

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE SWISS FEDERAL COUNCIL  
AND  
THE GOVERNMENT OF  
THE REPUBLIC OF KENYA  
ON  
MUTUAL LEGAL ASSISTANCE IN  
CRIMINAL MATTERS

The Swiss Federal Council

and

The Government of the Republic of Kenya,

hereinafter referred to as the Signatories,

GUIDED by the traditional friendly relations and the fruitful cooperation between the two States;

DESIRING to improve the effectiveness of cooperation between the two States in the field of mutual legal assistance in criminal matters;

AWARE of the need to ensure that cooperation is carried out in the most effective way;

ON THE BASIS of mutual respect for sovereignty and territorial integrity, equality, mutual benefit and non-interference in each other's internal affairs, with full respect for international law, including human rights;

IN OBSERVANCE of the constitutional and legal frameworks of the respective States and their international obligations,

HAVE COME TO THE FOLLOWING UNDERSTANDING:

### **ARTICLE 1 – Objective**

1. The Signatories wish to further improve the existing cooperation in the field of mutual legal assistance in criminal matters as stated in articles 2 and 3 of this Memorandum.
2. This Memorandum aims at:
  - a. developing a firm foundation for existing and future relations between the two States for cooperation in the field of mutual legal assistance in criminal matters;
  - b. defining the scope of mutual legal assistance in criminal matters;
  - c. enumerating measures for advancing cooperation;
  - d. promoting a greater understanding of each other's laws, legal system and legal institutions;
  - e. extending and strengthening the ties between the authorities directly responsible in the field of mutual legal assistance in criminal matters;
  - f. simplifying certain aspects of the mutual legal assistance procedure;
  - g. providing technical assistance.
3. The provisions of this Memorandum are without prejudice to existing obligations of the Signatories pursuant to treaties, bilateral arrangements, domestic legislation or otherwise and are not intended to create any legally binding obligations.

### **ARTICLE 2 – General principles of cooperation in the field of mutual legal assistance in criminal matters**

1. Mutual legal assistance in criminal matters can be sought and provided in accordance with the domestic legislation and the international obligations of the respective State, on the basis of reciprocity and in the context of this Memorandum.
2. The Signatories reaffirm their commitment to the rule of law, human rights and fundamental freedoms, in accordance with their obligations under international law.
3. This Memorandum can also be applied to requests for mutual legal assistance relating to acts or omissions committed before its coming into effect.

## **ARTICLE 3 – Scope**

1. Mutual legal assistance may be afforded in particular for the following purposes:
  - a. service of documents;
  - b. obtaining and handing over of evidence;
  - c. seizure, confiscation and handing over of objects or assets.
  
2. The assistance may include the following measures:
  - a. effecting service of judicial documents;
  - b. taking evidence or statements of persons;
  - c. executing searches and seizures, and freezing of assets;
  - d. examining objects and sites;
  - e. providing of information, judicial documents, evidentiary items and expert evaluations;
  - f. providing of originals or copies of relevant documents and records, including bank, financial, corporate or business records;
  - g. identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
  - h. handing over of objects or assets with a view to forfeiture or for restitution to the entitled natural or legal person;
  - i. facilitating the voluntary appearance of persons in the requesting State;
  - j. any other type of assistance in accordance with the domestic legislation of the requested State;
  - k. spontaneous transmission of information.

## **ARTICLE 4 – Further measures for advancing cooperation**

Measures with a view to further advancing the cooperation as stated in articles 2 and 3 may include:

- a. the exchange of materials concerning the relevant laws, legal systems and legal institutions of the respective State;
- b. the organizing of expert meetings and consultations in order to discuss questions and issues regarding mutual legal assistance, of a more general nature or with regard to concrete cases;
- c. the establishment and strengthening of appropriate contacts between the responsible authorities.

## **ARTICLE 5 – Confidentiality**

Each Signatory applies the provisions regarding confidentiality as provided for in its domestic legislation.

## **ARTICLE 6 – Central Authorities**

1. The Signatories may designate Central Authorities responsible for the cooperation in accordance with this Memorandum.

a. The Central Authority for the Swiss Confederation is:

The Federal Office of Justice of the Federal Department of  
Justice and Police  
(Bundesrain 20, CH-3003 Berne; phone: +41 58 462 11 20; fax:  
+41 58 462 53 80; e-mail: irh@bj.admin.ch)

b. The Central Authority for the Republic of Kenya is:

The Director  
Central Authority of the Office of the Attorney General and  
Department of Justice

Government of Kenya  
Harambee Avenue  
P. O. Box 40112-00100  
Nairobi, Kenya  
Tel: +254 20 222 7461  
+254 20 222 7462/3/4/5/9  
+254 20 225 1355  
Extension: 37370  
Email: centralauthority.mla@ag.go.ke

2. Any changes regarding the Central Authority should be communicated to the other Signatory through the diplomatic channel.

3. Within the framework of this Memorandum, the Central Authorities may communicate directly with each other.

## **ARTICLE 7 – Model request**

1. In order to facilitate and speed up cooperation between the Central Authorities, the Signatories may use a model request, taking into consideration the particularities of the respective laws. The model request is attached as Annex 1 to this Memorandum.
2. The model request may serve as a guideline for the following types of mutual legal assistance in criminal matters:
  - a. hearing of persons;
  - b. obtaining evidence;
  - c. restraining assets or seizing objects;
  - d. handing over assets or objects for the purpose of forfeiture or return (asset recovery).

## **ARTICLE 8– Support with regard to requests for legal assistance**

1. In order to ensure that cooperation is carried out in the most effective way, the Central Authorities may consult each other.
2. To that end, they may provide advice to each other at the stage of drafting a request for mutual legal assistance.

## **ARTICLE 9 – Language**

1. The Central Authorities may communicate in English.
2. Requests for legal assistance and supporting documents should be accompanied with a translation into one of the languages of the requested State.
3. In urgent cases or when agreed by the Central Authorities, requests for legal assistance and supporting documents may be transmitted in English.
4. Other documents falling within the framework of this Memorandum should as a rule be transmitted in English.

## ARTICLE 10 – Amendments

This Memorandum or its Annex may be amended at any time by mutual consent. All such amendments will be agreed upon in writing between the Signatories.

## ARTICLE 11 – Effectiveness

This Memorandum will come into effect on the date of its signature.

Signed at Nairobi on 28<sup>th</sup> April 2017, in two original copies in the English and German languages, both texts being equally valid.

For The Swiss Federal Council



Ralf Heckner  
Ambassador of Switzerland

For The Republic of Kenya



Githu Muigai  
Attorney-General