

From: [Affected Communities Col Matara Highway](#)

To: [Gwyn Owen](#)

Cc: [N Samarasingha](#) ; koswald@adb.org ; spf@adb.org ; ggama@mail.ewisl.net ; [Hemantha Withanage](#)

Sent: Tuesday, 22 February, 2005 6:39 PM

Subject: STDP: OSPF Report: G Owen

Dear Mr. Owen,

Thank you for sending the report.

We were very surprised at the contents. The many inaccuracies and the lack of independence shown in the Report underlines the failure to carry out a proper mediation process in a professional manner.

The attitude throughout the report is that it is enough for the Complainants to be heard. A resolution to the Complaint was, in your view, not necessary. Neither was it important that the MoH and the ADB lacked "Good Faith", nor was it important for you to find a way to obtain their "Good Faith".

It did not matter to you that the MoH and the ADB were not cooperating in seeking a resolution to the Complainants' issues, which were breaches of Policies and Guidelines resulting in a non sustainable development . These issues were not to be considered, by you.

The lack of accuracy of your statements shows that you were not independent it indicates a personal belief in the MoH and the ADB. Therefore your role as a facilitator is under serious question.

Let us illustrate what we mean by just a **few examples**. (there are many more)

Pg 3 Background We have long made clear that there were many hundreds of Complainants at the time when you mentioned there were only 32. The repetition of this misrepresentation by the ADB and the RDA is indeed appalling for someone in your position of neutrality.

There were 51 petitioners in Court and well over 150 letters to the President of ADB at precisely the same time as the number of 32 opposed was stated by ADB, Just considering the letters alone your figure was wrong by 400 %. **Misrepresentation of facts.**

Pg 10 External Influences The Committee of the Supreme Court Judges found in our favour. The requirement for a Supplementary EIA was well recognised in many places in their Report. Your comment that the panel "found against the appellants" indicates that you did not understand the brief that you received. **Misrepresentation of facts.**

Pg 13 Conclusion Justice Weeramantry never said what you say he did. **He condemned non-sustainable development** and we have shown that the STDP is not sustainable as evidenced in the data used by ADB in approving its loan in 1999. Misattributing statements to a Judge of the International Court of Justice to buttress your arguments is unethical. **Misrepresentation of facts.**

Pg 13 Recommendations You suggest that "National legislation provides the ultimate remedy." This is untrue. ADB has to follow its Safeguard Guidelines, these cannot be removed by National or any other legislation. **Incomplete grasp of the issues**

Pg 12 Review of Procedure You stated that the infringements by the MoH and the Government Officials claimed by us were not true, you "concluded that the Parties were acting within the scope of the agreements made". Yet we showed that the very parties who had complained to OSPF and were covered by your agreement had their lands entered by government officials and received communications Remember you had agreed that

The Government will not enter into the land of the Complainants nor enter into any communication with them for the duration of the negotiation period.

It was shown to you undeniably this was breached. Your report states otherwise. **A total misrepresentation of what occurred**

Pg 5 Procedure You pretended that Sinhala translations of your TOR and other notices were circulated and yet the first we saw of these was when they arrived attached to your report. **You are misrepresenting facts.**

Pg 6 Procedure You stated that a precondition for a meeting was the release of "confidential" documents. The document that we required was the Safeguards Report which was never defined as "confidential" and has consistently been promised to us, including in the Course of Action, a document from which you gained your position, in this it was stated the report would be available by mid November. . OSPF very much agreed that we should obtain this Report. The President of ADB had approved the Course of Action indicating his willingness for the report to be issued. **Another misrepresentation of facts.**

Pg 11 External Influences You suggested that the Complainants had sought the intervention of OSPF to interrupt the facilitation proceedings. This was not done, we wrote to OSPF several times, mostly with regards to the other elements of the Course of Action, but also to give you backing. You seem to believe that only your work was scheduled to occur, that was far from the truth. Yours was one of a series of elements. **Lack of understanding of the process.**

It should be recalled that the facilitation was one part of the process **to resolve the Complainants' problems** and issues. The major part of the problem related to the breaching by ADB of its policies.

A facilitation process should have included more than one meeting, made extremely long because of your lack of understanding of the facts. There should have been at least three meetings. Your continuing lack of knowledge of the Course of Action well illustrates that you had not understood the Complainants position properly and to terminate without your understanding the issues properly is suggestive of gross negligence. **Certainly to produce a report full of inaccuracies is unacceptable.**

You failed to deal with the Bandaragama deviation. In your meeting with the Complainants the urgent issue was Akmeemana as the RDA was pressing most strongly there, almost all the time in discussion was given to the Akmeemana representatives of the Complainants from there. This was despite there being 6 representatives of the Bandaragama Complainants present. In your conversation on the 6th December on the phone with a Representative of the Complainants it was pointed out that you had not dealt with the Bandaragama deviation. **You said that you had decided that you should concentrate on Akmeemana,** when that was finished you would look at the Bandaragama deviation. The court case that MoH claims is important relates only to the Akmeemana deviation. The decision by the MoH that you claim as definitive relates to the Akmeemana Deviation. The letter from the MoH of 6th January relates entirely to the Akmeemana Deviation, but then extrapolates the idea to the whole trace. **Failure to complete facilitation**

In your report you point out that the Complainants are from two separate sources, USPA from Akmeemana and GSS from Bandaragama. Yet you only discussed in detail the Akmeemana question. **At best you have done only half your work.** By deciding that the failure of the MoH and ADB to resolve the Akmeemana section means that they would also not be willing to resolve the Bandaragama complainants you have ignored half the task you were given. The fact that the Bandaragama people were present and were allowed a few minutes to discuss their issues does not mean that you can walk away from them and your task. We reiterate, you yourself confirmed to the Complainants that you had not dealt with the Bandaragama questions, but would deal with them later. **Then you terminate the facilitation without considering the Bandaragama Complaint.**

You accepted the information from the MoH on houses on the alternative trace as being accurate and to be accepted as "material evidence" (Pg 6). We were waiting to show you the reality when you came. The count of houses is entirely false when viewed from the Ground. We had covered the area illustrated on foot and found very few houses, nothing like the number marked as houses on the map. Our intention was to invite you to walk part of it with us for you to understand the false evidence you had been supplied. Whilst it is not your task to see who is right, the implication given in your report that this was accurate. It did not assist your mediation that the MoH repeated the information in their later letter. **Lack of Impartiality.**

You question the jurisdiction of an independent committee, but you would have been happy to accept the comments of consultants paid by ADB. **Devoid of logic.**

You failed to note in your report that the case that the MoH considered important was carried out in secret much of it handled whilst you were meeting them in Colombo (Petition 30th November decided 16th December). You have been tricked by this case. You have not done any investigations to indicate that the way that MoH reacted to the case was based on a false premise. You fail to note that it would be surprising that 5 individuals should hold sway against the multiple of that number who had complained to OSPF. Or the multiple of that number that had petitioned the United Nations. This is inconsistent with your comments about minorities. **Lack of impartiality.**

The meeting which you suggested postponing and then cancelled would have enabled you to realise better that the MoH were not only unwilling to act in Good Faith but were also SUPPLYING you with lies. **Failure to complete allocated task with due diligence.**

Clearly the facilitation has failed and that is indicative of the lack of want of ADB to make it work, as well as an illustration of your incomplete grasp of the issues and misrepresentation of the facts.

We believe it essential that your report is withdrawn and one based upon facts be issued.

The above is a limited sample of the errors that your report contains, before you issue it again you might want to check all the facts with us.

Sarath Athukorale, L.D.L. Pathmasiri and R.A.D. Sunil Ranjith Dayaratne
Joint Organization of the Affected Communities on Colombo Matara Highway