

**No. 12763**

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**SWEDEN  
and  
KENYA**

**Development Credit Agreement—*Kamburu Hydroelectric Project* (with annex). Signed at Washington on 7 June 1971**

*Authentic text: English.*

*Registered by Sweden on 19 September 1973.*

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**SUÈDE  
et  
KENYA**

**Contrat de crédit de développement — *Projet hydro-électrique de Kamburu* (avec annexe). Signé à Washington le 7 juin 1971**

*Texte authentique : anglais.*

*Enregistré par la Suède le 19 septembre 1973.*

## DEVELOPMENT CREDIT AGREEMENT<sup>1</sup>

AGREEMENT between the KINGDOM OF SWEDEN, on the one hand and the REPUBLIC OF KENYA, on the other hand (hereinafter called the Agreement).

WHEREAS the Kingdom of Sweden and the Republic of Kenya, desiring to strengthen the cooperation and cordial relations between them, have agreed that as a contribution to the economic and social development of Kenya, the Kingdom of Sweden (hereinafter called Sweden) shall extend to the Republic of Kenya (hereinafter called Kenya) a development credit (hereinafter called the Swedish Credit) to assist in the financing of a power project (hereinafter called the Project), to be undertaken by the Tana River Development Company Limited (hereinafter called the Company);

WHEREAS the Company has entered into a loan agreement of even date<sup>2</sup> (hereinafter called the Bank Agreement) with the International Bank for Reconstruction and Development (hereinafter called the Bank) with regard to further assistance towards the financing of the Project;

WHEREAS Kenya has also entered into a guarantee agreement of even date<sup>3</sup> (hereinafter called the Guarantee Agreement) with the Bank guaranteeing the obligations of the Company according to the Bank Agreement; and

WHEREAS Sweden, Kenya, the Bank, The East African Power and Lighting Company Limited and the Company have also entered into an agreement of even date<sup>4</sup> (hereinafter called the Joint Financing Agreement) in respect of the allocation, withdrawal and use of the proceeds of financing under the aforementioned agreements and the execution of the Project, as well as other matters;

NOW THEREFORE Sweden and Kenya agree as follows:

### *Article I. THE SWEDISH CREDIT*

1. Sweden shall make available to Kenya a development credit in an amount of thirty-one million five hundred thousand Swedish Kronor (SKr31,500,000) subject to the provisions of the Agreement, of which the attached annex forms an integral part, and to such other provisions as may be agreed upon between the Parties.

2. The Swedish Credit shall be available for withdrawal in an amount of twenty million Swedish Kronor (SKr20,000,000) from the effective date of the Agreement and in its entirety from July 1, 1972.

### *Article II. USE OF THE PROCEEDS OF THE SWEDISH CREDIT*

Kenya shall cause the proceeds of the Swedish Credit to be used by the Company in accordance with the Agreement and the Joint Financing Agreement to assist, jointly with the loan provided for under the Bank Agreement, in financing the Project. To that end,

<sup>1</sup> Came into force on 7 June 1971 by signature, with effect from 23 December 1971, the date when the related Loan Agreement of 7 June 1971 between the International Bank for Reconstruction and Development and the Tana River Development Company Limited (see foot-note 2 below) became effective, in accordance with article VII(1).

<sup>2</sup> See foot-note 3, p. 114 of this volume.

<sup>3</sup> See p. 113 of this volume.

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

Kenya shall relend the proceeds of the Swedish Credit to the Company on the same terms and conditions with respect to interest and amortization as apply according to the Bank Agreement. Funds paid by the Company to Kenya as interest or amortization in respect of the proceeds under the relending, which are not currently required by Kenya to service the Swedish Credit shall be used by Kenya for such rural electrification schemes or other projects and in such manner as shall be agreed from time to time between Kenya and the Swedish International Development Authority acting on behalf of Sweden.

### *Article III. THE SPECIAL ACCOUNT*

The amount to be made available in accordance with article I shall be paid by Sweden, as required to meet requests by Kenya for withdrawals, to the credit of an account in Swedish Kronor opened in the books of the Sveriges Riksbank, Stockholm, acting as agent for Sweden. The account shall be denominated "Central Bank of Kenya, Special Account No. 3" (hereinafter called the Special Account).

### *Article IV. WITHDRAWAL FROM THE SPECIAL ACCOUNT*

1. The Company, on behalf of Kenya, shall be authorized, subject to the provisions of the Agreement and the Joint Financing Agreement, to withdraw from the Special Account such proportion of the reasonable cost of goods and services required for the Project and to be financed by Sweden and the Bank, either separately or simultaneously, as agreed in accordance with the terms of the Joint Financing Agreement.
2. The closing date for withdrawals shall be June 30, 1975, or such other date as may be agreed upon between the Parties.

### *Article V. SERVICE OF THE SWEDISH CREDIT*

1. Kenya shall be obligated to pay to Sweden a service charge at the rate of three-fourths of one per cent ( $\frac{3}{4}$  of 1%) per annum on the principal amount of the Swedish Credit withdrawn from the Special Account and outstanding from time to time. The service charge shall be payable semi-annually on June 30 and December 31 in each year. The first payment shall, however, not be made before June 30, 1972. The service charge shall be computed on the basis of a 360-day year of twelve 30-day months.
2. Kenya shall be obligated to repay to Sweden the principal of the Swedish Credit withdrawn from the Special Account in semi-annual installments payable on June 30 and December 31 commencing June 30, 1982 and ending December 31, 2021, each installment to and including the installment payable on December 31, 1991 to be one-half per cent ( $\frac{1}{2}\%$ ) of such principal amount and each installment thereafter to be one and one-half per cent ( $1\frac{1}{2}\%$ ) of such principal amount. Kenya shall have the right to repay in advance of maturity all or any part of the principal amount of one or more maturities of the Swedish Credit specified by Kenya.
3. The principal of and service charge on the Swedish Credit shall be paid by Kenya in Swedish Kronor to the Sveriges Riksbank in favor of Sweden.
4. The principal of and service charge on the Swedish Credit shall be paid without deduction for, and free from, any taxes and charges and free from all restrictions imposed under the laws of Kenya or laws in effect in its territories.

*Article VI.* MISCELLANEOUS

1. Kenya shall take all necessary steps within its power to enable the Company to perform, and shall not take any action which would prevent the Company from performing, the covenants, agreements and obligations of the Company under the Joint Financing Agreement.

2. Kenya shall furnish to Sweden evidence of the authority of the person or persons who will, on behalf of Kenya, take any action or execute any document under the Agreement.

3. Any notice or request under the Agreement and any agreement between the Parties contemplated by the Agreement shall be in writing. Such notice or request shall be deemed to have been duly given or made when delivered through diplomatic channels.

*Article VII.* EFFECTIVE DATE; TERMINATION

1. The Agreement shall become effective after it has been signed by duly authorized representatives of the Parties and concurrently with the Bank Agreement becoming effective.

2. The Agreement and all obligations of the Parties hereunder, except those set forth in article V and in the annex, shall terminate on a date 25 years after the date of the Agreement or the date upon which the Parties shall have fulfilled all obligations, including those set forth in article V, arising from the Agreement, whichever shall be the earlier.

IN WITNESS WHEREOF, the Kingdom of Sweden and the Republic of Kenya, acting through their representatives thereunto duly authorized, have caused the Agreement to be signed.

DONE in the District of Columbia, United States of America, on the 7th day of June 1971, in two original copies in English.

For the Kingdom of Sweden:

[Signed]

By HUBERT DE BESCHE

For the Republic of Kenya:

[Signed]

By C. M. MWASHUMBE

ANNEX

The following provisions shall govern the rights and obligations under the Agreement, of which they are considered an integral part with the same force and effect as if they were fully set forth therein.

*Paragraph 1.* Cancellation and Suspension

1.1. Kenya may by notice to Sweden cancel any amount of the Swedish Credit which Kenya shall not have withdrawn, or with respect to which Sweden shall not be bound through a

special commitment entered into by the Bank pursuant to the Joint Financing Agreement, prior to the giving of such notice.

1.2. If any of the following events shall have happened and be continuing, Sweden may by notice to Kenya suspend, in whole or in part, the right of Kenya to make withdrawals from the Special Account:

(a) A default shall have occurred in the payment of principal or service charge under the Agreement.

(b) Kenya or the Company shall have failed to meet any other obligation under the Agreement or the Joint Financing Agreement and shall not have rectified such failure after notice by Sweden.

(c) An extraordinary situation shall have arisen which shall make it improbable that Kenya will be able to perform its obligations under the Agreement.

(d) The right of the Company to withdraw the proceeds of the Loan provided for in the Bank Agreement shall have been suspended or terminated, in whole or in part and the Company shall have failed to obtain funds for the Project from other sources in substitution therefor, on terms and conditions satisfactory to Sweden, and such event shall have continued for a period of 120 days.

(e) The outstanding principal of the Loan provided for in the Bank Agreement shall have been declared, or become, due and payable in advance of the agreed maturity thereof.

(f) The Company shall have cancelled any part of the Loan provided for in the Bank Agreement without Kenya's having cancelled a corresponding proportion of the Swedish Credit.

1.3. The right of Kenya to make withdrawals from the Special Account shall continue to be suspended in whole or in part, as the case may be, until the event or events which gave rise to such suspension shall have ceased to exist or until Sweden shall have notified Kenya that the right to make withdrawals has been restored, whichever is the earlier; provided, however, that in the case of any such notice of restoration the right to make withdrawals shall be restored only to the extent and subject to the conditions specified in such notice, and no such notice shall affect or impair any rights, power or remedy of Sweden in respect of any other or subsequent event described in this paragraph.

1.4. If (a) the right of Kenya to make withdrawals from the Special Account shall have been suspended with respect to any amount of the Swedish Credit for a continuous period of thirty days, or (b) by the date specified in article IV, section 2, of the Agreement as the closing date an amount of the Swedish Credit shall remain unwithdrawn from the Special Account, Sweden may by notice to Kenya terminate the right of Kenya to make withdrawals with respect to such amount. Upon the giving of such notice such amount of the Swedish Credit shall be cancelled.

1.5. No cancellation or suspension by Sweden shall apply to amounts with respect to which Sweden shall be bound through a special commitment entered into by the Bank pursuant to the Joint Financing Agreement.

1.6. Notwithstanding any cancellation or suspension all the provisions of the Agreement shall continue in full force and effect except as in this paragraph specifically provided.

#### *Paragraph 2. Remedies of Sweden*

If any event specified in subparagraph 1.2 (a), (d) or (f) of paragraph 1 shall occur and shall continue for a period of thirty days, or if any event specified in subparagraph 1.2 (b) or (c) of paragraph 1 shall occur and shall continue for a period of sixty days after notice thereof shall have been given by Sweden to Kenya, or if the event specified in subparagraph 1.2 (e) of paragraph 1 shall occur, then at any subsequent time Sweden, at its option, may declare the principal of the Swedish Credit then outstanding to be due and payable immediately, and upon any such declaration such principal shall become due and payable immediately, anything in the Agreement to the contrary notwithstanding.

*Paragraph 3. Failure to Exercise Rights*

No delay in exercising, or omission to exercise any right, power or remedy accruing to either Party under the Agreement upon any default shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default; nor shall the action of such Party in respect of any default or any acquiescence in any default, affect or impair any right, power or remedy of such Party in respect of any other or subsequent default.

*Paragraph 4. Arbitration*

(a) Any controversy between the Parties to the Agreement and any claim by either Party against the other arising under the Agreement which cannot be settled in a satisfactory manner through diplomatic channels, within six months, will at the request of either Party be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

(b) The Parties to such arbitration shall be Sweden and Kenya.

(c) The Arbitral Tribunal shall consist of three arbitrators appointed as follows: one arbitrator shall be appointed by Sweden; a second arbitrator shall be appointed by Kenya; and the third arbitrator (hereinafter called the presiding arbitrator) shall be appointed by agreement of the Parties or, if they shall not agree, by the President of the International Court of Justice or failing appointment by him, by the Secretary-General of the United Nations. If either of the Parties shall fail to appoint an arbitrator, such arbitrator shall be appointed by the presiding arbitrator. In case any arbitrator appointed in accordance with this paragraph shall resign, die or become unable to act, a successor arbitrator shall be appointed in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of such original arbitrator.

(d) Arbitration proceedings may be instituted under this paragraph upon notice by the Party instituting such proceeding to the other Party. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration, the nature of the relief sought, and the name of the arbitrator appointed by the Party instituting such proceeding. Within thirty days after the giving of such notice, the adverse Party shall notify the Party instituting the proceeding of the name of the arbitrator appointed by such adverse Party.

(e) If, within sixty days after the giving of such notice instituting the arbitration proceeding, the Parties shall not have agreed upon a presiding arbitrator either Party may request the appointment of a presiding arbitrator as provided in subparagraph (c) of this paragraph.

(f) The Arbitral Tribunal shall convene at such time and place as shall be mutually agreed by the parties and failing such agreement shall be fixed by the presiding arbitrator. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(g) Subject to the provisions of this paragraph and except as the Parties shall otherwise agree, the Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. All decisions of the Arbitral Tribunal shall be by a majority vote.

(h) The Arbitral Tribunal shall afford to the Parties a fair hearing and shall render its award in writing. Such award may be rendered by default. An award signed by a majority of the Arbitral Tribunal shall constitute the award of such Tribunal. A signed counterpart of the award shall be transmitted to each Party. Any such award rendered in accordance with the provisions of this paragraph shall be final and binding upon the Parties to the Agreement. Each Party shall abide by and comply with any such award rendered by the Arbitral Tribunal in accordance with the provisions of this paragraph.

(i) The provisions for arbitration set forth in this paragraph shall be in lieu of any other procedure for the determination of controversies between the Parties to the Agreement and any claims by either Party against the other Party arising thereunder.

(j) Service of any notice or process in connection with any proceeding under this paragraph or in connection with any proceeding to enforce any award rendered pursuant to this paragraph shall be made through diplomatic channels.