THE HIGH COURT, AT ITS HEADQUARTERS, TRIED THE PRESENT CASE IN APUBLIC HEARING ON 30^{TH} OCTOBER 2015 AS FOLLOWS:

Appellant:	, daughter of	and,
born in, residing at represented by Advocate	, Advocate	and Advocate
Case: Requesting the Court to her pregnancy [Appeal of judg		the permission to terminate [SE]
THE PROSECUTION WAS	S REPRESENTED BY:	
PN		
Background of the ca	se	
		Her mother, , filed the rt to grant permission
no criminal charges against	where he had to get pregnant	request, on the ground that there was d been convicted of raping without having sexual intercourse, and ow that is threatened by her
[2]. On 08th October 2015, sexual intercourse Prosecutor does not explain the	aged 13 engaged in, could	this honourable court stating that the have no other name but rape, and the d have become pregnant.
the criminal liability for abort that pregnancy, that this article to the Article 190 of the above assertion, that Article 165 of liability for abortion in Rwan abortion. The trial court fou	ion in Rwanda grant a raped e does not concern a defiled core Organic Law instituting the Organic Law instituting the da granted to a raped pregnand that article 165 could not	instituting the Criminal Code exempts pregnant woman the right to terminate hild, thus this article shall not be linked to Criminal Code. That the prosecution to Criminal Code exempts the criminal not woman the right to carry out lawful of the applicable to sexual act against ticle 190 of the Organic Law instituting

[4]. The Court shall examine:

- The prosecution's point of view which states that Article 165 of Organic Law instituting the Criminal Code of Rwanda is not applicable to a defiled child;

Whether was defiledWhether can be granted the right to terminate her pregnancy.

I. Analysis of the case

✓ The prosecution's point of view on the right to terminate

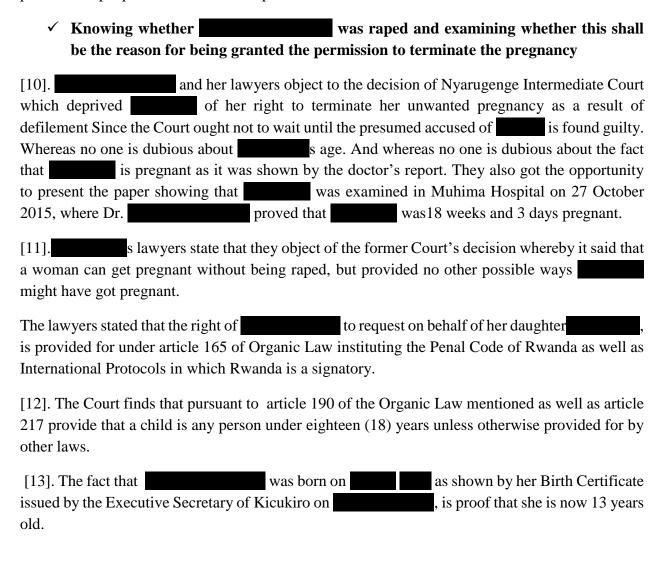
[5]. The prosecution stated that the exemption from criminal liability for abortion mentioned in article 165,1° of Organic Law No. 01/2012/OL of 02/05/2012 instituting the Penal Code, is applicable to a raped woman who is pregnant which is different from a child defiled provided for under article 190 of the Penal Code, as these are two distinct crimes, since rape is different from child defilement. Their point of view is that this article is not applicable to got pregnant as a result of defilement.

[6]. The right claimed by is based on the fact that she was raped at the age of 13 which is called child defilement provided for under article 190 of Organic Law instituting the Penal Code of Rwanda which provides that: "Child defilement means any sexual intercourse or any sexual act with a child regardless of the form and the means used."

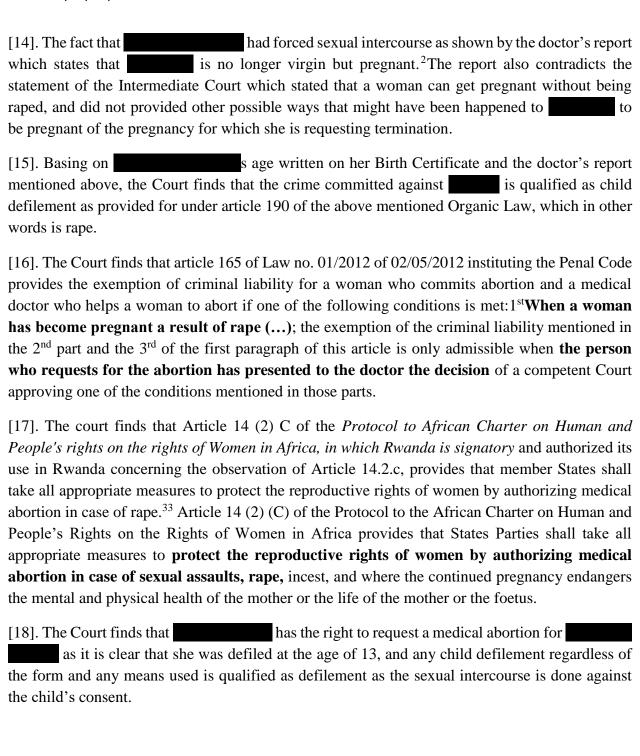
This is what is basing upon to request this court to carry out lawful abortion as provided for article 165 of Organic Law mentioned earlier. This article 165 provides miscellaneous reasons for a lawful abortion which may lead a woman to have a lawful abortion, and one of them is that the woman may have got pregnant as a result of rape.

- [7]. The word [Umugore] in Kinyarwanda, [Woman] in English, [Femme] in French has been recurrent where the Prosecutor presents in the aforementioned article that no defiled child is mentioned in the article but instead a woman ,thus the Prosecutor understands that the person who is granted the termination of the pregnancy is solely a mature person who is raped.
- [8]. The Court finds that this confusion shall be cleared by what those crimes have in common; that is the rape victims are raped against their consent. Regarding the child, under 18 years, the child is considered unable to decide for themselves concerning sexual intercourse, this is also called rape. Referring to the Article 190 of the aforementioned Organic Law which uses the word "child defilement" instead of "rape" that is mentioned in Article 165 of the present Organic Law does not change that a child was raped, since it was done against their consent.

[9]. What has been mentioned also puts emphasis on the National Protocol for operationalization of exemptions for abortion in the Penal Code of 2012], by the Ministry of Health whereby on page 9 it is written that young women under 18 who are made pregnant the act is referred to as child defilement as provided for by article 190 of Organic Law instituting the Penal Code, and to be punished as people who committed rape.¹

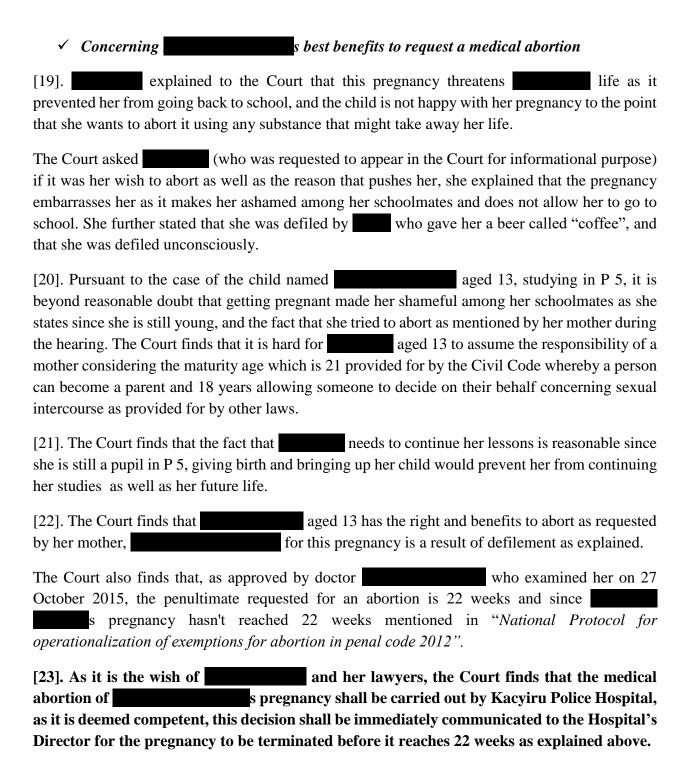


¹ Young women under the age 18, who become pregnant are also considered as child defilement according to Article of Law No. 54 of 14/12/2011 relating to the rights and the protestation of children and article 190 of the penal code, and should be treated as rape cases.



² Examination form in case of alleged rape or other sexual offence, made by pregnancy positive, hymen not intact, multiple old tears.

³ http://www.achpr.org/fr/instruments/women-protocol/visited on 28 October 2015



III. THE COURT'S DECISION

[24]. HEREBY declares that	s appe	eal is well-founded;
[25]. HEREBY declares the altered in all its aspects;	at the judgment rendered to the	case RP 0561/15/TGI/NYGE shall be
[26]. HEREBY declares that	is granted	permission to have a medical abortion;
[27]. HEREBY orders Kacabortion for	<u> </u>	of the Director to carry out medical the pregnancy reaches 22 weeks.
[28]. HEREBY orders that having its Headquarters at I	•	mmunicated to the Hospital's Director
[29]. Hereby orders that the was filed in the child's best	•	in the Government Treasury as the case
Thus pronounced in a publi	c hearing on 30 th October 2015,	in the High Court by:
Judge	President of the Jury	Judge
Mukakalisa Ruth	Kaliwabo Charles	Kabagambe Fabienne
(Signed)	(Signed)	(Signed)
Court Clerk		
(Signed)		

Certified true copy

In witness whereof, Court Clerk

On 30 October 2015

(Signed)