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**South Africa
and
Kenya**

**Memorandum of Understanding between the Government of the Republic of South Africa
and the Government of the Republic of Kenya on police cooperation. Nairobi,
11 October 2016**

Entry into force: *11 October 2016 by signature, in accordance with article 15*

Authentic text: *English*

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**Afrique du Sud
et
Kenya**

**Mémorandum d'accord entre le Gouvernement de la République sud-africaine et le
Gouvernement de la République du Kenya sur la coopération policière. Nairobi,
11 octobre 2016**

Entrée en vigueur : *11 octobre 2016 par signature, conformément à l'article 15*

Texte authentique : *anglais*

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF

SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF

KENYA

ON

POLICE COOPERATION

PREAMBLE

The Government of the Republic of South Africa and the Government of the Republic of Kenya (hereinafter jointly referred to as the “Parties” and separately as a “Party”);

ASPIRING to consolidate and further develop the cordial relations between the Parties;

DESIROUS of promoting peace, stability, security and prosperity in their respective countries;

RECOGNISING the importance of the promotion and development of cooperation in the field of combating crime;

COGNISANT of the objectives and principles of the international agreements to which they are parties, as well as resolutions of the United Nations and its specialised agencies on combating crime;

HEREBY AGREE as follows:

ARTICLE 1 OBJECTIVE

The aim of this Memorandum of Understanding (hereinafter referred to as the “MoU”) is to enhance police cooperation between the Parties through the establishment of a framework for the exchange of experience, best practices and knowledge for the use and mutual benefit of the Parties.

ARTICLE 2
AREAS OF COOPERATION

- (1) The Parties shall, within their means, cooperate in the following areas:
- (a) The prevention, combating and investigation of crime, including, but not limited to –
 - (i) organised crime, economic crime and money laundering;
 - (ii) the illicit production of and trafficking in narcotic drugs, psychotropic substances and precursors;
 - (iii) trafficking in firearms, ammunition and explosive materials;
 - (iv) trafficking in stolen goods, products of illegal wildlife trade and cultural objects;
 - (v) the illicit trafficking in unpolished diamonds, unwrought precious metals and related products;
 - (vi) human trafficking and/or smuggling;
 - (vii) the production, sale and uttering of forged banknotes, securities, academic certificates and other fraudulent documents; and
 - (viii) cyber and electronic crimes;
 - (b) training and capacity building of staff;
 - (c) quality assurance and joint research initiatives within the framework of this MoU; and

- (d) public order policing.
- (2) The Parties shall also cooperate in preventing and suppressing terrorist acts in accordance with the domestic law in force in their countries and their international obligations, including relevant international conventions and United Nations Security Council Resolutions;
- (3) The Competent Authorities may, within their competency, determine and develop other areas of police cooperation within the framework of this MoU.

ARTICLE 3

MANNER OF COOPERATION

- (1) The Parties shall cooperate by –
 - (a) the exchange of information and best practices in policing and victim support programmes;
 - (b) the exchange of information of interest relating to crimes which are being planned or which have been committed and relating to persons and organisations involved in those crimes;
 - (c) the exchange of information of interest relating to maintenance of public order;
 - (d) the exchange of information, including operational and forensic information about narcotic drugs, psychotropic substances and products of illegal wildlife trade;
 - (e) the exchange of information with a view to assisting in the control and supervision of the trade in precursors and essential chemicals, in order to prevent the diversion thereof;

- (f) the exchange of information on new criminal trends;
 - (g) the exchange of relevant legislation;
 - (h) the exchange and sharing of scientific and technical literature and data on the functions of the competent authorities;
 - (i) taking necessary measures to coordinate investigations and operations, including the implementation of special investigative techniques such as controlled deliveries, surveillance and undercover operations, for purposes of gathering evidence for the prosecution of persons involved in those crimes;
 - (j) searching for and tracing missing persons and persons who are evading criminal prosecution or execution of a criminal sentence;
 - (k) visits by delegations of high-ranking representatives from the Competent Authorities;
 - (l) the exchange of teaching material and sharing of information on the development of training materials;
 - (m) the exchange of police technology and materials;
 - (n) the participation in training courses, practical training, seminars, round-table discussions, including training of personnel at police training institutions, as may be agreed upon by the Competent Authorities; and
 - (o) the execution of requests as contemplated in Article 5.
- (2) The Competent Authorities may, within their competency, determine and develop other forms of police cooperation within the framework of this MoU.

ARTICLE 4
COMPETENT AUTHORITIES

- (1) The Competent Authorities responsible for the implementation of this MoU shall be –
 - (a) in the case of the Government of the Republic of South Africa, the South African Police Service; and
 - (b) in the case of the Government of the Republic of Kenya, the National Police Service.
- (2) The Competent Authorities shall, in the implementation of this MoU, act within the areas of their responsibility and subject to the international obligations of the Parties and the domestic law in force in their respective countries.

ARTICLE 5
REQUESTS FOR ASSISTANCE

- (1) Cooperation within the framework of this MoU shall take place on the basis of requests for assistance from the Competent Authorities or on the initiative of a Competent Authority which deems such assistance to be of interest to the other Competent Authority.
- (2) Requests for assistance shall be made in writing. In cases of emergency, requests may be made orally, but shall be confirmed in writing within seven days from the date on which such oral request was made.
- (3) Should there be any doubt about the authenticity or the content of the request, further confirmation may be requested.
- (4) Requests for assistance must contain the following information:

- (a) The name of the Competent Authority which applies for assistance and the name of the Competent Authority to which the application is made for assistance;
- (b) details of the case;
- (c) the purpose of and grounds for the request;
- (d) a description of the assistance requested; and
- (e) any other information which may assist in the effective execution of the request.

ARTICLE 6

EXECUTION OF REQUESTS

- (1) The requested Competent Authority shall take all necessary measures to ensure the prompt and full execution of a request.
- (2) The requesting Competent Authority shall be notified immediately in writing of any circumstances hampering the execution of the request or causing considerable delay in its execution.
- (3) If the execution of the request does not fall within the area of responsibility of the requested Competent Authority, it shall immediately notify the requesting Competent Authority in writing thereof.
- (4) The requested Competent Authority may request such further information as it deems necessary to duly execute the request.
- (5)(a) If the requested Competent Authority considers that the immediate execution of the request may hamper criminal prosecution, other proceedings or investigations being carried out in its State, it may suspend

the execution of the request or allow the execution under conditions which are set as necessary after consulting with the requesting Competent Authority.

- (b) If the requesting Competent Authority agrees to receive assistance under the suggested conditions, it shall comply with those conditions.
- (6)(a) On receipt of the request made by the requesting Competent Authority, the requested Competent Authority shall take all necessary measures to ensure the confidentiality of the fact that the request was made, its contents and annexed documents, as well as the fact of providing assistance.
- (b) If it is not possible to execute the request without preserving its confidentiality, the requested Competent Authority shall inform the requesting Competent Authority accordingly, after which the latter may decide as to whether it will be acceptable to execute the request under such conditions.
 - (c) The requested Competent Authority shall, at its earliest convenience, inform the requesting Competent Authority about the results of the execution of the request.

ARTICLE 7

REFUSAL OF ASSISTANCE

- (1) The assistance contemplated in this MoU may be refused wholly or partially if the requested Competent Authority deems the execution of the request to be detrimental to the sovereignty, security, public order or other essential interests of its State, or deems it to be in conflict with the domestic law in force in its country or its international obligations.
- (2) The assistance referred to in sub-Article (1) may also be refused if the execution of the request does not fall within the area of responsibility of the requested Competent Authority, or imposes an excessive burden on its resources.

- (3) If possible, the requested Competent Authority shall, before taking a decision to refuse the assistance requested in accordance with this MoU, consult with the requesting Competent Authority in order to establish whether the assistance may be granted subject to such conditions which the requested Competent Authority may impose. If the requesting Competent Authority agrees to receive assistance under the suggested conditions, it shall comply with these conditions.
- (4) The requesting Competent Authority shall be notified in writing about the full or partial refusal to execute the request together with an explanation of the reasons for such refusal.

ARTICLE 8
LIMITATIONS RELATING TO USE OF
INFORMATION AND DOCUMENTS

- (1) Each Competent Authority shall ensure the confidentiality of information and documents received from the other Competent Authority in accordance with conditions determined by the providing Competent Authority in writing.
- (2) Information and documents received in accordance with this MoU shall not be used without the consent of the providing Competent Authority for purposes other than those for which they were requested and provided.
- (3) Information and documents received from a Competent Authority in accordance with this MoU shall not be disclosed to a third party, except with the prior written consent of the providing Competent Authority.

ARTICLE 9
EXPENSES

- (1) Ordinary expenses incurred in processing a request in terms of this MoU shall be borne by the requested Party, unless otherwise agreed upon in writing by the Parties.
- (2) The requesting Competent Authority shall bear the expenses relating to training assistance referred to in Article 3(1)(n), unless otherwise agreed upon.
- (3) Should a request involve high or extraordinary expenses, the Parties shall consult each other in order to establish the terms and conditions under which the request shall be processed, and the way in which the expenses shall be borne.

ARTICLE 10
LANGUAGE

The Competent Authorities, in the course of their cooperation in accordance with this MoU, shall use the English language as the medium of communication.

ARTICLE 11
IMPLEMENTATION

- (1) In order to facilitate the execution of this MoU, representatives of the Competent Authorities shall, when necessary, have meetings and consultations with a view to discussing and improving cooperation.
- (2) The dates and venues for the meetings shall be communicated through the diplomatic channel.

- (3) Each Party shall be responsible for its own expenses for attendance of such meetings, provided that the Party hosting a meeting shall be responsible for providing the venue and secretarial services, unless otherwise agreed to by the Parties.
- (4) Each Party may in furtherance of the objectives of this MoU appoint a police officer or police officers within its respective environments to assist in the implementation thereof.

ARTICLE 12

RELATION TO OTHER INTERNATIONAL TREATIES

- (1) The provisions of this MoU shall not affect the rights and obligations arising out of other international treaties to which the Parties are signatories.
- (2) This MoU shall not apply to extradition and mutual legal assistance in criminal matters.

ARTICLE 13

SETTLEMENT OF DISPUTES

Any dispute between the Parties arising out of the interpretation or implementation of this MoU shall be settled amicably through consultation or negotiations between the Parties.

ARTICLE 14
AMENDMENT

This MoU may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 15
ENTRY INTO FORCE, DURATION AND TERMINATION

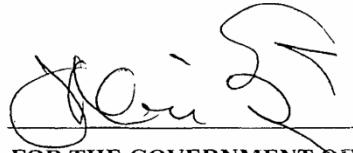
- (1) This MoU shall enter into force on the date of signature thereof.
- (2) This MoU shall remain in force until terminated in accordance with sub-Article (3).
- (3) This MoU may be terminated by either Party by giving six (6) months' written notice in advance through the diplomatic channel to the other Party of its intention to terminate this MoU.
- (4) The termination of this MoU shall not affect the full execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the Parties.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this MoU in duplicate in the English language, both texts being equally authentic.

DONE at Nairobi on this 11 day of October 2016.



**FOR THE GOVERNMENT OF
THE REPUBLIC OF SOUTH
AFRICA**



**FOR THE GOVERNMENT OF
THE REPUBLIC OF KENYA**