



Memorandum of Understanding between the International Criminal Court and the Commonwealth on Cooperation

ICC-PRES/10-04-11

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MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE COMMONWEALTH ON COOPERATION

Preamble

The International Criminal Court (hereinafter referred to as the "Court") and the Commonwealth Secretariat (hereinafter referred to as the "Commonwealth");

Considering the fundamental importance of supporting national jurisdictions to implement international legal conventions and in particular the Rome Statute of the International Criminal Court (hereinafter referred to as the "Statute"), through training courses and providing model legislation;

Noting the important role assigned to the Court in dealing with the most serious crimes of concern to the international community as a whole and to put an end to impunity for perpetrators of serious violations of international humanitarian law;

Recalling, amongst others, the 1949 Commonwealth London Declaration, the 1971 Commonwealth Singapore Declaration, the 1979 Lusaka Commonwealth Declaration, the 1991 Commonwealth Harare Declaration, the 2003 Commonwealth Aso Rock Declaration, and the 2009 Affirmation of the Commonwealth Values and Principles which *inter alia*, stress the Commonwealth's commitment to democracy, good governance, human rights and the rule of law;

Recognizing the primary responsibility of States to investigate and prosecute the most serious crimes of concern to the international community;

Recognizing, also, the importance of strengthening capacities of national judiciaries and judicial processes to investigate and prosecute serious crimes of concern to the international community;

Cognisant of the important role played by the Commonwealth in supporting Commonwealth countries in upholding the rule of law, through, amongst others, working with Commonwealth countries to develop legal, judicial and constitutional reforms and strengthening of both the legal and regulatory frameworks which protect and promote the rule of law;

Motivated by a common desire to establish close ties between the Court and the Commonwealth in order to enhance cooperation in international criminal law matters within the Commonwealth countries;

Have agreed as follows:

**Article 1
Purposes**

This Memorandum of Understanding (hereinafter referred to as "Memorandum") defines the terms of mutual cooperation between the Court and the Commonwealth.

**Article 2
Definition of terms**

1. For the purposes of this Memorandum, "Commonwealth" shall mean the Secretariat of the Commonwealth represented by the Secretary-General and shall not mean the Member States in their own right.

2. For the purposes of this Memorandum, "the Court" shall mean:
 - (a) The Presidency,
 - (b) The Office of the Prosecutor,
 - (c) The Registry.

The Secretariat of the Assembly of State Parties is an integral part of the Court.

**Article 3
Cooperation and Consultation**

The Court and the Commonwealth agree that, with a view to facilitating the effective discharge of their respective responsibilities they shall:

- (a) Cooperate closely with each other and consult each other on matters of mutual interest pursuant to the provisions of this Memorandum, in conformity with the respective provisions of the Statute and the Framework Documents of the Commonwealth;

- (b) Maintain contact with each other, including through the exchange of visits, the holding of meetings on all matters of common interest, and the establishment of appropriate liaison arrangements as may be necessary to facilitate their effective cooperation.

Article 4
Attendance at Meetings and Conferences

1. Subject to its applicable rules and procedures, the Commonwealth may invite the Court to attend meetings and conferences arranged under its auspices at which matters of interest to the Court are under discussion.
2. Subject to the applicable provisions of the Rules of Procedure and Evidence of the Court (“the Rules”), the Commonwealth shall have a standing invitation to attend public hearings of the Chambers of the Court and any public meetings of interest to the Commonwealth.

Article 5
Promotion of Principles and Values

The Commonwealth and the Court shall cooperate, by adopting initiatives to promote greater understanding of the principles and values enshrined in the Statute with special focus on the norms of international humanitarian law.

Article 6
Exchange of Information

1. The Court shall keep the Commonwealth informed of its public information and outreach activities particularly with regard to the role and nature of the Court. The Commonwealth shall keep the Court informed of its public activities related to the work of the Court.
2. The Court and the Commonwealth shall arrange for the exchange of other information of mutual interest. In particular:
 - (a) The Registrar of the Court (“the Registrar”) shall, upon the request of the Commonwealth and in accordance with the Statute and the Rules, provide information relating to pleadings, oral proceedings, judgments, orders, and the work of the Court generally;
 - (b) Pursuant to Article 87(6) of the Statute and in accordance with the applicable rules and procedures of the Commonwealth, the Secretary-General of the Commonwealth shall, when requested by the Court or on his own initiative, transmit to the Court information or documents on developments related to the Statute which are relevant to the work of the Court.

Article 7
Exchange of Legal Materials

The Court and the Commonwealth shall arrange to provide one another with legal materials of mutual interest. In particular:

- (a) The Court shall provide the Commonwealth with the publications contained in the Official Journal of the Court and, upon request, other significant publications;
- (b) The Commonwealth shall provide the Court with its periodic publications and, upon request, publicly accessible legal materials concerning the laws, legal systems and legal institutions of Member States of the Commonwealth, including substantive and criminal procedural laws, matters related to the application of international humanitarian and international criminal law, and related decisions of the national courts of its Member States in criminal matters which are of relevance to the Court.

Article 8
Training

The Parties shall endeavour, within the respective limits of their mandates and capabilities, to cooperate in the following matters:

- (a) to develop training and assistance programmes for judges, prosecutors, officials and counsel in work related to the Court;
- (b) to foster the professionalism of national judges, prosecutors, officials other staff or experts needed for the effective functioning of the Court's complementarity regime; and
- (c) to provide, upon request by the Court, expert advice or assistance on matters relating to the application of the common law.

Article 9
Implementation

1. The Registry of the Court and the Commonwealth shall oversee the implementation of this Memorandum, in accordance with their respective competencies.
2. The Parties may, for the purpose of implementing this Memorandum, enter into such arrangements as may be found appropriate for effective implementation of the provisions of international humanitarian law and international criminal law.

Article 10
Channel of Communication

1. Unless otherwise designated, and without prejudice to other organs of the Court, the Registrar shall be the channel of communication between the Commonwealth and the Court for the forms of cooperation specified in this Memorandum.
2. Requests for cooperation shall be addressed to the Secretary-General of the Commonwealth or the person designated by him who shall provide the requested cooperation in accordance with the provisions of this Memorandum.

Article 11
Amendment and Termination

1. This Memorandum may be amended with the mutual consent of the Parties. Any such amendment shall be approved by the President of the Court and the Secretary-General of the Commonwealth. The Court and the Commonwealth shall notify each other in writing of the date of such approval, and the Memorandum shall enter into force on the date of the later of the approvals aforesaid.
2. This Memorandum may be terminated by either Party on ninety (90) days' written notice to the other.
3. Notwithstanding paragraph 2 of this article, the provisions of this Memorandum shall survive any termination to the extent necessary to permit the orderly discharge of obligations between the Parties and the conclusion of activities then in progress within the framework of this Memorandum. To this end, the Parties shall take the necessary steps to ensure that termination does not prejudice ongoing activities and is not detrimental to the interests, financial or otherwise, of either Party.
4. Any dispute about the interpretation or application of this Memorandum will be resolved by consultations between the parties, and will not be referred to any national or international court or third party for settlement.

Article 12
Entry into Force

This Memorandum shall enter into force on the date of its signature by both the President of the Court and the Secretary-General the Commonwealth, or their duly authorized representatives.

In witness whereof, the undersigned have signed the present Memorandum

Done at Sydney this 13th day of July, 2011, in duplicate, in the English language.

FOR THE COURT

FOR THE COMMONWEALTH



Judge Sang-Hyun Song
President of the International Criminal Court



His Excellency Kamalesh Sharma
The Commonwealth Secretary-General