

REPUBLIQUE DE GUINEE

Travail - Justice - Solidarité



Le Bureau du Procureur
The Office of the Prosecutor

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE REPUBLIC OF GUINEA

AND

**THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL
CRIMINAL COURT**

The Government of the Republic of Guinea and the Office of the Prosecutor of the International Criminal Court (“ICC-OTP” or the “Office”), hereinafter the “Parties”;

Based on the Rome Statute of the International Criminal Court (the “Statute”) and the obligations arising under this instrument for the Republic of Guinea (“Guinea”);

Guided by the principle of complementarity, which constitutes the cornerstone for the exercise of the jurisdiction of the International Criminal Court;

Recalling the events that occurred on 28 September 2009, at the national stadium in Conakry (“28 September 2009 events”);

Noting that, in October 2009, the ICC-OTP opened a preliminary examination into the Situation in Guinea and in December 2011 found a reasonable basis to believe that the crimes against humanity of murder, imprisonment or other severe deprivation of liberty, torture, rape and other forms of sexual violence, persecution and enforced disappearance of persons were committed during and after the 28 September 2009 events;

Noting that since the opening of the preliminary examination into the Situation in Guinea, Guinea and the ICC-OTP have exchanged communications with respect to this process and developed a cooperative relationship aimed at addressing justice for the serious crimes;

Emphasizing the commitment of Guinea to ensure effective justice regarding the 28 September 2009 events, as part of its efforts to combat impunity and thereby to contribute to the prevention of serious crimes;

Recognizing the efforts of the transitional institutions in Guinea, its people, and civil society, as well as the progress made by the judicial authorities in investigating the alleged crimes committed in the context of the 28 September 2009 events;

Welcoming the opening of the trial of the 28 September 2009 events on their 13th anniversary on 28 September 2022 and emphasising the need for genuine proceedings that are carried out effectively;

Noting the ability and willingness of Guinea to genuinely administer justice related to crimes under the jurisdiction of the International Criminal Court committed in the context of the 28 September 2009 events, and the requirement for the ICC-OTP to determine, in the context of its preliminary examination, admissibility pursuant to article 17 of the Rome Statute on the basis of the facts as they presently exist;

Emphasising the commitment of the ICC-OTP to engage in a long term process of both supporting and learning from national accountability processes in Guinea;

Noting the possibility for the ICC-OTP to close the preliminary examination into the Situation in Guinea, subject to possible later reconsideration, while entering into a new and fruitful stage of cooperation with Guinea;

Recalling the willingness of the Guinean authorities to continue cooperating with the ICC-OTP and the commitment of the Office to continue supporting and accompanying the genuine judicial proceedings in Guinea with respect to the 28 September 2009 events;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Guinea and the ICC-OTP undertake to work actively and collaboratively to furthering the principle of complementarity and ensuring accountability for international crimes committed in Guinea in the context of the 28 September 2009 events.

ARTICLE 2

Without prejudice to the separation of powers, Guinea commits to continue supporting the trial of the 28 September 2009 events including by:

- (i) ensuring, in collaboration with its international partners, the training of Judges, prosecutors, registrars, and lawyers;
- (ii) ensuring, in collaboration with its international partners, outreach and communication to objectively inform the public of the developments of the judicial proceedings;
- (iii) preventing any interference with the administration of justice;
- (iv) ensuring the safety and security of judicial and prosecutorial personnel as well as participants appearing before the judges, in particular victims and witnesses;

- v) providing, in collaboration with its international partners, support and assistance to victims and witnesses participating in the trial, including but not limited to psychological support, and ensuring, through the competent judicial authorities, the familiarisation of victims and witnesses with the proceedings;
- vi) promoting full cooperation and coordination between the different State entities assigned with discharging duties with respect to accountability and the administration of justice in the context of the 28 September events and coordination of those entities with international stakeholders, as appropriate, including in the Steering Committee established by Guinea; and
- vii) allocating the required resources for the implementation of the above mentioned measures.

ARTICLE 3

Guinea will proactively, regularly and upon request keep the ICC-OTP informed of the progress made in the judicial proceedings related to the 28 September 2009 events and will facilitate access to relevant proceedings, records and documentation, as requested, as per the requirements of the laws of Guinea and the Rome Statute. To this end, with support of the Government of Guinea, bi-annual visits and exchanges will be organized between the ICC-OTP and national judicial institutions and other relevant stakeholders.

ARTICLE 4

In line with the Rome Statute, the ICC-OTP may reconsider its assessment of complementarity in light of any significant change in circumstances, including the imposition of any measures that might significantly hamper the progress or genuineness of the judicial proceedings related to the 28 September 2009 events; the issuance and the enforcement of ineffective or disproportionate penal sanctions; obstructions to the mandate or proper functioning of the relevant jurisdiction; or any suspension or unreasonable delay in the carrying out of the judicial proceedings in a manner which is inconsistent with an intent to bring the persons concerned to justice. In this context, and to ensure information flows about these and other related matters, lines of communication between the ICC-OTP and the Government of Guinea, judicial actors and members of the Steering Committee, will be maintained and reinforced.

ARTICLE 5

The ICC-OTP commits, within its mandate and means, to continue supporting Guinea's accountability efforts with respect to the events of 28 September 2009, including by contributing to projects and programmes aimed at the provision of knowledge transfer, the exchange of best practices and technical support.

ARTICLE 6

This memorandum of understanding will enter into force on the date of its signature. It may be denounced by either party giving three (3) months prior notice to the other.

Conakry, the 28th day of September 2022.

Executed in two (2) copies in English and in French, both of them being authentic.

For the Republic of Guinea

For the International Criminal Court

Office of the Prosecutor

H.E. Colonel Mamadi DOUMBOUYA
President of CNRD
Transitional President
Head of State
Supreme commander of the armies

M. Karim A.A. Khan KC
Prosecutor