

No. 12583

**INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
KENYA**

Guarantee Agreement—*Second East African Telecommunications Project* (with General Conditions Applicable to Loan and Guarantee Agreements). Signed at Washington on 25 May 1970

Authentic text: English.

Registered by the International Bank for Reconstruction and Development on 14 June 1973.

**BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
KENYA**

Contrat de garantie — *Deuxième projet est-africain relatif aux télécommunications* (avec Conditions générales applicables aux contrats d'emprunt et de garantie). Signé à Washington le 25 mai 1970

Texte authentique : anglais.

Enregistré par la Banque internationale pour la reconstruction et le développement le 14 juin 1973.

GUARANTEE AGREEMENT¹

AGREEMENT, dated May 25, 1970, between REPUBLIC OF KENYA (hereinafter called Kenya) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS (A) by a development credit agreement of even date herewith,² the Kingdom of Sweden has agreed to make available to Kenya, the United Republic of Tanzania and the Republic of Uganda a credit in a principal amount of twenty-seven million Swedish Kronor (SKr 27,000,000) equivalent at present parity rate as nearly as possible to five million two hundred thousand dollars (\$5,200,000), on the terms and conditions set forth in said agreement;

(B) by an agreement of even date herewith³ between the Bank and the East African Posts and Telecommunications Corporation (hereinafter called the Borrower), which agreement is hereinafter called the Loan Agreement, the Bank has agreed to make to the Borrower a loan in various currencies equivalent to ten million four hundred thousand dollars (\$10,400,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Kenya, the United Republic of Tanzania and the Republic of Uganda agree to guarantee such loan as provided in respective Guarantee Agreements between such countries and the Bank;

(C) the United Republic of Tanzania and the Republic of Uganda have agreed to guarantee such loan as provided in the respective Guarantee Agreements⁴ between such countries and the Bank;

(D) by an agreement of even date herewith,⁵ Kenya, the United Republic of Tanzania, the Republic of Uganda, the East African Community, the Bank and the Borrower have agreed on the allocation, withdrawal and use of the proceeds of such credit and loan and the execution of the project to be financed thereby, as well as other matters; and

(E) Kenya, in consideration of the Bank's entering into the Loan Agreement with the Borrower and the respective Guarantee Agreements with the United Republic of Tanzania and the Republic of Uganda, has agreed to guarantee such loan as hereinafter provided;

NOW THEREFORE, the parties hereto hereby agree as follows:

Article I

Section 1.01. The parties to this Guarantee Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,⁶ with the same force and effect as if they were fully set forth herein, subject, however, to the modifications thereof set forth in Schedule 2 to the Loan Agreement (said General Conditions Applicable to Loan and Guarantee Agreements, as so modified, being hereinafter called the General Conditions).

¹ Came into force on 9 November 1970, upon notification by the Bank to the Government of Kenya.

² See p. 107 of this volume.

³ The said Agreement entered into force on 9 November 1970. As it does not constitute an international agreement or a part of the present Agreement, it is not reproduced herein. However, it was published by the Bank as document LN 675 EA, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

⁴ See pp. 67 and 57 of this volume, respectively.

⁵ See p. 77 of this volume.

⁶ See p. 51 of this volume.

Section 1.02. Wherever used in this Guarantee Agreement, unless the context otherwise requires, the several terms defined in the General Conditions and in the Loan Agreement have the respective meanings therein set forth.

Article II

Section 2.01. Without limitation or restriction upon any of the other covenants on its part in this Guarantee Agreement contained, Kenya hereby unconditionally guarantees jointly and severally with the United Republic of Tanzania and the Republic of Uganda, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and the interest and other charges on, the Loan, the principal of and interest on the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds, and the punctual performance of all the covenants and agreements of the Borrower, all as set forth in the Loan Agreement, the Bonds and in the Joint Financing Agreement.

Article III

Section 3.01. Kenya shall duly perform its obligations set forth in the Joint Financing Agreement.

Section 3.02. It is the mutual intention of Kenya and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on governmental assets. To that end, Kenya undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of Kenya as security for any external debt, such lien will *ipso facto* equally and ratably secure the payment of the principal of, and interest and other charges on, the Loan and the Bonds, and that in the creation of any such lien express provision will be made to that effect; provided, however, that the foregoing provisions of this Section shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for the payment of the purchase price of such property; (ii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date; or (iii) any charges on the General Fund of the Community securing a debt of the Community where the amount of debt service on such debt in any financial year together with other debt service on other debt of the Community payable from such General Fund in such financial year do not exceed 2% of the average of the income tax collected by the East African Income Tax Department and of customs duties and excise duties collected by the East African Customs and Excise Department in the three financial years preceding such incurrence. For purposes of this sub-section, "debt service" shall include payments of the principal of, and interest and other charges on, debt; and any reference to incurring of debt shall include the assumption and guarantee of debt and any renewal, extension, or modification of the terms of the debt or of the assumption or guarantee thereof.

As used in this Section, the term "assets of Kenya" includes assets of Kenya or of any of its political subdivisions, or of any agency of Kenya or of any such political subdivision, including the Central Bank of Kenya, or any other institution performing the functions of a central bank; and the term "external debt" means any debt payable in any medium other than currency of Kenya, whether such debt is or may become payable absolutely or at the option of the creditor in such other medium, save that in the case of a debt of the Community, the term external debt means any debt payable in any medium other than the currencies of the members of the Community.

Section 3.03. (a) Kenya and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end, each of them shall furnish to

the other all such information as it shall reasonably request with regard to the general status of the Loan. On the part of Kenya, such information shall include information with respect to financial and economic conditions in the territories of Kenya and the international balance of payments position of Kenya.

Section 3.04. The principal of, and interest and other charges on, the Loan and the Bonds shall be paid without deduction for, and free from, any taxes, and free from all restrictions, imposed under the laws of Kenya or laws in effect in its territories; provided, however, that the provisions of this Section shall not apply to taxation of, or fees upon, payments under any Bond to a holder thereof other than the Bank when such Bond is beneficially owned by an individual or corporate resident of Kenya.

Section 3.05. This Guarantee Agreement, the Loan Agreement, the Tanzania Guarantee Agreement, the Uganda Guarantee Agreement, the Joint Financing Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of Kenya or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

Article IV

Section 4.01. Kenya shall endorse, in accordance with the provisions of the General Conditions, its guarantee on the Bonds to be executed and delivered by the Borrower. The Minister of Kenya for the time being responsible for finance and such person or persons as he shall designate in writing are designated as the authorized representatives of Kenya for the purposes of Section 8.10 (b) of the General Conditions.

Article V

Section 5.01. The Minister of Kenya for the time being responsible for finance is designated for the purposes of Section 10.03 of the General Conditions.

Section 5.02. The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For Kenya:

The Treasury
P.O. Box 30007
Nairobi, Kenya

Alternative address for cables:

Finance
Nairobi

For the Bank:

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Alternative address for cables:

Intbafrad
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this Guarantee Agreement to be signed in their respective names and delivered in the District of Columbia, United States of America, as of the day and year first above written.

Republic of Kenya:

By L. O. KIBINGE
Authorized Representative

International Bank for Reconstruction and Development:

By M. SHOAIB
Vice President

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

GENERAL CONDITIONS, DATED 31 JANUARY 1969

GENERAL CONDITIONS APPLICABLE TO LOAN AND GUARANTEE AGREEMENTS

[*Not published herein. See United Nations, Treaty Series, vol. 691, p. 300.*]