

No. 20724

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

Basic Agreement concerning assistance from the United Nations Capital Development Fund to the Government of Malawi. Signed at Lilongwe on 2 February 1982

Authentic text: English.

Registered ex officio on 2 February 1982.

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

Accord de base relatif à une assistance du Fonds d'équipement des Nations Unies au Gouvernement malawien. Signé à Lilongwe le 2 février 1982

Texte authentique : anglais.

Enregistré d'office le 2 février 1982.

BASIC AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALAWI AND THE UNITED NATIONS CAPITAL DEVELOPMENT FUND

Date: 2 February 1982

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WHEREAS the United Nations Capital Development Fund (hereinafter referred to as the “UNCDF”) was established by the General Assembly of the United Nations to provide assistance to developing countries in the development of their economies by supplementing existing sources of capital assistance by means of grants and loans directed towards the achievement of the accelerated and self-sustained growth of the economies of those countries and oriented towards the diversification of their economies, with due regard to the need for industrial development as a basis for economic and social progress (hereinafter referred to as the UNCDF “Assistance”);

WHEREAS the Government of the Republic of Malawi (hereinafter referred to as the “Government”) may decide to request such Assistance from the UNCDF;

WHEREAS the UNCDF and the Government consider it useful at this time to record the general terms and conditions under which such Assistance could be provided by the UNCDF to the Government;

NOW THEREFORE the Government and the UNCDF (hereinafter referred to as the “Parties”) have entered into this Basic Agreement in a spirit of friendly co-operation.

Article I. SCOPE OF THIS BASIC AGREEMENT

1. This Basic Agreement embodies the general terms and conditions under which the UNCDF could provide Assistance to the Government for its development activities, and shall apply to each project (hereinafter referred to as the “Project”) for which the Assistance is provided.

¹ Came into force on 2 February 1982 by signature, in accordance with article VIII (1).

2. The description of the Project and the specific terms and conditions for financing the Project, including the undertakings and responsibilities (with respect to carrying out the Project, furnishing of funds, supplies, equipment, services or other assistance) of the Government, the UNCDF, and such entity or entities which may be designated, shall be set forth in a project agreement or other instrument (hereinafter referred to as the "Project Agreement") to be signed by the Parties and, as may be appropriate, by an entity or entities designated in the Project Agreement.

Article II. PROVISION OF ASSISTANCE

1. Assistance shall be provided by the UNCDF only in response to a request submitted by the Government and approved by the UNCDF. The Assistance shall be made available to the Government in accordance with the applicable resolutions and decisions of the competent United Nations organs and UNCDF executive authorities, subject to the availability of the necessary funds to the UNCDF.

2. Requests for Assistance shall be presented by the Government to the UNCDF through the Resident Co-ordinator of the United Nations system for The Republic of Malawi, or the Resident Representative of the United Nations Development Programme (hereinafter referred to as the "UNDP") for the Republic of Malawi, or such other authority as may be designated by the UNCDF. Such requests shall be in the form and in accordance with procedures established by the UNCDF. The UNCDF and the appropriate authorities of the Government shall, however, normally communicate through the Resident Co-ordinator or Resident Representative in connexion with the provision of the Assistance. The Government shall provide the UNCDF with all appropriate facilities and relevant information to appraise the request, including an expression of its intent as regards budgetary, personnel or other support to the Project from its own resources.

3. On the UNCDF's approval of a request for Assistance and after a Project Agreement has been entered into, the UNCDF shall open on its books a separate project account (hereinafter referred to as the "Account") for the provision of such Assistance. Disbursement shall be made from the Account by the authorized person or entity specified in the Project Agreement and shall be administered in accordance with this Basic Agreement and the Project Agreement.

4. Disbursement from the Account shall be made in such currencies as the UNCDF may from time to time select and shall be in accordance with the schedule of disbursements set out in the Project Agreement. Whenever it is necessary to determine the value of one currency in terms of another, such value shall be determined at the United Nations operational rate of exchange in effect on the date such determination is made.

5. The conditions precedent to disbursement from the Account and the date by which such conditions are to be satisfied shall be set forth in the Project Agreement. The UNCDF may, upon notification to the Government, declare the Assistance to be null and void if such conditions are not satisfied on or before the date set forth in the Project Agreement.

6. Notwithstanding any other provision of this Basic Agreement, no disbursement shall be made from the Account in respect of:

- (i) Any commitment or expenditure made by or on behalf of the Government prior to the date of signature of the Project Agreement, unless otherwise provided in the Project Agreement;
- (ii) Payments for taxes, fees, duties or levies, or other charges imposed under the laws of the Republic of Malawi on the purchase, sale or transfer of goods or services, or on the importation, manufacture, procurement, supply or ownership thereof.

7. Upon completion of the Project or in case of its termination under article VI of this Basic Agreement, any unutilized portion of the Assistance shall revert to the general resources of the UNCDF.

Article III. UTILIZATION OF ASSISTANCE

1. The Government shall be responsible for the Project and the realization of the objectives of the Project, as described in the relevant Project Agreement, including the prompt provision of such funds, facilities, services and other resources as may be required for the Project.

2. The Government shall carry out the Project or shall ensure that the Project will be carried out through the entity or entities mutually agreed upon by the Parties and designated for that purpose in the Project Agreement. The Government shall ensure that the Project will be carried out with due diligence and efficiency and in conformity with appropriate administrative, technical and financial practices. The Government shall exert its best efforts to make the most effective use of the Assistance and shall ensure that the Assistance, including all goods and services financed out of its proceeds, is utilized exclusively for the purpose for which it was intended.

3. Any changes to be made with regard to the utilization of the Assistance or to the scope of the Project shall be mutually agreed upon by the Parties. The Parties shall also make every effort to co-ordinate the Assistance with assistance, if any, from other sources.

4. Procurement of goods and services, financed out of the proceeds of the Assistance shall be carried out through the entity or entities designated for that purpose in the Project Agreement, in accordance with the UNCDF guidelines. All such procurement shall also be subject to procedures acceptable to the UNCDF as may be set forth in the Project Agreement and shall be on the basis of competitive bidding unless otherwise exceptionally agreed by the UNCDF. Any service charge relating to such procurement by the entity or entities designated in the Project Agreement shall be met from the proceeds of the Assistance.

5. All goods, including vehicles and equipment, financed out of proceeds of the Assistance shall belong to the UNCDF unless and until such time as ownership thereof is transferred, on terms and conditions mutually agreed upon between the Parties, to the Government or to an entity nominated by it.

6. The Government shall cause all goods, including vehicles and equipment, financed out of the proceeds of the Assistance, to be insured against all risks including but not limited to fire, theft, damage by improper handling, weather,

and other causes, during the transit, delivery to the site, installation and use of such goods and equipment. Vehicles and other movable equipment shall additionally be insured against collision damage and third party liability. The terms and conditions of such insurance shall be consistent with sound commercial practices and shall cover the full delivery value of the goods and equipment. Such terms and conditions shall provide for the proceeds of the insurance of imported goods to be payable in a fully convertible currency. Any insurance proceeds shall be credited to the Account and shall in all respects become subject to and part of the funds governed by the Project Agreement.

7. Except as otherwise agreed by the UNCDF, the Government shall not create or permit to be created any encumbrance, mortgage, pledge, charge or lien of any kind on the goods, including vehicles and equipment, financed out of the proceeds of the Assistance provided, however, that this paragraph shall not apply to any lien created at the time of purchase solely as security for the payment of the purchase price of such goods.

Article IV. CO-OPERATION AND INFORMATION

1. The Parties shall co-operate fully to ensure that the purpose of the Assistance shall be accomplished. To this end they shall exchange views and information with regard to the progress of the Project, the expenditure of the proceeds of the Assistance, the benefits derived therefrom, the implementation of respective obligations, and other matters relating to the Assistance.

2. The Government shall furnish the UNCDF such relevant reports, maps, records, statements, documents and other information as the UNCDF may request concerning the Project and any programme or activity to which the Project is related. The Government shall enable the UNCDF representatives to have ready access to Project sites, to the goods and services financed out of the proceeds of the Assistance and to all documents and records pertaining thereto.

3. The UNCDF shall keep the Government informed of the performance of the UNCDF responsibilities under this Basic Agreement or the Project Agreement.

4. The Government shall maintain separate records adequate to show the status of the Assistance received from the UNCDF and the progress of the Project (including the cost thereof), and to identify the goods and services financed out of the proceeds of such Assistance, and shall have such records audited annually, in accordance with sound and consistently applied auditing principles, by auditors acceptable to UNCDF such as the Government's "Auditor General". (If necessary, independent private auditors acceptable to UNCDF may be retained for a Project and may, upon agreement of UNCDF, be paid out of the proceeds of the Assistance.) The Government shall furnish to the UNCDF such records and the report of the audit thereof not later than six months after the close of the financial year to which the audit relates.

5. The Government shall, upon completion or termination of the Project and in consultation with the entity or entities designated in the Project Agreement, prepare a final statement covering the total allocation of the Assistance to the Project and expenditures from the Account. The final statement shall be audited in accordance with the provisions of paragraph 4 of this article and transmitted to the UNCDF with the auditor's certificate, within six months after the date of completion or termination of the Project.

6. The Government shall, subsequent to the completion of the Project, make available to the UNCDF, at its request, information as to benefits derived from the activities undertaken under the Project including information necessary for evaluation of the Project or for evaluation of the Assistance, and shall consult with and permit inspection of the Project by the UNCDF for this purpose.

7. The Government and the UNCDF shall promptly inform each other of any condition which interferes with, or threatens to interfere with, the progress of any Project or any programme or activity to which the Project is related; the accomplishment of the purpose of Assistance or the performance by the Parties of their obligations under this Basic Agreement or the Project Agreement.

Article V. PRIVILEGES, IMMUNITIES AND FACILITIES

The provisions of articles IX (Privileges and Immunities) and X (Facilities for execution of assistance) of the Basic Assistance Agreement of 15 July 1977¹ between the UNDP and the Government shall apply *mutatis mutandis* to matters covered by this Basic Agreement, including matters covered by a Project Agreement.

Article VI. SUSPENSION OR TERMINATION OF ASSISTANCE

1. The UNCDF may, by written notice and after consultation with the Government, suspend the Assistance to a Project if, in its judgment: (a) any circumstance arises which interferes with or threatens to interfere with the effective utilization of the Assistance or the accomplishment of the purpose of the Project; or (b) continuation of the Assistance would not serve the purpose for which it was intended. The UNCDF may, in such written notice, indicate the conditions under which it is prepared to resume its Assistance to the Project. If any situation referred to in (a) or (b) above continues for a period specified in such notice, or in any subsequent notice, then at any time after the expiration of such period and if such situation should continue, the UNCDF may by written notice to the Government terminate the Assistance to the Project.

2. The provisions of this article shall be without prejudice to any other rights or remedies the UNCDF may have in the circumstances whether under general principles of law or otherwise. No delay in exercising or omitting to exercise any right or remedy available to the UNCDF, under this Basic Agreement or otherwise, shall be construed as a waiver thereof.

3. The Parties may by mutual agreement suspend or terminate, in whole or in part, the Assistance to a Project.

Article VII. SETTLEMENT OF DISPUTES

1. Any dispute between the UNCDF and the Government arising out of or relating to this Basic Agreement or a Project Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party.

2. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a 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

¹ United Nations, *Treaty Series*, vol. 1049, p. 3.

not been appointed, either Party may request the President of the International Court of Justice to appoint the arbitrator or the Chairman as the case may be.

3. 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 VIII. FINAL CLAUSES

1. This Basic Agreement shall enter into force upon signature and shall continue in force until terminated under paragraph 3 below.

2. This Basic Agreement may be modified by written agreement between the Parties. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Basic 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 this Basic Agreement shall survive the termination of this Basic Agreement to the extent necessary to ensure that work already undertaken and commitments entered into pursuant to this Basic Agreement and the related Project Agreements are brought to a satisfactory conclusion, and to ensure orderly withdrawal of the personnel, funds and property of the United Nations (including the UNCDF), the Specialized Agencies or the IAEA, or persons performing services on their behalf under this Basic Agreement.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Government and the United Nations Capital Development Fund respectively, have on behalf of the Parties signed the present Basic Agreement.

DONE in two copies in English at Lilongwe this second day of February 1982.

For the Government
of the Republic of Malawi:

[Signed]

Mr. CHAKAKALA CHAZIYA
Minister of Finance

For the United Nations
Capital Development Fund:

[Signed]

Mr. GALAL MAGDI
Executive Secretary