

ICTR-99-50-A
(5-26-2012)
(5-27-2012 6:55/A)

677/A

**INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA
IN THE APPEALS CHAMBER:**

NO. ICTR-99-50-A

Judges: The Hon. Patrick Robinson, Presiding
The Hon. Liu Daqun
The Hon. Andresia Vaz
The Hon. Theodor Meron
The Hon. Carmel Argius

Registrar: Adama Dieng

Date Filed: 25 April 2012

**JUSTIN MUGENZI
PROSPER MUGIRANEZA**

VS.

THE PROSECUTOR

2012 APR 25 A 10:38
ICTR
JUDICIAL RECORDS / ARCHIVES
RECEIVED

**PROSPER MUGIRANEZA'S APPLICATION FOR
WRIT OF MANDAMUS**

FOR THE OFFICE OF THE PROSECUTOR:

**Hassan Bubacar Jallow
James J. Arguin
George W. Mugwanya
Evelyn Kamau
Memory Maposa
Ndeye Marie Ka
Lansana Dumbuya**

FOR THE DEFENCE:

**Ms. Kate Gibson and Christopher Gosnell, for Justin Mugenzi
Mr. Tom Moran and Ms. Cynthia J. Cline, for Prosper Mugiraneza**

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INTRODUCTION

1. This Application for Writ of Mandamus seeks an order directed at the Registrar requiring him to arrange immediately a system by which Mugiraneza and his legal team may communicate and exchange documents electronically in a secure manner and to arrange for increased telephone access between Mugiraneza and his legal team in preparation of his reply to the Prosecutor's appellate brief. The writ of mandamus is sought to
 - a. Guarantee Mugiraneza's right to effective assistance of counsel as guaranteed by the Statute of the Tribunal;
 - b. To avoid the filing by counsel and co-counsel of a motion to withdraw based on the Tribunal's failure and refusal to meet its financial obligations; and
 - c. The refusal of the Registrar to account for funds paid to counsel so that counsel can ensure that reimbursement for expenses has been paid properly and in full.
2. The basis of this request is that the Registrar has failed and refused to reimburse counsel and co-counsel for expenses for a trip from the United States to Arusha to meet with Mugiraneza and file his appellate brief. The original documents requesting reimbursement for expenses was received at the Tribunal on 20 March 2012.
3. At the current time, counsel and co-counsel have advanced a substantial amount of money simply for airline tickets. Counsel has advanced more than \$6,000 and co-counsel about \$4,500. Stated simply, the Tribunal has exceeded its credit limit.

II. STATEMENT OF RELEVANT FACTS

4. In September 2011, lead counsel advanced funds on behalf of the Tribunal for travel from the United States to Arusha to receive the Trial Chamber judgment. While the Tribunal has made a deposit in his firm's account purportedly to cover reimbursable expenses, the Registrar has failed and refused to give counsel an accounting for the reimbursement.¹
5. In February and March, 2012, counsel and co-counsel traveled to Arusha to consult with the client, complete his appellate brief and file it. There were some problems with reimbursement of co-counsel's expenses but counsel was personally assured by the deputy registrar that the expenses would be paid. Counsel and co-counsel also were personally

¹The Tribunal finance section uses a Microsoft Excel form to show what expenses were reimbursed and which were refused. It can easily be sent by e-mail to counsel. However, the Tribunal finance section apparently treats this document like it was as sensitive as the nuclear launch codes used by the President of the United States.



assured by the Officer-in-Charge of the Defense Counsel and Detention Management Section that payment of the funds was approved.²

6. In April 2012, both returned to Arusha to confer with the client and to complete and file his reply to the Prosecutor's brief. However, the reply brief was not filed due to the order of the Pre-Appeal Judge ordering the Prosecutor to either replead his appellate briefs in this case or file a motion to exceed the word limits set by the practice directive on briefs. Both advanced funds on behalf of the Tribunal, including more than \$2,000 each for airline tickets.
7. On 25 April 2012, the Appeals Chamber denied the Prosecutor's motion to exceed the word limit and gave it five days to replead. That is 30 April 2012. Mugiraneza then has 15 days, or until 15 May 2012, to file his reply brief.
8. In the normal course of events, counsel and co-counsel would return to Arusha to again confer with Mugiraneza about 1) the Prosecutor's appellate brief and 2) his response. However, due to the Tribunal's failure and refusal to reimburse them for travel in February and March 2012, neither can nor will advance further funds on behalf of the Tribunal.
9. Stated simply, the Tribunal is refusing to meet its financial obligations and counsel no longer will advance funds for the benefit of the Tribunal. Combined, they have advanced approximately \$10,000 in airline fares alone.

III. RELIEF SOUGHT

10. Mugiraneza seeks a writ of mandamus ordering the Registrar to establish a method by which he can exchange documents in preparation of his reply brief with his legal team and a method by which he can timely communicate with his legal team. This could include:
 - a. A method by which documents can be sent and received by Mugiraneza and his legal team securely. This could include:
 - i. Direct access to the internet by Mugiraneza, or,
 - ii. A means by which he can immediately send and receive passworded documents from his legal team through Tribunal agents.
 - b. An increase in telephone time, including setting times coinciding with business hours in the United States by which he can confer with his legal team on his reply

²Copies of correspondence between counsel and the deputy registrar are attached hereto.

brief. The current allotment of telephone is about 20 minutes per week and does not allow Mugiraneza sufficient time to confer with counsel on this important matter.

IV. SUMMARY OF THE ARGUMENT

11. While it is questionable whether the judiciary of the Tribunals has the jurisdiction to order the Registrar to pay fees or reimburse expenses, it is unquestioned that the judiciary of the Tribunals may enter orders as necessary to ensure that an accused has a fair trial. That includes effective assistance of counsel and a reasonable opportunity to confer with counsel on important matters.
12. Counsel believe they would be justified in filing a motion to withdraw based on the failure and refusal of the Tribunal to meet its financial obligations and account for funds paid to counsel. However, as officers of the court, counsel and co-counsel want to find a way to continue representing Mugiraneza effectively without advancing funds in the apparently vain hope that they will be reimbursed.³ The request set out herein seems to be a fair compromise.

V. ARGUMENTS

13. The judiciary of the Tribunal, like all courts, has the inherent authority to enter such orders as are necessary to enforce its jurisdiction and orders and to ensure that its proceedings are conducted fairly to ensure the rights of all parties. As an example, while neither the Statute of the ICTR nor the Statute of the ICTY specifically authorizes contempt proceedings, both Tribunals have adopted rules for such proceedings.
14. In the instant case, Mugiraneza has the right under Article 21 of the Statute to effective assistance of counsel. Additionally, Mugiraneza as an attorney desires and is entitled to input in important decisions and documents in his case.
15. Article 24(A) of the Directive on Assignment of Counsel provides:

Travel expenses shall be reimbursed for an assigned Counsel who does not usually reside in the territory of the host country or in the country where the particular stage of the procedure is being conducted, on the basis of one economy class round trip air ticket by the shortest route or within limits laid

³Both the ICTY and the Special Tribunal for Lebanon purchase airline tickets for defence counsel travel. All three of the *ad hoc* Tribunals purchase airline tickets for travel by U.N. staff including the Prosecutor. The ICTR stands alone in requiring defence counsel to advance travel costs, then wait until the Registrar gets around to reimbursing them.

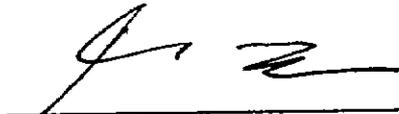
down by the Registrar, on presentation of a statement of travel expenses using the appropriate form established by the Registrar, with the approval of the Bureau, accompanied by the original counterfoil of the ticket, as well as the original of the invoice and any receipt including receipt showing payment by credit card.

16. Mugiraneza's defence team has complied with the Directive. The Registrar has failed and is refusing to reimburse those expenses. Further, the Registrar has failed to timely account for reimbursement so that counsel may determine if it is proper and complain through administrative channels if it is not.
17. It is not Mugiraneza's fault that the Prosecutor was unable to correctly interpret the plain wording of the Directive on appellate briefs. Mugiraneza and his team were ready and able to file his reply brief timely in Arusha.
18. Due to the actions of the Prosecutor, Mugiraneza and his defence team must now 1) receive and review a totally new appellate brief from the Prosecutor, then draft and file a reply. While it is almost certain that much of the previously prepared reply brief will be usable, significant rewriting will be required. Mugiraneza believes that he should have input into the rewritten reply brief.
19. Mugiraneza and his defence team well understand that approving payment of anything by the Tribunal takes time. For this reason, they did not demand reimbursement of expenses for travel during April 2012 before returning to Arusha in May. Likewise, they recognize that it is not the Registrar's fault that the Prosecutor misinterpreted this Chamber's directives, forcing what is in effect an unnecessary expense to the Tribunal.
20. However, it is unreasonable to expect counsel – one a sole practitioner and the other a member of a small law firm – to continue advancing funds after the appropriate officials have promised reimbursement, then failed to make that reimbursement. It also is unreasonable to expect counsel to simply accept "reimbursement" when the Registrar refuses to supply a readily available accounting, allowing counsel to determine if the reimbursement was proper.
21. In cases such as this where a party refuses or fails to make timely payment either of fees or expenses, counsel clearly are entitled to withdraw. It is unreasonable to expect lawyers to continually advance funds on behalf of a client without being reimbursed. It is outrageous when the Registry expects defence counsel to act as the Tribunal's lender of choice and to provide an unlimited credit limit.

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22. This is not the first time the Tribunal's bureaucracy has refused timely reimbursement of travel expenses. At one time, the Tribunal refused to reimburse undersigned counsel for travel expenses unless counsel committed a felony violation of Title 18, United States Code § 1543. This was done even though they were presented with letters from the general counsel of the United Nations and the Registrar that the requirement was not necessary and not part of U.N. rules.
23. In sum, undersigned counsel want to continue representing Mugiraneza. Mugiraneza wants this defence team to continue representing him. Counsel are willing to be reasonable in their dealings with the Tribunal bureaucracy and administration. They are not, however, willing to advance thousands of dollars more when the Registrar is unwilling to reimburse them in a timely manner.
24. The solution set out above is a fair compromise in which the Registrar can continue doing what he is doing, leaving counsel with administrative remedies if they choose to take them. It also goes a long way in guaranteeing Mugiraneza's right to effective assistance of counsel.
25. For these reasons, counsel move the Appeals Chamber to issue a writ of mandamus ordering Adama Dieng to provide the alternatives to travel set out in § III above.

Word Count 1918



Tom Moran

Cynthia J. Cline

SCHNEIDER & MCKINNEY, P.C.

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18 April 2012

Pascal Besnier,
Acting Deputy Registrar and Chief, DCDMS
International Criminal Tribunal for Rwanda
Arusha International Conference Centre
Arusha, Tanzania

BY HAND DELIVERY

RE: *Prosecutor v. Mugiraneza*, No. ICTR-99-50-A, now pending
in the International Criminal Tribunal for Rwanda

Dear Mr. Besnier:

This letter is to discuss problems with the case requiring additional funding due to the Prosecutor's filing of briefs far in excess of the word limits prescribed by the Appeals Chamber. As you know, Judge Meron has ordered the Prosecutor to either replead by Friday or to file a motion for excess length of the brief by today. In either case, Mugiraneza has an additional 15 days to reply after either the Prosecutor repleads or the Appeals Chamber rules on a motion.

Ms. Cline and I came to Arusha in good faith to work on the reply brief based on the briefs as filed by the OTP. The brief is complete. Mr. Mugiraneza rightly wanted us in Arusha so that he could work with us on the brief and he could have input. As an aside, his input was quite helpful and good.

However, unless the Appeals Chamber grants the OTP leave to file briefs well in excess of the 40,000 limit and accepts the current brief, we will have to re-do our brief. This will require another trip to Arusha and considerable more time. This added expense is not our fault and not your fault. It can be laid at the feet of the Prosecutor.

Because of this factor, I request leave for the following:

1. Ms. Cline and I be allowed to return to Arusha if we have to redo the reply brief. Mr. Mugiraneza will want and will demand his right to have input. Other than meeting with him in person at the UNDF, we have no quick, secure way to

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communicate with him.

2. Authorization for an additional 500 hours for Ms. Cline and me and 150 hours for our legal assistants. In this regard, we have communicated with Kate Gibson and she has no objection to each team getting this additional time.

No one could have expected that the OTP would ignore the plain English of the practice directive and force us to do work neither you nor I expected. I understand that the Butare case teams have each been authorized an additional 1,000 hours per person, so our request is quite reasonable.

As you will recall, immediately after the judgment was delivered, I offered to negotiate a rock solid, no changes, no request for changes fee arrangement for the appeal. It was to avoid bad surprises such as that caused by the OTP's actions. Now, we have gotten that bad surprise and we are being required to do more work than we expected.

Along these lines, both Ms. Cline and Schneider & McKinney have advanced on behalf of the Tribunal funds for two trips to Arusha. As of Tuesday, reimbursement for our last trip had not been received. Also, we have not been paid fees billed on 1 April 2012.

Neither Ms. Cline nor Schneider & McKinney can afford to continue financing the operations of the Tribunal. We can no longer advance travel expenses on behalf of the Tribunal. I estimate my firm and Ms. Cline have each advanced \$7,500-\$10,000 for travel. We would not advance funds at this level for any other client or payor - including the United States Government - and I know you will understand our position.

I understand the Tribunal's policy has been and will continue to be that you will not reimburse for this trip until we return to Houston and submit requests for payment. But our earlier requests for reimbursement have been sitting in the Registry for some time. They should have been paid along with our March 2012 invoices.

For these reasons, I am afraid that until we are reimbursed for expenses at least for our March 2012 travel to Arusha we will not advance any further funds for travel. This in turn could cause a severe problem with Mr. Mugiraneza if we have to rewrite our reply brief. He likely will assert that he is being deprived of the right to effective assistance of counsel and I agree with him. However, I cannot see any way we can advance several thousand more dollars on the Tribunal's behalf without reimbursement.

If you have any questions, do not hesitate to contact me. I leave Arusha on KLM 569 tonight. I will be in my office in Houston on Monday, 23 April. I can be reached by e-mail, or on my cell phone. My Arusha cell is 076-8202019. My mobile number in The Netherlands is ++31-062-1690343. My mobile number in the United States is ++1-713-857-9186.

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Thank you for your consideration in this matter.

Sincerely,

TOM MORAN

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28 March 2012

Pascal Besnier,
Chief, DCDMS and Acting Deputy Registrar
International Criminal Tribunal for Rwanda
Arusha International Conference Centre
Arusha, Tanzania

BY FAX: (212) 963-2848/2849

Dear Sir:

I have not heard from you concerning my e-mail on policies for reimbursement for air fare. Since I wrote you, I have re-examined Ms. Cline's tickets and determined that there is no substantial difference between her tickets and mine. Both are e-tickets showing payment. I cannot determine why your staff is having a problem determining that she paid for her ticket.

At her request, I am attaching a copy of her bank statement showing payment of \$2,196.58 to Delta Airlines. She informed me that DCDMS is demanding a copy of her bank statement.

I find this a terrible imposition on her right of privacy. Stated simply, neither you nor I nor anyone else needs access to her bank statements showing how she spends her money. Please forward copies of her bank statement to the appropriate officials within the registry.

More importantly, I still am unsure whether I will be denied reimbursement for air fare to Arusha in the future under the "terms" and "policies" being imposed on Ms. Cline. For that reason, I request that you clarify exactly what we must do to be reimbursed. I thought we had settled these issues some years ago when the U.N. general counsel, Mr. Dieng and your predecessor Everard O'Donnell agreed that neither Ms. Cline nor I would be required to commit a possible felony violation of 18 U.S.C. § 1543 in order to be reimbursed for funds advanced on behalf of the Tribunal.

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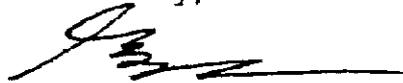
Pascal Besnier
28 March 2012
Page 2

As I told you in my e-mail, I am unwilling to advance funds - either my personal funds or my firm's funds - on behalf of the Tribunal until it is made clear to me whether I will be reimbursed. Since the request for reimbursement submitted by Ms. Cline is functionally identical to mine, I must presume that either 1) we are being treated differently for some reason known only to you and your staff or 2) my request for reimbursement of expenses including airline tickets is being denied without me being informed of that fact.

In either case, as I told you in my e-mail last week, I am concerned both that your staff has policies which have not been disclosed to me or that policies change for unknown reasons. I do not gamble as a leisure activity and I am unwilling to gamble on reimbursement from the Tribunal for advanced funds in the absence of some assurance that I will in fact be reimbursed for every cent advanced.

If you have any questions, do not hesitate to contact me.

Sincerely,



TOM MORAN



International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda
Defense Counsel Management Section
Arusha International Conference Centre, B.P. 6018, Arusha, Tanzania
Tel. 255 57 4207-11/4367-72 or 1 212 963 2850 Fax: 255 57 4000/4373 or 1 212 963 2846/49



666/A

Arusha, 29 March 2012

Dear Sir,

We acknowledge receipt of your letter dated 28 March 2012 requesting clarification about reimbursement of e-ticket.

DCDMS and Finance section allow using e-tickets as proof of travel together with boarding passes. However, the proof of payment must be included in the request for reimbursement. There are three ways of showing proof of payment: (i) a credit card payment transaction receipt clearly showing payment for the e-ticket (as indicated on your e-ticket below) or, (ii) original receipt of payment from the travel agency or Airline carrier (like the one received for the air plane ticket change penalty from Ms. Cynthia Cline) or, (iii) a bank statement showing proof of payment of the air plane ticket.

This policy on the requirement of showing proof of payment is not new. It's indicated in Article 27 (A) of the Directive on the Assignment of Defence Counsel where request for reimbursement of travel expenses must be "...accompanied by the original counterfoil of the ticket, as well as the original of the invoice and any receipt including receipt showing payment by credit card".

a. Difference between your e-ticket and Cynthia Cline's e-ticket

The main difference between your e-ticket and Ms. Cynthia Cline e-ticket was concerning the billing details and payment method. As you can see below, your e-ticket is clearly showing the payment of the air plane ticket by credit card (payment method) while it was unfortunately not the case for Ms. Cynthia Cline's e-ticket where no proof of payment clearly appears.

b. Bank privacy

Regarding the bank privacy, as it was suggested to DCDMS email sent to you and Ms. Cline on 26 March 2012 (see attachment), applicant can black out all other irrelevant and private bank transactions that may appear on the bank statement. Another solution is to request a receipt of payment from the Air Company or travel agency if the e-ticket does not clearly show payment by credit card.

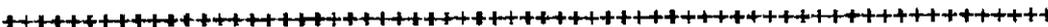
c. Payment of travel expenses

I can assure you that your reimbursement of travel expenses was sent to Finance section on 21 March 2012. Ms. Cynthia Cline's request for reimbursement will be sent today as proof of payment has been now received together with original receipt of payment of ticket change penalty from the Arusha based travel agency called Easy One.

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Please do not hesitate to contact me should you have additional queries regarding this matter,

Pascal Besnier,
Chief DCDMS



Mr. Moran e-ticket extract

Receipt Information

Billing Details

Passenger:
THOMAS D MORAN

Payment Method:
AX***6005**

Ticket Number:
00621962479773

FARE:

3220.00 USD

Tax:

701.40

Total:

3921.40 USD

027

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APR 25 2012
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f Board Certified DWI Defense - National College for DUI Defense

FAX TRANSMITTAL PAGE

TO: CMS

FAX#: 212 963 2848 / 2849

FROM: TOM MORAN
~~W. TROY MCKINNEY~~

DATE: 25 APRIL 12

RE: APPLICATION FOR WRIT OF HABEAS CORPUS

CAUSE NO.: ICTR 98-50 A

COMMENTS:

TO: <u>CMS</u>
CENTRAL REGISTRY
20 APR 2012
ACTION: <u>APPEALS</u>
COPY TO: <u>CMS</u>

TOTAL NUMBER PAGES 15 INCLUDING TRANSMITTAL PAGE.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 713-951-9994

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TRANSMISSION SHEET FOR FILING OF DOCUMENTS WITH CMS

COURT MANAGEMENT SECTION
(Art. 27 of the Directive for the Registry)

I - GENERAL INFORMATION (To be completed by the Chambers / Filing Party)

To:	<input type="checkbox"/> Team I N. M. Diallo	<input type="checkbox"/> Team II C. K. Hometowu N. M. Diallo	<input type="checkbox"/> Team III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> Appeals Chamber / The Hague R. Muzigo-Morrison
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence Tom Moran (names)	<input type="checkbox"/> Prosecutor's Office (names) <input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. Mugiraneza		Case Number: ICTR-99-50-A
Dates:	Transmitted: 25 April 2012		Document's date: 25 April 2012
No. of Pages:	13	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	Prosper Mugiraneza's Application for Writ of Mandamus		
Classification Level:	TRIM Document Type:		
<input type="checkbox"/> Ex Parte	<input type="checkbox"/> Indictment	<input type="checkbox"/> Warrant	<input type="checkbox"/> Correspondence
<input type="checkbox"/> Strictly Confidential / Under Seal	<input type="checkbox"/> Decision	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Confidential	<input type="checkbox"/> Disclosure	<input type="checkbox"/> Order	<input type="checkbox"/> Appeal Book
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Judgement	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Book of Authorities
			<input type="checkbox"/> Submission from non-parties
			<input type="checkbox"/> Submission from parties
			<input type="checkbox"/> Accused particulars

II - TRANSLATION STATUS ON THE FILING DATE (To be completed by the Chambers / Filing Party)

CMS SHALL take necessary action regarding translation.

Filing Party hereby submits only the original, and **will not submit** any translated version.

Reference material is provided in annex to facilitate translation.

Target Language(s):

English French Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party hereby submits **BOTH the original and the translated version** for filing, as follows:

Original	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda
Translation	in	<input type="checkbox"/> English	<input type="checkbox"/> French	<input type="checkbox"/> Kinyarwanda

CMS SHALL NOT take any action regarding translation.

Filing Party will be submitting the translated version(s) in due course in the following language(s):

English French Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service; for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: