



BUILDING DIALOGUE & UNDERSTANDING COMMUNITY VISIONS ON NILE GOVERNANCE

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ABBREVIATIONS

BCM	Billion Cubic Meters
CFA	Cooperative Framework Agreement
CSO	Civil Society Organizations
DRC	Democratic Republic of Congo
ERU	Equitable and Reasonable Utilization
IUCN	International Union for Conservation of Nature
NBD	Nile Basin Discourse
NBI	Nile Basin Initiative
NDF	National Discourse Forums
PIC	Prior Informed Consent
UNWC	1997 United Nations Watercourses Convention

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METHODOLOGY

Overview

The Nile Basin Discourse (NBD), in collaboration with the Environmental Law Centre of the International Union for the Conservation of Nature (IUCN), engaged with civil society in the Nile River Basin to foster cooperation. This project had two primary goals: build dialogue amongst the countries in the Nile Basin and gain a clear understanding of their vision regarding the governance of the Nile River Basin. To this end, NBD and IUCN utilized information collection tools to discern the unique circumstance of each country and the common goals of all countries. These tools were desktop-based and web-based and were administered through personal interviews with citizens. The objective was to increase awareness of the benefits of Nile cooperation and provide a platform wherein community voices could be incorporated into Nile Basin cooperation programs and initiatives. The overall aim was to discern the vision of the Basin countries on Nile Cooperation issues in order to clearly communicate with decision makers during upcoming Nile Basin meetings regarding the concerns and wishes of the Nile Basin citizens. Further, by ascertaining the vision of the Basin, programming initiatives in the Nile River can be improved and tailored to the needs of specific areas in order to foster Nile Cooperation at the national level.

The following report summarizes the main takeaways from the surveys, incorporates the results into a broader analysis, and attempts to frame the discussion within the context of the proposed Cooperative Framework Agreement and governance of the Nile River Basin.¹ After presenting the results for each country, the report will also discuss the factors necessary to create an environment that is conducive to proper and adequate transboundary water governance.

Research Structure

The first stage of the process was the identification and mapping of relevant stakeholders in the ten riparian States (Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, Sudan, South Sudan, Tanzania and Uganda). Eritrea was not a participant during this process. To this end the National Discourse Forums (NDFs) of each State provided support by identifying all individuals, groups, organizations, and institutions that could be considered a potential stakeholder. After the information was compiled, the stakeholders were classified according to two criteria: primary or secondary actors² and external and

¹ Please note that the analysis below is based off of the responses received from the series of surveys entitled "Understanding Visions on Nile Basin Governance" that were conducted by IUCN and NBD between July to December 2012. The responses and subsequent analysis are not meant to be construed as representative of the vision of the entire country but rather represent the visions and thoughts of the sample size.

² Primary stakeholders directly feel the impacts (positive or negative) of any developments on the Nile River Basin. The impacts can be either to their lives or livelihoods. Secondary stakeholders are not directly affected by developments. Rather, these stakeholders have an interest in the management of the Nile River Basin on a higher policy level or because they are concerned about the impacts felt by primary stakeholders. Secondary stakeholders, such as civil society organizations, often also are the intermediaries between those that are directly impacted and the policy makers who make the decisions.

internal stakeholders.³ Analysis was done on the interests, characteristics, and impacts on the stakeholder. The output, a list and description of the stakeholders, provided a roadmap that provided insights on the groups that should be integrated in the institutional architecture of the transboundary management of the basin.⁴

In addition to the stakeholder mapping, the NDF national coordinators developed a power relations matrix that illustrated the relationship between the identified stakeholder and the relative position of the stakeholder power and interest. The purpose of this tool was to explore points of conflict and cooperation among them and gain a deeper understanding on their capacities and potential to influence decisions.⁵

Next, NBD and IUCN formulated a survey to verify the national vision of each country regarding the Cooperative Framework Agreement (CFA) and the governance of the Nile River Basin. This survey had a test trial with a limited number of stakeholders but was not able to fully capture the community vision. As such, the survey was re-designed and expanded. It was modified from being a single survey that would be distributed to all stakeholders into three separate surveys that were targeted to three major groups of stakeholders. The groups surveyed were: 1) experts and decision-makers; 2) local authorities and actors; and 3) the local population. The questions explored topics such as the state of natural resources within the community, their familiarity with the Cooperative Framework Agreement, their knowledge of water management principles, and their beliefs on the rules and institutions that should govern the Nile basin.



The main issues that the surveys touched upon were the stakeholder's thoughts on water security, the application of the equitable and reason utilization principle, overall understanding of the legal regime of the Nile waters, and concerns regarding the Basin's governance.

For the purposes of the tools, the stakeholders are defined as follows. Experts and decision-makers encompass professionals with technical knowledge and access to a wide information base. This group has an interest in the management of the Nile River Basin on a higher policy level. This group comprises of those who have the power to influence

³ Internal stakeholders have direct responsibilities in managing the Nile River Basin. Stakeholders such as governments, donors, or private sector partners generally are tasked with designing, financing, or implementing basin management. External stakeholders encompass all stakeholders that are not internal.

⁴ The stakeholder mapping tool can be found at Annex I.

⁵ The power relations matrix can be found at Annex II.

decision. Local authorities and actors comprise people who are generally charged with the implementation of national initiatives. Finally, the local population comprises of citizens that live in or near the Nile River Basin and will most likely be directly impacted, positive or negative, by any project or changes in the flow of the River. This group relies on the Nile for their livelihoods and come into contact with it on a regular basis.

In total, NBD and IUCN received **632** results from the ten countries, as of January 23, 2013.⁶

Experts & Decision Makers	158
Local Authorities & Actors	241
Local Population	233
TOTAL	632

Implementation Strategy

To ensure the success engaging civil society in the governance of the Nile Basin, the implementation strategy requires a holistic approach.

Throughout the course of this project, IUCN and NBD remained in regular communication in order to assess the progress of the tools and improve the tools. Discussions took place via Skype calls, telephone conferences, and during World Water Week in Stockholm in August, 2012.

At the conclusion of the survey period, IUCN contacted the national coordinator from ten States to conduct a follow-up on their experiences. The goal of the discussion was to understand the survey administering process and explore any information gaps that might be relevant to the analysis. IUCN spoke with the national focal points of Burundi, DRC, Egypt, Ethiopia, Kenya, Rwanda, Sudan, South Sudan, and Tanzania. Further, IUCN consulted with the coordinators during the Project Review Meeting in Entebbe, Uganda on November 26-27, 2012. This exercise was another opportunity to collaborate and discuss the visions of the community and understand the challenges and opportunities for Nile Basin cooperation. All of the countries that participated in the surveys were also asked to contribute country profiles that would help illuminate deeper understanding the uses and users of the Nile River in their country.

Subject to funding, going forward, an important step would be to present the findings of the stakeholder surveys to the stakeholders within each of the participating countries. This would be helpful in building awareness and capacity within the impacted communities.

⁶ For a breakdown of the responses received, by group and country, please see Annex III.

Challenges

A number of challenges came up during the course of this project. For instance, the first survey that was created, entitled Stakeholder's Survey on Nile Cooperation Framework Agreement, was meant to show NBD members' awareness of Nile Cooperation issues and the Cooperative Framework Agreement. As the NDFs began to distribute the survey, the general consensus was that the survey was not sufficiently clear. The wording was too technical, the questions assumed that the respondents were aware of certain information, and it took too long to complete. Per the feedback, NBD and IUCN redesigned the survey to be more effective by using more accessible terminology and creating three different surveys. The modified survey was then distributed to a larger base than the initial survey and was more successful in eliciting feedback and participation.

The NDFs faced challenges in administering the surveys to their intended groups. Generally the local population did not have access to the internet and thus were unable to complete the survey through the Survey Monkey website. Alternatively, those that did have access to the internet did not have regular access. Some people would use internet intermittently and only when they needed to. This, however, meant that if they were not notified of the survey in another way, they would not be aware of it.

Additionally, accessing the rural areas that the local population lived in was also difficult. These areas would sometimes require special vehicles that were more capable of the terrain and these were not always at the coordinator's disposal. Reaching the local population to conduct face-to-face interviews was time consuming and costly. Once a coordinator was able to make contact with a local person from the community, the process of conducting the survey was not straightforward. The first part of the meeting would usually involve conversing with the respondent about the meaning of the survey, the goals, and the activities of the Nile Basin Discourse. This interaction, according to the coordinators, was generally beneficial to both parties since they were able to learn more about the circumstances. In some cases it would also be necessary to translate the survey from its original language, English, into the local language. Nevertheless, given the limited resources in time and money, this exercise did limit the number of face interviews that were able to be conducted.

Similarly, the NDFs also encountered problems accessing high level experts and decision-makers. This was attributed to the busy schedule of this group and, sometimes, their hesitation in participating. In sum, these problems of accessing the targeted respondents made it difficult to collect the highest level of participation.

Challenges such as poor connectivity also created obstacles to communication. Coordinating Skype calls or phone calls with coordinators was difficult because the connection was of low quality.

KEY FINDINGS

Enabling Factors

One main challenge that affects all three groups of stakeholders (experts and decision-makers, local authorities and actors, and the local population) was a lack or inaccessibility of information. Any information that did get exchanged was done in a one-way scheme, usually from top to bottom. For example, experts would inform local authorities about new policies or potential projects in their community. However, there was no process in place that would allow the local actors to convey helpful insights back to the experts. Since local actors are the group that are undoubtedly tasked with implementing national strategy plans on a local level, they are able to discern which tactics and processes are the best fit for their region. However, if this information cannot be delivered to the experts, decision-making and implementation strategies cannot be improved. A mechanism must be in place where follow-ups are conducted to assess the implementation scheme and discuss the experiences of those that administered the policies. Similarly, it is important that when policies are implemented, a guide or manual should also accompany the regulation to help the impacted stakeholder understand the rationale behind the new regulation. Channels for information exchange should be continuous and permanent; all levels of stakeholders must be aware of how to access and interact with others.

All respondents, despite category of stakeholder or country of origin, agreed that the Nile River is an important resource to their community. Stakeholders generally varied in their understanding the role that the Nile River could play on the daily lives of the citizens. For instance, the local population was more vocal about their reliance on the Nile River for sustenance and way of life. Some experts, who were more removed from the water source, saw the river as an important resource but failed to understand the impact the water would have on easing transportation needs or ensuring food security. This gap is demonstrative of a lack of awareness by secondary stakeholders in the multifaceted ways the Nile River impacts the lives and another example of a lack of information.

The local population was united in their belief that they must have an avenue to meaningfully participate in the decision-making process. Without the ability to engage in open dialogue where their concerns are heard and considered, they fear marginalization. In this regard, the local population of many countries expressed a desire to see a system of representation where they could elect a single person to represent their concerns at meetings conducted on a higher level. This would allow their voices to be heard during decision making processes while also appointing a focal point that could be the main contact for exchanging information.

The local population also sought more workshops that were focused on practical skill building and capacity development. For instance, in addition to public hearings wherein government officials and developers visit local communities to discuss potential new projects, there should also be workshops that teach skills that the local population can rely on immediately.

Constraints

A common challenge that was raised was poverty. For instance, for the inhabitants of poverty stricken areas, related phenomenon such as population growth and environmental degradations are also intertwined. Any program or project that is related to the Nile River must also take these interconnected issues into consideration.

Instability in countries such as South Sudan and the D. R. of Congo have created problems that hinder effective governance of the Nile River in the country. In areas where security is not guaranteed, infrastructure and institutions are under greater stress. Further, in the case of South Sudan, the country is engaged in nation-building efforts. There is an attempt to establish many foundational elements and as such the Nile River or water governance may be overlooked in the short-term while other more immediate concerns are dealt it.

Opportunities

Raising awareness and creating opportunities for economic growth should be fully and thoroughly explored. In order for the population to be effectively engaged, all citizens must become familiar with important issues regarding governance. For instance, several national coordinators mentioned publishing the Cooperative Framework Agreement in piecemeal form with explanatory notes. Thus, rather than making the entire Agreement available at once, important provisions should be published in a weekly or monthly basis to the local population. This would make it easier to digest the technical information. Similarly, other innovative forms of communications should be considered. For instance, radio or TV should be utilized to create awareness regarding Nile River issues and serve as a venue to reflect the opinions of the community.

In sum, the commonalities between the countries were greater than the differences. The respondents expressed a desire to create a community that could benefit from the Nile River and wanted to promote greater collaboration. Consensus was easier to reach on more abstract concepts however the details on how to precisely allocate the water distribution was more divided. The differences between the countries mostly centered on issues such as the role that prior agreements should play in the governance of the Nile River and how to select factors to determine equitable and reasonable utilization.

The experts and decision makers were generally more familiar with international principles and practices of other transboundary basins. This can be attributed to their educational backgrounds and higher access to information and news. On the other hand the local population was not as aware of governance structures or prior agreements unless they were from the signatory countries of the prior agreements. However, since governance would affect all citizens and most impact the primary stakeholders, the local population, the information needs to be distributed more widely.

Future actions undertaken by NBD should be cognizant of knowledge gaps and work towards eliminating them while helping realize the community vision.

COUNTRY CONTEXT

The Nile Basin Discourse (NBD) is a regional network of civil society organizations that was established to facilitate and support civil society engagement in Nile Basin cooperation and development processes. Engagement is facilitated by the regional Secretariat based in Uganda and through National Discourse Forums (NDFs) in each of the ten Nile Basin countries. The Eastern Nile sub-region comprises Egypt, Eritrea, Ethiopia and Sudan. The Nile Equatorial Lakes Sub-region comprises Burundi, DRC, Kenya, Rwanda, Tanzania and Uganda.

The Nile Basin Discourse (NBD) has been implementing a program titled '**Civil society engagement in Nile cooperation and development.**' The program started on May 1, 2010 and is planned to end on January 31, 2013. The purpose of the program is to promote and add value to Nile cooperation. The four priority areas are (1) policy influencing through NBD advocacy work (2) resource mobilisation (3) strengthen the NBD monitoring and evaluation system; and (4) undertake comprehensive preparatory work for establishing an NBD IT function. It is within the context of policy influencing that IUCN has been collaborating with NBD to integrate the community vision into Nile Basin management.

Effectively influencing policy and engaging in advocacy at a national and regional level requires an inclusive approach. Similarly, the success of basin-wide joint management of the Nile River is contingent on a thorough understanding of the community's vision on the mode of governance. In an effort to effectively and accurately formulate a community vision for the Nile Basin, the NBD and IUCN worked with the National Discourse Forums (NDFs) of each riparian State to utilize the data collection tools and provide a platform for the stakeholders to share their opinions and concerns.

The analysis below of each of the participating countries examines the survey responses while also taking into consideration other external and internal factors that have influenced the respondents. The analysis is three-fold: an overview of the hydrological background, the uses and users of the Nile in the country; considerations that provide a fuller picture of the country's current state; and a presentation of the results in each category of respondents on the governance of the Nile on key issues. The community understanding of Nile Cooperation is shaped by three main factors: (1) the body of laws, principles, rules and regulations that the community believes should govern Nile Cooperation; (2) the institutions necessary for the management of the shared Nile basin; and (3) the dynamics of change that can ensure positive development.



As such, the analysis will highlight the beliefs and concerns of the stakeholders that will be beneficial in influencing future policies, cooperating mechanism, and benefit-sharing programs in the region.

Cooperative Framework Agreement

The Nile Basin Cooperative Framework Agreement is a transboundary water management agreement that “applies to the use, development, protection, conservation and management of the Nile River Basin and its resources and establishes an institutional mechanism for cooperation among the Nile Basin States.”⁷ The CFA contains many international law principles such as equitable and reasonable utilization and the no significant harm principle. Many of the legal underpinnings have their basis on the 1997 United Nations Watercourses Convention.

The agreement opened for signature on May 14, 2010 and, to date, Ethiopia, Kenya, Tanzania, Uganda, Rwanda, and Burundi have signed the CFA. According to its terms, the CFA needs six instruments of ratification to enter into force but none of the six states has ratified the CFA through their domestic procedures. Eritrea currently holds observer status within the Nile Basin Initiative.

Enacting the Cooperative Framework Agreement is central to governance in the Basin. One factor that is important to this discussion involves the 1959 Nile Water Agreement between Egypt and Sudan which deals with the allocation of the Nile River water. Only Egypt and Sudan were signatories of the treaty however it has ramifications on other Basin countries.

⁷ Nile River Basin Cooperative Framework Agreement, Art. I.

Further, the existence of the newly independently state of South Sudan⁸ impacts the application of the 1959 treaty.

The creation of a new state creates several legal problems. In relation to the rule of succession,⁹ the governing principles are provided by 1978 Vienna Convention on Succession of States¹⁰ in respect of Treaties as well as by international state practice. As a general principle for multilateral treaties, in case of “partial” succession (when the “predecessor” state is not extinguished), the newly independent state¹¹ is not bound by any existing treaty of the predecessor by virtue of a principle of succession (1978 Vienna Convention, Art. 16). This provision is based on the “clean slate” principle which applies to new States deriving from existing ones as well as on the theory of *tabula rasa* that was applied to colonies.

The 1959 Nile Water Treaty includes a section that is particularly relevant to the issue at stake. In Article Fifth on General Provisions, the agreement states that if the possibility of new negotiation related to the Nile water with other riparian States arises, Sudan and Egypt need to agree on a unified view which will constitute the basis of such negotiations. Moreover, if a riparian State (other than Sudan and Egypt) “(...) claim[s] a share in the Nile waters, the two Republics have agreed that they shall jointly consider and reach one unified view regarding the said claim. (...)”. Although implicitly recognizing utilization rights of other riparian countries, Sudan and Egypt reserve to themselves the absolute authority to decide about it. The other riparian States have been always abnegating such a position and refusing the imposed hegemony of Egypt and Sudan on the Nile.¹²

The applicability of the CFA is an issue that influences and impacts the countries in the Nile River Basin. All the stakeholders surveyed noted that the CFA, or their understanding of the CFA within their lives, greatly affected their understanding of governance.

STRUCTURE OF REPORT

The following report presents a detailed look, on a country-by-country basis, on some key aspects of the governance on the Nile River Basin. The report is organized alphabetically of the ten riparian States: Burundi, Democratic Republic of Congo, Egypt, Ethiopia, Kenya, Rwanda, South Sudan, Sudan, Tanzania, and Uganda.

Each country has four main sub-sections. Section 1, the Country Profile, introduces the country as it relates to the Nile River Basin. The Profile includes both information from the Nile Basin Initiative and contribution from the national focal points. This section is meant to introduce the reader to the main uses and users of the Nile River in the country and present an overall picture with information such as political structure, existing water regulations, and geography.

⁸ South Sudan declared its independence of July 9, 2011 as a result of a referendum in which more than 98% of the population voted in favor of declaring independence from Sudan. The country was admitted as the 193rd member of the United Nations without any vote or objections on July 14, 2011 during the 65th session of the United Nations General Assembly.

⁹ The 1969 Vienna Convention on the Law of Treaties is silent on the question of state succession.

¹⁰ The 1978 Vienna Convention has been in force since 1996.

¹¹ 1978 Vienna Convention on Succession of States in respect of Treaties, art. 2 (f) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

¹² A fuller version of the legal analysis of the CFA and its applicability can be found in the Annex. VI. The information is derived from an IUCN platform that can be found on www.waterlawandgovernance.org.

Section 2, Considerations, comprises of discussions held with the national coordinators regarding their experiences in administering the surveys. The section presents a clearer picture of the process that the coordinators underwent to gather the responses, potential knowledge gaps, and overall impressions regarding the exercise.

Section 3, the Results, presents the responses and is subdivided into the three categories of respondents: Experts & Decision Makers, Local Authorities & Actors, and the Local Population. Each section explores themes such as their understanding of the principles that govern the Basin and their familiarity with the Cooperative Framework Agreement. *Rules and Principles* explores how a certain group of stakeholders view concepts such as the duty to notify, the usefulness of ratifying the United Nations Watercourses Convention, and awareness of the practices of other transboundary basins in their country. *Current Governance Framework* delves into what the stakeholder's impression of the efficacy of the governance structure in their country today. It discusses issues such as transparency, accountability, availability of procedural rights. Lastly, the *Cooperative Framework Agreement* section looks into how familiar the stakeholders were regarding the Agreement. It asks whether they have had access to the document, whether they have had an opportunity to review it, how they receive information and updates regarding the Agreement, and how the Agreement would apply to their country.

As mentioned previously, after presenting the results for each country, the report will also discuss the factors necessary to create an environment that is conducive to proper and adequate transboundary water governance. In this regard, international principles and the components of the United Nations Watercourses Convention will be presented for consideration.

BURUNDI

NUMBER OF RESPONDENTS			
	Burundi Count	Burundi Percent	Total
Experts & Decision Makers	11	7	158
Local Authorities & Actors	47	20	241
Local Population	22	9	233

1. Country Profile

The Republic of Burundi is a small country that is in the southwest portion of the Nile River Basin. The total land area is 27,834 square kilometers, the population estimated at 8 million in 2008, with 3% projected annual growth. Burundi, an upstream country, contributes water to the flow of Lake Victoria and is situated between Congo and the Nile Basin.¹³ The country has two official languages, French and Kirundi.

The Burundian Minister of Water, Environment, Land Management and Urban Planning signed the Cooperative Framework Agreement, on behalf of the Government of Burundi, on February 28, 2011. A large number of national institutions, including nine government ministries, and funding organizations are involved in the management of water resources. This has resulted in poor coordination, planning, and exploitation of the resource, creating conflicts in the allocation of water among sectors and incoherent collection and storage of information.¹⁴

The average population density is 310 inhabitants per square kilometer and it may increase to 650 inhabitants per square kilometer in the Northern provinces. That population is 90% rural and primarily relies on farming for their livelihoods. As a result of this, there is a strong pressure on natural resources in searching for cultivated croplands and firewood.

Despite richness in hydraulic resources vesting an important hydroelectric potential in the country, the Burundian consumption of electric power remains the lowest in East Africa at 2%. Electric power accounts for only 4% of the energy balance in the country and less than 3% of households have access to this energy. The country faces currently a considerable shortage in electricity mostly during dry season when power rationing is often undertaken and that brings about a disruption of economic activities in the country. That electric shortage is further aggravated by climate disturbances and anthropogenic actions which impact water storage tanks composed mainly of marshes. Poor management results in silting storage lakes and causes floods in hydroelectric stations.

In order to meet the country's needs in energy and to ensure sustainable development and poverty reduction of the population, the Government of Burundi has developed a strategy for

¹³ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

¹⁴ Country Profile contributed by National Coordinator via e-mail on December 21, 2012.

the sector of energy. Projects of hydroelectric stations, interconnection and the construction of new stations are planned. Furthermore, within the framework of the cooperation on Nile Basin, the Nile Basin Initiative has initiated, in the region of equatorial lakes, the development of energy generating and trading projects from which Burundi will benefit tremendously.

2. Considerations

The surveys were conducted by dividing the country into four main quadrants: south, north, center, and west. This breakdown helped target the efforts of the national coordinator because different areas of the country had different concentrations of stakeholder groups. For instance local authorities, local populations, and project-sites are found mostly near the basin in the northern part of the country. Likewise, as the capital Bujumbura, is located in the west, which is where experts and government officials were located. (Phone call, November 6, 2012).

In general the local population, as a whole, was not very familiar with the Cooperative Framework Agreement. National forums had been held in areas where the local population lived in an effort to provide information on the efforts of the Nile Basin Initiative and their projects. In addition, there have been efforts made earlier by other organizations to identify the people who would be most affected by floods or dislocated in the event of a dam construction. In these situations local populations were informed about specific transboundary projects, however they still lacked information about more general transboundary plans and international principles. (Phone call, November 6, 2012).

There is a growing trend to have a local representative that is elected by the local population to represent them at meetings during the implementation of a specific water related project. At present this elective representative has focused their efforts and attention to organizing compensation for dam-building projects. (Phone call, November 6, 2012).

Currently there is a proposed hydropower dam project at the Rusumo Falls, to begin in 2013, which is to be jointly developed by Tanzania, Burundi, and Rwanda.¹⁵ This Hydropower Project is expected to generate 90 megawatts of power that is to be shared equally by all three countries where the dam will be constructed five kilometers from the Burundi border. (Phone call, November 6, 2012). The project is also supposed to contribute to community development near the project area through watershed management and improved access to electricity. The Energy Ministers of Burundi, Rwanda, and Tanzania signed a memorandum on March 22, 2005 to declare their commitment to the project. The geographic location of the infrastructure will be on the border between Tanzania and Rwanda where transmission lines will extend to Gitega (Burundi), Birembo (Rwanda), and Nyakanazi (Tanzania.)¹⁶

3. Results

¹⁵ Nile Basin Initiative, Regional Rusumo Falls Hydroelectric and Multipurpose Project, available at <http://nilebasin.org/newnewsap/attachments/article/75/Rusumo%20Falls%20Hydroelectric%20Project.pdf>

¹⁶ Id.

a. Experts & Decision-Makers

i. *Rules and Principles*

Most of the experts and decision makers, 81.8%, believed that it is important to disseminate information about the practices of other transboundary basins and legal frameworks. (Experts & Decision-Makers Survey, Question 11). Further, they believed that international legal principles should heavily influence the governance of the Nile River Basin. (Experts & Decision-Makers Survey, Question 12). This search for information and congruence with internationally accepted principles is demonstrative of a desire to rely on a system of management that is objective and beneficial to all parties.

All the respondents believed signing and ratifying both the 1997 United Nations Watercourses Convention and the Cooperative Framework Agreement would be useful in the governance of the Nile. (Experts & Decision-Makers Survey, Question 34). These experts were familiar with international bodies of law that deal with water management on a broad scale; however they did not have in-depth knowledge about their details. (Phone call, November 6, 2012). Most responders also were of the opinion that public participation should be reflected within the provisions of the CFA.

Overall, the experts and decision makers were divided on the effectiveness of the duty to notify. 50% believed that the duty could stop development activities planned by a government but 40% believed that the duty to notify could not. (Experts & Decision-Makers Survey, Question 29).

ii. *Current Governance Framework*

Experts and decision-makers, generally, believed that the current governance situation in the Nile River Basin was effective and that it employed an inclusive approach. Approximately 82% of the respondents felt that the current governance structure was either somewhat effective (63.6%) or extremely effective (18.2%). (Experts & Decision-Makers Survey, Question 6).

Nevertheless, the experts were split evenly on whether the present form of governance was sufficiently transparent (one-third believed it was transparent, one-third believed it was not transparent, and one-third were unsure.) (Experts & Decision-Makers Survey, Question 8). This three part split was seen again when the experts were asked about the procedural rights afforded under the existing governance structure. (Experts & Decision-Makers Survey, Question 9).

This disconnect between the belief that the management of the Nile is effective while simultaneously also not providing sufficient transparency or procedural rights is confusing and does not provide a clear insight into the vision.

iii. *Cooperative Framework Agreement*

The experts and decision makers felt that international legal principles played an influential role in structuring the governance of the Nile River Basin (Experts & Decision-Makers Survey, Question 12) and approximately half, 63.6%, believed that previous agreements in the region was also relied upon in the current governance framework. (Experts & Decision-Makers Survey, Question 13).

The respondents did not have a clear stance on the adequacy of the notification system within the CFA (Part II, Article 8). 45.5% believed that the notification system could prevent unilateral decisions by States, 36.4% believed it would not, and 18.2% were unsure. (Experts & Decision-Makers Survey, Question 28).

Nearly all the experts and decision makers believed that the principle of public participation was either fairly reflected or very well reflected in the provisions of the Cooperative Framework Agreement. (Experts & Decision-Makers Survey, Question 18).

Most of the experts and decision-makers, 81.8%, believed that the CFA should become the governing document that repudiates all previous agreements. Only 9.1% believed that the CFA should reaffirm the commitments from previous agreements. (Experts & Decision-Makers Survey, Question 15).

It appears from these responses that the decision makers in Burundi believe that the Cooperative Framework Agreement should be ratified and become the governing instrument in the region. This group viewed the CFA as providing sufficient procedural rights and inclusiveness protections.

b. Local Authorities & Actors

i. *Rules and Principles*

This group of stakeholders was not very familiar with the practices of other transboundary basins. Only 2.1% felt they were very familiar with how other basins formulated management plans but most, 66%, felt that they were not familiar and 31.9% stated that they were somewhat familiar. (Local Authorities & Actors Survey, Question 12).

Nearly all local authorities and actors, 80.9%, believe that both upstream and downstream States owe a duty of care towards one another. (Local Authorities & Actors Survey, Question 13). Similarly a high percentage, 85.1%, believes that public and civil society organizations should be involved or represented within the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

As such, it seems that there is a gap of information wherein local authorities would like to gain a better and more thorough understanding of rules and principles of governance. This group favored multi-stakeholder involvement in decision making and advocated for a duty of care by all users.

ii. *Current Governance Framework*

There seems to be no resounding belief on the current governance framework of the Nile River amongst the local authorities and actors. This may be attributed, in part, to the disconnect between decisions made by national government officials with little to no consultation at a local level. For instance, most, 71.1% stated that the governance structure

was not inclusive (Local Authorities & Actors Survey, Question 10) and nearly all, 89.4%, believed that there was not enough representation by the public of civil society organizations during the decision-making process. (Local Authorities & Actors Survey, Question 17).

A small percentage of local authorities believe that the current administration of the Nile River Basin is effective (21.3%), others think the structure is either ineffective or adds no value (44.7%), and a third are unsure about how to describe it (34%). (Local Authorities & Actors Survey, Question 8).

Only a small group believed that the present system was transparent (12.8%) whereas half believed that it was not transparent (53.2%) and others were unsure (34%). (Local Authorities & Actors Survey, Question 9). Again, only a fraction of the respondents, 6.4%, felt that the current framework provided sufficient procedural rights. (Local Authorities & Actors Survey, Question 11).

Most of the respondents believed that swamps and lakes, specifically Rweru Lake, Kibira National Park, and the Akagera River were the environmental jewels in Burundi. (Local Authorities & Actors Survey, Question 4). The jewels that were selected either flowed into the Nile River or helped to regulate the climate or protect against erosion in the Nile Basin. (Local Authorities & Actors Survey, Question 5). The group was more concerned about dryness, deforestation, over-exploitation, and desertification adversely impacting their jewel and the Nile River. (Local Authorities & Actors Survey, Question 6). Thus, local authorities were searching for governance structure that was targeted towards these issues.

iii. *Cooperative Framework Agreement*

In Burundi, the respondents' responses allude to the fact that there needs to be further efforts to build capacity and raise awareness. Many were unfamiliar with the provisions of the Cooperative Framework Agreement and other previous agreements in the region that address the Nile River Basin.

Of the 46 respondents, 76.1% were not aware of any previous agreements in the Basin that dealt with the Nile River Basin. (Local Authorities & Actors Survey, Question 14). Similarly, 67.4% were not familiar with the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

Most of the local authorities and actors either had not reviewed the CFA, 31.9%, or did not have access to the document, 46.8%. (Local Authorities & Actors Survey, Question 18). This lack of awareness and familiarity with the document is apparent because only 2.2% believed that they thoroughly understood the Cooperative Framework Agreement and its provision while everyone else believed they did not have a thorough grasp of it. (Local Authorities & Actors Survey, Question 19).

Only a few of the respondents, 4.4%, believed that the CFA should reaffirm the commitments of previous agreements. A third, 37.8%, was not sure how the CFA should align with previous agreements and 57.8% believed that the CFA should become the governing document that repudiates all previous agreements. (Local Authorities & Actors Survey, Question 20). Most, 95.7% believed that the CFA was either useful or very useful in guaranteeing an equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

There was a high percentage of uncertainty, 40.4%, as to whether the governments had provided sufficient space for dialogue between stakeholders in the CFA structure. 21.3% believed that there was enough space for dialogue whereas 38.3% believed there was not enough space. (Local Authorities & Actors Survey, Question 24).

c. Local population

i. *Rules and Principles*

Similar to the local authorities and actors, the local population also viewed lakes, swamps, and rivers as the environmental jewel of their community. (Local Population Survey, Question 4). As such, this group was concerned with the prospect of crops reducing, dryness, and desertification. (Local Population Survey, Question 6). As such, the vision of this group was greatly influenced by how to protect swamps and lakes in their community to ensure adequate source of food.

The local population requested further efforts to make information available to their community. This group did not have direct access to many of the primary documents and relied heavily on parties who would come into their community and share information and knowledge.

For instance one respondent said “[a]greements among the riparian countries and rights on the Nile should be available and taught to the local population.” (Local Population Survey, Question 26).

ii. *Current Governance Framework*

The local population showed concern about accessing avenues in which they could meaningfully participate in decisions that would impact their lives and livelihoods.

As most of the respondents, 72.7% were not a member of a civil society organization there needs to be a channel that allows for the expression and reception of ideas from the local population. (Local Population Survey, Question 9). As it currently stands, most of the local population, 86.4%, did not believe that the management of the Nile River Basin had enough representation from civil society organizations and the public. (Local Population Survey, Question 10).

Further, there was concern over the lack of community public hearings on the use of natural resources or prospective projects. 95.5% of the respondents stated that currently there were no public hearings (Local Population Survey, Question 13) and 95.2% said that investors and public authorities do not seek the consent of the local population before implementing projects that have an impact on the natural resources in their region. (Local Population Survey, Question 14).

iii. *Cooperative Framework Agreement*

A high percentage of the people who participated in the survey, 90.9%, were familiar with the CFA. (Local Population Survey, Question 18). They learned about the Agreement mainly through a third party who came into a community and informed them about it. (Local Population Survey, Question 19). 72.7% were aware of whether Burundi was a signatory to the Cooperative Framework Agreement. (Local Population Survey, Question 20).

However, this group was mostly unfamiliar with any other agreement that addressed the Nile River Basin. 61.9% said they did not know of other agreements while 38.1% said they knew of other agreements. (Local Population Survey, Question 15). For instance, 81.8% had not heard about the 1959 treaty between Egypt and Sudan (Local Population Survey, Question 16).

All respondents believed that the CFA would be useful in guaranteeing equity in the Nile River. This group was clearly a proponent of the CFA and believed that the agreement could bring more benefits to themselves and their community.

DEMOCRATIC REPUBLIC OF CONGO

NUMBER OF RESPONDENTS			
	DRC Count	DRC Percent	Total
Experts & Decision Makers	22	14	158
Local Authorities & Actors	20	8	241
Local Population	23	10	233

1. Country Profile

The Democratic Republic of Congo (DRC) is located in the southwestern section of the Nile Basin and straddles the equator. The DRC is the second largest country in Africa and the enormity of its land mass creates problems that are unique to other Nile Basin countries. The Congo River Basin occupies nearly the entire country¹⁷ and the Nile Basin area represents approximately 1% of the surface area.¹⁸ The Congolese Nile Basin also includes Lake Edward, Lake Albert, Semliki River, and Ruwenzori and Bleu Mountains.¹⁹

Congo, an upstream country, is divided into ten provinces and one city-province. Presently there is no overall national strategy for the water sector and a national water law is in the process of being developed. Though French is the official language there are four languages that are considered national languages: Kikongo, Lingala, Tshiluba, and Swahili. Often in rural areas French is not as widely understood as the other national languages. The local population engages in farming and livestock breeding activities.

Politically, Congo has dealt with much internal strife and instability. Most of Congolese Nile Basin areas are ruled by the Bwami structures, with a lifelong term of office. With regards to the governance of the Nile Basin, Congo is heavily involved in the development of the Cooperative Framework Agreement. They are expected to sign onto the CFA²⁰ since they spearheaded the drafting of the Agreement. However, the Environment Minister stated that the Council of Ministers must first decide the matter officially before they can move forward with the CFA.²¹

The commission in charge of water and environment in DRC is handled by the Ministry of Environment at the national level and they represent the DRC government in the issue of

¹⁷ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

¹⁸ DRCNDF National Consultant, Development and Advocacy for Nile Basin Benefit Sharing and Tension Reduction Plans for Lakes Edward and Albert Integrated Fisheries & Water Resources Management Project in DRC, November 2012.

¹⁹ NDF National Coordinator contributed to the Country Profile via email on December 22, 2012.

²⁰ Arsano, Negotiations for a Nile-Cooperative Framework Agreement, Institute for Security Studies – ISS Paper 222, January 2011

²¹ Davison, Congo, Burundi Are Set to Sign Nile River Water Accord Rejected by Egypt, Bloomberg, January 20, 2011. Environment Minister Jose Endundu said, “It depends on the Council of Ministers and at this stage no position has been taken.”

Nile River. The Commission that is tasked with this is NIL CO (Nile-Commission) and they handle all issues that the DRC has regarding the waters of the Nile River.

2. Considerations

One problem in conducting the surveys in Congo was the enormous size of the country. The national coordinator found it difficult to reach the most impacted citizens given the size of the country and the poor points of access to these areas. Further, these areas benefitted greatly from the use of face-to-face meetings since internet was rare and most of the population did not speak English. As such, it was necessary for the coordinators to translate the question into French, transcribe the responses during the meeting, and eventually input the information into the website. (Phone call, November 6, 2012).

The size of the country also created obstacles in accessing decision-makers. Government officials and policy makers are work in the capital, Kinshasa, and do not have the time to adequately review all of the information they receive or interact with the local population. There also does not seem to be enough emphasis by these officials on the importance of the Nile River and the relationship between effective management, the Cooperative Framework Agreement, and the availability of food supply. (Phone call, November 6, 2012).

The main concern of the local population is on the lack of projects in the country. The citizens continuously compare themselves against the other Nile River Basin countries, most specifically Burundi and Ethiopia, and they too want to benefit from power generation projects occurring elsewhere. (Phone call, November 6, 2012).

An issue that the local population stressed was the lack of awareness on Nile Basin initiatives. Further, they stated that the methods in which they did receive information from the available sources was very politicized and biased. (Phone call, November 6, 2012).

In Congo there is no central agency that is responsible for the overall coordination of environment matters. There are no Environmental Impact Assessment (EIA) guidelines, some laws such as the Water Act are still in draft form, marginalized people are not recognized under the constitution, and state control of some mining areas is weak. In general the DRC has relatively weak policy, legal, and institutional frameworks for environmental governance as compared to other Nile riparian countries. (E-mail, December 22, 2012).

3. Results

a. Experts & Decision Makers

i. Rules and Principles

The responses were split as to whether it would be helpful to look at how other transboundary basins structured their legal frameworks. 59.1% believed that this would be helpful and 40.9% did not think the exercise would add value. (Experts & Decision-Makers Survey, Question 11). Nearly all, 95.2%, stated that they were either very familiar or

somewhat familiar with the practices of other basins. (Experts & Decision-Makers Survey, Question 10). Thus, it seems that since an overwhelming number of respondents already had some familiarity with how other transboundary basins organized their legal frameworks, the experts did not seem overly interested in exploring the matter.

Overall, this group overwhelmingly believed (95.5%) that signing and ratifying the 1997 United Nations Watercourses Convention and the Cooperative Framework Agreement would be very useful in the governance of the Nile in the Democratic Republic of Congo. (Experts & Decision-Makers Survey, Question 35). Only a small percentage, 35%, believed that the duty to notify could not stop the development activities planned by a government. Meanwhile 55% believed that the notification duty could have the power to stop government plans. (Experts & Decision-Makers Survey, Question 29).

ii. Current Governance Framework

Experts and decision makers had a very favorable view of the current governance structure in the Nile Basin.

The respondents all believed that civil society members had the capacity to promote cooperation in the River Basin and contribute to management strategies. (Experts & Decision-Makers Survey, Question 32).

Half believed that the current framework of governance on the Nile River Basin is effective (Experts & Decision-Makers Survey, Question 6); half believed it is inclusive (Experts & Decision-Makers Survey, Question 7); half that it is transparent (Experts & Decision-Makers Survey, Question 8); and half believed that the framework provides sufficient procedural rights. (Experts & Decision-Makers Survey, Question 9). This optimistic view of the governance framework overlooks some institutional

iii. Cooperative Framework Agreement

A high majority, 86.4%, also shared the belief that international legal principles played an influential role in the governance of the Nile Basin. (Experts & Decision-Makers Survey, Question 12). Similarly, 85.7% felt that previous agreements in the region played a significant role in formulating the governance structure in the Nile River Basin. (Experts & Decision-Makers Survey, Question 13).

Most experts, 95.5%, also described their knowledge and understanding of the Cooperative Framework Agreement as either fair or extensive. (Experts & Decision-Makers Survey, Question 14). Most experts and decision-makers, 90.5%, also believed that public participation was reflected sufficiently within the provisions of the CFA. (Experts & Decision-Makers Survey, Question 18). Nearly all, 90.5%, believed that the notification arrangement within Article 8 of the CFA was also an adequate system to prevent unilateral decisions by states. (Experts & Decision-Makers Survey, Question 28).

A high percentage, 86.4%, believed that the Cooperative Framework Agreement should become the governing document in the region that repudiates all previous agreements. (Experts & Decision-Makers Survey, Question 15). This might be attributed to the belief that all the respondents held wherein they believed that the CFA would be either useful or very useful in guaranteeing an equitable and reasonable utilization of the Nile waters.

b. Local Authorities & Actors

i. Rules and Principles

The local authorities and actors consistently held similar views and understandings of principles that would impact the governance of the Nile River Basin. They believed in shared rights and obligations by upstream and downstream countries and believed in an inclusive decision making process. Perhaps their point of view was influenced by their knowledge of the management practices of transboundary basins in other regions.

All responders stated that they were somewhat familiar with the practices of other transboundary basins. (Local Authorities & Actors Survey, Question 12). Most, 90% believed that both upstream and downstream states owned a duty of care towards one another. (Local Authorities & Actors Survey, Question 13).

This group was a strong proponent of utilizing a management structure that allowed a wide group of stakeholders to share their opinions and concerns. Nearly all, 95%, believed that the public and civil society organizations should be involved within the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

ii. Current Governance Framework

The Local authorities who participated in the survey were dissatisfied with the current governance framework in the Nile River Basin.

Everyone who responded, 100%, felt that the present administration of the Nile River Basin either had no value or was ineffective. (Local Authorities & Actors Survey, Question 8). None believe that the current framework of governance was inclusive (Local Authorities & Actors Survey, Question 10); none believed that the framework was transparent (Local Authorities & Actors Survey, Question 9); and none believed that there was sufficient procedural rights in place. (Local Authorities & Actors Survey, Question 11). This high level of displeasure in the current governance framework by the local authorities cannot be beneficial in implementing policy measures and should be addressed promptly.

Local authorities in the DRC believed the Semliki River, Lake Edward, and Lake Albert, and Virunga Park were all environmental jewels in their community. (Local Authorities & Actors Survey, Question 4). This group believed that climate change, mismanagement of natural resources, and poverty were all threats to these jewels. (Local Authorities & Actors Survey, Question 6). In sum, this group felt that the jewels in their community were directly impacted by the management of the Nile River and as such they wanted a governance structure that was more inclusive and transparent and able to combat the dangers their community faced.

iii. Cooperative Framework Agreement

The local authorities were fairly knowledgeable about the CFA and prior agreements and were proponents of ratifying the Agreement.

Most, 75%, were aware of other prior agreements that concerned the Nile River Basin (Local Authorities & Actors Survey, Question 14) and 90% were aware of the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

About half, 57.9%, had reviewed the Cooperative Framework Agreement (Local Authorities & Actors Survey, Question 18) and nearly all, 95%, said they had a fair understanding of the Agreement and its provisions. (Local Authorities & Actors Survey, Question 19). All respondents, 100%, believed that the CFA should become the governing document in the basin and previous agreements should be repealed.

Local authorities and actors were in favor of the CFA, 95%, because they viewed the agreement as a useful tool in guaranteeing equitable and reasonable utilization of the Nile River waters. (Local Authorities & Actors Survey, Question 21). 95% believed that the public and civil society organizations should be incorporated within the Nile River Basin Commission. (Local Authorities & Actors Survey, Question 23).

c. Local Population

i. Rules and Principles

Efforts need to be made to ensure that a higher percentage of the local Congolese population understands their rights. Half of the local population in Congo, 56.5%, believed that they understood their rights and obligations regarding their use of the Nile River Basin. However, there was a significant number of respondents, 43.5%, that did not understand their rights. (Local Population Survey, Question 22). This lack of knowledge can result in the local community feeling disenfranchised and being reluctant to get involved in community building projects that proceed without allowing for their full and active engagement.

The local population, similar to the local authorities, believes that Lake Edward, Lake Albert, and Virunga Park are the environmental jewels in their community. (Local Population Survey, Question 4). These natural resources are important in Congo because it provides water for domestic use and agriculture use, is a source for fishing, and a mode of transportation. (Local Population Survey, Question 5). However, these respondents were very concerned that climate change, instability in the country, and poverty would endanger the welfare of the environmental jewel and impact their ability to subsist of their land. (Local Population Survey, Question 6).

ii. Current Governance Framework

The Congolese local population expressed dissatisfaction about not being able to participate fully in decisions that impact their community. This section of the population was involved in organized groups, such as CSOs, that attempt to represent their needs but did not feel that this membership enabled them to have their voices heard.

There was concern about the lack of community public hearings regarding potential projects (Local Population Survey, Question 13) and there was discontent over the fact that investors and public authorities did not seek consent from the community before implementing projects that had an impact on the natural resources in their community. (Local Population Survey, Question 14).

Half of the local population surveyed is a member of a civil society organization (Local Population Survey, Question 9) but most, 65.2% did not believe that the current management of the Basin provided enough opportunities for civil society organizations or the

public. (Local Population Survey, Question 10). This demonstrates the existence of a gap between the local population and other levels of governance.

iii. Cooperative Framework Agreement

There is not enough information, currently, on the legal mechanisms in the Nile River Basin. The local population also lacks information on the status of the Cooperative Framework Agreement and its provisions.

Most of the local population, 69.6%, was not familiar with any other agreements that are associated with the management of the Nile River Basin. (Local Population Survey, Question 15). Many, 59.1%, did not know if Congo had signed onto the CFA (Local Population Survey, Question 20) but 59.1% believed that the agreement would be useful in securing equity in the Basin. (Local Population Survey, Question 24). On the other hand, 40.9% believed that the Agreement would be useless in this regard. This wide discrepancy might be resolved by providing the local population with more information regarding the Agreement and its impact on the community.

Half, 54.5%, of the respondents had heard about the Cooperative Framework Agreement (Local Population Survey, Question 18). Those that were aware of the Agreement were informed through the actions of a third party actor who came into their community to explain the contents or brief them about the document. (Local Population Survey, Question 19). Relying on a third party to convey the entirety of the information in a prompt and accurate manner is not sufficient. There should be efforts to use several channels to help spread news and information on the management of the Nile, potential projects, and opportunities for the locals to participate.

EGYPT

NUMBER OF RESPONDENTS			
	Egypt Count	Egypt Percent	Total
Experts & Decision Makers	33	21	158
Local Authorities & Actors	35	15	241
Local Population	22	9	233

1. Country Profile

The Arab Republic of Egypt is a transcontinental country situated mainly within North Africa, with its Sinai Peninsula forming a land bridge in Southwest Asia. Covering an area of about 1,010,000 square kilometers, Egypt is bordered by the Mediterranean Sea to the north, the Red Sea to the east, Sudan to the south and Libya to the west.²²

Egypt is one of the most populous countries in Africa and the Middle East, and the 15th most populated in the world. The great majority of its over 82 million people live near the banks of the Nile River, an area of about 40,000 square kilometers, where the only arable land is found. The large regions of the Sahara Desert, which constitute most of Egypt's territory, are sparsely inhabited. About half of Egypt's residents live in urban areas, with most spread across the densely populated centers of greater Cairo, Alexandria and other major cities in the Nile Delta.

The White Nile contributes about 14% of the Nile waters reaching Egypt, while the major share (86%) is contributed by the Blue Nile. The Nile River serves as the only source of water to Egypt and the greater part of Sudan. The Nile River interconnects the eleven riparian countries, despite their historical, cultural, political, social and economic differences.

For a long time, however, there have been debates over the use of the water between lower riparian countries (Egypt and Sudan) and upper riparian countries, the rest of the basin countries. Their debate stemmed from two treaties signed in 1929 and in 1959 between Egypt and Sudan. The first treaty gave Egypt the right to use the Nile water, despite it not contributing to the River. This treaty was later amended in 1959, signed by Egypt and Sudan, which also reaffirmed Egypt's share access to the Nile. The amended treaty stipulates that the average annual Nile flow would be about 84bm³ of which 10 bm³ is expected to be lost through evaporation and seepage. Egypt and Sudan would take 75% (55.5bm³) and 25% (18.5 bm³) of the remaining water respectively. Egypt has continuously sought to reaffirm 'historical or acquired right' in order to allow Egypt to maintain the existing flow regime. The country also views water rights as a national security issue. Therefore, Egypt has resisted signing onto the CFA till now for reaching an agreeable statement for this particular issue.

Main uses for the Nile water in Egypt include agriculture, domestic and industrial supplies, navigation, and tourism. The national water policy has been updated regularly since its

²² The national coordinator contributed to the Country Profile via email on December 24, 2012.

inception in 1975 and the country remains vested in promoting and defending their interests in the distribution and governance of the Nile River Basin.

The official language in Egypt is Arabic and English is also to some extent understood. The country is divided into 27 governorates and in recent times the country has faced political turmoil.

After the fall of Egyptian regime between January and February 2011, many aspects of national government were changed. The Ministry of Water Resources and Irrigation “MWRI” conducted National Dialogues to present the situation of the prior agreements on the Nile River in order to understand the present points of contention. These initiatives were followed by many higher level efforts to narrow the gap between the Nile basin countries especially East Nile to reach the way for Nile cooperation through applying the benefits sharing and win-win approaches.

The Cooperative Framework Agreement is not locally accepted and was a considered a confidential document until 2010. NDF and Civil Society Organizations struggled with the government in order to be involved in discussion and conflict resolution since mid-2010. However, the Ministry of Water Resources and Irrigation “MWRI” and the Nile Water Sector “NWS” refused to meet or discuss the issue of CFA and Nile Cooperation . On the other hand, the issue of the Agreement and dam construction in other Basin countries was considered polarizing and there was no room allowed for open dialogue. In this context, getting responses from ministers and high-level policy makers was difficult because most chose not to participate.

2. Considerations

The NDF is an umbrella entity that has many local partners in the form of Local Discourse Forums (LDF). The local discourse forums are meant to be in communities throughout the country and capture the visions and reflect the concerns of their respective area. In total there are approximately 17 LDFs and they form an interconnected network that work together on water management issues.²³

The Egyptian NDF has made efforts to resolve conflicts in the East Nile, the tensest sub-region. For instance, the NDF participated in the historical Egyptian Public Diplomacy visit to Addis in 2011 that helped to transform the Egyptian-Ethiopian relationship to the best status in 60 years.

This trip was the spark for opening new chapter between the east Nile countries, not only Egypt and Ethiopia but Sudan and South Sudan as well. This was followed by two exchange visits in Minia-Egypt and Bahr Dar-Ethiopia at which varied representatives from the four east Nile countries were attended to share and explore common ethical, cultural, traditions and technical pillars between east Nile countries.

The Egyptian NDF conducted several meetings with decision makers and parliamentarians to enhance the Nile Cooperation in the Nile Basin. Furthermore, the NDF conducted

²³ This section was contributed by the national focal point via email on Dec. 24, 2012.

meetings with members of the new constitution committee to add one or more items in the new constitution that links Egypt to the Nile basin in order to enhance Nile Cooperation.

As a result of these extensive efforts, the Parliament established a separate committee for African Affairs and Nile Cooperation before it was decomposed. The new constitution has three items regarding:

- Egypt as an African country with fixed duties to Nile basin,
- Nile Cooperation is an essential part of the national and regional actions and;
- Environment and natural resources management are dealt as national security issues.

The Referendum of the new constitution was conducted on two rounds Dec. 15th and 22nd 2012 and the unofficial results of approval reached 64% and officially will be announced soon. Thus, Nile cooperation and the Nile basin could be included within the constitution shortly.

3. Results

a. Experts & Decision Makers

i. Rules and Principles

Experts and decision makers in Egypt are well acquainted with international principles and concepts. Most of the experts and decision makers, 81.9%, said that they were familiar with the practices of other transboundary basins. (Experts & Decision-Makers Survey, Question 10). 72.7% of them also believed that learning about how other transboundary basins structure their legal framework out be beneficial in the Nile Basin context. (Experts & Decision-Makers Survey, Question 11). The desire and interest in the governance structure of transboundary basins in other areas by decision makers is very positive and should be continuously cultivated.

63.3% of experts did not believe that the duty to notify had the ability to thwart development activities planned by the Government. (Experts & Decision-Makers Survey, Question 29). The respondents also viewed the prospects of signing both the Cooperative Framework Agreement and the 1997 United Nations Watercourses Convention as favorable. 33.3% believe it would be very useful, 33.3% believed it would be useful, 11.1% thought it would have no impact, and 22.2% believe it would be a negative development. (Experts & Decision-Makers Survey, Question 34). Despite these favorable responses, Egypt's official position has been hesitant to sign onto the Cooperative Framework Agreement. Of those who were opposed to signing both documents, the main reason was the impact that upstream projects would have on Egypt. For instance, one respondent said:

“[The] Egyptian position not to sign the United Nations Convention ha[s] a good attitude and give[s] Egypt plenty of time to evaluate their positions for the CFA. [T]he Egyptian position is in line with the legal norms and principles, it's not intransigence in the sphere of international law for rivers that gives downstream countries special care [] with articles 5,6 of the Rules of Helsinki, and the provisions of international justice in particular the principle of non-

harming. [The] International Court of Justice ruling in February 2011 in the case of the Uruguay River between Uruguay and Argentina- as well as the Egyptian position, combined with the necessity of constructive cooperation which would provide thousands of billions of lost water.”
(Experts & Decision-Makers Survey, Question 35).

In general the experts were most concerned with promoting an open dialogue with other basin states that was based on neutrality and consultation. This position by individual decision-makers contrasts the official position of the government and should be explored further.

ii. *Current Governance Framework*

Experts and decision makers did not view the current governance framework for the Nile River in a favorable light. 66.7% of the respondents believed that the structure was not inclusive (Experts & Decision-Makers Survey, Question 7); 78.8% believed that it was not transparent (Experts & Decision-Makers Survey, Question 8); and 66.7% stated that there was insufficient procedural rights. (Experts & Decision-Makers Survey, Question 9). Overall half, 51.5%, believed that the current governance situation is ineffective and 42.4% said it was somewhat effective structure. (Experts & Decision-Makers Survey, Question 6).

Most experts, 85.2%, stated that in their opinion CSO members had the capacity to promote Nile Basin Cooperative and contribute to the management strategies. (Experts & Decision-Makers Survey, Question 32). This positive outlook on the role of civil society members overlooks the inefficiencies that the current governance structure of the Nile River. Effective governance in the Nile River Basin should incorporate procedural rights and allow for CSO to influence management policies.

iii. *Cooperative Framework Agreement*

It is vital that experts and decision-makers, those who have primarily tasked with creating national policies, have a thorough understanding of the development and components of the Cooperative Framework Agreement.

78.8% of experts believe that international legal principles were influential in designing the governance structure of the Nile River Basin. (Experts & Decision-Makers Survey, Question 12) and 84.8% believe that previous agreements in the Basin influenced the governance structure in the Nile River. (Experts & Decision-Makers Survey, Question 13). Nearly all, 90.6%, believed that they understood the CFA and its provisions. (Experts & Decision-Makers Survey, Question 14).

Egypt, as a downstream country, has a different perspective on the role that previous agreements should play in the Cooperative Framework Agreement. A significant number of respondents, 84.4%, believed that the CFA should reaffirm the commitments from previous agreements. Only 6.3% believed that the CFA should repudiate the previous agreements that governed the region. (Experts & Decision-Makers Survey, Question 15).

The experts and decision makers were positive about the role that the CFA could play in the distribution and allocation of the Nile waters. For instance, 78.1% believed that the

Agreement could be useful in guaranteeing equitable and reasonable utilization of the waters. (Experts & Decision-Makers Survey, Question 17). Half, 50%, believed that the notification provision in Article 8 of the CFA would not be able to prevent unilateral decisions by States. A smaller group, 33.3%, believed that the notification requirement to exchange information regarding planned measures would prevent independent decisions. (Experts & Decision-Makers Survey, Question 28). Given this positive outlook on how the CFA would impact Egypt, there seems to be support for its ratification.

There was no clear viewpoint on the integration of the public participation principle within the CFA. 31.3% believed public participation was very well reflected, 34.4% believed that the principle was fairly reflected, 28.1% believed that the principle was poorly reflected, and 6.3% believed it was not reflected at all. (Experts & Decision-Makers Survey, Question 18).

b. Local Authorities & Actors

i. Rules and Principles

The local authorities and actors were generally from local associations like the El-Sadek Charity association, the Dakhliya Trade union, and the local People's Council from the Bahaira governorate. (Local Authorities & Actors Survey, Question 2). This group of stakeholders knew about transboundary basins in other regions and believed that it is important to provide space for the public and CSO within the governance structure of Nile River management.

Most local authorities and actors, 65.7%, were familiar with the practices of other transboundary basins. (Local Authorities & Actors Survey, Question 12). The same percentage, 65.7%, believed that both upstream and downstream States owed a duty of care to the other while 14.3% believed that there was no obligation by either party. (Local Authorities & Actors Survey, Question 13). Almost all of the respondents, 97.1%, believed that the public and civil society organization should be represented in the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23). The group of stakeholders, thus, was composed by proponents of having a multi-stakeholder approach to decision making within the Basin.

ii. Current Governance Framework

The local authorities believed that the environmental jewels in their community were related to agriculture and livestock. (Local Authorities & Actors Survey, Question 4). Further, these jewels are inextricably linked to the basin because they depend on the quality and flow of the Nile River. (Local Authorities & Actors Survey, Question 5). However, the local actors were concerned about the impact that upstream project will have on Egypt's share of the Nile water and the threat of water shortage. (Local Authorities & Actors Survey, Question 6). The local actors, thus, want a governance structure that is capable of dealing with these concerns while also securing rights for the local population.

The stakeholders did not have a uniform view on the state of water governance in the Nile River Basin region. 40% believed that it was an effective system, 11.4% believed that it was neutral, 17.1% believed it was effective, and 31.4% were not sure. (Local Authorities & Actors Survey, Question 8). Only a small percent, 11.4%, believed that the governance situation was transparent, 31.4% were not sure, and the bulk believed that the structure was

not transparent. (Local Authorities & Actors Survey, Question 9). 60% believed that the framework was not inclusive (Local Authorities & Actors Survey, Question 10) and 57.1% believed that the framework did not provide sufficient procedural rights for the public. (Local Authorities & Actors Survey, Question 11). The wide variety of responses should be addressed.

Nearly all, 91.2%, of the local actors believed that there was not enough representation by the public and civil society organizations during the decision-making process. (Local Authorities & Actors Survey, Question 17). Effective governance includes guaranteeing rights to participate while also providing access to the decision-making process. In Egypt, even though there was no clear consensus on the procedural rights that were offered in the governance structure, the lack of representation during the decision-making process is also reflective of a weakened governance framework.

iii. *Cooperative Framework Agreement*

Even though Egypt is vested in the outcome of the Cooperative Framework Agreement not many of the local authorities have reviewed the provisions first hand. Given the importance of this Agreement, it is vital that the provisions be widely accessible and understood by all level of stakeholders.

Only 26.5% had reviewed the document while 47.1% had not and 26.5% did not have access to the Agreement. (Local Authorities & Actors Survey, Question 18). Not many of the local actors had reviewed the Cooperative Framework Agreement and this lack of personal review generally means that their opinions are formed through third party sources.

Most respondent, 73.5%, were familiar with previous agreements that dealt with Nile River Basin (Local Authorities & Actors Survey, Question 14) and 71.4% were aware of the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

None of the respondents believed that the CFA should repudiate prior agreements in the region. In fact, 73.5% believed that the CFA should reaffirm previous commitments and 26.5% were unsure about how the CFA should align with the previous agreements. (Local Authorities & Actors Survey, Question 20). However, 76.8% believed that the CFA could play an important task in guaranteeing an equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

The local actors also expressed dissatisfaction with the level of dialogue between stakeholders. 64.7% believed that the CFA structure did not provide enough space for consultation between the groups of stakeholders. (Local Authorities & Actors Survey, Question 24).

Overall it seems that the local actors and authorities believed that there were beneficial terms in the CFA that could be helpful for Egypt. However, there are points of contention as to the meaning of the Agreement's terms and its impact on Egypt and there is a need for more information.

c. Local Population

i. *Rules and Principles*

The local population views livestock, agriculture, and water as the environmental jewels of their community (Local Population Survey, Question 4) and believe that the Nile River is their most important resource. (Local Population Survey, Question 5). However, this group believes that a declining share of water, high evaporation rates, and outdated irrigation methods are adversely affecting the waters in Egypt. (Local Population Survey, Question 6).

Nearly all of the local population, 95.2%, believed that they understand their rights and obligations regarding their use of water from the Nile River Basin. (Local Population Survey, Question 22).

ii. *Current Governance Framework*

Nearly all of the Egyptian local population, 90.5%, is a member of a civil society organization but a high number of these people, 95.2%, believe that the current management of the Nile River Basin provides for enough representation from civil society organizations and the public. (Local Population Survey, Question 10). However, despite the large percentage that believed that was sufficient representation, the respondents were unable to cite instances of access to decision-making events. Most, 70%, however did not feel that they had an opportunity to talk about the concerns or ask questions about the management of the Nile River Basin. (Local Population Survey, Question 11).

The local population expressed that community public hearings did not occur regarding the use of natural resources and potential projects in the community. (Local Population Survey, Question 13). All, 100%, of the respondents also stated that investors and public authorities did not seek the consent of the community before implementing projects that would have an impact on their natural resources. (Local Population Survey, Question 14). This lack of participation mechanism is indicative of a governance structure that the community does not fully support.

iii. *Cooperative Framework Agreement*

Most of the local population, 76.2%, was unfamiliar with prior agreements that concerned the Nile River Basin (Local Population Survey, Question 15) and 85% also stated that they were not familiar with the 1959 treaty between Egypt and Sudan. There should be more awareness by this group of stakeholders for a treaty that speaks directly to Egypt's water allocation and distribution rights. Despite the unfamiliarity with the prior agreement, 81% of the respondents have heard about the Cooperative Framework Agreement. (Local Population Survey, Question 18).

70% of these stakeholders believed that the CFA would be useful in guaranteeing equity in the Nile. (Local Population Survey, Question 24). The respondents also knew about Egypt's stance on the Cooperative Framework Agreement and whether or not the country was a signatory of the Agreement. (Local Population Survey, Question 20).

ETHIOPIA

NUMBER OF RESPONDENTS			
	Ethiopia Count	Ethiopia Percent	Total
Experts & Decision Makers	26	16	158
Local Authorities & Actors	37	15	241
Local Population	30	13	233

1. Country Profile

Ethiopia, an upstream country, is located in the Horn of Africa and is the most populous landlocked country in the world. Ethiopia is one of the main sources of the Nile River and also to other rivers that flow to the Horn and North Africa. Ethiopia signed the Cooperative Framework Agreement on the first possible day, May 14, 2010.²⁴

In recent years Ethiopia has also explored the possibility of hydropower construction projects. These dam constructions are meant to address problems of poverty and food shortages but the projects have grown opposition from downstream countries, particularly Egypt. The latest project, the Grand Ethiopian Renaissance Hydro Electric Dam is located on the Abay River and is located approximately 750 kilometers from Addis Ababa. The dam will generate 6,000 megawatts of electricity and, if completed, will become one of the largest dams in the world.

The official language in Ethiopia is Amharic but many local languages are used in different regions around the country. The Federal Water Resources Management Policy was ratified in 1999 and its main objective is to optimize the use of available natural resources.

Ethiopia now has a federal state structure consisting of a federal government and nine ethnically-based regional governments which are further divided into sixty-eight zones, 550 districts (woredas) and six special woredas, and several neighborhoods (kebels). In addition to nine regional states, Ethiopia has two chartered cities (Addis Ababa and Dire Dawa) which serve as administrative entities. The nine regional states and two chartered cities in alphabetical order are: Addis Ababa, Afar, Amhara, Benishangul-Gumuz, Dire Dawa, Gambella, Harari, Oromiya, Somali, Southern Nations Nationalities and People's Region, and Tigray.

Although Ethiopia's water resource is large, very little of it has been developed for agriculture, hydropower, industry, water supply and other purposes. Out of the 3.7 million potential irrigable lands, to date, only about 160, 000 ha (about 4%) has been developed. Out of the hydro-electric potential of about 139,250 Gigawatt hours (GWh) per year, only 1.6% is utilized so far. National coverage of potable water supply stood at 47% by 2005 while coverage of sanitation services is only 30.63%. There is also a wide divergence in the

²⁴ The national coordinator for Ethiopia contributed to this section via email on December 22, 2012.

water supply coverage between urban (78%) and rural (41.16%) areas and sanitation for urban is 80.18% while for rural it is 21.34%.

2. Considerations

The Ethiopian National Discourse Forum (EthNDF) completed the Stakeholder mapping by identifying all individuals, groups and organizations and institutions that have a stake in the Nile River. Then the stakeholders were classified into sectoral categories (government, CSOs/NGOs, Media, Academic and Research institutions, etc.). They were further categorized according to a primary – secondary, internal-external grouping. Finally, the stakeholders were put onto power-interest relations matrix to identify key stakeholders.

The Ethiopian National Discourse Forum (EthNDF) dispatched the survey questionnaires to over a hundred stakeholders in the first category which included experts, media houses, decision-makers, and negotiators, through emails. Out of those dispatched only 26 survey questionnaires were filled and returned. This happened after several follow-up attempts such as sending reminder emails, and making frequent telephone calls. The reasons given from these stakeholders were that some said they were too busy to fill the survey questions; others said that they were not well versed with the issue, etc.

The EthNDF also dispatched questionnaires to local authorities and actors as well as local population. The survey questionnaires to these category of stakeholders were supported with face to face meetings which were in fact very beneficial in getting information about NBD but also very time consuming. Totally, 67 questionnaires were filled and returned by this category of stakeholders.

Generally, communities in Ethiopia have very high interest in the issues of the Nile. They feel that the resource is common resource of all the riparian countries. However, they have very little knowledge on how the resource is being governed currently. They thus want to have new sort of governance put in place in the Nile under the current CFA which allows for all countries to have a voice in the discussions. They envisage that this is the only way to peacefully and equitably develop, manage, and utilize the Nile.

3. Results

a. Experts & Decision Makers

i. *Rules and Principles*

Experts and decision makers felt strongly about aligning the management of the Nile River Basin with international principles. This group believed that peaceful and sustainable use of the Nile waters were intertwined with having a clear set of rules and principles that all basin states could adhere to.

76.9% of the experts were familiar with the practices of other transboundary basins (Experts & Decision-Makers Survey, Question 10) and 80.8% believed that that examining the practices of other transboundary basins would be helpful in structuring the legal framework in the Nile River Basin. (Experts & Decision-Makers Survey, Question 11).

Nearly all, 95.4%, believed that Ethiopia signing both the Cooperative Framework Agreement and the 1997 UN Watercourses Convention would be useful. (Experts & Decision-Makers Survey, Question 34). The respondents believed that signing and ratifying both documents would provide guidance on how to govern the shared water in the management and would better the relationship between all basin countries. (Experts & Decision-Makers Survey, Question 35). One respondent stated “It will be a step in the right direction in respecting the country's international and regional obligations. It will also ensure equitable utilization of transboundary watercourses of the country.” (Experts & Decision-Makers Survey, Question 35).

ii. *Current Governance Framework*

Ethiopian experts viewed the current governance situation in the Nile River Basin positively. 65.4% believed that the structure was effective and 23.1% believed that it was ineffective. (Experts & Decision-Makers Survey, Question 6). However, when they discussed the factors of an effective governance environment, there was less support. For instance, 42.3% believed that the framework is inclusive (Experts & Decision-Makers Survey, Question 7); 38.5% believed that it was transparent (Experts & Decision-Makers Survey, Question 8); and 28% believed that the governance structure had sufficient procedural rights. (Experts & Decision-Makers Survey, Question 9).

iii. *Cooperative Framework Agreement*

Most of the respondents believed that the Cooperative Framework Agreement could be an important instrument in helping provide equity in the use of Nile waters and promote improved relationships amongst all of the Nile River Basin countries.

65.4% of the experts believed that international legal principles influenced the structure of the governance of the Nile River Basin. (Experts & Decision-Makers Survey, Question 12). Half, 50%, believed that prior agreements in the region influenced Nile River Basin's governance while on the other hand 46.2% believed it was not influential. (Experts & Decision-Makers Survey, Question 13).

80% of the experts believed that they understand the Cooperative Framework Agreement (Experts & Decision-Makers Survey, Question 14) and 80% believed that the CFA should repudiate all previous agreements and become the governing document in the region. (Experts & Decision-Makers Survey, Question 15).

All respondents believed that the CFA would be a useful instrument in guaranteeing an equitable and reasonable utilization of the Nile waters (Experts & Decision-Makers Survey, Question 35). There was no consensus as to whether public participation as reflected with the CFA. 60% believed that the CFA did reflect the principle; 32 believed it was poorly reflected; and 8% believed that the principle was not reflected at all. (Experts & Decision-Makers Survey, Question 18).

b. Local Authorities & Actors

i. *Rules and Principles*

The local authorities and actors did not have a resounding familiarity with the practices of other transboundary basins. 51.4% were unfamiliar with the practices of other

transboundary basins while 48.6% had some level of familiarity with it. (Local Authorities & Actors Survey, Question 12). 81.1% believed that both the upstream and downstream State owned a duty of care to one another. (Local Authorities & Actors Survey, Question 13).

Nearly all, 94.6%, believed that civil society organizations and the public should be represented within the structure of the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

There is an opportunity here to inform the experts and decision makers about the structures and rules that transboundary basins in other regions utilize.

ii. Current Governance Framework

The environmental jewel for the local authorities and actors are the mountains of Adwa, Lake Tana, Abbay River, agriculture, and the Zegeye forests. (Local Authorities & Actors Survey, Question 4). These jewels are important to the community because they all are all parts of an ecosystem and there are inter-linkages between the different jewels. The aim of the governance structure in Ethiopia and in the Nile River Basin generally should protect these jewels and enable the users to optimize the uses.

However, most local actors, 62.2%, believe that the water governance in the Nile River Basin region is ineffective and only 21.6% believe that the state of the governance was effective. (Local Authorities & Actors Survey, Question 8). This lack of faith in the current governance framework is demonstrated by the stakeholders' opinions on the governance factors. For instance, only 37.8% believe that the current framework is transparent (Local Authorities & Actors Survey, Question 9); only 35.1% believe that the framework is inclusive (Local Authorities & Actors Survey, Question 10); and 38.9% believe that the governance structure provides sufficient procedural rights. (Local Authorities & Actors Survey, Question 11).

The local actors and stakeholders believe that the public and civil society organizations should be represented during the decision making process. However, 91.9% believed that there was not enough representation by the public into the decision making process. (Local Authorities & Actors Survey, Question 17).

Overall, the local actors and authorities believe that the current governance framework in the basin is ailing and missing necessary components. Public participation and access to the decision making process are in high demand.

iii. Cooperative Framework Agreement

Most of the stakeholders, 83.8%, were familiar with prior agreements that dealt with the Nile River basin. (Local Authorities & Actors Survey, Question 14). For instance, 75.7% were aware of the 1959 treaty between Egypt and Sudan on the management of the Nile Waters (Local Authorities & Actors Survey, Question 15) but only a small number, 5.4%, believed that all the inhabitants of the Basin region were bound by the terms of the 1959 agreement. (Local Authorities & Actors Survey, Question 16).

Only 11.1% of the local actors had an opportunity to review the Cooperative Framework Agreement and 19.4% did not have access to the document. (Local Authorities & Actors Survey, Question 18). 11.1% did not understand the CFA, 33.3% had not reviewed the

Agreement, and only 16.7% stated that they thoroughly understood the Agreement. (Local Authorities & Actors Survey, Question 19).

89.2% of the respondents believe that the CFA should repudiate all previous agreement and become the governing document while 0% believed that the CFA should reaffirm the commitments from the prior agreements. (Local Authorities & Actors Survey, Question 20). All of the local actors believed that the CFA would be an instrument that that could secure equitable and reasonable utilization of the Nile waters in the region. (Local Authorities & Actors Survey, Question 21).

Local actors have not had enough access to become familiar with the CFA and its terms but they firmly believe in the principles of equity and solidarity between the users.

c. Local Population

i. *Rules and Principles*

The local population view Lake Tana, Abbay Falls, forests, agricultural activities, and the Adwa mountains as the environmental jewels of their community in Ethiopia. (Local Population Survey, Question 4). These natural resources are interconnected with the daily lives of the local population and impact their ability to engage in agriculture and livestock. Further, these jewels get water from the Nile which is important since rain fall is not enough to sustain agriculture or livestock. (Local Population Survey, Question 5). For example, one respondent stated, “The environmental Jewel of Nile River is linked in terms of ensuring food security like fishing, irrigation, potable water, energy, livestock, and forestry. Mining and tourism is another link to the Nile River.” (Local Population Survey, Question 5). However, many are concerned about the impact of land degradation, poor agricultural practices, soil erosion, and droughts that are impeding the ability of the population to fully utilize the environmental jewel that is present in the community. (Local Population Survey, Question 6).

Most of the local population stakeholders, 73.3%, stated that they did understand their rights and obligations regarding the use of water from the Nile River Basin.

ii. *Current Governance Framework*

A high percentage of the Ethiopian local populations, 66.7%, are members of a civil society organization, (Local Population Survey, Question 9). However, 93.3% of respondents believed that the current management of the Nile River Basin did not have enough representation from civil society organizations and the public. (Local Population Survey, Question 10). There needs to be more efforts made to integrate CSO into the management strategies since implementation of the management policies cannot be successfully implemented in a community without the support of the local population and the civil society organization.

70% of the respondents said that community public hearings did not occur regarding the use of natural resources and potential projects in the community. (Local Population Survey, Question 13). Further, 86.7% stated that neither investors nor public authorities seek the consent of the community before work begins on implementing projects in their region even if these activities will impact the natural resources. (Local Population Survey, Question 14).

iii. *Cooperative Framework Agreement*

The local population had varying amounts of information regarding legal instruments that were applicable in the basin.

63.3% of the local population was familiar with other agreement that deals with the Nile River Basin and 36.7% was unfamiliar with other agreements in the region. (Local Population Survey, Question 15). A little more than half of the respondents, 56.7%, had heard about the Cooperative Framework Agreement (Local Population Survey, Question 18) and 66.7% were aware of whether Ethiopia was a signatory of the CFA. (Local Population Survey, Question 20). Nearly all, 96.7%, believed that the CFA would help guarantee equity in the distribution of the Nile River waters. (Local Population Survey, Question 24).

KENYA

NUMBER OF RESPONDENTS			
	Kenya Count	Kenya Percent	Total
Experts & Decision Makers	10	6	158
Local Authorities & Actors	17	7	241
Local Population	34	15	233

1. Country Profile

Kenya is an upstream country that lies on the equator and is a signatory of the Cooperative Framework Agreement. The Nile River forms approximately 8 percent of the national area and forms a part of the inflow into Lake Victoria.²⁵ The country is located on the East Coast of Africa, with equator running almost straight through the middle of the country. Ethiopia and Sudan border it to the North; Uganda to the West; Tanzania to the South; Somalia to the north-east; and Indian Ocean to the south-east. In August 2010, Kenya promulgated a new constitution which divided the country into 47 counties that are interdependent and are to be governed by elected governors. Kiswahili and English are the two official languages of the country.²⁶

Swahili and English are the two official languages of the country. Kenya is divided into 47 counties that are interdependent and are governed by elected governors. A National Water Policy was enacted in 1999 to develop and manage the water sector and develop a sustainable financing system for managing water resources. The government is attempting to engage in more poverty alleviation measures and increase the effectiveness of the institutional structures.

Kenya has diverse physical features. These include: vast plains which are home to world famous game parks and reserves, the Great Rift Valley, which runs north to south and whose floor has provided potential for geothermal power generation; Mount Kenya, the second highest mountain in Africa, which is about 5,199m above sea level; Lake Victoria, the largest freshwater lake on the continent, and which supports the fishing industry in the east African region; Lake Nakuru, another tourist attraction because of its flamingoes; Lake Magadi, famous for soda ash; and a number of major rivers, including Tana and Athi, Sondu Miriu, which generate the hydropower resources for the country; Yala, Nzoia and Mara, the major feeders into Lake Victoria.

Kenya is the most developed economy in Eastern Africa with a 2007 Gross Domestic Product (GDP) of approximately USD 27 billion. It is also the economic, commercial and logistical hub of the entire East African region. Kenya's estimated population is 38.6 million. About 16.1 million of the total population resides in the Nile Basin (Approximately 39.7 per cent of the population reside in the Nile Basin. This represents nearly a third of Kenyans whose livelihoods are dependent on the Nile. Notably, this area forms Kenya's bread basket and is the country's strategic source of food security. In recognition of this, the Kenyan

²⁵ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en. Lake Victoria is often considered a source of the Nile,

²⁶ Country profile includes contribution from national coordinator submitted via email on January 3, 2013.

government mandated the Ministry of Water and Irrigation to enter into multi-lateral negotiations with other Nile countries and represent the country's interests; a process that culminated into Kenya's signing of the CFA. But parallel to the political processes, there was a blanket absence of civil society engagement and public awareness on what the treaty negotiations were all about, on the part of the Kenyan government.

In 1999, the country enacted a National Water Policy to develop and manage the water sector and develop a sustainable financial system for managing water resources.

2. Considerations

Many people in Kenya, not just the local rural population, do not have regular access to the internet. People will visit an internet café, for example, when they have business to attend to but this sort of intermittent access makes it difficult for them to be reached. As such, face-to-face meetings were heavily relied upon especially to access people in rural villages. These meetings would be beneficial in two ways: 1.) the population would have a chance to hear about the work of NBD and ask questions and 2.) there would be a completed questionnaire at the end of the session that gave voice to that person. (Phone call, November 7, 2012).

Though civil society organizations are established in Kenya, there is also a growing disconnect between them and local actors. Previously these two groups would meet periodically to discuss Lake Victoria and coordinate their efforts on related activities. Recently, though, local authorities and civil society has become more disengaged and neither group is aware of the work of the other. (Phone call, November 7, 2012). Similarly, the local authorities and actors generally do not believe that the current form of governance in the Nile River Basin is transparent. The existence of an information gap is the root cause of this discontent because many people that national decisions do not attempt to fully integrate the concerns of the local level. (Phone call, November 7, 2012).

One major concern that affects the day to day life of most locals is hyacinth. Water hyacinth is a weed that floats on the water in Lake Victoria and it basically grows so thick that it is a mat that covers a sizeable portion of the water. The presence of this weed complicates many facets of life: transportation is impacted because canoes and other vessels cannot move in the water and water intake is extremely difficult because of the thick layer of hyacinth. Further, fishermen in the area have also said their livelihoods are affected because they cannot fish properly. Presently there are two schools of thoughts on how to handle the hyacinth and there is no consensus. One group believes that mechanical and manual removal must be undertaken to remove the weed from the area. However, this task is not a sustainable solution because not only is removal arduous but the weeds come up again and spread quickly. Alternatively, others have suggested that an economical use for hyacinth be explored wherein the weed is harvested for another product. (Phone call, November 7, 2012).

On the ground, a common complaint by the local population is format and content of information that is shared with them. Representatives from potential projects or the government often visit rural communities and in an effort to engage the populace will ask questions. However, most were concerned with its abstract nature and the technicality of the questions. Alternatively, before a project is initiated, it would be beneficial if there was a demonstration of the proposed project and workshops that clearly explain the impacts on the

community's lives. There was a resounding request for less theoretical discourse and more practical skill building initiatives.

3. Results

a. Experts & Decision Makers

i. Rules and Principles

The experts and decision makers in Kenya were competent regarding international principles and were in favor of ratifying the UNWC. All respondents said they were familiar with the practices of other transboundary basins. (Experts & Decision Makers Survey, Question 10). All also stated that examples from other basins on their framework and methodology would be beneficial in the Nile River Basin context. (Experts & Decision Makers Survey, Question 11). All believed that if Kenya signed onto both the 1997 U.N. Watercourses Convention and the Cooperative Framework Agreement, the situation would be useful to the country. (Experts & Decision Makers Survey, Question 34).

ii. Current Governance Framework

The responses were split on whether the current governance framework in the Basin was effective. 60% believed that it is somewhat effective whereas 40% believed it was ineffective. (Experts & Decision Makers Survey, Question 6). However, when asked about the existence of procedural rights, the respondents expressed a severe and important absence. Only 10% believed that the governance structure was inclusive (Experts & Decision Makers Survey, Question 7); only 30% believed that it was a transparent system (Experts & Decision Makers Survey, Question 8); and only 20% thought that the framework had sufficient procedural rights. (Experts & Decision Makers Survey, Question 9).

Most experts and decision makers, 90%, believed that civil society members had the capacity to promote the Nile River Basin. (Experts & Decision Makers Survey, Question 32). However, CSO can only be effective if they are able to operate within a governance framework that protects fundamental rights and the ability to exercise the rights is maintained by the government.

iii. Cooperative Framework Agreement

All respondents believed that international legal principles played a role in influencing the governance of the Nile River Basin. (Experts & Decision Makers Survey, Question 12). Most, 80%, also were of the opinion that previous agreements were relied upon in forming the governance of the Basin. (Experts & Decision Makers Survey, Question 13).

All respondents stated they understand the Cooperative Framework Agreement and its provisions. (Experts & Decision Makers Survey, Question 14). Most, 80%, believed that public participation was reflected within the CFA. (Experts & Decision Makers Survey, Question 18).

Most, 80%, of the experts and decision makers believed that the CFA should repudiate previous agreements to become the governing document in the region. Only 20% believed

that the CFA should reaffirm the commitments from the prior agreements. (Experts & Decision Makers Survey, Question 15). All of these stakeholders believed that the CFA would be useful in guaranteeing an equitable and reasonable utilization of the Nile waters and add value to the current governance structure. (Experts & Decision Makers Survey, Question 17). Thus, experts were fully supportive of the CFA.

b. Local Authorities & Actors

i. Rules and Principles

The local authorities and actors that participated in the survey were from local councils and organizations such as Kakamega Municipal Council, Town Council of Kendu Bay, and Sugar Campaign for Change (SUCAM). (Local Authorities & Actors Survey, Question 2). This group of stakeholders believed that Lake Victoria and River Yala are the environmental jewels in their community (Local Authorities & Actors Survey, Question 4) because they serve as sources of the Nile River or because they flow into another water source. (Local Authorities & Actors Survey, Question 5). However, the local actors were worried mostly about pollution, deforestation, and the presence of hyacinth. For example, one respondent stated, "The jewel of my community will suffer degradation and destruction of water sources thus diminished discharges to lake Victoria and eventually low water volume for River Nile. Downstream water pollution will equally negatively impact on the livelihoods of upstream communities." (Local Authorities & Actors Survey, Question 6).

Nearly all, 94.1% of the respondents expressed that they were familiar with the practices of other transboundary basins. (Local Authorities & Actors Survey, Question 12). 94.1% also felt that both downstream and upstream states owed a duty of care to one another. (Local Authorities & Actors Survey, Question 13).

All of the respondents believe that civil society organizations and the public should be involved in the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23). This unanimous viewpoint of the local authorities illustrates that importance of promoting public participation and a multi-stakeholder approach.

ii. Current Governance Framework

There is no clear view on the effectiveness of the current form of water governance on the Nile River Basin. The responses were split: 29.4% believed it was effective, 23.5% were neutral, 41.2% believe it is ineffective, and 5.9% were unsure. (Local Authorities & Actors Survey, Question 8).

Most, 64.7%, do not believe that the current framework of governance is effective (Local Authorities & Actors Survey, Question 9), most, 62.5%, do not believe it is inclusive (Local Authorities & Actors Survey, Question 10), and approximately half, 56.3%, do not believe there is sufficient procedural rights. (Local Authorities & Actors Survey, Question 11).

Most, 76.5%, did not believe that there is enough representation by the public or civil society organizations during decision-making processes. (Local Authorities & Actors Survey, Question 17).

iii. Cooperative Framework Agreement

Nearly all, 94.1%, were familiar with previous agreements that related to the Nile Basin (Local Authorities & Actors Survey, Question 14) and 94.1% were also familiar with the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

Roughly half, 47.1%, had reviewed the Cooperative Framework Agreement. (Local Authorities & Actors Survey, Question 18). Of this group 82.3% stated that they understood the Agreement and its provisions. (Local Authorities & Actors Survey, Question 19).

94.1% of the respondents believe that the CFA should become the governing document in the region and should repeal all prior agreements. Only 5.9% thought the CFA should reaffirm the commitments from previous agreements. (Local Authorities & Actors Survey, Question 20). All of the respondents believe that the CFA would be useful in guaranteeing the equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

c. Local Population

i. Rules and Principles

The Kenyan local population unanimously believed that Lake Victoria is the environmental jewel of their community (Local Population Survey, Question 4) because it is a source of the Nile River. (Local Population Survey, Question 5). The problem that the local population is most concerned with is hyacinths, pollution, and insufficient access to the water for domestic use. (Local Population Survey, Question 6).

85.3% of these stakeholders said that they somewhat understood their rights and obligations regarding their use of the water from the Nile River basin but 14.7% said that they did not understand. (Local Population Survey, Question 22).

ii. Current Governance Framework

Most, 63.6%, were a member of a civil society organization. (Local Population Survey, Question 9). However, a high number of respondents, 88.2%, did not believe that the current management of the Nile River Basin had enough representation from civil society organizations and the public. (Local Population Survey, Question 10). 61.8% of the local population stated that they did not believe that there was an opportunity made available for them to speak about their concerns or raise questions regarding the management of the Nile River Basin. (Local Population Survey, Question 11).

62.5% of the respondents said that no community hearings were held regarding the use of natural resources and potential projects that might be implemented in their community. (Local Population Survey, Question 13). 64.7% also stated that investors and public authorities did not seek the consent of the local population before implement projects and activities even if they have an impact on the natural resources in their community. (Local Population Survey, Question 14).

iii. Cooperative Framework Agreement

The local population viewed the Cooperative Framework positively. For example, one respondent stated, they “may not understand that the CFA is all about, [but it] would be a good starting point.” (Local Population Survey, Question 26).

Half of the respondents had heard about the Agreement, 50%, while the other half were not familiar with it. (Local Population Survey, Question 18). A small portion had read the document themselves, 11.8%, while others received information about the Agreement through a third party (another person or through the newspaper.) (Local Population Survey, Question 19).

70.6% of the Kenyan local population was familiar with other agreements that concerned the Nile Basin (Local Population Survey, Question 15).

Slightly less than half, 45.5% knew whether Kenya was a signatory of the Cooperative Framework Agreement while 54.5% did not know about Kenya’s status. (Local Population Survey, Question 20).

93.6% of the respondents believed that the CFA would be a useful instrument in securing equity in the Nile Basin, 3.2% believed that the Agreement would be neutral, and 3.2% believe the agreement was useless. (Local Population Survey, Question 24).

RWANDA

NUMBER OF RESPONDENTS			
	Rwanda Count	Rwanda Percent	Total
Experts & Decision Makers	19	12	158
Local Authorities & Actors	17	7	241
Local Population	28	12	233

1. Country Profile

Rwanda lies in the extreme southwest area of the Nile River basin and 80% of its land area is within the Nile Basin.²⁷ The upstream country signed onto the Cooperative Framework Agreement in May 2010.

The three official languages in Rwanda are Kinyarwanda, French, and English. Nevertheless, most Rwandans speak Kinyarwanda and it is considered the principal language. The country is divided into five provinces that act as intermediaries between the national government and the local districts. Districts are tasked with coordinating public service and economic development. It is estimated that 80% of the country's area drains into the Nile drainage basin. Rwanda has adopted a national water policy to address the development strategies, finances, and legal frameworks of managing water within the country.

2. Considerations

The national coordinator was able to conduct approximately thirty face to face meetings. During meetings with the local authorities and local population, the languages used to communicate were Kinyarwanda and French and the responses were later transcribed to English. (Skype Conversation, November 9, 2012).

An issue most people at the local level raised was the lack of engagement by Nile Basin Initiative in their region. There are too few actual projects that provide opportunities for Rwanda and this led to many locals feeling disjointed from the NBI. (Skype Conversation, November 9, 2012).

Experts, on the other hand, need more information regarding the status of various projects. These decision makers felt there was a lack of official correspondences and documentation that clarifies the actions being undertaken at local levels. Further, they expressed a desire to have more frequent consultations with a wider group of stakeholders. A gap exists because there is no mechanism to facilitate continuous and regular information sharing amongst the different levels. The information should be exchanged both top-down and

²⁷ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

bottom-up whereby updates and news can reach the stakeholders in a timely fashion. (Skype Conversation, November 9, 2012).

Experts also expressed that they would like the opportunity to carry out assessments within their region. This group felt that evaluations and monitoring should be done by people who are familiar with the country. (Skype Conversation, November 9, 2012).

The local population has a multitude of challenges they face on a daily basis that help form their community vision. The people are concerned about accessing clean water and water for irrigation. As such, they want to see more initiatives and programs from NBI that they can benefit from immediately and directly. Programs that are targeted to their specific circumstances and ones that attempts to address the quality of their lives. (Skype Conversation, November 9, 2012).

3. Results

a. Experts & Decision Makers

i. Rules and Principles

More experts and decision makers in Rwanda need to become familiar with the practices of other transboundary basins. 58.8% of the experts and decision makers stated that they were familiar with the practices of other transboundary basins while 41.2% stated that they were unfamiliar. (Experts & Decision Makers Survey, Question 34). A high number, 77.8%, believed that examples of how other transboundary basins structured their legal framework would be helpful in better understanding effective mechanisms and important factors of a governance structure. (Experts & Decision Makers Survey, Question 11).

Nearly all, 92.9% believe that if Rwanda were to sign and ratify both the Cooperative Framework Agreement and the 1997 United Nations Watercourses Convention, it would be useful for the country. (Experts & Decision Makers Survey, Question 34).

ii. Current Governance Structure

The experts and decision makers had varying opinions on the current governance structure. According to the surveys, there was no strong sentiment that was either positive or negative. 5.6% of the respondents described the current governance situation in the Nile River Basin as extremely effective; 55.6% said it was somewhat effective; 22.2% believe it was ineffective; and 16.7% were unsure of the situation. (Experts & Decision Makers Survey, Question 6). Only 33.3% believed that the framework was inclusive, whereas 11.1% said governance was not inclusive and an overwhelming 55.6% was not sure about the inclusiveness of the framework. (Experts & Decision Makers Survey, Question 7). The respondents were divided on their view of the transparency of the governance. 27.8% believed that the current framework is transparent; 33.3% believed it was not transparent; and 38.9% were unsure. (Experts & Decision Makers Survey, Question 8). Lastly, regarding the procedural rights that are provided in the current governance structure, 23.5% believe it was sufficient, 23.5% believe it was insufficient, and 52.9% were unsure. In this set of questions it was clear that the number of people that were unsure about the details of the current governance structure was higher than the respondents that were able to articulate their position.

On the other hand, the experts viewed the role of CSO members as very favorable. 75% believed that civil society organization members had the capacity to promote the Nile River Basin Cooperation and contribute to management strategies. However, the role that CSO is able to play in designing strategies is contingent on the rights afforded to them under the governance structure. As such, these two viewpoints do not align in a coherent manner.

iii. Cooperative Framework Agreement

82.4% of the experts and decision makers expressed that international legal principles were influential in structuring the governance of the Nile River Basin. (Experts & Decision Makers Survey, Question 12). 82.4% also believed that previous agreements in the region influenced the governance structure of the Basin. (Experts & Decision Makers Survey, Question 13).

66.7% expressed that they understood the provisions of the Cooperative Framework Agreement (Experts & Decision Makers Survey, Question 14) and 55.6% believed that the CFA should become the governing document that replaces all previous agreements in the region. (Experts & Decision Makers Survey, Question 15).

All of the respondents believed that the CFA would be useful in securing equitable and reasonable utilization of the Nile waters. (Experts & Decision Makers Survey, Question 17). There was a split on how public participation principle was reflected within the CFA. 13.3% believed public participation was very well reflected, 33.3% believed it was fairly reflected, 33.3% believed it was poorly reflected, and 20% felt that the principle was not reflected at all. (Experts & Decision Makers Survey, Question 18). The wide array of responses signifies that there is not a clear understanding of how public participation is incorporated into the Agreement.

b. Local Authorities & Actors

i. Rules and Principles

The local authorities and actors were comprised of organizations such as the Gasabo District, the Rwanda Rain Water Harvesting Association, and the Kirehe District. (Local Authorities & Actors Survey, Question 2). These stakeholders viewed water and agriculture as the environmental jewel of the community. (Local Authorities & Actors Survey, Question 5).

71.4% stated that they were somewhat familiar with the practices of transboundary basins in other areas while 28.6% said they were not familiar with these basins. (Local Authorities & Actors Survey, Question 12). 85.7% stated that their understanding of the rights and obligations that downstream and upstream states had towards one another was that of dual duty of care. Both parties owe the other a duty of care. (Local Authorities & Actors Survey, Question 13).

85.7% of the local authorities and actors believed that the public and civil society organizations should be involved or represented in the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

ii. Current Governance Structure

The Rwandan local actors did not have a clear stance on the state of water governance structure in the Nile River Basin region but none believed that it was an effective framework. 33.3% believed that the state of governance had no value, 33.3% believed it was ineffective, and 33.3% were not sure. (Local Authorities & Actors Survey, Question 8).

50% of the respondents were unsure whether the current framework is transparent, 16.7% believed it was transparent, and 33.3% believed it was not transparent. (Local Authorities & Actors Survey, Question 9). 66.7% believed that the current framework was not inclusive and only 16.7% believe it was inclusive. (Local Authorities & Actors Survey, Question 10). None of the respondents believe that the current structure provided sufficient procedural rights, 28.6% believed there was insufficient rights, and an overwhelming majority, 71.4% were unsure. (Local Authorities & Actors Survey, Question 11).

All of the local authorities and actors expressed that there was insufficient representation by the public and civil society organizations during the decision-making process. (Local Authorities & Actors Survey, Question 17).

iii. Cooperative Framework Agreement

None of the respondents had an opportunity to review the Cooperative Framework Agreement. 42.9% had not reviewed it while 57.1% said they did not have access to the document. (Local Authorities & Actors Survey, Question 18). The understanding of the CFA is also limited amongst this stakeholder group. 16.7% said they somewhat understood the Agreement and its provisions, 50% stated they did not understand, and 33.3% had not reviewed the document. (Local Authorities & Actors Survey, Question 19).

None of the local actors surveyed believed that they CFA should reaffirm the commitments from previous agreements, A small percentage, 14.3%, believed the CFA should become the governing document in the region. However, the overwhelming majority, 85.7%, were unsure about what their relationship should be. As such, the local authorities that were presumably be charged with implementation were not in favor of affirming the commitments from prior agreements in Rwanda. (Local Authorities & Actors Survey, Question 20).

All of the respondents believed that the CFA would be useful in guaranteeing an equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

c. Local Population

i. Rules and Principles

For the local population of Rwanda, Lake Victoria and the Nyungwe Forest are considered the environmental jewels of the community. (Local Population Survey, Question 4). These stakeholders believed these natural resources were intertwined with the health and welfare of the Nile River and concerns over poor management and pollution are central to the local population. (Local Population Survey, Question 6).

57.1% of the respondents said that they somewhat understood their rights and obligations regarding their use of the water in the Basin. However 42.9% said they did not understand these rights. (Local Population Survey, Question 22).

ii. Current Governance Structure

Most, 60%, believe that they do not have the opportunity to speak about their concerns and ask questions regarding the management of the Nile River Basin while 40% believed that they did have the opportunity. (Local Population Survey, Question 11). 53.3% state that they have the ability to exercise their rights, 26.7% say they do not have the ability, and 20% are unsure about their rights. (Local Population Survey, Question 12).

60% stated that they are community hearings held regarding the use of natural resources in the community. (Local Population Survey, Question 2). 60% said that investors and the public authorities did not seek the consent of the community before implementing projects and activities that have an impact on the natural resources. (Local Population Survey, Question 14).

Half of the local population, 53.3% are members of a civil society organization while 46.7% are not. (Local Population Survey, Question 9). However, a large percentage, 78.6% believed that the current management structure in the Basin did not have enough representation from civil society organizations and the public. (Local Population Survey, Question 10).

iii. Cooperative Framework Agreement

The local population in Rwanda did not have expansive knowledge regarding the legal instruments that deal with the Nile River.

57.1% said they were not familiar with any agreement that deal with the Nile River Basin while 42.9% said they were familiar. (Local Population Survey, Question 15). 53.3% stated that they had not heard about the CFA while 46.7% had heard about the Agreement. (Local Population Survey, Question 18). 53.3% said that they were unsure as to whether Rwanda was a signatory of the Cooperative Framework Agreement. (Local Population Survey, Question 20).

77% believed that the CFA would be useful in guaranteeing equity in the Nile River Basin while 23.1% believed that the Agreement would not add any value. (Local Population Survey, Question 24).

SOUTH SUDAN

NUMBER OF RESPONDENTS			
	South Sudan Count	South Sudan Percent	Total
Experts & Decision Makers	1	0.6	158
Local Authorities & Actors	23	9.5	241
Local Population	27	11.6	233

1. Country Profile

South Sudan is a landlocked country in east-central Africa. South Sudan attained independence on July 9, 2011 and is Africa's 54th state.²⁸ They are not currently a signatory to the Cooperative Framework Agreement and have not made any official declarations about their stance.²⁹

A tributary of the Nile River, the White Nile, flows north through the country and causes swampy regions. The White Nile Valley is one of the richest agricultural areas in Africa and has extremely fertile soil and abundant water supply.

English is the official language in South Sudan. The country is divided into ten states that are subdivided into 86 counties. Given its recent origins, South Sudan has underdeveloped infrastructure and is attempting to destabilize after decades of civil war with the north.

An Anglo-Egyptian Sudan was established the following year with Equatoria being the southernmost of its eight provinces. The isolated region was largely left to itself over the following decades, but Christian missionaries converted much of the population and facilitated the spread of English. When Sudan gained its independence in 1956, it was with the understanding that the southerners would be able to participate fully in the political system. When the Arab Khartoum government reneged on its promises, a mutiny began that led to two prolonged periods of conflict (1955-1972 and 1983-2005) in which perhaps 2.5 million people died - mostly civilians - due to starvation and drought. Ongoing peace talks finally resulted in a Comprehensive Peace Agreement, signed on 9th January 2005. As part of this agreement the south was granted a six-year period of autonomy to be followed by a referendum on final status. The result of this referendum, held in January 2011, was a vote of 98% in favor of secession. Independence was attained on 9 July 2011.

South Sudan is bordered by Ethiopia to the East, Kenya to the South West, Uganda to the South, Democratic Republic of Congo (DRC) to the South West, the Central African Republic (CAR) to the West, and Sudan to the North.

²⁸ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

²⁹ This section includes contributions from the national coordinator which was submitted via email on January 15, 2013.

2. Considerations

As South Sudan is a new nation, they face many different obstacles than the other Nile Basin Countries. At present, South Sudan is in the process of building infrastructure and communication mechanisms but presently the population is mostly unfamiliar with Nile River Basin efforts or the importance of the River. There is a lack of information and awareness at all these levels; most people know that the Nile River is the source of water but very few understand the importance of the Nile River to their lives. (Phone call, November 10, 2012).

Civil society organizations exist in South Sudan, however, their focus is generally not on water rights and governance. CSO in the country work on women's rights, children's rights, and human rights topics primarily. (Phone call, November 10, 2012).

The national coordination had difficulties accessing the stakeholders. Amongst the groups there was also tension that acted as an impediment to constructive dialogue. As the country is emerging from a period of war and instability, most people want peace and stability. In this context, in September 2012 an agreement was signed between Sudan and South Sudan to end conflict between the two nations. The agreement also opened the borders between the two countries so allow and promote trade and movement of people. (Phone call, November 10, 2012).

Within South Sudan, the country benefit most from awareness building efforts that reinforced pride in the country and support for Nile River.

3. Results

a. Experts & Decision Makers

As only one expert responded to the survey, the answers cannot serve as a reliable source of information regarding the vision of this group of stakeholders. As such, there will be no analysis regarding the responses.

b. Local Authorities and Actors

i. Rules and Principles

The local authorities and actors in South Sudan did not have a strong awareness regarding the practices of transboundary basins other than the Nile River Basin. Only 4.3% stated that they were very familiar with other basins whereas 47.8% stated that they were somewhat familiar and another 47.8% said they were not familiar. (Local Authorities & Actors Survey, Question 12). Regarding their understanding of the rights that upstream and downstream States had towards one another, 43.5% stated that it was only the upstream country that owed a duty of care. A similar percentage, 39.1%, stated that both parties owed a duty of care and only 4.3% believed there neither were under an obligation towards the other. (Local Authorities & Actors Survey, Question 13). All 100% of the respondents expressed a belief that the public and civil society should be represented within the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

From these responses it seems that the local authorities want an inclusive Commission structure and could also benefit from learning about the practices of other basins.

ii. Current Governance Framework

The local authorities believed that the Sudd wetlands and the Nile River are the environmental jewels of South Sudan (Local Authorities & Actors Survey, Question 4) and are concerned with overexploitation and pollution of the waters. (Local Authorities & Actors Survey, Question 6). As such, their ideal governance structure seeks to protect the water and keep it pristine.

The responses seem to reflect lack of firm faith in the current governance structure in the Basin. Only 13% of the respondents believed that the state of water governance in the Nile River Basin was effective whereas 56.5% believed that governance was ineffective. 4.3% believed there was no value to the current framework and 26.1% were not sure. (Local Authorities & Actors Survey, Question 8). None of the respondents believed that the framework was transparent, 43.5% believe that it was not transparent, and 56.5% were unsure about the framework's transparency. (Local Authorities & Actors Survey, Question 9). Only a small percentage, 13.5%, believe that governance was inclusive whereas 60.9% were not sure and 26.1% believe it was not transparent. (Local Authorities & Actors Survey, Question 10). Similarly, only 17.4% believe that the current framework of governance provided sufficient procedural rights and 60.9% were unsure about the rights afforded. (Local Authorities & Actors Survey, Question 11). All of the respondents stated that they did not feel that there was enough representation by the public or by civil society organizations during decision-making processes. (Local Authorities & Actors Survey, Question 17). The large number of respondents that are unsure about the status of the governance or the rights guaranteed under it should be explored. If citizens are not aware of their rights or are unsure if the system is inclusive, that is equivalent to not being able to participate.

iii. Cooperative Framework Agreement

Knowledge regarding the Cooperative Framework Agreement needs to be enhanced across all stakeholder groups.

In South Sudan, the local actors were nearly split evenly regarding their awareness of previous agreements that dealt with the Nile River Basin. 47.8% were aware of previous agreements whereas 52.2% were not. (Local Authorities & Actors Survey, Question 14). A similar breakdown was seen regarding their awareness of the 1959 treaty between Egypt and Sudan. 55% were aware of the treaty while 45% were not. (Local Authorities & Actors Survey, Question 15). Given that South Sudan is a newly formed state with similar history to Sudan, this number is confusing and should serve as an opportunity to raise awareness.

Only 4.3% of the respondents stated that they had reviewed the CFA whereas 65.2% had not reviewed it and 30.4% did not have access to the document. (Local Authorities & Actors Survey, Question 18). Only 13% thoroughly understood the provisions of the Agreement while 56.5% stated that they did not understand the CFA. (Local Authorities & Actors Survey, Question 8). Thus, not only is it vital to provide access to the Agreement, simultaneous efforts need to be undertaken to ensure that the document is understood.

None of the respondents believed that the CFA should reaffirm commitments from previous agreements, 40.9% believed that the CFA should repudiate previous agreements, and 59.1% were unsure how the CFA should align with previous agreements. (Local Authorities & Actors Survey, Question 20). Most, 73.9%, believed that the CFA would be either very or

somewhat useful in guaranteeing equitable and reasonable utilization of the Nile waters whereas 26.1% believed the CFA would not add any value. (Local Authorities & Actors Survey, Question 21).

c. Local Population

i. Rules and Principles

Most of the respondents, 70.4%, stated that they did not understand their rights and obligations regarding their use of water from the Nile River Basin. Only 7.4% believed that they thorough understood their rights and 22.2% believed that they somewhat understood them. (Local Population, Question 22). Engaging the local population is extremely important to understanding their vision and ensuring effective governance. As such, initiatives must be undertaken to educate the local population of South Sudan regarding their rights and regarding the rules and principles that govern their use of water.

ii. Current Governance Framework

The local population is most concerned about water pollution in and around the Nile waters (Local Population, Question 6) and the respondents did not believe that local authorities were effective in preventing the pollution. 55.6% believed that local actors were ineffective, 7.4% believed they were extremely effective, 3.7% believed they were somewhat effective, and 33.3% were unsure. (Local Population, Question 8. The local authorities need to build stronger relationships with the local population and be more vocal about their efforts to help address the concerns of the community.

Nearly all of the respondents, 85.2%, were not members of a civil society organization. (Local Population, Question 9). Given such a low rate of membership in CSO, initiatives to reach the local community must be broadened past traditional options. One explanation for the low rate of membership in civil society might be explained by the belief that 96.2% of the local population holds which is that the current management of the Nile River Basin does not have enough representation by CSO. (Local Population, Question 10).

In direct contrast to most of the responses, 92.6% believed that they had an opportunity to talk about their concerns and ask questions regarding the management of the Basin. (Local Population, Question 11). This contradicts the belief that the governance was ineffective and should be explored further.

66.7% of the respondents stated that community public hearings were not held regarding potential projects in their community. (Local Population, Question 13). This also weakens the notion that the public is granted an opportunity to speak about their concerns.

iii. Cooperative Framework Agreement

The local population, similar to the local authorities and actors, did not seem familiar with previous agreements that dealt with the Nile River Basin. 70.4% stated that they did not know about any agreements regarding the basin (Local Population, Question 15) and 46.2% had not heard about the 1959 treaty between Egypt and Sudan. (Local Population, Question 16). Further, all 100% of the respondents stated that they had not heard about the Cooperative Framework Agreement. (Local Population, Question 18). Nearly all, 96.2%, did

not know if their country had signed onto the CFA. (Local Population, Question 20). This lack of familiarity with the CFA is problematic and deserves prompt action.

SUDAN

NUMBER OF RESPONDENTS			
	Sudan Count	Sudan Percent	Total
Experts & Decision Makers	13	8	158
Local Authorities & Actors	15	6	241
Local Population	7	3	233

4. Country Profile

Sudan is downstream in the Nile River Basin. The Blue and White Nile meet to form the River Nile and flow northward through Egypt to the Mediterranean Sea.³⁰ Nile River divides the country into eastern and western halves and the Basin is the largest part of the country's area which comprises a high proportion of the available water resources.³¹

Along the Nile there are several dams and irrigated farms that play a significant role in the life of the Sudanese. Sudan is divided into seventeen states that are subdivided into 133 districts. The official languages are English and Arabic.

Sudan is not a signatory to the CFA and has resisted its current terms. Since the country is arid and water is a scarce resource, water is a high priority within the national government.

Sudan has various water resources: rainfall, surface and groundwater. The rainfall contributes appreciably to various activities dealing with the country economy and constitutes the main source of water originating in Sudan. Rainfall in Sudan varies from about 800mm in the southern states to zero in the north at the borders with Egypt. The average annual yield of the Wadis' (seasonal watercourses) waters is estimated at 6.0 BCM. Some of these Wadis are shared with neighboring countries. The average annual renewable groundwater is estimated at 4.0 BCM. The Sudan share from the Nile Waters Agreement (NWA) of 1959 between Sudan and Egypt is 18.5 BCM estimated at Aswan dam (equivalent to about 20.5 BCM at Sennar dam).

Sudan population after the separation of South Sudan is estimated at about 30 million, and the area of the country is about 1,882,000 km². The distribution of the population is roughly 40% in urban and 60% lives in rural areas. Agriculture is the main activity whether irrigated or rain-fed, and surface water resources are used extensively for production of crops; while groundwater is used mainly for drinking water and other economic activities as well. In fact the use of groundwater in rural areas is important for drinking water, animal watering, for industry and agriculture for producing cash crops.

³⁰ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

³¹ This section includes contributions from the national coordination received via email on January 10, 2013.

Irrigated projects are considered major components of development plans in many developing countries. This is because of the food security issue; in addition they produce commodities for export to earn foreign currency and also producing raw materials for local industry. Many other benefits are obtained from irrigation projects like offering jobs for rural inhabitants, reducing poverty, and thereby achieving rural development in the general context. Urban centers are also benefitting through receiving agricultural products and getting relief from the massive migrations of villagers' towards big cities seeking marginal jobs.

Sudan as an example of developing countries started irrigation projects early last century with the Gezira Irrigation Scheme (GIS), and through the years many other irrigation projects were constructed in different parts of the country. Today the irrigated areas exceed four million feddans (about 1.68 million hectare) second to Egypt in the African Continent.

However rain-fed agriculture constitutes the major portion of the livelihood of many inhabitants in Sudan. Water in rural areas is the center for the livelihood of the villagers, for drinking, farming, livestock watering and all other services.

Rainfall covers vast areas in the country and the estimated cultivated areas annually depend on the amount of rainfall, and vary between 15 million to more than 30 million feddans; in comparison to the irrigated areas which are about 4 million feddans. Rain-fed agriculture is a good tool for rural development and offer job opportunity for many populations and revives the country economy.

5. Considerations

The government is dealing with the Cooperative Framework Agreement as if it were a classified matter. The information is restricted to high level experts and negotiators and the public is largely unaware of the discussion. For example, the national coordinator attempted to engage with parliamentarians and government officials on repeated occasions but was unable to gain access to them in order to gain their participation in the surveys. Though there is no official communication stating that the CFA and management of the Nile River is classified, in practical terms it is not possible to speak with these officials about the stance of Sudan and their opinions regarding the matter. The waters from the Nile River appear to be a national security issue. (Phone call, November 9, 2012).

Over the last two months there have been efforts by the media to make the public more aware of the ongoing discussions about the management of the Nile River. To this end a series of articles have been published in a national newspaper by a Sudanese water expert about Sudan and the CFA. The articles, published in Arabic, have generated most interest in water management because they urge the country to engage with the other Nile Basin countries. As a result of these articles, negotiators from the government also responded through articles they penned in the newspaper too. This level of discourse is a positive change that has allowed more people in the country to become aware of the topic and raise their interest. (Phone call, November 10, 2012).

Participation in the Nile Basin Discourse is weak within Sudan. The NBD works in limited areas and because their mandate is to concentrate on development projects, their reach is constrained. As such, more efforts need to be undertaken to improve relations between NBD and the community. (Phone call, November 10, 2012).

At the expert and decision-maker level, they uniformly believed that the questionnaire was not sufficient to formulate a comprehensive national vision for Sudan. They believed that this was an important first step but hope to conduct a workshop that brings stakeholders together to discuss. In regards to this survey, many of the important stakeholders did not participate. As such, it cannot be considered a complete work that is reflective of the country's vision – however, it did make progress in beginning the discussions. (Phone call, November 10, 2012).

The local population was concerned about the impacts of climate change and finding mechanism to have their voices heard. Areas in Sudan are vulnerable to climate change, most especially deforestation and droughts, and are looking for projects that help them adapt to the changing environment. This group is more focused on how to utilize their current resources. Secondly, cities are too large to properly reflect the concerns of a local community. As such, there needs to be more village development communities that represent the local community in discussions with other groups. (Phone call, November 10, 2012).

6. Results

d. Experts & Decision Makers

i. Rules and Principles

Understanding rules and principles is often contingent on familiarity with the ideal examples of governance and with the practical implementation of these factors on other basin regions.

77% of the experts and decision makers stated that they were familiar with the practices of other transboundary basins while 23.1% stated that they were unfamiliar. (Experts & Decision Makers Survey, Question 34). 76.9% of the respondents believed that learning about how other transboundary basins structured their legal framework would be helpful in better understanding effective mechanisms and important factors of a governance structure. (Experts & Decision Makers Survey, Question 11).

72.8% believe that if Sudan were to sign and ratify both the Cooperative Framework Agreement and the 1997 United Nations Watercourses Convention, it would be useful for the country. However, 18.2% believed that ratifying both documents would have negative repercussions for Sudan. (Experts & Decision Makers Survey, Question 34). Even though nearly 73% of the experts and decision makers in Sudan favor ratification of the CFA, the official position has been to resist it. This dichotomy between the beliefs of the technical and knowledgeable group and the official Sudanese government must be further explored to understand its possible causes and solutions.

ii. Current Governance Framework

The respondents were divided between thinking that the current governance situation in the Nile River basin was somewhat effective, 53.8%, and ineffective, 46.2%. (Experts & Decision Makers Survey, Question 6). Most experts did not have a positive vision of the current governance framework. For instance 76.9% felt the system was not inclusive (Experts & Decision Makers Survey, Question 7); 66.7% believed it was not transparent (Experts & Decision Makers Survey, Question 8); and 76.9% said it did not provide sufficient

procedural rights. (Experts & Decision Makers Survey, Question 9). On the other hand, only 15.4% believed that the governance framework is inclusive (Experts & Decision Makers Survey, Question 7); 16.7% said it was transparent (Experts & Decision Makers Survey, Question 38); and 7.7% said it had sufficient procedural rights. (Experts & Decision Makers Survey, Question 9).

The experts and decision makers, however, were of the opinion that civil society organizations members had the capacity to promote the Basin Cooperation and contribute to management strategies. (Experts & Decision Makers Survey, Question 32). The ability of the public to influence management policies, through their membership in a CSO, can only be fruitful if they are guaranteed full procedural rights and are partaking in an inclusive and transparent operation.

iii. Cooperative Framework Agreement

Most experts and decision makers believed that international legal principles and previous agreements were influential in drafting the governance of the Nile River Basin. 15.4% believed that international legal principles were heavily influential, 53.8% believed they were somewhat influential, 23.1% believed they were not influential, and 7.7% were not sure about the role international legal principles played. (Experts & Decision Makers Survey, Question 12). 46.2% believed that previous agreements were heavily influential, 38.5% believed they were somewhat influential, 7.7% believed they were not influential and 7.7% were unsure about the influence level of prior agreements. (Experts & Decision Makers Survey, Question 13).

84.6% said they understood the Cooperative Framework Agreement and its provisions while 15.4% said they had not yet reviewed the Agreement. (Experts & Decision Makers Survey, Question 14). Most, 61.5%, said that the CFA should reaffirm the commitments from previous agreements while 23.1% were not sure how the CFA should fit. (Experts & Decision Makers Survey, Question 15).

75% believed that the CFA would be useful in securing equitable and reasonable utilization of the Nile waters and 25% believed that the Agreement would be of no value. (Experts & Decision Makers Survey, Question 17). The experts were divided as to the how public participation principles were reflected in the CFA. 16.7% believed it was very well reflected, 33.3% said it was fairly reflected, 33.3% believed it was poorly reflected, and 16.7% believed it was not reflected at all.

e. Local Authorities & Actors

i. Rules and Principles

The local authorities and actors involve organizations such as the Sudanese Environmental Conservation Society, Samturuk Village Development Committee and the Sennar State CSO Network. (Local Authorities & Actors Survey, Question 2). This group believed that the environmental jewel of their community was the confluence of the Blue Nile with the White Nile. (Local Authorities & Actors Survey, Question 4).

Most, 85.7%, were familiar with the practices of other transboundary basins while 14.3% were unfamiliar with other basins. (Local Authorities & Actors Survey, Question 12). Most, 71.4%, also believed that both upstream and downstream countries had a duty of care to one another. (Local Authorities & Actors Survey, Question 13).

85.7% believe that public and civil society organizations should be involved or represented within the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

ii. Current Governance Framework

28.6% believe that the state of water governance in the Basin region is effective while 42.9% think that it is ineffective. (Local Authorities & Actors Survey, Question 8). The vision of the local actors on governance structure is not straightforward. 28.6% believe that the governance structure is transparent, 28.6% believe it was not transparent, and 42.9% were unsure about the transparency. (Local Authorities & Actors Survey, Question 9). With regards to inclusiveness, 57.1% believe the framework is inclusive, 28.6% believe it is not inclusive, and 14.3% were not sure. (Local Authorities & Actors Survey, Question 10). 57.1% believe that the structure does not provide sufficient procedural rights while only 14.3% believe there are sufficient rights. (Local Authorities & Actors Survey, Question 11).

71.4% felt that there was not enough representation by the public and civil society during the decision-making process. (Local Authorities & Actors Survey, Question 17).

iii. Cooperative Framework Agreement

All of the respondents were familiar with previous agreements that concern the Nile Basin. (Local Authorities & Actors Survey, Question 14) and all were familiar with the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

Most, 57.1%, did not have access to the Cooperative Framework Agreement and thus had not reviewed the document while only 14.3% had reviewed the Agreement. (Local Authorities & Actors Survey, Question 18). 71.4 stated that they understood the CFA and its provisions. (Local Authorities & Actors Survey, Question 19).

The local actors in Sudan were split about how the Cooperative Framework Agreement should align with previous agreements. 42.9% believed that the CFA should reaffirm the commitments from previous agreements, 28.6% felt that the CFA should repeal the other previous agreements, and 28.6% were not sure. (Local Authorities & Actors Survey, Question 20). All of the respondents did believe that the CFA could guarantee the equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

f. Local Population

i. Rules and Principles

The local population in Sudan expressed that the environmental jewels of their community were agriculture, fisheries, and forests. (Local Population Survey, Question 4). The stakeholders felt that these resources were linked to the Nile River because the waters were used to sustain the agriculture. (Local Population Survey, Question 5).

All of the respondents said that they understood their rights and obligations regarding the use of water from the Nile River. (Local Population Survey, Question 22).

ii. Current Governance Framework

All respondents stated that there were public hearings regarding the use of natural resources and potential projects in the community. (Local Population Survey, Question 13). 85.7% stated that they had the ability to exercise their rights (Local Population Survey, Question 12) and all felt they had the opportunity to speak about their concerns on the management of the Nile River Basin. (Local Population Survey, Question 11). A high percentage, 85.7%, also stated that investors and authorities sought their consent before they began to implement projects and activities in their community. (Local Population Survey, Question 14).

Most, 71.4%, of the local population were also a member of a civil society organization and 42.9% believed that the current management of the Basin had enough representation from CSO and the public. (Local Population Survey, Question 10).

iii. Cooperative Framework Agreement

85.7% of the stakeholders stated they were familiar with agreements that deal with the Nile River Basin. (Local Population Survey, Question 15). 71.4% had heard about the Cooperative Framework Agreement (Local Population Survey, Question 18) and this group became familiar by either reading the document or being informed by a third party. (Local Population Survey, Question 19).

71.4% stated that they were aware of whether Sudan was a signatory of the Cooperative Framework Agreement. (Local Population Survey, Question 20). All of the respondents believed that the CFA would be useful in guaranteeing equity in the Nile River. (Local Population Survey, Question 24).

TANZANIA

NUMBER OF RESPONDENTS			
	Tanzania Count	Tanzania Percent	Total
Experts & Decision Makers	9	6	155
Local Authorities & Actors	18	8	217
Local Population	16	8	208

1. Country Profile

Tanzania is an upstream country that is located in East Africa. The Nile Basin within Tanzania forms part of the inflow into Lake Victoria and consists about 9% of the national area.³² The country signed the Cooperative Framework Agreement on May 14, 2010.

Tanzania has two official languages, Swahili and English. The country is divided into thirty regions between mainland and Zanzibar. The regions are subdivided into 99 districts that hold at least one council which is a local government authority.

The National Water Policy was enacted in 1991 and revised in 2002; the Policy emphasizes community-based domestic water supply systems, participatory planning, and cost-sharing construction techniques. At present there is a new water resources management policy that adopts a comprehensive policy framework where water is treated as an economic good.

2. Considerations

Local community most concerned about not having opportunity to be involved in projects in their community. They were not consulted and have little involvement in the process.

Local authorities' complaint: central government is not involved at the local level and do not coordinate with the local government. This result in parallel efforts and no collaboration. Also, the central government does not have a contact person to oversee implementation at project sites – they only provide a design but do not include follow-up efforts.

3. Results

a. Experts & Decision Makers

i. Rules and Principles

All of the experts and decision makers stated that they were either very familiar or somewhat familiar with the practices of other transboundary basins. (Experts & Decision Makers Survey, Question 34). 75% felt that obtaining examples of how other transboundary basins structured their legal framework would be helpful while 12.5% thought this would be beneficial. (Experts & Decision Makers Survey, Question 11).

³² *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

60% believed that if Tanzania were to sign and ratify both the Cooperative Framework Agreement and the 1997 UNWC, it would be useful for the country. However, 20% believed that ratifying both documents would have no added value and 20% felt that it would be negative for Tanzania. (Experts & Decision Makers Survey, Question 34).

ii. Current Governance Framework

77.8% of the respondents believed that the current governance situation in the Nile River basin was effective was 22.2% were unsure about the efficacy of the framework. (Experts & Decision Makers Survey, Question 6). 44.4% felt the current system was inclusive while 22.2% believed that it was not inclusive (Experts & Decision Makers Survey, Question 7). The respondents were evenly split on whether the framework was transparent with 33.3% believing it was transparent, 33.3% believing it was not transparent, and 33.3% were not sure. (Experts & Decision Makers Survey, Question 8). Only 22.2% felt that the current provides sufficient procedural rights while 33.3% believed the framework did not provide sufficient procedural rights. (Experts & Decision Makers Survey, Question 9).

The experts and decision makers thought that civil society organizations members generally had the capacity to promote the Basin Cooperation and contribute to management strategies. (Experts & Decision Makers Survey, Question 32).

iii. Cooperative Framework Agreement

In structuring the governance of the Nile Basin, 22.2% felt that international legal principles played a heavily influential role, 66.7% felt it was somewhat influential, and 11.1% believed that these principles were not influential at all. (Experts & Decision Makers Survey, Question 12). Further, 11.1% believed that previous agreements in the region played a heavily influential role in structuring the governance, 55.6% felt it was somewhat influential, and 33.3% were not sure of the role previous agreements played. (Experts & Decision Makers Survey, Question 13).

Most, 66.6%, felt that they understood the Cooperative Framework Agreement and its provision while 11.1% felt they did not understand the Agreement. (Experts & Decision Makers Survey, Question 14).

In Tanzania, there is an interesting split regarding prior agreements. There was an even split as to how the CFA should align with previous agreements. 33.3% believed that the CFA should reaffirm the commitments from previous agreements, 33.3% believed the CFA should become the governing document, and 33.3% were unsure. (Experts & Decision Makers Survey, Question 25).

Most, 87.5%, also felt that the CFA would be useful in guaranteeing the equitable and reasonable utilization of the Nile waters. (Experts & Decision Makers Survey, Question 17).

b. Local Authorities & Actors

i. Rules and Principles

The organizations that were represented by this group of stakeholders include the Ngara District Council, Tanzania Home Economics Association, and the Africa Medical Research Foundation. (Local Authorities & Actors Survey, Question 2).

88.9% of the respondents stated that they were familiar with the practices of other transboundary basins. (Local Authorities & Actors Survey, Question 12). There was uncertainty about how duty of care worked between upstream and downstream countries. 33.3% believed that only the upstream country owed a duty of care, 11.5% believed that only the downstream country owed a duty of care, 38.9% believed that both states owed a duty of care, and 16.7% were not sure. (Local Authorities & Actors Survey, Question 13).

100% of the local actors believed that the public and civil society organizations should be involved in the Nile Basin Commission structure. (Local Authorities & Actors Survey, Question 23).

ii. Current Governance Framework

There was a split between the local authorities and actors as to the state of water governance in the Nile River Basin region. 44.4% believed it was effective, 5.6% believed that there was no value, 38.9% believed it was ineffective, and 11.1% were unsure. (Local Authorities & Actors Survey, Question 8). 61.1% believed the current governance framework was transparent (Local Authorities & Actors Survey, Question 9); 55.6% believed it was inclusive (Local Authorities & Actors Survey, Question 10); and only 27.8% believed the framework provided sufficient procedural rights. (Local Authorities & Actors Survey, Question 11).

72.2% did not believe that there was enough representation by the public and civil society organizations during the decision-making process. (Local Authorities & Actors Survey, Question 17).

iii. Cooperative Framework Agreement

Only 44.4% were familiar with previous agreements in the Nile River Basin while 55.6% were unfamiliar. (Local Authorities & Actors Survey, Question 14).

There was an even split on whether the local authorities and actors had the opportunity to review the Cooperative Framework Agreement. 33.3% had reviewed the Agreement, 33.3% had not reviewed the document, and 33.3% did not have access to the document. (Local Authorities & Actors Survey, Question 18). Most stated that they did understand the CFA and its provisions. 16.7% thoroughly understood it, 44.4% somewhat understood it, 5.6% did not understand it, and 33.3% had not reviewed the Agreement. (Local Authorities & Actors Survey, Question 19).

44.4% believed that the CFA should become the governing document in the region and repeal all previous agreements while 16.7% believed that the CFA should reaffirm the commitments from previous agreements. (Local Authorities & Actors Survey, Question 20).

58.8% believed that the CFA could guarantee equitable and reasonable utilization of the Nile waters in the region. (Local Authorities & Actors Survey, Question 21).

c. Local Population

i. Rules and Principles

The Tanzanian local population viewed Lake Victoria and the Rusomo Falls as environmental jewels in their community. (Local Population Survey, Question 4).

31.3% felt that they thoroughly understood their rights and obligations regarding water use while 56.3% felt that they somewhat understood and 12.5% said they did not understand their rights. (Local Population Survey, Question 22).

ii. Current Governance Framework

75% of the local population in Tanzania is members of a civil society organization (Local Population Survey, Question 9) but 75% of the respondents felt that the current management of the Basin did not include enough representation from civil society organizations and the public.

Most, 81.3% felt that they had an opportunity to talk about their concerns regarding the management of the Nile Basin (Local Population Survey, Question 11) and further 87.5% felt that they had the ability to exercise their rights. (Local Population Survey, Question 12).

A majority, 87.5%, said that public hearings occurring regarding the use of natural resources or potential projects that might begin in the community. (Local Population Survey, Question 13). A little less than half, 43.8%, said that investors and public authorities sought consent from their community before project implementation occurred. (Local Population Survey, Question 14).

iii. Cooperative Framework Agreement

68.8% stated that they were not familiar with any agreements that deals with or dealt with the Nile River Basin. (Local Population Survey, Question 15). 56.3% had heard about the Cooperative Framework Agreement (Local Population Survey, Question 18) and they became familiar with the CFA through a variety of sources such as newspapers or third party sources. (Local Population Survey, Question 19).

66.7% did not know whether Tanzania was a signatory to the CFA but most, 86.7%, felt that the CFA could guarantee equity in the use and distribution of the Nile River. (Local Population Survey, Question 24).

UGANDA

NUMBER OF RESPONDENTS			
	Uganda Count	Uganda Percent	Total
Experts & Decision Makers	13	8	158
Local Authorities & Actors	12	5	241
Local Population	24	10	233

1. Country Profile

Uganda is located in East Africa and is an upstream country in the Nile River Basin. The country is landlocked and the country lies almost entirely within the Basin, with more than 98% of the total land area in the basin.³³ Uganda is a signatory to the Cooperative Framework Agreement.

The official languages are English and Swahili but many other local languages are also spoken in Uganda. There are 111 districts that are spread across four administrative regions. The regions are Northern, Eastern, Central, and Western. In addition to the state administration, there are five kingdoms, Toro, Busoga, Bunyoro, Buganda, and Rwenzururu.

A national water policy was adopted in 1999 and addresses water management issues such as domestic water supply and sanitation. The government has made efforts to delegate management functions to the lowest appropriate levels whether domestic demands are given the highest priority.

2. Considerations

Data not available.

3. Results

a. Experts & Decision Makers

i. Rules and Principles

Most experts and decision makers, 84.6%, stated that they were somewhat familiar with the practices of other transboundary basins. (Experts & Decision Makers Survey, Question 10). 75% believed that learning about how other transboundary basins structured their legal framework would be helpful and 25% were not sure about the helpfulness of this data. (Experts & Decision Makers Survey, Question 11).

³³ *NBI Country Profiles*, Nile Basin Initiative, http://www.nilebasin.org/newsite/index.php?option=com_content&view=category&id=35&layout=blog&Itemid=67&lang=en

All respondents, 100%, believed that signing and ratifying both the Cooperative Framework Agreement and the 1997 UNWC would be useful for Uganda. (Experts & Decision Makers Survey, Question 34).

ii. Current Governance Framework

Most, 69.2% believed that the current governance framework situation in the Nile River Basin was somewhat effective, while 23.1% believed it was an ineffective structure, and 7.7% were unsure. (Experts & Decision Makers Survey, Question 6). This seems to indicate an overall satisfaction with the governance of the Nile Basin; however, when asked about the details of the structure, the responses were not as affirmative.

With regards to inclusiveness and the current framework, 53.8% believed the framework was inclusive while 38.5% believed it was not. (Experts & Decision Makers Survey, Question 7). On the transparency of the governance structure, 30.8% believed it was transparent while 46.2% believed it was not. (Experts & Decision Makers Survey, Question 8). On the procedural rights provided by the governance structure, 46.2% believed it was sufficient while 30.8% did not believe there were sufficient rights. (Experts & Decision Makers Survey, Question 9). Further efforts need to be made to promote inclusiveness and transparency.

All of the respondents believed that CSO members possess the capacity to promote Nile River Basin Cooperation and contribute to management strategies. (Experts & Decision Makers Survey, Question 32).

iii. Cooperative Framework Agreement

Generally, the experts and decision makers of Uganda were in favor of the Cooperative Framework Agreement. This group of stakeholders believed that the Agreement could add value to the region and should be ratified. Nearly all, 92.3%, believed that international legal principles helped structure the governance of the Nile River Basin. (Experts & Decision Makers Survey, Question 12). Similarly, 92.3% believed that previous agreements from the region were also influential in designing the governance structure of the Basin. (Experts & Decision Makers Survey, Question 13).

Most, 84.5%, stated that they somewhat understood the Cooperative Framework Agreement and its provisions while only 7.7% said that they did not understand the Agreement. (Experts & Decision Makers Survey, Question 14).

The majority, 66.7%, believed that the CFA should become the governing document that repeals all previous agreements from the region and only 8.3% believed that the CFA should reaffirm the commitments from prior agreements. (Experts & Decision Makers Survey, Question 15).

All of the respondents believed that the Cooperative Framework Agreement would be useful in securing the equitable and reasonable utilization of the Nile waters. (Experts & Decision Makers Survey, Question 17). 72.8% believed that the principle of public participation was reflected within the body of the Agreement. (Experts & Decision Makers Survey, Question 18).

b. Local Authorities & Actors

i. Rules and Principles

Some of the organizations that the local authorities and actors belong to include the Mayuga District Local Government, the Busia District Local Government, and the Rakai District Local Government. (Local Authorities & Actors Survey, Question 2).

These stakeholders stated that they were mostly familiar, 58.3%, with the practices of other transboundary basin. (Local Authorities & Actors Survey, Question 12). Regarding the rights and obligations that upstream and downstream States owe to one another, there did not seem to be a clear understanding. Half believed that both parties owed a duty of care to one another while the other half said they were not sure. (Local Authorities & Actors Survey, Question 13). These two responses seem to indicate an opportunity to educate the local actors about the duties owed by demonstrating how it functions in other transboundary basins.

All respondents stated that the public and civil society organizations should be represented within the Nile River Basin Commission structure. (Local Authorities & Actors Survey, Question 23). Thus, the general consensus seems to favor a decision-making structure that includes representation from primary stakeholders and those directly impacted by national policies and regulations.

ii. Current Governance Framework

The local actors in Uganda were generally satisfied with the governance framework in the Nile River Basin. 54.5% of the local authorities and actors believed that the state of water governance in the Nile River Basin region was effective, 27.3% believed that it was ineffective, and 18.2% were unsure. (Local Authorities & Actors Survey, Question 8). 58.3% believed the current governance framework was transparent (Local Authorities & Actors Survey, Question 9); 66.7% believed it was inclusive (Local Authorities & Actors Survey, Question 10); and 50% believed the framework provided sufficient procedural rights. (Local Authorities & Actors Survey, Question 11).

Half of the respondents believed that there was enough representation by the public and civil society organizations during the decision-making process while half believed there was not enough representation. (Local Authorities & Actors Survey, Question 17). This response seems to reinforce the idea that the decision making, especially within the context of the Nile River Basin Commission, should involve CSO and the public.

iii. Cooperative Framework Agreement

This group of stakeholders had little familiarity with the prior agreements. Most, 75%, were unfamiliar with any previous agreements that concerned the Nile River Basin (Local Authorities & Actors Survey, Question 14) and 75% were also unaware of the 1959 treaty between Egypt and Sudan. (Local Authorities & Actors Survey, Question 15).

The local actors need more access and understanding of the Cooperative Framework Agreement. There does not seem to be a thorough grasp of the Agreement and its impact. 41.7% had an opportunity to review the Cooperative Framework Agreement while another

41.7% did not review the document and 16.7% did not have access to the Agreement. (Local Authorities & Actors Survey, Question 18). 58.3% stated that they somewhat understood the Agreement and its provision while 25% did not understand the CFA and 16.7% had not yet reviewed the Agreement. (Local Authorities & Actors Survey, Question 19).

Most of the local authorities and actors, 83.3% were unsure as to how the CFA should align with the previous agreements in the region. Meanwhile 16.7% believed that the CFA should reaffirm the commitments made in the previous agreements. (Local Authorities & Actors Survey, Question 20). In sum, there is a large gap since the local authorities are not familiar with the prior agreements and thus unable to articulate whether or not the CFA should reaffirm or repudiate them. Thus, it is important that information be distributed not only regarding the CFA but also about the prior agreements.

However, despite not fully understanding the details of the CFA, the local actors were proponents of the agreement. All of the respondents believed that the CFA would be useful in guaranteeing equitable and reasonable utilization of the Nile waters. (Local Authorities & Actors Survey, Question 21).

c. Local Population

i. Rules and Principles

The local population viewed agriculture and forestry as the environmental jewels in Uganda. (Local Population Survey, Question 2). These stakeholders were concerned about the contamination of the Nile waters and the impact of climate change on their livelihoods and to the environmental jewels. (Local Population Survey, Question 6).

Nearly all, 87.5%, stated that they understood their rights and obligations regarding their use of the water from the Nile River Basin. (Local Population Survey, Question 22). The high level of awareness by this group of stakeholders is positive but further information is needed to determine the extent and depth of their understanding. For instance, it is important to ascertain that their understanding of their rights is accurate and gives them access to the full extent of their rights.

ii. Current Governance Framework

In general the local population seemed very pleased with the role they had in the current governance framework. Most, 83.3%, felt that they had the opportunity to discuss their concerns and raise questions regarding the management of the Basin. (Local Population Survey, Question 11). Further, 83.3% believed they had the ability to exercise their rights. (Local Population Survey, Question 12).

62.5% stated that there were public hearings in the community regarding the use of natural projects (Local Population Survey, Question 13) and 50% stated that investors and public authorities looked for their consent before implementing projects that might impact the natural resources in their community. (Local Population Survey, Question 14). Efforts

should continue to secure public hearings occur frequently and with sufficient involvement from the public.

Approximately half, 54.2%, were a member of a civil society organization (Local Population Survey, Question 9) and only 33.3% believed that the current management of the Basin provided for enough representation from CSO and the public. (Local Population Survey, Question 10).

iii. Cooperative Framework Agreement

58.3% stated that they were familiar with other agreements dealing with the Nile River Basin (Local Population Survey, Question 15). Less than half, 45.5%, said that they had heard about the Cooperative Framework Agreement while 54.5% had not heard about the Agreement. (Local Population Survey, Question 18). 70.8% of the local population was unaware of whether Uganda was a signatory to the CFA (Local Population Survey, Question 20) but all of the respondents stated that they believed the CFA would be useful in guaranteeing equity in the Nile River Basin. (Local Population Survey, Question 24). These questions indicate an opportunity to educate the local population further about the Agreement and the impact it would have on their lives if ratified.

ENABLING ENVIRONMENT FOR EFFECTIVE WATER GOVERNANCE³⁴

Creating an environment that is conducive to proper and adequate transboundary water governance requires the presence of many factors and instruments. For instance, there are pillars for transboundary water governance that emphasize water cooperation and are of utmost relevance within the context of the Nile River Basin.

Pillars for transboundary water cooperation

Achieving transboundary cooperation is not an easy enterprise and it can be well asserted that there is no single 'one-size-fits-all' solution. Generally, when dealing with shared resources, there are international dimensions that comprise of common pillars that have been delineated by many other international principles. This section will discuss important principles that are usually considered as necessary for long-term, sustainable and reliable transboundary cooperation.

Legal Instruments

There is a consensus among the majority of riparian countries that transboundary agreements need to be concrete and must also establish institutional arrangements for cooperation, measures for management and protection of water resources, and enforcement. Agreements must take into account water quantity and quality, hydrological events, changing basin dynamics and societal values as well as all potential impacts of climate change. They should also incorporate dispute resolution mechanisms and identify clear yet flexible means to share the benefits of water, water allocations and water-quality standards. Provisions for joint monitoring, information exchange and public participation as well as mutual assistance in case of extreme events are also crucial. Agreements should also include methods to incorporate risk and uncertainty, for example provisions to accommodate the impacts of climate change.

A sound legal framework is essential for stable and reliable cooperation. At the global level, the 1997 Convention on the Non-Navigational Uses of International Watercourses ("UNWC") represents an important step forward. The Convention was adopted by the United Nations General Assembly and provides a legal framework for inter-State cooperation on international watercourses. Although it is not yet in force, this Convention's core principles, – e.g. equitable and reasonable utilization and the no-harm rule – are already part of international customary law. These central concepts will be discussed in further detail below.

Equitable Use

According to the principle of equitable use, Basin States are to use the waterways within their territory in a reasonable and equitable manner. The UNWC establishes that "Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable

³⁴ The present chapter was based upon the following sources: 1. Iza A., Aguilar G., Governance of Shared Waters: Legal and Institutional Issues. IUCN Environmental Law and Policy Papers No. 58 rev. Switzerland. 2011. Available under: <http://data.iucn.org/dbtw-wpd/edocs/EPLP-058-rev-En.pdf>. 2. UN Water – Thematic Paper. Transboundary Waters: Sharing Benefits, Sharing Responsibilities. 2008. Available under: http://www.unwater.org/downloads/UNW_TRANSBOUNDARY.pdf. 3. Abseno M., How does the Work of the ILC and the General Assembly on the Law of the International Watercourses Contribute towards a Legal Framework for the Nile Basin. Submitted in Partial Fulfilment of the Requirements for the Award of the Degree of Master of Laws by Research in International Water Law and Policy. School of Natural Resources Law, Policy and Management, University of Dundee, Scotland. 2009

utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse."³⁵

Equitable use does not imply a division of water basins, but the establishment of equal rights and shared sovereignty of States over these resources. In practice, this means achieving a balance of interests to take into account the needs and uses of the waters for each of the States part of the water basin. All States shall then share the benefits according to what is considered reasonable to satisfy their needs.

The UNWC establishes a number of factors, which are non-exhaustive, for determining equitable use³⁶:

- a) geographical, hydrologic, climatic, ecological and other natural factors;
- b) the economic and social needs of the riparian States;
- c) the population that depends on the watercourse in each riparian State;
- d) the effects that the use of the watercourse in one particular riparian State can have on another State;
- e) the existing and potential uses of the watercourse;
- f) the conservation, protection, exploitation and economy of use of the water resources of the watercourse; and
- g) the availability of alternatives, of comparable value to a particular use of the watercourse.

The 1997 Convention determines that, except in the event of an agreement between States or a custom which provides for the contrary, none of the uses mentioned above are more important or take precedence over the other: "The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is a reasonable and equitable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole"³⁷.

When a conflict exists in relation to the different uses of water, the Convention calls on all parties involved to resolve the conflict through negotiation. However, in the end, the solution should take into account the fulfilment of vital human needs: "In the event of a conflict between uses of an international watercourse, it shall be resolved [...] with special regard being given to the requirements of vital human needs"³⁸.

In the context of the Nile River Basin Cooperative Framework Agreements, Article 4 (1) sets out:

‘Nile Basin States shall in their respective territories utilize the water resources of the Nile River Basin in an equitable and reasonable manner. In particular, those water resources shall be used and developed by Nile Basin States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of the Basin States concerned, consistent with adequate protection of those water resources.’

³⁵ 1997 Convention, Article 5.1.

³⁶ 1997 Convention, Article 6.

³⁷ 1997 Convention, Article 6.3.

³⁸ 1997 Convention, Article 10.

Both provisions stipulate fundamental rights and duties of States in the utilization of international water courses. However, unlike the UNWC, the second sentence of Article

4(1) of the CFA provides

‘Each Basin State is entitled to an *equitable and reasonable share* [emphasis added] in the beneficial uses of the water resources of the Nile River Basin’.

The UNWC does not make any reference to the concept of ‘sharing’. It seems that the term has been introduced to the Nile from Article IV of the Helsinki Rules, albeit with a different understanding. In the Nile context, the introduction of the term ‘share’ is seen by upper riparian States as a guarantee to a ‘volumetric or physical sharing’, of water in order to redress the prevailing historical injustices under the existing agreements. Whether the Helsinki Rules supported this understanding is not clear, although it has been suggested that Article IV of the Helsinki Rules on ‘reasonable and equitable sharing’ principle is aimed at providing the maximum benefit to each basin state from the use of the waters with the minimum detriment to each’ bears ‘some resemblance to the concept of optimal utilization under the UNWC.

The idea of ‘volumetric water sharing’ is increasingly challenged by the ‘new’ concept of ‘benefit sharing’ making the need for a concrete mechanism on how ‘water sharing arrangement’ under the CFA has to be realized in the Nile River Basin more important than ever.

The other important element is the recognition of ecosystem and environmental protection as an essential component of equitable and reasonable utilization (“ERU”), requiring consistent environmentally sound management of fresh water resources.

Article 6(1) of the UNWC lists ‘natural factors’, which are related to physical characteristics of international watercourses, and ‘functional factors’ which are associated with economic and social needs. Regarding the ‘natural factors’, a proposal put forward by Ethiopia to include ‘water contribution by each watercourse State’ as provided under Article V of the Helsinki Rules was not accepted by the Working Group in the process of the debate over the UNWC. However, the Nile basin States have been able to endorse it in the new cooperative framework agreement.

Article 6 of the UNWC requires watercourse States to apply all relevant factors and circumstances ‘taking into account ... the utilization of the watercourse in question, the needs and uses of the watercourse States concerned.’ The factors under Article 6 cover two broad categories. The first category include natural or scientific factors such as: hydrographic, hydrological, climatic, ecological factors , effects of use of other watercourse States, existing and potential uses, conservation measures and availability of alternatives.. The other category comprises of socio-economic factors which include social and economic needs, population dependent on the watercourses. This requirement prohibits priority of uses under paragraph 1, while ‘vital human needs’ is considered an essential requirement under paragraph 2 in balancing different needs and uses. The term ‘vital human needs’ has been debated as to its exact meaning.

The CFA provides similar factors stipulated under Article 6 of the UNWC in determining what equitable and reasonable utilization is. However, it further adopts Article 4, paragraph 2 of the CFA lists the following relevant factors and circumstances, but not limited to:

- a) Geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;
- b) The social and economic needs of the Basin States concerned;
- c) The population dependent on the water resources in each Basin State;
- d) The effects of the use or uses of the water resources in one Basin State on other Basin States;
- e) Existing and potential uses of the water resources;
- f) Conservation, protection, development and economy of use of the water resources and the costs of measures taken to that effect;
- g) The availability of alternatives, of comparable value, to a particular planned or use;
- h) The contribution of each basin State to the waters of the Nile River System;
- i) The extent and proportion of the drainage area in the territory of each Basin State.

Duty not to cause damage or harm

In international law there is no absolute ban on the polluting of watercourses. There is only a tendency to control specific sources and to ban certain types of pollution.

The 1997 Convention specifies that "Watercourse States shall, in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse States."³⁹

This is a due diligence obligation, in other words, the conduct which is expected for good governance and which derives from the so-called principle of good neighbourliness.⁴⁰ In accordance with this obligation, States must not carry out or allow activities within their respective territories or common spaces (such as the high seas) without first considering the rights of the other States or the protection of the environment. This principle implies an obligation to prevent damages (to take adequate measures) instead of an obligation to repair. This is a principle of customary international law which is also reflected in several

³⁹ 1997 Convention, Article 7.1.

⁴⁰ Maxim (in Latin) *sic utere tuo, ut alienum non laedas*.

treaties and international declarations and has been developed⁴¹ through the rulings of international courts and awards of arbitration tribunals.⁴²

Basin States should refrain from carrying out any changes to existing systems, within their respective jurisdictions that could adversely affect the use of the basin for another State also part of the basin. The international obligation of due diligence is implemented through the introduction of laws and administrative regulations which relate to public and private behaviour and that are capable of protecting other States or the environment.

In accordance with a State's physical location within a water basin and because of the power relations which exist depending on whether the State is upstream or downstream, Basin States will tend to favour the principle of equitable use or the principle of causing no damage or harm. Upstream States will lean towards equitable use, whereas downstream States will prefer not to cause damage, since in each individual case, these principles favor the position of the State in question. For a downstream State, if the fundamental principle is to do no-harm, this will guarantee water availability in case there is an excessive use of water on the part of the State located upstream, whereas the upstream State tends to favor the other principle of equitable use, in the sense that not causing harm imposes a higher threshold of protection and is more stringent than the other option.

In the Helsinki Rules, the prevention of contamination of a body of water is subject to equitable use, whereas in the 1997 Convention, States are obliged to take all necessary measures to try and prevent any possible damage, in other words, they have a due diligence duty. The duty to equitably use an international watercourse shall prevail over the duty not to cause damage when the amount of damage is not particularly significant, in which case the State has to tolerate the damage, or in case of a significant damage when this damage could not have been avoided, even when exercising due diligence⁴³.

The duty to inform and provide consultation when an activity could cause significant damage to the interests of another State, is applicable in international water law and is covered by the provisions of the 1997 Convention. States have the duty to cooperate according to the principles of good faith, territorial integrity, sovereign equality and mutual benefit in order to attain optimal utilization and provide adequate protection of water.⁴⁴ The Convention leaves it up to the States to establish different mechanisms to implement the general duty to cooperate, such as the establishment of an organisation for the management of the river.

Article 7 of the UNWC and the CFA set forth a process aimed at avoiding significant harm while reaching an equitable result in each concrete case.

Likewise, the obligation not to cause significant harm under Article 5 of the CFA reads:

Nile Basin States shall, in utilizing Nile River Basin water resources in their territories, take all appropriate measures to prevent the causing of significant harm to other Basin States.

⁴¹ For example: Principle 21 of the Stockholm Declaration on the Human Environment; Principle 2 of the Rio de Janeiro Declaration on Environment and Development; Article 3 of the Convention on Biological Diversity; Preamble of the United Nations Framework Convention on Climate Change; The Trail Smelter Case (American Journal of international law (1939), 182; 35 AJIL (1941), 684), and the Corfu Channel Case (ICJ Reports (1949), 1).

⁴² An award is the result of a decision subjected to an alternative dispute resolution process called arbitration. This award is equivalent to a judicial ruling, being obligatory and binding for the parties involved in the conflict.

⁴³ 1997 Convention, Article 7.2.

⁴⁴ 1997 Convention, Article 8.

Where significant harm nevertheless is caused to another Nile Basin State, the States whose use causes such harm shall, in the absence of agreement to such use, take all appropriate measures, having due regard for the provisions of Article 4 above, in consultation with the affected State, to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation.

The CFA requires a Nile Basin State to take all appropriate measures in order to prevent the causing of significant harm to other Basin States, in utilizing the water resources of the Nile Basin in its respective territory, in a similar fashion to that under Article 7 of the UNWC. Furthermore, it makes 'causing no significant harm' an obligation of 'due diligence' which a flexible threshold is permitting lawful State activities.

The concept of due diligence under Article 5, paragraph 1 indicates that significant harm is unavoidable; hence, the obligation is towards the conduct rather than the result. Accordingly, the general rule governing the Nile is that a basin State can be considered legally responsible for causing significant harm, only if it failed to demonstrate that its use is equitable and reasonable; and that it has not taken all appropriate measures to prevent the harm in question.

The relationship between the principle of equitable and reasonable utilization and no-harm

The issue of the primacy of equitable and reasonable utilization and no significant harm within the Nile Basin context depends on the geographical position of riparian States. The lower riparian States, in particular Egypt argues that the no significant harm take precedence over the principle of equitable and reasonable utilization. Whether the compelling reason for Egyptian argument is based more on considerations of 'economic harm' than 'environmental harm' is an issue that require clarification.

Several international declarations including the 1972 UNWC incorporate the version of the principle of 'no-significant environmental harm'. For instance, Principle 21 of 1972 Stockholm Declaration of the United Nations Conference on the Human Environment provides:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

The above is reaffirmed by the 1992 Rio Declaration on Environment and Development. A number of other international instruments, such as the 1992 Biodiversity Convention and the UNWC prescribe to 'no significant environmental harm'.

In the Nile context, the issue of the relationship between equitable and reasonable utilization and no significant harm, and the primacy of one over the other has been influenced by the respective geographical positions of the riparian States as upstream or downstream. Accordingly, upstream States argued in favor of precedence of equitable and reasonable utilization over that of no-significant harm. Meanwhile, downstream States have repeatedly held the opposite notion. The later notion strongly advanced by Egypt considers the primacy of no significant harm in relation to 'economic harm' rather than 'environmental harm'. Egypt claims that that is entitled to a 55.5 BCM

of water under the 1959 treaty and considers this amount as foreclosed. According to Egypt, the 1959 quota is already allocated to its existing economic use, while more water is needed for its new Nile Valley and Delta in the Sinai and Western Desert. Egypt perceives activities upstream may as causing harm to its existing uses, which means that its existing and planned economic benefits can be affected. Therefore, 'economic harm' than 'environmental harm' has more consideration in the Egyptian argument for precedence of no-significant harm over that of equitable and reasonable utilization. However, as the CFA adopts the principles as enshrined in the UNWC, any interpretation pertaining to the issue with regard to the UNWC also applies in the Nile as well. Accordingly, the prevailing notion that the principle of equitable and reasonable utilization takes precedence over the no-harm governs the new Nile agreement.

Cooperation and Procedural duties

This is a basic principle of international law which is applicable to this particular area. The duty to cooperate comes from the idea of indivisibility of the water basin and of the community of interests that exists between the States that are part of the shared basin.⁴⁵ It is only through cooperation between all of these States that sustainable development can be achieved and ecological integrity maintained.

The duty to cooperate only establishes a general obligation and does not specifically require that institutions be established in order to put this process into practice. This is an overall duty to negotiate in good faith as well as the opportunity to participate in a shared basin cooperative water system.

States have a duty to exchange information about the overall condition of a basin, particularly issues of a hydrological, meteorological, ecological nature and issues relating to water quality.⁴⁶

Prior notification is an international obligation intended to provide sufficient information in cases where States are required to seek specific information.

The State planning to undertake measures which could cause adverse effects to another State part of the water basin must notify the other States in a timely manner of its intention before carrying out such measures. Such notification should be accompanied by available technical data and information, including the results of any environmental assessments.

The States will have a period of 6 months to evaluate the possible effects of the planned measures and to notify the reporting State of its findings. This period may be extended for up to 6 months in exceptional cases.⁴⁷

The proposed measures will not be executed without the consent of the previously notified States. During the above mentioned 6 months period, the notifying State shall provide all additional information requested by the notified party.⁴⁸

⁴⁵ This community of interests, in turn, is based on equal rights among all States in relation to the management and use of water, and excludes, in principle, any privileged status of one particular party over another.

⁴⁶ 1997 Convention, Article 9.

⁴⁷ 1997 Convention, Article 13.

⁴⁸ 1997 Convention, Article 14.

In particular instances in which a State understands that the planned measures are inconsistent with the notion of equitable use of the watercourse or with the duty not to cause damage, States must seek advice and, if necessary, enter into negotiations in order to reach an equitable solution.⁴⁹

The notifying State must abstain from carrying out or permitting the execution of the projected measures during a period of 6 months, if the notified State requests such action at the time of responding to the original notification.⁵⁰

Without prejudice to the time limits specified in the Convention and, taking into account the provisions on equitable use and the duty not to cause significant damage, the planned measures can be immediately implemented in such cases where it is necessary to protect public health and safety or that of other equally important interests.⁵¹

Institutional Structures and Capacity Development

The appropriate institutional structures at the national, transboundary, and regional levels are also preconditions for implementation of a strong water governance scheme which is contingent on cooperation among riparian States. It is very important for the different national and transboundary organizations to have a clear mandate leading to the formation of strong governing bodies.

As it has already been pointed out, effective transboundary water management starts at the national level, where coordination and cooperation between different ministries and water related institutions is needed, as are sufficient financing and political commitment. In this regard, overlapping competences, legal or policy gaps, lack of authority and lack of capacity of national institutions are major challenges that have to be tackled. The lack of institutional capacity to develop and implement the legal framework and related water agreements needed to effectively manage the different water uses among riparians and sectors is still one of the most problematic issues for delivering on good water governance.

At the transboundary level, formation of strong institutions, like River Basin Organizations is key for the different riparians to cooperate amongst themselves, but also as a mean to coordinate with the national authorities in charge of implementing obligations and duties of the riparians under their jurisdiction. A strong transboundary institution can be fundamental in ensuring cooperation at the various levels and an overall good management of shared resources. It is key for States to give a strong mandate to these type of international bodies, which will allow for an overall better mandate.

This leads to the notion of vertical and horizontal coordination, among the different institutions and sectors involved in water uses and management that goes from the watershed level, all the way to the local level. This interaction for coordination across level and institutions can be best undertaken by a strong river basin commission or alike.

To be effective, joint bodies should pursue the following:

1. Coordination and advisory functions (e.g. collecting and exchanging hydrological data and forecasts, identifying pollution sources and hot spots, serving as a forum for the exchange of information on emerging issues, existing and planned uses of water and related installations, conducting studies on climate change impacts);

⁴⁹ 1997 Convention, Article 17 (1).

⁵⁰ Article 17 (3).

⁵¹ Article 19.

2. Policy development and implementation, including formulating joint policies, strategies and visions to implement the agreement (e.g. developing joint monitoring programs, establishing warning and alarm procedures, setting up regimes for reservoirs and other facilities);
3. Implementation and dispute settlement, including monitoring and reporting on implementation and settling differences and disputes.
4. Joint bodies in the same basin with a different scope (e.g. navigation and water management, as
5. Bodies overseeing a first-order basin, main tributaries or aquifers should develop institutional and administrative structures that facilitate cooperation.
6. Cooperation between joint bodies with the same scope but in different areas, e.g. protection of inland waters and of the marine environment, makes the work of both bodies more effective.
7. Appropriate rules of procedure and terms of reference for river basin organizations that take into account specific local conditions are also crucial.
 - a. These rules should not only recommend the structure, responsibilities, rights and financial status of such organizations, but also ways and means to ensure public participation.

For joint bodies to be effective, their institutional and human capacities are crucial. Staffs of joint bodies should have a broad competence and skills that bridge disciplines. The capacities of managers, especially at the national and local levels, should be strengthened not only to raise understanding of the complexities of managing shared water resources but also to derive the benefits made possible through cooperation.

Negotiation, diplomacy and conflict resolution skills need to be developed and improved. The capacity to develop and implement policies and laws as well as the relevant enforcement mechanisms is vital, and should be developed accordingly, as is setting up funding arrangements, both internal and external.

Information Exchange and Joint Monitoring and Assessment

Information based on well-organized measurement networks and monitoring programs is a prerequisite for accurate assessments of water resources and problems. Assessment is essential for making informed decisions and formulating policy at the local, national and transboundary levels. Moreover, basin management by two or more countries calls for comparable information. A common basis for decision-making requires harmonized (if not standardized), compatible assessment methods and data management systems as well as uniform reporting procedures.

Exchange of information – including on pollution caused by accidents, on infrastructure projects that could affect downstream countries, on extreme events (floods and droughts) as well as on operations such as for hydropower, navigation and irrigation – is vital to building trust and a shared vision among riparian countries.

A Participatory Approach

Public participation is fundamental to maximize agreement, enhance transparency and decision-making, create ownership, and facilitate the acceptance and enforcement of decisions and policies. Further, it is also a mechanism for gaining a better or common understanding between the various stakeholders on the nature of a given problem and the desirability of specific outcomes. Stakeholder participation strengthens integration, thereby contributing to conflict prevention, and risk reduction – all highly important in large infrastructure development projects.

Numerous methods exist for public involvement ranging from compilation of a stakeholders' database for network interaction to public hearings. Participation should be organized in an open and transparent way and should involve all relevant groups. Local residents, government representatives, the research community, farmers, industries, the private sector, women and minority groups all need to be fully involved in the development of river basin, lake and aquifer strategies, agreements and institutions. Of course, numerous challenges to public participation exist as well, for instance differing legislation and management and public participation systems, as well as priorities, in neighboring countries. Frontiers frequently represent a "delimiter" not only of a linguistic but also a cultural and socio-economic nature, and the public can be insufficiently aware of how to take part in decision-making. In addition, mechanisms of public participation are not well developed in many countries and even less at the transboundary level.

Critically, public participation requires adequate financial resources to be effective. Yet despite the difficulties, transboundary public participation efforts can be successful. For instance, the Danube Convention, the Sardar Sarovar Project and the Regional Partnership for Prevention of Transboundary Degradation of the Kura-Aras River are all examples of such efforts that yielded productive outcomes.

In order for governance in the Nile River Basin to be strengthened, the Basin countries must reflect upon these principles and attempt to realize them in a way appropriate to their context. Principles such as collaboration, capacity development, information sharing, and equitable use will enable the citizens of the Basin to harness the resource in a productive manner and grant them security in their rights.

ANNEX I: STAKEHOLDER MAPPING | Kenya

	TYPE			
	Internal	External	Primary	Secondary
Local stakeholders	1. KFA; 2. Kenya Livestock Producers Assoc; 3. BMU; 4. WRUAs	5. CBO; 6. FBO; 7. Farm in-put merchants; 8. Farm produce traders; 9 Fish traders	1. KFA; 2. Kenya Livestock Producers Assoc; 3. BMU; 4. WRUAs	5. CBO; 6. FBO; 7. Farm in-put merchants; 8. Farm produce traders; 9 Fish traders
NGO Representatives and CSO	1. Friends of Lake Victoria (Osienala); 2. Sustainability Watchdog (Kenya Suswatch); 3. Victoria Research and Development (VIRED); 4. Uhai Lake Forum; 5. Health and Environmental Media Network (HEMNet)	6. Famine Early Warning Systems Network(FEWSNET); 7. Global Water Partnership; 8. International Union for Conservation of Nature(IUCN)	1. Friends of Lake Victoria (Osienala); 2. Sustainability Watchdog (Kenya Suswatch); 3. Victoria Research and Development (VIRED); 4. Uhai Lake Forum; 5. Health and Environmental Media Network (HEMNet)	6. Famine Early Warning Systems Network(FEWSNET); 7. Global Water Partnership; 8. International Union for Conservation of Nature(IUCN)
Local Administration and Local Public Officials	1. Town Councils; 2. County Councils; 3. Municipal Councils	4. Assistant Chiefs; 5. Chiefs; 6. District Officers(Dos); 7. District Commissioners(DCs)	1. Town Councils; 2. County Councils; 3. Municipal Councils	4. Assistant Chiefs; 5. Chiefs; 6. District Officers(Dos); 7. District Commissioners(DCs)
Developers and Private Sector Partners	1. Intergovernmental Authority on Development(IGAD), 2. East African Community(EAC) LVBC-LVFO, 3. LVEMP II NBI-Nile Basin Trust Fund,	4. World Bank-United Development Programme (UNDP), 5. Global Environment Facility(GEF)	1. LVBC-LVFO, 2. LVEMP II NBI-Nile Basin Trust Fund,	3. World Bank-United Nations Development Programme(UNDP), 4. Global Environment Facility(GEF)

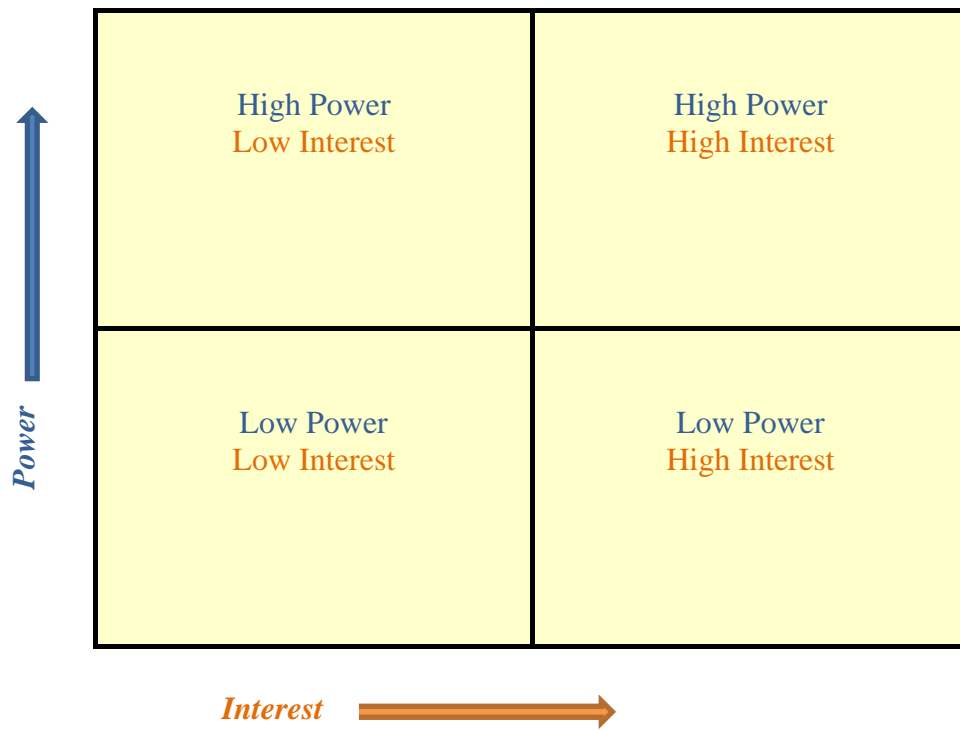
<p>Experts</p>	<p>Natural Resources Experts: 1. Prof. John Okidi, 2. Prof Ogalo, 3. Dr Mukabana, 4. Dr Phillip Raburu, 5. Dr Raphael Kapiyo, 6. Dr Obiero Ong'ang'a</p>	<p>7. Kenya Marine and Fisheries Research Institute(KMFRI), 8. Kenya Medical Research Institute (KEMRI), 9. Maseno University, 10. Masinde Muliro University of Science and Technology(MMUST), 11. Great Lakes University of Kisumu(GLUK), 12. Moi University, 13. University of Nairobi-Meteorological Training and Research, Kenya 14. Water Institute, 15. African Centre for Technology Studies(ACTS), 16. The world Agroforestry Centre(ICRAF) and The International Livestock Research Centre(ILRI)</p>	<p>1. Kenya Marine and Fisheries Research Institute(KMFRI), 2. Kenya Medical Research Institute (KEMRI)</p>	<p>3. Kenya Medical Research Institute (KEMRI), 4. Kenya Marine and Fisheries Research Institute(KMFRI), 5. Maseno University, 6. Masinde Muliro University of Science and Technology(MMUST), 7. Moi University, 8) University of Nairobi-Meteorological Training and Research, 9. Kenya Water Institute, 10. African Centre for Technology Studies (ACTS), 11. The world Agroforestry Centre (ICRAF); 12. The International Livestock Research Centre(ILRI)</p>
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Donors				
	<p>1. Nile Basin Trust Fund(NBTF), 2. Swedish International Development Agency(SIDA), 3. Canadian International Development Agency (CIDA), 4.Department for International Development(DFID)</p>	<p>5.World Bank, 6. African Development Bank(AfDB), 7. United Nations Agencies-Climate Change and development, 8. United Nations Environment Programme(UNEP), 9. United Nations Developmet Programme(UNDP), 10. United Nations Educational, scientific and cultural Organization(UNESCO)-through UNESCO-IHE Institute of water, 11. Japan International Cooperation(JICA), 12. Ministry for Foreign Affairs of Finland, 13. Norwegian Ministry of Foreign Affairs, 14. Ministry of Foreign Affairs of Denmark</p>	<p>1. Nile Basin Trust Fund(NBTF), 2. Swedish International Development Agency(SIDA), 3. Canadian development Agency (CIDA), 4. DFID</p>	<p>5. World Bank, 6. African Development Bank(AfDB), 7. United Nations Agencies-Climate Change and development, 8. United Nations Environment Programme(UNEP), 9. United Nations Developmet Programme(UNDP), 10. United Nations Educational, scientific and cultural Organization(UNESCO)-through UNESCO-IHE Institute of water, 11. Japan International Cooperation(JICA), 12. Ministry for Foreign Affairs of Finland, 13. Norwegian Ministry of Foreign Affairs, 14. Ministry of Foreign Affairs of Denmark</p>

<p>Government Officials</p>	<p>1. Ministry of Water, 2. NEMA, 3. Lake Basin Development Authority(LBDA)</p>	<p>4. Ministry of Energy-KETRACO, 5. Ministry of East African Community(EAC), 6. Ministry of Finance, 7. Ministry of Planning, 8. Office of the President/ Prime Minister, 9. Minister of Environment, 10. Minister of Energy, 11. Minister of Forestry and Wildlife, Sector Ministries(12. Water, 13. Lands, 14. Agriculture, 15. Fisheries, 16. Livestock Development, 17. Regional Development and Transport)</p>	<p>1. NEMA, 2. Lake Basin Development Authority(LBDA)</p>	<p>3. Ministry of Energy - KETRACO, 4. Ministry of Finance, 5. Ministry of Planning, 6. Office of the president/ Prime Minister, 7. Minister of Environment, 8. Minister of Energy, 9. Minister of Forestry and Wildlife, Sector Ministries(10. Water, 11. Lands, 12. Agriculture, 13. Fisheries, 14. Livestock Development, 15. Regional Development and Transport)</p>
<p>Negotiators</p>	<p>Director, Water Resources-Ministry of Water and Irrigation</p>			

<p>High Level Public Officials</p>	<p>1. Minister of Water and irrigation</p>	<p>2. Ministry of Finance, 3. Ministry of East African Community(EAC), 4. Ministry of Planning, 5. Office of the president/ Prime Minister, 6. Minister of Environment, 7. Minister of Energy, 8. Minister of Forestry and Wildlife, Sector Ministries(9. Water, 10. Lands, 11. Agriculture, 12. Fisheries, 13. Livestock Development, 14. Regional Development and Transport)</p>		
<p>Other</p>		<p>1. Health and Environmental Media Network(HEMNet), 2. The Lawyers of Nile, 3. Eminent Elders of the Nile Kenya National Chamber of Commerce & Industry (KNCCI)</p>		<p>1. Health and Environmental Media Network(HEMNet), 2. The Lawyers of Nile Eminent Elders of the Nile Kenya National Chamber of Commerce(KNCC)eur)</p>

ANNEX II: POWER RELATION MATIX



ANNEX III: BREAKDOWN OF RESPONDENTS – EXPERTS & DECISION MAKERS

Nile Basin Discourse - Understanding visions on Nile Governance for Experts, Decision Makers, and Other Relevant Stakeholders



1. Your Country		Response Percent	Response Count
Burundi		7.0%	11
Democratic Republic of Congo		13.9%	22
Egypt		20.9%	33
Eritrea		0.6%	1
Ethiopia		16.5%	26
Kenya		6.3%	10
Rwanda		12.0%	19
South Sudan		0.6%	1
Sudan		8.2%	13
Tanzania		5.7%	9
Uganda		8.2%	13
answered question			158

ANNEX IV: BREAKDOWN OF RESPONDENTS – LOCAL AUTHORITIES & ACTORS

Nile Basin Discourse - Understanding visions on Nile Governance – Local Authorities and Actors



1. Your Country			
		Response Percent	Response Count
Burundi		19.5%	47
Democratic Republic of Congo		8.3%	20
Egypt		14.5%	35
Eritrea		0.0%	0
Ethiopia		15.4%	37
Kenya		7.1%	17
Rwanda		7.1%	17
South Sudan		9.5%	23
Sudan		6.2%	15
Tanzania		7.5%	18
Uganda		5.0%	12
answered question			241

ANNEX V: BREAKDOWN OF RESPONDENTS – LOCAL POPULATION

Nile Basin Discourse - Understanding visions on Nile governance – Local Population



1. Your Country		Response Percent	Response Count
Burundi		9.4%	22
Democratic Republic of Congo		9.9%	23
Egypt		9.4%	22
Eritrea		0.0%	0
Ethiopia		12.9%	30
Kenya		14.6%	34
Rwanda		12.0%	28
South Sudan		11.6%	27
Sudan		3.0%	7
Tanzania		6.9%	16
Uganda		10.3%	24
answered question			233

ANNEX VI: SOUTH SUDAN AND THE COOPERATIVE FRAMEWORK AGREEMENT⁵²

International agreements can be amended if State parties agree to renegotiate them or if specific provisions establish amendment procedures as per Articles 39 and 40 of the 1969 Vienna Convention on the Law of Treaties⁵³. A multilateral treaty can also experience modification if two or more parties agree to modify it only between themselves⁵⁴. An existing treaty might also be modified by the conclusion of a new treaty or a successive norm of *jus cogens* as well as by the “subsequent practice in the application of the treaty establishing the agreement of the parties to modify its provisions”⁵⁵. Treaties can be negotiated in a variety of forms which are determined by the intention and consent of the parties. There are no substantive requirements and does not even have to be in written form, obviously oral agreements would lack the legal certainty that a written text offers. Making and agreement involves different steps: negotiation, adoption of a text, authentication, and expression of consent to be bound (through signature, ratification, acceptance, accession or approval). Negotiations embrace all the round of discussion developed between authorized representatives of two or more States aimed at establishing an agreement. Usually, negotiations take place during ad hoc conferences convened by a State, a group of States or an international organization.

The 1959 Nile Water Agreements does not include any renegotiation clause, however, the treaty itself can be considered as an amendment of the previous 1929 Nile Water Agreement. However, being South Sudan a newly independent State, there are further and more complex issues, linked to the rule of succession, that need to be analyzed.

South Sudan declared its independence on the 9th of July 2011 as a result of a referendum (held in January 2011) in which more than 98% of the population voted in favour of declaring independence from Sudan. Both Sudan and Egypt immediately recognized the independence of South Sudan and the country was admitted as the 193rd member of the United Nations without any vote or objections on the 14th July 2011 (during the 65th session of the UN General Assembly).

The rise of this new State leads to questions related to the validity and the potential modification of existing agreements, such as the 1959 Water Agreement between Egypt and Sudan.

The creation of a new state creates several legal problems. In relation to the rule of succession⁵⁶, the governing principles are provided by 1978 Vienna Convention on Succession of States⁵⁷ in respect of Treaties as well as by international state practice. As a general principle for multilateral treaties, in case of “partial” succession (when the

⁵² Please refer to www.waterlawandgovernance.org for further information. The Water Law and Governance Support Platform is meant to provide legal expertise and support on water governance issues in transboundary contexts whenever specific questions and needs arise throughout the learning and implementation cycle of water governance projects.

⁵³ The 1969 Vienna Convention on the Law of Treaties regulates this issue in Part IV on “Amendment and Modification of Treaties”.

⁵⁴ See Article 41 of the 1969 Vienna Convention on the Law of Treaties.

⁵⁵ Final Draft of the International Law Commission, Article 38, Yrbk. ILC (1966), ii 236. On this issue see Brownlie, I., 1998, Principle of Public International Law, Fifth Edition, Clarendon Press, Oxford, pag. 631.

⁵⁶ The 1969 Vienna Convention on the Law of Treaties is silent on the question of state succession.

⁵⁷ The 1978 Vienna Convention has been in force since 1996.

“predecessor” state is not extinguished), the newly independent state⁵⁸ is not bound by any existing treaty of the predecessor by virtue of a principle of succession (1978 Vienna Convention, Art. 16). This provision is based on the “clean slate” principle which applies to new States deriving from existing ones as well as on the theory of *tabula rasa* that was applied to colonies.

Nevertheless, a newly independent State might establish its status as a party to any existing multilateral treaty by mean of a notification of succession (Art. 17.1) unless otherwise provided within the relevant treaty. In this case, Art. 17.3 claims that “When (...) the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.”.

In contrast, in case of succession of States as a result of separation of parts of a State, Paragraph 1 (a) of Art. 34 establishes that the existing treaties which are in force at the date of the succession and relate to the entire territory of the predecessor State will be binding on each successor State unless the States concerned accord differently [Art. 34.2 (a)], the treaty establishes specific provisions in relation to this matter, such a validity would be in contrast to the text of the treaty, its object and purpose or it would radically change its operational conditions [Art. 34.2 (b)]. In relation to the predecessor State, Art. 35 establishes that the existing treaty will remain in force in respect to its remaining territory except that (a) the States concerned reach a different agreement; (b) the treaty relates only to the territory that has been separated from the predecessor State; or (c) the application of the treaty in respect of the predecessor would be incompatible with its objective, purpose or would alter completely its operational conditions.

Unlike the abovementioned provisions, the rule of non-transmissibility tend to be the most followed in practice, excluding exceptional cases (treaties declaring rules of general international law, law-making treaties and boundary treaties). Succession-related problems have been usually addressed in devolution agreements, are solved by direct accession to conventions by new States or through official declarations of new States⁵⁹. Therefore, State practice has not always been coherent as it has been influenced by political considerations (rather than legal ones) and it has been determined by the peculiar conditions of each case.

It has been claimed that agreements governing transboundary water resources could be considered as related to territory and included within the boundary treaties’ exception, being thus binding on successor States. However, there should be a clear distinction between rights and obligations related to international rivers as a natural resource (i.e. concerning water flows) and those connected to territorial aspects, such as navigational rights. For instance, the obligation to provide water supply to non-riparian population will restrict sovereignty of the new State *a priori*, limiting its right to use water on its territory.

It is worth mentioning that Article 13 of the 1978 Vienna Convention confirms the permanent sovereignty of every State and population over their natural wealth and resources. In addition to that, the Convention addresses the issue of bilateral agreements in Article 24, prescribing that bilateral treaty will continue to be in force after independence between the new State and the other State if expressly agreed or if their conduct implicitly shows such an agreement.

⁵⁸ 1978 Vienna Convention on Succession of States in respect of Treaties, art. 2 (f) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

⁵⁹ Brownlie, I., 1998, Principle of Public International Law, *cit.*

In addition, the 1959 Nile Water Treaty includes a section that is particularly relevant to the issue at stake. In Article Fifth on General Provisions, the agreement says that if the possibility of new negotiation related to the Nile water with other riparian States arises, Sudan and Egypt need to agree on a unified view which will constitute the basis of such negotiations. Moreover, if a riparian State (other than Sudan and Egypt) "(...) claim[s] a share in the Nile waters, the two Republics have agreed that they shall jointly consider and reach one unified view regarding the said claim. (...)". Although implicitly recognizing utilization rights of other riparian countries, Sudan and Egypt reserve to themselves the absolute authority to decide about it. The other riparian States have been always abnegating such a position and refusing the imposed hegemony of Egypt and Sudan on the Nile.

In light of all these elements, we can say that North Sudan will be certainly bound by the existing agreement according to Art. 35 of the 1978 Vienna Convention - unless any exception arises -, whereas South Sudan as multiple options. The 1959 Nile Waters Treaty deals with the use of waters and does not have any connection with international boundaries' issues, thus is not binding *per se* with respect to new States.

According to the letter of the Vienna Convention, South Sudan should be bound by existing agreements of its predecessor *ex Art. 34*. However, in line with international practice, South Sudan would follow the non-transmissibility principle and decide either to declare universal continuity (towards all the existing treaties negotiated by its predecessor) by a unilateral declaration of succession or to consider the Nile Waters Treaty and acknowledge its status in relation to this specific treaty. The reconsideration of the Nile Water Treaty would also be in line with the principle of permanent sovereignty over natural resources recognised by Article 13 of the 1978 Vienna Convention.

If South Sudan decides to succeed into the 1959 Agreement and claims water rights on the Nile, North Sudan and Egypt need to agree to this succession and water allocations would have to be renegotiated. Succeeding to the 1959 Agreement implicates that South Sudan joins downstream countries strengthening their already powerful position.

On the other hand, if South Sudan refuses the validity of the 1959 Agreement and align with upstream countries, it could join the Nile Basin Initiative and eventually sign the Cooperative Framework Agreement (CFA), which has been rejected by Egypt and Sudan.

The position of South Sudan is strategically important in terms of resource management. Its decision will be strongly influenced by geopolitical and economic considerations and will in turn have a substantial impact on the politic of the Nile. Therefore, it is possible that South Sudan will not clearly align with any of the two groups and decide to collaborate on a project-by-project basis with each country. The new State supports equitable distribution of the Nile water, it has clearly stated that regional and international cooperation is the way forward, but it has also claimed its entitlement to a share of the 18.5 billion cubic meters of water allocated to Sudan by the 1959 Agreement. In this context, South Sudan could act as a third party by facilitating the dialogue between upstream and downstream countries, promoting a fair use and allocation of water through the adoption of a basin perspective and encouraging the negotiation of a multilateral instruments that gathers together the eleven riparian countries of the Nile River and is developed according to the UN Convention on the Law of Non-Navigational Uses of International Watercourses.