

LOAN NUMBER 638 EA

# Guarantee Agreement

(East African Harbours Corporation Project)

BETWEEN

REPUBLIC OF UGANDA

AND

INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT

DATED AUGUST 25, 1969

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## **Guarantee Agreement**

**AGREEMENT**, dated August 25, 1969, between the **REPUBLIC OF UGANDA** (hereinafter called Uganda) and **INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT** (hereinafter called the Bank).

**WHEREAS** (A) by an agreement of even date herewith between the Bank and the East African Harbours 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 thirty-five million dollars (\$35,000,000), on the terms and conditions set forth in the Loan Agreement, but only on condition that Uganda, the Republic of Kenya and the United Republic of Tanzania agree to guarantee such loan as provided in respective Guarantee Agreements between such countries and the Bank;

(B) the Republic of Kenya and the United Republic of Tanzania have agreed to guarantee such loan as provided in the respective Guarantee Agreements between such countries and the Bank; and

(C) Uganda, in consideration of the Bank's entering into the Loan Agreement with the Borrower and the respective Guarantee Agreements with the Republic of Kenya and the United Republic of Tanzania, 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, with the same force and effect as if they were fully set forth herein, subject, however, to the modi-

fications thereof set forth in Schedule 5 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 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, Uganda hereby unconditionally guarantees jointly and severally with the Republic of Kenya and the United Republic of Tanzania, 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 and in the Bonds.

SECTION 2.02. Without limitation or restriction upon the provisions of Section 2.01 of this Agreement, Uganda specifically undertakes, whenever there is reasonable cause to believe that the funds available to the Borrower will be inadequate to meet the estimated expenditures required for carrying out the Project, to make arrangements, satisfactory to the Bank, with the Republic of Kenya, the United Republic of Tanzania, and the Borrower or any one or more of them promptly to provide the Borrower with such funds as are needed to meet such expenditures.

## ARTICLE III

SECTION 3.01. It is the mutual intention of Uganda and the Bank that no other external debt shall enjoy any pri-

ority over the Loan by way of a lien on governmental assets. To that end, Uganda undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of Uganda 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 Uganda" includes assets of Uganda or of any of its political subdivisions or of any agency of Uganda or of any such political subdivision, including the Bank of Uganda 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 Uganda, 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 3.02. (a) Uganda 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 Uganda, such information shall include information with respect to financial and economic conditions in the territories of Uganda and the international balance of payments position of Uganda.

(b) Uganda and the Bank shall from time to time exchange views through their representatives with regard to matters relating to the purposes of the Loan and the maintenance of the service thereof. Uganda 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.

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

SECTION 3.03. 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 Uganda 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 Uganda.

SECTION 3.04. This Guarantee Agreement, the Loan Agreement, the Kenya Guarantee Agreement, the Tanzania Guarantee Agreement and the Bonds shall be free from any taxes that shall be imposed under the laws of Uganda or laws in effect in its territories on or in connection with the execution, issue, delivery or registration thereof.

SECTION 3.05. (a) Uganda shall take, or cause to be taken, from time to time, all necessary steps (including but without limitation adjustments of the tariff structure and/or the rates of the Borrower) as shall be required to provide revenues of the Borrower sufficient (i) to produce an annual rate of return of not less than 8% on the value of the Borrower's net fixed assets in operation and (ii) to enable the Borrower out of internally-generated resources (A) to meet interest on and amortization of debt, (B) to maintain adequate working capital, (C) to establish and maintain reserves adequate to meet contingencies, and (D) to finance a reasonable portion of its capital expenditures including replacement of assets.

For the purposes of this sub-section (a):

- (i) The annual rate of return shall be calculated by relating the operating income for the year in question to the average of the value of the net fixed assets of the Borrower in operation at the beginning and at the end of that year.
- (ii) The term "value of net fixed assets in operation" shall mean the gross book value of such assets, less the amount of accumulated depreciation, as valued from time to time in accordance with sound and consistently maintained methods of valuation acceptable to the Bank.
- (iii) The term "operating income" shall mean the difference between:
  - (A) gross operating revenue accruing from the Borrower's services; and

(B) the operating and administration expenses, taxes (if any), adequate maintenance and depreciation but excluding interest and other charges on debt.

(b) Uganda shall take, or cause to be taken, all necessary steps by December 31, 1971 to revise the Borrower's tariff and rate structure on the basis of a cost analysis conducted by the Borrower referred to in Section 5.11 of the Loan Agreement.

#### **ARTICLE IV**

SECTION 4.01. Uganda 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 Uganda 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 Uganda for the purposes of Section 8.10 (b) of the General Conditions.

#### **ARTICLE V**

SECTION 5.01. The Minister of Uganda 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 Uganda:

Secretary to the Treasury  
P.O. Box 103  
Entebbe, Uganda

Alternative address for cables:

Finsec  
Entebbe



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 UGANDA

By /s/ W. OKWENJE  
*Authorized Representative*

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ SIMON ALDEWERELD  
*Vice President*