

# **Agreement between the Federal Republic of Nigeria and the Republic of Niger concerning the equitable sharing in the development, conservation and use of their common water resources done at Maiduguri, 18 July 1990**

The Federal Republic of Nigeria and the Republic of Niger being the Contracting Parties to this Agreement.

AWARE of the role which the orderly management of the scarce water resources they share along the common frontier plays in the economic and social development and well-being of their respective populations living on both sides of the frontier;

ANXIOUS to foster sustained co-operation in the development, conservation and use of their shared water resources through the established mechanisms for bi-lateral co-operation;

RECOGNIZING the need for the development, conservation and use of their shared water resources in an equitable manner, and the need to formulate principles therefore;

MINDFUL of their commitments under the Convention creating the Niger Basin Authority, concluded at FARANAH on 21 November 1980, and under the Convention and Statutes relating to the Development of the Chad Basin, concluded at N'djamena on 22 May 1964;

HAVE AGREED AS FOLLOWS:

## **PART I - SCOPE AND PURPOSE OF THESE ARTICLES**

### **Article 1**

1. These Articles shall govern the equitable development, conservation and use of the water resources in the river basins which are bi-sected by, or form, the common frontier between the Contracting Parties (hereinafter referred to as shared river basins).

2. The shared river basins to which this Agreement applies are:

- a. the Maggia/Lamido River Basin;
- b. the Gada/Goulbi of Maradi River Basin;
- c. the Tagwai/El Fadama River Basin; and
- d. the lower section of the Komadougou-Yobe River Basin,

and each River Basin shall be defined by reference to the Maps annexed to, and forming an integral part of, this Agreement.

3. Subject to the provisions of Article 9, a reference to the shared river basins shall include a reference to underground waters contributing to the flow of surface waters.

## **PART II - RIGHTS AND DUTIES OF CONTRACTING PARTIES**

### Article 2

Each Contracting Party is entitled, within its territory, to an equitable share in the development, conservation and use of the water resources in the shared river basins.

### Article 3

1. The Contracting Parties undertake to collect, process and provide at regular intervals the Nigeria-Niger Joint Commission for Co-operation<sup>60</sup> with all the data and information which, in the opinion of the Commission, are needed to arrive at equitable sharing determinations, and to monitor the continued viability thereof.

(<sup>60</sup>Created by the Convention done at Niamey on 3 March 1971, amended by Protocol of 22 December 1973.)

2. At the request of the Commission, the Contracting Parties shall:

(a) install in their territory the required measuring equipment, and protect such equipment from interference; and

(b) permit and facilitate inspections by the Commission of such equipment.

### Article 4

The Contracting Parties undertake to inform and consult with the Nigeria-Niger Joint Commission for Co-operation in advance of undertaking any project, programme or plan for the implementation of agreed upon equitable sharing determinations, or likely to have an appreciable impact on any such determination.

## **PART III - EQUITABLE SHARING DETERMINATIONS**

### Article 5

1. In determining the equitable share to which each Contracting Party is entitled pursuant to Article 2, the following factors shall be taken into account:

(a) the climate of the region, and its influence on rainfall patterns;

(b) rainfall patterns, and their influence on surface hydrology, and related hydro-geology;

(c) surface hydrology and related hydro-geology;

(d) existing uses of the waters;

(e) reasonable planned water development requirements;

(f) the economic and social development needs of the Contracting Parties;

(g) the dependence of local populations on the waters in question for their own livelihood and welfare;

(h) the availability of alternative sources of water to satisfy competing water demands;

(i) the practicability of compensations either in cash or in kind one or the other Contracting Party as a means of adjusting competing water demands;

(j) maintaining an acceptable environmental balance in and around a particular body of water;

(k) the avoidance of unnecessary waste in the utilization of waters, with due regard for the technological and financial capabilities of each Contracting Party;

(l) the proportion in which each Contracting Party contributes to the water balance of the basin.

2. Each factor is to be given the weight warranted by the circumstances peculiar to each individual river basin, or group of basins, and all factors so weighted are to be considered together and a determination arrived at on the basis of the whole.

#### Article 6

A water use existing at the time an equitable sharing determination is made shall take precedence over a future use, provided the existing use is beneficial to both Contracting Parties and reasonable under the circumstances.

#### Article 7

A water use existing at the time an equitable sharing determination is made shall take precedence over a competing existing use which came into being later in time, provided that:

(a) the use prior in time is beneficial to both Contracting Parties and reasonable under the circumstances; and

(b) the weighting of the factors under Article 5 does not warrant accommodation of the later use, in whole or in part.

#### Article 8

A water use shall be deemed an existing use within the meaning and for the purposes of Article 6 and 7 by reference to, and within the limits of, the amount of water which has been put to a beneficial use from the date of inception of construction or comparable acts of implementation to the date of entry into force of this Agreement.

#### Article 9

Groundwater resources shall not be accounted for the purpose of equitable sharing determination unless:

- (a) such resources are part of shared river basins within the meaning of Article 1, paragraph (3); or
- (b) such resources lie in whole or only in part within the shared river basins and are bi-sected by the common frontier between the Contracting Parties.

#### Article 10

Agreed upon equitable sharing determination shall be binding for the Contracting Parties. They may however be opened up for review by the commission at the request of either Party.

### **PART IV - INSTITUTIONAL ARRANGEMENTS**

#### Article 11

The Nigeria-Niger Joint Commission for co-operation (hereinafter referred to as the Commission) shall monitor the implementation of the provisions of this Agreement.

#### Article 12

1. A Permanent Technical Committee of Water Experts (hereinafter referred to as the Committee) composed of an equal number of representatives from the Contracting Parties, shall be established to assist the Commission in the discharge of its responsibilities under Article 11. The Contracting Parties will endeavour to ensure that the respective members of the Committee hold office for a minimum duration of four consecutive regular sessions.
2. The Committee shall meet once every four months, and at the request of the Commission as the need arises.
3. The Chairmanship of the Committee shall rotate between the Contracting Parties at each regular session which shall be held alternately in Nigeria and Niger.
4. Subject to the provisions of this Article and of Article 14, the Committee shall have the power to determine its own rules of procedure after the coming into effect of this Agreement, and from time to time.

#### Article 13

It shall be the duty of the Committee to:

- (a) prepare for approval by the Contracting Parties through the Commission schemes for the equitable sharing in the development, conservation and use of the shared river basins;

(b) monitor the performance of agreed upon equitable sharing schemes, and to recommend to the Commission any adjustments deemed necessary;

(c) recommend to the Commission for the adoption by the Contracting Parties measures called for by emergency situations related to, or stemming from, agreed upon equitable sharing scheme; and

(d) advise the Commission on any difference concerning the interpretation or implementation of equitable sharing determinations made pursuant to this Agreement.

#### Article 14

Recommendations by the Committee shall be adopted by consensus.

### **PART V - SPECIAL PROVISIONS FOR THE GADA/GOULBI OF MARADI RIVER BASIN**

#### Article 15

The Contracting Parties shall inform the Niger Basin Authority of agreed upon equitable sharing determinations concerning the Gada/Goulbi of Maradi river basin, including any subsequent adjustments thereof, and any plans, projects and programme for the implementation of such determinations.

### **PART VI - SPECIAL PROVISIONS FOR THE KOMADOUGOU-YOBE RIVER BASIN**

#### Article 16

1. The Contracting Parties shall inform the Lake Chad Basin Commission of agreed upon equitable sharing determinations concerning the lower section of the Komadougou-Yobe river basin as defined under Article 1 (hereinafter referred to as Komadougou-Yobe shared river basin), including any subsequent adjustments thereof, and any plans, projects and programmes for the implementation of such determinations.

2. The Contracting Parties shall further inform and consult with the Lake Chad Basin Commission prior to undertaking any hydraulic works for the implementation of agreed upon equitable sharing determinations concerning the Komadougou-Yobe shared river basin, to the extent that such works are likely to have an appreciable effect on the flow of surface and underground waters in the Lake Chad Conventional Basin as delimited pursuant to Article 2 of the Statutes Relating to Development of the Chad Basin, done at N'djamena on 22 May 1964.

### **PART VII - SETTLEMENT OF DISPUTES**

#### Article 17

1. Any difference concerning the interpretation or implementation of this Agreement, or of any equitable sharing determination made thereunder, shall be referred to the Nigeria-Niger Joint Commission for Co-operation.

2. Any such difference which cannot be settled by the Commission within six months after a reference to it under the last preceding paragraph, shall be regarded as a dispute and shall, at the request of both Contracting Parties, be referred to the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity for binding determination.