

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

Public Redacted Version of the “Request by the Common Legal Representative of the Victims of the Attacks for leave to present evidence and victims’ views and concerns”, ICC-01/04-02/06-1739-Conf-Red, 23 January 2017

Source: Office of Public Counsel for Victims (CLR2)

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Common Legal Representative of the Victims of the Attacks (the “Legal Representative”) respectfully requests Trial Chamber VI (the “Chamber”) for leave to present evidence and victims’ views and concerns. It is submitted that the expected evidence affects the victims’ personal interests, is meant to complement and corroborate the evidence already presented and accordingly to genuinely contribute to the search for the truth, and is not inconsistent with fair trial guarantees and rights of the Accused. It is also submitted that the presentation by victims of their views and concerns is consistent with the victims’ right to tell their story and have their story heard by the Judges, and is meant to assist the Chamber in its assessment of the evidence in the present case.

II. PROCEDURAL BACKGROUND

2. On 2 June 2015, the Chamber issued the “Decision on the conduct of the proceedings”¹ wherein it, *inter alia*, directed that “[a] Legal Representative shall file any request for leave to present evidence no later than two days after the Prosecution concluded its presentation of evidence. If the request includes leave for witnesses to be called, it shall include a summary of the expected testimony and an estimate of the time needed for the examination.”²

3. On 19 October 2016, the Chamber issued the “Order setting certain deadlines related to the end of the presentation of evidence by the Prosecution”,³ wherein it ruled that “the LRVs are directed to indicate by 16 December 2016 whether they anticipate

¹ See the “Decision on the conduct of the proceedings” (Trial Chamber VI), No. ICC-01/04-02/06-619, 2 June 2015.

² *Idem*, para. 69.

³ See the “Order sitting certain deadlines related to the end of the presentation of evidence by the Prosecution” (Trial Chamber VI), No. ICC-01/04-02/06-1588, 19 October 2016. See also, the “Corrigendum of ‘Order sitting certain deadlines related to the end of the presentation of evidence by the Prosecution’, 19 October 2016, ICC-01/04-02/06-1588” (Trial Chamber VI), No. ICC-01/04-02/06-1588-Corr, 12 December 2016.

*bringing a request to present evidence and/or for the views and concerns of victims to be presented to the Chamber, and the likely scope of any such request.”*⁴

4. On 16 December 2016, the Legal Representative notified the Chamber of his intention to present evidence.⁵

5. On 11 January 2017, the Chamber issued the “Order relating to the deadline for any requests by the Legal Representatives of Victims to present evidence or views and concerns of victims”,⁶ wherein it ruled that any request to call witnesses and/or to present views and concerns of victims shall be filed no later than 23 January 2017.⁷

III. SUBMISSIONS

6. The Legal Representative respectfully requests the Chamber for leave to present evidence and victims’ views and concerns. In particular, he requests for leave to call (1) one witness who is not participating victim in the present case, (2) seven participating victims to present evidence, and (3) four participating victims to present views and concerns.

7. The Legal Representative reiterates by reference his previous submissions made jointly with the Common Legal Representative for the former Child Soldiers according to which the jurisprudence of the Court has recognised the right of legal representatives to call witnesses – other than victims.⁸ It is his understanding that the Chamber has upheld the same approach in the present case insofar it referred to the

⁴ *Idem*, para. 9.

⁵ See the “Notification to Trial Chamber VI by the Common Legal Representative of the Victims of the Attacks of his intention to request for leave to present evidence”, No. ICC-01/04-02/06-1687-Conf-Exp, 16 December 2016.

⁶ See the “Order relating to the deadline for any requests by the Legal Representatives of Victims to present evidence or views and concerns of victims” (Trial Chamber VI), No. ICC-01/04-02/06-1711, 11 January 2017 (the “Order”).

⁷ *Idem*, para. 4.

⁸ See the “Joint submissions on the conduct of proceedings”, No. ICC-01/04-02/06-543, 7 April 2015, para. 44.

right of the Legal Representatives to request for “*leave for witnesses to be called*”⁹ and not exclusively for victims.

8. Regarding the participating victims, the Legal Representative wishes to underline the important distinction drawn in the jurisprudence of the Court to date between the right for legal representatives to call victims to give evidence and their right to call victims to present their views and concerns, and reiterates by reference his previous submissions in that regard.¹⁰

9. Furthermore, the Legal Representative recalls that the participation of victims in the proceedings before the Court shall be “*effective and significant as opposed to purely symbolic.*”¹¹ The participation of victims in the proceedings before the Court can only be deemed meaningful, rather than purely symbolic, if victims are entitled to positively contribute to the search for the truth – not to retribution or punishment of given individuals. In this respect, any form of positive contribution from victims appears to be crucial for the accomplishment of the Court’s function.¹²

10. In this regard, the Appeals Chamber has established the exhausted list of the requirements to be met in order to allow victims to present evidence or views and concerns.¹³ It is submitted that, as correctly pointed out by Judge Steiner, introducing any additional requirements to determine on the victims’ right to present evidence or

⁹ See the Decision on the conduct of proceedings, *supra* note 1, para. 69 (Emphasis added). See also, the Order, *supra* note 6, para. 4.

¹⁰ See the Joint submissions on the conduct of proceedings, *supra* note 8, paras. 37-43.

¹¹ See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, No. ICC-01/04-01/06-1432, para 97; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, para. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, para. 9; the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. ICC-01/05-01/08-1005, 1st December 2010 (dated 10 November 2010), para. 9(a).

¹² See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Second Edition, 2008, pp. 1280.

¹³ See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, *supra* note 11, paras. 4 and 104. The relevant criteria are as follows: “(i) a discrete application, (ii) notice to the parties, (iii) demonstration of personal interests that are affected by the specific proceedings, (iv) compliance with disclosure obligations and protection orders, (v) determination of appropriateness and (vi) consistency with the rights of the accused and a fair trial.”

views and concerns would “reflect a utilitarian approach towards the role of victims before the Court, which has no legal basis and appears to unreasonably restrict the rights recognised for victims by the drafters of the Statute.”¹⁴ It is also submitted that the question as to the number of victims who might be authorised to appear in person before the Court should be determined given the total number of the participating victims.¹⁵

A. Request for leave to call one witness who is not participating victim

Witness CLR2-1

11. The witness [REDACTED] is of Lendu ethnicity and is son of participating victim [REDACTED] and of [REDACTED] who was a notable in [REDACTED] during the period of the charges and was killed when attending the pacification meeting in Sangi in February 2003. The witness attended the meeting amongst Lendu notables in Buli. He saw [REDACTED] corps and buried him.

12. The witness is expected to testify about:

- His fleeing between the end of 2002 and the beginning of 2003 from Nyangaray to Lipri, Buli and Kobu and seeing numerous civilians killed, houses destroyed and pillaged by UPC troops.
- His attendance in February 2003 with [REDACTED] to the meeting amongst Lendu notables in Buli preceding the pacification meetings in Sangi.
- His knowledge about the call for a pacification meeting and subsequent warning message by [REDACTED].
- His seeing [REDACTED] body and observing various injuries.
- His involvement in [REDACTED] burying.
- His seeing about 17 persons killed in Kobu including 3 women.
- [REDACTED].

¹⁴ See the “Partly Dissenting Opinion of Judge Sylvia Steiner on the Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, ICC-01/05-01/08-2138”, No. ICC-01/05-01/08-2140, 23 February 2012, para. 11.

¹⁵ *Idem*, paras. 18-23.

- Harm suffered by the witness and her mother [REDACTED] as a result of [REDACTED] murder.

13. The estimated time of the testimony is 3 hours.

14. [REDACTED] was mentioned by some Prosecution witnesses, *i.e.* [REDACTED], during their testimony although without details. None of the witnesses testified about injuries received by [REDACTED] nor the latter's burying. It is submitted that the witness's expected testimony is meant to contribute to the determination of the truth, and in particular to complement and corroborate the evidence already presented. It also directly affects the personal interests of victim [REDACTED] ([REDACTED] widow) to have the circumstances of her husband murder and burial established before the Court insofar herself she did not see her husband body nor participated in his burying. Finally, the expected testimony affects the personal interests of many other participating victims whose family members were killed in the context of Sangi pacification meeting.

B. Request for leave to call victims to present evidence

Victim a/30012/15

15. The victim [REDACTED] is of Nyali ethnicity and is son of a businessman in [REDACTED] who was one of the community notables and leaders. When UPC troops installed themselves in [REDACTED] between the end of 2002 and the beginning of 2003, BOSCO NTAGANDA and KISEMBO often visited the victim's father seeking his support both financial and ideological. Because of the victim's father refusal to cooperate with UPC, the latter was arrested by a group of UPC soldiers, was tortured and killed.

16. The victim is expected to present evidence about:

- Being eye-witness of the arrival and installation of UPC troops in [REDACTED] between the end of 2002 and the beginning of 2003. His knowledge of UPC soldiers uniform and weapons.
- Being eye-witness of his father's numerous meetings with BOSCO and KISEMBO.
- Hearing threats addressed by BOSCO to the witness's father for refusal to cooperate.
- Knowledge of his uncle's arrest and detention where the latter was ordered [REDACTED].
- Being eye-witness of his father's arrest by UPC soldiers. Going to see KISEMBO to complain about his father arrest.
- Knowledge of his father been tortured and killed.
- Harm suffered by the victim.

17. The estimated time for the presentation of evidence is 3 hours.

Victim a/30365/15

18. The victim [REDACTED] is of Alur ethnicity. She saw UPC troops attacking Mongbwalu between the end of 2002 and the beginning of 2003, searching for Lendu people, killing civilians, destroying houses and pillaging goods. She and her family fled Mongbwalu to go to Beba wherein she was arrested and raped by three UPC soldiers. Her husband was killed because of his refusal to join UPC troops. Her two children were killed. Her house was destroyed and goods pillaged. Because of her rapes, the victim could not anymore give birth to a child.

19. The victim is expected to present evidence about:

- Being eye-witness of Mongbwalu attack by UPC troops.
- Her fleeing to Beba together with numerous civilians.
- Her arrest in Beba by UPC soldiers where women were separated from men.

- Being raped by three UPC soldiers. Other woman being raped by UPC soldiers.
- Civilian men being killed, including the victim's husband, for their refusal to join UPC troops.
- Seeing a *kadogo* in Beba carrying a head of a killed Lendu man.
- Killing of her two children, destruction of her house and pillage of goods.
- Long-term consequences of harm suffered by the victim.

20. The estimated time for the presentation of evidence is 2 hours.

Victim a/01635/13

21. The victim [REDACTED] is of [REDACTED] ethnicity and is the mother of two daughters [REDACTED]. During *Shika na mukono* operation carried out by UPC troops against Lendu civilians, the victim and her family fled Kilo Mission to escape in bush by fear for her [REDACTED] daughters. She then went to [REDACTED] inhabited mostly by Nyali. The victim's 14-years old daughter was taken by force by a UPC [REDACTED] and was used by him as sexual slave for about one year. The victim's 17-years daughter was also taken by force few days later as sexual slave by UPC soldiers.

22. The victim is expected to present evidence about:

- The victim and her family fleeing from Kilo Mission and conditions of their stay in bush.
- Abduction of her 14-years daughter by a UPC [REDACTED], and her 17-years daughter by UPC soldiers, for sexual slavery for about one year.
- Her attempts to liberate her 14-years old daughter from [REDACTED].
- Harm suffered by the victim and her daughters as a result of their sexual slavery, including long-term consequences of the sexual slavery.

23. The estimated time for the presentation of evidence is 3 hours.

Victim a/30286/15

24. The victim [REDACTED] is of Lendu ethnicity and resided in [REDACTED] where UPC troops attacked the village in February 2003. At that time, she was 13-years old. When trying to escape, the victim was captured and raped by three UPC soldiers in bush nearby. As a result of her rape, the victim received serious injuries and was infected with sexually transmitted disease.

25. The victim is expected to present evidence about:

- Attack on [REDACTED] by UPC troops in February 2003 during *Shika na mukono* operation.
- Her rape by three UPC soldiers in bush near [REDACTED].
- Physical injuries received and contamination with sexually transmitted disease as a result of the rape.
- Emotional and psychological harm suffered from the rape, as well as long-term consequences of the rape.

26. The estimated time for the presentation of evidence is 2 hours.

Victim a/00256/13

27. The victim [REDACTED] is of Lendu ethnicity and a notable in [REDACTED]. In February 2003, when being at home in [REDACTED], six members of his family were killed at a time by a shot of heavy weapon launched by UPC. At the beginning of March 2003, the victim was arrested by UPC soldiers and brought to [REDACTED]. In [REDACTED] he was accused for collaborating with Lendu combatants, was severely beaten in several instances and was forced to empty toilettes tanks with his hands. The victim received several injuries and was transported to hospital in Bunia. The victim's several houses were destroyed, and all his goods pillaged by UPC soldiers.

28. The victim is expected to present evidence about:

- Presence of UPC troops in [REDACTED] and surrounding villages with head quarter in Lokpa.
- Murder of six members of his family at a time by a shot of heavy weapon launched by UPC troops.
- Tortures and inhuman and degrading treatment suffered by the victim in UPC camp in [REDACTED].
- Destruction of his houses and pillage of his goods by UPC soldiers.
- His physical injuries and emotional and psychological harm suffered from the events.

29. The estimated time for the presentation of evidence is 2 hours.

Victim a/00045/13

30. The victim [REDACTED] is of Lendu ethnicity and he was, in 2002-2003, and currently still is, an employee with [REDACTED]. He resided in Bambu when the UPC troops started attacking the villages. He was mandated by [REDACTED] with head quarter in [REDACTED] to burry unidentified bodies in the affected villages, provide first aid to injured persons and transport them to nearest hospitals. The [REDACTED] group comprised 37 employees. Following every mission, the victim prepared a report. The victim was at market in Kobu when UPC troops attacked the village. The victim's mother and son were killed by UPC soldiers, and his house was burned.

31. The victim is expected to present evidence about:

- His role as a [REDACTED] employee during the war in Ituri at the beginning of 2003 to assist injured persons and to burry unidentified corps.
- Reporting his missions to [REDACTED] with head quarter in [REDACTED] at that time.
- UPC troops' attacks on different villages, killing civilians, and destroying houses.
- Seeing UPC soldiers catching civilians to bring them to Kobu.

- Seeing numerous corps in banana field in Kobu.
- Description of injuries and of corps of dead persons.
- Murder of his mother and son, and destruction of his house.
- Epidemic in Mongbwalu due to numerous unburied corps.

32. The estimated time for the presentation of evidence is 3 hours.

Victim a/30287/15

33. The victim [REDACTED] is of Lendu ethnicity and a Lendu notable in [REDACTED]. When UPC troops attacked the village between the end of 2002 and the beginning of 2003, the victim escaped in bush near [REDACTED] inhabited mostly by Bira people who hid Lendu refugees. When arrived in [REDACTED], UPC soldiers discovered that Lendu were hidden by Bira and killed all those Lendu, except one woman who managed to flee. The victim attended a meeting in Kobu where he was requested by UPC commanders to [REDACTED].

34. The victim was mentioned by Witnesses [REDACTED] during their testimony.

35. The victim is expected to present evidence about:

- His fleeing to [REDACTED] where he saw Lendu people who were hidden by Bira been killed by UPC soldiers.
- His attendance to a meeting in Kobu where he was requested by UPC commanders to [REDACTED].
- His seeing [REDACTED] been tortured by UPC soldiers.
- His knowledge of another letter for pacification sent through a [REDACTED] named [REDACTED].
- His seeing many bodies of killed civilians in Lipri.
- Destruction of his house.

36. The estimated time for the presentation of evidence is 3 hours.

37. It is submitted that the presentation of evidence by above victims is meant to genuinely contribute to the establishment of the truth and is not inconsistent with the fair trial requirements. It directly concerns the personal interests of the victims and is consistent with the victims' right to positively contribute to the search for the truth. Indeed, the expected evidence pertains to specific aspects of the case that were either not covered or explored to limited extent only by the evidence presented by the Prosecution, in particular specific locations, *i.e.* Petsi, Beba, Nizi and Soleniama, or specific crimes such as sexual slavery, torture and cruel treatment, and outrages against personal dignity. Accordingly, the expected evidence is not repetitive but is instead of complementary and corroborative nature. Finally, it does not prejudice the rights of the Accused since the Defence will have the possibility to cross-examine the victims.

C. Request for leave to call victims to present views and concerns

Victim a/01243/13

38. The victim [REDACTED] is of Nyali ethnicity and is son of a notable in [REDACTED] at the time of the events. When UPC troops arrived in Kilo at the end of December 2002, the victim together with his family fled the village to escape in [REDACTED] and then in [REDACTED]. In [REDACTED] the Victim was eye-witness of the murder of his three brothers by UPC soldiers. His two uncles were killed as well. According to the victim, UPC soldiers killed Nyali people because they lived together with Lendu people and were deemed the latter's spies.

39. The victim is expected to present views and concerns about:

- Fleeing with his family from [REDACTED] when UPC troops attacked the village in killing Lendu civilians.
- Murder of five of his family members in [REDACTED] because Nyali were deemed the Lendu spies.
- Seeing many bodies of killed civilians in [REDACTED].

- Harm suffered by the victim and his family.

40. The estimated time for the presentation of views and concerns is 1 hour.

Victim a/20126/14

41. The victim [REDACTED] is of Lendu ethnicity and resided in [REDACTED] at the time of the events. When UPC troops attacked the village between the end of 2002 and the beginning of 2003, the victim fled to bush. When the victim returned to the village to find some food he was captured and beaten. UPC commander [REDACTED] helped the victim to escape because they were from the same village. The victim's cousin was killed by machete and disembowelled by UPC soldiers. His uncle was killed as well. The victim's shop was pillaged and house fired.

42. The victim is expected to present views and concerns about:

- His fleeing to bush together with other civilians when UPC troops attacked [REDACTED].
- His arrest by UPC soldiers where he was beaten.
- Murder of his cousin and uncle.
- Pillaging of his goods and destruction of his house.

43. The estimated time for the presentation of views and concerns is 1 hour.

Victim a/30169/15

44. The victim [REDACTED] is of Bira ethnicity. In March 2003, UPC troops attacked [REDACTED] in killing civilians. The victim fled with his 12 children to bush where they stayed about two weeks. His two children died following a shot by a heavy weapon. Another son of 11-years old was killed by 12 bullets of a gunshot. His corps was found three days later and was partly eaten by animals. The victim was accused of being Lendu by a UPC soldier and was severely beaten and lost his teeth. His two daughters of 13 and 14-years old were raped by UPC soldiers in

[REDACTED]. The victim was forced by UPC soldiers to carry pillaged goods in [REDACTED].

45. The victim is expected to present views and concerns about:

- His fleeing from [REDACTED] with his 12 children.
- Conditions of their stay in bush during about two weeks.
- Murder of his three children.
- Being beaten by a UPC soldier.
- Rape of her two daughters by UPC soldiers.
- Being forced by UPC soldiers to carry pillaged goods in [REDACTED].

46. The estimated time for the presentation of views and concerns is 1 hour.

Victim a/20018/14

47. The victim [REDACTED] is of Lendu ethnicity. When UPC troops attacked Mongbwalu at the end of 2002, the victim fled to [REDACTED] with her family. At the beginning of 2003, UPC troops attacked [REDACTED] in killing Lendu civilians. Fleeing from [REDACTED], the victim was captured by UPC soldiers and was raped in front of her children. The soldiers also pillaged 500 USD she had. As a result of her rape, the victim could never give birth to a child. Her restaurant in Mongbwalu was also pillaged.

48. The victim is expected to present views and concerns about:

- Fleeing from Mongbwalu to [REDACTED] because of UPC troops' attack.
- Her rape by UPC soldiers in front of her children on the road to [REDACTED] and consequences of the rape.
- Pillage of the victim's goods and restaurant.
- Lendu civilians and combatants resistance against UPC troops to defend Kpandroma airport.

49. The estimated time for the presentation of views and concerns is 1 hour.

50. It is submitted that the presentation of views and concerns by above victims is consistent with their rights under article 68(3) of the Rome Statute as developed by the Court jurisprudence, and in particular their right to present views and concerns in person. This is also consistent with the victims' right to tell their story and to have their story heard by the Judges. Moreover, it is meant to assist the Chamber in its determination of the truth. Finally, it does not prejudice the rights of the Accused since victims' unsworn statements – as opposite to evidence – will not form part of the trial evidence but are meant *"to assist the Chamber in its approach to the evidence in the case."*¹⁶

D. The number of victims to be called to appear in person is in compliance with fair trial requirements

51. The Legal Representative submits that the number of victims he intends to call to appear in person, *i.e.* 11 victims, is reasonable and proportionate given the total number of the victims of the attacks admitted to participate in the proceedings (1859), and when comparing to the number of the witnesses called by the Prosecution. Accordingly, the appearance in person of eleven victims is not likely to affect the fairness and expeditiousness of the proceedings. Finally, the appearance in person of the victims is consistent with the requirement according to which the participation of victims in the Court proceedings shall be effective and meaningful and not purely symbolic.

E. Disclosure of the witness' and victims' identity to the parties and participants and to the public

52. The witness and victims the Legal Representative requests to call all consented that their identity be disclosed to the parties and participants but only if the Chamber were to decide to authorise them to appear in person before it. Also, they all

¹⁶ See the "Order issuing public redacted version of the "Decision on the request by victims a/ 0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial"" (Trial Chamber I), No. ICC-01/04-01/06-2032-Anx, 9 July 2009, paras. 17 and 25-27

expressed concerns about their safety and well-being should their identity be disclosed to the public.

53. The Legal Representative while taking note of the Chamber's guidance that "*in principle, any views and concerns, in particular, should be presented in public*",¹⁷ respectfully submits that the matter should be considered on a case-by-case basis, depending on the security situation of the victims concerned.

54. Based on the elements available to date and given the instable general security situation in the Ituri region, it is anticipated that the Legal Representative will request for in-court protective measures to be granted to the witness and all the victims he requests to call to present evidence, and to some victims he requests to call to present views and concerns.

F. Modalities of the witness and victims appearance

55. It is submitted that both the witness and the victims concerned should be allowed to present evidence *viva voce* and in courtroom, except victim a/00256/13. As regards the latter, the Legal Representative intends to request the Chamber's leave to conduct the presentation of evidence by video-link from [REDACTED], given the victim's health conditions.

56. Regarding the presentation of views and concerns, the Legal Representative submits that given the limited scope of their appearance and for the purpose of the expeditiousness of the proceedings, the victims concerned should be allowed to appear via video-link from [REDACTED].

¹⁷ See the Order, *supra* note 6, para. 5.

IV. CONFIDENTIALITY

57. Pursuant to regulations 23bis(1) and (2) of the Regulations of the Court, the present submissions are classified as “confidential – *Ex Parte* – only available to CLR2” as they contain identifying information regarding individuals who have not yet been authorised by the Chamber to appear in person before it either as witness or victim. A confidential redacted version is filed at the same time.

FOR THE FOREGOING REASONS the Legal Representative respectfully

REQUESTS the Chamber authorisation to call (1) one witness who is not participating victim in the present case, (2) seven participating victims to present evidence, and (3) four participating victims to present views and concerns.



Dmytro Suprun
Common Legal Representative of the Victims of the Attacks

Dated this 17th Day of February 2017

At The Hague, The Netherlands