

A policy briefing by:



Right to information at the IMF: *How to improve the Fund's transparency policy*

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Executive Summary

Upon a critical analysis of these issues, the IMF's practices on information disclosure falls far short of the best practice standards outlined in the Global Transparency Initiative's Transparency Charter for IFIs. The transparency policy of the IMF contains no recognition of the right of access to information, a basic requirement for effective and accountable governance of an institution. Additionally it is limited in coverage and badly integrated with the archives policy. The IMF has no clear rules or decision-making system around documents classified as confidential and strictly confidential. Though more than half of IMF executive directors have freedom of information legislation in place in their home countries, they have not moved to put such standards in place at the Fund.

The GTI Charter elaborates the standards upon which access to information policies of international financial institutions should be based. It takes a rights-based premise on Article 19 of the UN Universal Declaration of Human Rights, which guarantees the right of citizens to seek information from public bodies, both national and international. This brief shows that the IMF fails to meet five of the nine principles in the GTI Charter and only partially meets the other four. The IMF fares significantly worse than the World Bank in meeting these principles.

The IMF should use the upcoming transparency policy review, scheduled for 2009, to make a bold move towards recognizing the right to information. The policy review, which has already been delayed by more than 1 year, is a key opportunity for the IMF to begin to implement some of the recommendations of the Independent Evaluation Office (IEO) report on internal governance. However civil society feels that some of the IEO recommendations were too timid and that a bolder move towards international best practices in transparency needs to be made.

Recognizing the right to information and establishing a formal system for information requests will require political will from IMF member states and the executive directors. If the IMF chooses to stop short of fulfilling the requirements of Article 19 in this policy review, it can still make significant progress by liberalizing access to information rules and mechanisms to ensure the participation of external stakeholders. On top of the demand for recognizing the right to information, this brief recommends 11 specific changes to document and information access across a range of document types, including policy papers, archives and board documents.

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The IMF transparency policy compared to best practice

In order to rate how the IMF is meeting the openness principles set forth in the Transparency Charter, the GTI has developed a transparency scorecard. The scorecard reflects research based on the GTI's guide to *Transparency at the IMF*¹ and the *IFI Transparency Resource*—an online database of over 200 indicators of transparency for IFIs. The scorecard breaks down each Charter principle into a set of openness indicators. For each indicator, the IMF is graded as acceptable, needs improvement, or unacceptable. The scorecard is summarized in Table 1.

Principle 1: The Right of Access

Rating: unacceptable

Although the IMF's transparency policy has taken a first step toward recognizing the right to information by putting in place disclosure policies that cover over 24 types of documents, it does not recognize the right of access to information. Only the documents listed by the Fund's disclosure policy are publicly released; the public cannot access documents not listed by the Fund's policy, such as draft documents and Board meeting transcripts.

Principle 2: Automatic Disclosure

Rating: needs improvement

Basic institutional information, such as the IMF's Articles of Agreement and by-laws and aggregate financial and budgetary information, is disclosed. Country-based documents, draft policy documents, and project and program information during the formation stages, are not automatically disclosed. For documents such as the annual Article IV surveillance reports, the Fund's policy states, "A member's consent to Fund publication of documents... shall be voluntary but presumed." The policy's definition of "presumed" requires country members' explicit consent for the publication of country documents. This is the very opposite of automatic disclosure. Furthermore, there is no

required disclosure of institutional procedures, some policies and strategies—while some of the guidance notes from management to staff are released publicly, it is not required. Information on projects and programs in member countries is not publicly available during all stages of a lending program—publication is only allowed after the IMF's Board makes its decision and the country authorities submit a written consent for publication. A directory of contact information for the IMF is not available either online or in hard copy.

Principle 3: Access to Decision-Making

Rating: needs improvement

The IMF's transparency policy states: "Documents may be published .. only after their consideration by the Executive Board." This applies to all documents with the exception of a minority few, such as country-level Poverty Reduction Strategy Papers (PRSPs). Given this exclusion of draft documents from the Fund's publication list, access to decision-making on the design and input process of core IMF operations — which occur before Board consideration — is effectively barred. Board meetings are not only closed to the public but full transcripts remain confidential. In fact, Board meeting minutes and written statements from Executive Directors are withheld from public disclosure for ten years in the IMF's archives. The routine disclosure of successive versions of draft documents would provide external stakeholders an opportunity to give input on policy and program development. Open decision-making processes would facilitate the public's understanding of the role their national representative is playing in Board decisions as well as how or whether their own input is being considered.

Advance notice is available on a very limited basis, as the Fund's transparency policy does not require advance notice of policy or loan reviews or country documents. Furthermore, the Board meeting calendar provides only 7 days advance notice of its meetings, and country lending programs do not provide any advance notice of their reviews. The Public Information Notices that summarize Board meetings are not substitutes for meeting transcripts, as they do not provide attribution to specific Directors or a full record of the Directors' votes.

Principle 4: The Right to Request Information

Rating: unacceptable

The IMF does not recognize the right to request information as a transparency principle. While its website lists perfunctory information on how to submit inquiries, the Fund does not have well-developed rules on whether or how the public can request information that is not automatically disclosed through the internet, mailing lists, or other sources of the IMF. Contextually, the past evidence

Table 1: Transparency scorecard

GTI Principle	IMF	World Bank
1. The right of access	X	~
2. Automatic disclosure	~	~
3. Access to decision making	~	~
4. Right to request info	X	X
5. Limited Exceptions	X	X
6. Appeals	X	X
7. Whistleblower protection	~	~
8. Promotion of the freedom of information	X	~
9. Regular review	X	~

Key: o acceptable
 ~ need improvement
 X unacceptable

¹ See GTI, "Transparency at the IMF: A guide for civil society on getting access to information from the IMF," <http://www.ifitransparency.org/resources.shtml?x=67288>.

from the World Bank Group and other IFIs suggests that transparency policies focus only on publicly releasing a defined set of documents, rather than providing channels through which stakeholders can define, and request, what information they need. Process guarantees would ensure that the right to request information is realized. This includes providing assistance to requestors who may not fully understand the Fund's operations and policies and need help formulating their requests. Furthermore, the IMF does not produce a document register, which would list every type of document or information held by the organization.

Principle 5: Limited Exceptions

Rating: unacceptable

Limited exceptions to disclosure imply that the means by which an institution can keep information confidential should be narrowly-drawn, so as not to apply to any and all information, and should clearly state the possible harm that may result if the information is disclosed. The disclosure exemptions of the IMF are broadly outlined and could be interpreted to apply to almost any document on economic policy. Furthermore, these disclosure exemptions are not based on a test of harm. A key rationale for strict and enforceable exceptions to non-disclosure is that they are necessary for the effective functioning of disclosure systems. Broad and vague provisions grant excessive and inappropriate discretion, allowing arbitrary decisions about what information may be disclosed and what will remain locked away.

Principle 6: Appeals

Rating: unacceptable

An appeals process allows an individual who believes that an international organization has wrongly denied their request for information the right to have the matter reviewed by an independent and authoritative body. Currently, the IMF does not have in place either an administrative or an independent appeals process.

Principle 7: Whistleblower Protection

Rating: needs improvement

Individuals acting in good faith to expose and bring accountability to wrongdoings are acting as "whistleblowers," and should be protected and supported for their actions. The IMF had no formal whistleblower protection policy until this year. In June 2008, the IMF established a confidential 'integrity hotline' for handling allegations of staff misconduct, on either an anonymous or

identified basis, and from both internal and external sources. The hotline extends to both staff and consultants but there is no independent adjudication forum for a whistleblower to seek redress against retaliation or any specification of other mechanisms of relief or corrective action.

Principle 8: Promotion of Freedom of Information

Rating: unacceptable

The promotion of freedom of information refers to an organizational commitment to consistently prioritize and promote the day-to-day implementation of its transparency policy as well as incorporating openness in all its operational activities. The IMF does not have a strong or visible stance on promoting its freedom of information, particularly as it is not clear if and when IMF staff are trained on access to information rules or if openness standards form part of the Fund's corporate incentive structures and staff evaluation procedures. Furthermore, there is no records management system at the IMF which can act as a central system for tracking information.

Principle 9: Regular Review

Rating: unacceptable

As transparency, like accountability, is a rapidly evolving concept, openness norms are constantly changing. Reviews ensure opportunities to officially incorporate and amend the policy so that it can meet higher public disclosure expectations and improvements in technologies. The last IMF review of its 2001 transparency policy took place in 2005. A 2008 review was scheduled, and then abandoned due to the internal restructuring process. According to the transparency policy text, it must be reviewed at least every 36 months, but this provision has been changed by a blanket decision of the executive board to put all policy reviews on a five year cycle. This partially fulfills the requirement under the ninth principle of the Charter. However, the IMF does not require for a comprehensive and regionally-based consultation to form a part of its review process. No previous review of the transparency policy involved consultations with stakeholders. This poses a significant obstacle for ensuring meaningful participation by stakeholders as well as for making improvements that external stakeholders would be more likely to demand.

Recommendations

The IMF should use the upcoming transparency policy review to make a bold move towards recognizing the right to information. The policy review, which has already been delayed by more than 1 year, is the best chance for the IMF to begin to implement some of the recommendations of the IEO report on internal governance.

The 2009 transparency policy review will only meet its significant potential if it includes a process to actively solicit the opinion of communities who have been affected by IMF policies in general and external stakeholders in member countries that do not publish IMF documents in particular. Such a consultation must be performed in good faith and the recommendations of stakeholders must be seriously considered and incorporated into the proposed revisions.

While the GTI strongly believes in the right to information, it also recognizes that implementation of such a regime at the IMF presents political problems. If the IMF chooses not to fulfill the requirements of Article 19 of the Declaration on Human Rights in this policy review, it can still make significant progress by liberalizing access to information rules and mechanisms to ensure the participation of external stakeholders. There are clear improvements that can be made within the remit of the Fund's current policies on archives, transparency and publication.

Even without recognizing a right to information the IMF could establish a process for requesting information and an appeals system. Such a process empowers stakeholders to make requests for the considerable array of documents and information not currently included in the Fund's transparency policy, and would signify a substantive liberalization of access to information at the IMF. The creation of an appeals mechanism would augment the accountability the IMF is able to show to its external stakeholders. The IMF lags far behind its IFI counterparts, including its sister institution, the World Bank, in this regard.

One clear improvement that needs to be made is combining the transparency policy with the archives policy into a single coherent policy that covers all documents and information produced at or held by the IMF. This would resolve some of the significant confusion amongst stakeholders, staff and shareholders alike.

While the IEO recommendations are a good start on the road to accountability and transparency, most civil society organizations feel that the IEO recommendations were too timid and that a bolder move towards transparency needs to be made. The following table outlines some specific document and information types, their current publication status and recommendations for change.

Table 2: Recommendations for changes to the IMF's information access policies

Document or information type	Current Access	Recommendation	Rationale
Draft Policy Papers	20-years in IMF Archives	Publish a redline draft of the policy paper or a policy consultation document with all substantive details from the policy paper well before the executive board meeting to consider the policy.	Publication of a draft policy paper or consultation document will give external stakeholders access to decision-making. They will be able to give informed opinion to their governments and representatives at the IMF on important policy changes.
Technical Assistance final reports	Disclosure encouraged by Fund staff, published upon written consent from country authorities	Published except upon written refusal from country authorities.	TA reports significantly influence country authorities and shape economic policies that may have important impact on citizens. Thus TA reports should be publicly available to parliaments and citizens so that the merits of the recommendations can be openly debated and policy makers can be held accountable for their final decisions.
Executive Board documents	Available after 5 or 10 years	Make executive board documents, including minutes and statements, available as soon as possible.	Both shareholders and stakeholders would benefit from more transparency at the IMF board as they could better assess how their representatives are performing.

Document or information type	Current Access	Recommendation	Rationale
Staff directory	Unavailable	Publish a staff directory with work phone numbers, email addresses, titles, and departments.	A staff directory will enable external stakeholders and country authorities to better direct requests for information and clarification. It will facilitate better accountability through dialogue. As staff email addresses and extensions are already available from the switchboard there would be no loss of privacy.
IMF archival material	Some classes of documents available after 20 years	Make all material available after 1 year.	This material would be invaluable to researchers, shareholders and stakeholders who seek to learn from past IMF policies and country engagement in order to draw lessons for future policy and practice.
Confidential and secret material	Available after declassification by the managing director or department head	<p>Publish full list of which material has been classified and (if possible) reasons for classification.</p> <p>Write and publish clear criteria for refusing declassification.</p> <p>Establish independent appeals mechanism for refusals of declassification requests.</p>	Having a mechanism for requesting declassification of material is useless if shareholder and external stakeholder are not aware of what material is available or under what conditions it may be declassified. A full list of the documents classified needs to be available. Clear criteria for refusal of a declassification request and an independent and impartial appeals procedure guard against arbitrary refusals.
IMF archival material access	Available in Washington DC only	Put all archival materials (including executive board series documents) that have passed the relevant period for public access on the IMF website.	Most external stakeholders do not have the ability to go to Washington DC to access the archives. Much of the information has already been digitized and can be easily put online provided the board agrees to a blanket policy of consent and release of this information that has passed the relevant time delay. None of this material is likely to be market sensitive given the long delays in publication. Some Archival material is already being put online.
Executive Board schedule	<p>Published 1 week in advance</p> <p>Informal seminars can be excluded</p>	<p>Publish 1 month in advance (rolling basis).</p> <p>Include informal board seminars on the calendar.</p>	This would allow time for stakeholders to prepare input to their governments and representatives on all the topics to be discussed.
Article IV reports	Published upon written consent from country authorities	Published except upon written refusal from country authorities.	Moves the IMF towards a true presumption of disclosure regime on its documents and will not substantively changing the ability of member countries to withhold sensitive information.
Data on deletions requests	Unavailable	Publish aggregate data on the number of deletions requested, the number granted, and general information on the content of the deletions.	This information will allow stakeholders and shareholders to better assess whether member states are following the spirit of the Fund's transparency policies. This can be done in the context of the annual report on trends in disclosure policy.
Data on side letters usage	Unavailable	Publish aggregate data on usage of side letters and aggregate general (not detailed) information on their content.	This information will allow stakeholders and shareholders to better assess whether member states are following the spirit of the Fund's transparency policies. This can be done in the context of the annual report on trends in disclosure policy.

Appendix 1: GTI Transparency Charter

Preamble

The right to access information held by public bodies is a fundamental human right, set out in Article 19 of the United Nations Universal Declaration of Human Rights, which guarantees the right to “seek, receive and impart information and ideas”. This right applies to intergovernmental organisations, just as it does at the national level. The right to information plays a crucial role in promoting a range of important social values. Information has been described as the oxygen of democracy. It is a key underpinning of meaningful participation, an important tool in combating corruption and central to democratic accountability. A free two-way flow of information provides a foundation for healthy policy development, decision-making and project delivery. Key elements of a rights-based approach are a true presumption of disclosure, generous automatic disclosure rules, a clear framework for processing requests for information, limited exceptions and a right to appeal refusals to disclose to an independent body. This Charter elaborates the standards upon which the access to information policies of international financial institutions should be based. The Global Transparency Initiative (GTI) calls on all international financial institutions to amend their information disclosure policies to bring them into line with this Charter.

Principles

Principle 1: The Right of Access

The right to access information is a fundamental human right which applies to, among other things, information held by international financial institutions, regardless of who produced the document and whether the information relates to a public or private actor.

Principle 2: Automatic Disclosure

International financial institutions should automatically disclose and broadly disseminate, for free, a wide range of information about their structures, finances, policies and procedures, decision-making processes, and country and project work.

Principle 3: Access to Decision-Making

International financial institutions should disseminate information which facilitates informed participation in decision-making in a timely fashion, including draft documents, and in a manner that ensures that those affected and interested stakeholders can effectively access and understand it; they should also establish a presumption of public access to key meetings.

Principle 4: The Right to Request Information

Everyone has the right to request and to receive information from international financial institutions, subject only to a limited regime of exceptions, and the procedures for processing such requests should be simple, quick and free or low-cost.

Principle 5: Limited Exceptions

The regime of exceptions should be based on the principle that access to information may be refused only where the international financial institution can

demonstrate (i) that disclosure would cause serious harm to one of a set of clearly and narrowly defined, and broadly accepted, interests, which are specifically listed; and (ii) that the harm to this interest outweighs the public interest in disclosure.

Principle 6: Appeals

Anyone who believes that an international financial institution has failed to respect its access to information policy, including through a refusal to provide information in response to a request, has the right to have the matter reviewed by an independent and authoritative body.

Principle 7: Whistleblower Protection

Whistleblowers – individuals who in good faith disclose information revealing a concern about wrongdoing, corruption or other malpractices – should expressly be protected from any sanction, reprisal, or professional or personal detriment, as a result of having made that disclosure.

Principle 8: Promotion of Freedom of Information

International financial institutions should devote adequate resources and energy to ensuring effective implementation of their access to information policies, and to building a culture of openness.

Principle 9: Regular Review

Access to information policies should be subject to regular review to take into account changes in the nature of information held, and to implement best practice disclosure rules and approaches.

Appendix 2: Information availability at the IMF

Unfortunately the IMF does not make it very clear what documents and information are available at what times. This creates confusion amongst stakeholders and shareholders alike. Below we set out the current state of disclosure at the IMF.

Contemporaneous publication – mandated disclosure

The IMF is required by its Articles of Agreement to publish the following information:

- Audited statement of accounts (annual)
- Summary statement of operations and transactions (quarterly)
- Holdings of Special Drawing Rights, gold, member currencies (quarterly)

The IMF's rules and regulations provide for the following additional publications:

- Statement to members of their position in the Fund and details of operations and transactions between the Fund and member (monthly, non-public)

Some IMF policy documents related to non-administrative matters are published by the IMF under its transparency policy. The determination of which matters are administrative is made by the IMF.

- Fund Policy Papers²

Documents or statements related to conditionality are published under the transparency policy:

- Statements on Fund decisions on waivers of applicability, or for non-observance of performance criteria;
- Statements on Fund decisions on waivers of nonobservance of assessment criteria.

Contemporaneous publication – IMF discretion

Some Fund documents are published on an ongoing basis but not mandated to be released by any policy or by-law. Other documents are published on a case-by-case basis:

- Fund policy documents on administrative matters such as operating budget, personnel policies, staff retirement plan and asset management (case-by-case)
- Organization of the Fund including quotas, votes, names of governors and alternates, names of executive directors and alternates, names of senior officials, by-laws, rules, regulations, decisions of the executive directors (voluntary)
- Executive board calendar and work plan (voluntary)
- Monthly financial data on the following: member financial relations with the IMF, Fund disbursements and repayments, projected payments to the Fund, IMF credit outstanding, lending arrangements, SDR allocations and holdings, arrears, Fund financial resources and liquidity (voluntary)
- Weekly financial data on: SDR interest rates, rate of remuneration, rate of charge, burden sharing arrangements, financial support to member countries (voluntary)
- Daily SDR valuations (voluntary though formula is set in IMF rules and regulations)
- Guidance notes to Fund staff interpreting board decisions (case-by-case)
- Transcripts of speeches by senior management (voluntary)
- Working papers and other research papers by Fund staff (voluntary)

Contemporaneous publication – Country authority discretion

Fund documents relating to member countries that require explicit written authorization for disclosure:

- Article IV reports and other surveillance documents like Selected Issues Papers, Statistical Appendices, Reports on Standards and Codes;
- Use of Fund Resources documents (for all facilities) including PRSPs, JSANs, Letters of Intent and Memoranda of Economic and Financial Policies, Technical Memoranda of Understanding, staff reports, Ex-Post Assessments, HIPC decision and completion point documents;
- Staff-monitored program documents including staff reports, Letters of Intent and Memoranda of Economic and Financial Policies;
- Policy Support Instrument documents including PRSPs, JSANs, Letters of Intent and Memoranda of Economic and Financial Policies, Technical Memoranda of Understanding and staff reports.

² Board summing ups, or Public Information Notices which summarize board discussions are generally treated to the same publication standard as the associated document the board was considering with the exception of Article IV reports, for which a PIN is always issued regardless of the country authority's consent to publication of the report.

Publications on 5-year delay at IMF Archives

Some documents, including executive board documents, are available after 5 years from the IMF archives, meaning they are currently only accessible from the IMF's archives room in Washington. There are approximately 60 series of board documents, only some of which are available. There is not yet any system for making available country-related documents on the web site of the IMF because countries have not consented to their publication in this fashion. Five-year delay documents include:

- IMF Executive board documents, but not including certain kinds of document detailed below
- Other IMF documents

Publications on 10-year delay at IMF Archives

Some documents relating to the IMF executive board become publicly available only after 10 years. Again they can only be accessed at the IMF's archives room in Washington.

- BUFF – statements by the managing director and staff to the executive board
- BUFF/ED – statements by an executive director to the executive board
- EBM – executive board minutes
- GRAY – preliminary version of executive directors' statements to the board
- Secretary's Journal of Executive Board Informal Sessions Minutes
- Weekly decisions report
- Executive Board Seminars Agendas and Minutes

Publications on 20-year delay at IMF Archives

Some of the most interesting material regarding decision-making at the Fund and the operations of the institution are not available until 20 years after they are produced. This includes:

- Mission-related documents, including:
 - Background papers
 - Draft reports
 - Raw data
 - Minutes of meetings
- Communications, including:
 - Internal and inter-departmental memoranda
 - Draft documents
 - Emails and letters by staff
- Documents relating to the deliberation of various executive board committees

Confidential documents – never released

Some documents are not made available to the public even if the time restrictions on their publication have lapsed. These include documents marked as either confidential or strictly confidential, and include documents related to a restricted board meeting. Such documents may be declassified at some point and made available to the public, but there is no requirement for this.

The IMF has an internal procedure on information security which is supposed to guide the determination of the classification of a document, known as IMF general administrative order No. 35, but these guidelines are not publicly available. The Secretary of the IMF determines the classification of executive board documents, while the relevant department head has the final discretion over non-board documents.

Confidential board documents can be released after the approval of a request to the managing director of the IMF. It is understood that this consent will be granted in all instances but those which, despite the passage of time, the material remains highly confidential or sensitive. There is no mechanism for appeal of this decision. The same is true of confidential staff documents. For documents that have been passed to the archives, the Archives Department is responsible for the declassification in conjunction with the relevant department head or board official.

There is no directory or list of documents marked confidential in the archives of the Fund, complicating any potential request for declassification. Examples of confidential documents include:

- Side letters spelling out Fund conditionality in addition to conditions included in the LOI/MEFP
- Documents related to financial crisis lending, such as the Indonesian program of 1997
- Documents relating to countries that were against publication, such as Brazil in the 1990s