

Memorandum of Understanding between the International Commission on Missing Persons and the Office of the Prosecutor of the International Criminal Court

The International Commission on Missing Persons (the “ICMP”) and the Office of the Prosecutor of the International Criminal Court (the “OTP”);

CONSIDERING that the purposes of the ICMP are to secure the co-operation of governments and other authorities in locating and identifying persons missing as a consequence of wars, human rights abuses and natural disasters, or other involuntary reasons, and to assist them in doing so;

CONSIDERING that the International Criminal Court (“ICC” or the “Court”) was established by the Rome Statute to contribute to ending impunity for perpetrators of the most serious crimes of concern to the international community, and that the effective investigation and prosecution of such crimes must be ensured by taking measures at the national level and by enhancing international cooperation;

BEARING IN MIND that the OTP is responsible for receiving referrals and information on crimes that fall within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions of such crimes;

NOTING that the ICMP possesses full international legal personality, and pursuant to article VI (b) of the Agreement on the Status and Functions of the ICMP has the power to enter into any necessary agreement;

NOTING that article 54(3)(d) of the Rome Statute provides that the Prosecutor may enter into such arrangements or agreements, not inconsistent with the Rome Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization or person;

DESIRING to establish a mutually beneficial relationship whereby the discharge of respective responsibilities of the ICMP and the OTP may be facilitated; and

TAKING INTO ACCOUNT for this purpose, the provisions of the Agreement on the Status and Functions of the ICMP and the provisions of the Rome Statute of the ICC,

HAVE AGREED as follows:

Article 1

Scope of cooperation

1. This Memorandum of Understanding (“Memorandum”) defines the terms on which the ICMP and OTP (together “the Parties”) shall cooperate.
2. In accordance with the provisions of this Memorandum, the Parties shall, wherever possible, cooperate and assist each other in the discharge of their respective mandates, in conformity with the respective provisions of their respective legal frameworks.
3. Cooperation and assistance includes exchange of information, documents and records of mutual interest, including providing access to electronic and paper archives, as well as other databases maintained by either Party.

Article 2

Communications

1. The Parties shall channel all communications under this Memorandum through their respective designated focal points, which will be nominated and communicated by each Party.

Article 3

Form and content of requests for assistance

1. Requests for assistance shall be submitted in writing. In urgent cases, a request may be submitted orally, but must be confirmed in writing within forty-eight hours, unless the Requested Party agrees otherwise.
2. In all cases, requests shall indicate:
 - a) A concise description of the purpose and the context of the request;
 - b) A description of the type of information or other assistance requested; and
 - c) Any other information relevant to the execution of the request that may be required by the Requested Party.
3. Requests shall be submitted in one of the working languages of the Requested Party.

Article 4

Execution of requests

1. Subject to observance of each Party’s legal framework and policies, the Requested Party shall execute requests in a timely manner and to the fullest extent possible and practicable.

2. The Requested Party may refuse or postpone the execution of all or part of a request insofar as the execution would:
 - a) Be contrary to its statute, rules, regulations or policies;
 - b) Infringe any restriction on use contained in agreements signed by the Requested Party; or
 - c) Jeopardize a person's protection or security.
3. Before refusing or postponing the execution of a request, the Requested Party shall consider and consult with the Requesting Party whether the assistance can be provided subject to specific conditions or in an alternative manner.
4. The Requested Party shall notify the Requesting Party in writing of the reason(s) for refusal or postponement within thirty days of receipt of the Request.

Article 5

Third-party information or documents

1. If the ICMP is requested by the OTP to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental, international or non-governmental organization or an individual, the ICMP shall seek the consent of the originator to disclose that information or documentation or, where appropriate, will inform the OTP that it may seek the consent of the originator for the ICMP to disclose that information or documentation.

Article 6

Privileges and immunities

1. If the OTP seeks to bring forward charges with respect to a person who is alleged to be criminally responsible for a crime or an offence within the jurisdiction of the Court and if, in the circumstances, such person enjoys, under the applicable ICMP regulations and the relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the ICMP, the ICMP undertakes to cooperate fully with the ICC and to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities in accordance with the applicable ICMP regulations.

Article 7

Supplementary arrangements

1. The Parties may, for the purpose of implementing this Memorandum, make such supplementary arrangements as may be found appropriate.

Article 8

Consultations and settlements

1. The Parties shall meet at the request of either Party to exchange information of mutual interest and consult on questions concerning the interpretation, implementation or application of this Memorandum, whether in relation to general matters or to a specific Request.
2. Any difficulty arising from this Memorandum shall be resolved between the Parties through consultation and negotiation.

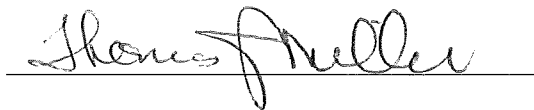
Article 9

Final clauses, entry into force and termination

1. This Memorandum shall enter into force upon signature by both Parties.
2. This Memorandum may be amended by mutual consent of the Parties in writing.
3. This Memorandum may be terminated by either of the Parties on six months' written notice to the other Party.
4. This Memorandum may be superseded, in whole or in part, in the event that ICMP concludes a Court-wide cooperation agreement with the ICC.
5. This Memorandum constitutes all that is agreed by the Parties.

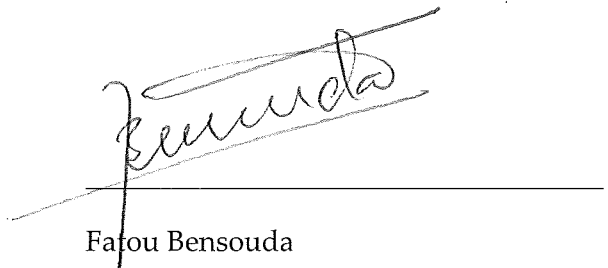
Signed in duplicate on Thursday, the seventh of July, 2016, in The Hague, The Netherlands.

FOR THE ICMP



Ambassador Thomas Miller
Chairman

FOR THE OTP



Fafou Bensouda
Prosecutor