

# **Strengthening Public Accountability Recommendations to the Asian Development Bank (ADB) for Revising its Inspection Policy**

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## **ABBREVIATIONS**

ADB	Asian Development Bank
BIC	Board Inspection Committee
DMC	Developing Member Country
IFI	International Financial Institution
MDB	Multi-lateral Development Bank
NGO	Non-Governmental Organization
OM	Operations Manual
STDP	Southern Transport Development Project
TOR	Terms of Reference



## EXECUTIVE SUMMARY

Six years after establishing its Inspection Function in 1995, the Asian Development Bank conducted its first Inspection ever, regarding the Samut Prakarn Wastewater Management Project in Thailand in 2001. Throughout the various stages of this Inspection process, serious flaws with the ADB Inspection Function have become evident.

One of the main problems is that the Inspection Function entails a complicated, cumbersome process that is intimidating for lay people. The ADB requires claims and communications to be conducted in English, which prevents many affected people from being able to engage in the process. It also requires citation and analysis of non-compliance with ADB policies. Moreover, there is no permanent Inspection Panel and Inspection Requests are handled by a Board Inspection Committee, consisting of ADB Board members. The case by case nature of the current Inspection Function prevents affected communities from building trust in the ADB's accountability mechanism and prevents institutional learning. The ADB Board members' dual function on the Board and the Inspection Committee compromises the independence of the process.

The Samut Prakarn case also showed the weakness of the current Inspection Function concerning the Inspection Panel's field visit to the project site. The policy allows borrowing governments to object to the Panel's field visit. Transparency and claimants' participation in the process are also not guaranteed. While the ADB Board has not made a decision on the remedial changes of the Samut Prakarn case, the effectiveness of the current Function for addressing the claimants' concerns is not yet proven.

In December 2001 and January 2002, the ADB Inspection Committee received two new Inspection Requests concerning the Southern Transport Development Project in Sri Lanka. These cases are currently being processed, and the Inspection Committee is expected to receive more Requests in the year 2002.

Realizing the need for an effective Inspection Function, the ADB is scheduled to complete the Inspection Policy review process that has been in progress for more than three years. The completion is scheduled for late 2002. We commend this effort, which is essential in light of the experience in the Samut Prakarn case and the increased caseload of Inspection requests.

This analysis evaluates the current ADB Inspection Function based on the experience of the Samut Prakarn case and the new Inspection Requests as well as experiences from other multi-lateral development banks (MDBs). In order to strengthen the Inspection Function, we recommend the following main changes:

- establish a permanent Inspection Panel and abolish the Board Inspection Committee;
- create a shorter, user-friendly Inspection Process, which assists claimants rather than places the burden on them;
- ensure the implementation of remedial measures authorized by the Board.



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## I. INTRODUCTION

*"The Inspection [Function's] existence has come as a great and important reassurance to our villagers to know that there is a process which will review the project actions against international guidelines and ensure they are as protected as they should be. Given the capacity of the local institutions ... not to value peoples lives means that an honest judge is important."*

*-- A community member living in the area affected by an ADB project.  
The case is being considered for an Inspection.*

Over the years, Asian Development Bank (ADB) project affected communities have attempted to find ways of raising their concerns on local and national levels, in an effort to have their voices heard by their governments. Yet in most cases, the outcomes were unsatisfactory for the affected communities. Aware of the ADB's role in the financing of projects, some communities tried to approach the ADB to hold the Bank accountable for the negative impacts of its programs and projects. The ADB's Inspection Function is the mechanism available to affected people explicitly for this purpose. Unfortunately, the Inspection Function entails a complicated, intimidating process that is not accessible to the majority of affected communities. Some of them, however, have decided to take this difficult route as they learn that there is a mechanism to which they can appeal.

The first Inspection case, Samut Prakarn, demonstrates that the existing Inspection Function has yet to live up to these expectations. The claims following the Samut Prakarn case, the Southern Transport Development Project (STDP) in Sri Lanka and the Chasma Rights Bank Irrigation Project in Pakistan also reveal serious flaws in the mechanism. The scarce number of Inspection requests received by the ADB in itself points to a problem with the Inspection Function, proving that affected communities do not know about the mechanism or do not have the capacity to undergo the complex Inspection process. This concern was addressed in the Asian Development Fund VIII Donor's Report (November 2000):

*"Donors noted, with some concern, a paucity of requests for inspection and the absence of instances of the actual inspection approved by the Board of Directors since the establishment of ADB Inspection Function, apart from the Korangi Wastewater Management Project in Pakistan, which was reviewed by the Board Inspection Committee. Although Donors noted that ADB's two projects co-financed by the World Bank had been subject to the latter's Inspection Panel's examination (the Jamuna Bridge Project in Bangladesh and the Arun III Hydroelectric Project in Nepal), they expressed concern about the need for the wider and more effective dissemination of information regarding the Inspection Function. Donors also felt that there is a need for review of procedures for making requests for inspection. In that regard, Donors noted and welcomed the Management plans, in full consultation with the Board of Directors, to strengthen the Inspection Function of ADB. Donors recommended a strengthened and more independent Inspection Function, and the Function should have oversight of private sector projects." (Para. 129)*

While the ADB is working to improve its policies and guidelines for projects and programs, such as the policies on the environment, indigenous peoples, confidentiality and information disclosure, good governance, resettlement, and integration of social considerations in bank operations, it is equally important that the Bank have an independent, effective mechanism for citizens to request the Bank to act in accordance with its own policies and procedures. Realizing

that an improved Inspection mechanism will not immediately address all issues of accountability at the ADB, a strong Inspection mechanism will move a step closer to increasing accountability at the ADB.

The experiences with the three cases being brought to the Inspection Function demonstrate the problems the communities face and demonstrate the need for revising the current policy. The ADB received its first Inspection Request in 1997 concerning the Korangi Wastewater Treatment Plant in Pakistan. However, the ADB rejected this Request, claiming that it did not meet the eligibility requirements (i.e. the need to cite ADB policy violations) as determined by the Inspection Policy. The first Inspection case accepted, the Samut Prakarn Wastewater Management Project in Thailand, was characterized by a lengthy bureaucratic process, problems related to the lack of a permanent Inspection Panel, and the ADB's inability to ensure the Inspection Panel's visit to the project site. At the end of 2001, the ADB Inspection Committee received three Inspection Requests from communities affected by the Southern Transport Development Project in Sri Lanka, which again illustrated that the process of filing an Inspection Request is cumbersome for affected communities. As none of the ADB's Inspection cases to date have been completed, it remains to be seen how the current Inspection Function works at the back end of an Inspection process. However, the problems throughout the cases processed so far, do not bode well for successful outcomes of Inspections under the current Inspection Function. The summaries of the three cases are available in the following boxes.

## **Case 1:**

### **Pakistan: Korangi Wastewater Management Project**

#### **Project Summary**

The Korangi Wastewater Management Plan (KWWMP) was part of the Asian Development Bank financed Greater Karachi Sewerage Plan. Its purpose was to address the sewage problem in the community of Korangi. The project caused controversies because the ADB failed to consider low-cost local alternatives for wastewater management in Karachi. The US \$ 100 million project was about four times as high as a locally designed alternative and thus would have put a substantial burden on taxpayers. The alternative sewage plan for Korangi was estimated at a cost of \$20 - \$25 million, for which no external loans would have been required. In addition, the Government of Pakistan tried to influence the project by replacing the Governor in charge with an appointee in favor of the project.

#### **Request for Inspection**

On October 27, 1997, the Pakistani NGO CREED (Coalition in Reforms for Efficient and Equitable Development) sent a complaint to the ADB Resident Representative in Pakistan. Not being satisfied with the ADB's response, CREED sent an Inspection Request to the Chair of the ADB Inspection Committee on November 5, 1997. The ADB Vice President responded to this letter, asking for additional information. CREED then sent in a detailed letter January 5, 1998, raising specific concerns with the project and providing the additional requested information.

Despite CREED's effort, the ADB Management rejected the Inspection Request in a letter dated January 28, 1998, with the following wording: "We find no specific grounds in (the claimants' letter) which will warrant proceeding with an Inspection Function action. In the absence of specific objections, we consider it adequate for us to respond to your broad areas of concern in the form of this letter, unless specific detailed information is provided..."

The exchange between CREED and the ADB continued until February 2000, when the ADB Inspection Committee finally rejected the Inspection Request claiming that the claimants had not been able to prove "that any (ADB policy) violation has had or is likely to have a direct and material adverse effect on the requester's rights and interests".

By February 2000, the ADB had cancelled the Korangi Wastewater Management Project. It is unclear whether this decision resulted from the pressure of civil society groups

## **Case 2:**

### **Thailand: Samut Prakarn Wastewater Management Project**

#### **Project Summary:**

The Samut Prakarn Wastewater Management Project is part of the Asian Development Bank's support to the Thai Government for rehabilitating the Samut Prakarn environment, in particular water quality. The project raised concerns among affected communities due to inconsistencies in the planning stages. When the project site was changed, no environmental assessment was conducted for the new project site. The environmental impacts of the project threaten to destroy the livelihood of 14 villages that depend on marine resources. In addition, moving the project site increased costs for the Thai government by 50 percent. The land acquisition for the project site raised suspicions of corruption because the land was bought at an artificially high price.

#### **Inspection Process**

Three representatives of the village of Klong Dan, the location of the project, first approached the ADB Management with their concerns on November 29, 2000. The Inspection of the project was not authorized until July 10, 2001. Over a year after the initial complaint, the Inspection Panel submitted its final report to the Inspection Committee on December 15, 2001. Even though the Inspection Panel terminated its investigation, the Inspection Process is not yet concluded, as the ADB Board has yet to respond to the Panel's report and decide on remedial changes in light of the Panel's findings.

The Inspection process was seriously undermined by the ADB's inability to ensure the Panel's visit to the project site. When the plan of the Panel's field visit to Thailand was postponed in October 2001, due to outstanding approval from the Thai Government, the ADB proved unable to ensure the Panel's field visit. Despite repeated negotiations between the ADB and the Thai Government, the Thai Government insisted on conditions for the field visit which were unacceptable to the Panel. This impasse led the Panel to suspend its actions on November 8, 2001. The Inspection Committee asked the Panel to write an interim report, which the Panel submitted on November 27, 2001. Due to the lack of a field visit, the Panel's investigation now merely consists of a desk review of the project.

### Case 3:

#### **Sri Lanka: Southern Transport Development Project**

##### **Project Summary**

The ADB-funded Southern Transport Development Project is part of the Sri Lankan Government's initiative to increase the country's road infrastructure. Due to inconsistencies in the planning stages, the road construction for this project is likely to affect over 1,000 houses along the road trace. Despite these impacts, the Sri Lankan Road Development Authority failed to prepare adequate resettlement plans and to ensure timely and adequate compensation of affected people. Three affected communities approached the ADB Management about their concerns without receiving a satisfactory response. Each of these communities has now filed Inspection Requests with the ADB Inspection Committee.

##### **Inspection Process**

On July 18, 2001, the affected community of Gelanigama sent its first letter to the resident mission in Sri Lanka but did not receive a response. The initial letter did not follow the format required by the ADB Inspection Policy but it consisted of a petition signed by around 150 households representing approximately 700 people. It is unacceptable for the ADB to reject such a complaint based on formalities. If there had been a permanent inspection panel with an independent secretariat, it could have assisted the claimants and the process would have been substantially shortened.

On August 11, the community sent another letter to the ADB that met the criteria required by the Inspection Policy. The Management responded to this letter on September 28, but did not inform the claimants of their right to request an Inspection. This is a violation of the ADB's Inspection Policy which states that "Management ...must inform the sender (of the complaint) of the right to submit a request for inspection to the Committee if the sender is not satisfied with Management's response" (ADB Inspection Procedures, 1996, Para. 25). On October 14, 2001, the claimants sent an official Inspection Request to the ADB and received a response on November 2.

In order to send the actual Inspection Request, the community of Gelanigama had to ask for the ADB to send them the policies relevant to the project. These policies were not available in the community's local language and due to the lack of resources, the community had to ask for help from an environmental lawyer from outside Sri Lanka. The representatives of the community pointed out that it was unrealistic for the ADB to expect affected communities to identify ADB policy violations, given the technical restraints of most affected communities in developing countries.

## II. THE CURRENT INSPECTION FUNCTION

The current Inspection Function is too cumbersome, long and complicated, and as a result, not easily accessible to affected communities. In addition, its effectiveness in addressing communities' concerns is not yet clear. The key players and stages involved in the Inspection process according to the current Inspection Policy are summarized below, followed by a list of problems that have emerged from the experiences with the Korangi, Samut Prakarn, and Southern Transport Development Project cases.

### **1. Key Players**

There are five key players that participate in a series of procedures that comprise the Inspection Function:

- *Project Affected Communities* (the "complainants" during the complaint stage or "requesters" once they request an Inspection) – the affected groups that file complaints about a Bank project and later may also request an Inspection.
- *ADB Management* – the President and the Vice Presidents.
- *Board Inspection Committee* – a standing committee of six ADB Executive Directors/Alternate Directors. It addresses all official Requests for Inspections and chooses the members of the Inspection Panel. It makes recommendations to the Board of Directors regarding authorization for an Inspection Request and the final decision on an Inspection claim.
- *Roster of Independent Experts* – a roster of outside experts from which members for an Inspection Panel are chosen if a claim is actually investigated.
- *Inspection Panel* -- a group of three or more experts derived from the Roster of Independent Experts who are tasked by the Board Inspection Committee to conduct an Inspection on a particular project.
- *ADB Board of Directors* – the key decision-makers on Inspection claims. The Board decides whether to authorize an Inspection, and makes a decision on an Inspection case based on the recommendations from the Board Inspection Committee.

## **2. Process**

The steps in the Inspection Function can be divided into two stages, the eligibility stage and the inspection stage. Of the following steps outlined in the ADB Inspection Procedures (October 1996), steps 1 to 6 fall under the eligibility stage and steps 7 to 13 under the inspection stage. (See Chart 1, page 17).

### Eligibility Stage:

1. The project-affected community (the claimant/s) sends a Complaint Letter to the President.
2. The President/Management is required to respond to the Complaint Letter within 45 days of receipt of the Letter unless the Chairman of the Board Inspection Committee obtains an extension for the President's response. The President/Management sends his/her response both to the Complainants and to the Board Inspection Committee.
3. If the Complainants are unsatisfied with the Management's Response, they send a Request for Inspection to the Board Inspection Committee. The Board Inspection Committee determines whether the Request meets the criteria for eligibility which include:
  - assertion of the Bank's failure to follow its operational policies or procedures,
  - assertion that this failure is likely to have direct and material adverse effects on the requesters, and
  - evidence that this failure was brought to the attention of the Bank's Management, which failed within a period of 45 days to demonstrate that the Bank had followed, or was taking adequate steps to follow, its operational policies and procedures.

If the Board Inspection Committee needs more information to determine whether the Request is eligible, it can ask for additional information from Complainants. The Board Inspection Committee then asks the Management to respond (unless it considers the Request clearly frivolous or ineligible).

4. The Management is required to send its response to the Inspection Request to the Board Inspection Committee within 30 days (unless an extension has been obtained from the chairperson of the Board Inspection Committee). Within 14 days of submission of the Management Response, the Board Inspection Committee recommends to the Board of Directors whether it considers an Inspection warranted. At this point, the Committee has another opportunity to ask for more information and obtain an extension for making the recommendation to the Board. (If the Committee

believes the Inspection may not be warranted, it must confer with members of the Roster of Independent Experts before making such a recommendation, unless the Request is clearly frivolous or ineligible.)

5. The Board is then required to decide within 21 days whether to authorize the Inspection.
6. The Board passes its decision back to the Board Inspection Committee, which informs the claimants about the Board decision within 7 days.

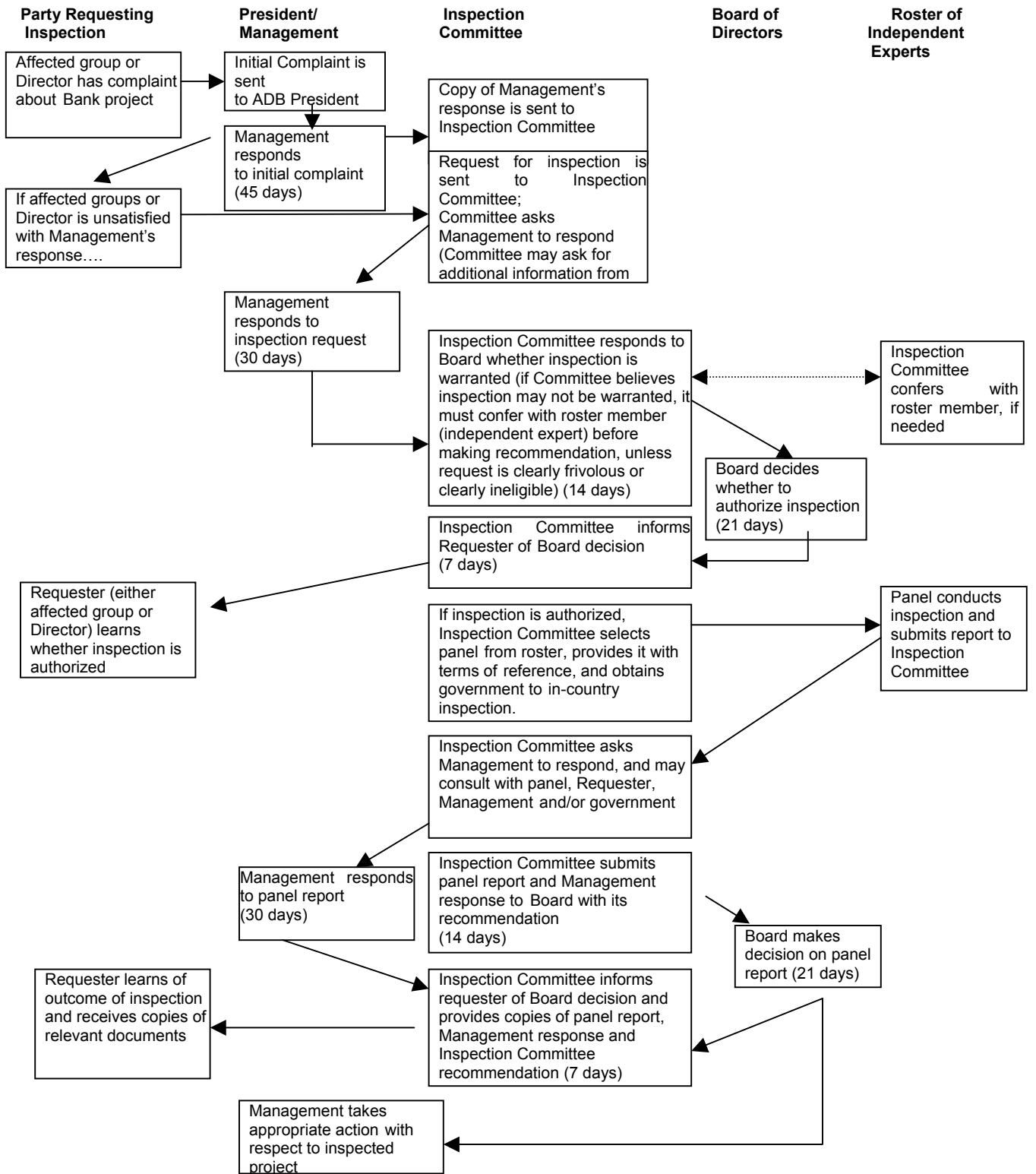
Inspection Stage:

7. If the Inspection is authorized, the Board Inspection Committee selects a panel of three or more members from the Roster of Independent Experts and provides it with terms of reference and obtains government consent for an in-country Inspection.
8. The Inspection Panel conducts the Inspection and submits its report and recommendations to the Board Inspection Committee. There is no time limit for this step.
9. The Board Inspection Committee asks the Management to respond within 30 days (the Management can request an extension of this period from the Board Inspection Committee) and may consult with the claimants, the Management and/or the borrowing government.
10. Within 14 days the Board Inspection Committee submits to the Board of Directors the following documents: the Panel's Report, the Management's Response and the Board Inspection Committee's recommendations for the Board's decision.
11. Within 21 days the Board of Directors makes a decision based on the recommendations of the Board Inspection Committee and passes its decision to the Board Inspection Committee and the Management.
12. The Board Inspection Committee informs the claimants of the Board's decision and provides copies of the panel report, Management's response and the Board Inspection Committee recommendations to Requesters, Management, and public within 7 days.
13. Depending on the Board of Directors' decision on the recommendations, the Management takes appropriate action with respect to the inspected project. There is no timeline in the Management's action on the Board's recommendations.



Chart 2

### CURRENT ADB INSPECTION FUNCTION



### **3. Scope**

The ADB Inspection Procedures specify that an Inspection can investigate the ADB's compliance with the Bank Policies and Operational Procedures set forth in the Bank's Operational Manual (OM), and to the extent applicable, corresponding sections in earlier editions of the OM. The policies and procedures under the scope of the Inspection Function also include Staff Instructions that relate to the formulation, processing or implementation of Bank projects, but that have not yet been incorporated into the OM.

### **4. Problems with the Current Inspection Function**

#### **4. 1. Bodies**

##### **4. 1.1. Roster of Independent Experts**

According to the *Establishment of an Inspection Function*, Nov. 10, 1995, the Roster of Independent Experts are nominated by the President and approved by the Board of Directors. Roster members serve for a non-renewable term of five years. They must be from one of the Bank member countries and must not have been employed by the Bank within two years preceding their appointment and will be precluded from employment with the Bank for five years following the completion of their term.

Roster members are selected “for their integrity and judgment, as well as their expertise and experience related to the Bank’s development activities” (Inspection Policy, para. 13). These criteria are open to interpretation and do not offer any concrete guidelines for the selection process.

##### **4.1.2. Lack of a Permanent Panel**

The lack of a permanent Inspection Panel causes a number of logistical and substantial problems, as follows:

- *No Guarantee in Experts' Availability:* The Inspection Panel is derived from a Roster of Experts. Although three or more Roster members have been selected for an Inspection Panel, their availability is not guaranteed as Roster members usually have full time jobs and other commitments. They may also have difficulty clearing their work agenda within the timeframe acceptable for establishing a Panel. During the set up of the Samut Prakarn Panel, the candidates that were first identified from the roster turned down the assignment due to time conflicts, conflicts of interests, and unwillingness to agree to not working for the bank for a certain period of time after serving on the Panel, despite his/her earlier agreement to that condition.

**Example of difficulties in setting up an Inspection Panel  
from the Roster of Experts**

- One candidate identified for the Samut Prakarn Inspection Panel managed to clear up her existing agenda. However, due to her organization's work with a partner in Thailand where the project to be inspected is located, she had to turn down the request to serve on the Panel because the partner was worried that her involvement in the Samut Prakarn inspection would have affected the partner's relationship with the Thai Government.
- A Panelist in the Samut Prakarn case had to resign after the Panel had already been working for four weeks because his organization was found to be involved in an ADB-funded project, and thus his eligibility was questioned.

- *Panel's Eligibility is Subject to Interpretation:* The case by case creation of Inspection Panels allows for influence on the selection of panelists for particular cases. According to the Inspection Procedures, Roster members are elected based on their “integrity and judgment, as well as their expertise and experience in areas related to the Bank’s development activities” (Inspection Procedures, October 1996, para. 9). This definition is vague and open to interpretation. The resignation of one of the Panelists in the Samut Prakarn inspection case while the inspection was already ongoing demonstrates this liability. (see the box above)
- *No Institutional Learning:* The transitory nature of Inspection Panels also has implications for the effectiveness of the overall Inspection Mechanism. Because Panel members change with every new case, no institutional learning can occur from case to case. Panel members do not have the opportunity to learn from previous inspections, and in many cases will even have to familiarize themselves with the Inspection Function itself and reinvent the wheel on how to best operate as a Panel.
- *Problems in Establishing Trust from the Public:* Furthermore, changing Inspection Panels for each case makes it difficult for the public to become familiar with the Panelists and to gain trust in Panel members.
- *Information and Advice Cannot Be Provided:* Without a permanent Panel, there is no independent, permanent place for potential claimants to go for advice and information about filing a claim.<sup>1</sup> A crucial disadvantage for stakeholders and prospective claimants is the fact that the Panel has no capacity for providing technical assistance to claimants in preparing an Inspection Request because the Panel is not set up until after the Inspection is authorized by the Board. The claimants in the Samut Prakarn case, and the Southern Transport Development Project in Sri Lanka, had to find their own sources of support and advice and continue to rely on outside support throughout their respective Inspections.

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<sup>1</sup> The World Bank Inspection Panel can often informally help potential claimants resolve their concerns with Bank Management just by giving advice to affected people as they try to get answers from appropriate Bank staff. Such a role helps affected people and the Bank resolve issues before they become problems that might trigger a claim.

- *Difficulties in Building Rapport with the Board.* It is important for the Board to build trust and have confidence in the Panel. This, however, is unlikely to happen if the Panel changes from case to case. Under the current Inspection Function, the Board Inspection Committee has to develop rapport with a new Inspection Panel every time there is an Inspection case.

#### 4.1.3. Lack of Independent Secretariat

The current structure of the Inspection Panel creates an institutional problem because the Office of the Secretariat, whose primary role is administrative assistance to the Bank Management, also assists the Inspection Panel. This overlap of institutions not only limits administrative assistance for the Panel but also compromises the Panel's independence. At this point, there is only one senior staff member from the Office of the Secretariat to support both the Board Inspection Committee as well as the Inspection Panel(s).

#### 4.1.4. The Board Inspection Committee

The Board Inspection Committee (BIC) is comprised of six members of the Board of Directors/Alternate Directors elected by the Bank's President in consultation with the Board. Four of these members must be regional members (at least two of whom must be from borrowing member countries) and two members are non-regional. Committee members are appointed for two-year terms. The dual function of Directors on the Board of Directors and on the Board Inspection Committee may result in a high workload for these particular Board members. The capacity of the Board Inspection Committee for dealing with multiple inspection cases may therefore be limited.

Their function on the Board Inspection Committee puts Board members in the position of approving loans on the one hand and making decisions on inspection cases on the other hand, making conflicts of interests likely to occur<sup>2</sup>. This undermines one of the main reasons for establishing the Inspection function at the multilateral development banks, which was to provide a tool for the Boards of Executive Directors to have projects reviewed independently. In addition, it should be noted that the Board members are also in charge of approving the policies which Management and Bank staff should comply with.

## **4. 2. Process**

### 4. 2.1. Cumbersome Process

The process of filing an Inspection Request is lengthy and bureaucratic. In the first stage of filing a formal Complaint to the Management, it takes 45 days for Complainants to receive a response, even if they have communicated their concerns with the project/program previously in other

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<sup>2</sup> In several cases, Alternate Directors rather than Executive Directors are members of the Inspection Committee. This may indicate the Board's unwillingness to prioritize the Inspection Committee. On the other hand, the choice of Alternate Directors for the Inspection Committee may reflect awareness of the conflicting role of Executive Directors as members of the Inspection Committee.

manners. Once an official request is made<sup>3</sup>, the Bank Management again handles the Request for 30 days of the process before another Management Response is submitted to the Board Inspection Committee. It takes another 14 days for the Inspection Committee to decide whether to recommend an Inspection to the Board or longer if the Committee requests an extension, and 21 days for the Board of Directors to decide whether to authorize an Inspection. The actual inspection begins at least 90 days after the affected party's initial claim is submitted to the Bank. In addition, there is no set timeframe for the inspection itself.

During the process, the Bank Management and the Board Inspection Committee can ask for extensions for their responses, thus further delaying the process. Such extensions significantly delayed both the Samut Prakarn and the Southern Transport Development Projects Inspection processes.

#### 4.2.2. Timeline Ignored

The Southern Transport Development Project (STDP) in Sri Lanka is an example of how the management ignored the claimants' complaint and failed to respond within 45 days as required by the Inspection Procedures. The Management's negligence regarding their requirement to respond within the set timeframe has resulted in further prolonging the Inspection process.

#### 4.2.3. Unleveled Playing Field

The ADB's requirements for an eligible Inspection Request are based on the assumption that the ADB is working with project-targeted counterparts that are (a) well informed about ADB policies and procedures and (b) have the resources and technical knowledge equivalent to the ADB. The legalistic language of the Inspection Policy and the requirements for filing an Inspection reveal the ADB's lack of awareness of the cultural and resource differences between itself as an international institution and the project-targeted local communities. The Bank's rigid and bureaucratic approach, which is familiar and comfortable for Bank staff, is very intimidating to anyone outside the Bank, and is particularly alienating for local communities. This has created grave adverse implications against the interests of the claimants and the communities in the region the Bank claims to serve.

- *Problems of Familiarity with Bank Policies:* In order to be able to prove that the Bank has violated its policies and procedures, claimants have to be familiar with these policies. However, in many project-targeted communities, such as small rural communities, people do not have a way of accessing such information or may even be unaware that the ADB has a set of guidelines. The primary ways for the public to access ADB information is via the Bank's website or through its resident missions. Again, the lack of computers, technical knowledge, English proficiency, and financial resources make it almost impossible for poor affected

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<sup>3</sup> Before the official request, the complainants have to send an initial complaint letter to the ADB management, to which the management has to respond within 45 days. This complaint is not yet considered a request. (Complaint therefore refers to the complainants' initial letter to the Management.) If the complainants are not satisfied they then can send an Inspection Request to the Inspection Committee. This Request is referred to as the official Inspection Request.

communities to find the information necessary for making an eligible request for an Inspection. Even if Requesters have access to the necessary information, the number of policies is overwhelming and their language is complicated. The Bank also requires -- explicitly as well as implicitly -- that Complaints/Requests be conducted following a western way of legalistic thinking. It is highly unreasonable to expect that lay people will be able to understand the policies and respective policy violations.

**Technical Obstacles for the Claimants in the  
Southern Transport Development Project Case, Sri Lanka**

When the community of Gelanigama prepared their Inspection Request, they had to ask the ADB to send them copies of the ADB operations manual (OM) since they did not have access to this document. In addition, the claimants experienced technical limitations. Out of almost 10 other affected communities, Gelanigama was the only group that had the resources and knowledge to write a request in English.

Due to the short supply of guidance booklets on the ADB Inspection Function, the affected communities had no knowledge of the format required for a complaint and who to address the complaint to. In addition, the costs of communicating with the ADB were beyond the communities' budgets. One affected community member summarized the situation as follows:

*I cannot imagine the local villagers communicating with Manila in their local language and receiving a rapid response. Communicating in English would be even harder. ...Another important consideration is cost. Faxes, letters with copies of all documentation, even telephone calls are beyond the budgets of local organizations. ...Even the receipt of faxes and documents has caused a problem for all three complainants. Courier services used by the ADB have not been able to deliver these. We have all had to arrange somebody in Colombo to take receipt and then pass to the society. ...The web pages (of the ADB) are only available on new/large computers (and) I cannot get them on mine. Even a typewriter has to be hired from a local communication shop to produce letters for most societies.*

*- A Sri Lankan community member affected by the Southern Transport Development Project.  
Email communication, February 10, 2002*

- *English as the Official Language for Communications:* Another crucial aspect that puts the requesters at a disadvantage is the obstacle of language. The Inspection Policy requires Requesters to make the Request in English. However, only a very small number of developing member countries, have English as the official language. Even in countries where English is the official language, local people usually speak their own languages and cannot be expected to conduct correspondence in English as required by the Policy or to understand the ADB policies which also only exist in English. The ADB's requirement to file Inspection Requests in English stands in opposition to the World Bank's Inspection policy which accepts Requests in all languages and expects the Bank Management to translate their responses to the language spoken by the Requesters.
- *Imbalance of access to the process:* The current Inspection Procedures give Management the opportunity to provide its views and responses at various points throughout the Inspection

process and the Board Inspection Committee's decision making process. Unfortunately, the Requesters are not given the opportunity to see and respond to the Panel's report and are forced to wait until the end of the process before learning of the Inspection Panel's findings and recommendations to the Board Inspection Committee. In the Samut Prakarn case, the Panel could not go to Thailand to visit the project site and meet with the Requesters but the Panel did interview a number of Management offices and staff; meanwhile, the Requesters had no opportunities to communicate with the Panel at all.

#### 4.2.4. Lack of Transparency

The Inspection process lacks transparency in various respects. Once the claimants have sent the Inspection Request to the Board Inspection Committee, it can take up to 72 days before the requesters learn whether the Board of Directors authorized an Inspection. During this time the Inspection Policy does not require any of the involved bodies (Board Inspection Committee, Management, Board of Directors) to communicate with the Requesters. Once an Inspection is authorized, the Requesters are also left uninformed about how the Inspection proceeds and what the status of the process is while it is underway, unless the Board Inspection Committee and/or the Panel decide to inform them.

#### **Uncertainty in the Case of Samut Prakarn**

In the Samut Prakarn Inspection case, the Requesters were left in the dark when the Thai government obstructed the Inspection Panel's field visit. Despite several communication attempts with the Inspection Committee from September to November 2001, the Requesters were uncertain as to the status of the Inspection and the Panel's intended field visit. The responses from the Inspection Committee were unclear and vague. Also, the Requesters were never informed about the conditions put by the Thai Government that made the Panel unable to visit the project site.

Due to several obstacles in the process, the Samut Prakarn Inspection Panel suspended its inspection on November 8, 2001. The Panel informed the Requesters of this decision by fax on November 12. The Panel then submitted its interim report to the Inspection Committee on November 27, 2001. On the same day, the Panel sent a copy of its memo to the Board Inspection Committee to the Requesters. In this memo the Panel recommended the Board Inspection Committee to make the interim report available to the Requesters. On December 15, 2001, the Panel submitted its final report to the Inspection Committee. The Requesters have since not had access to this report, the interim report nor any of the Panel's recommendations.

The current Inspection Policy does not require the Bank to inform the public or provide updates on the status of Inspections and important events regarding Inspection cases. Although the ADB did make documents relevant to the Inspection case available on the web, they did not provide updates on the status of the Inspection when the field visit was in question<sup>4</sup>. In addition, the ADB failed to inform the public of the Panel's decision to suspend its activities. The information on the ADB's website therefore was outdated and misleading. Although the Inspection Requests for the

<sup>4</sup> If local and international NGOs had not approached the ADB to confirm the status of the case, the Requesters would have not had any information on the Inspection process.

Southern Transport Development Project were sent to the ADB on October 14, 2001, there is no information on this Inspection case on the ADB's website.

#### 4.2.5. Terms of Reference

The purpose of the Terms of Reference (ToR) is to serve as a guideline for the process of specific Inspection cases. In the Samut Prakarn case, this purpose was undermined by the legalistic language of the ToR. The ToR were too rigid to allow flexibility in the Panel's operations. It more closely resembled a legal document than functional guidelines for an inspection process. The Requesters were concerned that the rigidity of the ToR would significantly limit the power of the Inspection Panel.

#### **The Samut Prakarn Inspection Case's Rigid Terms of Reference**

Even though the Requesters objected to the language and content of the ToR, the final version did not integrate many of the Requesters' concerns, such as suggested stages for the investigation, including at least two field visits by the Panel. The following excerpts demonstrate the limited powers and independence of the Panel and the legalistic language of the document intended to provide practical guidelines for the inspection.

- **Additional Means of Investigation.** If the Panel desires to use other means of investigation in addition to the means described in paragraphs 6 and 7 above (pertaining to the conduct of interviews and access to documents), in its belief that these would substantially assist in its inspection, the Panel should make a recommendation to the BIC. If the BIC approves the recommendation, the Panel should ensure, to the greatest extent practicable, that the provisions of paragraph 6(c) (pertaining to written reports after interviews) are observed. The Panel should seek to ensure that all such evidence that may be used in its deliberations and its final report to the BIC shall be as full, accurate and complete as possible
- **Legal Advice.** To provide advice on questions referred to in paragraph 51 of the *Inspection Procedures*, separate Counsel will be provided by the General Counsel from within his office, such person not to have been involved in giving advice to ADB with respect to the Project or this inspection. If the Panel requires advice on other questions of law, it may seek advice from such separate Counsel or may propose that a legal consultant be engaged under paragraph 9 above.

In making the Panel's visit to the field optional, the ToR provides a weak framework for the process of the investigation. The ToR points out that the Board Inspection Committee "has already sought the consent of the Government of Thailand to enable the Panel to undertake a site visit." The document further states that the Panel should modify its work plan, if the Thai Government objects. Instead of referring to a desk review as an alternative option, the ToR should put stronger emphasis on the ADB's efforts to enable the Panel's field visit.



#### 4.2.6. Field Visit

Paragraph 52 of the Inspection Procedures determines that as “part of an inspection, a Panel may also visit the project area and meet with the requester, other local communities, organizations and groups, project managers and government officials in the country where the project is located. However, before the Panel or any of its consultants undertakes such activities, the Committee must confirm with the Director representing the relevant country that the government of the country has no objection.”

#### **Obstacles to the Inspection Panel’s Visit to the Project Site in the Case of Samut Prakarn**

<b>Sep. 10, 2001</b>	Original date of Panel’s field visit to Thailand. The visit was postponed due to the conditions set by the Thai government for the Panel’s visit, which the ADB found unacceptable.
<b>Nov. 2001</b>	John Lockhart, the Chair of the Board Inspection Committee, flew to Thailand with the goal of convincing the Pollution Control Department, the executing agency, and the Thai Government to allow the Inspection Panel’s visit to the project site. However, his mission failed. Due to increased questions from the international community, President Chino got involved in the Inspection Process and asked the Vice President of the Region, Mr. Myong-Ho Shin to help ensure that the Panel could visit Thailand. Mr. Shin however, inappropriately deferred to Mr. Arjun Thapan to meet with the Thai Government on his behalf. Mr. Thapan is the Manager of Water Supply, Urban Development and Housing Division West, to whom the Samut Prakarn Project Manager reports.
<b>Nov. 8, 2001</b>	As of this date, the Thai government had still not agreed to the Panel’s visit. The Panel suspended its activities expressing its disappointment with the Inspection process.
<b>Nov. 11, 2001</b>	The requesters were informed of the Panel’s decision to suspend its activities in a letter from the Panel.
<b>Nov. 27, 2001</b>	The Panel submitted its interim report to the Board Inspection Committee. The Requesters were informed of this report but did not receive a copy although the Panel’s memo of submission contained the recommendation to the Board Inspection Committee to disclose the interim report to the Requesters and other stakeholders in the Inspection
<b>Dec. 15, 2001</b>	The Panel submitted its Final Report to the Board Inspection Committee. The Report consisted only of a desk review of the Samut Prakarn case and interview with some Bank Management officers and staff.

In the Samut Prakarn case, the Inspection Panel had three tasks: (a) to establish compliance or non-compliance with a number of policies; (b) in the case of non-compliance, to establish the direct and material harm as a consequence of the non-compliance; and (c) on the basis of the establishment of direct and material harm, to recommend remedial changes and mitigation measures.

A field visit to the site of the project or program being inspected is a key component to an effective Inspection. To omit this on-site Inspection would be like a doctor diagnosing a patient without seeing him. The requirement that a borrowing government grant permission to a field visit by the Inspection Panel can be a serious obstacle to the Inspection process. The Board of Executive Directors' approval of the Inspection Policy should imply that Bank member countries accept the possibility of field visits. Borrowing governments should not be allowed to obstruct these visits.

#### 4.2.7. Remedial Measures

The Inspection Policy does not include any provision for supervising the implementation of the Panel's recommendations. The implementation is left entirely up to the Management. In the current structure of the Inspection Function, there is no assurance that the remedial measures will be put into practice satisfactorily. In a number of World Bank Inspection cases, such as Yacyreta and Itaparica, the remedial measures that the Board approved were not implemented adequately. Without a mechanism to monitor whether Board-recommended remedial measures will be implemented satisfactorily, the effectiveness of the Inspection process is undermined as there is no guarantee of an outcome for the Requesters.

#### 4.2.8. Panel's Restricted Ability for Dealing with Urgent Matters

Under the current Inspection Function, the Inspection Panel does not have the opportunity to submit interim recommendations which may be required when dealing with urgent matters such as the need for mitigating measures or a halt to loan disbursement, so that irreversible damage or further harm can be prevented or minimized.

#### **Continued Loan Disbursement Despite Stalled Inspection Process**

In the case of the Samut Prakarn Inspection, the Management and the Board have both claimed that they are unable to stop loan disbursements while affected communities have indicated potential serious adverse impacts from the project because there is no violation of loan agreement -- a document that is not available publicly. The Requesters also called for the halt of loan disbursements while they filed their claim to the Bank's Inspection Function. Yet, since the initial Complaint in November 2001 and the completion of the Inspection process (scheduled for Board decision in March 28, 2002), loan disbursements continued and the project has come closer to completion, thus limiting the effectiveness of any remedial measures recommended by the Board as an outcome of the Inspection.

In the case of the Southern Transport Development Project (STDP) Inspection, the Sri Lankan Road Development Authority accelerated the land acquisition for the project site while the Inspection process was being stalled due to Management's request for an extension for responding to the Inspection Request. Despite the delay in the process, the ADB did not intervene in the accelerated land acquisition. Should the STDP Inspection case be authorized by the Board, the land acceleration will be beyond the point of change, rendering any remedial measures recommended by the Board ineffective.

### III. RECOMMENDATIONS FOR POLICY CHANGE

The ADB Inspection Policy needs to be revised to restructure the bodies involved and the overall process of Inspection, and to ensure that certain conditions are in place so that the Inspection Function is independent, transparent, and effective for affected communities.

#### **1. Bodies**

##### **1.1. Establishing a Permanent Inspection Panel**

The experience with the Samut Prakarn case has revealed serious problems in the existing Inspection Process, including reliance on a case-by-case Inspection Panel, the lack of an independent secretariat, and having an Inspection Committee composed of members from the Board of Directors (see Part II of this report). Establishing a Permanent Inspection Panel will address many of these problems.

- *Advantages of A Permanent Panel:* The creation of a permanent Inspection Panel and Secretariat could make a significant contribution towards addressing key problems of the current ADB Inspection mechanism. The main advantages of a permanent panel include:
  - the logistical advantage of having full-time staff available for processing Inspection Requests
  - the institutional learning and continuity acquired by building expertise from one Inspection case to the next
  - the setting of a precedent for decision-making on Inspections
  - an opportunity for the public to establish communication with and build trust in the members of a permanent panel
  - a possibility for the Board and Bank staff to build rapport with a permanent body
  - an increase in the Panel's visibility as the Panel will clarify its mandate and enable communication with the Bank's stakeholders and affected communities, borrowing government officers and executing agencies, etc.
  - a permanent Panel with an independent, permanent office will be better equipped to safeguard confidential information, including the anonymity of the claimants
- *Criteria for Inspection Panel members:* In order to ensure an independent, professional, and competent Inspection Panel, panel members should meet the following criteria:
  - have substantial prior knowledge of the multi-lateral development banks (MDBs)

- be able to demonstrate credibility and technical competence, including awareness of the complex environmental and social implications of development projects
  - have the interpersonal skills required to interact with and meet the different stakeholders involved in an inspection process, including bank staff, government representatives and project affected people
  - be able to deal thoroughly and fairly with Requests brought before them, and have recognized integrity and independence from the Bank Management
  - have not worked for the Bank for five years prior to their service on the Inspection Panel
  - be excluded from future employment by the Bank
- *Selection process for Panel members:* Panel members should be selected by the ADB Board in a participatory manner with input from civil society and community-based organizations in an open application process. A multi-stakeholder selection committee should be formed to make recommendations to the ADB Board of Directors. To prevent conflicts of interest for panel members inspecting a certain case, the Inspection Policy must include a provision that excludes a Panel member from working on a case in which he or she has had some prior involvement. The inspection should be conducted by the remaining Panel.
  - *Number of Panelists:* The number of panelists should be dependent on the Panel's caseload. Initially it may be sufficient to appoint three Panel members, but the terms of reference for establishing a permanent Panel should allow for appointing additional Panel members if required by an increase in incoming Inspection cases. At all times there should be an odd number of Panelists to ensure that decisions can be reached even in the absence of majority.
  - *Independent means of communications to the public:* It is very important that the Panel demonstrate its independence from the Bank Board and management to the public. The Panel should be able to communicate independently to Requesters, governments, and the public in general, and to maintain its own website separate from the Bank. It should have an independent budget to prepare its own publications, public statements, etc.
  - *Outside Consultants:* If necessary, the Panel should have the option of hiring outside consultants. These consultants should be selected based on their neutrality to the case in question and their technical expertise. The consultants should not have been employed by the ADB at any time and they should also be excluded from working for the Bank for a certain period after their service to the Inspection Panel.
  - *Independent Legal Counsel:* The Panel should have its own legal counsel, instead of taking advice from the Bank's General Counsel, which is under the Bank's Management and therefore is tasked to defend the Bank. This will prevent a conflict of interest and ensure additional technical assistance for the Panel. If the Panel feels the need, it should also be allowed to call on the Bank's General Counsel for assistance.

Whether or not there are cases filed for Inspection, the permanent Inspection Panel members should meet regularly amongst themselves, with the Bank Management, and Board of Directors to inform themselves about policy changes at the ADB, progress made in remedies for problem projects, and to become more knowledgeable about Bank operations as well as to help educate Management, staff and the Board about the Inspection process and the Panel's role. The Panel should also attend the Bank's Annual General Meetings (AGM) and have their own set of meetings at the AGM, so that it can interact with member delegations, Bank Management, and other participants of the Annual Meeting.

## **1.2. Establishing an Independent Secretariat**

To ensure institutional independence of a permanent panel, it is essential that the panel have its own secretariat, with adequate staff, office space, and required equipment. This secretariat should be responsible for providing logistical and administrative support to the panel. The secretariat should also assist complainants/requesters gaining access to information and in filing Inspection Requests. This is a key requirement to making the Inspection Mechanism accessible to affected communities. Persons who believe that they are being harmed by ADB projects or programs should be able to turn to this independent secretariat for help in requesting an Inspection. This will ensure that Inspection Requests will not be rejected because the claimants were not aware of certain formal requirements for filing the Inspection.

## **1.3. Board Inspection Committee**

The establishment of a permanent Inspection Panel would make the Board Inspection Committee redundant and would reduce the number of bureaucratic steps in the process and ensure a greater degree of independence for the Inspection Function. In the current Inspection Function, the Board Inspection Committee acts as the permanent body to which Inspection Requests are initially addressed. A permanent Inspection Panel would be able to take up this function, and as a result the process would become more streamlined and far more independent since Executive Directors would no longer serve in a function related to the Inspection process. Therefore, the Board of Inspection Committee should be abolished.

## **1.4. The Role of the Board of Directors**

The role of the Board of Directors in the Inspection Function should be:

- to establish and select the Panel members in consultation with civil society
- to supervise the Panel and evaluate ongoing cases and remedial measures through an annual report and meeting with the Board
- to authorize the Panel's budget
- to authorize Inspections based on the Panel's recommendations

- to determine actions to take based on the Panel's recommendations regarding remedial changes
- to review the Management's performance in implementing the Board-approved remedial measures through the implementation monitoring body

### **1.5. Body for Overseeing Implementation of Remedial Measures**

There is a need for assurance that implementation of Board-recommended remedial measures is adequate and timely. While the implementation of remedial measures is the responsibility of the Bank Management, the Board should receive reports on the status of implementation of remedial measures it has authorized. We recommend that:

- the Bank Management report to the Board, Panel, Requesters, and the public on its progress in terms of implementing remedial measures.
- the Board establish a subcommittee that conducts regular reviews of remedial measures that the Management implements. This body should be established under the Inspection Function. This body will review the implementation of the remedial measures by reviewing reports submitted by the Management to the Board, field visits, and other means.

## **2. Process**

The revised Inspection Policy should provide a shorter, more transparent and participatory process. The following stages and conditions are proposed. (Also see Attachment 3, page 33))

### **2.1. Proposed Stages**

1. The affected communities send an Inspection Request which describes (a) how they have been harmed or will be harmed by an ADB-funded project/program, (b) the steps already taken by the affected party to resolve the problems with Bank staff and why they consider the Bank's response inadequate. Such steps could include letters, phone calls or meetings with Bank staff.
2. The Panel registers the claim, notifies the President and Board and sends an explanation to the claimants concerning the process. Once a Request is received, the Inspection Panel then determines whether the Request is eligible within 14 days. It notifies the Board of Directors that an eligible Inspection Request has been received.
3. The Inspection Panel asks the Management to respond within 21 days. This response should be made available to the Requesters.
4. The Panel evaluates the Management's Response to the Inspection Request and then makes a recommendation to the Board as to whether the Board should authorize an Inspection within 21 days. If the Panel finds more factual data not already provided by

the Requester, the Panel may undertake an initial study that may include, but need not be limited to, a desk study and/or a visit to the project site. This initial study should take place within the 21-day timeframe. In some World Bank Inspection cases, initial studies conducted by the Panel before it made recommendations resulted in determination of non-eligibility because either the Requests were frivolous and/or did not represent the view of the affected communities.

5. The Board of Directors authorizes the Inspection on a no-objection basis within 14 days of receiving the Panel's recommendation. The Board should follow the recommendation of the Panel and not second-guess the Panel's decision.
6. The Inspection Panel informs the Requesters, Management, and the public about the Board's decision within 3 days of the Board's decision. At that time, the Panel sends the Management's response to the claimants.
7. The Panel notifies the borrowing government of the Inspection and conducts a full investigation within an open time frame, but no more than 6 months, unless certain circumstances are anticipated that may require a longer period. In such cases, the Panel can provide a notification to the Board, Management, Requesters, and the public about the need for an extension and the reasons for this decision.

During this time, the Panel sends monthly updates on the status of the Inspection to the Requesters and Bank Management, and makes the monthly updates available to the Board and the public.

8. At the conclusion of the investigation, the Panel sends a final report to the Requesters, Management and the Board of Directors, which contains the findings on policy compliance and recommendation on remedial measures.
9. Management is required to respond to the Panel's report within 21 days. The Management response to the Panel's report contains its remedial response plan to address the recommendations of the Panel. The Requesters are invited to respond within 21 days.
10. Based on the recommendations of the Panel, the Board authorizes Management to implement remedial measures within 14 days of receiving the Panel's Report.
11. The Panel informs the Requesters, Management, and the Board regarding the Board's decision within 3 days, and provides copies of any remedial action plan developed.
12. Management prepares and implements the Board-recommended remedial measures. It provides reports on the status of the implementation to the Board, Requesters, and the public every three months.

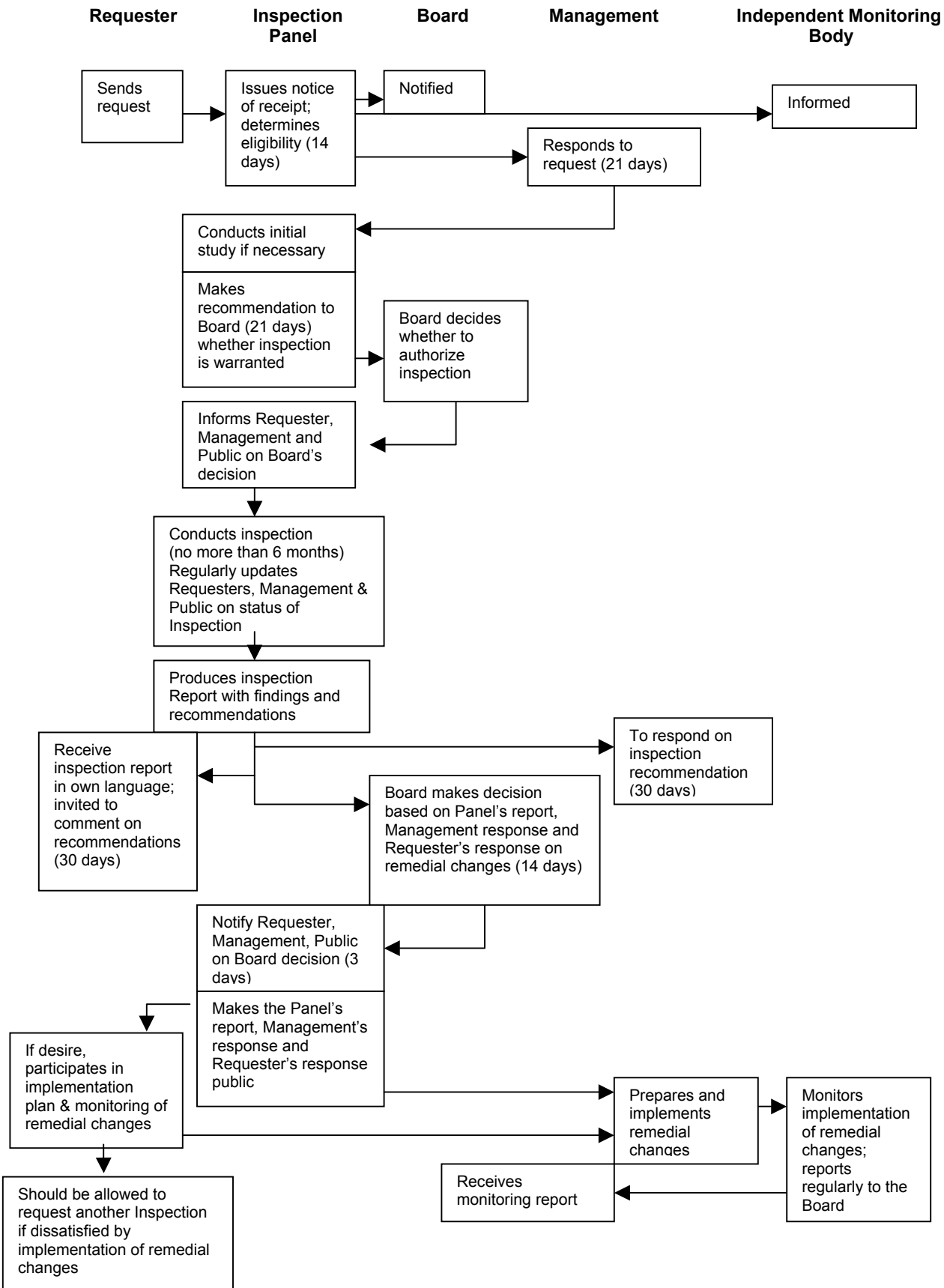
The Requesters and affected communities should participate in the planning and implementation of remedial measures. The Panel will evaluate and report to the Board on the quality and effectiveness of Requester participation.

13. The designated subcommittee of the Board that reviews the implementation of the recommended remedial measures reports every three months to the Board of Directors on its review of implementation as reported by the Management.



Chart 2

**PROPOSED MODEL**



## **2.2. Qualifications for Request**

In order for affected groups to qualify for an Inspection Request, they only need:

- to show that they have been harmed or are likely to be harmed by ADB-funded projects or programs
- to demonstrate the steps already taken by the affected party to raise concerns with Bank staff, such as communications with Bank staff, notes and minutes from meetings, etc., and explain why the Bank's response was inadequate
- if the Request is submitted by a non-affected representative, the Requester must provide evidence that s/he is representing an affected party. This evidence must include the signature of the affected party

The ADB President and Board members should also be allowed to file an Inspection Request

## **2.3. No Requirements for Citing Policy Non-Compliance**

Requesters should not be expected to detail ADB non-compliance with its own policies. The task to identify what policies are likely not to be complied with should be the Inspection Panel's responsibility. The Secretariat for the Inspection Function should provide assistance to Requesters and assist them in meeting the eligibility requirements.

## **2.4. Scope of the Inspection Function**

The Inspection Function should include claims that deal with procurement issues since these can also impact affected communities and there is no other mechanism to address procurement issues. In addition, projects in which the ADB failed to disclose those documents determined as public by the Policy on Confidentiality and Information Disclosure should automatically fall under the scope of the Inspection Function.

### **3. Conditions**

#### **3.1. Informing Stakeholders about the Inspection Function**

An essential condition for the credibility of the Inspection Mechanism is that stakeholders be informed of the mechanism. The stakeholders include:

- local communities: project or program-affected persons must know of their right to address their grievances with the ADB
- borrowers: borrowing governments must be fully informed of ADB policies and the Inspection process
- bank staff: ADB staff should be regularly briefed on the Bank policies and Panel process

It is not sufficient for the ADB to post information about the Inspection Function on the website. Information about the Inspection Function should also be made available in local languages and discussed in community consultations for each and every project or program loan. This requirement should be made part of the Inspection Policy. In addition, the ADB should make information on individual Inspection cases available as soon as an Inspection Request is sent to the ADB. All Requests received should be posted on the ADB's website and all interaction between the ADB and Requesters should be posted on the website from the point a Request is filed. Requesters and the public should be informed on the different stages throughout the process of an Inspection.

The Policy should require the Bank Management and the Panel to actively disseminate information in local languages about the Inspection Process and Panel in the ADB resident missions, field missions and project sites. The Policy should state that the Panel itself has a budget for public outreach.

#### **3.2. Inclusion of Policy Compliance in Loan Agreements**

Each loan agreement should include a provision that specifies compliance with all ADB policies. The document should list specifically the policies relevant to the proposed project or program. This is an essential prerequisite to ensuring the effectiveness of the Inspection Function because it clearly defines the scope of the Inspection of individual projects or programs and prevents random interpretations of the scope of the Inspection Function. Inclusion of policy compliance language in loan agreements also may enforce the borrowing governments' awareness and assurance to comply with Bank policies in projects/programs. In addition, the loan agreement should include language that commits the borrower to not obstruct a Panel investigation in the project.

### **3.3. Acceptance of Local Languages for Requests**

In order for the Inspection mechanism to be accessible to affected communities, the Bank should accept Inspection Requests written in a local language, as the World Bank Inspection Panel does. The Panel should ensure that its communications with the Requesters and documents relative to the Inspection are translated into the appropriate local languages, and allow the Requesters to communicate with the Bank in their own language. It is the Bank that is responsible for understanding and being able to communicate with the affected communities in their local language.

### **3.4. Panel's Interim Recommendations and Delay of Loan Disbursements**

Once the eligibility of a Request has been established the Inspection Panel should be allowed to provide the Board with interim recommendations if it foresees the potential for irreversible damage and harm, or other urgent matters. The Panel should also be able to recommend that the Board take urgent mitigating measures and/or halt loan disbursements.

### **3.5. Panel's Access to Information**

The Panel should have access to all internal documents pertaining to the project and all Bank staff who are involved in the project planning, project negotiation and decision-making.

### **3.6. Transparency of the Process**

In order for the Inspection mechanism to be credible, it is vital that the actual Inspection process itself be transparent. The ADB cannot claim confidentiality on a process that is supposed to investigate the Bank's compliance with its policies and act as an accountability mechanism. The following key aspects of transparency are recommended:

- The Panel should inform the public about the Board's decision whether or not to authorize Inspections. Once the Board has made a decision whether an Inspection is authorized, the Panel should make the following documents available in English and in the local languages spoken by the Requesters within 3 days of the Board's decision:
  - Inspection Request
  - Management Response to the Inspection Request
  - the Panel's recommendations to the Board
  - the Board's decision
- The Panel should provide the Requesters with monthly updates on the status of the Inspection in English and their own language. The same information should also be made available to the public. The Panel should regularly communicate with the Requesters and/or their

representatives to keep them informed about the status of the claim and to explain the stages of the process

- Once the Board makes a decision on the remedial changes, the Panel should make the following documents available in English and the local language spoken by the Requesters within 3 days of the Board's decision:
  - the Inspection Panel's reports and recommendations
  - the Management Responses to the Inspection Panel's reports and recommendations
  - Requesters' responses to the Inspection Panel's reports
  - the Board's decision and plan of action on remedial measures

### **3.7. Participation of Requesters in the Inspection Process**

The Inspection process should allow Requesters to participate. Should the Requesters feel it necessary, they should also be allowed to propose the names of individuals/organizations that the Panel should interview, as well as to submit proposals on project-site visits. The Panel should consult with the Requesters about recommendations for remedial measures. As Requesters cannot be expected to travel to Manila, the Panel should visit the Requesters for this purpose.

### **3.8. Nature of Management Responses**

The Management response to Inspection Requests should provide the Panel with evidence that that it has complied, or intends to comply, with the relevant Bank policies and procedures identified by the Panel. The Management responses should not dispute the eligibility of the Requests as this is the sole responsibility of the Panel, nor should they dispute which policies the Panel has considered to be potentially violated and Management is asked to demonstrate its compliance with.

The Management Responses to the Inspection Panel's report should contain Management's recommendations on how remedial changes will be implemented. Management should not dispute the findings of the Panel as indicated in the Panel's reports.

### **3.9. Anonymity Should be Guaranteed**

The new Inspection Policy should include a provision that allows Requesters to request that the Panel safeguard the confidentiality of their identity and keep their names confidential if there are concerns of possible repercussions due to the filing of an Inspection Request. If the Requesters prefer to withhold their identity they should be able to appoint a representative who signs the Inspection Request and describes why the Requesters are hesitant to disclose their identity.

### **3.10. Guarantee for Panel's Field Visit to the Project Site**

The new Inspection Policy should make the Panel's visit to the project site an inherent part of an Inspection. When the Board of Directors approved the Inspection Policy, it committed all ADB member countries to having an Inspection Policy. There should not be any need for the Inspection Panel to obtain borrowing government's approval prior to a project site visit.

The Bank urgently needs to address at the policy level the negative precedent set by the Samut Prakarn Inspection Panel's inability to conduct a field visit due to the lack of approval from the Thai Government. For example, the Ordinary Operations Loan Regulation, Article VII, Section 7.06 states that the Borrower "shall afford all reasonable opportunity for ADB's representatives to visit any part of its territory for purposes related to the Loan," which in all future loan agreements should explicitly include Inspection Panel site visits.

### **3.11. Criteria for Granting Extension**

While there may be cases where an extension of deadlines is needed, there is a need for the new Inspection Policy to provide clear guidance on the criteria for granting extensions. Deadline extensions need to be communicated to all stakeholders immediately. In addition, in cases of extensions, the ADB should put loan disbursement/project construction on halt, until the Inspection process proceeds. It is also important that the new Inspection Policy provide a shorter extension period, for example 7 days at the most, as longer extensions will prolong the overall Inspection process and create uncertainties.

### **3.12. Inclusion of Private Sector Loans under Inspection Function**

The new Inspection Policy should include private sector operations in the scope of the Inspection Function. The Inspection Panel should handle claims regarding ADB private sector operations as opposed to just public sector claims and thus create a more comprehensive system of accountability mechanisms for all ADB operations.

## **IV. RECOMMENDATIONS ON THE POLICY REVIEW PROCESS**

### **1. Inspection Committee In Charge of Review**

Even though for the new Inspection Function, the body of Board Inspection Committee is no longer recommended, at this point the Inspection Committee has had most the most experience with the Inspection Function and should be the party in charge of the review process. Leaving the process in the hands of the Management -- as is normally done in reviews and drafting of other policies -- causes a conflict of interest in this policy review because the Inspection Function is a Board mechanism for reviewing management accountability. While the Inspection Committee can be assisted by the Management in implementing the review process, it should be the Inspection Committee that reviews the various drafts, ensuring that comments are incorporated adequately, and that consultations are conducted sufficiently. The final draft of the

revised policy should be submitted to the Board by the Inspection Committee, not Management, for review.

## **2. Review Process**

In order to conduct an effective policy review, it is essential that the process for the review be transparent and participatory. We recommend the ADB take the following steps in the review process:

### **2.1. Inform Stakeholders**

At the beginning of the process, the ADB should notify the public regarding the review. The information/materials should be posted on the ADB's website, distributed at regional offices, included in the Bank's email lists, etc. In addition, the ADB should send hard copies of the information to those stakeholders who do not have access to the Internet or cannot go to a regional office.

### **2.2. Outline of Review Stages**

The Bank should make public the detailed steps to be taken in the review process, including the timeline and venues. It is essential to explain the objectives of the review, the timeline, the consultation process, and how public comments will be incorporated into the drafts.

### **2.3. Public Availability of Various Drafts**

The Bank should ensure that different working papers for the policy are made public so that the public can make comments at various steps of the revision. This includes translating the drafts into the languages of ADB member countries in a timely manner.

### **2.4. Sufficient Time for Public Comment**

The Bank should allow sufficient notice and time for stakeholders to comment on the various drafts. The public should be given at least one-month to provide comments on drafts.

### **2.5. Process of Incorporating Comments**

The comments of the stakeholders should be made available to everyone participating in the process and the public in general and translated into the languages of member countries. The ADB should also demonstrate which comments have been integrated in new drafts and explain which comments have been omitted and why. In doing so, public trust in the process can be developed.

### **3. Consultation**

The Bank should conduct consultations as an integral part of the review process.

#### **3.1. Participants in Consultation**

*Claimants:* for the review to reflect the actual experiences of the ADB inspection mechanisms, it is essential for the Bank to consult affected communities in the review process. The ADB should conduct consultations with all three sets of communities that have approached the Inspection Function. They are:

- the community and civil society groups involved in the Inspection Request for the Korangi Wastewater Management Plant in Pakistan
- the communities and civil society groups involved in the Inspection Request for the Samut Prakarn Wastewater Management Project in Thailand
- the communities and civil society groups involved in the Inspection Request for the Southern Transport Development Project in Sri Lanka

*Inspection Committee members:* consultations should also be conducted with the former and current Board Inspection Committee members.

*Inspection Panel Members:* Given their experience with the inspection of the Samut Prakarn project, it would be beneficial to consult the past and current Panel members and integrate their recommendations in the review.

*Donor and Borrowing Governments:* As stakeholders in ADB lending operations, the governments of donor and borrowing member countries should be involved in the review process. Priority should be given to government officials involved in the Samut Prakarn (Thailand), Southern Transport Development Project (Sri Lanka), and the Chasma Right Banks Irrigation Project (Pakistan). Since many governments most likely are unfamiliar with the Inspection process, the ADB should first distribute information material about the Inspection Function and then invite governments to comment on the drafts of the revised Inspection Policy.

*Citizen groups working on Multi-lateral Development Banks:* Several citizen organizations in developing countries focus on accountability mechanisms at the MDBs. The ADB should also consult these groups.

*Academics:* Academics at universities both in the North and South have developed expertise on MDB accountability mechanisms and they should be given the opportunity to comment on the ADB Inspection Policy review.



### **3.2. Venues of Consultations**

Given the variety of the consultation participants above, we propose that consultations should be conducted in the following countries: Thailand, Sri Lanka, Pakistan, Australia, USA, Japan, the Philippines and one European Country.

### **3.3. Preparation for the Consultations**

To ensure that the intended participants can attend the consultations, the invitations to the consultation should be sent at least a month in advance, with information about the review process, consultation process, the draft working papers translated in the language spoken in the country, and a full-list of consultation participants.

### **3.4. Conducive Environment for Consultations**

The Bank should ensure that the environment for the consultations is conducive for the participants to be active and share their thoughts without possible repercussions. The Bank should have an independent facilitator who is knowledgeable of the inspection issues and is trained in cross-cultural communication. It is equally important that the consultations are conducted in the language spoken in the country and that the Bank provide an independent, competent interpreter.

### **3.5. Summary of Consultations**

The Bank should ensure that summaries of consultations be sent to all consultation participants in their own languages and made available to the public. In the later stage, the participants should also be informed of how their views were or were not incorporated in the working papers and why.

## Attachment 1

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