

DEPARTMENT OF FOREIGN AFFAIRS

No. 1310

5 December 2008

AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

AND

THE UNITED NATIONS POPULATION FUND

ON

**ESTABLISHING A REGIONAL AND SUB-
REGIONAL TEAM OFFICE**

OF

THE UNITED NATIONS POPULATION FUND

IN

THE REPUBLIC OF SOUTH AFRICA

PREAMBLE

The Government of the Republic of South Africa (hereinafter referred to as “the Government”) and the United Nations Population Fund (hereinafter referred to as “the UNFPA”) and, as the context may require, hereinafter jointly referred to as “the Parties” and separately as “a Party”;

RECALLING that the UNFPA was established by the General Assembly of the United Nations, pursuant to General Assembly resolution 3019 (XXVII) of 18 December 1972;

RECALLING that the UNFPA is assisting Governments in Africa with respect to the formulation, adoption and implementation of their population policies and development strategies in national development plans;

RECALLING decision 2007/43 of 14 September 2007 of the Executive Board of the United Nations Development Programme and the UNFPA, by which the Executive Board approved a new organizational structure for the UNFPA, including the establishment of an UNFPA Regional Office for Africa and an UNFPA Sub-regional Team for Eastern and Southern Africa to be established and co-located in Johannesburg, Republic of South Africa;

RECOGNIZING the benefits of establishing a Regional Office as well as a Sub-regional Team of the UNFPA within the Republic of South Africa;

RECOGNIZING that the Government welcomes the establishment of such a Regional Office and Sub-regional Team within the Republic of South Africa;

RECALLING the applicability to the UNFPA of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, and acceded to by the Government on 30 August 2002; and

RECALLING the applicability, *mutatis mutandis*, to the UNFPA, by way of an Exchange of Letters concluded between the Government and the UNFPA on 14 May 1996, of the Basic Agreement between the Government and the United Nations Development Programme of 3 October 1994 concerning the UNFPA’s assistance to the Government in the area of technical cooperation and development assistance;

HEREBY AGREE as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, unless the context otherwise indicates-

- (a) “accredited foreign mission in the Republic” means diplomatic missions, consular missions and other missions of international organizations based in the Republic;
- (b) “Executive Director” means the Executive Director of the UNFPA;
- (c) “appropriate authorities” means such national or local government authorities under the laws and regulations of the Republic as may be responsible in the context of, and in accordance with, the laws and customs applicable in the Republic;
- (d) “archives of the UNFPA Office” means all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films and sound recordings, belonging to or held by the UNFPA Office in furtherance of its functions;
- (e) “the Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the United Nations General Assembly on 13 February 1946;
- (f) “the Head of the UNFPA Office” means the UNFPA Regional Director for Africa or another senior UNFPA official heading the UNFPA Office;
- (g) “the Republic” means the Republic of South Africa;
- (h) “Members of the Family” means the dependants of officials of the UNFPA Office, and includes their spouses, minor children and other members of their family forming part of their households who reside with, and are dependent on such officials for financial support and are officially recognised as such by the UNFPA Headquarters;
- (i) “officials of the UNFPA Office” means all staff assigned to the UNFPA Office, irrespective of nationality, with the exception of those who are locally recruited and assigned to hourly rates as provided for in United Nations General Assembly resolution 76(1) of 7 December 1946;
- (j) “premises of the UNFPA Office” means the facilities located in the Republic used by the UNFPA Office to conduct its functions;
- (k) “property of the UNFPA Office” means all property, including funds, income and other assets belonging to the UNFPA Office or held or administered by the UNFPA Office in furtherance of the functions of the UNFPA Office;

- (l) "Secretary-General" means the Secretary-General of the United Nations;
- (m) "service contractors" means individuals who are engaged under service contracts in their personal capacity, not as representatives of a government nor of any other authority external to the United Nations and who are neither staff members under the Staff Regulations and Rules of the United Nations nor officials for the purposes of the Convention;
- (n) "telecommunications" means any emission, transmission or reception of written or verbal information, images, sound or information of any nature by wire, radio, satellite, optical fibre or any other electronic or electromagnetic means;
- (o) "the UNFPA Country Programme" means the activities undertaken by the UNFPA in the Republic within the framework of the 1996 Exchange of Letters;
- (p) "the UNFPA Office" means the UNFPA Regional Office for Africa and the UNFPA Office of the Sub-regional Team for Eastern and Southern Africa, both co-located in Johannesburg, Republic of South Africa;
- (q) "1996 Exchange of Letters" means the Agreement between the United Nations (United Nations Population Fund) and the Republic of South Africa concluded on 14 May 1996 by which the Basic Agreement between the Government and the United Nations Development Programme of 3 October 1994 was made applicable, *mutatis mutandis*, to the UNFPA.

ARTICLE 2 PURPOSE AND SCOPE OF AGREEMENT

- (1) This Agreement regulates the status of the UNFPA Office, including its premises, officials and experts in the Republic.
- (2) The UNFPA Office shall perform the functions of the UNFPA Regional Office for Africa and the Office of the UNFPA Sub-regional Team for Eastern and Southern Africa.
- (3) To the extent that the UNFPA Office performs any function in support of the UNFPA activities within the framework of the UNFPA Country Programme in the Republic, the 1996 Exchange of Letters shall apply to the technical, operational and development activities of the UNFPA Office.

- (4) The Government confirms that the treatment afforded to the UNFPA Office and to the UNFPA shall be equal and the same as afforded to any other accredited foreign mission in the Republic.
- (5) The Parties recognize that in the recruitment of officials and Locally Recruited Personnel to staff the UNFPA Office, there is a large pool of labour in South Africa that can be utilized for this purpose and this will be borne in mind by the UNFPA, without prejudice to the United Nations Staff Regulations, Rules or administrative policies or issuances of UNFPA when filling staff vacancies.

ARTICLE 3 LEGAL CAPACITY

- (1) The United Nations, acting through the UNFPA, may-
 - (a) enter into any contract;
 - (b) acquire and dispose of immovable and movable property; and
 - (c) institute judicial proceedings.
- (2) For the purposes of this Article, the UNFPA shall be represented by the Head of the UNFPA Office.

ARTICLE 4 INVOLABILITY OF UNFPA OFFICE

- (1) The UNFPA Office shall be inviolable and its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case immunity shall have expressly been waived in accordance with the Convention, but such waiver of immunity shall not extend to any measure of execution.
- (2) No officer, official or other person exercising any public power in the Republic, shall enter the premises of the UNFPA Office to perform any duties therein except with the consent of, and under conditions approved by, the Head of the UNFPA Office.
- (3) In the case of a fire or other emergency requiring prompt protection action, the consent of the Head of the UNFPA Office to any necessary entry into the premises shall be presumed if he or she cannot be reached in time.
- (4) The premises of the UNFPA Office shall not be used in any manner incompatible with the purpose and scope of the UNFPA Office, as set out in Article 2 and includes the use of the premises for meetings, seminars,

exhibitions and other related purposes which are organized by the UNFPA Office, the United Nations or other related organizations.

- (5) The archives of the UNFPA Office, wherever located in the Republic, shall be inviolable.

ARTICLE 5 PUBLIC SERVICES AND SECURITY

- (1) The UNFPA Office shall receive the same level of service delivery by the relevant local authorities of necessary public services and utilities that is provided to any other accredited foreign mission in the Republic.
- (2) The UNFPA Office shall receive the same level of security and protection that is provided to any other accredited foreign mission in the Republic.

ARTICLE 6 EXEMPTION FROM TAXATION

- (1) With respect to all its official activities, the UNFPA Office, its assets, income and property shall be exempt from all forms of taxation; however, the UNFPA Office shall not claim exemption from taxes which are, in fact, no more than charges for public utility services.
- (2) The UNFPA Office shall be exempt from customs duties, prohibitions and restrictions on articles, including publications, imported or exported for its official purposes but the articles imported under such exemption shall not be sold in the Republic except under those conditions agreed to with the Government.

ARTICLE 7 FINANCIAL TRANSACTIONS

Without being restricted by financial controls, regulations or moratoria of any kind and in order to carry out its activities, the UNFPA Office-

- (a) may hold funds and currency of any kind and operate accounts in any currency;
- (b) may freely transfer its funds and currency to and from the Republic and convert any currency held by it into any other currency; and
- (c) shall be accorded the most favourable, legally available rate of exchange.

ARTICLE 8 COMMUNICATIONS

- (1) The UNFPA Office shall enjoy, for its official communications, treatment not less favorable than that accorded by the Government to any other government and the latter's diplomatic mission, in respect of priorities, rates and taxes on mail, cables, telegrams, radiograms, telephotos, telephone and other communication, and press rates for information to the press and radio media.
- (2) No censorship shall be applied to the official correspondence and other official communications of the UNFPA Office.
- (3) The UNFPA Office may operate communication equipment, including satellite facilities, use codes and dispatch and receive correspondence by couriers and sealed bags.
- (4) The bags referred to in sub-Article (3) must bear visibly the United Nations emblem and may contain only documents or articles intended for official use, and the courier shall be provided with a courier certificate issued by the United Nations.

ARTICLE 9 REPRESENTATIVES OF MEMBERS

Representatives of members of the United Nations attending meetings convened by the UNFPA Office shall, while performing their functions, enjoy the privileges and immunities set out in Article IV of the Convention.

ARTICLE 10 OFFICIALS OF UNFPA OFFICE

- (1) The Government shall accord to-
 - (a) the officials of the UNFPA Office, the privileges and immunities set out in Articles V and VII of the Convention; and
 - (b) the Head and the Deputy Head of the UNFPA Office, as well as officials with a rank of P5 and D1 who are officially appointed to these capacities by the UNFPA Headquarters and who are not nationals of the Republic or hold permanent resident status in the Republic, together with members of their family, in addition to the privileges and immunities set out in Articles V and VII of the Convention, the same privileges and immunities, exemptions and facilities accorded to diplomatic staff at missions accredited to the Republic;

- (2) Privileges and immunities are accorded to officials in the interests of the United Nations only and not for the personal benefit of the individuals themselves.
- (3) The Secretary-General may waive the immunity of any official of the UNFPA Office in any case where, in his or her opinion, the immunity would impede the course of justice and where immunity can be waived without prejudice to the interests of the UNFPA Office.

ARTICLE 11

EXPERTS ON MISSIONS AND SERVICE CONTRACTORS

- (1) Experts, other than officials of the UNFPA Office, performing duties for the UNFPA Office, shall be accorded the privileges and immunities as set out in Articles VI and VII of the Convention.
- (2) Service contractors shall be accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the UNFPA Office and such immunity shall continue to be accorded after termination of their engagement with the UNFPA Office.
- (3) Service contractors shall be accorded such other facilities as may be necessary for the independent performance of their functions for the UNFPA Office.
- (4) The terms and conditions of the engagement of service contractors shall be in accordance with the UN and the UNFPA decisions, regulations, rules and policies.
- (5) Privileges and immunities are granted to experts and service contractors in the interests of the United Nations only and not for the personal benefit of the individuals themselves.
- (6) The Secretary-General may waive the immunity of any expert or service contractor of the UNFPA Office in any case where, in the opinion of the Secretary-General, the immunity would impede the administration of justice and where the immunity can be waived without prejudice to the interests of the UNFPA.

ARTICLE 12

CO-OPERATION WITH APPROPRIATE AUTHORITIES

- (1) Without prejudice to the privileges and immunities accorded by this Agreement, every person enjoying such privileges and immunities must comply with the laws of the Republic and shall not interfere in its internal affairs.

- (2) The UNFPA Office shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, to secure compliance with the laws of the Republic and prevent the abuse of its facilities, privileges and immunities accorded to persons referred to in this Agreement.

ARTICLE 13 ENTRY INTO, EXIT FROM, MOVEMENT AND SOJOURN

All persons referred to in this Agreement and persons invited on official business shall have the right of unimpeded entry into, exit from, sojourn and free movement within the Republic except for areas which require special permission under the legislation on national security in force in the Republic and the Government must issue visas, entry permits, licenses and any other traveling documents, where required, as soon as possible.

ARTICLE 14 *LAISSEZ-PASSER*

- (1) The Government shall recognize and accept the United Nations *laissez-passer* issued by the United Nations to officials of the UNFPA office as a valid travel document.
- (2) Applications for necessary permits or visas, where required, by officials of the UNFPA Office holding the United Nations *laissez-passer* and which are accompanied by a certificate indicating that they are traveling on the business of the UNFPA Office shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel, where such facilities are made available to representatives of international organizations.
- (3) The provisions of sub-Article (2) are, *mutatis mutandis*, applicable in respect of experts and other persons employed on the official business of the UNFPA.

ARTICLE 15 IDENTIFICATION CARDS

All persons referred to in this Agreement who are conferred with immunities shall be entitled to have an appropriate identification card issued by the Government indicating their status as such.

ARTICLE 16
UNITED NATIONS FLAG AND EMBLEM

The UNFPA Office may display the United Nations or the UNFPA flag, emblem, logo and markings, on its premises, vehicles, aircraft and vessels.

ARTICLE 17
SETTLEMENT OF DISPUTES

- (1) Any dispute between the Parties arising out of or relating to this Agreement, which cannot be settled by negotiations or another agreed mode of settlement, shall, at the request of either Party, be submitted to a tribunal of three arbitrators established by the Parties for that purpose.
- (2) Each Party shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third independent arbitrator who act as chairperson of the tribunal.
- (3) If, within thirty days of the request for arbitration, a 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 President of the International Court of Justice to appoint an arbitrator to fill such vacancy.
- (4) A tribunal constituted under this Article shall determine its own procedures but, two arbitrators shall constitute a quorum for all purposes and any decision by the tribunal shall require the consensus of any two of the arbitrators.
- (5) The expenses of the tribunal shall be borne by the Parties as decided by the tribunal.
- (6) Any decision of the tribunal made under this Article must be fully motivated and is final and binding on the Parties.

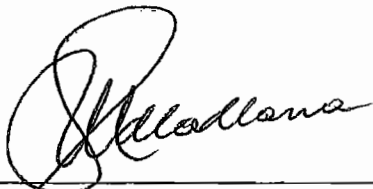
ARTICLE 18
AMENDMENT, ENTRY INTO FORCE, DURATION AND TERMINATION OF AGREEMENT

- (1) This Agreement may be amended by written agreement between the Parties and each Party shall give full consideration to any proposal advanced by the other Party.
- (2) This Agreement shall enter into force on the date of the last signature thereof by the respective Parties.

- (3) This Agreement may be terminated by either Party by giving three months' written notice in advance to the other Party to terminate this Agreement and this Agreement shall terminate six months after the receipt of such notice by the latter Party.
- (4) Despite the provisions of sub-Article (3), both Parties undertake to fulfill and finalize, within a reasonable time, all their respective obligations undertaken under this Agreement.
- (5) Despite the termination of this Agreement, the Government shall, as far as possible and where necessary permit the orderly withdrawal of the property, funds and assets of the UNFPA Office and officials of the UNFPA.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective Parties, have signed this Agreement in the English language.

DONE at PRETORIA, on this 14th day of NOVEMBER, 2008.



**FOR THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA**



**FOR THE UNITED NATIONS
POPULATION FUND**