

No. 12761

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

**Guarantee Agreement—*Kamburu Hydroelectric Project*  
(with General Conditions Applicable to Loan and  
Guarantee Agreements). Signed at Washington on  
7 June 1971**

*Authentic text: English.*

*Registered by the International Bank for Reconstruction and Development on  
19 September 1973.*

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

**Contrat de garantie — *Projet hydro-électrique de Kam-  
buru* (avec Conditions générales applicables aux con-  
trats d'emprunt et de garantie). Signé à Washington le  
7 juin 1971**

*Texte authentique : anglais.*

*Enregistré par la Banque internationale pour la reconstruction et le dévelop-  
pement le 19 septembre 1973.*

## GUARANTEE AGREEMENT<sup>1</sup>

AGREEMENT, dated June 7, 1971, between REPUBLIC OF KENYA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS (A) By a development credit agreement of even date herewith,<sup>2</sup> the Kingdom of Sweden has agreed to make available to the Guarantor a credit in an aggregate principal amount of thirty-one million five hundred thousand Swedish Kronor (SKr31,500,000), equivalent at present parity rates as nearly as possible to six million dollars (\$6,000,000) or forty-three million Kenya Shillings (KSh43,000,000), upon the terms and conditions therein set forth;

(B) By the Loan Agreement of even date herewith<sup>3</sup> between the Bank and Tana River Development Company Limited (hereinafter called the Borrower) the Bank has agreed to make to the Borrower a loan in various currencies equivalent to twenty-three million dollars (\$23,000,000), upon the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agrees to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided;

(C) By an agreement of even date herewith,<sup>4</sup> the Guarantor, the Kingdom of Sweden, the Bank, EAP&L 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

(D) The Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed so to guarantee such obligations of the Borrower and the obligations of EAP&L under the Joint Financing Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

### *Article I. GENERAL CONDITIONS; DEFINITIONS*

*Section 1.01.* The parties to this Agreement accept all the provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank dated January 31, 1969,<sup>5</sup> 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).

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

<sup>1</sup> Came into force on 23 December 1971, upon notification by the Bank to the Government of Kenya.

<sup>2</sup> See p. 153 of this volume.

<sup>3</sup> The said Agreement entered into force on 23 December 1971. 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 745 KE, a certified true copy of which was transmitted to the Secretariat together with the documentation submitted for registration of the present Guarantee Agreement.

<sup>4</sup> See p. 123 of this volume.

<sup>5</sup> See p. 117 of this volume.

## Article II. GUARANTEE; BONDS; PROVISION OF FUNDS

*Section 2.01.* Without limitation or restriction upon any of its other obligations under the Guarantee Agreement, the Guarantor hereby unconditionally guarantees, as primary obligor and not as surety merely, the due and punctual payment of the principal of, and interest and other charges on, the Loan and the Bonds, the premium, if any, on the prepayment of the Loan or the redemption of the Bonds prior to their maturity and the punctual performance of all the other obligations of the Borrower and of EAP&L, all as set forth in the Loan Agreement, the Bonds and the Joint Financing Agreement.

*Section 2.02.* The Guarantor 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 the Guarantor for the time being responsible for Finance and such other person or persons as he shall appoint in writing are designated as authorized representatives of the Guarantor for the purposes of Section 8.10 of the General Conditions.

## Article III. OTHER COVENANTS

*Section 3.01.* The Guarantor shall duly perform all its obligations set forth in the Joint Financing Agreement.

*Section 3.02.* (a) It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan or the Bonds by way of a lien on governmental assets.

(b) To that end the Guarantor (i) represents that at the date of this Agreement no lien exists on any governmental assets as security for any external debt except as otherwise disclosed in writing by the Guarantor to the Bank, and (ii) undertakes that, except as the Bank shall otherwise agree, if any such lien shall be created, it 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 in the creation of any such lien express provision will be made to that effect. The Guarantor shall promptly inform the Bank of the creation of any such lien.

(c) The foregoing representation and undertaking shall not apply to: (i) any lien created on property, at the time of purchase thereof, solely as security for 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 East African Community (hereinafter called 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 the purposes of this paragraph "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 "governmental assets" includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor 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 the Guarantor 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.

#### *Article IV.* CONSULTATION AND INFORMATION

*Section 4.01.* The Guarantor and the Bank shall cooperate fully to assure that the purposes of the Loan will be accomplished. To that end the Guarantor and the Bank shall from time to time, at the request of either party: (i) exchange views through their representatives with regard to the performance of their respective obligations under the Guarantee Agreement and other matters relating to the purposes of the Loan; and (ii) 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 the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor, including its balance of payments, and the external debt of the Guarantor, of any of its political subdivisions and of any agency of the Guarantor or of any such political subdivision.

*Section 4.02.* (a) The Guarantor shall promptly inform the Bank of any condition which interferes with, or threatens to interfere with, the accomplishment of the purposes of the Loan or the maintenance of the service thereof.

(b) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor for purposes related to the Loan.

#### *Article V.* TAXES AND RESTRICTIONS

*Section 5.01.* 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 imposed under the laws of the Guarantor or laws in effect in its territories; provided, however, that the foregoing shall not apply to taxation of 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 the Guarantor.

*Section 5.02.* The Guarantee Agreement, the Loan Agreement, the Joint Financing Agreement, the Bonds and the Supplemental Trust Deed shall be free from any taxes that shall be imposed under the laws of the Guarantor or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

*Section 5.03.* The payment of the principal of, and interest and other charges on, the Loan and the Bonds shall be free from all restrictions, regulations, controls or moratoria of any nature imposed under the laws of the Guarantor or laws in effect in its territories.

#### *Article VI.* REPRESENTATIVE OF THE GUARANTOR; ADDRESSES

*Section 6.01.* The Minister of the Guarantor for the time being responsible for Finance is designated as representative of the Guarantor for the purposes of Section 10.03 of the General Conditions.

*Section 6.02.* The following addresses are specified for the purposes of Section 10.01 of the General Conditions:

For the Guarantor:

The Treasury  
P.O. Box 30007  
Nairobi, Kenya

Cable address:

Finance  
Nairobi

For the Bank:

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

Cable address:

Intbafrad  
Washington, D.C.

IN WITNESS WHEREOF, the parties hereto, acting through their representatives thereunto duly authorized, have caused this 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 C. M. MWASHUMBE  
Authorized Representative

International Bank for Reconstruction and Development:

By J. BURKE KNAPP  
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.*]