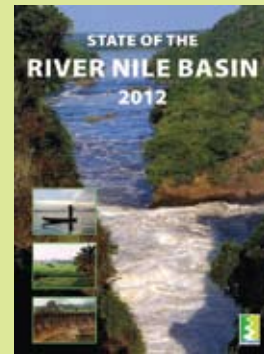




NILE BASIN INITIATIVE

INFORMATION DISCLOSURE POLICY



Burundi



DR Congo



Egypt



Ethiopia



Kenya



Rwanda



S. Sudan



Sudan



Tanzania



Uganda

PURPOSE

1. This document sets out the policy of the Nile Basin Initiative (NBI) with respect to information that it will make available to the public either as a routine matter or upon request. The Policy will enable NBI maximize disclosure of information while protecting the confidentiality of certain sensitive information.
2. The policy has been prepared by a task team of experts from the three NBI centres (Nile-Secretariat, Coordination Unit of Nile Equatorial Lakes Subsidiary Action Program, and Eastern Nile Technical Regional Office) and reviewed by the Nile Technical Advisory Committee (Nile-TAC).
3. This Policy becomes effective on the date of its approval by the Nile Council of Water Ministers (Nile-COM) and shall supersede any previous NBI guidelines on information disclosure. The Policy shall complement, and not replace, the Nile Basin Data and Information Exchange and Sharing Interim Procedures.

BACKGROUND

4. Public institutions have an obligation to disclose information, and the public has a corresponding right to receive information. Accordingly, the NBI is committed to allowing access to information in its possession, as part of a broader commitment to openness, transparency and accountability in its operations and decision-making process.
5. NBI recognizes that sharing of its knowledge and information is essential for increasing public trust in the NBI, building trust and confidence amongst member states, and achieving its shared vision of 'sustainable socio-economic development through the equitable utilization of, and benefit from, the common Nile Basin water resources'.
6. Thus, NBI's motivation for pursuing the fullest possible disclosure of information is for reasons that it brings with it multiple benefits including (i) increased feedback, and new and varied perspectives, from informed debate and dialogue on policies, programs and operations facilitated by the information disclosed by NBI; (ii) greater participation in decision making by member states, basin communities and other stakeholders leading to enhanced "ownership" of decisions by relevant stakeholders, and improving program and project design, implementation and sustainability; and (iii) improved understanding among member states, development partners, civil society organizations, academic institutions and the public at large, of the NBI's role thereby ensuring both financial and intellectual support for the NBI and its mission.
7. The objective of this Policy is to bring about broader stakeholder participation and provide an overarching framework for the disclosure of information across the NBI, consistent with the legal provisions of the NBI centres and the best practices of international river basin organizations.
8. For the purpose of this Policy information is defined to include all records held by the NBI, regardless of the form in which it is stored (printed or electronic; tape; electronic recording; etc), its state of processing (raw, quality assured or processed data; maps, charts and other illustrations; technical papers; etc), its source (whether generated by the NBI or another body) or the date of its production. Data, which shall be considered part of information, is defined as representation of facts, in a formalized manner, suitable for communication, interpretation or processing.

GENERAL PRINCIPLES

9. The NBI's Policy on Information Disclosure is premised on principles derived from international and regional law and standards¹, and evolving member states' practice on information disclosure. The principles are detailed below.
10. Principle 1 – Maximum disclosure. According to the Principle of Maximum Disclosure, all information held in the NBI shall be subject to disclosure except in very limited circumstances where there is compelling reason not to disclose.
11. Principle 2 – Timely disclosure. This Principle places upon public institutions the obligation to disclose information in a timely manner following the occurrence of an event or emergence of facts that require disclosure.
12. Principle 3 – Publishing of key information. According to this Principle, public institutions have an obligation to make known the types of information they hold that may be accessed by the public.
13. Principle 4 – Publishing the process for information access. As well as making known the types of information in its possession, to promote information sharing, public institutions are under obligation to make known the steps to be followed in accessing information.
14. Principle 4 – List of exceptions. While every effort is made to disclose information to the public, the effective function of public institutions requires some derogation from complete openness. The principle of List of Exceptions enables public institutions to maintain a balance between allowing the fullest possible disclosure, and protecting the confidentiality of certain types of information. Information included on the list of exceptions may not be disclosed to the public.
15. Principle 5 - Deliberative process privilege. This principle is recognition of the need to protect the integrity of the deliberative process and to facilitate and safeguard the free and candid exchange of ideas amongst the member states and between the NBI, its governance bodies, development partners and other stakeholders. In accordance with this principle, documents relating to the deliberative process are not to be disclosed. The theory behind the principle is that by guaranteeing confidentiality, the NBI will receive more candid advice, recommendations or opinions, resulting in better decisions.

¹ See (1) ARTICLE 19. 1999. The Public's Right to Know: Principles on freedom of information legislation. Article 19, Islington High Street, London. 19 pp.; and (2) the Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters, Aarhus, 1998.

THE POLICY

General considerations

16. The NBI's policy on information disclosure is to disclose all information in its possession except in cases where there are compelling reasons not to do so.
17. NBI shall not only accede to requests for information but shall proactively publish and disseminate widely documents of significant public interest, subject only to reasonable limits based on resources and capacity.
18. The NBI shall ensure that records, documents and information are created, retained and managed in a manner that protects the integrity of the information and at the same time ensures easy access. The NBI shall retained, archived or disposed records, documents and information in accordance with the Retention Schedule of each of its centres.
19. Information will be disclosed by methods appropriate to the nature of the information and intended recipients. Disclosure methods shall include, but not be limited to, press statements, press conferences, official notices, explanatory meetings, publicity events and public exhibitions, newsletters and bulletins, and websites and portals.
20. The NBI shall routinely update the types of information in its possession and shall, as a minimum, furnish information on the following areas:
 - a. Background information on the NBI, including how it was founded, the member states, shared vision, institutional structure; governance bodies; etc
 - b. The types and list of information which the NBI holds, where the information is located, the form in which the information is held, the categorization of the information (unrestricted, restricted and confidential) and how it can be accessed;
 - c. Information on any opportunities, requests or other direct actions which member states and the public may take in relation to the NBI;
 - d. Information about the strategic plan and programs and projects of the NBI including progress and financial information;
 - e. Guidance on processes by which members of the public may provide input in the formulation of policies or legislation relating to the NBI.
21. The NBI shall develop and widely disseminate detailed standard operational guidelines that clearly specify the procedures and steps to be followed by members of the public in requesting for information, including, where applicable, eligibility criteria for receipt of restricted information.
22. Information that is disclosed under this Policy but is not on the NBI's website or the Nile Information System (Nile-IS) shall be availed on request. Interested parties may request for such information by filling a request form online, filling a request form at any NBI centre, or sending a request letter to the Head of the NBI centre where the information is held. Every request for information shall be acknowledged, and should normally be responded to within 30 days. If the request is denied, a reply with be sent to the party requesting data citing reasons for the denial.
23. The NBI shall publish this Information Disclosure Policy on its website, and the Nile Information System (Nile-IS).

Unreasonable Requests

24. The NBI may refuse to honor any abusive, vexatious or unreasonable requests, including multiple requests, blanket requests, and any request that would require the NBI to create, develop, or collate information or data that does not already exist, or is not available in the NBI's records management system.

List of Exceptions, and categorization of information

25. The NBI shall maintain a reasonably small 'List of Exceptions' the information falling within which may not be disclosed to the public. All other information shall be subject to disclosure. The maintenance of the list of exceptions shall be necessary to protect certain 'confidential' or 'critical' types of information the disclosure of which may lead to serious harm to the NBI, the member states, development partners or NBI's contractors.
26. The NBI shall reserve the right not to disclose, under exceptional circumstances, information that it would normally disclose if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure.
27. Based on the guiding principles of this Policy, three information categories shall be maintained as follows: (a) unrestricted - readily accessible to the general public; (b) restricted - may be released to a specific audience following the appropriate approvals, and; (c) strictly confidential - not for release beyond the author and addressees. The List of Exceptions shall comprise of restricted and strictly confidential information.
28. Unrestricted - What shall be disclosed to all. Most of NBI's information falls in this category. This group includes project appraisal documents; program documents; annual workplans and progress reports; policies, strategies, guidelines and procedures; knowledge products; and information about the institutional and organizational structures. The full list of information falling under this category is presented in Annex 1. NBI will provide unrestricted access to information in this category and, in addition, will expand the categories of information that it routinely discloses.
29. Restricted - What may be disclosed to selected parties. Documents falling under this category need to meet at least one of the following criteria: (a) contain information which was initially intended for internal use, but which does not fall into the Strictly Confidential category, and where restricted access is judged beneficial for a work process or a working relationship; (b) need prior approval by a donor, such as project/program evaluation reports or where prior approval of a client is required, and; (c) contains technical information or comments considered to be sensitive and where wider distribution would be prejudicial to an ongoing process.
30. For information that meets the criteria in paragraph 29 above, the NBI may have compelling reasons or legitimate concerns to protect the confidentiality of the information and, as such, shall disclose the information to only selected individuals or parties. The individuals or parties shall be those for whom disclosure shall be considered not to lead to harm to the NBI or its interests. Some types of restricted information shall be available for 'viewing only' at the NBI centres. The NBI shall publish and widely disseminate the list of persons or parties eligible to receive different types of restricted information.
31. Restricted information shall include privileged information such as legal advice and matters in dispute, under negotiation or under any legal proceedings; disciplinary and investigatory information generated in or for the NBI; information dealing entirely with internal administration or institutional operations that has no direct effect outside of the institution; individual records of NBI employees; and commercial information whose disclosure may harm the financial interests of the NBI or other parties (see Annex II for full list).

32. To protect the integrity of the deliberative process, documents such as aide memoirs, supervision mission reports and minutes of governance meetings shall be classified as restricted and shall be disclosed to only selected individuals and parties. NBI shall distinguish the kinds of information that are truly of a deliberative nature from those that convey the results of its deliberations, so that it can: (a) disclose final outcomes and results of its deliberations at key process milestones and; (b) protect information that is of a truly deliberative nature unless it becomes eligible for declassification according to defined timelines.
33. National data and information obtained from member states through the Nile Basin data and information exchange and sharing interim procedures are classified as restricted and shall be disclosed in accordance with the provisions of the interim procedures. Data and information on the Nile Basin collected directly by NBI staff, or contractors acting on behalf of the NBI, are classified as unrestricted and shall be disclosed as such, except where there compelling or legitimate reasons to restrict access (such as where the data, methodology or conclusion of the knowledge generation process are disputed by one or more member countries, or where approval by NBI's governing bodies has not been given).
34. E-mail has increasingly become the NBI's predominant medium of communication. Some e-mail may contain or convey decisions or outcomes that are disclosable at key process milestones. Such e-mail shall be publicly available after they are filed in NBI's records management system and classified as unrestricted. Emails that related to the deliberative process shall be filed in NBI's records management system and treated as restricted information. The NBI shall not disclose e-mail that resides outside its records management system (including e-mail that does not pertain to official matters and e-mail containing personal information of NBI staff).
35. Strictly confidential – What may not be disclosed. This category, which includes Information provided by Member States or third parties in confidence (see Annex III), shall not be disclosed or considered for declassification, even after 20 years. Disclosure may take place in exceptional circumstances after receipt of written consent of the Member State or the third party concerned.
36. For a single document or record that contains parts or sections with different classification, where it is possible to disaggregate the document or record without distorting the information, it will be disaggregated and the different parts disclosed in accordance with the restrictions applicable to the respective classes. Where it is not possible to disaggregate the document or record, it shall be classified as 'strictly confidential' if it contains information of a confidential nature, otherwise it shall be treated as 'restricted'.
37. The List of Exceptions and further categorization into Restricted and Strictly Confidential information shall be decided upon through a consultative process presided over by Nile-TAC, and reviewed every three years.
38. A member country, development partner, contractor or other party providing information to the NBI shall have the right to determine the classification of the information (i.e. as unrestricted, restricted or strictly confidential).
39. The NBI shall not withhold restricted information from the public for an indefinite period, but shall declassify restricted information as its sensitivity decays with the passage of time. Declassification shall be carried out by the Nile-TAC at the time of review of the List of Exceptions.
40. Information held by the NBI for which other parties hold the copyright may be made available for review, but copying or distribution of such information may be limited to respect the rights of the copyright holder.

41. The NBI may levy a fee for provision of information to the public. Such a fee, which shall primarily be for the purpose of recovering the cost of information gathering, organization and provision, shall be determined by NBI and approved by the Nile Technical Advisory Committee (Nile-TAC).

Information disclosure by employees

42. No employee of the NBI may disclose information obtained in the course of his/her job responsibilities except in accordance with the provisions of this Policy.
43. Employees of the NBI shall not access, copy or remove information unless it is required as part of their job.
44. NBI employees are not authorized to grant interviews in respect of NBI without the prior written approval of the Head of the NBI centre. Furthermore, when NBI employees speak on public issues in their personal capacities, they must do so in a manner that does not give the impression that they are speaking on behalf of NBI.

IMPLEMENTATION OF THE POLICY

45. Following approval of the Policy by Nile-COM, NBI management shall immediately put in place administrative measures necessary for the implementation of the Policy. These measures shall include, but not be limited to, allocating sufficient staff and financial resources to ensure good record-keeping, and developing appropriate guidelines and procedures to assist staff in the implementation of the Policy.
46. The NBI centres and projects shall work out the cost implications for implementation of the Policy and integrate it their strategic planning and budgeting processes.
47. To facilitate the implementation of the Disclosure Policy, each of the three NBI centers shall establish a small team that shall be responsible for responding to information requests, coordinating clearance processes, and supporting the process of information classification and declassification.
48. The Nile Secretariat (Nile-SEC) has responsibility for periodically reviewing the policy and monitoring its implementation. The Secretariat shall facilitate the review process by preparing a report every two years that contains observations on the effectiveness of the Policy, and any recommendations for its modification. Nile Technical Advisory Committee (Nile-TAC) shall oversee and orient this process.

APPLICABILITY STATEMENT

49. This Policy shall apply only to the NBI, including its centres and projects. It shall not apply to the Nile riparian countries, who will disclosure information in accordance with national legislation, and the Nile Basin Data and Information Exchange and Sharing Interim Procedures.

AMENDMENTS

50. In case new issues emerge that are relevant for the content of this policy, revisions shall be initiated by Nile-SEC as necessary and consulted with due participation of all relevant stakeholders. The Nile Council of Water Ministers (Nile-COM) shall approve amendments to this Policy on the advice of the Nile Technical Advisory Committee (Nile-TAC).

Annex 1:

Unrestricted - (What shall be accessible to all)

The following list is not exhaustive, but is intended to provide guidance to supplement the classification criteria. In particular, the NBI shall routinely disclose the following:

- a. Information about projects under preparation, and projects under implementation.
- b. Conference proceedings
- c. Newsletters and bulletins
- d. Press statements
- e. Corporate expenses and audited financial statements
- f. Project Operational Documents prepared by the NBI—e.g. PADs , ICRs, etc
- g. Documents prepared jointly with other partners
- h. NBI Policies, Strategies, Guidelines and Procedures
- i. Project / Program Information Documents
- j. Strategic Plans and Strategic Programs
- k. Program progress reports
- l. Final consultants' reports
- m. Cartographic products
- n. Technical working papers
- o. Consultancy reports accepted and approved for use by the appropriate governance bodies under which the service is rendered
- p. NBI serial publications
- q. Unrestricted legal information
- r. Project related Environment and Social Management Framework (ESMF), Environmental Impact Assessments and similar reports released to the public under prevailing country, development partner or NBI regulations.
- s. Results at the end of deliberations - For example, Project Appraisal Documents (PADs), Implementation Completion Reports (ICRs).
- t. Empirical/statistical data and information, including real-time data, collected directly by NBI staff or by consultants contracted by the NBI. This shall include, but not be limited to:
 - i. Meteorological data such as historical time series data on precipitation, temperature, evaporation, transpiration and other climatic variables;
 - ii. Water resources and water use data such as hydrometric data (river flow, water level and stage data), sediment loading, water uses, data on characteristics of existing water related infrastructure (such as reservoirs, irrigation networks, hydropower generation schemes, etc), water demand data, reservoir operational rules, agricultural information, bathymetry of lakes, reservoirs, characteristics of groundwater aquifers;
 - iii. Ecological/environmental data and information such as wildlife and fisheries, wetland characteristics, pollution sources, nature reserves, water quality parameters;
 - iv. Basin physical characteristics such as land use and/or land cover, basin topography, drainage networks, soil erosion;
 - v. Socio-economic data such as population figures, Gross National Income, literacy levels, safe water coverage, infant mortality, dietary intake, etc

Annex II

List of Exceptions: Part A - Restricted (What will be disclosed to selected recipients)

Restricted information shall include:

- a. Personal information (personal or employment-related information concerning NBI staff, including organizational e-mail of staff and other NBI officials), information relating to staff appointment and selection processes; information pertaining to proceedings of the NBI's internal conflict resolution mechanisms; and information relating to investigations of allegations of staff misconduct, except to the extent permitted under the staff rules.
- b. Information, the disclosure of which could compromise the security and safety of NBI staff and their families, contractors, other individuals, or NBI assets.
- c. NBI Annual Workplans
- d. NBI Annual Reports
- e. Internal audit reports and investigations.
- f. Contractual documents, including technical cooperation documents, and personal and financial information provided by contractors.
- g. Documents containing commercial or proprietary information.
- h. Deliberative information—that is, information about deliberations between the NBI and its clients or third parties, as well as information pertaining to the NBI's own internal deliberative process (including e-mail that is part of the deliberative process and records pertaining to TAC/Nile-COM deliberations) unless it becomes eligible for declassification according to defined timelines.
- i. Certain information about the NBI's financial activities—unless it becomes eligible for declassification according to defined timelines.
- j. Consultancy reports not yet accepted and/or approved for use by the appropriate governance bodies under which the consultancy service was rendered.
- k. Empirical/statistical data and information, including real-time data, obtained from member states through application of the Nile Basin data and information exchange and sharing interim procedures. This shall include, but not be limited to:
 - i. Meteorological data such as historical time series data on precipitation, temperature, evaporation, transpiration and other climatic variables;
 - ii. Water resources and water use data such as hydrometric data (river flow, water level and stage data), sediment loading, water uses, data on characteristics of existing water related infrastructure (such as reservoirs, irrigation networks, hydropower generation schemes, etc), water demand data, reservoir operational rules, agricultural information, bathymetry of lakes, reservoirs, characteristics of groundwater aquifers;
 - iii. Ecological/environmental data and information such as wildlife and fisheries, wetland characteristics, pollution sources, nature reserves, water quality parameters;
 - iv. Basin physical characteristics such as land use and/or land cover, basin topography, drainage networks, soil erosion;
 - v. Socio-economic data such as population figures, Gross National Income, literacy levels, safe water coverage, infant mortality, dietary intake, etc

This above list of restricted information is not intended to be comprehensive or exhaustive. Unforeseen circumstances may arise in which the NBI, after careful deliberation, and with due regard to the general principles on information disclosure, may determine that the best interests of the NBI, its Governing Body, or other stakeholders require non-disclosure of certain specific information.

Annex III

List of Exceptions: Part B - Strictly Confidential (What may not be disclosed at all)

Strictly confidential information shall include:

- a. Information provided to the NBI in confidence by a Member State or a third party;
- b. Information provided to the NBI on the explicit or implied understanding that it will not be disclosed outside of the NBI, or may not be disclosed without the prior consent of the source;
- c. Information whose disclosure is likely to endanger the security of member states.
- d. Confidential information on disputes or negotiations amongst member states.
- e. Medical records of NBI staff.



NILE BASIN INITIATIVE

The Information Disclosure Policy is available online at <http://nileis.nilebasin.org>

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