



SOUTH AFRICAN NOTE

Mr. Jan Mattsson
Executive Director of United Nations Office for Project Services
Midtermolen 3
2100 Copenhagen
Denmark

Sir

I have the honour to note that the Government of the Republic of South Africa has been informed that the United Nations Office for Project Services (UNOPS) which, to date, has operated under the United Nations Development Programme (UNDP), has become independent of the UNDP. UNOPS furthermore wishes to establish a regional office in South Africa, and will operate from the premises in Sunninghill Johannesburg currently utilised by the UNDP Regional Services Centre.

It is accordingly necessary that the UNOPS enter into a headquarters agreement with the Government of the Republic of South Africa. For this purpose, the Government of the Republic of South Africa proposes that the *Agreement between the United Nations Development Programme and the Government of the Republic of South Africa on Establishing a Service Centre in South Africa* signed on 1 October 2007 be applied *mutatis mutandis* between UNOPS and the Government of the Republic of South Africa.

If this suggestion is acceptable to the UNOPS, it is understood that this Note and your reply thereto expressing your agreement shall be regarded as constituting an Agreement on this matter, which shall enter into force on the date of your Letter in reply.

Accept, Sir, the assurances of my high consideration.

Maite Nkoana-Mashabane
Minister of International Relations and Cooperation
Republic of South Africa
Pretoria

21 April 2010



AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

AND

**THE UNITED NATIONS DEVELOPMENT
PROGRAMME**

ON

ESTABLISHING A SERVICE CENTRE

IN

SOUTH AFRICA

Preamble

The Government of the Republic of South Africa (hereinafter referred to as "the Government") and the United Nations Development Programme (hereinafter referred to as "UNDP"),

RECALLING the decision made by the UNDP on the desirability to establish a Service Centre for Eastern and Southern Africa,

RECOGNIZING that the Government welcomes the establishment of such a Service Centre within the Republic of South Africa,

RECOGNIZING the benefits of establishing a Service Centre within the Republic of South Africa, to serve Eastern and Southern Africa,

RECALLING the applicability to UNDP of the Convention of the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, and acceded to by the Government on 30 August 2002,

RECALLING the applicability to UNDP of the Basic Agreement concluded between the Government and UNDP on 3 October 1994 concerning UNDP's assistance to the Government in the area of technical cooperation and development,

RECOGNIZING that the activities of the UNDP-Service Centre are focused primarily on service of UNDP operations outside of the Host Country, including for the management and support of regional programmatic activities, and

ACKNOWLEDGING that occasionally the UNDP-Service Centre will be called upon to support UNDP activities within the framework of the UNDP Country Programme in the Host Country;

HEREBY AGREE as follows:

ARTICLE I *Definitions*

Section 1

In this Agreement the expressions:

- a) "accredited foreign Mission in the Host Country" means diplomatic and consular missions and missions of international organisations based in the Republic of South Africa
- b) "Administrator" means the Administrator of the UNDP;

- c) "appropriate authorities" means such national or local government authorities under the laws and regulations of the Republic of South Africa as may be responsible in the context of, and in accordance with, the laws and customs applicable in the Republic of South Africa;
- d) "archives of the UNDP-SC" means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by UNDP-SC in furtherance of its functions;
- e) "the Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946;
- f) "the Director of the UNDP-SC" means the head of the UNDP-SC in the Republic of South Africa;
- g) "the Host Country" means the Republic of South Africa;
- h) "officials of the UNDP-SC" means the Director of the UNDP-SC and all staff assigned to the UNDP-SC, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;
- i) "the Parties" means the Government and UNDP;
- j) "premises of the UNDP-SC" means the facilities in the Republic of South Africa used for conducting functions by the UNDP-SC;
- k) "property of UNDP-SC" means all property, including funds, income and other assets belonging to the UNDP-SC or held or administered by UNDP-SC in furtherance of the functions of the UNDP-SC;
- l) "Secretary-General" means the Secretary-General of the United Nations;
- m) "Service contractors" means individuals who are engaged under service contracts in their personal capacity not as representatives of a government nor of any other authority external to the United Nations. They are neither staff members under the Staff Regulations and Rules of UNDP nor officials for the purposes of the Convention.
- n) "telecommunications" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means;
- o) "UNDP Country Programme" means the activities undertaken by UNDP in the Host Country within the framework of the 1994 Agreement;

- p) "UNDP-SC" means the United Nations Development Programme Service Centre established in the Republic of South Africa to serve Eastern and Southern Africa;
- q) "1994 Agreement" means the Agreement between the United Nations (United Nations Development Programme) and the Republic of South Africa concluded on 3 October 1994.

ARTICLE II

Purpose and Scope of the Agreement

Section 2

- a) This Agreement regulates the status of the UNDP-SC premises, officials and experts in the Host Country. To the extent that the UNDP-SC undertakes functions in support of the UNDP activities within the framework of the UNDP Country Programme in the Host Country, the 1994 Agreement shall apply to these technical and operational activities of the UNDP-SC.
- b) The Government confirms that the treatment afforded to the UNDP-SC and the UNDP shall be equal and the same as afforded to any other accredited foreign mission in the Host Country.

ARTICLE III

Legal Capacity

Section 3

- a) The United Nations, acting through UNDP, shall have the capacity:
 - (i) to contract;
 - (ii) to acquire and dispose of immovable and movable property; and
 - (iii) to institute judicial proceedings.
- b) For the purposes of this Article, UNDP shall be represented by the Director of UNDP-SC.

ARTICLE IV

Inviolability of the UNDP-SC

Section 4

- a) The UNDP-SC shall be inviolable and its property and assets, wherever located and by whosoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been

waived in accordance with the Convention. Waiver of immunity from legal process shall not extend to any measure of execution.

b) No officer or official of the Host Country or person exercising any public authority within the Host Country, shall enter the premises of the UNDP-SC to perform any duties therein except with the consent of, and under conditions approved by the Director of the UNDP-SC. In case of a fire or other emergency requiring prompt protection action, the consent of the Director of the UNDP-SC to any necessary entry into the premises shall be presumed if he/she cannot be reached in time.

c) The premises of the UNDP-SC shall not be used in any manner incompatible with the scope and purpose of the UNDP – SC, as set forth in Article II, above, which includes the use of the premises and facilities for meetings, seminars, exhibitions and other related purposes which are organized by the UNDP-SC, the United Nations or other related organizations.

Section 5

The Archives of the UNDP-SC, wherever located in the Host Country, shall be inviolable.

ARTICLE V

Public Services and Security

Section 6

(a) The UNDP-SC shall receive the same level of service delivery by the relevant local authorities of necessary public services and utilities that is provided to any other accredited foreign mission in the Host Country.

(b) The UNDP-SC shall receive the same level of security and protection that is provided to any other accredited foreign mission in the Host Country.

ARTICLE VI

Exemption from Taxation

Section 7

With respect to all official activities, the UNDP-SC, its assets, income and property shall be exempt from all forms of taxation; however, the UNDP-SC shall not claim exemption from taxes, which are, in fact, no more than charges for public utility services.

Section 8

The UNDP-SC shall be exempt from customs duties, prohibitions and restrictions on goods imported or exported for its official purposes, including publications; it is understood, however, the articles imported under such exemption shall not be sold in the Host Country except under conditions agreed to with the Government.

ARTICLE VII ***Financial Transactions***

Section 9

Without being restricted by financial controls, regulations or moratoria of any kind, the UNDP-SC may, in order to carry out its activities:

- (i) hold funds and currency of any kind and to operate accounts in any currency; and
- (ii) freely transfer its funds and currency to and from the Host Country, and convert any currency held by it into any other currency.
- (iii) be accorded the most favourable, legally available rate of exchange.

ARTICLE VIII ***Communications***

Section 10

The UNDP-SC shall enjoy, for its official communications, treatment not less favorable than that accorded by the Host Country to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication, and press rates for information to the press and radio.

Section 11

a) No censorship shall be applied to the official correspondence and other official communications of the UNDP-SC.

b) The UNDP-SC shall have the right to operate communication equipment including satellite facilities and to use codes and to dispatch and receive correspondence by couriers and bags. The bags must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations.

ARTICLE IX
Representatives of Members

Section 12

Representatives of members of the United Nations to meetings convened by the UNDP-SC shall, while exercising their functions, enjoy the privileges and immunities as set out in Article IV of the Convention.

ARTICLE X
Officials of the UNDP-SC

Section 13

The Government shall accord to:

- (a) the officials of the UNDP-SC, regardless of their nationality, the privileges and immunities set out in Articles V and VII of the Convention;
- (b) the Head of the UNDP-SC and the Deputy Head of the UNDP-SC and other officials assigned to the UNDP-SC, having the rank of P-5 and above, who do not have South African nationality or permanent resident status in the Host Country, shall, together with their families forming part of their household in addition to the privileges and immunities set out in Articles V and VII of the Convention, be accorded the same privileges and immunities, exemptions and facilities as are accorded to diplomatic staff at missions accredited to the Host Country.

Section 14

Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official of the UNDP-SC in any case where, in the opinion of the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

ARTICLE XI
Experts on Missions and Service Contractors

Section 15

Experts, other than officials, performing missions for the UNDP-SC shall be accorded the privileges and immunities as set out in Articles VI and VII of the Convention.

Section 16

Service Contractors shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the UNDP-SC. Such immunity shall continue to be accorded after termination of their engagement with the UNDP-SC. They shall also be accorded such other facilities as may be necessary for the independent exercise of their functions for the UNDP-SC. The terms and conditions of their engagement shall be in accordance with UN and UNDP decisions, regulations, rules and policies.

Section 17

Privileges and immunities are granted to experts and service contractors in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert or service contractor of the UNDP-SC in any case where, in the opinion of the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization.

ARTICLE XII

Cooperation with the appropriate authorities

Section 18

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Host Country, and not to interfere in the internal affairs of the Host Country.

Section 19

The UNDP-SC shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the facilities, privileges and immunities accorded to persons referred to in the present Agreement.

ARTICLE XIII

Entry into, exit from, movement and sojourn within the Host Country

Section 20

All persons referred to in this Agreement and persons invited on official business shall have the right of unimpeded entry into, exit from, sojourn and free movement within the Host Country except for zones which require special permission under the legislation on national security in force in the Host Country.

Visas, entry permits or licenses, where required, shall be granted as promptly as possible.

ARTICLE XIV

Laissez-Passer

Section 21

The Government shall recognize and accept the United Nations laissez-passer issued by the United Nations as a valid travel document equivalent to a passport. In accordance with the provisions of Section 26 of the Convention, the Government shall also recognize and accept the United Nations certificate issued to persons traveling on official business.

Section 22

Applications for the necessary permits or visas, where required, by officials holding the United Nations laissez-passer, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel. The Government further agrees to issue any required visa on the United Nations laissez-passer or national passport.

Section 23

Similar facilities to those specified in Section 22 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, are confirmed by the UNDP-SC as traveling on official business.

ARTICLE XV

Identification Cards

Section 24

All persons referred to in this Agreement and conferred with immunities and privileges shall be entitled to have an appropriate identification card issued by the Government indicating their status.

ARTICLE XVI

United Nations Flag and Emblem

Section 25

The UNDP-SC shall have the right to display the emblem of the United Nations or UNDP and/or the flag of the United Nations on its premises, vehicles, aircraft and vessels.

ARTICLE XVII

Settlement of Disputes

Section 26

Any dispute between the Parties arising out of, or relating to this Agreement, which is not settled by negotiation or another agreed mode of settlement, shall, at the request of either Party, be submitted to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within thirty days of the request for arbitration, a Party has not appointed an arbitrator, or if, within fifteen days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

ARTICLE XVIII

Entry into Force, Duration and Termination

Section 27

This Agreement may be modified by written agreement between the Parties hereto. Each Party shall give full consideration to any proposal advanced by the other Party under this Section.

Section 28

- a) This Agreement shall be subject to the signature by the Parties. It shall enter into force on the date of the last signature thereof.
- b) This Agreement may be terminated by either Party by written notice to the other and shall terminate six months after the receipt of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfillment or termination of all obligations entered into by virtue of this Agreement.
- c) The obligations assumed by the Government shall survive the termination of this Agreement, to the extent necessary to permit orderly withdrawal of the property, funds and assets of the UNDP-SC and officials assigned to it by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, being the duly appointed representatives of the respective Parties, have signed this Agreement in duplicate.

DONE at New York, this 1st day of October, 2007.

NCuma
For the Government of the Republic of
South Africa

DONE at New York, this Oct 1 day of 2007, 2007.

[Signature]
For the United Nations Development
Programme