



Memorandum of

Understanding relating to the setting up of a

Consultative Mechanism for the management of

the Iullemeden Aquifer System (IAS)

MEMORANDUM OF UNDERSTANDING

RELATING TO THE SETTING UP OF A CONSULTATIVE MECHANISM FOR THE MANAGEMENT OF THE IULLEMEDEN AQUIFER SYSTEM

PREAMBLE

The Republic of Mali,

The Republic of Niger,

The Federal Republic of Nigeria,

States signatories of this Memorandum of Understanding,

IN VIEW OF the Niger Basin Water Charter as adopted at the 8th NBA Heads of States and Governments Summit held on April 30th, 2008 in Niamey;

IN VIEW OF the Paris Declaration of April 26th, 2004 of the principles of management and good governance for a sustainable and shared development of the Niger Basin;

IN VIEW OF the three Conventions of the United Nations, namely the Framework Convention on Climate Change, Rio de Janeiro, June 5th, 1992, the Convention on Biodiversity signed in Rio de Janeiro on June 5th, 1992 and the Convention to Combat Desertification in the countries seriously affected by droughts and/or desertification, particularly in Africa, signed in Paris on June 17th, 1994.

CONSIDERING the adhesion of all the lullemeden Aquifer System (IAS) Member States to the principles of Integrated Water Resources Management (IWRM) stated in the World Water Vision as adopted by 2nd World Water Forum at The Hague in March 2000 and consented to reviewing as well as the revision of their Water sector's legal and institutional frameworks;

MINDFUL of the various transboundary risks to which the IAS is exposed;

CONSIDERING the need for instituting a suitable Consultative Mechanism in order to promote co-operation between the various Member States and to ensure the integrated development of the basin in all aspects by developing its water resources;

CONSIDERING the main IAS development challenges, namely the conservation of natural resources and the protection of the environment; the dynamics of the IWRM at national, regional and international levels as well as the development of socio-economic infrastructures and regional economic integration;

CONSIDERING the Transboundary Diagnostic Analysis, the Data base, the Geographical Information System and the mathematical model to be the common decision-making support tools already available at the level of the IAS member's countries;

Keeping in mind the progress made in the development and the codification of the international water law initiated by the Helsinki rules (1966);

Building on the results obtained for the setting up of the legal and institutional framework required for the establishment of the IAS Consultative Mechanism;

Keeping in mind that the document for the common water resources policy in West Africa presents the vision, the challenges of a regional water policy and enumerates the objectives, the major guidelines, the main strategic intervention axes and the modalities for their implementation;

Building on the conclusions of the United Nations Conference on the Environment and Development (Rio de Janeiro 1992); through the Rio Declaration on the Environment and Development and Agenda 21; as well as the Programme related to continuing the implementation of Agenda 21(New York 1997), the decision concerning the sustainable management of fresh waters, taken by the Sustainable Development Commission (New York 1998) and the Millennium Statement (New York, September 2000);

Being inspired in particular by the relevant provisions of the Convention on Wetlands, adopted in Ramsar (Iran), February 2nd, 1971 and of the African Convention on the Conservation of Nature and Natural Resources revised in Maputo (Mozambique) on July 11th, 2003;

Eager to develop close co-operation founded on a policy of pooling resources for a sustainable and coordinated use of the IAS water resources, in compliance with the principles of management and good water governance for a sustainable and shared IAS development;

Recognizing the individual's fundamental right of access to water;

Convinced that co-operation over IAS water is a process which enables the aquifer States to ensure a better management of these resources for a sustainable development of the region;

DECIDE on the following:

CHAPTER 1 GENERAL PROVISIONS

Article 1: Definitions

For the purposes of this Memorandum, and unless otherwise specified, the following terms shall have the meanings ascribed to them hereunder:

- **"States Signatories of this Memorandum of Understanding"**: means any of the aquifer State that ratifies this Memorandum of Understanding.
- **"Iullemeden Aquifer System-IAS"**: means a set of sedimentary deposits containing two major aquifers, the Continental Intercalaire at the bottom and the Continental Terminal at the top, both separated by an aquitard;
- **"Consultative Mechanism"**: means the institution established by virtue of this Memorandum of Understanding;
- **"National Technical and Scientific Committee"**: means the Technical and Scientific Advisory organs carrying out their activities in each of the signatory States;
- **"Ad hoc Committee of Experts"** : means the ad hoc Committee of Technical Experts made up evenly of representatives of each signatory State according to the theme of the session;
- **"Council of Ministers"**: organ composed of the Ministers in charge of Water Resources in the signatory States;
- **"Integrated Water Resources Management - IWRM"**: The process that favours the coordinated development and management of water, lands and closely related resources in an equitable manner, in order to achieve social and economic well-being, without compromising the sustainability of vital ecosystems;
- **"Transboundary Impact"**: any significant detrimental effect on the aquifer system caused by human or natural activity stretching out beyond an area

under the jurisdiction of an aquifer State. Such changes may affect life and property, safety of facilities and the aquifer ecosystem concerned;

Article 2: Establishment of the IAS Management Consultative Mechanism

It is hereby established among the States signatories of the present Memorandum of Understanding, and others that shall subsequently adhere to it, a Consultative Mechanism for the Management of the Lullemeden Aquifer System (IAS).

CHAPTER 2 OBJECTIVES AND SPHERE OF APPLICATION OF THE CONSULTATIVE MECHANISM

Article 3: Objectives of the Consultative Mechanism

The objective of the Consultative Mechanism shall be to promote cooperation based on solidarity and reciprocity for a sustainable, equitable and coordinated use of IAS water resources.

For this reason, it seeks to:

- a) promote the integrated management of the IAS water resources.
- b) strengthen solidarity and promote cooperation in communication and information in order to facilitate the joint identification of risks to which the IAS resources are exposed;
- c) facilitate the joint management of these risks;
- d) facilitate the sustainable development of the IAS resources;

Article 4: The mechanism's sphere of application

This Memorandum of Understanding shall be applicable to all the IAS signatory States.

It shall apply to activities designed to promote and protect the satisfactory condition of the land and waters of the IAS and current or projected activities for the use of IAS water resources, particularly those that have or might have a transboundary impact.

CHAPTER 3 FUNCTIONS AND STATUS OF THE CONSULTATIVE MECHANISM

Article 5: Functions of the Mechanism

The Consultative Mechanism shall have the following functions:

- a) formulate opinions on activities, policies and strategies, plans, programs and projects proposed by the States signatories of this Memorandum of Understanding likely to create situations of risk or cause damage to the IAS resources;
- b) define the measures to be taken for the management of risks;
- c) coordinate integrated development programs;
- d) formulate recommendations aimed at harmonizing and updating the legislation and the institutional framework of the signatory States;
- e) mobilize the financial resources required for the sustainable management of the IAS;
- f) settle disputes;
- g) draft and disseminate an annual report on the state of the IAS;
- h) define an initial monitoring program;

- i) oversee the harmonization of the related procedures and methodologies;
- j) define guidelines for the maintenance of the common IAS technological management tools
- k) define the methodologies for the identification of the risks to which the resources of the IAS are exposed
- l) identify the vulnerable IAS zones
- m) develop and elaborate the relevant maps
- n) Elaborate an Action Plan for the implementation of the objectives aimed at the creation of the Mechanism

Article 6: Status of the Consultative Mechanism

The Mechanism shall have a legal status, and for this reason it shall have the capacity to:

- a) contract,
- b) acquire and dispose of movable and immovable property
- c) receive gifts, subsidies loans and other liberalities
- d) contract loans;
- e) apply for technical assistance
- f) be party in legal proceedings.

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

**CHAPTER 4
ORGANS OF THE CONSULTATIVE MECHANISM**

Article 7: Organs

The Consultative Mechanism shall be made up of the following organs:

- a) The Council of Ministers,
- b) The *ad hoc* Technical Committee of Experts,
- c) The National Technical and Scientific Committees;
- d) The Executive Secretariat.

Article 8: The Council of Ministers

The Council of Ministers shall be composed of the Ministers in charge of Water Resources in the signatory States. It is the organ of decision, management and control.

The Presidency of the Council of Ministers shall be undertaken in alternation for one (two-year) 2-year period by each signatory State in alphabetical order.

The Council of Ministers shall have the following functions:

- a) The approval of the programs of measures relating to the management of risks
- b) The approval of the projects and programmes of integrated development of the IAS water resources
- c) The approval of the annual report on the state of the Aquifer System.

The ordinary sessions shall take place, alternatively in each signatory State yearly and extraordinary sessions, as a need arises, shall take place on the initiative of the President or at the request of a signatory State.

Article 9: Decisions of the Council of Ministers

Decisions of the Council of Ministers shall be taken unanimously.

Article 10: The *ad hoc* Technical Committee of Experts

The meetings of the Council of Ministers shall be preceded by the meetings of the *ad hoc* Committee of Technical Experts made up evenly of representatives of each signatory State according to the theme of the session.

Article 11: National Technical and Scientific Committees

The Technical Committees are Technical and Scientific advisory organs carrying out their activities in each of the signatory States.

The Presidency of the Technical Committee shall be held in each of the signatory States by the National Director in charge of the IAS Water Resources of the signatory States. The Governments of the signatory States shall decide on the composition of these committees.

The National Technical and Scientific Committees shall have the following responsibilities:

- a) to ensure the sustainable and equitable use of the IAS waters in accordance with the provisions of this Memorandum of Understanding;
- b) to facilitate the settlement of issues relating to the use of water resources;
- c) to contribute to the planning and the implementation of any project or program initiated in the IAS;
- d) to issue opinions on the technical aspects of the projects and programs and their compliance with the Mechanism's Action Plan;
- e) to issue opinions on any project or program which significantly affects the IAS water regime;
- f) to collect the data and information related to IAS water resources and transmit them periodically to the Executive Secretariat;
- g) to identify IAS vulnerable zones;
- h) to conduct studies relating to the measures to be adopted in good time in order to facilitate the sustainable management of the risks to which the IAS resources are exposed;
- i) to prepare the national programs for the integrated development of the IAS resources.

Article 12: The Executive Secretariat

The Executive Secretariat shall be headed by an Executive Secretary appointed by the Council of Ministers of the Mechanism for one (four-year) 4-year period renewable only once. The Executive Secretary shall be in charge of:

- a) coordinating the activities and works of the *ad hoc* Technical Committee of Experts and the National Technical and Scientific Committees
- b) preparing the Sessions of the Council of Ministers;
- c) implementing the decisions of the Council of Ministers;
- d) developing and maintaining the IAS management tools;
- e) informing periodically the National Technical and Scientific Committees on the IAS management tools
- f) establishing contact with the Technical and Financial Partners (TFP).

CHAPTER 5 GENERAL PRINCIPLES

Article 13: Equitable and reasonable use

The use of the IAS water resources shall take into consideration the principle of equitable and reasonable use. For this purpose, the following circumstances and relevant factors shall be taken into consideration:

- a) the technical data related to water resources particularly (the relevant geographical, hydrological, hydrogeological, meteorological, hydro-chemical, socio-economic and environmental data in each of the IAS member States);
- b) the reasonably planned needs for the development of IAS waters ;
- c) the past, present and future uses of the IAS water resources ;
- d) the States' and the populations' economic and social needs;
- e) the availability of other water resources and the cost of using other possible alternatives;
- f) the need to avoid wasting the IAS waters in their use ;
- g) the damage likely to be caused by a new or widened use;
- h) the effects of using IAS water resources by a State at the detriment of other States signatories ;
- i) the Water Right of the IAS populations;
- j) the conservation, the protection, the development and economy in the use of the water resources as well as the costs of the measurements taken for this purpose;
- k) the existence of other options, of comparable value, likely to replace a particular, current or projected use of these water resources.

Article 14 Public Participation

The use of the IAS water shall take into consideration the principle of public participation, according to which any user shall have the right to be informed of the state of the water resource and to take part in the development and the implementation of the decisions relating to the development of the basin.

Article 15: Non detrimental use

The use of IAS water shall take into consideration the principle of the non detrimental use, according to which any State shall take the necessary measures to ensure that the activities undertaken on its territory do not cause damage to other signatory States;

The modalities of application and compensation shall be commonly agreed among the States signatories;

Article 16: Precautionary measures

The use of IAS water resources shall take into consideration the principle of precaution, in virtue of which a State shall not defer the implementation of measures intended to avoid any situation likely to have a transboundary impact with the reason that scientific research has not shown the existence of a causality link between these measures and a possible transboundary impact.

Article 17: Polluter - Pays

The use of the IAS water resources shall take into consideration the Polluter-Pays principle, applicable to both individuals and companies, by virtue of which the costs of pollution prevention, control and reduction shall be borne by the polluter.

The States concerned by the present Memorandum of Understanding shall institute an Environmental Impact Assessment (EIA) in the conception and execution of programs, projects and all other development actions affecting or likely to affect the IAS resources and engender ecosystem risks.

Article 18: User - Pays

The use of the IAS waters shall take into consideration the user-pays principle, according to which rates for the use of water are set according to use. The use of water shall be subjected either to taxation or fees benefiting each of the States.

**CHAPTER 6
GENERAL OBLIGATIONS**

Article 19: The Preservation of water resources' sustainability and quality

The signatory States shall, separately and, where necessary, jointly, manage the IAS water resources so as to ensure the sustainability and maintain the quality of these resources at the highest possible levels. For this purpose, they shall undertake:

- a) to exchange data and information related to the IAS
- b) to prevent the damage likely to have harmful effects on human health or the natural resources in another State because of discharge of pollutants;
- c) to avoid the excessive abstraction of water resources.

Article 20: Policies concerning planning, conservation, management and development of water resources

The signatory States shall be committed to inform, beforehand, on the activities, policies, strategies, plans, programs and projects planned on the aquifer which may involve risks for the IAS resources or cause transboundary damage.

The signatory States shall institute and implement policies of planning, conservation, management, use and development of groundwater by undertaking the following:

- a) the study of the water cycle and inventories of the water resources in each country;
- b) integrated water resources management;
- c) the conservation of forests and other IAS areas such as the coordination and the planning of projects for the development of groundwater resources;
- d) the inventory and management of all the groundwater resources, including the management and control of all the forms of water use;
- e) the prevention and control of the pollution of these water resources, by, among other means, setting up, harmonized water quality standards.

Article 21: Environmental protection and conservation

The signatory States agree:

- a) to prevent any additional environmental degradation, to conserve and improve the state of the related ecosystems, terrestrial zones and their water needs as well as the wetlands connected to the IAS;
- b) to promote the sustainable water use based on the long-term protection of the available water resources;
- c) to reinforce the protection of the ecosystem, to ensure the progressive reduction of transboundary pollution and to prevent increasing pollution;

- d) to contribute to the mitigation of the effects of detrimental situations such as droughts and climatic changes;
- e) to resort to environmental impact assessment;
- f) to consolidate and improve knowledge of the state of water resources and other IAS natural resources by reinforcing the available data bases;
- g) to prevent and manage emergencies related to the decreasing IAS water resources.

For this purpose, the State signatories of this Memorandum of Understanding shall take any necessary internal measure to prevent and punish any violation of the stipulations of this Article.

CHAPTER 7 PLANNED MEASURES

Article 22: Exchange of Data and Information

The signatory States hereby commit themselves to:

- a) exchange data and information relating to the IAS water resources and their use,
- b) consult each other mutually and, if necessary,
- c) negotiate the possible effects of measures planned in the IAS.

Article 23: Action plan

To achieve the objectives provided for by Article 3 an Action Plan shall be drafted during the transition period by the *ad hoc* Technical Committee of Experts in collaboration with the National Technical and Scientific Committees under the supervision of the interim Executive Secretariat.

Article 24: Notification of planned measures

Before a State signatory implements on its territory measures likely to have adverse effects on the other IAS States, it shall inform the latter through the Executive Secretariat and in good time, of such planned measures. The aforementioned notification shall be accompanied by the technical data and available information, including the results of any assessment of the environmental impact, in order to allow the Mechanism to assess the possible effects of the planned measurements.

The Executive Secretary, upon reception of the notification, shall contact the National Technical Committees which shall give grounded opinions. These notifications shall be transmitted by the Executive Secretariat to the National Technical and Scientific Committees.

Subject to the provisions of the relevant article 28 of this Memorandum of Understanding, a State providing notification under the terms of the first paragraph of this article shall give the IAS Executive Secretariat three months to study and assess the possible effects of the planned measures.

This time can be extended by one month on request by the Executive Secretariat.

During the interval between the notification date and that allowed for the answer, the State author of the notification shall cooperate with the Executive Secretariat by providing, upon request, any additional information available within reasonable time.

During this period, the State author of the notification shall abstain from implementing or allowing the implementation of planned measures.

Notification shall equally be made to any State likely to be affected by the planned measures by providing the same information respecting the same deadline.

Article 25: Absence of response to the notification

In the event of absence of response to the notification within the time indicated above, the State author of the notification may proceed with the implementation of measures planned, in accordance with the notification, the technical data and information provided, and in accordance with the principle of equitable and reasonable use.

Article 26: Consultations and negotiations

If the State, which receives the notification or the Executive Secretariat, estimates that planned measures are likely to cause significant harm, consultations and possibly negotiations shall be engaged in order to reach an equitable solution.

The consultations and the negotiations shall proceed according to the principle of good faith and shall take into consideration the legitimate interests of any other signatory States.

Article 27: Absence of notification

If a signatory State reasonably believes that another IAS State plans measures which may have a significant harmful effect on its own uses or on the state of the resources, it may ask this other State to comply with the obligation of notification.

If the State projecting measures estimates that it is not obliged to proceed to the notification, it shall inform the Executive Secretariat and any State likely to be affected by addressing a documented explanation of its decision. If the decision does not satisfy the Executive Secretariat and the States likely to be affected, the parties shall engage in consultations and negotiations.

Article 28: Emergencies

If the implementation of such planned measures is of extreme emergency for the protection of public health, public safety or any such interests of equal importance, the State planning these measures shall immediately proceed to the implementation, notwithstanding the obligation of notification.

In this case, a formal declaration proclaiming the planned emergency measures shall be deemed necessary. It shall be supplemented by all information necessary and shall be addressed to the Executive Secretariat and the other IAS States.

The State planning such measures shall, upon request by any other signatory State not convinced of the emergency of the aforementioned measures, engage in consultations and negotiations.

CHAPTER 8 SETTLEMENT OF DISPUTES

Article 29: Amicable settlement

Any dispute arising between the States signatories shall be settled through the Consultative Mechanism's good offices, mediation or conciliation or by any other such peaceful method in the settlement of disputes.

Article 30: Role of the National Scientific and Technical Committees

If no solution is found through good offices, mediation and/or conciliation, the dispute shall be submitted to the National Scientific and Technical Committees which shall propose a Resolution to the Council of Ministers within three (03) months as from the date of notification by the Executive Secretariat.

Article 31: Regional resolution and legal settlement

In the absence of a satisfactory solution, the African Union's Conciliation Commission shall be contacted initially before recourse to Court of Justice and Human Rights of the African Union.

Article 32: Continuity of Non-disputed provisions

During the period of the dispute and until its resolution, all the provisions of this Memorandum of Understanding, notwithstanding those subjects of dispute, shall be applicable. Besides, the Council of Ministers shall decide on possible preventive measures proposed by the Executive Secretary.

CHAPTER 9 OPERATIONAL BUDGET OF THE CONSULTATIVE MECHANISM

Article 33: Budget of the Consultative Mechanism

Financing the Consultative Mechanism's budget shall be provided by the contributions of the signatory States.

The contributions shall be decided by the Council of Ministers.

Article 34: External financing

Financial contributions by international, regional and national organizations, individuals and corporate bodies shall support the financing of the Mechanism's budget.

CHAPTER 10 TRANSITIONAL PROVISIONS

Article 35:

The transition period shall be 2 (two) years as from the date of entry into force of this Memorandum.

During this transition period, the Consultative Mechanism shall be responsible for the improvement and updating of the common data base as well as developing and adopting the

Action Plan and implementing the objectives of the creation of this Consultative Mechanism.

Article 36: During the transition period, the Council of Ministers in charge of Water Resources shall be responsible for:

- a) considering and approving the policy of the IAS water resources management and the risks to which these resources are exposed;

- b) approving the initial strategies, the work program of the National Scientific and Technical Committees, the Action Plan and the status of the Permanent Mechanism which will be proposed;
- c) approving the establishment of the permanent Executive Secretariat at the end of the transition period.

Article 37: An interim Executive Secretary, appointed by the Council of Ministers, shall play the role of Facilitator during the transition period. For this reason, he shall be primarily in charge of preparing the meetings of the Council of Ministers as well as facilitating communication between the various organs of the Mechanism and external partners.

Article 38: During the transition period, each signatory State agrees to finance the participation of its representatives in the meetings of the Council of Ministers and shall be responsible for all the activities of its National Scientific and Technical Committees.

During the transition period, the interim Executive Secretary and the *ad hoc* Technical Committee of Experts shall be assisted financially by the financial support of donors.

CHAPTER 11 FINAL PROVISIONS

Article 39: Headquarter of the consultative mechanism

The Headquarters of the Consultative Mechanism shall be determined by the Council of Ministers of the IAS Consultative Mechanism.....

A headquarter agreement will be signed between the Mechanism and the host country. The Headquarters may be transferred to any other location by decision of the Council of Ministers.

During the transition period, the State hosting the Headquarters of the Mechanism shall provide the necessary premises for the takeoff of its activities.

Article 40: Legal Force of the Mechanism's Decisions

The decisions taken by the Consultative Mechanism shall be binding on signatory States.

Article 41: Relationships among the Signatory States of the Consultative Mechanism and with International and regional Organisations

The signatory States shall provide to the National Committees the technical data relating to the IAS resources and any such information deemed necessary, according to methods provided for by the rules of procedure.

The signatory States shall cooperate, within the framework of exchanging information and technical data related to the IAS water resources, with other regional or international organizations sharing the same objectives.

Article 42: Immunities and Privileges

The status, immunities and privileges of the Mechanism and its officials shall be contained in an agreement entered into for that purpose between the Mechanism and the Government of the host country

Article 43: Amendments and revisions

Any signatory State may propose amendments to the present Memorandum of Understanding.

The proposed amendment shall be considered diligently by the other States and the decision shall be made unanimously.

Proposals for amendments of this Memorandum of Understanding shall be addressed to the Executive Secretary who shall communicate them to the Council of Ministers within thirty (30) days at the latest after their reception and at least fifteen (15) days before the meeting during which the proposed amendment will be considered for adoption.

Any amendment or revision of the present Memorandum of Understanding shall come into force under the same conditions as the Memorandum.

Appendices shall be part and parcel of this Memorandum of Understanding.

Article 44: Denunciation

After the expiry of a (5-year) five-year deadline starting from the date on which this Memorandum of Understanding comes into force, any signatory State may denounce it.

Such denunciation shall be made in the form of a written notification addressed to the Government of the State custodian of the Memorandum of Understanding's ratification instruments, which shall acknowledge receipt of it and inform the third State signatory of the Memorandum of Understanding.

The denunciation shall take effect 1 (one) year after the date of reception unless withdrawn before this time.

The signatory State denouncing this Memorandum of Understanding shall be required to fulfil all its pending obligations under the terms of the present Memorandum of Understanding and under its duties as a signatory of this Memorandum of Understanding, before the effective date of the denunciation.

Article 45: The Mechanism's Rules of procedure

The Rules of procedure shall be drawn up by the Executive Secretariat and shall be approved by the Council of Ministers.

Article 46: Coming into Force

This Memorandum of Understanding shall come into force thirty (30) days after the deposition of the instrument of ratification by the three (03) founding States of the IAS Consultative Mechanism.

Article 47: New Membership

The Memorandum of Understanding shall be open to the accession of other States which share the IAS water resources. For this purpose, any membership application shall be submitted in writing through the Executive Secretary for the approval of the Council of Ministers

Any concerned IAS State may apply in writing to the Council of Ministers through the Executive Secretary for an observer status.

Article 48: Authentic texts and Depositary Government

The original of this Memorandum of Understanding, whose English and French texts shall be equally authentic, shall be deposited with the Government of the host country of the Mechanism which shall forward certified copies to the two other signatory States, and shall notify them of the date of the deposit of the instruments of ratification and adherence, and shall register this Memorandum of Understanding with the African Union and the United Nations.

In witness whereof, the Parties signed this Memorandum of Understanding,

Done at Bamako, on June 20th, 2009 in one original copy in English and in French languages, both texts being equally valid.

For the Republic of Mali	For the Republic of Niger	For the Federal Republic of Nigeria
MAMADOU DIARRA	AMINO TASSIOU	SAYYEDI ABBA RUMA
The Minister of Energy and Water	The Minister of Hydraulics	The Honourable Minister of Agriculture and Water Resources

Annex: Flowchart of the IAS consultation mechanism

