

No. 44845*

**South Africa
and
Denmark**

Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark regarding accelerating child and women's protection through prevention and response to violence and HIV/AIDS in South Africa (2007-2009). Pretoria, 21 December 2007

Entry into force: *21 December 2007 by signature, in accordance with article 13*

Authentic texts: *English*

Registration with the Secretariat of the United Nations: *South Africa, 19 March 2008*

**Afrique du Sud
et
Danemark**

Accord entre le Gouvernement de la République d'Afrique du Sud et le Gouvernement du Royaume de Danemark en vue d'accélérer la protection de l'enfant et de la femme et de prévenir la violence et l'HIV/SIDA en Afrique du Sud (2007-2009). Pretoria, 21 décembre 2007

Entrée en vigueur : *21 décembre 2007 par signature, conformément à l'article 13*

Textes authentiques : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Afrique du Sud, 19 mars 2008*

* *The texts reproduced below are the original texts of the agreement as submitted. For ease of reference, they were sequentially paginated. Their final UNTS version is not yet available.*

Les textes reproduit ci-dessous sont les textes authentiques de l'accord tel que soumises pour l'enregistrement. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Leur version finale RTNU n'est pas encore disponible.

[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark regarding accelerating child and women's protection through prevention and response to violence and HIV/AIDS in South Africa (2007-2009)

PREAMBLE

The Government of the Republic of South Africa (hereinafter referred to as “South Africa”), and the Government of the Kingdom of Denmark (hereinafter referred to as “Denmark”) (hereinafter jointly referred to as the “Parties” and separately as a “Party”);

WITHIN THE FRAMEWORK OF the existing agreements which govern Danish Development Assistance in the Republic of South Africa, namely:

The Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of South Africa regarding the Danish assistance programme to South Africa that was signed on the 27th of September 1996;

the Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark concerning the promotion of the Reconstruction and Development Programme of South Africa that was signed on the 29th of May 1997;

the Memorandum of Understanding between the Government of the Kingdom of Denmark and the Government of the Republic of South Africa that was signed on the 6th of May 2003;

PURSUANT to a programme document outlining the Danish support to Accelerating Child and Women’s Protection through Prevention and Response to Violence and HIV/AIDS in South Africa that has been elaborated, supported and approved by the National Prosecuting Authority of South Africa;

HEREBY AGREE as follows:

ARTICLE 1

Definitions

In this Agreement, unless the context otherwise indicates—

“Competent Authorities” means—

- (a) in the case of Denmark, the Ministry of Foreign Affairs, Danish International Development Assistance hereinafter referred to as “Danida” as represented by the Royal Danish Embassy in Pretoria; and
- (b) in the case of South Africa, the National Prosecuting Authority;

“Interdepartmental Management Committee” means the Interdepartmental Management Committee of South Africa which was established during 2000 by the South African Cabinet and which is mandated by the said Cabinet to implement the National Action Plan to reduce or end violence against women and children;

“the Programme” means the programme entitled “Accelerating Child and Women’s Protection through Prevention and Response to Violence and HIV and AIDS in the Republic of South Africa”, as detailed in the Programme Documentation;

“the Programme Documentation” means the Programme Document attached hereto as Annexure A and which contains a systematic description of the Programme and which shall govern its implementation;

“Programme Manager” means the United Nations Children’s Fund (UNICEF), which for the purposes of this Agreement has been designated as the institution responsible for the management of the Programme, as more fully set out in the Programme Documentation and as will be specified in an agreement to be concluded between UNICEF and Denmark;

“this Agreement” includes Annexure A which forms an integral part of this Agreement;

“Thuthuzela Model” means a programme developed by South Africa aiming to provide victims of sexual violence with better, integrated and humane treatment by improving the process of reporting and prosecution of rape and other sexual offences as well as the care and support to survivors in a dignified and caring environment, as more fully described in the Project Documentation;

“Thuthuzela Care Centres” (or TCC) means centres where the Thuthuzela Model of caring for victims of sexual violence is implemented.

ARTICLE 2

Objectives of the Programme

The Programme’s objectives shall be to—

- (a) accelerate child and women’s protection through prevention and response to violence and HIV/AIDS;
- (b) establish additional Thuthuzela Care Centres (TCCs) in four provinces namely: KwaZulu Natal, Limpopo, Eastern Cape and Mpumalanga;
- (c) reduce violence against women and children in communities where TCCs are established;
- (d) ensure that by December 2009, there are 12 additional fully functional Thuthuzela Care Centres serving approximately 45,000 children and women in the provinces mentioned in paragraph (b) above;
- (e) undertake prevention activities in order to change attitude, behaviour and knowledge in the communities using a mix of strategies such as

community mobilisation, information, education, communication, skills and services;

- (f) capacitate the Interdepartmental Management Committee to coordinate government prevention, response, protection, care and support and to disseminate information; and
- (g) endeavour to introduce and support the Thuthuzela Model in identified SADC countries.

ARTICLE 3

Changes in Programme Document

Changes in the Programme Document are subject to the written approval of the National Prosecuting Authority of South Africa and the Danish Ministry of Foreign Affairs.

ARTICLE 4

Responsibilities of South Africa

South Africa shall—

- (a) ensure that funds are available for the payment of all expenses required for the establishment and operation of the Programme, which are not mentioned as items to be provided by Denmark, or other parties to the Programme as outlined in more detail in the Programme Documentation;
- (b) promptly inform Denmark of any condition that interferes, or threatens to interfere, with the successful implementation of the Programme
- (c) within a reasonable time, provide advice on all matters relating to the implementation of the Programme as may be requested by Denmark, in accordance with the procedures agreed by the Parties, in order not to delay or disrupt the execution of the services or the works of the Programme.

ARTICLE 5

Contribution to be provided by Denmark

- (1) Denmark shall provide DKK 40 million in 2007 (equivalent to ZAR 50 million) for the effective implementation of the Programme.
- (2) A detailed budget outlining the specific purposes of the grant is presented in the Programme Documentation.

- (3) A technical agreement shall be entered into and signed between the Royal Danish Embassy and the Programme Manager with regard to the management of the Programme.
- (4) The matters that shall be dealt with in the agreement contemplated in sub-Article (3) shall include procurement, administration, accounting and financial reporting by the Programme Manager to Denmark for the Programme.

ARTICLE 6

Obligations of the Parties

- (1) The Parties shall—
 - (a) use their best endeavours to co-ordinate their efforts under this Agreement with other development partners, be they states, international organisations or non-governmental organisations; and
 - (b) use their best endeavours to optimise the use of the Programme resources.
- (2) If misuse of funds within the Programme is discovered, the appropriate authorities of South Africa shall be asked to investigate the matter. South Africa shall, if and when it is deemed appropriate, take action against suspects including immediate interdiction or suspension of such persons from work, to avoid their interference with the investigations.
- (3) Where the Programme funds have been lost in such a manner as described above, South Africa shall repay such funds to the Programme, in order to ensure that planned activities will not be disrupted.

ARTICLE 7

Conditions for Expatriate Institutions and Consulting Companies

When institutions, consulting companies or other legal persons from other countries than South Africa or international organisations are engaged by Denmark to perform tasks in South Africa with reference to the present Agreement, the general conditions for expatriate advisers as provided for in *the Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Denmark concerning the promotion of the Reconstruction and Development Programme of South Africa that was signed on the 29th of May 1997* shall apply to the expatriate personnel of these institutions and companies.

ARTICLE 8

Information, monitoring and evaluation

- (1) The Parties shall collaborate fully to ensure that the purposes of this Agreement are accomplished. To that end the Parties shall—
 - (a) exchange views with regard to matters relating to the Programme;
 - (b) provide each other with all available data, documentation and information available to them;
 - (c) provide appropriate mutual assistance required in the discharging of the Parties' duties under this Agreement;
 - (d) promptly inform each other of any condition which interferes or threatens to interfere with the successful implementation of the Programme; and
 - (e) provide all necessary support, in particular in all administrative issues, to facilitate the implementation of the Programme.
- (2)
 - (a) The Danish Ministry of Foreign Affairs shall, in consultation with South Africa, have the right to carry out any technical or financial monitoring mission that it considers necessary to follow the execution of the Programme.
 - (b) South Africa shall, subject to the domestic law in force in its territory, give all relevant assistance, information and documentation in order to facilitate the work of the persons instructed to carry out the monitoring mission referred to in paragraph (a).
- (3) Evaluation of the Programme, preferably undertaken jointly by the Danish Ministry of Foreign Affairs and South Africa, may be carried out at the request of either Party.
- (4) The Danish Ministry of Foreign Affairs shall, in consultation with South Africa, have the right to carry out monitoring and evaluation according to this Article after the termination of the Programme.

ARTICLE 9

Programme reporting

The procedures used for Programme reporting by the Programme Manager shall be set out in the agreement contemplated in Article 5(3), which shall include the following:

- (a) The Programme Manager shall provide to Denmark annual progress reports of the Programme operations in accordance with the Programme Manager's monitoring procedures. These reports shall be submitted no later than 4 months after the end of each calendar year. A Final Programme Report shall be submitted no later than 6 months after the Programme has been completed. Beyond the formal reporting procedures of the Programme Manager, the Programme Manager agrees to keep Denmark informed of key issues, problems or progress in the Programme as they arise;
- (b) upon completion of the Programme, the Programme Manager shall prepare a Programme completion report in accordance with Danida Guidelines for Programme Completion Reports; and
- (c) the Danish contribution to be administered by the Programme Manager shall be subject to the internal and external auditing procedures provided for in UNICEF's Financial Regulations and Rules, and other applicable directives of the Programme Manager.

ARTICLE 10

Transfer of ownership

- (1) The agencies referred to in the Programme Documentation, responsible for the implementation of the different programme components shall maintain updated inventories of all equipment provided to the Programme by Denmark, e.g. vehicles, computers, furniture and tools.
- (2) Items provided by Denmark for use during the implementation of the Programme, shall remain the property of Denmark, unless otherwise agreed upon in writing by the Parties.
- (3) Transfer of ownership of the above-mentioned assets to South Africa may take place during the Programme period.
- (4) Before Programme termination, the Parties shall assess and agree in writing on the final transfer of such assets, which can be justified on the basis of a final request from the receiving institutions.
- (5) Any remaining property shall be disposed of by Denmark.

ARTICLE 11

Suspension

- (1) If serious irregularities or suspicion thereof within the Programme have been ascertained, either Party may, after consultation with the other Party, suspend implementation of the Programme, either wholly or in part, until the

suspending Party decides to resume implementation.

- (2) Either Party may cancel the Agreement if, with respect to the components to be financed by Denmark, it determines that corrupt or fraudulent practices were engaged in by representatives of the donor country, the recipient country, or of a beneficiary of the funds during procurement or during the execution of the contract without the Party in question having taken timely and appropriate action satisfactory to the Party wishing the rescind this Agreement in order to remedy the situation.
- (3) Either Party reserves the right to suspend or terminate the Programme and its activities, wholly or in part, if representatives of the donor country, the recipient country, or of a beneficiary of the funds during procurement or during the execution of the contract engages in violations of legal principles as stipulated in international agreements and conventions signed by the Parties, without the Party in question having taken timely and appropriate action satisfactory to the Party wishing to rescind this Agreement to remedy the situation.

ARTICLE 12

Accounting procedure and audit

- (1) Representatives of the Auditor General of Denmark shall have the right to—
 - (a) carry out any audit or inspection, which Denmark considers necessary as regards the use of the Danish funds in question, on the basis of all relevant documentation;
 - (b) inspect accounts and records of suppliers and contractors relating to the implementation of the Programme; and
 - (c) perform a complete audit of the Programme, which shall be funded in terms of the unallocated budget.
- (2) Where South African authorities or agencies are required to perform an audit of the Programme in terms of Danida requirements, Denmark shall on request from South Africa provide the necessary documents and information with regard hereto.
- (3) Any unspent balance or savings from the Programme funds may not be spent without the approval of the Competent Authorities. The amount granted is in Danish Kroner (DKK), and gains due to interest accrued from the remittances cannot be utilised for the Programme, but shall be returned to Denmark on an annual basis

ARTICLE 13

Entry into force and amendment

- (1) This Agreement shall be subject to signature by both Parties. It shall enter into force on the date of last signature.
- (2) This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

ARTICLE 14

Programme duration

The Programme shall not extend beyond a period of 36 (thirty-six) months, unless otherwise agreed upon by the Parties in writing. In case of any delays in the Programme implementation, the duration of the Programme may be extended in writing by agreement of the Parties and within the budget agreed to in this Agreement.

ARTICLE 15

Settlement of disputes

- (1) Any dispute concerning the interpretation, application or implementation of this Agreement shall be settled amicably through consultation or negotiations between the Parties. In case the dispute has not been settled within a time limit of one year, either Party may refer the matter to arbitration.
- (2) The arbitration shall operate according to the following rules:
 - (a) The number of arbitrators shall amount to a total of three, one designated by each Party, and a third designated by the former two. The third arbitrator shall be the Chairperson of the tribunal.
 - (b) In case of a dispute between the former two arbitrators as to the designation of the third arbitrator, the third arbitrator shall be designated by a neutral institution to be identified by the former two arbitrators.
 - (c) The arbitral award shall be submitted in written form and must be signed by all three arbitrators.
 - (d) The proceedings to be followed by the arbitration tribunal shall be decided on by the three arbitrators, who shall also determine the distribution of costs relating to the arbitration between the Parties.

ARTICLE 16

Termination

- (1) This Agreement shall remain in force for the duration of the Programme, unless terminated in accordance with sub-Article (2).
- (2) This Agreement may be terminated by either Party giving six (6) months written notice in advance through the diplomatic channel to the other Party of its intention to terminate it.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments have signed and sealed this Agreement in duplicate in the English language, both text being equally authentic.

DONE at Pretoria on this 13 day of December 2007


FOR THE GOVERNMENT OF
DENMARK

Designation: Ambassador of Denmark
Department: Royal Danish Embassy

DONE at PRETORIA on this 21ST day of DECEMBER 2007


FOR THE GOVERNMENT OF
SOUTH AFRICA

Designation: Minister of Justice and Constitutional Development