



**FMWR-IUCN-NCF KOMADUGU YOBE BASIN PROJECT
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**MAKING OF WATER CHARTER FOR SUSTAINABLE AND
EQUITABLE MANAGEMENT OF THE
HADEJIA-JAMA'ARE-KOMADUGU-YOBE BASIN:
LESSONS LEARNED AND THE WAY FORWARD**



Report Presented

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Executive Summary

Aware of the need for cooperation in harnessing and ensuring equity in the use of the water resources of a transboundary river basin, the apparent inequity in the use of the dwindling water resources of the Hadejia-Jama'are-Komadugu-Yobe Basin (HJKYB), the failure of the River Basin Development Authorities (RBDAs) in the basin to control the situation or engender confidence in the stakeholders as regulating agencies, the Federal Government of Nigeria through its Federal Ministry of Agriculture and Water Resources with the assistance of the International Union for the Conservation of Nature and Natural Resources (IUCN) and the Nigerian Conservation Foundation (NCF) appointed a water law expert to prepare a Water Charter for the HJKYB and to document lessons learned in the Charter making process as well as propose the way forward for equitable and sustainable use of the water resources of the basin.

The water law expert and his team carried out this assignment in accordance with the terms of reference, by which it assembled and reviewed existing information including technical, hydrological

records, academic researches, treaties, conventions, agreements and other reference materials.

From 13 November to 20 December 2006, the water law expert (as the lead legal consultant) and Project Management Unit staff from the Project office in Kano, Nigeria, toured the six basin states of Bauchi, Borno, Jigawa, Kano, Plateau and Yobe. This marked the first phase of the Charter making process, the consultative phase, during which the legal expert interacted with stakeholders throughout the basin and recorded interviews with them.

The second phase was marked by consolidation meeting with basin states IWRM committees. It lasted from 09 to 26 January 2006. This phase involved meeting with all the basin states IWRM committees to review the draft charter as well as meetings with basin states Secretaries to State Government.

The third phase of the charter making process was the final phase. It was the validation phase and lasted from 12 to 14 February 2006.

The validation workshop took place in Jos, Plateau State. In attendance were representatives drawn from all the six basin states, delegations from relevant federal government ministries, experts from Lake Chad Basin Commission, Non-Governmental Organizations, Community-Based Organizations, the academia, and conservationists from within and outside the basin. Others are professionals, federal and state administrators and political leaders. The Plateau State Deputy Governor stood in for the Executive Governor. At the end of the two days of intense deliberations the validation workshop approved and adopted the Water Charter.

This report records the outcome of the charter making process. The Executive Summary is presented here before the main body starting with Chapter One, the Introduction, which gives the general background information about the basin and justification for the charter making exercise. It highlights the components that became salient and fundamental to the Charter making process. These are:

- Institutions and Participatory
- Legal and Regulatory

- Database and Information Management
- Environment Protection
- Transboundary Water

Chapter two deals with the Methodology. The work done, rationale behind the chosen methods, expectations, types of reference materials consulted, and attempts to decipher the underlying frame of mind of the respondents are explained herein.

Chapter three deals with lessons learned and these are shown to include the need for sustainable livelihoods for the basin population as a sine qua non to the success of the implementation of the water charter. Other lessons learned include establishing linkages in the land use and water management policy. Recognition of economic values of natural ecosystems, and the fusion of these values in ecosystem management and other activities that impact on ecosystem integrity and water supplies.

The role of data and information management, environmental protection, transboundary cooperation, goodwill and transparency, as well as highlights of institutional weaknesses are all shown as instances of lessons learned.

Chapter four anchors this report, and it shows the way forward to include, *inter alia*:

- The need for new development philosophy for sustainable development.
- Approaches to solving technical problems.
- Calls for readjustment of the territorial jurisdiction of the RBDAs to coincide with hydrological basins in order to facilitate Integrated Water Resources Management.
- Other features includes participatory decision making, political will to implement reforms as well as issues of public enlightenment.

The report has the final curtain drawn with concluding remarks.

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List of Abbreviations and Acronyms

| | |
|--------|---|
| CBDA | Chad Basin Development Authority |
| CBOs | Community-Based Organizations |
| HJKYB | Hadejia-Jama'are-Komadugu-Yobe Basin |
| HJRBDA | Hadejia-Jama'are River Basin Development Authority |
| HNWCP | Hadejia-Nguru Wetlands Conservation Project |
| IUCN | International Union for the Conservation of Nature and Natural Resources |
| IWRM | Integrated Water Resources Management |
| KYB | Komadugu Yobe Basin |
| NGOs | Non-Governmental Organizations |
| PMU | Project Management Unit |
| RBDAs | River Basin Development Authorities |
| SADC | Southern African Development Community |
| SSGs | Secretaries to State Governments |
| WRMS | Water Resources Management Strategy |

CHAPTER ONE

INTRODUCTION

1.0 Introduction

The Hadejia-Jama'are-Komadugu-Yobe Basin (HJKYB) is a well known basin of both national and international significance. Millions of citizens throughout the basin states eke out their livelihoods from the resources of the basin either as cultivators, pastoralists, fishermen or collectors of natural produce. The basin also holds a great potential for ecotourism, mining, small and medium scale agro-based industries, biodiversity and habitat conservation.

Climate change, desert encroachment and rapid population growth has given rise to immense pressure on the basin's ecosystem as well as its water and other environmental resources. Faced with dwindling resources and increased demand the federal and state governments within the basin decided to implement a system of Integrated Water Resources Management (IWRM) so as to achieve the equitable use and sustainable development of the basin's resources in the larger interests of all stakeholders both present and future in the basin.

It was thus against the afore-stated backdrop, that those governments decided to support the making of a Water Charter with the assistance of the International Union for the Conservation of Nature and Natural Resources (IUCN). The Charter it is hoped will govern the use, preservation, conservation, and overall management

of the basin's ground and surface waters, the ecosystem and other natural resources on a sustainable basis.

Towards these ends, the services of a water law expert was engaged to produce the Water Charter and the present account is an effort at providing a compendium of the lessons learned during the Charter making process, as well as advance opinion on the way forward in the aftermath of the completion of the Charter making exercise.

1.1 Justification

The Charter making was embarked upon as a result of the felt need to overcome the challenges the federal and state governments in the basin area faces in managing the water resources of the basin in an integrated and sustainable manner.

The main goal of the Charter in the context of IWRM thus, became the fusion of an ecosystem approach into catchment policies, planning and management. Certain strategic objectives/components of IWRM as deducible form the compendium of the consultant's interactions with vast and varied stakeholders in the basin formed the foundation of the Charter that emerged at the end of the consultation, consolidation and validation process.

The components that became salient and fundamental to the Charter making process are:

- Institutions and Participatory
- Legal and Regulatory

- Database and Information Management
- Environment Protection
- Transboundary Water (lower reaches of the Komadugu Yobe River is also shared with Niger Republic)

All in all, the various components form a coherent strategy for the Charter's forward looking approach towards fusing the ecosystem approach into catchment management.

CHAPTER TWO

METHODOLOGY

2.0 Background

After a series of meetings between the Lead Consultant (Water Law Expert) and the Project Management Unit (PMU) at the Kano Project Office of the IUCN and at the consultant's office at Zaria respectively, the Lead Consultant and his team met to plan the take-off of the Charter making process as well as put in place appropriate strategies for successful execution of the assignment. The outcome of these deliberations may be described under two main sub-headings; retrieval of legal information (review and analysis) and basin-wide field interviews with stakeholders.

2.1 Legal Information Review

2.1.1 Previous Studies and Legislative Enactments

Over the decades, a lot of studies have been carried out by national and international bodies on the Komadugu Yobe Basin (KYB). Individuals and groups have also carried out several studies on the basin (including those carried out by the Lead Legal Consultant severally and jointly with others). There are therefore significant reports, academic researches, articles and other reference materials which the consultant collected and reviewed. Notable among these are the reports of Diyam Consultants, Hadejia-Nguru Wetlands Conservation Project (HNWCP), IUCN, Transboundary Water Group (WRMS), the Legal and Regulatory Framework Group

(WRMS), the Institutions and Participatory Group (WRMS) and previous reports by the Lead Legal Consultant on studies carried out by him in the basin.

In addition to existing literature, the consultants obtained and deontically reviewed the following national and international statutes, policies, treaties and conventions.

2.2 National Legislation and Policy Documents Consulted

2.2.1 Nigeria

- Water Resources Act, 1993
- River Basin Development Authority Act, 1987
- Environmental Impact Assessment Act, 1992
- The Oil in Navigable Waters Act, 1968
- Minerals Act, 1917
- Agriculture (Control of Importation) Act, Cap A13
- Endangered Species (control of International Trade and Traffic) Act, Cap E9
- Live Fish (control of importation) Act, Cap L14
- National Park Services Act, Cap N65
- National Policy on Environment, 1991
- National Guidelines and Standards for Environmental Pollution Control in Nigeria, 1991
- National Effluent Limitation Regulation 1991
- Pollution Abatement in Industries and Facilities Generating Wastes Regulation, 1991

- Waste Management Regulation, 1991
- National Environmental Protection (management of Solid and Hazardous Wastes) Regulation, 1991
- National Policy on Flood and Erosion, 2005
- Draft National Water Policy, 2004
- National Policy on Agriculture
- National Policy on Drought, 2006
- All Basin States: Fisheries, Forestry, Grazing Reserve, and Farmers and Herdsmen Laws
- All Basin States Water Edicts.

2.3 International Treaties and Conventions

2.3.1 Africa

- Nigeria-Niger Joint Commission Agreement, Maiduguri, 1990
- Lake Chad Basin Convention, N'djamena, 1964
- African Convention on the Conservation of Nature and Natural Resources, Algiers, 1968
- Revised African Convention on the Conservation of Nature and Natural Resources, Maputo, 2003
- Abuja Ministerial Declaration on Water, 2002
- Convention relating to the Creation of Gambia River Basin Development Organization, Kaolack, 1978
- Protocol on Shared Watercourse Systems in the Southern African Development Community (SADC) Region, Johannesburg, 1995

- Southern African Development Community (SADC) Revised Protocol, 2000
- Niger Basin Authority, Revised Convention, N'djamena, 1987.

2.3.2 **World**

- UN/ECE Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 1991
- UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 1992
- UN Convention on Non-Navigational Uses of International Watercourses, New York, 1997
- Action Plan on Water (Mar del Plata) 1977
- World Water Vision
- Convention on biodiversity, (Rio de Janeiro), 1992
- Convention on Wetlands of International Importance especially as waterfowl habitats, Ramsar, 1971
- Convention on climate changes, New York, 1992
- Convention on desertification control in countries severely affected by drought and/or desertification in Africa mainly, Paris, 1994.

2.4 **Basin-wide Interviews with Stakeholders**

2.4.1 **Consultative Phase (Phase One)**

The Lead Legal Consultant and PMU staff met at Kano late October 2006, and fashioned out modalities for basin-wide

consultative meetings with diverse stakeholders. Next, the Lead Legal Consultant and PMU colleagues embarked upon field trips for conducting oral interviews and holding interactive sessions with stakeholders and basin states IWRM Committees in Bauchi, Borno, Kano, Jigawa, Plateau and Yobe states. This formal exercise lasted from 13th November to 20th December 2006. This marked the first phase of the Charter making process, the consultative phase.

2.4.2 Basic Guiding Principles in Conducting Interviews

Interview method refers to the verbal method of collecting data. It means asking questions in a face-to-face contact. The Legal Consultant adopted the "unstructured interview", as well as "focus interview" methods under which questions were not predetermined and sent in advance to the respondent. Both methods were therefore an oral-verbal method, spoken but not written. The benefits of this approach were:

First, it allowed greater degree of flexibility to interviewer to decide the manner and sequence in which the question can be asked.

Second, the interviewer (consultant) is never certain as to what the respondent will give out as information.

Third, the interviewer has freedom to explore reasons and motives and to probe further in the direction he thinks would afford clues.

Fourth, the legal consultant has greater freedom in recording the responses according to his own frame of judging the significance, relevance and convenience.

Finally, the consultant remained free to include relevant aspects and exclude irrelevancies from his record as well as highlight certain responses.

On the balance, both interview methods provided the consultant with fruitful sources of insight and proved useful in explanatory and formulative process. Having conducted consultative meetings with various stakeholders throughout the basin, responses were studied and analyzed with particular emphasis on aspects dealing with legal, institutional, environmental, hydrological, ecosystem, and conservation themes.

There were general consensuses over many issues. Most significant is the recognition of the need to protect the resource base and the need to establish processes and mechanisms that will adopt scientific approach in constantly studying, storing, documenting and monitoring data relating to water resources throughout the basin, and in the long run provide a transparent basis for informed decision making leading to equitable and sustainable use, as well as enforcement of laws. There was also unanimity in the call to ensure that the management of the HJKYB Trust Fund is transparent, efficient and accountable in its operations and that the Trust Deed be made part of the Water Charter.

2.4.3 Consolidation Phase (Phase Two)

Consolidation meetings marked the second phase in the Charter making process and revolved round states IWRM committees. It lasted from 09th to 26th January 2007. This phase saw meetings with all the basin states IWRM Committees to review the draft Charter as well as meetings with basin states' Secretaries to State Government (SSGs).

2.4.4 Validation Phase (Phase Three)

This marked the final phase in the Charter making process. It lasted from 12th to 14th February 2007. The validation workshop took place in Jos, Plateau State. In attendance were representatives drawn from all the six basin states, delegations from relevant federal government ministries, experts from the Lake Chad Basin Commission, NGOs, CBOs, the academia, conservationists from within and outside the basin, professionals, and administrators and political leaders. The Plateau state Deputy Governor stood in for the Executive Governor. At the end of its two-days of intense deliberations the validation workshop approved and adopted the Water Charter.

CHAPTER THREE

LESSONS LEARNED

3.1 Introduction

The growth of human population throughout the KYB is a reality that has led to increased agricultural activity to feed the people.

With increased agricultural activity both in volume and level of mechanization and the changing climatic pattern of some years, water demand in the basin for domestic use, agriculture, fishery, animal husbandry and ecosystem balance has outstripped the available resources and aroused suspicion and mistrust of the upstream users by downstream users, especially as they continually refer to the activities of upstream dam operators.

There are two large federal government River Basin Development Authorities (RBDAs) within the basin. These are the Chad Basin Development Authority (CBDA) and the Hadejia-Jama'are River Basin Development Authority (HJRBDA). The legal instrument setting up the RBDAs gave a flawed definition to the concept of river basin authorities. The delineation of the areas of authority along political lines rather than hydrological divides is a hindrance to the ability of RBDAs to truly assess the basin's water resources because political lines do not coincide with hydrological boundaries.

The glaring lack of coordination between CBDA and HJRBDA; the single minded pursuit of irrigation agriculture mandate which imposes no concomitant legal obligation for pollution control or

watershed management has resulted in an unsustainable approach to water use through lack of an integrated approach to water resources management.

3.2 Salient Lessons

3.2.1 Sustainable Livelihood

If the water Charter is to be successfully implemented, it has to be anchored on sustainable livelihoods: a sustainable system of capabilities, material and social resources and activities required for a means of living. Ecosystem management within the HJKYB can only be implemented successfully; and sustainably in alliance with the development of sustainable livelihoods. These livelihoods in turn depend on the sustainable management of the natural resources in the basin. A sustainable livelihood should be resilient, being thus able to withstand and recover from stresses and shocks. It also requires maintaining and enhancing its assets throughout the basin both in the short and long run, whilst not undermining the natural resources base. Conserving natural resources, therefore, constitute an indispensable factor in a sustainable livelihood strategy.

3.2.2 Establishing Linkages

IWRM requires the ability to establish effective linkages between departments and economic sectors to allow for the development of integrated planning and management. Pollution control, for instance, cannot be restricted to water pollution alone

since the pollution of land, air and water is closely connected as part of man's diurnal activity in search of livelihood. Control of water pollution in isolation will be less effective than integrated pollution control, which reckons with land and air pollution.

There is an incontestable inter-relationship between land and water. It may be seen therefore, that water resource management without any influence on land use policy and development is very restricted in its effectiveness. If, therefore, an envisaged IWRM is to succeed in the HJKYB, there has to be consistent land use and water management policy.

3.2.3 Economic Values

An IWRM approach to sustainable water resources management requires the realization of the high economic values associated with natural ecosystems, and to accept the fusion of these values in ecosystem management, in water decisions and in the land use and development activities that impact on ecosystem integrity and water supplies. It is important to be able to properly assess and adequately quantify the economic value that natural ecosystems provide by assuring the supply and quality of water and other goods and services, and to establish clearly the economic consequences associated with the degradation or loss of these ecosystems. These economic values have to be integrated into the policies, economic decisions and activities of the diverse sectors and stakeholder groups

whose welfare and wellbeing depend or impact on the basin's water and water based ecosystems.

3.2.4 Role of Data and Information Management

The importance of good data base and information system for IWRM is inextricably linked to the need to allocate water more efficiently and effectively to meet specific and general needs of society. A water resource information system and database play a signal role in the efficient and effective management of water resources. The need for adequate data manifests itself in such areas as:

- Water audit activities in the basin
- Forecasting and projecting current and prospective water use and demand
- Flood and drought forecasting
- Strategic plans for water provision, preservation, conservation and restoration
- Monitoring hydrological, hydrogeological, and other socio-economic related characteristics of water resources management and provision
- Monitoring hydrogeological risks in the basin.

A reliable water resources database and information system is therefore needed to meet specific and general characteristics demands, needs, and development of IWRM.

3.2.5 Environmental Protection

All kinds of projects alter the environment. The challenge of environmental problems emanating from the use of water have both qualitative and quantitative facets and both in-stream and off-stream aspects. Biodiversity and environmental protection require interdisciplinary, inter-sectoral, and inter-institutional projects. All in all, IWRM approach to environmental protection requires that all kinds of projects (large and small-scale) should primarily address the need for sustainable livelihoods of the people in catchments, since these represent the foundation for achieving the sustainable use of basin resources and social, economic and environmental security.

3.2.6 Transboundary Cooperation

One of the reasons a Water Charter was called for in the first place was to ensure equity and sustainability of resource use throughout the basin. The interests of IWRM as it affects sustainable water resources management demand a basin-wide approach to planning and action. Where basins are transboundary, riparian states need to adopt strategies involving different degrees of cooperation.

In the face of dwindling water resources, there exist the need for regular consultation and exchange of data and vital information on transboundary activities between the basin states as part of the implementation of a successful sustainable ecosystem management in any scheme of basin level IWRM.

3.2.7 Goodwill and Transparency

It goes without saying that suspicion and mistrust about rival intendments is prevalent among the parties. It requires political will to break barriers and transparent dealings to restore trust and mutual confidence among basin peoples.

3.2.8 Institutional Weaknesses

Certain weaknesses are identifiable in the present institutions set up to manage the water resources of the basin, namely the RBDAs. The RBDAs are, for instance, at once both suppliers and consumers of water and water resources. In effect, the law setting up the RBDAs constitutes them into regulator and user. This situation has engendered conflict of interest. Additionally, the operational domains of both the CBDA and the HJRBDA are delineated by political boundaries and not hydrological boundaries.

Finally, the single minded pursuit of irrigation agriculture mandate which impose no concomitant legal obligation for pollution control or watershed management has resulted in an unsustainable approach to water use through lack of an integrated approach to water resources management.

CHAPTER FOUR

THE WAY FORWARD

4.1 Preface

The following positions are hereby articulated as the way forward in achieving an equitable and sustainable use of the water resources of the basin as well as enhancing the efficiency and profitability of any investment made in that direction:

4.2 Need for New Development Philosophy for Sustainable Development

- Expand only what works, just like any successful economic enterprise would do
- Involve stakeholders in development for sustainability
- Make sector investment attractive for accelerated coverage of efficient, sustainable service
- Recognize the role of private sector investors
- Prepare legal and regulatory frameworks which acknowledge and recognize public-private partnership
- Reform the sector institutions to serve the stakeholders.

4.3 Solving Technical Problems

The technical capacity of water related institutions in the basin needs to be strengthened for them to cope with the demands of fulfilling their mandate. In particular assistance will be needed in the

areas of experts, training of staff and the provision of hydrological and hydrogeological data collection equipment.

4.4 **Territorial Boundaries of River Basin Institutions**

Readjustment of the territorial jurisdiction of the RBDAs to coincide with the hydrological basins is needed to facilitate IWRM.

4.5 **Others**

- The technical aspects of the appropriate water management and related issues such as adequate collection and storage of standardized data leading to equitable allocation of water through coordinated releases from the dams should be embarked upon on a priority basis.
- The different parties involved as stakeholders in the basin should be involved in participatory decision making in order to ensure fully adequate cooperation from them as this is crucial to the success of any programme launched within the basin.
- The relations between the contending parties in the basin should be made easier through a systematic and sustained programme of public enlightenment to raise awareness and eliminate conflicts, real or potential.
- Finally, the political will to carry out proposed reforms must be mustered by both the federal and basin states governments with a view to seeing the Charter implementation process carried out to its logical conclusion.

4.6 **Conclusion**

If the new Water Charter and the Trust Fund are to succeed in their mission, then, the cadres charged with their implementation and enforcement must have the right orientation, correct grasp and social commitment. Failing this, all efforts aimed at achieving an equitable and sustainable water resources management regime in the basin, will end in a yawning implementation gap.

Intellectual submissions and heroics in Charter drafting will be meaningless if institutions, laws and those charged with their administration and enforcement are deficient in their roles. The salutary effect of well conceived measures will be defeated and the benefits of the basin's vast water resources lost.

The best water resources Charter, Trust Fund and Catchment Management Plan must be backed by effective implementation and enforcement in the field.