

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINISTRY OF NATIONAL DEFENSE
AND
THE MINISTRY OF JUSTICE

This Memorandum of Understanding (MOU) is made and entered into this day of AD 2016, between the Ministry of National Defense of the Republic of Liberia (hereinafter known and referred to as “MoD”), represented by the Minister of National Defense, for and on behalf of the Armed Forces of Liberia (hereinafter referred to as “AFL”) and the Ministry of Justice of the Republic of Liberia (hereinafter referred to as “MoJ”), represented by the Minister of Justice, collectively referred to as “the Parties”.

WHEREAS article 19 of the 1986 Constitution of the Republic of Liberia allows for members of the Armed Forces of Liberia or members of the militia in active service to be subject to military law, tried by courts-martial and punished under military law; and

WHEREAS the current legal framework and capacity of the Armed Forces of Liberia is inadequate to operate a full-fledged military justice system; and

WHEREAS the current disciplinary arrangements within the AFL provide for certain crimes to be investigated and prosecuted by civilian courts; and

WHEREAS article 85 of the 1986 Constitution authorizes the President to deploy any portion of the AFL into a state of combat readiness, in defense of the Republic either before or after a declaration of a state of emergency; and

WHEREAS section 2.3 (e) of the Defense Act of the Republic of Liberia provides for the deployment of the AFL in certain situations to support the Liberian National Police to maintain law and order; and

WHEREAS it is a priority of the Liberian security sector reform process to ensure oversight and accountability within the AFL and all justice and security institutions to guide procedures for the arrest, investigation and trial of members of AFL accused of certain criminal offences;

NOW, THEREFORE, it is agreed between the Parties as follows:

ARTICLE I - DEFINITION

This MoU applies the following terminology:

- a) "Accused person" is a member of the AFL who has been charged with a criminal offence.
- b) "AFL" stands for Armed Forces of Liberia.
- c) "DP" stands for Director of Police.
- d) "LNP" stands for Liberia National Police.
- e) "MoD" stands for Ministry of National Defense.
- f) "MoJ" stands for Ministry of Justice.
- g) "MoU" stands for Memorandum of Understanding.
- h) "Suspect" stands for a member of the AFL who is yet to be charged with a criminal offence.

ARTICLE II - SCOPE

1. This MoU shall apply to all persons who are subject to court martial proceedings as envisaged under article 19 of the 1986 Constitution of the Republic of Liberia.

2. This MoU is without prejudice to all disciplinary procedures/processes to which all members of the Armed Forces of Liberia (AFL) are subject to. Consequently, a person suspected or accused of committing an offense which makes him/her subject to the arrangements under this MoU, shall remain a member of the AFL with all the benefits, until otherwise determined either by a court of competent jurisdiction or the appropriate disciplinary and/or administrative framework or procedures of the AFL.

ARTICLE III - APPLICABILITY OF THIS MoU

The arrangements under this MoU shall apply to all members of the AFL suspected or accused of any offences beyond the authority and capability of the AFL's Disciplinary Board and any criminal offense a member of the AFL commits against a civilian.¹

ARTICLE IV - ARREST

1. The Military Police shall arrest a member of the AFL suspected of committing a crime covered by this MoU where the alleged crime is committed:

- a) In the presence of an officer of the Military Police;
- b) On/within a military installation/facility/property; or
- c) Where the suspected member of the AFL is located within a military installation/facility/property.

2. The Liberia National Police (LNP) shall arrest a member of the AFL who is accused of a crime covered by this MoU in all other situations where the Military Police is not

¹ See section 25 of Legal Framework of the New AFL

present and where the alleged crime is committed outside a military installation/facility/property.

3. A member of the AFL arrested by either the Military Police or the LNP shall be informed in detail of the reason for his/her arrest, of his/her right to remain silent, the fact that any statement he/she makes could be used against him/her in a court of law and his/her right to counsel of his or her choice and not to make self-incriminatory statement(s)².

4. Where the LNP arrests a member of the AFL, the most senior officer of the AFL in the location where the arrest takes place should be notified as soon as possible, but no later than 24 hours, by the arresting officer or his immediate superior about the arrest. The notification should indicate the name of the person arrested, including his/her service number (if known), the alleged offense, and the exact location the person is being detained.

5. The arresting officer shall also notify his/her chain of command for the purpose of informing the Ministries of Justice and Defense, as soon as possible but no later than 48 hours after the arrest, about the arrest, including the place of arrest, the alleged offense, the name and service number of the suspect (if known) and the exact location where the suspect is being held.

6. A member of the AFL who is arrested by and in the custody of the LNP shall be transferred from the custody of the LNP into the custody of the AFL as soon as possible; however, within 24 hours following a written request by the Office of the Chief of Staff of the AFL to the Office of the Director of Police (DP) requesting the release of the suspect into the AFL's custody.

7. A member of the AFL who is arrested or detained and is subject to the arrangements under this MoU shall be formally charged and presented before a civilian court of competent jurisdiction within 48 hours³.

8. The suspect shall remain in the custody of the AFL until he/she is indicted by the Grand Jury, after which the court before which the accused is being tried shall determine whether the offense for which the accused is being tried is bailable or not and where it is not bailable the court shall determine where the accused shall be held during the trial.

9. The request for custody made by the Office of the Chief of Staff in sub-clause 6 signifies an implied undertaking that the AFL shall produce to the LNP at all times that the LNP requires the accused person for investigation - or any other process towards establishing the probability- or otherwise of the accused person having committed the alleged crime.

² See article 21 (c) and (h) of the Constitution

³ Article 21 (f) of the Constitution

10. The suspect or accused while undergoing investigation by the LNP shall at every stage of the said investigation have the right to be accompanied by his legal counsel⁴. Such right can only be waived by the suspect or accused person in writing after having been duly advised about the legal implications of his/her decision to waive this right. Thereafter, any and all statements made by the suspect or accused shall be deemed admissible before any court of competent jurisdiction and carry the full weight as if same was made in the presence of his/her legal counsel.

11. Where the suspect or accused is in the custody of the AFL, the LNP shall give the AFL sufficient notice, of at least 24 hours, to the focal person provided for under sub-clause 9 above, about its intentions to interrogate/interview/or take a statement from the suspect or accused.

- a) The notice should indicate the time, location and purpose for which the LNP is meeting the suspect.
- b) The focal person is required to immediately bring the said notice to the attention of the suspect or accused person's lawyer or where he or she has waived his or her right to legal counsel under sub-clause 11 above, the said notification shall be brought to the attention of the suspect or accused.

ARTICLE V – BAIL

The laws on bail applicable under the laws of Liberia shall apply to a member of the AFL suspected of or charged with the commission of a crime covered by this MoU.

ARTICLE VI - LEGAL REPRESENTATION

1. The AFL shall provide and/or bear the cost of legal representation for a member of the AFL suspected or accused of committing a crime covered by this MoU while on duty.
2. A member of the AFL suspected or accused of committing a crime while off duty shall be responsible for providing his/her own legal representation, provided that where the suspect or accused is unable to bear the cost of such legal representation, the LNP shall notify the Court Administrator of the Republic of Liberia who shall then designate a Public Defender⁵ to provide legal representation throughout the entire criminal justice process to the suspect or accused until a final determination of the matter is made by the competent authority.

ARTICLE VII - IMPLEMENTATION, COORDINATION AND DISPUTE RESOLUTION

1. The Parties agree to establish a Technical Committee (hereinafter referred to as “the Committee”) to operationalize the implementation of this MoU including to create awareness on its content among actors -including civil society, the AFL, the LNP, MoJ, MoD, and the Judiciary.

⁴ See article 21 (c) of the Constitution

⁵ See article 21 (h) of Constitution

2. The membership of the Committee shall be one representative each from the Parties not below the rank of Deputy Minister. Other members of the Committee shall be the Deputy Chief of Staff of the AFL, the Deputy Director of Police responsible for Operations.

3. The Committee shall endeavor to ensure that disputes arising under this MoU are resolved by consensus. Where the Parties are unable to reach a consensus the matter shall be referred to the National Security Council who shall take a binding decision.

ARTICLE VIII - DURATION AND AMENDMENT OF THE MoU

1. This MoU shall remain in force until a Uniformed Code of Military Justice for Liberia (UCMJ) is enacted into law by the Legislature and printed into Handbills, and the Minister of Defense makes Regulations to govern the processes and procedures for handing over to civilian authority/courts members of the AFL suspect or accused of crimes deemed to be against civil authority, and where the AFL has the capacity to operate a military justice system as envisaged under Liberian law.

2. This MoU represents the entire agreement of the Parties. It shall bind the Parties, their successors and assigns.

3. Any amendment to this MoU shall be in writing and signed by the duly authorized representatives of the Parties.

ARTICLE IX - ENTRY INTO FORCE

This MoU shall come into force on the date of final signatures by the Parties.

IN WITNESS WHEREOF the Parties hereto have affixed their signatures on this
Day of AD.....

For: Ministry of National Defense

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HON. JOSEPH FAYIAH JOHNSON
Acting Minister of National Defense, RL

For: Ministry of Justice, RL

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CLLR. FREDERICK CHERUE
Minister of Justice and Attorney General, RL