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Charter of Waters of the Senegal River

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Heads of State of:

- the Republic of Mali
- the Islamic Republic of Mauritania
- the Republic of Senegal

Considering the Charter of the United Nations of June 26, 1945;

Considering the Treaty instituting the African Union of July 11, 2000;

Considering the Convention on the Statute of the Senegal River of March 11, 1972;

Considering Convention creating Organization for the Development of the Senegal river of March 11, 1972;

Considering the Convention on the legal statute of the common works of December 21, 1978;

Considering the Convention on the methods of financing of the common works of May 12, 1982;

Considering Convention creating Agency of Management and Exploitation of Diama of January 7, 1997;

Considering Convention creating the Agency of Energy management of Manantali of January 7, 1997;

Considering the no7/CCEG/M.B Resolution bearing adoption of the legal instrument relating to the conditions for implementation of the work common called Dam Diama of December 11, 1979;

Considering the no9/CCEG/M.B Resolution bearing adoption of the legal instrument relating to the conditions for implementation of the work common called Dam Manantali adopted on May 12, 1982:

Considering the Resolution no89/CM/du bearing January 5, 1978 rules of procedure of the Standing committee of Water;

Anxious to strengthen the co-operation between the States and the people of the under-area and attaches to basic Conventions of the Organization;

Affirming the need for consolidating the bonds of good vicinity between the Coastal states of the Senegal River;

Convinced of the interest to take into account the Guinean part of the basin in the development of the policies and the programs of development of the basin of the Senegal River;

Conscious of the need of the respect of the general principles of the right of water resulting from the international law and the international common law which inspired the mode of the international rivers, and in particular the Convention of the United Nations on the right relating to the uses of the international rivers to ends other than the navigation of May 21, 1997;

Satisfied of institutional work and policy achieved to date within the framework of the Organization for the Development of the Senegal River;

Eager to give an at the same time durable and evolutionary framework to the community of the interests between the Coastal states of the Senegal River and to guarantee in each State and each user of the river a reasonable and equitable advantage of the use of water in accordance with the principles governing the right of divided water;

Anxious to cooperate in the good faith, the reciprocal consultation and in the spirit of good vicinity governing their relations;

Determined to jointly fight the practices of management of water likely to cause an injury in the States;

Conscious of the vulnerability and the scarcity of the fresh water resources, as of the importance of the functions which they fill in the plans economic, social and environmental;

Convinced that the River Senegal, ecosystem essential with the continuation of a durable development in the bordering countries, is to be considered by appreciating the cycle of water as a whole as well as the sectoral and intersector needs;

Considering that the resource sharing out of water between the uses, their management and their development will have to be carried out by taking account of the durable objective of development, by associating the various actors it: users, managers, decision makers, developers and experts concerned, in a global and integrated solution;

Considering the increase in the requirements out of water, the multiplicity and the diversification of the uses;

Eager to promote a policy of optimal and durable use of the resource implying the responsibility for the users and a policy affirmed in the field of the savings in water, by a management integrated and equitable for the benefit of the present generations and future;

Recalling the principles and recommendations relating to the environment adopted in particular by the Conference of the United Nations for the Environment and Development (CNUED) behaviour in Rio de Janeiro in 1992;

ARE AGREED OF WHAT FOLLOWS:

CHAPTER 1

DEFINITIONS

Article 1st

For purposes of this Charter, the following expressions and terms indicate:

1 "Coastal states": coastal states of the Senegal River to knowing Guinea, Mali, Mauritania and Senegal;

2 "contracting States": states left with the present Charter;

3 "Organization": the Organization for the Development of the Senegal River;

4 "Conference of the Heads of States and Government": the Conference of the Heads of State and Government of the Member States of the Organization for the Development of the Senegal River;

5 "the Council of Ministers": the Council of Ministers of the Organization for the Development of the Senegal River;

6 "High commissionership": the High commissionership of the Organization for the Development of the Senegal River;

7 "Standing committee of Water": Standing committee of Water of the Organization for the Development of the Senegal River;

8 "River": the Senegal River;

9 "Senegal River": International river divided by the Coastal states;

10 "Charter": this document, like its appendices;

11 "Resource": the totality of the water resource available in the catchment area;

12 "Users": persons or entities, current or future users of the resource;

13 "divided Water": water of the River;

14 "Use": the use of the resource for a given sector;

15 "Pollution": the direct or indirect introduction by the man of substances or energy into the River, when it has or can have harmful effects, such as damage to the living resources, with river fauna and the flora, health risks human, of the obstacles to the activities in the River, and of deteriorations of the quality of the water from the point of view of its use;

16 "Requirements out of water": quantities of the resource of which must lay out the users, for human satisfaction and who allow a durable development their living conditions, in the respect of the environment and the texts of the Organization;

17 "catchment Area of the River": the Senegal River, its affluents, its distributaries and associated depressions;

18 "domestic Uses": taking away or rejections having for object the need satisfaction of the people physical, and limited to the quantities necessary to the food, hygiene and the livestock or vegetable productions intended for the family use;

19 "Navigability": optimal hydrological conditions allowing navigation; in particular guarantee with a draught sufficient for Navigation;

20 "Subsoil waters": the water Contained in the porous, permeable and/or fissured geological formations whose total and/or partial renewal is associated the hydrological mode of the River.

TITRE 2

OBJECTIVES AND GOAL OF APPLICATION

Article 2

The Charter of Water has as an aim of:

- to fix the principles and the methods of the distribution of water of the Senegal River enters the various sectors of use. The various uses of water of the River can relate to agriculture, the breeding, continental fishing, pisciculture, sylviculture, fauna and the flora, hydroelectric energy, the water supply of the urban and rural populations, health, industry, navigation and the environment, by taking account of the domestic uses;
- to define the methods of examination and approval of the new users projects of water or affecting the quality of water;
- to determine the rules relating to the safeguarding and the environmental protection, particularly with regard to fauna, the flora, the ecosystems of the easily flooded plains and the wetlands;
- to define the framework and the methods of participation of the users of water in the catch of the decisions of stock management out of water of the Senegal River.

Article 3

The present Charter applies to the whole of the catchment area of the Senegal River including the affluents, the distributaries and the associated depressions.

CHAPTER 3

PRINCIPLES AND METHODS FOR THE DISTRIBUTION OF WATER BETWEEN THE VARIOUS SECTORS OF USE

Article 4

The use of water of the River is opened in each Coastal state, like with the people being on her territory in accordance with the principles and methods defined by the present Charter.

The distribution of water between the uses is in particular founded on the following general principles:

- obligation to guarantee the balanced management of the water resource;
- the equitable and reasonable use of water of the River;
- obligation to preserve the environment;
- obligation to negotiate in the event of conflict;
- obligation for each Coastal state to inform the other Coastal states before undertaking any action or any project which could have an impact on the availability of water and/or the possibility of implementing future projects.

The guiding principles of any distribution of water of the River aim at ensuring the populations of the Coastal states, the full pleasure of the resource, in the respect of the safety of the people and the works, as well as basic human rights to a salubrious water, from the point of view of a durable development.

Article 5

Any distribution of water between the uses is fixed by taking in consideration the availability of the resource and integrating the following elements:

1) the sous-régionale co-operation, which takes into account:

- the safety and improvement of the incomes of the populations of the basin of the Senegal River;
- the fight counters the rural migration;
- food safety and the fight for the reduction of poverty;
- reinforcement of the economies of the Coastal states compared to the climatic changes;
- the quantitative and qualitative development of the production agricultural, energy, mining and industrial;
- the development integrated thanks to the infrastructures carried out.

2) the integrated management of the resource, which takes into account:

- the availability and the continuity of the resource;
- the integration of the dimension of the environment in the management of water and the durable maintenance of the favorable ecological conditions in the basin of the River;
- the irrigation of a maximum quantity of surfaces according to the availability of the resource;
- permanent navigability of the river;
- optimal exploitation of the hydroelectric potential energy available;
- the creation of the hydraulic conditions necessary to the flood of the Valley and the traditional cultures of fall;
- the rolling of the exceptional natural risings with Manantali, and the reduction of the risks of flood;
- improvement of the filling of the Lakes Guiers and the R' Kiz, as well as natural depressions;
- reasonable character of the requests by economic sector and their implications.

Article 6

The technical principles aimed to Article 7 are secondary compared to the principle of nondiscrimination, the obligation to satisfy the vital needs and with safety for the people.

They are appreciated according to three different contexts:

- the normal situation corresponding to the situation where the reasonable satisfaction of all the needs is possible;
- the situation corresponding to the floods or natural disasters;

- the situation of shortage corresponding to one period of general or partial insufficiency, or to a case of absolute necessity.

In these the last two cases, the Standing committee of Water is seized. However, if a State is brought to take emergency measures in a unilateral way, it will hold immediately informed the other States of them.

Article 7

The principles used in the distribution of water, such as defined in the appendices, take account of the following essential elements:

- storage capacity;
- the division of information on water flows of the River for the taking into account of the constraints of use;
- the safety of the works;
- water supply (urban, and rural);
- the safeguarding and environmental protection;
- the support for agriculture (of fall, irrigated), for the livestock and continental fishing;
- hydroelectric production;
- the freedom of navigation.

The economic principles used in the distribution of water, take account of the following essential aspects:

- reassignment of the revenues from taxes resulting from the tax on the users responsible for pollution to the financing for ecological management for the resource;
- the taking into account of the financial contribution of each use to the financing of the investments, the recurring loads and to the refunding of the contracted debts.

Article 8

The use of the water resource aims at satisfying in a way right:

- requirements out of drinking water for the populations, in particular most vulnerable;
- needs for agriculture, the breeding, sylviculture, pisciculture, fishing, fauna, the flora and the environment;
- requirements out of water for the energy production;
- requirements out of water for industry;
- requirements out of water for navigation.

Article 9

The Organization, according to the requests of the users, fixes the priorities between the needs, as well as the water consumption necessary. No use profits from a priority compared to the others in accordance with the principles of the international law.

However, in the event of shortage of the resource, a detailed attention will be given to the supply drinking water and the domestic uses of water.

Article 10

Except the domestic uses which are free, the collecting of water of the river is subjected to a preliminary declaration or authorization arrangement.

The operations subjected to the authorization arrangement are:

- the construction or the operation of the installations or the works;

- the realization of work or various activities (taking away, discharges or rejections), likely to present dangers to health or public safety, to harm the free water run-off, to reduce the water resource, to affect the bed of the River, or to attack the quality or to the biodiversity of the aquatic environment.

The other operations are subjected to simple declaration. The authorities exerting the powers of police force and administration of water within each State have the obligation to transmit the declarations to the High commissionership.

A nomenclature of the thresholds of authorization and declaration will be worked out and implemented in accordance with the provisions of this Charter. On the quantitative level, the thresholds of authorization or declaration of the operations are a function of the flow taken compared to the minimum flow.

On the qualitative level, they take account of the brittleness of the zones of taking away or rejection.

This nomenclature is elaborate by taking account of the scenarios of management.

Article 11

The request for authorization is transmitted to the High commissionership which informs it and subjects it within 45 day to the opinion of the Standing committee of Water. The authorization is granted by the Council of Ministers, after opinion of the Standing committee of Water.

This authorization is granted subject to the rights of the thirds and the rights exerted before. It can be withdrawn in the same forms for the reasons of public interest or in the event of nonexecution.

Article 12

The provisions of the Charter apply to title back-up troop with all that do not provide the national legislations. They are the national authorities of control and police force of water which will be charged to the first chief to apply them.

In the event of dissension between the applicant and the controlling authority, a recourse will be possible near the Council of Ministers on sasine of the High commissionership, after opinion of the Standing committee of Water.

Article 13

The Coastal states take care that information relating to the state of water of the River, with measurements envisaged or catches to ensure the regularity of the flow of the River, as with the quality of water are accessible to the public. The States and the High commissionership must parallel to take care the education of the bordering populations by encouraging programmes of sensitizing for an ecologically rational use of water of the River.

Article 14

The scenarios of management envisaged within the framework of the Handbooks of Management of the Dams Manantali and Diama (Appendices 2 and 3 of the Charter) set the standards to be respected for each use and the possible order of certain technical priorities. The cumulative criteria of management and the parameters which they imply are developed in the appendices. They will have to be constantly in conformity with the standards in force.

Except in the event of extraordinary circumstances, as mentioned in Article 6, the artificial rising will be guaranteed annually.

Article 15

The annual management of the reserves of the stoppings built on the Senegal River and its affluents and distributaries is carried out according to principles' stated in the Handbooks of Management annexed to the Charter (Appendices 2 and 3 of the Charter).

CHAPTER 4

PROTECTION AND PRESERVATION OF THE ENVIRONMENT

Article 16

The contracting States protect and preserve the ecosystem of the River, and manage the resource in the respect of natural balances, in particular of the wet fragile zones and the marine environment, separately through their national legislations, and jointly by the legal instruments of the Organization for the Development of the Senegal River.

The contracting States begin to control any action likely to modify in a significant way the characteristics of the mode of the River, the medical state of water, the biological characteristics of its fauna and its flora, its water level and a general way its environment.

They make the provisions likely to prevent, reduce or control the events or conditions resulting from natural causes or human activities which are likely to cause a damage in the other States, with the environment of the River, the health or the safety of the Man.

For this reason, the contracting States act in concert in order to prevent the introduction of species foreign or new, plants or animals, likely to deteriorate the ecosystem. For this purpose, they:

- jointly draw up the list of the substances whose presence in water of the River must be prohibited, limited, be studied or controlled;
- objectives and common criteria concerning the quality of water according to the uses define jointly;
- work in concert in order to develop techniques and to found effective practices of saving of water and control of pollution specific or diffuse;
- work with the harmonization of the national legislations relating to the environmental questions concerning the catchment area.

Article 17

In complement of the general rules enacted above, the contracting States will jointly adopt a general plan of environmental action determining in particular the conditions in which the Organization:

- takes or provisional suspension restraint measures of certain uses of water, to face a situation of deficit, with a threat or the consequences of a natural disaster;
- enacts, in the respect of balance general of the rights and obligations resulting from this Charter and the various granted authorizations, of the special regulations applicable to the installations, activities and practical of the users, as well as the conditions in whom can be controlled, suspended, be limited or prohibited the methods of exercise of the various uses of water.
- sets up, the procedures necessary to the location and the quantification of the sources of pollution, and for the monitoring of the effluents.

Within this framework, is carried out each year to the prospective evaluation of the quantity of water and the quality of the water of the catchment area of the River.

In complement with the general rules enacted above, the contracting States will be able to adopt other provisions together determining in particular the conditions under which the rules of police force of water are applicable to divided water.

With regard to subsoil waters, it is carried out a cartographic census of the aquiferous zones of refill, in order to inventory them, to delimit the zones of food and collecting, and to know the interactions between surface water and subsoil waters.

Article 18

The taxes instituted by the States against the users pollutants of the environment are assigned to the financing of the ecologically rational management of the resource.

The States begin to set up tax incentives intended to help the economic operators who practise respectful methods of use of the resource of the environment.

The States will take care that the principle pollutant-payer is applied to the people morals and physics.

Notwithstanding the application of the principle pollutant payer, the violation by a State of its international obligations as regards pollution engages its responsibility in accordance with the rules for the international law.

CHAPTER 5

INSTITUTIONS CHARGED WITH DEVELOPMENT OF THE WATERS AND THE ENVIRONMENT

Article 19

The Standing committee of Water is charged to define, in accordance with the provisions of this Charter and of its appendices, the principles and the methods of the distribution of water between the various sectors of use.

Article 20

The Standing committee of Water is made up representatives of the Member States of the Organization.

Article 21

The Standing committee of Water gives an advisory opinion with the address of the Council of Ministers on any project or programs in connection with the stock management. Within this framework, it annually proposes at the Council of Ministers the control program of the works.

Article 22

The Standing committee of Water meets on convocation of the High-Commissioner of the Organization for the Development of the Senegal River or at the request of a Member State.

Article 23

The statute of observer near the Standing committee of Water could be granted by the Council of Ministers on a proposal from the High-Commissioner to certain entities of the Member States. They will take part in an effective way in work of the Standing committee of Water.

The statute of observer can be granted to:

- Representatives of the users;
- Representatives of the local authorities;
- Representatives of the NonGovernmental Organizations;
- Representatives of the Boards of decentralized management.

CHAPTER 6

METHODS FOR EXAMINATION AND APPROVAL OF NEW PROJECTS

Article 24

In accordance with the provisions of Article 4 of the Convention of March 11, 1972 relating to the Statute of the Senegal River and Article 10 of this Charter, any project of a certain width can be carried out only after prior approval of the contracting States. Moreover, an obligation of information and reciprocal consultation binds the parts, concerning the possible effects of the new projects.

There are three types of new projects:

- projects likely to have significant effects;
- projects not having significant effects;
- derogatory projects, moved by the urgency.

For the projects likely to have significant effects, it is made obligation, before their execution, to notify them in the States left, via the High commissionership. The notification must be done in good time and be accompanied by all the technical data necessary to its evaluation, in particular the impact studies. A three months deadline is granted to the States to answer the notification, the absence of answer being worth approval.

In any event, no project likely to modify in a significant way the characteristics of the mode of the River, its conditions of navigability, of industrial exploitation, the medical state of water, the biological characteristics of its fauna or its flora, its water level, can be carried out without to be approved as a preliminary by the contracting States.

If the project is derogatory, the Applicant state makes a formal statement, near the High commissionership to which is made the obligation to transmit it to the President the Council of Ministers and to the Member States of the Organization. Negotiations are then started on the level of the Council of Ministers on the basis of file educated by the High commissionership.

Article 25

Are transmitted to the States for examination, only the projects subjected to the authorization arrangement.

Article 26

The approval aimed to Article 24 fact the object of a request addressed to the Council of Ministers and lodged with the High commissionership.

After instruction, the High-Commissioner seizes of it the Standing committee of Water which gives an opinion for the Council of Ministers.

The approval of a new project is exclusive spring of the Council of Ministers.

CHAPTER 7

FINAL PROVISIONS

Article 27

The present Charter will come into effect after the deposit of the instruments of ratification by all the contracting States. It will be opened with adhesion the shortly after its entry into force for any other Coastal state of the River.

The instruments of ratification will be lodged with the government of the Islamic Republic of Mauritania which will inform of it the other contracting States and the High commissionership.

The present Charter will be addressed for recording with the Secretariat General of the United Nations at the time of her entry into force, in accordance with Article 102 of the Charter of the United Nations. It will be also addressed for recording to the Secretariat General of the African Union.

Article 28

The Charter will remain in force for all the lifespan of Convention carrying Statut of the Senegal River.

After this period, any State contracting can withdraw present Charter. The withdrawal will take place in the form of written notification addressed to the Government of the Islamic Republic of Mauritania which will inform the other contracting States of them. It will take effect after deadline a one year from the date on which the agent will have received notification from it.

It will not carry not reached, with less of contrary agreement, former engagements, this notification.

The provisions of the Charter will remain unchanged for one three years initial period known as probationary period.

After this period, a broad consultation will be held by the High commissionership, in order to evaluate the evolution of the stakes and the problems involved in the implementation of the Charter. Proposals for an amendment will be formulated if necessary, and will be submitted to the Council of Ministers.

With the exit of the probationary period, the provisions of the Charter will apply in a continuous way. Only the contracting States and the High commissionership will have the initiative to request his amendment.

The Conference of the Heads of States and Government is only qualified to rule on the modification of the Charter, on a proposal from the Council of Ministers.

Article 29

The appendices relating to the management of the works could be revised within shorter times so that the technical methods of application of the Charter remain in conformity in the duration with the rules in force and to take account of the evolutions related to the context of the catchment area.

The appendices with the Charter will be revised on justified request for a State or justified initiative of the High commissionership of the Organization for the Development of the Senegal River in dialogue with the actors concerned. The Council of Ministers proposes, on the basis of evaluation, measurements appropriate for adoption to the Heads of State and Government. The adopted measures become executory.

Article 30

Any disagreement which could emerge between the signatories parts, relative with the interpretation or the application of this Charter, its endorsements, or appendices, will be solved by the conciliation and the mediation. In the absence of agreement, the contracting States will have to seize the Commission of Conciliation and Arbitration of the African Union. As a last resort the International Court of Justice is seized.

During all the time that the settlement of the dispute lasts, and until its resolution, the Charter continues to apply in all its not disputed provisions. Moreover, the Council of Ministers of the Organization for the Development of the Senegal River will decide possible academics measurements on a proposal from the High-Commissioner.

In witness whereof, signed the present Charter,

For the Republic of Mali

For the Islamic Republic of Mauritania

For the Republic of Senegal