

No. 31260

**UNITED NATIONS
(UNITED NATIONS DEVELOPMENT PROGRAMME)
and
SOUTH AFRICA**

**Basic Agreement concerning assistance by the United Nations
Development Programme to the Government of South
Africa (with exchange of letters). Signed at New York on
3 October 1994**

Authentic text: English.

Registered ex officio on 3 October 1994.

**ORGANISATION DES NATIONS UNIES
(PROGRAMME DES NATIONS UNIES
POUR LE DÉVELOPPEMENT)
et
AFRIQUE DU SUD**

**Accord de base relatif à une assistance du Programme des
Nations Unies pour le développement au Gouvernement
sud-africain (avec échange de lettres). Signé à New York
le 3 octobre 1994**

Texte authentique : anglais.

Enregistré d'office le 3 octobre 1994.

AGREEMENT¹ BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE UNITED NATIONS DEVELOPMENT PROGRAMME

Whereas the General Assembly of the United Nations has established the United Nations Development Programme (hereinafter referred to as “the UNDP”) to support and supplement the national efforts of developing countries at solving the most important problems of their economic development and to promote social progress and better standards of life; and

Whereas the Government of the Republic of South Africa (hereinafter referred to as “the Government”) wishes to avail itself of development assistance from the UNDP for the benefit of the people of the Republic of South Africa;

Now therefore the Government and the UNDP (hereinafter referred to as “the Parties”) have entered into this Agreement in a spirit of friendly co-operation.

Article I

SCOPE OF THIS AGREEMENT

1. This Agreement embodies the basic conditions in terms of which the UNDP and its Executing Agencies shall assist the Government in carrying out the Government’s development projects, and in terms of which such UNDP-assisted projects shall be formulated and executed. This Agreement shall apply to all such UNDP assistance and to such documents and other instruments (hereinafter referred to as “Project Documents”) as the Parties may conclude to specify the particulars of such assistance and the respective obligations of the Parties and the Executing Agencies.

2. Assistance shall be provided by the UNDP in terms of this Agreement only in response to a request submitted by the Government and approved by the UNDP. The requested assistance shall be made available to the Government, or to an entity designated by the Government, and shall be furnished and received in accordance with the relevant and applicable resolutions and decisions of the competent UNDP organs, subject to the availability of the necessary funds to the UNDP.

Article II

FORMS OF ASSISTANCE

1. Assistance which may be made available by the UNDP to the Government in terms of this Agreement may consist of:

(a) The services of advisory experts and consultants, including consultant firms and organizations, selected, in consultation with the Government, by, and responsible to, the UNDP or the Executing Agency of the UNDP concerned;

(b) The services of operational experts selected, in consultation with the Government, by the Executing Agency concerned, to perform functions of an oper-

¹ Came into force provisionally on 3 October 1994 by signature, in accordance with article XIII (1).

ational, executive or administrative character as civil servants of the Government or as employees of entities referred to in sub-article 2 of Article I;

(c) The services of members of the United Nations Volunteers (hereinafter referred to as “volunteers”);

(d) Equipment and supplies not readily available in the Republic of South Africa (hereinafter referred to as “the Republic”);

(e) Seminars, training programmes, demonstration projects, expert working groups and related activities which are relevant to the needs of the people of the Republic;

(f) Scholarship and fellowships, or similar arrangements under which candidates nominated by the Government and approved by the Executing Agency concerned may study or receive training; and

(g) Any other form of assistance which may be agreed upon by the Parties.

2. A request for assistance in terms of this Agreement shall be made by the Government to the UNDP through the UNDP Resident Representative referred to in sub-article 4 of this Article, which request shall be in the form and in accordance with procedures established by the UNDP for the request concerned. The Government shall provide the UNDP with all appropriate facilities and relevant information to appraise the request, including an expression of its intent with respect to the follow-up of investment-oriented projects.

3. Assistance may be provided by the UNDP to the Government either directly, with such external assistance as the Parties may deem appropriate, or through an Executing Agency, which shall have primary responsibility for carrying out the UNDP assistance to the project and which shall have the status of an independent contractor for this purpose. Where assistance is provided by the UNDP directly to the Government, all references in this Agreement to an Executing Agency shall be a reference to the UNDP, unless the context indicates otherwise.

4. The UNDP may maintain a permanent mission in the Republic, headed by the UNDP Resident Representative, who shall have the functions referred to in this Agreement.

5. If the UNDP Resident Representative is also designated by the Secretary-General of the United Nations as the Resident Coordinator, he or she shall, without prejudice to the functions referred to in sub-article 6 below, on behalf of the United Nations system, have over-all responsibility for, and shall undertake the coordination of, operational activities for development of all organizations of the United Nations system at the national level. He or she shall exercise team leadership and be responsible for evolving, at the national level, an integrated and multi-disciplinary programme and approach to development assistance. He or she shall carry out the said functions in conformity with the objectives and priorities of the Government.

6. The Resident representative shall have full responsibility and ultimate authority, on behalf of the UNDP Administrator, for the entire UNDP programme in the Republic. The Resident Representative shall assist the Government, as may be required, in the preparation of the UNDP country programmes and project requests and changes therein. The Resident Representative shall be the principal channel of communication with the Government regarding all programme matters, assure proper coordination of all assistance rendered by the UNDP through Executing Agencies or other means, and assist the Government, as may be required, in co-

ordinating the UNDP finance activities with national, bilateral and multilateral programmes in the Republic. The Resident Representative shall also perform such other functions as may be entrusted to him or her by the UNDP Administrator or by an Executing Agency.

7. The UNDP Mission in the Republic shall have such other staff as the UNDP may deem appropriate to the Mission's proper functioning. The UNDP shall notify the Government from time to time of the names and status of the members, and of the families of the members, of the Mission, and of any changes in the status of such persons.

Article III

EXECUTION OF PROJECTS

1. The Government shall remain responsible for its UNDP-assisted development projects and the realization of their objectives as contained in the relevant Project Documents, and shall carry out such parts of such projects as may be stipulated in the provisions of this Agreement and such Project Documents. The UNDP undertakes to complement and supplement the Government's participation in each UNDP-assisted project through assistance to the Government in fulfilling its intent with respect to investment follow-up. The Government shall inform the UNDP of the Government Cooperating Agency directly responsible for the Government's participation in each UNDP-assisted project. Without derogating from or prejudice to the Government's overall responsibility for its project, the Parties may agree that an Executing Agency shall assume primary responsibility for the execution of a project in consultation and agreement with the Government Cooperating Agency, and any arrangements in this regard shall be stipulated in the Project Work Plan forming part of the Project Document concerned together with arrangements, if any, for the transfer of such primary responsibility, in the course of project execution, to the Government or to an entity designated by the Government.

2. Compliance by the Government with any prior obligations agreed to be necessary or appropriate for the UNDP assistance to a particular project shall be a condition of performance by the UNDP and the Executing Agency of their responsibilities with respect to that project. Should be provision of such assistance be commenced before such prior obligations have been met, it may be terminated or suspended without notice and at the discretion of the UNDP.

3. Any agreement between the Government and an Executing Agency concerning the execution of a UNDP-assisted project or between the Government and an operational expert shall be subject to the provisions of this Agreement.

4. The Government Cooperating Agency shall, as appropriate and in consultation with the Executing Agency, assign a full-time manager for each project who shall perform such functions as are assigned to him or her by the Government Cooperating Agency. The Executing Agency shall, as appropriate and in consultation with the Government, appoint a Chief Technical Adviser or Project Coordinator responsible to the Executing Agency to oversee the Executing Agency's participation in the project at the project level. That person shall supervise and coordinate the activities of experts and other Executing Agency personnel and be responsible for on-the-job training of national Government counterparts. That person shall also

be responsible for the management and efficient utilization of all UNDP-financed inputs, including the equipment provided for the project concerned.

5. Advisory experts, consultants and volunteers shall, in the performance of their duties, act in close consultation with the Government and with the persons or bodies designated by the Government, and shall comply with such instructions from the Government as may be appropriate to the nature of their duties and the assistance to be given and as may be mutually agreed upon between the Parties and the Executing Agency concerned. Operational experts shall be solely responsible to, and be under the exclusive direction of, the Government or the entity to which they are assigned, but shall not be required to perform any functions incompatible with or derogating from their international status or incompatible with the purposes of the UNDP or of the Executing Agency. The Government shall use its best efforts to ensure that the commencing date of the services of each operational expert shall coincide with the effective date of his or her contract with the Executing Agency concerned.

6. Fellowships contemplated in sub-article 1 (f) of Article II shall be administered in accordance with the fellowship policies and practice of the Executing Agency: Provided that the UNDP shall not pay the salaries of trainees and recipients of fellowships during the period of their respective fellowships.

7. Technical and other equipment, materials, supplies and other property financed or provided by the UNDP, shall remain the property of the UNDP, unless and until such time as ownership thereof is transferred to the Government or to an entity nominated by the Government on terms and conditions mutually agreed upon between the Parties.

8. The Parties agree to cooperate and exchange information on any discoveries, inventions or works resulting from the UNDP-assisted programmes provided for in this Agreement, and to take such steps as are necessary through registration or otherwise, to ensure their most efficient and effective use and exploitation, free of royalties, by the Parties in the Republic.

9. Patent rights, copyrights, and other similar intellectual property rights in any discoveries, inventions or works which are solely and specifically invented by experts and/or other persons engaged by the Government in the execution of programmes and projects in terms of this Agreement, or resulting from programmes or projects fully funded by the Government in terms of this Agreement, shall be the property of the Government: Provided that the UNDP shall be entitled to the use and exploitation of the said intellectual property rights in its programmes and projects outside the Republic, free of royalties or other charges.

10. Except as provided for in sub-article 9, title to any patent rights, copyrights, and other similar intellectual property rights in any discoveries, inventions or works resulting from UNDP-assisted programmes and projects in terms of this Agreement shall vest in the UNDP: Provided that the Government shall in the said cases be entitled to the use and exploitation of the said intellectual property rights within the Republic, free of royalties or other charges.

11. Where, following consultations between the Parties and agreement with the Government, the execution of a programme or project is entrusted to the Government for national execution, the Parties shall, by an Exchange of Letters, establish the terms and conditions governing the implementation of the programme or project. The Exchange of Letters shall be supplementary to this Agreement.