



**Agreement between the International Criminal Court and the
Government of the Republic of Mali on the Enforcement of Sentences
of the International Criminal Court**

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**AGREEMENT BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE
GOVERNMENT OF THE REPUBLIC OF MALI ON THE ENFORCEMENT OF SENTENCES OF
THE INTERNATIONAL CRIMINAL COURT**

The International Criminal Court (“Court”) and
The Government of the Republic of Mali (“Mali”),

RECALLING Article 103 of the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries (“Rome Statute”), according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons;

RECALLING Rule 200 of the Rules of Procedure and Evidence of the Court (“Rules”), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework, consistent with the Rome Statute, for the acceptance of persons sentenced by the Court;

RECALLING the widely accepted international standards governing the treatment of prisoners, including the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

NOTING the willingness of Mali to accept persons sentenced by the Court;

IN ORDER to establish a framework for the acceptance of persons sentenced by the Court and to provide for conditions under which the sentences will be enforced in the territory of Mali;

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

1. The Agreement shall regulate matters related to the enforcement of sentences of imprisonment imposed by the Court in prison facilities made available by Mali.
2. The ultimate responsibility for the fulfilment of obligations provided in the Agreement shall rest with Mali, which shall ensure the appropriate security, safety and protection of the sentenced persons.
3. Subject to the conditions contained in the Agreement, the sentence of imprisonment shall be binding on Mali, which shall in no case modify it. Mali shall terminate the enforcement of the sentence as soon as it is informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 2

Procedure and information relating to designation

1. The Presidency of the Court (“the Presidency”), when notifying Mali of its designation as a State of enforcement, shall transmit to Mali the following information and documents:

- a) the name, nationality, date and place of birth of the sentenced person;
- b) a copy of the final judgment of conviction and of the sentence imposed;
- c) the length and commencement date of the sentence and the time remaining to be served;
- d) after having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

2. Mali shall promptly decide upon the Court’s designation, in accordance with its national law, and inform the Presidency accordingly.

3. Mali may at any time withdraw its conditions of acceptance for the inclusion in the List of States of enforcement. Any amendments or additions to such conditions shall be subject to confirmation by the Presidency.

4. Mali shall notify the Court of any circumstances, including the exercise of any conditions agreed under article 103(1) of the Rome Statute, which could materially affect the terms or extent of the imprisonment. The Court shall be given at least 45 days’ notice of any such known or foreseeable circumstances. During this period, Mali shall take no action that might prejudice its obligations under article 110 of the Rome Statute.

Article 3

Delivery

1. The sentenced person shall be delivered to Mali as soon as possible after Mali accepts.

2. The Registrar of the Court (“Registrar”) shall ensure the proper conduct of the delivery of the person in consultation with Mali and the host State.

Article 4

Supervision and conditions of enforcement

1. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing the treatment of prisoners. In order to supervise the enforcement of sentences of imprisonment:

a) The Presidency may:

i) when necessary, request any information, report or expert opinion from Mali or from any other reliable sources with the consent of the authorities of Mali;

ii) where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying Mali, for meeting the sentenced person and hearing his or her views, without the presence of national authorities of Mali;

iii) where appropriate, give Mali an opportunity to comment on the views expressed by the sentenced person under subparagraph (ii).

b) Mali shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person(s) by the International Committee of the Red Cross (“ICRC”) at any time and on a periodic basis, with the frequency of the visits to be determined by the ICRC.

- i) The ICRC will submit a confidential report based on the findings of these inspections to Mali and to the Presidency.
- ii) Mali and the Presidency shall consult each other on the findings of the report.

The Presidency may thereafter request Mali to report to it any changes in the conditions of imprisonment suggested by the ICRC.

2. The conditions of imprisonment shall be governed by the law of Mali and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favourable than those available to prisoners convicted of similar offences in Mali.
3. Communications between a sentenced person and the Court shall be unimpeded and confidential.

The Presidency, in consultation with Mali, shall respect these requirements when establishing appropriate arrangements for the exercise by the sentenced person of his or her right to communicate with the Court about the conditions of imprisonment.

4. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of Mali, which may entail some activity outside the prison facility, Mali shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Article 5

Limitation on prosecution or punishment

1. The sentenced person shall not be tried before a court of Mali with respect to conduct which formed the basis of crimes for which the person has already been convicted or acquitted by the Court.

2. The sentenced person in the custody of Mali shall not be subject to prosecution or punishment or to extradition to a third State for any conduct engaged in prior to that person's transfer to Mali, unless such prosecution, punishment or extradition has been approved by the Presidency at the request of Mali.

a) When Mali intends to prosecute or enforce a sentence against the sentenced person, it shall notify its intention to the Presidency and transmit to it the following documents:

- i) A statement of the facts of the case and their legal characterisation;
- ii) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
- iii) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
- iv) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

b) In the event of a request for extradition made by a third State, Mali shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

c) In relation to subparagraphs 2(a) and 2(b), the Presidency:

- i) may in all cases request any document or additional information from Mali or the third State requesting the extradition.

ii) shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings. If the request concerns the enforcement of a sentence, the sentenced person may serve that sentence in Mali or be extradited to a third State only after having served the full sentence pronounced by the Court.

iii) may authorise the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to Mali after the prosecution.

d) Any information or documents transmitted to the Presidency under paragraphs 2(a), 2(b), or 2(c)(i) above shall be transmitted to the Prosecutor, who may comment.

3. Paragraph 2 of this article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of Mali after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

Article 6

Appeal, revision, reduction, and extension of sentence

1. Mali shall not release the person before expiry of the sentence pronounced by the Court.

2. The Court alone shall have the right to decide on any reduction of sentence or application for appeal and revision.

a) Mali shall not impede the making of any such application by the sentenced person.

b) The Court alone shall rule on a reduction of sentence after having heard the person.

3. For purposes of extension of the term of imprisonment, the Presidency must seek the agreement of Mali.

Article 7

Escape

1. If the sentenced person escapes, Mali shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.

2. If the sentenced person escapes from custody and flees Mali, Mali may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located, pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute. Where the Presidency seeks the person's surrender, it may direct that the person be delivered to Mali or to another State designated by the Court.

3. If the State in which the sentenced person is located agrees to surrender him or her to Mali, pursuant to either international agreements or its national legislation, Mali shall so advise the Registrar in writing. The person shall be surrendered to Mali as soon as possible, if necessary in consultation with the Registrar. The Registrar shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 207.

4. If the sentenced person is surrendered to the Court, the Court shall transfer him or her to Mali. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or Mali, designate another State, including the State to the territory of which the sentenced person has fled.

Article 8

Time spent outside of Mali

1. If, after the delivery of the sentenced person to Mali, the Court orders that the sentenced person appear before the Court, that person shall be transferred temporarily to the Court, conditional on his or her return to Mali within the period decided by the Court. The time spent in the custody of the Court shall be deducted from the term of the overall sentence remaining to be served in Mali.

2. In any event, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where article 7(4) is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.

Article 9

Designation of a State of enforcement other than Mali

The Presidency, acting on its own motion or at the request of Mali, the sentenced person or the Prosecutor, shall, at any time, decide to transfer a sentenced person to a prison of another State.

- a) Before deciding to designate a State of enforcement other than Mali, the Presidency may, *inter alia*, request views from Mali.
- b) If the Presidency decides to retain Mali as the State of enforcement, it shall notify the sentenced person, the Prosecutor, the Registrar and Mali.

Article 10

Transfer of the sentenced person upon completion of the sentence

1. Mali shall inform the Presidency:

- a) 60 days before the scheduled completion of the sentence, that the sentence will shortly be completed;
- b) 30 days before the scheduled completion of the sentence, of the relevant information concerning the intention of Mali to authorise the person to remain in its territory, or the location where it intends to transfer the person.

2. Following completion of the sentence, the sentenced person who is not a national of Mali may, in accordance with the law of Mali, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless Mali authorises the person to remain in its territory.

3. Subject to the provisions of Article 5, Mali may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 11

Costs

1. The ordinary costs for the enforcement of the sentence in the territory of Mali shall be borne by Mali.
2. Other costs, including those for the transport of the sentenced person from the seat of the Court to Mali and back, shall be borne by the Court.
3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

4. The Court undertakes to liaise with donor countries or donor organisations, to mobilize funding for all projects aimed at ensuring that the detention conditions in which the sentenced person must serve the sentence pursuant to the present Agreement are consistent with international norms.

Article 12

Designation of focal points

Mali and the Court shall each designate the authorities that will act as focal points to facilitate the implementation of the Agreement.

Article 13

Entry into force

The present Agreement shall enter into force upon signature.

Article 14

Amendments

The Agreement may be amended, after consultation, by mutual consent of the parties.

Article 15

Termination of the Agreement

Upon consultation, either party may terminate the Agreement, with two months' prior written notice. Such termination shall not affect sentences in force at the time of the termination. The provisions of the Agreement shall continue to apply until such sentences have been completed, terminated or, if applicable, the sentenced person has been transferred in accordance with Article 10 of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Agreement.

Done at Bamako, this 13th day of January 2012, in duplicate, in the French language.

FOR THE INTERNATIONAL CRIMINAL COURT

**FOR THE GOVERNMENT OF THE
REPUBLIC OF MALI**

Judge Fatoumata Dembele Diarra
First Vice-President
International Criminal Court

S.E.M Soumeylou Boubèye Maiga
Minister of Foreign Affairs and
International Cooperation