

HIGHT AUTHORITY FOR THE DEVELOPMENT OF SAHAR

(H.A.D.S)

CREATION ACTS



Part I
Draft Convention

Member States of the Community of Sahelo-Saharan States CEN-SAD:

1. **BEARING IN MIND** the objectives assigned to the Community by the Constitutive Treaty of 4 February 1998 ;
2. **CONSIDERING** the Constitutional instrument of the African Union, adopted in Lomé on 12 July 2000 and the new vision generated by NEPAD for the sustainable development of Africa;
3. **REFERRING** to the Decision to create an Authority for the Development of the Sahara, adopted by the 5th Session of the Conference of Leaders and Heads of State, held in Niamey from 14 to 15 March 2003 ;
4. **CONFIRMING** that the populations of the Sahara Desert and of its surroundings comprising the Sahel, are central in the concerns relative to the economic, social and cultural development of our Community ;
5. **AWARE** that sustainable economic growth, social development and the eradication of poverty are priorities for developing countries, particularly Africa ;
6. **RECOGNISING** the importance and need for an international cooperation and a partnership in the fight against desertification and to tone down the effects of drought;
7. **CONVINCED** that the Sahara Desert and its surroundings conceal huge potentialities with respect to farming, agro-industrial, mining, petroleum operations as well as scientific research ;
8. **CONSIDERING** that a rational and judicious development and an integrated management of these potentialities will contribute significantly in the socio-economic development of Sub-Saharan Africa and the establishment of peace in the Sahara space ;
9. **CONCERNED WITH** further developing actions of solidarity, relations of good neighbourliness and fruitful cooperation at the scientific, technical and technological levels, among the countries concerned in order to ensure a sustainable and harmonious development of the continent ;

DECIDE TO SET UP A HIGH AUTHORITY FOR THE DEVELOPMENT OF THE SAHARA.

TITLE I - **GENERAL PROVISIONS**

CHAPTER ONE: DEFINITIONS

Article one

For the purpose of this Agreement, the following expressions shall be understood as follows:

CEN-SAD : Community of Sahelo-Saharan States;

Authority : shall refer to the Authority for the Development of the Sahara ;

SAHARA : shall refer to the territories of States Parties to the Agreement, situated within the space that can currently be referred to as the «Sahara Desert » and their Sahelian parts,

Area of Intervention hereinafter known as the Area : shall refer to the area of cooperation comprising portions of territories of the SAHARA voluntarily placed at the Authority's disposal by Member States.

Resources: shall refer to all potential resources, localised in the SAHARA, particularly water, geological, mineral, petroleum and environmental resources;

Member States: shall refer to the States that accept to adhere to the Authority, in accordance with the provisions of this Agreement;

Desertification : shall refer to the degradation of land in the arid, semi-arid and sub-humid dry zones due to various factors, including climatic variations and human activities;

Desertification control: refers to the activities relative to the integrated development of land in the arid, semi-arid and sub-humid dry zones, with a view to ensuring sustainable development;

Mining and petroleum development activities : shall refer to all mining or oil resources prospecting, research, evaluation, development, production, extraction or exploitation, transportation and marketing operations (crude oil and natural gas) including natural gas treatment, refining and distribution ;

Companies : shall refer to one or several people having concluded a research or development convention or contract with the Authority as well as any other corporate

entity to which an interest shall be transferred, and having the status of a company by virtue of the applicable law

CHAPTER II: SETTING UP THE AUTHORITY

Article 2

This Agreement hereby establishes, within CEN-SAD, a management and cooperation High Authority for the Development of the SAHARA, as defined by article one of the said Agreement.

The High Authority shall be referred to as “High Authority for the Development of the SAHARA”, or HADS in abbreviated form.

It shall carry out its action throughout the space covered by the area of intervention. The limits of this area shall be defined within the framework of a management and cooperation Agreement.

The definition of the limits of the areas of intervention may be amended at the request of a State Party, after consultation and approval of the other parties;

The High Authority shall be composed of CEN-SAD Member States signatories to this agreement.

The High Authority may define the mechanisms organising cooperation and partnership with any other country or body interested in the development of the SAHARA.

The High Authority shall have its head office in, but it may be transferred to any other place, by decision of the Conference of Leaders and Heads of State of the Community of Sahelo-Saharan States.

Article 3

The Authority shall function on the basis of the following principles:

- sovereign equality of Member States,
- conservation and sustainable management of natural resources and the environment,
- permanent sovereignty of States over their natural resources,
- peaceful settlement of disputes,
- use of SAHARA resources for peaceful purposes,
- agreed distribution of resources of the area of intervention.

TITLE II -
OBJECTIVES

Article 4

The Authority shall seek to promote cooperation among CEN-SAD Member States, in order to ensure the rational and judicious development of all the potentialities comprising water resources, geological, mining and petroleum resources, among others, as well as scientific research and exploration opportunities provided by the SAHARA.

Article 5

In relation with Specialised Organisations, the Authority shall, in general, be entrusted with :

- organising and controlling the rational use of the water resources as well as the agricultural, oil or mineral resources of the Area,
- promoting Environmental management and conservation actions with a view to improving the implementation of desertification control programmes,
- cooperating in the various fields of interest with CEN-SAD Member States and competent international and regional organisations, civil society organisations or any other relevant organisation;

To this end, the Authority may act alone or in association with other national and international companies or bodies to carry out any activity in the Area.

Article 6

More specifically, the Authority shall also be mandated to:

a) in the mining and energy sectors

- Carry out or commission geological, geophysics and drilling studies and all other activities relative to research, exploration and development of mining and energy resources of the Area ;
- Promote activities geared towards research, exploration and development of mining and gas resources of the Area ;
- Market all or part of its share of the mining and gas production ;
- Support the State Parties to the Agreement in their efforts to promote and assess their resources;

- Study and promote the establishment of interconnected energy infrastructure;
- Institute a profitable energy policy among Member States;
- Define the implementation strategies and management model for renewable energy.

b) in the agricultural sector

- Promote scientific research with a view to improving soil fertility, the quality of seeds, crop protection and generate technologies tailored to the needs of users ;
- Contribute in crop diversification and the development of agricultural sub-sectors and markets, in order to ensure food security ;
- Institute a system for the integrated and harmonious management of agricultural resources;
- Promote actions geared towards the fight against crop predators, particularly desert locusts ;

c) in the water sector

- Take stock of the potential of the Area and establish shared water resources control mechanisms ;
- Strengthen partnership among actors involved in the integrated and harmonious management of shared resources ;
- Support Member States in the implementation of their policies, programmes and action plans relative to the water sector;
- Set up a pollution and nuisance control mechanism and prevent water-related risks such as floods, water-borne diseases, erosion and drought.

d) concerning infrastructure

- Study, design and carry out all works and structures needed for the activities of the Authority as well as those relative to transportation and communications ;
- Deliver all the infrastructure necessary for prospecting, exploration, development and production of the resources located in the Area of intervention ;
- Take the NEPAD infrastructure component into account.

e) concerning the environment and biodiversity management

- Ensure the protection of the SAHARA ecosystems, in collaboration with national institutions and international or regional organisations ;
- Improve the biodiversity conservation conditions;

- Harmonise the actions of the Authority with action programmes contained in frameworks and instruments of cooperation concerning Member States ;
- Contribute in implementing United Nations conventions on the Environment, with a view to developing scientific and technical cooperation;
- Contribute in developing wild resources in order to ensure sustainable development.

Article 7

To achieve the above-mentioned objectives, the Authority shall enjoy an international legal status that shall allow it to acquire and dispose of personal property and real estate.

TITLE III -

GENERAL UNDERTAKING

Article 8

Member States hereby undertake to :

- Cooperate with the Authority so as to enable it to carry out the objectives with which it is assigned;
- Make it easier for the Authority to carry out its activities in connection with security, research and transportation within their territory.
- Comply with the principles stipulated in the CEN-SAD Treaty with the concern that peace and security should be maintained and cooperation among Member States promoted ;
- Direct their efforts towards the fulfilment of conditions favourable to the accomplishment of the objectives assigned to the Authority. They shall refrain from taking any measures likely to jeopardise their achievement.
- Carry out their obligations, in good faith, by adopting all general or specific measures that will ensure implementation, in order to grant each party the rights and privileges arising from their membership.

Any State which persistently violates its general undertaking with respect to the provisions of this agreement, decisions or regulations of the Authority may be liable to sanctions to be determined by the Conference of Leaders and Heads of State.

TITLE IV -

ORGANS OF THE AUTHORITY

Article 9

The Authority shall be composed of the following organs:

- The Conference of Leaders and Heads of State;
- The Executive Council;
- The Board of Directors;
- The Enterprise.

Article 10

The Authority shall set up any other subsidiary organs required to carry out its missions.

CHAPITRE I -

THE CONFERENCE OF LEADERS AND HEADS OF STATE

Article 11: Competence, organisation and operation

The competence, organisation and operation of the Conference of Leaders and Heads of State are defined by the provisions of the CEN-SAD constitutive treaty of 4 February 1998.

CHAPTER II -

THE EXECUTIVE COUNCIL

Article 12: Competence, organisation and operation

The competence, organisation and operation of the Executive Council are defined by the provisions of the CEN-SAD constitutive treaty of 4 February 1998.

CHAPTER III -

THE BOARD OF DIRECTORS

Article 13: Composition and Operation

The Board of Directors shall be composed of nine (9) members elected by the Executive Council, on the basis of an equitable geographical distribution.

Every member of the Board of Directors shall be elected for three (3) years. However, an outgoing third of Board members shall be replaced every year at the expiry of their mandate.

The CEN-SAD Secretary General shall be a permanent member of the Board of Directors which it shall chair.

Article 14: Competence

The Board of Directors shall ensure that the recommendations are implemented and the orientations defined by the Conference of Leaders and Heads of State are complied with.

CHAPTER IV -

THE ENTREPRISE

Article 15: Missions and operation

The enterprise is the organ in charge of implementing the programmes of the High Authority. It is an international public institution, with international legal competence, functional autonomy, which acts in compliance with the objectives with which it is assigned.

The Enterprise's authorised capital and its distribution shall be determined by the Conference of Leaders and Heads of State.

It shall be headed by a Director General and its principal place of business shall be located at the Authority's headquarters...

Article 16: Director General

The Director General shall be the executive head and manager of the Enterprise. It shall implement the policy defined by the Authority and is in charge of the administrative, organisational and management functions of the Enterprise.

The Director General shall represent the Enterprise in all acts of civilian life and may conclude agreements or contracts approved by the Board of Directors. It shall ensure the implementation of all regulations and directives enacted by the Executive Council.

The Director General shall be appointed for a three (3) year mandate, renewal only once, by the Conference of Leaders and Heads of State, on the recommendation of the Executive Council.

He shall present an annual report to the Board of Directors of the Authority which shall also serve as the Board of Directors of the Enterprise.

In performing their duties, the Director General of the Enterprise and the staff placed under his authority:

- Shall not seek or accept instructions from any government or any authority outside the Board of Directors,

- Shall abstain from all actions incompatible with their position as international civil servants and shall only be answerable to the Board of Directors,
- Shall not have any financial interest in any of the activities related to the fields of interest of the Enterprise,
- Shall be subjected to the duty to preserve secrecy after they leave office.

Every Member State shall undertake to respect the exclusively international nature of the functions of Director General and the staff, and refrain from trying to influence them in the performance of their duties.

Article 17: Committee of Experts

The Board of Directors shall set up a technical and legal committee composed of experts mandated to assist the Director General, in the execution of tasks with which he is entrusted, notably:

- Preparing the sessions of the Board of Directors and following-up the implementation of recommendations,
- Preparing draft regulations, decisions and directives aimed at controlling the activities of the Enterprise,
- Examining contracts and agreements submitted to the Enterprise, notably the evaluation of the environmental impact of the proposed activities.

The Committee, whose composition shall reflect the fields of interest of the Enterprise, shall be composed of ten (10) members, at most. Members of the Committee shall be selected by the Board of Directors on the basis of a list proposed by the Director General and taking geographic distribution into account.

Article 18: Specialised Agencies of the Enterprise

Within the framework of the implementation of its programmes, the Enterprise shall create specialised agencies in the fields of interest referred to in article 6 of this Agreement.

The organisation and operating procedures of these agencies shall be defined by the Executive Council.

TITLE V-

THE FINANCIAL RESOURCES OF THE AUTHORITY

Article 19: Resources of the Authority

The resources of the Authority shall consist of:

- the contributions of Member States,
- financial products deriving from the exploitation of SAHARA resources,
- revenue deriving from services provided by the Authority,
- loans and returns on financial investments,
- all financial resources which may be obtained by the Authority within the framework of cooperation with States or international, regional and sub-regional organisations,
- donations and legacies from donators or private individuals or legal entities.

Article 20 : Budget

The annual draft budget shall be prepared by the Director General and presented to the Board of Directors for approval.

Article 21: Auditors

The Board of Directors shall appoint an Auditor for a three-year period.

He shall be responsible for auditing the ending fiscal year annually, and submitting a report to the Board of Directors.

TITLE VI -

PRIVILEGES AND IMMUNITIES

Article 23:

The High Authority shall enjoy privileges and immunities, on the territory of each of its members, to facilitate the accomplishment of its duties, in accordance with the United Nations Convention of 13 February 1946 and the African Union Convention of 11 July 2000.

TITLE VII -
FINAL PROVISIONS

Article 24

This Agreement shall come into force, after Member States deposit the 5th instrument of ratification with the Current Chairman of the Conference of Leaders and Heads of State, in accordance with their constitutional procedures.

This Agreement shall be registered with the African Union Commission and the United Nations General Secretariat, by the Current Chairman of the Conference of Leaders and Heads of State.

Article 25

This Agreement may be completed by protocols, if necessary.

Article 26

Five (5) years after the coming into force of this Agreement, the Conference of Leaders and Heads of State may convene a review conference, for the purpose of:

- evaluating the compliance of the results obtained with the assigned objectives;
- enacting new regulations or modifying those existing within the framework of the exploration and development of the resources of the SAHARA;
- amending this Agreement, if necessary.

Amendments to this Agreement shall be adopted by 2/3 of members of the General Assembly and submitted to Member States for approval, according to their constitutional rules.

Article 27

Any Member State wishing to withdraw from this Agreement, shall send a written notification to the Current Chairman of the Conference of Leaders and Heads of State. If, after twelve (12) months, the notification is not withdrawn, this Agreement shall cease to be in effect in this State.

Article 28

Any dispute between Member States arising from the interpretation or application of this Agreement, shall be settled through direct negotiation. In case of a break down in these negotiations, the dispute may be submitted either for arbitration, or to the International Court of Justice or any other Court of Justice approved by the Parties.

The Parties shall seek to reach a compromise in any dispute opposing them and perform their duties, in good faith.

In witness whereof, We, Leaders, heADS OF STATE AND Government of CEN-SAD,
have adopted this Agreement.

Done in on2005

For the Government of the
Republic of Benin

H. E. **Yayi BONI**
President of the Republic

For the Government of the
Republic of Burkina Faso

H. E. **Blaise COMPAORE**
President of the Republic

For the Government of the
Republic of Djibouti

H. E. Ismaël Omar GUELLEH
President of the Republic

For the Government of the
Central African Republic

H. E. **François BOZIZÉ**
President of the Republic

For the Government of the
Republic of Côte d'Ivoire

H. E. **Laurent GBAGBO**
President of the Republic

For the Government of the
Republic of Liberia

H. E. Ellen Johnson SHIRLEAF
President of the Republic

For the Government of the
Republic of Egypt

H. E. Hosni MUBARAK
President of the Republic

For the Government of the
Republic of Eritrea

H. E. Isaias AFWERKI
President of the Republic

For the Government of the
Republic of the Gambia

H. E. Yahya JAMMEH
President of the Republic

For the Government of the
Republic of Ghana

H. E. John KOUFORD
President of the Republic

For the Government of the
Republic of Guinea Bissau

H. E. João Bernardo VIEIRA
President of the Republic

For the Government of the
Republic of Senegal

H. E. Abdoulaye WADE
President of the Republic

For the Grand Libyan Jamahiriya
Islamic Republic of Libya

H.E. Mouamar AL-KADHAFI
Leader of the 1st September
Revolution

For the Government of the
Republic of Mali

H. E. Amadou Toumani TOURE
President of the Republic

For the Government of the
Kingdom of Morocco

H. E. Mohammed VI
King of Morocco

For the Government of the
Republic of Niger

H. E. Tandja MAMADOU
President of the Republic

For the Government of the
Federal Republic of Nigeria

H.E. Umaru Yar' Adua
President of the Federal Republic

For the Government of the
Republic of Chad

H. E. Idriss DEBY
President of the Republic

For the Government of the
Republic of Sierra Leone

H. E. Ernest Bai KOROMA
President of the Republic

For the Government of the
Republic of Somalia

H. E. Abdulahi Yusuf AHMED
President of the Republic

For the Government of the
Republic of Sudan

H. E. Omar Hassan AL-BASHIR
President of the Republic

For the Government of the
Republic of Togo

H. E. Faure GNASSINGBÉ
President of the Republic

For the Government of the
Tunisian Republic

H. E. Zine Al-Abidine BEN ALI
President of the Republic

Part 2
Draft of Management and
Cooperation Agreement

THE GOVERNMENTS of Member States of the Community of Sahelo-Saharan States (CENSAD) :

1. **BEARING IN MIND** the objectives assigned to the Community by the Constitutive Treaty of 4 February 1998 ;
2. **REFERRING** to the Decision to create an High Authority for the Development of the Sahara, adopted by the 5th Session of the Conference of Leaders and Heads of State, held in Niamey from 14 to 15 March 2003 ;
3. **CONFIRMING** that the populations of the Sahara Desert and of its surroundings comprising the Sahel, are central in the concerns relative to the economic, social and cultural development of our Community ;
4. **CONVINCED** that the Sahara Desert and its surroundings, notably the Sahel, conceal huge potentialities with respect to farming, agro-industrial, mining, petroleum operations as well as scientific research ;
5. **CONSIDERING** that a rational and judicious development and an integrated management of these potentialities will contribute significantly in the socio-economic development of Sub-Saharan Africa and the establishment of peace in the Sahara space ;
6. **CONCERNED WITH** further developing actions of solidarity, relations of good neighbourliness and fruitful cooperation at the scientific, technical and economic levels, among the countries concerned in order to ensure a sustainable and harmonious development of the continent ;

HAVE AGREED AS FOLLOWS :

Article one

For the purpose of the Cooperation and Management Agreement, the following expressions shall be understood as follows:

High Authority : shall refer to the High Authority for the Development of the Sahara;

Sovereign State : shall refer to the contracting State to the Convention for the creation of the Authority for development, having a portion of its territory in the area of intervention,

Area of Intervention hereinafter known as the Area : shall refer to the area of cooperation comprising portions of territories of the SAHARA voluntarily placed at the Authority's disposal by Member States hereinafter referred to as Sovereign States.

SAHARA : shall refer to the territories of Sovereign States, situated within the space that can currently be referred to as the «Sahara Desert » and their Sahelian parts,

Resources : shall refer to all potential resources, localised in the SAHARA, particularly water, geological, mineral, petroleum and environmental resources;

Member States : shall refer to the States that accept to adhere to the Authority, in accordance with the provisions of the Agreement on the creation of the Authority for the Development of the SAHARA;

Desertification control: refers to activities relative to the integrated development of land in the arid, semi-arid and sub-humid dry zones, with a view to ensuring sustainable development;

Mining and petroleum development activities : shall refer to all mining or oil resources prospecting, research, evaluation, development, production, extraction or exploitation, transportation and marketing operations (crude oil and natural gas) including natural gas treatment, refining and distribution ;

Companies : shall refer to one or several persons having concluded a research or development convention or contract with the Authority as well as any other corporate entity to which an interest shall be transferred, and having the status of a company by virtue of the applicable law

Article 2.

State Parties to this Agreement shall develop together the natural resources and development opportunities in the area of intervention, within the framework of the development of the SAHARA.

Article 3.

The area of intervention shall cover portions of territory situated within Member States, voluntarily placed at the Authority's disposal by Governments of Member States .

The localisation, designation, geographic coordinates and surface areas of these portions of territory shall be defined and mapped out on a topographic map at the scale of 1 /50.000. The boundary-line charts relative to the said portions of territory shall be an integral part of this Cooperation and Management Agreement to which they shall be annexed.

The definition of the limits of the said Area may be amended, at the request of a State Party, after consultation and approval of the other parties.

Article 4.

By this Agreement, Member States shall conduct together the exercise of their respective rights on the entire space of the said Area, and decide in this regard, to set up an international Authority in charge of the development and management of the natural resources of the Area of intervention

The organisation and operation of the Authority and the rights vested in it shall be defined in a Convention, on the basis of the State Parties' mutual consent.

Article 5

This Management and Cooperation Agreement shall come into force as soon as it is signed and ratified by State Parties to the Agreement relative to the creation and operation of the High Authority for the Development of the SAHARA.

Article 6

As soon as it is fully established, the Authority shall take over the States' rights and obligations arising from agreements initially concluded by each of them on the natural resources contained in the portion of territory placed at the disposal of the High Authority and as defined in this Agreement.

Article 7

The sharing of the Authority's resources, resulting from the development and management of a portion of territory of the Area, shall be effected on the basis of the following proportions and terms:

1) For mining and energy resources

- Sovereign State (SS):
- High Authority for the Development of the SAHARA (HADS) :

2) For agricultural resources.

- Sovereign State (SS):
- Authority for the Development of the SAHARA (ADS) :

3) For water resources

- *In case of shared resources*
 - Sovereign State (SS): shared equally among Sovereign States
 - Authority for the Development of the SAHARA (ADS) :

- *In case of non shared resources*
- 4) For any other resources :
 - Sovereign State (SS):
 - High Authority for the Development of the SAHARA (ADS) :

The resources of the high Authority shall be shared not later than six (06) months after the accounting date.

Article 8.

This management and cooperation Agreement, within the framework of the Development of the SAHARA, shall be effective for 20 years ; it may be revised at the end of this period.

Article 9.

The Authority, its organs and staff shall enjoy privileges and immunities, on the territories of each Member State, to facilitate the accomplishment of their duties, in accordance with the United Nations (UN) Convention ONU) of 13 February 1946 and the African Union Convention of 11 July 2000.

Article 10.

Any dispute between Member States arising from the interpretation or application of this Agreement shall be settled through direct negotiation. In case of a break down in these negotiations, the dispute may be submitted either for arbitration, or to the International Court of Justice or any other Court of Justice approved by the Parties.

The Parties shall seek to reach a compromise on any dispute opposing them and perform their duties, in good faith.

Done in On2005

For the Government of the
Republic of Benin

For the Government of the
Central African Republic

H. E. **Yayi BONI**
President of the Republic

H. E. **François BOZIZE**
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For the Government of the
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President of the Republic

For the Government of the
Republic of Mali

H. E. Amadou Toumani TOURE
President of the Republic

For the Government of the
Kingdom of Morocco

H. E. Mohammed VI
King of Morocco

For the Government of the
Republic of Niger

H. E. Tandja MAMADOU
President of the Republic

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H. E. João Bernardo VIEIRA
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H. E. Abdoulaye WADE
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H. E. Ernest Bai KOROMA
President of the Republic

For the Government of the
Federal Republic of Nigeria

H.E. Umaru Yar' Adua
President of the Federal Republic

For the Government of the
Republic of Chad

H. E. Idriss DÉBY
President of the Republic

For the Government of the
Republic of Togo

H. E. Faure GNASSINGBÉ
President of the Republic

For the Government of the
Republic of Somalia

H. E. Abdulahi Yusuf AHMED
President of the Republic

For the Government of the
Republic of Sudan

H. E. Omar Hassan AL-BASHIR
President of the Republic

For the Government of the
Tunisian Republic

H. E. Zine Al-Abidine BEN ALI
President of the Republic