

CONFORMED COPY

CREDIT NUMBER 1838 NIR

(Public Enterprise Institutional Development Project)

between

REPUBLIC OF NIGER

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 23, 1987

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 23, 1987, between REPUBLIC OF NIGER (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS 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; 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;

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 and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

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

(b) "MSE" means the Ministry of State Enterprises of the Borrower;

(c) "Project Preparation Advance" means the project preparation advance granted by the Association to the Borrower pursuant to exchanges of letters dated September 23, 1985 and October 23, 1985, July 29, 1986 and August 20, 1986, and April 22, 1987 and June 17, 1987 between the Borrower and the Association;

(d) "Public Enterprise Sector Adjustment Program" and "Program" mean the program referred to in the Preamble to the Development Credit Agreement of even date herewith between the Borrower and the Association for the Public Enterprise Sector Adjustment Credit (the Public Enterprise Sector Adjustment Credit Agreement);

(e) "Fiscal Year" means the Borrower's fiscal year which runs from October 1 to September 30;

(f) "CFAF" and "CFA Franc" mean the currency of the Borrower;

(g) "BDRN" means the Banque de Developpement de la Republique du Niger;

(h) "OPVN" means the Office des Produits Vivriers du Niger;

(i) "ORTN" means the Office de Radiodiffusion et Television du Niger;

(j) "DED" means the Direction des Etudes et de la Documentation of MSE; and

(k) "P.E. Legislation" means the following legislation of the Borrower on public enterprises:

- Ordonnances Nos. 86-001 and 86-002, and Decret No. 86-002 of January 10, 1986; and

- Decrets Nos. 86-120, 86-121, 86-122 and 86-123 of September 11, 1986.

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 four million three hundred thousand Special Drawing Rights (SDR 4,300,000).

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 described in Schedule 2 to this Agreement 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 CFA Francs a special account in BDRN on terms and conditions satisfactory to the Association. Deposits into, and payments out of, the Special Account shall be made in accordance with the provisions of Schedule 4 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.

Section 2.03. The Closing Date shall be June 30, 1992 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 at the rate of one-half of one percent (1/2 of 1%) per annum on the principal amount of the Credit not withdrawn from time to time. The commitment charge shall accrue from a date sixty days after the date of the Development Credit Agreement to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or shall be cancelled.

(b) 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 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, 1997 and ending May 1, 2027. Each installment to and including the installment payable on May 1, 2007 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 and repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the French Republic is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement and, to this end, shall carry out the Project through its Ministry responsible for Public Enterprises with due diligence and efficiency and in conformity with appropriate administrative and financial practices, and shall provide, promptly as needed, the funds, facilities, services and other resources required for the Project.

Section 3.02. 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 3 to this Agreement.

Section 3.03. The Borrower shall:

(a) establish a Public Enterprise Reform Unit (the Unit) at MSE to assist in the implementation of the Project as described in Schedule 2 to this Agreement;

(b) appoint a Chief of the Unit and five local staff, and employ an advisor in accordance with Section II of Schedule 3 to this Agreement; and

(c) consult with the Association, not later than June 30, 1991 on the opportunity of the integration of the Unit within DED.

Section 3.04. The Borrower shall undertake a review in consultation with the Association not later than September 30, 1989 on the overall PE Legislation.

Section 3.05. The Borrower shall furnish to the Association for its review and comments not later than December 31 of each year during the execution of the Project annual work programs of the Unit and its budget, and shall not make any change thereof without prior consultation with the Association.

Section 3.06. In order to carry out Part F of the Project, the Borrower shall submit to the Association for approval proposals for financing of specific Sub-projects within the objectives of the Project with a detailed analysis of the costs of said Sub-projects.

Section 3.07. The Borrower shall furnish to the Association not later than December 31, 1987 for review and comments, OPVN's detailed restructuring program.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of the Project of the departments or agencies of the Borrower responsible for carrying out the Project

or any part thereof.

(b) The Borrower shall:

- (i) have the records and accounts referred to in paragraph (a) of this Section including 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, 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
- (iii) furnish to the Association such other information concerning said records, accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) 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 paragraph (a) of this Section, records and accounts reflecting such expenditures;
- (ii) retain, until at least one year after the Association has received the audit for the Fiscal Year in which the last withdrawal from the Credit Account was made, all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures;
- (iii) enable the Association's representatives to examine such records; and
- (iv) ensure that such records and accounts are included in the annual audit referred to in paragraph (b) of this Section and that the report of such audit contains 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.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (h) of the General Conditions, the following additional event is specified, namely, that: Decrets Nos. 84-201 and 84-202 PCMS of December 5, 1984 amended by Decret No. 85-146 PCMS of September 27, 1985, or Arrete No. 0001 MTEP/SEM of June 6, 1986 shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the Borrower to perform any of its obligations under this Agreement.

ARTICLE VI

Effective Date; Termination

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

(a) all conditions precedent to the effectiveness of the Public Enterprise Sector Adjustment Credit have been met;

(b) the Borrower has prepared a revised training program satisfactory to the Association;

(c) the Unit referred to under Section 3.03 of this Agreement has been staffed in accordance with Section 3.03 (b) of this Agreement, in a manner satisfactory to the Association;

(d) MSE's work program for the Fiscal Year 1987-88 has been approved and is satisfactory to the Association; and

(e) the Borrower has made budgetary allocations satisfactory to the Association in its budget for Fiscal Year 1987-88 for the operations of the Unit referred to under Section 3.03 of this Agreement.

Section 6.02. 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

Representative of the Borrower; Addresses

Section 7.01. The Minister of the Borrower responsible for Planning 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:

Ministere du Plan
B.P. 862
Niamey
Republic of Niger

Cable address:

MINIPLAN
Niamey

Telex:

5463 NI

For the Association:

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

Cable address:

INDEVAS
Washington, D.C.

Telex:

440098 (ITT)
248423 (RCA) or
64145 (WUI)

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

REPUBLIC OF NIGER

By /s/ Joseph Diatta
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Michael Gillette
Acting Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Vehicles, furniture and equipment	70,000	100%
(2) Training	1,340,000	100%
(3) Consultants' services:		
(a) for Parts A, B, C and D of the Project	1,150,000	100%
(b) for Part E of the Project	540,000	100%
(4) Operating Costs	130,000	85% for with- drawals up to an aggregate amount equivalent to SDR 42,000; 60% for withdrawals up to an aggregate amount equivalent to SDR 86,000; and 40% for with- drawals up to an aggregate amount equivalent to SDR 130,000

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(5) Goods and services for Sub-projects under Part F of the Project	200,000	100%

(6) Refunding of Project Preparation Advance	580,000	Amount due pursuant to Section 2.02 (c) of this Agreement
(7) Unallocated	290,000	
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TOTAL	4,300,000	

2. For the purposes of this Schedule:

(a) the term "operating costs" means all costs associated with the Unit's operations including salary bonuses and overtime of personnel, maintenance of vehicles and equipment and office running costs; and

(b) "Sub-projects" means the execution of any activity within the objectives of the Project to be identified by the Borrower and accepted for financing by the Association, in accordance with Section 3.06 of this Agreement.

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

(a) payments made for expenditures prior to the date of this Agreement;

(b) payments made for expenditures under Category 3 (b), until a detailed restructuring program of ORTN has been approved by the Association; and

(c) payments made for expenditures under Category 5 for a specific Sub-project unless the Association has approved it.

SCHEDULE 2

Description of the Project

The objectives of the Project are to assist the Borrower in formulating and implementing the reforms of the Public Enterprise Sector Adjustment Program.

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: MSE and the Unit

Strengthening of MSE's capability in exercising its oversight and control responsibilities in respect of the formulation and implementation of the Program through advisory services and operational support from the Unit, the acquisition of office equipment and vehicles, and the preparation of annual audits by independent auditors of the accounts of the Project, and of individual accounts of public enterprises included in the Program.

Part B: General Sector Reform

1. Formulation and implementation of detailed divestiture programs for selected public enterprises.

2. Review of public enterprises statutes in accordance with P.E. Legislation and overall evaluation of P.E. Legislation.

3. Overall evaluation of the performance of the financial restructuring plan of the sector.

4. Review of the impact of privatization and other reforms of

the Program.

5. Studies of the basic constraints of the parapublic sector, namely in the fields of staff remuneration related to performance, financial control mechanisms, auditing and accounting norms, management and information systems, oversight and control responsibilities, in order to enable the Borrower to prepare and develop steps to overcome such constraints.

6. Strengthening the capability of MSE and selected public enterprises in:

- (i) introducing an effective management information system;
- (ii) preparing contrats de programmes for selected public enterprises; and
- (iii) carrying out annual audits of selected public enterprises.

Part C: Procurement

Review of the 1985 Procurement Code in order to improve the efficiency of current procedures, preparation of a procurement manual and standard bidding documents, and organization of seminars and training to assist administration and public enterprise staff in the preparation of documents used in the procurement of goods and services.

Part D: Training

Training at the Centre National de Perfectionnement a la Gestion of public enterprise executives and officials from ministries responsible for the monitoring and evaluation of public enterprises' performance.

Part E: Restructuring of ORTN

Strengthening ORTN's capabilities in the fields of management and accounting, revision of ORTN's statutes and preparation of the 1988-91 contrat de programme.

Part F: Other activities: Sub-projects

Studies and other activities to be identified by the Borrower during Project implementation.

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The Project is expected to be completed by December 31, 1991.

SCHEDULE 3

Procurement and Consultants' Services

Section I. Procurement of Goods

Part A: International Competitive Bidding

Except as provided in Part C hereof, goods shall be procured under contracts awarded in accordance with procedures consistent with those set forth in Sections I and II of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in May 1985 (the Guidelines).

Part B: Preference for Domestic Manufacturers

In the procurement of goods in accordance with the procedures described in Part A hereof, goods manufactured in Niger may be

granted a margin of preference in accordance with, and subject to, the provisions of paragraphs 2.55 and 2.56 of the Guidelines and paragraphs 1 through 4 of Appendix 2 thereto.

Part C: Other Procurement Procedures

1. Vehicles, furniture and equipment estimated to cost less than the equivalent of \$100,000 per contract up to an aggregate amount not to exceed the equivalent of \$1,000,000 may be procured under contracts awarded on the basis of competitive bidding, advertised locally, in accordance with procedures satisfactory to the Association.

2. Items or groups of items estimated to cost less than the equivalent of \$20,000 per contract, up to an aggregate amount not to exceed the equivalent of \$1,000,000, may be procured under contracts awarded on the basis of comparison of price quotations solicited from a list of at least three suppliers eligible under the Guidelines, in accordance with procedures acceptable to the Association.

Part D: Review by the Association of Procurement Decisions

1. Review of invitations to bid and of proposed awards and final contracts:

(a) With respect to each contract estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract required to be furnished to the Association pursuant to said paragraph 2 (d) shall be furnished to the Association prior to the making of the first payment out of the Special Account in respect of such contract.

(b) With respect to each contract not governed by the preceding paragraph, the procedures set forth in paragraphs 3 and 4 of Appendix 1 to the Guidelines shall apply. Where payments for such contract are to be made out of the Special Account, such procedures shall be modified to ensure that the two conformed copies of the contract, together with the other information required to be furnished to the Association pursuant to said paragraph 3, shall be furnished to the Association as part of the evidence to be furnished pursuant to paragraph 4 of Schedule 4 to this Agreement.

(c) The provisions of the preceding subparagraphs (a) and (b) shall not apply to contracts on account of which the Association has authorized withdrawals from the Credit Account on the basis of statements of expenditure. Such contracts shall be retained in accordance with Section 4.01 (c) (ii) of this Agreement.

2. The figure of 10% is hereby specified for purposes of paragraph 4 of Appendix 1 to the Guidelines.

Section II. Employment of Consultants

In order to assist the Borrower in carrying out the Project, the Borrower shall employ experts, consultants and a resident public enterprise advisor whose qualifications, experience and terms and conditions of employment shall be satisfactory to the Association. Such experts, consultants and advisor shall be selected in accordance with principles and procedures satisfactory to the Association on the basis of the "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" published by the Bank in August 1981.

Special Account

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means Categories 1 through 5 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 of CFAF 75,000,000 to be withdrawn from the Credit Account and deposited in the Special Account pursuant to paragraph 3 (a) of this Schedule.

2. Except as the Association shall otherwise agree, 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 may be made as follows:

(a) On the basis of a request or requests by the Borrower for a deposit or deposits which add up to the aggregate amount of the Authorized Allocation, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit in the Special Account such amount or amounts as the Borrower shall have requested.

(b) The Borrower shall furnish to the Association requests for replenishment of the Special Account at such intervals as the Association shall specify. On the basis of such requests, the Association shall withdraw from the Credit Account and deposit into the Special Account such amounts as shall be required to replenish the Special Account with amounts not exceeding the amount of payments made 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 the evidence supporting the request for such deposit furnished pursuant to paragraph 4 of this Schedule.

4. For each payment made by the Borrower out of the Special Account for which the Borrower requests replenishment pursuant to paragraph 3 (b) of this Schedule, the Borrower shall furnish to the Association, prior to or at the time of such request, such documents and other evidence as the Association shall reasonably request, showing that such payment was made for eligible expenditures.

5. (a) Notwithstanding the provisions of paragraph 3 of this Schedule, no further deposit into the Special Account shall be made by the Association when either of the following situations first arises:

(i) 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

(ii) the total unwithdrawn amount of the Credit allocated to the eligible Categories minus 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 be equal to the equivalent of twice the amount of the Authorized Allocation.

(b) 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 any expenditure or in any amount not eligible pursuant to paragraph 2 of this Schedule, or (ii) was not justified by the evidence furnished pursuant to paragraph 4 of this Schedule, the Borrower shall, promptly upon notice from the Association 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. No further deposit by the Association into the Special Account shall be made until the Borrower has made such deposit or refund.

(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 for crediting to the Credit Account.

