

An aerial photograph of a large dam with multiple spillways. Turbulent, yellowish-brown water is cascading down the spillways, creating a stark contrast with the deep blue water of the reservoir behind the dam. The dam structure is long and stretches across the frame.

Mega Water Projects and The Right to Information Sharing in the Nile Basin

Africa Water for Peace
Nile for Peace Initiative



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Introduction

In the context of its interest in strengthening peace and means of cooperation among the Nile Basin countries, specifically in light of the escalating crisis on the Grand Ethiopian Renaissance Dam (GERD), the Nile for Peace initiative presents a study entitled “[Mega Water Projects and The Right to Information Sharing in the Nile Basin](#)”. The study aims at highlighting the importance of including the principle of the right to exchange information and data within international and regional agreements focusing on issues of shared water sharing, by identifying this principle in previous agreements and treaties, in addition to mentioning the positive aspects of strengthening this principle and its role in achieving regional cooperation between countries. In the third part, the study touches upon some of the potential risks and damages in the absence of the principle of transparency in the exchange of information with application on the current GERD crisis, and concludes with a perception of the promotion of the principle of exchanging information and data among countries with the GERD crisis.

The principle of information and data exchange has become clearly entrenched in the majority of international water-related agreements between the riparian countries, which could result in the establishment of many relations on the basis of common interest and consequently the consolidation of relations between them. There is no doubt that the right to information is fundamental to the protection of international water and other rights; It guarantees integrity and transparency in dealings between countries in a way that guarantees respect for the rights of all.

The right to access data and information about water is of particular importance in international transboundary waters, basins and aquifers shared by two or more countries, given the possibility of conflict between them in the absence of information to ensure that they protect their interests.

However, accessing water resources relevant data becomes more complicated in international transboundary basins, although countries usually sign international agreements that allow data and information sharing and enhance the principle of transparency and integrity. But in reality, things are not conducted in accordance with the principles and





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prior agreements. Because transboundary waters pose significant challenges to management and collective action, states can gain the advantages of single-use while sharing costs in terms of reduced quantity or degraded quality, and these challenges have sometimes triggered conflicts to varying degrees between some states.

Undoubtedly, the principle of circulating information and data about water will deepen the principle of trust among the riparian countries, because denying other parties' access to information may cause damage their interests.

First: The right to circulate information and data on water in agreements and treaties

The right to exchange information and data is a principle deeply- rooted in all agreements and principles of states' use of rivers in non-navigational affairs, and they are customary principles that have settled in the conscience of states, and have become binding on all states. Among the principles of the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses are the principle of equitable and fair use of shared water resources, and the prior notification

before establishing any facility on shared watercourses. The following section presents the reality of the principle of information and data circulation on water in agreements and treaties.

The 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses

Article 9 on the regular exchange of data and information provides that:

- 1- watercourse States shall on a regular basis exchange readily available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature and related to the water quality as well as related forecasts;
- 2- If a watercourse State is requested by another watercourse State to provide data or information that is not readily available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information;
- 3- Watercourse States shall employ their best efforts to collect and, where





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appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.¹

There is also an item in the agreement providing for cooperation and negotiation in good faith. Article 8 thereof states that “watercourse States shall 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, including the exchange of data and information on the state of the river course (Article 9), the prevention of natural disasters (Articles 27 & 28), water control and its flow (Articles 25 & 26), consultation regarding planned projects (Articles 11 to 19), and finally, Article (33) stipulates a series of procedures for the peaceful settlement of disputes between states such as direct negotiations, good intentions, , mediation, investigation, conciliation,

¹ Steven see, Convention on the Law of the Non-navigational Uses of International Watercourses 1997, United Nations, 2010, at: <https://2u.pw/C8M6r>

² Bridge, Treaties and other Types of Agreements, Vol.1: International agreements, compilation and analysis book (2004), at: <https://2u.pw/czE9x>

arbitration and recourse to the International Court of Justice.²

Second: The importance of applying the principle of information and data circulation on water to enhance regional cooperation

The principle of exchanging data and information on water resources provides the first step towards broader cooperation across the borders of countries, and then the formation of agreements on expanding areas of cooperation, whether economic, political or other areas of cooperation, in a manner that serves the interests of the countries bordering the Nile, and also enhances confidence and transparency in dealings between the parties and reaching a solution that serves the interests of all parties and sustainable policy agreements to address the problem.³

³ Andrea Gerlak, Water resources data and information exchange in transboundary water treaties, Research Gate, 2010, at: <https://2u.pw/Xi5jc>



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The exchange of information, of course, improves the efficiency of water use and reduces the effects of drought, floods and other extreme phenomena. At the operational level, the exchange of data and information can be the basis for establishing an economic partnership on energy production in the case of building dams, or any other economic projects.

The principle of data and information exchange serves as the network established by intergovernmental organizations and in turn promotes communication and understanding among the participating countries. Conflicted claims about water availability and use or efficiency levels in rivers can be effectively resolved by examining the relevant data. Sharing data and information on shared water resources can help mitigate conflict and prevent crisis.⁴

What if the principle of exchanging information and data about water is neglected?

The implementation of the exchange of water resources data and information depends on the political will of the

riparian countries about the extent of the possibility of exchanging information and their awareness of the magnitude of the risks that could result in the absence of information exchange, which would cause them many harms, whether those related to the equitable and reasonable use of water or those related to the risks of the outbreak of conflicts.

One of the main problems faced by countries during water-related negotiations is the lack of sufficient and reliable data. Insufficient information can halt negotiations and stop the construction of many projects, as was the case in the GERD crisis between Egypt, Sudan and Ethiopia.

In application to the GERD and the currently escalating crisis in the Nile Valley region, it was mentioned in the international agreements on water and the 2015 Declaration of Principles, which stipulates the right of the downstream countries, Sudan and Egypt, to obtain data and information that will enable them to set correct expectations, avoid any potential damages from the dam. Although Ethiopia has announced in some conferences and meetings that it

⁴ Idem





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does not object to exchanging any information about the filling and operating the dam with Sudan, it refuses to sign a binding agreement in this regard. Ethiopia claims that the information about the GERD is a matter of absolute sovereignty over the sources of the Ethiopian plateau, which is untrue according to the international law. Under the 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses and the findings of the international judiciary, the international river is a joint property of its riparian countries.⁵

With regard to the extent of the damage inflicted on Sudan due to the failure to exchange the filling-related data, there are growing concerns over the recurrence of last year's tragedy of floods, which killed 117 people, destroyed 100,000 homes, and displaced about 600,000 people. Despite the preparedness of the competent authorities and their willingness to make all possible efforts, such tragedy may repeat itself due to the lack of sufficient information

⁵ Almonitor, Egypt, Sudan refuse Ethiopian proposal on filling Nile dam reservoir Read, April 2021, at: <https://2u.pw/IPo6e>

in Sudan and the failure to take adequate measures to prevent damages from the filling.⁶

However, some believe that ongoing fears require greater preparations to reduce the catastrophic losses that occurred last year, and this is due to the failure to take steps to expand the Nile course due to structural encroachments during the era of the previous government, in addition to the lack of clarity of vision regarding the filling of the GERD lake.⁷

With regard to Egypt, the damage is no less than that of Sudan, especially because Egypt depends heavily on the waters of the Nile, and in the event of a decrease in the amount of water or a rise in the water level, irreparable physical damages will certainly occur.

A general view of the promotion of the right to exchange information in the Nile Basin

After focusing on the principle of the necessity of exchanging information and

⁶ The Conversation, The Nile River led to Khartoum's growth, but now threatens the city, 2021, at: <https://2u.pw/7fjlv>

⁷ The conversation, OP.Cit





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data and the principle of transparency, especially with regard to agreements related to the equitable and reasonable use of water, and after applying this principle to one of the most prominent escalating issues in the Nile Valley region, and within the framework of the foregoing, the Nile for Peace Initiative presenting a set of recommendations, which if implemented, can settle the situation of information exchange between Ethiopia, Egypt and Sudan, and they are:

1. The three countries concerned; Ethiopia, Egypt and Sudan, need to abide by the 2015 Declaration of Principles, which stresses the right to exchange information and data, and to avoid causing harm to any of the countries, with the aim of reaching an agreement that takes into account the interests of the three countries.
2. The Nile for Peace Initiative affirms the absolute sovereignty of Ethiopia over all the resources of its national territory, in a manner that does not apply to the case of international rivers, such as the case of the Blue Nile. Besides, the principle of information and data exchange

does not undermine, one way or another, the state's private sovereignty. The initiative recommends Ethiopia to stop its intransigence with regard to this right and abide by the provisions of the water-related international treaties and agreements, because this is inconsistent with international water law.

3. The need to consider the importance of the right to exchange information and data and its many benefits to all parties in order to prevent them from falling into conflict.

