

No. 14063

**UNITED NATIONS
(UNITED NATIONS CAPITAL
DEVELOPMENT FUND)
and
MALAWI**

**Grant Agreement (with schedules). Signed at Lilongwe on
27 May 1975**

Authentic text: English.

Registered ex officio on 27 May 1975.

**ORGANISATION DES NATIONS UNIES
(FONDS D'ÉQUIPEMENT
DES NATIONS UNIES)
et
MALAWI**

**Accord relatif à un don en espèces (avec annexes). Signé à
Lilongwe le 27 mai 1975**

Texte authentique : anglais.

Enregistré d'office le 27 mai 1975.

GRANT AGREEMENT¹

AGREEMENT, dated 27 May 1975, between REPUBLIC OF MALAWI (hereinafter called "the Government") and UNITED NATIONS CAPITAL DEVELOPMENT FUND (hereinafter called "the UNCDF").

WHEREAS the Government has requested the UNCDF and the International Development Association (hereinafter called "the Association") to assist it in carrying out its long-term programme for the development of infrastructure and the improvement of smallholder agricultural production and social services in its Lilongwe District (hereinafter called "the programme");

WHEREAS the Association, by a Development Credit Agreement of even date herewith (hereinafter called "the Association Agreement"), has agreed to assist in the financing of that part of the programme described in Schedule 2 to the Association Agreement (hereinafter called "the Association Project") by providing an amount equivalent to eight million five hundred thousand United States dollars (US\$8,500,000);

WHEREAS the UNCDF is willing to assist the Government in carrying out that part of the programme described in Schedule 2 to this Agreement (hereinafter called "the Project") by providing a grant (hereinafter called "the Grant") to the Government;

NOW THEREFORE the Parties hereto have entered into this Agreement in a spirit of friendly cooperation.

Article I. THE GRANT

Section 1.01. The UNCDF agrees to make the Grant available to the Government, upon the terms and conditions set forth or referred to in this Agreement, in an amount of one million six hundred thousand United States dollars (US\$1,600,000).

Section 1.02. (a) The UNCDF shall open a grant account (hereinafter called "the Grant Account") on its books in the name of the Government and shall credit thereto the amount of the Grant.

(b) The amount of the Grant may be withdrawn by the Government from the Grant Account in accordance with the provisions of Schedule 1 to this Agreement, as such Schedule may be amended from time to time, for expenditures made (or, if the UNCDF shall so agree, to be made) in respect of goods and services, the cost of which is determined by the UNCDF to be reasonable, required for the Project and which are to be financed out of the proceeds of the Grant.

Section 1.03. The UNCDF may by notice to the Government terminate the right of the Government to withdraw from the Grant Account any amount not withdrawn by June 30, 1979, or by such other date as shall be agreed between the Government and the UNCDF.

Article II. PROCUREMENT

Section 2.01. Except as the UNCDF shall otherwise agree, the goods, works and services (other than consultants' services) for the Project which are to be fi-

¹ Came into force on 27 May 1975 by signature, in accordance with section 8.01.

nanced out of the proceeds of the Grant shall be procured in accordance with the provisions of this Article.

Section 2.02. The Government shall construct the civil works and procure the fertilizers, equipment, vehicles, materials, drugs and related supplies included in the Project either:

- (i) under contracts awarded on the basis of competitive bidding advertised locally and in accordance with the Government's usual procurement procedures, to the extent that they are not inconsistent with those of the UNCDF, or
- (ii) by direct use of the Government's plant, equipment, labour or other similar resources.

Section 2.03. With respect to each contract awarded under the provisions set forth or referred to in Section 2.02 (i) of this Article and which are to be financed out of the proceeds of the Grant, the Government shall furnish to the UNCDF, promptly after its execution and prior to the submission to the UNCDF of the first application for withdrawal of funds from the Grant Account in respect of such contract, two conformed copies of such contract, together with the analysis of bids, recommendations for award and such other information as the UNCDF shall reasonably request. The UNCDF shall, if it determines that the award of the contract was not consistent with the provisions of this Article, promptly inform the Government and state the reasons for such determination.

Article III. EXECUTION OF THE PROJECT

Section 3.01. The Government shall carry out the Project with due diligence and efficiency and in conformity with appropriate administrative, engineering and public health practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required therefor.

Section 3.02. The Government shall ensure that each of the health centers, health sub-centers and health posts included in the Project are staffed by an appropriate number of qualified and experienced persons.

Section 3.03. (a) The Government shall: (i) maintain separate records adequate to record the progress of the Project (including the cost thereof) and to identify the goods and services financed out of the proceeds of the Grant, and to disclose the use thereof in the Project; (ii) without limitation upon the provisions of paragraph (b) of this Section, enable the UNCDF's representatives to visit the facilities and construction sites included in the Project, and to examine the goods financed out of such proceeds and any relevant records and documents; and (iii) furnish to the UNCDF all such information as the UNCDF shall reasonably request concerning the Project, the expenditure of the proceeds of the Grant and the goods and services financed out of such proceeds.

(b) The Government shall permit the UNCDF's representatives to examine all installations, sites, works, buildings, property and equipment relating to the Project and any relevant records and documents.

(c) The Government shall furnish to the UNCDF, promptly upon their preparation, the plans, specifications, contract documents and construction and procurement schedules for the Project, and any material modifications thereof or additions thereto, in such detail as the UNCDF shall reasonably request.

Section 3.04. (a) The Government undertakes to insure, or make adequate provision for the insurance of, the imported goods to be financed out of the proceeds of the Grant against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation, and for such insurance any indemnity shall

be payable in a currency freely usable by the Government to replace or repair such goods.

(b) Except as the UNCDF shall otherwise agree, the Government shall cause all goods and services financed out of the proceeds of the Grant to be used exclusively for the Project.

Article IV. OTHER PROVISIONS

Section 4.01. The Government shall ensure that the health facilities constructed under the Project are adequately maintained in accordance with appropriate engineering and public health practices.

Section 4.02. The UNCDF may by notice to the Government designate a person or persons as representative of the UNCDF for the purpose of receiving any documentation which is to be furnished to the UNCDF or of performing any act required or permitted to be performed by the UNCDF in accordance with the terms of this Agreement.

Article V. SUSPENSION OR TERMINATION OF ASSISTANCE

Section 5.01. The UNCDF may by written notice to the Government suspend its assistance under this Agreement if in the judgment of the UNCDF any circumstance arises which interferes with or threatens to interfere with the successful completion of the Project or the accomplishment of its purposes. The UNCDF may, in the same or in a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance under this Agreement. Any such suspension shall continue until such conditions are accepted by the Government and the UNCDF shall have given written notice to the Government that it is prepared to resume its assistance under this Agreement.

Section 5.02. If any situation referred to in Section 5.01 shall occur and continue for a period of fourteen days after notice thereof shall have been given by the UNCDF to the Government, then at any time thereafter during the continuance thereof, the UNCDF may by written notice to the Government terminate its assistance under this Agreement.

Section 5.03. The provisions of this Article shall be without prejudice to any other rights or remedies that UNCDF may have in the circumstances, whether under general principles of law, the laws in effect in the Republic of Malawi or otherwise.

Article VI. SETTLEMENT OF DISPUTES

Section 6.01. Any dispute between the UNCDF and the Government arising out of or relating to this Agreement which is not 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 a third arbitrator, who shall be the chairman of the arbitration tribunal. 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 the two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint such as yet unappointed 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 as binding by the Parties to the dispute.

Article VII. REPRESENTATIVE OF THE GOVERNMENT; ADDRESSES

Section 7.01. The Minister of the Government at the time responsible for finance is designated as representative of the Government for the purpose of taking any action required or permitted to be taken under this Agreement on behalf of the Government.

Section 7.02. The following addresses are specified for the purpose of transmitting any notice or request required or permitted to be given or made under this Agreement.

For the Government

The Secretary to the Treasury
Ministry of Finance
P. O. Box 30049
Capital City
Lilongwe 3
Republic of Malawi
Cable address:
Finance
Lilongwe

For the UNCDF:

United Nations Capital Development Fund c/o Resident Representative
of the United Nations Development Programme
P. O. Box 30135
Capital City
Lilongwe 3
Republic of Malawi
Cable address:
Undevpro
Lilongwe

Article VIII. GENERAL PROVISIONS

Section 8.01. This Agreement shall enter into force on the date of signature by the Parties hereto.

Section 8.02. Any relevant matter for which no provisions is made in this Agreement shall be settled by the Parties in accordance with the spirit of this Agreement, each Party giving full and sympathetic consideration to any proposal advanced by the other Party under this Section.

Section 8.03. The obligations of the Government under the provisions of Section 4.01 of this Agreement shall cease on the date on which the Association Agreement terminates or on a date twenty-five years from the date of this Agreement, whichever shall be the earlier.

IN WITNESS WHEREOF, the undersigned, duly appointed representatives of the Government and the UNCDF, respectively, have on behalf of the Parties signed this Agreement in the English language in two copies at Lilongwe, Republic of Malawi, as of the day and year first above written.

Republic of Malawi:

[Signed — Signé]¹

By

Authorized Representative

United Nations Capital Development Fund:

[Signed]

By

WALTER HOLZHAUSEN

Authorized Representative

Resident Representative

of the United Nations Development Programme
in Malawi

SCHEDULE 1

WITHDRAWAL OF THE PROCEEDS OF THE GRANT

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Grant, the allocation of the amounts of the Grant to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in the United States Dollar Equivalent)	% of Expenditures to be Financed
(1) Civil works	420,000	100% of total expenditures
(2) Equipment, vehicles and materials (including insurance)	70,000	100% of total expenditures
(3) Drugs and supplies	90,000	100% of total expenditures
(4) LLDP Credit Fund (other than for costs of administration or operation)	600,000	100% of total expenditures
(5) Unallocated	420,000	
TOTAL	<u>1,600,000</u>	

2. For the purposes of this Schedule, the term "total expenditures" means the aggregate of expenditures in the currency of the Republic of Malawi, or for goods or services supplied from, the territory of the Republic of Malawi and of expenditures for goods produced in, or services supplied from, the territories, and in the currency of any country other than the Republic of Malawi.

3. The disbursement percentages have been calculated in compliance with the policy of the UNCDF that no proceeds of the Grant shall be disbursed on account of payments for taxes

¹ Signed by D. Matenje — Signé par D. Matenje.

levied by, or in the territory of, the Government on goods or services, or on the importation, manufacture, procurement or supply thereof; to that end, if any event occurs which shall affect the amount of any such taxes included in the cost of any item to be financed out of the proceeds of the Grant, the UNCDF may, by notice to the Government, correspondingly adjust the disbursement percentage then applicable to such item.

4. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of expenditures prior to the date of this Agreement.

5. Notwithstanding the allocation of an amount of the Grant or the disbursement percentages set forth in the table in paragraph 1 above, if the UNCDF has reasonably estimated that the amount of the Grant then allocated to any Category will be insufficient to finance the agreed percentage of all expenditures in that Category, the UNCDF may, by notice to the Government: (i) reallocate to such Category to the extent required to meet the estimated shortfall proceeds of the Grant which are then allocated to another Category and which in the opinion of the UNCDF are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the disbursement percentage then applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made.

6. If the UNCDF shall have reasonably determined that the procurement of any item in any Category is inconsistent with the procedures set forth or referred to in this Agreement, no expenditures for such item shall be financed out of the proceeds of the Grant and the UNCDF may, without in any way restricting or limiting any other right, power or remedy of the UNCDF under this Agreement, by notice to the Government, cancel such amount of the Grant as in the UNCDF's reasonable opinion, represents the amount of such expenditures which would otherwise have been eligible for financing out of the proceeds of the Grant.

SCHEDULE 2

DESCRIPTION OF THE PROJECT

The Project is an integral part of the Association Project, which is intended to support the three-year final phase of the Government's Lilongwe Land Development Programme, a long-term programme for the development of infrastructure and the improvement of smallholder agricultural production in the Program Area. It consists of the following Parts:

Part A. *Health Facilities*

- (1) The construction and equipping of about five health sub-centers and about 20 health posts.
- (2) The improvement of about two primary health centers, one health sub-center and about five health posts.
- (3) The provision of about seven vehicles, including insurance, for the duration of the Project implementation period.
- (4) The provision of drugs and other supplies.

Part B. *LLDP Credit Fund*

- (1) The provision of vehicles and office equipment, including insurance, for the duration of the Project implementation period.
- (2) The provision of additional funds for seasonal, short-term and medium-term credit to farmers in the Program Area.