

CONFORMED COPY

CREDIT NUMBER 2334 KE

(Protected Areas and Wildlife Services Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated March 30, 1992

CREDIT NUMBER 2334 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated March 30, 1992, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Borrower, having satisfied itself as to the feasibility and priority of the Project described in Schedule 2 to this Agreement, has requested the Association to assist in the financing of the Project;

(B) the Project will be carried out by Kenya Wildlife Service (KWS) with the Borrower's assistance and, as part of such assistance, the Borrower will make available to KWS the proceeds of the Credit as provided in this Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith between the Association and KWS;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985, with the last sentence of Section 3.02 deleted (the General Conditions) constitute an integral part of this Agreement.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to an exchange of letters dated February 8, 1991, and March 11, 1991, between the Borrower and the Association;

(b) "Special Project Preparation Advance" means the project preparation advance granted by the Bank to the Borrower pursuant to an exchange of letters dated September 7, 1989, and October 5, 1989, between the Borrower and the Bank;

(c) "Special Account" means the account referred to in Section 2.02 (b) of this Agreement;

(d) "KWS" means Kenya Wildlife Service, a public corporation established under the Borrower's Wildlife Conservation Act Chapter 376 of the laws of the Borrower;

(e) "Project Agreement" means the agreement between the Association and Kenya Wildlife Service (KWS), of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(f) "sub-project" means any community-based tourism related enterprise to be financed by the Community Development Facility to be established by KWS pursuant to Section 4.06 of the Project Agreement; and

(g) "Protected Areas" means National Parks, National Reserves, Sanctuaries or other areas of particular interest to conservation of bio-diversity and designated as such by the Borrower.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount in various currencies equivalent to forty-four million eight hundred thousand Special Drawing Rights (SDR 44,800,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit.

(b) The Borrower shall, for the purposes of the Project, open and maintain in US Dollars a special deposit account in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 3 to this Agreement.

(c) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to itself the amount required to repay the principal amount

of the Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Project Preparation Advance shall thereupon be cancelled.

(d) Promptly after the Effective Date, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and pay to the Bank the amount required to repay the principal amount of the Special Project Preparation Advance withdrawn and outstanding as of such date and to pay all unpaid charges thereon. The unwithdrawn balance of the authorized amount of the Special Project Preparation Advance shall thereupon be cancelled.

Section 2.03. The Closing Date shall be September 30, 1997, or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or cancelled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date or at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next payment date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on April 1, and October 1, in each year.

Section 2.07. (a) Subject to paragraphs (b) and (c) below, the Borrower shall repay the principal amount of the Credit in semi-annual installments payable on each April 1 and October 1 commencing April 1, 2002, and ending October 1, 2031. Each installment to and including the installment payable on October 1, 2011, shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's gross national product per capita, as determined by the Association, shall have exceeded \$790 in constant 1985 dollars for five consecutive years; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by them of the development of the Borrower's economy, modify the terms of repayment of installments under paragraph (a) above by requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid. If so requested by the Borrower, the Association may revise such modification to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from

time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(c) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

Section 2.09. KWS is designated as representative of the Borrower for the purposes of taking any action required or permitted to be taken under the provisions of Section 2.02 of this Agreement and Article V of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, without any limitation or restriction upon any of its other obligations under this Agreement, shall cause KWS to perform in accordance with the provisions of the Project Agreement all the obligations of KWS therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KWS to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) The Borrower shall pass on the proceeds of the Credit to KWS as equity under terms and conditions which shall have been approved by the Association.

Section 3.02. Without limitation upon any of its obligations under Section 3.01 of this Agreement, the Borrower shall ensure that sufficient annual budgetary allocations for KSW will be made in each of its recurrent budget, namely not less than the equivalent of \$3,500,000 in Fiscal Year 1992/93, not less than the equivalent of \$1,700,000 in Fiscal Year 1993/94, and not less than the equivalent of \$500,000 in Fiscal Year 1994/95.

Section 3.03. Except as the Association shall otherwise agree, procurement of the goods, works and consultants' services required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 1 to the Project Agreement.

Section 3.04. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03 through 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) shall be carried out by KWS pursuant to Section 2.03 of the Project Agreement.

Section 3.05. The Borrower shall take all necessary measures to ensure that the costs for improving tourist access roads leading to Amboseli National Park, Meru National Park and Aberdare National Park are included in the Ministry of Public Works Printed Estimates for financial year 1992/93 and its Forward Budget Estimates for 1993/94.

Section 3.06. The Borrower shall implement or shall cause to be implemented action plans, satisfactory to the Association, developed pursuant to reviews carried out by KWS under Section 3.04 (vi) of the Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

- (i) maintain or cause to be maintained in accordance with sound accounting practices, records and accounts reflecting such expenditures;
 - (ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for the fiscal year in which the last withdrawal from the Credit Account was made; and
 - (iii) enable the Association's representatives to examine such records.
- (b) The Borrower shall:
- (i) have the records and accounts referred to in paragraph (a) (i) of this Section and those for the Special Account for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;
 - (ii) furnish to the Association as soon as available, but in any case not later than six months after the end of each such year the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested, including a separate opinion by said auditors as to whether the statements of expenditure submitted during such fiscal year, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and
 - (iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional events are specified:

- (a) KWS shall have failed to perform any of its obligations under the Project Agreement.
- (b) As a result of events which have occurred after the date of this Agreement, an extraordinary situation shall have arisen which shall make it improbable that KWS will be able to perform its obligations under the Project Agreement.
- (c) The Wildlife Conservation Act, Chapter 376 of the laws of the Borrower, shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KWS to perform any of its obligations under the Project Agreement.
- (d) The Borrower or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of KWS or for the suspension of its operations.

Section 5.02. Pursuant to Section 7.01 (d) of the General Conditions, the following additional events are specified:

(a) any event specified in paragraphs (a) and (b) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty days after notice thereof shall have been given by the Association to the Borrower; and

(b) any event specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of this Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) KWS shall have appointed the core management team comprising director, deputy director-finance, commercial manager, training coordinator and heads of scientific, wildlife and technical services under terms and conditions satisfactory to the Association;

(b) the Annual Work Program satisfactory to the Association for fiscal year 1992/1993 has been furnished to the Association; and

(c) KWS shall have completed the implementation of a staff reduction plan, satisfactory to the Association.

Section 6.02. The following is specified as an additional matter, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association namely, that the Project Agreement has been duly authorized or ratified by KWS, and is legally binding upon KWS in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representatives of the Borrower; Addresses

Section 7.01. Except as provided in Section 2.09 of this Agreement, the minister of the Borrower responsible for finance is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi, Kenya

Cable address:

FINANCE
Nairobi

Telex:

2282 MINFIN
Nairobi

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Category	Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(3) Airplanes	1,620,000	100% of foreign expenditures
(4) Incremental operating costs	8,880,000	80% up to the maximum of SDR 5,730,000 for the first 3 years of Project Implementation and 50% of the remaining amount for the last years of Project Implementation
(5) Consultants' services and studies	5,050,000	100%
(6) Training	2,270,000	100%
(7) Sub-projects under Community Development Facility	670,000	75%
(8) Refunding of Project Preparation Advance	450,000	Amounts due pursuant to Section 2.02 (c) of this Agreement
(9) Refunding of Special Project Preparation Advance	120,000	Amount due pursuant to Section 2.02 (d) of this Agreement
(10) Unallocated	5,180,000	
TOTAL	44,800,000 =====	

2. For the purposes of this Schedule:

(a) the term "foreign expenditures" means expenditures in the currency of any country other than that of the Borrower for goods or services supplied from the territory of any country other than that of the Borrower;

(b) the term "local expenditures" means expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower; and

(c) the term "operating costs" means the incremental costs incurred by KWS for carrying out the Project, related to the operation and maintenance of buildings, offices, roads, vehicles, airplanes, equipment, and includes fuel and lubricants.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for:

(a) expenditures prior to the date of this Agreement, except that withdrawals, in an aggregate amount not to exceed SDR 1,630,000, may be made in respect of Categories 1, 2, 4, 5 and 6 on account of payments made for expenditures before that date but after August 1, 1991; and

(b) expenditures under Categories 1 (b) and 2 (b) unless KWS has submitted to the Association evidence, satisfactory to the

Association, that the County Councils have concluded agreements, satisfactory to the Association, on the management of each national reserve including revenue-sharing arrangements with communities.

(c) expenditures for any sub-project under Category 7 costing the equivalent of more than \$50,000 unless the Association's prior approval has been obtained.

SCHEDULE 2

Description of the Project

The objectives of the Project are to: (a) reverse the decline of the Borrower's wildlife, national parks and reserves; and (b) develop a sound foundation for environmentally sustainable wildlife-based tourism.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon from time to time to achieve such objectives:

Part A: Support for Kenya Wildlife Service

1. Strengthening the capacity of KWS to manage wildlife Protected Areas through:

(a) the construction of a headquarters building in Nairobi, the acquisition of office equipment, furniture, vehicles and supplies;

(b) the rehabilitation of and the acquisition of supplies for the Naivasha Wildlife and Fisheries Training Institute;

(c) training of KWS' staff in management, marine environments and other technical fields;

(d) establishing a Management Information System and a radio communication system; and

(e) carrying out improvements of its operations, including commercial activities, technical and financial services.

Part B: Park and Reserves Infrastructure Development

(a) Rehabilitation and reconstruction of roads in the national Parks and Reserves.

(b) Strengthening KWS' capacity in carrying out routine maintenance of roads and tracks in the Parks and Reserves.

(c) Construction and rehabilitation of workshops, offices, guard camps and staff houses.

(d) Improving the functioning of marine parks through the acquisition of motor boats, radio equipment, vehicles, staff houses and rehabilitation of marine park headquarters.

Part C: Community Wildlife Program (CWP)

Strengthening the capacity of KWS in implementing Community Wildlife Programs through:

(a) the establishment and operation of community wildlife services;

(b) construction and rehabilitation of CWP station offices and other facilities;

(c) training of KWS' staff in community wildlife, wildlife extension and related technical fields;

(d) training of members of the community in wildlife resource management and conservation;

(e) establishment and operation of a Community Development Facility to finance identification and preparation of small-scale wildlife related enterprises; and

(f) construction and maintenance of fencing in areas of community/wildlife conflict.

Part D: National Park and Reserve Planning

1. Improving the capacity of KWS in formulating and implementing wildlife-sector policies through:

(a) the establishment of a Wildlife Policy and Planning Unit within KWS, and the acquisition of computer equipment and vehicles for the operation of the Unit;

(b) development and implementation of a national conservation system plan and management plans for Protected Areas; and

(c) training of KWS' staff in national park management and planning.

2. Improving the capacity of KWS' in implementing environmentally sound management of Wetlands through:

(a) the establishment of an information base on Wetlands;

(b) the development of a national Wetlands policy and a Wetlands Master Plan;

(c) carrying out an inventory of the Borrower's Wetlands;

(d) training of KWS' staff in Wetlands management; and

(e) carrying out educational and outreach programs on the Wetlands.

Part E: Research, and Veterinary Services

1. Strengthening the capacity of KWS in carrying out wildlife research through:

(a) the development of a Kenya Wildlife Research strategy;

(b) construction of laboratory and office research facilities in Nairobi and field stations in parks and reserves; and

(c) rehabilitation of the research stations at Tsavo East National Park and the Masai Mara National Reserve, including acquisition of laboratory equipment, computers, library facilities and vehicles.

2. Supporting KWS' implementation of elephant and rhinoceros conservation programs through:

(a) the establishment of an Elephant Research Facility to finance special research activities on elephants;

(b) the protection of breeding population of black rhinoceros in sanctuaries;

(c) the establishment of a breeding population of white rhinoceros in the Lake Nakuru National Park; and

(d) the acquisition of vehicles and equipment.

3. Improving KWS' veterinary services through:

(a) the establishment of a veterinary services unit and a

diagnostic laboratory; and

(b) training of KWS' staff in animal health and other veterinary sciences.

Part F: Wildlife Education and Visitor Services

Assisting KWS in developing an educational and visitor services program through:

(a) the acquisition of vehicles and office equipment for the Wildlife Education Service;

(b) operating visitor information facilities in national parks, in Nairobi and in Mombasa;

(c) establishing and operating field study centers in selected national parks;

(d) promoting the use of wildlife education materials in Kenya schools, including the production and distribution of wildlife conservation textbooks and development of conservation curriculum; and

(e) training of school teachers in wildlife conservation.

Part G: Wildlife Protection and Tourist Security

Strengthening the capacity of KWS in protecting wildlife and tourists through:

(a) the establishment of an anti-poaching intelligence network;

(b) the acquisition of mobile field bases, vehicles and patrol boats; and

(c) the rehabilitation and expansion of the security training camp in Manyani.

* * *

The Project is expected to be completed by March 31, 1997.

SCHEDULE 3

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories 1 through 7 set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods and services required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$2,500,000 to be withdrawn from the Credit Account and deposited into the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Payments out of the Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the

Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for a deposit or deposits which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount or amounts as the Borrower shall have requested.

- (b) (i) For replenishment of the Special Account, the Borrower shall furnish to the Association requests for deposits into the Special Account at such intervals as the Association shall specify.
- (ii) Prior to or at the time of each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the Special Account for eligible expenditures.

All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into the Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement; or

(b) once the total unwithdrawn amount of the Credit allocated to the eligible Categories, less the amount of any outstanding special commitment entered into by the Association pursuant to Section 5.02 of the General Conditions with respect to the Project, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the Special Account as of the date of such notice will be utilized in making payments for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of the Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association (A) provide such additional evidence as the Association may request, or (B) deposit into the Special Account

(or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into the Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in the Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Account.

(d) Refunds to the Association made pursuant to paragraph 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

