

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Umwimerere: **Icyongereza**

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URUGEREKO RUBANZIRIZA IZINDI, ICYUMBA CYA II

**Rugizwe na: Madamu juji Ekaterina Trendafilova, juji perezida
Bwana juji Hans-Peter Kaul
Bwana juji Cuno Tarfusser**

BYABEREYE MURI REPUBULIKA IHARANIRA DEMOKARASI YA KONGO

URUBANZA

POROKIRERI aburana na BOSCO NTAGANDA

Inyandiko yo mu ruhame yahanaguwemo ibigomba kugirwa ibanga

Icyemezo cyafashwe biturutse ku cyifuzo cya Porokireri hakurikijwe ingingo ya 58

Hashingiwe ku ngingo ya 31 y'Amategeko agenga Urukiko, icyi cyemezo kimenyeshejwe aba bakurikira:

Ibiro bya Porokireri

Madamu Fatou Bensouda, Porokireri

Umwunganizi w'uregwa

Abahagarariye mu mategeko abakorewe ibyaha

Abahagarariye mu mategeko abasabye kuba mu rubanza

Abakorewe ibyaha badahagarariwe

Abasabye kuba mu rubanza badahagarariwe (kugira uruhare/indishyi)

Ibiro by'ubwunganizi rusange bw'abakorewe ibyaha

Ibiro by'ubwunganizi rusange bw'abaregwa

Abahagarariye za Leta

Inshuti z'urukiko (L'amicus curiae)

UBWANDITSI

Umwanditsi n'Umwanditsi wungirije

Madamu Silvana Arbia

Ishami rishinzwe gereza

Agashami gashinzwe gufasha abatangabuhamya n' abakorewe ibyaha

Abandi

Agashami gashinzwe indishyi no gafasha abatangabuhamya kugira uruhare mu manza

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URUGEREKO RUBANZIRIZA IZINDI, ICYUMBA CYA II (« Urugereko ») rw'Urukiko Mpuzamahanga Mpanabyaha (« Urukiko ») rufashe icyi cyemezo ku cyifuzo cyatanzwe na Porokireri¹ akurikije ibikubiye mu ngingo ya 58 ya Sitati ya Roma (« Icyifuzo cya Porokireri» cyangwa « Icyifuzo »²). Muri icyo cyifuzo, Porokireri asaba ko manda ya kabiri yo gufata Bosco Ntaganda itangwa.

1. Ku itariki ya 3 Werurwe 2004, Repubulika Iharanira Demokarasi ya Kongo (RDC) yashinze Porokireri gukurikirana urubanza rwa Bosco Ntaganda rukomoka ku byabereye muri icyo gihugu; nkuko biteganywa n'ingingo za 13-a na 14 za Sitati ya Roma (« Sitati »)³.
2. Ku itariki ya 5 Nyakanga 2004, ibyabereye muri icyo gihugu byashinzwe Urugereko rubanziriza izindi ; Icyumba cya I⁴.
3. Ku ya 22 Kanama 2006, Urugereko rubanziriza izindi ; Icyumba cya I, rwafashe icyemezo ku cyifuzo cy'Ubushinjacyaha gisaba itangwa rya manda yo gufata⁵ ; kikaba cyari giherekejwe na manda yo gufata Bosco

¹ Ku itariki ya 15 Kamena 2012, Madamu Fatou Bensouda yatangiye imirimo yo kuba Porokireri w'Urukiko amaze kurahira.

² *Icyifuzo cya Porokireri gishingiye ku bikubiye mu ngingo ya 58 giherekejwe n'umugereka A w'imyanzuro idashyirwa mu ruhame y'inama yabaye hagati y'abaturanyi gusa, n'imigereka kuva ku wa 1.1 kugera ku wa 26.6, 14 Gicurasi 2012, ICC-01/04-611-Conf-Exp. Inyandiko yashyizwe ahagaragara yatanze kw'itariki ya 14 Gicurasi 2012 (ICC-01/04-611-Red), ikosora ryo kw'itariki ya 15 Gicurasi 2012 (ryatangajwe kw'itariki ya 16 Gicurasi 2012) (ICC-01/04-611-Conf-Exp-Corr); hamwe n'ikosorwa ry'inyandiko yashyizwe mu ruhame kw'itariki ya 14 Gicurasi 2012 (igatangazwa kw'itariki ya 15 Gicurasi 2012) (ICC-01/04-611-Red-Corr).*

³ Ibaruwa yo ku wa 3 Werurwe 2004 ya Joseph Kabila iha CPI gukurikirana ibyaberaga muri RDC, yometse ku nyandiko yiswe « Icyifuzo cya Porokireri gisaba manda zo gufata ; Ingingo ya 58 », 12 Mutarama 2006 (yatangajwe kw'itariki ya 13 Mutarama 2006), ICC-01-/04-98-US-Exp-Anx1.

⁴ Ibiro bya Juji Perezida w'Urukiko. Icyemezo cyo gushinga Urugereko rubanziriza izindi ; Icyumba cya I ibyaberaga muri Repubulika Iharanira Demokarasi ya Kongo, ICC-01/04-1-Tfr.

⁵ Urugereko rubanziriza izindi ; Icyumba cya I, icyemezo cyerekeye icyifuzo cy'Ubushinjacyaha gisaba itangwa rya manda yo gufata, 22 Kanama 2006, ICC-01/04-02/06-1-US-Exp; n'inyandiko yasibwemo amabanga, itariki ya 6 Werurwe 2007, ICC-01-/04-02/06-1-Red

Ntaganda⁶, kuko rwasanze yaryozwa ibyaha byo mu ntambara, nkuko biteganywa n’ingingo ya 8-2-b-xxvi cyangwa se iya 8-2-e-vii ya Sitati; ibyaha byo kuba yarinjije abana bari muni y’imyaka 15 mu gisirikare ku gahato, akanandikisha abana mu gisirikare, agatuma banagira uruhare rufatika mu mirwano.

4. Ku itariki ya 15 Werurwe 2012, Urugereko⁷ rwongeye gushingwa ibyaberaga muri RDC.
5. Ku itariki ya 14 Gicurasi 2012, Porokireri yatanze icyifuzo, kivugwa hano muni, asaba ko hatangwa manda ya kabiri yo gufata Bosco Ntaganda kuko asanga uburyozwacyaha bwe ku giti cye buhari kubera 1) ibyaha byibasiye inyokomuntu bivugwa mu ngingo ya 7-1-a, iya 7-1-g n’iya 7-1-h za Sitati (ubwicanyi, gusambanya ku gahato/gushyira ku ngoyi ishingiyeye ku gitsina n’itotezwa rishingiyeye ku bwoko); 2) n’ibyaha by’intambara bivugwa mu ngingo za 8-2-c-i, 8-2-e-i, 8-2-e-v na 8-2-e-vi za Sitati (ubwicanyi, ibitero bigabwe nkana ku baturage b’abasivili, ubujura no gusambanya ku gahato/ gushyira ku ngoyi ishingiyeye ku gitsina)⁸.
6. Kugirango rufate icyemezo kuri icyo cyifuzo, Urugereko rurasuzuma : i) ububasha bw’Urukiko n’iyakirwa ry’urubanza; ii) rurebe niba hari impamvu zumvikana zituma umuntu yakwemera ko kimwe cyangwa byinshi mu byaha bivugwa muri icyo cyifuzo byarakozwe; iii) rusuzume niba hari impamvu zumvikana zituma umuntu yakwemera ko Bosco Ntaganda ashobora kuryozwa ibyaha bivugwa muri icyi cyifuzo; iv)

⁶ Urugereko rubanziriza izindi; icyumba cya I, manda yo gufata – ikosowe, 7 Werurwe 2007, ICC-01/04-02/06-2-Corr-Red.

⁷ Ibiro bya Juji Perezida, *Icyemezo kigena abagize Ingereko zibanziriza izindi no kugena ingereko zizakurikirana ibibera muri Repubilika Iharanira Demokarasi ya Kongo, Darifuru, Sudani na Cote d’Ivoire, 15 Werurwe 2012, ICC-01/04-02/06-32.*

⁸ icyifuzo cya Porokireri, urupap. rwa 5

runarebe niba ibisabwa, kugirango manda yo gufata Bosco Ntaganda itangwe, bikwiye.

I. Ububasha bw'Urukiko n'iyakirwa ry'urubanza

A. Ububasha bw'Urukiko

7. Ingingo ya 19-1 ya Sitati iteganya ko «Urukiko rubanza kureba niba rufite ububasha bwo kuburanisha urubanza rwagejejweho». Bityo, akaba nta shiti ko mbere yo gusohora manda yo gufata⁹ Bosco Ntaganda rugomba kubanza gusuzuma niba koko rufite ububasha bwo kumuburanisha.
8. Kugira ngo Urukiko rugire ububasha bwo gukurikirana icyaha runaka, icyo cyaha kigomba kuba kirangwa n'ibintu bitatu bikurikira : i) kuba kimwe mu byaha bivugwa mu ngingo ya 5 ya Sitati (ububasha ku cyaha nyirizina/ ububasha *ratione materiae*), ii) icyaha kigomba kuba cyarakozwe mu gihe kivugwa mu ngingo ya 11 ya Sitati (ububasha bushingiye ku gihe icyaha cyakorewe : *ratione temporis*) ; kandi iii) kigomba kuba cyujuje kimwe mu bintu bibiri bisabwa mu ngingo ya 12 ya Sitati ; ari byo kuba kigomba kuba cyarakorewe ku butaka bw'igihugu cyashyize umukono kuri Sitati, cyangwa kigakorwa n'umuturage ugikomokamo, cyangwa kigakorerwa mu gihugu cyatanze inyandiko ivugwa mu ngingo ya 12-3 ya Sitati cyangwa n'umuntu ugikomokamo ¹⁰ . Urugereko rufata imyanzuro kuri icyo cyifuzo rushingiye kuri izo ngingo eshatu zisabwa kugirango icyifuzo cyakirwe no ku bimenyetso cyangwa ayandi makuru yatanzwe na Porokireri.

⁹ Urugereko rubanziriza izindi ; icyumba cya III, icyemezo ku cyifuzo cya Porokireri cyo gutanga manda yo gufata Jean Pierre Bemba Gombo, ICC-01/05-01/08-14, Igika cya 11.

¹⁰ Cyimwe no haruguru; igika cya 12.

9. Ku byerekeye ingingo ya mbere isabwa, Urugereko rusanze ibyaha Bosco Ntaganda yaba yarakoze ari ibyaha byibasiye inyokomuntu n'ibyaha by'intambara nkuko bisobanuwe muri Sitati. Urugereko rugaragaza ko : ubwicanyi ari icyaha kibasiye inyokomuntu nkuko bivugwa mu ngingo ya 7-1-a ya Sitati. Icyaha cyo mu ntambara kivugwa mu ngingo ya 8-2-c-i ya Sitati, icyo gusambanya ku gahato no gushyira ku ngoyi ishingiye ku gitsina, ni ibyaha byibasiye inyokomuntu nkuko bivugwa mu ngingo ya 7-1-g ya Sitati ; bikaba n'ibyaha byo mu ntambara nkuko bivugwa mu ngingo ya 8-2-e-vi ya Sitati. itotezwa rishingiye ku bwoko ni icyaha kibasiye inyokomuntu nkuko bivugwa mu ngingo ya 7-1-h ya Sitati ; kuyobora ibitero ku baturage b'abasiviri ubigambiriye ni icyaha cy'intambara kivugwa mu ngingo ya 8-2-e-i ya Sitati naho gusahura kikaba icyaha cy'intambara nkuko bisobanuwe n'ingingo ya 8-2-e-v ya Sitati. Ku bw'ibyo Urugereko rukaba rusanze igisabwa kubahirizwa cya mbere cyerekeranye n'ububasha bw'Urukiko bwo kuburanisha icyaha nyirizina (*ratione materiae*) cyubahirijwe.
10. Ku byerekeye ingingo ya kabiri isabwa, ari bwo bubasha bw'Urukiko bushingiye ku gihe icyaha cyakorewe (*ratione temporis*), Urugereko ruragaragaza ko RDC yatangiye kubahiriza Sitati ku itariki ya 1 Nyakanga 2002. Ku bw'ibyo, bitewe nuko icyifuzo cya porokireri kivugwamo ibikorwa byaba byarakozwe hagati ya Nzeli 2002 na Nzeli 2003, Urugereko rukaba rusanze iyo ngingo ya kabiri isabwa yubahirijwe.
11. Ku ngingo ya gatatu isabwa, Urugereko rwemera ko ibyaha bivugwa byakorewe ku butaka bwa RDC rukaba runanzuye ko Urukiko rushobora gukoresha ububasha bwarwo bwo kuburanisha icyaha butewe n'aho cyakorewe (*ratione loci*) nkuko biteganywa n'ingingo ya 12-2-a ya Sitati.

12. Kubera izo mpamvu zavuzwe haruguru, Urugereko rwanzuye ko Urukiko rufite ububasha bwo kuburanisha urubanza rwa Bosco Ntaganda.

B. Iyakirwa ry'urubanza

13. Interuro ya kabiri y'ingingo ya 19-1 ya Sitati ivuga ko Urukiko rushobora kugaragaza aho ruhagaze ku byerekeye iyakirwa ry'urubanza nkuko bivugwa n'ingingo ya 17 ya Sitati. Urugereko rusanze atari ngombwa muri iki gice cy'imiburanishirize ¹¹ gusuzuma ibijyanye n'iyakirwa ry'urubanza.

II. Ese hari impamvu zumvikana zemeza ko icyaha cyangwa ibyaha byinshi mu bivugwa mu cyifuzo byakozwe ?

14. Nkuko biteganywa n'ingingo ya 58-1-a ya Sitati, Urugereko rusuzuma niba hari impamvu zumvikana zigaragaza ko umuntu yakoze icyaha Urukiko rufite ububasha bwo gukurikirana.

15. Bityo, Urugereko rugomba gusuzuma icyifuzo, imigereka n'inshamake z'ibimenyetso bishinje («ibimenyetso») byatanzwe na porokireri kugirango rurebe niba hari impamvu zumvikana zituma umuntu yakwemera ko Bosco Ntaganda yakoze ibyaha bivugwa¹².

¹¹ Reba nanone Urugereko rubanziriza izindi ; icyumba cya II, icyemezo cyerekeye icyifuzo cya porokireri gisaba ihamagazwa mu rukiko rya William Samoei Ruto, Henry Kiprono Kosgey na Josua Arap Sang, ku ya 8 Werurwe 2011, ICC-01/09-01/11-01-tFRA, igika cya 12.

¹² Urugereko rw'Ubujurire, Umwanzuro ku bujurire bwa Porokireri wajuririye icyemezo cyafashwe ku cyifuzo cye cyerekeye Manda yo gufata Omar Hassan Ahmad Al Bashir, 3 Gashyantare 2010, ICC-02/05-01/09-73, igika cya 31 na 39. Reba nanone ICC-01/05-01/08-14, igika cya 24.

16. Ibyemezo bimwe uru rukiko¹³ rwagiye rufata mbere bigaragaza ko imvugo «impamvu zumvikana zatuma umuntu yemera ko» igomba kumvikana mu buryo butabusanye n'amategoko arengera ikiremwamuntu yemewe kw'isi (ingingo ya 21-3 ya Sitati). Bityo, Urugereko rwagendeye ku ngingo ishingiye ku kubaho kw'«impamvu zifatika zo gukeka» zivugwa n'ingingo ya 5-1-c y'Amasezerano y'ibihugu by'uburayi arengera uburenganzira bw'ikiremwamuntu n'ukwishyira ukizana kw'ibanze (Convention europeene de sauvegarde des droits de l'homme et des libertes fondamentales). Urukiko rw'i Burayi rushinzwe uburenganzira bwa muntu (CEDH) rukaba rukura muri ayo masezerano igisobanuro kivuze ko «umuntu ashobora gukeka ko [habayeho] ibikorwa cyangwa amakuru ashobora gutuma umuntu ubisuzuma atabogamye yavuga ko ukurikiranyweho icyaha¹⁴ ashobora kuba koko yaragikoze». Byongeye, Urugereko rwifashishije ibyemezo bimwe byafashwe mbere n'urukiko rwa Amerika rurengera uburenganzira bw'ikiremwamuntu (CIADH) ku byerekeye uburenganzira bw'ibanze bwo kwishyira ukizana buvugwa mu ngingo ya 7 y'Amasezerano ya Amerika yerekeye uburenganzira bw'ikiremwamuntu¹⁵.

¹³ Urugereko rw'ubujurire, urubanza ku buhurire bwa porokireri yakoze ajuririra icyemezo cyafashwe cyo kutemera ko hashyirwaho manda yo gufata Omar Hassan Ahmad Al Bashir, 3 Gashyantare 2010, ICC-02/05-01/09-73, igika cya 31 na 39. Reba nanone ICC-01/05-01/08-14, igika cya 24.

¹⁴ ICC-02/05-01/0-73, igika cya 31; ICC-01-05/08-14, igika cya 24; CEDH, *Fox, Campbell et Hartley c. Royaume-Uni*, urubanza rw'ubujurire rwo ku itariki ya 30 kanama 1990, vol. 182, serie A, urup. rwa 16, igika cya 32; *K-F c. Allemagne*, urubanza rw'ubujurire rwo kuwa 27 ugushyirwa 1997-VII, igika cya 57, *Labita c. Italie*, urubanza rw'ubujurire rwo kuwa 6 mata 2000, igika cya 155; *Berkta c. Turquie*, urubanza rw'ubujurire rwo kuwa 01 Werurwe 2001, igika cya 199; *O'Hara c. Royaume-Uni*, urubanza rw'ubujurire rwo kuwa 16 ukwakira 2001, igika cya 34.

¹⁵ ICC-01/05-01/08-14, igika cya 24; reba urugero, CIADH, *Bamaca Velasquez c. Guatemala*, urubanza rw'ubujurire rwo kuwa 25 ugushyirwa 2000, serie C numero 70, igika cya 138 kugeza ku cya 144; *Loayaza-Tamayo c. Perou*, urubanza rw'ubujurire rwo kuwa 17 nzeri 1997, serie C numero 33, igika cya 49 kugeza ku cya 55, *Gangaram Panday c. Surinam*, urubanza rw'ubujurire rwo kuya 21 mutarama 1994, serie C No. 16, igika cya 46 kugeza ku cya 51.

A. Ibyaha byibasiye inyokomuntu

17. Mu cyifuzo cye, porokireri yemeza ko ibyaha byibasiye inyokomuntu byakorewe ahantu hatandukanye muri RDC¹⁶.

Ikirego cya 1

Ubwicanyi nk'icyaha kibasiye inyokomuntu (ingingo ya 7-1-a n'iya 25-3-a za Sitati)

[UKO BYASEMUWE] Hagati y'itariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, nk'umufatanyacyaha, yakoze ubwicanyi bugize icyaha kibasiye inyokomuntu muri Ituri, mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo), burimo iyicwa ry'abantu b'abasivili batari muni ya magana bari batuye mu muji wa Mongbwalu no mu murenge wa Sayo hagati y'itariki ya 18 n'iya 23 Ugushyungu 2002 ; n'abasivili nibura magana atatu na mirongo itanu bari batuye Lipri, Bambu, Kobi no mu murenge ihagereye hagati y'itariki ya 17 gashyamba 2003 n'iya 2 werurwe 2003 ; ubwicanyi bwakozwe n'ingabo za UPC/FPLC, ziciye ukubiri n'ingingo ya 7-1-a n'iya 25-3-a za Sitati.

Ikirego cya 4

Ugusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina bigize ibyaha kibasiye inyokomuntu

(ingingo ya 7-1-g n'iya 25-3-a za Sitati)

Hagati y'itariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, nk'umufatanyacyaha, yakoze ibyaha by'ubusambanyi no gushyira ku ngoyi ishingiyeye ku gitsina ; ibyaha byibasiye inyokomuntu byakorewe muri Ituri, mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo), mu muji wa Mongbwalu no mu murenge wa Sayo hagati y'itariki 18 na 23 Ugushyungu 2002 ; n'i Lipri, Bambu, Kobi no mu murenge ihagereye hagati y'itariki ya 17 gashyamba 2003 n'iya 2 werurwe 2003 ; ibikorwa byakozwe n'ingabo za UPC/FPLC, ziciye ukubiri n'ingingo ya 7-1-g n'iya 25-3-a za Sitati.

¹⁶ icyifuzo cya porokireri, urupapuro rwa 12 na 13.

Ikirego cya 6
Itoteza nk'icyaha kibasiye inyokomuntu
 (ingingo ya 7-1-h n'ya 25-3-a za Sitati)

Guhera kw'itariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, nk'umufatanyacyaha, yakoze ibyaha by'itoteza bigize icyaha kibasiye inyokomuntu; arikorera abaturage batari aba Hema, cyane cyane aba Lendu, harimo aba Ituri mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo), mu muji wa Mongbwalu no mu murenge wa Sayo hagati y'itariki 18 na 23 Ugushyingo 2002 ; hamwe n'ahitwa Lipri, Bambu, Kobu no mu murenge ihagereye hagati y'itariki ya 17 gashyantare 2003 n'ya 2 werurwe 2003; itotezwa ryakozwe n'ingabo za UPC/FPLC, ziciye ukubiri n'ingingo ya 7-1-h n'ya 25-3-a za Sitati.

- 1) Ibimenyetso bishingiye ku byabaye biraranga ibyaha byibasiye inyokomuntu
18. Ingingo ya 18 ya Sitati ivuga ko igikorwa runaka gifatwa nk'icyaha kibasiye inyokomuntu iyo cyakozwe mu rwego rw'ibitero rusange cyangwa biri kuri gahunda byagabwe ku baturage b'abasivili. Ingingo ya 7-2-a ya Sitati isobanura ko «kugaba igitero ku baturage b'abasivili» ari «ugukora ibikorwa binyuranye bisobanuwe n'igika cya 1 ; ukabikorera abaturage runaka b'abasivili, kugirango uwo mugambi wa Leta cyangwa ishyirahamwe runaka ukurikizwe cyangwa ushyirwe mu bikorwa».
19. Gukoresha imvugo ibitero rusange cyangwa biri kuri gahunda bisobanuye ko ibikorwa bidakorewe hamwe cyangwa mu gihe kimwe, kandi bitateguwe, bidashyirwa mu bigize ibyaha byibasiye inyokomuntu. Ni muri urwo rwego ijamba «rusange» risobanuye ko «igitero cyagabwe cyari kinini kandi cyibasiye abantu benshi¹⁷». Naho amagambo «biri kuri gahunda» asobanuye ko «ibikorwa by'urugomo byakozwe byari

¹⁷ ICC-01/05-01/08-14, igika cya 33.

byateguwe ku buryo gutekereza ko byabaye bitunguranye bidashoboka¹⁸». Kubaho k'umugambi wa Leta cyangwa ishyirahamwe bishingirwaho mu gufata umwanzuro werekana ko igitero cyabaye cyari cyateguwe¹⁹».

Igitero cyagabwe ku baturage b'abasivili

20. Porokireri aremeza ko hagati ya Nzeli 2002 na Nzeli 2003, Bosco Ntaganda yacuze umugambi anayobora ibitero byinshi bya gisirikare biteguye neza byibasiye aba Lendu n'andi moko atari ay'aba Hema. Ingabo za *Union des patriotes Congolais* (UPC) n'iza *Forces patriotiques pour la libération du Congo* (FLPC) zaba zariraye mu mijyi n'imisozi yabo, zigasahura, zikica zikanasambanya ku gahato abasivili batuye hose mu ntara ya Ituri²⁰. Mu kubyemeza, porokireri avuga ubwicanyi bw'abantu bagera nibura kuri 800 b'aba Lendu, n'abandi basivili batari aba Hema, bwakozwe na UPC/FLPC hagati y'impera z'umwaka wa 2002 n'intangiriro z'uwa 2003 i Mongbwalu, Kilo, Kobu, Lipri, Bambu no mu misozi y'aba Lendu y'aho hafi; akavuga ko abasivili ibihumbi bakomeretse maze bikaba ngombwa ko abaturage bahungira mu bisambu²¹.

21. Rushingiye ku bimenyetso byatanzwe, Urugereko rwanzuye ko hari impamvu zumvikana zituma rwemera ko imisozi myinshi yo muri Ituri yagabweho ibitero na UPC/FLPC hagati ya Nzeli 2002 na Nzeli 2003 byatumye umubare munini w'abasiviri upfa, bigatuma abantu barenga 140 000 bava mu byabo ku gahato, bikanatuma habaho ibyaha bigizwe n'ubwicanyi, gusambanya ku gahato, gushyira ku ngoyi ishingiyeye ku

¹⁸ Ni cyo kimwe no haruguru.

¹⁹ Ni cyo kimwe no haruguru.

²⁰ icyifuzo cya prokireri, igika cya 9.

²¹ icyifuzo cya porokireri, igika cya 11 na 49.

gitsina n'itotezwa nkuko bisobanuwe hano muni²². Ibitero byatumye ibyaha byavuzwe bikorwa bishobora kuba byarabereye neza na neza i Mongbwalu na Sayo hagati ya 18 na 23 Ugushyingo 2002, n'i Lipri, Bambu, Kobu no mu mirenge yo mu nkengero zaho, hagati y'itariki ya 17 Gashyantare n'iya 2 Werurwe 2003²³. Byongeye, urugereko rwanzuye ko hari impamvu zumvikana zituma rwemera ko ibyo bitero byari bigabwe ku baturage b'abasivili²⁴.

Umurongo (politiki) ngenderwaho wa Leta cyangwa w'ishyirahamwe

22. Porokireri avuga ko igisabwa ari uko hagomba kugaragazwa ko ibyaha byakozwe hakurikijwe cyangwa hubahirizwa umurongo ngenderwaho wa Leta cyangwa w'ishyirahamwe kandi ari nako byagenze²⁵. Aremeza ko UPC/FLPC wari umutwe wa politiki na gisirikare ufite imitunganyirize ya gihanga iruhije kumvwa na bese ukanagira inzego Bosco Ntaganda yashoboraga gukoresha zagereranywa n'iza Leta z'ibihugu kugirango akore ibyaha byibasiye inyokomuntu. By'umwihariko, ashimangira ko UPC/FLPC ari umutwe i) wari ufite inzego ziteguwe neza. Bosco Ntaganda akaba yari afitemo imirimo ikomeye; ii) wari ufite inzego ziteguwe neza mu buryo zimwe zabaga zikuriwe n'izindi kandi zikora neza; iii) wari ufite uburyo bwa tekini y'itumanaho butuma ihanahana

²² icyifuzo cya porokireri, umugereka wa 12.1, urup. rwa 7 kugeza ku rwa 9, igika cya 24; umugereka wa 25.17-Corr, urup. rwa 237, umugereka wa 25.18, urup. rwa 34 na 42, umugereka wa 25.20, urup. rwa 13, umugereka wa 25.21, urup. rwa 9 na 10; umugereka wa 25.24, urup. rwa 3, igika cya 8.

²³ icyifuzo cya porokireri, umugereka wa 19.1, igika cya 33 n'icya 34; umugereka wa 20.1, urup. rwa 5 na 6, igika cya 20 kugeza ku cya 23; umugereka wa 25.1, urup. rwa 24 na 32; umugereka wa 25.16, urup. rwa 33 kugeza 36; umugereka wa 25.20, urup. rwa 17 kugeza 20; umugereka wa 25.25, urup. rwa 2.

²⁴ icyifuzo cya porokireri, umugereka wa 4.1, igika cya 77, 96 na 97; umugereka wa 5.4, urup. rwa 6; umugereka wa 13.1, urup. rwa 12 na 13, igika cya 46 kugeza 50; umugereka wa 16.1, urup. rwa 6, igika cya 18 na 19; umugereka wa 25.1, urup. rwa 24, igika cya 69; umugereka wa 25.16, urup. rwa 33; umugereka wa 25.17-Corr, urup. rwa 240 na 241, igika cya 420; umugereka wa 25.18, urup. rwa 34 na 40; umugereka wa 25.20, urup. rwa 2,3 na 17 kugaza kuri 20; umugereka wa 26.1, urup. rwa 3 kugeza kuri 5.

²⁵ icyifuzo cya porokireri, igika cya 26.

ry'amakuru n'amategeko bibasha kugera ku nzego zose uko zasumbanaga ; ukaba wari iv) unafite imitunganyirize y'inzego zimwe zikuriwe n'izindi ku buryo butuma abashinzwe FLPC bahabwa ububasha bumwe na bumwe²⁶.

23. Porokireri yemeza kandi ko UPC/FLPC yaremwe kugirango ihe aba Hema bo muri Ituri²⁷ ubwiganze bw'imbaraga za politiki n'iza gisirikare ziruta iz'abandi ; ko kuva muri Nzeli 2002 kugeza muri Nzeli 2003, uwo mutwe washyize mu bikorwa politiki yawo yo gutera aba Lendu n'abandi baturage batari aba Hema ku butaka bwose bw'intara ya Ituri²⁸. Avuga ko, by'umwihariko, UPC/FLPC yagaragaje ku buryo bugaragarira buri wese politiki yayo mbisha mw'itangazo yavugiyemo ko mu byemezo byari byafashwe hari harimo icyo kwica «abatahakomoka» (*les non-originaires*) ; gusahura no gusenya ku buryo buri kuri gahunda imitungo²⁹ yabo. Porokireri nanone ashimangira ko kuba ibitero byaragabwe mu buryo buri kuri gahunda inonosoye neza no kuba ibyo bitero byari binini byerekana ko hari hariho gahunda igamije gukora ibyo byaha³⁰.

24. Mu byemezo bigomba kuzuzwa byafashwe n'urugereko biranga politiki ya Leta cyangwa y'ishyirahamwe harimo ko: a) igitero kigomba kuba cyarateguwe neza hakurikijwe uburyo busanzwe bukoreshwa ; b) kigomba gushyirwa mu bikorwa hubarijwe politiki yumvikanyweho kandi ikoresha uburyo bwa leta cyangwa bwite; c) gishobora gushyirwa mu bikorwa n'imitwe y'abantu bayoboye intara runaka cyangwa n'ishyirahamwe iryo ari ryo ryose rishoboye kugaba igitero rusange

²⁶ icyifuzo cya porokireri, igika cya 7 na 27 kugeza kuri 29.

²⁷ icyifuzo cya porokireri, igika cya 3 na 31.

²⁸ icyifuzo cya porokireri, igika cya 30.

²⁹ icyifuzo cya porokireri, igika cya 49 na 50.

³⁰ icyifuzo cya porokireri, igika cya 49 na 50.

cyangwa kiri kuri gahunda kigabwe ku baturage b'abasivili ; ntikigomba byanze bikunze gutangirwa ibisobanuro ku buryo bwimazeyo cyangwa bwemewe ku mugaragaro (igitero kigomba rero gukorerwa gahunda, kikayoborwa cyangwa kigategurwa ; ntikibe kigizwe n'ibikorwa by'urugomo bya hatu na hatu, bitari ibya rusange, kugirango bibe byujuje iyo ngingo isabwa³¹).

25. Rushingiye ku bimenyetso byatanzwe kandi nkuko bisobanuwe hano muni, Urugereko rusanze hari impamvu zumvikana zituma rwemera ko hari ibitero byagabwe ku baturage b'abasivili kugirango hubahirizwe politiki y'uwo mutwe.
26. Kubera ibimenyetso byatanzwe na porokireri hari impamvu zumvikana zemeza ko UPC/FLPC wari umutwe ufite ubuyobozi buzi icyo bukora, ukaba wari unafite ubuyobozi bw'abantu bamwe bakuriye abandi buhamye bwari burangajwe imbere na perezida, Bosco Ntaganda, wari Komanda w'ibikorwa bya gisirikare, Shefu Kawa wari minisitiri w'ingabo, Floribert Kisembo wari Umugaba w'ingabo n'abandi ba minisitiri benshi n'aba Ofisiye³². Hari kandi nanone impamvu zifatika zemeza ko UPC/FLPC yari ifite uburyo bwo kugaba igitero mu rwego rusange cyangwa kiri kuri gahunda ku baturage b'abasivili kuko uwo mutwe wari ufite umubare munini w'intwano³³ ukanagira umubare w'abasirikare

³¹ ICC-01/09-19-Corr-Tfra. igika cya 84 kugeza 86. gisaba kureba ibyemezo bikurikira: ICC-01/04-01/07-717-Tfra. igika cya 396 na ICC-01/05-01/08-424-Tfra. igika cya 81.

³² icyifuzo cya porokireri. umugereka 1.1, urupap. rwa 46; umugereka wa 3.1, urupap. rwa 76; umugereka wa 3.2, urupap. rwa 4; umugereka wa 4.2, urupap. rwa 21 na 24; umugereka wa 5.1, urupap. rwa 32 na 33; umugereka wa 8.2, urupap. rwa 29 na 30; umugereka wa 25.16, urupap. rwa 18.

³³ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 21; umugereka wa 5.7, urupap. rwa 18; umugereka wa 5.10, urupap. rwa 31; umugereka wa 5.12, urupap. rwa 13 kugeza kurwa 15; umugereka wa 8.2, urupap. rwa 50.

bahawe imyitozo³⁴ n'imiyo boro y'itumanaho riyihuza n'abo bayobozi bari ku rugamba³⁵. Rushingiye kuri ibyo bivuzwe haruguru, Urugereko rusanze UPC/FLPC ari umutwe ufite imiterere ijyanye n'ibisobanuro bivugwa mu ngingo ya 7-2-a ya Sitati.

27. Ku byerekeye ingingo ireba umurongo ngenderwaho uyu mutwe wari ufite, Urugereko rusanze hari impamvu zumvikana zituma rwemera ko uyu mutwe wakurikizaga umurongo ngenderwaho ugamije kwibasira abasivili badakomoka muri Ituri, cyane cyane aba Lendu, kugirango birukanywe muri iyo ntara³⁶, barimburwe³⁷, basahurwe kandi batwikirwe imitungo yabo³⁸ mu buryo buri kuri gahunda, maze amaherezo uwo mutwe uzigarurire iyo ntara urememe «Leta yigenga ya Ituri»³⁹.

Igitero kigabwe mu buryo bwa rusange kandi buri kuri gahunda

28. Porokireri avuga ko hagati ya Nzeli 2002 na Nzeli 2003, UPC/FLPC yakoze ibikorwa bya gisirikare byinshi muri Ituri mu rwego rw'umugambi wari ugamije kubasha kugenzura ku buryo bwa gisirikare intara hakoreshejwe ubwicanyi, itoteza n'isambanya ku gahato by'amagana y'abaturage b'abasivili⁴⁰. Aremeza ku kubera ibyo bitero, aba

³⁴ icyifuzo cya porokireri, umugereka 2.3, urupap. rwa 42 kugeza 46; umugereka wa 3.2, urupap. rwa 41 kugeza 43; umugereka wa 4.2, urupap. rwa 44 na 45; umugereka wa 5.1, urupap. rwa 33 kugeza 35 n'urupapuro rwa 38; umugereka wa 5.7, urupap. rwa 18.

³⁵ icyifuzo cya porokireri, umugereka 4.2, urupap. rwa 30; umugereka wa 5.1, urupap. rwa 46 na 47; umugereka wa 5.3, urupap. rwa 19; umugereka wa 22.1, urupap. rwa 68 kugeza ku rwa 69.

³⁶ icyifuzo cya porokireri, umugereka 21, urupap. rwa 97; umugereka wa 2.4, urupap. rwa 50 kugeza 53; umugereka wa 5.7, urupap. rwa 18; umugereka wa 5.12, urupap. rwa 27; umugereka wa 12.1, urupap. rwa 6, urupap. rwa 22; umugereka wa 25.18, urupap. rwa 40 na 41.

³⁷ icyifuzo cya porokireri, umugereka 24.4, urupap. rwa 2 na 3; umugereka wa 2.2, urupap. rwa 9; umugereka wa 3.2, urupap. rwa 19 na 20; umugereka wa 25.16, urupap. rwa 28 kugeza kurwa 30; umugereka wa 25.18, urupap. rwa 40.

³⁸ icyifuzo cya porokireri, umugereka 24.4, urupap. rwa 2 na 3; umugereka wa 5.3, urupap. rwa 12; umugereka wa 17.1, urupap. rwa 11 na 12; igika cya 45.

³⁹ icyifuzo cya porokireri, umugereka 24.4, urupap. rwa 2 na 3; umugereka wa 2.2, urupap. rwa 8 na 9; umugereka wa 5.12, urupap. rwa 27, umugereka wa 13.1, urupap. rwa 14, igika cya 53.

⁴⁰ icyifuzo cya Porokireri, igika cya 9 na 51.

Lendu n'abandi basivili nibura 800 batari aba Hema bishwe na UPC/FLPC mu mpera za 2002 no mu ntangiriro za 2003 i Mongbwalu, kilo, Kobu, Lipri, Bambu no mu mirenge y'aba Lendu yari hafi aho⁴¹.

29. Porokireri avuga kandi ko ibikorwa bya gisirikare Bosco Ntaganda yateguye akanayobora byakozwe mu nzira n'uburyo bumwe ; ari byo bivuze ko : i) ibitero byagabwaga ku mirenge ituwe n'aba Lendu n'indi mirenge ituwe n'abatari aba Hema ; ii) UPC/FLPC yagotaga imirenge ; iii) imirenge yamishwagaho ibisasu hakoreshejwe intwara za rutura ; iv) abasirikare ba UPC/FLPC bajyaga mu mirenge bakica buri muntu babona ko ari umwanzi wabo bakoresheje intwara zoroheje, imihoro n'ibyuma ; bagakurikizaho gusahura no gutwika ; gushimuta abagore ; kubasambanya ku gahato ; vii) no kugerageza gufata mpiri aba Lendu bose cyangwa abandi bantu batari aba Hema babaga basigaye bakabarundira hamwe⁴².

30. Rushingiye ku bimenyetso byatanzwe, Urugereko rwanzuye yuko hari impamvu zumvikana zituma rwemera ko igitero cyagabwaga ku baturage b'abasivili mu rwego rusange nkuko bigaragazwa n'umubare w'abakorewe ibyaha n'uw'abavuye mu byabo kubera igitero hamwe n'ahantu hanyuranye habaga hibasiwe⁴³. By'umwihariko, Urugereko rwashingiye ku bikorwa by'urugomo byabaye hagati y'impera za 2002 n'intangiriro za 2003 byatumye UPC/FLPC yica abasivili bakabakaba 800; muri abo 200 nibura bakaba bari Mongbwalu, naho 350 bakaba bari abo

⁴¹ icyifuzo cya Porokireri, igika cya 11 na 49.

⁴² icyifuzo cya Porokireri, igika cya 10 na 49.

⁴³ icyifuzo cya porokireri, umugereka 16.1, urupap. rwa 7, igika 24; umugereka wa 17.1, urupap. rwa 8, igika cya 28 na 29 n'urupap. rwa 11; igika 44; umugereka wa 18.1, urupap. rwa 6, igika cya 20, umugereka wa 19.1, urupap. rwa 6, igika cya 22; umugereka 20.1, urupap. rwa 6, ibika 21 na 23; umugereka wa 25.1, urupap. rwa 24 na 25, igika cya 70; umugereka wa 25.17-Corr, urupap. rwa 240 na 241, igika cya 420; umugereka wa 25.8, urupap. rwa 40 kugeza 42; umugereka wa 25.20, urupap. rwa 8, 18 na 19.

mu duce 26 tuhegereye twa Kobu, Lipri na Bambu⁴⁴. Abantu 60 000⁴⁵ nabo bakaba baravuye mu byabo.

31. Nanone kandi, Urugereko rukaba rusanga hari impamvu zumvikana zatuma rwemera ko icyo gitero cyari kiri kuri gahunda bitewe nuko abagabye ibitero aho hantu hatandukanye hibasiwe bakoresheje ibikoresho n'uburyo bumeze kimwe : Basatiraga aho bagambiriye gutera ari benshi ; baturutse mu mpande zinyuranye⁴⁶ icyarimwe ; bagatera imirenge bakoreshe intwari za rutura⁴⁷ ; bagahiga mu buryo buri kuri gahunda abaturage bakoresheje uburyo bumwe ; bava ku nzu bajya ku yindi ngo babavumbure cyangwa se bakabashakira mu bisambu, bagasahura kandi bagatwika imitungo⁴⁸ yabo yose.

32. Rushingiye ku bivuzwe haruguru, Urugereko rwanzuye ko ibyangombwa bigize ibiranga ibyaha byibasiye inyokomuntu bivugwa na porokireri mu cyifuzo cye byuzuye.

⁴⁴ Icyifuzo cya porokireri, umugereka 25.18, urupap. rwa 42; umugereka wa 25.1, urupap. rwa 24, 25 na 32, ibika 69, 70 na 102; umugereka wa 25.16, urupap. rwa 34; umugereka wa 25.20, urupap. rwa 2 na 3; umugereka wa 15.1, urupap. rwa 10, igika cya 36; umugereka wa 16.1, urupap. rwa 11, igika cya 41; umugereka wa 17.1, urupap. rwa 12 na 13, igika cya 50.

⁴⁵ Icyifuzo cya Porokireri, igika cya 25.1, urupap. rwa 24 na 25, igika cya 70.

⁴⁶ Icyifuzo cya porokireri, umugereka 4.1, urupap. rwa 96; umugereka wa 11.1, urupap. rwa 5, igika cya 18; umugereka wa 16.1, urupap. rwa 7, igika cya 24; umugereka wa 20.1, urupap. rwa 6, igika cya 21 na 23; umugereka 25.1, urupap. rwa 24, igika 69; umugereka wa 25.20, urupap. 13,17 kugera 19 n'igika cya 33, 56,58,59 na 63.

⁴⁷ Icyifuzo cya porokireri, umugereka 12.1, urupap. rwa 6, igika 22; umugereka wa 14.1, urupap. rwa 7, igika cya 22; umugereka wa 16.1, urupap. rwa 6 na 7, ibika bya 19 na 22, umugereka wa 25.1, urupap. rwa 31, igika cya 32, ibika bya 101 na 102; umugereka 25-17-Corr, urupap. rwa 241, igika cya 420.

⁴⁸ Icyifuzo cya porokireri, umugereka 5.3, urupap. rwa 22; umugereka wa 12.1, urupap. rwa 7; umugereka wa 15.1, urupap. rwa 8 na 9; umugereka wa 25.1, urupap. rwa 24, igika cya 69; umugereka 25.18, urupap. rwa 38; umugereka wa 25.20, urupap. rwa 19 na 20.

2) Ibikorwa biri ku rutonde mu ngingo ya 7-1, bigize ibyaha byibasiye inyokomuntu, byakozwe mu rwego rw'igitero rusange kandi kiri kuri gahunda.

33. Porokireri avuga ko Bosco Ntaganda, nk'umufatanyacyaha, yakoze ibyaha byibasiye inyokomuntu hagati ya Nzeli 2002 na Nzeli 2003 bigizwe no kwica, gusambanya ku gahato, gushyira mu bucakara bushingiye ku gitsina n'itoteza rishingiye ku bwoko; byakorewe umubare munini w'abasiviri – ibyaha bivugwa mu ngingo ya 7-1-a, 7-1-g na 7-1-h za Sitati⁴⁹.

Ubwicanyi nk'icyaha kibasiye inyokomuntu (ikirego cya 1)

34. Porokireri avuga ko nibura aba Lendu 800 n'abandi basivili batari abahema baba barishwe na UPC/FLPC mu mpera za 2002 n'intangiriro za 2003 i Mongbwalu, Kilo, Kobu, Lipri, Bambu no mu mirenge y'aba Lendu ihagereye⁵⁰. By'umwihariko, bivugwa ko hari abantu biciwe mu gitero cy'abasirikare cyamaze iminsi 6; nkuko bisobanurwa hano munsu i Mongabwalu⁵¹ na Sayo⁵². Nanone bivugwa ko hari abapfiriye i Lipri, Kobu, Bambu n'ahahegereye⁵³ barimo abaturage b'abasivili b'aba Lendu⁵⁴ nibura 47 batari bitwaje intwaro.

35. Nyuma y'isuzuma ryimbitse ry'ibimenyetso bihari, Urugereko rusanze hari impamvu zumvikana zituma rwemera ko habayeho ubwicanyi bwakozwe mu rwego rw'ibitero birimo ibyagabwe i Mongbwalu na Sayo hagati y'itariki 18 na 23 Nzeli 2002, n'ibyagabwe i Lipri, Bambu, Kobu

⁴⁹ icyifuzo cya porokireri, urupap. rwa 12 na 13.

⁵⁰ icyifuzo cya porokireri, igika cya 11 na 49.

⁵¹ icyifuzo cya porokireri, ibika bya 54, 60 kugeza 62, 65 na 66.

⁵² icyifuzo cya porokireri, ibika bya 68, 70 na 71.

⁵³ icyifuzo cya porokireri, ibika bya 74, 81, 83, 85, 94 na 96.

⁵⁴ icyifuzo cya porokireri, ibika bya 74 na 91

n'imirenge ihegereye hagati ya 17 Gashyantare n'itariki ya 2 Werurwe 2003.

36. By'umwihariko, ibimenyetso byatanzwe byerekanye ko ba nyirugukora ibyo byaha nyabo bigabije banica abasivili mu bitero byagabwe kuri Mongbwalu bakoresheje imbunda, banicisha imihoro n'amacumu abatari bahunze⁵⁵. Nyuma yaho abasiviri baba baratsembewe i Sayo muri kiliziya ya Mungu Samaki⁵⁶. Birashoboka ko UPC/FLPC yaba yarishe inakoresheje ubwo buryo abasivili b'i Lipri, Bambu, Kobu no mu mirenge ihegereye, haba mu gihe cy'ibikorwa bya gisirikare cyangwa se ikabicira mu bisambu igihe hakurikiragaho⁵⁷ ihigwa ry'abantu cyangwa se nyuma yo kubafunga⁵⁸. By'umwihariko, abazivili bari mu nama yo kugarura amahoro i Sangi baba barafashwe bakicirwa Kobu⁵⁹.

Gusambanya ku gahato nk'icyaha kibasiye inyokomuntu (icyaha cya 4)

37. Porokireri yemeza ko kuva muri Nzeli 2002 kugera muri Nzeli 2003, «[NIKO BYASEMUWE] abasivili» b'aba Lendu n'abandi batari aba Hema

⁵⁵ icyifuzo cya porokireri, umugereka wa 25.1, urupap. rwa 32, igika cya 102; umugereka wa 25.16, urupap. rwa 33 na 34; umugereka wa 25.18, urupap. rwa 38; umugereka wa 25.20, urupap. rwa 13, igika cya 33.

⁵⁶ icyifuzo cya porokireri, umugereka wa 4.1, urupap. rwa 75 na 79; umugereka wa 25.1, urupap. rwa 32, igika cya 102; umugereka wa 25.16, urupap. rwa 33 na 34; umugereka wa 25.18, urupap. rwa 39 na 40.

⁵⁷ icyifuzo cya porokireri, umugereka wa 8.1, urupap. rwa 8; umugereka wa 13.1, urupap. rwa 13, ibika 50 na 51; umugereka wa 17.1, urupap. rwa 9, ibika 31,32; umugereka wa 18.1, urupap. rwa 8, igika cya 31; umugereka wa 25.1, urupap. rwa 24 na 25, ibika bya 69 na 70; umugereka wa 25.17-Corr, urupap. rwa 240 na 241, igika cya 420; umugereka wa 25.20, urupap. rwa 2, 3 na 16 kugeza 19.

⁵⁸ icyifuzo cya porokireri, umugereka wa 4.3, urupap. rwa 10 na 11; umugereka wa 5.5, urupap. rwa 15; umugereka wa 15.3, urupap. rwa 4 na 7; umugereka wa 10.1, urupap. rwa 9, igika cya 37; umugereka wa 11.1, urupap. rwa 7, ibika bya 24, 25, 35 na 40; umugereka wa 12.1, urupap. rwa 9 na 10, igika cya 37 na 41; umugereka wa 13.1, urupap. rwa 14 na 15, igika cya 56 na 58; umugereka wa 19.1, urupap. rwa 9 na 10, ibika 30 na 37; umugereka wa 25.17-Corr, urupap. rwa 241, igika cya 420.

⁵⁹ icyifuzo cya porokireri, umugereka wa 5.13, urupap. rwa 8 na 33; umugereka wa 10.1, urupap. rwa 10, igika cya 41; umugereka wa 11.1, urupap. rwa 7, igika 24, 25, 35 na 40; umugereka wa 15.1, urupap. rwa 10, igika cya 36; umugereka wa 16.1, urupap. rwa 11, ibika bya 40 na 41; umugereka wa 17.1, urupap. rwa 12 na 13, ibika bya 49 kugeza 51; umugereka wa 20.1, urupap. rwa 9 kugeza ku rwa 11, igika cya 33 kugeza ku cya 37 na 40; umugereka wa 25.1, urupap. rwa 24, igika cya 69; umugereka wa 25.17-Corr, urupap. rwa 241, igika cya 420; umugereka wa 25.20, urupap. rwa 18 na 69; umugereka wa 25.17-Corr, urupap. rwa 241, igika cya 420; umugereka wa 25.20, urupap. rwa 18 na 19.

- bashimuswe, basambanywa ku gahato ku buryo buri kuri gahunda banashyirwa ku zindi ngoyi z'urugomo rushingiye ku gitsina mu rwego rw'umurungo wa politiki UPC/FLPC yakurikizaga kugirango ibashe kugenzura Ituri⁶⁰.
38. Nyuma yo gusuzuma ibimenyetso byatanzwe, Urugereko rwanzuye ko hari impamvu zumvikana zemeza ko ibyaha byo gusambanya ku gahato n'ibyo gushyira ku ngoyi ishingiyeye ku gitsina byakozwe igihe cy'ibitero byagabwe ahantu hanyuranye muri Ituri, ariho Mongbwalu na Sayo hagati ya 18 na 23 Nzeli 2002 n'i Lipri, Bambu, Kobu, no mirenge ihagereye, hagati ya 17 Gashyantare na 2 Werurwe 2003⁶¹.
39. Urugereko rusanze umuyoboke wa UPC/FLPC yaba yarashishikariye abasirikare gutera Mongbwalu ababwira ko bazasangayo amafaranga n'abagore⁶². Umubare utazwi w'abasivili waba waranasambanyijwe ku gahato hagati ya 18 na 20 Gashyantare 2003 mu gihe cy'igitero cyagabwe Kobu, Lipri, Nyangaraye na Bambu. Ku yindi minsi myinshi byanabereye mu mirenge ya Jitchu, Buli n'ahahegereye⁶³ nyuma y'itariki ya 25 Gashyantare 2003. Nkuko abatangabuhamya babiri babivuga, abagore barafunzwe, basambanywa ku gahato n'abayoboke ba UPC/FLPC nyuma y'ibitero byagabwe Kobu n'ahahegereye⁶⁴.
40. Ku byerekeye gushyira ku ngoyi ishingiyeye ku gitsina, imyanzuro y'Urugereko ivuga ko UPC/FLPC yakoze ibikorwa byo gushyira ku ngoyi ishingiyeye ku gitsina, nk'icyaha kibasiye inyokomuntu, igaragazwa

⁶⁰ icyifuzo cya porokireri, igika cya 100.

⁶¹ Reba *haruguru*, ibika bya 21, 30 na 31.

⁶² icyifuzo cya porokireri, umugereka wa 4.1, urupap. rwa 70.

⁶³ icyifuzo cya porokireri, umugereka wa 25.17-Corr, urupap. rwa 240 na 241, igika cya 420.

⁶⁴ icyifuzo cya porokireri, umugereka wa 10.1, urupap. rwa 8,9, ibika 32 kugeza 35; umugereka wa 11.1, urupap. rwa 8, igika cya 27 na 28.

n'ubuhamya bwatanzwe n'abatangabuhamya babiri bavuga ko abagore basambanyijwe ku gahato bakanashimutwa igihe ibitero byagabwaga ahitwa Kobu no bice bihegereye⁶⁵ ; ikaba inashimangirwa n'ibindi bimenyetso biziguye⁶⁶ . Iyo myanzuro ariko ntacyo igomba kuzabangamiraho icyemezo gishobora kuzafatwa mu bihe by'iburanisha, biri imbere, ku byerekeye isuzuma ry'ibiranga icyaha cyo gushyira ku ngoyi ishingiyeye ku gitsina.

Itoteza nk'icyaha kibasiye inyokomuntu (ikirego cya 6)

41. Porokireri avuga ko abaturage batari aba Hema, cyane cyane aba Lendu, batotejwe⁶⁷ na UPC/FLPC ibagabaho ibitero hagati y'itariki ya 1 Nzeli 2002 n'iya 30 Nzeli 2003 mu ntara ya Ituri.
42. Kuri iyo ngingo, Urugereko ruvuga ko Porokireri aterekana ku buryo bwuzuye imyitwarire yakozwe icyo gihe iranga icyaha cy'itoteza kivugwa mu kirego cya 6 cy'icyifuzo cye. Cyakora, Urugereko ruzashingira ku myitwarire iranga ibyaha by'ubwicanyi, gusambanya ku gahato, gushyira ku ngoyi ishingiyeye ku gitsina no ku byaha by'intambara, nkuko bisobanuwe hano muni; byakozwe mu bihe Porokireri yasobanuye agaragaza ibyaha arega Bosco Ntaganda. Ku byaha bivugwa hano muni, Urugereko rwanzuye ko hari impamvu zifatika zituma rwemera ko byakozwe cyane cyane ku mpamvu z'amoko⁶⁸.

⁶⁵ Nicyo kimwe no haruguru.

⁶⁶ Nicyo kimwe no haruguru.

⁶⁷ Reba urugero, icyifuzo cya porokireri, ibika 3, 9, 10, 52, 54, 61, 62, 73, 74, 82, 83, 85 na 101.

⁶⁸ Reba urugero, icyifuzo cya porokireri, umugereka wa 4.3, urupap. rwa 11; urupap. rwa 8; igika cya 32; umugereka wa 11.1, urupap. rwa 7 kugeza 10, ibika bya 25 na 35; umugereka wa 15.1, urupap. rwa , igika cya 35; umugereka wa 17.1, urupap. rwa 12, igika cya 49; umugereka wa 18.1, urupap. rwa 7, 8, na 10, ibika bya 23, 31 na 37; umugereka wa 25.16, urupap. rwa 33 na 34; umugereka wa 25.18, urupap. rwa 7, 8

3. Umwanzuro

43. Rushingiye ku bivuzwe haruguru, Urugereko rwanzuye ko hari impamvu zumvikana zituma rwemera ko ibyaha byibasiye inyokomuntu bisobanuwe n'ingingo za 7-1-a, 7-1-g na 7-1-h za Sitati; by'ubwicanyi, gusambanya ku gahato, gushyira ku ngoyi ishingiyeye ku gitsina n'itoteza rishingiyeye ku moko; byakozwe na UPC/FLPC; ibikorera abaturage batari aba Hema batuye Mongbwalu na Sayo hagati ya 18 na 23 Nzeli 2002, n'i Lipri, Bambu, Kobu no mu mirenge ihegereye hagati y'itariki 17 Gashyantare n'ya 2 Werurwe 2003, mu rwego rw'igitero rusange kandi kiri kuri gahunda cyagabwe ku baturage b'abasivili; hakurikijwe umurongo ngenderwaho w'uwo mutwe.

B. Ibyaha by'intambara

44. Mu cyifuzo cye, porokireri avuga ko ibyaha by'intambara bikurikira byakorewe ahantu hatandukanye muri RDC⁶⁹.

Ikirego cya 1

Ubwicanyi nk'icyaha kibasiye inyokomuntu (ingingo ya 7-1-a n'ya 25-3-a za Sitati)

Guhera tariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, nk'umufatanyacyaha, yakoze ubwicanyi bugize icyaha kibasiye inyokomuntu muri Ituri, mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo), burimo iyicwa ry'abantu b'abasivili batari muni ya magana abiri bari batuye mu mujyi wa Mongbwalu no mu murenge wa Sayo hagati y'itariki 18 na 23 Ugushyamba 2002; n'abasivili nibura magana atatu na mirongo itanu bari batuye Lipri, Bambu, Kobu no mu mirenge ihegereye hagati y'itariki ya 17 gashyantare 2003 n'ya 2 werurwe 2003; ubwicanyi bwakozwe n'ingabo za UPC/FLPC, ziciye ukubiri n'ingingo ya 8-2-e-i n'ya 25-3-a za Sitati.

na 10, igika cya 23, 31 na 37; umugereka wa 25.16, urupap. rwa 33 na 34; umugereka wa 25.18, urupap. rwa 38.

⁶⁹ icyifuzo cya porokireri, urupap. rwa 12 na 13.

Ikirego cya 5

Ugusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina; bigize ibyaha byibasiye inyokomuntu

(ingingo ya 8-2-e-vi n'ya 25-3-a za Sitati)

Hagati y'itariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, we nk'umufatanyacyaha, yakoze ibyaha by'ubusambanyi no gushyira ku ngoyi ishingiyeye ku gitsina; ibyaha byibasiye inyokomuntu byakorewe muri Ituri, mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo), harimo ibyakorewe mu muji wa Mongbwalu no mu murenge wa Sayo hagati y'itariki 18 na 23 Ugushyingo 2002; n'i Lipri, Bambu, Kobu no mu murenge ihegerereye hagati y'itariki ya 17 gashyantare 2003 n'ya 2 werurwe 2003; ibikorwa byakozwe n'ingabo za UPC/FPLC, ziciye ukubiri n'ingingo ya 8-2-e-vi n'ya 25-3-a ya Sitati.

Ikirego cya 7

Gusahura nk'icyaha cyo mu ntambara

(ingingo ya 8-2-e-vi n'ya 25-3-a za Sitati)

Guhura ku itariki ya 1 Nzeli 2002 na 30 Nzeli 2003, **Bosco NTAGANDA**, we nk'umufatanyacyaha, yakoze isahura nk'icyaha kibasiye inyokomuntu muri Ituri, mu ntara y'iburasirazuba (Repubulika iharanira demokarasi ya Kongo); harimo ibyakorewe mu muji wa Mongbwalu no mu murenge wa Sayo hagati y'itariki 18 na 23 Ugushyingo 2002; n'i Lipri, Bambu, Kobu no mu murenge ihegerereye hagati y'itariki ya 17 gashyantare 2003 n'ya 2 werurwe 2003; ibikorwa byakozwe n'ingabo za UPC/FPLC, ziciye ukubiri n'ingingo ya 8-2-e-v n'ya 25-3-a ya Sitati.

1) Ibimenyetso bishingiyeye ku byabaye biranga ibyaha byo mu ntambara

45. Ingingo za 8-2-c na 8-2-e za Sitati zerekana urutonde rw'ibyaha bikorwa mu rwego rw'intambara ikoreshejwemo intwaro itari iyo mu rwego mpuzamahanga. Nkuko bivugwa mu ngingo za 8-2-d na 8-2-f, ingingo za 8-2-c na 8-2-e ntizireba ibyerekeye «ibihe by'imyivumbagatanyo n'urunturuntu imbere mu gihugu nk'imvururu, ibikorwa by'urugomo bidakorewe hamwe cyangwa rimwe n'ibindi bikorwa biteye nk'ibyo». Ingingo ya 8-2-f ivuga kandi ko izo ntambara zikoreshejwemo intwaro « zishyamiranya, mu gihe kirekire, ku butaka bw'igihugu, abayobozi ba

guverinoma y'icyo gihugu n'imitwe yitwaje intwaro yaba ikora buri wose ukwawo cyangwa se n'ikorera hamwe».

46. Porokireri ashimangira ko hari impamvu zifatika zemeza ko igihe ibi byaha bivugwa mu kirego byakorwaga, muri Ituri hari intambara itari iyo mu rwego mpuzamahanga ikoreshejwemo intwaro ; akaba kuri iyi ngingo yifashishije imyanzuro yafashwe n'Urugereko rwa mbere rw'iremezo I mu rubanza rwa Lubanga rwo ku itariki ya 14 werurwe 2012⁷⁰ .
47. Nkuko byagaragajwe haruguru, Urugereko, rushingiye ku bimenyetso byatanzwe, rwanzuye ko hari impamvu zumvikana zemeza ko ibyangombwa biri mu Cyifuzo byuzuye kandi bigaragaza ko hashobora kuba harabayeho ibyaha by'intambara.
48. Urugereko rwanzuye ko hari impamvu zumvikana zituma rwemera ko mu gihe gihera nibura muri Nzeli 2002 kikagera muri Nzeli 2003, habayeho intambara ikoreshejwemo intwaro y'igihe kinini yagiye irushaho gukara, nkuko bivugwa mu ngingo ya 8-2-f ya Sitati, ikaba yarashyamiraniye UPC/FLPC, *le Front nationaliste intégrationniste* (FNI) n'indi mitwe iteguwe neza yitwaza intwaro⁷¹.
49. Urugereko rusanga hari impamvu zumvikana zemeza ko imitwe ya UPC/FLPC na FNI yari ifite inzego zimwe zikuriye izindi zituma ibasha gukora ihawe amabwiriza n'abashinzwe ubuyobozi bari bafite ijamba ku birebana n'ibikorwa n'imyitwarire, bakagira n'inzego zitunganyije ku buryo buhagije. By'umwihariko, urugereko ruributsa imyanzuro yarwo

⁷⁰ icyifuzo cya porokireri, igika cya 140

⁷¹ Reba *hepfo*, igika cya 49 na 50.

ireba imitunganyirize⁷², yerekeye kubaho kw'impamvu zumvikana zatuma rwemera ko UPC/FLPC yari iyobowe n'abayobozi babifitiye ububasha kandi ikaba yari ifite n'inzego zisumbana zishikamye. Nanone kandi, Urugereko rusanga hari impamvu zumvikana zituma rwakwemera ko indi mitwe yitwaje intwaro yari iri muri iyo mirwano, nka FNI, yari ifite inzego zitunganyije ku buryo zimwe zikuriye izindi ikanagira ububasha bwo gutegura no gushyira mu ngiro ibikorwa bya gisirikare⁷³.

50. Urugereko rusanga kandi hari impamvu zumvikana zatuma rwemera ko iyo mitwe yakoze urugomo rukaze, rukoresheje intwaro kandi rwamaze igihe kirekire⁷⁴. Iyo mitwe yaba yaragenzuye igice cya Ituri, bikaba byarabashoboye gutegura no gukora ibikorwa bya gisirikare⁷⁵.

2) Ibikorwa bigize ibyaha byo mu ntambara byakozwe igihe cy'intambara ikoreshejwe intwaro ibera imbere mu gihugu cyangwa idafite icyo ihuriyeho n'amahanga.

51. Porokireri ashinja Bosco Ntaganda ko, nk'umufatanyacyaha, yakoze ibyaha by'intambara hagati ya Nzeli 2002 na Nzeli 2003, by'ubwicanyi, kugaba ibitero ku baturage b'abasivili, ubusahuzi, gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina umubare munini w'abasivili;

⁷² Reba *haruguru*, igika 25 na 27.

⁷³ icyifuzo cya porokireri, umugereka wa 25.1, urupap. rwa 48 kugeza 50; umugereka wa 25.16, urupap. rwa 23 na 24; umugereka 25.18 urupap. rwa 21 na 22.

⁷⁴ icyifuzo cya porokireri, umugereka wa 25.1, urupap. rwa 9 kugeza 15 na 52 kugeza 63; umugereka wa 25.16, urupap. rwa 27; umugereka wa 25.18, urupap. rwa 34 kugeza ku rwa 68.

⁷⁵ icyifuzo cya porokireri, umugereka wa 1.1, urupap. rwa 14 na 75; umugereka wa 25.16, urupap. rwa 30, umugereka wa 25.18, urupap. rwa 35.

ibyaha bisobanuwe n'ingingo za 8-2-c-i, 8-2-e-i, 8-2-e-v na 8-2-e-vi za Sitati⁷⁶.

Ubwicanyi nk'icyaha cyo mu ntambara (ikirego cya 2)

52. Ku byerekeye ubwicanyi nk'icyaha cyo mu ntambara, yongera kuvuga ko aba Lendu n'abandi basivili batari aba Hema nibura 800 baba barishwe na UPC/FLPC mu mpera z'umwaka wa 2002 n'intangiriro za 2003⁷⁷.

53. Urugereko rurasubiramo imyanzuro yarwo yerekeye ikirego cya 1 ivuga ku mpamvu zumvikana zatuma rwemera ko ubwicanyi bwakozwe, nkuko byagaragajwe haruguru⁷⁸, igihe ibitero byagabwaga i Mongbwalu na Sayo hagati y'itariki ya 18 na 23 Ugushyingo 2002 n'i Lipri, Bambu, Kobu n'imirenge ihakikije hagati y'itariki ya 17 gashyantare n'iya 2 werurwe 2003⁷⁹.

Ibitero byagabwe ku baturage b'abasivili nk'icyaha cyo mu ntambara (ikirego cya 3)

54. Porokireri avuga ko ingabo za UPC/FLPC zateye abaturage b'abasivili, batari aba Hema, muri Ituri, bahashyira ibirindiro, basahura imirenge n'imijyi, barica banasambanya ku gahato abasivili⁸⁰.

55. Nyuma y'isuzumwa ry'ibimenyetso byatanzwe na porokireri, Urugereko rwanzuye ko hari impamvu zifatika zituma rwemera ko ibitero byagabwe na UPC/FLPC i Mongbwalu na Sayo hagati y'itariki ya 18 na 23 Ugushyingo 2002, n'ibyangabwe i Kobu, Lipri, Bambu no ku mirenge

⁷⁶ icyifuzo cya porokireri, urupap. rwa 12 na 13.

⁷⁷ icyifuzo cya porokireri, igika cya 11 kugeza 49, Nanone reba *haruguru*, igika cya 34.

⁷⁸ Reba *haruguru*, igika 34 kugeza 36.

⁷⁹ Reba *haruguru*, igika 35.

⁸⁰ ICC-01/05-01/08-14, igika 9, 11 na 49.

ihgereye, hagati y'itariki ya 17 Gashyantare n'ya 2 Werurwe 2003, yibasiye abaturage b'abasivili⁸¹.

Gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina nk'icyaha kibasiye inyokomuntu (ikirego cya 5)

56. Ku byerekeye gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina nk'icyaha kibasiye inyokomuntu, porokireri asubiramo ko abasivili b'aba Lendu n'abatari aba Hema bashimuswe, bagasambanywa ku gahato mu buryo buri kuri gahunda ; banashyirwa ku ngoyi y'ubundi bwoko bw'urugomo rushingiyeye ku gitsina mu rwego rwo gukurikiza imigambi ya UPC/FLPC yo kugenzura Ituri⁸².

57. Urugereko rusubiramo imyanzuro yarwo yerekeye ikirego cya 4 ku birebana no kuba hari impamvu zumvikana zarwemeza ko gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina byabayeho, nkuko byagaragajwe haruguru⁸³, bikabera ahatandukanye muri Ituri ; ariho Mongbwalu na Sayo hagati y'itariki ya 18 na 23 Ugushyingo 2002, n'i Lipri, Bambu, Kobu no mu mirenge ihgereye hagati ya 17 Gashyantare n'iy' a 2 Werurwe 2003.

⁸¹ icyifuzo cya porokireri, umugereka wa 4.1, urupap. rwa 77, urwa 96 na 97; umugereka wa 5.4, urupap. rwa 6; umugereka wa 13.1, urupap. rwa 12 na 13; ibika bya 46 kugeza 50; umugereka wa 16.1, urupap. rwa 6, igika cya 18 na 19; umugereka wa 25.1, urupap. rwa 24, igika cya 69; umugereka wa 25.16, urupap. rwa 33; umugereka wa 25.17-Corr, urupap. rwa 240 na 241, igika cya 420; umugereka wa 25.18, urupap. rwa 34, 38 na 40; umugereka wa 25.20, urupap. rwa 2,3 na 17 kugeza ku rwa 20; umugereka wa 26.1, urupap. rwa 3 kugeza ku rwa 5.

⁸² icyifuzo cya porokireri, igika 100, Reba na none *hepfo* igika 37.

⁸³ Reba *supra*, igika 37 kugeza 40.

Gusahura nk'icyaha kibasiye inyokomuntu (ikirego cya 7)

58. Porokireri avuga ko ingabo za UPC/FLPC zakoze ibyaha by'intambara mu gusahura no gutwika, mu buryo buri kuri gahunda, imirenge itari iy'aba Hema, ubwo hagabwaga ibitero i Mongbwalu na Sayo hagati 18 na 23 Ugushyingo 2002, n'i Kobu, Lipri, Bambu no mu mirenge ihagereye hagati y'itariki ya 17 Gashyantare n'iya 2 Werurwe 2003⁸⁴.
59. Nyuma y'isuzumwa ry'ibimenyetso byatanzwe na porokireri, Urugereko rwanzuye ko hari impamvu zifatika zemeza ko, mu gihe cy'ibitero bivugwa mu cyifuzo cye, habayeho ibikorwa byo gusahura nk'icyaha cyo mu ntambara. Ibyo bimenyetso byerekana ku buryo buhagije ko gusahura cyari igikorwa cya ngombwa kiranga ibitero byagabwe ku mijyi n'imirenge ya Mongbwalu na Sayo hagati ya 18 na 23 Ugushyingo 2002, n'iby'i Kobu, Lipri, Bambu n'imirenge ihagereye hagati ya 17 Gashyantare na Werurwe 2003. Uko gusahura kukaba kwari kwemewe kandi gushyigikiwe na ba shefu⁸⁵. By'umwihariko, Urugereko ruratanga ingero zeruye ku mutungo bwite Bosco Ntaganda yaboneye mu ntambara⁸⁶.

3) Umwanzuro

60. Rushingiye ku bivuzwe haruguru, Urugereko rusanze hari impamvu zumvikana zirwemeza ko ibyaha bivugwa byakorewe muri Ituri mu gihe hari intambara ikoreshejwe intwari kandi bifitanye isano nayo. Ibyaha bivugwa byo kugaba ibitero ku basivili, kwica, gusahura no gusambanya

⁸⁴ icyifuzo cya porokireri, igika cya 10, 52, 64, 65, 68, 82,97 na 98.

⁸⁵ icyifuzo cya porokireri, umugereka wa 3.1, urupap. rwa 28, umugereka wa 4.1, urupap. rwa 96; umugereka wa 5.2, urupap. rwa 23 na 26 kugeza 28; umugereka wa 5.11, urupap. rwa 34 na 35; umugereka 26.1, urup. rwa 3 kugeza ku rwa 5.

⁸⁶ icyifuzo cya porokireri, umugereka wa 3.1, urupap. rwa 26 kugeza 28.

ku gahato byari bifitanye isano ya hafi n'imirwano yari iriho kubera ko ukubaho kw'uko guhangana byagize uruhare rufatika mw'ikorwa ryabyo.

61. Rushingiye ku bimenyetso byatanzwe, Urugereko rwanzuye ko hari impamvu zumvikana zirwemeza ko ibyaha by'ubwicanyi, kugaba ibitero ku baturage b'abasivili, gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina, ari ibyaha byo mu ntambara bisobanuwe n'ingingo za 8-2-c-i, 8-2-e-i, 8-2-e-v na 8-2-e-vi ya Sitati, byakozwe na UPC/FLPC, ibikorera abaturage batari aba Hema i Mongbwalu na Sayo hagati y'itariki ya 17 Gashyantare n'ya 2 Werurwe 2003.

III. Ese hari impamvu zumvikana zatumye umuntu yemera ko Bosco Ntaganda yaryozwe ibyaha byasobanuwe mu cyifuzo cya Porokireri ?

62. Porokireri avuga ko, atirengagije icyo aricyo cyose mu biranga ibice by'iryozwacya bijyanye n'uru rubanza, Bosco Ntaganda aryozwe ibyaha byibasiye inyokomuntu n'ibyaha by'intambara bivugwa mu cyifuzo⁸⁷, we nk'umufatanyacyaha, nkuko bisobanuye mu ngingo ya 25-3-a.

63. Porokireri avuga ko «[NIKO BISEMUYE] kubera ko ibyaha byarondowe byakozwe mu gihe habagaho ibikorwa bya gisirikare bya UPC/FLPC, Bosco Ntaganda [...] yaryozwe ishyirwa mu bikorwa ryabyo⁸⁸ kuko ari we wari ubishinzwe mu rwego rw'amategako n'urw'imikorere.

64. Kubwa Porokireri, Bosco Ntaganda yagize uruhare mu gutegura no gushyira mu bikorwa umurongo wa UPC wari ugamije kwigarurira Ituri hakoreshejwe uburyo bwa gisirikare⁸⁹. Bosco Ntaganda yayoboraga

⁸⁷ icyifuzo cya porokireri, urupap. rwa 12 na 13 n'igika cya 117.

⁸⁸ icyifuzo cya porokireri, igika cya 118.

⁸⁹ icyifuzo cya porokireri, igika cya 120.

segiteri na burigade zose za gisirikare ; n'ibikorwa byose bya gisirikare. Nanone kandi yinjizaga abantu mu gisirikare, agahura n'ingabo akanagenzura amatsinda yazo ; akagenzura ibigo by'imyitozo, akagura, akanatanga imbunda n'amasasu kandi agahorana uburyo bwo gutumanaho n'abandi bose bashinzwe iby'ubuyobozi bw'ingabo⁹⁰.

65. By'umwihariko, porokireri avuga ko Bosco Ntaganda, mu gihe cy'igikorwa cyabereye Mongbwalu mu Gushyingo 2002, yohereje abasirikare anabaha amabwiriza yihariye yo gukora ibikorwa bibisha. Nanone kandi, yabaga yamenyesheje mbere abasirikare ibyo bagomba gukora. Yababwiye ko bagomba gutera Mongbwalu bakongera kuyigarurira⁹¹, anabategeka kurasa ku baturage⁹².

66. Rumaze gusuma rwitonze ibimenyetso byatanzwe, Urugereko rwanzuye ko hari impamvu zifatika zemeza ko Bosco Ntaganda yagize uruhare mu cyaha, nk'umufatanyacyaha mu buryo buziguye (ingingo ya 25-3-a ya Sitati) mu gukora ibyaha byibasiye inyokomuntu bikurikira : ubwicanyi (ingingo ya 7-1-a ya Sitati), gusambanya ku gahato n'urugomo rushingiye ku gitsina (ingingo ya 7-1-g ya Sitati), itoteza (ingingo ya 7-1-h ya Sitati) n'ibyaha byo mu ntambara bikurikira : ubwicanyi (ingingo ya 8-2-c-i ya Sitati), igitero cyagabwe ku baturage b'abasivili (ingingo ya 8-2-e-i ya Sitati), gusahura (ingingo ya 8-2-e-v ya Sitati), gusambanya ku gahato n'urugomo rushingiye ku gitsina (ingingo ya 8-2-e-vi ya Sitati). Urugereko rurashimangira ko uyu mwanzuro ntacyo uzahungabanyaho indi myanzuro rushobora kuzafata mu bihe by'iburanisha biri imbere ku byerekeye irindi ryozwacyaha ritandukanye n'iri.

⁹⁰ icyifuzo cya porokireri, igika cya 121.

⁹¹ icyifuzo cya porokireri, igika cya 122.

⁹² icyifuzo cya porokireri, igika cya 128.

67. Ibyemezo byafashwe mbere n'uru rugereko cyangwa n'izindi byerekana ko kugirango habeho igikorwa gihuriweho n'abantu ku buryo buziguye, ibyangombwa bifite icyo bishingiyeho gifatika n'ibitagifite bigomba kuzuzwa ari ibi: i) Ukekwa agomba kuba ahuriye n'undi muntu cyangwa n'abandi benshi ku mugambi umwe cyangwa amasezerano ; ii) ukekwa n'abandi bafatanyacyaha bagomba gutanga umusanzu kamara unari kuri gahunda utuma ibiranga icyaha nyirizina bigaragara (*éléments matériels*); iii) ukekwa agomba kugenzurana n'abandi imitunganyirize y'umutwe (abarizwamo) ; iv) Uwo mutwe ugomba kuba ufite ubuyobozi butunganyije neza kandi inzego zabwo ziteye ku buryo zimwe zikuriye izindi ; v) ikorwa ry'ibyaha rigomba kuba mu buryo amategeko yatanzwe n'ukekwaho icyaha yubahirizwa nkako kanya ; vi) ukekwa agomba kubahiriza ibyangombwa biranga icyaha bidafite icyo bishingiyeho gifatika; vii) ukekwa n'abandi bafatanyacyaha bagomba kumenya no kwemera, ku buryo buhuriweho, ko ikorwa ry'ibintu bifite icyo bishingiyeho gifatika rizagaragarira mw'irangizwa ry'umugambi uhuriweho; kandi viii) ukekwa agomba kumenya uruhurirane rw'ibiba, bituma ashobora gufatanya n'abandi gukora igenzura ry'ikorwa ry'icyaha binyuze ku muntu umwe cyangwa benshi ⁹³ . Nanone, Urugereko

⁹³ Urugereko rubanziriza izindi ; icyumba cya III, icyemezo cyafashwe hakurikijwe alineya a) na b) z'ingingo ya 61-7 ya Sitati ya Roma; ku birego Porokireri arega Jean Pierre Bemba Gombo, ICC-01/05-01/08-424-TFRA, ibika 350 na 351; Urugereko rubanziriza izindi ; icyumba cya II, *Icyemezo cyerekeye iyemezwa ry'ibirego hakurikijwe ingingo ya 61(7)(a) na b bya Sitati ya Roma*, cyafashwe mu rubanza ruregwamo William Samoei Ruto, Henry Kiprono Kosgey na Joshua Arap Sang, ICC-01/09-01/11-373, igika cya 292; Urugereko rubanziriza izindi ; icyumba cya II, *Icyemezo cyerekeye iyemezwa ry'ibirego hakurikijwe ingingo ya 61(7)(a) na b bya Sitati ya Roma* cyafashwe mu rubanza ruregwamo Francis Kirimi Muthaura, Uhuru Muigai Kenyatta na Mohamed Hussein Ali, ICC-01/09-02/11-382-Red, igika cya 297. Reba nanone Urugereko rubanziriza izindi ; icyumba cya I, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/6-01/07-717-tFRA, igika cya 500 kugeza 514 na 527 kugeza 539; Urugereko rubanziriza izindi ; icyumba cya I, icyemezo cyerekeye icyifuzo cy'Ubushinjacyaha gisaba isohorwa rya manda yo gufata Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-3-Tfra, igika cya 209 kugeza 213.

rwabonye hari ibimenyetso by'ibyaha bivuga ko nyir'ugukora ibyaha byibasiye inyokomuntu bivugwa hano agomba kumenya cyangwa yagombaga kumva ko iyo myitwarire yari imwe mu yigize igitero rusange cyangwa kiri kuri gahunda cyagabwe ku baturage b'abasivili⁹⁴. Nanone kandi, ku byerekeye ibyaha by'intambara, uregwa agomba kumenya uruhurirane rw'ibyabaye bigaragaza ukubaho kw'intambara ikoreshejwemo intwari⁹⁵

68. Urugereko rusanga hari impamvu zumvikana zirwemeza ko ibyangombwa bisabwa byerekana ko Bosco Ntaganda yakoze igikorwa gihuriweho ku buryo buziguye byuzuye.

69. Nkuko byagaragajwe n'ibyemezo byafashwe mbere n'Urugereko, umugambi uhuriweho cyangwa ubwumvikane ntibigomba kuganisha by'umwihariko kw'ikorwa ry'icyaha ariko bigomba nibura kurangwa n'«icyimenyetso kiranga imigambi mibisha»⁹⁶.

70. Urugereko rwemeye ko hari impamvu zifatika zirwemeza ko Bosco Ntaganda n'abandi bayobozi bo mu rwego rwo hejuru ba UPC/FLPC bumvikanye ku mugambi umwe wo kwigarurira Ituri⁹⁷. Uwo mugambi wateganyaga iyirukanwa ry'amoko ahanganye n'ayo muri ako karere⁹⁸.

⁹⁴ Reba ibigize icyaha, ingingo ya 7-1-a, igika cya 3; ingingo ya 7-1-g-1, igika cya 4; ingingo ya 7-1-g-2 igika cya 4; n'ingingo ya 7-1-h, igika cya 6.

⁹⁵ Reba ibigize icyaha, ingingo ya 8-2-c-i-1, igika cya 5; ingingo ya 8-2-e-i, igika cya 5; ingingo ya 8-2-e-vi-1 igika cya 4; ingingo ya 8-2-e-v, igika cya 5; n'ingingo ya 8-2-e-vi-2 igika cya 4.

⁹⁶ Urugereko rwa mbere rw'iremezo I, Urubanza rwa Lubanga, ICC-01/04-01/06-2842, igika cya 984; Urugereko rubanziriza izindi ; icyumba cya II, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/04-01/06-803, igika cya 344; Urugereko rubanziriza izindi ; icyumba cya II, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/09-01/11-373, igika cya 301.

⁹⁷ icyifuzo cya porokireri, umugereka wa 2.2, urupap. rwa 10, imirongo ya 1 kugeza 11.

⁹⁸ icyifuzo cya porokireri, umugereka wa 2.4, urupap. rwa 53, umurongo ya 23 kugera ku rupapuro rwa 54, umurongo wa 6.

Nanone kandi, Urugereko rwanzuye ko ibyaba byakozwe byari mu rwego rw'umugambi uhuriweho.

71. Urugereko ruributsa ko ibyemezo byafashwe n'Urukiko mbere bivuga ko umufatanyacyaha ku buryo buziguye afatwa nk'uwatanze umusanzu kamara iyo afite ubushobozi bwo kuba yabangamira ishyirwa mu bikorwa ry'icyaha igihe atakoze ibyo ashinzwe⁹⁹. Nanone kandi, igisabwa gusa ku ruhare rwe mu gikorwa gihuriweho kiziguye ni «ugutuma haboneka uburyo bugusha kw'ishyirwa mu bikorwa ry'ako kanya amabwiriza yatanze ; ari byo bivuze gukora ibyaha¹⁰⁰»
72. Urugereko rwanzuye ko hari impamvu zumvikana zituma rwemera ko Bosco Ntaganda yatanze umusanzu kamara. Yagize uruhare mw'ishyirwaho rya UPC¹⁰¹, umutwe washyigikiye iyo politiki ukanaha umusanzu kamara uwo mugambi wavuzwe». Bosco Ntaganda yagize uruhare rwa ngombwa mu gitero cyagabwe Mongbwalu : yateguye itangwa ry'intwari n'amasasu byakoreshejwe muri icyo gitero¹⁰² ; aha amabwiriza abasirikare mbere y'igitero¹⁰³ ; akaba kandi we ubwe yarayoboye itsinda rimwe igihe ibitero¹⁰⁴ byabaga. Muri rusange yari

⁹⁹ Urugereko rubanziriza izindi ; icyamba cya I, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/04-01/07-717-tFRA, igika cya 525.

¹⁰⁰ Urugereko rubanziriza izindi ; icyamba cya I, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/04-01/07-717-tFRA, igika cya 525, Urugereko rubanziriza izindi ; icyamba cya II, icyemezo cyerekeye iyemezwa ry'ibirego, ICC-01/09-01/11-373, igika cya 306.

¹⁰¹ icyifuzo cya porokireri, umugereka 8.2, urupap. rwa 30, umurongo wa 20 kugeza ku rupap. rwa 31; umurongo wa 11.

¹⁰² icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 21, imirongo 643 kugeza 46; umugereka wa 4.1, urupap. rwa 73, imirongo wa 17 kugeza 21.

¹⁰³ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 20, umurongo 56 kugera ku rupap. rwa 21, umurongo wa 611.

¹⁰⁴ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 17, umurongo 500 kugeza 502; umugereka wa 2.3, urupap. rwa 61, umurongo wa 4 kugeza ku rupap. rwa 62, umurongo wa 11; umugereka wa 4.1, urupap. rwa 72, umurongo wa 10 kugeza ku rupapuro rwa 73, umurongo wa 5.

ashinzwe itangwa ry'intwano¹⁰⁵ harimo n'izakoreshejwe i Kobu¹⁰⁶. Ku rwego rw'imategurire ya gisirikare yanagize uruhare mw'itegurwa ry'ibikorwa bya gisirikare bya UPC/FLPC¹⁰⁷. Ibyo bikorwa, uretse n'imirimo yari ashinzwe muri UPC/FLPC ku mugaragaro yo kuba umugaba w'ingabo wungirije, birahagije mu kwerekana ko uruhare rwe rwari kamara.

73. Urugereko rwanzuye ko hari impamvu zumvikana zemeza ko, nkuko bivugwa hano muni, Bosco Ntaganda yafatanyaga n'abandi kugenzura uwo mutwe wari igikoresho cy'ubutegetsi giteguye neza cyatangirwagamo amategeko yubahirizwaga nk'ako kanya.

74. Kuri iyo ngingo, Urugereko ruributsa ko mu gika cya 26, kivugwa haruguru, rwasanze UPC/FLPC wari umutwe nkuko usobanurwa mu ngingo ya 7-2-a ya Sitati. Byongeye, nkuko bivugwa mu gika cya 26, Bosco Ntaganda, we nk'umuyobozi (Komanda) wari ushinze ibikorwa bya gisirikare, yari mu bayobozi bo mu rwego rwo hejuru ba UPC/FLPC¹⁰⁸. FLPC, nk'ishami rya gisirikare, yari iteguye neza cyane, ifite inzego zifite imiterere nk'iy'iz'igisirikare cy'igihugu¹⁰⁹; ikagira ibigo by'imyitozo¹¹⁰ n'amategeko akurikizwa ku buryo bukaze uko inzego zigenda

¹⁰⁵ icyifuzo cya porokireri, umugereka 8.1, urupap. rwa 67, imirongo ya 11 kugeza 19; umugereka wa 2.3, urupap. rwa 70, umurongo wa 20 kugeza ku rupap. rwa 72; umurongo wa 1.

¹⁰⁶ icyifuzo cya porokireri, umugereka 5.8, urupap. rwa 7, imirongo ya 131 kugeza 138.

¹⁰⁷ icyifuzo cya porokireri, umugereka 3.2, urupap. rwa 65, imirongo ya 3 kugeza 9, urupap. rwa 66, umurongo wa 18 kugeza ku rupap. rwa 67, umurongo wa 7.

¹⁰⁸ icyifuzo cya porokireri, umugereka 2.3, urupap. rwa 43, 44 na 46, umugereka wa 3.2, urupap. rwa 64, umugereka 4.1, urupap. rwa 77; umugereka wa 5.2, urupap. rwa 18; umugereka wa 5.8, urupap. rwa 7 na 8; umugereka wa 8.2, urupap. rwa 26, 50 na 51.

¹⁰⁹ icyifuzo cya porokireri, umugereka wa 4.2, urupap. rwa 22, imirongo ya 10 kugeza 20 n'urupap. rwa 24, imirongo ya 3 kugeza 13.

¹¹⁰ icyifuzo cya porokireri, umugereka wa 3.2, urupap. rwa 42, umurongo wa 8 kugeza ku rupap. rwa 43, umurongo wa 11; umugereka wa 5.1; urupap. rwa 38, umurongo wa 24 kugeza 39, umurongo wa 5.

zisumbana¹¹¹. Afatanije n’abandi bayobozi bo mu nzego zo hejuru, Bosco Ntaganda yari ashinzwe intara yagenzurwaga na UPC/FLPC¹¹². Yagiraga uruhare mw’ifatwa ry’ibyemezo ku rwego rwo hejuru; ahafatiwe icyemezo cyo kugaba igitero hakanategurirwa¹¹³ imirwano. Nanone, kubera umwanya yari arimo, yari akuriye aba ofisiye bagize uruhare mu gitero¹¹⁴. Byongeye, hari ibimenyetso byerekana ko Bosco Ntaganda yavuganaga ku buryo buhoraho na perezida w’umutwe, wanemeraga inama amugiriye¹¹⁵. Urugero rwiza rwerekana uburyo yagenzuraga uwo mutwe ni igitero cya Mongbwalu: we ku giti cye yari ashinzwe ingabo za FLPC¹¹⁶, hakaba hari n’itsinda yayoboye ubwo igitero¹¹⁷ cyabaga. Mbere y’icyo gitero, yahaye amabwiriza ingabo, azitegeka kwirukana abaturage b’aba Lendu¹¹⁸ no gutera Mongbwalu kugirango bongere kuyigarurira¹¹⁹. Nanone, ubwo yavuganaga n’ingabo ze mbere y’igitero, Bosco Ntaganda yazishishikariye gusahura umujyi wa Mongbwalu¹²⁰. Hari kandi impamvu zumvikana zemeza ko Bosco Ntaganda n’abandi bayobozi bo mu rwego rwo hejuru b’uwo mutwe, bitewe n’ububasha bari bafite n’imyanya bari barimo, mu mutwe wari ufite inzego zigenda zisumbana kandi

¹¹¹ icyifuzo cya porokireri, umugereka wa 5.1, urupap. rwa 34, umurongo wa 23 kugeza ku rupap. rwa 35, umurongo wa 23.

¹¹² icyifuzo cya porokireri, umugereka wa 1.1, urupap. rwa 47, umurongo wa 5 kugeza 18.

¹¹³ icyifuzo cya porokireri, umugereka wa 8.3, umurongo wa 13 kugeza 21.

¹¹⁴ icyifuzo cya porokireri, umugereka wa 5.2, urupap. rwa 18, umurongo wa 525 na 526.

¹¹⁵ icyifuzo cya porokireri, umugereka wa 2.3, urupap. rwa 47, imirongo ya 14 kugeza 23; umugereka wa 8.3, urupap. rwa 13, imirongo ya 20 kugeza 24.

¹¹⁶ icyifuzo cya porokireri, umugereka wa 8.3, urupap. rwa 17, imirongo ya 6 kugeza 8.

¹¹⁷ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 17, imirongo ya 500 kugeza 502, umugereka wa 2.3, urupap. rwa 61, umurongo wa 6 kugeza ku rupap. rwa 62, umurongo wa 11; umugereka wa 25.16, urupap. rwa 34 na 35.

¹¹⁸ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 22, imirongo ya 679 kugeza 681.

¹¹⁹ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 22, imirongo ya 668 kugeza 669.

¹²⁰ icyifuzo cya porokireri, umugereka 5.2, urupap. rwa 22, imirongo ya 670 kugeza 673, umugereka wa 4.1, urupap. rwa 82, imirongo 5 kugeza ku 9.

zihagazeho, bashoboraga gukoresha ibyaha ¹²¹ abo bategeka kuko babumviraga nkako kanya.

75. Rushingiye ku byemezo byatanzwe, Urugereko rwanzuye nanone ko hari impamvu zumvikana zemeza ko, ku bireba uruhare rwa Bosco Ntaganda, ibimenyetso by'icyaha bisabwa bidashingiye ku mpamvu zifatika (*éléments subjectifs*), zivugwa n'ingingo ya 30 ya Sitati, byuzuye. Yari azi ko ishyirwa mu bikorwa ry'umugambi uhuriweho ryari gutuma ibyaha bivugwa bikorwa. Yari azi nanone ko hari igenzura yakoranaga n'abandi ry'uwo mutwe, akamenya ko n'imyitwarire ye yari kimwe mu bigize icyo bita igitero rusange kandi kiri kuri gahunda. Yari azi kandi ibigaragaza ko intambara ikoreshejwe intwari yabayeho.

76. Iyi myanzuro ikomoka ku byakozwe mu buryo bwa rusange. Bitewe n'umwanya yari afite muri UPC/FLPC n'amanama menshi yagiranye na Perezida n'abandi bayobozi b'umutwe, Bosco Ntaganda yari azi mu buryo bwuzuye ibyaberaga muri uwo mutwe. Ubwe yagize uruhare mw'ishyirwaho ry'ingamba zo gutera. Aha urugereko ruributsa igika cya 26 cy'icyi cyemezo rwanzuyemo ko Bosco Ntaganda yabaga buri gihe avugana n'abamukuriye n'abo akuriye, hamwe n'igika cya 72 urugereko rwerekanyemo uburyo umusanzu wa Bosco Ntaganda wabaye kamara. Byongeye, Bosco Ntaganda yavugiyemo mu bigo by'imyitozo amagambo ahamagarira abasirikare «[NIKO BYASEMUWE] kurwanya umwanzi» no

¹²¹ icyifuzo cya porokireri, igika cya 2.3, urupap. rwa 30, umurongo wa 25 kugeza ku rupap. rwa 32, umurongo wa 22; umugereka wa 3.1 urupap. rwa 22, imirongo 19 kugeza 22; umugereka wa 3.2, urupap. rwa 45, umurongo wa 13 kugeza ku rupap. rwa 48, umurongo wa 25; umugereka wa 5.1, urupap. rwa 46 na 47; umugereka wa 5.7, urupap. 19, umurongo wa 15; umugereka wa 8.1, urupap. rwa 10, imirongo ya 3 kugeza 5.

NIKO BYASEMUWE] kumutsinda»¹²². Umutangabuhamyu yavuze ko Bosco Ntaganda yari ashinzwe umujyi washyizwemo icyigo abagore bagirirwagamo nabi, bagatukwa, bagaterwa ubwoba bwo kwicwa, bagakoreshwa akazi ku gahato bakanasambanywa ku gahato¹²³. Ibyo byoze byerekana ko yari ashyigikiye imigambi y'uwo mutwe akaba yaranashyizeho ake ku buryo bufatika kugirango igerweho. Bitewe n'umwanya yari afite muri uwo mutwe, Bosco Ntaganda yari azi ko imyitwarire ye yari kimwe mu bituma igitero rusange kandi cyiri kuri gahunda kigabwa ku baturage b'abasivili, akaba yari anazi ibituma intambara ikoreshejwe intwari ibaho.

IV. Ese ibisabwa kugirango hatangwe manda yo gufata Bosco Ntaganda biruzuye ?

77. Urugereko ruravugaga ko nkuko bisobanuye mu ngingo ya 58-1 ya Sitati, manda yo gufata ishobora gutangwa n'Urugereko iyo rwemeye ko hari impamvu zumvikana zirwemeza ko uwo muntu yakozwe icyaha Urukiko rufitiye ububasha bwo gukurikirana, ko kandi ifatwa rye ari ngombwa kugirango rizatume koko: yitaba Urukiko ; ii) atazabangamira iperereza cyangwa imiburanishirize mu rukiko cyangwa ngo ahungabanye imigendekere yabyo ; cyangwa se iii) ntabe yazakomeza gukora icyaha nyir'izina cyangwa ikindi cyaha kirebana n'icyo cyakozwe mu buryo bumwe n'ubw'icyo kindi Urukiko rufitiye ububasha bwo gukurikirana. Urugereko rugomba kugenzura niba kimwe mu bisabwa n'ingingo ya 58-1-b ya Sitati cyuzuye kugirango rwemere gusohora manda yo gufata.

¹²² icyifuzo cya porokireri, umugereka wa 8.1, urupap. rwa 71, umurongo wa 17 kugeza ku rupap. rwa 72, umurongo wa 5.

¹²³ icyifuzo cya porokireri, igika cya 25.2, urupap. rwa 23 na 24.

78. Nkuko biteganywa n'ingingo ya 25-3-a-b ya Sitati, Urugereko rwamaze kwanzura ko Bosco Ntaganda ashobora kuryozwa ibyaha byibasiye inyokomuntu n'ibyaha byo mu ntambara byasuzumwe haruguru mu gice cya II.
79. Mu cyifuzo cye, Porokireri avuga ko ibyo Urugereko rubanziriza izindi rwashingiyeho kugirango rusohore manda yo gufata yo ku itariki ya 22 Kanama 2006 bitahindutse. Kubera iyo mpamvu, akavuga ko itangwa rya manda yo gufata ari ngombwa kugirango i) Bosco Ntaganda azitabe Urukiko nta gisibya ; ii) ntazabangamire iperereza ; no kugirango iii) manda yo gufata iriho ibashe kubahirizwa¹²⁴.
80. Urugereko ruremera ko ifatwa rya Bosco Ntaganda rikiri ngombwa kugirango byanze bikunze azitabe Urukiko kandi ntazabangamire iperereza ; no kugirango ibyaha Urukiko rufitiye ububasha bwo gukurikirana nkuko bisobanuwe mu ngingo ya 58-1-b-i kugeza kuri iii ya Sitati ntibizakorwe. Urugereko rwageze kuri uwo mwanzuro kubera ko Bosco Ntaganda, nubwo akurikiranywe n'ubutabera bwo muri Repubulika iharanira demokarasi ya Kongo, hakaba hari na manda yo kumufata ya mbere Urukiko rwasohoye, agikomeje guhunga ubutabera kandi, uhereye ku bimenyetso byatanzwe¹²⁵, akaba akinagira uruhare mu bikorwa bibi birimo ubwicanyi bushingiye ku bwoko, gusambanya ku gahato no gushyira abana mu gisirikare.
81. Urugereko, rushingiye ku bimenyetso rwahawe, kandi hatabayeho icyemezo cyazafatwa nyuma cyagira icyo gihindura, nkuko biteganywa

¹²⁴ icyifuzo cya porokireri, urupap. rwa 143.

¹²⁵ icyifuzo cya porokireri, igika cya 26.6.

n'ingingo ya 60 ya Sitati n'ya 119, rusanze ifatwa rya Bosco Ntaganda ari ngombwa hakurikijwe ingingo ya 58-1-b-i), ii) na iii) ya Sitati.

V. Umwanzuro

82. Rushingiye ku bivuzwe haruguru, Urugereko rusanze hari impamvu zumvikana zitumye rwemera ko, hagati ya Nzeli 2002 n'impera za Nzeli 2003, Bosco Ntaganda yakoze ibyaha biteganywa n'ingingo ya 25-3-b ya Sitati byasobanuwe mu bika bya 17 kugeza ku cya 61 by'icyi cyemezo.

83. Urugereko rwemeje rero gusohora manda yo gufata Bosco Ntaganda hubahirijwe ingingo ya 58-1 ya Sitati.

KUBERA IZO MPAMVU, URUGEREKO

RWEMEJE

ko rufite ububasha bwo kuburanisha urubanza Bosco Ntaganda aregwamo; ko manda yo gufata ari ngombwa kubera uruhare yagize, nk'umufatanyabikorwa ku buryo buziguye; rusobanuwe mu ngingo ya 25-3-a ya Sitati n'ingingo y'amategeko agenga Urukiko; ku byaha byibasiye inyokomuntu n'ibyaha by'intambara bikurikira byakorewe muri Ituri, mu ntara y'uburasirazuba bwa Repubulika iharanira demokarasi ya Kongo, hagati y'ya 1 Nzeli 2002 n'impera za Nzeli 2003, nkuko bigaragara mu bisobanuro by'ibyakoze bikubiye mu bika bya 17 na 61 by'icyi cyemezo :

- i) Ubwicanyi nk'icyaha kibasiye inyokomuntu (ingingo ya 7-1-a ya Sitati) (ikirego cya 1) ;**
- ii) Gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina nk'icyaha kibasiye inyokomuntu (ingingo ya 7-1-g ya Sitati)(ikirego cya 2) ;**
- iii) Gutoteza nk'icyaha kibasiye inyokomuntu (ingingo ya 7-1-h ya Sitati)(ikirego cya 6) ;**
- iv) Ubwicanyi nk'icyaha kibasiye inyokomuntu (ingingo ya 8-2-c-i ya Sitati)(ikirego cya 2) ;**
- v) Kugaba ibitero ku baturage b'abasivili nk'icyaha kibasiye inyokomuntu (ingingo ya 8-2-e-i ya Sitati)(ikirego cya 3) ;**
- vi) Gusambanya ku gahato no gushyira ku ngoyi ishingiyeye ku gitsina nk'icyaha kibasiye inyokomuntu (ingingo ya 8-2-e-vi ya Sitati)(ikirego cya 5) ;**
- vii) Gusahura nk'icyaha cyo mu ntambara (ingingo ya 8-2-e-v ya Sitati) (ikirego cya 7) ;**

KUBW'IBYO RUTANZE MANDA ZO GUFATA

Bosco Ntaganda, wavukiye mu Rwanda, ku itariki n'ahantu hatazwi ;

RUTEGETSE UMWANDITSI

- 1) Gutegura no gukorana na Porokireri icyifuzo gisaba ubufasha abayobozi ba RDC babishinzwe bwo guta muri yombi Bosco Ntaganda no kumushyikiriza Urukiko ; icyo cyifuzo kigomba kuba kirimo amakuru n'ibyangombwa bitegetswe n'ingingo za 89-1 na 91 za Sitati n'iza 176-2 na 187 z'amategeko agenga imiburanishirize n'itangwa ry'ibimenyetso ;
- 2) Gutegura no koherereza indi Leta iyo ariyo yose bireba icyifuzo cy'inyongera cyaba cyiri ngombwa kugirango Bosco Ntaganda afatwe anashyikirizwe urukiko, nkuko biteganywa n'ingingo za 89 na 91 za Sitati ;
- 3) Gutegura no koherereza icyifuzo cyo gufata by'agateganyo nkuko bisobanuwe mu ngingo ya 92 ya Sitati hakurikijwe uko ibintu byifashe ;
- 4) Gutegura no koherereza indi Leta iyo ariyo yose bireba icyifuzo, bibaye ari ngombwa, cyo kunyuza Bosco Ntaganda ku butaka bwayo kugirango ashayikirizwe Urukiko nkuko ingingo ya 89-3 ya Sitati ibiteganywa ;
- 5) Gushyikirana n'Ubushinjacyaha bagasaba RDC n'ingoma y'Ubuholandi gusaba Akanama ka Loni gashinzwe amahoro kw'isi n'Inama y'ubumwe bw'ibihugu by'uburayi gukuraho inzitizi

zabuzaga Bosco Ntaganda gukora ingendo kugirango ashyikirizwe Urukiko kandi abashe kwinjira ku butaka bw'igihugu cy'ubuholandi ; no

[BYAHANAGUWE] ; no

RUSABYE POROKIRERI

- 1) Kumenyeshya Urugereko n'Umwanditsi, atarenze ku nshingano ze zo kutamena ibanga, amakuru yose afite abona ku bwe yakoroshya ihanahana n'ishyirwamubikorwa ry'ubufasha kwasabwe buvuzwe haruguru.

Byanditswe mu cyongereza n'igifaransa; inyandiko y'icyongereza niyo igenderwaho.

/umukono/
Madamu juji Ekaterina Trendafilova
Juji perezida

/umukono/
Bwana juji Hans-Peter Kaul

/umukono/
Bwana juji Cuno Tarfusser

Bikozwe ku itariki ya 13 nyakanga 2012.

I La Haye (Ubuholandi)