

# Access to Information Appeal Form

Access information / Jan 18, 2018 2:10 PM

## Requestor Information

Case Number	AI5197-A
Justification	Public Interest, Violation of policy
Appeal Details	Access to Information Appeal Case Number: AI5197

On December 18, 2017, the World Bank's Access to Information (AI) team denied an AI request for the Consensus Building Institute's (CBI) report on "Options for Conflict Prevention and Mitigation for Energy Projects in Nepal" (CBI Report).

The AI request (Case Number: AI5197) had been submitted on August 24, 2017 on behalf of the Struggle Committee of communities in Sindhuli, Nepal affected by the World Bank funded Khimti Dhalkebar Transmission Line (KDTL), which was part of the World Bank's Nepal Power Development Project (P043311). We would like to appeal the AI team's denial of the request.

The World Bank commissioned CBI, a conflict management firm, to develop this report in part as a response to the Sindhuli communities' opposition to the implementation of the KDTL project, and their complaint to the World Bank's Inspection Panel, which found that the Bank's Safeguards had been violated in its Investigation Report (INSP/93722-NP). Bank management's First Progress Report – on the Management Action Plan (MAP), in response to the Inspection Panel's findings – refers to the CBI Report as a positive step taken by the Bank, and states that CBI would develop the final report, by August 31, 2016, with recommendations for conflict prevention and management in Nepal energy sector projects.

We are asking the AI Committee to disclose the final CBI Report on the basis that it is disclosable and was drafted with the intention of it being a public facing document. It does not fall under any of the exceptions in the World Bank's AI policy, and the final version of the report cannot reasonably be classified as a deliberative document.

Additionally, there are strong public interest reasons to disclose the report on an urgent basis. The CBI Report analyses conflicts in Nepalese transmission and hydropower projects, and makes recommendations on how to prevent and mediate conflicts related to energy sourcing between the government and community groups in Nepal. This information would be tremendously helpful for Sindhuli communities who are in a long-standing dispute regarding implementation of the KDTL project, and are in good faith seeking an amicable resolution to the dispute. CBI's report would likely also be helpful to other communities, transmission line funders and project developers in Nepal, who are also facing similar issues.

The Struggle Committee and their representatives have been repeatedly asking the World Bank and the CBI for the report. In response, some Bank staff have suggested that it would be possible to disclose it. But the Struggle

Committee are yet to receive the report, which is why we have resorted to the formal AI process.

#### 1. CBI Report is disclosable and not a deliberative document

The CBI Report does not fall under any of the exceptions to disclosure listed in the World Bank's AI Policy. For these reasons, to maximize transparency and access to information, the report should be disclosed as soon as possible.

In denying the AI request, the AI team indicated that the CBI Report was deliberative, but did not explain why the final report is classified as deliberative. Some Bank staff had also at times suggested the CBI Report is classified as deliberative but have not been able to explain on what basis that classification was made. After our request was denied, we even asked the AI team and the Civil Society Team at the Bank for an explanation on what basis the document has been classified as deliberative. But we have not heard anything.

The report does not fall within the definition of "deliberative" in Section III(2)(i) of the AI Policy. The CBI, as the report's author, have repeatedly indicated that the report was drafted with the intention that it would be a public document, and there is nothing in the document that could be prejudicial to the Bank if made public. In fact, we were informed that report finalization was delayed in part to make it more appropriate for public consumption. So, it cannot be said that the report is meant solely for internal Bank deliberations, and/or deliberation with member countries and/or the board, which is how a deliberative document is defined according to the AI Policy.

Even if draft versions of the report were "deliberative" at an earlier date, that status no longer applies. The CBI Report was submitted in final form more than a year ago, in or about, September 2016. Any internal debates about these issues – which may have needed to take place away from public scrutiny – are now over.

If the AI Committee determines that the CBI Report is a deliberative document, we request you to please provide clear reasons and detailed explanation as to how you have come to that determination. This will help ensure transparency.

#### 2. Strong public interest reasons to disclose the document

There are also strong public interest reasons to disclose the document urgently.

The CBI came to Sindhuli in February 2016, met with the Sindhuli Struggle Committee and interviewed them to develop the report, raising expectations that it would be shared once the report was complete. Since the CBI interviewed the Struggle Committee for the report, it is only natural that the Struggle Committee now wants to see the result. The Bank's reluctance to share the report is raising suspicions that the Bank has something to hide. Disclosure by the Bank will be a confidence building measure by the Bank to help bring an amicable dispute to the conflict in Sindhuli.

The CBI Report covers issues which speak to the dispute in Sindhuli. CBI's Terms of Reference for the assignment states that CBI's detailed assessment report was to include a proposal for conflict management and an action plan for the KDTL project, amongst others. The CBI website indicates that the report includes an analysis of the drivers and dynamics of conflicts in energy infrastructure development in Nepal. It focuses on conflicts with local communities over siting, compensation and benefit-sharing associated with major transmission lines. CBI conducted two missions to Nepal and the report provides options for conflict prevention and mitigation including recommendations on both short- and long-term actions to (1) improve provisions and instruments for compensation, rehabilitation, and benefit-sharing and (2) improve communication and consultation practices and grievance mechanisms. These were exactly the issues that Sindhuli communities have been raising with the World Bank and Nepalese authorities in their long-standing dispute.

As the Inspection Panel found, misinformation and lack of information from the Bank and Nepalese authorities have been at the root of the conflict around the KDTL project in Sindhuli. Disclosure of the CBI Report as soon as possible, will help provide impartial conflict mitigation information for the still unresolved conflict in Sindhuli. The World Bank's board specifically asked management to find an amicable resolution to outstanding issues. (This was made public in a news release by the Bank dated July 13, 2015 that accompanied the board-approved Panel investigation report and management's response.) Releasing the CBI Report as soon as possible would help provide insights on how to achieve an amicable resolution as advised by the World Bank's board.

Additionally, other transmission lines projects across Nepal have also experienced similar disputes. This includes World Bank funded transmission projects like the Kabeli Corridor and the Hetauda Dhalkebar Inaruwa Transmission Line, but also other transmission projects like the 132kV Thankot-Chapagaun, 220kV Bharatpur-Bardaghat, 132kV second circuit of Middle and Lower Marsyangdi and 400kV Tamakoshi-Kathmandu lines. These transmission lines are stranded assets in limbo or delayed due to conflicts between communities and the project developers. Public release of the impartial conflict mitigation information in the CBI Report will likely also be helpful to address these other disputes.

As discussed, the Sindhuli communities – and other communities, project funders and developers in Nepal who are also facing similar issues – will likely benefit much from the disclosure of this CBI Report. Since the report was drafted by the CBI to be a public facing document, there will be no potential harm from the disclosure of the CBI Report. For these reasons, the disclosure of the CBI Report on an urgent basis will serve the public interest.

### 3. Please avoid any further delays

The Sindhuli communities have been asking for the CBI Report since their initial consultation meeting with the CBI in February 2016. They have continued to request the World Bank and the CBI for the document, especially

since after the document had been finalized in August/September 2016.

To make matters worse, after communities filed an AI request in August 24, 2017, it took the AI team over 75 working days, and nearly 120 calendar days to respond, even though paragraph 25 of the AI Policy sets an expectation of a response within 20 working days. The AI team did not notify us of any delays to our initial request. Further, we received no response to a follow up message we sent the AI team on October 25, 2017 asking for the information on the status of our request. The AI team finally replied with a denial on December 18, 2017. They did so only after we reached out to the World Bank's Civil Society team in early December 2017 raising our concerns about the delays, and lack of transparency and communication from the AI team. Lack of transparency from the AI team has added insult to injury.

We urge the AI Committee to avoid any further delays and poor communication. Please provide the CBI Report as soon as possible.

---