



Comments on the World Bank's Approach Paper "Toward Greater Transparency: Rethinking the World Bank's Disclosure Policy"

May 2009 (final)

Executive Summary

This paper contains comments by the Global Transparency Initiative (GTI) on the World Bank's Approach Paper "Toward Greater Transparency: Rethinking the World Bank's Disclosure Policy" (January 29, 2009). We have reviewed the Bank's proposals in light of the nine principles of GTI's [Transparency Charter for International Financial Institutions](#).

We welcome the Bank's call for a "paradigm shift" in access to Bank-held information. In particular, we support the move away from a 'positive list' approach, whereby only information on the list is disclosed, to one that provides for a presumption of disclosure for all information, subject only to exceptions. The four principles on which the new policy is to be based – (1) maximum access, (2) limited exceptions, (3) request procedures, and (4) appeals – are appropriate (though incomplete) and are commonly found in national freedom of information regimes. The proposal to expand routine disclosure is also welcome, although it does not go as far as the GTI recommends.

At the same time, we identify a number of shortcomings in the Bank's proposals. These include:

- the lack of a clear vision on how access to information improves development outcomes and supports the Bank's poverty reduction mission and is linked to the Bank's overarching "empowerment" mandate;
- overly-broad exceptions to disclosure which are not based on an assessment of potential harm to well-defined interests that could result from disclosure;
- third parties are granted a veto over release of information they have provided to the Bank;
- proposals on access to Board proceedings have been deferred, and while the Approach Paper proposes expanded access to Board Papers once they have been considered, access to materials prior to formal approval remains unduly limited;
- lack of a clear framework for providing stakeholders access to development decision-making, including to draft information;
- a lack of detail on how requests for information are to be processed;
- the absence on an independent appeals body; and
- the lack of any proposal for providing greater access to translated materials; and
- no commitment to strengthen the Bank's Public Information Centers or to promote access to information actively.

Analysis in Light of GTI 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.

Comments

“Maximizing Access:” The Approach Paper makes a strong commitment to move towards a disclosure system that largely reflects a genuine ‘right of access’ principle with, for the most part, concrete mechanisms to put it into effect. In particular, it does away with the ‘positive list’ approach, whereby only information on the list is made available, and instead provides for a presumption of disclosure for all information, subject only to the exceptions. We welcome the Bank’s clear statement on maximizing access to information:

The World Bank recognizes the fundamental importance of transparency and accountability in the development process. Accordingly, the Bank’s disclosure policy would give public access to all information in its possession, subject only to a limited set of exceptions. (para. 7, Principle 1)

However, we note more qualified language as the Paper elaborates this principle. Para. 8 states that the Bank would “strive to maximize access” and that, as an expression of this, it would “disclose all country-specific operational documents prepared by the Bank while protecting confidential information ...” (para. 8). To “strive” is an aspirational goal, not a policy commitment. While the commitment to release “all” country-specific operational documents is welcome, we note that this is but a sub-category of all of the documents held by the Bank. The “maximize access” principle should be applied clearly to all Bank-held information, not just to a subset of this. This includes the Bank’s technical assistance, advisory and fee-for service activities .

Third-party Information: The paragraph on maximizing access (para. 8) also refers to expanding “the list of documents and information [the Bank] would require member countries to disclose as a part of doing business with the Bank.” We welcome the initiative to expand routine disclosure of information, whether generated by the Bank or member countries (see comments below on “automatic disclosure”).

At the same time we are concerned that the proposals largely treat information provided by third parties as being owned by them and give third parties a veto over release of that information. Although cast as an exception (see para. 10), this is more properly understood as a limitation on the scope of the policy (since subjecting disclosure to third party consent cannot be described as a presumption in favour of release). The GTI has consistently argued against a third party veto, which is not an approach that is employed in national access to information laws and which substantially undermines the principle of access. Instead, we call for harm based exceptions (including to protect third parties) and for third parties to be consulted

whenever there is a possibility that information provided by them may be disclosed. We include further comments on third party information in section 5 below.

We would also like to see the policy include a commitment by the Bank to make an effort to ensure that it holds information relevant to its operations and activities, even if this information is normally created or held by another actor, such as a contractor. Perhaps the Bank already does this, but this is unclear from the Approach Paper. This could be achieved through inserting transparency and/or access to information clauses in contracts, so as to require third parties to provide key information to the Bank, either automatically or upon request.

Historical Information: We are concerned that the scope of the new policy will be limited to documents created after it takes effect and that separate procedures may be developed for documents classified under earlier policies (para. 19, footnote 25, and para. 33). We note that national access to information laws are not limited in this way and that, given the very wide scope of the exceptions, we do not believe this is warranted. We instead recommend that all information held by the Bank be subject to the new policy. Further comments on historical information are provided in section 5 below.

Other World Bank bodies: We also emphasize that other bodies of the World Bank – such as the Department of Institutional Integrity, the Sanctions Board, the Inspection Panel and the Independent Evaluation Group – should review their own disclosure commitments and practices to ensure that they conform to best practice in this area.

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.

Comments

The Bank currently releases a large amount of information on a routine basis, both on its website and through its Public Information Centers. We acknowledge the Bank's progress in this regard and welcome the commitment in the Approach Paper to "routinely post as much as possible on its external website" (para. 7, Principle 3).

We recommend that the Bank's policy contain affirmative language regarding objectives of routine disclosure, such as facilitating engagement with stakeholders and strengthening third-party oversight and accountability of Bank-financed operations.

The Approach Paper states that the Bank will expand the number of documents that it will disclose, or require to be disclosed, on a routine basis. Particularly noteworthy are commitments to disclose more information during project preparation (such as minutes of Concept review meetings and Decision meetings) as well as during implementation (including aide memories and sections of the Implementation Status and Results Reports, although we are concerned that important staff comments might be removed) (para. 31). We also support the proposal to release project financial statements and project audits. Annex C of the Approach Paper lists some but not all of these proposed new disclosures. We note that most documents in Annex C are already disclosed under the current policy and needs to be significantly expanded.

Annex C, however, does not mention a range of documents that are currently either withheld or released only after decisions have been made. We maintain that an overriding public interest warrants the routine disclosure of information including the documents on the following illustrative list (we note that release of “draft” documents relates to access to decision-making and is addressed in section 3 below):

Country Related Documents

- Draft Country Assistance Strategy/Partnership
- Draft Joint Staff Advisory Notes/Assessment of PRSPs
- All PRSP progress and status reports
- Rationale for Country Policy and Institutional Performance (CPIA) ratings
- All Economic and Sector Work (including all social and environmental analyses, not just “grey cover” reports)
- Complete debt sustainability analyses

Projects and Programs

- Initiating Memorandum (initial document for development policy operations)
- Project Concept Notes (first documents on potential projects)
- Draft Program Document (presents development policy operation, including conditionality matrix)
- Draft Project Appraisal Document (most complete description of a project)
- All Factual Technical Documents (should be routinely posted on project websites)
- Project implementation Plan

Technical Assistance and Fee-based Services

- TA, AAA and fee-for-service activities. Proposals, terms of reference, decisions, financing, reports, etc., related to these services should be routinely disclosed.

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.

Comments

Development research is conclusive on the relationship between increased ownership of development initiatives and improved outcomes. A primary means of strengthening local ownership is through participatory processes and decision-making. The Approach Paper acknowledges the “fundamental importance of transparency” (para. 7, Principle 1) and sees transparency “as a critical tool for enhancing good governance, accountability, and development effectiveness” (para. 3). At the same time, the paper does not elaborate on the need for timely access to information to strengthen stakeholder participation and ownership. This is unfortunate. Without a clearer vision of inclusion, the Bank’s information policy risks serving primarily as a

publication scheme for final decisions instead of a proactive tool for integrating stakeholders into development decision-making.

Empowerment is identified as a core strategic priority for the Bank (as in OP1.00), but this objective is absent from the Approach Paper beyond the vague, if affirmative, statements noted above. The paper does not acknowledge the all too real barriers faced by marginalized communities and individuals in accessing information and participating in development decisions. There is also no acknowledgement of potential gender differences in accessing and utilizing information in Bank-financed initiatives.

Deliberative Information: The Approach Paper does not provide enough information for stakeholders to evaluate the Bank's proposals for access to decision-making. The proposed "deliberative process" exception (para. 17) declares that the Bank will not disclose "draft documents, except those prepared specifically for external consultation purposes." The exceptions relating to deliberative processes in para. 17 are vastly overbroad, and would rule out an enormous amount of information that is both uncontroversial from a disclosure point of view and in fact disclosed under national access to information laws. In particular, it is not justifiable to conclude *a priori*, as the Approach Paper appears to do, that access to drafts would impinge on the Bank's ability to conduct its deliberations effectively. Furthermore, the Bank consults only on a narrow range of topics, placing most draft documents outside of public purview.

At the same time, the Bank states that it would disclose "final decisions/documents relating to Bank-financed projects at key milestones of project preparation and implementation" (para. 17, emphasis added) and that Bank management will define the set of these final decisions and documents (footnote 22). Paragraph 31 provides a few examples of "deliberative" information that would be released at various stages.

It is difficult for outside observers to understand the implications of this statement in terms of access to decision-making, since it is not fully developed in the Approach Paper. For example, "draft" Program Documents (PDs) and Project Appraisal Documents (PADs) are currently disclosed only after Board approval. Draft Country Assistance Strategies/Partnerships (CAS/Ps) are at times disclosed, but not consistently across all regions. There is a clear public interest in accessing these documents before final approval, given that CAS/Ps contain the Bank's three-year business strategy for a particular country, PADs contain the most complete description of a project, and PDs contain, among other things, the conditionality matrix of stipulated economic and governance reforms. Is the Bank proposing that these and other critical documents would, at a certain stage of internal processing, no longer be considered "drafts" and hence disclosed before Board approval? This would be a significant advance from current practice, but the Approach Paper is unclear on this. We call on the Bank to provide more information to stakeholders on which milestones and which "final decisions/documents" would be disclosed. We strongly recommend disclosure of CAS/Ps, PADs, and PDs before Board approval.

Board Information: The Approach Paper also does not really address the issue of the Bank's intentions regarding Board proceedings. It is troubling that the Bank has commenced public consultations without key proposals on Board transparency (a Board subcommittee is to provide recommendations on this, but not before the end of

the first consultation period). Citizens of a World Bank member country have virtually no way of knowing how their government – through the Executive Director – is representing their country’s interests. The gap in democratic accountability is very troubling. Currently the Board maintains a blanket of secrecy over its proceedings, save for skeletal minutes of meetings and irregular (indeed rare) Chairman’s summary statements.

Board Papers: Currently most papers presented to the Board for consideration are not released. We welcome the proposal to disclose a large number of such papers “at the end of the deliberative process” (para. 11 and Box 1). However, we maintain that papers relating to policy and operations should be disclosed to the public at the same time they are transmitted to the Board. This would allow stakeholders to communicate concerns to Directors before decisions are finalized.

Open Meetings: We call on the Bank’s Board of Executive Directors to open their meetings to the public. Telecasting Board meetings would be the most efficient means of achieving this, with provisions for closed executive sessions. We note that allowing observers to attend executive bodies is an increasingly established practice, even at the World Bank itself. Observers now attend executive body meetings of the Bank’s Clean Technology Fund, Strategic Climate Fund, Forest Investment Program, Forest Carbon Partnership Facility and Pilot Program on Climate Resilience. It has also been longstanding practice at the Global Environment Facility.

It is important to note that major intergovernmental and national decision-making bodies, that consider sensitive issues at times, provide public access to meetings. The rules of procedure for the UN Security Council provide for public meetings: “Unless it decides otherwise, the Security Council shall meet in public” (Rule 48).¹ Many other UN bodies provide webcasts of certain meetings and deliberations, including the UN General Assembly, International Labor Organization, UNESCO and the UN Human Rights Council.

At the U.S. Federal Reserve, the “public is welcome to attend all meetings except those that the Board [of Governors] determines should be closed under legal exemptions” of U.S. law.² Furthermore, a large number of national parliaments televise deliberations and meetings.³

Summaries: The Bank currently produces, but does not disclose, “Summaries of Discussion” of Board meetings. The summaries provide important information regarding key issues discussed and questions raised during Board consideration of financing operations, policy issues, Bank administrative matters and other issues. The summaries do not attribute remarks to individuals. There is a strong public interest in the disclosure of these summaries. To strengthen democratic accountability, the summaries should include attribution. Information that poses a risk of serious harm to a well-defined interest could be redacted.

¹ <http://www.un.org/Docs/sc/scrules.htm>. We note, however, a trend in recent years at the UNSC to meet in closed session.

² <http://www.federalreserve.gov/boarddocs/meetings/sunshine.htm>.

³ For a complete list of parliaments that have webcasts, see C-SPAN at www.cspan.org.

Executive Director Statements: Individual statements presented by Executive Directors to Board meetings should be disclosed. Citizens have a strong public interest in the positions taken by their governmental representatives at the Bank. We note that currently Executive Directors maintain their own websites at the Bank, but do not post any information regarding their positions or statements.

Transcripts: Transcripts of Board meetings, which are currently confidential, should be disclosed. There is no justification for this. These should be released when they have been agreed, subject to potential redaction of information that poses a risk of serious harm to a well-defined interest.

Subcommittees: Currently, no documents relating to Board subcommittee meetings – such as minutes or summaries – are made public. We are uncertain what interest is served by this secrecy and call for the records of these meetings to be released on the same basis as we recommend for the Board itself.

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.

Comments

The Approach Paper outlines principles on procedures for requesting information that, upon further specificity, would largely conform to the GTI Charter. We are unclear why the Bank did not provide specific proposals for feedback in the Approach Paper. Below we provide specific comments and recommendations on the request system.

Request Processing: The Bank states that it will adopt “simple, clear, efficient, and cost-effective procedures for processing requests” (page 6, Principle 3).

Contact Point and Support: The policy should include details on where and how to submit requests, covering issues such as the provision of assistance to requesters that are having problems formulating their requests and the languages in which requests may be submitted. We also recommend the inclusion in the policy of options regarding form of access, such as inspection in Bank offices, or receiving an electronic or hard copy.

Acknowledgement: Requests should be acknowledged expeditiously so requesters know that their request has been received. We recommend that acknowledgments be sent within three (3) days as no decision-making is required at this step.

Response: Requests should be processed as quickly as possible. We recommend that the policy commit the Bank to responding to requests within 15 days. We welcome the Bank’s commitment to provide written responses whenever a request for information is refused, specifying the exception relied upon to refuse the request and the requester’s right of appeal.

Fees: We are somewhat concerned about the idea of charging fees for providing information (paras. 35 and 46). We welcome the commitment to not charge for

information available in electronic form and to provide information on a requester's own country free of charge. Although we appreciate the attempt in the Approach Paper to keep charges low for other types of information, and to distinguish between types of requesters, we recommend that the list of lower-cost entities be increased (for example journalists should be included, even though they work for commercial entities). We would also like to see a commitment to limit fees, for example by providing set amounts of processing time for free (so that only more complex requests would attract charges) and by explicitly excluding time spent determining whether an exception applies, which requesters should not have to pay for.

Third-Party Information: We are concerned that the Bank is proposing to develop separate "guidelines on categories and circumstances under which Bank would either consult or obtain explicit consent of member country or third parties before disclosing" (page 6, Principle 3). As noted, the idea of an originator veto is not consistent with a presumption in favour of disclosure. It is also not something that is found in national laws, which often instead give third parties an opportunity to comment on requests relating to information they have provided.

Translations: We recommend that procedures and a budget be put in place to accommodate requests for information in another language (i.e. for translations of documents). While we recognize that it is not practical to translate all information, certain operational and policy documents may have significant relevance to citizens in borrowing countries and, at a minimum, summaries of such documents should be made available in a language they understand. We note that borrower governments often translate project and program information. The Bank should ensure that these translations are submitted to the Bank and posted on the Bank's website.

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.

Comments

The Approach Paper states that the Bank "would deny access to information for which there is a compelling reason for confidentiality" and that exceptions to disclosure "would be clear and as narrow as possible" (para. 7, Principle 2). These statements in general reflect standards set out in the GTI Charter.

However, as the Approach Paper elaborates the Bank's proposed exceptions, it becomes clear that many are not narrowly drawn. Equally troubling, the "harm" standard as stated is not reflected in the more detailed description of the exceptions set out in the Approach Paper. The GTI Charter and most FOI laws only envisage the withholding of information where the body holding the information can demonstrate that its disclosure would create a risk of serious harm to one of the narrow, clearly defined and broadly accepted interests listed. Most of the exceptions proposed in Section C of the Approach Paper do not refer to specific interests that might be harmed. Instead, they describe either a category of documents (for example Board

records or being part of the external or internal deliberative process) or a process (being classified as ‘official use only’ or being subject to third party consent). We call on the Bank to revise the proposed exceptions substantially to reflect a true “harm test.”

Furthermore, the policy should make it clear that exceptions only apply to specific information the disclosure of which would lead to harm. Instead of rendering whole documents off limits, exceptions should apply only to specific information contained in documents, which may then be redacted and the rest of the document released.

Together, these problems seriously undermine the idea of a presumption of disclosure. Indeed, it might be said that these proposals would move the policy from being based on a positive to a negative list, instead of to a presumption of disclosure that might only be defeated by an overriding interest. While an important improvement, this still fails in important ways to meet the claims of limited exceptions and the standards in the GTI Charter.

We are troubled also by footnote 11 which states: “Management would update this list [of exceptions] as appropriate to reflect new categories of information.” Properly crafted exceptions should not be predicated on specific documents but on well-defined interests. While new categories of information might arise, new interests are unlikely to (as demonstrated in the experience of national right to information laws) and so this power is unnecessary. Furthermore, it is troubling that Bank management asserts a prerogative to restrict the policy at its discretion.

Most of the exceptions in the Approach Paper are significantly overbroad. Specifically, we have the following concerns:

Third Party Information: The Approach Paper largely regards information provided by third parties as “originator-owned” and grants third parties a veto over release of that information (para. 10). Instead, we call for harm-based exceptions, including to protect the legitimate interests of third parties. Third parties should have the right to make representations as to why information they have provided falls within the scope of an exception before it is disclosed. But the policy should not recognize an originator control principle.

Para. 32 suggests that this limitation is required for two legal reasons. The first is that the Bank is legally prohibited from releasing information provided on a confidential basis. We are not aware of the legal basis for this. National access to information laws do not provide for a third party veto and we do not believe that any general legal rules require this. We therefore presume that this claim is based on specific provisions in legal documents binding the Bank and suggest that ways around this be explored. Furthermore, it is clear from existing Bank policies, and the Approach Paper, that this rule may be overcome where disclosure is understood as being ‘a condition of doing business with the Bank’ (para. 5(f)) or where the Bank reserves the right to disclose information (para. 21). We suggest that the approach of requiring disclosure be expanded as far as possible to cover all information that would not otherwise fall within the scope of an exception.

Second, the idea of property rights over documents is raised. We presume that this situation arises very rarely in relation to information held by the Bank, and that it is usually based on copyright protection. There are exceptions to copyright which would allow for some form of sharing of most information, so this should not be posited as a grounds for allowing third party veto of disclosure of information.

We are also concerned about footnote 10, which invokes the archival immunity found in the Articles of the Bank (which provides that “archives of Bank shall be inviolable”) as a “basis upon which the institution may protect information from compulsory disclosure.” We note that if this were correct, it would apply to all information held in the archives, and thus defeat the whole purpose of the Policy. We reject any such interpretation of this provision.

E-Mail Systems: The Approach Paper does not provide enough information for stakeholders to assess the proposed exception in favour of emails, although it states that emails filed in the Bank’s main software system (Lotus Notes) would not be normally disclosed, with the exception of some emails filed in another system and classified as public (para. 12). Good national FOI laws do not establish exceptions based simply on the form of information (such as an email, notes and so on). There is no reason to adopt a special approach to emails, which should be subject to disclosure in the same way as any other Bank-held information.

Financial Information: While some of the financial information referred to in para. 14 is legitimately confidential, not all of it is. For example, we are unclear of the interests protected by withholding “information on contributions by individual donors to IDA,” “information to support preparation of internal and external financial reports,” and “information regarding amounts overdue from borrowers.” It would be possible to protect against unfair commercial advantage or disadvantage – the key underlying interests here – without resorting to blanket exclusions. National access to information laws do not resort to such blanket exclusions for financial information.

Corporate Procurement and Security Information: Subsections (a) and (b) of para. 15 cross-reference disclosures permitted by the Corporate Procurement Policies and Procedures Manual. We raise a concern that the disclosure systems relating to this and other bodies/processes (see below) may fall short of the standards proposed in the Approach Paper (we have not been able to study this specific regime in detail). At a minimum, we would like to see a commitment to ensure that the policies governing these other bodies/processes are reviewed and brought into line, as far as possible, with the new information policy.

We oppose the inclusion of independent entities that report directly to the Board of Directors (for example Department of Institutional Integrity and Inspection Panel) in Management’s list of proposed disclosure exceptions. Disclosure standards of these entities are established by their own policies and practices. We note, for example, that the Independent Evaluation Group (IEG) is not included here as we understand that IEG will develop its own disclosure statement. Furthermore, we oppose the unduly restrictive proposed language regarding other World Bank bodies. For example, para. 16(d) on the Inspection Panel would categorically forbid disclosures that are not specifically authorized in the Panel’s founding resolution and clarifications – quite the opposite of a presumption of disclosure. Such a standard would, as we read it, even

prohibit publication of the Panel's Annual Report (which is not foreseen in the founding documents). The Panel is a dynamic body that should innovate regarding information sharing in order to accomplish its accountability mandate. Reference to the Panel (and INT) should at a minimum be removed from the exceptions section (placed in stand alone paragraphs) and the restrictive language removed.

Classification of Records: The Approach Paper does not provide enough information for external stakeholders to evaluate the proposed classification scheme (see para. 18). We welcome the general statement that all records will be classified as "public" unless they fall under one or more of the exceptions. Documents that fall under exceptions would be classified as "Official Use Only, Confidential, or Strictly Confidential, depending on the level of sensitivity of their information content...." The Approach Paper provides no guidance on criteria for determining "sensitivity" (for example, what distinguishes "confidential" from "strictly confidential?"). What is to protect against over-classification?

We note concerns about the implications of classification of documents. Exceptions should be assessed at the time of a request for information, and not at the point at which a document is created, among other things because the basis for confidentiality may no longer apply when the request is made. Any system of classification should serve simply to signal to those handling documents whether they are sensitive, and not as a basis for deciding upon requests. The current proposal implies that classification (hence disclosure) decisions will be made at the time the document is created.

Historical Information: We welcome the Bank's acknowledgment that much historical information does not require the degree of secrecy that now applies (whereby information is released after 20 years, but subject to the exceptions) (para. 19). The Approach Paper instead proposes to establish timelines for different categories of withheld information, but is not specific on which time frames would apply to which categories. In general, we support this idea, which could ensure that shorter timelines were established, but this would depend on the substance of the actual proposals, which are not elaborated upon in the Approach Paper.

The Approach Paper proposes that information that would fall under a number of the exceptions be withheld in perpetuity (para. 20). This includes information provided by third parties, emails, personal information, corporate procurement and security information, attorney-client information, investigations, sanctions, and certain Board information (to be decided). This is legitimate only insofar as information is only withheld under narrowly drawn exceptions that conform to the standards set out in the GTI Charter.

Public Interest Override: The public interest override proposed in para. 7, Principle 2, does not conform to the proposed "maximizing access" standards set out in para. 1, Principle 1, and para. 8. Instead of calling for disclosure unless the harm to the protected interest outweighs the benefits of disclosure, the override is engaged only where the following conditions are met:

- disclosure is in the interests of the Bank and the development community (which may be quite different than the wider notion of overall 'benefits of disclosure');

- nondisclosure is likely to cause serious harm to the interest of the Bank, a member country, Bank staff or other individuals (which may be quite different than comparing the relative pros and cons of disclosure); or
- where disclosure is required under the whistleblower policy.

Furthermore, addition to the list of exceptions, the Paper states that the Bank would “also reserve the right not to disclose information if it determines that (a) such disclosure is likely to cause serious harm to the interests of the Bank, a member country, Bank staff, or other individuals, and (b) this potential harm outweighs the benefits of disclosure” (para. 7, Principle 2). This is the precise opposite of how public interest overrides work in national right to information laws and the standards set out in the GTI Charter.

The laws in many countries provide for a comprehensive and simple public interest override. A good example is the Indian Right to Information Law, 2005, section 8(2) of which provides:

Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

We recommend that a formulation along these lines be applied in the new policy.

Disclosure Policy Committee: The Bank proposes to create a “Disclosure Policy Committee to advise Management on the application of the policy with the power to disclose certain information that is otherwise restricted (para. 24). We note that the Bank has an inherent prerogative to disclose any information in its possession (as noted in para. 21) and an advisory body to review disclosure decisions is welcome. This committee should, however, in no way interfere with the functioning of the appeals body that will provide oversight of refusals to disclose information (see section 6 below).

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.

Comments

We welcome the Bank’s acknowledgement (para. 7, Principle 4 and para. 25) of a requesters’ “right to an appeals process” for denials of access to information. The establishment of an internal appeals panel with authority to reverse previous decisions reflects mechanisms adopted by some other IFIs. An internal appeal can help resolve disputes quickly and efficiently. At the same time, an internal appeals body needs to be supplemented by a second, independent appeals body outside of control of Bank management to ensure full respect for requesters’ right of access.

The World Bank Inspection Panel could perform this function, although special rules would need to be put in place for it to be an effective appeals body in the access to

information context. The threshold requirement of needing to show direct potential harm by non-compliance with a policy is inappropriate in the context of information requests. Furthermore, far more rapid and less complex procedures would need to be established as these would suffice for information appeals. The Chairperson or a designated Panel member could review an appeal and submit a recommendation to the Board, requester and Bank management. Ideally, the Board would agree *a priori* to accept the Panel member's recommendations.

In the absence of an independent appeals body, the Bank should at least ensure that members of internal appeals body are chosen in a manner that limits conflicts of interest. The proposal that senior managers with responsibilities over operational departments (such as the Managing Director for Networks and a Regional Vice President) sit on the panel does not meet this standard. Without a second appeals body, the internal function should be more independent of operational line management and should include outside parties, as mooted at para. 25.

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.

Comments

The Approach Paper does not address the issue of whistle-blowing directly, referring instead to the existing whistleblower policy in Staff Rule 8.02 (para. 7), and calling for a review of the rules on unauthorized disclosures, with a view to strengthening them as necessary (para. 43). Without commenting on the substance of these rules, which fall outside the scope of the information policy, we note the imbalance inherent in this approach. We instead call for a review of the rules on both protected and unauthorized disclosures, with a view to bringing them into conformity with the standards set out in the GTI Charter.

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.

Comments

Surprisingly, the Approach Paper does not address the question of promotional measures directly. Proactive, timely distribution of information to stakeholders should be seen as a core aspect of the Bank's sustainable development mandate. It would, therefore, be appropriate to include within the policy a commitment to take active steps to promote its effective implementation. Some specific commitments that could be made are as follows:

- Review the strengths and weaknesses of the Bank's Public Information Centers and establish objectives for strengthening provision of information in borrowing countries, including in local languages and to marginalized communities.

- Ensure that policy implementation accounts for potential gender differences in accessing information.
- Ensure appropriate staff training. References are made to training to avoid unwarranted disclosures (para. 43) and generally to the possibility of greater training costs (para. 34), but no commitment to ensure adequate training to promote information disclosure is made in the Approach Paper.
- Publicize global information about requests. Para. 44 calls for a new tracking system for requests, but does not include a commitment to make public key information generated by this system. Regular reports should be produced.
- Publish and widely disseminate an annual review of implementation of the access to information policy, as a sort of information audit.

We note that staff should also be informed that there would be sanctions for wilful obstruction of the World Bank disclosure policy.

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.

Comments

The Approach Paper notes that the Bank has a history of reviewing and improving its information disclosure policy (para. 1). However, it does not specifically commit to continuing this process. A commitment to review is particularly appropriate given the very significant changes proposed in the Approach Paper and the resulting need to assess how they are working in due course. Ideally, a commitment should be made to a specific timeframe for an implementation review, for example of two years.