

No. 671

**UNITED NATIONS DEVELOPMENT PROGRAMME
(SPECIAL FUND)
and
TONGA**

**Agreement concerning assistance from the United Nations
Development Programme (Special Fund). Signed at
Nuku'alofa on 22 April 1971**

Authentic text: English.

Filed and recorded by the Secretariat on 1 February 1972.

**PROGRAMME DES NATIONS UNIES
POUR LE DÉVELOPPEMENT (FONDS SPÉCIAL)
et
TONGA**

**Accord concernant une assistance du Programme des Na-
tions Unies pour le développement (Fonds spécial).
Signé à Nuku'alofa le 22 avril 1971**

Texte authentique : anglais.

Classé et inscrit au répertoire par le Secrétariat le 1^{er} février 1972.

AGREEMENT¹ BETWEEN THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND) AND THE GOVERNMENT OF THE KINGDOM OF TONGA CONCERNING ASSISTANCE FROM THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND)

WHEREAS the Government of the Kingdom of Tonga has requested assistance from the United Nations Development Programme (Special Fund), hereinafter referred to as the Special Fund, in accordance with resolutions 1240 (XIII)² and 2029 (XX)³ of the General Assembly of the United Nations;

WHEREAS the Special Fund is prepared to provide the Government with such assistance for the purpose of promoting social progress and better standards of life and advancing the economic, social and technical development of the Kingdom of Tonga;

NOW THEREFORE the Government and the Special Fund have entered into this Agreement in a spirit of friendly co-operation.

Article I

ASSISTANCE TO BE PROVIDED BY THE SPECIAL FUND

1. This Agreement embodies the conditions under which the Special Fund shall provide the Government with assistance and also lays down the basic conditions under which projects will be executed.
2. A Plan of Operation for each project shall be agreed to in writing by the Government, the Special Fund and the Executing Agency. The terms of this Agreement shall apply to each Plan of Operation.
3. The Special Fund undertakes to make available such sums as may be specified in each Plan of Operation for the execution of projects described

¹ Came into force on 22 April 1971 by signature, in accordance with article X (1), with effect from 7 January 1972, the date when Tonga became a member of one of the specialized agencies of the United Nations.

² United Nations, *Official Records of the General Assembly, Thirteenth Session, Supplement No. 18 (A/4090)*, p. 11.

³ *Ibid.*, *Twentieth Session, Supplement No. 14 (A/6014)*, p. 20.

therein, in accordance with the relevant and applicable resolutions and decisions of the appropriate United Nations organs, in particular resolutions 1240 (XIII) and 2029 (XX) of the General Assembly, and subject to the availability of funds.

4. Compliance by the Government with any prior obligations specified in each Plan of Operation as necessary for the execution of a project shall be a condition of performance by the Special Fund and by the Executing Agency of their responsibilities under this Agreement. In case execution of project is commenced before compliance by the Government with any related prior obligations, such execution may be terminated or suspended at the discretion of the Special Fund.

Article II

EXECUTION OF PROJECT

1. The Parties hereby agree that each project shall be executed or administered on behalf of the Special Fund by an Executing Agency, to which the sums referred to in article I above shall be disbursed by agreement between the Special Fund and such Executing Agency.
2. The Government agrees that an Executing Agency, in carrying out a project, shall have the status, vis-à-vis the Special Fund, of an independent contractor. Accordingly, the Special Fund shall not be liable for the acts or omissions of the Executing Agency or of persons performing services on its behalf. The Executing Agency shall not be liable for the acts or omissions of the Special Fund or of persons performing services on behalf of the Special Fund.
3. Any agreement between the Government and an Executing Agency concerning the execution of a Special Fund project shall be subject to the provisions of this Agreement and shall require the prior concurrence of the Administrator.
4. Any equipment, materials, supplies and other property belonging to the Special Fund or an Executing Agency which may be utilized or provided by either or both in the execution of a project shall remain their property unless and until such time as title thereto may be transferred to the Government on terms and conditions mutually agreed upon between the Government and the Special Fund or the Executing Agency concerned.

Article III

INFORMATION CONCERNING PROJECT

1. The Government shall furnish the Special Fund with such relevant documents, accounts, records, statements and other information as the Special Fund may request concerning the execution of any project or its continued feasibility and soundness, or concerning the compliance by the Government with any of its responsibilities under this Agreement.
2. The Special Fund undertakes that the Government will be kept currently informed of the progress of operations on projects executed under this Agreement. Either Party shall have the right, at any time, to observe the progress of any operations carried out under this Agreement.
3. The Government shall, subsequent to the completion of a project, make available to the Special Fund at its request information as to benefits derived from and activities undertaken to further the purposes of that project, and will permit observation by the Special Fund for this purpose.
4. The Government will also make available to the Executing Agency all information concerning a project necessary or appropriate to the execution of that project, and all information necessary or appropriate to an evaluation, after its completion, of the benefits derived from and activities undertaken to further the purpose of that project.
5. The Parties shall consult each other regarding the publication as appropriate of any information relating to any project or to benefits derived therefrom.

Article IV

PARTICIPATION AND CONTRIBUTION OF GOVERNMENT IN EXECUTION OF PROJECT

1. The Government shall participate and co-operate in the execution of the projects covered by this Agreement. It shall, in particular, perform all the acts required of it in each Plan of Operation, including the provision of materials, equipment, supplies, labour and professional services available within the country.
2. If so provided in the Plan of Operation, the Government shall pay, or arrange to have paid, to the Special Fund the sums required, to the extent

specified in the Plan of Operation, for the provision of labour, materials, equipment and supplies available within the country.

3. Moneys paid to the Special Fund in accordance with the preceding paragraph shall be paid to an account designated for this purpose by the Secretary-General of the United Nations and shall be administered in accordance with the applicable financial regulations of the Special Fund.
4. Any moneys remaining to the credit of the account designated in the preceding paragraph at the time of the completion of the project in accordance with the Plan of Operation shall be repaid to the Government after provision has been made for any unliquidated obligations in existence at the time of the completion of the project.
5. The Government shall as appropriate display suitable signs at each project identifying such project as one assisted by the Special Fund and the Executing Agency.

Article V

LOCAL FACILITIES TO BE PROVIDED BY THE GOVERNMENT TO THE SPECIAL FUND AND THE EXECUTING AGENCY

1. In addition to the payment referred to in article IV, paragraph 2, above, the Government shall assist the Special Fund and the Executing Agency in executing any project by paying or arranging to pay for the following local facilities required to fulfil the programme of work specified in the Plan of Operation:
 - (a) The local living costs of experts and other personnel assigned by the Special Fund or the Executing Agency to the country under this Agreement, as shall be specified in the Plan of Operation;
 - (b) Local administrative and clerical services, including the necessary local secretarial help, interpreter-translators, and related assistance;
 - (c) Transportation of personnel, supplies and equipment within the country;
 - (d) Postage and telecommunications for official purposes;

- (e) Any sums which the Government is required to pay under article VIII, paragraph 5 below.
2. Moneys paid under the provisions of this article shall be paid to the Special Fund and shall be administered in accordance with article IV, paragraphs 3 and 4.
 3. Any of the local services and facilities referred to in paragraph 1 above in respect of which payment is not made by the Government to the Special Fund shall be furnished in kind by the Government to the extent specified in the Plan of Operation.
 4. The Government also undertakes to furnish in kind the following local services and facilities:
 - (a) The necessary office space and other premises;
 - (b) Appropriate medical facilities and services for international personnel engaged in the project.
 5. The Government undertakes to provide such assistance as it may be in a position to provide for the purpose of finding suitable housing accommodation for international personnel assigned to the country under this Agreement.

Article VI

RELATION TO ASSISTANCE FROM OTHER SOURCES

In the event that assistance towards the execution of a project is obtained by either Party from other sources, the Parties shall consult each other and the Executing Agency with a view to effective co-ordination and utilization of assistance received by the Government from all sources. The obligations of the Government hereunder shall not be modified by any arrangements with other entities co-operating with the Government in the execution of a project.

Article VII

USE OF ASSISTANCE

The Government shall exert its best efforts to make the most effective use of the assistance provided by the Special Fund and the Executing Agency

and shall use such assistance for the purpose for which it is intended. The Government shall take such steps to this end as are specified in the Plan of Operation.

Article VIII

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government shall apply to the United Nations and its organs, including the Special Fund, its property, funds and assets, and to its officials, the provisions of the Convention on the privileges and immunities of the United Nations.¹
2. The Government shall apply to each Specialized Agency acting as an Executing Agency its property, funds and assets, and to its officials, the provisions of the Convention on the privileges and immunities of the specialized agencies,² including any annex to the Convention applicable to such specialized agency. In case the International Atomic Energy Agency acts as an Executing Agency, the Government shall apply to its property, funds and assets, and to its officials and experts, the Agreement on the privileges and immunities of the International Atomic Energy Agency.³
3. In appropriate cases where required by the nature of the project, the Government and the Special Fund may agree that immunities similar to those specified in the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies shall be granted by the Government to a firm or organization, and to the personnel of any firm or organization, which may be retained by either the Special Fund or an Executing Agency to execute or to assist in the execution of a project. Such immunities shall be specified in the Plan of Operation relating to the project concerned.
4. The Government shall take any measures which may be necessary to exempt the Special Fund and any Executing Agency and their officials and other persons performing services on their behalf from regulations or other

¹ United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

² *Ibid.*, vol. 33, p. 261. For the final and revised texts of annexes published subsequently, see vol. 71, p. 318; vol. 79, p. 326; vol. 117, p. 386; vol. 275, p. 298; vol. 314, p. 308; vol. 323, p. 364; vol. 327, p. 326; vol. 371, p. 266; vol. 423, p. 284; vol. 559, p. 348, and vol. 645, p. 340.

³ *Ibid.*, vol. 374, p. 147.

legal provisions which may interfere with operations under this Agreement, and shall grant them such other facilities as may be necessary for the speedy and efficient execution of projects. It shall, in particular, grant them the following rights and facilities:

- (a) the prompt issuance without cost of necessary visas, licenses or permits;
- (b) access to the site of work and all necessary rights of way;
- (c) free movement, whether within or to or from the country, to the extent necessary for proper execution of the project;
- (d) the most favourable legal rate of exchange;
- (e) any permits necessary for the importation of equipment, materials and supplies in connexion with this Agreement and for their subsequent exportation; and
- (f) any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the Special Fund or of an Executing Agency, or other persons performing services on their behalf, and for the subsequent exportation of such property.

5. In cases where a Plan of Operation so provides the Government shall either exempt from or bear the cost of any taxes, duties, fees or levies which may be imposed on any firm or organization which may be retained by an Executing Agency or by the Special Fund and the personnel of any firm or organization in respect of:

- (a) the salaries or wages earned by such personnel in the execution of the project;
- (b) any equipment, materials and supplies brought into the country in connexion with this Agreement or which, after having been brought into the country, may be subsequently withdrawn therefrom; and
- (c) any property brought by the firm or organization or its personnel for their personal use or consumption or which, after having been brought into the country, may subsequently be withdrawn therefrom upon departure of such personnel.

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or an Executing

Agency, against the personnel of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency concerned and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Parties hereto and the Executing Agency that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between the Special Fund and the Government arising out of or relating to this Agreement which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the chairman. If within thirty days of the request for arbitration either 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 an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article X

GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature, and shall continue in force until terminated under paragraph 3 below.
2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by the Parties under articles III, IV and VII shall survive the expiration or termination of this Agreement. The obligations assumed by the Government under article VIII hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of the Special Fund and of any Executing Agency, or of any firm or organization retained by either of them to assist in the execution of a project.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the United Nations Development Programme and of the Government, respectively, have on behalf of the Parties signed the present Agreement at Nuku'alofa this 22nd day of April 1971 in the English language in two copies.

For the Kingdom of Tonga :

TU'IPELEHAKE
Prime Minister

For the United Nations
Development Programme :

W. B. HUSSEY
Regional Representative