

No. 31849

**UNITED NATIONS
(UNITED NATIONS CHILDREN'S FUND)
and
MADAGASCAR**

**Basic Cooperation Agreement. Signed at Antananarivo on
26 September 1994**

Authentic text: French.

Registered ex officio on 30 May 1995.

**ORGANISATION DES NATIONS UNIES
(FONDS DES NATIONS UNIES POUR L'ENFANCE)
et
MADAGASCAR**

**Accord de base régissant la coopération. Signé à Antana-
narivo le 26 septembre 1994**

Texte authentique : français.

Enregistré d'office le 30 mai 1995.

[TRANSLATION — TRADUCTION]

BASIC COOPERATION AGREEMENT¹ BETWEEN THE UNITED NATIONS CHILDREN'S FUND AND THE GOVERNMENT OF THE REPUBLIC OF MADAGASCAR

PREAMBLE

Whereas the United Nations Children's Fund (UNICEF) was established by the General Assembly of the United Nations by resolution 57 (I) of 11 December 1946² as an organ of the United Nations and, by this and subsequent resolutions, was charged with the responsibility of meeting, through the provision of financial support, supplies, training and advice, the emergency and long-range needs of children and their continuing needs and providing services in the fields of maternal and child health, nutrition, water supply, basic education and supporting services for women in developing countries, with a view to strengthening, where appropriate, activities and programmes of child survival, development and protection in countries with which UNICEF cooperates, and

Whereas UNICEF and the Government of the Republic of Madagascar wish to establish the terms and conditions under which UNICEF shall, in the context of United Nations operations and within its mandate, cooperate in programmes concerning women and children,

Now, therefore, UNICEF and the Government, in a spirit of friendly cooperation, have entered into the present Agreement.

Article I

DEFINITIONS

For the purpose of the present Agreement, the following definitions shall apply:

(a) "Appropriate authorities" means central, local and other competent authorities under the law of the country;

(b) "Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;³

(c) "Experts on mission" means experts coming within the scope of articles VI and VII of the Convention;

(d) "Government" means the Government of the Republic of Madagascar;

(e) "Greeting Card Operation" means the organizational entity established within UNICEF to generate public awareness, support and additional funding for UNICEF mainly through the production and marketing of greeting cards and other products;

¹ Came into force on 30 May 1995, the date after the exchange of an instrument of ratification by the Government of Madagascar and an act of formal confirmation by UNICEF, which took place on 29 May 1995, in accordance with article XXIII (1).

² United Nations, *Official Records of the General Assembly, First Session, Second Part (A/64/Add.1)*, p. 90.

³ *Ibid.*, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

- (f) “Head of the office” means the official in charge of the UNICEF office;
- (g) “Country” means the country where a UNICEF office is located or which receives programme support from a UNICEF office located elsewhere;
- (h) “Parties” means UNICEF and the Government;
- (i) “Persons performing services for UNICEF” means individual contractors, other than officials, engaged by UNICEF to perform services in the execution of programmes of cooperation;
- (j) “Programmes of cooperation” means the programmes of the country in which UNICEF cooperates, as provided in article III below;
- (k) “UNICEF” means the United Nations Children’s Fund;
- (l) “UNICEF office” means any organizational unit through which UNICEF cooperates in programmes; it may include the field offices established in the country;
- (m) “UNICEF officials” means all members of the staff of UNICEF employed under the Staff Regulations and Rules of the United Nations, with the exception of persons who are recruited locally and assigned to hourly rates, as provided in General Assembly resolution 76 (I) of 7 December 1946.¹

Article II

SCOPE OF THE AGREEMENT

1. The present Agreement embodies the general terms and conditions under which UNICEF shall cooperate in programmes in the country.
2. UNICEF cooperation in programmes in the country shall be provided consistent with the relevant resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including the Executive Board of UNICEF.

Article III

PROGRAMMES OF COOPERATION AND MASTER PLAN OF OPERATIONS

1. The programmes of cooperation agreed to between the Government and UNICEF shall be contained in a master plan of operations to be concluded between UNICEF, the Government and, as the case may be, other participating organizations.
2. The master plan of operations shall define the particulars of the programmes of cooperation, setting out the objectives of the activities to be carried out, the undertakings of UNICEF, the Government and the participating organizations and the estimated financial resources required to carry out the programmes of cooperation.
3. The Government shall permit UNICEF officials, experts on mission and persons performing services for UNICEF to observe and monitor all phases and aspects of the programmes of cooperation.

¹ United Nations, *Official Records of the General Assembly, First Session, Second part (A/64/Add.1)*, p. 139.

4. The Government shall keep such statistical records concerning the execution of the master plan of operations as the Parties may consider necessary and shall supply any of such records to UNICEF at its request.

5. The Government shall cooperate with UNICEF in providing the appropriate means necessary for adequately informing the public about the programmes of cooperation carried out under the present Agreement.

Article IV

UNICEF OFFICE

1. UNICEF may establish and maintain an office in the country as the Parties may consider necessary to facilitate the implementation of the programmes of cooperation.

2. UNICEF may, with the agreement of the Government, establish and maintain a regional/area office in the country to provide programme support to other countries in the region/area.

3. In the event that UNICEF does not maintain an office in the country, it may, with the agreement of the Government, provide support for programmes of cooperation agreed to between UNICEF and the Government under the present Agreement through a UNICEF regional/area office established in another country.

Article V

ASSIGNMENT TO UNICEF OFFICE

1. UNICEF may assign to its office in the country officials, experts on mission and persons performing services for UNICEF, as is deemed necessary by UNICEF, to provide support to the programmes of cooperation in connection with:

(a) The preparation, review, monitoring and evaluation of the programmes of cooperation;

(b) The shipment, receipt, distribution or use of the supplies, equipment and other materials provided by UNICEF;

(c) Advising the Government regarding the progress of the programmes of cooperation;

(d) Any other matters relating to the application of the present Agreement.

2. UNICEF shall, from time to time, notify the Government of the names of UNICEF officials, experts on mission and persons performing services for UNICEF; UNICEF shall also notify the Government of any changes in their status.

Article VI

GOVERNMENT CONTRIBUTION

1. The Government shall provide to UNICEF as mutually agreed upon and to the extent possible:

(a) Appropriate office premises for the UNICEF office, alone or in conjunction with the United Nations system organizations;

- (b) Costs of postage and telecommunications for official purposes;
- (c) Costs of local services such as equipment, fixtures and maintenance of office premises;
- (d) Transportation for UNICEF officials, experts on mission and persons performing services for UNICEF in the performance of their official functions in the country.

2. The Government shall also assist UNICEF:

(a) In the location and/or in the provision of suitable housing accommodation for internationally recruited UNICEF officials, experts on mission and persons performing services for UNICEF;

(b) In the installation and supply of utility services, such as water, electricity, sewerage, fire protection services and other services, for UNICEF office premises.

3. In the event that UNICEF does not maintain a UNICEF office in the country, the Government undertakes to contribute towards the expenses incurred by UNICEF in maintaining a UNICEF regional/area office elsewhere, from which support is provided to the programmes of cooperation in the country, up to a mutually agreed amount, taking into account contributions in kind, if any.

Article VII

UNICEF SUPPLIES, EQUIPMENT AND OTHER ASSISTANCE

1. UNICEF's contribution to programmes of cooperation may be made in the form of financial and other assistance. Supplies, equipment and other assistance intended for the programmes of cooperation under the present Agreement shall be transferred to the Government upon arrival in the country, unless otherwise provided in the master plan of operations.

2. UNICEF may place on the supplies, equipment and other materials intended for programmes of cooperation such markings as are deemed necessary to identify them as being provided by UNICEF.

3. The Government shall grant UNICEF all necessary permits and licenses for the importation of the supplies, equipment and other materials under the present Agreement. It shall be responsible for, and shall meet the costs associated with, the clearance, receipt, unloading, storage, insurance, transportation and distribution of such supplies, equipment and other materials after their arrival in the country.

4. While paying due respect to the principles of international competitive bidding, UNICEF shall attach high priority to the local procurement of supplies, equipment and other materials which meet UNICEF requirements in quality, price and delivery terms.

5. The Government shall exert its best efforts, and take the necessary measures, to ensure that the supplies, equipment and other materials, as well as financial and other assistance intended for programmes of cooperation, are utilized in conformity with the purposes stated in the master plan of operations and are employed in an equitable and efficient manner without any discrimination based on sex, race, creed, nationality or political opinion. No payment shall be required of any recipient of supplies, equipment and other materials furnished by UNICEF unless, and only to such extent as, provided in the relevant master plan of operations.

6. No direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programmes of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative arrangements for the remission or return of any excise duty or tax payable as part of the price.

7. The Government shall, upon request by UNICEF, return to UNICEF any funds, supplies, equipment and other materials that have not been used in the programmes of cooperation.

8. The Government shall maintain proper accounts, records and documentation in respect of funds, supplies, equipment and other assistance under this Agreement. The form and content of the accounts, records and documentation required shall be as agreed upon by the Parties. Authorized officials of UNICEF shall have access to the relevant accounts, records and documentation concerning distribution of supplies, equipment and other materials, and disbursement of funds.

9. The Government shall, as soon as possible, but in any event within sixty (60) days after the end of each of the UNICEF financial years, submit to UNICEF progress reports on the programmes of cooperation and certified financial statements, audited in accordance with existing government rules and procedures.

Article VIII

INTELLECTUAL PROPERTY RIGHTS

1. Subject to legislation in force, the Parties agree to cooperate and exchange information on any discoveries, inventions or works, resulting from programme activities undertaken under the present Agreement, with a view to ensuring their most efficient and effective use and exploitation by the Government and UNICEF.

2. Patent rights, copyright rights and other similar intellectual property rights in any discoveries, inventions or works under paragraph 1 of this article resulting from programmes in which UNICEF cooperates may be made available by UNICEF free of royalties to other Governments with which UNICEF cooperates for their use and exploitation in programmes.

Article IX

APPLICABILITY OF THE CONVENTION

The Convention shall be applicable *mutatis mutandis* to UNICEF, its office, property, funds and assets and to its officials and experts on mission in the country.

Article X

LEGAL STATUS OF UNICEF OFFICE

1. UNICEF, its property, funds and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. (a) The premises of the UNICEF office shall be inviolable. The property and assets of UNICEF, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action;

(b) The appropriate authorities shall not enter the office premises to perform any official duties, except with the express consent of the head of the office and under conditions agreed to by him or her.

3. The appropriate authorities shall exercise due diligence to ensure the security and protection of the UNICEF office, and to ensure that the tranquillity of the office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.

4. The archives of UNICEF, and in general all documents belonging to it, wherever located and by whomsoever held, shall be inviolable.

Article XI

UNICEF FUNDS, ASSETS AND OTHER PROPERTY

1. Without being restricted by financial controls, regulations or moratoria of any kind:

(a) UNICEF may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

(b) UNICEF shall be free to transfer its funds, gold or currency from one country to another or within any country, to other organizations or agencies of the United Nations system;

(c) UNICEF shall be accorded the most favourable, legally available rate of exchange for its financial activities.

2. UNICEF, its assets, income and other property shall:

(a) Be exempt from all direct taxes, value-added tax, fees, tolls or duties; it is understood, however, that UNICEF will not claim exemption from taxes which are, in fact, no more than charges for public utility services, rendered by the Government or by a corporation under government regulation, at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized;

(b) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by UNICEF for its official use. It is understood, however, that articles imported under such exemptions will not be sold in the country into which they were imported except under conditions agreed with the Government;

(c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article XII

GREETING CARDS AND OTHER UNICEF PRODUCTS

Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established

purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes.

Article XIII

UNICEF OFFICIALS

1. Officials of UNICEF shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(b) Be exempt from taxation on the salaries and emoluments paid to them by UNICEF;

(c) Be immune from national service obligations;

(d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(e) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions to the Government;

(f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) Have the right to import free of duty their furniture, personal effects and all household appliances, at the time of first taking up their post in the host country.

2. The head of the UNICEF office and other senior officials, as may be agreed between UNICEF and the Government, shall enjoy the same privileges and immunities accorded by the Government to members of diplomatic missions of comparable ranks. For this purpose, the name of the head of the UNICEF office may be incorporated in the diplomatic list.

3. In the same way as members of diplomatic missions of comparable ranks, UNICEF officials shall also be entitled to the following facilities:

(a) To import free of customs and excise duties limited quantities of certain articles intended for personal consumption in accordance with existing government regulation;

(b) To import a motor vehicle free of customs and excise duties, including value-added tax, in accordance with existing government regulation.

Article XIV

EXPERTS ON MISSION

1. Experts on mission shall be granted the privileges and immunities specified in article VI, sections 22 and 23, of the Convention.

2. Experts on mission may be accorded such additional privileges, immunities and facilities as may be agreed upon between the Parties.

Article XV

PERSONS PERFORMING SERVICES FOR UNICEF

1. Persons performing services for UNICEF shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with UNICEF;

(b) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

2. For the purpose of enabling them to discharge their functions independently and efficiently, persons performing services for UNICEF may be accorded such other privileges, immunities and facilities as specified in article XIII above, as may be agreed upon between the Parties.

Article XVI

ACCESS FACILITIES

1. UNICEF officials, experts on mission and persons performing services for UNICEF shall be entitled:

(a) To prompt clearance and issuance, free of charge, of visas, licences or permits, where required;

(b) To unimpeded access to or from the country, and within the country, to all sites of cooperation activities, to the extent necessary for the implementation of programmes of cooperation.

Article XVII

LOCALLY RECRUITED PERSONNEL ASSIGNED TO HOURLY RATES

The terms and conditions of employment for persons recruited locally and assigned to hourly rates shall be in accordance with the relevant United Nations resolutions, decisions, regulations and rules and policies of the competent organs of the United Nations, including UNICEF. Locally recruited personnel shall be accorded all facilities necessary for the independent exercise of their functions for UNICEF.

Article XVIII

FACILITIES IN RESPECT OF COMMUNICATIONS

1. UNICEF shall enjoy, in respect of its official communications, treatment not less favourable than that accorded by the Government to any diplomatic mission (or intergovernmental organization) in matters of establishment and operation, priorities, tariffs, charges on mail and cablegrams and on teleprinter, facsimile, telephone and other communications, as well as rates for information to the press and radio.

2. No official correspondence or other communication of UNICEF shall be subjected to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties. UNICEF shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.

3. UNICEF shall have the right to operate radio and other telecommunication equipment on United Nations registered frequencies and those allocated by the Government between its offices, within and outside the country, and in particular with UNICEF headquarters in New York.

4. UNICEF shall be entitled, in the establishment and operation of its official communications, to the benefits of the International Telecommunication Convention (Nairobi, 1982)¹ and the regulations annexed thereto.

Article XIX

FACILITIES IN RESPECT OF MEANS OF TRANSPORT

The Government shall grant UNICEF necessary permits or licences for, and shall not impose undue restrictions on, the acquisition or use and maintenance by UNICEF of civil aeroplanes and other craft required for programme activities under the present Agreement.

Article XX

WAIVER OF PRIVILEGES AND IMMUNITIES

The privileges and immunities accorded under the present Agreement are granted in the interests of the United Nations, and not for the personal benefit of the persons concerned. The Secretary-General of the United Nations has the right and the duty to waive the immunity of any individual referred to in articles XIII, XIV and XV in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of the United Nations and UNICEF.

Article XXI

CLAIMS AGAINST UNICEF

1. UNICEF cooperation in programmes under the present Agreement is provided for the benefit of the Government and people of the country and, therefore, the Government shall bear all the risks of the operations under the present Agreement.

2. The Government shall, in particular, be responsible for dealing with all claims arising from or directly attributable to the operations under the present Agreement that may be brought by third parties against UNICEF, UNICEF officials, experts on mission and persons performing services on behalf of UNICEF and shall, in respect of such claims, indemnify and hold them harmless, except where the

¹United Nations, *Treaty Series*, vol. 1531, p. 2 (authentic Chinese and English texts); vol. 1532, p. 2 (authentic French and Russian texts); and vol. 1533, p. 2 (authentic Spanish text).

Government and UNICEF agree that the particular claim or liability was caused by gross negligence or wilful misconduct.

Article XXII

SETTLEMENT OF DISPUTES

Any dispute between UNICEF and the Government relating to the interpretation and application of the present 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 (30) days of the request for arbitration either Party has not appointed an arbitrator, or if within fifteen (15) 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 for 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 XXIII

ENTRY INTO FORCE

1. The present Agreement shall enter into force, following signature, on the day after the exchange between the Parties of an instrument of ratification or acceptance by the Government and of an instrument constituting an act of formal confirmation by UNICEF and, pending such ratification, it shall, by agreement of the Parties, be given provisional effect.

2. The present Agreement supersedes and replaces all previous Basic Agreements, including addenda thereto, between UNICEF and the Government.

Article XXIV

AMENDMENTS

The present Agreement may be modified or amended only by written agreement between the Parties hereto.

Article XXV

TERMINATION

The present Agreement shall cease to be in force six months after either of the Parties gives notice in writing to the other of its decision to terminate the Agreement. The Agreement shall, however, remain in force for such an additional period as might be necessary for the orderly cessation of UNICEF activities, and the resolution of any disputes between the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized plenipotentiary of the Government and duly appointed representative of UNICEF, have on behalf of the Parties signed the present Agreement, in the French language.

DONE at Antananarivo, this 26th day of September 1994.

For the United Nations Children's Fund:

Name: ROBERT GRANDCOURT

Title: Resident Representative

For the Government:

Name: JACQUES SYLLA

Title: Minister for Foreign Affairs
