

MEMORANDUM OF UNDERSTANDING BETWEEN PHILIPPINE NATIONAL POLICE AND NATIONAL CRIME AGENCY OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND REGARDING COOPERATION AND TH...

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The Philippine National Police (PNP) and the National Crime Agency of the United Kingdom of Great Britain and Northern Ireland (UK-NCA) (hereafter referred to as "the Participants") have reached the following understanding:

Desiring to further develop co-operation and consolidate existing relations between the Participants;

Recognising the increased threat posed by international criminality and its increasingly complex nature, and that international co-operation is needed to combat this threat;

Further recognising the need to establish a mechanism for the exchange of information between the Participants in a manner that respects privacy, civil liberties, and human rights.

Giving highest regard to the value of human dignity and respect for the rights of every individual as guaranteed under international treaties and the domestic laws of the Philippines and United Kingdom.

Paragraph 1

Scope of Co-operation

This Memorandum of Understanding (MOU) establishes conditions to facilitate cooperation and the sharing of Information between the Participants on a Case-by-Case Basis, pursuant to their respective domestic laws and common law powers, regulations and policies.

The purpose of this MOU is to assist in the prevention, detection or investigation of Serious and/or Organised Crime and aid collaborative efforts in the interest of public protection. it is not intended to create binding legal relations.

In the context of this MOU, Serious and/or Organised Crime includes but is not limited to;

- The sexual abuse and exploitation of children and vulnerable persons whether it be physically, online (making, distributing and the sharing or streaming of indecent material) or through control or influence over these acts);
- the trafficking of human beings or;
- the facilitation of illegal migrants;
- cyber or technology enabled crime;
- financial and other economic crimes (including but not limited to money laundering, fraud, embezzlement, bribery and corruption, tax and duty evasion, counterfeiting and theft, intellectual property crime, forgery of documents, and illegal manufacture and trafficking of currencies and negotiable securities);
- smuggling of counterfeit, mutually prohibited or taxable commodities;

- illegal trafficking in arms, ammunitions, explosives, poisonous substances and environmentally harmful and radioactive substances;
- trafficking of endangered species; and
- other crimes mutually deemed to be serious and of concern.

Paragraph 2

Definitions

For the purpose of this MOU:

"Case-by-Case Basis" refers to an ad-hoc sharing process initiated by a Participant who has reason to suspect that (i) a request for Information pertaining to specific individuals or groups of persons or entities may generate Information useful for the purposes described in paragraph 1 or (ii) the Information is relevant to the other Participant for the purposes described in paragraph 1.

"Cooperation" means the provision of operational support; training and capacity building; and the exchange of professional knowledge and skills, equipment, personnel, science and technology.

"Information" means intelligence, material or data collected for the purposes of the prevention, detection or investigation of Serious and/or Organised Crime; to aid collaborative efforts in the interest of public protection; or to administer or enforce the Participants' respective domestic immigration and nationality laws. Information may be in oral, visual, electronic or documentary form.

"Human trafficking" means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Paragraph 3

Provision, use and disclosure of information

To the extent permitted by the laws of each Participant country and any international treaty obligations, and consistent with its own policies and procedures, each Participant will make every effort to provide, spontaneously or upon request from the other, Information or support that may be relevant to the investigation or prosecution of serious and/or organised crime when the Participant's risk assessments permit it.

A requesting Participant will, to the fullest extent possible, provide a brief statement of the underlying facts to justify the necessity, proportionality and legality of any request for Information.

Participants will only exchange Information in accordance with the requirements of domestic and international law that each Participant is bound by relating to the protection of and disclosure of Information.

Any Information exchanged pursuant to the terms of this MOU will be confidential, protected by the receiving Participant from unauthorised access and will not be disclosed to a third party or used for any purpose other than that for which it was provided, without written consent being sought from the Participant that provided the Information.

Any external dissemination by a receiving Participant of information provided pursuant to the terms of this MOU to another domestic or international agency must be authorised by the providing Participant. Before any dissemination of the material, the providing Participant will issue clear and detailed handling conditions in respect

for the information.

If a Participant is placed under a legal obligation, (whether during or the course of legal proceedings or otherwise) that would require the disclosure of Information it has received from the other Participant, the receiving Participant will immediately notify and seek the written consent of the other Participant to disclose the Information. If such consent cannot be provided, every effort will be made by the receiving Participant to ensure that the Information is not disclosed.

All information supplied and/or fed by both participants shall be based on appropriately assessed data provided with the clearance of the unit chief and subject to the prevailing international laws for legality in use and dissemination

Paragraph 4

Agreement for the production of information and intelligence into evidence

If either Participant wishes to use material provided by the other Participant in evidence, full enquiries will be needed by the Participant to confirm that the material can be so used.

If the providing Participant confirms that the material can be used evidentially, the receiving Participant will then submit a Mutual Legal Assistance request through the appropriate diplomatic channels to the providing Participant.

All Participants recognise that they cannot request or provide information on an evidential basis if it has originated from a third Participant agency and/or jurisdiction. In this event any Mutual Legal Assistance request will have to be submitted to the third party agency and/or jurisdiction.

Paragraph 5

Adherence to International Human Rights Standards

During Arrest, Interview and Custody Stages

Each Participant will notify the other of any and all arrest(s) made as a result of material or support provided by the other Participant as soon as possible. This includes arrests made by party agencies or jurisdictions cooperating with one of both Participants.

A participant may request for an opportunity to be present at all interviews of individuals arrested within the jurisdiction of the Other Participant where such arrest is a result of an operational activity based on information or support provided by the former to the latter. The Participants shall ensure that all interviews are recorded.

Both Participants will provide regular updates on the location, status of any prosecution and welfare of individuals arrested, interviewed or prosecuted as a result of operational activity under this MOU. These updates should include information that includes, by way of example, details about criminal charges, trial dates, convictions, sentence, bail, transfer or release.

Each Participant will ensure that, where possible, individuals, arrested as a result of information or support provided by the other Participant, should be detained in or transferred to internationally recognised human rights compliant custodial facilities.

Each Participant will ensure that no individual arrested or held in custody as a result of information or support provided by the other Participant is subjected to the unlawful use of force, torture, or cruel, inhumane or degrading treatment and that individuals are dealt with in accordance with the relevant Participant's domestic and international human rights obligations.

Both Participants agree to notify the other of any and all allegations of mistreatment made by individuals arrested,

interviewed or prosecuted in their jurisdiction as a result of operational activity conducted as a result of information or support provided by the other Participant.

Both Participants will fully investigate any and all allegations of mistreatment of an individual arrested or detained as a result of operational activity conducted or information shared to the other Participant and will take appropriate action and share evidence of any findings made in respect of such allegations with the other Participant.

In the event of any allegations of mistreatment made in respect of activities carried out by one Participant, the other Participant may make a request to view material concerning those allegations and/or communicate with the individual making the allegations in order to satisfy that Participant's human rights obligations. Each Participant respond to such requests and if unable to do so will inform the other Participant why this is the case.

Legal Representation and Consular Access

Both Participants will allow individuals arrested as a result of operational activity carried out under or as a result of information shared under this MOU the opportunity to seek legal representation.

Both Participants will provide consular access to any foreign national arrested as a result of operational activity resulting from information or support provided by the other Participant.

Furthermore in the event that there is a request made to transfer or extradite any individuals, arrested as a result of information or support provided by the other Participant, to another jurisdiction, such individuals will only ever be transferred to that other jurisdiction in the event that there is a recognised extradition treaty with that jurisdiction and subject to the extradition of that individual being ordered by the courts in the relevant Participant state and being in accordance with any additional domestic and international legal obligations and human rights considerations that bind the relevant Participant.

Cases involving Kidnap or Human Trafficking

In cases involving kidnap or human trafficking, any victims rescued within or returned to the Philippines will be treated as victims of crime. Trafficking victims will not be pursued for any criminal acts they may have committed through exploitation.

Double Jeopardy

Both participants agree to work together on a Case-by-Case Basis to ensure that double jeopardy does not occur.

Paragraph 6

Equipment, Training and Occasional Funding

The NCA may provide equipment, training and occasional funding to the PNP to enhance capability to conduct investigations in accordance with the principles contained within this MOU. The arrangements will be decided between the Participants.

Paragraph 7

Amendment

This MOU may be revised or amended at any time by joint written consent of both Participants. Such revision or amendment will come into operation on a date jointly decided by the Participants.

Paragraph 8

Settlement of Disputes

The Participants will, through direct consultation and negotiation or via the appropriate diplomatic channels, settle

any dispute arising out of the interpretation or fulfilment of commitments made under this MOU.

No racial discrimination and/or prejudice between the participants shall arise during disputes over/about the MOU. Equal treatment shall prevail with settlement as the primary objective.

The NCA International Liaison Officer will be the initial point of contact for any disputes arising for the side of UK-NCA. While the Foreign Liaison Division, Directorate for Intelligence for the side of the PNP.

Paragraph 9

Entry into Operation, Duration and Termination

This MOU will come into operation upon signature by both Participants.

This MOU will be reviewed by the Participants, recorded in writing 1 (one) year after signature by both participants and then no later than 3 (three) years after the last review.

This MOU may be terminated at any time by either Participant by giving 3 (three) months' written notice.

Either Participant may wholly or partly suspend this MOU in the case of circumstances arising that prejudice the sovereignty, security, public order, or other essential interests of their respective State, or are contrary to the national legislation or international legal obligations of their State, or may adversely affect live investigations or legal proceedings.

In the event that one of the Participants legislates death penalty laws for serious crimes, after this MOU comes into effect, the implementation of the MOU and any Cooperation pertaining to offences carrying the death penalty will be suspended, as far as the Other Participant is concerned, until appropriate written assurances is received by the latter from the former that said death penalty shall not be imposed.

In the event of suspension or termination of this MOU, the Participants will continue to observe their commitment to confidentiality as recorded in paragraph 5 (confidentiality), unless the Participants jointly decide otherwise.

In witness thereof, the undersigned, being duly authorized by their respective governments, do hereby sign this present Memorandum of Understanding

SIGNED in Dubai on the 19[th] day of November in the year Two Thousand and Eighteen.

For the
PHILIPPINE NATIONAL POLICE

For the
NATIONAL CRIME AGENCY OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND

(Sgd.)

OSCAR D ALBAYALDE
Police Director General
Chief, Philippine National Police

(Sgd.)

LYNNE G. OWENS
Director-General
United Kingdom's National Crime Agency

Entry into Force: November 19, 2018

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