Cour
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Urukiko Mpanabyaha Mpuzamahanga

Inyandiko y'umwimerere iri mu Cyongereza

No.: **ICC-01/04-01/12**
Itariki: **13 Nyakanga 2012**

URUGEREKO RW'IBANZE, ICYUMBA CYA II

Imbere y'Abacamanza: **Ekaterina Trendafilova, Perezida**
Hans-Peter Kaul
Cuno Tarfusser

IBYABEREYE MURI REPUBULIKA IHARANIRA DEMOKARASI YA KONGO
URUBANZA POROKIRERI AREGA SYLVESTRE MUDACUMURA

Inyandiko rusange yahanaguwemo amagambo

Icyemezo ku Cyifuzo cya Porokireri gishingiye ku ngingo ya 58

Hakurikijwe ingingo ya 31 y'Amategeko agenga Urukiko, iki cyemezo kigomba kumenyeshwa:

Ibiro bya Porokireri
Fatou Bensouda, Porokireri

Avoka w'Uregwa

Abavoka bahagarariye abahohotewe

Abavoka bahagarariye abaregera indishyi

Abahohotewe badahagarariwe

Abasabye gukurikirana urubanza n'Abaregera indishyi badahagarariwe

Ibiro by'Ubujyanama Rusange bw'Abahohotewe

Ibiro by'Ubujyanama Rusange bw'Abaregwa

Abahagarariye za Leta

Inshuti z'Urukiko

Abandi

IBIRO BYA GEREFIYE

Gerefiye na Gerefiye Wungirije
Silvana Arbia, Gerefiye
Didier Preira, Gerefiye Wungirije

Ishami rishinzwe gufasha Ubwunganizi

Agashami gashinzwe Abahohotewe n'Abatangabuhamya

Ishami rishinzwe Gereza

Ishami rishinzwe guhagararira Abahohotewe no gutanga indishyi

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URUGEREKO RW'IBANZE, ICYUMBA CYA II ("Urugereko") rw'Urukiko Mpanabyaha Mpuzamahanga ("Urukiko") rufashe iki cyemezo ku "Cyifuzo cya Porokireri gishingiye ku ngingo ya 58" ("Icyifuzo" cyangwa "Icyifuzo cya Porokireri".[1] Muri icyo Cyifuzo PorokireriPorokireri [2] arasaba guhabwa urwandiko rwo gufata Bwana. Sylvestre Mudacumura ("Bwana Mudacumura").

1. Ku itariki ya 3 Werurwe 2004, Repubulika Iharanira Demokarasi ya Kongo ("RDC") yasabye Porokireri gukurikirana ibyabereye muri icyo gihugu (RDC) ari na byo ntandaro yo gukurikiranwa kwa Bwana Mudacumura, hakurikijwe ingingo za 13(a) na 14 za Sitati y'i Roma ("Sitati").[3]

2. Ku itariki ya 17 Kamena 2004, Perezida w'Urukiko yamenyeshejwe ko Porokireri yamaze kwemeza ko hari impamvu za ngombwa zihagije zo gutangiza iperereza ku byabereye muri Repubulika Iharanira Demokarasi ya Kongo.[4]

3. Ku itariki ya 6 Nyakanga 2004, Ibiro bya Perezida w'Urukiko byashinze Urugereko rw'Ibanze, Icyumba cya I.[5] kuburanisha imanza zerekeye ibyabereye muri Repubulika Iharanira Demokarasi ya Kongo.

4. Ku itariki ya 15 Werurwe 2012, Ibiro bya Perezida w'Urukiko byahinduye gahunda bisaba Urugereko rw'Ibanze, Icyumba cya II[6] kuba ari rwo ruburanisha imanza zerekeye ibyabereye muri Repubulika Iharanira Demokarasi ya Kongo.

5. Ku itariki ya 15 Gicurasi 2012, Porokireri yatanze icyifuzo cyo guhabwa urwandiko rwo gufta Bwana Mudacumura ("Icyifuzo cya mbere").[7]

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[1] ICC-01/04-616-Conf-Exp n'imigereka yayo. *Reba kandi* "Icyifuzo cya Porokireri gishobora kubonwa na bose ariko gisibwemo ibigomba kugirwa ibanga, hakurikijwe ingingo ya 58", ICC-01/04-616-Red.
[2] Ku itariki ya 15 Kamena 2012, Madamu Fatou Bensouda yarahiriye kuba Porokireri w'Urukiko.
[3] Ibaruwa ya Joseph Kabila yo ku itariki ya 3 Werurwe 2004 isaba Urukiko gukurikirana ibyabaye muri Repubulika Iharanira Demokarasi ya Kongo, yometswe nk'umugereka ku "Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata, Ingingo ya 58", ICC-01/04-98-US-Exp-Anxl.
[4] Ibaruwa Porokireri yandikiye Perezida w'Urukiko ku itariki ya 17 Kamena 2004, yometswe nk'umugereka ku "Cyemezo gishinga Urugereko rw'Ibanze, Icyumba cya I gukurikirana Ibyabaye muri Repubulika Iharanira Demokarasi ya Kongo", ICC-01/04-1, urup. 4.
[5] Ibiro bya Perezida, "ICYEMEZO GISHINGA URUGEREKO RW'IBANZE, ICYUMBA CYA I GUKURIKIRANA IBYABAYE MURI REPUBULIKA IHARANIRA DEMOKARASI YA KONGO", ICC-01/04-1.
[6] Ibiro bya Perezida, "Icyemezo gishyiraho Icyemezo gishyiraho Ingereko z'Ibanze kikanagenera buri rugereko ikibazo rugomba gukurikirana mu bikurikira: Ibyabaye muri Repubulika Iharanira Demokarasi ya Kongo, Darfur, Sudani na Côte d'Ivoire", ICC-01/04-02/06-32.

6. Ku itariki ya 31 Gicurasi 2012, Urugereko rwanze kwakira Icyifuzo cya mbere *rugikubita* kubera ko kitari gisobanuye birambuye.[8]

7. Ku itariki ya 13 Kamena 2012, Porokireri yatanze Icyifuzo gisaba Urugereko ibintu *birimo* ibi bikurikira:,

> 1. Kwemeza ko hari impamvu zumvikana zatuma byemerwa ko Sylvestre MUDACUMURA agomba kuryozwa ibyaha by'intambara n'ibyaha byibasiye inyokomuntu Urukiko rufitiye ububasha bwo kuburanisha, byakozwe na FDLR mu Ntara za Kivu y'Amajyaruguru na Kivu y'Amajyepfo muri Repubulika Iharanira Demokarasi ya Kongo, hagati y'itariki ya 20 Mutarama 2009 n'impera za Nzeli 2010, hakurikijwe ingingo ya 25(3)(a) cyangwa, bitaba ibyo, Ingingo ya 25(3)(b) cyangwa Ingingo ya 28(a) ya Sitati;
>
> 2. Kwemeza ko urwandiko rwo gufata Sylvestre MUDACUMURA ari ngombwa;
>
> 3. Gutanga urwandiko rwo gufata Sylvestre MUDACUMURA;
>
> 4. Gutegeka Ibiro bya Gerefiye, bibyumvikanyeho kandi bifatanyije n'Ubushinjacyaha, gutegura no gutanga inyandiko isaba inzego zibishinzwe zo muri Repubulika Iharanira Demokarasi ya Kongo gufata MUDACUMURA no kumushyikiriza Urukiko;
>
> [**BYAHANAGUWE**].[9]

8. Mu gufata umwanzuro ku Cyifuzo cya Porokireri, Urugereko rugomba gusuzuma ibi bikurikira: (i) ububasha bw'Urukiko no kwakirwa kw'urubanza; (ii) niba hari impamvu zumvikana zatuma byemerwa ko hakozwe icyaha kimwe cyangwa byinshi bivugwa mu Cyifuzo cya Porokireri; (iii) niba hari impamvu zumvikana zo kwemera ko Bwana Mudacumura agomba kuryozwa ibyaha bivugwa mu Cyifuzo cya Porokireri kandi (iv) niba ibyangombwa bisabwa kugira ngo hatangwe urwandiko rwo gufata Bwana Mudacumura byujujwe.

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[7] ICC-01/04-612-Conf-Exp, "Inyandiko ikosora 'Inyandiko ishobora kubonwa na bose isibwemo ibigomba kugirwa ibanga y'Icyifuzo cya Porokireri gishingiye ku ngingo ya 58'", ICC-01/04-612-Red-Corr n'imigereka yayo.
[8] Urugereko rw'Ibanze, Icyumba cya II, "Icyemezo ku Cyifuzo cya Porokireri gishingiye ku ngingo ya 58", ICC-01/04-613.
[9] Icyifuzo cya Porokireri, imp. 57-58.

I. Ububasha bw'Urukiko no kwakirwa kw'urubanza

A. Ububasha bw'Urukiko

9. Ingingo ya 19(1) ya Sitati igira iti: "Urukiko rugomba kubanza gusuma niba rufite ububasha bwo kuburanisha buri rubanza rushyikirijwe. Urukiko rushobora, ku bwarwo, gusuzuma niba urubanza rugomba kwakirwa nk'uko biteganywa n'ingingo ya 17". Ni yo mpamvu ari ngombwa ko rubanza gusuzuma niba urubanza Bwana Mudacumura aregwamo ruri mu zo Urukiko rufitiye ububasha bwo kuburanisha, mbere yo gutanga urwandiko rwo kumufata.[10]

10. Kugira ngo icyaha kibarwe mu byo Urukiko rufitiye ububasha bwo kuburanisha, ni ngombwa ko ingingo za ngombwa eshatu zikurikira zuzuzwa: (i) icyo cyaha kigomba kuba ari kimwe mu byaha bivugwa mu ngingo ya 5 ya Sitati (Ububasha bushingiye ku kiburanwa [*ratione materiae]*); (ii) icyo cyaha kigomba kuba cyarakozwe mu gihe cyihariye kivugwa mu ngingo ya 11 ya Sitati (ububasha bushingiye ku gihe icyaha cyabereye [*ratione temporis]*) kandi (iii) icyo cyaha kigomba kuba cyujuje kimwe mu byangombwa bisabwa mu ngingo ya 12 ya Sitati; ari byo: kuba cyarakorewe ku butaka bwa kimwe mu bihugu byemeye Urukiko cyangwa kuba cyarakozwe n'umwenegihugu wa kimwe muri ibyo bihugu, cyangwa kuba kuba cyarakorewe ku butaka bw'igihugu cyatanze itangazo riteganywa mu ngingo ya 12(3) ya Sitati cyangwa kigakorwa n'umwenegihugu w'icyo gihugu.[11] Imyanzuro y'Urugereko ku byerekeye izo ngingo eshatu za ngombwa ishingiye kuri iki Cyifuzo no ku buhamya cyangwa amakuru byatanzwe na Porokireri.

11. Ku byerekeye ingingo ya ngombwa ya mbere, Urugereko rusanze ari byo ko ibyaha Bwana Mudacumura aregwa ari bimwe mu byaha biteganywa na Sitati. Urugereko rero rusanze ingingo ya ngombwa ya mbere yerekeye ububasha bushingiye ku kiburanwa (*ratione materiae*) yujujwe.

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[10] Urugereko rw'Ibanze, Icyumba cya III, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Jean-Pierre Bemba Gombo," ICC-01/05-01/08-14-tENG, igika cya 11.

[11] Urugereko rw'Ibanze, Icyumba cya III, "Icyemezo ku Icyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Jean-Pierre Bemba Gombo," ICC-01/05-01/08-14-tENG, igika cya 12.

12. Ku byerekeye ingingo ya ngombwa ya kabiri ari yo ububasha bushingiye ku gihe icyaha cyakorewe (*ratione temporis*), Urugereko rusanze Sitati z'Urukiko zaratangiye kubahirizwa na Repubulika Iharanira Demokarasi ya Kongo ku itariki ya 1 Nyakanga 2002. Urugereko rusanze ibyaha bivugwa ko byakozwe byarakozwe nyuma y'itariki ya 1 Nyakanga 2002, by'umwihariko hagati y'itariki 20 Mutarama 2009 n'impera za Nzeli 2010, bityo ingingo ya ngombwa ya kabiri ikaba yujujwe.

13. Ku byerekeye ingingo ya ngombwa ya gatatu, igizwe n'inginngo zo ngombwa ebyiri zishobora gusimburanwa, nk'uko zivugwa mu ngingo ya 12 ya Sitati, Urugereko rusanze ibyaha Bwana Mudacumura aregwa kuba yarakoze byabereye koko ku butaka bwa Repubulika Iharanira Demokarasi ya Kongo, kandi kubera ibyo, Urugereko rwanzuye ko ingingo ya ngombwa ya gatatu na yo yujujwe.

14. Urugereko ruributsa kandi ko "impamvu rukumbi ituma Urukiko rugira ububasha bwo kuburanisha urubanza rukomoka ku iperereza ku byabaye ahantu runaka ari uko ibyaha byihariye bivugwa muri urwo rubanza biba bitararengereye imbibi z'igihugu, imbibi z'igihe n'ibindi bipimo ngenderwaho bwite bituma ibyabaye bikorwaho iperereza byumvikana. Ikindi kandi ibyo byaha bigomba kuba biri mu byo Urukiko rufitiye ububasha bwo kuburanisha".[12] Ibipimo ngenderwaho mu gukora iperereza ku byabaye ahantu runaka ntibigizwe gusa n'ibyaha byamaze gukorwa cyangwa byari bigikomeza gukorwa igihe urubanza rushyikirijwe Urukiko, ahubwo binagizwe n'ibyaha byakozwe nyuma y'icyo gihe, bipfa gusa kuba bifitanye isano ihagije n'ibyabaye aho ahantu byabaye intandaro yo gushyikiriza urubanza Urukiko.[13]

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[12] Urugereko rw'Ibanze, Icyumba cya III, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Jean-Pierre Bemba Gombo", ICC-01/05-01/08-14-tENG, igika cya 12; Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye Icyemezo cy'Urugereko rw'Ibanze, Icyumba cya I cyo ku itariki ya 10 Gashyantare 2006 no Gushyira Inyandiko mu zindi zigize Urubanza rwa Bwana Thomas Lubanga Dyilo", ICC-01/04-01/06-8-Corr, Umugereka wa 1, igika cya 21 (kirimo icyemezo ku byerekeye urwandiko rwo gufata Thomas Lubanga Dyilo, cyakiriwe bwa mbere ku itariki ya 10 Gashyantare 2006).

[13] *Reba* Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo ku byerekeye ingoboka y'Ubwunganizi ivuga ko Urukiko rudafite ububasha", ICC-01/04-01/10-451, igika cya 21; Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Callixte Mbarushimana", ICC-01/04-01/10-1, igika cya 6 (cyakiriwe bwa mbere ku itariki ya 28 Nzeli 2010); Urugereko rw'Ibanze, Icyumba cya III, "Inyandiko ikosora 'Igitekerezo cy'Umucamanza Fernández de Gurmendi gitandukanye kandi kinyuranya muri bimwe mu bikubiye mu Cyemezo gishingiye ku ngingo ya 15 ya Sitati y'i Roma ku byerekeye Uruhushya rwo Gukora Iperereza ku byabereye muri Repubulika ya Côte d'Ivoire'", ICC-02/11-15-Corr, ibika bya 70-72 (Igitekerezo gitandukanye kandi kinyuranya kuri bimwe cy'Umucamanza J. Fernández de Gurmendi).

15. Kuri iyi ngingo, Porokireri yasabwe gukurikirana ibyabaye muri Repubulika Iharanira Demokarasi ya Kongo, ari na byo ntandaro y'urubanza rwa Mudacumura, mu ibaruwa yo gushyikiriza urubanza yo ku itariki ya 3 Werurwe 2004 ("Ibaruwa ya Repubulika Iharanira Demokarasi ya Kongo"). Mu Ibaruwa ya Repubulika Iharanira Demokarasi ya Kongo, Perezida Joseph Kabila wa Repubulika Iharanira Demokarasi ya Kongo yasabye Porokireri gukora iperereza ku byerekeye *"Ibintu birimo kubera mu gihugu cyanjye guhera ku itariki ya 1 Nyakanga 2002. Biragaragara ko muri ibyo birimo kuba hari ibyaha byakozwe Urukiko Mpanabyaha Mpuzamahanga rufitiye ububasha bwo kuburanisha"*.[14] Ku itariki ya 17 Kamena 2004 Porokireri yamenyesheje Perezida w'Urukiko Mpanabyaha Mpuzamahanga ko, nyuma yo gusuzuma ingingo za ngombwa zose ziteganywa n'ingingo ya 53 ya Sitati, yasanze hari impamvu yumvikana yatuma hatangizwa iperereza.[15] Porokireri rero yasobanuye ko ibyabaye byari birimo gukorwaho iperereza byabereye ku butaka bwa Repubulika Iharanira Demokarasi ya Kongo guhera ku itariki ya 1 Nyakanga 2002.[16]

16. Mu Cyifuzo cye, Porokireri akomoza ku byaha avuga ko byakozwe hagati ya Mutarama 2009 n'impera za Nzeli 2010 mu rwego rw'ubushyamirane bukoreshwamo intwaro bwabereye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo. Rumaze gusesengura amakuru yatanzwe na Porokireri, Urugereko rusanze ari byo ko, byibura guhera ku itariki ya 4 Ukuboza 2002, imirwano ishyamiranyije ingabo z'igihugu n'imitwe yitwaje intwaro yari irimo kubera mu burasirazuba bwa Repubulika Iharanira Demokarasi ya Kongo, by'umwihariko mu ntara za Kivu n'iya Ituri.[17] Urugereko nanone rusanze ari byo ko, byibura guhera igihe Urukiko rwasabiwe gukurikirana iki kibazo, *Forces Démocratiques pour la Liberation du Rwanda [Ingabo ziharanira demokarasi no kubohoza u Rwanda "FDLR"]* zari zaratangiye kugira uruhare mu bikorwa bya gisirikari byaberaga mu

[14] Ibaruwa ya Joseph Kabila yo ku itariki ya 3 Werurwe 2004 isaba Urukiko gukurikirana ibyabaye muri Repubulika Iharanira Demokarasi ya Kongo, yometse nk'umugereka ku "Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata, Ingingo ya 58", ICC-01/04-98-US-Exp-Anxl.
[15] *Reba* Ibiro bya Perezida, "ICYEMEZO GIHA URUGEREKO RW'IBANZE, ICYUMBA CYA I", INSHINGANO YO GUKURIKIRANA IBYABAYE MURI REPUBULIKA IHARANIRA DEMOKARASI YA KONDO, ICC-01/04-1, urup. 4.
[16] *Reba* Itangazo rigenewe abanyamakuru: 23.06.2004. Ibiro bya Porokireri w'Urukiko Mpanabyaha Mpuzamahanga byatangije iperereza ryabyo rya mbere, ICC-OTP-20040623-59.
[17] Icyifuzo cya Porokireri, Umugereka wa 9, imp. 5, 10, 15, 19. *Reba kandi* Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Callixte Mbarushimana", ICC-01/04-01/10-1, ibika bya 6-7.

burasirazuba bwa Repubulika Iharanira Demokarasi ya Kongo kandi zaregwaga kuba zaragize uruhare mu gukora ibyaha Urukiko rufitiye ububasha bwo kuburanisha.[18] Ni yo mpamvu Urugereko rwemeye ko urubanza rwa Bwana Mudacumura rufitanye isano n'ibyabaye byatumye Repubulika Iharanira Demokarasi ya Kongo isaba Urukiko gukurikirana iki kibazo.

17. Rushingiye ku byo rumaze kuvuga kandi rumaze kubona ubuhamya n'amakuru byatanzwe na Porokireri, Urugereko rwanzuye ko urubanza rwa Bwana Mudacumura ruri mu zo Urukiko rufitiye ububasha bwo kuburanisha.

B. Kwakirwa kw'urubanza

18. Interuro ya kabiri y'ingingo ya 19(1) ya Sitati ivuga ko Urukiko rushobora, ku bushake bwarwo, kwemeza niba urubanza rugomba kwakirwa hakurikijwe ingingo ya 17 ya Sitati. Kuri iyi ntera y'iburanisha, Urugereko rurabona atari ngombwa gusuzuma niba urubanza rukwiriye kwakirwa.[19]

II. Kuba hari impamvu zumvikana zatuma byemerwa ko hakozwe icyaha kimwe cyangwa ibyaha byinshi mu bivugwa mu Cyifuzo

19. Ku byerekeye igipimo ngenderwaho mu gutanga urwandiko rwo gufata, ingingo ya 58(1) ya Sitati isaba ko Urugereko rubanza rukareba niba haratanzwe ingingo zumvikana zatuma byemerwa ko umuntu yakoze icyaha Urukiko rufitiye ububasha bwo kuburanisha. Igisabwa gusa ni uko ubuhamya butuma hafatwa umwanzuro yuko umuntu yakoze icyaha Urukiko rufitiye ububasha bwo kuburanisha. Si ngombwa yuko uwo uba ari wo mwanzuro wonyine ushobora gufatwa hashingiwe kuri ubwo buhamya.[20]

20. Urugereko rurabona iki Cyifuzo cya Porokireri gifie aho gihuriye n'urubanza *Porokireri aburana na. Callixte Mbarushimana.* Muri urwo rubanza, Urugereko rw'Ibanze, Icyumba cya

[18] Icyifuzo cya Porokireri, Umugereka wa 9, imp. 8-10, 15, 19, 21-22.
[19] *Reba kandi* Urugereko rw'Ibanze, Icyumba cya II, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gushyikiriza Urukiko William Samoei Ruto, Henry Kiprono Kosgey na Joshua Arap Sang", tariki ya 8 Werurwe 2011, ICC-01/09-01/11-01, igika cya 12.
[20] Urugereko rw'Ubujurire, "PorokireriIkizarubanza ry'ubujurire Porokireri yatanze ajuririra 'Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Omar Hassan Al Bashir", ICC-02/05-01/09-73 (OA), ibika bya 33, 39.

I, mu bwiganze bw'abacamanza barwo, rwanze kwemeza ibirego.[21] Icyo cyemezo cyashyigikiwe n'Urugereko rw'Ubujurire.[22] Nyamara, Urugereko rurabona imyanzuro yarwo nyuma yo gusuzuma iki cyifuzo, mu by'ukuri, idakwiriye kugendera ku myanzuro y'Urugereko rw'Ibanze, Icyumba cya I mu rubanza rwo kwemeza ibirego bya *Mbarushimana.* Koko rero, uru ni urundi rubanza ruri imbere y'urundi Rugereko, rureba undi muntu kandi rufite igipimo cy'ubuhamya giciye bugufi.

21. Ibi bivuga yuko Urugereko rugomba gusesengura iki Cyifuzo, imigereka n'inshamake z'ubuhamya byatanzwe na Porokireri (byose hamwe byitwa "ibimenyetso") kugira ngo rwemeze niba hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura yakoze ibyaha akekwaho.[23]

A. Ibyaha byibasiye inyokomuntu

22. Urugereko ruributsa ko, kugira ngo ibikorwa byose bivugwa mu ngingo ya 7 ya Sitati byemerwe nk'ibyaha byibasiye inyokomuntu, ari ngombwa ko biba byarakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri abo ari bo bose, kandi (uregwa) akaba yari azi ko icyo gitero cyabaye. "Igitero cyibasiye abaturage b'abasiviri abo ari bo bose ", hakurikijwe ingingo ya 7(2)(a) ya Sitati, ni ukuvuga uruhererekane rw'imyitwarire rurimo gukora ibikorwa byinshi bivugwa mu ngingo ya 7(1) ya Sitati ubigirira abaturage b'abasiviri abo ari bo bose, hakurikijwe cyangwa mu rwego rwo gushyira mu bikorwa ingengamikorere ya Leta cyangwa y'Umuryango runaka igamije kugaba igitero nk'icyo Bityo rero, ni ngombwa kugaragaza ko hariho ingengamikorere nk'iyo ya Leta cyangwa y'Umuryango runaka yateganyaga ko abaturage b'abasiviri ari bo *ntego y'ibanze* y'icyo gitero,[24] kandi Ingingo zigize Ibyaha zitanga igisobanuro cy'inyongera yuko "ingengamikorere yo kugaba igitero nk'icyo" isaba ko

[21] Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye kwemeza ibirego", ICC-01/04-01/10-465.
[22] Urugereko rw'Ubujurire, "Ikizarubanza ku bujurire bwa Porokireri yatanze ajuririra Icyemezo cy' Urugereko rw'Ibanze, Icyumba cya I cyo ku itariki ya 16 Ukuboza 2011 cyiswe 'Icyemezo cyerekeye kwemeza ibirego'", ICC-01/04-01/10-514 (OA 4).
[23] Mu bika bikurikira, Urugereko rurakomoza gusa ku gice cy'ibimenyetso byatanzwe gishimangira imyanzuro yarwo.
[24] *Reba* Urugereko rw'Ibanze, Icyumba cya II, "Icyemezo gishingiye ku ngingo ya 61(7)(a) na (b) ya Sitati y'i Roma cyerekeye ibirego Porokireri arega Jean-Pierre Bemba Gombo", ICC-01/05-01/08-424, igika cya 76.

Leta cyangwa Umuryango runaka "byamamaza kandi bigashyigikira ko igitero nk'icyo kigabwa ku baturage b'abasiviri".[25]

23. Rushingiye ku bimenyetso byatanzwe na Porokireri, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko: (i) FDLR yujuje ibyangombwa byo kwitwa umuryango hakurikijwe igisobanuro cy'iryo jambo mu ngingo ya 7(2) (a) ya Sitati kandi ko (ii) guhera ku itariki ya 20 Mutarama 2009 kugeza mu mpera za Nzeli 2010, FDLR yakoze ibikorwa byinshi bivugwa mu ngingo ya 7(1) ya Sitati. Cyakora, kubera impamvu ruza gusobanura mu bika bikurikira, Urugereko nta impamvu zumvikana rwabonye zatuma byemerwa ko ibyo bikorwa byakozwe hakurikijwe cyangwa se mu rwego rwo gushyira mu bikorwa ingengamikorere ya FDLR igamije kugaba ibitero ku baturage b'abasiviri.

24. Naho ku byerekeye kuba FDLR ifite inzego zikorera kuri gahunda, uwo mutwe ufite uruhererekane rw'inzego z'ubuyobozi rufite imiyoboro isobanutse neza ifatirwamo ibyemezo.[26] Ubuyobozi bwa politiki n'ubwa gisirikari bwa FDLR bwari bugizwe n'abantu bakorana ku buryo bwa hafi[27] kandi bafatanyije gukwirakwiza mu mahanga amakuru agamije gushakira inkunga ibikorwa bya politiki n'ibya gisirikari by'uwo muryango.[28]

25. Ku byerekeye uruhare rwa FDLR mu ntangiriro z'umwaka wa 2009, itegeko ryo gukora ku buryo habaho "akaduruvayo muri Kongo"[29] hakoreshejwe ibikorwa bigamije gutuma habaho "icyorezo cyibasira abantu" ryatanzwe ku bubasha bwa Bwana Mudacumura,[30] nk'uko bigiye gusobanurwa mu cyiciro gikurikira. Mu gihe kirebwa n'ibirego bya Porokireri, abaturage b'abasiviri bagezweho n'ingaruka z'ibikorwa bya

[25] Ingingo ya 7(3) y'Ingingo zigize Ibyaha.
[26] Icyifuzo cya Porokireri, Umugereka wa 104, imp. 10, 22; Icyifuzo cya Porokireri, Umugereka wa 59, igika cya 17; Icyifuzo cya Porokireri, Umugereka wa 76, imp. 14-28; Icyifuzo cya Porokireri, Umugereka wa 89, imp. 10, 12, 24-25, 54, 55; Icyifuzo cya Porokireri, Umugereka wa 118, urup. 56.
[27] Icyifuzo cya Porokireri, Umugereka wa 73, imp. 14, 19, 20; Icyifuzo cya Porokireri, Umugereka wa 74, imp. 27, 83-84; Icyifuzo cya Porokireri, Umugereka wa 77, imp. 44-46.
[28] Icyifuzo cya Porokireri, Umugereka wa 21, urup. 644; Icyifuzo cya Porokireri, Umugereka wa 43, urup. 75.
[29] Icyifuzo cya Porokireri, Umugereka wa 19, urup. 424; Icyifuzo cya Porokireri, Umugereka wa 20, imp. 171-73; Icyifuzo cya Porokireri, Umugereka wa 39, imp. 151-52.
[30] Icyifuzo cya Porokireri, Umugereka wa 21, urup. 426-27; Icyifuzo cya Porokireri, Umugereka wa 30, imp. 91, 94, 122; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 84-90.

FDLR mu Ntara za Kivu.[31] Hagati y'umwaka wa 2009 n'uwa 2010, abasiviri barishwe,[32] barashimutwa,[33] basambanywa ku gahato,[34] bagirirwa ibikorwa by'ubugome ndengakamere[35] cyangwa bacibwa ingingo zimwe z'umubiri[36] kandi amazu yarasenywe.[37] Nanone, ibikorwa bya gisirikari bya FDLR byatumye abaturage bava mu byabo.[38]

26. Nyamara, ibitero hafi ya byose bya FDLR bivugwa mu birego bya Porokireri byari ibitero byo kwihimura byagabwe ku birindiro bya gisirikari. Hari kandi n'ibimenyetso byinshi bigaragaza ko FDLR yari ifite politiki yo kutagirira nabi abasiviri no kutabavutsa uburenganzira bwabo[39] kandi ko bamwe mu bayobozi ba FDLR batashakaga ko hagira abasiviri bicwa muri za operasiyo za FDLR.[40] Ibintu byabaye Porokireri ashingiraho ibirego bye akenshi usanga bisa n'ibyabereye igihe kimwe n'ibitero ingabo za *Forces Armées de la République Démocratique du Congo* ("FARDC") zagabye kuri FDLR aho hantu havugwa,[41] ibi bikaba bishimangira igitekerezo cyo kuba ibyo bitero byari ibyo kwihimura. Nubwo rimwe na rimwe uburyo ibyo bitero byo kwihimura byagabwemo bwari ubwo kwibasira intego za gisirikari n'abasiviri ku giti cyabo batari bafite uruhare

[31] Icyifuzo cya Porokireri, Umugereka wa 42, imp. 36-37; Icyifuzo cya Porokireri, Umugereka wa 42, urup. 15; Icyifuzo cya Porokireri, Umugereka wa 57, urup. 11; Icyifuzo cya Porokireri, Umugereka wa 79, urup. 14; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 842-50; Icyifuzo cya Porokireri, Umugereka wa 48, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 96, urup. 5; Icyifuzo cya Porokireri, Umugereka wa 69, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 42, urup. 42; Icyifuzo cya Porokireri, Umugereka wa 65, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 97, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 123, imp. 5-8; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 164-69, 175-79, 187-90.

[32] Icyifuzo cya Porokireri, Umugereka wa 42, imp. 22, 25-28, 39, 42; Icyifuzo cya Porokireri, Umugereka wa 48, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 164-69.

[33] Icyifuzo cya Porokireri, Umugereka wa 19, urup. 497; Icyifuzo cya Porokireri, Umugereka wa 69, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 82.

[34] Icyifuzo cya Porokireri, Umugereka wa 18, imp. 770-76; Icyifuzo cya Porokireri, Umugereka wa 58, urup. 5; Icyifuzo cya Porokireri, Umugereka wa 69, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 175-79.

[35] Icyifuzo cya Porokireri, Umugereka wa 18, imp. 775-76; Icyifuzo cya Porokireri, Umugereka wa 48, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 42, urup. 39.

[36] Icyifuzo cya Porokireri, Umugereka wa 42, urup. 36; Icyifuzo cya Porokireri, Umugereka wa 58, urup. 5; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 82.

[37] Icyifuzo cya Porokireri, Umugereka wa 19, urup. 497; Icyifuzo cya Porokireri, Umugereka wa 42, imp. 22, 25-28; Icyifuzo cya Porokireri, Umugereka wa 21, urup. 801; Icyifuzo cya Porokireri, Umugereka wa 49, imp. 6-7; Icyifuzo cya Porokireri, Umugereka wa 51, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 187-88.

[38] Icyifuzo cya Porokireri, Umugereka wa 42, urup. 15; Icyifuzo cya Porokireri, Umugereka wa 65, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 67, imp. 3-8, 71; Icyifuzo cya Porokireri, Umugereka wa 72, urup. 160; Icyifuzo cya Porokireri, Umugereka wa 74, imp. 10-45, 82; Icyifuzo cya Porokireri, Umugereka wa 75, ibika bya 29-30, 48 ; Icyifuzo cya Porokireri, Umugereka wa 76, urup. 40; Icyifuzo cya Porokireri, Umugereka wa 81, imp. 16-37.

[39] Icyifuzo cya Porokireri, Umugereka wa 5, imp. 10-11; Icyifuzo cya Porokireri, Umugereka wa 7, urup. 18; Icyifuzo cya Porokireri, Umugereka wa 17, urup. 810; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 426-29, 433-34.

[40] Icyifuzo cya Porokireri, Umugereka wa 15, imp. 180-81; Icyifuzo cya Porokireri, Umugereka wa 16, imp. 91, 615; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 813-15.

[41] Icyifuzo cya Porokireri, Umugereka wa 11, urup. 45; Icyifuzo cya Porokireri, Umugereka wa 13, imp. 47-48; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 229-31; Icyifuzo cya Porokireri, Umugereka wa 20, urup. 167; Icyifuzo cya Porokireri, Umugereka wa 30, urup. 76.

rutaziguye mu mirwano, ibi nta wabiheraho ngo yemeze ko itegeko ryo guteza icyorezo cyibasira abantu ryashyizwe mu bikorwa n'ingabo za FDLR ku rugamba hakurikijwe *ingengamikorere* igamije kugaba ibitero ku basiviri bazira icyo gusa. Guca ku mahame y'amategeko mpuzamahanga arengera ikiremwamuntu byonyine, cyane cyane mu rwego rw'ibyabaye bivugwa muri uru rubanza nk'uko bigaragazwa n'ibimenyetso byatanzwe, ntibigaragaza ko iyo ngengamikorere yari iriho.

27. Kubera iyo mpamvu, Urugereko ntirusanga hari ubuhamya buhagije bwatuma rwanzura ku buryo bucishije mu gaciro yuko operasiyo za FDLR zari mu rwego rwa gahunda ndende yateguwe igamije mbere na mbere kwibasira abaturage b'abasiviri.

28. Urugereko ruributsa ko muri Nzeli 2010 Urugereko rw'Ibanze, Icyumba cya I, rwemeje ko hari impamvu zumvikana zatuma byemerwa ko FDLR yari ifite ingengamikorere igamije kugaba ibitero ku baturage b'abasiviri, mu mwaka wa 2009.[42] Nyamara, rushingiye ku buhamya bwakiriwe kugeza ubu (bwakomeje kwiyongera guhera muri Nzeli 2010), Urugereko rusanze kuvuga ko hariho ingengamikorere y'umuryango nta shingiro ryumvikana bifite.

29. Kubera izo mpamvu, Urugereko rusanze, mu gihe nta ngengamikorere y'umuryango ihari, nta mpamvu zumvikana zatuma byemerwa ko FDLR yakoze ibyaha byibasiye inyokomuntu kuva ku itariki ya 20 Mutarama 2009 kugeza mu mpera za Nzeli 2010.

B. Ibyaha by'intambara

(1) Ingingo zigize ibyaha by'intambara zishingiye ku byabaye

30. Urugereko rugiye kubanza gusuzuma niba ingingo zishingiye ku byabaye zigize ibyaha by'intambara zaragaragajwe, mbere yo gusesengura ibimenyetso rwashyikirijwe na Porokireri. Nk'uko rugiye kubisobanura, Urugereko rusanga hari impamvu zumvikana zatuma byemerwa ko ingingo zishingiye ku byabaye zigize ibyaha by'intambara bivugwa mu Cyifuzo zagaragajwe ku buryo buhagije.

[42] Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo ku Cyifuzo cya Porokireri gisaba Urwandiko rwo Gufata Callixte Mbarushimana", ICC-01/04-01/10-1, igika cya 26.

31. Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko ubushyamirane bukoreshwamo intwaro bufite ubukana bugereranyije bwabereye mu ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo hagati y'ingabo za Repubulika Iharanira Demokarasi ya Kongo, FARDC, zarwanaga zonyine cyangwa zifatanyije n'izindi ngabo, *zirimo* ingabo z'u Rwanda cyangwa ingabo z'Umutwe w'Umuryango w'Abibumbye muri Repubulika Iharanira Demokarasi ya Kongo ("MONUC" cyangwa "MONUSCO"), na FDLR, zarwanaga zongine cyangwa zifatanyije n'indi mitwe y'ingabo.[43] FDLR ifite uruhererekane rw'inzego rufite ubuyobozi bukora neza kandi ifite ubushobozi bwo gutegura no gushyira mu bikorwa ibikorwa bya gisirikari.[44]

32. Ubushyamirane bukoreshwamo intwaro bwatangiye ku itariki ya 20 Mutarama 2009, ubwo Ingabo z'u Rwanda, ("RDF") zinjiraga ku butaka bwa Repubulika Iharanira Demokarasi ya Kongo zigamije gufatanya n'ingabo za operasiyo ifatanyijwe yiswe *Umoja Wetu [Ubumwe bwacu]*, yari igamije kuvana ku ngufu FDLR mu birindiro byayo byo muri Kivu y'Amajyaruguru no gutuma abasirikari ba FDLR babyifuza bashyira intwaro hasi bagasubizwa mu buzima bwa gisiviri mu Rwanda.[45] Ibitero FDLR yagabye guhera muri Mutarama kugeza mu mpera za Gashyantare 2009 byagabwe mu rwego rwo kurwanya ingabo zishyize hamwe za FARDC na RDF.[46] Ku itariki ya 25 Gashyantare 2009, ingabo za RDF zatangiye kuva muri Kivu y'Amajyaruguru[47] maze operasiyo yo kurangiza ibyamaze gukorwa yiswe *Kimia II (Guceceka II)* itangizwa n'ingabo za FARDC, zibifashijwemo n'ingabo za MONUC, ahantu hose mu Ntara za Kivu y'Amajyaruguru n'iy'Amajyepfo, hagamijwe gusibanganya FDLR bayibuza kongera gufata ibirindiro byayo bya kera ndetse banafunga inzira zanyuragamo inkunga y'ubukungu yahabwaga.[48] Mu rwego rwo

[43] Icyifuzo cya Porokireri, Umugereka wa 71, ibika bya . 3-13; Icyifuzo cya Porokireri, Umugereka wa 73, imp. 13-14; Icyifuzo cya Porokireri, Umugereka wa 83, imp. 12, 15.
[44] Icyifuzo cya Porokireri, Umugereka wa 59, igika cya 17; Icyifuzo cya Porokireri, Umugereka wa 76, imp. 14-28; Icyifuzo cya Porokireri, Umugereka wa 89, imp. 10, 12, 24-25, 54, 55; Icyifuzo cya Porokireri, Umugereka wa 104, imp. 10, 22; Icyifuzo cya Porokireri, Umugereka wa 118, urup. 56.
[45] Icyifuzo cya Porokireri, Umugereka wa 9, urup. 27; Icyifuzo cya Porokireri, Umugereka wa 50, imp. 3, 4; Icyifuzo cya Porokireri, Umugereka wa 64, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 73, imp. 7, 13; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 83, urup. 12.
[46] Icyifuzo cya Porokireri, Umugereka wa 50, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 64, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 8.
[47] Icyifuzo cya Porokireri, Umugereka wa 50, urup. 4.
[48] Icyifuzo cya Porokireri, Umugereka wa 19, imp. 323-326; Icyifuzo cya Porokireri, Umugereka wa 50, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 51, imp. 2-4; Icyifuzo cya Porokireri, Umugereka wa 52, urup. 3.

kwivuna operasiyo za *Kimia II (Guceceka II)*, FDLR yagabye ibitero bikurikiranye byo kwihimura byibasiye abaturage ndetse n'ibirindiro bya FARDC.[49] *Kimia II (Guceceka II)* yatangiye ku itariki ya 2 Werurwe 2009 irangira ku itariki ya 31 Ukuboza 2009.[50]

33. Operasiyo ya gisirikari ihuriweho na FARDC na MONUC kandi irwanya FDLR yiswe *Amani Leo (Amahoro None)*, yatangijwe muri Mutarama 2010, nyuma yo kurangira kwa operasiyo *Kimia II (Guceceka II)* ku itariki ya 31 Ukuboza 2009; iyo operasiyo yari igamije mbere na mbere kurinda umutekano w'abasiviri, kubuza FDLR n'indi mitwe y'ingabo gutegura ibitero byo kwihorera muri Kivu y'Amajyaruguru n'iy'Amajyepfo, no gukomeza kugenzura uturere n'ahantu h'ingenzi FDLR yari yambuwe.[51] Ibitero bya FDLR byo kwihorera byarakomeje ari nako igirana ubufatanye n'indi mitwe y'ingabo kandi ikagenda yimukira mu turere twa kure tugoye kugeramo.[52] Nubwo FARDC hari za operasiyo zayo bwite yakoze muri Mutarama 2010, ibikorwa bihuriweho na FARDC/MONUC n'ibindi bishyigikiwe na MONUSCO byatangijwe ku itariki ya 26 Gashyantare 2010 mu ntara za Kivu mu rwego rwa operasiyo *Amani Leo (Amahoro None)*,[53] yaje kongererwa igihe kugira ngo yibande ku ntego zihariye.[54] Amakuru yatangajwe avuga ko mu mpeshyi y'umwaka wa 2010, abasirikari 60,000 ba FARDC na batayo 10 z'ingabo z'Umuryango w'Abibumbye zishinzwe kubungabunga amahoro, MONUC, boherejwe mu ntara za Kivu,[55] mu gihe FDLR yari igikomeza kugaba ibitero byayo byo kwihimura.[56]

34. Rushingiye ku bimenyetso byatanzwe, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko (i) mu bihe biri hagari y'amatariki akurikira: kuva ku itariki ya 20 Mutarama 2009 kugeza ku ya 25 Gashyantare 2009, kuva ku itariki ya 2 Werurwe 2009

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[49] Icyifuzo cya Porokireri, Umugereka wa 52, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 73, urup. 14; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 9.
[50] Icyifuzo cya Porokireri, Umugereka wa 51, imp. 2-3; Icyifuzo cya Porokireri, Umugereka wa 53, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 64, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 118, urup. 51.
[51] Icyifuzo cya Porokireri, Umugereka wa 42, urup. 35; Icyifuzo cya Porokireri, Umugereka wa 53, urup. 16; Icyifuzo cya Porokireri, Umugereka wa 71, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 76, urup. 14; Icyifuzo cya Porokireri, Umugereka wa 83, urup. 12.
[52] Icyifuzo cya Porokireri, Umugereka wa 76, urup. 14.
[53] Icyifuzo cya Porokireri, Umugereka wa 71, urup. 3.
[54] Icyifuzo cya Porokireri, Umugereka wa 71, urup. 3.
[55] Icyifuzo cya Porokireri, Umugereka wa 83, urup. 12.
[56] Icyifuzo cya Porokireri, Umugereka wa 65, urup. 2; Icyifuzo cya Porokireri, Umugereka wa 76, urup. 14; Icyifuzo cya Porokireri, Umugereka wa 83, urup. 15.

kugeza ku ya 31 Ukuboza 2009 no kuva muri Mutarama 2010 kugeza muri Nzeli 2010, habayeho ubushyamirane bukoreshwamo intwaro ku butaka bwa Repubulika Iharanira Demokarasi ya Kongo, ubwo bushyamirane bukaba bwari bufite ubukana bugereranyije kandi atari mpuzamahanga, nk'uko bisobanurwa mu ngingo ya 8(2)(f) ya Sitati, bukaba bwaramaze igihe kirekire bubera mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, (ii) ubwo bushyamirane bukoreshwamo intwaro bwabaye hagati ya FDLR, rimwe na rimwe yifatanyije n'indi mitwe y'ingabo, na FARDC, ifatanyije na RDF mu gihe cya operasiyo *Umoja Wetu (Ubumwe Bwacu)* kandi ifatanyije na MONUC mu gihe cya za operasiyo *Kimia II (Gucececka II)* na *Amani Leo (Amahoro None)* kandi (iii) FDLR ni umutwe w'ingabo ukorera kuri gahunda nk'uko bisabanurwa mu ngingo ya 8(2)(f) ya Sitati. Bityo rero, Urugereko rusanze ibikorwa bivugwa ko byakozwe bigize ibyaha byakozwe na FDLR, nk'uko bigiye gusobanurwa mu kanya, byarabaye mu rwego rw' ubushyamirane bukoreshwamo intwaro butari mpuzamahanga kandi bifitanye isano n'ubwo bushyamirane.

(2) Ibikorwa bigize ibyaha by'intambara byakozwe mu rwego rw' ubushyamirane bukoreshwamo intwaro butari mpuzamahanga cyangwa bifitanye isano na bwo

35. Porokireri yatanze ibirego icyenda (9) by'ibyaha by'intambara. Urugereko rugiye gusesengura ibyabaye bivugwa mu Cyifuzo cya Porokireri kugira ngo rurebe niba hari impamvu zumvikana zatuma byemerwa ko ibyaha by'intambara byakozwe nk'uko ingingo ya 8 ya Sitati ibisobanura.

Igitero cyibasiye abaturage b'abasiviri nk'icyaha cy'intambara (ingingo ya 8(2)(e)(i) ya Sitati) (Ikirego cya 1)

36. Mu kirego cya 1 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo kugaba ku bwende ibitero ku baturage b'abasiviri ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, harimo i **Kipopo**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009; i **Mianga**, mu karere ka

Walikale, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki ya 12 Mata 2009; i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikale, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki ya 9-10 Gicurasi 2009; i **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki za 20-21 Nyakanga 2009; i **Malembe**, mu karere ka Walikale, muri Kivu y'Amajyaruguru, mu mpera za Nyakanga, mu ntangiriro za Kanama, ku matariki cyangwa ahagana ku matariki ya 11-13 Kanama n'iya 15 Nzeli 2009; [**BYAHANAGUWE**].[57]

37. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko abantu b'abasiviri bagabweho igitero na FDLR, nk'uko ingingo ya 8(2)(e)(i) ya Sitati ibisobanura,: (i) i Kipopo ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009,[58] (ii) Mianga ku itariki cyangwa ahagana ku itariki 12 April 2009,[59] (iii) Busurungi no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009,[60] (iv) Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009,[61] (v) Malembe mu mpera za Nyakanga 2009,[62] mu ntangiriro za Kanama 2009,[63] ku matariki ya 11-13 Kanama 2009[64] no ku itariki cyangwa ahagana ku itariki ya 15 Nzeli 2009,[65] [**BYAHANAGUWE**][66], [**BYAHANAGUWE**][67] ,[**BYAHANAGUWE**][68] na [**BYAHANAGUWE**][69].

38. Urugereko rurongera gusubiramo ko ibyo bikorwa byari uruvange rw'ibitero byibasiye abasiviri n'ibirindiro bya gisirikari. Ibitero nk'ibyo biri mu bivugwa mu ngingo ya 8(2)(e)(i) ya Sitati, kubera ko kugira ngo icyaha cy'intambara cyo kugaba ibitero ku

[57] Icyifuzo cya Porokireri, igika cya 31.
[58] Icyifuzo cya Porokireri, Umugereka wa 13, imp. 206-215; Icyifuzo cya Porokireri, Umugereka wa 17, imp. 454-57; Icyifuzo cya Porokireri, Umugereka wa 42, imp. 16-18, 20.
[59] Icyifuzo cya Porokireri, Umugereka wa 17, imp. 440, 442-43; Icyifuzo cya Porokireri, Umugereka wa 39, imp. 215-16; Icyifuzo cya Porokireri, Umugereka wa 57, imp. 4, 7, 13.
[60] Icyifuzo cya Porokireri, Umugereka wa 11, urup. 45; Icyifuzo cya Porokireri, Umugereka wa 12, imp. 221, 229, 267-84.
[61] Icyifuzo cya Porokireri, Umugereka wa 17, imp. 458-60; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 474-91.
[62] Icyifuzo cya Porokireri, Umugereka wa 37, imp. 7-8.
[63] Icyifuzo cya Porokireri, Umugereka wa 37, imp. 8-10.
[64] Icyifuzo cya Porokireri, Umugereka wa 13, urup. 186-188; Icyifuzo cya Porokireri, Umugereka wa 37, urup. 10; Icyifuzo cya Porokireri, Umugereka wa 56, imp. 4-5; Icyifuzo cya Porokireri, Umugereka wa 122, urup. 7.
[65] Icyifuzo cya Porokireri, Umugereka wa 37, urup. 11; Icyifuzo cya Porokireri, Umugereka wa 56, urup. 5.
[66] Icyifuzo cya Porokireri, Umugereka wa 28, imp. 7-8; Icyifuzo cya Porokireri, Umugereka wa 29, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 38, imp. 8-9.
[67] Icyifuzo cya Porokireri, Umugereka wa 21, imp. 789-94; Icyifuzo cya Porokireri, Umugereka wa 124, imp. 6-7.
[68] Icyifuzo cya Porokireri, Umugereka wa 61, imp. 2-7; Icyifuzo cya Porokireri, Umugereka wa 63, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 72, urup. 60.
[69] Icyifuzo cya Porokireri, Umugereka wa 40, imp. 13-14; Icyifuzo cya Porokireri, Umugereka wa 62, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 121, imp. 2-3.

basiviri gikorwe "si ngombwa ko abaturage b'abasiviri baba ari bo bonyine bibasiwe n'icyo gitero".[70] Cyakora, Urugereko rusanze kugaba igitero utitaye kuwo ukigabaho bitandukanye no kugaba igitero ku baturage b'abasiviri ari bo ugamije kwibasira nk'uko bivugwa mu ngingo ya 7 ya Sitati, kuko icyo gihe abaturage b'abasiviri bagomba kuba ari bo ntego y'ibanze y'icyo gitero.

Ubuhotozi nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 2)

39. Mu kirego cya 2 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cy'ubuhotozi FDLR yakoreye bamwe mu baturage b'abasiviri ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, harimo **Kipopo**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009; **Busurungi**, mu karere ka Walikale, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki 3 Werurwe 2009; **Mianga**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki 12 Mata 2009; **Busurungi** no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009; **Malembe**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 11-13 Kanama na 15 Nzeli 2009; [**BYAHANAGUWE**] i **Mutakato**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 2-3 Ukuboza 2009; [**BYAHANAGUWE]**[71]**.**

40. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko icyaha cy'ubuhotozi cyakozwe, nk'uko gisobanurwa mu ngingo ya 8(2)(c)(i) ya Sitati, igihe cyose FDLR yishe umusiviri umwe cyangwa benshi badafite uruhare mu mirwano i: (i) Kipopo ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009,[72] (ii) Busurungi ku itariki cyangwa ahagana ku itariki 3 Werurwe 2009[73] no ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi

[70] Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye kwemeza ibirego", ICC-01/04-01/10-465-Red, igika cya 218.
[71] Icyifuzo cya Porokireri, igika cya 31.
[72] Icyifuzo cya Porokireri, Umugereka wa 17, imp. 454-57; Icyifuzo cya Porokireri, Umugereka wa 42, imp. 16-17, 20.
[73] Icyifuzo cya Porokireri, Umugereka wa 23, urup. 7; Icyifuzo cya Porokireri, Umugereka wa 24, urup. 5; Icyifuzo cya Porokireri, Umugereka wa 31, urup. 6.

2009,[74] (iii) Mianga ku itariki cyangwa ahagana ku itariki 12 Mata 2009,[75] (iv) Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009,[76] (v) Malembe hagati y'amatariki 11-13 Kanama 2009[77] no ku itariki cyangwa ahagana ku itariki 15 Nzeli 2009,[78] [**BYAHANAGUWE**][79] na [**BYAHANAGUWE**][80].

41. Naho ku byerekeye ibirego bya Porokireri byerekeye ibyabereye i Mutakato ku itariki cyangwa ahagana ku itariki 2 Ukuboza 2009, Urugereko rusanze ubuhamya rukumbi Porokireri yatanze ari ubw'umutangabuhamya uvuga ko abasiviri bose bahunze kandi ko hishwe abasirikari gusa[81] na raporo y'Umuryango w'Abibumbye ivuga ko "abantu" babiri bishwe.[82] Bityo rero, Urugereko rusanze ubuhamya bwatanzwe ku byerekeye icyo gikorwa budahagije kugira ngo rwemeze ko hari impamvu zumvikana zatuma byemerwa ko abantu bishwe bari *hors de combat (batari mu mirwano)*, cyangwa bari abasiviri, abakozi bo kwa muganga cyangwa abakozi b'idini badafite uruhare mu mirwano.

Kwangiza imyanya y'umubiri nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 4)

42. Mu kirego cya 4 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo **kwangiza imyanya y'umubiri** cyakozwe na FDLR i **Busurungi** cyangwa hafi yaho no mu nsisiro zihakikije, mu karere ka Walikare, muri Kivu y'Amajyaruguru ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009.[83]

43. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko kwangiza imyanya y'umubiri byakozwe,

[74] Icyifuzo cya Porokireri, Umugereka wa 12, imp. 266-68; Icyifuzo cya Porokireri, Umugereka wa 17, imp. 711-12, 717-18; Icyifuzo cya Porokireri, Umugereka wa 34, imp. 5-6.
[75] Icyifuzo cya Porokireri, Umugereka wa 16, urup. 483; Icyifuzo cya Porokireri, Umugereka wa 32, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 54, urup. 7.
[76] Icyifuzo cya Porokireri, Umugereka wa 17, urup. 459; Icyifuzo cya Porokireri, Umugereka wa 33, igika cya 31; Icyifuzo cya Porokireri, Umugereka wa 188, urup. 73.
[77] Icyifuzo cya Porokireri, Umugereka wa 37, urup. 10; Icyifuzo cya Porokireri, Umugereka wa 56, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 122, urup. 7.
[78] Icyifuzo cya Porokireri, Umugereka wa 37, urup. 11; Icyifuzo cya Porokireri, Umugereka wa 56, urup. 5.
[79] Icyifuzo cya Porokireri, Umugereka wa 28, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 29, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 38, urup. 9.
[80] Icyifuzo cya Porokireri, Umugereka wa 26, urup. 7; Icyifuzo cya Porokireri, Umugereka wa 40, urup. 13; Icyifuzo cya Porokireri, Umugereka wa 121, urup. 3.
[81] Icyifuzo cya Porokireri, Umugereka wa 39, urup. 264.
[82] Icyifuzo cya Porokireri, Umugereka wa 55, imp. 3-5.
[83] Icyifuzo cya Porokireri, igika cya 31.

nk'uko bisobanurwa n'ingingo ya 8(2)(c)(i) ya Sitati, i Busurungi ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009, aho abasirikari ba FDLR batoboye amaso y'umugore wari utwite bakoreshe za bayoneti kandi umusirikari wa FDLR wari ufite ipeti rya Liyetona agashahura abantu b'abasiviri cyangwa abantu *hors de combat (batari mu mirwano)* mu rwego rw'ibitero byo kwihimura kuri FARDC.[84]

Ubugome ndengakamere nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 6)

44. Mu kirego cya 6, Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa **ibikorwa by'ubugome ndengakamere** nk'icyaha cy'intambara cyakozwe na FDLR ubwo yateraga kandi/cyangwa igakomeretsa abasiviri kandi/cyangwa ikabikoreza ku gahato imitwaro iremereye y'ibisahurano; mu gukora ibyo ikaba yarabateye amavunane n'ububabare bikomeye cyangwa bagakomereka bikomeye ku mubiri cyangwa mu mutwe cyangwa mu mibiri yabo. Ibyo bikorwa byabereye ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo. Hamwe muri aho hantu ni i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikale, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; i **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009**; [BYAHANAGUWE**][85]

45. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko ibikorwa by'ubugome ndengakamere byakozwe, nk'uko bisobanurwa mu ngingo ya 8(2)(c)(i) ya Sitati, i: (i) Busurungi no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009, aho [**BYAHANAGUWE**][86] (ii) i Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009, aho [**BYAHANAGUWE**][87], [**BYAHANAGUWE**][88] n'i [**BYAHANAGUWE**][89].

Gusambanya ku gahato nk'icyaha cy'intambara (ingingo ya 8(2)(e)(vi) ya Sitati) (Ikirego cya 7)

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[84] Icyifuzo cya Porokireri, Umugereka wa 17, imp. 412-414; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 333, 751-52; Icyifuzo cya Porokireri, Umugereka wa 34, urup. 5.
[85] Icyifuzo cya Porokireri, igika cya 31.
[86] Icyifuzo cya Porokireri, Umugereka wa 34, imp. 5-6.
[87] Icyifuzo cya Porokireri, Umugereka wa 33, imp. 5-10.
[88] Icyifuzo cya Porokireri, Umugereka wa 35, imp. 7-8; Icyifuzo cya Porokireri, Umugereka wa 36, imp. 10-11; Icyifuzo cya Porokireri, Umugereka wa 70, imp. 15-16.
[89] Icyifuzo cya Porokireri, Umugereka wa 40, urup. 13; Icyifuzo cya Porokireri, Umugereka wa 71, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 121, urup. 3.

46. Mu kirego cya 7 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo **gusambanya ku gahato** cyakozwe n'abasirikari ba FDLR bagikorera abasiviri b'igitsina gore ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, harimo i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikare, muri Kivu y'Amajyaruguru, mu mpera za Mata cyangwa mu ntangiriro za Gicurasi no ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; [**BYAHANAGUWE**]; i **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009; [**BYAHANAGUWE**][90].

47. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko gusambanya ku gahato byakozwe, nk'uko bivugwa mu ngingo ya 8(2)(e)(vi) ya Sitati, ubwo abasirikari ba FDLR bigabizaga umubiri w'undi muntu mu kwinjiza imyanya yabo ndangagitsina ku gahato cyangwa hakoresheje ibikangisho cyangwa igitugu, (i) i Busurungi no mu nsisiro byegeranye ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009,[91] [**BYAHANAGUWE**][92] , (iii) i Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009 [93] , [**BYAHANAGUWE**][94], n'i [**BYAHANAGUWE**][95].

48. Urugereko rumaze kubona ko Porokireri akomoza ku kintu cyabereye i Busurungi "mu mpera za Mata cyangwa mu ntangiriro za Gicurasi [2009]", ariko ntasobanure icyo kintu icyo ari cyo mu Cyifuzo cye kandi ntanatange inshamake y'ubuhamya kuri icyo kintu. Ni yo mpamvu Urugereko rusanze nta mpamvu zumvikana zihari zatuma byemerwa ko gusambanya ku gahato byabereye i Busurungi mu mpera za Mata mu ntangiriro za Gicurasi 2009.

Kwica urubozo nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 9)

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[90] Icyifuzo cya Porokireri, igika cya 31.
[91] Icyifuzo cya Porokireri, Umugereka wa 24, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 25, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 34, urup. 5.
[92] Icyifuzo cya Porokireri, Umugereka wa 28, imp. 6-7; Icyifuzo cya Porokireri, Umugereka wa 29, imp. 5-6; Icyifuzo cya Porokireri, Umugereka wa 38, imp. 5-7.
[93] Icyifuzo cya Porokireri, Umugereka wa 118, imp. 73-74.
[94] Icyifuzo cya Porokireri, Umugereka wa 26, imp. 9-10; Icyifuzo cya Porokireri, Umugereka wa 36, imp. 14-15; Icyifuzo cya Porokireri, Umugereka wa 60, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 61, urup. 2.
[95] Icyifuzo cya Porokireri, Umugereka wa 26, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 71, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 121, urup. 3.

49. Mu kirego cya 9 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo **kwica urubozo** cyakozwe hifashishijwe ibikorwa bikabije by'urugomo, gusambanya ku gahato bikoranywe ubugome bukabije, kwangiza imyanya y'umubiri na/cyangwa ibikorwa by'ubugome ndengakamere birimo kubabaza bikabije umubiri cyangwa ubwenge cyangwa gutera ububabare bukabije abahohotewe hagamijwe kubatera ubwoba, kubahana cyangwa kubavangura kubera kubakekaho gushyigikira ingabo za FARDC; ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, harimo i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; [**BYAHANAGUWE**][96]

50. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko kwica urubozo byakozwe, nk'uko biteganywa n'ingingo ya 8(2)(c)(i) ya Sitati, ubwo abasirikari ba FDLR bakomeretsaga bikomeye ku mubiri cyangwa mu bwenge cyangwa bagatera ububabare umusiviri umwe cyangwa abasiviri benshi bagamije kubahana, (i) i Busurungi no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009. Icyo gihe abasiviri barakubiswe, basambanywa ku gahato, bangirizwa imyanya y'umubiri kandi bakorerwa ibikorwa by'ubugome ndengakamere n'abasirikari ba FDLR bari bagamije kubahana kubera ko babakekagaho gushyigikira ingabo za FARDC, [97] (ii) [**BYAHANAGUWE**] [98] , n'i [**BYAHANAGUWE**][99].

Gusenya imitungo nk'icyaha cy'intambara (ingingo ya 8(2)(e)(xii) ya Sitati) (Ikirego cya 11)

51. Mu kirego cya 11 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo gusenya imitungo y'umwanzi cyangwa gusenya imitungo ibonetse yose kandi nta mpamvu za gisirikari zisaba ko bikorwa**;** icyo cyaha cyakozwe na FDLR, kigizwe n'ibikorwa byo gutwika aho banyuze hose amazu y'abasiviri n'inyubako

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[96] Icyifuzo cya Porokireri, igika cya 31.
[97] Icyifuzo cya Porokireri, Umugereka wa 25, imp. 4, 6; Icyifuzo cya Porokireri, Umugereka wa 31, urup. 4; Icyifuzo cya Porokireri, Umugereka wa 18, urup. 752.
[98] Icyifuzo cya Porokireri, Umugereka wa 28, imp. 6-7; Icyifuzo cya Porokireri, Umugereka wa 29, imp. 5-6; Icyifuzo cya Porokireri, Umugereka wa 38, urup. 6.
[99] Icyifuzo cya Porokireri, Umugereka wa 26, imp. 9-10; Icyifuzo cya Porokireri, Umugereka wa 61, imp. 1-8; Icyifuzo cya Porokireri, Umugereka wa 70, urup. 14.

ziri ahantu cyangwa hafi y'ahantu hatandukanye mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, harimo i **Kipopo**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009; i **Mianga**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki ya 12 Mata 2009; i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; i **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009; i **Malembe**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, mu ntangiriro za Kanama, ku matariki cyangwa ahagana ku matariki ya 11-13 Kanama no ku itariki ya 15 Nzeli 2009; [**BYAHANAGUWE**][100].

52. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko hakozwe ibikorwa byo gusenya imitungo, nk'uko bisobanurwa n'ingingo ya 8(2)(e)(xii) ya Sitati, ubwo abasirikari ba FDLR basenyaga cyangwa bagafata, bidatewe n'impamvu zemewe za gisirikari, umutungo w'uwo bahanganye kandi uwo mutungo ushinganywe n'amategeko mpuzamahanga agenga ubushyamirane bukoreshwamo intwaro (i) i Kipopo ku matariki cyangwa ahagana ku matariki ya 12-13 Gashyantare 2009, ubwo FDLR yatwikaga amazu menshi muri urwo rusisiro mu gitero cyanibasiye ibirindiro bya gisirikari,[101] (ii) i Mianga ku itariki cyangwa ahagana ku itariki ya 12 Mata 2009, aho abasirikari ba FDLR batwitse amazu y'abasiviri mbere na nyuma yo gutera kandi bagatsinda ibirindiro by'ingabo za FARDC,[102] (iii) i Busurungi no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009, aho amazu y'abasiviri yatwitswe mu mirwano yabashyamiranyije n'abasirikari ba FARDC ndetse na nyuma y'iyo mirwano,[103] (iv) i Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009, aho abasirikari ba FDLR batwitse amazu y'abasiviri nyuma y'uko abasirikari ba FARDC bahunga bava muri urwo rusisiro,[104] (v) i Malembe mu ntangiriro za Kanama 2009,[105] ku matariki ya 11-13 Kanama

[100] Icyifuzo cya Porokireri, igika cya 31.
[101] Icyifuzo cya Porokireri, Umugereka wa 13, imp. 212-213; Icyifuzo cya Porokireri, Umugereka wa 17, imp. 454-455; Icyifuzo cya Porokireri, Umugereka wa 30, imp. 152-155; Icyifuzo cya Porokireri, Umugereka wa 57, urup. 11.
[102] Icyifuzo cya Porokireri, Umugereka wa 20, imp. 174-176; Icyifuzo cya Porokireri, Umugereka wa 39, imp. 215-216; Icyifuzo cya Porokireri, Umugereka wa 74, urup. 83.
[103] Icyifuzo cya Porokireri, Umugereka wa 13, urup. 53; Icyifuzo cya Porokireri, Umugereka wa 18, urup. 428; Icyifuzo cya Porokireri, Umugereka wa 23, imp. 11, 13.
[104] Icyifuzo cya Porokireri, Umugereka wa 18, imp. 483-484; Icyifuzo cya Porokireri, Umugereka wa 33, imp. 6, 9; Icyifuzo cya Porokireri, Umugereka wa 118, urup.73.
[105] Icyifuzo cya Porokireri, Umugereka wa 37, imp. 8-10.

2009[106] no ku itariki cyangwa ahagana ku itariki ya 15 Nzeli 2009,[107] ubwo abasirikari ba FDLR batwikaga amazu y'abasiviri inshuro nyinshi, [**BYAHANAGUWE**] [108] , [**BYAHANAGUWE**][109] n'i [**BYAHANAGUWE**][110].

Ubusahuzi nk'icyaha cy'intambara (ingingo ya 8(2)(e)(v) ya Sitati) (Ikirego cya 12)

53. Mu kirego cya 12 Porokireri avuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara **cy'ubusahuzi bw'imitungo** y'abaturage b'abasiviri, irimo, amafaranga, zahabu, ibikoresho byo mu rugo, ibyo kurya n'amatungo, ariko si ibyo byonyine, byakorewe ahantu cyangwa hafi y'ahantu runaka mu Ntara za Kivu muri Repubulika Iharanira Demokarasi ya Kongo, harimo i **Mianga**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku itariki cyangwa ahagana ku itariki 12 April 2009; i **Busurungi** no mu nsisiro zihakikije, mu karere ka Walikare, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009; i **Manje**, mu karere ka Masisi, muri Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009; i **Malembe**, mu karere ka Walikare, muri Kivu y'Amajyaruguru, mu mpera za Nyakanga, ku matariki cyangwa ahagana ku matariki ya 11-13 Kanama no ku itariki ya 15 Nzeli 2009; [**BYAHANAGUWE**] i **Mutakato**, Mu karere ka Walikare, Kivu y'Amajyaruguru, ku matariki cyangwa ahagana ku matariki ya 2-3 Ukuboza 2009; [**BYAHANAGUWE**][111].

54. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko hakozwe ibikorwa by'ubusahuzi nk'uko bisobanurwa n'ingongo ya 8(2)(e)(v) ya Sitati, ubwo abasirikari ba FDLR bigabizaga imwe mu mitungo y'abandi bakayigira iyabo cyangwa bakayikoresha ku nyungu zabo beneyo batabanje kubyemera: (i) i Mianga ku itariki cyangwa ahagana ku itariki ya 12 Mata 2009, aho abasirikari ba FDLR bashakishaga ibyo kurya n'imyambaro ubwo igikorwa cyahakorewe cyabaga maze bagatwara imwe mu mitungo y'abasiviri,[112] (ii) i Busurungi no mu nsisiro zihakikije ku matariki cyangwa ahagana ku matariki ya 9-10 Gicurasi 2009, aho

[106] Icyifuzo cya Porokireri, Umugereka wa 13, imp. 130-131; Icyifuzo cya Porokireri, Umugereka wa 18, urup. 392; Icyifuzo cya Porokireri, Umugereka wa 37, urup. 10; Icyifuzo cya Porokireri, Umugereka wa 122, urup. 7.
[107] Icyifuzo cya Porokireri, Umugereka wa 37, urup. 11.
[108] Icyifuzo cya Porokireri, Umugereka wa 28, urup. 8; Icyifuzo cya Porokireri, Umugereka wa 38, urup. 8.
[109] Icyifuzo cya Porokireri, Umugereka wa 21, imp. 791-792; Icyifuzo cya Porokireri, Umugereka wa 124, imp. 6-7.
[110] Icyifuzo cya Porokireri, Umugereka wa 26, urup. 9; Icyifuzo cya Porokireri, Umugereka wa 35, urup. 10; Icyifuzo cya Porokireri, Umugereka wa 36, urup. 13.
[111] Icyifuzo cya Porokireri, igika cya 31.
[112] Icyifuzo cya Porokireri, Umugereka wa 16, urup. 483; Icyifuzo cya Porokireri, Umugereka wa 39, urup. 242.

abasirikari ba FDLR bafashe amatungo, imyenda n'ibikoresho bavanye mu mazu mu gihe igitero cyabaga,[113] (iii) i Manje ku matariki cyangwa ahagana ku matariki ya 20-21 Nyakanga 2009, aho abasirikari ba FDLR bambuye abasiviri ibiribwa n'ibikoresho byo mu rugo,[114] (iv) i Malembe mu mpera za Nyakanga 2009[115] no hagati y'amatariki ya 11-13 Kanama 2009,[116] aho amazu y'abasiviri yasahuwe inshuro nyinshi, [**BYAHANAGUWE**][117], (vi) i Mutakato ku matariki cyangwa ahagana ku matariki ya 2-3 Ukuboza 2009, aho imitungo y'abasiviri irimo amatungo yatwawe n'abasirikari ba FDLR, [118] [**BYAHANAGUWE**][119] n'i [**BYAHANAGUWE**][120].

Gutesha undi agaciro nk'icyaha cy'intambara (ingingo ya 8(2)(c)(ii) ya Sitati) (Ikirego cya 14)

55. Mu kirego cya 14 Porokireri alleges inavuga ko:

> MUDACUMURA agomba kuryozwa icyaha cy'intambara cyo **gutesha undi agaciro** cyakorewe ahantu hatandukanye mu Ntara za Kivu , muri Repubulika Iharanira Demokarasi ya Kongo, harimo [**BYAHANAGUWE**][121].

56. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko hakozwe icyaha cyo gutesha agaciro undi, nk'uko gisobanurwa n'ingingo ya 8(2)(c)(ii) ya Sitati, ubwo abasirikari ba FDLR bakozaga isoni, bagacisha bugufi cyangwa bagatesha agaciro umuntu umwe cyangwa benshi mu basiviri ku buryo muri rusange ibyo bikorwa byabo byagaragaye nk'ibitesha agaciro abandi. Ibyo byabereye [**BYAHANAGUWE**][122].

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[113] Icyifuzo cya Porokireri, Umugereka wa 17, imp. 396-97, 754-55; Icyifuzo cya Porokireri, Umugereka wa 18, urup. 263; Icyifuzo cya Porokireri, Umugereka wa 54, urup. 6.
[114] Icyifuzo cya Porokireri, Umugereka wa 33, urup. 8.
[115] Icyifuzo, Umugereka wa 37, imp. 7-8.
[116] Icyifuzo, Umugereka wa 37, urup. 10; Icyifuzo cya Porokireri, Umugereka wa 122, urup. 7.
[117] Icyifuzo cya Porokireri, Umugereka wa 28, urup. 8.
[118] Icyifuzo cya Porokireri, Umugereka wa 39, urup. 264; Icyifuzo cya Porokireri, Umugereka wa 55, urup. 4.
[119] Icyifuzo cya Porokireri, Umugereka wa 21, imp. 575-86; Icyifuzo cya Porokireri, Umugereka wa 35, urup. 11; Icyifuzo cya Porokireri, Umugereka wa 61, imp. 2-8.
[120] Icyifuzo cya Porokireri, Umugereka wa 39, urup. 273-74; Icyifuzo cya Porokireri, Umugereka wa 40, urup. 13; Icyifuzo cya Porokireri, Umugereka wa 71, urup. 4.
[121] Icyifuzo cya Porokireri, igika cya 31.
[122] Icyifuzo cya Porokireri, Umugereka wa 35, imp. 7-8; Icyifuzo cya Porokireri, Umugereka wa 36, urup. 13.

(3) Umwanzuro

57. Rushingiye ku byo rumaze kuvuga, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko ibyo bikorwa bigize icyo cyaha bimaze kuvugwa byakozwe mu rwego rw' ubushyamirane bukoreshwamo intwaro mu Ntara za Kivu, nk'uko byasobanuwe haruguru, kandi byari bifitanye isano n'ubwo bushyamirane. Kugaba ibitero ku basiviri, ubuhotozi, kwangiza imyanya y'umubiri, gukora ibikorwa by'ubugome ndengakamere, gusambanya ku gahato, kwica urubozo, gusenya imitungo, gusahura no gukora ibikorwa bitesha undi agaciro byari bifitanye isano ya hafi n'ubushyamirane bwari burimo kuba kubera ko kuba ubwo bushyamirane bwari buriho byagize uruhare runini mu gukora ibyaha.

58. Rushingiye ku bimenyetso byatanzwe muri rusange, Urugereko nanone rwanzuye ko hari impamvu zumvikana zatuma byemerwa ko abantu bakoze ibyo byaha bujuje ingingo zihariye z'ibyaha byasobanuwe haruguru; zirimo umugambi mubisha wa ngombwa, kandi ku bw'ibyo rusanze ibyaha by'intambara byo kugaba ibitero ku baturage b'abasiviri, ubuhotozi, kwangiza imyanya y'umubiri, ibikorwa by'ubugome ndengakamere, gusambanya ku gahato, kwica urubozo, gusenya imitungo, ubusahuzi no gutesha undi agaciro– bihanishwa ingingo za 8(2)(c)(i), 8(2)(c)(ii), 8(2)(e)(i), 8(2)(e)(v), 8(2)(e)(vi), 8(2)(e)(xii) za Sitati – byarakozwe na FDLR.

III. Kuba hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura agomba kuryozwa ibyaha Porokireri avuga mu Cyifuzo cye

59. Mu Cyifuzo cye, Porokireri atanga uburyo butatu bushobora gusimburanywa bwo kuryoza icyaha Bwana Mudacumura kubera uruhare rwe bwite mu byaha byakozwe, mu bika bikubiyemo ibirego. Ubwo buryo ni ubu bukurikira: (i) gukora icyaha ku buryo buziguye hakurikijwe ingingo ya 25(3)(a) ya Sitati, (ii) gutegeka abandi gukora ibyaha

hakurikijwe ingingo ya 25(3)(b) ya Sitati no (iii) kugira uruhare rwa komanda hakurikijwe ingingo ya 28(a) ya Sitati.[123]

60. Urugereko ubu rugiye gusuzuma uburyo bwa mbere bwo kuryoza icyaha buvugwa na Porokireri mu Cyifuzo cye, ari bwo: gukora icyaha ku buryo buziguye. Urugereko ruributsa ko *bimwe mu* bisabwa n'ubu buryo bwo kuryoza icyaha ari uko umuntu agomba kuba ari umwe mu bacuze umugambi uhuriweho cyangwa bagiranye amasezerano arimo ubushake bwo gukora ibyaha.[124]

61. Urugereko rurabona ibyo Porokireri arega FDLR ku byerekeye umugambi uhuriweho ari uko ubuyobozi bwa politiki n'ubwa gisirikari bw'uwo muryango bwumvikanye ko buzagaba, kandi koko bwagabye, igitero rusange kandi kiri kuri gahunda cyibasiye abaturage b'abasiviri mu ntara za Kivu, ibyo bakabifatanya n'igikorwa cyo gukwirakwiza amakuru cyari kigamije gutuma u Rwanda rwemera kugira ibyo rwemerera FDLR mu rwego rwa politiki.[125]

62. Kuri iyi ngingo, Urugereko rurashaka ko byumvikana neza ko , nubwo amagambo "umugambi uhuriweho" n'"ingengamikorere" ku birebana n'ibyaha byibasiye inyokomuntu ashobora kugira inyito ijya gusa nk'uko bimeze muri uru rubanza, mu by'ukuri ayo magambo, ntasobanura ikintu kimwe. Bitewe n'uko Urugereko rwamaze gusanga FDLR nta ngengamikorere yari ifite yo kugaba ibitero ku basiviri ubwabo,[126] Urugereko rusanze Porokireri ataratanze impamvu zumvikana zatuma byemezwa ko umugambi uhuriweho uvugwa nawo watangiwe ibimenyetso, bitewe n'uko mu Cyifuzo cye, Porokireri yavuze ko ayo magambo afitanye isano. Ku buryo bw'umwihariko, nta buhamya bwatanzwe bugaragaza ko abayobozi ba politiki na gisirikari ba FDLR bagiranye amasezerano mbere cyangwa nyuma cyangwa bari bafite umugambi wo kugaba igitero ku baturage b'abasiviri nk'aho ari bo ntego y'ibanze bagomba kurasaho.

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[123] Icyifuzo cya Porokireri, igika cya 31.
[124] Urugereko rw'Ibanze, Icyumba cya II, "Icyemezo cyerekeye kwemeza ibirego hakurikijwe Ingingo ya 61(7)(a) na (b) ya Sitati y'i Roma", ICC-01/09-01/11-373, ibika bya 301, 305, 313, 333; Urugereko rw'Ibanze, Icyumba cya II, "Icyemezo cyerekeye kwemeza ibirego hakurikijwe Ingingo ya 61(7)(a) na (b) ya Sitati y'i Roma", ICC-01/09-02/11-382-Red, igika cya 297; Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye kwemeza ibirego", ICC-01/04-01/07-717, ibika bya 500-14, 527-39.
[125] Icyifuzo cya Porokireri, igika cya 70.
[126] *Supra [Haruguru]*, ibika bya 22-29.

Byongeye, ubuhamya bwatanzwe ntibuhagije kugira ngo bigaragazwe ko itegeko ryo gukora ku buryo habaho icyorezo cyibasira abantu mu Ntara za Kivu ryakomotse ku kiganiro cyangwa ku masezerano ayo ari yo yose, ku buryo byavugwa ko iryo tegeko ryabaye intandaro y'umugambi uhuriweho n'abayobozi ba politiki na gisirikari ba FDLR. Kubera izo mpamvu, Urugereko rusanze nta mpamvu zumvikana zatuma byemerwa ko Bwana Mudacumura agomba kuryozwa ibyaha by'intambara byakozwe nk'uko bivugwa mu cyiciro kibanziriza iki, nk'uwakoze icyaha ku buryo buziguye hakurikijwe ingingo ya 25(3)(a) ya Sitati.

63. Ubu noneho Urugereko rugiye gusuzuma uburyo bwo kuryoza icyaha bukurikiyeho bushobora gusimbuzwa ubundi bwatanzwe na Porokireri. Urugereko ruributsa ko muri uru Rukiko, gutegeka abandi gukora icyaha hakurikijwe ingingo ya 25(3)(b) ya Sitati ari uburyo bw'ingoboka bwo kuryoza icyaha.[127] Rumaze kubona ukuntu inkiko *zihariye* zisesengura uburyo bwo kuryoza icyaha bwo gutegeka abandi gukora icyaha,[128] Urugereko rurasanga mbere yo kuryoza umuntu icyaha hakurikijwe ingingo ya 25(3)(b) ya Sitati ari ngombwa kubanza kugaragaza ko (a) uwo muntu ari mu mwanya w'ubuyobozi,[129] (b) uwo muntu aha abandi amabwiriza ayo ari yo yose[130] yo: (i) gukora icyaha kandi icyo cyaha kikaba koko cyangwa bakagerageza kugikora cyangwa (ii) gukora igikorwa runaka cyangwa kwirengagiza gukora icyo gikorwa maze ibyo bigatuma hakorwa icyaha runaka,[131] (c) iryo tegeko rigomba kuba ryaragize ingaruka itaziguye ku gukorwa kw'icyaha cyangwa ku kugerageza kugikora,[132] kandi (d) uwo muntu agomba kuba byibura azi yuko icyo cyaha kizakorwa ibintu nibiramuka bigenze uko byakagombye kugenda kandi ko icyo cyaha kizaba ari ingaruka yo kubahirizwa cyangwa

[127] Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye kwemeza ibirego", ICC-01/04-01/07, igika cya 517; Urugereko rw'Ibanze, Icyumba cya I, "Icyemezo cyerekeye kwemeza ibirego", ICC-01/04-01/06-803-tEN, ibika bya 320-21.
[128] *Reba* ingingo ya 21(1)(b) ya Sitati.
[129] ICTY, Urugereko rw'Ubujurire, *Porokireri arega D. Milošević*, "Ikizarubanza", 12 Ugushyingo 2009, IT-98-29/1-A, igika cya 290; ICTY, Urugereko rw'Ubujurire, *Porokireri arega Kordić and Čerkez*, "Ikizarubanza", 17 Ukuboza 2004, IT-95-14/2-A, igika cya 28.
[130] ICTR, Urugereko rw'Ubujurire, *Kamuhanda arega Porokireri*, "Ikizarubanza", 19 Nzeli 2005, ICTR-99-54A-A, igika cya 76.
[131] ICTR, Urugereko rw'Ubujurire, *Karera arega Porokireri*, "Ikizarubanza", 2 Gashyantare 2009, ICTR-01-74-A, igika cya 211; ICTR, Urugereko rw'Ubujurire, *Nahimana et al. arega Porokireri*, "Ikizarubanza", 28 Ugushyingo 2007, ICTR-99-52-A, igika cya 481.
[132] *Ariko reba* ICTR, Urugereko rw'Ubujurire, *Kamuhanda arega Porokireri*, "Ikizarubanza", 19 Nzeli 2005, ICTR-99-54A-A, igika cya 75; ICTR, Urugereko rw'Ubujurire, *Porokireri arega Kayishema and Ruzindana*, "Ikizarubanza (Impamvu)", 1 Kamena 2001, ICTR-95-1-A, igika cya 186.

gushyirwa mu bikorwa kw'iryo tegeko. Uwo muntu ashobora gutanga iryo tegeko abinyujije ku wundi kandi si ngombwa ko aryihera ku buryo butaziguye uwakoze icyaha.[133]

64. Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko mu gihe cyose kivugwa mu Cyifuzo cya Porokireri, ibyo Bwana Mudacumura yakoze yabikoze ari mu mwanya w'ubutegetsi. Bwana Mudacumura yari komanda mukuru w'ingabo za FDLR muri icyo gihe kivugwa.[134] Nk'uko byamaze gusobanurwa, FDLR ni umuryango mugari ukorera kuri gahunda kandi ufite uruhererekane rw'inzego rusobanutse.[135] Bwana Mudacumura ni we wagenzuraga ingabo ze kandi yari afite ububasha ku byerekeye kwinjiza abarikiri, kuzamura abasirikari mu ntera, kubavana mu myanya no kubahana mu gihe bakosheje.[136] Bimwe mu bimenyetso bigaragaza ukuntu Bwana Mudacumura yari afite ubutware busesuye kandi yagenzuraga ingabo za FDLR ni ukuba yarakoraga uko ashoboye ngo abuze abasirikari gusubira mu buzima busanzwe, ,[137] kuba yari afite ububasha bwo gutanga uburenganzira bwo kubaka urugo[138] kandi akaba yaranagenzuraga amakuru bohererezwaga n'abantu bo hanze[139] ndetse n'ayabaga

[133] *Reba* ICTY, Urugereko rwa mbere rw'Iremezo, *Porokireri arega Đorđjević*, "Ikizarubanza", 23 Gashyantare 2011, IT-05-87/1-T, igika cya 1871; ICTY, Urugereko rwa mbere rw'Iremezo, *Porokireri arega Kordić and Čerkez*, "Ikizarubanza", 26 Gashyantare 2001, IT-95-14/2-T, igika cya 388; ICTY, Urugereko rwa mbere rw'Iremezo, *Porokireri arega Blaskić*, "Ikizarubanza", 3 Werurwe 2000, IT-95-14-T, igika cya 282.

[134] Icyifuzo cya Porokireri, Umugereka wa 11, imp. 5, 10, 158; Icyifuzo cya Porokireri, Umugereka wa 12, imp. 84-85; Icyifuzo cya Porokireri, Umugereka wa 15, imp. 97, 334; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 171-173; Icyifuzo cya Porokireri, Umugereka wa 30, imp. 183, 183; Icyifuzo cya Porokireri, Umugereka wa 44, urup. 9; Icyifuzo cya Porokireri, Umugereka wa 46, urup. 3; Icyifuzo cya Porokireri, Umugereka wa 72, urup. 34; Icyifuzo cya Porokireri, Umugereka wa 94, urup. 6; Icyifuzo cya Porokireri, Umugereka wa 117, urup. 38; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 89-91.

[135] Icyifuzo cya Porokireri, Umugereka wa 13, urup. 94; Icyifuzo cya Porokireri, Umugereka wa 14, urup. 205; Icyifuzo cya Porokireri, Umugereka wa 15, urup. 81; Icyifuzo cya Porokireri, Umugereka wa 16, urup. 89; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 537-543; Icyifuzo cya Porokireri, Umugereka wa 19, imp. 170-183; Icyifuzo cya Porokireri, Umugereka wa 27, imp. 177-179; Icyifuzo cya Porokireri, Umugereka wa 59, igika cya 17; Icyifuzo cya Porokireri, Umugereka wa 78, urup. 28; Icyifuzo cya Porokireri, Umugereka wa 79, urup. 40; Icyifuzo cya Porokireri, Umugereka wa 89, urup. 10.

[136] Icyifuzo cya Porokireri, Umugereka wa 11, urup. 56; Icyifuzo cya Porokireri, Umugereka wa 12, urup. 366; Icyifuzo cya Porokireri, Umugereka wa 13, urup. 94; Icyifuzo cya Porokireri, Umugereka wa 15, imp. 81, 183, 214; Icyifuzo cya Porokireri, Umugereka wa 19, urup. 204; Icyifuzo cya Porokireri, Umugereka wa 20, imp. 123, 188; Icyifuzo cya Porokireri, Umugereka wa 27, urup. 158; Icyifuzo cya Porokireri, Umugereka wa 30, imp. 181, 183, 188; Icyifuzo cya Porokireri, Umugereka wa 39, imp. 185-187; Icyifuzo cya Porokireri, Umugereka wa 94, urup. 6; Icyifuzo cya Porokireri, Umugereka wa 118, urup. 89.

[137] Icyifuzo cya Porokireri, Umugereka wa 12, imp. 191-94; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 646-647.

[138] Icyifuzo cya Porokireri, Umugereka wa 30, urup. 213.

[139] Icyifuzo cya Porokireri, Umugereka wa 16, urup. 211.

aturutse imbere muri FDLR.[140] Kubahiriza amategeko ya Bwana Mudacumura byari shinganwa.[141]

65. Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura yategetse abandi kugaba igitero cyihariye maze mu gushyira mu bikorwa iryo tegeko hagakorwa ibyaha by'intambara Urugereko rwamaze kwemeza ko byakozwe. Ku bubasha bwa Bwana Mudacumura, itegeko rusange ryo gukora ku buryo habaho icyorezo cyibasira abantu ryatanzwe mu ntangiriro z'umwaka wa 2009.[142] Bwana Mudacumura kandi yanashyigikiye itegeko rusange ryo gusahura imitungo y'abasiviri hagamijwe gushyigikira ibikorwa bya gisirikari bya FDLR.[143] Za inite za FDLR zabaga ziri ku rugamba zakoze za operasiyo zabaga zabanje gutegurwa no kwemezwa na Bwana Mudacumura,[144] kandi byibura za operasiyo zikomeye zagombaga kwemerwa na we.[145] Nanone hari ubuhamya bugaragaza ko Bwana Mudacumura, ku buryo bwihariye, yatanze uburenganzira bwo gutera i Mianga[146] n'i Busurungi.[147]

66. Bityo rero, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko amategeko ya Bwana Mudacumura yagize ingaruka zitaziguye ku byaha byemejwe n'Urugereko mu cyiciro kibanziriza iki. Kuba byamaze kugaragazwa ko yari afite ububasha ku bakoze icyaha ku buryo butaziguye birashimangira umwanzuro uvuga ko amategeko ye yagize ingaruka zitaziguye ku ikorwa ry'ibyaha. Kimwe mu bibigaragaza ni ukuntu itegeko rusange yatanze ryo gukora ku buryo habaho icyorezo cyibasira abantu

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[140] Icyifuzo cya Porokireri, Umugereka wa 16, urup. 284.
[141] Icyifuzo cya Porokireri, Umugereka wa 13, urup. 94; Icyifuzo cya Porokireri, Umugereka wa 19, imp. 206, 212; Icyifuzo cya Porokireri, Umugereka wa 27, urup. 178.
[142] Icyifuzo cya Porokireri, Umugereka wa 14, imp. 106-07, 224-26, 269, 284-85, 287, 353-54; Icyifuzo cya Porokireri, Umugereka wa 16, imp. 417-20; Icyifuzo cya Porokireri, Umugereka wa 19, urup. 232.
[143] Icyifuzo cya Porokireri, Umugereka wa 18, imp. 524-525, 620-624; Icyifuzo cya Porokireri, Umugereka wa 20, imp. 229-230; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 829-839.
[144] Icyifuzo cya Porokireri, Umugereka wa 11, urup. 107; Icyifuzo cya Porokireri, Umugereka wa 14, imp. 113, 125-126, 205; Icyifuzo cya Porokireri, Umugereka wa 16, imp. 91-92, 117-118, 166, 308-15; Icyifuzo cya Porokireri, Umugereka wa 19, urup. 490; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 393, 421-422, 668-669, 845, 848; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 60-61.
[145] Icyifuzo cya Porokireri, Umugereka wa 16, imp. 166-168, 308-312; Icyifuzo cya Porokireri, Umugereka wa 18, imp. 626-627; Icyifuzo cya Porokireri, Umugereka wa 21, urup. 393; Icyifuzo cya Porokireri, Umugereka wa 118, imp. 60, 89.
[146] Icyifuzo cya Porokireri, Umugereka wa 13, urup. 138; Icyifuzo cya Porokireri, Umugereka wa 16, imp. 154-155; Icyifuzo cya Porokireri, Umugereka wa 17, imp. 440-443.
[147] Icyifuzo cya Porokireri, Umugereka wa 11, urup. 45; Icyifuzo cya Porokireri, Umugereka wa 13, urup. 76; Icyifuzo cya Porokireri, Umugereka wa 14, urup. 113.

ryubahirijwe. Urugero, hari umutangabuhamya wiyemerera ko, by'umwihariko, igitero cyagabwe i Busurungi muri Gicurasi 2009 cyaturutse kuri iryo tegeko.[148]

67. Mu gusoza, Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura: (i) yari azi neza impamvu zifatika zishingiye ku byabaye zatumye habaho ubushyamirane bukoreshwamo intwaro kandi (ii) byibuze yari azi yuko namara gutanga ayo mategeko hari ibyaha biri bukorwe, ibintu biramutse bigenze uko byakagombye kugenda, kandi ko ibyo byaha bizaba ari ingaruka zo kubahiriza amategeko ye. Ku buryo bw'umwihariko, hashyizweho uburyo buhambaye bw'itumanaho bwatumaga Bwana Mudacumura agezwaho raporo za buri gihe ku byerekeye operasiyo za gisirikari.[149] Yamenyeshejwe ko hari ibyaha byakekwaga kuba byarakozwe.[150] Yanamenyeshejwe kandi ko ingabo yari abereye umutware zaregwaga kuba zarakoze ibyo byaha byatangajwe n'imiryango mpuzamahanga n'imiryango itegamiye kuri Leta.[151]

68. Ku byerekeye ibitero byagabwe i Mianga n'i Busurungi muri Gicurasi 2009, hari n'ubuhamya bugaragaza ko Bwana Mudacumura yagize uruhare mu kugerageza guhishira kamere nyayo y'ibyaha FDLR yakoreye aho hantu.[152] Bwana Mudacumura yanze kwemerera mu ruhame ko abasirikari be hari ibyaha bari bakoze.[153] Ahubwo, rimwe na rimwe, yategetse ko abakomanda baregwaga gukora ibyaha bazamurwa mu mapeti.[154]

69. Bityo rero Urugereko rusanze hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura agomba kuryozwa ibyaha by'intambara byakozwe nk'uko byasobanuwe mu cyiciro kibanziriza iki, hakurikijwe ingingo ya 25(3)(b) ya Sitati.Urugereko rurashimangira ko uyu mwanzuro utabuza ko hazafatwa undi mwanzuro ku byerekeye ubundi buryo bwo kuryoza icyaha, ku yindi ntera y'iburanisha.

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[148] Icyifuzo cya Porokireri, Umugereka wa 30, urup. 122.
[149] Icyifuzo cya Porokireri, Umugereka wa 12, imp. 84-85, 383; Icyifuzo cya Porokireri, Umugereka wa 14, urup. 205; Icyifuzo cya Porokireri, Umugereka wa 16, imp. 117-125; Icyifuzo cya Porokireri, Umugereka wa 19, imp. 205-212; Icyifuzo cya Porokireri, Umugereka wa 20, urup. 123; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 421-422, 668-689.
[150] Icyifuzo cya Porokireri, Umugereka wa 12, urup. 383; Icyifuzo cya Porokireri, Umugereka wa 21, imp. 393, 421-422, 845-848; Icyifuzo cya Porokireri, Umugereka wa 112, imp. 115, 135.
[151] Icyifuzo cya Porokireri, Umugereka wa 43, urup. 52; Icyifuzo cya Porokireri, Umugereka wa 44, imp. 202, 204.
[152] Icyifuzo cya Porokireri, Umugereka wa 4 (and further citations therein).
[153] Icyifuzo cya Porokireri, Umugereka wa 14, urup. 381; Icyifuzo cya Porokireri, Umugereka wa 17, imp. 797-798; Icyifuzo cya Porokireri, Umugereka wa 44, imp. 202-04.
[154] Icyifuzo cya Porokireri, Umugereka wa 39, urup. 298.

IV. Kuba ari ngombwa gufata Bwana Mudacumura hakurikijwe ingingo ya 58(1)(b) ya Sitati

70. Urugereko ruributsa ko, hakurikijwe ingingo ya 58(1) ya Sitati, Urugereko rugomba gutanga Urwandiko rwo Gufata iyo rusanze byaragaragajwe bihagije ko hari impamvu zumvikana zatuma byemerwa ko umuntu yakoze icyaha Urukiko rufitiye ububasha bwo kuburanisha kandi ko bigaragara ko ari ngombwa gufata uwo muntu: (i) kugira ngo yitabe urukiko, (ii) kugira ngo adatambamira cyangwa akarogoya iperereza cyangwa imirimo y'urukiko cyangwa (iii) iyo ari ngombwa, kugira ngo babuze uwo muntu gukomeza gukora icyo cyaha cyangwa ikindi cyaha gifitanye isano n'icyo kandi Urukiko rufitiye ububasha bwo kuburanisha kandi cyatewe n'impamvu zimwe. Kugira ngo rutange urwandiko rwo gufata birahagije ko Urugereko rusanga harujujwe kimwe mu bintu bya ngombwa bisabwa n'ingingo ya 58(1)(b) ya Sitati.

71. Urugereko rwamaze kwemeza ko hari impamvu zumvikana zatuma byemerwa ko Bwana Mudacumura agomba kuryozwa ibyaha by'intambara byasuzumwe haruguru mu cyiciro II(B), hakurikijwe ingingo ya 25(3)(b) ya Sitati.

72. Urugereko rusanze bigaragara ko ari ngombwa gufata Bwana Mudacumura kugira ngo yitabe urukiko, kubera ko Bwana Mudacumura aregwa ibyaha bikomeye, bikaba bivugwa ko yibera mu karere kagoye kugerwamo ko mu Ntara ya Kivu y'Amajyaruguru, muri Repubulika Iharanira Demokarasi ya Kongo kandi akaba afite urugaga mpuzamahanga rw'abantu bamushyigikiye rushobora kumufasha gucika akajya aho ububasha bw'Urukiko butabasha kugera.[155]

73. Urugereko nanone rusanze gufata Bwana Mudacumura bigaragara ko ari ngombwa kugira ngo atabangamira cyangwa akaburizamo iperereza cyangwa imirimo y'urukiko, kubera ko Bwana Mudacumura: (i) uko bigaragara ari we ukiri komanda mukuru wa FDLR, (ii) ashobora kuba yaranahawe ububasha bwisumbuyeho muri uwo muryango

[155] Icyifuzo cya Porokireri, igika cya 88; Icyifuzo cya Porokireri, Umugereka wa 74, imp. 24-30; Icyifuzo cya Porokireri, Umugereka wa 94, urup. 6.

nyuma yo gufatwa kwa Bwana Mbarushimana[156] kandi (iii) afite ubushobozi buhambaye bwo kubona amakuru mu karere arimo k'uburengerazuba bwa Repubulika Iharanira Demokarasi ya Kongo.[157] Byongeye kandi, Porokireri avuga ko hari abahohotewe, abatangabuhamya n'abashobora kuba abatangabuhamya muri uru rubanza batuye mu turere twa Repubulika Iharanira Demokarasi ya Kongo tugenzurwa na FDLR.[158]

74. Mu kurangiza, Urugereko rusanze bigaragara ko ari ngombwa gufata Bwana Mudacumura kugira ngo abuzwe gukomeza gukora ibyaha bikomoka ku mpamvu zavuzwe kandi Urukiko rufitiye ububasha bwo kuburanisha, kuko bivugwa ko agikomeje kugenzura FDLR kugeza magingo aya kandi bikaba bigaragara ko uwo mutwe ugikomeza gukora ibikorwa bya gisirikari mu Ntara za Kivu nyuma ya Nzeli 2010.[159]

75. Rushingiye ku bimenyetso rwakiriye kandi haseguriwe icyemezo kindi gishobora gufatwa hakurikijwe ingingo ya 60 ya Sitati n'ingingo ya 119 y'Amategeko, Urugereko rusanze bigaragara ko ari ngombwa gufata Bwana Mudacumura hakurikijwe ingingo ya 58(1)(b)(i), (ii) na (iii) ya Sitati.

V. <u>Umwanzuro</u>

76. Kubera izo mpamvu, Urugereko rusanze byaragaragajwe bihagije ko hari impamvu zumvikana zatuma byemerwa ko, hagati y'itariki ya 20 Mutarama 2009 n'impera za Nzeli 2010, Bwana Mudacumura agomba kuryozwa ibyaha bivugwa mu bika bya 30-58 by'iki Cyemezo.

77. Ni yo mpamvu Urugereko rufashe icyemezo cyo gutanga Urwandiko rwo Gufata Bwana Mudacumura, hakurikijwe ingingo ya 58(1) ya Sitati.

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[156] Icyifuzo cya Porokireri, Umugereka wa 39, imp. 128-129, Icyifuzo cya Porokireri, Umugereka wa 94, urup. 6.
[157] *Supra [Haruguru]*, igika cya 67.
[158] Icyifuzo cya Porokireri, igika cya 89.
[159] Icyifuzo cya Porokireri, igika cya 89; Icyifuzo cya Porokireri, Umugereka wa 9, imp. 56-59 (Umwanzuro w'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumya wo ku itariki ya 29 Ugushyingo 2011 usaba FDLR gushyira intwaro hasi no "guhita ireka urugomo urwo ari rwo rwose, ihohoterwa ry'ikiremwamuntu n'ibikorwa binyuranyije n'amategeko mpuzamahanga arengera ikiremwamuntu bikorerwa abaturage b'abasiviri muri Repubulika Iharanira Demokarasi ya Kongo").

78. [**BYAHANAGUWE**][160].

79. [**BYAHANAGUWE**].

KUBERA IZO MPAMVU, URUGEREKO:

RWEMEJE KO

Urubanza Sylvestre Mudacumura aregwamo ruri mu zo Urukiko rwerewe kuburanisha kandi ko bigaragara ko ari ngombwa gutanga urwandiko rwo kumufata kubera uruhare aregwa nk'uko biteganywa n'ingingo ya 25(3)(b) ya Sitati, hakurikijwe igipimo cyateganyijwe, mu byaha by'intambara bikurikira byakorewe mu Ntara za Kivu, muri Repubulika Iharanira Demokarasi ya Kongo, hagati y'itariki ya 20 Mutarama 2009 n'impera za Nzeli 2010, kandi ibyo byaha bikaba byagaragajwe mu nyandikomvugo y'ibyabaye iri mu bika bya 30-58 by'iki Cyemezo:

(i) **Ubuhotozi nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 2)**

(ii) **Kwangiza ibice by'umubiri nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 4)**

(iii) **Ibikorwa by'ubugome bukabije nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 6)**

(iv) **Kwica urugaraguro nk'icyaha cy'intambara(ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 9)**

(v) **Gutesha undi agaciro nk'icyaha cy'intambara (ingingo ya 8(2) (c) (ii) ya Sitati) (Ikirego cya 14)**

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[160] Icyifuzo cya Porokireri, igika cya 93.

(vi) Igitero cyibasiye abaturage b'abasiviri nk'icyaha cy'intambara (ingingo ya 8(2) (c) (i) ya Sitati) (Ikirego cya 1)

(vii) Ubusahuzi nk'icyaha cy'intambara ingingo ya 8(2) (e) (v) ya Sitati) (Ikirego cya 12)

(viii) Gusambanya ku gahato nk'icyaha cy'intambara (ingingo ya 8(2) (e) (vi) ya Sitati) (Ikirego cya 7)

(ix) Gusenya imitungo nk'icyaha cy'intambara (ingingo ya 8(2) (e) (xii) ya Sitati) (Ikirego cya 11);

BITYO RERO URUGEREKO RUTANZE URWANDIKO RWO GUFATA

Sylvestre Mudacumura, wavukiye muri selire ya Ferege, segiteri ya Gatumba, komini ya Kibilira, perefegitura ya Gisenyi, mu Rwanda, mu mwaka wa 1954, akaba anazwi ku yandi mazina akurikira: Pierre Bernard Mupenzi, Komanda Pharaon, Pharaoh, Mudac, Mukanda cyangwa Radja. Ubwo ibyaha byakorwaga no kugera ku itariki Porokireri yatangiyeho Icyifuzo cye, Sylvestre Mudacumura yari Komanda w'Ikirenga w'Ingabo za *Forces Démocratiques pour la Libération du Rwanda*.

RUTEGETSE GEREFIYE

1) gutegura no kohereza, abyumvikanyeho kandi afatanyije na Porokireri, ibaruwa isaba ubufatanye bw'inzego zibishinzwe zo muri Repubulika Iharanira Demokarasi ya Kongo mu gufata no gushyikiriza ubutabera Sylvestre Mudacumura. Iyo baruwa igomba kuba ikubiyemo amakuru kandi iherekejwe n'izindi nyandiko za ngombwa ziteganywa n'ingingo ya 89(1) n'iya 91 za Sitati ndetse n'ingingo ya 176(2) n'iya 187 z'Amategeko y'Imiburanishirize n'Itangwa ry'Ibimenyetso ("Amategeko");

2) gutegura no kohereza Leta iyo ari yo yose ibaruwa y'inyongera isaba gufata no gushyikiriza ubutabera, biramutse bibaye ngombwa, kugira ngo Sylvestre Mudacumura afatwe kandi ashyikirizwe Urukiko hakurikijwe ingingo ya 89 n'iya 91 za Sitati;

3) gutegura no kohereza, biramutse bibaye ngombwa, ibaruwa isaba kumufata by'agateganyo hakurilijwe ingingo ya 92 ya Sitati;

4) gutegura no kohereza Leta iyo ari yo yose ibaruwa isaba inzira, biramutse bibaye ngombwa, kugira ngo Sylvestre Mudacumura ashyikirizwe Urukiko hakurikijwe ingingo ya 89(3) ya Sitati;

5) gukorana na Porokireri kugira ngo asabe Repubulika Iharanira Demokarasi ya Kongo n'Ubwami bw'Ubuholandi gusaba Inama Ishinzwe Amahoro ku Isi n'Inama y'Ibihugu byiyunze by'Iburayi kuvanaho ingamba zibuza abantu bamwe kujya mu mahanga kugira ngo Sylvestre Mudacumura abashe gushyikirizwa Urukiko no gukandagira ku butaka bw'Ubuholandi;

[**BYAHANAGUWE**];

RUSABYE POROKIRERI

1) gushyikiriza Urugereko na Gerefiye, mu rugero abyemererwamo n'inshingano ze zo gukorera mu ibanga, amakuru yose afite ashobora gufasha mu kuburizamo ingaruka mbi zose zishobora kuba ku bakorewe ibyaha na/cyangwa ku batangabuhamya barebwa n'amabaruwa yo gusaba ubufatanye azaba yatanzwe nk'uko byavuzwe haruguru; no

2) gushyikiriza Urugereko na Gerefiye, mu rugero abyemererwamo n'inshingano ze zo gukorera mu ibanga, amakuru yose afite abona ko ashobora gutuma ayo mabaruwa yo gusaba ubufatanye ashyikirizwa abo agenewe kandi ibiyakubiyemo bigashyirwa mu bikorwa ku buryo bworoshye.

Bikozwe mu Cyongereza no mu Gifaransa ariko inyandiko y'Icyongereza niyo igenderwaho.

Ekaterina Trendafilova
Perezida

Hans-Peter Kaul
Umucamanza

Cuno Tarfusser
Umucamanza

Kuwa Gatanu, tariki ya 13 Nyakanga 2012

I Lahe, mu Buholdandi