

**UMURYANGO  
W'ABIBUMBYE**



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

Urubanza N°: MICT-13-38-I

Itariki: 27 Gicurasi 2020

Umwimerere: icyongereza

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**UMUCAMANZA W'IZAMU**

**Umucamanza:** William H. Sekule  
**Gerefiye:** Olufemi Elias  
**Itariki:** 27 Gicurasi 2020

**POROKIRERI**

aburana na

**FÉLICIEN KABUGA**

***INYANDIKO ITARI IBANGA***

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**ICYEMEZO KU CYIFUZO CYA POROKIRERI GISABA KO  
URWANDIKO RWO GUFATA N'ITEGEKO RYO KWIMURA  
BIHINDURWA**

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**Ibiro bya Porokireri**

Serge Brammertz

**Félicien Kabuga**

1. **JYEWE, William H. Sekule**, Umucamanza w'izamu ku Ishami ry'Urwego Mpuzamahanga Rwashyiriweho Gukora Imirimo y'Insigarira y'Inkiko Mpanabyaha ry'Arusha ("IRMCT") mu gihe cy'ukwezi kwa Gicurasi 2020<sup>1</sup>, nashyikirijwe icyifuzo cyihutirwa Porokireri yatanze asaba ko Urwandiko rwo gufata Félicien Kabuga ruhindurwa, kugira ngo yimurirwe by'agateganyo ku Ishami rya IRMCT ry'i Lahe<sup>2</sup>. Si ngombwa gutegereza igisubizo cya Kabuga kubera ko ubusanzwe inzandiko zo gufata n'amategeko yo kwimura bitamenyeshwa abaregwa. Kabuga namara kubona iki Cyemezo cyangwa gushyikirizwa IRMCT, azashobora gusaba indihano ikwiye cyangwa gusaba ko hagira ibindi bihindurwa ku byerekeranye n'aho azafungirwa by'agateganyo n'uburyo azafungwamo ari mu maboko ya IRMCT, hashingiwe kuri Sitati n'Amategeko Agenga Imiburanishirize n'Itangwa ry'Ibimenyetso ("Amategeko").

## I. UKO IBINTU BYAKURIKIRANYE

2. Umuryango w'Abibumbye wamaze imyaka irenga 20 ushakisha Félicien Kabuga. Kuva Inyandiko y'ibirego ya mbere yamukorewe yakwemezwa n'Umucamanza Lennart Aspegren ku itariki ya 26 Ugushyingo 1997, yari mu bantu b'ingenzi barezwe mu Rukiko Mpanabyaha Mpuzamahanga Rwashyiriweho u Rwanda ("TPIR")<sup>3</sup>. Mu mwaka wa 2012, ubwo IRMCT yafataga inshingano za TPIR, Kabuga wari umwe mu bayobozi bakuru bakekwaho kuba baragize uruhare rukomeye cyane muri jenocide yo mu Rwanda yakomeje gushakishwa bikomeye, kugira ngo afatwe maze aburanishirizwe ku Ishami rya IRMCT ry'Arusha<sup>4</sup>. Igikorwa cyo gushakisha Kabuga cyarangiyeye ku itariki ya 16 Gicurasi 2020, mu gitondo, ubwo abayobozi bo mu Bufaransa, mu rwego rwo gushyira mu bikorwa Urwandiko rwo kumufata rwatanze na IRMCT, bamufataga maze bakamufunga. Ubu arimo kwitaba inzego z'ubucamanza zo mu Bufaransa nk'uko biteganywa n'itegeko ryo mu Bufaransa rigenga ibyerekeranye n'ubufatanye na IRMCT<sup>5</sup>.

<sup>1</sup> Reba muri rusange, urubanza N° MICT-12-01, Itegeko rishyiraho Umucamanza w'izamu ku Ishami ry'Arusha kuva muri Werurwe kugera mu mpera za Kamena 2020, 14 Gashyantare 2020, paje 1, 2.

<sup>2</sup> Icyifuzo cyihutirwa gisaba ko Itegeko ryo kwimura rihindurwa, 20 Gicurasi 2020 ("Icyifuzo"), ibika 1-7. Reba n'Itegeko risaba Umucamanza w'izamu ku ishami ry'Arusha gusuzuma icyifuzo, 22 Gicurasi 2020, paje ya 1.

<sup>3</sup> *Urubanza Porokireri aburana na Félicien Kabuga*, N° ICTR-97-22-I, icyemezo cyemeza Inyandiko y'ibirego, 26 Ugushyingo 1997.

<sup>4</sup> Reba Ingingo ya 1(2) ya Sitati.

<sup>5</sup> Reba Itegeko N° 95-1 ryerekeranye no guhuza amategeko yo mu Bufaransa n'ibiteganywa n'Icyemezo N° 827 cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumye gishyiraho Urukiko Mpuzamahanga rushinzwe gucira imanza abantu baregwa kuba barakoze ibikorwa binyuranyije bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara mu cyahoze ari Yugosilaviya kuva mu mwaka wa 1991, 2 Mutarama 1995; Itegeko N° 96-432 ryerekeranye no guhuza amategeko yo mu Bufaransa n'ibiteganywa n'Icyemezo N° 955 cy'Inama Ishinzwe Amahoro ku Isi y'Umuryango w'Abibumye gishyiraho Urukiko Mpuzamahanga rushinzwe gucira imanza abantu bakoze jenocide cyangwa ibindi bikorwa binyuranyije bikomeye n'amategeko mpuzamahanga arengera abantu mu gihe cy'intambara mu Rwanda n'Abanyarwanda babikoreye mu bihugu bituranye n'u Rwanda mu mwaka wa 1994, 22

3. Mu gihe Kabuga yari yaratorotse ubutabera, Inyandiko y'ibirego ye yarahinduwe, kandi ku itariki ya 13 Mata 2011 ni bwo Dennis C. M. Byron, Umucamanza wa TPIR, yemeje Inyandiko y'ibirego igenderwaho<sup>6</sup>. Kabuga akurikiranyweho ibirego birindwi bya jenocide n'ibyaha byibasiye inyokomuntu bishingiye ku bivugwa mu Nyandiko y'ibirego yahinduwe, ko ari mu bantu bashinze Radiyo RTLM (“RTLM”) yahitishaga amatangazo ahamagarira abantu gukora jenocide, ko yateye inkunga igikorwa cyo guha intwari no gutwaza Interahamwe harimo n'izari zigize umutwe wihariye we, wishe ibihumbi by'abasivire, kandi ko, mu mamitingi yakoranyanga imbaga, yahamagariye abantu kwica Abatutsi<sup>7</sup>. Urwandiko rwo gufata rwagendeweho rwatanzwe na IRMCT, rushyirwaho umukono n'Umucamanza Vagn Joensen ku itariki ya 29 Mata 2013 kandi rutegeka ko Kabuga agomba kwimurirwa ku Ishami rya IRMCT ry'Arusha kugira ngo aburanishwe<sup>8</sup>.
4. Ku itariki ya 11 Werurwe 2020, Ishami ry'Umuryango w'Abibumbye ryita ku Buzima ryatangaje ko isi yose yugarijwe n'icyorezo cya Koronavirusi, bituma mu bihugu hafi ya byose hafatwa ingamba, zishobora guhinduka, zibuza ingendo<sup>9</sup>. Kubera iyo mpamvu, Porokireri yasabye ko Urwandiko rwo gufata n'Itegeko ryo kwimura bihindurwa, kugira ngo abayobozi bo mu Bufaransa basabwe kwimurira by'agateganyo Kabuga ku Ishami rya IRMCT ry'i Lahe, mu rwego rwo koroshya inzitizi zerekeranye n'ingamba zibuza ibintu bimwe na bimwe mu Bufaransa no muri Tanzaniya kubera icyorezo<sup>10</sup>. Porokireri avuga ko iryo hindurwa ryatuma Kabuga ashikiriye IRMCT bidatinze kandi rikagabanya ubukererwe, ubwo ari bwo bwose, bushobora guterwa n'ibibazo bishobora kugaragara bigomba gufatwaho ibyemezo n'inkiko zo mu Bufaransa, byerekeranye no gusuzuma niba kumwimurira muri Tanzaniya mu gihe cy'icyo cyorezo byashoboka<sup>11</sup>.

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Gicurasi 1996; Itegeko N° 2013-711 rishyiraho ingingo zinyuranye zo guhuza amategeko akurikizwa mu butabera mu rwego rwo kubahiriza amategeko y'Umuryango w'ibihugu by'i Burayi n'inshingano z'u Bufaransa zo mu rwego mpuzamahanga, 5 Kanama 2013, Umutwe wa IX.

<sup>6</sup> *Urubanza Porokireri aburana na Félicien Kabuga*, N° ICTR-98-44B-PT, icyemezo ku Cyifuzo cya Porokireri gisaba uruhushya rwo gutanga Inyandiko y'ibirego yahinduwe, 13 Mata 2011 (Inyandiko y'ibanga); *Urubanza Porokireri aburana na Félicien Kabuga*, N° ICTR-98-44B-I, Inyandiko y'ibirego yahinduwe, 14 Mata 2011 (“Inyandiko y'ibirego yahinduwe”).

<sup>7</sup> Reba Inyandiko y'ibirego yahinduwe, ibika 16-28, 44-53, 66-71, 81-84.

<sup>8</sup> *Urubanza Porokireri aburana na Félicien Kabuga*, N° MICT-13-38, Urwandiko rwo gufata n'Itegeko ryo kwimura bigenewe ibihugu byose, 29 Mata 2013 (“Urwandiko rwo gufata n'Itegeko ryo kwimura”), paje 1-3.

<sup>9</sup> Reba icyemezo cya 74/270 cy'Inteko Rusange y'Umuryango w'Abibumbye cyerekeranye n'ubufatanye mpuzamahanga mu kurwanya icyorezo cya Koronavirusi, U.N. Doc. A/Res/74/270, 2 Mata 2020, paje ya 1. Reba n'ijambo ry'ikaze Umuyobozi Mukuru w'Ishami ry'Umuryango w'Abibumbye ryita ku Buzima yavuze atangiza ikiganiro yagiranye n'abanyamakuru kuri Koronavirusi ku itariki ya 11 Mata 2020 (Ryarebwe bwa nyuma ku itariki ya 27 Gicurasi 2020, ku rubuga <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>).

<sup>10</sup> icyifuzo, ibika 3, 5.

<sup>11</sup> icyifuzo, igika cya 5.

## II. ISESENGURA

5. Nk’uko biteganywa n’Ingingo ya 3 ya Sitati, “IRMCT ifite Amashami abiri, rimwe rishinzwe imirimo yari iy’ [Urukiko Mpanabyaha Mpuzamahanga Rwashyiriweho icyahoze ari Yugosilaviya (“TPIY”)] n’irindi rishinzwe imirimo yari iya TPIR. Ishami rishinzwe imirimo yari iya TPIY rifite icyicaro i Lahe, Ishami rishinzwe imirimo yari iya TPIR rikagira icyicaro Arusha”<sup>12</sup>. Amategeko ateganya ko abantu TPIR yakoreye inyandiko z’ibirego, nka Kabuga, bimurirwa bakanafungirwa ku Ishami rya IRMCT ry’Arusha kandi bakaba ari ho baburanishirizwa<sup>13</sup>.
6. Gutanga inzandiko zo gufata n’amategeko yo kwimura cyangwa kubihindura bikorwa n’abacamanza babifitiye ububasha<sup>14</sup>. Muri urwo rwego, Umucamanza ni we wenyine ushobora guhindura urwo rwandiko cyangwa iryo tegeko. Urugereko ruzaburanisha uru rubanza ntirurashyirwaho, bityo rero, Ingingo ya 12(2) ya Sitati n’iya 28 y’Amategeko zimpa ububasha bwo guhindura urwo Rwandiko rwo gufata n’Itegeko ryo kwimura. Mu gufata iki Cyemezo, ndashingira ku Ngingo ya 18(1) ya Sitati n’iya 55 y’Amategeko ziha Abacamanza baburanisha urubanza inshingano yo gukora ibishoboka byose kugira ngo rucibwe mu buryo buboneye kandi bwihuse, hubahirijwe Amategeko, no gutanga amategeko, inzandiko zo gufata n’amategeko yo kwimura uwafashwe, aho bikenewe mu gutegura urubanza cyangwa mu kuruburanisha. Nkoresheje ubwo bubasha, nsanga ibyo Porokireri asaba ko bihindurwa mu Rwandiko rwo gufata n’Itegeko ryo kwimura uwafashwe bikwiye gusuzumanwa ubushishozi kubera ko, muri rusange, biteganyijwe ko muri uru rubanza, uregwa afungirwa by’agateganyo Arusha kandi akaba ari na ho aburanishirizwa, ibyo bigahindurwa ari uko habonetse impamvu zidasanzwe<sup>15</sup>.

<sup>12</sup> Reba n’Icyemezo cya 1966 cy’Inama Ishinzwe Amahoro ku Isi y’Umuryango w’Abibumbye, U.N. Doc. S/Res/1966, 22 Ukuboza 2010, Umugereka 2, Ingingo z’inzibacyuho, Ingingo ya 1(4).

<sup>13</sup> Nk’urugero, reba Ingingo za 57(E) na (G), 59(A), 64(A) na 67 z’Amategeko. Reba Ingingo ya 78(B) n’iya 87(I) z’Amategeko. Kuri izi Ngingo rusange z’amategeko ateganya ko Kabuga azafungirwa akanaburanishirizwa ku Ishami ry’Arusha igihe azaba amaze gushyikirizwa IRMCT, hari amarengayobora make. Ingingo ya 67 y’Amategeko yemera ko, “iyi hari impamvu zidasanzwe”, nyuma yo gushyikirizwa IRMCT, umuntu uregwa ashobora gufungirwa mu gihugu kitari icyo Ishami rya IRMCT bireba rifitemo icyicaro, naho Ingingo ya 4 y’Amategeko ikemerera Urugereko rushobora gukorera imirimo yarwo ahandi hantu hatari ku cyicaro cy’Ishami rya IRMCT bireba, iyo biri “mu nyungu z’ubutabera”.

<sup>14</sup> Ingingo ya 55 n’iya 57 z’Amategeko. Reba n’*Urubanza Porokireri aburana na Radovan Karadžić*, N° MICT-13-55, Icyemezo ku Cyifuzo gisaba kuvana Umucamanza mu rubanza no ku Cyifuzo cyerekeranye n’iburabubasha, 28 Ukwakira 2019, igika cya 10 (“Iyo Perezida afashe icyemezo nka Perezida, aba arangiza inshingano ze nk’umuyobozi wa IRMCT, ntaba ari Umucamanza umwe rukumbi cyangwa umwe mu bagize inteko iburanisha urubanza [...]).

<sup>15</sup> Reba haruguru, igika cya 5. Reba n’*Urubanza Porokireri aburana na Michel Bagaragaza*, N° ICTR-2005-86-I, Itegeko rishyiraho ingamba zo gufunga zihariye, 13 Kamena 2005, paje 2, 3 (Ryemera icyifuzo cya Porokireri gisaba ko, nyuma yo kwitaba Urukiko bwa mbere Arusha, umuntu uregwa muri TPIR afungirwa by’agateganyo mu Buholandi kubera impamvu zirimo iy’ibibazo by’umutekeno byaterwa no gufungirwa Arusha, iyo kuba Uregwa yarasabye

7. Mbere na mbere, kandi hatitawe ku kuba icyemezo kigaragazwa nk’“icyihutirwa”, amateka agaragaza ko, mbere yo kwimurirwa Arusha muri Tanzaniya, abantu TPIR yakoreye inyandiko z’ibirego bafatiwe mu Bufaransa bagiye bafungirwayo amezi ari hagati y’atatu n’umunani mu gihe ibibazo byabo bikirimo gusuzumwa<sup>16</sup>, kandi mu Cyifuzo nta kintu kivugwamo cyatuma umuntu atekereza ko gusuzuma ibibazo bya Kabuga byaba biri hafi kurangira. Byongeye kandi, icyifuzo gishingiye ku “bibazo byerekeranye no gushyira mu bikorwa” bidasobanurwa neza, bijyanye no kwimurira Kabuga Arusha bamuvanye mu Bufaransa, bishingiye ku ngamba zashyizweho kubera icyorezo<sup>17</sup>. Cyakora, ibivugwa mu mvugo rusange mu Cyifuzo ntibigaragaza izo nzitizi mu buryo bwumvikana<sup>18</sup> cyangwa ngo niba hari iburanisha ryerekeranye no kwimura Kabuga riteganyijwe mu Bufaransa, bishingire ku gihe rishobora kuzamara no kuba bishoboka ko izo nzitizi zavanwaho igihe kumwimura bizaba ari ngombwa. Ikgaragara ni uko, ubu, icyifuzo kitagaragaza ko igikorwa giteganyijwe cyo kwimurira Kabuga ku Ishami ry’Arusha, n’uko bitegetswe mu Rwandiko rwo gufata n’Itegeko ryo kumwimura ari inzitizi cyangwa gishobora kuzaba inzitizi ku iyimurwa rye kugira ngo ashikiranizwe IRMCT.
8. Byongeye kandi, nta makuru akubiye mu Cyifuzo agaragaza ko, igihe nikigera kandi urugendo rwo kuza Arusha rushoboka, u Bufaransa butazubahiriza ibisabwa mu Rwandiko rwo gufata n’

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gufungirwa mu Buholandi n’iyo kuba u Buholandi bwaremeye ko ahafungirwa); *Urubanza Porokireri aburana na Augustin Ngirabatware*, N° MICT-12-29-R, Itegeko rishyiraho iburanisha, 21 Ukuboza 2016, paje ya 2 (Ritegeka ko ku Ishami ry’i Lahe habera iburanisha ryo gusuzuma icyifuzo Uregwa adahari, bitewe n’uko ikibazo cyihutirwa kandi Ishami rya IRMCT ry’Arusha rikaba rimaze igihe gito mu gikorwa cyo kwimukira mu nyubako nshya); *Urubanza Porokireri aburana na Jean de Dieu Kamuhanda*, N° ICTR-99-54A-A, Uruhushya rwa Perezida rwemerera Urugereko rw’Ubujurire kuburanishiriza ahandi hantu hatari ku cyicaro cy’Urukiko, 6 Nzeri 2005 (Bisabwe na Perezida w’inteko iburanisha urubanza, Perezida wa TPIR yemeye ko Urugereko rw’Ubujurire rwa TPIR rusoma urubanza ruri i Lahe, kugira ngo hirindwe gukoreza urubanza cyane); *Urubanza Porokireri aburana na Alfred Musema*, N° ICTR-96-13-A, Uruhushya rwa Perezida rwemerera Urugereko rw’Ubujurire kuburanishiriza ahandi hantu hatari ku cyicaro cy’Urukiko, 3 Ukwakira 2001, paje ya 3 (Bisabwe na Perezida w’inteko iburanisha urubanza, Perezida wa TPIR yemereye Urugereko rw’Ubujurire rwa TPIR kuburanishiriza i Lahe kugira ngo bigabanye cyane amafaranga akoreshwa kandi ntihabeho gukererwa kwari kubangamira inyungu z’ubutabera).

<sup>16</sup> Reba *Urubanza Porokireri aburana na Augustin Ndindiliyimana na bagenzi be*, N° ICTR-00-56-T, Inyandiko y’urubanza n’igenagihano, 17 Gicurasi 2011, Umugereka A, igika cya 11 (François-Xavier Nzuwonemeye yafatiwe mu Bufaransa ku itariki ya 15 Gashyantare 2000 maze yimurirwa muri TPIR ku ya 23 Gicurasi 2000); *Urubanza Porokireri aburana na Dominique Ntawukulilyayo*, N° ICTR-05-82-T, Inyandiko y’urubanza n’igenagihano, 3 Kanama 2010, Umugereka A, igika cya 2 (Dominique Ntawukulilyayo yafatiwe mu Bufaransa ku itariki ya 17 Ukwakira 2007 maze yimurirwa muri TPIR ku ya 5 Kamena 2008); *Urubanza Porokireri aburana na Jean de Dieu Kamuhanda*, N° ICTR-95-54A-T, Inyandiko y’urubanza, 22 Mutarama 2004, igika cya 8 (Jean de Dieu Kamuhanda yafatiwe mu Bufaransa ku itariki ya 26 Ugushyamba 1999 maze yimurirwa muri TPIR ku ya 7 Werurwe 2000).

<sup>17</sup> Reba icyifuzo, igika cya 3. Uretse kuba mu Cyifuzo “ibibazo byerekeranye n’ishyirwa mu bikorwa” bidasobanuye, n’inzitizi zerekeranye no kwimurira Kabuga ku Ishami ry’i Lahe, ari byo kumenya niba u Buholandi bwaremeye ko Kabuga afungirwa ku butaka bwabwo, ntacyo zivugwaho. Reba Ingingo ya 59(A) y’Amategeko (Iteganyako kwimurira uregwa kuri IRMCT bisaba ubufatanye n’igihugu Ishami birebana rifitemo icyicaro). Kuba ibyo bitarakozwe ni ikintu cyumvikana kubera ko Sitati n’Amategeko bya IRMCT hamwe n’Urwandiko rwo gufata n’Itegeko ryo kwimura biteganyako ko Kabuga azafungirwa by’agateganyo ku Ishami ry’Arusha.

<sup>18</sup> Ahubwo, icyifuzo gisa n’icyirengagiza ko Tanzaniya Ishami ry’Arusha rifitemo icyicaro, iherutse kuvanaho inzitizi ku ngendo mpuzamahanga zari zashyizweho kubera icyorezo cya Koronavirusi. Itangazo rigenewe abakora ingendo N° 3 ryatanzwe na Reta ya Tanzaniya ku itariki ya 18 Gicurasi 2020 (Ryarebwe bwa nyuma ku itariki ya 27 Gicurasi 2020 ku rubuga <https://www.moh.go.tz/en/covid-19-info>).

Itegeko ryo kumwimura<sup>19</sup>. Mu by'ukuri, Urwandiko rwo gufata n'Itegeko ryo kwimura byatanzwe hashingiwe ku Mutwe wa VII w'Itegeko Shingiro ry'Umuryango w'Abibumbye, kandi inshingano yo ku rwego mpuzamahanga u Bufaransa bufite, yo kwimura Kabuga bukamushyikiriza IRMCT nk'uko bisabwa n'Itegeko ryo kumwimura, isumba amategeko yo mu gihugu<sup>20</sup>. Muri uru rwego, kuba icyifuzo gishingira ku bibazo bishobora kugaragara bigomba gufatwaho umwanzuro n'inkiko zo mu Bufaransa, birwanya ko Kabuga yimurirwa Arusha kandi Porokireri yemeza ko bishobora gukereza iyimurwa ry'Uregwa, si impamvu simusiga yatuma Urwandiko rwo gufata n'Itegeko ryo kwimura bihindurwa ubu<sup>21</sup>.

9. Kubera ibivugwa haruguru, impamvu zishyigikira icyifuzo ntizihagije. Igihe cyo kwimurira Uregwa ku Ishami ry'Arusha nikigera ntibishoboke, Porokireri azashobora gusaba ko hafatwa ingamba zikwiye.

### III. ICYEMEZO

Kubera impamvu zimaze kuvugwa, **SINEMEYE** icyo Cyifuzo.

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

Bikozwe uyu muni, tariki ya 27 Gicurasi 2020,

[Umukono]

Arusha, muri Tanzaniya.

William H. Sekule

Umucamanza w'izamu

<sup>19</sup> Reba icyifuzo, ibika 3-5, igisobanuro N° 10 cyo hasi kuri paje.

<sup>20</sup> Ingingo ya 28(2)(e) ya Sitati iteganya ko ibihugu byubahiriza nta kuzarira ibyemezo, birimo itegeko ritanzwe n'Umucamanza umwe rukumbi, harimo n'iryo gutanga Uregwa no kumwimurira kuri IRMCT. Byongeye kandi, Ingingo ya 60 y'Amategeko iteganya ko inshingano ikubiye mu Ngingo ya 28 ya Sitati irusha uburemere inzitizi zabangamira gutanga cyangwa kwimurira uregwa kuri IRMCT, zishobora kuboneka mu mategeko y'igihugu cyangwa mu masezerano mpuzamahanga igihugu bireba cyashyizeho umukono.

<sup>21</sup> Reba icyifuzo, igika cya 5.

Kashe ya IRMCT