

# **APPEAL TO THE ACCESS TO INFORMATION APPEALS BOARD**

Case No. AI5197

June 4, 2018

On April 6, 2018, in decision on appeal #64, the World Bank's Access to Information Committee (AIC) denied an Access to Information (AI) appeal for the Consensus Building Institute (CBI) Final Report on "Options for Conflict Prevention and Mitigation for Energy Projects in Nepal" (CBI Final Report).

As background, 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). The World Bank's AI team denied the AI request for the CBI Final Report, on December 18, 2017, and the Requestors then filed an appeal to the AIC on January 18, 2018. We would like to appeal the AIC's decision to uphold the Bank's initial decision to deny public access to the CBI Final Report.

The CBI Final Report is not Deliberative Information in accordance with section III.B.2.(i) of the Bank's AI Policy. Rather, the CBI Final Report is an analytical and advisory (AAA) product, relating to the Bank's economic and sector work (ESW), which is routinely disclosable.

## **I. About the CBI Final Report**

The CBI Report analyses conflicts in Nepalese transmission and hydropower projects, and makes recommendations for conflict prevention and management. The CBI's website says the following about their work:

CBI identified significant opportunities for strengthening dialogue on the distribution of benefits and costs associated with energy development. These included methods for conducting meaningful consultations and redress of grievances at the project level and for promulgating enabling policies. Multi-stakeholder participatory planning at all levels will also facilitate a more productive, less acrimonious debate among Nepalis on forging a common energy future.<sup>1</sup>

## **II. CBI Final Report is not Deliberative Information**

The CBI Final Report cannot be classified as Deliberative Information as defined in Section III.B.2.(i) of the Bank's AI Policy. It is clearly not an internal communication or communication with external parties (like an e-mail, note, letter, or memoranda), nor is it a draft report, as defined in Sub-sections III.B.2.(i) i-ii.

---

<sup>1</sup> CBI, Managing Energy Sector Conflict in Nepal, available at <https://www.cbi.org/case/managing-energy-sector-conflict-in-nepal/>.

The Requestors acknowledge that the CBI Final Report may have been Deliberative Information at an earlier stage while it was in draft form. However, that status no longer applies. The CBI Final Report was finalized in September 2016. Any internal debates about these issues – which may have needed to take place away from public scrutiny – are now over.

Further, it is inappropriate for the Bank to assert that the report is “*solely*” for the Bank, when the CBI, the author of the CBI Final Report, has repeatedly informed the Requestors 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.

Additionally, the CBI met with the Requestors and interviewed them to develop their report, raising expectations that it would be shared with them. The Struggle Committee of affected communities in Sindhuli, and their representatives, have been repeatedly asking the World Bank for the report.

Finally, even Bank staff have suggested that at different times it would be possible to disclose the CBI Final Report. Just because Bank management indicates in its First Progress Report that it hired CBI “to draw experiences/lessons for Bank management” does not mean that the report was meant *only* for Bank management and its deliberative purposes to the preclusion of public disclosure. In fact, in the same sentence in the First Progress Report, Bank management clearly states the goal of the report is to develop recommendations for conflict prevention and management for Nepal energy sector projects generally. It is very clear the CBI Final Report is a sectoral analysis made by an independent expert, not a deliberative report that has to be safeguarded.

Thus, it cannot be said that the report is meant solely for internal Bank deliberations to the preclusion of external disclosure when the report’s authors and the Bank have indicated otherwise.

### **III. The AIC’s findings are factually incorrect and internally consistent**

There are factual inaccuracies, internal inconsistencies, and logical gaps in the AIC’s findings as stated in paragraph 8 of the AIC’s decision dated April 6, 2018.

1. The AIC relies on out of date information from Bank Management’s Second Progress Report dated August 2017 to state that the Bank is using the CBI Final Report to support Nepal’s ongoing negotiations on compensation with adversely affected communities in Sindhuli. The facilitated dialogue Bank management is referring to ended in December 2017. The Bank-funded facilitator for the dialogue submitted his final report to the Sindhuli communities in December 2017 because his contract was not extended. In fact, the dialogue ended despite repeated requests from the Sindhuli communities and their advocates for the facilitated dialogue to be extended. It is disingenuous now for the Bank to assert it is using the CBI Final Report for an ongoing dialogue, when that dialogue ended about six months ago.

2. The AIC's findings are also internally inconsistent. On one hand, in para 8 (c) the AIC finds that the Bank never had "any intention or expectation to ...share the CBI Report with Nepal, as the Bank's member country, or any of its agencies (e.g., National Electricity Authority)". Yet, in para 8 (a) the AIC asserts that the CBI Final Report "serves for the Bank's deliberations with a member country." Both statements appear to contradict each other.
3. The AIC incorrectly found that the CBI Final Report is Deliberative Information on the bases that it continues to inform Bank projects in the energy sector and the Bank continues to consult it as a tool for internal discussions. However, just because Bank management relies on a document does not make that document deliberative. Bank management is likely to rely on a range of documents that are publicly available. If a document can be classified as deliberative on the basis that Bank management relies on it, that would necessarily expand the scope of the Deliberative Information exception in the AI Policy to the point of rendering it meaningless. All Bank documents are likely to be relied in one way or another by the Bank.

#### **IV. The CBI Final Report is analytical and advisory work**

As discussed, the CBI Final Report is not Deliberative Information as defined in the AI Policy. By the AIC's own admission, the purpose of the CBI Final Report is to provide advice and analysis on the energy/power sector in Nepal. Thus, in actuality, the CBI Final Report is analytical and advisory in nature, and may be better classified as part of its AAA work.

The Bank's website describes its AAA work as follows:

Economic and sector work (ESW) and non-lending technical assistance (TA) are two of the analytical and advisory services (AAA) through which the Bank provides knowledge support to its client countries. The objectives of ESW are to inform lending, inform government policy, build client capacity, stimulate public debate, and influence the development community. The objectives of TA are to assist in policy implementation, strengthen institutions, and facilitate knowledge exchange.<sup>2</sup>

The Bank's AI Staff Handbook and its Appendices -- while not determinative -- indicate that final documents of AAA work are made routinely available. As an AAA final product, the CBI Final Report must also be made available to the public.

Regardless, even if the CBI Final Report is not an AAA product, it is still not Deliberative Information (for the reasons discussed above) and must be disclosed.

---

<sup>2</sup> World Bank. 2008. The World Bank's Economic and Sector Work and Technical Assistance, FY00-06. IEG Fast Track Brief. World Bank, Washington, DC. © World Bank.  
<https://openknowledge.worldbank.org/handle/10986/10590> License: CC BY 3.0 IGO.