

AIC decision on appeal # 10

**CASE NUMBER AI0652 AND AI0834
DRAFT VERSIONS OF A WORLD BANK REPORT AND COMMUNICATIONS BETWEEN
THE WORLD BANK AND THE GOVERNMENT OF THE KINGDOM OF SWAZILAND
CONCERNING THE DRAFTS**

(Decision dated July 29, 2011)

1. On April 25, 2011, the applicant filed the attached application (“Application”) appealing the World Bank’s decision to deny access to information requested under (a) Case Number AI0652, concerning certain draft World Bank (“Bank”) reports, and (b) Case Number AI0834, concerning communications between the Bank and the Government of the Kingdom of Swaziland (“Government”). The appeal is filed on public interest grounds. The applicant asserts that the Government used a draft Bank report in its defense in a court case filed against the Government.

2. In support of the public interest appeal, the Application states, in relevant part, the following:

To understand why the public would have an interest about the drafts and any communications around the drafts requires an explanation of certain facts. * * *

April 2010 – GKOS submits May 2009 version of WB report in response to applicant’s case. The front page of the report now reads “FOR OFFICIAL USE ONLY” at the top and “This document has restricted distribution and may be used by recipients only in the performance of their official duties” in a box at the bottom. In the middle of the front page was printed “May 2009”.

April 2010 – WB releases final version of Swaziland education report which now contains none of the passages relied on by the GKOS in its legal response of April 2010.

May 2010 – Supreme Court of Swaziland finds against applicant citing May 2009 WB Report six times as evidence that “government cannot afford FPE.” * * *

The WB draft that was submitted to the court was, of course, not the sole, nor even the main, reason the court denied the applicant’s request. But it was hugely influential in the outcome.

Public interest

From the above, I trust that you can see that specific questions of public interest arise from the circumstances of this case. I am sure that WB’s client states, the Swazi public and the wider global community will be interested in WB’s involvement in the Free Education Case in Swaziland.

Findings and Decision of the Access to Information Committee

The Policy

3. The Access to Information Committee (“AIC”) considered the Application in accordance with the Bank’s Policy on Access to Information (“Policy”). The Policy states that the Bank “does not provide access to documents that contain or refer to information listed in paragraphs 8-17” of the Policy, which set out the Policy’s list of exceptions. Paragraph 16 of the Policy indicates that the *Deliberative Information* exception covers information prepared for, or exchanged during the course of the Bank’s deliberations with member countries or other entities with which it cooperates, or information prepared for, or exchanged during the course of the Bank’s own deliberations (*see* Policy at paragraph 16 (a) and (b)).

4. The Policy allows a requester, who is denied access to information by the Bank, to file an appeal on public interest grounds if “the requester is able to make a public interest case to override the Policy exceptions that restrict the information requested (limited to those exceptions set out in paragraph 15 (*Corporate Administrative Matters*), paragraph 16 (*Deliberative Information*), and paragraph 17 (a), (b), and (c) (relating to certain *Financial Information*) of [the Policy] statement.)” (Policy at paragraph 36(b).)

Findings

5. **Case Number AI0652.** The AIC first considered the portion of the Application that appeals the Bank’s decision not to make public two draft versions of a World Bank report titled “The Education System in Swaziland: Training and Skills Development for Shared Growth and Competitiveness,” dated April 2009 and May 2009 (respectively, “April 2009 Draft Report,” and “May 2009 Draft Report”; collectively “Draft Reports”). The Bank had denied the applicant’s request to access the Draft Reports on March 23, 2011. The AIC found that the Draft Reports were prepared for and exchanged during the course of the Bank’s deliberations with a member country, and were also part of the Bank’s own internal deliberations. Thus, the Draft Reports are deliberative documents covered by the *Deliberative Information* exception of the Policy, and the denial of their disclosure may be appealed on public interest grounds, if the requester is able to make a public interest case to override that Policy exception.

6. In support of the public interest appeal, the Application states that the May 2009 Draft Report was “hugely influential” in a decision of the Supreme Court of Swaziland (“Supreme Court”), though it also notes that the May 2009 Draft Report was “not the sole, nor even the main, reason” for the court’s final decision. In view of the applicant’s statement, the AIC considered the January 19, 2010, Supreme Court decision at issue. The AIC found the Supreme Court decision quoted the May 2009 Draft Report, indicating that “Swaziland will require substantial external and national resources to finance reforms proposed in this report.”

7. The AIC reviewed the May 2009 Draft Report and found the quoted statement in the report. The AIC also reviewed the final, published version of the draft report titled “The Education System in Swaziland: Training and Skills Development for Shared Growth and Competitiveness” (“Final Report”)

and found the same statement in the Final Report. The AIC also found the Final Report publicly available on the World Bank's public database, *Documents and Reports*.

8. In considering the appeal, the AIC took into account, *inter alia*, the following: (a) one of the Policy's guiding principles is to safeguard the deliberative process, and thus, recognizes the importance of ensuring the free and candid exchange of ideas; (b) the Draft Reports in question are deliberative documents; (c) the statement cited by the Supreme Court is reflected not only in the May 2009 Draft Report, but also in the Final Report, which has been published and made public. In view of the above considerations, the AIC did not find adequate support for the applicant's appeal to override the *Deliberative Information* exception for the purpose of disclosing either the April 2009 Draft Report or the May 2009 Draft Report.

9. **Case Number AI0834.** In accordance with the Policy, the AIC considers appeals that challenge the Bank's decisions to deny access to information. At the time that the Application was filed, the Bank had not decided on Case Number AI0834 (and the subsequent decision of the Bank did not involve a denial). The appeal challenging the Bank's decision under Case Number AI0384 is, therefore, not properly before the AIC.

Decision

10. For the above reasons, the AIC: (a) upholds the Bank's decision to deny access with respect to the request made under Case Number AI0652; and (b) dismisses the portion of the Application concerning Case Number AI0834, because it appeals a matter that the AIC does not have authority to consider.

11. Under the Policy, the decision of the AIC is final for appeals that assert a public interest case to override a Policy exception (*see* Policy at paragraph 37).

12. For your ease of reference, please find the Final Report attached below as well as the link to access it on-line through the Bank's *Documents and Reports* public database.

[Document attached in original decision sent to the requester.]

http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&theSitePK=523679&entityID=000333037_20100511003747&searchMenuPK=64187283&theSitePK=523679