

No. 25285

**UNITED NATIONS
(UNITED NATIONS DEVELOPMENT PROGRAMME)
and
BURMA**

**Standard Basic Assistance Agreement. Signed at Rangoon
on 17 September 1987**

Authentic text: English.

Registered ex officio on 17 September 1987.

**ORGANISATION DES NATIONS UNIES
(PROGRAMME DES NATIONS UNIES POUR LE
DÉVELOPPEMENT)
et
BIRMANIE**

**Accord type d'assistance de base. Signé à Rangoon le
17 septembre 1987**

Texte authentique : anglais.

Enregistré d'office le 17 septembre 1987.

AGREEMENT¹ BETWEEN THE SOCIALIST REPUBLIC OF THE UNION OF BURMA AND THE UNITED NATIONS (THE UNITED NATIONS DEVELOPMENT PROGRAMME)

Whereas the General Assembly of the United Nations has established the United Nations Development Programme (hereinafter called 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 Socialist Republic of the Union of Burma (hereinafter called the Government) wishes to receive assistance from the UNDP for the benefit of its people;

Now therefore the undersigned Parties have entered into this Agreement in a spirit of friendly cooperation.

Article I. SCOPE OF THIS AGREEMENT

1. This Agreement embodies the basic conditions under which the UNDP and its Executing Agencies shall assist the Government in carrying out its development projects, and under which such UNDP-assisted projects shall be executed. It shall apply to all such UNDP assistance and to such Project Documents or other instruments (hereinafter called Project Documents) as the Parties may conclude to define the particulars of such assistance and the respective responsibilities of the Parties and the Executing Agency hereunder in more detail in regard to such projects.

2. Assistance shall be provided by the UNDP under this Agreement only in response to requests made by the Government and approved by the UNDP. Such assistance shall be made available to the Government, or to such entity as the Government may designate, and shall be furnished and received in accordance with the relevant and applicable resolutions and decisions of the competent UNDP organs, and 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 under this Agreement may consist of:

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

(b) Subject to the prior written agreement of the Parties hereto, the services of operational experts selected by the Executing Agency, to perform functions of an operational, executive or administrative character as civil servants of the Government or as employees of such entities as the Government may designate under Article I, paragraph 2, hereof;

(c) Subject to the prior written agreement of the Parties hereto, the services of members of the United Nations Volunteers (hereinafter called volunteers);

¹ Came into force on 17 September 1987 by signature, in accordance with article XIII (1).

(d) Equipment and supplies not readily available in the Socialist Republic of the Union of Burma (hereinafter called the country);

(e) Seminars, training programmes, demonstration projects, expert working groups and related activities;

(f) Scholarships 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 Government and the UNDP.

2. Requests for assistance shall be presented by the Government to the UNDP through the UNDP resident representative in the country (referred to in paragraph 4(a) of this Article), and in the form and in accordance with procedures established by the UNDP for such requests. 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 it may deem appropriate, or through an Executing Agency, which shall have primary responsibility for carrying out 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 construed to refer to the UNDP, unless clearly inappropriate from the context.

4. (a) The UNDP may maintain a permanent mission, headed by a resident representative, in the country to represent the UNDP therein and be the principal channel of communication with the Government on all Programme matters. The resident representative's appointment by the Administrator of UNDP will be subject to the prior approval of the Government. He shall have full responsibility and ultimate authority on behalf of the UNDP Administrator, for the UNDP programme in all its aspects in the country, and shall be team leader in regard to such representatives of other United Nations organisations as may be posted in the country, taking into account their professional competence and their relations with appropriate organs of the Government. He shall maintain liaison on behalf of the Programme with the Government's co-ordinating agency for external assistance and contact the concerned ministries, departments and other organs of the Government as appropriate and shall inform the coordinating agency accordingly. He shall inform the Government of the policies, criteria and procedures of the UNDP and other relevant programmes of the United Nations. He shall assist the Government, as may be required, in the preparation of UNDP country programme and project requests, as well as proposals for country programme or project changes, assure proper coordination of all assistance rendered by the UNDP through various Executing Agencies or its own consultants, assist the Government, as may be required, in coordinating UNDP activities with national, bilateral and multilateral programmes within the country, and carry out such other functions as may be entrusted to him by the Administrator or by an Executing Agency.

(b) The UNDP mission in the country shall have such other staff as the UNDP may deem appropriate to its proper functioning. The UNDP shall notify

the Government from time to time of the names of the members, and of the families of the members, of the mission, and of 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 realisation of their objectives as described in the relevant Project Document, 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 such projects through assistance to the Government in pursuance of this Agreement and the Work Plans forming part of such Project Documents, and through assistance to the Government in fulfilling its intent with respect to investment follow-up. The Government shall inform UNDP of the Government Cooperating Agency directly responsible for the Government's participation in each UNDP-assisted project. Without prejudice to the Government's overall responsibility for its projects, the Parties may agree that an Executing Agency shall assume primary responsibility for execution of a project in consultation and agreement with the Cooperating Agency, and any arrangements to this effect shall be stipulated in the project Work Plan forming part of the Project Document together with arrangements, if any, for transfer of such 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 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 provision of such assistance be commenced before such prior obligations have been met, it may be suspended or terminated in accordance with Article XI below.

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 Cooperating Agency shall as appropriate and in consultation with the Executing Agency assign a full-time director for each project who shall perform such functions as are assigned to him by the 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. He shall supervise and coordinate activities of experts and other Executing Agency personnel and be responsible for the on-the-job training of national Government counterparts. He shall be responsible for the management and efficient utilisation of all UNDP-financed inputs, including equipment provided to the project.

5. In the performance of their duties, advisory experts, consultants and volunteers shall act in close consultation with the Government and with 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 UNDP and the Executing Agency concerned and the Government. 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 their international status or with the purposes of the UNDP or of the Executing Agency. The Government undertakes that the commencing date of each operational expert in its service shall coincide with the effective date of his contract with the Executing Agency concerned.

6. Nominations for fellowships will be made by the Government. Recipients of fellowships shall be selected by the Executing Agency. Such fellowships shall be administered in accordance with the fellowship policies and practices of the Executing Agency.

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

8. With reference to patent rights, copyright rights, and other similar rights relating to inventions and discoveries:

(a) The patent rights, copyright rights, and other similar rights to any discovery or work which results solely and specifically from UNDP assistance under this Agreement shall belong to the UNDP;

(b) The Government shall have the right of use and exploitation in the country free of royalty or any charge of similar nature, and to grant licences of use and exploitation on the terms and conditions it deems relevant, by simple notification of its desire to the UNDP;

(c) The UNDP shall have the right to grant licences of use and exploitation outside the country by simple notification of its desire to the Government and taking note of the points of view of the latter;

(d) The UNDP shall inform the Government of all patent rights, copyright rights and other similar rights relating to inventions and discoveries which are available to it under similar agreements with other countries; and

(e) The Government shall be entitled to benefits hereunder no less favourable than those to which any other country may be entitled under any similar agreements between UNDP and any such country.

Article IV. INFORMATION CONCERNING PROJECTS

1. The Government shall furnish the UNDP with such relevant reports, maps, accounts, records, statements, documents and other information as it may request concerning any UNDP-assisted project, its execution or its continued feasibility and soundness, or concerning the compliance by the Government with its responsibilities under this Agreement or Project Documents.

2. The UNDP undertakes that the Government shall be kept currently informed of the progress of its assistance activities under this Agreement. Either Party shall have the right, at any time, to observe the progress of operations on UNDP-assisted projects.

3. The Government shall, subsequent to the completion of a UNDP-assisted project, make available to the UNDP at its request information as to benefits derived from and activities undertaken to further the purposes of that project,

including information necessary or appropriate to its evaluation or to evaluation of UNDP assistance, and shall consult with and permit observation by the UNDP for this purpose.

4. Any information or material which the Government is required to provide to the UNDP under this Article shall be made available by the Government to the Executing Agency at its request made through the resident representative.

5. The Parties shall consult each other regarding the publication, as appropriate, of any information relating to any UNDP-assisted project or to benefits derived therefrom. Information relating to an investment-oriented project may be released by the UNDP to potential investors with the prior approval of the Government.

Article V. PARTICIPATION AND CONTRIBUTION OF GOVERNMENT IN EXECUTION OF PROJECT

1. In fulfilment of the Government's responsibility to participate and cooperate in the execution of the projects assisted by the UNDP under this Agreement, it shall contribute the following in kind to the extent detailed in relevant Project Documents:

- (a) Local counterpart professional and other services, including national counterparts to operational experts;
- (b) Land, buildings, and training and other facilities available or produced within the country; and
- (c) Equipment, materials and supplies available or produced within the country.

2. Whenever the provision of equipment forms part of UNDP assistance to the Government, the latter shall meet charges, if any, relating to customs clearance of such equipment, its transportation from the port of entry to the project site together with any incidental handling or storage and related expenses, its insurance after delivery to the project site, and its installation and maintenance.

3. The Government shall also meet the salaries of trainees and recipients of fellowships during the period of their fellowships.

4. The cost of items constituting the Government's contribution to the project in pursuance of this Article, as detailed in Project Budgets, shall be considered as estimates based on the best information available at the time of preparation of such Project Budgets. Such estimates shall be subject to adjustment whenever necessary to reflect the actual cost of any such items purchased thereafter.

5. The Government shall as appropriate display suitable signs at each project identifying it as one assisted by the UNDP and the Executing Agency.

Article VI. PAYMENTS IN LOCAL CURRENCY

1. In addition to the contribution referred to in Article V above, the Government shall assist the UNDP in providing it with assistance by paying or arranging to pay for the following local costs or facilities as agreed between the Parties in the Project Document:

- (a) Local administrative and clerical services, including necessary local secretarial help, interpreter-translators, and related assistance;

- (b) Transportation of personnel within the country; and
- (c) Postage and telecommunications for official purposes.

2. The Government shall also pay each operational expert directly the salary, allowances and other related emoluments which would be payable to one of its nationals if appointed to the post involved. It shall grant an operational expert the same annual and sick leave as the Executing Agency concerned grants its own officials, and shall make any arrangement necessary to permit him to take home leave to which he is entitled under the terms of his service with the Executing Agency concerned. Should his service with the Government be terminated by it under circumstances which give rise to an obligation on the part of an Executing Agency to pay him an indemnity under its contract with him, the Government shall contribute to the cost thereof the amount of separation indemnity which would be payable to a national civil servant or comparable employee of like rank whose service is terminated in the same circumstances.

3. The Government undertakes to furnish in kind the following local services and facilities:

- (a) The necessary office space and other premises;
- (b) Such medical facilities and services for international personnel as may be available to national civil servants;
- (c) Simple but adequately furnished accommodation to volunteers; and
- (d) Assistance in finding suitable housing accommodation for international personnel, and the provision of such housing to operational experts under the same conditions as to national civil servants of comparable rank.

4. The Government shall also contribute towards the expenses of maintaining the UNDP mission in the country by paying annually to the UNDP a lump sum mutually agreed between the Parties to cover the following expenditures:

- (a) An appropriate office with equipment and supplies, adequate to serve as local headquarters for the UNDP in the country;
- (b) Appropriate local secretarial and clerical help, interpreters, translators and related assistance;
- (c) Transportation of the resident representative and his staff for official purposes within the country;
- (d) Postage and telecommunications for official purposes; and
- (e) Subsistence for the resident representative and his staff while in official travel status within the country;

5. The Government shall have the option of providing in kind the facilities referred to in paragraph 4 above, with the exception of items (b) and (e).

6. All contributions made by the Government to UNDP shall be in accordance with the relevant decisions of the governing bodies of UNDP.

Article VII. 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 utilisation of assistance received by the Government from all sources. The obligations of the Govern-

ment hereunder shall not be modified by any arrangements it may enter into with other entities co-operating with it in the execution of a project.

Article VIII. USE OF ASSISTANCE

The Government shall exert its best efforts to make the most effective use of the assistance provided by the UNDP and shall use such assistance for the purpose for which it is intended. Without restricting the generality of the foregoing, the Government shall take such steps to this end as are specified in the Project Document.

Article IX. PRIVILEGES AND IMMUNITIES

1. The Government shall apply to the United Nations and its organs, including the UNDP and U.N. subsidiary organs acting as UNDP Executing Agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations.¹

2. The Government shall apply to each Specialised 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 Specialised Agencies,² including any Annex to the Convention applicable to such Specialised Agency. In case the International Atomic Energy Agency (the IAEA) 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 IAEA.³

3. Members of the UNDP mission in the country may be granted such additional privileges and immunities as may be necessary for the effective exercise by the mission of its functions and as may be agreed upon by the Parties.

4. (a) Except as the Parties may otherwise agree in Project Documents relating to specific projects, the Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of the UNDP, a Specialised Agency or the IAEA who are not covered by paragraphs 1 and 2 above the same privileges and immunities as officials of the United Nations, the Specialised Agency concerned or the IAEA under Sections 18, 19 or 18 respectively of the Conventions on the Privileges and Immunities of the United Nations or of the Specialised Agencies, or of the Agreement on the Privileges and Immunities of the IAEA.

(b) For purposes of the instruments on privileges and immunities referred to in the preceding parts of this Article:

(1) All papers and documents relating to a project in the possession or under the control of the persons referred to in sub-paragraphs 4(a) above shall be deemed to be documents belonging to the United Nations, the Specialised Agency concerned, or the IAEA, as the case may be; and

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; vol. 645, p. 340; vol. 1057, p. 320, and vol. 1060, p. 337.

³ *Ibid.*, vol. 374, p. 147.

(2) Equipment, materials and supplies brought into or purchased or leased by those persons within the country for purposes of a project shall be deemed to be property of the United Nations, the Specialised Agency concerned, or the IAEA, as the case may be.

5. The expression "persons performing services" as used in Articles IX, X and XIII of this Agreement includes operational experts, volunteers, consultants, and juridical as well as natural persons and their personnel. It includes governmental or non-governmental organisations or firms which UNDP may retain, whether as an Executing Agency or otherwise, to execute or to assist in the execution of UNDP assistance to a project, and their personnel. Nothing in this Agreement shall be construed to limit the privileges, immunities or facilities conferred upon such organisations or firms or their personnel in any other instrument.

Article X. FACILITIES FOR EXECUTION OF UNDP ASSISTANCE

1. The Government shall take any measures which may be necessary to exempt the UNDP, its Executing Agencies, their experts and other persons performing services on their behalf, other than Government nationals employed locally, from regulations or other 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 UNDP assistance. It shall, in particular, grant them the following rights and facilities:

- (a) Prompt clearance of experts and other persons performing services on behalf of the UNDP or an Executing Agency;
- (b) Prompt issuance without cost of necessary visas, licenses or permits;
- (c) Access to the site of work and all necessary rights of way;
- (d) Free movement within or to or from the country, to the extent necessary for proper execution of UNDP assistance as far as security conditions reasonably permit;
- (e) The most favourable legal rate of exchange;
- (f) Any permits necessary for the importation of equipment, materials and supplies, and for their subsequent exportation;
- (g) Any permits necessary for reasonable importation of property belonging to and intended for the personal use or consumption of officials of the UNDP, its Executing Agencies, or other persons performing services on their behalf, and for the subsequent exportation of such property; and
- (h) Prompt release from customs of the items mentioned in sub-paragraphs (f) and (g) above.

2. The Government shall bear all risks of operations arising under this Agreement. It shall be responsible for dealing with claims which may be brought by third parties against the UNDP or an Executing Agency, their officials or other persons performing services on their behalf, and shall hold them harmless in respect of claims or liabilities arising from operations under this Agreement. The foregoing provision shall not apply where the Parties and the Executing Agency are agreed that a claim or liability arises from the gross negligence or wilful misconduct of the above-mentioned individuals.

Article XI. SUSPENSION OR TERMINATION OF ASSISTANCE

1. The UNDP may, after due consideration of the views of the Government and the Executing Agency concerned, suspend its assistance to any project by written notice to the Government and the Executing Agency, if any circumstance arises which interferes with or threatens to interfere with the successful completion of the project or the accomplishment of its purposes. The UNDP may, in the same or a subsequent written notice, indicate the conditions under which it is prepared to resume its assistance to the project. Any such suspension shall continue until such time as such conditions are accepted by the Government and as the UNDP shall give written notice to the Government and the Executing Agency that it is prepared to resume its assistance.

2. If any situation referred to in paragraph 1 of this Article shall continue for a period of fourteen days after notice thereof and of suspension shall have been given by the UNDP to the Government and the Executing Agency, then at any time thereafter during the continuance thereof, the UNDP may by written notice to the Government and the Executing Agency terminate its assistance to the project.

3. The provisions of this Article shall be without prejudice to any other rights or remedies the UNDP may have in the circumstances, whether under general principles of law or otherwise.

Article XII. SETTLEMENT OF DISPUTES

1. Any dispute between the UNDP 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, 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 Secretary General of the United Nations 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.

2. Any dispute between the Government and an operational expert arising out of or relating to the conditions of his service with the Government may be referred to the Executing Agency providing the operational expert by either the Government or the operational expert involved, and the Executing Agency concerned shall use its good offices to assist them in arriving at a settlement. If the dispute cannot be settled in accordance with the preceding sentence or by other agreed mode of settlement, the matter shall at the request of either Party be submitted to arbitration following the same provisions as are laid down in paragraph 1 of this Article, except that the arbitrator not appointed by either Party or by the arbitrators of the Parties shall be appointed by the Secretary-General of the Permanent Court of Arbitration.

Article XIII. GENERAL PROVISIONS

1. This Agreement shall enter into force upon signature, and shall continue in force until terminated under paragraph 3 below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNDP resources and concerning the UNDP office in the country, and it shall apply to all assistance provided to the Government and to the UNDP office established in the country under the provisions of the Agreements now superseded.

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 IV (concerning project information) and VIII (concerning the use of assistance) hereof shall survive the expiration or termination of this Agreement. The obligations assumed by the Government under Articles IX (concerning privileges and immunities), X (concerning facilities for project execution) and XII (concerning settlement of disputes) 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 UNDP and of any Executing Agency, or of any persons performing services on their behalf under this Agreement.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the United Nations (the United Nations Development Programme) and of the Government of the Socialist Republic of the Union of Burma, respectively, have on behalf of the Parties signed the present Agreement in the English language in two copies at Rangoon this 17th day of September 1987.

For the United Nations
(United Nations Development
Programme):

[Signed]

WILLIAM H. DRAPER III
Administrator

For the Government
of the Socialist Republic
of the Union of Burma:

[Signed]

U NYUNT MAUNG
Deputy Minister