugomba gusesengura niba kuba itegeko ryarashyizeho ibihano bikomeye ku bakora icyaha cyo gusambanya abana, bivuguruza ihame ryo kungana imbere y'amategeko.

i) Gukumira icyaha cyo gusambanya abana bisaba imbaraga nyinshi za Leta hagamijwe ko abakora bene ibi byaha batazongera kubikora ukundi. Bumwe mu buryo bukomeye u Rwanda rwakoresheje ni ugufata gusambanya umwana nk'icyaha gikomeye cy'indengakamere ndetse cyashyizwe mu byaha bidasaza. Umuntu wese wangiza ejo hazaza h'umwana nta mutima aba afite, bityo umuryango, sosiyete na Leta muri rusange bigomba gufatanya kurwanya iryo hohoterwa no kurinda abahohotewe.

j) Ihame ryo kungana imbere y'amategeko risobanura ko mu gukurikirana uwakoze icyaha hagomba kubahirizwa uburenganzira bw'uregwa bwo kuburanira mu ruhame, mu rukiko rufite ububasha kandi rwigenga, kandi rwanashyizweho n'itegeko. Iri hame rikaba ryumvikanisha ko amategeko akoreshwa arengera abantu mu buryo bumwe nta vangura rihari, hatitawe ku byiciro babarizwamo muri sosiyete, nko kuba umuntu ari umukire, umukene, umwana, umuntu mukuru, igitsina, uruhu, umuco, idini cyangwa ikindi icyo aricyo cyose.

K) Ku birebana n'uburyo bwo kurengera abana cyane ko ari nabo bahohoterwa cyane, ingingo ya 19 y'Itegeko Nshinga ivuga ko umwana wese afite uburenganzira bwo kurengerwa ku buryo bwihariye n'umuryango we, abandi banyarwanda na Leta, bitewe n'ikigero n'imibereho arimo nk'uko biteganywa n'amategeko. Abana bakeneye rero kurengerwa byihariye kugirango ihohoterwa bakorerwa ricike ndetse bahabwe n'ubutabera mu buryo bwo guhana byimazeyo uwabahohoteye, bityo akaba ari ntawavuga ko itegeko rivangura ugereranyije n'ibindi byaha bishobora gukorerwa abana nk'icyaha cyo gukomeretsa bikabije.

UKO URUKIKO RUBIBONA

[9] Ingingo ya 15 y'Itegeko Nshinga rya Repubulika y'u Rwanda, igira iti: abantu bose barareshya imbere y'amategeko. Amategeko abarengera ku buryo bumwe. Naho ingingo ya 16 yo ikavuga ko (1) Abanyarwanda bose bavukana kandi bagakomeza kugira uburenganzira n'ubwisanzure bingana. (2) 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'imibereho, 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.

[10] Ingingo ya 4 y'Itegeko N° 69/2019 ryo ku wa 08/11/2019 rihindura Itegeko N° 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, yahinduwe n'ingingo ya 14 y' Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange. Igika cyayo cya mbere aricyo kivuga ibikorwa bihanirwa mu gika cya 2, icya 3 n'icya 4 byaregewe, kigira kiti: (1) umuntu ukorera ku mwana kimwe mu bikorwa bishingiye ku gitsina bikurikira, aba akoze icyaha: (a)gushyira igitsina cy'umuntu mu gitsina, mu kibuno cyangwa mu kanwa by'umwana; (b)gushyira urugingo urwo ari rwo rwose rw'umubiri w'umuntu mu gitsina cyangwa mu kibuno cy'umwana; (c)gukora ikindi gikorwa cyose ku mubiri w'umwana hagamijwe ishimishamubiri. Naho igika cy'iyo ngingo cya 2, icya 3 n'icya 4, bigateganya ko (2) Umuntu uhamijwe n'urukiko gukora kimwe mu bikorwa bivugwa mu gika cya (1) cy'iyi ngingo ahanishwa igifungo kitari munsi y'imyaka 20 ariko kitarenze imyaka 25. (3) Iyo gusambanya umwana byakorewe ku mwana uri munsi y'imyaka 14 igihano kiba igifungo cya burundu. (4) Iyo gusambanya umwana byakorewe kumwana ufite cyangwa urengeje imyaka 14 byamuteye indwara idakira cyangwa ubumuga, igihano kiba igifungo cya burundu.

[11] Urukiko rurasanga mu rwego rwo gusesengura no gutanga igisubizo ku kibazo cyavuzwe haruguru, ari ngombwa guhuriza hamwe ingingo eshatu z'ingenzi zikurikira:

a) Ihame ryo kureshya n'iryo kutavangura imbere y'amategeko,

b) Ingaruka z'icyaha cyo gusambanya abana ndetse n'abatari abana muri rusange.

c) Ihame ry'uko uburemere bw'igihano bushingira ku buremere bw'icyaha (*principle of proportionality*)

a. Ihame ryo kureshya n'iryo kutavangura imbere y'amategeko

[12] Ihame ryo kureshya imbere y'amategeko n'iryo kutavangura yasesenguwe mu bihe bitandukanye n'uru Rukiko mu manza zitandukanye zaritanzeho umurongo, zirimo urubanza RS/INCONST/SPEC00004/2021/SC, rwaciwe ku wa 10/02/2023, haburana Ngendahayo Kabuye, aho rwasobanuye ko ihame ryo kureshya imbere y'amategeko rijyana n'iryo kutavangura, kandi ko afitanye isano, akaba agomba kureberwa hamwe kuko yombi ahuriza ku kintu cy'ingenzi cyo kudasumbanya abantu mu buryo butemewe cyangwa bubujijwe nta mpamvu, ugamije kugira abo uheza ku burenganzira bemererwa n'amategeko. Urukiko rwavuze kandi ko kureshya imbere y'amategeko no kutavangura bitavuze ko gutandukanya abantu ubwabyo mu bihe byose ari ivangura. Ko ndetse gutandukanya abantu cyangwa ibyiciro by'abantu bishobora kuba ngombwa bitewe n'ikigambiriwe, hari impamvu zumvikana zishingiye ku ntego ifite ireme (legitimate or rational purpose).[1]

[1] Urubanza RS/INCONST/SPEC 00004/2021/SC, rwaciwe n'Urukiko rw'Ikirenga ku wa 10/02/2023, haburana Ngendahayo Kabuye na Leta y'u Rwanda, igika cya 36 na 39.

[13] Muri urwo rubanza, uru Rukiko rwashimangiye ko abantu bari mu bihe cyangwa mu byiciro bimwe, bafatwa kimwe, ko iyo badafashwe kimwe nta mpamvu ifite ireme kandi yumvikana, byitwa ivangura, ko Leta ishobora gutandukanya abantu cyangwa ibyiciro by'abantu ariko ntibyitwe kubangamira ihame ryo kureshya imbere y'amategeko cyangwa iryo kutavangura, ko kugira ngo bishoboke, igomba kuba ifite impamvu yumvikana, ifite ireme kandi ikurikije amategeko, inagamije inyungu rusange z'abaturage.[2]

[14] Naho mu rubanza RS/INCONST/SPEC00004/2019/SC, rwaciwe ku wa 24/07/2020, haburana Me Nzafashwanayo Dieudonné, mu gika cya 31, hasobanuwe ko ihame ryo kureshya imbere y'amategeko rivuga ko itegeko rifata nk'abareshya abantu bari mu cyiciro kimwe kandi rigashyirwa mu bikorwa kimwe. Mu yandi magambo, ibisa bifatwa kimwe. Ni ukuvuga ko nta vangura rigomba kubaho ku bantu bari mu bihe bisa no mu buryo busa. Bikumvikana ko abantubatari mu cyiciro kimwe badashobora gufatwa kimwe.

[15] Uru Rukiko rwasobanuye nanone izo ngingo mu rubanza RS/INCONST/SPEC 00001/2019/SC haburana Me Murangwa Edward, rugaragaza ko ihame ry'uko abantu bareshya imbere y'amategeko rivuze ko abantu bafatwa kimwe imbere y'itegeko, nta busumbane cyangwa ivangura, n'itegeko rigiyeho rigafata kimwe abo rireba. Rwongeyeho ko ibintu bimeze kimwe bifatwa kimwe, naho ibintu bitandukanye bigafatwa ku buryo butandukanye hakurikijwe itandukaniro ryabyo, ko kandi n'ubwo abantu bagomba kureshya imbere y'amategeko, kubatandukanya cyangwa kubashyira mu byiciro bititwa buri gihe ivangura.

b. Ingaruka z'icyaha cyo gusambanya abana ndetse n'abatari abana muri rusange

[16] Mu cyegeranyo cyasohowe n'Umuryango w'Abibumbye, gikubiyemo imanza zaciwe n'Inkiko Mpuzamahanga ku ihohoterwa rishingiye ku gitsina, harimo Urukiko Mpanabyaha Mpuzamahanga rwashyiriweho u Rwanda, urwashyiriweho Yugoslavia n'urwashyiriweho Sierra Leone, hagaragaramo ko ihohoterwa rishingiye ku gitsina ritera ububabare bukabije no kubabara ku mubiri ndetse no mu ntekerezo. Kubabara mu ntekerezo ku wakorewe ihohoterwa bishobora gukongezwa na sosiyete ndetse n'ibiranga umuco kandi bikaba biremereye byihariye binamara igihe kinini cyane.[3] Gukoreshwa imibonano mpuzabitsina ku gahato bitera ububabare bukabije ku mubiri no mu bitekerezo. Ububabare mu bitekerezo bw'abantu bakoreshejwe imibonano mpuzabitsina ku gahato bushobora kongerwa bitewe n'ibyerekeye imibereho n'umuco kandi bikagira ingaruka zikomeye kandi z'igihe kirekire.

[17] Urubanza R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424, rwaciwe n'Urukiko rw'Ikirenga rwa Canada, rwasobanuye ko kugirango habe uburyo bukwiye bwo kurwanya icyaha cyo gusambanya abana, mu kugena igihano ari ingenzi ku bacamanza kubanza kumva mu buryo bunoze uburemere bw'ububi bwo gusambanya abana ndetse n'igikomere bitera. Uru rubanza rwagaragaje ko kunanirwa kumenya cyangwa kwemeranya n'inyungu umushingamategeko agamije kurinda mu bijyanye no kurwanya ibyaha bishobora gutuma habaho gutesha agaciro mu buryo budakwiye uburemere bw'icyaha. Ibi bishobora gutuma kandi imitekerereze idafite ireme icengera mu mihango ijyanye n'igenwa ry'igihano, ingaruka zikaba kudatahura ndetse no gukoresha nabi impamvu nkomeza cyaha cyangwa impamvu nyoroshya cyaha. Kumva mu buryo bunoze igikomere cyatewe n'icyaha bituma hatangwa igihano mu murongo uhuye n'imyumvire igezweho muri sosiyete yumva kamere

[2] Idem, igika cya 57.

[3] *United Nations, Department of Peacekeeping Operations, Review of the Sexual Violence Elements of the Judgments of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone in the Light of Security Council Resolution 1820, (United Nations, 2010), p. 34. States that "Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting."*

n'uburemere bw'ihohoterwa rishingiye ku gitsina rikorewe abana, bikanatuma imyumvire itariyo no kwibwira kubi bitinjira mu igenwa ry'igihano.[4]

[18] Urwo rubanza rumaze kuvugwa rukomeza rugaragaza ko inyungu shingiro umushingamategeko aba arengera mu kugena ibihano ku byaha byo gusambanya abana ari ubwigenge bwa muntu, kudahungabanywa ku mubiri, kudahungabanywa mu by'imibonano mpuzabitsina, ikuzo, no kungana kw'abana. Rwagaragaje kandi ko ihohoterwa rishingiye ku gitsina rikorewe abana rihungabanya ubwigenge bwa muntu bw'umwana mu buryo butandukanye no ku muntu mukuru kuko umwana aba adafite ububasha bwo kwemera gukora imibonano mpuzabitsina n'umuntu mukuru, bisobanuye ko aba agikeneye uburenganzira bwo gukura butarangwamo gufatiranwa akoreshwa imibonano mpuzabitsina n'abakuze.[5]

[19] Urwo rubanza kandi mu gika cya 76 kugeza ku cya 80, ruvuga ko gusambanya abana ari ikibi muzi, gikomeretsa mu buryo bweruye, buri gihe bigashyira umwana mu mage yo gukomereka bikomeye, ku rwego byigaragaza, igikomere nyirizina kikaba kijyana n'umwihariko wa buri cyaha. Iryo hohoterwa buri gihe rijyana no gukoresha imbaraga zijyanye na kamere y'imibonano mpuzabitsina ku mwana. Ikindi cyagaragajwe n'urwo rubanza ni uko impamvu zikomeza icyo cyaha zituruka ku buryo guhungabanywa ku bwigenge ku bijyanye n'imibonano mpuzabitsina ku mwana byiyongeraho guhungabanywa ku mubiri w'umwana. Urukiko rwemeje kandi ko ukora icyaha ahuza imyanya ndangagitsina ye n'iy'umwana, bigatera ihohoterwa mu ntekerezo kandi ko mu buryo buhamye ihohoterwa ry'umubiri risobekeranye n'ihohoterwa mu ntekerezo. Rwanagaragaje ko ibikomere mu mubiri no mu ntekerezo by'umwana biba karande bagendana mu bwana bwe bwose.[6]

c. Ihame ry'uko uburemere bw'igihano bushingira ku buremere bw'icyaha (*principle of proportionality*)

[20] Mu rubanza R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424, rwavuzwe haruguru, Urukiko rw'Ikirenga rwa Canada rwasobanuye ihame ryo kuba uburemere bw'igihano bugomba gushingira ku buremere bw'icyaha, aho rwasobanuye ko ibihano byose bigendana n'ihame ryo kuba igihano

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[4] R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424, para 50, ruboneka kuri https://decisions.scc-csc.ca/scc- csc/scc-csc/en/item/18238/index.do? q=R.+v.+Friesen states that "*To effectively respond to sexual violence against children, sentencing judges need to properly understand the wrongfulness of sexual offences against children and the profound harm that they cause. Getting the wrongfulness and harmfulness right is important…. failure to recognize or appreciate the interests that the legislative scheme of offences protects can result in unreasonable underestimations of the gravity of the offence. Similarly, it can result in stereotypical reasoning filtering into the sentencing process and the consequent misidentification and misapplication of aggravating and mitigating factors. Properly understanding the harmfulness will help bring sentencing law into line with society's contemporary understanding of the nature and gravity of sexual violence against children and will ensure that past biases and myths do not filter into the sentencing process*."

[5] Ibid., para 54 – 59. States that "*This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that may often be more pervasive and permanent in its effect than any physical harm…… These forms of harm are particularly pronounced for children. Sexual violence can interfere with children's self-fulfillment and healthy and autonomous development to adulthood precisely because children are still developing and learning the skills and qualities to overcome adversity. For this reason, even a single instance of sexual violence can permanently alter the course of a child's life*."

[6] Idem., para 77. States that "*…violence is always inherent in the act of applying force of a sexual nature to a child. Far from removing the violence, the sexual dimension instead aggravates the wrongfulness of the violence by adding interference with the child's sexual integrity to the interference with the child's bodily integrity. Physical contact of a sexual nature with a child always means that the offender has interfered with both the child's security of the person from any non-consensual contact or threats of force and the child's bodily integrity, which lies at the core of human dignity and autonomy. Such physical sexual contact is also a form of psychological violence precisely because bodily and psychological integrity are closely linked. The degree of physical interference and the intensity of physical and psychological violence vary depending on the facts of individual cases. However, any physical contact of a sexual nature with a child always constitutes a wrongful act of physical and psychological violence even if it is not accompanied by additional physical violence and does not result in physical or psychological injury. Courts must always give effect to this inherent violence since it forms an integral component of the normative character of the offender's conduct*."

kigomba kuba kingana n'uburemere bw'icyaha ndetse n'urwego uwagikoze akwiye kuryozwaho (*principle of proportionality*). Umucamanza ugena igihano yita na none ku rindi hame ryo kuba abanyabyaha bamwe, bakoze icyaha kimwe, mu buryo bumwe, bagomba guhabwa igihano kimwe (principle of parity). Amahame abiri amaze kuvugwa ntabwo avuguruzanya, ahubwo kubahiriza rimwe nibyo bituma irindi naryo ryubahirizwa. Nanone kandi, uburyo bwatuma hatangwa igihano kimwe ku bitameze kimwe nabwo buba butubahirije ihame ryo kuba igihano kigomba kuba kingana n'uburemere bw'icyaha n'ihame ryo kuba abanyabyaha bamwe, bakoze icyaha kimwe mu buryo bumwe bagomba guhabwa igihano kimwe. Iri hame rimaze kuvugwa niryo rigaragaza mu buryo ngiro uko uburemere bw'igihano bugomba gushingira ku buremere bw'icyaha.[7]

[21] Abahanga mu mategeko bavuga kandi ko ihame ry'uburemere bw'igihano bugomba gushingira ku buremere bw'icyaha (*principle of proportionality*) ritegeka ko igihano ku cyaha kigomba gutangwa hadashingiwe gusa kuri kamere y'ibikorwa bigize icyaha byakozwe, ahubwo ko hanashingirwa ku buryozwe n'umugayo uwagikoze akwiye. Bimwe mu byitabwaho inkiko zagiye zigenderaho igihe zemeza urwego umuntu ari buryozweho ku bikorwa bigize icyaha akaba ari ububasha bwe bwo gufata icyemezo (decision-making capacity), uburyo icyaha cyakozwemo, ndetse n'imyitwarire imuranga.[8]

[22] Ukurikije ibisobanuro n'imirongo byatanzwe mu manza zavuzwe haruguru zaciwe n'uru Rukiko kw'ihame ryo kureshya n'iryo kutavangura imbere y'amategeko, Urukiko rurasanga urega atabasha kugaragaza uburyo ibihano ku cyaha cyo gusambanya abana binyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga, usibye kugereranya ibihano bihanishwa uwahamwe n'icyo cyaha n'ibihabwa uwahamwe n'icyaha cyo gukubita no gukomeretsa byaviriyemo uwakorewe icyaha ingaruka zigaragara ku mubiri nko gucibwa ukuboko.

[23] Urukiko rushingiye ku isesengura ryakozwe haruguru, ndetse no ku manza zitandukanye zisesengura amahame ateganywa mu ngingo ya 15 na 16 z'Itegeko Nshinga, rurasanga ibyo byaha byombi bitandukanye, bityo n'ababikoze bakaba batahanwa kimwe kandi bahanirwa ibyaha bitandukanye, hakaba ntawavuga ko yavanguwe mu gihe ibikorwa na kamere y'ibyo aregwa gukora n'ingaruka zabyo kuri sosiyete bitandukanye n'ibikorwa na kamere y'ibyo uwo yigereranya nawe yakoze.

[24] Kubera izo mpamvu zose zavuzwe haruguru, Urukiko rurasanga ingingo ya 14, mu gika cya 2, icya 3, n'icya 4, y' Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange itanyuranyije n'ingingo ya 15 n'iya 16 z'Itegeko Nshinga.

2. Kumenya niba igika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, binyuranyije n'ingingo ya 29 y'Itegeko Nshinga rya Repubulika y'u Rwanda

[7] R. v. Friesen, 2020 SCC 9, [2020] 1 S.C.R. 424, para 30-33, available at https://decisions.scc-csc.ca/scc- csc/scc-csc/en/item/18238/index.do? q=R.+v.+Friesen. states that "*Parity and proportionality do not exist in tension; rather, parity is an expression of proportionality. A consistent application of proportionality will lead to parity. Conversely, an approach that assigns the same sentence to unlike cases can achieve neither parity nor proportionality. In practice, parity gives meaning to proportionality*."

[8] Barry C. Feld and Donna M. Bishop, The Oxford Handbook of Juvenile Crime and Juvenile Justice (Oxford University Press, USA, 12 Jan 2012), p. 539, states that "*Basic principles of proportionality dictate that criminal punishment should be meted out not only based on the nature of the perpetrator's criminal actions, but also by his blameworthiness. Included among the factors that the courts have traditionally considered when determining the degree to which a person is held responsible or blameworthy for criminal actions are the individual's decision- making capacity, the circumstances under which the crime was committed, and the individual's character*."

[25] Me Kayitana Evode uhagarariye Munyemana Dionize avuga ko Itegeko Nshinga mu ngingo yaryo ya 29 iteganya ko buri muntu wese afite uburenganzira ku butabera buboneye[...]; kandi ko mu gusobanura ubutabera buboneye n'ibibukubiyemo, Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC00003/2019/SC rwaciwe ku wa 04/10/2019, rwagaragaje ko "ubutabera buboneye bugizwe n'uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko (*procedural due process*) n'ubutabera buboneye bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'abaturage (*substantive due process*). Akaba asanga ibihano biteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru bikabije uburemere ugereranyije n'uburemere bw'icyaha, bikaba binyuranyije n'ingingo ya 29 y'Itegeko Nshinga kubera impamvu zikurikira:

a. Umuntu utemye umwana akamuca amaguru cyangwa amaboko we ahanishwa imyaka itarenze 15, bikaba bitumvikana ukuntu gukoza igitsina ku cy'umwana, rimwe na rimwe uwabikoze ntagere no ku gikorwa nyirizina cyo kumusambanya, nk'uko Ubushinjacyaha bubivuga mu rubanza rwa Munyemana Dionize, yahanishwa igifungo cy'imyaka 20 cyangwa icya burundu.

b. Nta butabera buboneye umuntu yavuga ko yabonye mu gihe yahawe ibihano bifite ubukana budahuye n'uburemere bw'icyaha yakoze.

c. Hari abantu benshi basambanyijwe bakiri batoya, kandi ubu bakaba bubatse, barabyaye, bakora akazi neza, nta kibazo gikomeye bafite mu buzima. Urugero rw'umuntu wasambanyijwe akiri muto ubu akaba ari mu bantu bakomeye ku isi, akaba ari Pastor Joyce Meyer wavuzwe haruguru, witangira ubuhamya ko se yamusambanyije akiri umwana inshuro zigera kuri 200, ariko ubu bikaba bitaramubujije kuba ari umudamu ufite urugo rukomeye, ndetse ari n'umupasitori ukomeye ku isi.

d. Mu bikorwa bimwe bihanwa mu ngingo y'Itegeko ryavuzwe haruguru, harimo ibitanagize igikorwa cya "*pénetration sexuelle*", nko gukorakora umwana ku gitsina cyangwa ku mabere cyangwa kumusoma ugamije ishimishamubiri. Asanga nta butabera buboneye iyi ngingo itanga kuko uwasomye umwana akatirwa imyaka 20 cyangwa igifungo cya burundu, mu gihe uwamutemye akamuca amaboko cyangwa amaguru ahanishwa imyaka itarenze 15. Niyo mpamvu avuga ko harimo akarengane, kabuzwa muri "substantive due process" ivugwa mu ngingo ya 29 y'Itegeko Nshinga.

e. Urukiko rw'Ikirenga mu rubanza RS/INCONST/SPEC00003/2019/SC haburana Kabasinga Florida, rwasobanuye ko mu mategeko y'u Rwanda hagaragaramo akarengane mu bihano, bityo Urukiko rukaba rwarasabye ko hashyirwaho politiki yo guhana yemerera Umucamanza ubwisanzure bwo gutanga igihano akurikije uburemere bw'icyaha n'ingaruka cyateye.

[26] Me Karemera Georges uhagarariye Leta y'u Rwanda asobanura ko ingingo ya 29 y'Itegeko Nshinga irebana n'uburenganzira ku butabera buboneye (*right to due process / droit à la guarantie judiciaire*). Akavuga ko igika cya 2, icya 3 n'icya 4, by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 ryavuzwe haruguru, bitanyuranyije n'ingingo ya 29 y'Itegeko Nshinga, kubera impamvu zikurikira:

a. Kuba ibihano biremereye ntibivuga ko uwahanwe yimwe uburenganzira ku butabera buboneye cyangwa se ko atahawe uburenganzira butenganywa n'ingingo ya 29 y'Itegeko Nshinga.

b. Ku bijyanye n'ubutabera buboneye (*substantive due process*), urega ntagaragaza ko ibihano biteganyijwe mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 yavuzwe haruguru, bidashyira mu gaciro, cyangwa ngo bibe bibangamiye

uburenganzira bw’abaturage. Icyo agaragaza gusa ni uko ibihano biremereye ibyo bikaba bidahura n’ibyo Urukiko rw’Ikirenga rwasobanuye mu rubanza yagaragaje mu mwanzuro we.

c. Urega yatanze urugero kuri Pastor Joyce Meyer, ashaka kugaragaza ko icyaha cyo gusambanya umwana kidafite ingaruka zikomeye, bitandukanye cyane n’ukuri, kuko ubwe yivugira ko kuba se umubyara yaramusambanyije kuva akiri muto byamugizeho ingaruka zikomeye cyane mu mikurire ye, ko ndetse bigoye kwiyumvisha ingaruka mbi gusambanya umwana bigira kuri uwo mwana.[9]

d. Ibihano bigenewe abakoze icyaha cyo gusambanya abana bigamije kurinda uburenganzira bw’abana ndetse na sosiyete muri rusange, bibarinda abantu nka Munyemana Dionize, kandi bikanakumira abandi bantu bashobora kugira igitekerezo cyo gukora icyo cyaha ariko ntibagikore kubera gutinya igihano bashobora guhabwa baramutse bishoye muri icyo cyaha.

[27] Mu izina ry’Inshuti y’Urukiko (*amicus curiae*) (i.e. Certa Foundation), Me Kabasinga Florida, uyihagarariye avuga ko:

a. Impaka ziriho zishobora kugabanya ubukana bw’ihohoterwa rishingiye ku gitsina, ugereranyije n’ubundi buryo bwo kugira nabi. Uku gupfobya kukaba gushobora gushimangira mu buryo butagenderewe imyumvire igabanya uburemere bw’icyaha cyo gusambanya umwana no gukinisha imyumvire y’uwahohotewe.

b. Kwibanda gusa ku bikorwa bifatika bigize icyaha bishobora kubuza kumenya neza ingaruka mbi zikomoka kw’ihohoterwa iryo ari ryo ryose rishingiye ku gitsina, cyane cyane irikorerwa umwana ndetse bikanagira ingaruka zo kumvikanisha ko ko igihano cy’ibi byaha kidakwiye.

c. Birakwiye ko mu butabera hatagarukirwa gusa ku gusesengura ingaruka ku mubiri zo gukoreshwa imibonano mpuzabitsina ku gahato kuko n’ubwo zishobora kuba ziremereye ushingiye ku kuba bamwe mu bahohotewe byarabateye ubumuga, zimwe mu ngingo zabo zigatakaza imikorere, cyangwa bagahura n’ibibazo byo gutwita, abandi bagapfa kubera gukuramo inda, ingaruka mu mitekerereze y’uwakoreshejwe imibonano mpuzabitsina ku gahato cyangwa uwasambanyijwe ziraremereye kandi akenshi zikaba zirengagizwa.

d. Igitekerezo cy’uko abarokotse gukoreshwa imibonano mpuzabitsina ku gahato bashobora kubaho neza, gukora no kugira imiryango nk’uko byavuzwe ahanini mu nkuru ya Joyce Meyer, bishobora kuba ukuri kuri bamwe, nyamara ntibikuraho ihungabana abarokotse iryo hohotera akenshi bahangana naryo. Joyce Meyer mu magambo ye ntiyigeza avuga ko atagizweho ingaruka n’ihohoterwa yakorewe.

e. Ubushakashatsi bwakozwe hagati ya Kamena 2015 na Nyakanga 2016 mu bitaro by’igihugu bya Kenyatta n’ibitaro by’abagore bya Nairobi, bwakorewe ku bantu 40 bakoreshejwe imibonano mpuzabitsina ku gahato n’imiryango yabo, bwagaragaje ko abana bakoreshwejwe imibonano mpuzabitsina ku gahato baragize ingaruka mbi mu bijyanye no kutitwara neza mu masomo, kwiyubaha guke, kwiheba, ndetse n’imibanire mibi n’abandi.

f. Mu gihe hasesengurwa ibijyanye no gukoreshwa imibonano mpuzabitsina ku gahato, hagomba kandi kurebwa ingaruka iki cyaha gishobora kugira ku bagize umuryango w’abahohotewe, kuko bitewe no guhohoterwa na se, murumuna wa Joyce Meyer yabaswe n’ibiyobyabwenge ndetse birangira yiyahuye. Ibi bigaragaza ko gukoreshwa imibonano mpuzabitsina ku gahato bigera ku yindi ntera yo kurimbura abagize umuryango ukikije abahohotewe.

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[9] Pasiteri Joyce Meyer abivuga muri aya magambo: “*I was so profoundly ashamed because of this. I was ashamed of me, and I was ashamed of my father and what he did. I was also constantly afraid. There was no place I ever felt safe growing up. I don't think we can even begin to imagine what kind of damage this does to a child. At school I pretended I had a normal life, but I felt lonely all the time and different from everyone else. I never felt like I fit in….*”

g. Mu gihe cyo guhangana n'icyaha cyo gukoresha imibonano mpuzabitsina ku gahato, birakwiye kutibanda gusa ku karengane gashobora kuba ku bakoze icyaha, bavuga ko igihano kidahuye n'uburemere bw'icyaha, kuko kwibanda ku bitekerezo by'uwakoze icyaha utitaye bihagije ku ngaruka zabaye ku wahohotewe, bishobora gutuma mu buryo butagambiriwe habaho imyumvire mu bantu yo gushyira imbere uburenganzira n'ibitekerezo by'abaregwa ibyaha bishingiye ku mibonano mpuzabitsina kuruta kwita ku mibereho y'abahohotewe.

h. Mu rubanza rwaciwe n'Urukiko rw'Amerika rw'Uburenganzira bwa Muntu haburana Linda Loaiza v. Venezuwela, Urukiko rwemeje ko gukoresha Linda Loaiza imibonano mpuzabitsina ku gahato byagize uruhare mu kuvogera ubuzima bwe ku bijyanye n'imibonano mpuzabitsina, kandi bikuraho uburenganzira bwe bwo guhitamo mu bwisanzure uwo bazakorana imibonano mpuzabitsina, bigatuma atakaza uburenganzira bwe bwo gufata ibyemezo bikwiye ku mikorere y'ibanze y'umubiri.

i. Ni ngombwa gukorana ubwitonzi ibiganiro bishingiye ku ngingo zikomeye nko gusambanya umwana, hirindwa imvugo ishobora kwimakaza imyumvire mibi cyangwa ibangamira ubuzima bw'abahohotewe.

j. Uwakoze icyaha ahanwa kuko bikwiye (*retribution*), hatabujijwe ubundi buryo bwo guhana nko guhana nk'uburyo bwo kubuza uwakoze icyaha gukomeza kwidegembya (*incapacitation*), gahana nk'uburyo bwo gukumira icyaha (*deterrence*), guhana nk'uburyo bwo kugorora no gusubiza uwakoze icyaha mu buzima busanzwe (rehabilitation), no guhana nk'uburyo bwo gusana cyangwa kuriha ibyangiritse (*reparation*).

k. Hari amoko y'ihohoterwa rikorerwa abana, kandi rishobora gukorwa hatagombye kwinjira (*penetration*) mu myanya y'igitsinagore cyangwa kwangirika kw'agahu gatwikira igitsinagore. Hari n'ihohoterwa rikorerwa abahungu cyangwa irikorerwa abana hakoreshejwe indi myanya itari igitsina cy'umugore cyangwa ibindi bikorwa byose biganisha ku ishimishamubiri, nko kwinjiza igitsina mu kanwa k'umwana, n'ibindi byinshi, rikaba ritareberwa gusa ku miterere y'agahu gatwikira igitsinagore cyangwa ubusugi. Urukiko rw'Ubujurire muri Uganda rwagaragaje ko mu kwemeza ko habayeho icyaha cy'ihohoterwa rikorerwa abana rishingiye ku gitsina, atari ngombwa kuba harabayeho imibonano mpuzabitsina mu buryo bwimbitse, kuko kwinjira gato bihagije kugirango bibe bigize icyaha ndetse ko kuba umwana w'umukobwa cyangwa igitsinagore adafite akarangabusugi atari ikimenyetso cyagenderwaho mu kwemeza ko yahohotewe.

UKO URUKIKO RUBIBONA

[28] Ingingo ya 29, interuro ya mbere, y'Itegeko Nshinga iteganya ko buri muntu afite uburenganzira ku butabera buboneye, [….].

[29] Ingingo ya 49, igika cya mbere y'Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange igaragaraza ibyo umucamanza akurikiza mu gutanga igihano. Iteganya ko umucamanza atanga igihano akurikije uburemere bw'icyaha, ingaruka icyaha cyateye, impamvu zatumye agikora, uko uwagikoze yari asanzwe yitwara, imibereho ye bwite n'uburyo icyaha cyakozwemo. […].

[30] Mu rubanza RS/INCONST/SPEC00003/2019/SC, ku wa 04/12/2019, haburana Kabasinga Florida, uru Rukiko rwasobanuye ko ubutabera buboneye busobanurwa mu buryo butandukanye; hari ubutabera buboneye bushingiye ku migendekere (*procedural due process: a course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles*). Ni ukuvuga uruhererekane rw'ibigomba kubahirizwa mu migendekere y'urubanza hashingiwe ku mahame ateganywa n'amategeko. Hari n'Ubutabera buboneye bushingiye

ku biteganywa n'itegeko "*substantive due process": protection against enactement of arbitrary and unreasonable legislation or other measures that would violate peoples'rights*." Ubu buryo bwo bubuza ishyirwaho ry'amategeko cyangwa izindi ngamba zidashyira mu gaciro zibangamira uburenganzira bw'abaturage.

[31] Mu rubanza RS/INCONST/SPEC00005/2020/CS - RS/INCONST/SPEC00006/2020/CS rwaciwe ku wa 12/02/2021, uru Rukiko rwemeje ko ingingo iteganya igifungo cya burundu ku muntu wakoze icyaha cyo gusambanya umwana kidashobora kugabanywa kubera impamvu nyoroshyacyaha, nta gaciro ifite kubera ko inyuranye n'Itegeko Nshinga. Ibi bivuze ko igihe bigaragara ko hari impamvu nyoroshyacyaha, igifungo cya burundu kivugwa muri iyo ngingo gishobora kugabanywa, ndetse mu rubanza RS/INJUST/RP 00003/2019/SC rwaciwe n'uru Rukiko ku wa 28/01/2022, haburana Niyonsaba Eric n'Ubushinjacyaha, rwagabanyije igihano cy'igifungo cya burundu cyari cyahawe Niyonsaba Eric ku cyaha cyo gusambanya umwana yahamijwe n'Urukiko rw'Ubujurire, maze rushingiye ku mpamvu nyoroshyacyaha rumuhanisha igifungo cy'imyaka cumi n'itanu (15).

[32] Urukiko rurasanga ibimaze kuvugwa haruguru bigaragaza ko mu gihe umucamanza asanze hari impamvu nyoroshyacyaha, atabujijwe kugabanyiriza igihano uhamwe n'icyaha cyo gusambanya umwana, bitandukanye n'ibyo Me Kayitana Evode avuga.

[33] Ku birebana n'uburemere bw'icyaha cyo gusambanya umwana nk'imwe mu mpamvu zishingirwaho mu igenwa ry'igihano uregwa agomba guhanishwa, mu rubanza Botha v The State (546/2021) [2022] ZASCA 87 (08 June 2022),[10] rwaciwe n'Urukiko rw'Ikirenga rw'Ubujurire mu gihugu cy'Afurika y'Epfo, aho icyasuzumwaga kwari ukumenya icyakorwa ku gihano cy'igifungo cy'imyaka 36 gishingiye ku giteranyo cy'ibihano cyatanzwe n'Urukiko Rukuru, urugereko rwa Gauteng, Pretoria, kubera impurirane y'ibyaha by'ihohotera rishingiye ku gitsina, rwasuzumye niba harabaye kurengera cyangwa se harimo gukabya mu buryo budakwiye, runasuzuma niba ari ngombwa ko Urukiko rw'Ikirenga rw'Ubujurire ruhagarika icyo gihano binyuze mu zindi nzira ziteganywa n'amategeko. Mu isesengura ryakozwe rikubiye mu gika cya 18, rwasobanuye ko impamvu nkomezacyaha zarutaga impamvu nyoroshyacyaha, uburemere bw'icyaha n'icyasha cyo gusambanywa ku bana badafite kirengera kitafatwa nk'ikintu cyoroshye, kuko ingaruka bigira ku miterere y'umuryango na sosiyete muri rusange, igikomere cyo mu ntekerezo n'amarangamutima mabi ku mwana, bizwi neza. […]. Urukiko rwemeye ko igihano cy'igifungo cy'imyaka 36 gikomeye koko, ariko ko kidakomeye kurusha uburemere bw'ibyaha cyatanzweho. Urwo Rukiko rwasanze Urukiko Rukuru rutarakoresheje ububasha ku mahitamo yarwo mu buryo budashyize mu gaciro.

[34] Urukiko rurasanga nk'uko byagaragajwe haruguru, mu isesengura ryakozwe ku kibazo cya mbere cyasuzumwe haruguru, ndetse n'iryakozwe ku kibazo gisuzumwa muri iki gice, uburemere icyaha cyo gusambanya umwana gifite n'ingaruka kimugiraho, ndetse n'izo kigira kuri sosiyete, n'ubwo koko ibihano bitangwa kuri icyo cyaha biremereye ntibiruta ingaruka zacyo n'uburemere bwacyo. Rusanga kandi uburemere bw'icyo cyaha bwaragaragajwe muri raporo zakozwe n'Urwego

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[10] Ruboneka kuri https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/38- judgments-2022/3845-botha-v-the-state-546-2021-2022-zasca-87-08-june-2022, cyangwa kuri https://www.saflii.org/za/cases/ZASCA/2022/87.html., mu gika cya 18. "T*he aggravating factors far outweigh the mitigating factors in this case. The individual sentences were not severe. The gravity of the offences and the scourge of such offences on helpless and vulnerable children cannot be downplayed and the effect of these crimes cannot be understated. The impact on the family structure and community, as well as the psychological harm and adverse emotional impact on the child, are well known. A concurrence of the sentences was not possible on account of the abominable conduct of the appellant. 13 We accept that a sentence of 36 years' imprisonment is severe, but the facts of this case are such that a sentence of 36 years' imprisonment is not shockingly disproportionate to the crime. The high court did not exercise its discretion unreasonably. There is no reason to interfere with the sentences imposed*."

rw'Igihugu rushinzwe Ubugenzacyaha(RIB),[11] n'urw'Ubushinjacyaha Bukuru (NPPA)[12] aho byagaragaye ko habaye izamukarikabije ry'icyaha cyo gusambanya abana.

[35] Urukiko rurasanga nanone nk'uko byagaragajwe n'Inshuti y'Urukiko, mu gihe cyo guhangana n'icyaha cyo gusambanya abana, bidakwiye kwibanda gusa ku karengane gashobora kuba ku bakoze icyaha bavuga ko igihano kidahuye n'uburemere bw'icyaha, utitaye bihagije ku ngaruka zabaye k'uwahohotewe, kuko bishobora gutuma mu buryo butagambiriwe, habaho imyumvire mu bantu yo gushyira imbere uburenganzira n'ibitekerezo by'abakoze ibyaha bishingiye ku mibonano mpuzabitsina kuruta kwita ku mibereho y'abahohotewe. Ibyo byose bikaba bikwiye kwitabwaho mu gutanga igihano.

[36] Guhanisha icyaha cyo gusambanya umwana ibihano biremereye hashingiwe ku ngaruka zikomeye kandi z'igihe kirekire kigira k'uwahohotewe by'umwihariko no kuri sosiyete muri rusange, si umwihariko w'igihugu cy'u Rwanda nk'uko bigaragara mu mategeko ahana ibyaha y'ibihugu nka Uganda,[13] Kenya,[14] na Tanzania.[15]

[37] Urukiko rurasanga Me Kayitana Evode, uhagarariye Munyena Dionize, aterekana uburyo ingingo ya 14, igika cya 2, icya 3 n'icya 4 y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange aregera, ibangamiye uburenganzira bw'urega ku butabera buboneye buteganywa n'ingingo ya 29 y'Itegeko Nshinga.

[38] Hashingiwe ku bisobanuro bimaze gutangwa, Urukiko rurasanga ibyo Munyemana Dionize asaba Urukiko ko ibihano biteganywa mu gika cya 2, icya 3 n'icya 4 by'ingingo ya 14 y'Itegeko Nº

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[11] Raporo y'Urwego rw'Igihugu rushinzwe ubugenzacyaha (RIB), Statistical Analysis of Child Defilement - From July 2018 to June 2021, at page 4 states that "*.... in three fiscal years a total of 12,840 cases were recorded indicating an increase of 1,897 representing the rate of 55%. A total number of 13,646 victims and 13,485 suspects were recorded. The number of victims increased by 2,334 (66%) while suspects increased with margin of 2,096 (59%).*"

[12] Raporo igaragaza ibikorwa byakozwe n'Ubushinjacyaha Bukuru mu mwaka wa 2019 – 2020, ku rupapuro rwa 25, yerekana uko amadosiye y'ibyaha by'ihohotera rishingiye ku gitsina yagiye yiyongera mu myaka 7 yari ishize (Nyakanga 2013 – Kamena 2020), igaragaza ko muri 2013-2014 ibyaha byo gusambanya abana byari 1.819 naho muri 2019-2020 bikaba byari bigeze kuri 3.793.

[13] The Penal Code (amendment) Act, 2007, section 129 states that "(1) Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment. (2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not exceeding eighteen years. (3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death."

[14] The Sexual Offences Act, nº 3 of 2006 of Kenya, states that "(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement. (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life. (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years. (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years."

[15] Tanzania: Act No. 4 of 1998, Sexual Offences Special Provisions Act, 1998, section 131, states that "(1) Any person who commits rape is except in the cases provided for in the renumbered subsection (2), liable to be punished with imprisonment for life, and in any case for imprisonment of not less than thirty years with corporal punishment, and with fine, and shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person. (2) Notwithstanding the provision of any law, where the offence is committed by a boy who is of the age of eighteen years or less, he shall- (A)if a first offender, be sentenced to corporal punishment only; (B)if a second time offender, be sentenced to imprisonment for a term of twelve months with corporal punishment; (C)if a third time and recidivist offender he shall be sentenced to life imprisonment pursuant to subsection (1). (3) Notwithstanding the preceding provisions of this section whoever commits an offence of rape to a girl under the age of ten years shall on conviction be sentenced to life imprisonment."

059/2023 ryo ku wa 04/12/2023 ryavuzwe haruguru byagabanywa, kandi bigahita bikoreshwa kuri we ndetse no ku bantu bose bahamwe n'iki cyaha batararangiza ibihano, bitakiri ngombwa ko bisuzumwa.

III. ICYEMEZO CY'URUKIKO

[39] Rwemeje ko ikirego cya Munyemana Dionize, uhagarariwe na Me Kayitana Evode, gisaba kwemeza ko ingingo ya 14, igika cya 2, icya 3 n'icya 4, y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange inyuranyije n'ingingo ya 15, iya 16 n'iya 29 z'Itegeko Nshinga rya Repubulika y'u Rwanda, nta shingiro gifite.

[40] Rwemeje ko ingingo ya 14, igika cya 2, icya 3 n'icya 4, y'Itegeko Nº 059/2023 ryo ku wa 04/12/2023 rihindura Itegeko Nº 68/2018 ryo ku wa 30/08/2018 riteganya ibyaha n'ibihano muri rusange, itanyuranyije n'ingingo ya 15, iya 16, n'iya 29 z'Itegeko Nshinga rya Repubulika y'u Rwanda.