

AIC decision on appeal #33

CASE NUMBER AI3271

**WORLD BANK-COMMISSIONED STUDY: WHITTINGTON, D. & JEULAND, M. -
(2012) EASTERN NILE STRATEGIC ECONOMIC ASSESSMENT: A SCOPING-
LEVEL ECONOMIC ANALYSIS OF MULTIPURPOSE DAMS IN THE BLUE NILE
GORGE**

(Decision dated May 23, 2014)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the application, which asserts an appeal on a public interest basis, is not properly before the AIC for consideration. The requested report in this case is restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the World Bank’s Access to Information Policy (“AI Policy”). Under the AI Policy, public interest appeals may not be made to override this exception. For this reason, and pursuant to paragraph 40 (c) of the AI Policy, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On April 4, 2014, the requester submitted a request (“Request”) seeking to access the “World Bank-commissioned study: Whittington, D. & Jeuland, M. - (2012) Eastern Nile Strategic Economic Assessment: A Scoping-level Economic Analysis of Multipurpose Dams in the Blue Nile Gorge” (“Report”). On April 14, 2014, the World Bank (“Bank”) denied the Request on the basis that the Report is restricted by both the *Deliberative Information* and the *Information Provided by Member Countries or Third Parties in Confidence* exceptions under the World Bank’s Access to Information Policy (“AI Policy”). On April 21, 2014, the secretariat to the Access to Information Committee received an application (“Application”) appealing the Bank’s decision to deny access to the Report.

2. The Application challenges the Bank’s decision to deny public access to the Report on the basis that there is a “public interest” case to override the AI Policy exceptions that restrict the Report. The Application states, in relevant part, the following:

[T]he report [...] contains an economic assessment of the Grand Ethiopian Renaissance Dam as well as an analysis of its downstream impact based on data collection in Sudan. This is the first independent study of its kind of what is a hugely important public project: GERD will be Africa's largest dam and is being funded by the Ethiopian government and Ethiopian people -- both development partners of the WB. It is also a project of regional and international significance as

the Nile is a transboundary watercourse, and so GERD is of key importance not only to Ethiopians but also to downstream riparian nations Sudan and Egypt it is unacceptable that a public institutions such as the WB, which proclaims a belief in transparency and accountability, refuses to release a report of such obvious public interest.

Findings and Related Decisions

3. In reviewing the Application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Application and the basis on which the requester appealed the Bank's denial of access to the Report;
 - (c) the nature of the Report;
 - (d) the AI Policy's *Deliberative Information* and *Information Provided by Member Countries or Third Parties in Confidence* exceptions that justified the Bank's decision to deny public access to the Report; and
 - (e) the information provided by the relevant business unit concerning the Report.
4. For the purposes of this decision, the AIC's findings and conclusions discussed in this decision focus on the Report's restriction pursuant to the AI Policy's *Information Provided by Member Countries or Third Parties in Confidence* exception.

"Public Interest" case

5. Pursuant to the AI Policy, a requester who is denied access to information by the Bank may file an appeal on a "public interest" basis if the requester is able to make a public interest case to override certain AI Policy exceptions that restrict the Report. Public interest appeals are limited to information restricted by the *Corporate Administrative Matters*, *Deliberative Information*, and *Financial Information* (other than banking and billing information) exceptions (*see* AI Policy at paragraph 36 (b)).
6. The AI Policy states that the Bank "does not provide access to documents that contain or refer to information listed in paragraphs 8-17" of the AI Policy, which set out the AI Policy's list of exceptions. Paragraph 14 of the AI Policy provides, under the *Information Provided by Member Countries or Third Parties in Confidence* exception, that the Bank has an obligation to protect information that it receives in confidence and, thus, does not provide access to information provided to it by a member country or a third party on the understanding of confidentiality, without the express permission of that member country or third party (*see* AI Policy at paragraph 14). The AI Policy also states, in relevant part, that "[w]hen a member country or a third party provides [...] non-public information to the Bank with the understanding that it will not be disclosed, the Bank treats the information accordingly. This includes information, data, reports and analysis [...], deliberations, and any other work product generated as a result of or in response to the confidential information received from a member country or third party." (*see* AI Policy at

footnote 8.) The AI Policy further recognizes that if the Bank believes that information was given by a member country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure pursuant to the *Information Provided by Member Countries or Third Parties in Confidence* exception (see AI Policy at footnote 11).

7. In this case, the AIC found that: (a) the Report, which has not been finalized, had been prepared by consultants commissioned by the Bank to support the Bank's own internal deliberations and its deliberations with the member countries concerned; (b) the consultants had prepared the Report with information provided by member countries or third parties who had an implied expectation that the information would be kept in confidence; and (c) the parties concerned have not authorized the disclosure of that information. For these reasons, the AIC concluded that the Report reflects information generated as a result of or in response to confidential information received from the member countries or third parties concerned and is, thus, restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.

8. The AIC further recognized that the AI Policy allows requesters to make a public interest case to override certain AI Policy exceptions that restrict the public's access to information, limited to the *Corporate Administrative Matters*, *Deliberative Information*, and *Financial Information* (other than banking and billing information) exceptions (see AI Policy at paragraph 36 (b)). Because the AI Policy does not allow requesters to make a public interest case to override the *Information Provided by Member Countries or Third Parties in Confidence* exception, the AIC concluded that the public interest appeal to override this exception restricting the Report is not properly before the AIC for consideration (see AI Policy at paragraph 40 (c)).

9. For the above reasons, and pursuant to paragraph 40 (c) of the AI Policy, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

10. Under the AI Policy, the decision of the AIC is final for appeals that assert a public interest case to override an AI Policy exception (see AI Policy at paragraph 37).