

# Too Hot to Handle

## The Samut Prakan Wastewater Management Project Inspection Process

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Global South*

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# Klong Dan Community Writes to the ADB President

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26 March 2002

Mr. Tadao Chino  
President  
Asian Development Bank (ADB)  
6 ADB Avenue, Mandaluyong City  
0401 Metro Manila  
The Philippines

## **Re: The Inspection of the Samut Prakarn Wastewater Management Project (SPWMP)**

The Inspection of the Samut Prakarn Wastewater Management Project is now completed and the reports of the Inspection Panel and the Board Inspection Committee are available.<sup>2</sup>

We, the representatives of the communities at Klong Dan and Song Klong wish to express our concerns about the inspection process and the findings of the Inspection Panel and the Board Inspection Committee.

We note that the Inspection Panel finds that the ADB did not comply with six of its own policies and procedures in processing and implementing the project. These include:

- Supplementary Financing of Cost Overruns

- Bank Operational Missions
- Environmental Considerations in Bank Operations
- Involuntary Resettlement
- Incorporation of Social Dimensions in Bank Operations
- Governance

In particular, the Inspection Panel concluded that not carrying out a reappraisal of the entire project for the supplementary loan proposal in 1998 was a crucial omission, which then resulted in other consequences.

The Inspection Panel also finds that ADB only partially complied with the following policies:

- Benefit Monitoring and Evaluation
- Economic Analysis of Projects

With regard to assessment of direct and material harm on the rights and interests of the local communities, particularly those dependent on the coastal ecosystem for their livelihoods, the Panel states that:

- The rights and interests of people with regard to consultation and participation have been adversely affected.
- The rights and interests of some of the people whose livelihood depends upon the activities in, and in the vicinity of, economic exclusion zone could also be adversely affected due to the potential problems caused by the dilution of salinity, release of toxins or heavy metal.
- The rights and interests of people, who are in the vicinities of the treatment plant, could be adversely affected by the odor, lowering of

property value and potential problems caused by the existence of toxin and heavy metal in the sludge management.

(Final Report of Inspection Panel on the Samut Prakarn Wastewater Management Project, 14 December 2001; page 2).

We reiterate our concern that the inspection process has been flawed and unacceptable:

1. The Terms of Reference (TOR) for the Inspection Panel's work programme compromised the very principles underlying independent inspection.
2. The Panel's work programme gave more attention to ADB Management priorities rather than to the concerns of the local communities who requested the Inspection.
3. The Inspection Panel failed to visit the project site to carry out adequate consultations and directly access information with local communities to be affected by the SPWMP.
4. The Inspection Panel worked from the ADB's offices in Manila which limited their access to information from independent sources outside the ADB.

Most of these limitations were acknowledged by members of the Inspection Panel as well. In the final report submitted by the Inspection Panel to the ADB's Inspection Committee, the Panel notes that, "The fact-finding process for this Inspection, therefore, is not complete. It is clear that the incomplete information has made the assessment of facts extremely difficult, and in certain areas, impossible" (Final Report of Inspection Panel on Samut Prakarn Wastewater Management Project, 14 December 2001; Page 7, paragraph 18). And further, "The Panel is aware of the severe limitations to the inspection process and that it does not have the full picture. Based on the limited information gathered and analyses done, the Panel has reached certain conclusions regarding the complaints submitted by the Requesters" (Final Report of Inspection Panel on Samut Prakarn Wastewater Management Project, 14 December 2001; page 38, paragraph 157).

The Panel finds that the ADB complied with its policies on Confidentiality and Disclosure of Information, and Internal Audit. The Panel's report claims that it was "common

knowledge" that the ADB's Office of the General Auditor (OGA) conducted an internal investigation on allegations of corruption in the project (Final Report of Inspection Panel on Samut Prakarn Wastewater Management Project, 14 December 2001; page 33, paragraph 136). However, the findings of this investigation are still not known to the Thai public and the residents of Klong Dan, and our concerns about the allegations of corruption in the project have not yet been given full attention by the ADB.

The Bank Inspection Committee report agrees with the findings of the Inspection Panel on several key issues such as the Supplementary Financing of Cost Overruns, ADB's Operational Missions, Good Governance, and Benefit Monitoring Appraisal. However, we find the recommendations of the Inspection Committee to the ADB's Board of Directors shockingly weak and disconnected with the findings of the Inspection Panel.

It is evident that the ADB's leadership and senior management appear unwilling to take responsibility for their own actions and initiate appropriate action to correct their own mistakes.

The Inspection Panel and the Inspection Committee reports make it clear that the ADB has made serious errors in the appraisal, approval and implementation process of the SPWMP. The ADB must therefore immediately stop all financial support for the project.

The ADB cannot expect to initiate a "good faith" process of dialogue with the Klong Dan and surrounding communities unless it is willing to take the bold but correct steps required to show that it is indeed committed to good governance in both spirit and practice.

Yours sincerely,

Narong Khomklom  
Mayor of Klong Dan

Chalao Timthong      Dawan Chantarahassadee  
Klong Dan villager      Klong Dan villager

**Cc:**

- Mr. Osamu Tsukahara - Director, Japan
- Mr. P.G. Mankad - Director, India; Bangladesh; Bhutan; Lao People's Democratic Republic; Tajikistan

- Mr. Zhao Xiaoyu - Director, China
- Mr. John S. Lockhart - Director, Australia; Azerbaijan; Cambodia; Hong Kong, China; Kiribati; Federated States of Micronesia; Nauru; Solomon Islands; Tuvalu
- Mr. Jusuf Anwar - Director, Cook Islands; Indonesia; Fiji Islands; Kyrgyz Republic; New Zealand; Samoa; Tonga
- Mr. Othman Jusoh - Director, Thailand; Malaysia; Myanmar; Nepal; Singapore
- Mr. Uwe Heinrich - Director, Austria; Germany; Turkey; UK
- Mr. Patrick Thomas - Director, Belgium; France; Italy; Spain; Switzerland
- Mr. Jeung-Hyun Yoon - Director, Republic of Korea; Papua New Guinea; Sri Lanka; Taipei, China; Uzbekistan; Vanuatu; Vietnam
- Ms. Kh. Zaheer Ahmed - Director, Kazakhstan; Maldives; Marshall Islands; Mongolia; Pakistan; Philippines
- Mr. Julian H. Payne - Director, Canada; Denmark; Finland; Netherlands; Norway; Sweden
- Ms. Chantale Yok-Min Wong - Alternate Director, USA
- ADB Inspection Committee

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- 1 *Final Report of Inspection Panel on Samut Prakarn Wastewater Management Project. 14 December 2001.*
  - 2 *Report and Recommendation of the Inspection Committee to the Board of Directors, Asian Development Bank on Inspection Request: Samut Prakarn Wastewater Management Project, Samut Prakarn Thailand, 28 February, 2002.*

# Controversial Report Poisons Board-Management Relations at ADB

*By Walden Bello\**

The Asian Development Bank (ADB) Board is the latest casualty of a controversial wastewater treatment plant in Thailand.

Notes taken by a participant at the most recent meeting of the ADB Board on March 25 that were made available to the author reveals an institution that is deeply shaken and split by the report of an independent inspection panel on the project, which is located in Samut Prakan province.

The independent inspection, the first ever undertaken by the Bank, was triggered by the petition of the people of Khlong Dan, a village affected by the project. The report faulted Bank management for violating at least six of its policies. In response, the Bank management issued a response denying all the charges. The Board Inspection Committee (BIC), in turn, supported the findings of the inspection panel, setting the stage for what one participant characterized as the “most contentious board meeting in ADB history.”

During the meeting, the BIC itself was caught in the crossfire of critics and supporters. The result was a compromise that is likely to haunt the ADB for a long time. The Board refrained from endorsing the full BIC report, coming out in support only of a carefully worded statement committing the ADB to being “an active participant” with the Khlong Dan community and the Thai government in the

“proper assessment of damages by the Thai government and, where relevant, the award of appropriate compensation.”

The Board’s failure to mention any wrongdoing on the part of management, much less reprimand it, was, in the view of some observers, one more step in a retreat from confrontation with management. Prior to the board meeting, the inspection panel and BIC decided not to seek an end to funding for the project in spite of their devastating findings on management’s transgressions.

Foremost among the critics during the Board meeting was, not unexpectedly, Alternate Director Ram Binod Bhattarai, who represents a group of countries that includes Thailand. Bhattarai attacked both the inspection panel and the BIC for “disregard of the Thai authorities and lack of respect for the sovereign rights of Thailand.” The BIC had supported the inspection panel’s decision not to make a site visit owing to what the latter considered “unacceptable” conditions imposed by the government. For Bhattarai, it was the BIC and inspection panel that were at fault for “politicizing the event,” with “premature releases of information to the press and welcoming flags in the Khlong Dan community...indicating a beginning of an unhealthy pattern and a display of lack of professionalism.”

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## **China attacks panel and BIC**

Bhattarai's comments were, however, mild compared to those of Director Zhao Xiaoyu representing China, who began by saying that while the report might strike some as "a nice piece of steak, to me it is a lousy dish that is overcooked."

Asking what the Bank had gotten after spending nearly \$2 million on the inspection process, Zhao answered: "We have produced a pile of groundless damaging paper. The Bank's credibility is undermined, the staff is demoralized, the Thai government is fed up, and a good environmental project is unduly held up for two years. The only visible gain is to a handful of experts and consultants who got a fat contract without having to worry about being held accountable."

While attacking the inspection panel as enjoying a "power equivalent to God," Zhao professed concern for the morale of the ADB staff, who would be encouraged by the Samut Prakan example to engage in "risk-averse behavior." The effect on the ADB, he predicted, would be like the impact on the World Bank of the full-scale inspection done on the Bank's controversial Western Poverty Project in China, which civil society groups had accused of displacing ethnic minorities. "Today, if one visits the offices of senior officials of multilateral institutions working on China, you will find big China maps on the wall with little red flags pinned here and there. These are not flags indicating bank activity. They are core reminders to senior managers that these are regions with ethnic residents, and they should keep away from those places, even if these are areas of great poverty."

A Board vote in support of the BIC report, said Zhao, "would see similar red flags sprout in the rooms of our own ADB staff reminding them to keep away from wastewater projects, thereby "leaving people to suffer surrounded by stinking wastewater and sludge." Saying that Board support for the BIC was "not courage but hypocrisy," Zhao concluded by calling the Samut Prakan inspection "fraudulent and the conclusions based on it groundless."

Zhao's remarks were supported by Directors P.G. Mankad, representing a group of countries including India and Bangladesh, and Zaheer Ahmed, representing a bloc that includes the Philippines and Pakistan. Mankad warned

the Board that by approving the BIC report, they would be "leaving the bank vulnerable to open-ended liabilities, bad precedents, and potential lawsuits."

## **Management under siege**

Supporters of the BIC report were perhaps not as inflammatory in their comments but they were equally firm in their views. C. Alexander Severens, speaking for the United States, faulted the Thai government for obstructing a site visit, a move that eroded the credibility of the inspection process. According to Severens, "When a government receives resources from this institution, it implicitly and explicitly makes a commitment to cooperate with all representatives of this institution. Accordingly, we would hope that any government would guarantee that all representatives of the Bank, including Inspection Panel members, can do site visits. Efforts were made in this case, but it is regrettable that a site visit under reasonable conditions could not be facilitated."

Alternate Director Frank Black, representing a bloc of countries including the United Kingdom, lashed out at what he regarded as the ADB management's ultra-defensive response. In his words, "the really fatal error—the point at which a bad situation became infinitely worse—was when management totally rejected the findings of the independent panel." In his view, this "did not show an institution living up to the high and necessary ideals of accountability, transparency, and capacity to be a learning institution."

Black and a number of other directors criticized Bank President Tadao Chino for making what they felt was a big mistake in signing the management response to the inspection panel since, in their view, this compromised the neutrality he was supposed to exhibit as chairman of the Board. Chino was also commanded by US representative Severens "to look into some actions of the staff which seem to indicate unwillingness to have the inspection process function as intended. This concerns us gravely and we hope you will look into this matter and ensure it does not happen again."

## **Chino on the way out?**

Listening to the exchange, one participant commented, “I thought, there goes his job. Chino alienated management by allowing the inspection to proceed. And he alienated the BIC by endorsing a fierce management reply denying all charges.”

Even the Japanese director, Osamu Tsukahara, abandoned Chino, who comes from Japan’s Ministry of Finance, by siding with the BIC and admonishing management “that it is of critical importance to listen carefully to NGO’s and others’ opinions.” He also instructed Chino to push the Thai government to “accelerate” its investigation of the villagers’ charges of corruption by government officials involved in the Samut Prakan project. Tsukahara told Chino to remind the Thai government that “the right of the borrower to make withdrawals may be terminated if corrupt or fraudulent practices were engaged in by the borrower and no timely and satisfactory action has been taken to remedy the situation.” If he follows this missive from the ADB’s most powerful member-country, Chino is likely to add the Thai government to those he has alienated.

## **Board-staff relations poisoned**

Already beset by many problems before the Samut Prakan inspection, the ADB has been plunged into disarray by recent developments. The relationship between Board and Staff has been poisoned, and within the board, members from donor countries and those from recipient countries are increasingly separated by a wide gulf in values and priorities.

“Samut Prakan simply brought festering antagonisms to the surface,” says one staff economist. “This institution, if it survives, will never be the same again.” Another staff member, also speaking under conditions of anonymity, was more cynical. “After the sound and the fury, the Board will get behind a recalcitrant management and it will be business-as-usual,” she asserted. “Just wait and see.”



# Evading Responsibility

## The Asian Development Bank and the Inspection Function

By Shalmali Guttal\*

The recently completed Inspection Process of the Samut Prakarn Wastewater Management Project (SPWMP) in Thailand has revealed fundamental inconsistencies in the accountability mechanisms of the Asian Development Bank (ADB).

The SPWMP is the first ADB supported project to be subjected to inspection and quite literally, has been a test case for the ADB's fledgling Inspection Policy. However, every step of the inspection process, from the initial inspection request filed by the affected communities to the ADB Management's response to the findings of the Bank Inspection Committee (BIC) and the Inspection Panel, have been wracked by suspicion, mistrust and finger-pointing among the ADB's staff, Management and senior leadership.

In a recent meeting (March 25, 2002) of the ADB's Board of Directors, Board Members were sharply divided about the extent of the ADB's responsibility and culpability in the SPWMP, and about how the Bank should respond to the reports and recommendations of the Inspection Panel and BIC. While some Directors from the Bank's Developing Member Countries (DMCs) rejected the findings and recommendations, most Directors representing donor countries accepted them. Both sides talked about how the Bank's actions regarding the inspection results would set a "precedent,"

but again, there were serious differences. Those who supported the findings and recommendations were concerned about setting precedents for what they believe are essential aspects of good governance; but those who rejected the findings and recommendations claimed that the SPWMP threatened to set a precedent for future challenges to the Bank's authority, mandate and legitimacy.

These debates have been accompanied by a flurry of activities within the Bank regarding a review and update of the ADB's Operation Manual (OM) and a review of its Inspection Policy. Two particularly interesting issues to emerge from all these activities are the controversy over the ADB's Operation Manual (OM) and the nature of the ADB's potential liability under the inspection function.

### Hide and seek in the Operation Manual

Debate over the ADB's OM was sparked almost a year ago, when the ADB Board noted that the SPWMP Inspection Request referred to policies and procedures that were not included in the OM. The policies and procedures had, however, been approved by the Board in past meetings and for all practical purposes, were regarded by the Board as official ADB policies. The OM is quite literally a manual that lists all

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the operational policies and procedures that ADB staff and Management are expected to implement and be guided by in the course of their work. It soon became apparent that the OM had not been updated for several years and decisions made by the Board at earlier dates had not yet been included in the OM. This raised questions about what policies and procedures had ADB staff followed in their work in the past years, and what then was the Inspection Panel to examine: official, Board approved policies that were outside the OM, or, outdated policies in the OM. These problems were further compounded by parallel policy documents about the same procedures (such as supplementary financing for cost overruns) without clarity as to which policy documents were indeed the ones currently applicable. Predictably, this resulted in considerable controversy about which policy documents the Inspection Panel should have based its findings on, with ADB Management insisting that the documents they followed were the correct ones regardless of whether or not they were outdated, or in the OM.

If nothing else, at least the SPWMP catalysed the ADB into updating its OM with a view to which policies and procedures staff and Management are expected to implement. In the midst of continued heated arguments and recriminations among various sections of the Bank, the ADB Board and Management are struggling with some surprisingly basic questions about the purpose and scope of the OM. For example, would policies that are not included in the OM not be operationalised? Would policies not included in the OM be subject to inspection? Which policies should be included in the OM? And, which policies should be excluded from the OM?<sup>i</sup>

The SPWMP has also spurred the ADB to undertake a review of its Inspection Policy, which is expected to be completed by November 2002. However, recent discussions among ADB Board Members and Management indicate that regardless of whether a Board approved policy is included in the OM or not, the question of which policies are “inspectable” remains thorny and complex. In order to protect itself from future inspection processes, the ADB is likely to classify the elements of its operational policies and procedures as those that are mandatory, non-mandatory (or recommendatory) and mixed (i.e., have mandatory and recommendatory elements).

These would then be grouped into different document packages that may be named OMs or “something more appropriate.”<sup>ii</sup> What would then be deemed “inspectable” are only those elements of operational policies and procedures that provide ADB staff with explicit directions on how to formulate, process and implement projects. Elements of vision, strategy, intention, and internal finance and administration (which certainly influence how projects are formulated and implemented) would not be “inspectable.”

An ADB insider revealed that the updating of the OM and the review of the Inspection Policy are moving towards arbitrarily limiting the number of “inspectable” policies and procedures. The less the ADB opens itself for investigation, the less responsibility it needs to assume for problems in its own projects.

### **Immunity: A quagmire of self-interest**

The limits of the ADB’s Inspection Policy in terms of any real or tangible accountability by the institution are revealed in a paper from the ADB’s Secretary to the Directors regarding the question of the ADB’s potential liability under the Inspection Function.<sup>iii</sup> The paper provides a legal opinion about whether, and to what extent, the ADB is potentially liable for its failure to comply with its policies and procedure in the formulation, processing and/or implementation of a proposed or ongoing project.

The paper concludes that the by virtue of the immunity provided by its Charter, the ADB is not liable for any findings of wrongdoing through the Inspection Function and is protected from any legal action that might arise from such findings:

“In short, the immunities and privileges ADB enjoys effectively shield ADB from the barrage of competing, if not conflicting, demands that could be made on the ADB in local jurisdiction from a large number of various groups, both official and private of its member countries. Plainly, ADB’s immunities and privileges support the performance of its functions.”<sup>iv</sup>

The rationale for the ADB’s Inspection Function is based on the immunity it enjoys. By its own admission, the ADB’s immunity from all forms of legal processes and local jurisdiction in

any member country “denied citizens and other relevant people access to effective official fora to air their complaints and seek proper remedies.” Therefore, it needed another forum by which it could claim commitment to policies of transparency, accountability and participation that reflected the “peoples’ empowerment movement around the world.”<sup>v</sup>

The paper identifies two objectives of the Inspection Function: 1) to allow private individuals access to the ADB’s internal decision making process, and 2) to safeguard, at the same time, against the possibility of the ADB being held liable by a Third Party for material injuries sustained by private individuals. The Inspection Function, then, was never intended or designed to offer complainants or injured parties any redress:

“The establishment of the Inspection Function was, therefore, designed to allow private individuals who are materially and adversely affected by ADB’s project in a DMC to lodge a complaint in order to seek proper remedies. Nevertheless, there is one seemingly self-contradictory aspect about the reason for the Inspection Function that needs to be firmly understood. That is, the absence of access to effective remedies on account of ADB’s immunity from local jurisdiction is the essential reason for the establishment of the Inspection Function as an internal mechanism.... The Inspection Function cannot be an instrument by which to deprive ADB of its immunity protection...”<sup>vi</sup>

According to the ADB’s internal governance mechanisms, final decisions about the Bank’s compliance to policies and procedures, and assessment of institutional and staff conduct rest with the ADB’s Board of Directors. The ADB then, is its own investigator, judge and jury, with no obligations of external, public accountability. The BIC investigates complaints by an applicant group not with the intention of helping the applicant group to seek “proper remedies,” but with the intention of making ADB’s operations more accountable to its DMCs.

“The obligations imposed on ADB under its operational policies and procedures, e.g., ‘participatory consultation,’ do not create the corresponding rights on the part of local private individuals. ADB’s contractual obligations are, first and foremost, with the Government.....The

Policy does not provide a mechanism of indemnity or compensation for such material infringements of the rights and interests of the applicant group. Nor is the Inspection Function a mechanism for establishing liability for such infringements.”<sup>vii</sup>

The convoluted workings of the Inspection Policy also allow ADB Management to place the burden of proof in inspection requests on applicant groups, thus contradicting the “non-judicial” nature of the inspection process and undermining independent investigations of policy violations and wrong doing. In refuting the inspection request by local residents in Sri Lanka for the Southern Transport Development Project, ADB Management claimed: <sup>viii</sup>

“There should be no further consideration of the Request since it not only fails to show non compliance by ADB with ADB’s Involuntary Resettlement Policy, but also attempts to undermine the balance in ADB’s Involuntary Resettlement Policy as supported by the CEA. It should also be noted that further consideration of the Request under ADB’s Inspection Policy could undermine the legal framework in Sri Lanka and the contract between ADB and Sri Lanka.”

### **And further,**

“The Requester does not provide evidence of authority to represent its alleged constituency, many of the allegations do not concern acts or omissions by ADB, the allegations against ADB are not supported by sufficient evidence, and the requester is unable to demonstrate direct and material adverse effect caused by ADB. Management submits that these multiple grounds for ineligibility cumulatively warrant a BIC recommendation of “clear ineligibility” with regard to the Request.”

In sum, established as a purely internal administrative process, the ADB’s Inspection Function does not offer any avenue of redress against wrong-doing, malpractice, or violation of even its own policies and procedures to those negatively affected by an ADB project or programme. Despite its rhetoric of poverty reduction, good governance and promoting development, the ADB is protected from functioning as a responsible public institution by its Charter. Its Inspection Function is not

designed to open channels for fair hearing and open discussion with those who ADB projects are supposed to benefit—i.e., the citizens of a DMC. On the contrary, it is designed to safeguard the ADB's immunity and internal decision-making from the messy realities of lost livelihoods, degraded and polluted environments, and erosion of rights and entitlements. Not only is the ADB safe from public scrutiny and accountability, but also, its contractual relationship with the Government ensures that project or programme imperfections and problems can be handled in a closed, exclusive group of project implementers (the Government) and ADB Management.

In such a system, local communities, project-affected peoples and other citizens have no place or voice with the ADB and even their own governments. The ADB's Inspection Function and Policy are a mockery of any universally accepted precept of good governance. Unless radically amended, the Inspection Function and Policy will continue to provide the ADB with more ways to evade responsibility for poor performance, bad decisions and actions, and harmful projects.

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- i *Memo from the Director General of the SPD to the President, Secretary, General Counsel, Directors General and Principal Directors, 15 January, 2002.*
  - ii *Memo from the Secretary to the Directors and Alternate Directors, 6 March, 2002.*
  - iii *Samut Prakarn Wastewater Management Project, Legal Opinion on the Question of ADB's Potential Liability Under the Inspection Function. 26 December, 2001.*
  - iv *Ibid.*
  - v *Ibid.*
  - vi *Ibid.*
  - vii *Samut Prakarn Wastewater Management Project, Legal Opinion on the Question of ADB's Potential Liability Under the Inspection Function. 26 December, 2001.*
  - viii *Response of ADB Management to the Request for Inspection of the STDP, Sri Lanka, February 2002. Paragraphs 39 and 103.*

# Call for Government to review mega-projects tainted by graft

*By Onnucha Hutasingh and Sunthorn Pongpao*

*This article appeared in the Bangkok Post, 10th April 2002*

The Anti-Corruption Network and senators say corruption beset the controversial waste-water treatment project in tambon Khlong Dan and a project at Nong Ngu Hao airport. They want the government to review the mega projects. Senator Niran Pithakwatchara said the projects were examples of 'policy corruption' in which decisions were made by a select group of politicians and officials, without public participation.

The projects would need long-term foreign loans, a burden the taxpayer could do without.

Lawan Chanhasadee, a protester from Khlong Dan in Samut Prakan and a representative of the network, said politicians, public servants and contractors had a vested interest in the 30-billion-baht project.

Politicians had business connections with the NVPSKG consortium which is undertaking the project. The consortium comprises six firms, Northwest International, Vjitphan Construction, Prayoonvit, Sisaeng Karnyotha, Krunghon Engineering and Gateway Visavakram.

She urged the government to suspend the project, which she said had lacked transparency from the start.

Senator Charoon Youngprapakom said he did not understand why the consortium had demanded 6.8 billion baht in compensation from the Pollution Control Department for construction delays when the firm itself had breached the contract. The project was supposed to wrap up on Feb 20, but was still only 80% complete.

The contractor blamed delays on protests by Khlong Dan residents, but Mr Charoon said protests occurred only twice and lasted seven days.

Sources said the Asian Development Bank had admitted it was wrong to lend money for the project, which it believes breached the bank's principles of transparency and environmental conservation.

However, the bank was not prepared to cancel the loan. It has suggested the government pay compensation to affected fishermen.

On the Nong Ngu Hao project, Noppanan Wannathepsakul, a Chulalongkorn University economics lecturer, disputed the government's claim that the winning bid for the airport terminal was below the median price of 45 billion baht.

The government says it managed to bring the price down by insisting that local and not imported materials be used. In fact, the project was scaled down to reduce costs. The winner quoted 36 billion baht for the scaled down project. The government later called bids for a six-billion baht terminal expansion project.

The attorney-general has yet to approve details, he said. The government was trying to cover up the real cost, he said.

Meanwhile, opponents of the Khlong Dan project have threatened to expose alleged irregularities by the end of this month. Chalao Timthong, a protest leader, said villagers raised questions about the purchase of 1,900-rai land plots for the site and the terms of the contract. His group would meet the House Committee on Science and Technology today.

# Dirty business in Samut Prakan

*By Chang Noi*

*This article appeared in The Nation, Bangkok, 15th April 2002*

Where there's muck, the old saying goes, there's money. By all accounts, Samut Prakan is Thailand's muckiest province. A few people have alchemised its pollution into gold.

In 1993, the Pollution Control Department (PCD) counted 5,200 factories spilling out industrial waste in Samut Prakan. The Science Ministry got a consultant to spec a wastewater project. The plan was circulated to relevant government agencies. The Industry Ministry, Finance Ministry and NESDB pointed out the project overlapped with other projects already under way. The Interior Ministry criticised the turnkey approach, and warned there would be problems over the land purchase. The Budget Bureau wondered if the completed project would ever operate at a profit.

The Science Ministry took these objections in its stride. It ignored them. The Cabinet approved a budget of Bt13.6 billion in October 1995. The Asian Development Bank (ADB) offered its largest-ever loan for a turnkey project. Bids were called.

Then the fun started. Thirteen firms showed initial interest in bidding. By the end of the process, all but one had mysteriously withdrawn. The remaining NVPSKG consortium suggested some changes to the original design. Instead of two plants located in the two areas with the most factories, it suggested one big plant 20 kilometres away at Khlong Dan. It also suggested upgrading the piping and other details. The budget increased by Bt 10 billion.

Why did the contractor's suggestions differ so much from the consultant's original spec? Why was the new location not among the 13 options identified by the consultant? Why did the Science Ministry not review this major change (the Chulalongkorn team trying to trace the paper trail cannot find a review)? Why did the ADB not treat this as a major revision requiring a full reappraisal? Why did the Cabinet approve the relocation, upgraded specs, and budget hike without a murmur? Why was there no assessment of impact on the environment and local communities?

Now watch the muck turn into money. The contractors bought 1,903 rai for the project at an average cost of Bt1.03 million a rai. Give or take a few satang that's Bt2 billion. The local Land Office's estimate for that location was Bt480,000 per rai. Banks said there was no comparative data on land sales in that zone because the land was scarcely saleable. The PCD justified the high price by comparing it with the cost of land bought for the provincial jail, and land in a housing project much better locations than the project's flood-prone stretch of deserted mangrove.

Why all this happened is, of course, a mystery. But here is some information that can help you guess. In NVSPKG construction consortium, the S stands for the Sisaeng Kanyotha company of the Silpaarcha family. The P stands for the Prayon Wiswakam company of the Liptapanlop family. The company that sold the land (Khlong Dan Marine

and Fishery) is said to belong in part to the Asavaheme and Pinkayan families. The science minister who first approved the project was Suwat Liptapanlop.

The prime minister at the time was Banharn Silpa-archa. The Science Minister at the time of the revision was Yingphan Manasikan. He was part of the “cobra faction” headed by Wattana Asavaheme. The consultant company (Seatech) is part-owned by Subin Pinkayan, former commerce minister who topped the list of the “unusually rich” in 1991.

It gets worse. The project is not liable to be much use. It will probably never run at more than 25 per cent of its capacity and always make a loss. That’s because the new location is far away from the biggest concentrations of polluting factories. Pipe connections will be expensive. A survey found 90 per cent of factories had built their own wastewater facilities.

The same thing has happened on a smaller scale with wastewater projects elsewhere. The specs are set too high. The construction contractor makes a lot of money. But the resulting facility is too expensive to run and maintain.

In 1998, only five of 26 plants were said to be working. Now there are some 80, and a House committee recently concluded that only a few were working properly, and most of the Bt 64 billion investment was wasted.

It is striking how many of those who have headed the Science Ministry over recent years have had very little obvious interest in science:

Suwat Liptapanlop, Yingpan Manasikarn and now Sonthaya Khunpleum. It is striking how many of them have interests in construction contracting.

It gets even worse. The relocation of the project onto a certain piece of land also threatens a highly productive fishery. The unusual currents around the river mouth create a unique marine environment in the mangroves of Khlong Dan, especially good for shellfish farming. The villagers who depend on these fisheries were never consulted. They found out about the project when the contractor erected a sign.

Despite local protests, the project has proved unstoppable. Suwit Khunkitti tried to halt and investigate the project in 1999. He was

steamrollered. Arthit Urairat said he would lose his job as Science Minister if he interfered.

The ADB held an independent review of the project. The Science Ministry tried to prevent the investigators getting access to the site. The review found the ADB had broken its own rules and procedures in six ways. Why was there no reappraisal when the site changed and the cost rose? Why was the project wrongly categorised so that the environmental impact was never examined? Why was there no social impact assessment? Why did the ADB not apply internally the standards of governance which it preaches to others?

It still gets worse. The contractor is now talking of asking for Bt6.8 billion in compensation for the delays and difficulties caused by the protests. Before paying this, the government should conduct the same sort of investigation currently being done for the expressway project.

# Inspection Report on Samut Prakan Shakes Asian Development Bank

*By Walden Bello\**

The report on a controversial wastewater management project in Thailand by an independent Inspection Panel of the Asian Development Bank (ADB) has struck Bank management like a thunderbolt.

To make things worse, most of the key conclusions of the inspection panel on ADB management's decision-making behavior have been endorsed by the ADB Board Inspection Committee.

The focus of the report, the Samut Prakan Wastewater Treatment Project, was designed to alleviate massive water pollution in Samut Prakan province, the most heavily industrialized and rapidly urbanizing of the five provinces of the Bangkok Metropolitan Region in Thailand. Sharp escalation of project costs eventually made the project the largest turnkey project ever supported by the ADB, with the figure reaching US\$948 million, of which about \$230 million came from the Bank.

The revision of original estimates was accompanied by major changes in the design of the project. One such change brought into the project a site that was not originally included: the village of Khlong Dan. This was done without consultation of the residents, provoking protests from the villagers, who accused the Bank of violating its key policies, including those on consultation, resettlement, environment, and good governance. In a letter

to ADB President Tadao Chino, three individuals—the mayor and two civic leaders representing the villagers—asked for an immediate halt to ADB funding for the project and an investigation of what they claimed were the “many violations of ADB policies.”

Under pressure from a campaign waged by key groups in Thai civil society and a number of international NGO's—which included a massive protest during the ADB's 33rd annual meeting in May 2000—the Bank Board commissioned a review of the project by an independent panel. The team was eventually composed of Judy Henderson, chair of Australian Ethical Investment Ltd, Wiert Wiertsema, co-founder of the Dutch NGO Both Ends; and Pin-Cheung Loh, former Secretary General of the International Cooperation and Development Fund in Taipei.

Despite obstruction from the Thai government and ADB management's marked reluctance to assist them in visiting the project site without having to conform to what panel members viewed as unacceptable conditions imposed by the government, the inspection panel issued a report based on available data and interviews with Bank staff members in November 2001.

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## **Damning findings**

The findings were damning. According to the inspection panel, the Bank management:

- violated its policies governing the review of cost overruns by not carrying out a reappraisal of the whole project in preparing financing for a supplementary loan;
- failed to comply with policies covering changes made in project design by not conducting a full reappraisal of technical, economic, social, and environmental issues relevant to the project;
- breached the Bank's environmental guidelines by not conducting an environmental impact assessment (EIA) of the project;
- violated the Bank's policy on involuntary resettlement by not carrying out a social impact assessment (SIA);
- violated Bank policy on governance by not allowing opportunities for the affected residents of Khlong Dan to participate in designing and implementing the project; and
- failed to comply with Bank policy on project evaluation and monitoring by not putting in place a system for effectively monitoring the social and environmental impacts of the project.

In response, the Bank's management drafted a point-by-point rebuttal of the Inspection Panel report. However, the Board Inspection Committee (BIC) headed by John Lockart of Australia upheld most of the Panel's main findings. According to the BIC, "ADB's failure to comply with policies on supplementary financing of cost overruns and operational missions (and particularly the failure to carry out a comprehensive reappraisal after a fundamental change in technology and a massive cost overrun and again when a substantial supplementary loan was processed) constituted and led to important omissions." It went on "accept" the inspection panel's conclusion that "a relevant group has suffered direct and material harm as a result of ADB's noncompliance with operational policies and procedures."

## **Inexplicable recommendation**

It is inexplicable, however, that after finding significant deviations from its policies

that resulted in harm to Khlong Dan villagers, the inspection panel did not recommend suspension of loan disbursement, as the Khlong Dan villagers demanded. In fact, the suggested course of remedial action is rather weak, consisting of ADB management admitting it did not comply with its policies, improving the monitoring, consultation, and participation process, and working with the Thai government to compensate villagers for the harm done to them.

Reparations are unlikely to occur, however, since, as a multilateral institution, the Bank is exempted from damage claims and the Thai government has stoutly resisted any suggestion it behaved inappropriately in implementing the project.

Fear that they would be used to legitimize continuation of the project was one of the factors that prompted the Khlong Dan villagers to be interviewed by the panel. With the inspection panel's formula of getting management to acknowledge violations of policy while endorsing continued ADB funding of the project, the villagers' skepticism about the inspection process appears to have been justified.

## **Siege mentality**

Nevertheless, the panel report is creating consternation among Bank staff. Management fears that the Samut Prakan fiasco will dominate talk at the Bank's 35th annual meeting in Shanghai in mid-May. There is also the fear that there will now be greater public scrutiny of the Bank's operational policies, many of which are not yet in the Operations Manual and thus inaccessible to both staff and the public. In fact, according to one ADB source, "the Operational Manual has not been updated for five years, which raises fundamental questions about staff being aware of the existence of certain policies."

The biggest fear, however, is that the Samut Prakan case—the first inspection to be conducted under the Board's inspection policy approved in 1995—will trigger other requests for independent inspection panels. Two controversial projects, one in Sri Lanka, the other in Pakistan, are said to be in the inspection pipeline as a result of strong pressure from civil society groups. To contain the impact of such inspections, management is seeking to limit

what is “inspectable” in projects in fairly narrow terms to “operational policies and procedures that provide ADB staff with mandatory directions on how to formulate, process, and implement projects” and exclude all other matters such as “strategies and strategic aspects of all policies.”

## **Skepticism**

Will the Samut Prakan decision really mean a change in the Bank’s way of doing business? Many within the Bank are doubtful. Noting the move to limit the elements of projects open to inspection, an ADB economist who requested anonymity said, “Instead of opening itself to a transparent process, the Bank is allowing itself to be taken over by a siege mentality.” Referring to the response of management to the inspection panel report, she continued, “the document amounts to a blanket defense not only of everything the ADB staff did but of everything the Thai government did—including preventing the inspection panel from conducting a site visit.”

This skepticism was echoed by an alternate director in the ADB board: “These fellows are entrenched, and they’ll manage to resist change. Look, you have a great inspection panel report, but there’s hardly any change. The project goes on.”

# Summary of the Final Report of the Inspection Panel on Samut Prakan Wastewater Management Project

14 December, 2001\*

## Introduction

This document provides a summary of the Inspection Panel's final report to the Asian Development Bank (ADB) on the inspection carried out of the Samut Prakarn Wastewater Management Project (SPWMP). The inspection was requested by the communities of Klong Dan and Song Klong, Samut Prakarn, Thailand (also referred to as the Requesters). The inspection was conducted from September-December, 2001. The members of the Inspection Panel (the Panel) were independent experts, who were not part of the ADB Management or staff, but selected by the ADB's Inspection Committee. The Terms of Reference (ToR) for the inspection were developed by the Inspection Committee and did not include all the issues that the Requesters outlined in their inspection request.

The following sections are summaries of the findings of the Panel. Key observations, statements and conclusions from the report have been highlighted by the author in bold typeface. The author's own comments are in brackets and italics.

## A. Methodology

The ToR for the Inspection Panel dated 4 September, 2001 specifies that the purpose of the inspection is:

“to determine whether the ADB complied with its operational policies or procedures in

processing or implementing the Samut Prakarn Wastewater Management Project in Thailand. If the Inspection Panel (the Panel) determines that ADB has not complied with its policies, it must further determine whether this non-compliance has had, or is likely to have, a direct and material adverse effect on the rights and interests of the groups making the request (the Requesters).”<sup>1</sup>

In carrying out the inspection, the Panel reviewed documents obtained from the ADB, the Requesters, the Executing Agency (the Pollution Control Department), consultants, non-governmental organisations (NGOs), academics and experts involved in the project. The Panel also conducted interviews with various individuals who had been involved in the project at some time or the other.

The Panel was not able to visit the project site because of conditions imposed by the Government of Thailand for a site visit. The conditions referred to possible law and order issues and that the ADB shoulder all financial liabilities for costs that might arise from a site visit.

*The inability of the Panel to visit the site and meet directly with project affected communities clearly constrained the ability of the Panel to make proper assessments on a number of issues raised by the Requesters.*

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\*Summary Prepared by Shalmali Guttal, Focus on the Global South (s.guttal@focusweb.org)

According to the Panel, “The fact-finding process for this Inspection, therefore, is not complete. It is clear that the incomplete information has made the assessment of facts extremely difficult and in certain areas, impossible...”<sup>2</sup>

The Panel notes that the conditions imposed by the Government of Thailand fundamentally undermine the effectiveness of the inspection system, and go against the spirit and objective of the establishment of such a system. The conditions also undermine the impartiality of the Panel, which requires a fair access by the Panel to all stakeholders and by all stakeholders to the Panel. According to the Panel, “The fact that for more than 2 months no communication could be established with the Requesters of the Inspection is disturbing indeed.”<sup>3</sup>

*It is important to ask here why the Government’s conditions were not discussed by the Inspection Committee and ADB Management. It is quite clear that ADB Management did not welcome or support approval for the inspection process. In its own report to the ADB Board, the Inspection Committee clearly states that ADB Management did not respond to repeated requests by the Committee to clarify the implications of the Government’s conditions. The Committee also states that this failure on part of the Management created a difficult situation for the ADB in its relations with the Government. Were ADB Management and staff advising the Government on how to deal with the inspection process? If ADB Management were confident that they had followed all ADB policies and procedures, why were they silent on the conditions imposed by the Government, especially those regarding the ADB taking on financial liabilities arising from site visits by the Inspection Panel?*

## **B. Overview of the management of the project by the ADB**

### **I. Observations on certain common perceptions <sup>4</sup>**

The Panel notes that certain common perceptions shared by ADB staff and managers had a strong influence on the decisions made for

the Project.

First, there was a perception that the Project is a “good environmental project” and therefore, ADB requirements regarding environmental categorisation, social and economic impacts on the community and other related policies are easily met. And since the Project was intended to improve the environment of the Project area, the environmental impacts of the Project can only be viewed as positive. It was also perceived by ADB staff and management that if the Project was not done, the people in the Project area would be worse off.

There has been a tendency among ADB staff and management that many important changes in the Project that were made after the loan approval were changes of a technical nature and were viewed individually as minor changes. However, the Panel points out that if viewed collectively and over time, these changes (project costs, construction methods, location of treatment sites and the number of turnkey projects) amount to major departures from the original loan agreement.

The Panel notes that ADB staff and management firmly believe that the ADB is merely a financing institution and it is the project owner (in this case the Thai Government) who is responsible for the required work. However, this is contrary to the fact that the Bank expects its staff to complete certain required actions before it agrees to finance the project and that there are other requirements that ADB staff are expected to fulfill at different stages of the project cycle.

Despite the fact that under various ADB policies participation should include community inputs in the formulation of project design, mitigation of negative impacts and optimisation of overall project benefits, ADB staff view community participation as public relations and awareness programs.

In the implementation of the project, a turnkey contract approach was adopted and the turnkey contract for the SPWMP is the largest single turnkey contract in the history of the ADB. The bidding documents for the Project required the contractor to acquire the land for the Project and also placed the responsibility for certain functions such as studies of the project impacts on the turnkey contractor. Such a situation gives rise to possible conflicts of

interest and biases in the actions of the turnkey contractor, and it is important that the ADB or the Project owner ask an objective third party to review the output of the turnkey contractor. However, despite the unique nature of the contract arrangements, no special attention was given to review the various changes in the Project. In the perception of ADB staff and managers, since the Project is implemented through a turnkey contract, all Project implementation issues should be taken care of by the turnkey contractor.

The Panel notes that when there is a need to interpret a policy requirement, ADB staff and managers believe that the strictest interpretation should be followed. In the case of the Project, the most restrictive interpretation was adopted even in situations where a common sense approach was needed.

And finally, the Panel notes that there is a perception among some people in the ADB that the Requesters are a small group of people organised by specific interest groups, and do not represent the views of the majority in the Klong Dan community.

*The perceptions of ADB Management and staff indicate their prejudice towards the Project and the Requesters.*

## **II. Review of certain events in the project cycle <sup>5</sup>**

The Panel notes that certain actions of the ADB that occurred during the project cycle resulted in important consequences for the Project.

The Report and Recommendation of the President (RRP) and draft loan agreement for the Project (which was signed by the Government) explicitly mention that there would be two treatment plants located on each side of the Chao Phraya river. At that time, it was envisaged that more than one turnkey contract would be used for the procurement arrangement. Although the contractors were asked to acquire the land, the Loan Agreement states that the final responsibility for land acquisition rested with the Government.

The loan for the Project was approved by the Executive Directors of the Board of the ADB on 7 December, 1995. During this Board meeting, one of the Directors noted that the ADB and the Thai Government had included community participation in the planning of the

Project. However, the Panel points out that the community discussed in this Board meeting was not the community affected by the Project because at that time, the site of the plants has not yet been selected.

Between the time that the Loan was approved by the ADB Board (7 December, 1995) and the signing of the Loan Agreement (31 July, 1996), the cost of the Project increased from \$ 507 million to \$ 948 million—an increase of about 87 percent of the original estimate. The Panel was not able to determine whether the Project was reviewed before signing the Loan Agreement and if there was a review, at what level the review was carried out.

The Panel states that this was the first important change in the Project in terms of cost and construction technology, and although there was no change in the original objectives or coverage of the Project, “this change has set the pattern to be followed by other changes to come.” Here, the Panel also asks whether “such drastic change could have been anticipated at the feasibility study and appraisal stage.”

The changes in the number and sites of the treatment plants, and the number of turnkey contracts evolved during the preparation of the bidding process for the turnkey contracts. Bidding documents were amended by the insertion of an addendum to permit alternative bids for a single plant site. But this addendum was not approved by the ADB as required by Bank procurement procedures. According to the Panel, “this prior approval procedure would give the Bank an opportunity to consider the implications of such changes.” However, the Panel was told that this “procedural defect” was rectified by the approval of the Bank of the turnkey contract as a whole.

The Panel states that many of the complaints of the Requesters can be traced to the changes in the Project that occurred during this period. Since these changes were approved by the ADB, ADB staff was required to undertake certain responsibilities resulting from such changes, in particular, due to new policies and policy updates introduced since 1997.

It is not clear to the Panel whether the major changes in the Project were reviewed by ADB management, as is required by procedures for major changes in a project. The Panel was told that changes in the turnkey bidding documents were reviewed by the ADB

Procurement Committee, whose major concerns were compliance of procurement requirements and the sufficiency of competition. However, the number of bidders dwindled from 14 to 2 and finally only one bidder submitted a price bid and was awarded the largest single turnkey contract ever financed by the ADB.

*Clearly, neither the ADB's procurements, nor its competition requirements were met. But the Procurement Committee seemed to not notice these issues.*

Because of "The lack of clear evidence on the issue of sufficient attention by the senior level of the Bank managers including the Management" the Panel questions whether the necessary experience and policy guidance were made available to the staff "whose focus would be understandably different from that of the senior officials of the Bank."

*Is this an attempt to determine where responsibility for wrong actions should be placed? Or does this imply that the entire system is unaccountable?*

The Panel notes that since 1997, a number of Operational Manuals (OMs) have been issued or updated to deal with the very same issues that subsequently became the key concerns of the community. These new policies placed certain responsibilities and requirements on ADB staff. Consequently, compliance with policies and procedures issued by the Bank before the Supplementary Loan was approved in 1998 became "a most crucial issue."

A Supplementary Loan for the Project was appraised and sent to the ADB Board for approval in December, 1998. This appraisal covered matters of cost overruns, different options for the Project, and an analysis of the economic and financial justifications for the revised Project. Although ADB Management claims that the coverage of the appraisal was appropriate, the Panel finds that the Management took a position that was "unnecessarily narrow." According to the Panel, "The judgement to ignore other important issues in the appraisal was not a sound judgement expected from a respected professional organisation such as the Bank."

Also, in the submission to the Board for the review of the Supplementary Loan, it was indicated in the Preamble section of the draft Loan Agreement that the original Project Description (in the 1995 Loan Agreement) was

amended. However, the Panel was told by Bank staff that there was no such amendment. According to the Panel: "This raised the question whether the Board was misled, or indeed there was a problem of decision-making process in the Bank; neither of which is a desirable development for the Bank."

*Why did the Board did not notice this when they approved the loan?*

During the Board discussion on the Supplementary Loan, some Directors of the Board raised questions regarding the procurement process and changes in the Project, and how such changes should be reviewed by Bank staff and the Board. One Executive Director said "that a change in a project that has such major cost implications should not be treated as a matter of administration. This really needs a detailed assessment to determine whether the Project, in its revised shape, is still viable and can be supported by the Bank."

The Panel notes ADB staff began to have dialogue with the local community only since 2000, reflecting the perceptions of the staff that such activities were the responsibility of the executing agency (i.e., the Thai Government and the Pollution Control Department). However, the Panel points out that ADB staff were required by the ADB's policies and procedures to have undertaken a more proactive approach and resolved certain issues earlier.

In summary, the Panel notes that several key events of the Bank's action or inaction determined the course of development of the Project, which affected the people who filed the complaint and requested the Inspection:

- The feasibility report and the subsequent Bank report on the outcome of appraisal resulted in incompleteness in meeting the requirements of the ADB's policies.
- An 87 percent cost increase and other important changes in the Project were accepted as a matter of routine before the first Loan Agreement was signed.
- The ADB did not take the opportunity to conduct a comprehensive review of the Project at the stage of the Supplementary Loan appraisal. The appraisal was too narrowly focussed and did not cover the pertinent issues subsequently raised by the Requesters.
- There is a lack of understanding in the Bank of community participation.

## **C. Compliance in specific areas**

In this section, the Panel examines the specific issues raised by the Requesters of the inspection.

### **I. Supplementary financing of cost overruns <sup>6</sup>**

ADB Management uses policy papers from 1983 (Document R 115-83, Revision 1, 29 November) and 1989 (Document Sec. M49-89, 12 September) to support its claims that the reappraisal should be focussed on financial aspects, and that Project scope and design are only reviewed to confirm that the Project is still viable and that the cost overrun cannot be avoided by changes in scope or design. Also, some Bank staff have the view that a cost overrun only referred to the increase in the Bank's financing of the Project; if the Government would finance the increased costs, this would not be interpreted as a cost overrun.

However, according to the Panel, these views were not supported by all Bank staff and are quite different from the definition of cost overrun in the document OM 13, 12 December, 1995, which states that: "cost overrun refers to the excess of the foreign exchange and/or local currency expenditures actually incurred or expected to be incurred by the borrower over the corresponding project cost estimated at appraisal."

With regard to the need and scope of a reappraisal for a supplementary loan, the document OM 13 BP, 12 December 1995 states that: "Financing of cost overruns will require reappraisal of the project concerned." The OP (Operational Procedure) of this section further states that: "The procedure for processing a supplementary loan, whether by additional financing or by reallocating funds from other Bank-financed projects, is similar to that for new loans, and includes reappraisal of the entire project." And further that the reappraisal mission is required to "obtain all the necessary information to analyse the technical, economic, financial, legal, institutional, social, environmental and other aspects of the revised project."

Such an interpretation of the need for a reappraisal of the entire project for the supplementary loan was confirmed by relevant Bank staff during interviews with the Panel.

Therefore, the Panel concludes that by

not carrying out a reappraisal of the entire project for the supplementary loan proposal, there was non-compliance by the ADB of OM 13/BP/OP, 12 December, 1995. According to the Panel, "This omission became a crucial factor from which other consequences followed."

### **II. Bank's operational missions <sup>7</sup>**

Although the ADB Management agrees that the focus of reappraisal in the case of major change in project scope is wider than in the case of a cost overrun, it argues that there was no major change in project scope and therefore a full reappraisal was not necessary.

According to the Panel, this view of Bank Management highlights an issue of judgement by the Bank, which had continuing ramifications for the way in which the Project was managed throughout the period of the supplementary loan proposal. The growing number of changes in the Project—the number and location of plants, the number of turnkey contracts, the construction and treatment technologies, the significant cost overrun—were all considered technical changes by Bank Management and not a major change in the scope of the Project. However, the combined and cumulative nature of all these changes did eventually result in a major change in the Project.

The Panel points out that according to the ADB's Project Administration Instructions PAI 5.05, issued in June 1995 on Changes in Project Scope or Implementation Arrangements, "a major change is one that substantially affects the project objectives, components, costs, benefits, procurement or other implementation arrangements." And further, "a major change is defined as any change in Project cost exceeding 10 percent."

Therefore, the Panel concludes that a major change in the Project had occurred, and that there was non-compliance with the ADB's policy on Operational Missions, OM 32 BP/OP.

### **III. Environmental considerations in Bank operations <sup>8</sup>**

ADB Management argues that in view of the "environmental degradation of the general area of Samut Prakarn due to industrialisation and extensive shrimp farm development along the coastal area, together with the consequent

destruction of the mangrove area” the Project was not deemed as environmentally sensitive and an EIA (Environmental Impact Assessment) was not required.

According to the Panel, the key to violations of environmental polices lie in the Bank’s initial categorisation of the Project. The Project should have been categorised as Environmentally Sensitive (ES), i.e., Category A or B1. Instead, it was categorised as Category B and as a result, Bank staff did not follow a number of requirements such as: conducting a full EIA; submitting the EIA to the Board 120 days before the Board’s consideration of the project; requiring that borrower takes the views of affected groups and local NGOs into account in preparing EIA reports; and releasing all environmental assessment reports to the Board, NGOs and the public. Since the policy on Environmental Considerations in Bank Operations, OM 20/O, 7 January 1997 came into effect during the course of this Project, all its requirements were applicable at the time of the supplementary loan.

The Panel points out that wastewater treatment systems are identified as having significant potential to harm the environment through the disposal of the effluent and management of sludge and odour. The Project is a large wastewater treatment facility by any standards, and the fact that it may be located in an environmentally degraded area does not mean that such a large structure would not have environmental impacts.

The Panel notes that the original feasibility study did contain an Initial Environmental Examination (IEE) which concluded that “a more detailed EIA for any selected strategy option is recommended” and a superficial EIA was carried out on the preferred option for the 1995 Loan. However, when the bidding resulted in an entirely different location, no EIA was conducted.

Further, since project implementation is through a turnkey contract, in the Bank’s view, the EIA is the responsibility of the contractor. The EIA, thus, was not viewed by the ADB Management as a single event early in the project cycle that could influence the project design. The proposed Environmental Management Plan (EMP) emerged too late in the project cycle to have any positive impact on the design of the project.

Therefore, the Panel concludes that the ADB did not comply with its policy on Environmental Considerations in Bank Operations, OM Section 21, 21 December 1992 and the succeeding OM 20/OP, 7 January 1997.

#### **IV. Involuntary resettlement <sup>9</sup>**

The Panel notes that the loan agreement for the first loan contains a clause which states that “if the acquisition of land for the purpose of the Project displaces any land-owners or occupiers, the Borrower shall ensure that the PCD prepares a resettlement plan in respect of such displaced persons, in accordance with the Bank’s policy on involuntary resettlement, for the approval of the Bank.”

The Panel questions how the Bank ensured that no people were displaced for the purpose of the Project. The Klong Dan site was not included in the 13 options that were compared in the feasibility study, nor was it included in the Social Impact Assessment (SIA) of the Project Preparation Technical Assistance (PPTA). It appears that the choice of Klong Dan as the location for the Central Treatment Facility (CTF) was defined by the availability of land under the turnkey contract that emerged from the bidding process.

The Panel states: “The Panel has no evidence that supports the assertion of the Management that the need for minimization of displacement of people also was a factor in the selection of the Klong Dan area. In the end, the Bank approved the turnkey contract, including the choice of Klong Dan as the site of the CTF, without conducting an Initial Social Assessment (ISA).”

The Panel concludes that had the Bank conducted a full reappraisal of the project for the supplementary loan, an SIA would have to have been conducted, in line with the Bank’s policy on involuntary resettlement. The failure by the Bank to comply with its policy on supplementary financing of cost overruns therefore also led to a non-compliance with the Bank’s policy on involuntary resettlement.

#### **V. Good governance <sup>10</sup>**

According to the Panel, ADB Management is applying a narrow and legalistic concept of governance. The introduction to the Bank Policy on Governance reads “from the Bank’s point of view, governance is concerned



directly with the management of the development process.” (OM section 54/BP, paragraph 1; issued 13 January, 1997). The policy further states that “In essence, it concerns norms of behavior that help ensure that governments actually deliver to their citizens what they say they will deliver” (OM section 54/BP, paragraph 3). The Policy then goes on to list four “basic elements” of good governance: 1) accountability; 2) participation; 3) predictability; and 4) transparency. The Policy also states that these four elements are closely linked and mutually reinforcing (OM section 54/BP, paragraph 4).

*Interesting that the policy does not outline “norms of behavior” to help ensure that the ADB delivers to people what it says it will deliver. Governance, then, is an issue only for governments, but not for the ADB.*

The Panel notes that from interviews conducted with Bank staff and the Management’s response to the Inspection Request, it is clear that the Bank retains the opinion that the scope and objective of the Project did not change. However, the Panel understands that the complaint of the Requesters is that the villagers of Klong Dan are confronted with the establishment of a CTF in their immediate vicinity, while both the type of plant and the location thereof were different at the time of original loan approval. The Panel points out that the issue of contention here is not so much whether there was a fundamental change in the Project, but how Project changes were handled, in short, the governance process.

The Panel also notes that the Bank’s governance policy does not speak of consultations, but of participation: “Participation implies that government structures are flexible enough to offer beneficiaries, and others affected, the opportunity to improve the design and implementation of public policies, programs, and projects” (OM Section 54/BP, paragraph 7). The Panel did not get any evidence that the Requesters and the Klong Dan community were given such an opportunity. The current efforts at community consultation are too late since the Project is already at an advanced stage.

Therefore, the Panel concludes that the Bank failed to ensure that the basic element of participation was properly taken care of. The Bank’s OM on governance states that the four

elements of good governance are closely linked and mutually reinforcing. Thus, the Bank failed to comply with its policy on governance.

## **VI. Incorporation of social dimensions <sup>11</sup>**

The Panel observes that the ADB’s Policy on the incorporation of social dimensions in Bank operations (OM Section 47, issued 7 January 1997) overlaps with the Bank’s Policy on involuntary resettlement. Both policies require an Initial Social Assessment (ISA) for every development project.

The Policy on incorporation of social dimensions not only requires an identification of potential beneficiaries and people likely to be adversely affected right at the stage of project identification, but requires “this to continue with more and more refinement in the succeeding stages of project processing” (OM Section 47/OP, paragraph 5). However, the ADB Management’s response to the Inspection Request indicates that consultations by the executing agency with Klong Dan residents happened for the first time in March 1999.

The mid-term review of the Project, carried out in June 1999 reflects the concerns of some Bank staff regarding this issue. The Aide Memoir for the mission (7-18 June 1999) registers the potential for “further delays while the MAC (MOSTE Advisory Council) conducts its investigations, possibly leading to contractual concerns (Aide Memoir of the Mid-Term Review Mission, 7-18 June 1999, paragraph 32). The same document also reports on the intention to strengthen the Public Relations Sub-unit within the Project, “to respond to recent community protests from the residents of Klong Dan, adjacent to the treatment plant site, and from unlicensed aquaculture farmers who use the coastal area at the site of the proposed outfall... A number of other ongoing PCD investigations will help address and allay the concerns of the local community” (Aide Memoir of the MRM, paragraph 56).

The Panel notes that in the ADB’s Annual General Meeting (AGM) in Chiang Mai in May 2000, community residents addressed their concerns directly to the Bank. It was only after the AGM that a special loan review mission met with the Klong Dan community, and raised some awareness within the Bank of the state of community-PCD relations. It was only by the end of 2000, in response to rising

tensions regarding the Project, that the Bank finally commissioned a study on community assessment and development for the Project (TA-3517). The Technical Assistance (TA) study has not been concluded yet.

The Panel notes that a major complaint of the Requesters is that the ADB persists in its failure to take community concerns into account. Considering the overall process of incorporation of social dimensions in Bank operations in the case of the SPWMP, the Panel agrees with this complaint. It also observes that while the OM is clear in its requirements for an initial social assessment right from the start of a project, the Bank failed to carry out such assessments for the SPWMP.

For the above reasons and following from the Bank's failure to comply with its policy on supplementary financing of cost overruns, the Panel concludes that the ADB did not comply with its policy on incorporation of social dimensions (OM Section 47, 7 January 1997) in Bank Operations.

## **VII. Benefit monitoring and evaluation**<sup>12</sup>

In its response to the Requesters' complaint, ADB Management claims that benefit monitoring and evaluation plan is built into the Project, and that baseline conditions will be established at the time of commissioning of the treatment facilities.

The ADB's Policy on Benefit Monitoring and Evaluation (OM 22, 7 January 1997) states that "Benchmark information comprises quantitative and qualitative information about important social and economic characteristics of individuals and groups affected by the proposed project... Benefit monitoring makes available information that will help in assessing whether adverse effects of Bank intervention have been adequately mitigated" (paragraph 3).

The Operational Policy (OP) of the same policy states that "where possible STPs (socio-technical profiles are prepared either during project formulation or prior to the approval of the loan by the Bank. In projects where it is not possible to prepare an STP before approval of the loan, the STP would be prepared during the early stages of project implementation prior to the detailed engineering design" (paragraph 4).

The Panel agrees with the Requesters' opinion that the monitoring process also refers to those negatively impacted by a project as well

as the beneficiaries. The Panel notes: "The fact that with the decision to locate the treatment plant in the Klong Dan area, there exists another group of legitimate stakeholders who potentially could be adversely affected by downstream impacts of the Project, appears to have escaped attention until very late in the process, indeed not until the affected community started voicing their concerns."

The Panel does not dispute the Management's claim that the Project "will directly benefit about one million residents, as well as businesses, industries, and institutions who will gain from better health and welfare arising from improvements in water quality and resource cost savings." However, the Panel notes, the EMP released in August 2001 "contains only a brief overview of the socio-economic situation of the Klong Dan area and there is little evidence in the monitoring schedule of any intent for on-going monitoring of the socio-economic parameters of a community whose livelihood may be potentially impacted." According to the Panel, "Once the precise location of the treatment plant had been established, baseline data should have been obtained as soon as possible to set down reliable benchmarks as once the proposed facility starts to become a reality, the baseline data can shift quite dramatically."

Therefore, the Panel concludes that efforts to establish reliable benchmarks for a monitoring program were made at a late stage, and this is not fully in compliance with the spirit of the policy as laid down in OM 22, 7 January 1997.

## **VIII. Economic analysis**<sup>13</sup>

The Panel finds that in reviewing the economic justification of the Project, ADB staff had complied with the requirements of the Bank's policies and procedures. In this case ADB staff did perform the required tasks and the conclusion reached was a professional judgement of the staff. In the absence of any alternative study to refute the work of the staff, the Panel does not dispute the professional judgement of the Bank.

## **IX. Confidentiality and disclosure**<sup>14</sup>

In response to the Requesters' complaint, ADB Management states that Bank disclosure policy "categorizes what documents can or

cannot be disclosed to interested parties upon their request.” The Bank maintains that it has made documents available upon request and has explained the reasons in case of non-disclosure.

According to the Panel, it has not been able to follow up with the Requesters on the issues of specification of instances that the Bank withheld information. Therefore the Panel concludes that “Subject to verification of such issues, the Bank did comply with its confidentiality and disclosure policy (R 134-94, 18 August, 1994).

#### **X. Internal audit policy**<sup>15</sup>

In general, the Panel assessed that loan review missions systematically reported on the compliance with the covenants of the loan agreement. According to the Panel, “It is common knowledge that the OGA (Office of the General Auditor) did conduct an internal investigation on the allegations of corruption in the Project. However, issues relating to the anticorruption policy of the Bank are outside the scope of the TORs of the Panel. Since a report on the internal investigations has not yet been published, the panel decided not to comment on corruption investigations.”

*When was this investigation conducted? Will the community and the Thai public get access to the complete findings of this investigation?*

The Panel concludes that subject to verification, Bank staff did comply with the Bank’s Internal Audit Policy (OM Section 51, 16 October 1996).

#### **XI. Other issues**<sup>16</sup>

In the TORs of the Panel, a number of laws of Thailand were listed for the Panel to examine to the extent that they are directly relevant to the ADB’s compliance with operational policies and procedures. However, once the Panel concluded that there was non-compliance with a number of the ADB’s policies and procedures, the Panel observed that there was no need to pursue the same issues under the Laws of Thailand.

The Panel did not examine ADB compliance with its Urban Sector Strategy since it is “not a policy that has been approved by the Board of Directors, nor is it in the OM of the Bank.” The Panel also did not look into compliance with the ADB’s Poverty Reduction

Mandate since the Poverty Reduction Strategy was approved after the approval of the supplementary loan. The TORs of the Panel did not cover examination of ADB compliance with its Policy on Fisheries and Anticorruption Policy.

In the case of the Policy on Fisheries, the Panel notes that the policy was approved by the Board on 25 September 1997, which is well before the approval of the supplementary loan. However, since the Policy has not yet been incorporated into the OM, it was deemed outside the scope of inspection. But in once incorporated into the OM, ADB staff have to implement the policy, the Panel considered it appropriate to make some comments on the issue, as raised by the Requesters.

*How many other such policies have the Board approved, but which have not been included in the OM? Why then bother at all to approve a policy, or have an OM?*

The Panel does not dispute that the Project has the potential to have an overall beneficial effect on the water quality of the Upper Gulf of Thailand by reducing the diffuse source of pollution. But the Panel notes that “The fact remains that the marine outfall will itself be a site of point source pollution with resultant effects on the aquatic biota in its vicinity and the potential for impact would have been apparent at the time of finalization of the Project design in August 1997.” And further, “There is no evidence that the Bank’s Fisheries Specialists were consulted on this Project.”

#### **D. Assessment of direct and material harm**<sup>17</sup>

The Panel notes that according to the ADB, the benefits to Samut Prakarn Province from the Project are so significant that any negative impacts can be justified. And also that the EMP prepared by the PCD contains all the necessary mitigation measures. However, the Panel points out that the EMP appeared very late in the process and was not developed through consultations with the community or with the review of the Independent Review Team (IRT). The Panel states that “local knowledge and experience of the community cannot be replaced by laboratory modeling.”

The Panel goes on to state that “the early recognition and early involvement in project

planning of those people who may be negatively affected is crucial for the avoidance, minimization and mitigation of potential impacts.” The Panel concludes that the actual or potential for direct and material harm on the community of Klong Dan could have been minimised and even avoided “if compliance with the Bank’s policies and procedures had been carried out at an early stage of the Project cycle with adequate assessment of social and environmental factors and appropriate participation by the community.”

Thus the Panel concludes that “the Bank’s inaction by not ensuring early community participation has resulted in direct harm to the community.” The Panel further elaborates on the harm to the communities as described below:

- a) The rights and interest of the people with regard to consultation and participation have been adversely affected;
- b) The rights and interests of the people whose livelihood depends upon the activities in the EEZ (Economic Exclusion Zone) have been adversely affected due to being excluded from engaging in their economic activities. Here, the Panel also states that “It is unclear how many are affected and it appears that the EEZ has been established without local consultation. The Panel was informed that reparation for some of the farmers had already occurred but has no evidence that the community has been involved in the negotiation process over the issue of compensation.”
- c) The rights and interests of some of the people whose livelihood depends upon the activities in the vicinity outside the EEZ could also be adversely affected due to the potential problems caused by the dilution of salinity, release of heavy metals or other toxic materials.
- d) The rights and interests of people who are in the vicinities of the treatment plan could be adversely affected by the odor, lowering property value and the potential problems caused by existence of heavy metals, toxic materials and the management of sludge.

## E. Conclusions and recommendations<sup>18</sup>

The Panel states “The Panel has not been

able to complete the inspection process for the Project.” This statement refers to the inability of the Panel to have direct access to Project affected communities, who are the Requesters of the inspection. The Panel goes on to say. “Not being able to fulfill the expectations of all stakeholders at this stage is not conducive for the integrity of the Bank’s Inspection Policy.”

The Panel notes that it is “aware of the severe limitations of the inspection process and that it does not have the full picture.” The Panel then goes on to summarise its findings on compliance on ADB policies and procedures, and assessment of direct and material harm (as described in the earlier sections).

*Given the strong conclusions of the Panel in relation to Bank compliance with policies and procedures and assessment of direct and material harm, the recommendations of the Panel are disappointingly weak and unconnected with its own findings.*

The Panel recommends that the ADB acknowledge non-compliance with some of its policies “in order to establish an environment of trust with the people of Klong Dan.” The Panel notes that the restoration of confidence among all involved parties requires mutual recognition that the process of consultation and participation needs to be improved.

The Panel recommends that “negotiations in good faith be instituted as soon as possible with the Klong Dan community” on the following issues:

1. The degree and extent of actual and potential damages and appropriate and adequate compensation to those affected;
2. The remedial action programmes for the immediate and longer term solutions;
3. The participation of the local community in the management and the operation of the treatment plant so as to minimize any future potential adverse effects on the community. Specifically, it would be “useful” to establish :
  - accurate baseline data for the socio-economic parameters of the community so that impacts can be monitored through the commissioning and operation of the treatment plant;
  - mechanisms for meaningful community involvement in the risk assessment of future problems;

- mechanisms for timely notification of actual exceedances of limits for odor and effluent parameters so that appropriate action can be taken.

The Panel states that the Bank “should be an active participant” in the above efforts.

*However, the Panel does not mention any disciplinary steps or reprimands for those responsible for non-compliance of policies and procedures, and thus implicated in causing direct and material harm to the communities.*

*The final message of the Panel’s recommendations appear to be that it is okay for ADB staff and Management to violate their own policies and procedures, as long as they can take mitigative action subsequently.*

The Panel does not recommend suspension of the Loan disbursement by the ADB for the Project. According to the Panel, “..at this stage of Project implementation, suspension should not be recommended.”<sup>19</sup>

*The Panel’s failure to recommend suspension of the loan disbursement is the most disappointing part of the report. Are we to understand that if the inspection had been carried out an earlier stage of project implementation, the Panel might have recommended suspension of the loan? Or are Inspection Panels simply not inclined to make such recommendations? Or are there inherent (even unconscious) biases on the part of such experts regarding what they consider sunk and non-recoverable costs, and what they consider “mitigatable” costs?*

*The Panel justifies this decision by noting that the Requesters say that they have never challenged the importance of having appropriate wastewater treatment facilities to help deal with the pollution problems in Samut Prakarn. The Panel believes that problems related to the negative impacts from its new location can be mitigated with the remedial recommendations mentioned above.*

*However, by making such an argument, the Panel contradicts the spirit and substance of its own findings. The Panel has noted at several places in the report that changes in the Project cumulatively amounted to a major change in the project scope that called for full reappraisal as in the case of a new project. Clearly, even without visiting the Project site, the Panel seems to hold the view that the Project in its current form, scope and location is not the same project*

*that the original PPTA and loan agreement described. To then argue that such major changes can be mitigated through greater participation in the future from local residents in developing socio-economic indicators and risk assessments, and timely notification of impending toxic pollution, is both inconsistent and contradictory.*

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1	Paragraph 13
2	Paragraph 18
3	Paragraph 32
4	Paragraphs 37-45
5	Paragraphs 46-65
6	Paragraphs 70-75
7	Paragraphs 76-82
8	Paragraphs 83-94
9	Paragraphs 95-103
10	Paragraphs 104-109
11	Paragraphs 110-118
12	Paragraphs 119-126
13	Paragraphs 127-130
14	Paragraphs 131-133
15	Paragraphs 134-137
16	Paragraphs 138-149
17	Paragraphs 150-155
18	Paragraphs 156-168
19	Paragraph 167

# Summary of the Report and Recommendation of the Inspection Committee to the Board of Directors of the Asian Development Bank on Inspection Request *Samut Prakarn Wastewater Management Project, Samut Prakarn, Thailand, 28 February, 2002\**

## Introduction

This document summarises the report of the Asian Development Bank's (ADB) Inspection Committee to the Board of Directors of the ADB on the results of the inspection process of the Samut Prakarn Wastewater Management Project (SPWMP). The full report of the Inspection Committee contains the Committee's views on the Inspection Panel Report and the ADB Management's response to the Inspection Panel's report, and the Committee's recommendations to the ADB's Board of Directors about further action regarding the SPWMP inspection results. The full report can be obtained directly from the ADB.

In this document, key conclusions and observations in the Committee's are summarised and highlighted in bold typeface. Comments by the author are in brackets and italics.

## Summary of Key Points

### A. Rationale for Inspection Function

The Inspection Committee states that paragraph 5 of the ADB's inspection policy makes it clear that the purpose of inspection is much broader than a legalistic determination of whether ADB staff followed all inspectable policies and procedures. Very important objectives of the Inspection Function are the

“fostering of trust and offering a fair hearing of the views of the affected group.”

*Given the limitations of the inspection process, including the narrowed scope of the Terms of Reference (ToR) of the Inspection Panel and the lack of contact between the Inspection Panel and communities, these objectives have clearly not been met*

### B. Compliance with operational policies and procedures

#### *Supplementary financing of cost overruns on Bank-Financed Projects (OM 13)*

The Inspection Committee supports the conclusion of the Inspection Panel that the ADB did not comply with this policy. It points out that an analysis of the language of OM 13 supports the “common sense view that a full reappraisal of the of the Samut Prakarn project was required at the time and preparation of the supplementary loan.” The Committee therefore supports the Panel's conclusion that in not carrying out a reappraisal of the entire project for the supplementary loan proposal there was non-compliance by the Bank of OM 13/BP/OP.<sup>1</sup>

The Inspection Committee rejects the ADB Management's response, particularly the argument by the Management that only those policies that are included in the Operations Manual (OM) are subject to inspection, and that the scope of reappraisal was limited by an

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\* Summary prepared by Shalmali Guttal, Focus on the Global South (s.guttal@focusweb.org)

earlier Board paper (1983) on supplementary financing of cost overruns of Bank-financed projects. The Committee points out that the Management is inconsistent in first using the OM to limit the scope of the inspection, and then arguing that not the OM, but the underlying policies (as outlined in the 1983 paper) are the relevant documents. The Committee clearly points out to the Management that if there are inconsistencies between underlying policy papers and the OM that results from these policy papers, this would represent a failure of the Management itself.<sup>2</sup>

The Inspection Committee examined the earlier policy document invoked by the Management (R 115-83) and concludes that the document is very clear on reappraisal: “Financing of cost overruns will be considered on a case-by-case basis after reappraisal of the project concerned...” and further, “The procedural arrangements for processing supplementary loans would be similar to those applicable to new loans, including the reappraisal of the whole project.”<sup>3</sup>

*Agreement within the ADB about whether or not the Project should have been reappraised at the time of the supplementary loan in 1998 is being manipulated by ADB Management. Management argues that the OM never included the required instructions for reappraisal for supplementary financing for cost overruns, although a policy about reappraisal in such cases had already been approved and passed by the Board. The Committee’s position seems to be that updating the OM and making sure that staff know which policies to follow is the work of Management. The Committee points this out in the report: “...members of the Board, as well as the President, expressed serious concern at the time that the Samut Prakarn inspection was authorised on 10 July, 2001, that some ADB policies had never been included in the OM at all. In this context, the Committee had observed in its recommendation to the Board, dated 20 June 2001 (Sec. M35-01) that it is important that Management examine this issue as a matter of urgency.” So now, staff and Management are throwing the blame at each other and no one wants to take responsibility.*

#### ***ADB’s Operational Missions (OM 32/OP)***

The Inspection Committee supports the Inspection Panel’s conclusion that the ADB did not comply with its policy on Operational Missions (OM 32/OP). According to the Panel, the failure to carry out a full project reappraisal in accordance with the relevant policy on supplementary financing of cost overruns (as discussed above) became a crucial factor from which other factors followed. The Inspection Committee agrees with the Inspection Panel and points out that changes in the scope and implementation arrangements of the project and cost overruns demanded a full reappraisal mission.<sup>4</sup>

ADB Management argues that since none of the Project’s most critical parameters changed as a consequence of the cost increase, they judged that a reappraisal was not required. The Inspection Committee does not accept this argument. It points out that a sudden increase of \$ 441 million in a recently approved ADB project is significant and that this massive cost increase resulted from a change in a critical parameter of the project, namely, the technology on which the project was originally appraised. According to the Committee, “...one cannot seriously argue that such a fundamental and far-reaching change in technology did not constitute a basic, major, substantial change in implementing arrangements.”<sup>5</sup>

#### ***Environmental Considerations (OM Section 21 and OM 20/OP)***

The Inspection Committee is unable to reach a firm conclusion about whether or not the ADB complied with its policy on Environmental Considerations. However, it accepts the Inspection Panel’s recommendations that are based on the Panel’s conclusion that the ADB did not comply with this policy.<sup>6</sup>

The Inspection Committee does not agree with the Management about its response to the Inspection Panel’s conclusion: “If an inspection would demonstrate that a particular project would have clearly adverse effects on the environment, while being classified as environment category B, the Panel could certainly question the original classification.”<sup>7</sup>

*Here, it seems that the Inspection Committee agrees that the policy was not complied with in the broader and more useful interpretation of the policy. But for some reason,*

*the Committee seems unable to come out and say this clearly, and seems constrained by the technically narrow language on environmental categorisation.*

#### ***Involuntary resettlement***

The Inspection Committee supports the Inspection Panel's conclusion that the ADB Management did not comply with this policy. The Committee also disagrees with the Management's view the involuntary resettlement policy was not applicable in this case.<sup>8</sup>

#### ***Good governance***

The Inspection Committee was unable to reach a conclusion about non-compliance with this policy. However, it notes that consultation processes should have started earlier and that Management acknowledges this point.<sup>9</sup>

*The Inspection Committee's inability to reach a clear conclusion on this issue rises quite directly from the way the policy is worded. According to the Committee, "In the case of this policy, it is not easy to extract operationally useful and measurable parameters for the implementation of principles expressed in necessarily broad terms."<sup>10</sup> But the Inspection Panel was able to reach the conclusion that this policy was violated. What is the use of such a policy, if the ADB's Inspection Committee itself is unable to use it?*

#### ***Incorporation of social dimensions***

The Inspection Committee accepts the Inspection Panel's finding that there was non-compliance with this policy.<sup>11</sup>

#### ***Benefit monitoring and evaluation***

The Inspection Committee accepts the Inspection Panel's finding that there was non-compliance with this policy.<sup>12</sup>

In summary, the Inspection Committee agrees that ADB's failure to comply with the above policies resulted in important consequences for the project. However, the Committee accepts the Management's response that in many cases the effect of these failures was diminished by "sound project administration" and the "quality of the project."<sup>13</sup>

### **C. Direct and material harm**

The Inspection Panel accepts the conclusion of the Inspection Panel that a relevant group has suffered direct and material harm as a result of ADB's non-compliance with operational policies and procedures.<sup>14</sup>

### **D. Discussion of the panel's recommendations**

The Inspection Committee notes that the ADB Management disagrees with the Inspection Panel's findings and recommendations, and argues that there was "no failure on the part of the ADB staff to interpret and administer ADB policies correctly." However, the Committee supports the Panel's finding of non-compliance with the above policies.<sup>15</sup>

ADB Management challenges the Inspection Panel's recommendation that ADB start negotiations with the Klong Dan community on the grounds that it is based on "a series of misconceptions." However, the Inspection Committee accepts all the recommendations of the Inspection Panel.<sup>16</sup>

ADB Management refuses to accept the Panel's recommendation that the ADB acknowledge that there has been non-compliance with some of its policies. However, the Committee feels that Management's response is "unfortunate" in light of the broader objectives of the Inspection Policy.<sup>17</sup>

The Inspection Committee agrees with the Management's position that the Thai Government is obliged by Thai law, the loan documents and ADB's resettlement policy to make appropriate arrangements for the calculation and payment of adequate compensation to those affected by the Project, and that it is ADB's job to ensure that ADB's resettlement policy is complied with. Following from this, the Committee believes that ADB should continue to monitor resettlement effects and ensure that all legitimate concerns with respect to consultation with and participation by affected peoples are met.<sup>18</sup>

### **E. Observations on management's response**

The Inspection Committee notes that the Management has provided a detailed response to the Inspection Panel's report and at times has severely criticised the findings and methodology



of the Inspection Panel. In light of the broader objectives of the Inspection Policy, the Committee has doubts about whether this is a “fruitful approach.”<sup>19</sup> Further, the Committee states that it is not correct for ADB’s Management to criticise the findings of the Panel on questions of fact, methodology or reasoning process. The Panel has not made any finding that is contrary to the evidence before it, or that is untenable.<sup>20</sup>

The Committee points out that the purpose of the Inspection Function is to “encourage transparency, beneficiary participation, offering a fair hearing and fostering greater confidence and support for the ADB.”<sup>21</sup> And also, that “a modern multilateral development bank must have an inspection process that is fair, speedy and inexpensive. It must do justice to the Requesters, ADB and all interested stakeholders.” Following from this, the Committee indicates that by criticising the Panel’s report, the ADB can be perceived by the outside world as trying to discredit the inspection process. If this is permitted, the ultimate sufferer will be the ADB itself since eminent persons will refuse to serve on the ADB’s inspection panel in the future.<sup>22</sup>

The Inspection Committee also questions the Management’s position on the inability of the Inspection Panel to visit the project site. One of the conditions laid down by the Thai Government for the Panel to visit the project site was that the ADB must shoulder all financial liability that might arise from the inspection visit. The Committee reminds the Management that in a letter dated 12 September, 2001, it requested Management to respond to the question of financial liability. The Committee feels that only Management could have provided clarity on whether or not the ADB could or should assume such financial liability. To date, despite reminders, Management has still not responded to the Inspection Committee’s request and letter. According to the Committee, Management’s failure to provide the required clarity put the Inspection Panel and the Committee in a very difficult position vis-à-vis the Thai Government.<sup>23</sup>

Finally, the Inspection Committee rejects attempts by the Management to blame the Inspection Panel for shortcomings in the inspection process and the Panel’s findings and report.<sup>24</sup>

*From the Inspection Committee’s views on the Panel’s recommendations and ADB Management’s response, it seems quite clear that the Inspection Committee is not happy with the manner in which Management has tried to undermine the inspection process. The Committee also seems a bit surprised that Management is so defensive about admitting its own culpability in the mismanagement of the Project.*

## **F. Conclusions and recommendations**

The Inspection Committee once again supports the Inspection Panel’s conclusions that the ADB did not comply with its policies on supplementary financing of cost overruns, operational missions, involuntary resettlement, incorporation of social dimensions, and benefit monitoring and evaluation. The Committee states that it has not been able to reach a conclusion on whether policies on governance and environmental considerations were breached.<sup>25</sup>

The Committee notes that ADB Management feels that ADB had not failed to comply with any of its policies and that Management does not accept the Inspection Panel’s recommendation that ADB acknowledge non-compliance. Management does however accept the second part of the Panel’s recommendation and is willing to do whatever it can to restore confidence between the community, the Executing Agency and the ADB.<sup>26</sup>

ADB Management acknowledges the merits of improving community participation and notes that the Pollution Control Division is working on a compensation mechanism in line with ADB’s resettlement policy. Management also indicates that community liaison groups will be established through the Environment Management Plan (EMP) for the wastewater treatment plant to foster greater community involvement in the management and treatment of the treatment plant. Management also indicated that work has already started to establish baseline data for socio-economic parameters, a mechanism for community involvement in risk assessment of future problems, and for timely public notifications.<sup>27</sup>

## **G. Recommendations of the committee<sup>28</sup>**

*The recommendations made by the Inspection Committee to the Board are weak and disconnected from its own conclusions in the report, and those of the Inspection Panel. The recommendations merely reiterate the actions that Management already agreed to take, as summarised in the above two paragraphs. There is no recommendation to the Board that the ADB acknowledge its non-compliance, attempt to alleviate the harm its actions have resulted in, or initiate any kind of action to reprimand ADB Management and staff for breach of policy. So this gives us a hint of what the final outcome of an ADB inspection process is: no matter how much evidence of wrongdoing might be there, and how clear are the conclusions of the Inspection Panel, no one in the ADB takes any responsibility for any wrongdoing...*

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- 1 Paragraph 33
  - 2 Paragraphs 26-29
  - 3 Paragraphs 30-31
  - 4 Paragraphs 34-35
  - 5 Paragraphs 37-38
  - 6 Paragraph 44
  - 7 Paragraph 43
  - 8 Paragraph 45
  - 9 Paragraph 46
  - 10 Ibid.
  - 11 Paragraph 47
  - 12 Paragraph 48
  - 13 Paragraph 49
  - 14 Paragraph 51
  - 15 Paragraph 52
  - 16 Paragraph 53
  - 17 Paragraph 54
  - 18 Paragraph 57 and 59
  - 19 Paragraph 66
  - 20 Paragraph 69
  - 21 Paragraph 67
  - 22 Paragraph 68
  - 23 Paragraph 72 and 75
  - 24 Paragraph 76
  - 25 Paragraph 79
  - 26 Paragraph 80
  - 27 Paragraph 81
  - 28 Paragraph 83

# **Interventions by Directors representing various Countries at the ADB Board meeting held on 25th of March 2002 Excerpts from the Minutes of the Board Meeting\***

**Alternate Director representing  
Thailand, Malaysia, Myanmar,  
Nepal and Singapore :  
Mr. Bhattarai**

18. Alternate Director Bhattarai: Please allow me to begin my intervention by thanking the members of the Board Inspection Committee (BIC) who have contributed their time and effort in the deliberation and the finalization of the very first inspection report in ADB's history. We admire the spirit of the members of the BIC and the Inspection Panel as they have carried out their work with enthusiasm and dedication. We also extend our appreciation and thanks to the staff and management to have dedicated extensive time and effort in clarifying the various issues pertaining to the Samut Prakarn Wastewater Management project.

19. This chair is well aware that this inspection function is the first experience of its kind to both the members of the BIC, the management and staff of ADB. There is no precedent and experience to refer to which made the task all the more difficult and also added unspoken burden to the decisions that are made in this regard could be taken as an example in the further future. We do continue to believe that well conducted inspection function is in the best interest of stake holders, the host

government and the ADB itself.

20. The most important task of the board was to determine whether the ADB's policies and procedures had been followed in implementing the Samut Prakarn Wastewater Management Project. This aspect has also been highlighted in paragraph 12 of the report and recommendation of the Board Inspection Committee. However, this chair finds that in several important areas, this requirement has not been met. There are important facts that have been overlooked which, in our view, had significant bearing in the final outcome of the report. The report has been made on several perceptions and the Panel has not been able to overcome those perceptions.

21. This chair has observed the developments relating to the inspection process with great patience. While we appreciate the work done by everybody involved, we have to say that this chair as well as the Thai authorities are not all satisfied with the way the inspection function of the Samut Prakarn Project was undertaken. We do not find any legitimate reason that can convince us to support the recommendations of the BIC. Our serious concern relates to both the Reports of the BIC and the panel that many critical issues have arisen from their conclusions and

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\* the paragraphs are numbered as they appear in the original document

recommendations. This Chair categorizes them into four major areas, namely, (i) sovereignty of the borrower country, (ii) credibility and reputation of the ADB, (iii) financial borrowings and (iv) others.

### **Sovereignty of the borrower country**

22. For whatever reason, the Inspection of the Samut Prakarn Wastewater Management Project did not give due importance to the role of the Thai Government. This, we believe, has led to wrong conclusions by both the BIC and the Inspection Panel. The Inspection Policy, in fact, is quite clear about the role of the Borrower. Paragraph 41 of the 1995 Inspection Policy Paper recognizes the right of the Project Owner or the borrowing country by saying that: 'The borrowing member country to which a Bank project under inspection relates, and the Director representing that country, shall be consulted during the inspection and given an opportunity to record its views. Any part of the inspection to be conducted by the Panel or its consultants in the territory of a borrowing country will be carried out only if the country has no objection. If the country raises an objection, the inspection nevertheless will continue to the extent feasible on the basis of reports and other information otherwise available to the Bank'.

23. The Inspection Policy has made an unambiguous provision that the borrowing country and the Director representing the country should be consulted and given an opportunity to record their views. For the record, under the Inspection of the Samut Prakarn Project, this Chair would like to inform you that aside from the correspondence about the site visit and the Terms of Reference (TORS) of the Inspection Panel which were provided before the actual Inspection convened, there has not been any consultation made with Thailand and my office during the inspection, nor an opportunity was given to this Chair to record its views. Our office was advised not to participate in the meetings of the BIC due to perceived conflict of interest. Furthermore, this Chair was advised that should any one from my office attend the BIC meetings, he or she could only make general statements and not specifically

refer to the Samut Prakarn Project. This Chair, therefore, as well as the Thai authorities seriously doubt the fairness of the Inspection, as the Interim and the Final Reports were developed and finalized without any communication with us.

24. Still dwelling on the issue of communication and discussion, the Pollution Control Department (PCD), the Executing Agency of the Borrower, had expressed its interest in paying a visit to Manila to discuss with the Inspection Panel in order to clarify its position as well as other related matters. Such offer was expressed directly to the Chairman of the BIC during his visit to Thailand on 6 November 2001 and in the PCD's comments on the Inspection Panel's Site Visit, which was attached to the letter from the Thai Government dated 14 November 2001. However, there was no interest from the BIC and the Inspection Panel to this request and Thailand was thus denied the opportunity to be heard. Surprisingly, this fact was not mentioned at all in the report of either the Panel or the BIC. Even after the submission of the Inspection Panel's Final Report to the Management, this Chair had to wait for one and a half months before receiving a copy from the BIC, which is a vital document for consultations between my constituency and the BIC in accordance with paragraph 44 of the Inspection Policy.

25. Paragraph 41 of the Inspection Policy has also clearly stated that any part of the Inspection to be conducted by related parties in the territory of the borrowing country would be carried out only if the country has no objection. Under the Inspection Policy, it is evident that due importance is given to preserve the sovereignty of the borrowing country. However, past correspondences and the conduct of the Inspection Panel on the Samut Prakarn Wastewater Management Project have raised some questions as to whether respect for such sovereignty has been kept in accordance with the terms of the Inspection Policy.

26. Please allow me to elaborate a little more on the perception of my Thai authorities on the whole issue of the proposed site visit. Had the BIC and the Panel taken a more pragmatic approach to the site visit without

politicizing the event, it would have probably been more effective. The premature information release to the press, the welcoming flags in the Klong Dan community on 12 September 2001, and the anticipated date of the Panel's site visit, all indicate a beginning of an unhealthy pattern and display of lack of professionalism. More seriously, the applied pressure shows disregard of the Thai authorities and their assessment of the potential adverse impact of a site visit, and lack of respect for the sovereign rights of Thailand.

27. Although a site visit to a project may be desirable, but we feel that it is not crucial and there are numerous ways to get around the issue. Sovereign decisions must be respected without question and not be subjected to undue pressure.

28. A third matter that has given rise to the issue of sovereignty is the recommendation of the BIC in paragraph 83, page 16 of the Paper, which also refers to the Inspection Panel's recommendation in paragraph 166. This Chair believes that both the recommendations either reflect apparent lack of awareness of the work which the Thai Government has already initiated or the BIC and the Panel have found it convenient to ignore the efforts made by the Government. In fact, the Inspection Panel's report and assessments itself has admitted that no actual damages have occurred. This Chair wonders why the BIC and the Inspection Panel saw it mandatory that a discussion on a compensation package be instituted in the community if no actual damage has been done.

29. Paragraph 55 of the Management's Response, as well as the views of Executive Director Mankad, as expressed in his memo dated 12 March 2002, indicate that the content of the Panel's recommendation in paragraph 166 can be taken as a disregard of the Thai Government's authority. Although I personally believe that such recommendation could have been made in good faith, we should be cautious not to create the notion that ADB is unnecessarily mingling in the internal affairs of its borrowers.

## **Credibility and reputation of the ADB**

30. This Chair, like some other Chairs, are uncomfortable with the recommendations given in paragraph 83 of the BIC Report requesting the Board to "confirm" and "instruct" Management on certain matters. This Chair is concerned that the recommendation will set a new practice and the Board of Directors may be dragged into micro management which has neither been envisaged by the Charter nor is it desirable to do. The BIC's recommendation may give the impression that the Bank's Board of Directors is not fully confident of its Management. If that happens, it could rapidly erode the organizational efficiency for which we are all proud of.

31. The BIC's view as mentioned in paragraph 69 of the Paper is another area that can adversely affect the Bank's credibility. This Chair is concerned on the BIC's opinion that it is not a correct approach for ADB's Management to criticize the findings of the Inspection Panel on the basis of facts, methodology or reasoning processes. This standpoint seems to send out a signal from the BIC that it will appreciate Management's response only if the latter is in favor of the Inspection Panel's report. I hope I am wrong on this issue.

## **Cost implications of the inspection**

32. This Chair tried to get some idea about the direct cost implications of the Inspection Process. It has been roughly estimated that financial implications for the staff and management during December 2000 and February 2002 involves approximately 1,900 staff days, which cost approximately 1.5 million US dollars. We believe that the process has been, costly and less effective, the burden of which the borrowers themselves have to bear.

## **Others**

33. Many government changes have occurred in Thailand since the Project was initiated. Each successive government has continued to support the Samut Prakam Wastewater Management Project, which sufficiently indicates that the country is fully committed to and owns the Project. Over

600,000 people will be benefited by this Project. It is common that the process of economic development may have an unsettling effect. However, we must also bear in mind that no project can satisfy everybody. We urge our Board colleagues to see this Project in this larger context.

34. Under the Inspection, unlike the Thai Government, the requesters were offered an opportunity to express their views through an invitation extended by the Inspection Panel for them to come to Manila as evidenced by the letters sent by the BIC and the Inspection Panel on 10 October 2001, 18 October 2001, and 12 November 2001, respectively. In spite of the availability of the opportunity and the facilities, the requesters did not pay interest to visit Manila to clarify their position. This fact was mentioned in passing by the BIC in its report but without any comment. The refusal of the requesters to come to Manila shows that they might have been more interested in making headline news rather than in sorting out various issues.

35. The arguments put forward by the Panel and Management to justify their respective positions highlight a lack of clarity in the relevant clauses of the Inspection Policy. It is interesting to note that even the experts familiar with the procedures and policies of the Bank do not agree on a single interpretation. Given the fact that the issue of whether ADB's policies and procedures have been breached is at the core of the Inspection Process, this Chair and my Thai authorities feel that the investigations should have given greater focus on the clarification of this ambiguity rather than on other issues such as the site visits or whether more community action is needed.

36. Here, it is also pertinent to recall the memo dated 6 March 2002 by Executive Director Julian Payne and the response to it by General Counsel Gerald H. Sumida on 13 March 2002 as well as the memo of Executive Director P. G. Mankad dated 12 March 2002 and the memo of Executive Director Patrick Thomas dated 14 March 2002. Their contents sufficiently reveal various issues relating to the Report which need further clarification.

37. As you are aware, Mr. Chairman, the views of my Thai authorities on the Inspection Process relating to the Samut Prakarn Wastewater Management Project are reflected in their letter dated 21 February 2002 addressed to my office, a copy of which had already been circulated to all members of the Board. We do not intend to reiterate their views here this morning. To put it briefly, my Thai authorities are disappointed with the conduct of the Inspection Panel and its Report and feel that the whole exercise has done little to enhance the Image of the Bank amongst its borrowers and raises more questions than it answers. In fact, it creates doubt in the mind of the Government as to whether the whole inspection process was meant to be fair and transparent and whether the whole process was used to justify a predetermined set of findings. The requesters seem to have far more credibility than the implementers of the Project and the Bank's Management. In short, the conduct of the Inspection was questionable. However, let me reiterate that my Thai authorities are not against the spirit of the Inspection Function. It is in the best interest of all the stakeholders that ADB listens to the views of all and maintains a cooperative relationship among its members.

## **Summary and conclusions**

38. The Samut Prakam experience clearly demonstrates that there is a fundamental weakness in the Inspection Policy. Under the Policy, the Inspection Panel must find fault on ADB's management in order for it to look more credible. In turn, the Management is made to react and aggressively to defend itself. Therefore, the stage is set for a conflict. Accordingly, this Chair suggests that the policy and procedures be reviewed to reduce the potential for conflict in future inspections. We are confident that the Management will take this into account in the review process of the Inspection Policy, which is currently being undertaken.

39. In conclusion, this Chair is not in a position to support the recommendations of the BIC and the Inspection Panel and thus wishes to be recorded as opposing the recommendations of the BIC as proposed in paragraph 83 of the Report, for the reasons expressed above.

## **Director representing China : Mr. Zhao Xiaoyu**

57. Director Zhao: This inspection case of Samut Prakarn has been haunting this Bank as well as this Board for quite a long time. Theoretically, I should be happy today because the dragging process is finally drawing to a conclusion. But, after reading the big report and the Inspection Panel Report, I found myself not relieved at all. I must say I am seriously disturbed by and profoundly disappointed by what has come out of the process. The BIC Report raises more questions than answers on the Inspection Panel's Report in this particular case as well as on the Inspection Function in general.

58. The Panel Report and BIC Report strengthened this Chair's belief in only one thing, that is this Board made a serious mistake by approving the establishment of an Inspection Panel to inspect the Samut Prakarn Project.

59. I have several concerns on the inspection process. The first one is on the fairness of the investigation process. This Chair has serious doubt on the way the Inspection Panel and BIC were constructed during the Samut Prakarn review process. The Inspection Panel was composed of three persons; two of them representing transnational advocacy interest. One of them a lawyer previously working for IBRD. There is a natural tendency for the Panel to steer towards views against the Bank and the Thai Government.

60. Next observation is on the BIC structure. The BIC members were appointed by the President after careful consideration of balances from various perspectives. But, on the first day of BIC considerations on the case, the DMC Chair who represented the Thai Government in the Committee was excluded on the presumption of conflict of interest. Here I would like to remind my colleagues around the table of one thing. The Panel was mandated to see if the Management, not the Government, had followed the Bank's policies and procedures. In that sense, I do not believe there was an issue of conflict of interest since the said DMC member only represents himself on professional ground. Someone may argue that this matter was written down as a rule establishing the BIC, but the rule was put in place only by the Committee itself.

The Board noted it, not approved it, as a rule.

61. The BIC decision cannot be labeled as unanimous in this fashion. From the outset, it has become a crippled process. Such structure of the Panel and BIC effective ensuring imbalanced investigation and will exclude unbiased considerations of viewpoints from either the management or the Government, in this case the Government of Thailand.

62. As a matter of fact, the Panel has never undertaken any formal direct consultations with the Host Government, the subject community, the senior Management, or the related constituency. It is interesting to note that, at one point near the end of last year, the Panel offered to fly some complainants into Manila but the complainants refused. Then, later on, the Government expressed wishes and willingness to send PCD officials to Manila to directly consult with the Panel and the BIC both through letter communications to the BIC and through face-to-face discussions with the BIC member visiting Bangkok. But BIC just brushed aside this gesture of goodwill. Basically, almost all views, comments, and conclusions of the Panel were derived from closed-door deliberations here inside this building by small groups of people with almost preset inclinations.

63. I do not know how my Board members feel about this. For me, I do not feel comfortable at all. Conclusions and recommendations so brewed in backrooms would naturally be skewed. This Chair cannot trust, let alone support, results out of such skewed decision-making process.

64. Maybe, for some people, what is now presented on the table is a nicely cooked course of dish. It may be a bit overcooked. But it is still considered a nice piece of steak. But to me it is a lousy course of dish. It is overcooked in a wrong procedure like putting the salt before the cooking oil. The simple chooses (sic) the tasty Chinese cuisine is only possible when the right cooking procedures is followed. The same is true to all good cuisines.

65. My second concern is on the scope of the investigation by the Inspection Panel. As recognized by the BIC in its report, the Panel's

job was to determine whether ADB has complied with these operational policies or procedures in processing or implementing the Samut Prakarn Project in Thailand. But the final report delivered by the Panel went well beyond the terms of reference. One example was the Panel's decision to suspend the inspection. Instead of addressing the governments legitimate concerns about the law and order situation with respect to the proposed visit, the panel wrongly interpreted the governments conditions as objections to a site visit. The Panel went further on to declare the suspension of inspection. Such decision is clearly against the Bank's Inspection Policy. Our Policy allows the Government concerned to state an objection to a visit. The Inspection procedures provide clear guidelines on how to complete the inspection in such a case. But the Panel did not follow the procedure. Instead, it stated that the conditions imposed by the government of Thailand fundamentally undermine the effectiveness and soundness of the inspection system. As elaborated on page 16 of the Management response, the Panel has exceeded its mandate in this respect. The adequacy of ADB's policy is matter of the Board to decide and is outside the scope of an inspection.

66. My third concern is on the BIC recommendations. There are three recommendations on the BIC report. The first one begins by asking the Board to confirm the Bank's commitment to being an active participant in the discussion with the Klong Dan community or negotiation. The second half of the sentence then asks the Bank to confirm the bank's commitment to all the efforts mentioned in Para 166 of the Panel report. From the way the sentence is structured the BIC report is in effect implicitly saying that the Bank has not been committed to the discussion to the Klong Dan community. This Chair does not believe this assertion is a true presentation of the situation and therefore cannot support.

67. As for the reference to Para 166 of the Panel report, this chair finds it even harder to accept. Para 166 is closely related to its preceding paragraph—para 165. —which asserts noncompliance of the Bank. Paragraph 165 flows on from the assertion of noncompliance by requesting the Bank to make efforts to

correct its wrong doings. But where are the wrong doings? The Panel did not build a convincing case against the Management, neither did the BIC Report. Based on this observation, this Chair cannot accept this first recommendation.

68. Recommendations 2 and 3 may look fine in the first sight, but they are in effect just saying what the Bank is already doing for the subject Project. In other words, with or without the Board intervention, the scenario does not change. The recommendations are redundant in this sense. There is no point in asking the Board to confirm what is being done anyway by the Management. Moreover, the actions recommended are micro-management. I do not believe it is advisable for the Board to be directly involved in micro-management. Based on these observations, this Chair cannot support recommendations (ii) and (iii).

69. Besides the above case's specific concerns, this Chair also has some concerns about the Inspection process in general. The first concern is on the cost-incurring pattern of the process. Almost every time when we discuss about some development projects in the Bank, cost is one major issue many love to touch on. But, for the inspection process, no one appears to be concerned at all about the cost implications for the Bank, let alone cost implications to the Government concerned. For this process, cost appears to be a non-issue. In this open-ended spending pattern, is this open-ended spending pattern affordable and sustainable? Out of curiosity, I tried to get some rough estimations from the Staff on how much we have spent for the inspection of the subject Project alone. The answer was it is already close to \$2 million, some say \$1.5 million. This is just the cost on the Bank side. The borrower Government also spent quite a lot extra sum of concerted efforts or counterpart effort. I was really taken aback by this estimate. What have we got from spending this nearly \$2 million worth of precious resources? We have produced a pile of groundless damaging paper. The Bank's credibility is undermined, the staff is demoralized, DMC government is fed up, and the environment improvement project is unduly held up for two years. The only visible gain is that a handful of experts and consultants got a



fat job for which no one has to worry about being held accountable. NGOs declare an indication for finger-pointing at MDBs again. What about the Klong Dan community? Because of this exercise, the access of one million people to cleaner water has been held up unduly. Is this exercise worth it? I do not think so. I urge my fellow Board colleagues to seriously think about the value of this process.

70. The second concern is on the screening of the legitimacy of complaints. I am not against complaints handling in a transparent manner but there should be certain guidelines on legitimacy screening. Right now, the rule is so relaxed that everybody and anybody can raise a complaint for whatever reason they feel like. No one has to be responsible for legitimacy of the claims. One thing is ensured though, that is the project will surely be disrupted. This is 100% free disruption matter. Such a loose system is so tempting that it can be easily hijacked by special interest groups with political agenda.

71. My third concern is on the power assigned to the Inspection Panel. Right now, the authorization is drastically out of balance with the Panel's capacity. The Panel acts in a fashion of a supreme court justice or even higher than that because no one can challenge them. Basically, these people are believed to be infallible. They decide by themselves who to talk to, where to go, and what to do. They do not have to be held responsible for anything. But everyone else must be held responsible for everything. In this sense, they enjoy a power equivalent to God Almighty. But do they have an capacity? Are they capable of the job? Are they credible at all?

72. A typical Bank project preparation requires hundreds of people in and out of the Bank working in a team for one to two years. But our inspection process now, in fact, tells us the team's work is less trustworthy than three randomly picked persons. This group of three persons can decide what is right or wrong with our projects. To accept such a notion is very dangerous. If you agree with such a notion, why do we have to employ thousands of staff and consultants at all? Logically, the next step is to fire all Bank staff and kick them out and kick out the Counsels because these three randomly

selected persons are all important. That is a very big word. They know what is right or wrong in the world. They hold the truth. So why do we waste billions of administrative expenses. Just spend millions to feed the three people is enough. Let them do the job and let us roll up the Bank. Is that the direction we are asked to go?

73. My fourth concern is on the morale of the staff, If we say yes to such pointless exercise, we risk losing the support and commitment of the staff. We would be encouraging risk averseness of the staff. From now on, the best strategy for the staff is to sit and do nothing because only in this way can they make sure that they are safe from the catching of international advocacy groups.

74. Two years ago, the World Bank did its first full-scale inspection. It was on China's Western Poverty Project. Most of my colleagues know about the Project and the surrounding debate. China decided to do the Project in its own way with its own resources and the Project is proceeding very smoothly and poverty-stricken people are getting out of poverty in the Chinese way. What my Board colleagues might not know is the after-effect on the MDBs' behavior in their China operations. These days, if you visit the offices of senior MDB officials working on China, you will find big China maps on the wall with little red flags pinned here and there. These are not flags proudly standing for bank activity. They are core reminders to the senior managers. The marks stand for regions with ethnic residents and the staff are constantly reminded to keep away from these places. These places are the places where poverty is a serious problem.

75. If today our Board votes to support the BIC Report, I seriously suspect we will begin to see similar red flags in the rooms of our own staff reminding them to keep away from doing wastewater projects anymore. The result is clear. Gradually, more and more groups of people or same types of projects will be excluded from the Bank support. The region's development agenda will be hampered.

76. The Board has a responsibility to encourage the staff to take on various

developmental challenges facing the region. We cannot encourage risk aversion from staff. If we do, our staff will be less inclined to exercise professional judgment and our Bank's capacity to help members reduce poverty will be impaired. Leaving those people suffering in communities surrounded by stinking wastewater and slush is not courage. Such behavior has a different name. It is called ... Doing this while sitting in our leather chairs in airconditioned rooms with clean water on the table also has a name. It is not righteousness. It is called hypocrisy. In the face of millions of people in need of Bank's assistance to help fight poverty and environment challenges, I say no to any move to bring this Bank down either intentionally or unintentionally.

77. My fifth concern comes from one rumor I have heard of recently. The development of the Asia region needs this Bank. That is very, very clear and the voice is very loud in this region. It is the wish of this Bank that all shareholders will strongly support this Bank's effort in its fight against poverty. Fighting against poverty is, again, a major agenda in the recently closed Global Financing Conference in Mexico.

78. But this Chair would be quite disturbed if any constituency ever attempted, at some point, to force the Management one way or the other to accept Panel recommendations completely and unconditionally. To me, such a behavior is arrogant, rude, and highly inappropriate. This Bank is devoted to contribute to economic development and growth by fighting poverty in the Asia region. By its Charter and its multilateral nature, it should be free from pressures of political agenda of any member government or congressional institutions. We wish to believe that the rumored threat was, in fact, a rumor only. This Bank should do business in its own way. The ultimate guidance is its Charter, not anything otherwise.

79. In conclusion, this Chair considers the inspection exercise fraudulent and the conclusions based on this process groundless. Since there is no evidence that any material damage has been done to the complainant, the inspection process should not have been triggered in the first place. There is no case of

noncompliance on the part of the Management. As the Management is already dutifully doing its part along the right course, this Chair considers the BIC recommendations either unnecessary or questionable. Based on these observations, this Chair strongly opposes the BIC Report.

### **Director representing Japan: Mr. Osamu Tsukahara**

91. Director Tsukahara: First of all, we like to appreciate the Committee Chairman, Director Lockhart, Committee members, and all other relevant people's efforts to make the inspection process reach the final stage. We can support Mr. Payne's proposal concerning the wording of the Board decision and its Minutes.

92. This Chair also supports the recommendations of this Board paper and asks Management and Staff to cope with them sincerely. It is incumbent on the Management and Staff to implement what are recommended by BIC in close consultation with the Thai Government. And it is important to list up in concrete what needs to be implemented, together with the schedules. Such works should be completed and outcome should be presented to the Board as soon as possible. With regard to the Management's semiannual reports to be circulated to the Board, this Chair believes it is important that the follow-up process should not be just a one-way process from the Management to the Board. For example, meetings between Board members and staff should be held, if necessary, when we receive these reports.

93. Needless to say, the problems and issues identified through this very first inspection case, like Panel's site visit and coverage of inspection, should be seriously discussing during the ongoing policy review process. The Japanese Director's Office will make a positive contribution to the process. This Chair would like to remind the Staff that it is of critical importance to listen very carefully to NGOs' and others' opinions.

94. In our understanding, corruption claim with regard to this Project has been investigated by NCCC of Thailand. According to the Bank's Anti-corruption Policy and para.

8.03 of the Loan Agreement, the right of the borrower to make withdrawals may be terminated after due process like consultation with borrower when, with respect to any contract to be financed out of the proceeds of the loan, corrupt or fraudulent practices were engaged by borrower and others, as the borrower has not taken timely and satisfactory action to remedy the situation. NCCC's investigation outcome may have critical effect on this Project. ADB should remind NCCC of the need to accelerate the investigation process to reach a conclusion.

95. We have some other comments. There are four of them. First, the Panel Report and the Board paper before us have made not a few critical points against the Management and Staff like policy noncompliance with regard to this Project, delay in inclusion of some policies in the OM, and non-response from the Management to the BIC's inquiry. Furthermore, there seems to be criticism from residents and NGOs that they were not treated in a sincere manner during the inspection process. We ask relevant parties to seriously reflect on what they should, and pay due attention in future activities.

96. Second, the Board paper states that it does not behoove ADB well for a response to engage in a criticism of the Panel's Report. If Staff did have such attitude, it would be a serious issue. If they did not have such intention, we think Management should make it clear.

97. Thirdly, the fact that the Panel did not make a site visit is an important point in terms of the ongoing policy review. In any view, we want to emphasize that smooth relations between the Panel, BIC, or any other organization that participates in the inspection procedure under the revised new inspection policy, and the borrower has to be established with close consultation during the implementation process of the inspection.

98. No. 4, some important conclusions of BIC were virtually made at internal meetings without observers. Such process may give rise to transparency issue of the inspection process and we think this needs to be revisited when we discuss inspection mechanisms.

99. Finally, a couple of personal notes, part of which I am sure I can share with you, Mr. Chairman, and my Board colleagues here. No. 1, I believe most Board colleagues, as well as Management and Staff, are convinced through this experience of Samut Prakarn case that current ADB inspection procedures have a number of deficiencies, including a matter of DMC representation in the BIC as mentioned by Director Zhao. I would like to urge Management and Staff that the Review of Inspection Policy should be speeded up so that the revised policy could be made effective as soon as possible.

100. Secondly, throughout pre-Board and other discussions with Staff, I learned some of the staff members did not fully understand the importance of inspection process, not only for the stakeholders of the Project but also the importance of inspection process for ADB itself. Needless to say, inspection process or the existence of inspection mechanism itself ensure sound project implementation, just like the Administrative Tribunal and other grievance procedures ensure sound implementation of personnel welfare and other policies for staff members. I remember similar discussion when the Administrative Tribunal was proposed to ADB, especially discussion against the introduction from within BPMSD.

101. Therefore, I believe Management and senior staff members who are present at this meeting should make every effort so that ADB's staff, especially those in the operational departments fully understand the implication of Inspection Policy of ADB, the implication to the stakeholders of ADB projects, implication to the shareholders of ADB, including both DMCs and donor countries' capitals, and implication to ADB itself and implication to ADB staff themselves.

102. With these comments, I would like to reiterate my support for the recommendation.

### **Alternate Director representing the United Kingdom, Germany, Turkey and Austria : Mr. Frank Black**

Alternate Director Black: I was very taken by Director Zhao's cooking analogy.

Another well-known phrase came to my mind about too many cooks and I do have the impression that around this table, we are 12 trying to represent 59 cooks, all trying to produce the same dish, all using a different recipe and none of us have the right ingredients. It is a difficult task. I would also make a plea on behalf of members of the Inspection Committee. A lot of people have complimented us on our hard work. I would make a plea to the Board in the Bank to liberate us from this task as rapidly as possible. It is an impossible task. It gets us no thanks from anyone and I don't actually know what value we add.

156. There is another Board paper that has been circulated and now it is in the public domain so I can refer to it on another inspection request, Sri Lankan Southern Highway. Director Ahmed and myself were asked to produce the Inspection Committee response on this. I did the first draft, include it with Director Ahmed. Our names appear on that paper. That paper reaches a different conclusion. We find the Bank Management's response convincing and we do not recommend an inspection in that case. I am already waiting for the onslaught of critical maybe even abusive e-mails and letters that will hit my desk when that report becomes public. This is a no-win situation. It is a very dubious system that places individuals in this kind of position. I don't see why the entire Board, given the wisdom that it has couldn't look at the requestor's complaint, the Management's response, and make this decision without me having to filter it for them, particularly given the reaction to the filtering that we have done on this case.

157. This Chair, and the authorities we represent, have watched with concern, some sorrow and some disbelief, as this first ever full inspection process has played out over the past months. We are keen to know how the Bank would react to this first ever inspection. With confidence, with maturity, with an adherence to the highest principles of governance? Would it be able to accept findings by a properly constituted independent panel, however hard or unfair the Bank might think those findings were, and show that it could learn from even a difficult adverse situation? Well, no, sadly, it did not prove capable of such a reaction. Rather, as we

have watched events unfold (and as I in my personal capacity have served as a member of the Inspection Committee), it is too often seemed to us that the Bank was in danger of digging an ever deeper hole in which the credibility of its inspection process would be buried. Needless to say we hope that the Bank will learn from this unfortunate experience, and place a revised inspection process in place which will reflect the highest principles of governance. There are many useful lessons to be learned.

158. For my authorities, again this is a very different perspective from others that have emerged today, the really fatal error, the point at which a bad situation became infinitely worse, was when the Bank's Management, under cover of a memo signed by you personally, Mr. President, and I will come back to that, rejected totally the findings of the independent Panel. This was the point at which alarm bells began ringing loudly in my capital and others, because this represented such a departure from the norms by which quasi sovereign international administrations such as this Bank must allow themselves to be regulated and accountable. The Bank's sovereign members, its shareholders via their representatives serving in their individual capacities on the Inspection Committee (and ultimately in their representative capacities on the Board), could, indeed, as Director Mankad has said, have decided that the Panel's report was so clearly and gravely in error that it be rejected and that Management perhaps need even not bother responding to it. Where I disagree with Director Mankad is in the subsequent intervention by Management in the form of the memo from the Office of the General Counsel offering a further interpretation, a further stir to the Board with regard to textual and contextual analysis after the Inspection Committee had issued its final recommendation. Perhaps this was a grave error of judgment. We believe that this Board would have been perfectly capable of reaching its own conclusions from an analysis of the paper laid before it. The Management should not have come back at that stage in the process.

159. What we on the inspection Committee did, far from finding that the Panel

report was gravely flawed or in serious error, the Inspection Committee with unanimity, felt the Panel had done a very thorough, creditable job, given the constraints and there were many that they faced. We asked the Management to respond. Now aside from any interpretations of accepted international norms with regard to the findings of properly constituted independent tribunals or panels, it is clear even from the Bank's own Inspection Policy that there is an expectation that Management will, however reluctantly, accept the Panel's findings and focus on remedial measures. Paragraph 44 of the Bank's policy paper is very clear: after the Panel's findings are known, the Inspection Committee meets with Management and the Director representing the country concerned to discuss what remedial measures. There is no place in the procedures for second guessing the findings of the independent Panel. The role of the Inspection Committee and this Board is then to decide what is feasible and appropriate and to instruct the Bank to do what is necessary to address any failures this Board perceives as being finally proven. The Board may well decide that the Bank, as a learning institution, has already taken adequate remedial measures, and that very little needs to be done. That is, I think, largely the case with the Panel's Samut Prakarn findings. They do not make great demands on the Bank. Given this, it is even more regrettable that the Bank Management could not indicate that, in a spirit of acceptance of the principles of accountability, transparency and independence of process which must underpin the inspection function, that they could accept the Panel's findings. If they had then gone on in a few lines or even a few paragraphs to indicate where they felt that the Panel had not been entirely fair to Management, where its analysis was perhaps lacking, I do not think any of us would have minded. That would have been perfectly acceptable but the integrity of the process would have been preserved. This Bank, or at least its Management, does not seem to have fully understood from the outset in this case, how very important perceptions that this integrity of process has been observed are to the standing of this Bank in the wider international community. Mr. President, you will know that this principle of accepting the findings of an independent Panel is one to which my British authorities attach the highest importance, and

you have received appeals from the highest levels in DFID in recent days to step back even at this stage, and acknowledge that the Bank Management should, as an important matter of principle, have accepted the Panel's findings. As I have said, the Bank could then certainly have contested some of the detail though not to the extent, or with the language used, in the response that Management did send.

160. The Bank enjoys an extraordinary degree of immunity for the consequences of the activities it funds under national and international law.

161. The Bank is in the even more privileged position of determining through its Board the extent to which it will be accountable for its actions, and how they affect ordinary people, in the places where they live and work. These are the people, poor people, whose enhanced welfare and liberation from poverty provide the overarching reason for the Bank's existence. The inspection process is therefore of vital importance if this Bank takes its commitment to the poor seriously, and if by doing so it is willing to be accountable to them, and not just to the governments and shareholders, for its activities.

162. The Bank, to show its accountability, transparency and capacity to be a learning institution must have an inspection process which lives up to the highest standards of governance: these are standards to which the Bank has committed itself publicly.

163. It is unfortunate that the Samut Prakarn experience does not show an institution living up to these high and necessary ideals. Part of the problem was, as others have said, the inspection procedures to be followed: the flawed nature of aspects of these procedures became apparent only as the Inspection Committee tried to implement them for the first time, and as we did so, also trying to protect the essential independence and impartiality of the inspection process.

164. We agree with Director Payne's comments that the review of this process must clearly define the roles and responsibilities of all the key parties involved in any inspection

process. This must include not just the requestors, Bank Staff and Management, must also include your own role in this, Mr. President. This Chair regards it as essential that, in his dual role as Chief Executive and Board Chair, and remembering that the Board is the ultimate adjudicator in this process, the President should be seen to be as neutral in his stance as possible in an inspection process.

165. With this in mind, we would have preferred to see the Management's response to the Panel's report delegated to, and signed off by, the Operational Vice-President, in order to preserve distance and neutrality. If there are to be further inspections with the current procedures in place and I hope there are not, we would recommend that this course of action be followed.

166. While dwelling on learning lessons from Samut Prakarn, some staff, perhaps from overzealousness caused by going into this uncharted territory for the first time have, we believe, seriously transgressed acceptable behavior. Some allegations regarding staff behavior are so disturbing that we will be following these up bilaterally and will seek an investigation if they are proved to be substantiated.

167. However, the most important reaction now is for Bank to live up to our self proclaimed status as a "learning institution," to move on, to absorb the lessons learned from these events. We strongly welcome the review of the inspection process and the plans to consult widely about it, including some of ADB's most vociferous NGO critics. The Bank, through this review, is giving the right signals that it is taking great care to learn from the lessons of Samut Prakarn, and from the experience of other, comparable institutions. We are seeking an inspection process for this Bank which will reflect the highest ideals of governance, and which will, hopefully, save this Bank from ever having to sit through another meeting like this one today. I hope we would all hope not to see that happen again.

168. To conclude, this Chair fully supports the report and recommendations of the Inspection Committee, and wishes to record its thanks to the members of the first ever Inspection Panel to be mandated by the Board of this Bank.