UMURYANGO W'ABIBUMBYE

Urwego Mpuzamahanga Rwashyiriweho Gukora Imirimo y'Insigarira y'Inkiko Mpanabyaha

Urubanza N°: MICT-13-38-AR80.3

Itariki: 7 Kanama 2023

Umwimerere: Icyongereza

URUGEREKO RW'UBUJURIRE

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Itariki: **7 Kanama 2023**

POROKIRERI

aburana na

FÉLICIEN KABUGA

INYANDIKO ITARI IBANGA

ICYEMEZO KU BUJURIRE KU KINDI CYEMEZO CYEREKERANYE NO KUMENYA NIBA UBUZIMA BWA FÉLICIEN KABUGA BWATUMA AKOMEZA KUBURANISHWA

Ibiro bya Porokireri

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Byasemuwe kandi byemezwa na LSS/IRMCT

1. Urugereko rw'Ubujurire rw'Urwego Mpuzamahanga Rwashyiriweho Gukora Imirimo y'Insigarira y'Inkiko Mpanabyaha ("Urugereko rw'Ubujurire" na "IRMCT", uko bikurikirana)[1] rwashyikirijwe Ubujurire bwatanzwe n'Ubwunganizi bwa Félicien Kabuga ("Ubwunganizi" na "Kabuga", uko bikurikirana) n'ubwatanzwe n'Ibiro bya Porokireri wa IRMCT ("Porokireri") ku itariki ya 23 Kamena 2023[2], bajuririra Icyemezo cyatanzwe n'Urugereko rwa Mbere rw'Iremezo rwa IRMCT ("Urugereko rwa Mbere rw'Iremezo") ku itariki ya 6 Kamena 2023[3]. Mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo, ku bwiganze bw'amajwi y'Abacamanza barugize, uretse Umucamanza El Baaj watanze igitekerezo kinyuranye n'icya bagenzi be, rwafashe umwanzuro uvuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa maze rwemeza ko ruzakomeza kuburanisha urubanza "hakoreshwa ubundi buryo buzatuma hafatwa umwanzuro"[4]. Ubwunganizi na Porokireri batanze Ibisubizo ku matariki ya 3 na 4 Nyakanga 2023, uko bakurikirana[5]. Porokireri yatanze Imyanzuro isubiza ku itariki ya 7 Nyakanga 2023[6]. Ubwunganizi ntibwatanze Imyanzuro isubiza.

I. UKO IBINTU BYAKURIKIRANYE

2. Kabuga yarezwe mu Rukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda ("TPIR") mu Ugushyingo 1997[7], ariko yakomeje guhunga ubutabera kugera ubwo yaje gufatirwa mu

[1] Reba Itegeko rishyiraho inteko y'Urugereko rw'Ubujurire, 23 Kamena 2023, paje ya 1. Reba n'Icyemezo ku Cyifuzo cyihutirwa cy'Ubwunganizi, 28 Kamena 2023 (Inyandiko y'ibanga), igisobanuro N° 1 cyo hasi kuri paje.

[2] Ubujurire ku "Kindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Félicien Kabuga bwatuma akomeza kuburanishwa" cyo ku itariki ya 6 Kamena 2023, 23 Kamena 2023 (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 29 Kamena 2023) ("Ubujurire bw'Ubwunganizi"); Ubujurire bwa Porokireri ku Cyemezo kivuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa, 23 Kamena 2023 (Inyandiko y'ibanga ifite Umugereka na wo w'ibanga kandi ufite abo utagomba kumenyeshwa; inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga, yatanzwe ku itariki ya 26 Kamena 2023) ("Ubujurire bwa Porokireri"). Reba *Urubanza Porokireri aburana na Félicien Kabuga,* N° MICT-13-38-T, Icyemezo ku Byifuzo bisaba uruhushya rwo kujuririra Ikindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Félicien Kabuga bwatuma akomeza kuburanishwa, 16 Kamena 2023 ("Icyemezo cyo ku itariki ya 16 Kamena 2023"), paje ya 2.

[3] *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Ikindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Félicien Kabuga bwatuma akomeza kuburanishwa, 6 Kamena 2023 ("Icyemezo kijuririrwa").

[4] Icyemezo kijuririrwa, igika cya 59. Reba n'Icyemezo kijuririrwa, igitekerezo, kinyuranye n'icya bagenzi be, cy'Umucamanza Mustapha El Baaj ("Igitekerezo cy'Umucamanza kinyuranye n'icya bagenzi be").

[5] Igisubizo cy'Ubwunganizi ku "bujurire bwa Porokireri ku Cyemezo kivuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa" bwatanzwe ku itariki ya 23 Kamena 2023, 3 Nyakanga 2023 (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 6 Nyakanga 2023) (Inyandiko y'ibanga) ("Igisubizo cy'Ubwunganizi"); Igisubizo cya Porokireri ku bujurire bwa Kabuga ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo cyo ku itariki ya 6 Kamena 2023 gitegeka ko iburanisha rikomeza hakoreshwa ubundi buryo bwatuma hafatwa umwanzuro, 4 Nyakanga 2023 (Inyandiko itari ibanga ifite Umugereka A w'ibanga) ("Igisubizo cya Porokireri").

[6] Imyanzuro isubiza ya Porokireri ku Gisubizo cya Kabuga ku bujurire bwa Porokireri ku Kindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Félicien Kabuga bwatuma akomeza kuburanishwa, 7 Nyakanga 2023 (Inyandiko y'ibanga) ("Imyanzuro isubiza ya Porokireri").

[7] Reba *Urubanza Porokireri aburana na Félicien Kabuga*, N° ICTR-97-22-I, Icyemezo cyemeza Inyandiko y'ibirego, 26 Ugushyingo 1997 (Inyandiko y'ibanga). Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Inyandiko y'ibirego yahinduwe bwa kabiri, 1 Werurwe 2021 (Inyandiko itari ibanga, ifite Umugereka w'ibanga n'utari uw'ibanga); *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Icyemezo ku Cyifuzo cya Porokireri gisaba uruhushya rwo guhindura Inyandiko y'ibirego, 24 Gashyantare 2021, igika cya 22.

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Bufaransa ku itariki ya 16 Gicurasi 2020[8]. Ku itariki ya 26 Ukwakira 2020, yimuriwe, by'agateganyo, ku Ishami rya IRMCT ry'i Lahe kugira ngo akorerwe isuzumabuzima rirambuye[9]. Guhera ku itariki ya 9 Ukuboza 2020, hubahirizwa amategeko yo kumukorera isuzumabuzima rwatanze mbere, Urugereko rwa Mbere rw'Iremezo rwagiye rushyikirizwa, kabiri mu kwezi, amaraporo ya Muganga ukuriye Serivise y'ubuvuzi muri Gereza y'Umuryango w'Abibumbye ku Ishami rya IRMCT ry'i Lahe ("UNDU"), ku buzima bwa Kabuga[10].

3. Ku itariki ya 22 Mutarama 2021, mu gihe urubanza rwa Kabuga rwari rukiri mu cyiciro kibanziriza iburanisha, Ubwunganizi bwagejeje ku Rugereko rwa Mbere rw'Iremezo Icyifuzo gisaba, hashingiwe ku Ngingo ya 84 (A) y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso ya IRMCT ("Amategeko"), ko hashyirwaho impuguke mu by'ubuvuzi zigenga kugira ngo zikorere Kabuga isuzumabuzima rigamije ibintu birimo no kumenya niba ubuzima bwe bwatuma ashobora kuburanishwa[11]. Ku itariki ya 15 Mata 2021, Urugereko rwa Mbere rw'Iremezo rwemeye, kuri bimwe, icyo Cyifuzo maze rutegeka Gerefiye wa IRMCT ("Gerefiye" cyangwa "Ibiro bya Gerefiye") gushyiraho impuguke mu buzima n'imibereho by'abageze mu za bukuru, yigenga, kugira ngo ikorere Kabuga isuzumabuzima maze irufashe mu kwemeza niba ubuzima bwe bwatuma ashobora kuburanishwa[12]. Nyuma yaho, Urugereko rwa Mbere rw'Iremezo rwategetse impuguke mu by'ubuzima bwo mu mutwe zigenga, ebyiri, gukorera Kabuga irindi suzumabuzima[13] maze rwemera Ibyifuzo bya Porokireri

[8] *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-I, Icyemezo ku Cyifuzo cya Félicien Kabuga gisaba ko Urwandiko rwo kumufata n'Itegeko ryo kumwimura bihindurwa, 21 Ukwakira 2020 ("Icyemezo cyo ku itariki ya 21 Ukwakira 2020"), igika cya 2.

[9] *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-I, Itegeko rishyiraho itariki y'umuhango wo kwitaba Urukiko bwa mbere, 8 Ugushyingo 2020, paje 1, 2, mu bihavugwa harimo n'ibiri mu Cyemezo cyo ku itariki ya 21 Ukwakira 2020, ibika 11-18.

[10] Icyemezo kijuririrwa, igika cya 2. Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT, Icyemezo cyerekeranye no kumenya niba Félicien Kabuga ashobora kuburanishwa, kwimurirwa Arusha no kuhafungirwa, 13 Kamena 2022 ("Icyemezo cyo ku itariki ya 13 Kamena 2022"), igika cya 3.

[11] *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT, Icyifuzo cy'Ubwunganizi gisaba ko hatangwa itegeko ryo gukora isuzumabuzima rikozwe n'umuganga w'impuguke hashingiwe ku Ngingo ya 84 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, 22 Mutarama 2021 (Inyandiko y'ibanga) (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 2 Gashyantare 2021), ibika 23, 47-49, paje ya 17.

[12] *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT, Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba ko hatangwa itegeko ryo gukora isuzumabuzima rikozwe n'umuganga w'impuguke hashingiwe ku Ngingo ya 84 y'Amategeko, 15 Mata 2021 (Inyandiko y'ibanga), ("Icyemezo cyo ku itariki ya 15 Mata 2021"), igika cya 19. Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-AR80.1, Icyemezo ku bujurire ku Cyemezo cyerekeranye no kumenya niba Félicien Kabuga ashobora kuburanishwa, 12 Kanama 2022 ("Icyemezo cyo ku itariki ya 12 Kanama 2022"), igika cya 3.

[13] *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT, Itegeko ritegeka ko hakorwa irindi suzumabuzima rikozwe n'Impuguke mu by'ubuvuzi yigenga, 1 Ukuboza 2021 (Inyandiko y'ibanga), paje 2, 3; *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT, Icyemezo ku Cyifuzo cya Porokireri gisaba ko hakorwa irindi suzumabuzima rigamije kumenya niba Uregwa ashobora kuburanishwa n'uko hatangwa itegeko ry'uko haba irindi suzumabuzima rikozwe n'impuguke yigenga, 15 Werurwe 2022 (Inyandiko y'ibanga) ("Icyemezo cyo ku itariki ya 15 Werurwe 2022"), ibika 25, 28. Reba n'Icyemezo cyo ku itariki ya 12 Kanama 2022, ibika 3, 6.

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n'Ubwunganizi byasabaga ko hashyirwaho impuguke mu by'ubuvuzi bihitiyemo kugira ngo zisuzume Kabuga[14].

4. Ku itariki ya 13 Kamena 2022, rumaze gusuzuma dosiye yo kwa muganga rwashyikirijwe, Urugereko rwa Mbere rw'Iremezo rwemeje ko Ubwunganizi butagaragaje ko icyo gihe Kabuga atari gushobora kuburanishwa, cyane cyane umuntu azirikanye ibintu byashoboraga gushyirwaho kugira ngo bimufashe[15]. Rwemeje kandi ko Kabuga akomeza gufungirwa ku Ishami rya IRMCT ry'i Lahe, akaba ari ho urubanza rutangira kuburanishirizwa kugera igihe byemejwe ukundi[16]. Ku itariki ya 12 Kanama 2022, Urugereko rw'Ubujurire, ku bwiganze bw'amajwi y'Abacamanza barugize, rwanze ubujurire bw'Ubwunganizi ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo cyerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma ashobora kuburanishwa[17]. Iburanisha ry'urubanza rwa Kabuga mu rw'iremezo ryatangiye ku itariki ya 29 Nzeri 2022 kandi, kuva kuri iyo tariki kugera ku ya 22 Ukuboza 2022, Urugereko rwa Mbere rw'Iremezo rwaburanishije iminsi 29, iburanisha ribera mu cyumba cy'iburanisha[18].

5. Ku itariki ya 13 Nyakanga 2022, mu rwego rwo kubahiriza amabwiriza yatanzwe n'Urugereko rwa Mbere rw'Iremezo, Gerefiye yashyizeho Porofeseri Gillian Mezey ("Dogiteri Mezey"), Impuguke mu by'ubuzima bwo mu mutwe, Porofeseri Henry Gerard Kennedy ("Dogiteri Kennedy"), Impuguke mu by'ubuzima bwo mu mutwe na Porofeseri Patrick Cras ("Dogiteri Cras"), Impuguke mu buvuzi bw'indwara z'ubwonko n'imyakura, nk'abagize itsinda ry'Impuguke mu by'ubuvuzi zigenga ("Impuguke"), kugira ngo zikurikirane ubuzima bwa Kabuga kandi zijye zitanga, nyuma ya buri minsi 180, amaraporo y'isuzumabuzima ahuriweho ku byerekeranye no kumenya niba uko ubuzima bwe bwifashe byatuma ashobora kuburanishwa[19]. Ku itariki ya 12 Ukuboza 2022, Ibiro bya Gerefiye byatanze Raporo y'isuzumabuzima ihuriweho ya 1 yateguwe n'izo Mpuguke ("Raporo y'isuzumabuzima

[14] Reba Icyemezo cyo ku itariki ya 15 Werurwe 2022, igika cya 28; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba ko hashyirwaho umuganga w'impuguke watanzwe n'Ubwunganizi, 13 Gicurasi 2022 (Inyandiko y'ibanga), paje ya 2. Reba n'Icyemezo cyo ku itariki ya 12 Kanama 2022, ibika 7, 8.

[15] Reba Icyemezo kijuririrwa, igika cya 5; Icyemezo cyo ku itariki ya 13 Kamena 2022, ibika 8-10, 14-17, 19, 20, 22, 25-30, 33-37, 44-57, 62.

[16] Icyemezo cyo ku itariki ya 13 Kamena 2022, igika cya 62.

[17] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 22. Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Icyemezo ku Cyifuzo cya Félicien Kabuga gisaba uruhushya rwo kujuririra Icyemezo cyo ku itariki ya 13 Kamena 2022, 23 Kamena 2022, paje ya 2.

[18] Icyemezo kijuririrwa, igika cya 8.

[19] *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Imyanzuro ya Gerefiye irebana n'"Icyemezo cyerekeranye no kumenya niba Félicien Kabuga ashobora kuburanishwa, kwimurirwa Arusha no kuhafungirwa" cyo ku itariki ya 13 Kamena 2022, 18 Nyakanga 2022 (Inyandiko itari ibanga, ifite Umugereka w'ibanga), ibika 2-4. Reba n'Icyemezo cyo ku itariki ya 13 Kamena 2022, igika cya 62.

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ihuriweho ya 1")[20]. Muri iyo Raporo, izo Mpuguke zemeranyije ko, mu gihe zakoraga isuzumabuzima, Kabuga yari afite indwara yo kugabanuka kw'imikorere y'ubwonko n'imitekerereze, imikorere y'ubwonko bwe igenda igabanuka buri munsi, kandi ko hari "ibimenyetso by'uko afite uburwayi bw'imyakura yo mu bwonko n'iby'ibibazo yagize byo guturika cyangwa kuziba k'udutsi tujyana cyangwa tuvana amaraso mu bwonko"[21]. Ku byerekeranye n'ubushobozi bwa Kabuga bwo kugira uruhare mu iburanisha ry'urubanza rwe no gukoresha uburenganzira bwe bwo kuburanishwa mu buryo buboneye, izo Mpuguke zemeranyije ko Kabuga yari afite ubushobozi bwo kuba yavuga niba yemera cyangwa ahakana ibyaha aregwa, ubwo gusobanukirwa imiterere y'ibyaha aregwa n'ingaruka z'urubanza[22]. Cyakora, izo Mpuguke mu by'ubuvuzi bw'indwara zo mu mutwe zose zemeje ko Kabuga atari afite ubushobozi bwo gusobanukirwa imigendekere y'iburanisha cyangwa gutanga ubuhamya mu Rukiko[23]. Ebyiri muri izo Mpuguke zavuze kandi ko Kabuga atari afite ubushobozi bwo guha amabwiriza Avoka umwunganira[24]. Zafashe umwanzuro uvuga ko ubwo zamukoreraga isuzumabuzima ku matariki ya 11 na 21 Ugushyingo 2022, Kabuga "atari afite ubushobozi bwo kugira uruhare mu iburanisha ry'urubanza rwe"[25]. Impuguke mu by'ubuvuzi zigenga zose zatanze kandi inama y'"ubufasha" Kabuga yari akeneye kugira ngo agire uruhare mu iburanisha ry'urubanza rwe, bwashobora kumufasha ari uko imikorere y'ubwonko bwe yaba irushijeho kumera neza ugereranyije n'igihe yakorerwaga isuzumabuzima[26].

6. Ku itariki ya 13 Ukuboza 2022, Urugereko rwa Mbere rw'Iremezo rwanze Icyifuzo cy'Ubwunganizi cyarusabaga guhagarika urubanza, maze rwemeza ko iburanisha ryo kumva ubuhamya rikomeza[27]. Rwategetse Ibiro bya Gerefiye gusaba izo Mpuguke kongera gusuzuma Kabuga mu gihe kitarenze iminsi 90 uhereye ku itariki ya 28 Ugushyingo 2022 no gutanga

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[20] *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye irebana n'"Icyemezo cyerekeranye no kumenya niba Félicien Kabuga ashobora kuburanishwa, kwimurirwa Arusha no kuhafungirwa" cyo ku itariki ya 13 Kamena 2022, 12 Ukuboza 2022 (Inyandiko itari ibanga, ifite Umugereka w'ibanga), igika cya 5, Umugereka.
[21] Raporo y'isuzumabuzima ihuriweho ya 1, paje 3-5.
[22] Raporo y'isuzumabuzima ihuriweho ya 1, paje 5, 7, 8.
[23] Raporo y'isuzumabuzima ihuriweho ya 1, paje 5-8.
[24] Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 7.
[25] Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 10.
[26] Raporo y'isuzumabuzima ihuriweho ya 1, paje 8, 9.
[27] Inyandikomvugo y'iburanisha, 13 Ukuboza 2022, paje ya 7 (Mu muhezo); inyandikomvugo y'iburanisha, 14 Ukuboza 2022, paje 1-3 (Mu muhezo). Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyifuzo cyihutirwa cy'Ubwunganizi gisaba ko iburanisha ry'urubanza risubikwa kubera ko Félicien Kabuga adashobora kuburanishwa, nk'uko byagaragajwe n'itsinda ry'Impuguke, 13 Ukuboza 2022 (Inyandiko y'ibanga) (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 16 Ukuboza 2022), paje ya 2. Urugereko rwa Mbere rw'Iremezo kandi rwanze Icyifuzo cy'Ubwunganizi gisaba uruhushya rwo kujuririra icyemezo rwatanze ku byerekeranye no gusubika iburanisha ry'urubanza. Reba *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyemezo ku Cyifuzo cya Félicien Kabuga gisaba uruhushya rwo kujuririra icyemezo cyatanzwe mu magambo ku itariki ya 14 Ukuboza 2022, 11 Mutarama 2023 (Inyandiko y'ibanga), paje ya 3.

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raporo y'isuzumabuzima nyuma yaho[28]. Gusubukura iburanisha ry'urubanza byari biteganyijwe ku itariki ya 17 Mutarama 2023 byarasubitswe hashingiwe ku maraporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU, yavugaga mu magambo arambuye ku bibazo by'ubuzima Kabuga yagize muri Mutarama no mu ntangiriro za Gashyantare 2023[29]. Iburanisha ry'urubanza ryasubukuwe ku itariki ya 14 Gashyantare 2023 Urugereko rwahinduye uburyo bugomba gukurikizwa mu iburanisha, mu byahinduwe harimo kugabanya igihe iburanisha rimara no kuba Kabuga azajya akurikira iburanisha ry'urubanza rwe ari muri UNDU, hifashishijwe ikoranabuhanga ry'amajwi n'amashusho[30].

7. Ku itariki ya 6 Werurwe 2023, Gerefiye yatanze Raporo y'isuzumabuzima ihuriweho ya 2 yateguwe n'izo Mpuguke ("Raporo y'isuzumabuzima ihuriweho ya 2")[31]. Muri iyo Raporo, Impuguke zose zemeje ko ubushobozi bwo mu mutwe bwa Kabuga "bwarushijeho kumera nabi" kuva igihe yaherukiraga gukorerwa isuzumabuzima kandi ko "bigaragara ko bigenda byiyongera"[32]. Izo Mpuguke zafashe umwanzuro uvuga kandi ko Kabuga asigaranye ubushobozi bwo kuvuga ikintu ashaka n'icyo ahitamo ku byerekeranye n'ibintu bimwe na bimwe birebana n'ubuzima n'imibereho myiza bye[33]. Byongeye kandi, izo Mpuguke ebyiri zemeranyije ko Kabuga "noneho yujuje ibimenyetso by'uburwayi bwo mu mutwe bukomeye" kandi zemeje ko "atashobora kugira uruhare rufatika mu iburanisha ry'urubanza rwe", n'ubwo haba hashyizweho uburyo bugomba gukurikizwa mu kumuburanisha cyangwa bwo kumufasha kugira uruhare muri iryo buranisha[34].

8. Ku itariki ya 6 Werurwe 2023, Urugereko rwa Mbere rw'Iremezo rwasubitse iburanisha ryo kumva ubuhamya ryari riteganyijwe gusubukurwa bukeye bwaho, maze ku itariki ya 8

[28] Inyandikomvugo y'iburanisha, 14 Ukuboza 2022, paje ya 3 (Mu muhezo).

[29] Icyemezo kijuririrwa, igika cya 12; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n'"Itegeko ritanzwe nyuma y'umuhango wo kwitaba Urukiko bwa mbere" ryo ku itariki ya 25 Ugushyingo 2020, 4 Mutarama 2023 (Inyandiko itari ibanga ifite Umugereka w'ibanga), Umugereka; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n'"Itegeko ritanzwe nyuma y'umuhango wo kwitaba Urukiko bwa mbere" ryo ku itariki ya 25 Ugushyingo 2020, 11 Mutarama 2023 (Inyandiko itari ibanga ifite Umugereka w'ibanga), Umugereka; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n'"Itegeko ritanzwe nyuma y'umuhango wo kwitaba Urukiko bwa mbere" ryo ku itariki ya 25 Ugushyingo 2020, 26 Mutarama 2023 (Inyandiko itari ibanga ifite Umugereka w'ibanga), Umugereka; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n'"Itegeko ritanzwe nyuma y'umuhango wo kwitaba Urukiko bwa mbere" ryo ku itariki ya 25 Ugushyingo 2020, 8 Gashyantare 2023 (Inyandiko itari ibanga ifite Umugereka w'ibanga), Umugereka.

[30] Reba Icyemezo kijuririrwa, igika cya 15.

[31] *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n'icyemezo cyatanzwe mu magambo ku itariki ya 14 Ukuboza 2022, 6 Werurwe 2023 (Inyandiko y'ibanga ifite Umugereka w'ibanga), igika cya 7, Umugereka.

[32] Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye.

[33] Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye.

[34] Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye.

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Werurwe 2023 haba iburanisha kugira ngo rwumve ibyo ababuranyi bavuga ku byerekereranye n'ingaruka ibivugwa muri Raporo y'isuzumabuzima ihuriweho ya 2 byagira ku miburanishirize y'uru rubanza [35]. Nyuma y'imyanzuro ababuranyi batanze, hagati y'itariki ya 15 n'iya 30 Werurwe 2023, Urugereko rwa Mbere rw'Iremezo rwumvise ubuhamya bwatanzwe mu Rukiko na Dogiteri Kennedy, Dogiteri Mezey na Dogiteri Cras [36] naho ku ya 30 Werurwe 2023, rwumva indi myanzuro ababuranyi batanze, mu magambo, ku kibazo cyo kumenya niba uko ubuzima bwa Kabuga bwifashe byatuma ashobora kuburanishwa[37].

9. Mu gihe Urugereko rwa Mbere rw'Iremezo rwakoraga isesengura ry'ikibazo cyo kumenya niba ubuzima bwa Kabuga bwatuma ashobora kuburanishwa, ku itariki ya 25 Mata 2023 rwategetse ababuranyi gutanga imyanzuro ku byerekeranye n'ingaruka icyemezo rwafata kivuga ko ubuzima bwa Kabuga butatuma ashobora kuburanishwa gishobora kugira, bazirikana ubukemuramanza mpuzamahanga n'imikorere y'inkiko z'ibihugu ku byerekeranye n'iki kibazo,"by'umwihariko kuba habaho iburanisha ryo gusuzuma ibyabaye"[38]. Urugereko rwa Mbere rw'Iremezo kandi rwategetse, by'umwihariko, ababuranyi ko mu myanzuro yabo bagomba kuzirikana Amabwiriza ya Komite ishinzwe iyubahirizwa ry'uburenganzira bw'abantu bafite ubumuga asobanura Ingingo ya 14 y'Amasezerano y'Umuryango w'Abibumbye yerekeranye n'uburenganzira bw'abantu bafite ubumuga[39]. Ku itariki ya 9 Gicurasi 2023, Porokireri n'Ubwunganizi batanze Imyanzuro hashingiwe ku Itegeko ry'Urugereko rwa Mbere rw'Iremezo, naho ku itariki ya 16 Gicurasi 2023 ababuranyi bombi batanga, buri wese, Igisubizo kuri iyo Myanzuro[40].

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[35] Reba *Urubanza Porokireri aburana na Félicien Kabuga,* N° MICT-13-38-T, Irindi Tegeko ryerekeranye n'iburanisha, 6 Werurwe 2023, paje ya 1; inyandikomvugo y'iburanisha, 8 Werurwe 2023, paje 2-30.

[36] Dogiteri Kennedy yatanze ubuhamya mu Rukiko ku matariki ya 15, 16 na 17 Werurwe 2023. Reba inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 2-22; inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 3-45; inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje 1-39. Dogiteri Mezey yatanze ubuhamya mu Rukiko ku itariki ya 23 Werurwe 2023. Reba inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 1-49. Dogiteri Cras yatanze ubuhamya mu Rukiko ku itariki ya 29 Werurwe 2023. Reba inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 1-52.

[37] Reba inyandikomvugo y'iburanisha, 30 Werurwe 2023, paje 1-47.

[38] *Urubanza Porokireri aburana na Félicien Kabuga,* N° MICT-13-38-T, Itegeko ryo gutanga imyanzuro, 25 Mata 2023 ("Itegeko ryo ku itariki ya 25 Mata 2023"), paje 1, 2.

[39] Itegeko ryo ku itariki ya 25 Mata 2023, paje ya 1. Reba n'Icyemezo cy'Inteko Rusange y'Umuryango w'Abibumbye N° A/RES/61/106, 24 Mutarama 2007, Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga.

[40] Reba *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Porokireri yerekeranye n'ingaruka zaterwa n'icyemezo gishobora gufatwa kivuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa, 9 Gicurasi 2023; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro Ubwunganizi bwatanze bwubahiriza Itegeko ry'Urugereko ryo ku itariki ya 25 Mata 2023, 9 Gicurasi 2023 (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 15 Gicurasi 2023); *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Igisubizo cy'Ubwunganizi ku "Myanzuro ya Porokireri yerekeranye n'ingaruka zaterwa n'icyemezo gishobora gufatwa kivuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa" yatanzwe ku itariki ya 9 Gicurasi 2023, 16 Gicurasi 2023 (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu

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10. Ku itariki ya 6 Kamena 2023, Urugereko rwa Mbere rw'Iremezo rwatanze Icyemezo kijuririrwa, aho, ku bwiganze bw'amajwi y'Abacamanza barugize, rwafashe umwanzuro uvuga ko ubuzima bwa Kabuga butatuma ashobora gukomeza kuburanishwa kandi ko bishoboka cyane ko atazongera kugira ubwo bushobozi[41]. Kubera uyu mwanzuro kandi hashingiwe ku bubasha busesuye rufite bwo kuyobora iburanisha ry'imanza, Urugereko rwa Mbere rw'Iremezo rwasanze ari ngombwa kwemeza uburyo bugomba gukurikizwa, bujyanye n'inshingano yarwo yo kubahiriza amahame yose y'uburenganzira bwa muntu no gukora ku buryo ayo mahame yubahirizwa kandi hazirikanwa intego zatumye IRMCT n'Inkiko zayibanjirije bishyirwaho[42]. Rumaze gusuzuma uburyo burimo guhagarika urubanza burundu, guhagarika iburanisha ry'urubanza no kuburanisha urubanza hakoreshwa "ubundi buryo bwatuma hafatwa umwanzuro", Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uvuga ko "uburyo bwiza kuruta ubundi bwo gukora ku buryo uburenganzira bwa Kabuga bwubahirizwa kandi intego za IRMCT zigashyirwa mu bikorwa ari uko hakoreshwa ubundi buryo buzatuma hafatwa umwanzuro busa, mu buryo bushoboka, n'iburanisha risanzwe ariko budashobora gutuma hafatwa icyemezo kimuhamya icyaha"[43].

11. Ku itariki ya 16 Kamena 2023, Urugereko rwa Mbere rw'Iremezo rwemeye Icyifuzo cya Porokireri n'icy'Ubwunganizi[44] bisaba uruhushya rwo kujuririra Icyemezo ku bibazo byerekeranye no "kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa n'ingaruka za byo"[45]. Mu bujurire bwe, Porokireri atanga impamvu z'ubujurire ebyiri, avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rwakoresheje ikigenderwaho mu rwego rw'amategeko kitari cyo[46] kandi rwakoresheje nabi ububasha busesuye rufite mu gusuzuma ibimenyetso byerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa[47]. Kubera izo mpamvu, Porokireri asaba

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cyongereza yatanzwe ku itariki ya 19 Gicurasi 2023); *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Igisubizo cya Porokireri ku Myanzuro ya Kabuga yatanze yubahiriza Itegeko ry'Urugereko ryo ku itariki ya 25 Mata 2023, 16 Gicurasi 2023. Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba Urugereko kwanga rugikubita Imyanzuro ya Porokireri yo ku itariki ya 9 Gicurasi 2023, 25 Gicurasi 2023.

[41] Icyemezo kijuririrwa, ibika 39, 57, 59.

[42] Icyemezo kijuririrwa, igika cya 45.

[43] Reba Icyemezo kijuririrwa, ibika 46-57.

[44] Reba *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyifuzo cya Porokireri gisaba uruhushya rwo kujuririra Ikindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa, 13 Kamena 2023; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyifuzo cy'Ubwunganizi gisaba uruhushya rwo kujuririra "Ikindi Cyemezo cyerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa" cyatanzwe ku itariki ya 6 Kamena 2023, 13 Kamena 2023 (Inyandiko y'umwimerere iri mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 20 Kamena 2023).

[45] Icyemezo cyo ku itariki ya 16 Kamena 2023, paje ya 2.

[46] Reba ubujurire bwa Porokireri, ibika 2, 4-13.

[47] Reba ubujurire bwa Porokireri, ibika 2, 14-29.

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Urugereko rw'Ubujurire kuvanaho Icyemezo cy'Urugereko rwa Mbere rw'Iremezo kivuga ko Kabuga adashobora kugira uruhare rufatika mu iburanisha ry'urubanza rwe[48]. Ubwunganizi butanga impamvu z'ubujurire eshatu, buvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rutategetse ko urubanza ruhagarara[49], rwemeje ko iburanisha rizakomeza hakoreshwa "ubundi buryo buzatuma hafatwa umwanzuro"[50] kandi rutategetse ko Kabuga afungurwa[51]. Kubera izo mpamvu, Ubwunganizi busaba Urugereko rw'Ubujurire kuvanaho Icyemezo kijuririrwa, rugahagarika urubanza kandi rugategeka ko Kabuga afungurwa[52]. Urugereko rw'Ubujurire rugiye gusuzuma ibyo ababuranyi bavuga, buri kimwe ukwacyo.

II. ISESENGURA

A. <u>Ibibazo byo mu ikubitiro</u>

12. Urugereko rw'Ubujurire rusanga Igisubizo cya Porokireri, cyagombaga gutangwa ku itariki ya 3 Nyakanga 2023, cyaratanzwe iyo tariki irengaho umunsi umwe[53]. Ku itariki ya 4 Nyakanga 2023, Porokireri yatanze Icyifuzo cyihutirwa gisaba ko Urugereko rw'Ubujurire rwemera ko Igisubizo cye cyatangiwe igihe kandi mu buryo bwemewe n'amategeko[54]. Porokireri asobanura ko yakurikije imikorere y'Urugereko rwa Mbere rw'Iremezo aho, inyandiko zitangwa bifatwa ko zatangiwe igihe iyo zitanzwe bitarenze saa sita z'ijoro zibura umunota umwe ku isaha y'i Lahe, hakurikijwe ahantu urubanza ruburanishirizwa[55]. Porokireri avuga ko, kubera ikinyuranyo cy'amasaha hagati y'Arusha na Lahe, Igisubizo cya Porokireri cyatanzwe igihe ntarengwa kirenzeho igice cy'isaha[56]. Urugereko rw'Ubujurire rusanga, kubera uburemere bw'ibibazo bivugwa mu bujurire kandi hazirikanywe ko Ubwunganizi butarwanya Icyifuzo cya

[48] Ubujurire bwa Porokireri, ibika 3, 31.
[49] Reba ubujurire bw'Ubwunganizi, ibika 68, 71-87.
[50] Reba ubujurire bw'Ubwunganizi, ibika 68, 88-104.
[51] Reba ubujurire bw'Ubwunganizi, ibika 68, 105-111.
[52] Ubujurire bw'Ubwunganizi, igika cya 112.
[53] Reba Ingingo ya 132(B) n'iya 152(A) z'Amategeko; Amabwiriza ngengamikorere yerekeranye n'ibisabwa n'ibikurikizwa mu bujurire, MICT/10/Ihindurwa rya 1, 20 Gashyantare 2019 ("Amabwiriza ngengamikorere"), igika cya 26. Reba n'Amabwiriza ngengamikorere yerekeranye n'inyandiko zirebana n'imanza, MICT/42, 25 Gicurasi 2023, Ingingo ya 14 n'iya 15.
[54] Icyifuzo cyihutirwa cya Porokireri gitanzwe hashingiwe ku Ngingo ya 154 y'Amategeko, 4 Nyakanga 2023 (Inyandiko itari ibanga ifite Umugereka A w'ibanga) ("Icyifuzo cya Porokireri"), igika cya 4.
[55] Icyifuzo cya Porokireri, igika cya 2, havugwa ku biri mu nyandikomvugo y'iburanisha,18 Kanama 2022, paje ya 9.
[56] Icyifuzo cya Porokireri, igika cya 3, Umugereka A.

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Porokireri[57], gukoresha ububasha busesuye rufite maze rukemera ko Igisubizo cya Porokireri cyatanzwe mu buryo bwemewe n'amategeko biri mu nyungu z'ubutabera[58].

13. Byongeye kandi, ku itariki ya 18 Nyakanga 2023, Ubwunganizi bwatanze Icyifuzo gisaba ko ababuranyi bombi bahabwa ifoto y'ubwonko bwa Kabuga yafashwe muri Kamena 2023, hakoreshejwe imashini yo mu bwoko bwa MRI, na raporo y'umuradiyoroge yerekeranye na bwo (Bivugiwe hamwe byitwa "Ibisubizo by'ikizamini byabonetse hakoreshejwe imashini yo mu bwoko bwa MRI"), byavuzweho muri Raporo y'isuzumabuzima yatanzwe na UNDU[59]. Ubwunganizi buvuga ko kuba hari ibisubizo bishya by'ikizamini cya MRI, bishyigikira ibimenyetso byavuye mu isuzumabuzima ryakozwe mbere ku igabanuka ry'imikorere y'ubwonko bwa Kabuga ari ikintu cy'ingenzi kigomba kuzirikanwa mu byerekeranye n'ubujurire bwa Porokireri, kandi ko guhabwa ibisubizo by'ikizamini cya MRI bizafasha Ubwunganizi gusaba ko bishyirwa muri dosiye nk'ibimenyetso by'inyongera mu bujurire hashingiwe ku Ngingo ya 142(A) y'Amategeko[60]. Mu gusubiza, Porokireri avuga ko atarwanya Icyifuzo cy'Ubwunganizi gisaba guhabwa izo nyandiko, kandi na we asaba ko ababuranyi bemererwa guha ibyo bisubizo bya MRI impuguke mu by'ubuvuzi batanze ngo zimusuzume[61].

14. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rusanzwe rwemerera Ubwunganizi na Porokireri guhabwa amaraporo ya muganga yerekeranye n'ubuzima bwa Kabuga, rukabemerera kuyaganiraho, nk'inyandiko z'ibanga, n'impuguke batanze zo kumusuzuma[62]. Rushingiye ku kuntu ibintu byifashe muri uru rubanza, Urugereko rw'Ubujurire

[57] Igisubizo cy'Ubwunganizi ku "Cyifuzo cyihutirwa cya Porokireri gitanzwe hashingiwe ku Ngingo ya 154 y'Amategeko, ku itariki 4 Nyakanga 2023, 6 Nyakanga 2023 (Inyandiko y'umwimerere yatanzwe mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 7 Nyakanga 2023), igika cya 13.

[58] Reba Ingingo ya 154(A) y'Amategeko; Amabwiriza ngengamikorere, igika cya 31.

[59] Icyifuzo cy'Ubwunganizi gitanzwe hashingiwe ku Ngingo ya 142 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, 18 Nyakanga 2023 (Inyandiko y'ibanga) (Inyandiko y'umwimerere yatanzwe mu gifaransa; inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 20 Nyakanga 2023) ("Icyifuzo gisaba guhabwa inyandiko zo kwa muganga"), ibika 7, 15, paje ya 3. Reba n'*Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Imyanzuro ya Gerefiye yerekeranye n' "Itegeko ritanzwe nyuma y'umuhango wo kwitaba Urukiko bwa mbere" ryo ku itariki ya 25 Ugushyingo 2020, 12 Nyakanga 2023 (Inyandiko itari ibanga ifite Umugereka w'ibanga), Umugereka ("Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU, 11 Nyakanga 2023"); inyandikomvugo y'iburanisha, 17 Nyakanga 2023, paje 9, 10.

[60] Icyifuzo gisaba guhabwa inyandiko zo kwa muganga, ibika 12-15, paje ya 3.

[61] Igisubizo cya Porokireri ku "Cyifuzo cy'Ubwunganizi gitanzwe hashingiwe ku Ngingo ya 142 y'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso", 19 Nyakanga 2023 (Inyandiko y'ibanga), igika cya 1.

[62] Nk'urugero, reba *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyemezo cyerekeranye n'iburanisha ry'urubanza, 13 Gashyantare 2023, igika cya 6, igisobanuro N° 15 cyo hasi kuri paje; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Itegeko ryo gutanga imyanzuro yerekeranye na Raporo y'isuzumabuzima ihuriweho n'iyerekeranye n'Icyifuzo gisaba guhabwa inyandiko zo kwa muganga, 15 Ukuboza 2022 (Inyandiko y'ibanga), paje 1, 2; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-T, Icyemezo ku Cyifuzo cyihutirwa cya Porokireri gisaba guhabwa inyandiko zo kwa muganga, 28 Gashyantare 2022 (Inyandiko y'ibanga), paje ya 2; *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38-PT, Icyemezo ku Byifuzo by'Ubwunganizi bisaba guhabwa inyandiko kandi hagatangwa itegeko ryo gutanga andi makuru, 24 Gashyantare 2021, paje 1, 4.

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nta mpamvu rubona yatuma hakoreshwa uburyo butandukanye n'ubwo busanzwe kandi rusanga, kubera iyo mpamvu, bikwiye ko rwemera bahabwa izo nyandiko.

15. Cyakora, Urugereko rw'Ubujurire rusanga kuba Ubwunganizi buteganya gusaba ko ibisubizo by'ikizamini cya MRI bishyirwa muri dosiye nk'ibimenyetso by'inyongera hashingiwe ku Ngingo ya 142 y'Amategeko atari impamvu yatuma rusubika gufata icyemezo ku bujurire bwa Porokireri. Ku byerekeranye n'ibisubizo by'ikizamini cya MRI, Urugereko rw'Ubujurire rusanga Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 11 Nyakanga 2023 ivuga ko "ifoto yo muri sikaneri igaragaza ko hari udutsi two mu bwonko twaturitse kandi ko habayeho kugabanuka k'utunyangingo tw'ubwonko, hamwe no kwangirika kw'imyakura yo mu bwonko", ikanagaragaza ko "nta kindi kibazo gishya cyabaye ku mikorere y'imyakura y'ubwonko cyatuma umuntu asobanukirwa […] ikibazo Kabuga afite cyo kugabanuka kw'imikorere y'ubwonko[63]". Urugereko rw'Ubujurire rusanga, n'ubwo ababuranyi bamenye ko hari ibisubizo by'ikizamini cya MRI Icyemezo kijuririrwa cyaramaze gutangwa, amakuru yerekeranye no kuba Kabuga yaragize ikibazo cyo guturika k'udutsi two mu bwonko, kugabanuka k'utunyangingo tw'ubwonko n'indwara y'imyakura yo mu bwonko atari ikintu gishya kandi Impuguke zaragisuzumye zikanacyunguranaho ibitekerezo[64]. Kubera iyo mpamvu, amakuru akubiye mu bisubizo by'ikizamini cya MRI ashobora kuba ahanini asa n'ari mu bindi biri muri dosiye Urugereko rwa Mbere rw'Iremezo rwamaze gusuzuma rugafata umwanzuro uvuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa[65].

16. Byongeye kandi, kubera imyanzuro y'Urugereko rw'Ubujurire ivugwa hepfo ku byerekeranye n'ubujurire bwa Porokireri[66], kudaha Ubwunganizi undi mwanya wo gushyigikira umwanzuro w'Urugereko rwa Mbere rw'Iremezo Porokireri ajuririra ntibizateza Kabuga akarengane[67].

[63] Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 11 Nyakanga 2023, igika cya 3.
[64] Reba Icyemezo kijuririrwa , ibisobanuro N° 65, 79, 124 byo hasi kuri paje, mu bihavugwa hari ibiri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 9-12, Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 7, Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 4 (Ishimangira ko hari "ibimenyetso by'indwara y'imyakura yo mu bwonko yangiza ubwonko n'iby'ibibazo yagize byo guturika cyangwa kuziba k'udutsi tujyana cyangwa tuvana amaraso mu bwonko, bigaragazwa ku ifoto y'ibisubizo by'ikizamini cya MRI. Bemeranya kandi ko hari n'ibindi byahindutse mu bwonko bwa Kabuga bitewe n'imyaka afite"). Reba n'Icyemezo cyo ku itariki ya 13 Kamena 2022, igika cya 25.
[65] Reba Icyemezo kijuririrwa, ibisobanuro N° 76, 78, 79, 124, 151 byo hasi kuri paje, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 7, Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje ya 10, Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 4, Ibivugwa na Dogiteri Kennedy na Dogiteri Mezey bahuriyeho, 16 Gicurasi 2022, paje ya 2. Reba n'Icyemezo cyo ku itariki ya 13 Kamena 2022, ibika 14, 15, 25, 35, 50, mu bihavugwa harimo ibiri muri Raporo ya Dogiteri Mezey yo ku itariki ya 28 Mutarama 2022, paje 19, 20, ibika 53, 56, 57, 64, Mezey, inyandikomvugo y'iburanisha, 1 Kamena 2022, paje 4, 5.
[66] Reba hepfo, igika cya 48.
[67] Reba *Urubanza Porokireri aburana na Jovica Stanišić na Franko Simatović*, N° MICT-15-96-A, Icyemezo ku Cyifuzo cya Jovica Stanišić gisaba ko ibimenyetso by'inyongera bishyirwa muri dosiye, 21 Ukuboza 2022, igika cya 15; *Urubanza*

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Ahubwo, inyungu z'ubutabera zisaba ko ikibazo cyashyikirijwe Urugereko rw'Ubujurire gifatwaho umwanzuro vuba bishoboka no kutazarira. Ibyo ntibibuza ababuranyi kugaragariza Urugereko rwa Mbere rw'Iremezo ibibazo byerekeranye n'ibisubizo bya MRI bashingiye ku bivubwa muri iki Cyemezo.

B. Ubujurire bwa Porokireri

1. Uko ibintu byakurikiranye

17. Mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo, ku bwiganze bw'amajwi, rwafashe umwanzuro uvuga ko ubuzima bwa Kabuga butatuma ashobora gukomeza kuburanishwa kandi bishoboka cyane ko atazongera kugira ubwo bushobozi[68]. Mu gufata uwo mwanzuro, Urugereko rwa Mbere rw'Iremezo rwasuzumye dosiye y'isuzumabuzima nini rwashyikirijwe, irimo Raporo y'isuzumabuzima ihuriweho ya 1 n'iya 2 hamwe n'ubuhamya Dogiteri Kennedy, Dogiteri Mezey na Dogiteri Cras batanze mu Rukiko[69]. Urugereko rwa Mbere rw'Iremezo rwasanze ibyinshi cyane mu bimenyetso rwashyikirijwe bishyigikira umwanzuro uvuga ko ubuzima bwa Kabuga butatuma ashobora kuburanishwa[70].

18. Ku byerekeranye n'uko ubuzima bwa Kabuga bwagiye buhinduka, Urugereko rwa Mbere rw'Iremezo rwibukije ko, mu Cyemezo cya 1 cyarwo ku kibazo cyerekeranye no kumenya niba ubuzima bwe bwatuma ashobora kuburanishwa cyatanzwe muri Kamena 2022, rwahaye uburemere bwihariye ubuhamya bwa Dogiteri Kennedy n'ubwa Dogiteri Mezey, icyo gihe batemeranyaga ku buremere n'ingaruka by'ikibazo Kabuga afite cyo kugabanuka kw'imikorere y'ubwonko[71]. Rushimangira ubumenyi buhanitse n'ubunararibonye bwa ngombwa buhagije Dogiteri Kennedy, Dogiteri Mezey na Dogiteri Cras bafite, Urugereko rwa Mbere rw'Iremezo rwasanze, ubu noneho, izo mpuguke zose uko ari eshatu zemeranya ko imikorere y'ubwonko n'umubiri bya Kabuga yagiye irushaho kuba mibi mu buryo bukomeye kuva mu cyiciro cyabanjirije iburanisha ry'urubanza, ko afite uburwayi bwo mu mutwe buri ku rugero rukomeye; kandi ko atashobora kugira uruhare rufatika mu rubanza rwe n'iyo yahabwa

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Porokireri aburana na Jovica Stanišić na Franko Simatović, Nº IT-03-69-AR65.1, Icyemezo ku Byifuzo Stanišić yatanze hashingiwe ku Ngingo ya 115 bisaba uruhushya rwo gutanga ibimenyetso by'inyongera mu Gisubizo cye ku bujurire bwa Porokireri, 3 Ukuboza 2004, ibika 14, 16.

[68] Icyemezo kijuririrwa, ibika 39, 59.

[69] Icyemezo kijuririrwa, ibika 9, 12-14, 16, 18-23, 30-35. Reba n'Icyemezo kijuririrwa, ibika 3, 4.

[70] Icyemezo kijuririrwa, igika cya 30.

[71] Icyemezo kijuririrwa, ibika 3-5, 30.

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ibimworohereza[72]. Urugereko rwa Mbere rw'Iremezo rusanga Impuguke zose zivuga ko uburwayi bwa Kabuga bugenda burushaho gukomera uko igihe gihita kandi butazakira[73].

19. By'umwihariko, Urugereko rwa Mbere rw'Iremezo rusanga, mu myanzuro yazo, Impuguke zemeranya ko Kabuga adafite ubushobozi bune bw'ingenzi kugira ngo abe yagira uruhare rufatika mu rubanza, ni ukuvuga, ubushobozi bwo gusobanukirwa imigendekere y'iburanisha ry'urubanza, gusobanukirwa ibimenyetso, guha amabwiriza Avoka umwunganira no gutanga ubuhamya mu Rukiko[74]. Ku byerekeranye n'igitekerezo cy'Impuguke zivuga ko Kabuga agifite ubushobozi butatu bukenewe, ni ukuvuga, ubushobozi bwo kuba yavuga niba yemera cyangwa ahakana ibyaha aregwa, ubwo gusobanukirwa imiterere y'ibyaha aregwa n'ingaruka z'urubanza, Urugereko rwa Mbere rw'Iremezo rusanga ubushobozi bwa Kabuga bwo gusobanukirwa ibyo bintu na bwo buri ku kigero gito cyane[75]. Icya nyuma, Urugereko rwa Mbere rw'Iremezo rushimangira ko ibyo rwiboneye kuri Kabuga mu gihe cy'iburanisha ry'uru rubanza bihuye n'imyanzuro ihuriweho y'izo Mpuguke[76].

2. Ikosa bivugwa ko ryakozwe ku byerekeranye n'ikigenderwaho mu gusuzuma niba ubuzima bw'Uregwa bwatuma akomeza kuburanishwa

20. Mu mpamvu y'ubujurire ya 1, Porokireri avuga ko, mu kwemeza niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rwakoresheje ikigenderwaho mu rwego rw'amategeko cyo ku rwego rwo hejuru aho uruhare rw'avoka mu kunganira Kabuga rutazirikanwe[77]. By'umwihariko, avuga ko, mu kwemera imyanzuro y'Impuguke "yose uko yakabaye" kandi rutabanje gushishoza, Urugereko rwa Mbere rw'Iremezo rwakoresheje ikigenderwaho mu rwego rw'amategeko maze gituma rukora ikosa ryo gufata ko ubwonko bwa Kabuga bugomba kuba bufite imikorere yo ku rwego rwo hejuru cyane[78]. Mu gushyigikira ibyo avuga, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rutagize icyo ruvuga ku ruhare rw'Avoka mu kunganira Kabuga, ko ahubwo rwashimangiye ko ibibazo byerekeranye n'ibyabaye n'ibyo mu rwego rw'amategeko ari urusobe n'uko ibimenyetso ari byinshi [79]. Porokireri avuga ko iyo

[72] Icyemezo kijuririrwa, igika cya 30.
[73] Icyemezo kijuririrwa, igika cya 31.
[74] Icyemezo kijuririrwa, igika cya 31.
[75] Icyemezo kijuririrwa, igika cya 34
[76] Icyemezo kijuririrwa, igika cya 38.
[77] Reba Ubujurire bwa Porokireri, ibika 2, 4-9, 30.
[78] Ubujurire bwa Porokireri, ibika 5, 6, 8, mu bihavugwa harimo ibiri mu Gitekerezo cy'Umucamanza kinyuranye n'icya bagenzi be, ibika 5, 14; Imyanzuro isubiza ya Porokireri, ibika 2, 3.
[79] Ubujurire bwa Porokireri, igika cya 6, havugwa ku biri mu Cyemezo kijuririrwa, igisobanuro N° 144 cyo hasi kuri paje.

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Urugereko rwa Mbere rw'Iremezo rukoresha ikigenderwaho mu rwego rw'amategeko gikwiye, rwari gusuzuma ibimenyetso biri mu maraporo ya muganga byashingiweho n'Impuguke mu gufata imyanzuro yazo, hazirikanwa ko Kabuga ari umuntu Uregwa "ufite Avoka umwunganira uko bikwiye[80]". Porokireri asanga dosiye ikubiyemo ibimenyetso byinshi bigaragaza ko Kabuga agishoboye gukoresha ubushobozi bunyuranye, by'umwihariko, afashijwe n'ibintu bishobora gushyirwaho n'ikipe y'Ubwunganizi mu rwego rwo kumworohereza[81].

21. Porokireri avuga kandi ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rutakoresheje ibintu bya ngombwa mu kugaragaza ko ubuzima bwa Kabuga bwatuma akomeza kuburanishwa, mu buryo bwubahiriza amategeko yerekeranye n'uburenganzira bwa muntu yose harimo n'Amasezerano Mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga, ateganya ko umuntu uregwa ufite ikibazo cyo kugabanuka kw'imikorere y'ubwonko agomba guhabwa ibimworohereza bishoboka byose kugira ngo ashobore kugira uruhare mu iburanisha ry'urubanza[82]. Kuri iyo ngingo, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rutavuze uburyo bwo gufasha Kabuga kuba yagira uruhare rufatika mu iburanisha, nk'urugero, gusaba Avoka umwunganira koroshya ibintu bityo akorohereza Kabuga mu byo asabwa[83].

22. Mu gusubiza, Ubwunganizi buvuga ko Urugereko rwa Mbere rw'Iremezo rwakurikije uko bikwiye ikigenderwaho mu rwego rw'amategeko, rukoresha ubushishozi mu gukora irisite y'uburenganzira bwihariye Kabuga agomba kuba abasha gukoresha kugira ngo habe hakwemezwa ko ubuzima bwe bwatuma akomeza kuburanishwa, maze rusuzuma neza niba imikorere y'ubwonko bwe yatuma agira ubushobozi bukenewe kugira ngo akoreshe buri burenganzira buri kuri iyo risite[84]. Ubwunganizi buvuga ko ibivugwa na Porokireri bidafite ishingiro kuko ubuzima bwa Kabuga butatuma agira uruhare mu iburanisha ry'urubanza n'iyo hakoreshwa ikigenderwaho cyo ku rwego rwo hasi cyane mu gusuzuma niba bwatuma akomeza kuburanishwa[85]. Buvuga kandi ko, mu byo Porokireri avuga byerekeranye n'uruhare rw'avoka, yirengagiza umwanzuro w'Impuguke uvuga ko Kabuga afite ikibazo cy'igabanuka

[80] Reba Ubujurire bwa Porokireri, ibika 7, 9.
[81] Ubujurire bwa Porokireri, igika cya 9, mu bihavugwa harimo ibiri mu Gitekerezo cy'Umucamanza kinyuranye n'icya bagenzi be, igika cya 16.
[82] Reba ubujurire bwa Porokireri, ibika 2, 10-13 n'ibisobanuro byo hasi kuri paje byerekeranye na byo.
[83] Ubujurire bwa Porokireri, igika cya 13.
[84] Igisubizo cy'Ubwunganizi, ibika 26, 28.
[85] Igisubizo cy'Ubwunganizi, igika cya 28.

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ry'imikorere y'ubwonko gikomeye kandi ko nta buryo bumworohereza bwaba buhagije mu kumukemurira icyo kibazo.[86].

23. Urugereko rw'Ubujurire rwibutsa ko ikigenderwaho gikurikizwa mu kwemeza niba ubuzima bw'umuntu uregwa bwatuma ashobora kuburanishwa ari ukuba ashobora kugira uruhare rufatika, rutuma ashobora gukoresha uburenganzira bwe bwo kuburanishwa mu buryo buboneye ku buryo agira uruhare bya nya byo mu iburanisha ry'urubanza rwe kandi agasobanukirwa ibintu by'ingenzi byo muri rwo[87]. Ku irisite ya bumwe mu bushobozi bugomba kugenzurwa mu gusuzuma niba uregwa ashobora kuburanishwa harimo ubushobozi bwo: (i) kwemera cyangwa guhakana icyaha; (ii) gusobanukirwa imiterere y'ibyaha aregwa; (iii) gusobanukirwa imigendekere y'iburanisha; (iv) gusobanukirwa amakuru arambuye ku bimenyetso; (v) guha amabwiriza avoka umwunganira; (vi) gusobanukirwa ingaruka z'urubanza; no (vii) gutanga ubuhamya mu rukiko[88]. Bityo rero, igisabwa kugira ngo bifatwe ko ubuzima bw'uregwa bwatuma ashobora kuburanishwa ni ukuba muri rusange afite ubushobozi bwatuma agira uruhare rufatika mu rubanza rwe, mu gihe afite avoka umwunganira uko bikwiye[89]. Urugereko rw'Ubujurire rusanga, mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo rwarasobanuye neza ikigenderwaho gikurikizwa mu rwego rw'amategeko[90].

24. Urugereko rw'Ubujurire ruributsa kandi ko umuntu uregwa wunganirwa n'avoka adashobora gufatwa nk'usobanukiwe ibintu byerekeranye n'urubanza rwe ku rwego rumwe n'urw'avoka ufite ubumenyi n'ubunararibonye mu by'amategeko[91]. Gusesengura amakuru menshi y'urusobe akomoka ku miterere y'imanza nshinjabyaha zo ku rwego mpuzamahanga ni inshingano y'abavoka, kugira ngo bagire inama abo bunganira[92]. Koko rero, ikigenderwaho mu kwemeza

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[86] Igisubizo cy'Ubwunganizi, igika cya 29.

[87] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 11; *Urubanza Porokireri aburana na Goran Hadžić*, Nº IT-04-75-AR73.1, Icyemezo ku bujurire bwihutirwa bwa Porokireri ku Cyemezo gikomatanyije cyerekeranye no gukomeza iburanisha ry'urubanza, 4 Werurwe 2016 ("Icyemezo mu rubanza rwa Hadžić, 4 Werurwe 2016"), igika cya 7; *Urubanza Porokireri aburana na Pavle Strugar*, Nº IT-01-42-A, Inyandiko y'urubanza, 17 Nyakanga 2008 ("Inyandiko y'urubanza rwa Strugar mu bujurire"), igika cya. 55.

[88] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 12 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.

[89] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 12, havugwa ku biri mu Nyandiko y'urubanza rwa Strugar mu bujurire, igika cya 60.

[90] Icyemezo kijuririrwa, ibika 26, 28.

[91] Inyandiko y'urubanza rwa Strugar mu bujurire, igika cya 60.

[92] *Urubanza Porokireri aburana na Ratko Mladić*, Nº MICT-13-56-A, Inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga, y'"Icyemezo ku Cyifuzo gisaba ko imikirize y'urubanza mu rw'iremezo ivanwaho n'urubanza rugahagarikwa" cyatanzwe ku itariki ya 30 Mata 2018, 8 Kamena 2018 ("Icyemezo mu rubanza rwa Mladić, 8 Kamena 2018"), paje ya 3; *Urubanza Porokireri aburana na Vujadin Popović na bagenzi be*, Nº IT-05-88-A, Inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga, y'Icyemezo ku Cyifuzo gisaba ko urubanza mu bujurire bwerekeranye na Milan Gvero ruhagarikwa burundu cyo ku itariki ya 30 Ugushyingo 2012, 16 Mutarama 2013 ("Icyemezo mu rubanza rwa Popović na bagenzi be, 16 Mutarama 2013"), igika cya 22; Inyandiko y'urubanza rwa Strugar mu bujurire, igika cya 60 (Aho Urugereko rw'Ubujurire rwa TPIY rwemeje ko "n'abantu bafite ubuzima bwiza bw'umubiri n'ubwo mu mutwe,

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niba ubuzima bw'umuntu uregwa bwatuma ashobora kuburanishwa cyerekana ko "rimwe na rimwe umuntu uregwa ashobora gukenera ubufasha kugira ngo agire uruhare mu rubanza[93]".

25. Mbere na mbere, Urugereko rw'Ubujurire rusanga ibyo Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rutasuzumye mu buryo bucukumbuye ibimenyetso byatanzwe n'impuguke kandi ko ibyo byatumye rukora ikosa ryo gukoresha ikigenderwaho mu rwego rw'amategeko cyo ku rwego rwo hejuru mu gusuzuma niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa bidafite ishingiro. Muri icyo Cyemezo, Urugereko rwa Mbere rw'Iremezo rwasobanuye byimbitse amateka y'uburwayi bwa Kabuga, harimo no kuba rwaravuze ko rwagiye rushyikirizwa amaraporo ya muganga, atangwa na Muganga ukuriye Serivise y'ubuvuzi ya UNDU kabiri mu kwezi, rugasobanura mu buryo bwitondewe, imirongo migari y'imyanzuro y'Impuguke mu by'ubuvuzi ikubiye muri Raporo y'isuzumabuzima ihuriweho ya 1 n'iya 2 kandi rwasubiyemo mu buryo burambuye ibyavuzwe mu buhamya izo Mpuguke zatanze mu Rukiko[94]. Urugereko rwa Mbere rw'Iremezo rwasuzumye kandi, mu buryo bweruye ibyo Porokireri avuga ko izo Mpuguke zakoresheje ikigenderwaho gisumba igisabwa mu gusuzuma niba ubuzima bw'umuntu uregwa bwatuma ashobora kuburanishwa[95]. Mu gufata umwanzuro warwo, Urugereko rwa Mbere rw'Iremezo rwasesenguye mu buryo burambuye ibimenyetso biri mu maraporo ya muganga ku byerekeranye na buri bushobozi bwa ngombwa mu isuzuma rigamije kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa[96]. N'ubwo Urugereko rwa Mbere rw'Iremezo rwashingiye ku bice by'ibimenyetso izo Mpuguke zatanze ku byerekeranye n'ikigero cy'ubushobozi Kabuga afite ku byerekeranye n'ubukenewe[97], rwavuze, mu buryo bweruye, ku mwanzuro w'izo Mpuguke uvuga ko ubushobozi bw'imikorere ubwonko bwa Kabuga busigaranye ari ubwo kuvuga "icyo yifuza n'amahitamo ye" ku byerekeranye n'ubuzima n'imibereho myiza bye, kandi ko ubwo bushobozi buke afite bwo kuganira butatuma ashobora kugira uruhare rufatika mu rubanza rwe kuko byamusaba kuba ubwonko bwe bufite ubushobozi burenze ubwo bufite ubu[98]. Urugereko

ariko badafite ubumenyi buhambaye mu by'amategeko n'ubushobozi bujyanye na bwo, bakenera cyane kunganirwa mu by'amategeko, by'umwihariko mu manza zirimo ibibazo by'urusobe byo mu rwego rw'amategeko n'ibishingiye ku byabaye biteye kimwe n'ibiri mu ziburanishwa n'Urukiko").

93 Urubanza rwa Popović na bagenzi be, Icyemezo cyo ku itariki ya 16 Mutarama 2013, igika cya 22.

94 Icyemezo kijuririrwa, ibika 2-4, 9, 12, 14, 16, 18-23 n'ibisobanuro byo hasi kuri paje byerekeranye na byo. Reba n'Icyemezo kijuririrwa, ibika 30-38.

95 Icyemezo kijuririrwa, igika cya 25, havugwa ku biri mu nyandikomvugo y'iburanisha, 30 Werurwe 2023, paje 20, 21, 25, 38-40, 44, 45.

96 Icyemezo kijuririrwa, ibika 30-35.

97 Icyemezo kijuririrwa, ibika 30-35.

98 Icyemezo kijuririrwa, igika cya 35, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 11, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 6, 7, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje 12, 13, Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 15, 16, 36, Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 13, 14.

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rwa Mbere rw'Iremezo rwasanze kandi Kabuga adafite ubwonko bukora ku buryo yashobora gusesengura amakuru yagumana no kuyatangaho igitekerezo[99].

26. Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rutari rwiteze ko Kabuga afite ubushobozi bwo gusobanukirwa n'amakuru y'urusobe n'inshoza zo mu rwego rw'amategeko cyangwa gusesengura ibimenyetso byinshi, ibi bikaba binyuranyije n'ibyo Porokireri avuga. Ahubwo, ibyo rwavuze ku byerekeranye no kuba uru rubanza ari urusobe rwabivuze mu rwego rwo gusuzuma ibivugwa na Porokireri ko "ibintu by'ingenzi muri uru rubanza byoroshye kandi bisobanutse":

> […] Urugereko rwa Mbere rw'Iremezo ntirwemeranywa na Porokireri, aho avuga ko ibintu by'ingenzi muri uru rubanza byoroshye kandi bisobanutse cyangwa ko byerekeranye "n'icyegeranyo cy'ibimenyetso bizwi n'ibintu bitari byinshi birimo kugibwaho impaka".[...] Ahubwo, Urugereko rusanga ibibazo byerekeranye n'ibyabaye n'ibyo mu rwego rw'amategeko bikomoka ku bwinshi n'imitere y'ibirego biri mu Nyandiko y'ibirego, birimo ibya jenoside, ubwumvikane bugamije gukora jenoside, gutoteza n'itsembatsemba nk'ibyaha byibasiye inyokomuntu, n'ubuhotozi kimwe n'ibyo Kabuga ashinjwa ko yashyigikiye ikorwa ry'ibyaha byakozwe n'Interahamwe kandi ko yari mu mugambi mubisha uhuriweho, uretse kuba bikomeye binajyanye no kureba aho byanakorewe mu turere dutandukanye n'ahantu hatandukanye mu mujyi wa Kigali, Kigali-Ngali, Kibuye na Perefegitura ya Gisenyi n'ibikorwa n'imyitwarire guhera mu mwaka wa 1992. Byongeye kandi, uru rubanza rurimo ibimenyetso byinshi harimo ubuhamya bwanditse n'ubwatanzwe mu magambo bw'abatangabuhamya 103, Amakasete amagana ya Radiyo RTLM, n'ibihumbi by'amapaje y'inyandukuro y'ayo makasete, inyandikomvugo z'ubuhamya abatangabuhamya batanze mu Rukiko n'ubuhamya bwanditse byo mu manza zaciwe mbere[100].

27. Ibyo Urugereko rwa Mbere rw'Iremezo rwavuze, birebewe hamwe n'uburyo iki kibazo giteye, bigaragara ko byerekeranye, mu buryo butaziguye, n'umwanzuro rwafashe uvuga ko bisaba "nibura kuba umuntu afite ubwonko bukora, harimo no gushobora kugumana amakuru mu gihe runaka, kuyatekerezaho no kuyatangaho igitekerezo" iyo ari ngombwa[101]. Mu byo Urugereko rwa Mbere rw'Iremezo rwiboneye, na byo bifite akamaro, mu buryo butaziguye, mu isuzuma rwakoze ryo kumenya intera y'ubushobozi Kabuga afite bwo kuganira n'Avoka umwunganira

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[99] Icyemezo kijuririrwa, igika cya 36.
[100] Icyemezo kijuririrwa, igisobanuro Nº 144 cyo hasi kuri paje.
[101] Icyemezo kijuririrwa, igika cya 36.

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no kumuha amabwiriza, nta kintu na kimwe kigaragaza ko rwakoresheje ikigenderwaho mu rwego rw'amategeko kidakwiye.

28. Byongeye kandi, Urugereko rw'Ubujurire ntirunyuzwe n'ibyo Porokireri avuga ko, mu gusuzuma niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa, Urugereko rwa Mbere rw'Iremezo rutazirikanye uruhare rw'Avoka mu kunganira Kabuga. Mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo rwavuze by'umwihariko ko Impuguke zemeranyije ko Kabuga atari afite ubushobozi bwa ngombwa bwo guha amabwiriza Avoka umwunganira[102]. Muri urwo rwego, Urugereko rwa Mbere rw'Iremezo rwasuzumye ubuhamya bw'impuguke buvuga ko Kabuga atari agishoboye kuganira n'umuntu mu buryo busanzwe adategwa cyangwa kugirana n'umuntu ikiganiro kizima ngo avuge ibintu byerekeranye[103], ko yari afite ubushobozi bwo gukurikira iburanisha cyangwa gusobanukirwa ibimenyetso ku rugero ruto cyane[104], kandi ko atari ashoboye gusobanukirwa impamvu y'ibibazo bibazwa mu Rukiko[105]. Byongeye kandi, Urugereko rwa Mbere rw'Iremezo rwasuzumye ubuhamya buvuga ko Impuguke zananiwe no gusobanukirwa akantu na gato mu byo Kabuga yavuze[106]. Rushingiye kuri ibyo, Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uvuga ko Kabuga atari agishoboye guha amabwiriza Avoka umwunganira[107]. Urugereko rw'Ubujurire ruributsa ko ubushobozi bw'umuntu uregwa bwo kugira uruhare rufatika mu iburanisha ry'urubanza rwe buterwa no kuba afite ubushobozi bwo mu mutwe bwo kuganira, bityo akaba yabasha kungurana ibitekerezo n'avoka umwunganira[108]. Koko rero, Urugereko rw'Ubujurire rw'Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho Icyahoze ari Yugosilaviya ("TPIY") rwemeje, mu buryo

[102] Icyemezo kijuririrwa, igika cya 31, mu bihavugwa harimo ibiri muri Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 8, Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye; Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 6; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje ya 39; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 34, 35.

[103] Icyemezo kijuririrwa, igika cya 32, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 16; inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje ya 22; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 3, 4, 13, 14; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje ya 49.

[104] Icyemezo kijuririrwa, igika cya 33, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023 paje ya 42; inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje 10, 13, 36-38; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 4, 14, 33, 37, 38.

[105] Icyemezo kijuririrwa, igika cya 33, havugwa ku biri mu buhamya bwa Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 14 (Aho Dogiteri Cras agira ati "kubera urwego uburwayi bwo mu mutwe [bwa Kabuga] buriho, ndibwira ko byagorana cyane ndetse ahubwo bitanashoboka ko yabasha kungurana ibitekerezo n'Avoka we ngo agire ingingo amugezaho"), 35, 49.

[106] Icyemezo kijuririrwa, igika cya 32, havugwa ku biri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 43, 44.

[107] Icyemezo kijuririrwa, igika cya 33.

[108] *Urubanza Porokireri aburana na Vujadin Popović na bagenzi be*, Nº IT-05-88-A, Inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga, y'Icyemezo ku Cyifuzo cy'Avoka washyiriweho Milan Gvero cyerekeranye n'ukuntu ubuzima bwe bwifashe cyo ku itariki ya 13 Ukuboza 2010, 16 Gicurasi 2011 ("Icyemezo mu rubanza rwa Popović na bagenzi be, 16 Gicurasi 2011"), igika cya 11. Reba n'Icyemezo mu rubanza rwa Popović na bagenzi be, 16 Gicurasi 2011, igika cya 14.

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bweruye, ko kuba uregwa afite ubushobozi bwo guha amabwiriza avoka umwunganira ari bumwe mu burenganzira "bw'ingenzi mu kumenya niba ubuzima bw'uregwa butuma yashobora gukomeza kuburanishwa"[109]. Kubera ibyo bintu byinshi Urugereko rwa Mbere rw'Iremezo rwazirikanye, Urugereko rw'Ubujurire rusanga Porokireri atagaragaza ko rwakoresheje ikigenderwaho mu rwego rw'amategeko kitari cyo bitewe no kuba rutarazirikanye uruhare rw'avoka iyo uregwa amufite.

29. Byongeye kandi, Urugereko rw'Ubujurire ntirwemeye ibyo Porokireri avuga, ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwirengagije amahame y'uburenganzira bwa muntu asaba ko uregwa ufite ikibazo cy'igabanuka ry'imikorere y'ubwonko ahabwa ubufasha bukwiye, kubera ko atatanze ibimenyetso bibishyigikira. Urugereko rw'Ubujurire ruributsa ko ubukemuramanza bugomba gukurikizwa buvuga ko kumenya niba uko ubuzima bw'uregwa bwifashe byatuma ashobora kuburanishwa bigomba gushingira ku kuba ubushobozi bwe, "burebwe muri rusange kandi mu buryo bushyize mu gaciro, buri ku kigero gituma ashobora kugira uruhare mu rubanza rwe (rimwe na rimwe ahawe ubufasha) kandi agakoresha bihagije ubwo burenganzira bwavuzwe"[110]. Nyuma yo kwibutsa uburyo bugomba gukoreshwa mu iburanisha n'ubufasha byashyizweho mbere mu rwego rwo gufasha Kabuga kugira uruhare rufatika mu iburanisha ry'urubanza rwe[111], Urugereko rwa Mbere rw'Iremezo rwazirikanye mu buryo bweruye, mu Cyemezo kijuririrwa, umwanzuro uhuriweho n'impuguke zose uvuga ko ubuzima bwa Kabuga bwo ku mubiri n'ubushobozi bwo mu mutwe bwe byarushijeho kumera nabi kuva igihe yaherukiraga gukorerwa isuzumabuzima, kandi ko atashobora kugira uruhare rufatika mu iburanisha ry'urubanza rwe n'iyo hashyirwaho uburyo bwihariye bwo kumuburanisha cyangwa bwo kumufasha kugira uruhare muri iryo buranisha[112]. Ibintu Urugereko rwa Mbere rw'Iremezo rwazirikanye bigaragaza ko rwagendeye ku bukemuramanza bugomba kubahirizwa kandi ko bitanyuranyije n'amahame y'uburenganzira bwa muntu Porokiri avuga mu bujurire bwe. Urugereko rw'Ubujurire rusanga kandi Porokireri atagaragaza ko, hashingiwe ku buhamya bw'impuguke mu by'ubuvuzi busobanutse neza rwagejejweho, Urugereko rwa Mbere rw'Iremezo rutashyize mu gaciro kuba rwaremeje ko nta bufasha

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[109] Inyandiko y'urubanza rwa Strugar mu bujurire, ibika 41, 55.
[110] Icyemezo mu rubanza rwa Mladić, 8 Kamena 2018, paje 2, 3; Icyemezo mu rubanza rwa Popović na bagenzi be, 16 Mutarama 2013, igika cya 21; Inyandiko y'urubanza rwa Strugar mu bujurire, igika cya 55. Reba haruguru, igika cya 23.
[111] Nk'urugero, reba Icyemezo kijuririrwa, ibika 8, 15.
[112] Icyemezo kijuririrwa, ibika 16, 21, 30, havugwa ku biri muri Raporo y'isuzumabuzima ihuriweho ya 1, paje 4, 10; Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye; Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 12, 13, 20, 21, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 31-34, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje 14, 15, 25, 26; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 3, 4, 7, 10-12, 43; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 6, 9-11, 13.

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bukwiye Kabuga yahabwa bwatuma abasha kugira uruhare rufatika mu iburanisha ry'urubanza rwe.

30. Icya nyuma kuri iyi ngingo, n'ubwo Porokireri avuga ko, mu isuzuma ry'ibimenyetso byo mu rwego rw'ubuvuzi, Urugereko rwa Mbere rw'Iremezo rutashyize mu gaciro, Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo ari rwo rufite ububasha bwo kwemera cyangwa kwanga igitekerezo cy'umutangabuhamya w'impuguke, cyose uko cyakabaye cyangwa igice cyacyo[113]. Nk'uko bigenda ku bindi bimenyetso byose, Urugereko rwa Mbere rw'Iremezo ni rwo rufite ububasha bwo gusuzuma ukwizerwa n'agaciro bya raporo n'ubuhamya by'impuguke[114]. Ibyo Porokireri avuga, nta gutanga ibisobanuro birambuye, ko ibimenyetso byatanzwe bigaragaza ko Kabuga ashobora gukoresha "ubushobozi bunyuranye, cyane cyane abagize ikipe y'Ubwunganizi bwe baramutse bamuhaye ubufasha"[115] nta shingiro bifite, kandi byerekana gusa ko atemeranya n'uburyo Urugereko rwa Mbere rw'Iremezo rwasesenguye ibimenyetso rwashyikirijwe, nta kwerekana ikosa rigaragara rwaba rwarakoze.

3. <u>Ikosa bivugwa ko ryakozwe mu isuzuma ry'ibimenyetso byerekeranye no kumenya niba ubuzima bwa Félicien Kabuga bwatuma akomeza kuburanishwa</u>

31. Mu mpamvu y'ubujurire ya 2, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha bwarwo mu gusuzuma agaciro k'ibimenyetso byo mu rwego rw'ubuvuzi byerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa[116], kandi rukaba, mu gufata umwanzuro uvuga ko Kabuga yasoje inshingano ye yo gutanga ibimenyetso bigaragaza ko atashobora gukomeza kuburanishwa, rutarazirikanye ko nta bufatanye Kabuga yagaragaje[117]. Ubwunganizi busubiza ko ibyo Porokireri avuga nta gaciro bifite kandi ko ubujurire bwe, bwose uko bwakabaye, budakwiye kwemerwa[118].

(a) <u>Ikosa Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze mu gusuzuma agaciro k'ubuhamya bw'impuguke mu buvuzi</u>

32. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rigaragara kubera ko rwafashe icyemezo rushingiye ku masuzumabuzima Impuguke zakoreye Kabuga muri Gashyantare 2023, no kuri Raporo y'isuzumabuzima ihuriweho ya 2 yavuye muri ayo

[113] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 16 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[114] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 16 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[115] Reba Ubujurire bwa Porokireri, igika cya 9.
[116] Reba Ubujurire bwa Porokireri, ibika 2, 14-24.
[117] Reba Ubujurire bwa Porokireri, ibika 2, 14, 23, 25-29.
[118] Reba Igisubizo cy'Ubwunganizi, paje ya 8. Reba n'Igisubizo cy'Ubwunganizi, ibika 30-36.

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masuzumabuzima, rwirengagije “inenge zikomeye” zatumaga atakwizerwa[119]. By’umwihariko, Porokireri avuga ko: (i) Amasuzumabuzima yakozwe n’Impuguke, yashingiweho mu gukora Raporo y’isuzumabuzima ihuriweho ya 2, yakorwaga mu gihe cy’isaha imwe cyangwa “gito kurushaho” ubwo Kabuga yari arwaye indwara eshatu zikomeye zari zariyongereye ku zo asanganywe[120]; kandi ko (ii) Dogiteri Mezey yakoreye Kabuga isuzumabuzima avugana na we batari kumwe, hifashishijwe ikoranabuhanga ry’amajwi n’amashusho, aho kumusuzuma ari kumwe na we[121]. Porokireri avuga kandi ko Raporo y’isuzumabuzima ihuriweho ya 2 igaragaza ko izo Mpuguke zititaye ku “maraporo ya muganga menshi y’ingirakamaro avuga ku burwayi bwa Kabuga” kandi ko izo Mpuguke zatanze ibitekerezo byazo ku bushobozi bw’ubwonko bwa Kabuga mu gihe nta makuru zari zifite ku kigero uburwayi bwe buriho n’ubukana bwabwo nk’uko byasobanuwe mu maraporo y’isuzumabuzima yatanzwe na serivise y’ubuvuzi ya UNDU[122]. Porokireri avuga ko Icyemezo kijuririrwa kitagaragaza ko Urugereko rwakoze “isesengura ricukumbuye” rya Raporo y’isuzumabuzima ihuriweho ya 2 cyangwa ngo “rugire icyo ruvuga ku buke bw’inkomoko z’amakuru izo Mpuguke zashingiyeho imyanzuro yazo idacukumbuye kandi itatangiwe ibimenyetso”[123]. Porokireri asanga nta Rugereko rwa Mbere rw’Iremezo rushyira mu gaciro, rwari kwita ku bitekerezo byatanzwe n’izo Mpuguke muri ubwo buryo, ngo rubishingireho rufate icyemezo ku bushobozi bw’ubwonko bwa Kabuga[124].

33. Mu gusubiza, Ubwunganizi buvuga ko Porokireri atagaragaza ikosa Urugereko rwa Mbere rw’Iremezo rwaba rwarakoze mu isesengura ry’ubuhamya bw’Impuguke[125]. Buvuga ko Urugereko rwa Mbere rw’Iremezo rwasuzumye, mu buryo bweruye, ibintu byari gutuma isuzumabuzima ryakozwe n’izo Mpuguke ridakorwa uko bikwiye [126], kandi ko byaba atari ukuri kuvuga ko Raporo y’isuzumabuzima ihuriweho ya 2 igomba gufatwa ukwayo, kubera ko yakozwe isoza isuzumabuzima ryari rimaze igihe kirekire rikorwa, ryatangiye mu Ugushyingo 2020[127]. Ubwunganizi buvuga kandi ko imyanzuro y’Impuguke igaragaza ko gutakaza ubushobozi bwo ku mubiri n’ubwo mu mutwe kwa Kabuga bitatewe n’indwara ziyongereye ku zo yari asanzwe arwaye ahubwo ko byatewe no kwangirika k’ubwonko bwe[128]. Muri urwo

[119] Ubujurire bwa Porokireri, ibika 14-24.
[120] Ubujurire bwa Porokireri, ibika 16-20.
[121] Ubujurire bwa Porokireri, ibika 21-22. Urugereko rw’Ubujurire rurasuzuma ibyo Porokireri avuga ko nta bufatanye Kabuga yagaragaje (Reba Ubujurire bwa Porokireri, igika cya 23), hepfo mu Cyiciro cya II.B.3.(b).
[122] Ubujurire bwa Porokireri, ibika 17-19, 24.
[123] Ubujurire bwa Porokireri, ibika 14-24, 29.
[124] Ubujurire bwa Porokireri, igika cya 19.
[125] Igisubizo cy’Ubwunganizi, igika cya 32.
[126] Igisubizo cy’Ubwunganizi, ibika 30-33.
[127] Reba Igisubizo cy’Ubwunganizi, ibika 1-20.
[128] Igisubizo cy’Ubwunganizi, igika cya 20.

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rwego, Ubwunganizi buvuga ko ibisubizo by'isuzumabuzima Kabuga yakorewe hifashishijwe MRI, n'ibitekerezo by'izo Mpuguke bigaragaza ibintu binyuranye birimo kuba bimwe mu bice by'ubwonko bwe byaramaze kwangirika bikomeye, ibyo bikaba ari ikimenyetso cy'impinduka ubusanzwe zijyana n'uburwayi bwitiriwe Alzheimer, kandi ko hari aho ubwonko bwe bwangiritse nk'uko biba bimeze iyo umuntu afite uburwayi bwo mu mutwe[129].

34. Mu Myanzuro isubiza, Porokireri avuga ko inkomoko z'amakuru Ubwunganizi bwifashishije zerekeranye n'igihe byemejwe ko uko ubuzima bwa Kabuga bwari bwifashe byatumaga ashobora kuburanishwa kandi ko amaraporo ya muganga yatanzwe nyuma yaho, kugera igihe yarwaraga indwara ziyongereye ku zo yari asanzwe afite hagati y'Ukuboza na Werurwe 2022, bitagaragaza ishusho y'igabanuka ry'imikorere y'ubwonko rigenda rirushaho kwiyongera[130]. Porokireri yongeraho ko ibyo Kabuga avuga ku byerekeranye no kuba afite "ikibazo gikomeye cyo kudashobora gusobanukirwa ibintu" harimo gukabya, bidahura n'ibigaragazwa n'ibimenyetso biri muri dosiye, kandi ko kuba Ubwunganizi bushingira cyane ku byavuye mu isuzuma ryakoreshejwe MRI nta shingiro bifite kubera ko izo Mpuguke ubwazo zavuze ko gusuzuma ubwonko hifashishijwe ubwo buryo bitari kamara mu kwemeza niba uwo muntu afite cyangwa adafite ubushobozi bwo kugira icyo akora[131].

35. Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rufite ububasha busesuye mu gufata icyemezo ku byerekeranye n'isuzuma ry'ubuhamya bw'impuguke[132]. Kugira ngo umuburanyi asabe kandi yemererwe ko icyemezo urugereko rwa mbere rw'iremezo rwafashe rushingiye ku bubasha busesuye rufite, agomba kugaragaza ko rwakoze ikosa rigaragara ryamuteje akarengane[133]. Urugereko rw'Ubujurire ruvanaho icyemezo Urugereko rwa Mbere rw'Iremezo rwafashe rushingiye ku bubasha busesuye rufite ari uko gusa rusanze rwarakoze ikosa rigaragara, rukagifata bitewe no kumva nabi amategeko agenderwaho cyangwa rushingiye ku myanzuro ku byabaye bigaragara ko ikosamye, cyangwa kikaba cyaratumye Ujurira agira akarengane cyangwa gikabije kuba kidashyize mu gaciro ku buryo bigaragara ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha busesuye rufite[134].

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[129] Reba Igisubizo cy'Ubwunganizi, ibika 11-19. Reba n'Igisubizo cy'Ubwunganizi, ibika 35, 36.
[130] Imyanzuro isubiza, yanditse, ya Porokireri, igika cya 4.
[131] Imyanzuro isubiza, yanditse, ya Porokireri, ibika 5, 6, havugwa ku biri mu Gisubizo cy'Ubwunganizi, igika cya 6.
[132] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 11 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[133] *Urubanza Porokireri aburana na Jovica Stanišić na Franko Simatović*, N° 15-96-A, Inyandiko y'urubanza, 31 Gicurasi 2023 (Inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga) ("Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire"), ibika 288, 592; Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 11 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[134] Reba Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, igika cya 581; Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 11 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.

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36. Ku byerekeranye n'ibyo Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwashingiye ku masuzumabuzima Impuguke zakoreye Kabuga, Urugereko rw'Ubujurire rusanga Urugereko rwa Mbere rw'Iremezo rwarazirikanye mu buryo bweruye ko igihe Kabuga yakorerwaga isuzumabuzima n'izo Mpuguke yarimo koroherwa indwara ziyongereye mu burwayi yari asanzwe afite kandi ko ibyo bishobora kuba hari ingaruka zidakomeye byagize ku masuzumabuzima zakoze[135]. Cyakora, Urugereko rwa Mbere rw'Iremezo rwemeye igitekerezo izo mpuguke zahuriyeho, zavuze mu buhamya zatanze mu Rukiko nyuma ya Raporo y'isuzumabuzima ihuriweho ya 2, ko nta ngaruka zikomeye indwara ziyongereye ku burwayi Kabuga yari asanzwe afite zagize ku myanzuro yazo ku byerekeranye no kuba Kabuga adafite ubushobozi bwo kugira uruhare rufatika mu rubanza[136]. Mu kwemera igitekerezo cy'Impuguke kuri icyo kibazo, Urugereko rwa Mbere rw'Iremezo rwavuze ku biri mu bice by'ubuhamya Dogiteri Kennedy yatanze mu Rukiko avuga ko "ubushobozi bwa Kabuga bwo kwiyitaho mu buzima bwa buri munsi no kwikorera ibintu bimwe na bimwe bimwerekeye bwarushijeho kugenda bugabanuka mu buryo bugaragara uko iminsi ihita kandi [...] bukomeza kugabanuka ku buryo umuntu atavuga ko byatewe n'indwara aherutse kurwara ziyongereye ku zo asanganywe"[137], kandi ko byari "nk'ibintu bidashoboka rwose" ko ingaruka z'indwara aheruka kurwara zaba zaragize ingaruka ku isesengura yakoze ry'uko kuntu ubuzima bwa Kabuga bwari bwifashe[138]. Rwazirikanye kandi ko Dogiteri Mezey yumvaga ubushobozi bwa Kabuga bwo kugira icyo akora butaragizweho ingaruka cyangwa butarazambijwe n'uburwayi bw'umubiri asanganywe[139].

37. N'ubwo Porokireri ashimangira ko Dogiteri Kennedy na Dogiteri Cras basangaga kuba Kabuga yakorerwa irindi suzumabuzima mu gihe atarwaye cyangwa atarimo koroherwa indwara ziyongereye ku zo asanganywe bishobora gufasha izo mpuguke gusobanukirwa ibyerekeranye n'ubushobozi bw'ubwonko bwe no kwemeza ikigero ubwo bushobozi bwaba buriho igihe yaba atarwaye izo ndwara[140], izo Mpuguke zose uko ari eshatu zemeje ko bisa n'ibidashoboka ko

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[135] Icyemezo kijuririrwa, igika cya 37.
[136] Icyemezo kijuririrwa, igika 37, igisobanuro N° 146 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 12, 16, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 14, 15, 35, 36, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje 23, 28, 32, 33; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 27-29, 31, 32; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 39, 48.
[137] Icyemezo kijuririrwa, igisobanuro N° 146 cyo hasi kuri paje, mu bihavugwa harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 12.
[138] Icyemezo kijuririrwa, igisobanuro N° 146, mu bihavugwa harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje ya 23.
[139] Icyemezo kijuririrwa, igisobanuro N° 146 cyo hasi kuri paje, mu bihavugwa harimo ibiri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje ya 32.
[140] Ubujurire bwa Porokireri, igika cya 19, igisobanuro N° 75 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 38, 39; Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 25, 26.

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iryo suzumabuzima ryazatuma zihindura umwanzuro zatanze[141]. Byongeye kandi, Dogiteri Mezey yavuze ko, kubera ko Kabuga agira ibibazo by'uburwayi bw'umubiri bigenda bigaruka kandi ko "ahora afite amagara make", bigoye cyane ko habaho igihe "yazaba atari bwo akimara koroherwa uburwayi bw'umubiri cyangwa atari hafi yo gufatwa n'ubundi"[142]. Urugereko rwa Mbere rw'Iremezo rwemeye ubuhamya simusiga bw'uko imikorere y'ubwonko n'umubiri bya Kabuga yagiye irushaho kuba nabi mu buryo bukomeye kandi ko afite uburwayi bwo mu mutwe bukomeye burushaho gukomera uko igihe gihita kandi butazakira[143]. Ruzirikana ko mu gusuzuma ibimenyetso bitanzwe n'impuguke Urugereko rwa Mbere rw'Iremezo ruba rufite ububasha busesuye, harimo ubwo kwemera cyangwa kwanga ibyo bimenyetso, byose uko bwakabaye cyangwa igice cyabyo, n'ubwo gusuzuma ukwizerwa n'agaciro kabyo[144], Urugereko rw'Ubujurire rusanga Porokireri atagaragaza ko, mu gusuzuma ibimenyetso rwashyirikijwe, Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rigaragara.

38. N'ubwo Porokireri avuga ko igihe ayo masuzumabuzima yamaraga kirushaho gutuma imyanzuro y'izo Mpuguke idakwiye kwizerwa[145], Urugereko rw'Ubujurire rusanga ibyo avuga ari ugushakisha. Icy'ingenzi ni uko Urugereko rwa Mbere rw'Iremezo rwagejejweho ibyo Kennedy yavuze amaze kuvugana na Kabuga bwa mbere, ko Kabuga "yashoboye kuvugana na we mu gihe cyagiye kirushaho kuba gito" kubera ko yabaga "ataka umunaniro", "ibyo bikaba bijyanye no kuba byaramugaragaragaho ko ubwonko bwe bunanirwa vuba cyane iyo agerageje gutekereza, gukoresha ubwonko"[146]. Porokireri ntatanga ibimenyetso bishyigikira ibyo avuga ko igihe amasuzumabuzima yamaraga cyagize ingaruka ku miterere yayo cyangwa ko gituma imyanzuro y'Impuguke idakwiye kwizerwa.

39. Urugereko rw'Ubujurire kandi ntirunyuzwe n'ibyo Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwashingiye ku mwanzuro wa Mezey kandi, mu Ugushyingo 2022 no muri Gashyantare 2023, yarabajije Kabuga ibibazo, batari kumwe, hifashishijwe ikoranabuhanga ry'amajwi n'amashusho. Urugereko rw'Ubujurire rusanga

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[141] Icyemezo kijuririrwa, igisobanuro Nº 146 cyo hasi kuri paje, mu bihavugwa, harimo ibiri mu buhamya bwa Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje ya 48; Kennedy, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje ya 22; Mezey, inyandikomvugo y'iburanisha 23 Werurwe 2023 paje ya 32.
[142] Icyemezo kijuririrwa, igisobanuro Nº 146 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje ya 32.
[143] Icyemezo kijuririrwa, ibika 30, 31, 33, mu bihavugwa harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje ya 34; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 11, 12; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje ya 13.
[144] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 15 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[145] Ubujurire bwa Porokireri, igika cya 17.
[146] Reba Icyemezo kijuririrwa, igisobanuro Nº 147 cyo hasi kuri paje, mu bihavugwa harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 14, 15.

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Urugereko rwa Mbere rw'Iremezo rwaravuze, mu buryo bweruye, ubumenyi bugaragara n'ubunararibonye buhagije bya Mezey nk'impuguke mu by'ubuzima bwo mu mutwe, by'umwihariko kuba ari impuguke mu gusuzuma abantu bakoze ibyaha bafite uburwayi bwo mu mutwe, kubavura no kubafasha koroherwa[147]. Ruzirikana ubumenyi Mezey afite kandi ko mbere yari yarasuzumye Kabuga birambuye bari kumwe kandi akaba yari azi ko izindi Mpuguke zimusuzuma ziri kumwe na we, Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uvuga ko kuba Dogiteri Mezey yarabajije Kabuga batari kumwe bidatesha agaciro igitekerezo cye nk'impuguke[148]. Mu gufata uyu mwanzuro, Urugereko rwa Mbere rw'Iremezo na bwo rwavuze mu buryo bweruye ko Raporo y'isuzumabuzima ihuriweho ya 2 yuzuza kandi igashimangira amasuzumabuzima yari amaze amezi atatu akozwe, maze rusanga igomba gusomerwa hamwe na Raporo y'isuzumabuzima ihuriweho ya 1 n'amaraporo yayibanjirije yatanzwe na Dogiteri Kennedy na Dogiteri Mezey[149].

40. Byongeye kandi, Urugereko rw'Ubujurire rusanga bidahagije kuba Porokireri ashingira ku duce tunyuranye tw'ubuhamya Dogiteri Kennedy na Dogiteri Cras batanze mu Rukiko, avuga inyungu isuzumabuzima rikozwe "urikora ari kumwe n'urikorerwa" rirusha irikozwe n'uri kure y'uwo asuzuma[150], agamije kwerekana ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa mu isuzuma ry'ibimenyetso rwashyikirijwe. N'ubwo Dogiteri Mezey atakoresheje uburyo bwo gusuzuma bwitwa "Mini Mental State Assessment" mu masuzuma yakoreye Kabuga batari kumwe nk'uko Porokireri abivuga[151], ibimenyetso Urugereko rwa Mbere rw'Iremezo rwashyikirijwe bigaragaza ko, mu isuzuma rya mbere yakoreye Kabuga, Dogiteri Mezey yakoze iryo suzuma kugira ngo apime igabanuka ry'imikorere y'ubwonko bwe maze asanga iryo suzuma "ridafasha cyane […] gupima uko uburwayi bugenda bwiyongera cyangwa bugabanuka" cyangwa bitari ngombwa ko bwongera gukoreshwa "keretse usuzumwa aramutse agaragayeho ibimeyetso bitandukanye cyane n'uko byari byifashe ubwo yasuzumwaga bwa

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[147] Reba Icyemezo kijuririrwa, igika cya 30, igisobanuro Nº 71 cyo hasi kuri paje.
[148] Icyemezo kijuririrwa, igika cya 38.
[149] Icyemezo kijuririrwa, igika cya 38. Reba n'Icyemezo kijuririrwa, igika cya 30; Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5030: nomero yashyizweho n'Ibiro bya Gerefiye; Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje ya 31 (Hemezwa ko izo Mpuguke zavuze ko Kabuga afite uburwayi bwo mu mutwe zishingiye ku isuzuma Dogiteri Kennedy na Dogiteri Cras bamukoreye, amaraporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU, ibiganiro bagiranye n'abantu bitaga kuri Kabuga buri umunsi hamwe n'"ibyo bari basanzwe bazi hamwe n'isuzuma bakoze bagamije kureba ishusho y'uburwayi bwe mu gihe runaka"); Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje ya 6 (Avuga ko ubuzima bwa Kabuga burushaho kugenda bumera nabi).
[150] Ubujurire bwa Porokireri, igika cya 21, igisobanuro Nº 79 cyo hasi kuri paje, mu bihavugwa harimo ibiri mu buhamya bwa Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 44, 45, Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 8, 9.
[151] Ubujurire bwa Porokireri, igika cya 21, igisobanuro Nº 81 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 12, 19, 20.

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mbere"[152]. Uko biri kose, n'ubwo izo Mpuguke zakoresheje uburyo bunyuranye mu masuzumabuzima zakoreye Kabuga, imyanzuro yazo ku byerekeranye n'ubushobozi bwa Kabuga irahuye[153]. Rushingiye ku isesengura ry'ibimenyetso Urugereko rwa Mbere rw'Iremezo rwakoze mu buryo burambuye, Urugereko rw'Ubujurire ntirwemeye ibyo Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rutemeje ko imyanzuro ya Dogiteri Mezey yateshejwe agaciro no kuba yarasuzumye Kabuga amubaza ibibazo batari kumwe.

41. Byongeye kandi, Urugereko rw'Ubujurire rusanga ibyo Porokireri avuga ko Raporo y'isuzumabuzima ihuriweho ya 2 igaragaza ko izo Mpuguke zititaye ku maraporo menshi y'ingenzi yakozwe na muganga kandi ko zitari zizi ubukana bw'uburwayi bw'umubiri Kabuga yari afite, nta shingiro bifite[154]. N'ubwo Raporo y'isuzumabuzima ihuriweho ya 2 itavugwamo iby'indwara ziyongereye ku zo Kabuga yari asanzwe arwaye, igaragaza ko izo Mpuguke zasomye kandi zikazirikana amaraporo menshi yakozwe na Muganga ukuriye serivise y'ubuvuzi ya UNDU, yavuzwemo iby'uburwayi Kabuga yari afite icyo gihe[155]. Raporo y'isuzumabuzima ihuriweho ya 2 igaragaza kandi ko, ubwo bakoraga isuzuma, Dogiteri Kennedy na Dogiteri Cras babajije abakozi ba gereza bashinzwe kwita kuri Kabuga, bareba ibiri mu nyandiko zerekeranye n'uburwayi bwe ziri mu buryo bwa eregitoronike, banavugana na Muganga ukuriye serivise y'ubuvuzi ya UNDU[156]. Icy'ingenzi ni uko, mu buhamya zatanze mu Rugereko rwa Mbere rw'Iremezo nyuma yo gutanga Raporo y'isuzumabuzima ihuriweho ya 2, izo Mpuguke zagize icyo zivuga mu buryo bweruye ku burwayi bwa Kabuga bwiyongereye ku ndwara yari asanganywe, zivuga ko izo ndwara zitagize ingaruka ku myanzuro yazo ku byerekeranye no kuba Kabuga adafite ubushobozi bwo kugira uruhare rufatika mu rubanza rwe[157].

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[152] Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje ya 21; *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-PT; Imyanzuro ya Gerefiye yerekeranye n'"Itegeko ry'inyongera ku Itegeko ritegeka ko impuguke mu buvuzi yigenga ikora irindi suzumabuzima" ryo ku itariki ya 14 Mutarama 2022, 31 Mutarama 2022 (Inyandiko y'ibanga ifite Umugereka na wo w'ibanga) ("Raporo ya Dogiteri Mezey yo ku itariki ya 28 Mutarama 2022"), Umugereka, paje 3, 9.
[153] Reba Icyemezo kijuririrwa, ibika 30-35.
[154] Reba Ubujurire bwa Porokireri, ibika 16, 17, 24.
[155] Raporo y'isuzumabuzima ihuriweho ya 2, paje 5030, 5029: amanomero yashyizweho n'Ibiro bya Gerefiye. Reba Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 25 Mutarama 2023, ibika 2, 3; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 8 Gashyantare 2023, ibika 2, 5; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 21 Gashyantare 2023, ibika 2, 3, 6.
[156] Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye. Reba n'ubuhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 14, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 11-15, 31.
[157] Reba haruguru, igika cya 36.

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42. Mu gusoza, ku byerekeranye n'ibyo Porokireri avuga muri rusange ko Urugereko rwa Mbere rw'Iremezo rutasuzumye mu buryo bwimbitse Raporo y'isuzumabuzima ihuriweho ya 2, Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo ari rwo rufite ububasha bwo gusuzuma ukwizerwa n'agaciro by'ubuhamya bw'impuguke[158]. Mu gufata umwanzuro ku byerekeranye no kumenya niba uko ubuzima bwa Kabuga bwifashe byatuma ashobora gukomeza kuburanishwa, abenshi mu Bacamanza bagize Urugereko rwa Mbere rw'Iremezo bavuze, mu buryo burambuye, ku bintu binyuranye bigize isuzuma izo Mpuguke zakoze ry'ubushobozi bw'ubwonko bwa Kabuga[159]. Urugereko rwa Mbere rw'Iremezo, ku bwiganze bw'amajwi y'Abacamanza barugize, rwazirikanye ko ibimenyetso by'ingenzi rwashyikirijwe ari ibyatanzwe n'izo Mpuguke uko ari eshatu, "buri yose muri zo ikaba ifite ubumenyi bugaragara n'ubunararibonye bwa ngombwa buhagije"[160]. Nyuma yo kugaragaza ibyo bimenyetso no kuvuga ingingo izo Mpuguke zemeranyijeho harimo n'ibiri muri Raporo y'isuzumabuzima ihuriweho ya 2, kandi rumaze kuvuga mu buryo burambuye ku myanzuro y'izo Mpuguke[161], Urugereko rwa Mbere rw'Iremezo rwasanze ibyinshi mu bimenyetso rwashyikirijwe bishyigikira umwanzuro uvuga ko uko ubuzima bwa Kabuga bwifashe bitatuma ashobora kuburanishwa[162]. Rwazirikanye kandi ko rukurikije uko rwiboneye Kabuga mu gihe cy'iburanisha, nta kintu rwabonye kinyuranye n'imyanzuro izo Mpuguke zahurijeho[163]. By'umwihariko, mu gufata uwo mwanzuro, Urugereko rwa Mbere rw'Iremezo rwazirikanye ibibazo Porokireri yavuze mu bujurire, nk'ibyerekeranye n'indwara za Kabuga ziyongereye ku zo yari asanganywe n'amasuzumabuzima Dogiteri Mezey yamukoreye batari kumwe[164]. Kubera izo mpamvu, Urugereko rw'Ubujurire rusanze Porokireri atagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rigaragara mu isuzuma ry'ibimenyetso rwashyikirijwe.

(b) <u>Ibivugwa ko Urugereko rwa Mbere rw'Iremezo rutazirikanye ko Kabuga atagaragaje ubufatanye mu isuzumabuzima</u>

43. Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rutahaye agaciro, cyangwa ko rwahaye agaciro gake, ibyo kuba Kabuga yaramaze igihe kirekire yaranze kugira ubufatanye muri ayo masuzumabuzima[165]. By'umwihariko, avuga ko Urugereko rwa

[158] Reba haruguru, ibika 30, 37.
[159] Reba Icyemezo kijuririrwa, ibika 30-38 n'ibisobanuro byo hasi kuri paje byerekeranye na byo. Reba n'Icyemezo kijuririrwa, ibika 9, 16, 18-23.
[160] Icyemezo kijuririrwa, igika cya 30.
[161] Reba Icyemezo kijuririrwa, ibika 18-23, 30-35, 38.
[162] Icyemezo kijuririrwa, igika cya 30.
[163] Icyemezo kijuririrwa, igika cya 38.
[164] Icyemezo kijuririrwa, ibika 37, 38.
[165] Ubujurire bwa Porokireri, igika cya 25.

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Mbere rw'Iremezo nta kintu rwavuze ku byo kuba Kabuga ataragaragaje ubufatanye mu gihe cy'amasuzumabuzima, rukavuga ko rusanga kwirwaza bisa n'ibidashoboka kandi rugafata umwanzuro uvuga ko Kabuga yujuje inshingano ze zo gutanga ibimenyetso bigaragaza ko ubuzima butatuma akomeza kuburanishwa[166]. Muri urwo rwego, Porokireri avuga ko amasuzumabuzima Kabuga yakorewe atakozwe neza bitewe no kuba yarakomeje kwanga kwambara ibikoresho byifashishwa mu kumva yasabwaga kwambara mu gihe yabaga arimo gusuzumwa, kuba akenshi yaranze kwitabira cyangwa kurangiza amasuzuma yo kureba niba afite uburwayi bwo mu mutwe, no kuba ataratanze amakuru yose ajyanye n'uburwayi bwe yari akenewe mu masuzuma yo kureba niba ashobora kuburanishwa[167]. Porokireri avuga ko amasuzumabuzima Kabuga yakorewe mbere agaragaza ko bimwe mu bisubizo yatanze bitagaragaza ko afite uburwayi bwo mu mutwe, akemeza ko atashakaga kurasa ku ngingo, ko ibintu atibukaga byaba byaraterwaga no gushaka kurinda umutekano w'abantu bo mu muryango we[168], kandi ko kuba ataragaragaje ubufatanye bishobora kwerekana ko yagira ngo adasuzumwa uko bikwiye[169]. Porokireri avuga ko bitewe no kuba isuzumabuzima rigamije kumenya niba umuntu afite uburwayi bwo mu mutwe rishingira ku bimenyetso byose muganga yitegereza ku wo asuzuma, kutagaragaza ubufatanye kwa Kabuga kwatumye isuzuma yakorewe, muri rusange, ritakwizerwa bihagije[170].

44. Mu gusubiza, Ubwunganizi burwanya ibyo Porokireri avuga ko kuba Kabuga atarafatanyije n'abamukoreraga amasuzumabuzima byagize ingaruka ku isesengura ry'Urugereko rwa Mbere rw'Iremezo[171]. Buvuga ko, mu gihe cy'imyaka itatu, Kabuga yabonanye n'Impuguke zirindwi kandi yasubizaga ibibazo zagendaga zimubaza, ndetse ko ibiganiro yagiranye n'Abaganga bakuriye Serivise y'ubuvuzi ya UNDU ari byo byashingiweho mu ikorwa ry'amaraporo menshi ya muganga yatanzwe[172]. Buvuga ko kuba Kabuga atarabashije gusubiza ibibazo cyangwa gukora ibyo yasabwaga mu gihe cy'isuzumabuzima kugera rirangiye byatewe n'uburwayi bwo mu mutwe yatewe no kwangirika k'ubwonko bwe[173].

45. Mbere na mbere, Urugereko rw'Ubujurire rusanga kuba Porokireri ashingira ku bukemuramanza bwo mu rundi rubanza, kugira ngo abashe kwerekana ko igihe umuntu uregwa atagaragaza ubufatanye bituma isuzumabuzima rigamije kugaragaza niba afite ubushobozi bwo

[166] Ubujurire bwa Porokireri, ibika 2, 3, 25, 28, 29.
[167] Ubujurire bwa Porokireri, igika cya 26. Reba n'Imyanzuro isubiza ya Porokireri, igisobanuro Nº 11 cyo hasi kuri paje.
[168] Ubujurire bwa Porokireri, ibika 27, 29.
[169] Ubujurire bwa Porokireri, igika cya 28.
[170] Ubujurire bwa Porokireri, igika cya 29.
[171] Igisubizo cy'Ubwunganizi, igika cya 34.
[172] Igisubizo cy'Ubwunganizi, igika cya 34.
[173] Igisubizo cy'Ubwunganizi, igika cya 34.

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kuburanishwa ridashoboka, nta shingiro bifite kubera ko ubwo bukemuramanza bwerekeranye n'ibintu byabaye bitandukanye n'ibyo muri uru rubanza[174]. Urugereko rw'Ubujurire rusanga, mu gufata icyemezo kivuga ko Kabuga adafite ubushobozi bwo gukomeza kuburanishwa, Urugereko rwa Mbere rw'Iremezo rwari rwasuzumye mu buryo bwimbitse ibimenyetso rwashyikirijwe kandi rwemera igitekerezo cy'Impuguke kivuga ko kuba Kabuga yari afite intege nke no kuba yaranze gusubiza bimwe mu babazo zamubajije mu gihe cy'isuzuma bitabangamiye imyanzuro yazo[175]. Urugereko rwa Mbere rw'Iremezo rwazirikanye kandi by'umwihariko igitekerezo cy'izo Mpuguke kivuga ko " kutagaragaza ubufatanye " kuvugwa, uko ari ko kose, kwaterwaga n'igabanuka ry'imikorere y'ubwonko bwa Kabuga[176], kandi ko imyanzuro yazo yerekeranye n'ubushobozi bwa Kabuga bwo kuburanishwa "idashingiye gusa kuri ayo masuzumabuzima zakoze, ahubwo […] ishingiye no ku makuru akubiye mu nyandiko ziri muri dosiye yo kwa muganga ye hamwe n'ayo zahawe n'abakozi bamwitaho"[177]. Urugereko rwa Mbere rw'Iremezo rwasanze izo nyandiko ziri muri dosiye ye n'ayo makuru ashingiye ku bimugaragaraho bigaragaza ko ubushobozi bwe bwo kwiyitaho bwagabanutse mu buryo bugaragara, icyo kikaba cyari ikindi kimenyetso cyerekerana ko imikorere y'ubwonko bwe yagabanutse[178]. Rwasuzumye kandi ibimenyetso bigaragaza ko hari ubwo ibitekerezo bya Kabuga byivanga, ubushobozi bwe bwo gusobanukirwa ibyo abwiwe no gusubiza ibihuye na byo ari buke[179], kandi rusanga Impuguke zarananiwe no gusobanukirwa akantu na gato mu byo Kabuga avuga[180]. Kubera ko Urugereko rwa Mbere rw'Iremezo rwavuze birambuye ku bimenyetso rwashyikirijwe, Urugereko rw'Ubujurire rusanga Porokireri atagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rigaragara ryo kudaha uburemere buhagije ibyerekeranye no kuba hari ubwo Kabuga yangaga gufatanya n'abamukoreraga amasuzumabuzima.

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174 Ubujurire bwa Porokireri, igisobanuro Nº 91 cyo hasi kuri paje, mu bivugwaho harimo ibiri mu *Rubanza Porokireri aburana na Milorad Trbić*, Nº IT-05-88/1-PT, Itegeko ryerekeranye no kwitegura iburanisha ry'urubanza, 21 Werurwe 2007 (Inyandiko y'ibanga), paje 2, 4.

175 Icyemezo kijuririrwa, igika cya 37, igisobanuro Nº 147 cyo hasi kuri paje.

176 Icyemezo kijuririrwa, igika cya 37, igisobanuro Nº 147 cyo hasi kuri paje, mu bivugwaho harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje ya 14, Kennedy, inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje ya 14 (Mu muhezo); Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 5-7 (Mu muhezo), Cras, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 7, 8 (Mu muhezo), 27, 28, 33.

177 Icyemezo kijuririrwa, igika cya 37, igisobanuro Nº 147 cyo hasi kuri paje, mu bivugwaho harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 13-16.

178 Icyemezo kijuririrwa, igika cya 37, igisobanuro Nº 148 cyo hasi kuri paje, mu bivugwaho harimo ibiri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje ya 17.

179 Icyemezo kijuririrwa, igika cya 31, igisobanuro Nº 127 cyo hasi kuri paje, mu bivugwaho harimo ibiri muri Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 4; Raporo y'isuzumabuzima ihuriweho ya 2, paje ya 5029: nomero yashyizweho n'Ibiro bya Gerefiye.

180 Icyemezo kijuririrwa, igika cya 32, igisobanuro Nº 133 cyo hasi kuri paje, mu bivugwaho harimo ibiri mu buhamya bwa Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 43, 44.

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46. Urugereko rw'Ubujurire rusanga kandi ibyo Porokireri avuga ko, ubwo rwemeraga imyanzuro y'Impuguke ivuga ko kwirwaza bisa n'ibidashoboka, Urugereko rwa Mbere rw'Iremezo rutazirikanye imyitwarire ya Kabuga yo kwanga gufatanya n'abamukoreraga isuzumabuzima bidafite ishingiro. Urugereko rwa Mbere rw'Iremezo rwasanze Impuguke zemeranywa ko Kabuga afite "uburwayi bwo mu mutwe buri ku rugero rukomeye"[181]. N'ubwo amasuzumabuzima ubwayo yonyine adahagije mu gusuzuma ubushobozi bw'uregwa bwo kuburanishwa[182], Urugereko rw'Ubujurire rusanga nta kosa Urugereko rwa Mbere rw'Iremezo rwakoze kuba rwarashingiye ku byavuye mu masuzumabuzima Kabuga yakorewe maze rukemera ubuhamya Dogiteri Kennedy na Dogiteri Cras batanze mu Rukiko bavuga ko kwirwaza ari "ikintu kidakunze kubaho, ndetse kitanashobora kubaho" ku muntu ufite uburwayi bwo mu mutwe bukomeye[183].

47. Mu gusoza kuri iyi ngingo, n'ubwo mu Cyemezo kijuririrwa Urugereko rwa Mbere rw'Iremezo rutavuze, mu buryo bweruye, kuri bimwe mu bintu Porokireri yerekana muri make mu bujurire bwe, nko kuba Kabuga yaranze kwambara ibikoresho bimufasha kumva neza, gukora ibyo yasabwaga gukora mu gihe cy'amasuzumabuzima, no gutanga amakuru ku buzima bwe, Urugereko rw'Ubujurire ruributsa ko Urugereko rwa Mbere rw'Iremezo rudasabwa gushingira kuri buri kimenyetso kiri muri dosiye y'urubanza cyangwa ngo rusobanure uko rwagiye rugera kuri buri mwanzuro[184]. Urugereko rw'Ubujurire rusanga Porokireri avuga ku bimenyetso byerekana, mu by'ukuri, ko gusuzuma Kabuga akenshi byagiye "bigorana" kubera ikibazo gikomeye afite cyo kutumva neza[185], ko, mu ntangiriro z'umwaka wa 2022, hari igihe kimwe Kabuga atifuzaga ko bamukorera isuzuma rigamije kugaragaza ubushobozi bwe bwo kwibuka ibintu[186], kandi ko ibyo Kabuga yavuze ko yari afite intege nke mu gihe cy'amasuzumabuzima yakorewe mu mwaka wa 2021 bidafite ibimenyetso byo mu rwego rw'ubuvuzi bibishyigikira [187]. Porokireri avuga kandi ko, muri Gashyantare 2022, hari igihe kimwe Kabuga yagaragaje kuba atashakaga ko raporo yo kwa muganga ku buzima bwe imenyekanishwa, akavuga ko Impuguke zitigeze zihabwa amadosiye ya Kabuga yo kwa muganga, ariho amatariki agaraza ko

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[181] Icyemezo kijuririrwa, igika cya 30.
[182] Icyemezo cyo ku itariki ya 12 Kanama 2022, igika cya 20 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[183] Icyemezo kijuririrwa, igika cya 37, igisobanuro Nº 149 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 15, 16; inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje 31, 32; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 28, 45, 46.
[184] Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, ibika 246, 312 n'ibisobanuro byo hasi kuri paje byerekeranye na byo.
[185] Nk'urugero, reba ubujurire bwa Porokireri, igika cya 26, igisobanuro Nº 95 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 17, 18.
[186] Ubujurire bwa Porokireri, igika cya 26, igisobanuro Nº 96 cyo hasi kuri paje, havugwa ku biri mu buhamya bwa Kennedy, inyandikomvugo y'iburanisha, 31 Gicurasi 2022, paje ya 11.
[187] Ubujurire bwa Porokireri, igika cya 26, igisobanuro Nº 97 cyo hasi kuri paje.

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yakozwe mbere y'uko afatwa agashyikirizwa IRMCT mu Ukwakira 2020[188]. Urugereko rw'Ubujurire rusanga kuba Porokireri yarahisemo gushingira gusa ku madosiye yo kwa muganga amwe n'amwe bigaragaza gusa ko atemeranya n'isesengura ry'Urugereko rwa Mbere rw'Iremezo[189], kandi bikaba bidahagije ngo bibe byagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa rigaragara, by'umwihariko kubera ko Impuguke zasuzumye ibimenyetso byinshi byo mu rwego rw'ubuvuzi mbere y'uko zitanga ibitekerezo byazo kandi Urugereko rwa Mbere rw'Iremezo ruba rufite ububasha busesuye mu kwemeza uburemere bw'ibimenyetso no kubisuzuma[190].

4. Umwanzuro

48. Nk'uko byavuzwe mu myanzuro yafashwe haruguru, Porokireri ntagaragaza ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera gushingira ku bigenderwaho mu rwego rw'amategeko bitari byo ubwo rwafataga umwanzuro uvuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa. Porokireri ntagaragaza kandi ko Urugereko rwa Mbere rw'Iremezo rwakoresheje nabi ububasha busesuye rufite mu gihe cyo gusuzuma ibimenyetso byerekeranye no kumenya niba ubuzima bwa Kabuga bwatuma akomeza kuburanishwa. Bityo rero, Urugereko rw'Ubujurire ntirwemeye ubujurire bwa Porokireri.

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[188] Ubujurire bwa Porokireri, igika cya 26, igisobanuro Nº 99 cyo hasi kuri paje.

[189] Nk'urugero, gereranya ubujurire bwa Porokireri, igika cya 26, igisobanuro Nº 99 cyo hasi kuri paje (Havugwa ku biri muri Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 16 Gashyantare 2022 (Inyandiko y'ibanga), paje ya 1) na Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 4 Mutarama 2023 (Inyandiko y'ibanga), paje ya 4711: nomero yashyizweho n'Ibiro bya Gerefiye, igika cya 2. Reba na Raporo ya Dogiteri Mezey yo ku itariki ya 28 Mutarama 2022, paje 6, 14, 16, ibika 16, 17; Raporo y'isuzumabuzima ihuriweho ya 1, paje ya 4; Kennedy, inyandikomvugo y'iburanisha, 15 Werurwe 2023, paje 5 (Aho bavuga bati "[Kabuga] ntiyarangizaga gukora ibyinshi mu byo twabaga twamusabye gukora ariko n'ibyo yarangizaga, byabaga bidakoze neza mu buryo bwinshi, ibyo bikaba bigaragaza ko atari abishoboye"), 16, 17; inyandikomvugo y'iburanisha, 16 Werurwe 2023, paje ya 29; inyandikomvugo y'iburanisha, 17 Werurwe 2023, paje ya 16; Mezey, inyandikomvugo y'iburanisha, 23 Werurwe 2023, paje 12, 19, 21; Cras, inyandikomvugo y'iburanisha, 29 Werurwe 2023, paje 4, 12, 29, 30, 46 (Aho avuga ati: "Amwe mu masuzuma twifashishije n'ayo Impuguke mu mikorere y'ubwonko n'imyakura n'imitekerereze yifashishije, ntashingira ku biganiro. Bivuze rero ko n'ubwo bigoranye, turacyemeza byimazeyo ko igice kinini cy'isuzumabuzima cyakozwe mu buryo bwimbitse [...]".); Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 16 Ugushyingo 2022; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 30 Ugushyingo 2022; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 14 Ukuboza 2022; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 11 Mutarama 2023; Raporo ya Muganga ukuriye Serivise y'ubuvuzi ya UNDU yo ku itariki ya 8 Gashyantare 2023.

[190] Reba Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, ibika 121, 122, 142, 173, 387 n'ibisobanuro byo hasi kuri paje byerekeranye na byo.

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C. Ubujurire bw'Ubwunganizi

1. Uko ibintu byakurikiranye

49. Mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo rwasanze yaba Sitati n'Amategeko bya IRMCT cyangwa iby'Inkiko zayibanjirije, nta na kimwe giteganya uko bigenda iyo hamaze gufatwa umwanzuro uvuga ko ubuzima bw'uregwa budatuma yashobora kuburanishwa, kandi rwasanze nta n'ubukemuramanza bw'Urugereko rw'Ubujurire buhari butegeka uburyo bugomba gukoreshwa igihe ibintu bimeze bityo[191]. Rushingiye ku bubasha busesuye rufite bwo kuyobora iburanisha ry'imanza, Urugereko rwa Mbere rw'Iremezo rwasanze rufite inshingano yo "kwemeza uburyo bujyanye n'inshingano yarwo yo kubahiriza amahame y'uburenganzira bwa muntu yose no gukora ku buryo ayo mahame yubahirizwa, by'umwihariko uburenganzira bw'uregwa nk'uko buvugwa mu Itangazo mpuzamahanga ryerekeranye n'uburenganzira bwa muntu, Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike, n' [Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga]", kandi rukanazirikana "impamvu zatumye IRMCT n'Inkiko zayibanjirije bishyirwaho, zirimo kugira uruhare mu kugarura no kubungabunga amahoro"[192]. Kubera izo mpamvu, nyuma yo gufata umwanzuro uvuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa, Urugereko rwasanze hari uburyo butatu bushoboka: (i) guhagarika burundu urubanza; (ii) gusubika urubanza; cyangwa (iii) kuburanisha urubanza hakoreshwa "ubundi buryo buzatuma hafatwa umwanzuro"[193].

50. Ku byerekeranye n'uburyo bwa mbere, Urugereko rwa Mbere rw'Iremezo rwasanze guhagarika burundu urubanza bitaba bikwiye kubera akamaro "kuburanisha ibyaha bya jenoside n'ibyibasiye inyokomuntu Kabuga aregwa bifitiye abantu bakorewe ibyaha, abarokotse jenoside ndetse n'abatuye isi muri rusange"[194]. Ku byerekeranye no kuba urubanza rwasubikwa by'agateganyo, Urugereko rwa Mbere rw'Iremezo rwasanze, mu manza zaburanishijwe n'inkiko mpuzamahanga zemejwemo ko uko ubuzima bw'uregwa bumeze bitatuma ashobora kuburanishwa, muri rusange izo nkiko zaragiye zisubika urubanza by'agateganyo maze zigakomeza kugira ububasha bwo kuba zazongera kumuburanisha igihe uko ubuzima bwe bwifashe byaba bituma yakongera kuba umuntu washobora kuburanishwa[195]. Cyakora, mu gihe cyo gufata umwanzuro uvuga ko gusubika uru rubanza bitaba bikwiye, Urugereko rwa Mbere

[191] Icyemezo kijuririrwa, ibika 40, 45.
[192] Icyemezo kijuririrwa, igika cya 45 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.
[193] Icyemezo kijuririrwa, igika cya 46.
[194] Icyemezo kijuririrwa, igika cya 47.
[195] Icyemezo kijuririrwa, igika cya 48, igisobanuro N° 187 cyo hasi kuri paje.

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rw'Iremezo rwasanze, uretse urubanza rumwe rwaburanishijwe na rumwe mu Ngereko Zihariye z'Inkiko za Kamboje, imanza zose inkiko mpuzamahanga zagiye zisubika by'agateganyo "zarabaga ziregwamo abantu umuntu ashyize mu gaciro yabonaga ko ubuzima bwabo bwashoboraga kuzongera gutuma bashobora kuburanishwa"[196]. Urugereko rwa Mbere rw'Iremezo rwasanze kandi gusubika urubanza by'agateganyo mu gihe kitazwi, kandi bigaragara ko bishoboka cyane ko uko ubuzima bw'uregwa bwifashe bitazatuma yongera kugira ubushobozi bwo kuburanishwa, ari "ukumuvutsa uburyo bwo kugaragaza ko ari umwere ku byaha aregwa" no gufungurwa adasabwe kugira ibyo azajya yubahiriza[197]. Urugereko rwa Mbere rw'Iremezo rwazirikanye kandi inshingano za IRMCT, zirimo kurwanya umuco wo kudahana, kugarura amahoro mu Rwanda no kuyabumbatira, inyungu rusange zikomeye, zirimo inyungu z'abakorewe ibyaha n'iz'abarokotse, no kuba ubwo Kabuga yafatwaga, yari amaze igihe kirenga ibinyacumi bibiri yihisha ubutabera[198].

51. Nyuma yo gufata umwanzuro uvuga ko guhagarika burundu urubanza cyangwa kurusubika by'agateganyo atari bwo buryo bukwiye hakurikijwe uko ibintu biteye[199], Urugereko rwa Mbere rw'Iremezo rwemeje, ku bwiganze bw'amajwi y'Abacamanza barugize, ko "uburyo bwiza kuruta ubundi bwo gukora ku buryo uburenganzira bwa [Kabuga] bwubahirizwa kandi intego za IRMCT zigashyirwa mu bikorwa, ari uko hakoreshwa ubundi buryo buzatuma hafatwa umwanzuro busa, mu buryo bushoboka, n'iburanisha risanzwe ariko budashobora gutuma hafatwa icyemezo kimuhamya icyaha"[200]. Mu gushyiraho ibigomba kugenderwaho muri iryo buranisha ryakoresha ubundi buryo, Urugereko rwa Mbere rw'Iremezo rwavuze ko Porokireri yakomeza kugira inshingano yo gutanga ibimenyetso bigaragaza, mu buryo budashidikanywaho, "igikorwa n'igitekerezo bigize buri cyaha"[201] kandi ko "ruzagerageza korohereza [Kabuga] kurigiramo uruhare uko abishoboye kose kandi mu buryo bushyize mu gaciro"[202]. Cyakora, Urugereko rwa Mbere rw'Iremezo rwasanze "kubera ko uko ubuzima bwa Kabuga bwifashe bitatuma ashobora kugira uruhare rufatika mu iburanisha ry'urubanza rwe kandi uburyo ruzaburanishwamo budashobora gutuma hafatwa umwanzuro umuhamya icyaha, "atari ngombwa" kujya yitabira iburanisha "bityo akaba atazajya asabwa kuba ahari"[203].

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[196] Icyemezo kijuririrwa, igika cya 49.
[197] Icyemezo kijuririrwa, igika cya 50.
[198] Icyemezo kijuririrwa, igika cya 51.
[199] Icyemezo kijuririrwa, ibika 47, 51.
[200] Icyemezo kijuririrwa, igika cya 57.
[201] Icyemezo kijuririrwa, igika cya 57.
[202] Icyemezo kijuririrwa, igika cya 58.
[203] Icyemezo kijuririrwa, igika cya 58.

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52. Mu kwemeza ko "urubanza ruzaburanishwa mu bundi buryo buzatuma hafatwa umwanzuro", abenshi mu Bacamanza bagize Urugereko rwa Mbere rw'Iremezo bashingiye ku kuba uburyo busa n'ubwo bukoreshwa mu bindi bihugu nk'u Bwongereza, Pays de Galles, Nouvelle Zélande, Afurika y'Epfo, Australie, Gwatemala n'Ifasi ya New Mexico yo muri Reta Zunze Ubumwe z'Amerika[204]. Urugereko rwa Mbere rw'Iremezo rwasanze icyo ubwo buryo bwose buhuriraho kandi kibutandukanya n'imanza zuzuye, ari uko budashobora gutuma hafatwa icyemezo gihamya icyaha uregwa kuko kumuhamya icyaha byaba ari ukumuvutsa uburenganzira bwe[205], kandi rukavuga ko inkiko zo muri ibyo bihugu zasanze "gukomeza gufunga umuntu hemejwe ko ubuzima bwe butatuma ashobora kuburanishwa […] rimwe na rimwe biba ari ngombwa mu rwego rwo kurinda umutekano we n'uwa rubanda"[206]. Urugereko rwa Mbere rw'Iremezo rwasanze, muri rusange, ubwo buryo butandukanira ku byerekeranye n'inshingano yo gutanga ibimenyetso no kuba hasabwa ko hatangwa ibimenyetso ku gikorwa kigize icyaha no ku gitekerezo cyo gukora icyaha[207], no ku byerekeranye no kuba uregwa asabwa kwitabira iburanisha ry'urubanza rwe cyangwa atabisabwa[208]. N'ubwo ariko bimeze bityo, Urugereko rwa Mbere rw'Iremezo rwanasanze Komisiyo y'u Bwongereza na Pays de Galles ishinzwe amategeko itanga inama y'uko hajyaho uburyo bushya yise "ubundi buryo buzatuma hafatwa umwanzuro", busaba ko hatangwa ibimenyetso ku gikorwa kigize icyaha no ku gitekerezo cyo gukora icyaha. Rwasanze kandi iyo Komisiyo inatanga inama y'uko kuba mu iburanisha kw'abaregwa hemejwe ko uko ubuzima bwabo bwifashe bitatuma bashobora kuburanishwa, bikwiye gushyigikirwa uko bishoboka kose[209].

53. Nk'uko byavuzwe haruguru, Ubwunganizi butanga impamvu z'ubujurire eshatu, aho buvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rutategetse ko urubanza rusubikwa; ko rwemeje ko ruburanishwa hifashishijwe "ubundi buryo buzatuma hafatwa umwanzuro" kandi rutategetse ko Kabuga afungurwa[210]. Kubera ko impamvu y'ubujurire ya 2 y'Ubwunganizi yerekeranye n'ikibazo cy'ingenzi mu Cyemezo kijuririrwa, Urugereko rw'Ubujurire rusanga bikwiye ko ruyifataho umwanzuro mbere y'izindi.

[204] Icyemezo kijuririrwa, igika cya 52, ibisobanuro N° 198, 199 byo hasi kuri paje.
[205] Icyemezo kijuririrwa, igika cya 53.
[206] Icyemezo kijuririrwa, igika cya 53.
[207] Icyemezo kijuririrwa, ibika 54, 56.
[208] Icyemezo kijuririrwa, igika cya 55.
[209] Icyemezo kijuririrwa, ibika 54, 55.
[210] Reba haruguru, igika cya 11.

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2. Ibivugwa ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa kubera ko rwafashe umwanzuro uvuga ko uru rubanza ruzaburanishwa hakoreshwa "ubundi buryo buzatuma hafatwa umwanzuro"

54. Ubwunganizi buvuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rwafashe umwanzuro uvuga ko rufite ububasha busesuye bwo kuburanisha uru rubanza mu "bundi buryo buzatuma hafatwa umwanzuro"[211], ubwo bukaba ari uburyo bushya bwo kuburanisha urubanza budafite amategeko bushingiyeho[212]. Ku byerekeranye n'ububasha busesuye bw'Urugereko rwa Mbere rw'Iremezo, Ubwunganizi buvuga ko yaba Sitati cyangwa Amategeko, nta na kimwe muri byo giteganya ubwo buryo bwo kuburanisha urubanza Urugereko rwa Mbere rw'Iremezo rwemeje ko bwakoreshwa. Ibyo ubwabyo binyuranyije n'Ingingo ya 18 n'iya 19 za Sitati kubera ko Kabuga adafite ubushobozi bwo gukoresha uburenganzira bwe bw'ibanze kuko ubuzima bwe budatuma yakomeza kuburanishwa[213]. Buvuga ko impamvu Urugereko rwa Mbere rw'Iremezo rwagaragaje, zatumye IRMCT n'Inkiko zayibanjirije bishyirwaho, na zo zidashyigikira ko hakurikizwa ubwo buryo bushya kuko butujuje ibisabwa mu rwego rwo kuburanisha uru rubanza mu buryo buboneye[214]. Buvuga kandi ko, bushingiye ku mubare muke w'ibihugu bifite amategeko ateganya ubwo buryo bwo kuburanisha bumeze kimwe nk'ubwo Urugereko rwa Mbere rw'Iremezo rwemeje ko buzakurikizwa, busanga ubwo buryo budashyigikiwe n'ihame rusange ry'amategeko kandi budashingiye ku muco mpuzamahanga[215]. Buvuga ko gukoresha ubwo buryo bwo kuburanisha binyuranyije n'ihame ryo kutanyuranya n'amategeko n'irivuga ko abantu bose bareshya imbere y'amategeko[216], kandi binyuranyije n'impamvu yatumye hashyirwaho "Amabwiriza y'Umuryango w'Abibumbye yerekeranye n'uburenganzira bw'abantu bafite ubumuga"[217].

55. Mu gusubiza, Porokireri avuga ko, kubera ko nta bukemuramanza bwashinze imizi buhari buvuga uburyo bugomba gukoreshwa iyo hamaze gufatwa umwanzuro uvuga ko ubuzima bw'uregwa budatuma ashobora kuburanishwa, Urugereko rwa Mbere rw'Iremezo, rushingiye

[211] Ubujurire bw'Ubwunganizi, ibika 68, 88-95, mu bivugwaho harimo ibiri mu Cyemezo kijuririrwa, ibika 40, 45.
[212] Ubujurire bw'Ubwunganizi, ibika 62, 68, 69, 97-104.
[213] Ubujurire bw'Ubwunganizi, ibika 63, 93-95, havugwa ku biri mu Gitekerezo, kinyuranye n'icya bagenzi be, cy'Umucamanza, igika cya 32. Reba n'ubujurire bw'Ubwunganizi, igika cya 100.
[214] Ubujurire bw'Ubwunganizi, ibika 65, 70, 96, havugwa ku biri mu Cyemezo kijuririrwa, igika cya 45.
[215] Ubujurire bw'Ubwunganizi, ibika 62, 97-99, havugwa ku biri mu Gitekerezo, kinyuranye n'icya bagenzi be, cy'Umucamanza, igika cya 35.
[216] Ubujurire bw'Ubwunganizi, ibika 62, 102-103, havugwa ku biri mu Gitekerezo, kinyuranye n'icya bagenzi be, cy'Umucamanza, igika cya 33.
[217] Ubujurire bw'Ubwunganizi, igika cya 101.

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ku bubasha busesuye rufite bwo kuyobora iburanisha ry'imanza, rwemeje, mu buryo bushyize mu gaciro, uburyo bushobora gukoreshwa[218]. Nyuma yo kuvuga ku bubasha kamere bwa TPIY na TPIR bwo gukurikirana abantu bakekwaho icyaha cyo gusuzugura izo Nkiko no gukoresha ububasha bwazo mu kuburanisha abakoze icyaha cyo kuba mu mugambi mubisha uhuriweho, ibyo byombi bikaba bidateganywa, mu buryo bweruye, na Sitati n'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso by'izo Nkiko, Porokireri avuga ko IRMCT na yo ifite ububasha kamere bwo gufata ibyemezo bikenewe kugira ngo ibashe gukoresha ububasha bwayo bwo guca imanza[219]. Avuga ko kuburanisha uru rubanza mu "bundi buryo buzatuma hafatwa umwanzuro" byatuma IRMCT ibasha gukoresha ububasha bwayo bwo gukurikirana Kabuga ku byaha aregwa kandi uburenganzira bwe bukitabwaho mbere y'ibindi byose, ibyo bikaba bitandukanye n'uko byagenda haramutse hafashwe icyemezo cyo gusubika urubanza rwe kuko byo byatuma abura epfo na ruguru kandi ntabashe gukoresha uburenganzira bwe bwo kwiregura ku byaha aregwa[220]. Ni muri urwo rwego, Porokireri avuga ko Urugereko rwa Mbere rw'Iremezo rwazirikanye, mu buryo bukwiye, ihame ryo kubahiriza uburenganzira bw'uregwa n'ihame ryo kuburanisha urubanza mu buryo buboneye biteganywa n'Ingingo ya 18 n'iya 19 za Sitati, maze rugakuraho, mu buryo bukwiye, urujijo ruri muri Sitati kandi rukabikora rukurikije icyo iyo Sitati igamije[221].

56. Porokireri avuga kandi ko Urugereko rwa Mbere rw'Iremezo rutasabwaga kwemeza uburyo bushobora gukoreshwa, rushingiye ku mategeko mpuzamahanga ashingiye ku muco karande cyangwa ku ihame rusange ry'amategeko mpuzamahanga, kandi ko rwemeje, mu buryo bukwiye, ko rufite inshingano yo kubahiriza amahame yose y'uburenganzira bwa muntu, harimo n'ateganywa n'Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga[222]. Avuga ko "ubundi buryo buzatuma hafatwa umwanzuro" bujyanye neza n'ibikorwa byo kubahiriza uburenganzira bw'abaregwa biteganywa n'Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike hamwe n'Amasezerano y'u Burayi yerekeranye n'uburenganzira bwa muntu, kandi bufasha, mu buryo bushyize mu gaciro, kuzuza inshingano ya IRMCT yo kubahiriza amahame mpuzamahanga yerekeranye n'uburenganzira bwa muntu[223]. Porokireri avuga kandi ko Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga

[218] Igisubizo cya Porokireri, ibika 10-13.
[219] Igisubizo cya Porokireri, ibika 12, 13.
[220] Igisubizo cya Porokireri, igika cya 14.
[221] Igisubizo cya Porokireri, ibika 15, 16.
[222] Igisubizo cya Porokireri, igika cya 17.
[223] Igisubizo cya Porokireri, igika cya 17.

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ateganya ko abantu bafite ubumuga bagomba guhabwa ububasha bemererwa n'amategeko kandi bagahabwa ubutabera ku kigero kimwe nk'icy'abantu badafite ubumuga, kandi ko, n'ubwo usanga uburyo buzatuma hafatwa umwanzuro bukoreshwa mu bihugu bitandukanye buba budasa, Urugereko rwa Mbere rw'Iremezo rwatanze gusa, mu buryo bukwiye, ingero za bimwe mu bihugu bikoresha ubwo buryo bwo kuburanisha[224].

57. Urugereko rw'Ubujurire rurabanza gufata umwanzuro ku mpamvu y'ubujurire y'Ubwunganizi ivuga ko Urugereko rwa Mbere rw'Iremezo rwakoze ikosa ryo mu rwego rw'amategeko kubera ko rwafashe umwanzuro uvuga ko rufite ububasha busesuye bwo kuburanisha uru rubanza hakoreshejwe "ubundi buryo buzatuma hafatwa umwanzuro". Kugira ngo ubujurire bwabwo bwemerwe, Ubwunganizi bugomba kugaragaza ikosa ryo mu rwego rw'amategeko Urugereko rwa Mbere rw'Iremezo rwakoze kandi rituma biba ngombwa kuvanaho Icyemezo kijuririrwa[225].

58. Mbere na mbere, Urugereko rw'Ubujurire ruributsa ko, muri rusange, ingereko za mbere z'iremezo zifite ububasha busesuye bwo kuyobora iburanisha ry'imanza zishinzwe kuburanisha[226]. Ubwo bubasha busesuye bwazo bukoreshwa mu bihe bitandukanye. Nk'urugero, bukoreshwa ku byerekeranye no gufatanya imanza, gushyiraho ingengabihe y'iburanisha ry'imanza, gushyira muri dosiye ibimenyetso no kubisuzuma, gufata ibyemezo ku bibazo byerekeranye n'imikorere y'Urukiko n'imiburanishirize y'imanza, harimo ibyerekeranye no gushyiraho avoka wunganira uregwa, kwemeza niba uregwa akwiye gufungurwa by'agateganyo, no kugena ibihano[227]. Kuba ubwo buryo bwo kuburanisha

[224] Reba Igisubizo cya Porokireri, ibika 17-22.
[225] Reba *Urubanza Porokireri aburana na Maximilien Turinabo na bagenzi be*, Nº MICT-18-116-PT na MICT-18-116-AR79.1, Icyemezo ku bujurire bwa Porokireri bwerekeranye n'Icyemezo ku Byifuzo birebana n'iburabubasha, 28 Kamena 2019, igika cya 5; *Urubanza Porokireri aburana na François-Xavier Nzuwonemeye*, Nº MICT-13-43, Icyemezo ku bujurire bwerekeranye n'Icyemezo cy'Umucamanza umwe rukumbi cyo ku itariki ya 22 Ukwakira 2018, 17 Mata 2019, igika cya 12; *Urubanza Porokireri aburana na Radovan Karadžić*, Nº IT-95-5/18-AR72.1, IT-95-5/18-AR72.2, IT-95-5/18-AR72.3, Icyemezo ku Byifuzo bya Radovan Karadžić byerekeranye n'iburabubasha (Uburyozwacyaha bushingiye ku guteshuka ku nshingano, Ibyaha bisaba igitekerezo cyihariye - III - byakozwe mu rwego rw'umugambi mubisha uhuriweho, uburyozwacyaha bw'umuntu ukuriye abandi), 25 Kamena 2009, igika cya 10; *Urubanza Porokireri aburana n'Ante Gotovina na bagenzi be*, Nº IT-06-90-AR72.1, Icyemezo ku bujurire bw'Ante Gotovina bwerekeranye n'Icyemezo ku Byifuzo binyuranye birebana n'iburabubasha, 6 Kamena 2007, igika cya 7.
[226] Nk'urugero, reba Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, igika cya 295; *Urubanza Porokireri aburana na Ratko Mladić*, Nº MICT-13-56-A, Inyandiko y'urubanza, 8 Kamena 2021 (Inyandiko, itari ibanga, yakuwemo ibigomba kugirwa ibanga) ("Inyandiko y'urubanza rwa Mladić mu bujurire"), igika cya 107; *Urubanza Porokireri aburana na Radovan Karadžić*, Nº MICT-13-55-A, Inyandiko y'urubanza, 20 Werurwe 2019 (Inyandiko, itari ibanga, yakuwemo ibigomba kugirwa ibanga) ("Inyandiko y'urubanza rwa Karadžić mu bujurire"), igika cya 72.
[227] Nk'urugero, reba Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, ibika 288, 320; *Urubanza Porokireri aburana na Félicien Kabuga*, Nº MICT-13-38-AR80.2, Icyemezo ku bujurire ku Cyemezo cyerekeranye no kunganira Félicien Kabuga, 4 Ugushyingo 2022, igika cya 16; Inyandiko y'urubanza rwa Mladić mu bujurire, ibika 84, 539; Inyandiko y'urubanza rwa Karadžić mu bujurire, igika cya 198; *Urubanza Porokireri aburana na Nikola Šainović na bagenzi be*, Nº IT-05-87-A, Inyandiko y'urubanza, 23 Mutarama 2014, igika cya 29; *Urubanza Porokireri aburana na Slobodan Milošević*, Nº IT-99-37-AR73, Impamvu zashingiweho mu gufata Icyemezo ku bujurire bwa Porokireri ku Cyemezo cyanga Icyifuzo gisaba ko hatangwa itegeko ryogufatanya imanza, 18 Mata 2002, igika cya 3.

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urubanza butarigeze bukoreshwa mbere kandi Sitati cyangwa Amategeko bidateganya, mu buryo bweruye, ko bushobora gukoreshwa, cyangwa bitabuza, by'umwihariko, ko bukoreshwa, ubwabyo ntibivuze ko Urugereko rwa Mbere rw'Iremezo rudafite ububasha busesuye bwo kwemeza ko ubwo buryo bwo kuburanisha urubanza bukoreshwa[228].

59. Muri uru rubanza, Urugereko rwa Mbere rw'Iremezo, rushingiye ku bubasha busesuye rufite bwo kugena uburyo iburanisha ry'imanza ruburanisha rikorwa, rwemeje ko hakoreshwa "ubundi buryo butuma hafatwa umwanzuro buteye, uko bishoboka kose nk'iburanisha"[229]. Rwasobanuye ko, mu iburanisha hakoreshwa ubu buryo: (i) bitazaba ngombwa ko Kabuga yitabira iburanisha kubera ko uko ubuzima bwe bwifashe bitatuma ashobora kurigiramo uruhare rufatika ndetse n'uburyo buzakoreshwa bukaba butazatuma hafatwa icyemezo kimuhamya icyaha[230]; kandi ko (ii) Porokireri azakomeza kugira inshingano yo gutanga ibimenyetso bigaragaza, mu buryo budashidikanywaho, igikorwa n'igitekerezo bigize buri cyaha Kabuga aregwa[231]. Urugereko rw'Ubujurire rusanga, n'ubwo bisa n'aho byerekeranye n'imiburanishirize, ibintu by'ingenzi bigize "ubundi buryo butuma hafatwa umwanzuro", nk'uko bisobanurwa n'Urugereko rwa Mbere rw'Iremezo, bifite ingaruka ku burenganzira bw'ibanze bwa Kabuga "kubera ko, hashingiwe ku mategeko, hari uburyo agomba kuburanishwamo butuma intego y'ibanze yo kuburanisha urubanza mu buryo buboneye igerwaho"[232]. Kubera iyo mpamvu, Urugereko rw'Ubujurire rusanga ibyerekeranye no kuba Urugereko rwa Mbere rw'Iremezo rwaba rufite ububasha busesuye bwo gukoresha ubwo "buryo bundi butuma hafatwa umwanzuro" mu mwanya w'iburanisha risanzwe mu by'ukuri ari ikibazo cyerekeranye no gusobanura ingingo z'amategeko[233].

[228] Reba Inyandiko y'urubanza rwa Stanišić na Simatović mu bujurire, ibika 583, 592; *Urubanza Porokireri aburana na Radovan Karadžić*, N° IT-95-5/18-AR73.11, Icyemezo ku bujurire ku Cyemezo cyerekeranye n'Icyifuzo cy'Uregwa gisaba ko Zdravko Tolimir ategekwa kwitaba Urukiko, 13 Ugushyingo 2013, igika cya 47; *Urubanza Porokireri aburana n'Arséne Shalom Ntahobali na Pauline Nyiramasuhuko*, N° ICTR-97-21-AR73, Icyemezo ku "bujurire bw'Arsène Shalom Ntahobali bwerekeranye n'Icyemezo ku Cyifuzo Kanyabashi yatanze mu magambo gisaba kwemererwa kubaza Ntahobali ibibazo binyomoza hifashishijwe ubuhamya bwanditse Ntahobali yahaye abapererezi b'Ibiro bya Porokireri muri Nyakanga 1997", 27 Ukwakira 2006, igika cya 12.

[229] Icyemezo kijuririrwa , ibika 45, 57.

[230] Icyemezo kijuririrwa, igika cya 58.

[231] Icyemezo kijuririrwa, igika cya 57.

[232] Reba *Urubanza Porokireri aburana na Pauline Nyiramasuhuko na bagenzi be*, N° ICTR-98-42-A15bis, Icyemezo ku kibazo cyerekeranye n'imiburanishirize iteganywa n'Ingingo ya 15*bis* D), 24 Nzeri 2003, igika cya 12.

[233] Reba *Urubanza Porokireri aburana na Zlatko Aleksovski*, N° IT-95-14/1-A, Inyandiko y'urubanza, 24 Werurwe 2000 ("Inyandiko y'urubanza rw'Aleksovski mu bujurire"), igika cya 98 (Aho, mu gusuzuma ikibazo kidateganywa, mu buryo bweruye, muri Sitati ya TPIY, Urugereko rw'Ubujurire rwemeje ko "kwifashisha amategeko n'imikorere byo mu bihugu binyuranye no mu nzego mpuzamahanga bidashingirwaho byanze bikunze mu gushakira igisubizo ikibazo cyerekeranye n'amategeko akwiye gukurikizwa" kandi ko "Icyo kibazo kigomba Sitati n'Amategeko bya TPIY, n'igisobanuro cyabyo giha agaciro gakwiye amahame agenderwaho mu gusobanura (Ukwizerwa, imvugo yakoreshejwe, ukuntu ibintu bimeze na teworojiya) asobanurwa mu Masezerano y'i Vienne yerekeranye n'Amategeko agenga amasezerano mpuzamahanga (1969)").

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60. Urugereko rw'Ubujurire ruributsa ko Sitati igomba kumvikana hakurikijwe uko amagambo yumvikana mu buryo busanzwe bitewe n'aho akoreshejwe kandi hashingiwe ku mpamvu n'icyari kigamijwe mu kuyishyiraho[234]. Ruhereye ku magambo akoreshwa muri Sitati, Urugereko rw'Ubujurire rusanga, Ingingo ya 1 (2) ya Sitati iteganya ko IRMCT ifite ububasha bwo gucira imanza abantu bakorewe inyandiko y'ibirego na TPIR bari mu bayobozi bakuru kurusha abandi bakekwaho kuba baragize uruhare runini kurusha abandi mu byaha bivugwa mu gika cya 1 cy'iyi Ngingo. Mu gusobanura ibyiciro by'iburanisha ry'urubanza, Ingingo ya 18 (1) ya Sitati iteganya ko Urugereko rwa Mbere rw'Iremezo rukora ku buryo "urubanza" ruburanishwa mu buryo buboneye kandi bwihuse, kandi hashingiwe ku Mategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso, hubahirijwe, mu buryo bwuzuye, uburenganzira bw'uregwa. Ingingo ya 19 ya Sitati, ishingira ku Ngingo 14 y'Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike[235], mu gusobanura uburenganzira bw'umuntu uregwa, iteganya ko umuntu uregwa afatwa nk'umwere kugera igihe icyaha kimuhamiye, afite uburenganzira nibura ku bintu birimo "kuburanishwa" ahibereye no kwiregura ubwe cyangwa kunganirwa n'avoka yihitiyemo. Ingingo ya 21 ya Sitati iteganya ko iyo iburanisha ry'urubanza rirangiye, Urugereko rwa Mbere rw'Iremezo rusoma urubanza kandi rukagenera igihano uregwa wahamwe n'ibyaha. Ingingo ya 23 n'iya 24 za Sitati ziteganya ko uwahamwe n'icyaha ari we wenyine ufite uburenganzira bwo kujurira no gusaba ko imikirize y'urubanza isubirwamo. Porokireri na we ashobora kubisaba mu bihe bimwe na bimwe. Mu gusoza kuri iyi ngingo, Urugereko ruributsa ko Sitati iteganya ihame ryo kudakurikiranwa kabiri ku cyaha kimwe, aho nta muntu ushobora gukurikiranwa n'urukiko rw'igihugu ku bikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara biteganywa na Sitati, iyo yamaze "kubiburanishwaho" na IRMCT[236].

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[234] *Urubanza Porokireri aburana na Pauline Nyiramasuhuko na bagenzi be*, N° ICTR-98-42-A, Inyandiko y'urubanza mu bujurire, 14 Ukuboza 2015 ("Inyandiko y'urubanza rwa Nyiramasuhuko na bagenzi be mu bujurire"), igika cya 2137, havugwa ku biri mu Masezerano y'i Vienne yerekeranye n'Amategeko agenga amasezerano mpuzamahanga, 23 Gicurasi 1969, Umuryango w'Abibumbye, Icyegeranyo cy'Amasezerano mpuzamahanga, Umutumba wa 1155, paje ya 331. Reba n'*Urubanza Porokireri aburana na Zejnil Delalić na bagenzi be*, N° IT-96-21-A, Inyandiko y'urubanza, 20 Gashyantare 2001, ibika 67, 68; Inyandiko y'urubanza rw'Aleksovski mu bujurire, igika cya 98; *Urubanza Porokireri aburana na Duško Tadić*, N° IT-94-1-A, Inyandiko y'urubanza, 15 Nyakanga 1999 ("Inyandiko y'urubanza rwa Tadić mu bujurire"), igika cya 282.

[235] Reba *Urubanza Ferdinand Nahimana na bagenzi be baburana na Porokireri*, N° ICTR-99-52-A, Inyandiko y'urubanza, 28 Ugushyingo 2007 (Inyandiko y'umwimerere yatanzwe mu gifaransa, inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 16 Gicurasi 2008) ("Inyandiko y'urubanza rwa Nahimana na bagenzi be mu bujurire"), igika cya 96 (Cyerekeranye n'Ingingo ya 20 ya Sitati ya TPIR bihwanye); *Urubanza Slobodan Milošević aburana na Porokireri*, N° IT-02-54-AR73.7, Icyemezo ku bujurire ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo cyerekeranye no gushyiraho Avoka wunganira Uregwa, 1 Ugushyingo 2004 ("Icyemezo mu rubanza rwa Milošević, 1 Ugushyingo 2004"), igika cya 11 (Cyerekeranye n'Ingingo ya 21 ya Sitati ya TPIY bihwanye).

[236] Reba Ingingo ya 7 1) ya Sitati.

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61. Urugereko rw'Ubujurire rusanga Sitati, isobanuwe uko bikwiye hakurikijwe uko amagambo yumvikana mu buryo busanzwe bitewe n'aho akoreshejwe, iteganya ko uko iburanisha ry'imanza rigenda, ikaba idateganya ko hashobora gukoreshwa uburyo busa gusa na ryo, mu mwanya waryo[237]. Ubu buryo bwo kumva Sitati bujyanye kandi n'impamvu n'icyari kigamijwe mu kuyishyiraho nk'uko bivugwa mu Cyemezo cya 1966 cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, aho Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye yongeye kwemeza ko ari ngombwa gushyiraho IRMCT kugira ngo ikore imirimo y'ingenzi ya TPIR, irimo "*gucira imanza* abantu bahunze ubutabera bari mu bayobozi bo mu nzego zo hejuru zisumba izindi bakekwaho kuba baragize uruhare ruruta urw' abandi mu byaha byakozwe"[238].

62. Urugereko rw'Ubujurire ruributsa kandi ko bigaragara ko ibiteganywa n'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso na Sitati bya TPIR na TPIY ari byo bikomeza mu Mategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso no muri Sitati bya IRMCT[239]. Bigaragara ko, mu gushyiraho TPIR no kwemeza Sitati yayo, Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye yashatse guha uru Rukiko ububasha bwo gukurikirana abantu bakoze ibikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara rubaburanisha[240]. Ni yo mpamvu uwari uhagarariye intumwa z'u Bufaransa yavuze ko abantu "bagomba gushyikirizwa *ubutabera* bagacirwa imanza"[241]. Urugereko rw'Ubujurire rusanga no muri Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye yo ku itariki ya 13 Gashyantare 1995 havugwa ko inshingano ya TPIR ari ukuburanisha "imanza"[242]. Muri iyi Raporo, Umunyamabanga Mukuru w'Umuryango w'Abibumbye yanashimangiye ko gushyiraho TPIR kandi TPIY iriho byatumye biba ngombwa

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[237] Reba Icyemezo kijuririrwa, igika cya 57 (Aho Urugereko rwa Mbere rw'Iremezo rwemeje ko hazakoreshwa "ubundi buryo buzatuma hafatwa umwanzuro busa, mu buryo bushoboka, n'iburanisha risanzwe").

[238] Icyemezo cya 1966 (2010) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, UN.Doc. S/RES/1966(2010), 22 Ukuboza 2010 ("Icyemezo cya 1966 cy'Inama Ishinzwe Amahoro ku Isi) "), paje ya 1 (Ntibyanditse mu nyuguti za itarike mu nyandiko byakuwemo).

[239] *Urubanza Augustin Ngirabatware aburana na Porokireri*, N° MICT-12-29-A, Inyandiko y'urubanza, 18 Ukuboza 2014 ("Inyandiko y'urubanza rwa Ngirabatware mu bujurire"), igika cya 6, havugwa ku biri mu Cyemezo mu *Rubanza Phénéas Munyarugarama aburana na Porokireri*, N° MICT-12-09-AR14, Icyemezo ku bujurire ku Cyemezo cyo kwimurira urubanza rwa Phénéas Munyarugarama mu Rwanda n'Icyifuzo cya Porokireri gisaba Urugereko kutakira Imyanzuro isubiza y'Ubwunganizi, 5 Ukwakira 2012 ("Icyemezo mu rubanza rwa Munyarugarama, 5 Ukwakira 2012"), igika cya 5.

[240] Reba Icyemezo cya 955 (1994) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, UN.Doc.S/RES/955(1994), 8 Ugushyingo 1994 (Icyemezo cya 955 cy'Inama Ishinzwe Amahoro ku Isi"), paje 1-3.

[241] Inama ya 3453, yo mu mwaka wa 49, y'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, UN.Doc.S/PV.3453, 8 Ugushyingo 1994, paje ya 3 (Ijambo rya Bwana Mérimée) (Ntibyanditse mu nyuguti za itarike mu nyandiko byakuwemo).

[242] Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye yatanzwe hashingiwe ku gika cya 5 cy'Icyemezo cya 955 (1944) cy'Inama Ishinzwe Amahoro ku Isi, U.N. Doc S/1995/134, 13 Gashyantare 1995 ("Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, 13 Gashyantare 1995"), ibika 36, 42.

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"gukoresha uburyo bushingiye ku mategeko bumwe"[243]. By'umwihariko, muri Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye yo ku itariki ya 3 Gicurasi 1993 yerekeranye n'ishyirwaho rya TPIY n'iyemezwa rya Sitati yayo harimo ibitekerezo birambuye ku byerekeranye n'ibyiciro by'iburanisha ry'urubanza n'ibyo uregwa aba yemerewe kugira ngo uburenganzira afite bwo kuburanishwa mu buryo buboneye bwubahirizwe. Aha ibyiciro bivugwa ni "icyiciro kibanziriza iburanisha ry'urubanza, iburanisha n'icyiciro gikurikira iburanisha"[244].

63. Urugereko rw'Ubujurire rwemeranya n'ibyo Urugereko rwa Mbere rw'Iremezo ruvuga rushimangira impamvu zatumye TPIR ishyirwaho, harimo gutanga umusanzu muri gahunda y'ubwiyunge bw'Abanyarwanda no mu kugarura no kubungabunga amahoro[245]. Mu by'ukuri, ibi Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye yabigaragaje, mu buryo bweruye ubwo yemezaga Sitati ya TPIR, ibyo bikaba bigaragarira kandi mu madisikuru y'intumwa zinyuranye zari muri iyo nama, zashyigikiye ishyirwaho ry'uru rukiko rudahoraho nk'urwego ruzafasha mu bwiyunge bw'Abanyarwanda[246]. Cyakora, iyo umuntu asomeye hamwe ibyo byemezo by'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye byerekeranye n'ishyirwaho rya TPIR na IRMCT, bigaragara ko ababyemeje bateganyaga kugera kuri izo ntego binyuze mu kurwanya umuco wo kudahana hashyirwaho inkiko zagombaga gukora iperereza ku byaha byakozwe, gukurikirana ababikoze no kubacira imanza, "hagamijwe gusa" kuryoza abantu ibikorwa bakoze binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara[247]. Muri urwo rwego, ni ngombwa kwibutsa ko inshingano y'ibanze ya IRMCT yo gucira imanza abantu baregwa kuba barakoze ibikorwa binyuranyije bikomeye n'Amategeko mpuzamahanga arengera abantu mu gihe cy'intambara idashobora kugerwaho igihe Porokireri n'umuntu uregwa batizeye ko amategeko asobanutse [248].

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[243] Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, 13 Gashyantare 1995, igika cya 9.

[244] Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye yatanzwe hashingiwe ku gika cya 2 cy'Icyemezo cya 808 (1993) cy'Inama Ishinzwe Amahoro ku Isi, U.N. Doc S/25704, 3 Gicurasi 1993 ("Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, 3 Gicurasi 1993"), ibika 16, 99-107 (Ntibyanditse mu nyuguti za itarike mu nyandiko byakuwemo).

[245] Reba Icyemezo kijuririrwa, ibika 45, 51. Reba n'Icyemezo cya 955 (1994) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, paje ya 1; Icyemezo cya 1966(2010 cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye), paje ya 1.

[246] Reba Icyemezo cya 1966(2010) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, paje ya 1. Nk'urugero, reba U.N. Doc. S/PV.3453 (8 Ugushyingo 1994), paje 6, 8, 10, 12.

[247] Icyemezo cya 1966 (2010) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, paje ya 1; Icyemezo cya 955(1994) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, paje 1, 2. Reba n'Icyemezo cya 827 (1993) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye,), U.N. Doc. S/RES/827(1993), paje 1, 2.

[248] Reba Inyandiko y'urubanza rw'Aleksovski mu bujurire, igika cya 113 (ii).

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64. Urugereko rw'Ubujurire ruributsa kandi ko rusanga rugomba gusobanura Sitati n'Amategeko bya IRMCT mu buryo bujyana n'ubukemuramanza bwa TPIR na TPIY[249]. Ruzirikana inshingano rufite muri urwo rwego, Urugereko rw'Ubujurire rusanga ibintu bigize "ubundi buryo butuma hafatwa umwanzuro", uko bisobanurwa n'Urugereko rwa Mbere rw'Iremezo, bigaragara ko bibangamira uburenganzira bumwe na bumwe abaregwa bose baburanishwa na IRMCT bahabwa n'amategeko. By'umwihariko, umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko, mu gihe haba hakoreshejwe ubwo "buryo bundi butuma hafatwa umwanzuro", bitaba ngombwa ko Kabuga yitabira iburanisha usa n'unyuranye n'ibiteganywa n'Ingingo ya 19 (4)(d) ya Sitati umuntu asomye amagambo, yumvikana mu buryo busanzwe, iteganya ko umuntu warezwe muri IRMCT afite uburenganzira bwo kuburanishwa ahibereye. Ubukemuramanza bugomba gukurikizwa bwerekana ko ubu burenganzira buteganywa na Sitati ari ubwo uregwa afite bwo kuburanishwa ahibereye[250]. Urugereko rw'Ubujurire rwashimangiye ko uburenganzira bw'uregwa bwo kuburanishwa ahibereye ari "inkingi ya mwamba y'ubutabera" kandi ko, muri rusange, kuburanisha uregwa ahibereye, ari rimwe mu mahame y'ibanze kandi asanzwe aranga iburanisha riboneye ry'urubanza nshinjabyaha[251].

65. Urugereko rw'Ubujurire ruzirikana ko uburenganzira bw'uregwa bwo kuburanishwa ahibereye atari ndakuka kubera ko ashobora kubwivutsa cyangwa bukaba bwagabanywa mu bundi buryo bitewe n'uko abangamira cyane imirimo y'iburanisha ariko bidaturutse ku bushake bwe[252]. Cyakora, mu gusuzuma impamvu yihariye yatuma uburenganzira bw'uregwa bwo kuburanishwa ahibereye bugabanywa, ingereko za mbere z'iremezo zigomba kuzirikana ihame ry'igereranya rituma kugabanya ubu burenganzira bw'ibanze bikorwa gusa ari uko hari indi

[249] Inyandiko y'urubanza rwa Ngirabatware mu bujurire, igika cya 6; Icyemezo mu rubanza rwa Munyarugarama, 5 Ukwakira 2012, igika cya 6.
[250] Reba Icyemezo mu rubanza rwa Hadžić, 4 Werurwe 2016, igika cya 8; *Urubanza Porokireri aburana na Jovica Stanišić na Franko Simatović*, Nº IT-03-69-AR73.2, Icyemezo cy'Urugereko rw'Ubujurire ku bujurire bw'Ubwunganizi ku Cyemezo cyerekeranye n'ukuntu iburanisha rizagenda, 16 Gicurasi 2008 ("Icyemezo mu rubanza rwa Stanišić na Simatović, 16 Gicurasi 2008"), igika cya 6; *Urubanza Protais Zigiranyirazo aburana na Porokireri*, Nº ICTR-2001-73-AR73, Icyemezo ku bujurire ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo, 30 Ukwakira 2006 ("Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006"), ibika 11-13.
[251] Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006, ibika 8, 11, havugwa ku biri mu Cyemezo mu rubanza rwa Milošević, 1 Ugushyingo 2004, ibika 11-13.
[252] Icyemezo mu rubanza rwa Hadžić, 4 Werurwe 2016, igika cya 8; Icyemezo mu rubanza rwa Stanišić na Simatović, 16 Gicurasi 2008, ibika 6, 15; Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006, igika cya 14. Urugereko rw'Ubujurire rusanga uburenganzira bw'uregwa, ufite ubuzima butuma ashobora kuburanishwa, bwo kuburanishwa ahibereye bushobora kugabanywa bitewe n'uko abangamira cyane imirimo y'iburanisha n'ubwo byaba atari ku bushake bwe. Reba Icyemezo mu rubanza rwa Milošević, 1 Ugushyingo 2004, igika cya 14, igisobanuro N° 42 cyo hasi kuri paje (Aho Urugereko rw'Ubujurire rwa TPIY rwasuzumye ikibazo cyerekeranye no gushyiraho avoka wo kunganira uregwa, hemejwe ko ubuzima bwe bwatuma ashobora kuburanishwa, ariko Urugereko rukavuga ruti "n'ubwo ubuzima bumeze neza bihagije ku buryo yakora imirimo yo mu buzima bwa buri munsi isanzwe kandi itagoye, adafite imbaraga zihagije zatuma yihanganira umunaniro wose ujyana n'imirimo y'iburanisha").

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ntego ikomeye igamijwe kandi na bwo ntibirenge ibikenewe kugira ngo iyo ntego igerweho[253]. Urugereko rw'Ubujurire rusanga amategeko ya IRMCT ateganya ko iri suzuma rikorwa gusa ku muntu uregwa ufite ubuzima bwatuma ashobora kuburanishwa[254]. Ibyo bishingiye ku kuba gukomeza kuburanisha umuntu uregwa ufite ubuzima butatuma ashobora kuburanishwa ari ukumuvutsa uburenganzira ahabwa n'amategeko bwo kuburanishwa ahibereye[255]. Koko rero, Urugereko rw'Ubujurire rwa TPIY na TPIR rwasobanuye ko, uretse igihe uregwa yivukije uburenganzira bwe bwo kuburanishwa ahibereye, urubanza rw'uregwa inkiko zidahoraho zifitiye ububasha bw'ibanze bwo kuburanisha zigomba kwirinda kuruburanisha adahari[256]. Ubukemuranza, bufatiwe hamwe no kuba uregwa afite ubuzima butatuma ashobora kuburanishwa no guha amabwiriza avoka umwunganira[257], busobanura neza ko akarengane uwo muntu yaterwa no gukomeza kuburanishwa kafatwa nko guca urubanza nabi[258].

66. Urugereko rw'Ubujurire rusanga kandi, haramutse hakoreshejwe "ubundi buryo butuma hafatwa umwanzuro", Porokireri yaba agomba gutanga ibimenyetso bigaragaza, mu buryo budashidikanywaho, igikorwa n'igitekerezo bigize buri cyaha Kabuga aregwa, nyamara

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[253] Reba *Urubanza Porokireri aburana na Ratko Mladić*, N° MICT-13-56-A, Icyemezo cyerekeranye n'ingengabihe y'iburanisha mu bujurire n'inama ntegurarubanza, 17 Nyakanga 2020, igika cya 15; Icyemezo mu rubanza rwa Hadžić, 4 Werurwe 2016, igika cya 8; Icyemezo mu rubanza rwa Stanišić na Simatović, 16 Gicurasi 2008, igika cya 6; Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006, igika cya 14.

[254] Reba Icyemezo mu rubanza rwa Hadžić, 4 Werurwe 2016, igika cya 31 (Aho Urugereko rw'Ubujurire rwa TPIY rwasabye Urugereko rwa Mbere rw'Iremezo "gusuzuma bundi bushya, rushingiye ku nyandiko zo kwa muganga zihari kandi zirimo amakuru mashya, niba Hadžić yashobora kuburanishwa maze, *rwasanga ashobora kuburanishwa*", "rugasuzuma uburyo bwose bushoboka kandi bushyize mu gaciro, bwo gukomeza iburanisha ry'urubanza hashingiwe ku ihame ryo kutarengera" (Ntibyanditse mu nyuguti za itarike mu nyandiko byakuwemo)).

[255] Reba Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006, igika cya 11 (Aho Urugereko rw'Ubujurire rwa TPIR rwemeje ko kuburanisha uregwa ahibereye, "ubusanzwe ari rimwe mu mahame y'ibanze kandi asanzwe aranga iburanisha riboneye ry'urubanza nshinjabyaha").

[256] Reba *Urubanza Porokireri aburana na Rasim Delić*, N° IT-04-83-A, Icyemezo cyerekeranye n'imikirize y'urubanza, 29 Kamena 2010, igisobanuro N° 19 cyo hasi kuri paje; Inyandiko y'urubanza rwa Nahimana na bagenzi be mu bujurire, ibika 96-109 n'ibisobanuro byo hasi kuri paje byerekeranye na byo; *Urubanza Porokireri aburana na Tihomir Blaškić*, N° IT-95-14-AR108 *bis*, busabe Inyandiko y'urubanza ku busabe bwa Repubulika ya Korowasiya isaba ko Icyemezo cy'cy'Urugereko rwa Mbere rw'Iremezo, II, cyo ku itariki ya 18 Nyakanga 1997 gisubirwamo, 29 Ukwakira 1997 ("Icyemezo mu rubanza rwa Blaškić, 29 Ukwakira 1997"), igika cya 59.

[257] Reba Icyemezo mu rubanza rwa Popović na bagenzi be, 16 Gicurasi 2011, igika cya 11; Icyemezo mu rubanza rwa Zigiranyirazo, 30 Ukwakira 2006, igika cya 21 (Aho Urugereko rw'Ubujurire rwa TPIR rwemeje ko kuba, muri urwo rubanza, Urugereko rwa Mbere rw'Iremezo rwaragerageje "kubahiriza, mu buryo bwuzuye, uburenganzira bwo kunganirwa n'avoka n'ihame ry'uko ababuranyi bagomba guhabwa uburyo bungana bidakuraho kuba rutarubahirije ubundi burenganzira bw'uregwa bwihariye kandi bw'ibanze bwo kuburanishwa ahibereye"). Byongeye kandi, igihe kuba uregwa yaranze kuvugana n'avoka umwunganira cyangwa kumuha amabwiriza bituma urubanza rudashobora kuburanishwa mu buryo buboneye kandi vuba ni bwo "avoka agomba kugira icyo akora ashingiye ku byo abona biri mu nyungu z'uregwa" kandi, mu buryo bushyize mu gaciro, "ni […] ibyo gusa avoka aba agomba gukora iyo ari uko ibintu bimeze". Reba *Urubanza Porokireri aburana na Vojislav Šešelj*, N° IT-03-67-AR73.3, Icyemezo ku bujurire ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo cyerekeranye no gushyiraho avoka, 20 Ukwakira 2006, igika cya 45.

[258] Inyandiko y'urubanza rwa Strugar mu bujurire, igika cya 34 (Aho Urugereko rw'Ubujurire rwa TPIY rwafashe umwanzuro uvuga ko ikibazo cyerekeranye no kumenya niba uregwa ashobora kuburanishwa ari ikibazo gikomeye ku buryo kuba Urugereko rw'Ubujurire rukwiye gufata, mu buryo bwihuse, icyemezo ku kibazo cyose cyerekeranye n'ubushobozi bwo kuburanishwa bisa n'aho ari ingenzi kubera ko "akarengane umuntu uregwa yaterwa no gukomeza kuburanishwa mu gihe ubuzima bwe butatuma ashobora kuburanishwa kafatwa nko guca urubanza nabi").

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bidashoboka ko hafatwa icyemezo kimuhamya icyaha[259]. Urugereko rw'Ubujurire ruributsa ko, Ingingo ya 104 y'Amategeko iteganya ko iyo ababuranyi bamaze gutangaibimenyetso, Urugereko rwa Mbere rw'Iremezo rugomba kwiherera maze kuri buri kirego kiri mu Nyandiko y'ibirego rukemeza niba rwemera ko ibimenyetso byatanzwe bigaragaza, mu buryo budashidikanywaho, ko uregwa ahamwa n'icyaha maze rwasanga ahamwa n'icyaha kimwe cyangwa byinshi rukagena igihano kuri buri cyaha. Nk'uko byemejwe mbere n'Urugereko rw'Ubujurire, imyumvire y'Amategeko ishingiye ku mvugo yakoreshejwe n'urwego yakoreshejwemo ishyigikira ihame rivuga ko iyo ikirego cyatangiwe ibimenyetso mu buryo budashidikanywaho, hafatwa umwanzuro uvuga ko uregwa ahamwa n'icyaha[260]. Mu bukemuramanza hasobanurwa neza ko "Urugereko rwa Mbere rw'Iremezo rugomba gufata imyanzuro ihamya icyaha uregwa kuri buri cyaha cyatangiwe ibimenyetso bigaragaza, mu buryo budashidikanywaho, ko kimuhama kugira ngo rwerekane, mu buryo bwuzuye, imyitwarire mibisha y'umuntu wahamwe n'icyaha"[261]. "Ubundi buryo butuma hafatwa umwanzuro" Urugereko rwa Mbere rw'Iremezo ruvuga, busa n'ubuhabanye n'ibi bisabwa. Byongeye kandi, n'ubwo itandukaniro riri hagati y'iburanisha rishobora gutuma hafatwa icyemezo gihamya icyaha umuntu uregwa n'iburanisha ritangwamo ibimenyetso bigaragaza ibigize icyaha byose ariko hadashobora gufatwa icyemezo gihamya icyaha umuntu uregwa rishobora gusa n'aho ari rito, iri buranisha rya kabiri rinyuranyije cyane n'ihame ribuza kuburanisha urubanza uregwa adahari[262]. Urugereko rw'Ubujurire ruributsa ko kuba urubanza rwaburanishwa uregwa adahari byavanywe nkana muri Sitati n'Amategeko bya IRMCT n'Inkiko zayibanjirije[263].

67. Ikindi kigaragaza ko gukoresha "ubundi buryo butuma hafatwa umwanzuro" bihabanye n'amategeko IRMCT ni ingaruka zishobora kubaho igihe Urugereko rwasanga Kabuga agomba kuryozwa ibyaha aregwa ariko ntirufate icyemezo kimuhamya icyaha. Ntiyaba yemerewe

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[259] Icyemezo kijuririrwa, igika cya 57.
[260] Reba *Urubanza Porokireri aburana na Marie Rose Fatuma na bagenzi be*, N° MICT-18-116-A, Inyandiko y'urubanza, 29 Kamena 2022, igika cya 93.
[261] Reba *Urubanza Porokireri aburana na Jadranko Prlić na bagenzi be*, N° IT-04-74-A, Inyandiko y'urubanza, 29 Ugushyingo 2017, igika cya 399; *Urubanza Porokireri aburana na Vujadin Popović na bagenzi be*, N° IT-05-88-A, Inyandiko y'urubanza, 30 Mutarama 2015, igika cya 538; *Urubanza Jean Baptiste Gatete aburana na Porokireri*, N° ICTR-00-61-A, Inyandiko y'urubanza, 9 Ukwakira 2012, igika cya 261. Reba n'*Urubanza Édouard Karemera na Matthieu Ngirumpatse baburana na Porokireri*, N° ICTR-98-44-A, Inyandiko y'urubanza, 29 Nzeri 2014, igika cya 711, mu bihavugwa harimo ibiri mu Nyandiko y'urubanza rwa Strugar mu bujurire, igika cya 324, havugwa ku biri mu Nyandiko y'urubanza rwa Stakić mu bujurire, igika cya 358.
[262] Reba haruguru, ibika 64, 65.
[263] Reba Raporo y'Umunyamabanga Mukuru w'Umuryango w'Abibumbye, 3 Gicurasi 1993, igika cya 101 (Havugwa ko "abantu benshi bumva ko Sitati idakwiye guteganya ko ko urubanza rushobora kuburanishwa umuntu uregwa adahari kubera ko byaba binyuranyije n'Ingingo ya 14 y'Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike, iteganya ko umuntu uregwa aburanishwa ahibereye" (Ntihashyizwemo ibisobanuro byo hasi kuri paje)).

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kujuririra uwo mwanzuro cyangwa gusaba ko imikirize y'urubanza rwe isubirwamo. Ni ngombwa kwibutsa ko Ingingo ya 23 n'iya 24 za Sitati ziteganya ko Porokireri n'abantu bahamijwe icyaha ari bo bonyine bemerewe kujurira no gusaba ko imikirize y'urubanza isubirwamo. Kubera uko ibintu bimeze, haramutse hakoreshejwe "ubundi buryo butuma hafatwa umwanzuro", hari urujijo ku byerekeranye n'uburyo uburenganzira bw'uregwa bwo kujurira bwakubahirizwa[264]. Byongeye kandi, Kabuga ashobora kuvutswa uburenganzira bwo gukoresha mu buryo bwuzuye uburenganzira bushingiye ku 'ihame rivuga ko umuntu adashobora kuburanishwa kabiri ku cyaha kimweriteganywan'Ingingo ya 7 Sitati. Urugereko rw'Ubujurire rwa TPIR rwasobanuye ko iri hame "rirengera umuntu wahamijwe icyaha burundu cyangwa byemejwe ko ari umwere, kugira ngo atongera kugikurikiranwaho"[265].

68. Kubera impamvu zimaze kuvugwa, Urugereko rw'Ubujurire rusanze haba muri Sitati cyangwa mu bukemuramanza bwa IRMCT n'ubw'Inkiko zayibanjirije, nta hateganywa ko, mu mwanya w'iburanisha risanzwe, hashobora gukoreshwa "ubundi buryo butuma hafatwa umwanzuro", nk'uko bwasobanuwe n'Urugereko rwa Mbere rw'Iremezo. Urugereko rw'Ubujurire rurazirikana ibyavuzwe n'Urugereko rwa Mbere rw'Iremezo ko Komite ya CRPD yasabye ibihugu byashyize umukono kuri ayo Masezerano kujya bikora ku buryo abaregwa bafite ubumuga baburanishwa mu buryo busa cyane n'ubusanzwe bukoreshwa mu kuburanisha umuntu uregwa[266], kandi ko amategeko akurikizwa mu nkiko z'ibihugu zimwe na zimwe ateganya imiburanishirize ijya gusa n'urubanza rusanzwe mu gihe hemejwe ko ubuzima bw'uregwa butatuma aburanishwa[267]. By'umwihariko, kuba Urugereko rwa Mbere rw'Iremezo rwarashingiye ku bikorwa mu bihugu bimwe na bimwe, bigaragaza ko uburyo bujya gusa n'iburanisha risanzwe, bwateganyijwe mu buryo bweruye kandi bwihariye mu mategeko ya buri gihugu bireba[268]. Urugereko rw'Ubujurire rusanga ibiteganywa mu masezerano mpuzamahanga n'amategeko akurikizwa mu bihugu, n'ubwo bifite akamaro gakomeye, atari

[264] Reba Ingingo ya 14 (5) y'Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike. Reba n'Ingingo ya 13 n'iya 14 z'Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga.

[265] Reba *Urubanza Porokireri aburana na Tharcisse Muvunyi*, Nº ICTR-00-55A-AR73, Icyemezo ku bujurire bwa Porokireri bwerekeranye n'intera y'ibimenyetso bigomba gutangwa mu iburanisha ryo gusubiramo urubanza bundi bushya, 24 Werurwe 2009, igika cya 16, havugwa ku biteganywa n'Ingingo ya 14 (7) y'Amasezerano mpuzamahanga yerekeranye n'uburenganzira mu by'imbonezamubano no mu bya poritike.

[266] Icyemezo kijuririrwa, igika cya 50, mu bihavugwa harimo ibiri mu Ngingo ya 12(2) na 12(3) n'iya 13 z'Amasezerano mpuzamahanga yerekeranye n'uburenganzira bw'abantu bafite ubumuga, Raporo ya Komite ishinzwe uburenganzira bw'abantu bafite ubumuga, A/76/55, 2021, ibika 23, 26 (Aho iyo Komite yasabye ko ibihugu byashyize umukono kuri ayo Masezerano byafata ingamba zo mu rwego rw'amategeko, urw'ubuyobozi n'urw'ubutabera za ngombwa kugira ngo bivaneho inzitizi zose zibuza abantu bafite ubumuga kugira uruhare rufatika mu byiciro byose by'urubanza).

[267] Icyemezo kijuririrwa, ibika 52-56 n'ibisobanuro byo hasi kuri paje byerekeranye na byo.

[268] Reba Icyemezo kijuririrwa, ibika 52, 54, ibisobanuro byo hasi kuri paje Nº 198, 203, 206 n'ibivugwamo byakuwe ahandi.

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ngombwa ko bishingirwaho byanze bikunze mu kugena intera y'ububasha bwa IRMCT. Sitati ya IRMCT, nk'itegeko shingiro ryayo, ni yo igena intera ya manda yayo kandi kuyihindura cyangwa kuyivanaho bishobora gukorwa binyuze mu Cyemezo cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye gusa[269].

69. Urugereko rw'Ubujurire ntirwemera kandi ibyo Porokireri avuga ko gukoresha "ubundi buryo butuma hafatwa umwanzuro" biri mu bubasha bwite bwa IRMCT bwo gufata ibyemezo bikenewe mu rwego rwo gukoresha ububasha ihabwa n'amategeko[270]. Nk'uko byibukijwe haruguru, Sitati ya IRMCT nk'itegeko shingiro ryayo, igena intera y'ububasha bwayo bw'ibanze n'aho bugarukira nk'uko buvugwa mu Ngingo 1-7 za Sitati ya TPIR[271]. Ku byerekeranye na Sitati z'Inkiko zayibanjirije, Urugereko rw'Ubujurire rwemera ko Sitati ya IRMCT "itari kandi itavuga ko ari igitabo cy'amategeko kivuga mu buryo bwimbitse kandi burambuye kuri buri kibazo gishobora kubaho n'imikemurire yacyo" kandi ko ivuga mu buryo bwa rusange ububasha IRMCT ifite mu rwego rw'inshingano yahawe[272]. Muri bwo harimo ububasha bwo gukora ku buryo imirimo yayo yerekeranye no guca imanza itavogerwa[273]. Kuri iyi ngingo, hemejwe koko ko, mu kurangiza inshingano zabo, Abacamanza batagomba kugendera gusa ku Mategeko yayo bityo bakaba bafite ububasha bwite bwo gutanga amategeko yerekeranye, mu buryo bushyize mu gaciro, n'ibibazo bashyikirijwe kandi bikomoka, mu buryo butaziguye, ku mirimo yo gutanga ubutabera[274].

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[269] *Urubanza Porokireri aburana na Radovan Karadžić*, Nº IT-95-5/18-AR73.4, Icyemezo ku bujurire bwa Karadžić ku Cyemezo cy'Urugereko rwa Mbere rw'Iremezo ku byerekeranye n'ibivugwa ko Ujurira yagiranye amasezerano na Holbrooke, 12 Ukwakira 2009 (Icyemezo mu rubanza rwa Karadžić, 12 Ukwakira 2009"), ibika 34-36 (Ku byerekeranye na Sitati ya TPIY).

[270] Reba Igisubizo cya Porokireri, igika cya 12.

[271] Ingingo ya 1(1) ya Sitati. Reba n'Icyemezo mu rubanza rwa Karadžić, 12 Ukwakira 2009, igika cya 34.

[272] *Urubanza Porokireri aburana na Milan Milutinović na bagenzi be*, Nº IT-99-37-AR72, Icyemezo ku Cyifuzo cya Dragoljub Ojdanić cyerekeranye n'iburabubasha – ku birebana n'umugambi mubisha uhuriweho, 21 Gicurasi 2003 ("Icyemezo mu rubanza rwa Milutinović na bagenzi be, 21 Gicurasi 2003"), igika cya 18.

[273] *Urubanza Porokireri aburana na Zlatko Aleksovski*, Nº IT-95-14/1-AR77, Inyandiko y'urubanza rw'Anto Nobilo mu bujurire, ku Cyemezo kimuhamya icyaha cyo gusuzugura Urukiko, 30 Gicurasi 2001 ("Inyandiko y'urubanza rwa Nobilo mu bujurire ku byerekeranye n'icyaha cyo gusuzugura Urukiko"), igika cya 30.

[274] Reba *Urubanza Porokireri aburana na Radovan Stanković*, Nº IT-96-23/2-AR11*bis*.1, Icyemezo cyerekeranye no kwimura urubanza hashingiwe ku Ngingo ya *11bis* y'Amategeko, 1 Nzeri 2005 ("Icyemezo mu rubanza rwa Stanković, 1 Nzeri 2005"), igika cya 51, ibisobanuro Nº 97, 98 byo hasi kuri paje (Havugwa ko ububasha bwite bwa TPIY burimo, nk'urugero, ubwo gusuzuma ububasha bwayo, kwemera ko ibimenyetso bitangwa mu bujurire n'iyo byaba byari biriho igihe urubanza rwaburanishwaga mu rw'Iremezo, iyo rusanga kutabishyira muri dosiye byatuma urubanza rucibwa nabi hamwe n'ubwo guhamya abantu icyaha cyo gusuzugura Urukiko kugira ngo imanza ziburanishwe mu buryo buboneye kandi imirimo y'ubutabera ikorwe uko bikwiye), havugwa ku biri mu Nyandiko y'urubanza rwa Nobilo mu bujurire ku byerekeranye n'icyaha cyo gusuzugura Urukiko, igika cya 30, *Urubanza Porokireri aburana na Goran Jelisić*, Nº IT-95-10-A, Icyemezo ku Cyifuzo gisaba ko ibimenyetso by'inyongera bishyirwa muri dosiye, 15 Ugushyingo 2000, *Urubanza Porokireri aburana na Duško Tadić*, Nº IT-94-1-AR72, Icyemezo ku bujurire bw'Ubwunganizi bwerekeranye n'Icyemezo ku Cyifuzo cyerekeranye n'iburabubasha, 2 Ukwakira 1995, igika cya 14.

70. Urugereko rw'Ubujurire rusanga, mu gushyigikira ibyo avuga, Porokireri avuga ku bubasha Inkiko zabanjirije IRMCT zari zifite, bwo gusuzuma ibyerekeranye n'uburyozwacyaha bushingiye ku mugambi mubisha uhuriweho n'ubwerekeranye n'icyaha cyo gusuzugura Urukiko, kandi ibyo bintu bitari biteganyijwe, mu buryo bweruye, muri Sitati cyangwa/no mu Mategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso byazo[275]. Cyakora, Urugereko rw'Ubujurire ruributsa ko ububasha bwo kuburanisha ku byerekeranye n'uburyozwacyaha bushingiye ku mugambi mubisha uhuriweho buri mu bubasha nyirizina bwa TPIR buteganywa n'Ingingo ya 6(1) ya Sitati yayo, bwo kuryoza icyaha abantu "bakoze" ibyaha bivugwa mu Ngingo za 2 - 4 za Sitati ya TPIR[276]. Ku byerekeranye n'ububasha bwo kuburanisha ibyaha byerekeranye no gusuzugura Urukiko, Urugereko rw'Ubujurire ruributsa ko, kuri iyi ngingo, ububasha bwite bw'inkiko zidahoraho bukomoka ku mirimo zishinzwe yerekeranye n'imanza aho zigomba gukora ku buryo ububasha zihabwa, mu buryo bweruye, na Sitati zazo butabangamirwa kandi imirimo yazo yerekeranye n'imanza y'ibanze ikabungwabungwa[277].

71. Nk'uko byasobanuwe haruguru, Sitati ntiha IRMCT, mu buryo bweruye, ububasha bwo kuburanisha imanza zitari izo mu rw'iremezo, mu bujurire n'izo gusubiramo imikirize y'imanza[278]. Hashingiwe ku ihame rivuga ko "icyo itegeko rishaka rirakivuga", iyo abateguye Sitati bashaka guha IRMCT ububasha bwo gukoresha uburyo busa n'iburanisha risanzwe, bari kubiteganya mu buryo bweruye. Urugereko rw'Ubujurire rusanga, ku byerekeranye n'urukiko mpanabyaha mpuzamahanga, ubu atari ububasha bushobora gufatwa nk'ubukomoka ku mirimo rushinzwe gukora[279].

72. Hashingiwe ku bimaze kuvugwa, Urugereko rw'Ubujurire rusanze, mu kwemeza ko hakoreshwa "ubundi buryo butuma hafatwa umwanzuro", Urugereko rwa Mbere rw'Iremezo rwarakoresheje ububasha busesuye IRMCT itahawe n'amategeko ayigenga, bityo rukaba rwarakoze ikosa ryo mu rwego rw'amategeko rituma Icyemezo kijuririrwa kigomba

[275] Reba Igisubizo cya Porokireri, igika cya 12.
[276] Reba Icyemezo mu rubanza wa Milutinović na bagenzi be, 21 Gicurasi 2003, ibika 18-20 (Byerekeranye n'ibiteganywa n'Ingingo ya 7(1) ya Sitati ya TPIY bihuye). Reba n'*Urubanza Porokireri aburana na Elizaphan Ntakirutimana na Gérard Ntakirutimana*, Nº ICTR-96-10-A na ICTR-96-17-A, Inyandiko y'urubanza, 13 Ukuboza 2004, ibika 461, 462, 468 (Aho Urugereko rw'Ubujurire rwa TPIR rwavuze ibikurikira: "n'ubwo uburyozwacyaha bushingiye ku mugambi mubisha uhuriweho ari ubukemuramanza bwashinze imizi bwa TPIY, uru ni rwo rubanza rwa kabiri rwa TPIY Urugereko rw'Ubujurire rwasabwe gufatamo umwanzuro kuri icyo kibazo. Kubera ko TPIY na ICTR zifite ingingo zisa ziteganya uburyo umuntu ashobora kuryozwa icyaha, Urugereko rw'Ubujurire rwemera ko ubukemuramanza bwa TPIY bukwiye gukoreshwa mu gusobanura Ingingo ya 6(1) ya Sitati ya TPIR."); Inyandiko y'urubanza rwa Tadić mu bujurire, ibika 186-194, 226.
[277] Reba *Urubanza Porokireri aburana na Duško Tadić*, Nº IT-94-1-A-R77, Inyandiko y'urubanza rwo gusuzugura Urukiko rwa Milan Vujin, wari Avoka wunganira Uregwa, 31 Mutarama 2000, ibika 13, 18.
[278] Reba Ingingo za 18, 23 na 24 za Sitati.
[279] Reba Icyemezo mu rubanza rwa Blaškić, 29 Ukwakira 1997, igika cya 25 (Ku byerekeranye n'ububasha bwa TPIY bwo gutanga amategeko ahamagaza ibihugu mu rukiko, budateganywa mu buryo bweruye muri Sitati yayo).

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kuvanwaho. Kubera uyu mwanzuro, Urugereko rw'Ubujurire rusanga atari ngombwa gusuzuma izindi ngingo zikubiye mu bujurire bw'Ubwunganizi. Ubu noneho Urugereko rw'Ubujurire rugiye gusuzuma uburyo bukwiye kurusha ubundi bwo gukosora iryo kosa, hakurikijwe uko ibintu byifashe muri uru rubanza.

3. Umuti w'ikibazo

73. Urugereko rw'Ubujurire rusanga, mu Cyemezo kijuririrwa, Urugereko rwa Mbere rw'Iremezo rwarafashe umwanzuro uvuga ko kugira ngo uburenganzira bwa Kabuga bwubahirizwe ari ngombwa ko hakoreshwa "ubundi buryo butuma hafatwa umwanzuro" aho gusubika urubanza[280]. Nk'uko Urugereko rw'Ubujurire rwabifasheho umwanzuro haruguru, gukoresha "ubundi buryo butuma hafatwa umwanzuro" ntibyari mu byo Urugereko rwa Mbere rw'Iremezo rufitiye ububasha, bityo rero, si uburyo bukwiye bwakwifashishwa aho gusubika rubanza. Urugereko rw'Ubujurire rusanga kandi Icyemezo kijuririrwa kitaravuze mu buryo bweruye ku manza zaburanishijwe n'Inkiko zabanjirije IRMCT aho guhagarika iburanisha mu gihe kitazwi byemejwe hamaze gufatwa umwanzuro uvuga, mu buryo bweruye cyangwa hakurikijwe uko ibintu bimeze, ko ubuzima bw'uregwa butatuma akomeza kuburanishwa kandi ko, mu by'ukuri, nta cyizere ko azongera kuba yashobora kuburanishwa, maze uregwa agafungurwa by'agateganyo ariko hari ibyo agomba kubahiriza[281]. N'ubwo Urugereko rw'Ubujurire ruzirikana ko Ingereko za Mbere z'Iremezo cyangwa Urugereko rw'Ubujurire zidategetswe kugendera ku byemejwe n'izindi Ngereko za Mbere z'Iremezo[282], kwifashisha iyo mikorere bishobora gufasha mu gufata icyemezo cyerekeranye n'icyakorwa muri uru rubanza.

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280 Icyemezo kijuririrwa, igika cya 50.

281 Reba Icyemezo kijuririrwa, igika cya 49 (Aho Urugereko rwa Mbere rw'Iremezo rwafashe umwanzuro uvuga ko "Urundi rubanza, rumwe rukumbi, rwaburanishijwe n'urukiko mpuzamahanga rwaregwagamo umuntu umeze nk'uwo muri uru ari urwa Ieng Thirith rwaburanishijwe n'[(Ingereko Zihariye z'Inkiko za Kamboje)]"). Reba *Urubanza Porokireri aburana na Goran Hadžić*, Nº IT-04-75-T, inyandiko itari ibanga, yakuwemo ibigomba kugirwa ibanga, y'Icyemezo cyerekeranye no gukomeza iburanisha cyo ku itariki ya 24 Werurwe 2016, 5 Mata 2016, ibika 4, 28-31; *Urubanza Porokireri aburana na Goran Hadžić*, Nº IT-04-75-T-AR65.1, Icyemezo ku bujurire bwihutirwa bwerekeranye n'Icyemezo cy'Urugereko rwa Mbere rw'Iremezo cyangira Uregwa gufungurwa by'agateganyo, 13 Mata 2015 (Inyandiko itari ibanga, ifite Umugereka w'ibanga), igika cya 23; *Urubanza Porokireri aburana na Goran Hadžić*, Nº IT-04-75-T, Icyemezo ku Cyifuzo cya Porokireri gisaba ko urubanza ruhagarikwa burundu ku mugaragaro, 17 Kamena 2016; *Urubanza Porokireri aburana na Goran Hadžić*, Nº IT-04-75-T, Itegeko rihagarika urubanza burundu, 22 Nyakanga 2016, paje ya 1; *Urubanza Porokireri aburana na Radoslav Brđanin na Momir Talić*, Nº IT-99-36-T, Icyemezo ku Cyifuzo cy'Ubwunganizi gisaba ko Momir Talić afungurwa by'agateganyo, 20 Nzeri 2002, ibika 32, 42, paje ya 13; *Urubanza Porokireri aburana na Momir Talić*, Nº IT-99-36/1-T, Icyemezo ku Byifuzo, 26 Ugushyingo 2002, paje 3, 4; *Urubanza Porokireri aburana na Momir Talić*, Nº IT-99-36/1-T, Icyemezo cyerekeranye no kumenya niba ubuzima bw'Uregwa bwatuma ashobora kuburanishwa, 29 Mata 2003 (Inyandiko y'ibanga), paje 2, 3; *Urubanza Porokireri aburana na Momir Talić*, Nº IT-99-36/1-T, Itegeko rihagarika burundu urubanza rwa Momir Talić, 12 Kamena 2003, paje ya 1.

282 Reba Inyandiko y'urubanza rwa Mladić mu bujurire, igika cya 243 n'ibisobanuro byo hasi kuri paje byerekeranye na cyo.

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74. Kubera ko Urugereko rw'Ubujurire rwagumishijeho umwanzuro w'Urugereko rwa Mbere rw'Iremezo uvuga ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa kandi ko bishoboka cyane ko ubuzima bwe butazongera gutuma ashobora kuburanishwa[283], rusanga, hakurikijwe uko ibintu biteye, igikwiye kurusha ibindi muri uru rubanza ari ukurusubiza mu Rugereko rwa Mbere rw'Iremezo ariko rugategekwa gusubika urubanza mu gihe kitazwi. Gutegeka ko uru rubanza rusubikwa mu gihe kitazwi bijyanye n'imikorere yifashishijwe mbere kandi ituma uburenganzira abantu bose baregwa muri IRMCT bemererwa n'amategeko bwubahirizwa hakanakorwa ku buryo IRMCT ikomeza kugira ububasha bwo kuburanisha umuntu uregwa kuba yarakoze bimwe mu byaha by'indengakamere kandi wihishe ubutabera mu gihe kirenga imyaka ibinyacumi bibiri.

75. Mu gufata icyemezo cyo gusubiza iki kibazo mu Rugereko rwa Mbere rw'Iremezo, Urugereko rw'Ubujurire ruzirikana ko Urugereko rwa Mbere rw'Iremezo ruzi neza ibyerekeranye n'uru rubanza ndetse na gahunda y'isuzumabuzima rwashyizeho hagamijwe gukurikirana uko ubuzima kwa Kabuga bwifashe. Bityo rero, Urugereko rwa Mbere rw'Iremezo ni rwo rukwiye kwemeza uburyo bwo gusubika urubanza no gukemura ikibazo cy'ifungurwa rya Kabuga hashingiwe kuri iryo subikwa ry'urubanza. Kuri iyi ngingo, Urugereko rw'Ubujurire rusanga amaburanisha yo kumva ubuhamya muri uru rubanza yarasubitswe by'agateganyo guhera ku itariki ya 6 Werurwe 2023[284] kandi Kabuga agifunze nyuma y'uko hemejwe ko ubuzima bwe butatuma akomeza kuburanishwa. Kubera izo mpamvu, ni ngombwa ko mu gutegeka ko urubanza rusubikwa mu gihe kitazwi, Urugereko rwa Mbere rw'Iremezo rusuzuma mbere na mbere ikibazo cyerekeranye no gufungura Kabuga hashyizweho ibintu bikwiye kurusha ibindi agomba kubahiriza hakurikijwe uko ibintu biteye.

76. N'ubwo Urugereko rw'Ubujurire rwemera ko, nk'uko Porokireri abivuga, kubona igihugu kizemera kwakira Kabuga ku butaka bwacyo bishobora kuzaba imbogamizi[285], iyo si impamvu yatuma Kabuga akomeza gufungwa by'agateganyo, hashingiwe ku itegeko ryatanzwe na IRMCT. Kubera izo mpamvu, Urugereko rwa Mbere rw'Iremezo rutegetswe gusuzuma mu buryo bwihuse uburyo bukwiye n'ibigomba kubahirizwa kugira ngo afungurwe.

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[283] Reba haruguru, igika cya 48.
[284] Reba Icyemezo kijuririrwa, ibika 17, 59.
[285] Reba Igisubizo cya Porokireri, igika cya 35.

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D. Ingingo zisoza

77. Urugereko rw'Ubujurire ruributsa ko TPIR yashyizweho kugira ngo ifashe muri gahunda y'igihugu y'ubwiyunge no mu kugarura no kubumbatira amahoro mu Rwanda[286]. Ubukemuramanza bw'Urugereko rw'Ubujurire na bwo bwerekana koko ko kuburanisha abantu baregwa ibyaha mpuzamahanga bikomeye birimo jenoside n'ibyaha byibasiye inyokomuntu, bifite inyungu rusange zikomeye[287]. Cyakora, Urugereko rw'Ubujurire ruzirikana ko inyungu z'ingenzi z'umuryango mpuzamahanga mu gukurikirana abantu baregwa kuba baranyuranyije bikomeye n'Amategeko arengera abantu mu gihe cy'intambara zigomba kurengerwa hanazirikanwa uburenganzira bw'ibanze bw'uregwa[288]. Ibyo byombi bigomba kubahirizwa mu rwego rw'inshingano za IRMCT.

78. Urugereko rw'Ubujurire ruzirikana ko abarokotse n'abantu bakorewe ibyaha Kabuga aregwa bamaze igihe kirekire bategereje guhabwa ubutabera kandi ko kudashobora gusoza iburanisha muri uru rubanza kubera ko ubuzima bwa Kabuga butatuma akomeza kuburanishwa bigomba kuba bibabababaje. Cyakora, ubutabera bushobora kubaho gusa igihe urubanza ruburanishijwe mu buryo buboneye, hubahirijwe, mu buryo bwuzuye, uburenganzira bw'uregwa nk'uko Sitati ibiteganya. Iki ni ikintu cy'ibanze mu mategeko ya IRMCT n'ay'Inkiko zayibanjirije kandi ni ingenzi kugira ngo izi nzego zigirirwe icyizere n'umurage wazo uzarambe. Urugereko rw'Ubujurire rufashe uyu mwanzuro ruzirikana inshingano rufite yo gukora ku buryo ibyemezo bifatwa biba bishingiye gusa ku butabera n'amategeko[289]. Birumvikana ko ubutabera bugomba gutangwa kandi bikagaragarira buri wese.[290]

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[286] Reba Icyemezo cya 1966 (2010), cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, Iriburiro; Icyemezo cya 955 (1994) cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumbye, paje ya 1.

[287] Reba Icyemezo mu rubanza rwa Karadžić, 12 Ukwakira 2009, ibika 49, 52; *Urubanza Porokireri aburana na Dragan Nikolić*, Nº IT-94-2-AR73, Icyemezo ku bujurire ku Cyemezo cyerekeranye n'iyubahirizwa ry'amategeko mu ifatwa ry'Uregwa, 5 Kamena 2003 ("Icyemezo mu rubanza rwa Nikolić, 5 Kamena 2003"), igika cya 25.

[288] Inyandiko y'urubanza rwa Nyiramasuhuko na bagenzi be mu bujurire, igisobanuro Nº 943 cyo hasi kuri paje; Icyemezo mu rubanza rwa Karadžić, 12 Ukwakira 2009, igika cya 46; *Urubanza Juvénal Kajelijeli aburana na Porokireri*, Nº ICTR-98-44A-A, Inyandiko y'urubanza, 23 Gicurasi 2005, igika cya 206; Icyemezo mu rubanza rwa Nikolić, 5 Kamena 2003, ibika 26, 30.

[289] Reba *Urubanza Porokireri aburana na Ramush Haradinaj na bagenzi be*, Nº IT-04-84-AR65.1, Icyemezo ku ifungurwa ry'agateganyo rya Ramush Haradinaj ryahinduwe, 10 Werurwe 2006, igika cya 51; *Urubanza Jean-Bosco Barayagwiza aburana na Porokireri*, Nº ICTR-97-19-AR72, Icyemezo (Icyifuzo cya Porokireri gisaba ko Icyemezo gisubirwamo), 31 Werurwe 2000 (Inyandiko y'umwimerere yatanzwe mu gifaransa, inyandiko isemuye mu cyongereza yatanzwe ku itariki ya 7 Mata 2000), igika cya 34.

[290] *Urubanza Porokireri aburana na Théoneste Bagosora n'abandi bantu 28,* Nº ICTR-98-37-A Icyemezo cyerekeranye no kwakira ubujurire bwa Porokireri ku Cyemezo cyafashwe n'Umucamanza wasuzumye niba Inyandiko y'ibirego yakwemezwa, wanze kwemeza Inyandiko y'ibirego yakorewe Théoneste Bagosora n'abandi bantu 28, 8 Kamena 1998, igika cya 32.

Byasemuwe kandi byemezwa na LSS/IRMCT

III. ICYEMEZO

79. Kubera impamvu zimaze kuvugwa, **URUGEREKO RW'UBUJURIRE**,

RWEMEYE Icyifuzo cya Porokireri kandi rusanze Igisubizo cye cyaratanzwe mu buryo bwubahirije amategeko;

RWEMEYE Icyifuzo gisaba ibisubizo by'isuzumabuzima ryakozwe hifashishijwe MRI kandi

RWEMEREYE ababuranyi kubyereka impuguke bakorana, bigafatwa nk' ibanga rikomeye;

NTIRWEMEYE ubujurire bwa Porokireri, bwose uko bwakabaye;

RWEMEYE ubujurire bw'Ubwunganizi, kuri bimwe;

RUVANYEHO Icyemezo kijuririrwa;

RUSUBIJE iki kibazo mu Rugereko rwa Mbere rw'Iremezo kandi rurutegetse gusubika urubanza mu gihe kitazwi no gufata, mu buryo bwihuse, umwanzuro ku kibazo cy'ifungwa ry'agateganyo rya Kabuga, ujyanye n'iki Cyemezo; kandi

NTIRWEMEYE ibindi bivugwa mu bujurire bw'Ubwunganizi.

Bikozwe mu cyongereza no mu gifaransa ariko inyandiko yo mu cyongereza ni yo igenderwaho.

Bikozwe uyu munsi, tariki ya 7 Kanama 2023,
Arusha, muri Tanzaniya.

[**Umukono**]

Carmel Agius
Perezida

[Kashe ya IRMCT]

Byasemuwe kandi byemezwa na LSS/IRMCT