

No. 9591

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT
and
NIGERIA

Guarantee Agreement—Kainji Project (Supplementary)
(with annexed Loan Regulations No. 4, as amended,
and Loan Agreement between the Bank and the
Niger Dams Authority). Signed at Washington on
27 November 1968

Authentic text: English.

*Registered by the International Bank for Reconstruction and Development on
30 May 1969.*

BANQUE INTERNATIONALE POUR
LA RECONSTRUCTION ET LE DÉVELOPPEMENT
et
NIGÉRIA

Contrat de garantie — Projet (complémentaire) de Kainji
(avec, en annexe, le Règlement n° 4 sur les emprunts,
tel qu'il a été modifié, et le Contrat d'emprunt entre
la Banque et la Niger Dams Authority). Signé à
Washington le 27 novembre 1968

Texte authentique: anglais.

*Enregistré par la Banque internationale pour la reconstruction et le développe-
ment le 30 mai 1969.*

GUARANTEE AGREEMENT ¹

AGREEMENT, dated November 27, 1968, between FEDERAL REPUBLIC OF NIGERIA (hereinafter called the Guarantor) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (hereinafter called the Bank).

WHEREAS by a loan agreement dated July 7, 1964 ² and made between the Bank and the Niger Dams Authority (hereinafter called the Borrower), the Bank agreed to make a loan to the Borrower in an amount in various currencies equivalent to eighty-two million dollars (\$82,000,000), on the terms and conditions set forth in said loan agreement to assist the Borrower in financing a multi-purpose project more particularly described in Schedule 2 to said loan agreement ;

WHEREAS by a guarantee agreement dated July 7, 1964 ² and made between the Guarantor and the Bank, the Guarantor guaranteed the obligations of the Borrower in respect of said loan on the terms and conditions set forth in said guarantee agreement ;

WHEREAS by an agreement of even date herewith between the Bank and the Borrower, which agreement and the schedules therein referred to are hereinafter called the Loan Agreement, ³ the Bank has agreed to make to the Borrower a loan in various currencies equivalent to fourteen million five hundred thousand dollars (\$14,500,000), for the completion of the project, on the terms and conditions set forth in the Loan Agreement, but only on condition that the Guarantor agree to guarantee the obligations of the Borrower in respect of such loan as hereinafter provided ; and

WHEREAS the Guarantor, in consideration of the Bank's entering into the Loan Agreement with the Borrower, has agreed to guarantee such obligations of the Borrower ;

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 Loan Regulations No. 4 of the Bank dated February 15, 1961

¹ Came into force on 14 January 1969, upon notification by the Bank to the Government of Nigeria.

² United Nations, *Treaty Series*, Vol. 537, p. 3.

³ See p. 190 of this volume.

as amended February 9, 1967,¹ subject, however, to the modifications thereof set forth in Section 1.01 of the Loan Agreement (said Loan Regulations No. 4 as so modified being hereinafter called the Loan Regulations) with the same force and effect as if they were fully set forth herein.

Section 1.02. Wherever used in this Agreement, unless the context shall otherwise require, the several terms defined in the Loan Agreement shall 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 Agreement contained, the Guarantor hereby unconditionally guarantees, 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, the Guarantor 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, promptly to provide the Borrower or cause the Borrower to be provided with such funds as are needed to meet such expenditures.

Article III

Section 3.01. It is the mutual intention of the Guarantor and the Bank that no other external debt shall enjoy any priority over the Loan by way of a lien on public assets. To that end, the Guarantor undertakes that, except as the Bank shall otherwise agree, if any lien shall be created on any assets of the Guarantor 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 on commercial goods to secure a debt maturing not more than one year after the date

¹ See p. 190 of this volume.

on which it is originally incurred and to be paid out of the proceeds of sale of such commercial goods ; or (iii) any lien arising in the ordinary course of banking transactions and securing a debt maturing not more than one year after its date.

The term “ assets of the Guarantor ” as used in this Section includes assets of the Guarantor or of any of its political subdivisions or of any agency of the Guarantor or of any such political subdivision, including, without limitation, the Central Bank of Nigeria or any other institution performing the functions of a central bank.

Section 3.02. (a) The Guarantor 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 either shall reasonably request with regard to the general status of the Loan. On the part of the Guarantor, such information shall include information with respect to financial and economic conditions in the territories of the Guarantor and the international balance of payments position of the Guarantor.

(b) The Guarantor 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. The Guarantor 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) The Guarantor shall afford all reasonable opportunity for accredited representatives of the Bank to visit any part of the territories of the Guarantor 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 the Guarantor or laws in effect in its territories ; provided, however, that the provisions of this Section shall not apply to taxation of 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 the Guarantor.

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

Section 3.05. (a) The Guarantor shall, prior to the Project going into commercial operation, and in agreement with the Bank, take such steps

with respect to the organization and operations of ECN and the Borrower as may be necessary to obtain efficient coordination of electric power production and distribution and assure maximum efficiency of operation under capable management and in accordance with sound engineering, financial and public utility practices.

(b) The Guarantor shall take all steps necessary to ensure that the exchange of assets between ECN and the Borrower described in Section 5.03 (a) of the Loan Agreement is carried out.

(c) The Guarantor shall take all requisite steps to ensure that the tariffs and charges prescribed by the Borrower for the supply of electricity are adequate for the purposes set forth in Section 5.02 of the Loan Agreement.

Section 3.06. The Guarantor shall, at a reasonable time prior to any appointment of a Chairman of the Borrower (or any person to perform the functions of chief executive of the Borrower), notify the Bank of any proposal to make such appointment and shall not make such appointment unless the qualifications and experience of the proposed candidate are acceptable to the Bank.

Article IV

Section 4.01. The Guarantor shall endorse, in accordance with the provisions of the Loan Regulations, its guarantee on the Bonds to be executed and delivered by the Borrower. The Federal Commissioner for Finance of the Guarantor and such person or persons as he shall designate in writing are designated as the authorized representatives of the Guarantor for the purposes of Section 6.12 (b) of the Loan Regulations.

Article V

Section 5.01. The following addresses are specified for the purposes of Section 8.01 of the Loan Regulations :

For the Guarantor :

Permanent Secretary
Federal Ministry of Finance
Lagos, Nigeria

Alternative address for cables :

Permfin
Lagos

For the Bank :

International Bank for Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America