

No. 1357

**United Nations
and
International Criminal Court**

Memorandum of Understanding between the United Nations and the International Criminal Court concerning the provision by the United Nations Office at Nairobi of support services and facilities to the Registry of the Court in connection with its activities in the Republic of Kenya (with annexes). Nairobi, 9 June 2011, and The Hague, 13 June 2011

Entry into force: *13 June 2011 by signature, in accordance with article 14*

Authentic text: *English*

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**Organisation des Nations Unies
et
Cour pénale internationale**

Mémorandum d'accord entre l'Organisation des Nations Unies et la Cour pénale internationale relatif à la fourniture par l'Office des Nations Unies à Nairobi de services d'appui et d'installations au Greffier de la Cour dans le cadre de ses activités en République du Kenya (avec annexes). Nairobi, 9 juin 2011, et La Haye, 13 juin 2011

Entrée en vigueur : *13 juin 2011 par signature, conformément à l'article 14*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *d'office, 13 juin 2011*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Memorandum of Understanding
between the United Nations and the International Criminal Court
Concerning the Provision by the United Nations Office at Nairobi
of Support Services and Facilities to the Registry of the Court
in Connection with its Activities in the Republic of Kenya**

WHEREAS the United Nations and the International Criminal Court (the “Court”) have concluded a Relationship Agreement between the United Nations and the International Criminal Court (The “Relationship Agreement”), which entered into force on 4 October 2004;

WHEREAS the United Nations General Assembly, in its resolution 58/318 of 13 September 2004, decided that all expenses resulting from the provision of services, facilities, cooperation and any other support rendered to the Court that may accrue to the United Nations as a result of the implementation of the Relationship Agreement shall be paid in full by the Court to the Organization;

WHEREAS the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court have concluded a Memorandum of Understanding Regarding Coordination of Security Arrangements (the “MOU on Security Arrangements”) that entered into force on 22 February 2005;

WHEREAS the Secretary-General of the United Nations and the Court have concluded a special arrangement for the purposes of Article 12 of the Relationship Agreement by means of an exchange of letters between the Secretary-General and the Registrar of the Court dated 31 January 2005 and 22 February 2005 (the “special arrangement on UNLPs”), which entered into force on 3 March 2005;

WHEREAS in its decision ICC-01/09-19 issued on 31 March 2010, Pre-Trial Chamber II of the Court authorized investigations by the Prosecutor of the Court into the situation in the Republic of Kenya in relation to alleged crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 20 November 2009;

WHEREAS the Registrar of the Court is mandated to provide all administrative and logistical support as well as to carry out certain Registry-mandated activities in the Republic of Kenya, including public information and protection of victims and witnesses;

WHEREAS in Article 10 of the Relationship Agreement, the United Nations agreed that, upon the request of the Court, it shall, subject to availability, provide on a

reimbursable basis for the purposes of the Court such facilities and services as may be required;

WHEREAS it is further stipulated in Article 10 of the Relationship Agreement that the terms and conditions on which any facilities or services may be provided by the United Nations shall, as appropriate, be the subject of supplementary arrangements;

WHEREAS in Article 8, paragraph 2 (c), of the Relationship Agreement, the United Nations and the Court agreed to strive for the maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services;

WHEREAS the Director General of the United Nations Office in Nairobi (UNON), in a letter dated 14 September 2010, has confirmed that UNON will be in a position to provide office space for the Registry of the Court in 2011 within the UNON compound and a wide range of administrative support services;

WHEREAS the Government of the Republic of Kenya communicated to UNON in its Note Verbale of 4 April 2011 that it had no objection to the Court establishing an office within the UNON compound;

WHEREAS the United Nations and the Court now wish to conclude arrangements of the kind envisioned in Articles 8 and 10 of the Relationship Agreement;

NOW, THEREFORE, the United Nations, acting through the United Nations Office in Nairobi (UNON), and the Court, acting through its Registrar, (the "Parties") agree as follows:

Article 1

Purpose

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Court in connection with the investigations conducted by the Prosecutor of the Court into the situation in Kenya in relation to crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 20 November 2009.

Article 2

Cooperation

1. The United Nations and the Court undertake to cooperate with each other in accordance with the specific modalities set out in this MOU.
2. This MOU may be supplemented at any time by means of a written agreement between the Parties setting out additional modalities of cooperation between the United Nations and the Court.

Article 3
Basic principles

1. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be construed as derogating from any of its terms. In case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.
2. It is agreed that UNON shall make available to the Court the facilities, services, assistance and support provided for in this MOU to the extent feasible within its capabilities and without prejudice to its ability to discharge its other mandated functions.
3. The Court acknowledges that the Government of the Republic of Kenya (the "Government") has primary responsibility for the safety and security of all individuals, property and assets present on its territory. Without prejudice to the MOU on Security Arrangements, neither the United Nations nor UNON shall be responsible for the safety or security of the staff/officials or assets of the Court or of potential witnesses, witnesses, victims, suspects or accused or convicted persons identified in the course, or as a result, of the Prosecutor's investigations or of the legal representatives of victims, suspects or accused or convicted persons or of individuals identified by suspected, accused or convicted persons as witnesses or potential witnesses in their defence. In particular, nothing in this MOU shall be understood as establishing or giving rise to any responsibility on the part of the United Nations or UNON to ensure or provide for the protection of witnesses, potential witnesses or victims identified by the Prosecutor or contacted by the Registry.

Article 4
Reimbursement

1. All services, facilities, assistance and support provided to the Court by UNON pursuant to this MOU shall be provided on a fully reimbursable basis. The Court shall reimburse UNON in full for and in respect of all clearly identifiable direct costs that UNON may incur as a result of or in connection with UNON providing services, facilities, assistance or support pursuant to this MOU. UNON and the Court shall endeavour to identify such costs in advance and to agree on relevant estimates. UNON shall, where possible, notify the Court of any additional costs that it might subsequently identify and of any increase in those estimates in advance of making available and rendering the relevant services, facilities, assistance and support.

2. The Court shall not be required to reimburse UNON for or in respect of;
 - a. costs that UNON would have incurred regardless of whether or not services, facilities, assistance or support were provided to the Court pursuant to this MOU;
 - b. any portion of the common costs of UNON;
 - c. depreciation in the value of UNON owned equipment that might be used by UNON in the course of providing services, facilities, assistance or support pursuant to this MOU.
3. UNON shall submit invoices to the Court for the provision of services, facilities, assistance and support under this MOU on a timely basis after receipt of a request for the provision of such services, facilities, assistance or support.
4. The Court may request further details in writing regarding any services, facilities, assistance or support for which an invoice has been submitted by UNON.
5. The Court shall make payment in full on such invoices within 30 (thirty) days of the date printed on them, unless it has requested further details in accordance with the preceding paragraph, in which case it shall make payment within 30 (thirty) days of the receipt of such details.
6. Payment shall be made in United States Dollars, either in cash or by means of bank transfer made payable to the UNON bank account specified on the invoices concerned.

Article 5

Facilities

1. With the prior written consent of the Government, UNON shall make available to the Court office space within the UNON compound (the "office space") capable of accommodating up to a maximum of twenty (20) staff/officials of the Court.
2. UNON shall maintain the office space and its related infrastructure in good and working order and shall take the necessary steps to ensure that the office space is provided with:
 - a. all necessary utilities, including electricity, water, sewerage, heat and air conditioning, and
 - b. all necessary services, including garbage collection, cleaning, pest control, fire and security and safety patrols and inspections and use of UNON's internal mail and messenger services