

CONFORMED COPY

CREDIT NUMBER 3406-KE

Development Credit Agreement

(Economic and Public Sector Reform Credit)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated August 2, 2000

CREDIT NUMBER 3406-KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated August 2, 2000, between  
REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL  
DEVELOPMENT ASSOCIATION (the Association).

WHEREAS: (A) the Association has received a  
letter of development policy (hereinafter called the  
LDP) from the Borrower describing a program of  
actions, objectives and policies designed to achieve  
structural adjustment of the Borrower's economy  
(hereinafter called the Program), declaring the  
Borrower's commitment to the execution of the Program,  
and requesting assistance from the Association in  
support of the program during the execution thereof;  
and

(B) on the basis, inter alia, of the  
foregoing, the Association has decided in support of  
the Program to provide such assistance to the Borrower  
by making the Credit in three tranches as hereinafter

provided;

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, (as amended through October 6, 1999) with the modifications thereof set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 9, shall be modified to read:

"Project" means the program, referred to in the Preamble to the Development Credit Agreement, in support of which the Credit is made;

(b) A new paragraph (c) is added to Section 3.04 to read:

"If the Association shall at any time receive less than the full amount then due and payable to it under the Development Credit Agreement, the Association shall have the right to allocate and apply the amount so received in any manner and for such purposes under the Development Credit Agreement as the Association shall in its sole discretion determine."

(c) Section 4.01 is modified to read:

"Except as the Association and the Borrower shall otherwise agree, withdrawals from the Development Credit Account shall be made in the currency of the deposit account specified in Section 2.02 of the Development Credit Agreement."

(d) Section 5.01 is modified to read:

"The Borrower shall be entitled to withdraw the proceeds of the Credit from the Credit Account in accordance with the provisions of the Development Credit Agreement and of these General Conditions. Except as the Association and the Borrower shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a member of the Bank or for goods produced in such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Association, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United

Nations."

(e) The last sentence of Section 5.03 is deleted;

(f) Section 9.06 (c) shall be modified to read:

"(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, the Borrower shall prepare and furnish to the Association a report, of such scope and in such detail as the Association shall reasonably request, on the execution of the Program referred to in the Preamble to the Development Credit Agreement, the performance by the Borrower and the Association of their respective obligations under the Development Credit Agreement and the accomplishment of the purposes of the Credit."; and

(g) Section 9.04 is deleted and Sections 9.05, 9.06 (as modified above), 9.07 and 9.08 are renumbered, respectively, Sections 9.04, 9.05, 9.06 and 9.07.

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

(a) "Deposit Account" means the account referred to in Section 2.02 (a) of this Agreement;

(b) "FY" means the fiscal year of the Borrower, which runs from July 1 to June 30;

(c) "First Tranche" means the tranche referred to in Category 1 of paragraph 1 of Schedule 1 to this Agreement to be released by the Association on or after the Effective Date;

(d) "Second Tranche" means the tranche referred to in Category 2 of paragraph 1 of Schedule 1 to this Agreement to be released by the Association on or after the date on which the conditions referred to in Part A of Schedule 2 to this Agreement have been met;

(e) "Third Tranche" means the tranche referred to in Category 3 of paragraph 1 of Schedule 1 to this Agreement to be released by the Association on or after the date on which the conditions referred to in Part B of Schedule 2 to this Agreement have been met;

(f) "KACA" means the Kenya Anti Corruption Authority established pursuant to the Prevention of Corruption Act (Cap 65) as amended in 1997 of the laws

of the Borrower;

(g) "Telecom Kenya" means the Kenya Telecommunications Company established pursuant to the Kenya Communication Act of 1998 of the laws of the Borrower;

(h) "Privatization Strategy Paper" means the policy adopted by the Borrower on to guide the Borrower's privatization activities;

(i) "NACC" means the National Aids Coordinating Council established by the Borrower to coordinate HIV/AIDS activities; and

(j) "PRSP" means the Poverty Reduction Strategy Paper of 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 the Development Credit Agreement, an amount in various currencies equivalent to one hundred thirteen million, one hundred thousand Special Drawing Rights (SDR 113,100,000).

Section 2.02. (a) The Borrower shall open, prior to furnishing to the Association the first request for withdrawal from the Credit Account, and thereafter maintain in its central bank, a deposit account in dollars on terms and conditions satisfactory to the Association. All withdrawals from the Credit Account shall be deposited by the Association into the Deposit Account.

(b) Subject to the provisions of paragraphs (c), (d) and (e) of this Section, the Borrower shall be entitled to use the proceeds of the Credit withdrawn from the Credit Account and deposited in the Deposit Account in support of the Program.

(c) The Borrower undertakes that the proceeds of the Credit shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Association shall have determined at any time that any proceeds of the Credit shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Association: (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Association shall so request, refund such amount to the Association. Amounts refunded to the Association upon such request shall be credited to the Credit Account for cancellation.

(d) No withdrawal shall be made from the Credit Account after the aggregate of the proceeds of the Credit withdrawn from the Credit Account shall have reached the equivalent of SDR 37,700,000, unless

the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association: (i) with the progress achieved by the Borrower in the carrying out of the Program; (ii) that the macro-economic policy framework of the Borrower is satisfactory, as measured on the basis of indicators agreed between the Borrower and the Association; and (iii) that the actions described in Part A of Schedule 2 to this Agreement have been taken. If, after said exchange of views, the Association shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Association, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

(e) No withdrawal shall be made from the Credit Account after the aggregate of the proceeds of the Credit withdrawn from the Credit Account shall have reached the equivalent of SDR 75,400,000, unless the Association shall be satisfied, after an exchange of views as described in Section 3.01 of this Agreement based on evidence satisfactory to the Association: (i) with the progress achieved by the Borrower in the carrying out of the Program; (ii) that the macro-economic policy framework of the Borrower is satisfactory, as measured on the basis of indicators agreed between the Borrower and the Association; and (iii) that the actions described in Part B of Schedule 2 to this Agreement have been taken. If, after said exchange of views, the Association shall have given notice to the Borrower that the progress achieved and actions taken are not satisfactory and, within 90 days after such notice, the Borrower shall not have achieved progress and taken actions satisfactory to the Association, then the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the Credit or any part thereof.

Section 2.03. The Closing Date shall be June 30, 2002 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 and service charges shall be payable semiannually on May 1 and November 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 May 1 and November 1 commencing November 1 2010, and ending May 1, 2040. Each installment to and including the installment payable on May 1, 2020 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 per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; 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 repayment of installments under paragraph (a) above by:

(A) 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; and

(B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six (6) months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five (5) years on such repayment of principal.

(C) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above 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.

(D) 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.

### ARTICLE III

#### Particular Covenants

Section 3.01. (a) The Borrower and the Association shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program and the actions specified in Schedule 2 to this Agreement.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Association for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Association shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Association on any proposed action to be taken after the disbursement of the Credit which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program, including any action specified in Schedule 2 to this Agreement.

Section 3.02. Upon the Association's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(b) furnish to the Association as soon as

available, but in any case not later than four months after the date of the Association's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(c) furnish to the Association such other information concerning the Deposit Account and the audit thereof as the Association shall have reasonably requested.

#### ARTICLE IV

##### Additional Event of Suspension

Section 4.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional event is specified, namely, that a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out.

#### ARTICLE V

##### Termination

Section 5.01. 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 VI

##### Representatives of the Borrower; Addresses

Section 6.01. The Minister for Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. 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:

22921

MINFIN-KE

For the Association:

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



Cable address:	Telex:
Facsimile:	
INDEVAS	248423
(RCA) (202) 477-6391	
Washington, D.C.	82987
(FTCC)	
	64145
(WUI) or	
	197688
(TRT)	

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in Nairobi, Kenya, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ Chrysanthus Okemo  
Authorized Representative

INTERNATIONAL DEVELOPMENT  
ASSOCIATION

By /s/ Harrold Wackman  
Acting Regional Vice President  
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit  
and Excluded Expenditures

% of Expenditures Category to be Financed	Amount of the Credit Allocated  (Expressed in SDR Equivalent)
(1) First Tranche 100%	37,700,000
(2) Second Tranche 100%	37,700,000
(3) Third Tranche 100%	37,700,000
TOTAL	113,100,000

2. Notwithstanding the provisions of paragraph 1 above, for purposes of Section 2.02 (c) of this Agreement, the proceeds of the Credit shall not be used to finance any of the following expenditures:

(a) expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;

(b) expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;

(c) expenditures for goods included in the following groups or sub-groups of the Standard International Trade Classification, Revision 3 (SITC, Rev. 3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or sub-groups under future revisions to the SITC, as designated by the Association by notice to the Borrower:

Group	Sub-group	Description of Items
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semi-precious stones, unworked or worked
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728.43	-	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

(d) expenditures for goods intended for a military or para-military purpose or for luxury consumption;

(e) expenditures for environmentally hazardous goods (for purposes of this paragraph, the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party, and any other goods designated as environmentally hazardous by agreement between the Borrower and the Association);

(f) in furtherance of the purposes of Section 5.01 of the General Conditions, expenditures (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

(g) expenditures under a contract in respect of which the Association determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Credit during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Association to remedy the situation.

3. Notwithstanding the provisions of paragraph 1 above, no withdrawal shall be made from the Credit Account in respect of expenditures to be financed out of the proceeds of the IDA Reflows after a date twelve months (or such later date as the Association shall establish and promptly notify the Borrower) from the date of this Agreement. At any time after such date, the Association may, by notice to the Borrower, cancel the unwithdrawn amount of the IDA Reflows.

## SCHEDULE 2

Actions Referred to in Section 2.02 (d) and (e)  
of this Agreement

Part A: Conditions for the Release of the Second  
Tranche:

1. The Borrower has, consistent with paragraph 14 of the LDP, taken measures, including, if necessary, the presentation of legislation to Parliament to merge the office of the Auditor General (Corporations) with the office of the Controller and Auditor General.

2. The Borrower has established a task force under terms of reference satisfactory to the Association to review and prepare revisions to the Exchequer and Audit Act and other financial regulations and procedures with the view to improving the timely flow of budget resources to the districts as outlined in paragraph 17 of the LDP.

3. The Borrower has, in accordance with paragraph 14 of the LDP, submitted to the Association a progress report satisfactory to the Association on the implementation of the Borrowers' plan to (a) enhance fiduciary transparency involving public resources, and (b) improve the quality and timeliness of audit reports.

4. The Borrower has, as specified in paragraph 17 of the LDP, submitted to the Association progress reports satisfactory to the Association on the implementation of the Government's March 2000 Circular regarding the processing of payments of donor-funded projects utilizing off-shore special accounts.

5. The Borrower's Cabinet has, as specified in paragraph 15 of the LDP, approved the new proposed procurement law whose objective shall be to (a) establish a uniform and transparent procurement system for all public procurement (including public enterprises), (b) establish a Procurement Appeals Board, and (c) establish a Directorate of Public Procurement.

6. The Borrower has submitted to the Association reports, satisfactory to the Association, showing progress in implementing its civil service restructuring plan specified in paragraph 23 of the LDP, including a reduction of staff corresponding to the reduction in the core functions of the government and including the removal of duplication of functions.

7. The Attorney General of the Borrower has, as provided in paragraph 21 of the LDP, issued a legal opinion that the updated "Privatization Strategy Paper" as it relates to the public utilities sectors (railways, ports, electricity and water) is consistent with the current law and that no further new legislation is required to implement the privatization of these entities.

8. The Borrower has submitted to the Association a report showing the previous quarter's public expenditures in accordance with paragraph 25 of the LDP.

9. The Borrower has, in accordance with paragraph 25 of the LDP, submitted to the Association reports satisfactory to the Association on the financing and expenditures on core poverty programs. Such reports shall demonstrate the release of funds to the said programs and that funds released are in accordance with the 2000/2001 budget. For the purpose of this paragraph, the term "core poverty programs" shall be those which are particularly important to the poor and the disadvantaged members of the society.

10. The Borrower has submitted to the Association a report showing that NACC has been funded and is operational, as provided in paragraph 34 of the LDP.

11. The Borrower has taken all measures necessary, including the enactment of new legislation or amendment of existing legislation (a) to liberalize small farmer tea processing activities, (b) abolishing the Kenya Tea Development Authority (KTDA), and (c) to

implement policy measures to allow individual tea factories to operate independently, all in accordance with paragraph 27 of the LDP.

12. The Judicial Service Commission has approved the Judicial Code of Conduct, as specified in paragraph 18 of the LDP.

Part B: Conditions for the Release of the Third Tranche

1. The Borrower has (a) submitted to the Association a report showing that public consultation process for the full PRSP has been successfully undertaken, and (b) developed a mechanism for monitoring core poverty programs, all as outlined in paragraph 5 of the LDP.

2. The Borrower has presented the 1998/1999 audited accounts of the government to Parliament in accordance with paragraph 14 of the LDP.

3. The Borrower has, as specified in paragraph 15 of the LDP, presented to its Parliament the new comprehensive bill on procurement.

4. The Borrower has submitted to the Association a progress report satisfactory to the Association showing progress achieved in the implementation of the civil service restructuring plan as specified in paragraph 23 of the LDP.

5. The Borrower has submitted to the Association a progress report satisfactory to the Association on the implementation of the Borrower's privatization program as contained in the updated "Privatization Strategy Paper" with regard to the privatization of Kenya Railways Corporation, Kenya Ports, public enterprises in the electricity sector, the water sector and the public enterprises in the sugar sector as outlined in paragraph 21 of the LDP.

6. The Borrower has taken all measures under its control to offer for sale 49% of Telkom Kenya shares to pre-qualified bidders through an objective, transparent and competitive tender process acceptable to the Association as specified in paragraph 21 of the LDP. For the purpose of this condition, the term "to offer for sale" shall mean that the Borrower has taken the following steps: (a) invited firms to pre-qualify, (b) carried out the pre-qualification exercise and publicly announced the pre-qualified bidders (if any), (c) signed Confidentiality Agreements with pre-qualified bidders, (d) invited bidders to the Data Room, visits to the field, discussions with management and government officials, (e) drafted legal documents and information memorandum given to bidders, (f) investors have provided comments on draft legal documents. Thereafter, meetings with all bidders to discuss their comments and negotiations on the aspects of the transaction will have taken place, (g) Government has drafted the final bidding documents, including legal documents and final timetable, (h) final bidding documents have been issued to bidders, (i) legal documents signed by bidders are received, (j) the Evaluating Commission reviews the documents, (k) the government announces the companies that have

completed this step and are allowed to bid, (l) price proposals are received in sealed envelopes, (m) the envelopes are opened in public and the award of the bid is announced immediately, and (n) closing of the transaction.

7. The Borrower has rationalized the primary school curriculum, including the reduction of taught subjects from thirteen subjects to seven subjects and a reduction of examinable subjects from seven subjects to five subjects as provided in paragraph 30 of the LDP.

8. The Borrower has rationalized the curriculum for secondary schools, including: (a) the reduction of subjects from 36 to 17, (b) limiting the core curriculum to 10 subjects, and (c) limiting the core curriculum to a maximum of 9 and a minimum of 7 examinable subjects, all as provided in paragraph 30 of the LDP.

9. The Borrower's cabinet has approved a Sessional Paper separating the regulatory functions of the Kenya Coffee Board from its marketing role as outlined in paragraph 27 of the LDP.

10. The Borrower has, in accordance with paragraph 25 of the LDP submitted to the Association reports satisfactory to the Association on the financing and expenditures on core poverty programs. Such reports shall demonstrate the release of funds to the said programs and that funds released are in accordance with the 2000/2001 budget. The Borrower has submitted to the Association a report showing the previous quarter's public expenditures in accordance with paragraph 25 of the LDP.

11. The Borrower has submitted to the Association a financing plan, satisfactory to the Association for NACC and the ministerial HIV/AIDS programs as provided in paragraph 34 of the LDP.

