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International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

ICTR-99-50-T  
23-06-2010  
(33554-33547)  
TRIAL CHAMBER II

OR: ENG

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**Before Judges:** Khalida Rachid Khan, presiding  
Lee Gacuiga Muthoga  
Emile Francis Short

**Registrar:** Mr. Adama Dieng

**Date:** 23 June 2010

**THE PROSECUTOR**  
v.  
**CASIMIR BIZIMUNGU**  
**JUSTIN MUGENZI**  
**JÉRÔME-CLÉMENT BICAMUMPAKA**  
**PROSPER MUGIRANEZA**

Case No. ICTR-99-50-T

JUDICIAL RECORDS ARCHIVES  
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**DECISION ON PROSPER MUGIRANEZA'S FOURTH MOTION TO  
DISMISS INDICTMENT FOR VIOLATION OF RIGHT TO TRIAL  
WITHOUT UNDUE DELAY**

*Article 20(4)(c) of the Statute of the Tribunal*

**Office of the Prosecutor:**  
Mr. Paul Ng'arua

**Counsel for the Defence:**  
Ms. Michelyne C. St. Laurent and Ms. Andrea Valdivia for **Casimir Bizimungu**  
Mr. Ben Gumpert and Mr. Jonathan Kirk for **Justin Mugenzi**  
Mr. Michel Croteau for **Jérôme-Clément Bicamumpaka**  
Mr. Tom Moran and Ms. Cynthia Cline for **Prosper Mugiraneza**

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## INTRODUCTION

1. By Motion filed on 6 April 2010, the Accused Prosper Mugiraneza ("Mugiraneza") alleges a violation of his right to trial without undue delay as guaranteed by Article 20(4)(c) of the Statute of the Tribunal and requests the dismissal of the Indictment against him with prejudice.<sup>1</sup> The Prosecution opposes the Motion, arguing that there has not been any undue delay in this case.<sup>2</sup>

## DISCUSSION

### *Law on Undue Delay*

2. Article 20(4)(c) of the Statute provides:

In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

[...]

(c) To be tried without undue delay

3. The Chamber recalls that the Appeals Chamber has previously held that in determining whether there has been a violation of the right to be tried without undue delay, it is necessary to consider, *inter alia*, the following factors:

- (1) The length of the delay;
- (2) The complexity of the proceedings, such as the number of charges, the number of accused, the number of witnesses, the volume of evidence, the complexity of facts and law;
- (3) The conduct of the parties;
- (4) The conduct of the relevant authorities; and
- (5) The prejudice to the accused, if any.<sup>3</sup>

4. The Appeals Chamber's jurisprudence indicates that there cannot be a determination of whether the right to trial without undue delay was violated without considering the totality of the above-mentioned five criteria.<sup>4</sup> Furthermore, a finding of undue delay will depend on the circumstances of the case.<sup>5</sup>

<sup>1</sup> *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, "Prosper Mugiraneza's 11<sup>th</sup> Anniversary Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay", filed 6 April 2010 ("Motion"); *Bizimungu et al.*, "Prosper Mugiraneza's Reply to Prosecutor's Response to Prosper Mugiraneza's 11<sup>th</sup> Anniversary Motion to Dismiss Indictment for Violation of Right to Trial Without Undue Delay", filed 15 April 2010, ("Mugiraneza's Reply").

<sup>2</sup> *Bizimungu et al.*, "Prosecutor's Response to Prosper Mugiraneza's 11<sup>th</sup> Anniversary (*sic*) Motion for Violation (*sic*) of Right to Trial Without Undue Delay", filed 12 April 2010, ("Prosecution Response").

<sup>3</sup> *Bizimungu et al.*, "Decision on Prosper Mugiraneza's Interlocutory Appeal from Trial Chamber II Decision of 2 October 2003 Denying the Motion to Dismiss the Indictment, Demand Speedy Trial and for Appropriate Relief," (AC), 27 February 2004 ("Appeals Chamber Undue Delay Decision"), page. 3. See also *Bizimungu et al.*, "Decision on Prosper Mugiraneza's Third Motion to Dismiss for Indictment for Violation of his Right to a Trial Without Undue Delay," (TC), 10 February 2009 ("Third Undue Delay Decision"), paras. 12-23.

<sup>4</sup> *Bizimungu et al.*, "Decision on Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay," (TC), 29 May 2007, ("Second Undue Delay Decision") para 15, citing *Prosecutor v. Prosper Mugiraneza et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's



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*Mugiraneza's Motion*

5. This is the fourth Motion of such a nature to be filed by Mugiraneza<sup>6</sup> who incorporates, by reference, the arguments he made in his earlier submissions on this issue.<sup>7</sup> The Chamber denied all previous Motions, finding that there had not been a violation of Mugiraneza's right to a trial without undue delay.<sup>8</sup>

6. In this Motion as well as its predecessors, Mugiraneza relies on a number of authorities external to the Tribunal, including the United Nations Human Rights Committee (HRC), the European Court of Human Rights (ECHR), and the Supreme Court of the United States of America (US Supreme Court).<sup>9</sup> The Chamber notes, once again, that it accepts the binding nature of the generally accepted norms of human rights on the Tribunal.<sup>10</sup> It reiterates, however, that while the jurisprudence of these authorities may have a persuasive effect on a Trial Chamber, the Tribunal's own statutory instruments and jurisprudence remain its primary sources of law. Therefore, the Chamber considers that it should have recourse to such authorities only to the extent that the Tribunal's statutory instruments and jurisprudence are deficient.<sup>11</sup>

7. In this respect, the Chamber notes that the fundamental guarantees afforded to Mugiraneza and other accused before the Tribunal are derived directly from the Tribunal's statutory instruments, particularly Articles 19 and 20 of the Statute. Moreover, the Appeals Chamber has already established clear criteria which must be taken into account in determining whether there has been undue delay. Therefore, in assessing Mugiraneza's request for the dismissal of the Indictment against him, the Chamber will follow the jurisprudence which is binding upon it.

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Application for a Hearing or other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay (TC), 3 November 2004, para. 28.

<sup>5</sup> Second Undue Delay Decision, para 15, citing *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Extremely Urgent Motion on Habeas Corpus and for Stoppage of Proceedings (TC), 23 May 2000 at para. 68.

<sup>6</sup> See *Bizimungu et al.*, "Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20 (4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief" ("First Motion"), filed on 18 July 2003; *Bizimungu et al.*, "Prosper Mugiraneza's Second Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay" ("Second Motion"), filed on 12 December 2006; and *Bizimungu et al.*, "Prosper Mugiraneza's Third Motion to Dismiss for Deprivation of his Right to Trial Without Undue Delay" ("Third Motion"), filed on 10 December 2008.

<sup>7</sup> Motion, para. 4.

<sup>8</sup> See Third Undue Delay Decision; Second Undue Delay Decision, generally, and particularly the findings at para. 39; *Bizimungu et al.*, "Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on his Motion for Dismissal for Violation of his Right to Trial without Undue Delay," (TC), 3 November 2004, ("First Undue Delay Decision") generally, and particularly the findings at para. 34. See also *Bizimungu et al.*, "Decision on Prosper Mugiraneza's Motion to Dismiss the Indictment for Violation of Article 20(4)(C) of the Statute, Demand for Speedy Trial and for Appropriate Relief," (TC), 2 October 2003. Note that certification to appeal the Trial Chamber's Decision of 2 October 2003 was granted and the Appeals Chamber subsequently vacated the Trial Chamber's Decision. It remanded the matter back to the Trial Chamber for reconsideration of its decision, see Appeals Chamber Undue Delay Decision. The Trial Chamber's subsequent reconsideration of its Decision of 2 October 2003 led to its Decision of 3 November 2004.

<sup>9</sup> Motion, paras. 7-10.

<sup>10</sup> Second Undue Delay Decision, para 20; Third Undue Delay Decision, para 10.

<sup>11</sup> *Ibid.*



8. Mugiraneza's principal argument in this fourth Motion is that the length of the delay should be the single most important factor in determining whether there has been a violation of his right to trial without undue delay. He urges the Chamber to "give the greatest weight to the length of the delay" and argues that this factor alone can outweigh all the others.<sup>12</sup>

9. The Chamber recalls the Appeals Chamber's ruling that in order to determine whether there has been undue delay, it is necessary to "conduct a full enquiry," taking all the factors into account.<sup>13</sup> The Chamber will therefore consider each of the five factors enumerated by the Appeals Chamber in determining the issue.

*Application of the Appeals Chamber Factors*

(1) The length of the delay

10. Mugiraneza asserts that "the length of the delay standing alone should be sufficient to require dismissal of the indictment."<sup>14</sup> He submits that, having been incarcerated for 4,018 days as at the date of filing the Motion,<sup>15</sup> he has been denied his right to a trial without undue delay.

11. The Chamber disagrees with Mugiraneza's view that the Indictment ought to be dismissed solely on the basis of the length of his incarceration. The Chamber has heard all the evidence in Mugiraneza's case and is currently at the stage of deliberating and preparing its judgement. It reiterates its previously expressed view that the reasonableness of a period of delay cannot be translated into a fixed length of time and has to be assessed on a case-by-case basis taking into consideration all of the other factors articulated by the Appeals Chamber.<sup>16</sup>

(2) The complexity of the proceedings

12. Mugiraneza makes no new submission regarding the complexity of the case. The Prosecution, on its part, notes that Mugiraneza fails to appreciate the administrative complexities involved in running a trial at an *ad hoc* international tribunal.<sup>17</sup>

13. The Chamber observes that these proceedings, involving four co-accused, 171 witnesses, 404 trial days and several thousand pages of exhibits and court transcripts, are very

<sup>12</sup> Motion, paras. 9, 13..

<sup>13</sup> Appeals Chamber Undue Delay Decision.

<sup>14</sup> Motion, para. 9.

<sup>15</sup> Motion, para. 5.

<sup>16</sup> *Bizimungu et al.*, "Decision on Justin Mugenzi's Motion Alleging Undue Delay and Seeking Severance" (TC), 14 June 2007 para. 15; Second Undue Delay Decision, para 27; *See also, Prosecutor v. Kanyabashi*, Case No. ICTR-96-15-I, Decision on the Defence Extremely Urgent Motion on Habeas Corpus and For Stoppage of Proceedings (TC), 23 May 2000, para. 68; *Prosecutor v. Joseph Kanyabashi*, Case No. ICTR-96-15-T, Decision on the Defense Motion for the Provisional Release of the Accused (TC), 21 February 2001, para. 11; *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-PT, Decision of Defence Motion for Stay of Proceedings (TC), 3 June 2005, para. 26; *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Decision on Prosper Mugiraneza's Application for a Hearing or Other Relief on His Motion for Dismissal for Violation of His Right to a Trial without Undue Delay (TC), 3 November 2004, para. 31. In addition, as this Chamber has previously noted, *see*, Second Undue Delay Decision, para. 27: "the Strasbourg organs have deemed trials that lasted longer than 10 years to be compatible with Article 6(1) of the ECHR, on the other hand holding that undue delay has occurred in others which lasted less than one year."

<sup>17</sup> Prosecutor's Response, para. 2. (c).



complex indeed.<sup>18</sup> The complexity of the factual allegations is exacerbated by the legal issues involved, including the Prosecutor's allegation of conspiracy and the various modes of liability attaching to the counts in the Indictment. In light of the foregoing, the Chamber, Judge Short dissenting, is not of the view that there has been undue delay.

(3) The conduct of the parties

14. Mugiraneza does not present any new evidence of delay caused by the Prosecution or any of the co-accused in this case and relies on arguments made in his prior submissions. The Chamber has previously considered these arguments and found that there was no undue delay in this case attributable to the Office of the Prosecutor (OTP).<sup>19</sup> For the same reasons, the Chamber again rejects the arguments.

(4) The conduct of the relevant authorities

15. In his earlier submissions, Mugiraneza attributed the alleged undue delay to the failure of the United Nations Security Council and General Assembly to provide adequate resources to the Tribunal. He also blamed the perceived delay on the bureaucratic infighting between the OTP and the Registry, on the limited amount of courtroom space and on the practical realities of working simultaneously in three languages. In his latest submission, Mugiraneza suggests that "the creator of the court must give it the tools in terms of money, personnel and physical plant to conduct its business without undue delays."<sup>20</sup>

16. In rejecting these arguments previously, the Chamber noted that Mugiraneza had failed to provide any details to support his assertion that the Tribunal lacks the personnel and facilities to perform its functions or to show how such issues have translated into undue delay.<sup>21</sup> For the same reasons, the Chamber, Judge Short dissenting, cannot find that the conduct of the relevant authorities has resulted in undue delay in these proceedings.

(5) The prejudice to the Accused, if any

17. In addition to earlier submissions regarding, *inter alia*, the fading memories of witnesses and the loss of exculpatory evidence over time, Mugiraneza now submits that as a matter of international human rights law, after an 11-year delay, prejudice should be presumed and the Indictment against him should be dismissed.<sup>22</sup> He further submits that his continued detention "carries with it prejudice such as oppressive incarceration, anxiety and concern."<sup>23</sup>

18. The Chamber notes that Mugiraneza has now been in custody for 11 years. However, this matter must be considered in light of the totality of the criteria laid down by the Appeals Chamber. Furthermore, since the date of the previous Decision on this issue, the trial in this case has advanced significantly and the Chamber is now at the stage of deliberating and considering its judgement. Therefore, the Chamber is not of the view, Judge Short dissenting, that there has been undue delay in this case.

<sup>18</sup> Second Undue Delay Decision, para. 30; Third Undue Delay Decision, para. 16. See also the "Trial statistics" provided in the Prosecution Response at paras 14-21.

<sup>19</sup> First Undue Delay Decision, para. 32; Second Undue Delay Decision, para. 33.

<sup>20</sup> Mugiraneza's Reply, para. 17 b.

<sup>21</sup> Second Undue Delay Decision, para. 36; Third Undue Delay Decision, paras. 19-20.

<sup>22</sup> Motion, para. 9.

<sup>23</sup> Motion, para. 12.

### Conclusion

19. Mugiraneza requests the Chamber to dismiss the indictment against him with prejudice as "the only remedy" for the undue delay he has suffered. Having considered the submissions of the Parties in light of the totality of the criteria established by the Appeals Chamber, and taking into account the current stage of the proceedings in the case, the Chamber finds, Judge Short dissenting, that Mugiraneza has failed to show that he has been denied his right to a trial without undue delay. Therefore, the Chamber, Judge Short dissenting, need not consider whether dismissing the indictment is an appropriate remedy.

**FOR THESE REASONS, THE CHAMBER, JUDGE SHORT DISSENTING,**

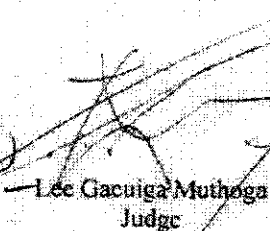
**DENIES** the Motion.

Judge Emile Francis Short appends a partially dissenting opinion

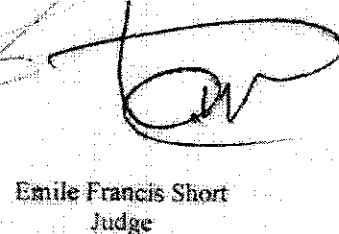
Arusha, 23 June 2010



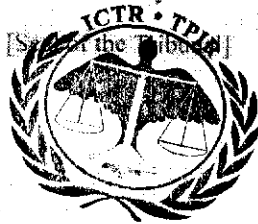
Khalida Rashid Khan  
Presiding Judge



Judge



Emile Francis Short  
Judge



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PARTIALLY DISSENTING OPINION OF JUDGE EMILE FRANCIS SHORT

1. I have had the opportunity to peruse the Decision of the majority but I am unable to agree with the entirety of the reasoning thereof. I respectfully set out my dissenting opinion.

2. I agree with the reasoning of the majority that the reasonableness of a period of delay cannot be translated into a fixed length of time and has to be assessed on a case-by-case basis taking into consideration all of the other factors established by the Appeals Chamber.<sup>24</sup> Notwithstanding this, while the majority observes that it is currently at the stage of deliberating and preparing its judgement, I consider that they did not sufficiently consider the reasonableness of the time taken during this phase of the proceedings in light of the totality of the proceedings to date. Indeed, the evidence phase of this case closed on 12 June 2008 and closing oral arguments were heard by the Chamber between 1 and 5 December 2008. I consider that the Chamber's failure to deliver its judgement 24 months after close of the evidence in this case is alone sufficient to constitute a violation of Mugiraneza's right to a trial without undue delay.

3. I further disagree with the majority that the conduct of the relevant authorities has not resulted in undue delay in these proceedings.<sup>25</sup> More specifically, I consider that the majority did not give due regard to the extent of the obligation to ensure an expeditious trial and avoid undue delay, as guaranteed by Articles 19 and 20 (4) (c). I consider it instructive to turn to the well established jurisprudence of the European Court of Human Rights, which has a persuasive effect on the Tribunal, with regard to the right to trial without undue delay. The European Court has held that Contracting States are under a duty to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 (1) European Convention on Human Rights including the right to a hearing within a reasonable time.<sup>26</sup> The European Court has thus found that factors such as the workload of the court and the shortage of resources are not sufficient justifications for delays in a trial. Similarly, I consider that the United Nations Security Council and General Assembly have a duty to organise the Tribunal so as to allow it to comply with requirements of Articles 19 and 20 (4)(c) of its Statute. I find that they have failed in this duty in this case.

4. I consider that the conduct of the relevant authorities has in fact occasioned the delay in the judgement drafting phase of this case. The Tribunal has pursued a policy of pursuing new cases prior to reaching judgement in ongoing cases. This has been detrimental to rendering judgements in the multi-accused cases in which the accused persons have been in custody for a considerable length of time. Since the close of the evidence in *Bizimungu et al.*, my distinguished colleagues, Judges Khan and Mathoga, have been involved in a number of additional cases. They were members of the bench in the case of *Prosecutor v. Protais Zigiranyirazo* which was in judgement drafting phase during this period, the judgement being delivered on 18 December 2008.<sup>27</sup> In addition, they have sat in the following three new cases before the Tribunal, with Judge Khan presiding over each: (i) *The Prosecutor v. Léonidas Nshogoza* between 9 February 2009 until 30 March 2009, with judgement rendered on 7 July

<sup>24</sup> *Supra*, para. 11.

<sup>25</sup> *See supra*, para. 16.

<sup>26</sup> *Mull v. Italy* (1994) Series A No 281-C, para. 15; *Périsseur and Sassi v. France*, March 25, 1999, ECHR 1999-II, para. 74; *O'Reilly and others v. Ireland*, App. No. 54725/00, 29 July 2004, para. 33.

<sup>27</sup> Case No. ICTR-01-73-T.

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*The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-T

2009.<sup>28</sup> (ii) *The Prosecutor v. Dominique Ntawukulilyayo*, heard over 33 trial days between 6 May 2009 and 17 December 2009 and currently in judgement drafting phase;<sup>29</sup> (iii) *The Prosecutor v. Jean-Baptiste Gatete*, heard over 30 trial days from 20 October 2009 to 29 March 2010 and currently in judgement drafting phase.<sup>30</sup> The assignment of Judges Khan and Muthoga to these three new cases has significantly increased their workload to the detriment of this case, resulting in undue delay.

5. Moreover, the involvement of Judges Khan and Muthoga in these cases has had a direct impact on the legal staff employed to assist the Chamber in carrying out its functions. More specifically, the number of cases in which those staff members are involved in, and their corresponding workload, increased significantly.

6. For the reasons stated above, I find that Mugiraneza's right to a trial without undue delay has been violated, however, I do not consider that dismissal of the Indictment against him with prejudice is the necessary or appropriate remedy. I would determine the remedy pending the outcome of the judgement: in the case of conviction, the remedy would take the form of a reduction in sentence; and in the case of an acquittal, it would take the form of compensation.<sup>31</sup>

23 June 2010, in English.



Emile Francis Short  
Judge

<sup>28</sup> Case No. ICTR-07-91-T.

<sup>29</sup> Case No. ICTR-05-82-T.

<sup>30</sup> Case No. ICTR-00-61-T.

<sup>31</sup> See *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-A "Decision on Appeal against Decision on Appropriate Remedy", 13 September 2007.



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### Conclusion

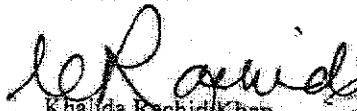
19. Mugiraneza requests the Chamber to dismiss the Indictment against him with prejudice as "the only remedy" for the undue delay he has suffered. Having considered the submissions of the Parties in light of the totality of the criteria established by the Appeals Chamber, and taking into account the current stage of the proceedings in the case, the Chamber finds, Judge Short dissenting, that Mugiraneza has failed to show that he has been denied his right to a trial without undue delay. Therefore, the Chamber, Judge Short dissenting, need not consider whether dismissing the Indictment is an appropriate remedy.

**FOR THESE REASONS, THE CHAMBER, JUDGE SHORT DISSENTING,**

**DENIES the Motion.**

Judge Emile Francis Short appends a partially dissenting opinion


Arusha, 23 June 2010



Khalida Rachid Khan  
Presiding Judge



Lee Gaculiga Muthoga  
Judge



Emile Francis Short  
Judge

[Seal of the Tribunal]





# 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)

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	<input type="checkbox"/> Chief, CMS J.-P. Fomété	<input checked="" type="checkbox"/> Appeals Chamber / Arusha Chamber II F. A. Talon		<input type="checkbox"/> Appeals Chamber / The Hague K. K. A. Afande R. Muzigo-Morrison
From:	<input checked="" type="checkbox"/> Chamber Nina Tavakoli (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)	<input type="checkbox"/> Other: (names)
Case Name:	The Prosecutor vs. CASIMIR BIZIMUNGU et al.			Case Number: ICTR-ICTR-99-50-T
Dates:	Transmitted: 23 June 2010		Document's date: 23 June 2010	
No. of Pages:	9	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda	
Title of Document:	DECISION ON PROSPER MUGIRANEZA'S FOURTH MOTION TO DISMISS INDICTMENT FOR VIOLATION OF RIGHT TO TRIAL WITHOUT UNDUE DELAY			
Classification Level:	TRIM Document Type:			
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## 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.**

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<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input checked="" type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: