

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

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The Swiss Federal Council

and

the Government of the Federal Republic of Nigeria,

hereinafter referred to as the Signatories

BEARING IN MIND the existing friendly relations and the fruitful cooperation between the two States, deepened through human rights dialogue, political consultations and, most recently, the migration partnership;

CONSIDERING furthermore the well established police-cooperation within the framework of the migration partnership;

BELIEVING in the necessity of enhancing the domains of bilateral cooperation between the two countries in different areas;

REALIZING the importance of broadening the aspects of cooperation to include the field of mutual legal assistance in criminal matters in order to fight drug trade and other international crimes to their mutual benefit;

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;

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

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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, 3 and 4.
2. To this end, this Memorandum aims at:
 - developing a firm foundation for future relations between the two States for cooperation in the field of mutual legal assistance in criminal matters;
 - defining the scope of mutual legal assistance in criminal matters;
 - enumerating measures for advancing cooperation;
 - promoting a greater understanding of each other's laws, legal system and legal institutions;
 - extending and strengthening the ties between the authorities directly responsible in the field of mutual legal assistance in criminal matters;
 - simplifying certain aspects of the mutual legal assistance procedure.

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 provided in accordance with the domestic legislation and the international obligations of the respective States and on the basis of reciprocity.
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.

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ARTICLE 3 – Mutual legal assistance in criminal matters

1. Mutual legal assistance may be afforded in particular for the following purposes:

- serving of documents;
- obtaining and handing over of evidence;
- seizure, confiscating and handing over of objects or assets with a view to forfeiture or restitution to the person entitled.

2. In detail, the assistance may include the following measures:

- effecting service of judicial documents;
- taking evidence or statements of persons;
- executing searches and seizures, and freezing;
- examining objects and sites;
- providing information, evidentiary items and expert evaluations;
- providing originals or copies of relevant documents and records, including bank, financial, corporate or business records;
- identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- handing over of objects or assets with a view to forfeiture or for restitution to the entitled person;
- facilitating the voluntary appearance of persons in the requesting State;
- any other type of assistance in accordance with the domestic legislation of the requested State.

ARTICLE 4 – Forfeiture of the profits and proceeds of drug crimes

The Signatories may particularly afford any type of mutual legal assistance in accordance with the domestic legislation of the requested State in order to facilitate the forfeiture of the profits and proceeds of drug crimes.

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ARTICLE 5 – Further measures for advancing cooperation

Measures with a view to further advancing the cooperation as stated in articles 2, 3 and 4 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 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 6 – Confidentiality

Each Signatory applies the dispositions regarding confidentiality in conformity with its domestic legislation.

ARTICLE 7 – Exchange of information with regard to the respective legal system

The Signatories may, upon request or upon their own initiative, exchange information on the respective legal systems, on national legislation in the field of mutual legal assistance in criminal matters as well as on the legal institutions involved.

Article 8 – Meetings and consultations

The Signatories may, upon mutual agreement, hold meetings and consultations in order to exchange their practical experience and discuss issues of mutual interest either of a more general nature or with regard to specific cases.

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ARTICLE 9 – Central Authorities

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

a) For the Swiss Confederation:

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

b) For Nigeria:

The Honorable Attorney General of the Federation and Minister of Justice, Federal Ministry of Justice, Plot 71B, Shehu Shagari Way, Central Area, PMB197 Garki PO, Abuja, Nigeria (phone: +234 803 451 2381; fax: +234 803 7863 616; e-mail: abubakar.malami@justice.gov.ng; pius.oteh@justice.gov.ng).

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

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

ARTICLE 10 – Model request

1. To facilitate cooperation between the Central Authorities, a model request, attached as annex to this MoU, taking into consideration the particularities of the respective laws may be used.
2. The model request enumerates as a guideline the following types of mutual 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).

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ARTICLE 11 – 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 at the stage when a request for mutual legal assistance is being drafted.

ARTICLE 12 – Language

1. The Central Authorities may communicate in English.
2. Requests for 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 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 13 - Settlement of differences

Differences arising out of the interpretation, operation and implementation of this Memorandum should be settled amicably through consultations on the basis of mutual understanding and respect between the Central Authorities.

ARTICLE 14 - Amendments

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

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ARTICLE 15 – Effectiveness

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

ARTICLE 16

In WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments have signed this MoU in two original texts, in English and French languages, both texts being equally valid on July 29th 2016, in Abuja.

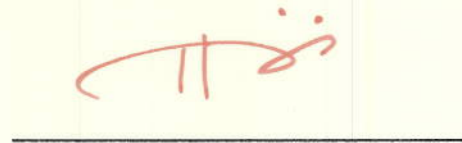
For the Swiss Federal Council

Eric Mayoraz,
Ambassador of Switzerland
to Nigeria



For the Government of the
Federal Republic of Nigeria

For
Geoffrey Onyeama,
Honourable Minister
of Foreign Affairs



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**REQUEST
FOR
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

CENTRAL AUTHORITY OF THE REQUESTING STATE

Official title:

Address:

Contact details of the responsible official dealing with the case (incl. phone and telefax numbers with country code and e-mail address):

Please find enclosed the above-mentioned request for mutual legal assistance. Kindly have it executed according to your legislation and within the scope of your possibilities.

In this context we wish to inform you that similar requests from ... might be executed under the regulations of ... law. (reciprocity)

We are looking forward to your information about the decision which will be taken by your relevant authorities and thank you very much for your cooperation.

**Name and seal of the
National Central Authority:**

**Signature of the responsible
official at the National Central
Authority:**

Place and date:

Copies:

Embassy of the Requesting State

...

Language: Please note that the request and the accompanying documents have to be submitted together with a translation into the following languages:

- Requests submitted to Nigeria: English
- Requests to Switzerland: German, French or Italian, as specified in each case by the Swiss central authority

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Letter-head of the requesting authority primarily involved in the concrete case

**REQUEST
FOR
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

1. REQUESTING AUTHORITY

Official title:

Address:

Contact details of the person dealing with the case (incl. phone and telefax numbers with country code and e-mail address):

2. SUSPECT / DEFENDANT (if known)

Family name:

Given name:

Alias (if applicable):

Gender:

Nationality:

Date and place of birth:

Address:

Passport/Identity card number (if applicable):

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In case of legal person:

Information on legal person:

Company name:

Where applicable and available:

Registration number/address of the seat

Address of different branches:

Contact details of person authorized to act on behalf of the company:

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3. SUMMARY OF THE FACTS AND LEGAL QUALIFICATION OF THE OFFENCE

Relevant facts of the case including place, time and manner of the commission of the offence:

Legal qualification (the specific criminal offence):

Applicable penal provision(s) and maximum penalty:

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4. OBJECT OF AND REASON FOR THE REQUEST

Subject matter and nature of the investigation, prosecution or judicial proceeding in the requesting State to which the request relates (stage of the criminal proceedings):

Assistance sought / acts requested:

Clear description of the links between the offence and the person and between the offence and the evidence/measure/criminal assets sought in the requested State:

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5. DETAILED INFORMATION AND SPECIAL REQUIREMENTS
(MAIN TYPE(S) TO BE CHOSEN ACCORDING TO NECESSITY)

Hearing of persons:

- Information on the person: family name, given name, alias (if applicable), gender, nationality, date and place of birth, address

- Hearing in the capacity of: witness suspect expert person with other procedural role
 defendant

- List of questions to be asked (to be attached to this document)

- Where applicable, state the rights and obligations of the person to be heard (for instance duty to give evidence, obligation to be truthful, right to refuse to give evidence as well as the consequences in case of failure to fulfil the obligations to be notified to the person to be heard:

Other evidence to be taken:

- Evidence to be taken and the acts requested (as detailed as possible):

- Confirmation that the requested measures are also permitted in the requesting State:

Blocking of bank account(s) / seizing of assets and objects:

- In the case of a request for the blocking of bank accounts information relating to bank account(s) in question: name of the bank, account number (where known), address of branch where the account is held (where known)

- State why it is believed that the account is held in the requested State:

- Confirmation that the requested measures are also permitted in the requesting State:

Handing over of assets or objects for the purpose of forfeiture or return:

- Indicate exactly the requested measures (execution of the confiscation order, handing over of the restrained assets x or the seized objects y).

- Earlier request(s) for obtaining evidence resp. for restraining assets or seizing objects connected with the present request and date of this/these request(s):

- Stage of the proceedings in the requesting State: Has the defendant been condemned and have the assets restrained in the requested State been confiscated in the requesting State? If so, please provide a copy of the confiscation order and a confirmation that the confiscation order is final and executable.

- Confirmation that the rights of the owners of the assets/objects and possibly third persons entitled to these assets/objects have been given the occasion to defend their claims in a proceeding of the requesting State:

- Brief summary as to how the concerned persons could defend their claims and what the outcome was:

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6. ADDITIONAL INFORMATION

Particular procedure or requirement the requesting authority wishes to be followed:

Reasons:

Any other details which the requesting authority considers important and which may assist the requested authority in carrying out the request:

Seal, name and function of the official of the requesting authority:

Signature:

Place and date:

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