

Annex

The Grand Ethiopian Renaissance Dam (GERD)

Sudan's Position:

“Safeguarding lives of 20 million people living below the GERD”

Executive Summary

While Ethiopia negotiates for its right for socio-economic development, and Egypt for the right of its water share, Sudan negotiates to safeguard the lives of more than 20 million people living downstream the GERD”

The Grand Ethiopian Renaissance Dam located across the Blue Nile is under construction since 2011. Since then, negotiations between Egypt, Ethiopia, and Sudan has been ongoing on how to fill and operate this gigantic dam. The filling for the first year has already been completed in July 2020, (unilaterally), without agreement, raising even more concerns in the region. At present (April, 2021) the negotiation continues under the supervision of the African Union.

The Republic of the Sudan is an important riparian country to the Blue Nile, located immediately downstream of the GERD, and thus stands to be impacted the most by this large dam. Accordingly, Sudan feels obligated to inform the world community of its position, and views on GERD and on the ongoing negotiations.

The Blue Nile is a sacred river our region is blessed with and shared by the three countries of Egypt, Ethiopia, and Sudan. It is an inseparable part of the history, culture, economy, and conscious of the people of our region. For Sudan, the Blue Nile is the life line for most of Sudan's 40 million people. It serves 70% of the irrigated land in the country, and as such represents the heart of the agricultural activities on which the country's population and economy are largely dependent.

Sudan has long believed in and advocated for regional cooperation and partnership over the Blue Nile as well as the Nile River as a whole. This is demonstrated by Sudan's positions and actions since its independence as a leader in all regional initiatives and programs around the Blue Nile and the Nile River as whole.

Ethiopia is currently in the final phases of constructing the GERD across the Blue Nile, merely few kilometers upstream from the Sudanese-Ethiopian border. With a storage capacity of 74 Billion Cubic meters (BCM) and installed capacity of 6450 MW, the GERD will be the largest in Africa, and among the largest 15 hydropower plants in the world. As such, this large dam will be a towering permanent structure presence with the potential of bringing both positive and negative impacts to Sudan.

The potential positive impacts of the GERD on Sudan emanate from regulating the water flow of the Blue Nile. This regulation of flow will reduce the annual floods during the rainy season, and enable Sudan to better manage its irrigation and hydropower generation systems. On the negative sides, the GERD will completely change the flow regime of the Blue Nile by flattening its hydrograph. With this enormous gigantic size (1.5 times bigger than the annual flow of the Blue Nile), the GERD risks of causing significant negative impacts on Sudan if not properly designed, constructed, filled and operated. These impacts range from threatening the lives and safety of millions of Sudanese citizens living directly downstream the GERD, to the operational safety of the Sudanese dams, to the flood-plain agricultural system of the country, and to the socioeconomic and environmental impacts along the Blue Nile and downstream the main Nile River all the way up to the border with Egypt. For the positive impacts to be realized and for the negative impacts to be mitigated there has to be an agreement in place with Ethiopia on how to fill and operate the GRED, otherwise, the GERD stands to cause substantial risks to Sudan.

Therefore, while Sudan recognizes the right of Ethiopia to develop its water resources for the benefit and well-being of its citizens, it is vital that Ethiopia does so while ensuring that any potential negative impacts are properly addressed and mitigated in close consultation and coordination with the downstream riparian countries.

The discussions with Ethiopia over the GERD started since 2011. Since then, Sudan has been engaged - in good faith, in all the stages of the GERD negotiations. A key millstone of the negotiation, led by Sudan, is the signature of the Declaration of Principles at Khartoum in 2015, which form the base for the subsequent negotiation afterwards.

The ongoing round of negotiations has started in 2018 through the so called National Independent Scientific Research Group. In November 2019, the United States and the World Bank joined the negotiation process as observers to support the three riparian countries reaching a final comprehensive agreement on the filling and operation of the GERD. Despite the fact that major progress has been achieved through this round of negotiations, it is unfortunate that no deal has been signed at the end, in February 2020.

Afterwards, the negotiation was stalled, with escalation in rhetoric statements from both Egypt and Ethiopia.

In April and May 2020, the Prime Minister of Sudan has led an initiative to resume negotiations to reach a fair deal before start of the filling of the dam, which was planned in July 2020. The PM took the initiative to invite three observers to join the negotiations, namely, South Africa which was then the current Chair of the African Union, the United States of America, and the European Union. The trilateral negotiations were able to make significant progress, reaching consensus in most of the issues, except few but important legal and technical issues. By mid-June, it was then clear that, the negotiations needed political commitment to resolve the key outstanding issues.

After the closed session of the Security Council in late June 2020, the African Union requested to host the negotiations on the GERD. The first meeting of the Extraordinary Bureau of the Assembly of Heads of State and Government has been held on June 26th, 2020. The meeting was chaired by H.E., President Ramaphosa of South Africa, as the Chairperson of the African Union. The Bureau urged the three Parties to reach an acceptable and amicable solution to the outstanding issues. The Bureau of the Assembly also augmented the Tripartite Committee consisting of Egypt, Ethiopia and Sudan with the participation of observers, namely: South Africa, Members of the Bureau of the AU (Kenya, DRC, and Mali), USA, and EU, and eight African experts appointed by the Commission.

Although the negotiations under the AU-led process resulted in a better understanding of the outstanding issues, *but made no significant progress all the way for more than 11 months*. The AU experts presented their report about the outstanding issues, to the 2nd meeting of the AU Bureau in July 2020. Unfortunately the report has been ignored by Egypt and Ethiopia, as well as by the Chair of the AU, while Sudan accepted the report, and believes that it is a fair and balanced report, and could form a good basis for the negotiation between the three parties. The key legal outstanding issues discussed in the report, are: The binding nature of the agreement; the link of the GERD agreement to future development projects and water sharing in the basin; and the conflict resolution mechanism.

A serious development in the GERD negotiation occurred when Ethiopia unilaterally and without notification, filled the GERD for the first year by a volume of 5 BCM. This event caused sudden dropdown of the water level along the Blue Nile, and caused shortage of drinking water supply in Khartoum city for about 3 days. The event also raised serious concerns in Sudan, if a similar filling continue for in the second year in July 2021, with a volume of 13.5 BCM.

The negotiations resumed in August 2020, after a critical setback by Ethiopia to include water sharing as a condition before reaching an agreement on the filling and operation of the GERD. Both Sudan and Egypt rejected this as a distinct deviation from the agreed terms of reference stated in the DoP of 2015. Soon after, the countries agreed to resume negotiations only on the filling and operation of the GERD, and to discuss the right of Ethiopia for future development projects.

A second setback in the AU-led negotiation process when countries were requested to compile a zero draft of the agreement without any support from the observers and AU experts. Instead of focusing on the outstanding issues, Egypt and then Ethiopia, dramatically changed their negotiating positions, in the zero draft submitted to AU by the end of August 2020. As such, the position of the countries deviates further apart than when they started the AU-led process in June 2020. The position of the Sudan remains consistently intact, with the only modification to incorporate the key concern of Ethiopia on the right for future development projects. As such, it has been very clear that reaching an agreement on the GERD under the AU-led process needs the right political will from the parties. A similar conclusion already reached in mid-June at the last stages of PM Hamdok initiative.

Sudan believes that, the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Convention) reflects and codifies the basic principles of customary international water law which must be adhered to in order to resolve the remaining differences on the GERD. The UN Convention lays down, in detail, four main principles to which Sudan fully subscribes: the principle of “*equitable and reasonable utilization*”; the “*obligation not to cause significant harm*”; “*notification and exchange of data and information*”; and the “*peaceful settlement of disputes*”. The same principles have been adopted by the countries as given in the DoP signed by the three head of states in 2015.

It must emphasize that, Sudan’s concern about the GERD negotiation process is very genuine. The risks to Sudan are immediate and catastrophic in the absence of an agreement due to the fact that already a volume of 5 BCM of water is stored (unilaterally without notification), at a short distance of 15 Km from Roseires reservoir, and with no provisions of exchange of information whatsoever. In the absence of a safety emergency plan for Roseires dam (which is just 1/10 the GERD size), due to lack of information, this poses a serious threat for the safe operation of Roseires dam, and hence for the safety of 50% of the Sudanese people living along the Blue Nile. This is absolutely unacceptable situation in dams operation.

In October, 2020, and to get out from the futile and circular nature of the negotiations since June, 2020, Sudan has submitted a proposal to empower the role of the AU experts, by giving them a more active role in the negotiation to narrow the gap between the three countries. The Sudan proposal suggests that the AU Experts be tasked with (i) moderating sessions; (ii) proposing solutions; and (iii) offering alternate draft texts. The proposal makes it clear that the ownership and leadership of the negotiations process will remain with the negotiating parties. While Ethiopia intends to agree on Sudan proposal, Egypt rejects any facilitation role by the observers and experts.

Continuing its active efforts to push the negotiations forward, Sudan proposed a quartet consists of the African Union (AU), the European Union (EU), United Nations (UN), and the United States (USA), to play an active role as facilitators/mediators in the negotiations process. The quartet should be looked at as an enhancement to the AU led process rather than a replacement, therefore, the Democratic Republic of Congo in its capacity as the current chair of the AU could play the role of the coordinator and leader of the quartet. Sudan believes that if this negotiation modality is adopted, it will:

- Brings considerable reputation and political weight which can be useful in bridging the gap between the countries.
- It can also provide some of the assurances and guarantees needed to build the trust needed among the parties (similar to the Indus Water Treaty between India-Pakistan).
- Brings experience in transboundary water issues, dam safety, and other related matters which could help solve some of the outstanding issues.
- Enhance the AU led process by adding UN expertise, as the EU, and US are already part of the negotiations as observers, and therefore they know the issues and may have ready solution ideas to put forward as facilitators/mediators.

In the last Ministerial meeting in Kinshasa, Sudan put forward this proposal to the negotiation parties, however, while Egypt accepted, Ethiopia rejected and insisted on continuing the old negotiation modality which proved to be futile, circular and lead to nowhere during the last 11 months.

Sudan believes that the window for reaching an agreement is closing by the hour. Let us all work very hard to mark a historic moment in the Nile region and turn GERD into a trigger for cooperation instead of a cause for conflict and instability.

This is therefore; Sudan would like to request the esteemed Security Council to:

- A. Take note of the stalled negotiations and their failure completely under the auspices of the African Union in light of the declaration of the Federal

Republic of Ethiopia its intention to implement the second filling of the dam lake in July 2021 without agreement between the parties, which surely will deepen the crisis and miss opportunities to reach amicable solutions. This necessitates effective intervention to move the deadlock and open opportunities and horizons for friendly solutions;

- B. Encouraging all parties to refrain from taking unilateral measures, including the commencement of the second filling of the Grand Ethiopian Renaissance Dam before a comprehensive agreement is reached, or any other action that endangers regional and international peace and security;
- C. Support the efforts of the Republic of Sudan and the Arab Republic of Egypt to expand negotiations over the filling and operation of the Renaissance Dam to immediately resume negotiations in good faith with the aim of resolving the outstanding issues and concluding a final comprehensive agreement as soon as possible.

This report gives further details on the GERD, and its impacts downstream. It also shows the different phases of negotiations since the start in 2011, elaboration on the recent negotiations led by the AU, which continued for 11 months with almost no output, but going into circles. The report shows the position of Sudan during the different phases of negotiation, efforts to push the negotiations forward.

1. Background

Ethiopia is currently in the final phases of constructing the Grand Ethiopian Renaissance Dam (GERD), built across the Blue Nile, very close to the Sudanese-Ethiopian border. The two parts of the GERD, the saddle and concrete dams are located at a mere of 5 km and 15 km, respectively from the border of Sudan, see Fig. 1. The GERD comprises a 155m high dam and will create a reservoir with total storage capacity of 74 BCM, see Fig. 2. It has a total installed capacity of 6450 MW of electrical power. Once completed the GERD will be the largest dam in Africa, and among largest 15 hydropower plants in the world. The filling for the first year of about 5 BCM has been completed in July 2020, without agreement, raising even more concerns in the region.

The Blue Nile is the life line for most of Sudan's 40 million people; It serves 70% of the irrigated land in the country, and as such represents the heart of the agricultural activities on which the country's population and economy are largely dependent. The 70% of the Sudan's irrigation system is mainly supplied by two dams built across the Blue Nile; namely Roseires and Sennar dams. The Roseires dam, located just over 100 km downstream the GERD has a reservoir size of less than one tenth that of GERD, while

Sennar dam, located at 210 km downstream Roseires, has a capacity of less than 1% of the GERD.

Located just by the border, with this huge size, the GERD poses substantial negative impacts on Sudan if not properly designed, constructed, filled and operated. These impacts range from threatening the lives and safety of about 20 million Sudanese citizens living just downstream the GERD, to the operation of the Sudanese dams, to the flood-plain agricultural system of the country, and to the socioeconomic and environmental systems along the Blue Nile, and downstream in the main Nile River, up to the border with Egypt.

Therefore, while Sudan recognizes the right of Ethiopia to develop its water resources for the benefit and well-being of its citizens, it is vital that Ethiopia addresses and mitigates any potential negative impacts in close consultation and coordination with the downstream riparian countries.

2. Potential Impacts of the GERD on Sudan

Since the GERD is 1.5 times bigger than the annual flow of the Blue Nile, it will completely change the flow regime of the river by flattening its hydrograph. This will create large impacts on the river hydrology, water resources and sedimentation. In turns, these will have direct impacts, on infrastructure, land use, people and ecosystem along the Blue Nile and the main Nile. Some of these impacts are positive and some are negative, as briefly explained below.

The positive impacts of the GERD results mainly because of flow regulation of the Blue Nile, i.e., the flow of the Blue Nile will be more steady with much less seasonality compared to the condition without the GERD. The positive impacts include: An increase of the hydropower generation from the existing hydropower plants in Sudan; Improved reliability of water supply to the irrigation.

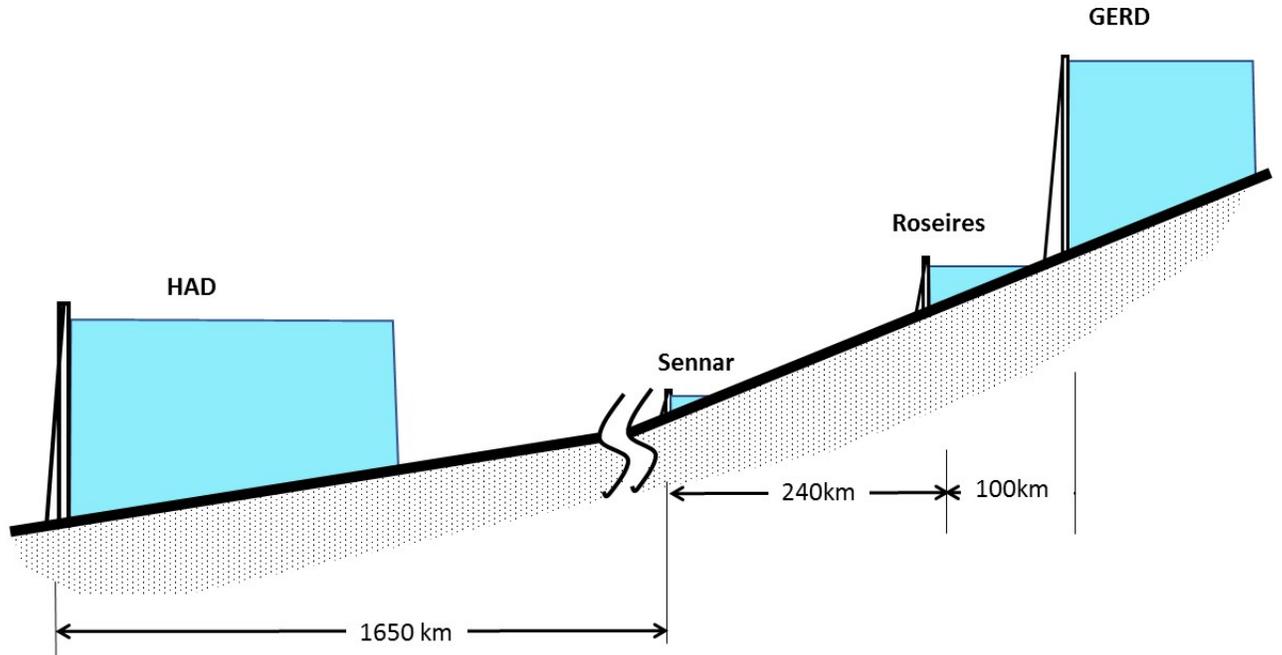


Fig. 2: Schematization of Dams to Show Relative Size, and Distances

Schemes; Reduced sediment load and hence longer lifespan of dams; Reduction of damages caused by high floods. However, for the above potential benefits to materialize, closer coordination and cooperation is a prerequisite in the way GERD is operated, otherwise, all the positive impacts will be jeopardized, and changed into direct threats for safe operation of Roseires reservoir, and hence the safety of the people living downstream the dam.

In addition, GERD has the capacity of causing substantial negative impacts on Sudan. The dam safety issue is the major concern of Sudan. Failure of a dam of such a huge size as the GERD will cause devastating damages to lives, properties and agriculture in Sudan. For this reason, all dam safety measures during filling and operation stages of GERD must be in place, active, updated and followed up carefully. Emergency preparedness and planning for the GERD and the Sudanese dams should be well coordinated, jointly planned and checked, and continuously updated and tested. The GERD will definitely cause large impacts on millions of farmers rely mainly on the flood plain agriculture in the Blue and main Nile. However, the regulation of the flow of the Blue Nile will reduce the flood irrigated land by about 50%, thus affecting the farmers if this impact is not properly addressed and mitigated. The annual sediment load carried by the river will be reduced after the GERD, which is a good natural fertilizer. *The expected environmental impacts not studied yet include change in river hydrology and water quality, morphological changes, fisheries, flood forests, and health issues.*

It is important to note that the above socioeconomic and environmental impacts have not yet been fully studied and quantified by Ethiopia. Therefore, the Independent Panel of Experts recommended and the three counties agreed to as stated in the Declaration of the Principles to finalize these transboundary socio-environmental studies. *Sudan believes that these negative impacts could be greatly minimized, if properly quantified, and a sound regional cooperation resulting in optimal management of the shared water resources is achieved.*

For the positive impacts to be realized and negative impacts to be mitigated, there has to be an agreement in place with Ethiopia, on how to fill and operate the GRED, otherwise, the GERD stands to cause substantial risks to Sudan. This actually has happened during the period of 13 to 21 July 2020, when Ethiopia unilaterally and without notification filled a volume of 5 BCM for the first year. The drinking water supply for Khartoum City has been interrupted for three days, before remedy actions were taken. More details are given in Section six.

With a volume of 5 BCM of water already stored, at a short distance of only 15 Km from Roseires reservoir, and with no provisions of exchange of information whatsoever, the risks to Sudan are immediate and catastrophic in the absence of an agreement. In the absence of a safety emergency plan for Roseires dam, due to lack of information, this poses a serious threat for safe operation of Roseires dam, and hence for the safety of 50% of the Sudanese people living along the Blue Nile. This is an unacceptable situation in dams operation. These circumstances surely amount to a threat to Sudan's national security.

3. International Law Principles Governing the GERD Issues

Although not yet a party to the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN 1997 Convention), Sudan accepts the view that the UN Convention reflects and codifies the basic principles of customary international water law. It is Sudan's firm belief that these principles must be adhered to, during the negotiations, to resolve the remaining differences on the GERD, inasmuch as they have been followed for resolving the earlier main differences.

The overarching of these principles of international water law is cooperation of the riparian states of the shared watercourse, and requires the riparian states to “*cooperate on the basis of sovereign equality, territorial integrity, mutual benefit and good faith in order to attain optimal utilization and adequate protection of an international watercourse.*” Under this umbrella, the UN Convention lays down, in detail, four main principles to which Sudan fully subscribes: the principle of equitable and reasonable

utilization; the obligation not to cause significant harm; notification and exchange of data and information; and the peaceful settlement of disputes.

During the negotiations to conclude an agreement on the GERD in 2015, Sudan worked closely and diligently with Egypt and Ethiopia to ensure that these basic and cardinal principles of international water law are incorporated and fully reflected in the “*Agreement on Declaration of Principles between the Arab Republic of Egypt, the Federal Democratic Republic of Ethiopia and the Republic of the Sudan on the Grand Ethiopian Renaissance Dam Project*”, concluded in Khartoum on 23 March 2015. To underscore its importance, the DoP was signed by the Presidents of Egypt and Sudan, and the Prime Minister of Ethiopia, themselves.

Walking on the footsteps of the UN Convention, the DoP emphasizes the principle of cooperation in the first of its Articles, and requires the three states “*To cooperate based on common understanding, mutual benefit, good faith, win-win, and principles of international law.*” Furthermore, the same Article requires the three states “*To cooperate in understanding upstream and downstream water needs in its various aspects.*” The DoP then goes on to embrace and elaborate the four ensuing and basic principles of international water law, namely: (i) The Obligation not to cause significant harm, (ii) Equitable and reasonable utilization, (iii) Exchange of Information and Data, and (iv) Peaceful Settlement of Disputes.

With regards to the principle “*not to cause significant harm*”, and in line with the UN Convention, Article III of the DoP requires the three states to “*take all appropriate measures to prevent the causing of significant harm in utilizing the Blue/Main Nile.*” Where significant harm is nevertheless caused to one of the three states, Article III requires the state whose uses cause such harm, to take all appropriate measures “*to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.*”

Article VII of the DoP deals with the “*Principle of Exchange of Information and Data*” and requires each of the three states to “*provide data and information needed for the conduct of the TNC joint studies in good faith and in a timely manner.*”

With regards to the Principle of Peaceful Settlement of Disputes, Article X of the DoP requires the three states to settle disputes arising out of the interpretation or implementation of the DoP “*amicably through consultation or negotiation in accordance with the principle of good faith.*” Failing that, the DoP states that the parties “*may jointly request for conciliation, mediation, or refer the matter for the consideration of the Heads of State/Heads of Government.*”

In addition to incorporating and elaborating these basic principles of international water law as codified in the UN Convention, the DoP sets forth in Article V the “*Principle to*

Cooperate in the First Filling and Operation of the Dam.” This Article requires the three states to “implement the recommendations of the International Panel of Experts (IPoE), respect the final outcomes of the Tripartite National Committee (TNC) Final Report on the joint studies recommended in the IPoE Final Report throughout the different phases of the project.”

Moreover, Article V of the DoP requires that the three states “*in the spirit of cooperation, will utilize the final outcomes of the joint studies, to be conducted as per the recommendations of the IPoE Report and agreed upon by the TNC to: (i) Agree on guidelines and rules for the first filling of GERD which shall cover all different scenarios, in parallel with the construction of GERD; (ii) Agree on guidelines and rules for the annual operation of GERD, which the owner of the dam may adjust from time to time*”; and *(iii) Inform the downstream countries of any unforeseen or urgent circumstances requiring adjustments in the operation of GERD*”. Article V adds “*the time line for the above-mentioned process shall be 15 months from the inception of the two studies recommended by the IPoE.*” Article V, thus, underscores the need for, and importance of, the two studies recommended by the IPoE, and agreed upon by the three parties.

It is worth adding that the Memoranda to the Security Council of both the Arab Republic of Egypt, and the Federal Democratic Republic of Ethiopia (dated 1 May 2020, and 14 May 2020, respectively) have reconfirmed their full commitment to the DoP.

For these reasons, Sudan remains fully committed to the DoP, and believes firmly that its provisions afford adequate, fair and appropriate grounds for resolving the remaining differences on the filling and operation of the GERD, and its safety, as well as the two studies, and for reaching a full and final (and not a partial) agreement on the GERD.

1. Phases of GERD negotiations since 2011 to date

The discussions with Ethiopia over the GERD started since 2011. Since then, Sudan has been engaged - in good faith - in all the stages of the GERD negotiations. This includes the first phase with the IPOE, and the subsequent trilateral negotiations rounds (2013-2015) that culminated in the successful conclusion of the Agreement on the Declaration of Principles on the GERD (DoP), signed by the leaders of the three countries in Khartoum on 23rd March, 2015.

The ongoing round of negotiations has started in 2018 through the so called the National Independent Scientific Research Group (NISRG). In November 2019 the United States and the World Bank joined the NISRG negotiation process as observers to support the three riparian countries reaching a final comprehensive agreement on the filling and

operation of the GERD. Despite the fact that major progress has been achieved throughout this round of negotiations including 6 meetings in Washington, it is unfortunate that, the negotiations have stalled in February 2020, after Ethiopia withdrawing from the last round.

In April and May 2020, the Prime Minister of Sudan has led an initiative to resume negotiations to reach a final and fair deal before starting the filling of the dam, planned to start in July 2020. He also invited three observers to join the negotiations, namely, South Africa which is the current Chair of the African Union, the United States of America, and the European Union. These rounds of trilateral negotiations were able to make significant progress, reaching consensus on most of the issues, except few but important legal and technical issues. It was then clear that, the negotiations needed political commitment to resolve key outstanding issues. It is to be emphasized that, during this round of negotiations, the three countries were closest to each other than any other time. The draft version of the agreement proposed by Sudan on June 14, 2020, is a compromise position for the three countries.

The AU-led process on the GERD, started by the first meeting of the Extraordinary Bureau of the Assembly of Heads of State and Government held on June 26th, 2020. The meeting was chaired by H.E., President Ramaphosa of South Africa, as the Chairperson of the African Union. The Bureau urged the three Parties to reach an acceptable and amicable solution to the outstanding technical and legal issues. The Bureau also augmented the Tripartite Committee consisting of Egypt, Ethiopia and Sudan with the participation of observers, namely: South Africa, Members of the Bureau of the AU (Kenya, DRC, and Mali), USA, and EU, and experts from the Commission.

Although the negotiations under the AU-led process has resulted in a better understanding of the outstanding issues, but has made no significant progress. The AU experts have presented their report to the 2nd meeting of the Bureau held on 21st July 2020. Although the report has not been adopted by the Bureau, nor by Egypt and Ethiopia, Sudan believes that it has been fair and balanced report and proposed solutions to the negotiating parties. The key outstanding issues were discussed in the report, those are: The binding nature of the agreement; the link of the GERD agreement to future development projects and water sharing; and the conflict resolution mechanism.

In mid-July 2020, a serious development in the GERD negotiation process occurred when Ethiopia unilaterally and without notification, filled the GERD for the first year by a volume of 5 BCM. This event caused sudden dropdown of the water level along the Blue Nile, and resulted in shortage of drinking water supply in Khartoum city for about 3 days.

The negotiations then resumed in August 2020, after a critical setback by Ethiopia to include water sharing as a condition before reaching an agreement on the filling and operation of the GERD. Both Sudan and Egypt rejected this as a distinct deviation from the agreed terms of reference given in the DoP of 2015. Soon after, the countries agreed to resume negotiations on the filling and operation of the GERD and to discuss the right of Ethiopia for future development projects.

A second setback in the AU-led negotiation process when countries were requested to compile a zero draft of the agreement without any support from the observers and AU experts. A request, Sudan has reluctantly accepted, as it proved to be futile in previous attempts of the negotiations. Instead of focusing on the outstanding issues, Egypt and then Ethiopia dramatically changed their negotiating positions, in the zero draft submitted to AU by the end of August 2020. Therefore, the position of the countries in November 2020 has been further apart than when they started the AU-led process in June 2020. The position of the Sudan remains consistently the same since June, with the only modification to incorporate the key concern of Ethiopia on the right for future development project.

It has been clear that reaching an agreement on the GERD under the AU-led process needs the right political will from the parties. A similar conclusion already reached in mid-June at the last stages of PM Hamdok initiative.

In October, 2020, and to get out from the futile and circular nature of the negotiations since June, 2020, Sudan has submitted a proposal to empower the role of the AU experts, by giving them a more active role in the negotiation to narrow the gap between the three countries. The Sudan proposal suggests that the AU Experts be tasked with (i) moderating sessions; (ii) proposing solutions; and (iii) offering alternate draft texts. The proposal makes it clear that the ownership and leadership of the negotiations process will remain with the negotiating parties. While Ethiopia intends to agree on Sudan proposal, Egypt rejects any facilitation role by the observers and experts. This effort continues until the Ministerial meeting of the 3rd Jan, 2021, which ended with no results.

Continuing its active efforts to push the negotiations forward, Sudan proposed quartet consists of the African Union (AU), the European Union (EU), United Nations (UN), and the United States (USA), to play an active role as facilitators/mediators in the negotiations process. The quartet should be looked at as an enhancement to the AU led process rather than a replacement, therefore, the Democratic Republic of Congo in its capacity as the current chair of the AU could play the role of the coordinator and leader of the quartet. Sudan believes that if this negotiation modality is adopted, it will:

- Bring considerable reputation and political weight which can be useful in bridging the gap between the countries.
- Provide some of the assurances and guarantees needed to build the trust needed among the parties (similar to the Indus Water Treaty between India-Pakistan).
- Bring experience in transboundary water issues, dam safety, and other related matters which could help solve some of the outstanding issues.
- Enhance the AU led process by adding UN expertise, as the EU, and US are already part of the negotiations as observers, and therefore they know the issues and may have ready solution ideas to put forward as facilitators/mediators.

In the last Ministerial meeting in Kinshasa, Sudan put forward this proposal to the negotiation parties, however, while Egypt accepted, Ethiopia rejected and insisted on continuing the old negotiation modality which proved to be futile, circular and lead to nowhere during the last 11 months.

Now the negotiations are at impasse. And Ethiopia has declared that, another 13.5 BCM are going to be added to the already stored 5 BCM in the GERD next July, 2021, at a short distance of only 15 Km from Roseires reservoir, and with no provisions of exchange of information whatsoever, and safety emergency plan for Roseires dam. This poses a serious threat for the safety of 50% of the Sudanese people living along the Blue Nile, and safe operation of both Roseires Sennar dams. These circumstances surely amount to a threat to Sudan's national security. Therefore, Sudan urges the UN Security Council to take the necessary measures to.....

2. Outstanding issues in the negotiations

It is to be affirmed that, up to the start of the AU-led process in June 2020, major progress has been made in the negotiations during the last 5 months. Our evaluation, is that, the three countries have made good progress in most of the technical issues, while few but key legal issues still pending. We believe that, it is possible to converge on the remaining technical issues if the legal issues are resolved.

The pending technical issues include: Drought mitigation measures; the variability of the daily releases from the GERD; definition of the mean annual operation rule; and the procedure of refilling the GERD following succession of dry years in the future. The key pending legal issues, include: the right of the countries for future development in relation to water sharing issues; the binding nature of the agreement and how it can be amended; and the conflict resolution mechanism. The Table below shows the Sudan's proposed solutions to the outstanding issues.

Issue	Sudan proposal
<p>(1) Future Development: whether the GERD agreement will limit Ethiopia’s ability to develop future developments upstream of GERD</p>	<p>Sudan is proposing to insert an entire section in the draft agreement to deal with the issue of future developments. It will include the core principles that (1) the GERD agreement shall not prejudice the parties’ rights for future developments, (2) future developments shall be carried out in accordance with the principles of international law; and (3) that for projects that have been developed in accordance with international law Ethiopia should be able to adjust the numerical values for the drought mitigation measure while maintaining the quintiles.</p>
<p>(2) The Binding Nature of the Agreement: the nature of the document to be signed reflecting the agreements reached, and whether should it be a legally binding or less binding instrument.</p>	<p>Sudan proposal ensures that the agreement to be signed will be legally binding and cannot be amended or terminated without the agreement of all three parties. However, there are two options to consider:</p> <p>Option (1): call the document “Guidelines and Rules”, but insert a very clear and an unambiguous provision stating that <u>“this agreement, which consists of the following Articles and Annexes containing the Articles and Annexes related to the Guidelines and Rules for the First Filling and Annual Operations as well as the other Articles of the agreement (hereinafter referred to as the “Guidelines and Rules”).</u></p> <p>Option (2) : keep the reference to the document as is i.e., “Agreement”,</p>
<p>(3) Reference to Water-Sharing Agreement: what is the relationship between the GERD agreement and other agreements such as water-sharing and pre-existing bilateral agreement, e.g., 1959 and the CFA agreements.</p>	<p>Sudan view is that both issues are outside the objective and scope of the GERD agreement which should be limited to <i>“filling and operating the GERD”</i>.</p> <p>In addition, any water-sharing discussion or agreement cannot be done in isolation of the other riparian countries of the Nile River.</p> <p>With regard to the CFA it is important to note that Sudan has not signed the CFA, so it cannot enter into a commitment based on the CFA.</p> <p>On the reference to 1959 agreement, it is important to note that nothing in the GERD agreement refers to 1959 Nile Agreement. Sudan did not impose or refer to any right under 1959 nor did it require Ethiopia to recognize it.</p> <p>However, one compromise Sudan is willing to propose is to make this provision mutual, by inserting this provision: <i>“This Agreement shall not be considered or interpreted as a recognition by any Party of a pre-existing water related agreement or any other agreement to which it is</i></p>

	<i>not a Party</i> ".
<p>(4)Dispute Resolution Mechanism: should the dispute resolution mechanism be binding and conclusive or non-binding.</p>	<p>Sudan proposal includes a gradual system of technical (TCC), Ministerial (MC), political (Heads of State), and if all fail then the issue will be settled by a conclusive and binding process either arbitration or binding mediation.</p> <p>However, Sudan is open to including the following options:</p> <p>Option (1): involve the African Union in the binding process, for example, by giving the AU the right to arbitrate or mediate the whole matter or at least appoint the mediator (in case of binding mediation) or the two arbitrators out of the five-dispute resolution panel (the other three will be appointed by the Parties.</p> <p>Option: (2) make the decision to transfer the matter to arbitration by a minimum of two Heads of State. This is to mitigate against abuse by one Party.</p> <p>Option (3): make the Heads of States decision by majority, meaning 2 out of 1 can decide on a resolution. This way their decision will be conclusive and binding.</p>
<p>(5) Dry Years (Prolonged period of Dry Years): this issue relates to the question of how could the GERD supports the downstream system if the flow is below average, but still above the criteria for drought.</p>	<p>Sudan proposes that if the average Flow at the GERD over the preceding four (4) hydrological years is between 38 BCM (Q90) and 40 BCM (Q85), then in addition to the annual release indicated in Annex C, the TCC shall discuss and agree on additional releases if the GERD Level is above 605 m.a.s.l.</p>
<p>(6) Annual Operation Rule: it is important to share the average (standard) “<i>annual operation rule</i>” with Roseires reservoir to be able to plan water usages downstream. This curve can be adjusted by the dam owner at the beginning of the hydrological year, and again later at end of</p>	<p>The Sudan proposal includes sharing of the average “<i>annual operation rule</i>” in the draft agreement. However, the dam owner adjusts this average rule every year, and also can be further adjusted, later in the year, around October.</p> <p>Option (1): The average rule curve of GERD is given in Annex ... of this agreement. However, at the beginning of the Hydrologic year a preliminary or indicative rule curve for the release shall be determined and communicated to the countries. The preliminary or indicative rule curve is based on the average rule curve. By the end of rainy season (Oct) the release may be adjusted based on observed condition at GERD</p>

October.	Option (2): Annual filling during operation of the GERD will be carried out in July and August and may continue in September if the Flow in September is above the average (Q50) of the flow in September).
(7) Daily Variation of Release: Since the Roseires reservoir is very small compared to the GERD (1/12 in size), it is important to limit the daily changes of the release from the GERD to ensure safe operation of Roseires.	The daily change in the release from the GERD should be less than 200 Mm ³ /day. However, Sudan is willing to move to 250 MCM/day, on the condition that the TCC will discuss and agree on a fixed value between 200 to 300 MCM/day or lower.
(8) Refilling Rules: If excessive drought occurs in the future, (like the mid 1980's), it is most likely that both big dams HAD and GERD drop to their minimum operation level. How to refill GERD.	Option (1): Shall follow the provisions of Article 4 above (Filling). Option (2): Similar to option (1), but adds “However, further modifications in favor of increased release can be discussed and agreed upon by the TCC. The modifications will be based on the drought conditions, hydropower power generations in Ethiopia, and lessons learned from the operation of GERD.

3. Filling for the first year in July 2020

While Sudan genuinely respected the call of the countries and from the African Union to refrain from unilateral actions while negotiating on the GERD, it was shocked by the withhold of 4.9 BCM in only one week period in mid July 2020, without any notification. This event caused a sudden drop in the water levels all the way down from the border with Ethiopia up to Khartoum City. This action has been undertaken without notifying Sudan so that, at the minimum, its dam operators could have adjusted to the sudden and unexpected drop in water levels, and triggered mitigation measures.

The negative impact was immediate on Sudan with a sudden disruption of water supply to several million people in Khartoum between 18 and 21 July, 2020, before remedy measures were taken. This is in addition to the shortage of irrigation water to the pumping stations along the Blue Nile during the initiation of the cropping season.

The event of the sudden drop was first monitored at El Diem gauging Station located at the border between Ethiopia and Sudan at 15 km downstream the GERD. Typical to this time of the year, the Blue Nile flow shows a gradual increase during the period of 1 to 12

July, 2020, from 120 to 200 Mm³/day. Suddenly, in one day the flow dropped from 190 Mm³/day on 12 July to 90 Mm³/day on 13 July, which is lower than the driest year in the record (1984). Starting from 21st July onward, the flow tends to increase again, to match the normal flow conditions.

The sudden drop of the discharge at El Deim station, continues to affect the Blue Nile River all the way down to Khartoum City, though with clear attenuation. Fig. 1 below shows the water level of the Blue Nile at three gauging stations El Diem, Sennar, and Khartoum. Sennar station, is located at 300 km south of Khartoum, which is approximately half way between El Diem and Khartoum.



Figure (1): Gage readings along the Blue Nile reach measured at El Diem, downstream Sennar dam, and Khartoum.

The water managers responsible for the operation of the drinking water supply from the Blue Nile, were also surprised by this sudden drop, and couldn't take action before it has been confirmed to be true. In that, they started to lower down the intakes of the pumps in 2 to 3 days period, when a shortage of water supply already hit several millions of people for more than 72 hours. Six drinking water supply stations were temporarily out of service for 2 to 3 days in Khartoum. These are: El Saliha A and B, El Mogran, Soba, BaitElmal; El Manara. Typically it takes around 2 days to recover the supply within the distribution network of the system, see Fig. 2.



Figure (2): River receding images in front of El Salha Water Plant, captured on July 20, 2020

It is to be reaffirmed that, the unilateral filling of the GERD is against the international law, and against the principles set in the DOP, which may seriously affect the people of Sudan. It is also against the request of the AU led process “*Parties to refrain from unilateral actions*”.

Although the amount of water retained is very small, only 4.9 BCM, but taking it in just one week has caused serious downstream implications all the way along the Blue Nile. Should Sudan received prior notification of the start of filling, its dams would have been better managed and negative impacts reduced. This event underscored the issue of data exchange and sharing of information and how crucial these aspects are to the safety and wellbeing of the Sudanese people.

This event reflected a bad image of the GERD in Sudan when it was very positive before. Sudan believes that with transparency we can establish trust and a good basis for cooperation among the riparian countries.

4. Sudan's Position throughout the Negotiations Process

Sudan's long-standing policy is that cooperation would optimize the returns and benefits for all, and that benefits from large infrastructure projects should be enhanced in order to address water and power scarcity and shortages in the region. Historically, Sudan has constructively contributed to all cooperative projects in the Nile, viz: the HYDROMET project (1967 to 1992); the TECCONILE from 1992 to 1998, and the Nile Basin Initiative (NBI) since 1999 to date. Sudan considers that without cooperation, unilateral actions will result in an exceedingly harmful situation that jeopardizes the regional security.

Committed to the significance of the River Nile as the source of livelihood and the major resource to the development of the three countries, and affirming Ethiopia's right to benefit from the Nile, similar to the two downstream countries, Sudan explicitly and officially supported the GERD.

Since 2011, Sudan encouraged the parties for the GERD trilateral talks including high level diplomatic visits. Accordingly, Sudan organized the main trilateral negotiations rounds in Khartoum (2013-2015) that culminated in the successful conclusion of the Agreement on the Declaration of Principles on the GERD signed by the leaders of the three countries in Khartoum, on 23rd March, 2015.

Putting the DoP into effect, Sudan has been instrumental in establishing the National Independent Scientific Research Group NISRG in mid of 2018, whose mandate is to promote technical negotiations on the GERD. Major achievement of the NISRG is the agreement on the GERD first filling to be in stages, as well as studying different scenarios for the initial filling.

Sudan has played a very constructive role during the Washington led process between November 2019 and February 2020, where then, the three countries made significant progress in the negotiations, which were observed by the United States of America, and the World Bank. By the last session concluded on February 13th, 2020 a draft agreement was in a very advanced stage with 90% of the issues agreed upon by the three countries, and only few differences remained to be resolved.

Throughout the process Sudan negotiated in good faith, believed in and advocated for a comprehensive agreement inclusive of all three riparian countries. For this reason when Ethiopia was unable to attend the last meeting which was supposed to be held on February 27, 2020, Sudan refrained from holding any talks that did not include all three parties. Similarly, when Ethiopia, later in April 2020, proposed a partial agreement

addressing the initial filling stage, Sudan again insisted that a comprehensive agreement addressing all issues is the only tenable way forward.

Thus, Sudan strongly believes that signing a partial agreement covering only the first stage filling will not be tenable because there are many other technical and legal issues which should be included in any agreement related to the filling and operation of the GERD. These include, but not limited to, the coordination mechanism, normal operation, data exchange, dam safety measures, and the pending environmental and social impacts studies.

Furthermore, Sudan strongly believes that reaching an agreement on the guidelines and rules for the first stage filling, prior to starting the filling of the GERD is extremely necessary and important for all parties, as GERD is a huge dam, built just 15 km from the border, with millions of Sudanese people living downstream along the river banks. Most importantly, GERD is only 100 km upstream of the Roseires Dam which is one-tenth smaller in size. Any unilateral decisions on the timing and rules of filling the GERD will put millions of lives and communities at risk.

5. The Way forward

The GERD negotiations has achieved major progress during the last 9 years, though with major ups and downs. Until the 2nd meeting of the Bureau of the AU on 21st July, 2020, the countries agreed on almost 90% of the issues, and remains few – but important discrete legal and technical issues. The substantial outstanding legal issues are: the binding nature of the agreement, the future development projects and reference to water sharing agreements, and the dispute resolution mechanism. While, the technical outstanding issues are: the maximum daily inflow variation to Roseires dam, the provision of the normal operation curve of the GERD, the support of GERD to downstream system in case of dry years both during filling and long term operation, and the GERD refilling procedure in the future.

However, the last round under the AU-led process (after the 2nd meeting of the AU Bureau and up to 21st November, 2020), the countries made no significant progress, instead the two riparian countries of Ethiopia and Egypt attested serious setbacks from their already achieved consensus. While Sudan has maintained consistent and accommodative negotiating position.

Sudan believes that there is no alternative to negotiations, but it has to be in good faith. Sudan is also committed to the AU led process and we believe that the AU could play a vital and constructive role in bringing the parties together and help bridge the gap in some of the outstanding issues. However, the negotiation during the last couple of weeks

of the AU-led process was not constructive and will not lead to any results. That is why Sudan refused to join the meeting of 21st November, 2020, continuing with the same modality of moving into circles.

Therefore, Sudan believes it is time to empower the AU led process and bring the voice of the AU to the table. Accordingly, we are providing the following recommendations as a way forward:

1. Holding a summit as soon as possible for the AU Bureau of the Assembly of the Heads of State and Government to renew the political commitment of all three parties to reaching an agreement on the GERD within a specific time frame.
2. Changing the role of the AU experts to that of mediators so that they can actively participate and moderate the next phase of the process.

Sudan has submitted terms of reference for the tasks of the AU experts to the Chair of the AU, by its letter on 09th November 2020. In summary, Sudan proposal suggests that the AU Experts to be tasked with (i) moderating sessions; (ii) proposing solutions; and (iii) offering alternate draft texts. The position of Sudan on the role of the AU experts is largely consistent with Ethiopia, while Egypt rejected this role. The Sudan's proposal makes it clear that the ownership and leadership of the negotiations process will remain with the negotiating parties. Finally, Sudan proposed that while the AU Expert can play an enhanced role, the observers on the other hand will remain in their role as observers.

Sudan insistence for an effective negotiation stems out of its keenness to reach a binding agreement which guarantee the safety of Sudan's installations and the lives of half of its population along the Blue Nile. The threat is already imminent by the unilateral storage of 5 BCM at 15 KM from Roseires reservoir.

Sudan will continue to maintain its principled position of negotiating in good faith and upholding international water law fundamental principles and will continue to exert every possible effort to bring the parties to converge and conclude an agreement that would accommodate the concerns and the interests of all parties. In this context, the draft compromise agreement (dated July 14, 2020) developed by Sudan is constitutes an earnest endeavor that represents a basis to reach the destined and aspired goal of concluding a comprehensive agreement.