

ICTR-01-75-I
23-02-2011
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Memorandum of Understanding

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JUDICIAL DEPT/ARCHIVES

2011 FEB 23 PM 1:00

Memorandum of Understanding

Between

The Special Court for Sierra Leone

And

The Government of the Republic of Rwanda

Memorandum of Understanding

Whereas the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone signed on 16 January 2002 established the Special Court for Sierra Leone (hereinafter the "Special Court" or "SCSL") to investigate and prosecute those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996;

Whereas the Special Court was established as an independent international judicial institution;

Whereas the Special Court will, upon completion of its judicial activities, be succeeded by a Residual Body that will be mandated to discharge all ongoing and *ad hoc* residual functions of the President, Judges, Prosecutor and Registrar of the Special Court (hereinafter the "R-SCSL");

Whereas Article 22 of the Statute of the Special Court provides that imprisonment of persons sentenced by the Special Court shall be served in Sierra Leone; or if circumstances so require, in any State that has concluded with the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for former Yugoslavia an agreement for the enforcement of sentences and which has indicated to the Special Court its willingness to accept convicted persons; or alternatively, in any State with which the Special Court has concluded similar agreements;

Whereas on 18 March 2009 the Special Court for Sierra Leone and the Government of the Republic of Rwanda ("the Government of Rwanda") signed an Agreement, in Kigali, Rwanda, for the Enforcement of Sentences imposed by the Special Court for Sierra Leone (hereinafter the "Enforcement Agreement");

Whereas the Special Court and the Government of Rwanda, while respecting each other's independence, are determined to cooperate to enforce the sentences imposed by the Special Court with a view to put an end to impunity for perpetrators of serious crimes;

Noting that the President of the Special Court may, pursuant to Rule 103(B) of the Rules of Procedure and Evidence, designate the Republic of Rwanda as the state in which a person or persons convicted by the Special Court is to serve his sentence of imprisonment (hereinafter the "Convicted Persons");

Whereas the Government of Rwanda recognises and undertakes to comply with the widely accepted international standards governing the treatment of imprisonment including those stipulated under the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC Resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

Whereas this Memorandum of Understanding ("MOU") is entered into, by and between the Special Court, including, where the context so allows, references to the Residual body of the

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Special Court (R-SCSL), on the one hand; and the Government of Rwanda, on the other, for the purpose of mutually facilitating the provision of services, facilities and support pertaining to the enforcement in Rwanda of sentences imposed by the Special Court, in accordance with the terms of the Enforcement Agreement;

Now therefore, the Special Court and the Government of Rwanda, hereinafter collectively referred to as the "participants" and individually as the "participant", have decided as follows:

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Paragraph 1 Purpose

This document is an implementing MOU to the Enforcement Agreement that sets out financial and certain other commitments of the participants under the terms and conditions of that Agreement.

Paragraph 2 Principles

The performance of the SCSL's, or R-SCSL's, commitments under this MOU will not impinge upon the judicial independence of the SCSL or that of the R-SCSL, which will at all times continue to have the legal status of an independent entity.

Paragraph 3 Transfer of Convicted Persons

- 3.1 All logistics in relation to the transfer of the Convicted Persons will be agreed upon between the SCSL Chief of Detention and the Commissioner General of the National Prisons Service.
- 3.2 The transfer of liability shall take effect upon transference of the Convicted Persons to the Commissioner General and receipt by the SCSL Chief of Detention of signed Body Receipts. Such transference will be subject to the Commissioner's and the SCSL Chief of Detention's agreement.
- 3.3 Where applicable, the Government of Rwanda undertakes to grant the Convicted Persons' entry in the Republic of Rwanda with an SCSL-issued "Travel Document for Convicted Person".

Paragraph 4 Financial commitments of the SCSL or R-SCSL during enforcement

- 4.1 As per Article 11 of the Enforcement Agreement, the SCSL or R-SCSL will raise sufficient funds to provide for the upkeep and maintenance of the Convicted Persons during the period of execution of their sentences in Rwanda. Specifically, the SCSL or R-SCSL undertakes to cover expenses related to their meals, on the basis of three meals a day, hygiene and sanitation, as well as remuneration for active employment during incarceration, communication and other welfare costs, where appropriate.
- 4.2 In addition, costs incurred as a result of exceptional medical care that goes beyond that which is provided in any Rwandan facility and is not covered under the national insurance plan, including surgeries, specialists treatment, transfer to a third country's medical facility, or other type of care that is necessary for the well-being of the Convicted Persons will be borne by the SCSL or R-SCSL. Any such medical costs will be disbursed on a reimbursement basis.

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- 4.3. The estimated annual costs that will be borne by the SCSL or the R-SCSL are limited to those described in this MOU, as detailed in Annex 1.
- 4.4. Until the funds raised in accordance with paragraphs 4.1 and 4.2 above are disbursed to the Government of Rwanda, as appropriate, the SCSL or the R-SCSL retains full control over the management of these funds.

Paragraph 5

Commitments of the Government of Rwanda

- 5.1. The Government of Rwanda will ensure that the Convicted Persons are treated in compliance with the widely accepted international standards on the treatment of prisoners referenced both in the preamble of this MOU and in Article 3.3 of the Enforcement Agreement.
- 5.2. The Government of Rwanda undertakes to enrol each SCSL Convicted Person in its national medical insurance plan. The cost of the medical insurance shall be borne by the SCSL or the R-SCSL. A policy of this insurance plan detailing the coverage available to convicted persons shall be provided to the SCSL Chief of Detention and Medical Officer prior to transfer.
- 5.3. In the event that specialised or urgent medical care, not covered under the plan, becomes necessary for the treatment of a Convicted Person serving a sentence in Rwanda, the Government of Rwanda will immediately take all measures necessary for the proper medical attention to be provided to the convicted person. It will inform the SCSL or R-SCSL as soon as possible. The SCSL or R-SCSL will reimburse the Government of Rwanda, or its service-provider, for the expenses incurred, as per Paragraph 6.3 below.
- 5.4. The Government of Rwanda will ensure that the Convicted Persons are provided gainful employment opportunities throughout the duration of their sentence. In accordance with Paragraph 4.1 of this MOU, the Special Court undertakes to contribute to the earning scheme of each Convicted Person.
- 5.5. The Government of Rwanda undertakes to place a portion of the Convicted Persons' earning in an interests-generating savings account in the name of each Convicted Person, which shall be given to them upon their release. In case of a family emergency, Convicted Persons will be allowed to request the transfer of some or all of these funds to an account of their choice up to three times a year.
- 5.6. The Government of Rwanda will cover all other expenses incurred by the enforcement of the sentence in Rwanda, pursuant to Article 11.2 of the Enforcement Agreement.

Paragraph 6

Transfer of funds to Rwanda

- 6.1. Within one month of the initial transfer of a convicted person(s) to Rwanda, the SCSL or R-SCSL or its designate will transfer to the Government of Rwanda

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sufficient funds as described in paragraph 4.1 of this MOU to cover the expenses that will be incurred during the first year of enforcement of the sentence.

- 6.2. Thereafter, and no later than one month before the commencement of the following year of enforcement of the sentence in Rwanda, the SCSL or R-SCSL or its designate will transfer funds described in paragraph 4.1 of this MOU to the Government of Rwanda in annual instalments.
- 6.3. As described in Paragraph 5.3 of this MOU, exceptional costs that may be incurred as a result of exceptional medical care not covered by the national insurance plan will be reimbursed to Rwanda after the SCSL or R-SCSL receives all necessary documents in support of the costs incurred. The transfer of funds necessary to cover such expenses will be effected within one month of receipt of the supporting documents.
- 6.4. In the event of termination of the Enforcement Agreement under any circumstances contemplated under Articles 9 or 10 of the Enforcement Agreement, the Government of Rwanda will within three months of termination of the Enforcement Agreement refund a prorated portion of the funds advanced in accordance with paragraph 6.2 above.

Paragraph 7

Unforeseen Expenditure

In the event that the Government of Rwanda incurs any other type of unforeseen expenses or reasonably foresees the possibility of incurring such expenditure, which should be borne by the SCSL or R-SCSL under the spirit of the Enforcement Agreement, it will submit in writing to the SCSL or R-SCSL any justification related to the unforeseen expenditure. However, the Government of Rwanda will give the SCSL or R-SCSL reasonable time to make a determination on the suitability of the request. The Registrar of the SCSL or R-SCSL will notify the President of the request for additional expenditure and the justification. If the President is satisfied with the justification of such a request, he/she will approve such expenditure and the transfer the additional funds agreed to the Government of Rwanda. If the President is not satisfied, then the Government of Rwanda will bear the costs of such unforeseen expenditure.

Paragraph 8

Audit of Accounts

- ✓ The Government of Rwanda undertakes to submit to a regime of audit of accounts in relation to the funds transferred pursuant to this MOU, as may be required by the SCSL or R-SCSL. The participants agree to audits by an independent auditor.

Paragraph 9

Access to Counsel

- 9.1. In accordance with Article 28 of Law No 38/2006 of 25/09/2006 establishing and determining the organisation of the National Prisons Service, the Government of

Rwanda will allow the Convicted Persons to have access to qualified counsels *as often as necessary* for any legal matter arising in relation to their conviction. In this context, the Government of Rwanda will make necessary provisions to facilitate *privileged* attorney-client consultations during the period of enforcement of sentences in Rwanda. Any legal consultation between an SCSL Convicted Person and his counsel *shall not be monitored*.

- 9.2. Convicted Persons will be provided with all relevant information concerning legal aid provided by the Rwandan Bar Association or any other institution they may be granted access to.

Paragraph 10

Discipline and Complaints

- 10.1. Any internal disciplinary matters arising during the period of enforcement of the Convicted Persons' sentence in Rwanda will be handled in accordance with the regulations applicable to Rwanda's Prison Service.
- 10.2. The Government of Rwanda undertakes to provide a complaint mechanism in accordance with Standard Minimum Rules on the Treatment of Prisoners.

Paragraph 11

Public Communication

1. Notwithstanding the laws of Rwanda concerning access to prisoners in the custody of Rwandan authorities, the Government of Rwanda will not disclose to the public or the media, whether local or international, any information pertaining to the status of the SCSL Convicted Persons without prior consultation with the SCSL or R-SCSL.

Paragraph 12

Facilitation of Family Visits

- 12.1. Subject to Rwanda's national immigration laws, the Government of Rwanda will grant visas to family members and friends of the Convicted Persons, who wish to travel to Rwanda for prison visits. In this context, the SCSL and R-SCSL will, in coordination with the Rwandan authorities, assist visa applicants by forwarding applications along with a supporting Note Verbale to the nearest Rwandan embassy for processing, with a copy sent to the Ministry of Foreign Affairs of Rwanda.
- 12.2. The Government of Rwanda shall ensure that, having regard to the time and resources spent on travel from Sierra Leone to Rwanda for such visits, sufficient time be granted in Rwanda, as well as during scheduled family visits, for family members and friends to visit the Convicted Persons.
- 12.3. During their families' and friends' stay in Rwanda, Convicted Persons shall be able to receive visitors several times a week.

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Paragraph 13
Inspection by the ICRC

- 13.1. As per Article 6 of the Enforcement Agreement, the Government of Rwanda will allow periodic and unlimited inspection of the conditions of detention and the treatment of prisoners by the International Committee for Red Cross or any other person or body designated by the SCSL or the RSCSL to undertake such periodic inspection.
- 13.2. In the event that recommendations are made by the inspecting body on changes to be effected to ensure compliance with international standards, the President of the SCSL or R-SCSL may request the Government of Rwanda to report on measures taken to effect such changes.

Paragraph 14
Settlement of Disputes

The participants undertake to accord each other the widest measure of cooperation in respect of this MOU. Disputes between the participants arising out of or in connection with the implementation of this MOU will be settled through consultation between the Registrar of the SCSL or R-SCSL, or an official designated by the Registrar, and the Minister for Foreign Affairs and Cooperation, or their official designate. Should they fail to settle any dispute through consultation, it will be referred to a mutually agreed third party. The Participants will agree to the third party within two months.

Paragraph 15
Entry into Effect and Duration

- 15.1. The MOU will enter into effect provisionally upon its signature and definitely upon the handing over of Convicted Person(s) to the competent Rwandan authorities under the intention of the Enforcement Agreement.
- 15.2. The MOU will remain valid until either the completion of the longest sentence served by a convicted person transferred to Rwanda or upon termination of the Enforcement Agreement pursuant to the Articles 9 and 10 of the Enforcement Agreement.

Paragraph 16
Amendment

The MOU may be subject to review at any time upon written request a participant and by written agreement between the participants in order to:

- (a) determine the need for its continuation, modification or termination;
- (b) make adjustments in any of the areas covered in its terms.

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Paragraph 17
Notices

All communications required or contemplated under both the Enforcement Agreement and this MOU will be in writing and unless the participants otherwise agree will be addressed to:

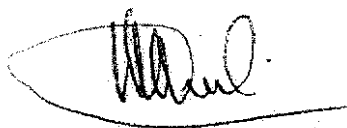
- a) Ministry of Foreign Affairs and Cooperation:
P.O. Box 179 Kigali-Rwanda
Tel.: +250 575386/575830
Email: info@minaffet.gov.rw

- b) Registrar of the SCSL
Jomo Kenyatta Road
New England
Freetown
Sierra Leone
Tel.: +232 22 297 000
Email: mansarayb@un.org

Memorandum of Understanding

Signed in duplicate in English on the 2nd day of October 2009 in Kigali, Rwanda.

For and on behalf of
the Government of Rwanda:



H.E. Mrs. Rosemary Museminali
Minister for Foreign Affairs and
Cooperation of the Republic of Rwanda

For and on behalf of
the Special Court for Sierra Leone:



Ms. Binta Mansaray
Acting Registrar of the Special Court
for Sierra Leone

02/10/09

Annexes

1. Schedule of the Estimated Annual Cost per Prisoner

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Annex 1

Items	Budget Daily Cost (USD)	Budget Yearly Cost (USD)
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Meals

	1 day	365.25 days
3 diverse meals a day (fish/chicken + spice)*	\$12	
SUB-TOTAL	\$12	\$4,383

* West Africa/SL diet, as agreed with Food production factory

Welfare

Hygienic items/toiletries supplement	\$1	365.25 days
Cleaning Clothes/Bedding	\$1	
Teacher(s) (prisoner teacher and tailor)	\$3	
Earning subsidy (\$100/month)	\$8.33	-11-
Phone Credit (150/month)	\$4.91	
DSTV/Newspapers/reading and writing material	\$1.5	
SUB-TOTAL		
TOTAL	\$26.74	\$9,766.8

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SIBO Bosco
<sibobosco1969@yahoo.co.uk>

To: Roger Tchinda Kouamba ICTR <kouambo-tchinda@un.org>
cc:
Subject: MoU between SCSL and GoR

02/23/2011 03:30 PM

Dear Roger,

The document attached herewith is the Memorandum of Understanding between the Special Court for Sierra Leone and the Government of the Republic of Rwanda. It is now complete, there are Eleven pages signed by both parties. Consider this one and ignore the previous ones sent with the brief as it lacks some pages.

We humbly request that the Kinyarwanda document which was sent in the Exhibit F of Theoneste KARENZI, Coordinator of the Witness and Victims Protection and Assistance Unit within NPPA be removed. The Kinyarwanda document was erroneously attached and we request not to be considered. It is neither referred to in our brief nor indicated as an attachment on the Addendum listing of the Affidavit of Theoneste KARENZI (refer to the Addendum listing Exhibit F).

Kindly, inform all parties of this change.

Regards,

John Bosco SIBOYINTORE
Prosecutor & Acting Head
Genocide Fugitives Tracking Unit(GFTU)
National Public Prosecution Authority
Republic of Rwanda



Memorandum of Understanding b/n SCSL and GoR.pdf

JUDICIAL
FUGITIVES
TRACKING
UNIT

2011 FEB 23 P 1: 00



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)

To:	<input type="checkbox"/> Trial Chamber I N. M. Diallo	<input checked="" type="checkbox"/> Trial Chamber II R. N. Kouambo	<input type="checkbox"/> Trial Chamber III C. K. Hometowu
	<input type="checkbox"/> OIC, JLSD P. Besnier	<input type="checkbox"/> OIC, JPU C. K. Hometowu	<input type="checkbox"/> F. A. Talon (Appeals/Team IV)
From:	<input type="checkbox"/> Chamber (names)	<input type="checkbox"/> Defence (names)	<input type="checkbox"/> Prosecutor's Office (names)
	<input checked="" type="checkbox"/> Other: PROSECUTOR GENERAL OF THE REPUBLIC OF RWANDA Mr. Martin NGOGA (names)		
Case Name:	The Prosecutor vs. Jean Bosco UWINKINDI		Case Number: ICTR-
Dates:	Transmitted: 23rd February 2011	Document's date: 23rd FEBRUARY 2011	
No. of Pages:	11	Original Language:	<input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Kinyarwanda
Title of Document:	MEMORANDUM OF UNDERSTANDING BETWEEN SCSL and GOR		
Classification Level:		TRIM Document Type:	
<input type="checkbox"/> Ex Parte <input type="checkbox"/> Strictly Confidential / Under Seal <input type="checkbox"/> Confidential <input checked="" type="checkbox"/> Public		<input type="checkbox"/> Indictment <input type="checkbox"/> Warrant <input checked="" type="checkbox"/> Correspondence <input type="checkbox"/> Decision <input type="checkbox"/> Affidavit <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Disclosure <input type="checkbox"/> Order <input type="checkbox"/> Appeal Book <input type="checkbox"/> Judgement <input type="checkbox"/> Motion <input type="checkbox"/> Book of Authorities	
		<input type="checkbox"/> Submission from non-parties <input type="checkbox"/> Submission from parties <input type="checkbox"/> Accused particulars	

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.

☐ Filing Party **will be submitting the translated version(s)** in due course in the following language(s):

☐ English ☐ French ☐ Kinyarwanda

KINDLY FILL IN THE BOXES BELOW

<input type="checkbox"/> The OTP is overseeing translation. The document is submitted for translation to: <input type="checkbox"/> The Language Services Section of the ICTR / Arusha. <input type="checkbox"/> The Language Services Section of the ICTR / The Hague. <input type="checkbox"/> An accredited service for translation; see details below: Name of contact person: Name of service: Address: E-mail / Tel. / Fax:	<input type="checkbox"/> DEFENCE is overseeing translation. The document is submitted to an accredited service for translation (fees will be submitted to DCDMS): Name of contact person: Name of service: Address: E-mail / Tel. / Fax:
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III - TRANSLATION PRIORITISATION (For Official use ONLY)

<input type="checkbox"/> Top priority	COMMENTS	<input type="checkbox"/> Required date:
<input type="checkbox"/> Urgent		<input type="checkbox"/> Hearing date:
<input type="checkbox"/> Normal		<input type="checkbox"/> Other deadlines: