

**No. 58115\***

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**United Nations (World Food Programme)  
and  
Kenya**

**Basic Agreement between the Government of Kenya and the United Nations World Food Programme (WFP). Nairobi, 15 January 2002**

**Entry into force:** *15 January 2002 by signature, in accordance with article XIV*

**Authentic text:** *English*

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**Organisation des Nations Unies (Programme alimentaire  
mondial)  
et  
Kenya**

**Accord de base entre le Gouvernement du Kenya et le Programme alimentaire mondial de l'Organisation des Nations Unies (PAM). Nairobi, 15 janvier 2002**

**Entrée en vigueur :** *15 janvier 2002 par signature, conformément à l'article XIV*

**Texte authentique :** *anglais*

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[ TEXT IN ENGLISH – TEXTE EN ANGLAIS ]



**BASIC AGREEMENT BETWEEN  
THE GOVERNMENT OF KENYA  
AND  
THE UNITED NATIONS WORLD FOOD PROGRAMME (WFP)**

*Preamble*

The Government of Kenya, hereinafter referred to as “the Government”;

and the United Nations World Food Programme, hereinafter referred to as “WFP”;

In pursuance of the provisions of the United Nations General Assembly Resolutions 1714 (XVI), 2095 (XX), 3348 (XXIX), 3404 (XXX) and 46/22 and Resolutions 1/61, 4/65, 22/75 and 9/91 of the Conference of the Food and Agriculture Organization of the United Nations, regarding the establishment of the institutional, financial and operational arrangements of WFP;

Recalling United Nations General Assembly Resolutions 43/131 and 45/100 on humanitarian assistance to victims of natural disasters and similar emergency situations;

Recognizing the humanitarian and developmental character of the activities of WFP and its important role in fighting hunger and poverty in the world;

Recalling the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies and its Annex II, concerning the Food and Agriculture Organization of the United Nations, adopted by the United Nations General Assembly on 21 November 1947, which are both applicable to WFP; and

Desiring to supplement the provisions of the Conventions with a view to regulating the relations between the Government and WFP, taking into account the special requirements of humanitarian and food operations;

Agree to the following:



**ARTICLE I**  
***Definitions***

*Section 1*

In this Agreement:

- a. "WFP" means the institutional and financial arrangements for the World Food Programme established by the United Nations General Assembly Resolution 1714 of 19 December 1961 and by FAO Conference Resolution 1/61 of 24 November 1961;
- b. "the Country" means Kenya;
- c. "the Government" means the Government of the Republic of Kenya;
- d. the expression "appropriate Kenyan authorities" means such national or other authorities in Kenya as may be responsible in the context and in accordance with the laws and customs applicable to Kenya;
- e. the expression "the Parties" means the Government and WFP;
- f. "United Nations" means the United Nations established by the Charter of the United Nations on 26 June 1945;
- g. "FAO" means the Food and Agriculture Organization of the United Nations;
- h. the expression "the Conventions" 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 and the Convention on the Privileges and Immunities of the Specialized Agencies adopted by the United Nations General Assembly on 21 November 1947, and its Annex II concerning FAO;
- i. the expression "Executive Board" means the Executive Board of WFP established by the United Nations and FAO to be responsible for providing intergovernmental support and specific policy direction to and supervision of the activities of WFP;
- j. the expression "Executive Director" means the Executive Director of WFP or any officer designated to act as such on his/her behalf;



- k. the expression "the Representative" means the WFP staff member representing the Executive Director in the Country;
- l. the expression "officials of WFP" means the Executive Director and all staff assigned to the Country Office, including representatives of other organizations attending meetings hosted by the Country Office, and experts employed by WFP, serving on committees or on mission, with the exception of locally recruited staff who are paid on the basis of hourly rates as provided for in the United Nations General Assembly Resolution 76 (1) of 7 December 1946 and FAO Conference Resolution 71/59;
- m. the expression "Country Office" means any location used by WFP in the Country for the conducting of operational and administrative activities;
- n. the expression "property of WFP" means all property, including funds, incomes and other assets, belonging to WFP or held or administered by WFP in furtherance of its constitutional functions;
- o. the expression "archives of WFP" includes all records, correspondence, documents, manuscripts, computer records, still and motion pictures, films, and sound recordings, belonging to or held by WFP in furtherance of its constitutional functions;
- p. the expression "WFP Assisted Activities" means any operational or project activity undertaken by WFP, including but not limited to Country Programme, Development Activity, Development Project, Emergency Operation, Protracted Relief and Recovery Operation or Special Operation;
- q. the expression "WFP Activity Agreements" means any agreement under which a WFP Assisted Activity is implemented, and includes but is not limited to a Country Programme Agreement, Operational Contract, Plan of Operations, Letter of Understanding and Memorandum of Understanding;
- r. "vehicles" means landside vehicles, including cars, motorcycles, trucks and railway wagons, that are owned by WFP for use in connection with WFP Assisted Activities;



- s. "vessels" means vehicles of transportation on waterways that are owned by WFP for use in connection with WFP Assisted Activities;
- t. "aircraft" means aircraft that are chartered or leased by, or provided to WFP, for use in connection with WFP Assisted Activities; and
- u. "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.

## **ARTICLE II**

### ***Juridical Personality and Freedom of Assembly***

#### ***Section 2***

The Government recognizes the juridical personality of WFP, and in particular its capacity:

- i) to contract;
- ii) to acquire and dispose of immovable and movable property; and
- iii) to institute judicial proceedings.

#### ***Section 3***

WFP shall enjoy in the furtherance of its official functions, treatment not less favourable than that accorded to other organizations of the United Nations. WFP shall have the right to display its flag, and/or other United Nations identifiers, on its premises, vehicles, aircraft and vessels.

#### ***Section 4***

The Government recognizes the right of WFP to convene meetings within the Country Office and with the concurrence of the appropriate Kenyan authorities, elsewhere in the Country. The Government shall take all proper steps to ensure that no impediment is placed on the full freedom of discussion and decision at such meetings.



Any building in or outside of Nairobi which may be used with the concurrence of the Government for meetings convened by WFP shall be temporarily included in the Country Office.

### **ARTICLE III** ***The Country Office***

#### ***Section 5***

The Government of Kenya shall facilitate WFP in the identification of suitable premises for the operation of the Country Office and its Sub-offices. In the implementation of this section:

- i. the appropriate Kenyan authorities shall exercise due diligence to ensure the security and tranquillity of the Country Office is not disturbed by any person or group of persons attempting unauthorized entry or creating disturbances in the immediate vicinity of the Country Office;
- ii. if so requested by the Country Representative, the appropriate Kenyan authorities shall provide such number of police as may be considered necessary for the preservation of order in the Country Office;
- iii. the appropriate Kenyan authorities shall exercise their respective powers to ensure that the Country Office is supplied with the necessary public utilities and services, including, without limitation by reason of this enumeration, fire protection, electricity, water, sewerage, post and telecommunications. When public utilities and services are supplied by Government authorities or bodies under their control, WFP shall be supplied at tariffs not exceeding the rates accorded to other United Nations Offices. WFP shall have the right where necessary to install and use generators in its premises for purposes of obtaining electric power;
- iv. in case of any interruption, or threatened interruption, of any of the above services, the appropriate Kenyan authorities shall consider the needs of WFP as being of equal importance to those of similar international organisations and shall take steps accordingly to ensure that the work of WFP is not prejudiced; and



- v. WFP shall be responsible for all ordinary repairs and for the upkeep and maintenance of premises and installations.
- vi. the Government shall contribute a portion of the costs of the Country Office in kind and in cash. The Government may, however, request WFP to waive in whole or in part the requirement to make such contributions in the case of budgetary or financial constraints.

**ARTICLE IV**  
***Inviolability of the Country Office***

*Section 6*

- a. The Country Office shall be inviolable. No officer or official of the Country, or person exercising any public authority within Kenya, shall enter the Country Office to perform any duties therein except with the consent of and under conditions approved by the Executive Director. The Executive Director's consent to such entry shall be presumed in the event of fire or other analogous emergency requiring urgent action. The service of legal process, including the seizure of private property, may take place within the Country Office only with the consent of and under conditions approved by the Executive Director.
- b. The Country Office shall be under the control and authority of WFP, which shall have the power to make regulations applicable with regard to the premises for the full and independent performance of its functions.

The Country Office shall not be used in any manner incompatible with the functions of WFP.

**ARTICLE V**  
***Property of WFP***

*Section 7*

WFP and its property, 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 Conventions.



Waiver of immunity from legal process shall not be held to imply waiver of immunity in respect of any measure of execution, for which a separate waiver shall be necessary.

*Section 8*

The property of WFP, wherever located and by whomsoever held, shall be subject to the immunities contained in the relevant provisions of the Conventions.

*Section 9*

The archives of WFP and all documents belonging to WFP or held by it shall be inviolable, wherever located and by whomsoever held.

**ARTICLE VI**  
***Freedom from Taxation***

*Section 10*

With respect to all official activities, WFP and its property shall be exempt from all forms of direct taxation.

*Section 11*

WFP shall be exempt with respect to all taxes in relation to operations and transactions related to the attainment of its constitutional objectives and the performance of its functions.

*Section 12*

WFP shall be exempt from customs duties, VAT and all other levies, prohibitions and restrictions on all goods imported or exported by WFP for its official purposes.





**ARTICLE VII**  
***Financial Transactions***

***Section 13***

Without being subject to any financial controls, regulations or moratoria of any kind, WFP may freely:

- i. Purchase any currencies through authorised channels and hold and dispose of them;
- ii. Operate accounts in any currency;
- iii. Purchase through authorized channels, hold and dispose of funds, securities and gold;
- iv. Transfer its funds, securities, gold and currencies to or from the Republic of Kenya, to or from any other country, or within the Republic of Kenya;
- v. Raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Kenya, WFP shall obtain the concurrence of the Government.

**ARTICLE VIII**  
***Transport and Communication***

***Section 14***

In the event of WFP providing food assistance, the Government, within its national boundaries, shall grant facilities as may be necessary for the fast and efficient execution of WFP Assisted Activities. The details of such arrangements shall be specified in a WFP Activity Agreement, prepared and signed at the time of such interventions. The following general principles will apply:

- a. to facilitate expeditious unloading of food commodities at ports and airports and facilitate their transit at border checkpoints, the Government shall afford preferential berthing at docks and clearance of sea vessels, aircraft and landside transport vehicles contracted by WFP;



- b. the Government shall issue all necessary permits and licences for the importation, free of duties and other taxes, of the supplies for all equipment, including internationally contracted aircraft, vehicles and vessels; and other materials necessary for the execution of WFP Assisted Activities, and their subsequent exportation, without delay or restriction;
- c. aircraft, vehicles and vessels contracted by WFP may use roads, bridges, railway lines, rivers, canals and other waters, port facilities and airfields without the payment of dues, tolls or other charges, including wharfage charges and airport landing fees. Similarly, WFP and its contractors shall be exempt from taxes and similar charges, such as sales tax and VAT, for the transportation of items related to the WFP Assisted Activities;
- d. aircraft, vehicles and vessels in the service of WFP shall not be subject to registration, certification or licensing by the Government, provided that:
  - (i) the aircraft is properly registered and the operators and crew are properly licensed in accordance to the national regulatory requirements of a country which is a party to the Convention on International Civil Aviation (ICAO) signed at Chicago, United States of America on 7 December 1944 and its annexes;
  - (ii) all vehicles and vessels shall be properly registered with an appropriate authority, in accordance with the requirements of international law and shall carry appropriate insurance as may be required by the relevant legislation; and

The Government shall, upon request by the Representative, issue WFP special licence plates for vehicles or shall accept as valid licence plates issued by WFP, without tax or fee.

#### *Section 15*

WFP shall enjoy treatment for its official communications and telecommunications no less favourable than that accorded by the Government to any other United Nations organization or government, including its diplomatic missions. Specifically:

- i. the Government shall provide WFP with licences and frequencies required to maintain 24-hour-a-day, seven-days-a-week wireless communications with its operational units, wherever situated;



- ii. the Government shall provide WFP with licences for the importation, installation, operation and eventual exportation of satellite communications equipment in conformity with the provisions of the International Telecommunication Union, required to maintain 24-hour-a-day, seven-days-a-week satellite communications;
- iii. the Government shall afford WFP the right to import, and subsequently export, all necessary telecommunications equipment, including but not limited to radio phones, mobile phones, satellite stations, and electronic devices and media, free of customs duty and other taxes;
- iv. the Government shall afford WFP the right to install and operate the above-mentioned telecommunications equipment from its offices, vehicles, vessels and aircraft and hand-carried by officials of WFP, free of local or national taxes and registration fees;
- v. the official communications and correspondence of WFP shall be inviolable. The Government shall not apply any censorship to WFP's communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, film and sound recordings, and electronic mail;
- vi. WFP shall have the right to dispatch and receive correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags; and
- vii. WFP shall ensure that all telecommunications equipment and communications frequencies are to be used only by its own officials. WFP shall ensure proper security and ensure restricted access to its telecommunications equipment.

**ARTICLE IX**  
***Transit and Residence***

*Section 16*

The Government shall take all necessary measures to facilitate the entry to and departure from Kenya of the following persons, irrespective of their nationalities, and shall impose no impediment on the transit to or from the Country Office, affording the said persons every necessary protection in transit:



- a. officials of WFP assigned to the Country Office, their spouses and their dependants;
- b. officials of the United Nations, officials of other intergovernmental organisations, international institutions and non-governmental organisations, visiting the Country Office on official WFP business; and
- c. experts performing official missions on behalf of WFP or serving on bodies established by WFP and the spouses of the said experts.

*Section 17*

Visas that may be required for persons referred to in this Article shall be granted free of charge and without delay. No activity performed by any such person referred to in Section 15 above, in his/her official capacity shall constitute a reason for preventing his/her entry into the Country or for requiring him/her to leave the Country, except as provided for under the Conventions.

*Section 18*

- a. The Government shall recognize and accept the United Nations Laissez-Passer issued to officials of WFP as a valid travel document equivalent to a passport and shall ensure that the appropriate Kenyan authorities are duly informed thereof.
- b. Similar facilities to those specified in Section 18(a) shall be accorded to experts and other persons who, although not the holders of a United Nations Laissez-Passer, have a certificate that they are travelling on business of WFP.



**ARTICLE X**  
***Officials of WFP***

*Section 19*

WFP may assign to the Country Office such officials as are deemed necessary to fulfil the obligations of WFP. Officials of WFP shall enjoy within and with respect to the Country the following privileges and immunities:

- a. immunity in respect of themselves, their spouses and their dependent relatives from personal arrest or detention and from seizure and inspection of their personal and official baggage;
- b. immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in their official capacity. Such immunity shall continue notwithstanding that the persons concerned have ceased to be officials of WFP;
- c. inviolability of all papers, documents and other official materials;
- d. exemption from taxation in respect to salaries, emoluments and indemnities paid to them by WFP with regard to their services with WFP;
- e. for officials of WFP who are not nationals of the Country, exemption from any form of taxation on income derived by them from other sources outside the Country;
- f. for officials of WFP who are not nationals of the Country, freedom to acquire or maintain within the Country or elsewhere foreign securities, foreign currency accounts and other movables and the right to take the same out of the Country through authorized channels without prohibition or restriction;
- g. for officials of WFP who are not nationals of the Country, the same privileges in respect of currency exchange facilities as are accorded to officials of comparable ranks forming part of diplomatic missions; and
- h. for officials of WFP who are not nationals of the Country, the same protection and repatriation facilities with respect to themselves, their spouses, their dependant relatives and other members of their



households as are accorded in time of international crisis to staff of the United Nations or members of diplomatic missions.

*Section 20*

Officials of WFP who are not nationals of the Country shall enjoy within and with respect to the Country the right to import, for personal use, free of duty and other levies, prohibitions and restrictions on imports:

- a. their furniture and household and personal effects, in one or more separate shipments, and thereafter to import necessary additions of the same;
- b. one automobile, and in the case of officials accompanied by the spouses, two automobiles, every three years, unless the Parties agree in particular cases that the replacements may take place at an earlier date, because of loss, extensive damage or otherwise. Imported automobiles may then be sold in the Country at any time after their importation, subject to the Government regulations concerning payment by the buyer of customs duties; and
- c. reasonable quantities of articles intended for personal consumption in accordance with existing Government regulations.

*Section 21*

The Government shall accord to:

- a. the Representative and officials of WFP, having the rank D-2 and above, the same privileges and immunities, exemptions and facilities as Ambassadors who are heads of missions;
- b. a senior official of WFP, when acting on behalf of the Representative during his/her absence from duty, the same privileges and immunities, exemptions and facilities as the Representative;
- c. other officials of WFP as may be designated by the Representative, in consultation with the Executive Director and on the grounds of their responsibilities, the same privileges and immunities, exemptions and



facilities as members of diplomatic missions accredited to the Country, having comparable rank; and

- d. officials of WFP, who are locally recruited, only those privileges and immunities provided in the Convention, including immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Nevertheless, such privileges and immunities, including exemption from taxation in accordance with sub-Section 19(d) of this Article, shall apply.

#### *Section 22*

WFP shall communicate to the Government annually a list of the officials of WFP assigned to the Country Office.

#### *Section 23*

The Government shall ensure, taking special measures if required, the security, protection and free movement of officials of WFP to the extent necessary for the proper, timely and efficient execution of WFP Assisted Activities;

#### *Section 24*

The Government shall issue to officials of WFP, their spouses and dependant relatives, who are entitled to privileges, immunities and facilities, a special identity card specifying that the holder is an official of WFP or the spouse of or a relative dependant on such an official and that the holder enjoys the privileges, immunities and facilities provided for in this Article.

#### *Section 25*

The Government shall apply the provisions of the Conventions to WFP, to officials of WFP, to experts on mission, and to WFP offices, property, funds and assets. Experts on mission may include military observers and United Nations civilian personnel on official WFP business.



*Section 26*

- a. The privileges and immunities provided for in this Article are conferred in the interest of WFP and not for the personal benefit of individuals themselves. Consistent with the Conventions, the immunity of such individuals may be waived by WFP whenever the immunity would impede the course of justice and can be waived without prejudice to the interests of WFP.
- b. WFP and its officials shall cooperate at all times with the appropriate Kenyan authorities to facilitate the proper administration of justice, to secure the observance of the Kenyan law including police regulations and to prevent the occurrence of any abuses in connection with the privileges and immunities accorded under this Article.

*Section 27*

The Government shall:

- a. accept as valid, without tax or fee, a permit or licence issued to any officials of WFP by the United Nations to drive a vehicle, provided that such official is already in possession of a valid licence; and
- b. upon the request of the Representative, facilitate the recruitment of qualified local personnel by WFP and to accelerate the process of such recruitment. The terms and conditions of employment for locally recruited personnel shall be in accordance with the relevant United Nations and WFP resolutions, regulations and rules.

*Section 28*

- a. WFP shall be exempt from all compulsory contributions to, and officials of WFP shall not be required by Government to participate in, any social security scheme of the Republic of Kenya.
- b. The Government shall make provisions as may be necessary to enable any official of WFP who is not afforded social security coverage by WFP to participate, if WFP so requests, in any social security scheme of the country. WFP shall, insofar as possible and without prejudice to its immunity, arrange for the participation in the Country's social security system of those locally recruited personnel who do not





participate in the United Nations Joint Staff Pension Fund and to whom WFP does not grant social security protection at least equivalent to that offered under the Country's law.

**ARTICLE XI**  
***WFP Assisted Activities***

*Section 29*

- a. The Government may request assistance from WFP to fulfil its humanitarian requirements. Such requests for assistance shall be in written form addressed to the Country Representative.
- b. Upon such a request, the Parties shall conclude a WFP Activity Agreement to define the respective roles, obligations, commitments and responsibilities under the WFP Assisted Activity.
- c. The provisions of this Host Country Agreement shall apply in their entirety and without exception to all subsequent WFP Activity Agreements.

*Section 30*

The Government shall seek to ensure:

- a. the safe and unimpeded access for the assessment, delivery, distribution and monitoring of food aid, to officials of WFP;
- b. the safe and unimpeded access of humanitarian assistance and personnel to all civilians , including refugees and internally displaced persons, in times of peace or armed conflict; and
- c. the provision to WFP of all facilities, information, resources and assistance necessary to enable WFP to provide humanitarian assistance as required.



*Section 31*

The Parties agree that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality as specified in the United Nations General Assembly Resolution 46/182 of 19 December 1991.

**ARTICLE XII**  
***General provisions***

*Section 32*

- a. The Conventions and the Agreement shall be construed as being complementary when their provisions concern the same subject. In the event of any inconsistency between the Conventions and this Agreement, the provisions of the latter shall prevail.
- b. This Agreement shall be governed by the general principles of law to the exclusion of national law.
- c. Whenever this Agreement imposes obligations on the competent authorities, the Government shall be ultimately responsible for ensuring the fulfilment of such obligations.
- d. This Agreement may be modified by written agreement between the Parties hereto. Each Party shall give full consideration to any proposal advanced by the other Party under this Section.

**ARTICLE XIII**  
***Settlement of Disputes***

*Section 33*

Any dispute between the Parties arising out of or relating to this Agreement or a WFP Assisted Activity that cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. For the purposes of the implementation of this Section:

- a. Each Party shall appoint one arbitrator and advise the other Party of the name of its arbitrator. Should the arbitrators fail to agree upon an



award they shall immediately appoint an umpire. In the event that within thirty (30) days of the request for arbitration either Party has not appointed an arbitrator, or that the arbitrators appointed fail to agree on an award and/or on the appointment of an umpire, either Party may request the President of the International Court of Justice to appoint an arbitrator or an umpire, as the case may be;

- b. A majority vote of the arbitrators shall be sufficient to reach a decision, including decisions on procedural matters, which shall be final and binding; and
- c. The expenses of arbitration shall be borne by the Parties as laid down in the arbitral award.

#### ARTICLE XIV

##### *Entry into Force and Cessation*

##### *Section 34*

- a. This Agreement shall enter into force upon signature by WFP and the Government and shall continue in force unless terminated in accordance with the provisions of sub-Section 34(b).
- b. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty (60) days after receipt of the other party of such notice. Notwithstanding any such notice of termination, this Agreement shall remain in force until complete fulfilment or termination of all WFP Activity Agreements entered into by virtue of this Agreement.
- c. The obligations assumed by the Government shall survive the termination of this Agreement under the foregoing sub-Section 34(b), to the extent necessary to permit orderly withdrawal of the property, funds and assets of WFP and officials of WFP by virtue of this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly appointed representatives of the Parties, respectively, have on behalf of the Parties signed this Agreement.



Signed at NAIROBI this 15<sup>th</sup> day of JANUARY,  
2002.

Handwritten signature of M.H. Madoka in black ink.

.....  
**Hon. Maj. (Rtd.) M.H. Madoka,  
E.G.H., M.P.,  
Minister for Foreign Affairs &  
International Co-operation**

Handwritten signature of Tesema Negash in black ink.

.....  
**Tesema Negash,  
Representative,  
United Nations World  
Food Programme**