



OBSERVATOIRE DU SAHARA ET DU SAHEL
SAHARA AND SAHEL OBSERVATORY



2nd COUNCIL OF MINISTERS OF GICRESAIT PROJECT
Abuja, Nigeria
Friday 28TH March, 2014

MEMORANDUM OF UNDERSTANDING
for the Establishment of a Consultation Mechanism for the
Integrated Management of the Water Resources of the
Iullemeden, Taoudeni/Tanezrouft Aquifer Systems (ITAS)

(Algeria, Benin, Burkina Faso, Mali, Mauritania, Niger, Nigeria)



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PREAMBLE

**The Democratic, Popular Republic of Algeria,
The Republic of Benin,
Burkina-Faso,
The Republic of Mali,
The Islamic Republic of Mauritania,
The Republic of Niger,
The Federal Republic of Nigeria,**

Hereinafter referred to as the Signatory States to the Memorandum of Understanding on the Consultation Mechanism for the Integrated and Concerted Management of the Water Resources of the Iullemeden and the Taoudeni/Tanezrouft Aquifer Systems,

Considering the United Nations Charter of 26 June 1945;

Considering the Constitutive Act of the African Union of 11 July 2000;

Considering the Revised Treaty of the Economic Community of West African States (ECOWAS) on 24 July 1993;

Considering the Treaty establishing the Arab Maghreb Union (UMA) of 17 February 1989;

Considering the Niamey Act regarding navigation and economic cooperation between the States of the Niger Basin, signed on 26 October 1963

Considering the Convention of 21 November 1980 establishing the Niger Basin Authority, revised at the 15th Session of the Council of Ministers of the NBA in October 1987 in N'Djamena (Chad) (revised Convention of 29 October 1987);

Considering the Convention establishing the Organization for the Development of the Senegal River (ODSR/OMVS) and the Convention relating to the Status of the Senegal River, adopted 11 March 1972;

Considering the Charter of the Niger Water Basin adopted by the 8th Summit of Heads of State and Government of the NBA, 30 April 2008 in Niamey;

Considering the Charter of the Senegal River Waters, adopted 28 May 2002;

Bearing in mind the major contribution of non-conventional international instruments to the emergence of fundamental principles of the laws on watercourses and international lakes including:

- a) The Helsinki Rules on the Uses of the Waters of International Rivers, adopted in 1966 in Helsinki;

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- b) UN Resolution 34/186 on the principles of conduct in the conservation and harmonious utilization of shared natural resources, adopted in New York on 18 December 1979;
- c) United Nations Resolution A.RES/63/124 on the Law of Trans-boundary Aquifers, adopted by the UN General Assembly on 11 December 2008;
- d) Declaration of the International Conference on Water and the Environment in the context of sustainable development, adopted in Dublin, Ireland in 1992;
- e) Statement of the United Nations Conference on Environment and Development and the Action Plan of the United Nations Conference on Environment and Development, in particular its Chapter 18 on the protection of freshwater resources and their quality, adopted in Rio de Janeiro in 1992 ;
- f) Declaration of the International Conference on Water and Sustainable Development, held in Paris in 1998;
- g) The Millennium Declaration, including the Millennium Development Goals, adopted in New York in 2000 ;

Given the decisive contribution of conventional instruments in the codification and progressive development of law on international rivers and lakes namely:

- a) The African Convention on the Conservation of Nature and Natural Resources adopted on 16 September 1968 and revised July 11, 2003 in Maputo (Mozambique);
- b) The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention), adopted on 2 February 1971 in Ramsar (Iran);
- c) The Convention on the Protection and Use of Trans-boundary Watercourses and International Lakes of 17 March 1992;
- d) The Convention on the Law on the Use of water for purposes other than navigation, adopted by the UN General Assembly in New York on 21 May 1997;

Taking due account of the African regional and sub-regional initiatives in the field of water, in particular:

- a) The African Water Vision 2025 for a sustainable and equitable use of water for socio - economic development, adopted in March 2000 by the Extraordinary Summit of the African Union;
- b) The New Economic Partnership for African Development (NEPAD) and in particular the Action Plan of the "Environment Initiative» NEPAD, 2003;
- c) The "Ouagadougou Declaration" adopted at the West African Conference on Integrated Water Resources Management (IWRM), held in March 1998 in Ouagadougou (Burkina Faso);
- d) Decision A/DEC. 12/12/00 of the ECOWAS Summit of Heads of State and Government, adopting a sub-regional Action Plan for the integrated management of water resources, adopted on 16 December 2000 in Bamako (Mali);
- e) Decision A/DEC. 5/12/01 establishing the Permanent Framework for Coordination and Follow-up to the Integrated Water Resources Management in West Africa (CPCS/ IWRM / AO) of 21 December 2001;
- f) Additional ECOWAS Act A/SA.5/12/08 adopting the policy of the Water Resources of West Africa, 5 December 2008;

- g) The North African Charter for the Protection of the Environment and Sustainable Development dated 11 November 1992;
- h) The Johannesburg Declaration of the African Council of Ministers in charge of Water on the Water Sector ;

Hoping to move towards a universal convention on trans-boundary aquifers on the basis of Resolution A/RES/63/124 of 11 December 2008 on the Law on Trans-boundary Aquifers ;

Considering the adherence of all countries involved in the ITAS to the principles of the Integrated Water Resources Management (IWRM) as contained in the World Water Vision and, adopted by the 2nd World Water Forum in the Hague in March 2000 ;

Relying in particular on the technical and scientific results obtained through the studies completed and the diagnosis of the legal, policy and institutional framework required for the establishment of the ITAS Consultation Mechanism;

Keeping in mind the Memorandum of Understanding establishing the Consultation Mechanism for the management of the Iullemeden Aquifer System adopted in June 2009 in Bamako (Mali) by the Ministers in charge of water from Mali, Niger and Nigeria;

Bearing in mind that the common policy document of the water resources of West Africa presents the Vision, the challenges of a regional water policy and sets out the objectives, the guiding principles, the main strategic axes of the intervention and the procedures of their implementation;

Aware of the various cross-border risks to which ITAS is exposed;

Convinced of the need to ensure the development, use, conservation, management and protection of groundwater resources by promoting optimal and sustainable utilization of water resources for the benefit of present and future generations;

Considering the need to establish an appropriate Consultation Mechanism to promote cooperation between the different countries involved in ITAS and ensure the integrated development of the basin in all areas by developing water resources;

Considering the major ITAS development challenges including the conservation of natural resources, namely the protection of the environment, the dynamics of IWRM at the national, regional and international levels, the development of socio- economic infrastructure and regional economic integration;

Considering that Trans-boundary Diagnostic Analysis, the Database, the Geographic Information System and the mathematical model are common decision support tools already available in the countries involved in the ITAS;

Seeking to develop close cooperation based on a policy of pooling their resources for a sustainable and coordinated use of ITAS water resources in accordance with water management and good governance principles for a sustainable and shared development of the ITAS;

Recognizing the fundamental right of each individual for access to water;

Convinced that cooperation in the management of ITAS water resources is a process that allows the Signatory States to ensure better management of their shared groundwater resources for sustainable development of the region;

Agreed to adopt this Memorandum of Understanding on a Consultation Mechanism for the Integrated and Concerted Management of Water Resources of the Iullemeden and Taoudeni/Tanezrouft Aquifer Systems, defined above as "Consultation Mechanism".

CHAPTER 1: GENERAL PROVISIONS

Article 1: Definitions

For the purpose of this Memorandum of Understanding, unless otherwise stated, the following terms shall have the following meanings:

- "Aquifer" means a permeable geological formation containing water underlain by a less permeable layer and the water contained in the saturated zone of the formation;
- "Aquifer system" a series of two or more aquifers that are hydraulically connected;
- "Trans-boundary aquifer" or "trans-boundary aquifer system", respectively, an aquifer or aquifer system located in several states;
- "Signatory States" means the States which ratify this Memorandum of Understanding;
- "Iullemeden Aquifer System - IAS" means a set of sedimentary deposits containing two major aquifers: the Sedimentary Continental at the base and the Continental Terminal separated by an aquitard. This system is shared by Algeria, Benin, Mali, Niger and Nigeria;
- "The Taoudeni/Tanezrouft Aquifer Systems- TAS " means a set of aquifer systems of Taoudeni/Tanezrouft (TAS) covering an area of approximately 2 million square kilometers in four countries (Burkina Faso, Mali, Mauritania and Algeria).
- "ITAS" means the union of Iullemeden and Taoudeni/Tanezrouft Aquifer Systems
- "Consultation mechanism" means the institution established under this Memorandum of Understanding;
- "Permanent Scientific and Technical Committee" means the Standing Committee of Experts selected with equal number of members from each Signatory State and on specific topics to prepare for a given session of the Council of Ministers;
- "National Committee" means the structures of national institutions, coordinated by the National Focal Point, which operate in each of the Signatory States;
- "the Council of Ministers" means the body made up of ministers in charge of water resources of the Signatory States;
- "Integrated Water Resources Management - IWRM" : "the process which promotes the coordinated development and management of water, land and related resources, in order to maximize, in an equitable manner, the resulting economic and social well-being; without compromising the sustainability of vital ecosystems";
- "Trans-boundary impact" means any significant adverse effect on the Aquifer System caused by natural or human activity, beyond an area under the jurisdiction of a State of the Aquifer. Such changes may affect life and property, safety of facilities and the ecosystem in question:
- "Coordination Unit" the coordination body of the Consultation Mechanism.

Article 2: Establishment of the ITAS Consultation Mechanism

There shall be established between the Signatory States and those who will join, a Consultation Mechanism for the Management of the Iullemeden Taoudeni/Tanezrouft Aquifer System (ITAS).



CHAPTER 2:

OBJECTIVES AND SCOPE OF the CONSULTATION MECHANISM

Article 3: Objectives of the Consultation Mechanism

The objective of the Consultation Mechanism is to promote and foster cooperation between the Signatory States to this Memorandum of Understanding and those that will join, based on solidarity and reciprocity for a sustainable, equitable, coordinated and collaborative use of the ITAS water resources.

In this regard, the Consultation Mechanism aims to :

- a) Promote an integrated and concerted management of the ITAS water resources;
- b) Strengthen solidarity and promote cooperation in communication and mutual information in order to facilitate the joint identification of risks to which the ITAS water resources are exposed;
- c) Facilitate the joint management of those risks;
- d) Formulate the rules relating to the conservation and protection of the environment and aquatic ecosystems against degradation and pollution, in accordance with the objectives of sustainable development;
- e) Facilitate the sustainable development of the ITAS resources.

Article 4: Scope of Application of the Memorandum of Understanding

This Memorandum of Understanding shall apply to all States of the Consultation Mechanism.

It applies in the ITAS, to all public or private measures and activities, ongoing or planned, for the purpose of:

- a) Promoting a better knowledge of groundwater resources;
- b) The protection and preservation of shared groundwater resources
- c) Promoting the sustainable use of the lands and waters within the framework of ongoing or future activities, relating to the use and mobilization of groundwater resources for the satisfaction of socio- economic and environmental needs, particularly those that are likely to have a trans-boundary impact on water resources or the environment.

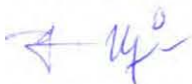
CHAPTER 3:

FUNCTIONS AND STATUS OF THE CONSULTATION MECHANISM

Article 5: Functions of the Mechanism

The Consultation Mechanism's main mission is to provide a framework for exchange and cooperation between the States Signatories to this Memorandum of Understanding through:

- a) The formulation of the activities, plans, and programs proposed by the Signatory States, that are likely to create situations of risk, or cause damage to ITAS resources;
- b) The definition of measures to be taken for risk management;
- c) Conducting joint studies and coordination of programs for the Integrated and concerted development of the ITAS resources;



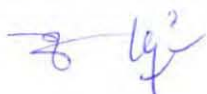
- d) Formulating recommendations for the harmonization and updating of the legislative, institutional and management framework of water resources shared by the Signatory States;
- e) The contribution to the mobilization of the necessary financial resources for a sustainable management of the ITAS resources;
- f) Settling any dispute that may arise between the States Signatories to this Memorandum of Understanding;
- g) The development and dissemination of an annual report on the state of ITAS;
- h) The definition of an initial monitoring and evaluation program;
- i) Monitoring and evaluating the harmonization of procedures and relevant methodologies;
- j) The definition of guidelines for the maintenance of common technological ITAS management tools;
- k) The definition of methodologies for the identification of risks to which ITAS water resources are likely to be exposed;
- l) Identification of risk and vulnerable areas in the ITAS and the development of the relevant Action Plans;
- m) The development and preparation of relevant maps;
- n) The development of an Action Plan for the attainment of the objectives set through the establishment of the Consultation Mechanism;
- o) Strengthening and updating tools for the management of the resource (common databases, GIS, Models) through the permanent exchange of data and information, the production and dissemination of indicators on water resources;
- p) Carrying out joint training, information and education activities on the ITAS resources and their sustainable management;
- q) The development of a Common Observation Network of the Iullemeden and Taoudeni/Tanezrouft Aquifers Systems.

Article 6: Status of the Consultation Mechanism

The Consultation Mechanism is a legal personality and therefore shall have the power to:

- a) Contract;
- b) Acquire and dispose of movable and immovable property necessary for its normal operation;
- c) Receive gifts, grants, bequests and other donations;
- d) Negotiate loans;
- e) Receive and give technical assistance;
- f) Sue and be sued.

The Executive Secretary shall be the legal representative of the Consultation Mechanism.



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CHAPTER 4:

ORGANS OF THE CONSULTATION MECHANISM

Article 7: Organs of the Consultation Mechanism

The mechanism shall be composed of the following organs:

- a) The Council of Ministers in charge of Water Resources of the Signatory States;
- b) The Executive Secretariat, headed by an Executive Secretary, shall be the executive organ of the Mechanism;
- c) The Permanent Scientific and Technical Committee (PSTC), composed of equal number of representatives of the Signatory States, to be consulted for technical advice and/or specific scientific issues to prepare a given session of the Council of Ministers;
- d) National Committees, composed of national institutions in charge of water resources in each Signatory State, and other national bodies involved with the issue of water resources;
- e) The Coordination Unit, headed by a Coordinator.

Article 8: The Council of Ministers

The Council of Ministers shall be composed of the Ministers in charge of Water Resources of the Signatory States. It is the decision-making, management and control body.

The Presidency of the Council of Ministers shall be held in turn for a period of two (2) years by each of the Signatory States in their alphabetical order.

The Council of Ministers shall have the powers to:

- a) Approve the Management and ITAS Water Resources Management Plans;
- b) Approve the Action Plan for the attainment of the objectives of the Mechanism,
- c) Approve the by-laws and Rules of Procedure of the Mechanism;
- d) Approve programs and measures to be undertaken for risk management;
- e) Approve projects and programs for the integrated development and management of the ITAS Water Resources;
- f) Approve the annual report on the state of the Systems.

Regular sessions of the Council of Ministers shall be held alternately in each of the Signatory States, once every two (2) years; and special sessions, as appropriate, upon initiative of the President or request by a Signatory State to this Memorandum of Understanding.

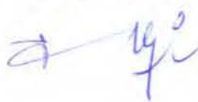
Decisions of the Council of Ministers shall be taken unanimously.

Article 9: The Executive Secretariat

The Executive Secretariat shall be headed by an Executive Secretary appointed by the Council of Ministers of the Mechanism for a period of four (4) years renewable only once.

The Executive Secretary shall be responsible for ensuring:

- a) the coordination of the activities and work of the Coordination Unit of the Permanent Scientific and Technical Committee and the National Committees ;
- b) the preparation of the Sessions of the Council of Ministers;



- c) the implementation of decisions of the Council of Ministers;
- d) the development and maintenance of ITAS management tools;
- e) contacts with ITAS Basin Organizations and other bodies.

Article 10: The Permanent Scientific and Technical Committee

The Sessions of the Council of Ministers shall be preceded by meetings of the Permanent Scientific and Technical Committee and / or its ad hoc working group, to give advice on any issue submitted to it, including:

- a) The technical aspects of projects and programs and their consistency with the plans (schemes) for the Development and Management of Water Resources;
- b) Any project or program likely to have significant negative effects on the ITAS water system, its aquatic ecosystems and the environment;
- c) Where applicable, the Environment Impact Study Reports developed for the implementation of planned measures.

The Permanent Scientific and Technical Committee may establish ad hoc Working Groups for the review of records and specific themes, composed of resource persons (experts) in equal numbers for each Signatory State.

Article 11: National Committees

Under the auspices of the Ministries in charge of Water Resources in every Signatory State, the National Committees, besides the relevant body at the Ministry of Water Resources which is the National Focal Point, shall be expanded to include:

- other national institutions such as the Ministries of Agriculture, Environment ...
- the National Coordination Units of the Water Resources or any other relevant stakeholders' associations concerned with the Aquifer System.

In each Signatory State, the Chair of the National Committee shall be a highly responsible officer designated by the Minister in charge of Water Resources.

The composition, operation procedures and organization of the National Committees shall be determined by order of the Minister for Water resources in each Signatory State.

National Committees shall be responsible for:

- a) Ensuring the rational and equitable use of ITAS water resources in accordance with the provisions of this Memorandum of Understanding;
- b) Facilitating the regulation of issues relating to the use of water resources;
- c) Contributing to the planning and implementation of any project or program initiated in ITAS;
- d) Collecting data and information at the national level and transmitting them periodically to the Coordination Unit;
- e) Identifying vulnerable ITAS areas;
- f) Carrying out studies on the appropriate measures to be adopted in order to facilitate the sustainable management of risks to which the ITAS resources will be exposed;
- g) The preparation of national programs for the Integrated and consultative development of the ITAS resources.



Article 12: Coordination Unit

Led by a Coordinator and housed in the Sahara and Sahel Observatory (OSS), the Coordination Unit shall have as essential functions:

- a) To support the Signatory States to this Memorandum of Understanding in the implementation of key technical activities and facilitate consultation.

To this end, the Coordination Unit shall, through the National Committees, establish common networks, work on collecting and processing data and information in a way that facilitates their use by Signatory States and other bodies of the Consultation Mechanism to which the data and information are disseminated.

It shall also work on updating the common database and models;

- b) Boost the institutional process by identifying trans-border water issues;
- c) Ensure the dissemination of trans-border information and data to the Signatory States and studies conducted by the OSS as technical and scientific support to the ITAS Consultation Mechanism;
- d) Ensure dialogue at the level of decision-makers for the development programs and options across the basins, and enable the participatory management through real communication work;
- e) Ensure the development of an Action Plan for the Implementation of the objectives of the Mechanism.

CHAPTER 5: GENERAL PRINCIPLES

Article 13: Equitable and reasonable utilization

The use of ITAS water resources should take into account the principle of equitable and reasonable utilization. To this end, the following circumstances and relevant factors shall be taken into account:

- a) Socio-economic technical data relating to water resources , namely the relevant geographical, hydrological , hydrogeological , meteorological, hydro-climatic , hydro-chemical, socioeconomic and demographic data within the territory of each ITAS State;
- b) The reasonably planned needs for the development of ITAS water resources, taking into account present and future needs of the Signatory States and other potential water resources for these States;
- b) The previous, current and future uses of the ITAS water resources;
- c) The present and future economic and social needs of the Signatory States and riparian communities ;
- d) The availability of other water resources and the cost of a possible substitution ;
- e) The need to avoid the wasteful use of ITAS waters;
- f) The degradation likely to be caused by a new or expanded use ;
- g) The effects of the use of ITAS by a State on other Signatory States;
- h) The role of the relevant aquifer or ITAS in the related ecosystem;
- i) The right of access to water for ITAS people;

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- j) The conservation, protection, development and saving in the use of water resources and the costs of measures taken to that effect;
- k) The availability of alternatives, of comparable value, likely to replace a particular current or intended use.

Article 14: General Duty to Cooperate

The use of ITAS water resources shall take into account the principle of cooperation, under which it is necessary to develop relations between States, organizations of aquifers and water basins and regional organizations in order to ensure an integrated concerted and peaceful management of water resources of the aquifers and basin environments that would allow generating positive gains in that mentioned region.

To this end, the Signatory States shall cooperate on the basis of sovereign equality, territorial integrity, sustainable development, mutual benefit and good faith in order to achieve an equitable and reasonable utilization and appropriate protection of the ITAS.

Article 15: The Principle of Complementarity

The use of ITAS water resources shall take into account the principle of complementarity, under which, from a regional integration perspective, the complementarity of the economies of the States shall be better exploited on the basis of current or potential comparative benefits within the Signatory States of this Memorandum of Understanding.

Article 16: The Principle of Sustainable Development

The use of ITAS water resources shall take into account the principle of sustainable development whereby the management of ITAS shall help meet the needs of current generations without compromising those of future generations, balancing the demands of economic development, environmental protection and social development.

Article 17: The Principle of Partnership

The use of ITAS water resources shall take into account the principle of Partnership, under which Signatory State shall seek complementarities and synergies between national institutions and intergovernmental organizations, non-governmental organizations, associations and all actors in the field of water resources for high efficiency of the actions undertaken.

Article 18: The Principle of Exchange of Data and Information

The use of ITAS water resources shall take into account the principle of exchange of data and information under which the Signatory States shall regularly exchange easily accessible data and information on the state of the ITAS within their national jurisdiction, in particular those of geological, hydrogeological, hydrological, meteorological and ecological nature and those related to the hydrochemistry of the aquifers or aquifer systems, as well as the relevant forecasts.

If a Signatory State is requested by another State to provide data and information relating to the national section of the ITAS that are not readily available, it shall make its best efforts to meet this request through the Coordination Unit which can carry out a study on the matter.

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Article 19: Principle of Information and Participation

The use of ITAS water resources shall take into account the principle of information and public participation, under which any user (and their legally recognized organization and coordination) shall have the right to be informed of the water resources and to contribute to the development and implementation of decisions relating to the development of the basin.

Article 20: the Principle of Non-damaging Use

The use of ITAS water shall take into account the principle of non-damaging use, under which, every Signatory State shall ensure and take all appropriate measures to ensure that the activities carried out on its territory do not cause damage to other Signatory States.

The modalities of quantifying the amount of compensation arising from any damage caused shall be agreed mutually by the affected Signatory States working with the Executive Secretariat; as contained in the Annex to this Memorandum of Understanding

Article 21: Principle of Planning

The use of ITAS water resources shall take into account the principle of planning, under which, the Executive Secretary of the Consultation Mechanism, in close collaboration with other bodies, develops and implements plans (schemes) of development and management of the ITAS water resources.

Article 22: Principle of Protection and Preservation of the ecosystems

The use of ITAS water resources shall take into account the principle of preservation and protection of the ecosystems, under which the Signatory States to this shall take all appropriate measures to protect and preserve the trans-boundary aquatic ecosystems including measures to ensure that the quality and quantity of water that is contained in the aquifer systems, as well as the water flowing through its discharge zones, are sufficient to protect and preserve these ecosystems.

Article 23: Principle of Precaution

The use of ITAS water resources shall take into account the precautionary principle, whereby a Signatory State shall not delay the implementation of measures to prevent any situation that may have trans-boundary impacts on the ground that scientific research has not demonstrated the existence of a causal link between these measures and a possible trans-border impact.

Article 24: The Polluter-Payer Principle

The use of ITAS water resources shall take into account the "polluter-payer principle", applied to both legal and natural persons, whereby the costs of prevention, control and reduction of pollution are borne by the polluter.

The Signatory States to this Memorandum of Understanding shall carry out an Environment Impact Assessment (EIA) in the design and implementation of programs, projects and other development activities affecting or likely to affect the ITAS resources and engender risks to the ecosystem.

Article 25: The Tapper-Payer Principle

The use of ITAS water resources shall take into account the tapper-payer principle, whereby rates for the use of water are decided according to what is applied. The use of water shall be subject to either a tax or a charge benefiting each of the Signatory States.

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CHAPTER 6: GENERAL OBLIGATIONS

Article 26: Preservation of the sustainability and quality of water resources

Signatory States, individually and/or collectively, shall manage the ITAS water resources to ensure their sustainability and maintain their quality to the highest possible level. To this end, they undertake to:

- a) Exchange information and data on the ITAS;
- b) Prevent damage that could have harmful effects on human health or natural resources in another state by the discharge of pollutants;
- c) Avoid excessive abstraction of these resources.

Article 27: Planning, conservation, management and development policies of water resources

The Signatory States shall give prior notice on activities, policies and strategies, plans, programs and projects proposed in the area, which may pose a risk to ITAS water resources or trans-boundary adverse impacts.

The Signatory States shall establish and implement policies for planning, conservation, management, utilization and development of groundwater in relation to:

- a) The water cycle and water resources inventories,
- b) The Integrated Management of Water Resources;
- c) The conservation of forests and other areas of ITAS, and the coordination and planning of projects for the development of groundwater resources;
- d) The inventory and management of all groundwater resources, including the administration and control of all forms of water use;
- e) The prevention and control of water pollution, through, inter alia, the establishment of harmonized water quality standards.

Article 28: Conservation and protection of the environment

The signatory States shall be committed to:

- a) Prevent any further deterioration of the environment, preserve and improve the conditions of associated ecosystems, lands and their needs as well as the wetlands that depend on the ITAS;
- b) Promote a sustainable use of water resources based on long-term protection of available water resources;
- c) Strengthen the protection of the ecosystem, the progressive reduction of trans-boundary pollution and prevent further pollution;
- d) Help mitigate the effects of harmful situations such as drought and climate change;
- e) Recourse to the use of Environmental Impact Assessment ;
- f) Consolidate and improve the knowledge about the state of water resources and other ITAS natural resources by strengthening available databases;
- g) Prevent and manage emergencies related to the reduction of ITAS water resources.



To this end, the Signatory States shall take all the necessary measures to prevent any internal breach of the provisions of this Article.

CHAPTER 7: PROPOSED MEASURES

Article 29: Exchange of Data and Information

The Signatory States undertake to:

- a) Exchange data and information on ITAS water resources and their uses;
- b) Consult each other and, if necessary,
- c) Negotiate the possible effects of planned measures in the ITAS likely to have a significant negative impact on another state in order to achieve an equitable solution.

Article 30: Action Plan, Management Plan and Management of the ITAS Water Resources

To achieve the objectives referred to in Article 3 of this Memorandum of Understanding; an ITAS Action Plan shall be drafted during the transitional period by the Coordination Unit in connection with the Permanent Scientific and Technical Committee and the National Committees.

Article 31: Notification of planned measures

Before a Signatory State implements or permits the implementation of measures on its territory that are likely to have significant negative impacts on other ITAS states, it shall notify them timely, through the Executive Secretariat.

Such notice shall be accompanied by technical data and information, including the results of any evaluation of the environmental and social impact, to enable the Consultation Mechanism to assess the possible effects of planned measures.

The Executive Secretary, after receiving the notification, shall seize the Permanent Scientific and Technical Committee which shall issue reasoned opinions. These notices shall be sent by the Executive Secretariat of the Council of Ministers of Water Resources to the Consultation Mechanism.

Subject to the provisions of Article 34 of this Memorandum of Understanding, a State providing a notification under the first paragraph of this article, shall give the ITAS Executive Secretariat six (6) months to study and evaluate the possible effects of the planned measures.

This period may be extended by one (1) month at the request of the Executive Secretariat.

During the period between the notification and the response given, the notifying State shall cooperate with the Executive Secretariat, by providing, upon request, any additional data and information available within a reasonable time.

During this period, the notifying State shall refrain from implementing or permitting the implementation of the planned measures.

The notification shall also be made to any State likely to be affected by the proposed measures by providing the same information within the same timeframe.



Article 32: Failure to reply to the notification

If no response to the notification within the time stated above is provided, the notifying State may proceed with the implementation of the planned measures, according to the notification and the technical data and information provided and in accordance with the principle of equitable and reasonable utilization.

Article 33: Consultations and negotiations

If the notified State or the Executive Secretariat believes that the proposed measures are likely to cause significant harm, consultations and negotiations may be undertaken to achieve an equitable solution.

The consultations and negotiations shall be conducted according to the principle of good faith, taking into account the legitimate interests of any other signatory State.

Article 34: Failure to notify

If a Signatory State has reasonable grounds to believe that another ITAS State projects measures that could have material adverse effects on its own uses or on the state of the water resources, it may request the latter to meet the notification requirement.

If the State planning the measures considers that it is not obliged to make the notification, it shall inform the Executive Secretariat and any State likely to be affected by sending a documented explanation of its decision.

If the decision does not satisfy the Executive Secretariat and the States likely to be affected, the parties involved shall engage in consultation and negotiation.

Article 35: Emergency Situations

In the event that the implementation of planned measures is of the utmost urgency for the protection of public health, public safety or other equally important interests, the State planning these measures may immediately proceed with the implementation, notwithstanding the notification requirement.

In this case, a formal declaration of the urgency of planned measures is required. It shall be complemented by all the required information and submitted to the Executive Secretariat and other ITAS States.

the State planning the measures shall, at the request of any Signatory States not convinced of the urgency of the measures, proceed with consultations and negotiations.

CHAPTER 8: SETTLEMENT OF DISPUTES

Article 36: Amicable settlement

Any dispute between the Signatory States shall be settled through the good offices of the Mechanism, mediation or conciliation or by any other method of peaceful settlement of disputes.

Article 37: Role of the Permanent Scientific and Technical Committee

If no solution is achieved through the procedures of good offices, mediation and/or conciliation, the dispute shall be submitted to the Council of Ministers, which may use the



technical opinion of the Permanent Scientific and Technical Committee, through the Executive Secretariat, which will submit resolutions within six (6) months as from the date of referral by the Executive Secretariat.

In case no satisfactory solution is achieved through the proposals of the Permanent Scientific and Technical Committee, the parties to the dispute shall initially seize the Conciliation Commission of the African Union.

Article 38: Regional Regulations and legal settlement

In case no satisfactory solution is provided by the Conciliation Commission of the African Union, the parties to the dispute shall seize the International Court of Justice.

Article 39: Application of unchallenged provisions

During the period of settling dispute, and until a resolution is achieved, all the provisions of the Memorandum of Understanding shall remain unchallenged. In addition, the Council of Ministers may decide on any precautionary measures proposed by the Executive Secretary.

CHAPTER 9:

OPERATION BUDGET OF THE CONSULTATION MECHANISM

Article 40: Operation Budget of the Consultation Mechanism

Funding the operation budget of the Consultation Mechanism shall be provided by annual contributions of the Signatory States.

The contributions shall be fixed by the Council of Ministers, which shall notify their respective Governments.

Article 41: External Funding

Financial contributions from international, regional and national organizations, as well as any other physical or legal entity can be accepted to support funding the Consultation Mechanism.

CHAPTER 10:

TRANSITIONAL AND FINAL PROVISIONS

Article 42: Duration of the Transitional Period

There shall be a transitional period of four (4) years to take effect upon the signing of this Memorandum of Understanding.

Article 43: Defining priorities during the transitional period

In its first session, the Council of Ministers of the Mechanism shall:

- Appoint the Coordinator and initiate the process of establishing the Coordination Unit at the OSS headquarters in Tunis (Tunisia);
- Develop and approve the Action Plan, the bylaws and Rules of Procedure of the Consultation Mechanism;
- Develop and approve the Development and Management Plan of the Water Resources and any documents of importance to the Consultation Mechanism.



Article 44: Management of the Transitional Period

During the transitional period, the Consultation Mechanism shall be managed by the Coordination Unit hosted at the OSS Headquarters in Tunis (Tunisia).

The Coordination Unit of the Consultation Mechanism will be headed by a light structure made up of:

- A coordinator appointed by the Council of Ministers of Water Resources in the ITAS ;
- A technical advisor and assistant, who shall be OSS staff;
- An administrative assistant, who shall be OSS staff;

During this transition period, the Coordinator of the Coordination Unit shall be the legal representative of the Consultation Mechanism.

As such, he/she shall be in charge, in addition to his/her duties under Article 12 above , of the administrative matters of the Mechanism including:

- a) the preparation of meetings of the Council of Ministers;
- b) the implementation of decisions of the Council of Ministers;
- c) the establishment of contacts with the ITAS region Basin Organizations as well as technical and financial Partners (TFP);
- d) the development of the bylaws and Rules of Procedures of the Consultation Mechanism ;
- e) the coordination of the activities of the Permanent Scientific and Technical Committee and the National Committees;
- f) the development of the Action Plan and implementation of the objectives targeted by the Consultation Mechanism;
- g) monitoring the process of updating and harmonizing national laws and documents;
- h) the preparation of all documents required for the implementation of this Memorandum of Understanding entrusted to him/her by the Council of Ministers

Article 45: Funding the Transitional Period

The expenses of the transitional period shall be provided by annual contributions of the Signatory States.

The annual budget for the transitional period shall be applied to financing the activities mentioned in Article 44 of this Memorandum of Understanding, as well as those listed below:

- a) Salaries and various allowances;
- b) Missions;
- c) The preparation of meetings of the Council of Ministers;
- d) Meetings of the Permanent Scientific and Technical Committee;
- e) The implementation of the Data Bank ;
- f) The acquisition of computer equipment;
- g) The daily management of the Unit expenses.



CHAPTER 11:

MISCELLANEOUS AND FINAL PROVISIONS

Article 46: Headquarters of the Consultation Mechanism

The location of the head office of the Consultation Mechanism shall be decided by the Council of Ministers of the ITAS Consultation Mechanism.

A Head Office Agreement shall be signed by the Mechanism and the host country.

The head office may be moved anywhere upon decision of the Council of Ministers of the ITAS Consultation Mechanism.

The Observatory of the Sahara and Sahel, which houses the Coordination Unit, shall provide offices and the necessary services to help the Mechanism start its activities.

Article 47: Legal Effect of the Decisions of the Mechanism

Decisions taken by the Consultation Mechanism shall bind the Signatory States,

Article 48: Relations between the Signatory States of the Mechanism and International and Regional Trans-boundary Water Resources Water Management Organizations/Institutions

Unless the Signatory States agree otherwise, this Memorandum of Understanding shall not affect the rights or obligations of the States under international conventions and bilateral or multilateral agreements in force at the date on which they become party to this Memorandum.

OSS shall provide the Coordination Unit of the Mechanism with the technical data related to ITAS water resources and other necessary information according to procedures to be fixed by mutual agreement.

The Signatory States cooperate in the exchange of information and technical data on ITAS water resources with any international or regional organization/institution sharing the same goals including the ECOWAS Centre for the Coordination of Water Resources, the Niger Basin Authority (NBA), and the Organization for the Development of the Senegal River (ODSR/OMVS), the Authority of the Volta Basin (AVB).

Article 49: Privileges and Immunities

The status, privileges and immunities of the Consultation Mechanism and its officials shall be provided by an agreement established for this purpose by the Consultation Mechanism and the Government of the host country.

In addition, the immunities and privileges of the Coordination Unit hosted by OSS in Tunis (Tunisia) shall be the same as those granted to officials of diplomatic missions in Tunisia.

Article 50: Amendments and Revision

Any signatory State may propose amendments to this Memorandum of Understanding.

The proposed amendment shall be promptly investigated by other states and the decision shall be taken unanimously.

Proposed amendments to this Memorandum of Understanding shall be addressed to the Executive Secretary who shall notify the Council of Ministers within thirty (30) days at the latest as from the date of receipt and at least fifteen (15) days before the meeting at which the proposed amendment will be considered .



Any amendment or revision of this Memorandum shall enter into force according to the same terms of the Memorandum of Understanding.

The appendices shall be an integral part of this Memorandum of Understanding.

Article 51: Termination

Any signatory State may terminate this Memorandum of Understanding upon expiration of five (5) years as from the date of entry into force.

Termination shall be effected by written notification addressed to the Government Depositary of the instruments of ratification of the Memorandum of Understanding, which will acknowledge receipt and inform the Governments of the other Signatory States.

The termination shall take effect (1) year after the date of receipt unless withdrawn earlier.

The Signatory State which terminates the Memorandum of Understanding shall be required to pay all dues incumbent upon it under this Memorandum of Understanding and resulting from its being Signatory to the Memorandum before the date of termination.

Article 52: By-laws and Rules of Procedure of the Consultation Mechanism

The bylaws and the Rules of Procedure shall be prepared by the Executive Secretariat and approved by the Council of Ministers

Article 53: Entry into force

This Memorandum of Understanding shall enter into force thirty (30) days after the deposit of instruments of ratification by at least two thirds of the member States of the ITAS Consultation Mechanism.

Article 54: Authentic Texts and Depositary Government


The original of this Memorandum of Understanding, whose English and French versions shall be equally authentic, shall be deposited with the Government of the host country of the Mechanism which shall transmit certified copies to all the Signatory States and shall notify them of the date of filing the instruments of ratification and adherence and shall register this Memorandum of Understanding with the African Union and the United Nations.



Done at Abuja on the 28 day of March 2014 in a single original copy in both English and French; both texts being equally authentic.

For the Democratic, Popular
Republic of Algeria

For the Republic of Benin

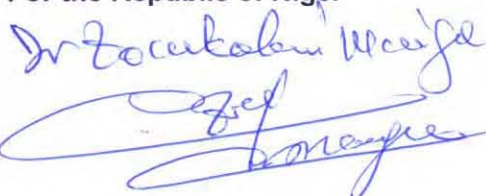

IBOURAIMA Safiri

For Burkina-Faso

For the Republic of Mali

For the Islamic Republic of
Mauritania

For the Republic of Niger


Dr. Zoukroun Wane

For the Federal Republic of
Nigeria