

No. 1358

**United Nations
and
International Criminal Court**

Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations Operation in Côte d'Ivoire (UNOCI) and the Prosecutor of the International Criminal Court (with annexes). New York, 20 January 2012 and 23 January 2012

Entry into force: *23 January 2012 by signature, in accordance with article 24*

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 coopération entre l'Opération des Nations Unies en Côte d'Ivoire (ONUCI) et le Procureur de la Cour pénale internationale (avec annexes). New York, 20 janvier 2012 et 23 janvier 2012

Entrée en vigueur : *23 janvier 2012 par signature, conformément à l'article 24*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**Memorandum of Understanding
Between the United Nations and the International Criminal Court
Concerning Cooperation between the United Nations Operation in Côte d'Ivoire (UNOCI)
and the Prosecutor of the International Criminal Court**

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 to the Organization;

Whereas the United Nations and the Court have concluded a Memorandum of Understanding between the United Nations, represented by the United Nations Security Coordinator, and the International Criminal Court Regarding Coordination of Security Arrangements (the "MOU on Security Arrangements"), which entered into force on [22 December 2004];*

Whereas the United Nations Operation in Côte d'Ivoire ("UNOCI") was established pursuant to United Nations Security Council resolution 1528 (2004) of 27 February 2004 as a subsidiary organ of the United Nations;

Whereas the United Nations Security Council, in its resolution 2000 (2011) of 27 July 2011, called upon UNOCI, where consistent with its existing authorities and responsibilities, to support national and international efforts to bring to justice perpetrators of grave violations of human rights and international humanitarian law in Côte d'Ivoire;

Whereas the Government of Côte d'Ivoire (the "Government") on 18 April 2003 lodged with the Registrar of the International Criminal Court (the "Registrar") pursuant to Article 12, paragraph 3, of the Rome Statute of the International Criminal Court (the "Rome Statute") a declaration accepting the exercise of jurisdiction by the International Criminal Court and reaffirmed its acceptance of the Court's jurisdiction on 14 December 2010;

Whereas the Pre-Trial Chamber of the International Criminal Court on, 3 October 2011, authorized the Prosecutor of the International Criminal Court (the "Prosecutor") to commence an investigation into the situation of crimes within the jurisdiction of the Court which may have been committed on the territory of Côte d'Ivoire since 28 November 2010 and whereas the Prosecutor has commenced such an investigation;

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

* The date in brackets should read "22 February 2005".

Whereas, in Article 15 of the Relationship Agreement, with due regard to its responsibilities and competence under the Charter and subject to its rules as defined under applicable international law, the United Nations undertakes to cooperate with the Office of the Prosecutor (OTP);

Whereas, in Article 18 of the Relationship Agreement, the United Nations undertakes, with due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, to cooperate with the Prosecutor of the Court and to enter with the Prosecutor into such arrangements or agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations under Article 54 of the Statute;

Whereas the United Nations and the Prosecutor wish to conclude arrangements of the kind foreseen in Article 18 of the Relationship Agreement;

Now, therefore, the United Nations represented by UNOCI (hereinafter UNOCI) and the Court represented by the Prosecutor (hereinafter the Prosecutor) have agreed as follows:

CHAPTER I: GENERAL PROVISIONS

Article I **Purpose**

This Memorandum of Understanding (the "MOU") sets out the modalities of cooperation between the United Nations and the Prosecutor in connection with investigations conducted by the Prosecutor into crimes within the jurisdiction of the Court which may have been committed on the territory of Côte d'Ivoire since 28 November 2010.

Article 2 **Cooperation**

1. The United Nations undertakes to cooperate with the Prosecutor in accordance with the specific modalities set out in this MOU.
2. This MOU may be supplemented from time to time by means of written agreement between the signatories or their designated representatives setting out additional modalities of cooperation between the United Nations and the Prosecutor.
3. This MOU is supplementary and ancillary to the Relationship Agreement. It is subject to that Agreement and shall not be understood to derogate from any of its terms. In the case of any inconsistency between the provisions of this MOU and those of the Relationship Agreement, the provisions of the Relationship Agreement shall prevail.

Article 3
Basic Principles

1. It is understood that UNOCI shall afford the assistance and support provided for in this MOU to the extent feasible within its capabilities and areas of deployment and without prejudice to its ability to discharge its other mandated tasks.
2. The Prosecutor acknowledges that 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 UNOCI 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. 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 UNOCI to ensure or provide for the protection of witnesses, potential witnesses or victims identified or contacted by the Prosecutor in the course of his or her investigations.

Article 4
Reimbursement

1. All services, facilities, cooperation, assistance and other support that may be provided to the Prosecutor by the United Nations or by UNOCI pursuant to this MOU shall be provided on a fully reimbursable basis.
2. The Prosecutor shall reimburse the United Nations or UNOCI in full for and in respect of all clearly identifiable direct costs that the United Nations or UNOCI may incur as a result of or in connection with providing services, facilities, cooperation, assistance or support pursuant to this MOU.
3. The Prosecutor shall not be required to reimburse the United Nations or UNOCI for or in respect of:
 - (a) costs that the United Nations or UNOCI would have incurred regardless of whether or not services, facilities, cooperation, assistance or support were provided to the Prosecutor pursuant to this MOU;
 - (b) any portion of the common costs of the United Nations or of UNOCI;
 - (c) depreciation in the value of United Nations or contingent owned equipment, vehicles, vessels or aircraft that might be used by the United Nations or UNOCI in the course of providing services, facilities, cooperation, assistance or support pursuant to this MOU.

CHAPTER II: SERVICES, FACILITIES AND SUPPORT

Article 5

Administrative and logistical services

1. Pending conclusion of an agreement between the United Nations and the Registry relating to administrative and logistical services, UNOCI is prepared, at the request of the Prosecutor, to provide administrative and logistical services to the Prosecutor, including:

- (a) access to UNOCI's internet service in areas where available, subject to compliance with UNOCI's information technology protocols, policies and rules, in particular with respect to the use of external applications and the installation of software;
- (b) with the prior written consent of the Government and on the understanding that the Prosecutor purchases compatible equipment for that purpose, access to UNOCI's internal telecommunications facilities (PABX) and its two-way radio security channels for the purpose of communications within Côte d'Ivoire;
- (c) storage for items of equipment or property owned by the Office of the Prosecutor on a space-available basis, it being understood that risk of damage to, or deterioration or loss of, such equipment or property during its storage by UNOCI shall lie with the Office of the Prosecutor. The Office of the Prosecutor hereby agrees to release the United Nations, including UNOCI, and their officials, agents, servants and employees from any claim in respect of damage to, or deterioration or loss of, such equipment or property;
- (d) provided that staff/officials of the Office of the Prosecutor are lawfully entitled to benefit from the same immigration formalities on their entry into and departure from Côte d'Ivoire as are members of UNOCI, assistance to staff/officials of the Office of the Prosecutor in completing those formalities when arriving or departing on flights that are also carrying members of UNOCI. It is understood that it is the Prosecutor's responsibility to ensure that his/her staff/officials are in possession of appropriate travel documents and that UNOCI is not in a position to resolve any travel, immigration or departure problems for staff/officials of the Office of the Prosecutor;
- (e) on an exceptional basis and with the prior written consent of the Government, temporary or overnight accommodation for staff/officials of the office of the Prosecutor on UNOCI premises, it being understood that UNOCI will consider requests for such services on a case-by-case basis, taking duly into consideration the security of its own members and assets and the availability of alternative suitable accommodation in the vicinity. It shall be a condition of the accommodation of any staff member/official of the Office of the Prosecutor on UNOCI premises that he or she first sign a waiver of liability as set out in Annex A of this MOU. The Prosecutor shall advise his/her staff/officials concerned of this requirement and shall instruct them to complete and sign that waiver. UNOCI and the Prosecutor shall make practical arrangements for the transmittal to UNOCI of completed and signed waivers at least 5 (five) working days in advance of the arrival of the staff/officials concerned at the UNOCI premises at