

Report No. 64964-KZ

The Inspection Panel



Report and Recommendation

**KAZAKHSTAN: South West Roads:
Western Europe-Western China
International Transit Corridor Project
(CAREC 1B & 6B)
(IBRD Loan No. 7681-KZ)**

October 18, 2011

The Inspection Panel
Report and Recommendation
On
Request for Inspection

**Republic of Kazakhstan: South-West Roads: Western Europe-Western China
International Transit Corridor Project (CAREC-1b & 6b)
(IBRD Loan No. 7681-KZ)**

1. Between February 16, 2011, and April 19, 2011, the Inspection Panel (hereinafter, the “Panel”) received several complaints expressing different concerns related to impacts of the Kazakhstan—South-West Roads: Western Europe-Western China International Transit Corridor Project (hereinafter, the “Project”). On June 15, 2011, the Panel received a formal Request for Inspection asking the Panel to investigate these concerns (hereinafter, the “Request”, see Annex I). This Request was supplemented by Clarifications received by the Panel on June 24, 2011.¹ The concerns relate to the design, appraisal, and implementation of different road segments of the World Bank-financed Project in Kazakhstan. The Request was submitted by Mr. Bauyrzhan Isaliev, a representative of the non-governmental organization “National Analytical Information Resource” (hereinafter, “NAIR”), on his own behalf and on behalf of NAIR and 24 Project-affected people (hereinafter, the “Requesters”).
2. Issues raised in the Request relate to loss, or potential loss, of assets and livelihood from land acquisition for the Project and potential adverse environmental impacts with regard to works on different sections of the road. The Request primarily alleges violations of the World Bank’s Policies on Environmental Assessment and Involuntary Resettlement, and harm that could likely occur as a result of such policy violations. According to the Request, the Requesters have brought their concerns to the attention of World Bank Management (hereinafter, “Management”), and were not satisfied with Management’s response.
3. The Panel registered the Request on August 17, 2011, and notified the Executive Directors and President of the World Bank (hereinafter, “the Bank”) in accordance with the Resolution establishing the Inspection Panel (“the Resolution”).² On September 16, 2011, Management submitted its Response to the Request (hereinafter, the “Response”, see Annex II).
4. As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Request and to make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in this Request.

¹ The Request, Clarifications, Management Response, and all related documents, are available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22985149~menuPK:64129250~pagePK:64129751~piPK:64128378~theSitePK:380794~isCURL:Y,00.html>

² International Bank for Reconstruction and Development, Resolution 93 – 10, Resolution Establishing the Inspection Panel, September 22, 1993.

A. The Project

5. The Project is financed through a Loan Agreement between the International Bank for Reconstruction and Development (also referred to as “the Bank”) and the Republic of Kazakhstan.
6. The Project is part of the Government’s program to upgrade and improve 2,840 km of roads, which constitutes a road corridor linking Russia (and Europe) with China through Kazakhstan.³ Different donors including the Bank and the Government of Kazakhstan are co-financing separate sections of this road corridor.⁴
7. According to the Project Appraisal Document (hereinafter, “the PAD”), the objective of the Project is to increase transport efficiency along the road section between Aktobe/Kyzylorda oblast⁵ border and the city of Shymkent, and improve road management and traffic safety in Kazakhstan.⁶ The Project contributes to the upgrading of 1,062 km of road sections. The Project consists of 5 components, which are described below. Land acquisition and road design costs are financed by the Government of Kazakhstan.

Component 1 – Upgrade and reconstruction of road sections within Kyzylorda oblast (excluding the bypass to Kyzylorda), estimated at a total cost of US\$1,334.5 million equivalent, excluding physical and price contingencies, and the costs of consulting services for supervision of the construction.

Component 2 – Upgrade and reconstruction of road sections along the corridor within South Kazakhstan oblast from Kyzylorda oblast border to Shymkent (including the bypasses to Kyzylorda and Shymkent), at an estimated cost of US\$879.1 million equivalent, excluding physical and price contingencies, and the costs of consulting services for construction supervision. About 273.4 km of road sections, all of which will be dual carriageways with 4 lanes, will be reconstructed or upgraded to include road safety features and road services.

Component 3 – Contracting Project Management Consultants (PMC) estimated at US\$6.5 million equivalent. The consultant services are designed to assist the Committee

³ Project Appraisal Document to the Republic of Kazakhstan for a South West Roads Project: Western Europe-Western China International Transit Corridor (CAREC-1b&6b), April 7, 2009, (hereinafter, “PAD”) p. 7 para. 27.

⁴ PAD, p. 8 para. 27. According to the PAD, the European Bank for Reconstruction and Development (EBRD) will finance road sections between the Russian Federation border to Martuk in Aktobe oblast (102 km); the Asian Development Bank (ADB) jointly with the Japan International Cooperation Agency (JICA) will finance road sections between Taraz and Korday within Zhambyl oblast (about 321 km); the Islamic Development Bank (IDB) will finance 159 km of road sections between the border of South Kazakhstan oblast and Taraz; and IBRD (the “Bank”) finances sections of the Corridor in the South-West regions of Kazakhstan between Shymkent and Aktobe oblast border (approx 1,062 km). Moreover, the Government of Kazakhstan is financing the remaining sections of the Corridor. This in addition to the construction of 273 km of roads in Aktobe oblast (Aktobe - Karabutak – Irgiz) completed in 2006, plus 205 km of the Almaty-Bishkek road completed in 2005 with ADB and EBRD loans, and the ongoing construction of 215 km of roads in Aktobe oblast (Karabutak to the Kyzylorda oblast border) and the road section from Shymkent to the border with Uzbekistan.

⁵ An oblast is an administrative and territorial division in the former Union of Soviet Socialist Republics.

⁶ PAD, Project Development Objective p. ii.

for Roads with the management of all activities associated with the Project including the supervision of all safeguard and fiduciary aspects. Additional financing towards the full PMC costs for the whole corridor will be made by other participating International Financial Institutions (IFIs).

Component 4 – Institutional development and preparation of action plans to improve road safety and road services, including consulting services to review options to strengthen the Committee for Roads, improve the overall condition of the road network, and improve road safety and road services. This component is estimated at US\$3.5 million equivalent.

Component 5 – Consulting services for supervision of civil works under Components 1 and 2, estimated at about US\$55 million equivalent. This also includes review of detailed engineering designs and supervision of the implementation of Environmental Management Plans prepared for each road section.⁷

8. Overall progress in implementation of the Project will be monitored through: (i) reduction in transport costs; (ii) improvement in the capacity of the project implementing entities; (iii) adoption of action plans for improving road safety and road services along the corridor; and (iv) implementation of improved road management concepts.⁸
9. During the initial stages of preparation, the Project was designed to be implemented as separate phases of an Adaptable Programmatic Loan (APL). However, to respond to the Government's requirement that the entire Loan be committed upfront, as was done for other sections financed by other IFIs, the proposed financing instrument was changed from an APL to a Specific Investment Loan. Accordingly, the Project was reclassified after appraisal and placed in environmental screening Category A, which requires the environmental assessment and resettlement plans to be disclosed prior to appraisal. Senior Bank management agreed that a waiver should be sought from the Board of Executive Directors concurrently with the approval of this Project for the requirement to have disclosed these safeguards documents prior to appraisal.⁹

B. Financing

10. On April 30, 2009, the Bank approved a loan (the "Loan") to the amount of US\$2.125 billion for the Republic of Kazakhstan (the "Borrower"). The scheduled closing date for the Loan is December 31, 2013.¹⁰ According to the PAD, the Government will finance 15 percent of the cost of the Project financed by the Bank. Costs of land acquisition and compensation for

⁷ Management Response to Request for Inspection Panel Review of the Republic of Kazakhstan, Western Europe-Western China International Transit Corridor (CAREC – 1b & 6b)- South West Roads Projects (IBRD Loan No. 7681-KZ), September 16, 2011 (hereinafter, "Management Response"), pp. 4-5, para 12.

⁸ PAD, p. 9 para 30.

⁹ PAD, page *iii*, See also Management Response, p. 5, para 14-15.

¹⁰ Loan Agreement (South West Roads Project: Western Europe- Western China International Transit Corridor (CAREC 1b & 6b)) between the Republic of Kazakhstan and the International Bank for Reconstruction and Development, Loan Number 7681 KZ, June 13, 2009, p. 10.

involuntary resettlement will be paid for separately from the government budget. The Loan became effective on December 9, 2009.

11. The total cost of the entire corridor is estimated to be US\$7.5 billion, of which 37 percent is financed by the Government and the balance by the World Bank and other IFIs.
12. According to disclosed information on the Project's status the Borrower requested a restructuring of the Project to finance additional 80km of 4 lanes east of Shymkent to Zhambyl Oblast border section and additional 2 lanes on 10 km of the Kyzylorda bypass through cost-savings from Components 1 and 2. The Borrower was yet to ratify this Amendment to the Loan Agreement by the Parliament. Accordingly, works on these sections would start in spring 2012.

C. The Request

13. The claims in the Request (see Annex I) relate to four different road segments of the Project. These are located in **Turkestan**, **Sairam**, **Yntymak** and **Temirlanovka**.
14. Concerning the claims relating to **Turkestan**, according to the Request, two family members, signatories to the Request, claim that they will lose assets and income as a result of Project related land acquisition. The affected persons built a commercial facility on their land, which is allegedly affected by road upgrading in Turkestan city. The Request states that the affected persons received notification about the design and future implementation of the Project when they had just completed the construction of the commercial facility, which they are now unable to operate. The Request further states that the *Akimat* [mayor's office] refused to acknowledge their right as they relate to compensation. The Request claims that the affected persons incurred a significant loss as a result of the Project. The Request claims violation of the Bank's OP/BP 4.12 on Involuntary Resettlement.
15. Concerning claims relating to **Sairam**, according to the Request, eight affected community members claim that project related activities started on their lands before the conclusion of compensation agreements. The Request claims that excavation activities *"have not started on the lands of other citizens only because of the resistance of these landowners; such situation can lead to massive social conflict."* The Request states that recently four of the affected people have been compensated. The Panel was informed that the land in question is used for cash-crop farming. According to the Request, during a meeting on April 13, 2011, the Bank team stated that *"the Bank would not solve specific problems of individual land owners and users, and it is the prerogative of the Committee for Roads and the Project Management's consultant to do so."*
16. In the urban settlement of **Yntymak**, which stretches over 5 km along the highway out of Shymkent, according to the Request, the *"project designer"* asserts that the distance from the road to the settlement is 35-40 meters. The Request claims that the designer's assertion *"does not reflect reality"*; that the distance is only 15-20 meters. The Request further states that this should result in installation of noise fences at a distance of only 5 meters from the residential houses and that the trees that are planted alongside the existing roads in Yntymak

“will be felled during the implementation of the project.” Furthermore, the Request questions whether the Technical Specifications of the contracts with construction companies are in accordance with the Bank’s environmental safety standards. The Requesters raise concerns relating to the Bank’s OP/BP 4.01 on Environmental Assessment (EA).

17. Finally, the Request states that the Environmental Impact Assessment report (EIA) relating to the bypass in **Termirlanovka** *“[d]oes not comply with the instructions on assessing the impact of proposed (...) activities on the environment”*, stated in the Bank’s EA Policy. The Requesters states that their *“right to participate in decision-making processes on matters related to the environment”* was violated, because of the limitations on their *“right to express [their] opinions during the environmental expertise review.”* The Requesters allege that the EIA report for the Temirlanovka bypass includes *“neither analysis nor mitigation plan.”* They state that this EIA report is not taking into consideration the local flora and fauna, including the *Tugai* forest.¹¹ They add that the *Tugai* forest and the Arys River ecosystem will suffer direct and irreversible impact from the project. They further state that the EIA report does not properly assess potential flooding such as the one that occurred in February 2009. Such alleged failures according to the Request, represent non-compliance with the Bank’s EA Policy, and raise concerns relating to the Bank’s Policy on Access to Information and the United Nations Economic Commission for Europe’s Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). The Requesters attached to the Request for Inspection a document containing the EIA-related concerns and suggestions, which they also sent to Management on October 19, 2010.
18. The above claims expressed in the Request may constitute, *inter alia*, non-compliance by the Bank with various provisions of the following Operational Policies and Procedures:
- OP/BP 4.01 Environmental Assessment
 - OP/BP 4.04 Natural Habitats
 - OP/BP 4.12 Involuntary Resettlement
 - OP/BP 13.05 Project Supervision
 - OMS 2.20 Project Appraisal
 - The World Bank Policy on Access to Information, July 1, 2010

D. Management Response

19. As stated earlier in this Report, Management submitted its Response (see Annex II) on September 16, 2011. In its Response, Management states that the *“Bank has made diligent efforts to apply its policies and procedures in the context of the planning for, and implementation of, this Project.”* Management adds that in its view, the Bank has followed its policies and procedures and that *“neither the Requesters’ rights nor interests have been*

¹¹ *Tugai* forests are floodplain forests found in Central Asia. *Tugai* are found in river valleys where water is close to the surface of the ground. The Requesters indicate that in this *Tugai* grow willows, silver oleaster, cheegrass, and tamarisk. They state that animal species such as ducks, herons, pheasants, birds of prey, and jackals live there, and that barbell, catfish, and other types of small fish are found in the river.

*adversely affected by a failure of the bank to implement its policies and procedures.”*¹² Management Response also adds that this Project involves road improvement across a 1,065km alignment and that in projects of “*such technical and administrative complexity, planning and implementation issues can arise at any point in time, reflecting unanticipated situations (...) as is the case of this Request.*”¹³

20. In Management’s view, the Request for Inspection is based on “*assumed outcomes of ongoing activities and a misplaced assumption that no actions are being taken to address the issues raised by the Requesters.*”¹⁴ However, Management acknowledges all issues raised in the Request. Management adds that such issues are typical and “*need to be identified and addressed as they arise in the course of Project implementation, as is being done.*”¹⁵
21. While noting that the grievance process was not raised by the Requesters specifically, Management adds that the Project has “*multiple channels to identify and address issues promptly and on ongoing basis.*”¹⁶ The first channel involves “*Project Affected Persons lodging complaints or concerns with local government officials (the akimat)*”.¹⁷ The second channel is provided by “*the Project comprising grievance coordination functions undertaken by designated staff employed by supervision consultants for each road section financed through the Project.*”¹⁸ Management Response also adds that these grievance coordinators deal with complaints or concerns relating to contractor performance and damages that might be caused as a result of civil works.¹⁹
22. Management Response states that brochures describing procedures and providing contact information have been disseminated, and were available at local *akimats* visited by the Bank in April 2011.²⁰ Management Response further states that “[m]any complaints have been addressed in a satisfactory manner, and additional measures are being introduced to improve the systemic recording of grievances and reporting on actions taken.”²¹ Management Response states that the Committee for Roads of the Republic of Kazakhstan has actively engaged with the Requesters in response to issues raised in the Request. Management Response also states that “[t]o date, the Committee’s record is strong in resolving complaints, as evidenced by several measures to redesign particular road segments in response to consultations with local communities.”²²
23. Management Response then addresses the four issues raised by the Request. With regard to the claim relating to **Turkestan**, Management notes that the Resettlement Action Plan (RAP) is in place and has identified the signatories as “*potentially Project Affected Person*” and that

¹² Management Response, p. iv.

¹³ Management Response, p. 9, para. 26.

¹⁴ Management Response, p. 9, para. 25.

¹⁵ Management Response, p. ii.

¹⁶ Management Response, p.iii.

¹⁷ Management Response, p. 7, para. 19.

¹⁸ Management Response, p. 7, para. 19.

¹⁹ Management Response, p. 7, para. 19.

²⁰ Management Response, p. 7, para. 20.

²¹ Management Response, p. 7, para. 21.

²² Management Response, p. 9, para. 27.

the compensation will be based “on both the final determination regarding [the] property and land requirements of the Project.”²³ Management Response also states that the Committee for Roads has been engaged in seeking a resolution to the issue, with the direct involvement of “high-ranking Project officials (...) and rayon akimat.”²⁴ Management Response also states that the Bank has informed the Committee for Roads that the compensation “will need reassessment, based on the actual impacts that eventually may occur, and taking into account inflation that may have occurred since the initial assessment.”²⁵

24. With regard to premature start of works in **Sairam**, Management notes that during its field visit in August 2011, the Bank was informed that a contractor “had moved equipment onto private property and initiated works on lands for which compensation arrangements were still subject to dispute, and for which compensation had not been paid at the time.”²⁶ According to Management, this incursion lasted “about one day” and the extent of works involved only “some scraping and removal of topsoil.”²⁷ Management further states that “the Requesters do not claim that any material harm resulted from the incursion” and that therefore, “no further action is required in relation to this incursion.”²⁸
25. With regard to the issues related to **Yntymak**, Management states that the Bank and the Committee for Roads are actively engaged in responding to the community’s concerns. According to Management, in a recent visit that took place in August 2011, the Bank found that “prospects for effective redesign – satisfying city road design standards and local residents – are limited by the spatial constraints of this narrow area in which the alignment must be situated.”²⁹ Management further states that it has made suggestions regarding possible options to reduce or mitigate environmental risks, but that “at present it is not possible for the Bank to state whether an appropriate design can be achieved without recourse to further land acquisition and population displacement.”³⁰ Management affirms that it will ensure that consultations take place as soon as a draft revised design is available.³¹
26. When addressing the issues associated with EIA report for the **Temirlanovka** bypass, Management concurs with the Requester’s assertion that the referred EIA document lacks specific references to a range of environmental issues that are relevant in constructing a road bypass in that location.³² Management Response states that the current EIA is “largely generic and is lacking in information and analysis regarding site-specific conditions and issues.”³³ Management agrees that effective and timely consultation is essential, but that in

²³ Management Response, p. 10, para. 30.

²⁴ Management Response, p. 11, para. 32.

²⁵ Management Response, p. 11, para. 32.

²⁶ Management Response, p. 13, para. 43.

²⁷ Management Response, p. 13, para. 43.

²⁸ Management Response, p. 14, para. 46.

²⁹ Management Response, p. 11, para. 34.

³⁰ Management Response, p. 11, para. 34.

³¹ Management Response, p. 11, para. 35.

³² Management Response, p. 12, para. 39.

³³ Management Response, p. 12, para. 39.

order to have such consultations, “*the document needs to be ready.*”³⁴ Management Response also states that the current EIA has not been approved by the Bank, and that once it has been revised and improved to a state acceptable to the Bank, “*it will be duly shared with the public and consultations organized.*”³⁵ According to Management, OP 4.04 would only be triggered if Temirlanovka bypass redesign involves potential impacts on natural habitats, and that since the proposed area is in close proximity to a rayon center, “*both the river and adjacent land areas are already significantly degraded as a result of heavy human use.*”³⁶

27. Finally, Management believes that it “*has been fully responsive to the issues raised, and has made every effort to apply its policies and procedures in the context of the Project.*”³⁷ Management also declares that it will continue to monitor all aspects of implementation, including the issues raised by the Requesters, to ensure full compliance with Bank policies.³⁸

E. Eligibility

28. According to the 1999 Clarifications,³⁹ the Panel’s determination of eligibility is based on information presented in the Request, on the Management Response and on other documentary evidence.⁴⁰ The Panel may also visit the country if it believes that this is necessary for the determination of eligibility. The Panel must determine whether the Request satisfies the eligibility criteria set forth in the 1993 Resolution establishing the Panel and further elaborated in the 1999 Clarifications and recommend whether the matters alleged in the Request should be investigated.
29. The Panel has carefully reviewed the Request and Management Response. Panel Member Alf Jerve together with Panel Senior Operations Officer Serge Selwan visited Kazakhstan between September 26 and October 1, 2011. During its visit, the Panel team visited Turkestan, Sairam, Yntymak and Temirlanovka and met with the different Requesters. The Panel team also met with Government officials in Astana and Shymkent and with the *Akimat* in Turkestan. Furthermore, the Panel team met with staff of the World Bank country office.
30. The Panel has determined the eligibility of the Request in light of the eligibility criteria set forth in the Paragraph 9 of the 1999 Clarifications and is satisfied that the Request meets all the six eligibility criteria.
31. Criterion (a): “*The affected party consists of any two or more persons with common interests or concerns and who are in the borrower’s territory.*” The Panel confirms that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Panel. The Requesters live in areas potentially affected by the Project and have common interests and common concerns.

³⁴ Management Response, p. 12, para. 40.

³⁵ Management Response, p. 12, para. 40.

³⁶ Management Response, p. 13, para. 41.

³⁷ Management Response, p. 14, para. 47.

³⁸ Management Response, p. 14, para. 47.

³⁹ Conclusions of the Board’s Second Review of the Inspection Panel (the “1999 Clarifications”), April 1999.

⁴⁰ 1999 Clarifications, paragraph 7.

32. Criterion (b): “*The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester.*” The Panel confirms that the Request asserts that some of the Requesters (in Turkestan and Sairam) will suffer undue losses because of the land acquisition process and that they claim that their loss of assets and potentially generated income will not be properly compensated.
33. The Panel confirms that other Requesters assert that the design for road widening in Yntymak will affect their livelihoods and is not done according to standards consistent with Bank Policies. They claim that the current design will contribute to limiting access to their commercial structures. Finally other Requesters assert that the Environmental Impact Assessment for the bypass of Temirlanovka is of poor quality and is neither analyzing the impacts of the bypass, nor proposing measures to mitigate potential impacts.
34. It is the Panel’s consideration that there is a credible link between these alleged harms and the Project, and that such potential material adverse effects on the requesters and harm to the environment may result, at least partly, from non-compliance with Bank operational policies and procedures.
35. Criterion (c): “*The request does assert that its subject matter has been brought to Management’s attention and that, in the Requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.*” The Panel confirms that the Bank has been aware of the Requesters’ concerns about the Project’s impacts on them and their communities and that, in the Requesters’ opinion at the time of submitting the Request, they were not satisfied with Management’s response.
36. Criterion (d): “*The matter is not related to procurement*”. The Panel is satisfied that the claims with respect to harm and non-compliance included in the Request for Inspection do not raise issues of procurement under the Project.
37. Criterion (e): “*The related loan has not been closed or substantially disbursed*”.⁴¹ As stated above, the closing date of the Loan is December 31, 2013. As of the date the Request was filed about 80 percent of the Loan was yet to be disbursed.
38. Criterion (f): “*The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request*”. The Panel confirms that it has not previously made a recommendation on the subject matter of the Request.
39. On April 29, 2010, the Panel registered a first Request for Inspection related to a different section of the Project and raised different concerns. In that case, in light of the satisfactory resolution of key matters of concern to the Requesters and the positive Response to the

⁴¹ According to the Resolution that established the Panel, “*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*” Footnote to Paragraph 14 (c).

Requesters concerns documented in the Management Response, the Panel did not recommend an investigation.

F. Observations

40. In this section, the Panel summarizes its observations concerning the specific allegations raised by the Request relating to the four areas referred to therein. The Table below on page 16 presents the timelines of key events related to the four areas. Secondly, the Panel makes some observations related to issues of principle pertaining to the credibility of the Request mentioned in the Response and to systemic issues with respect to grievance redress and public consultation also mentioned in the Response.
41. **On the specific claims in the Request.** With regards to the case in the town of **Turkestan**, the Panel team was informed that the Requesters built a commercial facility in 2008 with the intention to operate it in 2009. According to the Requester, his problems started in early 2009 when he was informed that, because of the Project, he needed to stop his venture and that he would be compensated for his loss. The Panel team was informed that compensation was not paid due to a dispute over the paperwork showing the size of the plot, which may or may not be less than what the Requester operates. The Panel team was also told that the Requester did not have the required technical certificates for the building itself, and that these could not be issued in the absence of a valid title deed on the land. Furthermore, the Panel team was told that this dispute, depending on how it was resolved, would lead to different valuation of the assets; hence, the compensation could not be awarded.
42. Project officials informed the Panel team that the matter was in the hands of the judiciary in Shymkent and that they had no stake in the dispute, and would compensate the Requester according to what he would be legally entitled to. They also stated that it was seeking a resolution of the matter so that it could proceed with the road works, which has been suspended at this site. In Turkestan, the Panel team met with the Requester and with the Akimat separately. Both informed the Panel team that they wanted the matter resolved. They also informed the Panel team that there was no ownership dispute between the Requester and any other private individual; and the main issue was to determine the area over which the Requester could claim ownership. If it was deemed smaller than what he was currently occupying, the remainder would fall back into public domain. The Requester told the Panel team that he would file for a fourth Court application to finalize all his entitlements due to acquisition of his land and assets.
43. The Akimat confirmed that it was aware of the South Kazakhstan Region Resettlement Action Plan (SKR/RAP) agreed between the Government and the Bank, and that this contained provisions and entitlements not enshrined in the laws of Kazakhstan. Considering the need to advance the Project, the Akimat informed the Panel team that it would assist the Requester to obtain a court ruling reflecting his rights under the RAP.
44. The Panel wishes to note the following provision in the SKR/RAP: *“regarding the issue of land use without title the Borrower has clearly committed to adhering to WB safeguards policies during Project implementation, including the World Bank’s procedures for*

*compensating land users without formal title equally to those with formal titles.”*⁴² The Panel notes that this may be of relevance to the Turkestan case.

45. With regard to the “*premature*” start of road works in **Sairam**, according to the Management Response, “*one contractor was misinformed and prematurely entered privately leased land.*”⁴³ During its visit, the Panel team was informed that the contractor had undertaken some minor activities on agricultural land for which the owners had not yet received compensation. Project officials in Shymkent informed the Panel team that all but one of the eight Requesters had agreed on the compensation, and were paid accordingly. The compensation for the eighth owner was pending verification of the valuation of the assets that would be acquired. During its visit to Sairam, the Panel team confirmed that seven of the Requesters had received compensation and were satisfied. As for the eighth Requester, he informed the Panel team that he had reached a compensation agreement with Project proponents and, although he was going to respect it, he expressed some second thoughts because he believed he agreed to less than what he was owed.
46. The Panel team was informed that the different Requesters held agricultural land based on a 49-year lease from the State. The Panel notes that there was a certain level of confusion concerning the valuation of such land when acquired. The Panel team was told that Kazakhstan law requires that compensation for the acquisition of arable land that is under long-term lease from the State, would be based on an estimate of loss of future income from the land during the remaining lifetime of the contract. The Panel notes that the SKR/RAP states that the Land Code of the Republic of Kazakhstan (CODE No. 442 of 20 June 2003) requires that “*in the case of land under lease, the land user is compensated for the full amount of losses and may be granted an alternative plot.*”⁴⁴ The Panel further notes that the Entitlement and Compensation Matrix (hereinafter, “the Matrix”) listed in the SKR/RAP requires that long term leaseholders of State-owned arable land, are given cash compensation based on the market value of gross yield (3-year average); compensation for trees or other fixed assets; and, renewed lease in alternative plot, irrespective of the impact’s severity.⁴⁵ Furthermore, the Panel notes that this provision was not included in a Kazakh and Russian version of the Matrix disclosed as part of an information leaflet describing the SKR/RAP. The Panel team was informed by Requesters in Sairam that they never saw this leaflet.
47. The Panel notes that this case is an example where the interpretation of the Matrix (which seems to indicate that one year of loss of future income should be compensated for) and the interpretation of Kazakhstan Law (which seems to require that calculation of the compensation for loss of future income should include all remaining years until the term of the contract) may be at odds. The Panel also notes that confusion over the valuation method may have been the reason behind the delayed resolution of the eighth case in Sairam.
48. With regard to the issues related to **Yntymak**, Project officials informed the Panel team that during consultations, community members wanted the Project to avoid any harm to them and

⁴² South Kazakhstan Region Resettlement Action Plan (hereinafter, “SKR/RAP”), March 2011, p. 23, para. 3.28.

⁴³ Management Response, p.iii.

⁴⁴ SKR/RAP, p.18, para. 3.3.

⁴⁵ SKR/RAP, p.25, para. 4.2.

their livelihoods and had asked for the construction of noise barriers and the plantation of trees. Project officials also informed the Panel team that the new design in the neighborhood of Yntymak would take into consideration suggestions to reduce the width of lanes and the width of the separation between both sides of the traffic to create space for construction of noise barriers and/or the planting of trees. The Panel team was also informed that this new design would be completed by end of October or early November.

49. During its visit to Yntymak, the Panel team met with a large group of the neighborhood's community members, including some of the Requesters. The Panel notes that most of the people it met with either owned or managed a business along the road in Yntymak. The Panel further notes that their concerns related mainly to safeguarding access to their businesses and not losing much of the parking space currently available to them. Many also expressed concerns over their children's safety from: i) crossing the road; and/or, ii) climbing over the noise barrier or fence if it was to be constructed. The majority of affected people in the meeting expressed their desire to have a "decorative fence" combining trees and hedge plants between the road and their stores. They asked that, while the new design should take into account the Government's proposals, they should be further consulted.
50. The Panel team was accompanied during this visit by a representative of the Project Management Consultant⁴⁶ who informed the community members that he was going to relay their concerns and desires to the road designers. He also mentioned that once the design was finalized, it would be shared with the community members who would have another opportunity to provide their feedback.
51. With reference to the concern associated with the EIA report for the **Temirlanovka** bypass, the Panel team visited the area to get a clearer picture of the area that would potentially be impacted by the bypass. The Panel team visited the floodplain forest area along the Arys River over which a bridge would be built to serve the bypass.
52. The Panel team was told that the forest was partially burnt down in the 1970s so that the land could be used for agriculture and that most of the current forest was secondary. The Panel team noticed the existence of some trees that seemed to be very old. Concerning the fauna living in the forest, the Panel team was informed that there was no knowledge of endangered (Red-list) species and that a full inventory of plant and animal species had not been carried out.
53. The Panel team informed the Requesters that the Bank, in its Response, concurred with their views concerning the generic nature of the EIA report and its lack of specificity and analysis. The Panel team also informed the Requesters that the Bank regards this EIA report as a draft which is not yet sufficiently advanced for meaningful public consultation and that the Bank considers that once the Bank finds that the EIA is acceptable for this purpose consultations

⁴⁶ According to the Management Response, the consultant services provided by the Project Management Consultant "are designed to assist the Committee for Roads with the management of all activities (...), including the supervision of all safeguard and fiduciary aspects (...). The main beneficiaries will be the Committee for Roads and the [Ministry of Transport and Communications] from improved efficiency in Project implementation and management of the road network." See Management Response p. 4 para. 12.

should occur as soon as possible. The Panel notes the satisfaction of the Requesters with the Bank's position vis-à-vis the EIA, and the Requester's concern that a revised EIA ensures that impacts on the floodplain forest are minimized.

54. In summary, the Panel wishes to note that **with regard to the four separate issues** raised in the Request, the Requesters acknowledged that their concerns now were either resolved or are about to be resolved. They added that their concerns had not been given due attention and that the Panel process had brought their concerns to a higher level of decision-making, which contributed to the resolution of these concerns.

55. **Issues of Principle Pertaining to the Credibility of the Lead Requester.** The Panel notes Management's statement "*that the Lead Requester's other activities in connection with the Project may lead to confusion or even a conflict of interest on his part.*"⁴⁷ The Panel would like to clarify that the involvement in Project activities does not, *per se*, create a conflict of interest and prevent affected people, or their representatives, from approaching the Panel to seek accountability and recourse. Approaching the Panel is part of a legitimate effort to support the achievement of the Project's development objectives. Accordingly, the Panel wishes to record its concern with the above statement that seemingly attempts to cast doubt on the legitimacy of the Request.⁴⁸

56. The Panel wishes to note that similar concerns with respect to the role of the Lead Requester were not raised by the parties met in Kazakhstan. While some disagreed with the Lead Requester on particular issues, his role as an interlocutor between local communities and affected persons and the Project authorities was acknowledged and appreciated. The Panel wishes to acknowledge the sense of open cooperation and commitment to development effectiveness shared among the parties met. This was confirmed during the Panel's visit to South Kazakhstan Oblast, where the Lead Requester and the Project's resettlement specialist (contracted by the PMC) attended all meetings - i.e. with the Department of Roads, Turkestan local government (Rayon Akimat) and Requesters (in Turkestan, Yntymak and Sairam).

57. The Panel further notes that Management in its Response seems to express the view that the Requesters should not have submitted the Request to the Panel. The Response states "*that actions of the Lead Requester have the effect of escalating these issues under the assumption of a harmful outcome before the ongoing efforts to resolve them have been exhausted*"⁴⁹ and that the "*Request for Inspection is based on assumed outcomes and a misplaced assumption that no actions are being taken to address the issues*"⁵⁰ and that "*the multiple roles of the Lead Requester in relation to this Project contribute to premature claims.*"⁵¹

⁴⁷ Management Response, p. 8, para. 24.

⁴⁸ The Panel wishes to note that this is not the first time Management makes statements attempting to discredit Requesters' role and concerns as stated in recent Management Responses. The Panel expresses its concern that this trend may reflect negatively on the World Bank's overall objective to promote sustainable development and accountability. It may also create reluctance on the part of Requesters to voice their concerns and seek recourse for harm that might be caused by Bank Projects.

⁴⁹ Management Response, p. 8, para. 24.

⁵⁰ Management Response, p. 9, para. 25.

⁵¹ Management Response, p. 8, para. 24.

58. The Panel wishes to note that the Panel Resolution provides the opportunity for project-affected people to bring claims to the Panel on issues of non-compliance by Management and related harm during the design, appraisal and implementation of Bank-financed projects. Furthermore, in this particular case, the Panel notes that the Requesters raised their concerns on several occasions with the Project team and that there seems to have been ample opportunities to address these concerns (see table “*Chronology of Issues Raised by the Requesters*” below on page 16). The Panel does not consider the Requesters’ claims to be “premature” at this stage.
59. While Management does not explicitly refer to the Panel process in this context, it is important to note that for Requesters to raise their concerns before the Inspection Panel cannot be viewed as having the effect of escalating these issues. Rather, it is a legitimate exercise of their rights – granted by the Bank’s Board of Executive Directors under the Panel Resolution and its Clarifications – to approach the Panel for an independent review of Management actions or omissions. The Panel would like to add that the Panel process is not, and cannot be regarded as, an appeals instance for Project level grievance mechanisms. Moreover, the fact that there is a grievance mechanism in a project does not necessarily mean that this mechanism has been established and is operating in full compliance with Bank operational policies and procedures. Affected people have the right to ask for an independent review of Management’s actions with regard to such a mechanism.
60. **Systemic issues with respect to grievance redress and public consultation.** The Panel notes that Management is of the view that adequate mechanisms are in place to address grievances related to the Project, which “*has multiple channels to identify and address issues promptly and on an ongoing basis. The Project has supplemented the existing domestic channels for grievance redress with a project level grievance mechanism which provides for grievance coordinators appointed by the supervision consultant for each section of the road.*”⁵² The Panel team met with some grievance coordinators who are employees of supervision engineers and act as contact points for complaints during implementation. Few complaints have been registered to date.
61. The Panel further notes that with respect to complaints concerning land acquisition, compensation and resettlement, the SKR/RAP outlines the Court as the final arbiter. The RAP prescribes entitlements to affected people that are not enshrined in relevant Kazakh laws. As noted above, the two cases in the Request which relate to land acquisition seem to indicate that there is a lack of understanding, among affected people as well as officials, of how to apply certain provisions in the entitlement Matrix in the SKR/RAP.
62. The Panel notes that Management states in its Response that “*in most cases those issues were already known and in the process of being resolved*”⁵³, which poses a broader question of whether involving the Panel in this Project has provided tangible benefits to requesters as well as development effectiveness more generally. When the Panel team raised this question during its visit, the Lead Requester and other observers noted major improvements in the role

⁵² Management Response, pp. iii-iv.

⁵³ Management Response, p. 8, para. 24.

and involvement of civil society in recent years. Different stakeholders mentioned to the Panel team that the Project represents an important arena for learning for all parties, including the NGOs themselves, and the role of the Bank, including the Panel, was mentioned as a significant factor. The recent initiative by the Government and the Bank to establish a multi-stakeholder monitoring mechanism was mentioned as an important step towards greater transparency and accountability.

63. The first Panel Request, mentioned in paragraph 39 above, and the effective efforts to address the concerns of the Requesters by the Government and Management that followed, were acknowledged. In addition, this process, according to the Lead Requester, was a breakthrough in fostering mutual respect and enhancing the role of NGOs: *“the Panel process had been a capacity building experience for all involved.”*
64. Finally, the Panel notes the efforts made by Project authorities to meet with potentially affected persons and distribute information on the Project and the SKR/RAP in particular. People with whom the Panel team met were aware of the information leaflet prepared by the PMC. The Panel wishes to record, however, that certain provisions in the SKR/RAP appear not to be well known or understood. Furthermore, for reasons not clear to the Panel, some sections in the English version of the Matrix do not appear in the Russian and Kazakh version (i.e. in the information leaflet). These pertain to some entitlements for sharecropper, encroacher and informal land user, owner/leaseholder losing more than 10% of productive land, renter/leaseholder of residential/commercial land, loss of permanent or temporary employment or business, assistance in relocation, and assistance to vulnerable people.

G. Recommendation

65. The Panel has examined the eligibility of the Request for Inspection in light of the technical eligibility criteria provided in Paragraph 9 of the 1999 Clarifications and is satisfied that the Request meets these criteria.
66. The Panel notes that, in this particular case, Management in its Response has acknowledged the Requesters’ concerns in the four above mentioned areas. It is the Panel’s view that Management has demonstrated that actions were and are being taken to resolve these concerns. The Panel also notes that the Requesters, who highlighted to the Panel team that the engagement of the Panel has brought more attention to their grievances, are satisfied with the fact that their concerns were either resolved or about to be resolved.
67. In light of the specific elements relating to this case and the specific claims, as listed above, and pursuant to paragraph 5 of the 1999 Clarification, which states that the Panel *“will satisfy itself as to whether the Bank’s compliance or evidence of intention to comply is adequate, and reflect this assessment in its reporting to the Board,”* and based on Management’s representation in its Response and the observations of the Panel team in the field, the Panel does not recommend an investigation of whether the Bank has complied with its operational policies and procedures with respect to the allegations contained in the Request for Inspection. If the Board of Executive Directors concurs with this recommendation, the Panel will advise the Requesters and Management accordingly.

Chronology of Issues Raised by the Requesters

Compensation in Turkestan	Road Design in Yntymak	Environmental Impact Assessment for Temirlanovka bypass	Compensation in Sairam
<u>January 7, 2010:</u> Turkestan Requester writes the Panel raising his concerns – the Panel asks him to raise his concerns with Management first	<u>July 19, 2009:</u> Pursuant to public consultations 84 people issue a statement requesting changes in the road design for Yntymak	<u>October 19, 2010:</u> Lead Requester emails Management about concerns related to the Temirlanovka Bypass EIA report	<u>March 2011:</u> Contractor starts excavations on the land belonging to Requesters
<u>February 15, 2011:</u> Lead Requester writes Management about different concerns including concerns over the Resettlement Action Plan	<u>July 30, 2009:</u> In a meeting with Bank staff and local officials, Lead Requester raises the concerns stipulated in the statement mentioned above	<u>October 29, 2010:</u> Lead Requester hands NAIR's comments on the EIA to the Natural Resources Department in South Kazakhstan Oblast	<u>April 4, 2011:</u> South Kazakhstan Oblast's concludes a compensation agreement with each of the Requesters
<u>March 11, 2011:</u> Turkestan Requester writes Management raising his concerns	<u>August 24, 2009:</u> Lead Requester writes Bank staff and Project officials again raising the issues listed in the statement mentioned above	<u>November 1, 2010:</u> Another member of NAIR sends the same comments to the Natural Resources Department in South Kazakhstan Oblast	<u>April 12, 2011:</u> The Department for Roads terminates the compensation agreement
<u>April 13, 2011:</u> Lead Requester meets with Bank staff on the same issue and is not satisfied with the response	<u>August 30, 2009:</u> Discussion over Yntymak issues during a town hall meeting in the presence of Bank staff	<u>November 25, 2010:</u> Lead Requester writes the Natural Resources Department in South Kazakhstan Oblast asking for reactions	<u>April 13, 2011:</u> Lead Requester meets with Bank staff on the same issue and is not satisfied with the response
	<u>September 11, 2009:</u> Lead Requester sends similar letter to the South Kazakhstan Department of Environment	<u>December 7, 2010:</u> Lead Requester is informed that he would receive a response within three months	
	<u>September 28, 2009:</u> Lead Requester sends another letter to Bank staff and Project officials on the same issues	<u>April 13, 2011:</u> Lead Requester meets with Bank staff and is informed that EIA is done	
	<u>April 13, 2011:</u> Lead Requester meets with Bank staff on the same issues and is not satisfied with the response		

ANNEX I

REQUEST FOR INSPECTION

REQUEST FOR INSPECTION (Original Russian)

От 15 июня 2011 года

ИСПОЛНИТЕЛЬНОМУ СЕКРЕТАРЮ
ИНСПЕКЦИОННОГО СОВЕТА

To: Executive Secretary; The Inspection Panel

1818 H Street, NW, Washington, DC 20433, USA

Факс: 202-522-0916; or c/o the appropriate World Bank Country Office

ЗАПРОС НА ПРОВЕДЕНИЕ ПРОВЕРКИ

1. Мы, граждане Республики Казахстан:

I. АБУБАКИР БАУЫРЖАН МУХТАРОВИЧ и ДУСЕБАЕВА ГУЛЗИРА АБДУГАФФАРОВНА, проживающие по адресу: Республика Казахстан, Южно-Казахстанская область, город Туркестан, ул. Бабай батыра, дом 16, в лице своего представителя ИСАЛИЕВА БАУЫРЖАНА МОМЫНЖАНУЛЫ.

II. ИСАЛИЕВ БАУЫРЖАН МОМЫНЖАНУЛЫ и ШВЕЦОВА ЕЛЕНА АЛЕКСАНДРОВНА представляем лиц, проживающих в Республике Казахстан, Южно-Казахстанская область, город Шымкент, микрорайон Ынтымак.

III. Общественное объединение «Национальный Аналитический Информационный Ресурс» (ОО «НАИР») в лице ИСАЛИЕВА БАУЫРЖАНА МОМЫНЖАНУЛЫ, БУРМИНСКОГО ДМИТРИЯ МИХАЙЛОВИЧА, МОЛДАБЕКОВА СЕРИКА БИУЗАКОВИЧА, проживающих в Республике Казахстан, Южно-Казахстанская область, город Шымкент, представляют интересы жителей ЮКО.

IV. ИСАЛИЕВ БАУЫРЖАН МОМЫНЖАНУЛЫ и НЫСАНОВ БАУЫРЖАН ТУРСЫНБАЕВИЧ, представляем лиц, проживающих в Республике Казахстан, Южно-Казахстанская область, Сайрамский район, аулы Курлык, Таскешу, Комешбулак, Ширкин, село Аксукент.

Наши адреса прилагаются.

2. Нам может быть причинен ущерб в результате недостатков или упущений Всемирного Банка в ходе реализации Проекта «Развитие автомобильных дорог Юг-Запад: Международный транзитный коридор "Западная Европа-Западный Китай" (ЦАРЭС-1b &

6b)», (Заем МБРР № 7681-KZ) (Проект Коридора), осуществляемого в Республике Казахстан

3.

I. Проектным решением участок проектируемой дороги по городу Туркестан намечен по существующей объездной трассе. На пересечении улиц М.Шокай и Ж.Карменов вдоль проектируемой трассы расположен земельный участок, принадлежащий гражданину АБУБАКИР Б.М. на праве частной собственности. На земельном участке построен коммерческий объект - магазин по продаже строительных материалов. Для строительства этого объекта владелец использовал свой семейный капитал, а также займы близких знакомых, коллег по бизнесу и банковский кредит в размере 45000\$ с процентной ставкой 3000\$ в год. Уведомление о начале проекта реконструкции автодороги Западная Европа - Западный Китай АБУБАКИР Б.М. получил именно в тот момент, когда он закончил строительство объекта, но не смог начать его эксплуатацию и получение планируемого дохода. В связи с чем, он стал неплатежеспособным кредитором, его задолженность по всем полученным займам увеличивается с каждым месяцем. Таким образом, необходимо на основании имеющихся финансовых документов посчитать сумму упущенной выгоды вышеуказанного объекта бизнеса. Кроме того, перед коммерческим объектом на государственной земле АБУБАКИРОМ Б.М. оборудована благоустроенная площадка для автостоянки автомашин покупателей. Необходимо компенсировать и эти расходы. Решением коллегии по гражданским делам Южно-Казахстанского областного суда по кассационной жалобе АБУБАКИРА Б.М. коммерческий объект узаконен. Однако Туркестанская городская администрация отказала АБУБАКИРУ Б.М. в выдаче правоустанавливающих документов по принятию магазина в эксплуатацию. Более того, свой отказ представители местного органа государственной власти не оформляют письменно, лишая АБУБАКИРА Б.М. возможности обратиться в суд с исковым заявлением на действия чиновников. В то же время они, злоупотребляя своими полномочиями, неоднократно пытались снести оборудованную автостоянку перед магазином силами строительно-подрядной организации «DENA RAHSAZ CONSTRUCTION Co.», с которой Правительством Республики Казахстан заключен контракт по лоту км 2057 – км 2111 автодороги граница Российской Федерации (на Самару) - Шымкент.

II. Обсуждаемая проблема касается проекта «Реконструкция автомобильной дороги граница Российской Федерации (на Самару) – Шымкент км 2231 – км 2260». 30 июля 2009 года на совещании по вопросам реализации проекта «Западная Европа-Западный Китай» по Южно-Казахстанской области с участием представителей Всемирного Банка, Аппарата акима области, Комитета автодорог Минтранскома Республики Казахстан, областного Департамента автодорог, заинтересованной общественности, проектных, земельных и других заинтересованных сторон в числе других поднимался нижеследующий вопрос:

- Проектировщик утверждает, что выполненные расчеты в местах расположения застройки с учетом наличия ограждений высотой 2-3 метра, выполняющих роль защитных экранов, позволяют установить, что концентрация токсичных веществ, содержащихся в отработавших газах (оксидов углерода, углеводородов, сажи, соединений свинца в воздухе) находятся в пределах допустимых концентраций на расстоянии 35-40 метров от ближайшей полосы движения и не будут оказывать отрицательного влияния на окружающую среду. На самом деле, в микрорайоне Ынтымак, расположенном вдоль трассы на расстоянии 5 км, расстояние между линиями застройки противоположных жилых домов в самой широкой части дороги составляет 54,7 метров. При проектируемой проезжей части 15 метров на каждую сторону дороги до линии застройки остается максимум 20 метров вместо 35-40, как утверждает проектировщик.
- Утверждение проектировщика о том, что расстояние от проектируемой автодороги до населенного пункта Ынтымак составляет 40 метров, не соответствует действительности, оно равно 15-20 метров.
- Отрицательное влияние шума на условия проживания населения поселка Ынтымак не будет оказано при условии установки заборов на расстоянии 10 метров от дороги, утверждает проектировщик; следовательно, заборы должны быть установлены на расстоянии 5 метров от линии застройки жилых домов.
- Как утверждает проектировщик, существующие лесополосы вдоль реконструируемой автодороги расположены на расстоянии 30-40 метров от оси полосы движения, тогда как требуемая ширина полосы отвода под реконструкцию автодороги составляет от 16 до 28 метров от оси дороги. Следовательно, при реконструкции автодороги существующие лесополосы вырубке не подлежат. На самом деле, в поселке Ынтымак по обочине существующей автодороги расположены деревья, которые будут вырублены в ходе проекта.

Мы поставили общий вопрос: насколько это соответствует стандартам экологической безопасности?

В своем ответе заместитель Председателя Комитета автодорог ОМИРБАЕВ Н.Б. сообщил, что свои замечания заинтересованная общественность может подать после заключения контрактов со строительно-подрядными организациями. В Технических Спецификациях контрактов эти замечания будут учтены и включены в задания подрядным организациям, если они обоснованы. По микрорайону Ынтымак, как сказал ОМИРБАЕВ Н.Б., можно рекомендовать меры по экологическим требованиям.

Эту проблему мы поднимали перед Шу-Таласским Департаментом экологии Министерства охраны окружающей среды Республики Казахстан в сентябре 2009 года.

В начале июня 2011 года мы получили Технические Спецификации по данному лоту из офиса Консультанта по управлению проектом (КУП) и из Комитета автодорог. При изучении данного документа мы выяснили, что рекомендации проектировщика, изложенные в отчете ОВОС, по оборудованию шумозащитного экрана и посадки декоративных лесонасаждений с полным техническим описанием не учтены

На основании изложенного, мы настаиваем на внесении в Технические Спецификации контракта компании «KUKDONG ENGINEERING & CONSTRUCTION CO. LTD» изменений, связанных с выполнением требований и стандартов экологической безопасности Всемирного Банка и экологического законодательства Республики Казахстан, а именно:

- 1) оборудование шумозащитного экрана на 2255-2258 километре проектируемой автодороги по обеим сторонам улицы в пределах микрорайона Ынтымак;
- 2) посадка декоративных лесонасаждений на 2255-2260 километре проектируемой автодороги.

III. В соответствии с условиями Соглашения о займе, подписанного между Республикой Казахстан и Международным Банком реконструкции и развития 13 июня 2009 года и ратифицированного Законом Республики Казахстан от 10 июля 2009 года номер 172-4, Заемщик через Министерство транспорта и коммуникаций Республики Казахстан с помощью Консультанта по управлению проектом Канадской компанией «SNC Lavalin» реализует Проект Коридора в Южно-Казахстанской области.

В октябре 2010 года в Южно-Казахстанское областное Управление природных ресурсов и регулирования природопользования (далее – Эксперт) Шу-Таласского Департамента охраны окружающей среды (ООС) Министерства ООС Республики Казахстан направлен отчет ОВОС Товарищества с Ограниченной Ответственностью (ТОО) «ГрадСтройЭкоПроект» (далее – Эколог) по проекту «Обход села Темирлановка» для вынесения заключения государственной экологической экспертизы.

Данный отчет не соответствует требованиям Инструкции по проведению оценки воздействия намечаемой хозяйственной и иной деятельности на окружающую среду при разработке предплановой, плановой, предпроектной и проектной документации (Инструкция), утвержденной Приказом Министра ООС Республики Казахстан от 28 июня 2007 года номер 204-п, и стандартам Операционного Руководства Всемирного Банка ОР 4.01, Операционная Политика «Экологическая Оценка», январь 1999.

В связи с чем, представителями ОО «НАИР» ИСАЛИЕВЫМ Б.М. и МОЛДАБЕКОВЫМ С.Б. Эксперту в октябре 2010 года были направлены Замечания к отчету ОВОС с предложением: отчет вернуть Экологу на повторное проведение исследований и оценки воздействия проекта «Обход села Темирлановка» на окружающую среду с соблюдением всех требований и стандартов Всемирного Банка и законодательства Республики Казахстан.

В дальнейшем уполномоченный орган в лице областного Департамента Комитета автодорог Минтранскома Республики Казахстан не выполнил требования Инструкции по учету общественного мнения по проекту ОВОС, а именно:

- не подтвердил регистрации писем с Замечаниями представителей ОО «НАИР»;
- не проанализировал поступившие от общественности замечания и предложения;

- не оформил соответствующий протокол;
- не изложил свои комментарии по предложениям общественности.

В свою очередь Эксперт дал неудовлетворительный ответ (номер 08/4778 от 7 декабря 2010 года) на наше письмо от 25 ноября 2010 года, высланное Эксперту по электронной почте:

«Материалы по рабочему проекту строительства участка автомобильной дороги «Обход села Темирлановка» находятся на рассмотрении государственной экологической экспертизы и согласно ст. 50 Экологического Кодекса Республики Казахстан срок рассмотрения экологической экспертизы не составляет 3 месяцев с момента подачи заявки. Также доводим до Вашего сведения, что согласно ст. 53 Экологического Кодекса Республики Казахстан, ст. 9 Закона Республики Казахстан «О государственной службе», а также исходящих из положения Управления должностных инструкций, государственный служащий, являющийся экспертом государственной экологической экспертизы, обеспечивает сохранность материалов, не допуская разглашения вверенных ему сведений, и выполняет приказы, распоряжения руководителей, решения и указания вышестоящих органов в пределах своих полномочий».

IV. Проектным решением участок проектируемой дороги «Обход г. Шымкент» с км 2231 автодороги М-32 «гр. РФ – Самара – Шымкент» до км 674 автодороги А-2 «Хоргос – Алматы – Шымкент – гр. Республики Узбекистан» проходит по земельным участкам крестьянских хозяйств граждан Республики Казахстан:

- Джумабаевой Бекзады (представитель по доверенности Альжанов Серик Ермакович);
- Даулетбахова Данияра Дутбаевича;
- Ахмедова Каипбека Жораевича;
- Меирбекова Рахыша Ширинбековича;
- Булегенова Мурата Сериковича;
- Нази Накыпбека Сабитулы;
- Кожабаева Тлеукабыла;
- Маннатов Армана.

Суть претензий:

а) подрядчиком СП «Азеркорпу/Тепе» весной 2011 года начаты земляные работы на земельных участках Меирбекова Р.Ш., Джумабаевой Б. до заключения Договора о размере возмещения убытков при изъятии земли на государственные нужды. 4 апреля 2011 года Южно-Казахстанский областной Департамент автодорог заключает с этими гражданами вышеуказанный Договор, который расторгает своим письмом от 12 апреля 2011 года;

б) подрядчиком СП «Азеркорпу/Тепе» весной 2011 года начаты земляные работы на земельном участке Кожабаева Т. без оформления Договора о размере возмещения убытков при изъятии земли на государственные нужды;

в) по земельным участкам остальных вышеназванных граждан земляные работы не начаты только ввиду стихийного сопротивления самих землепользователей.

В соответствии с письмом специалиста офиса КУП «SNC Lavalin» от 13 июня 2011 года гражданам:

- Джумабаевой Б.
- Даулетбахову Д.Д.
- Ахмедову К.Ж.
- Меирбекову Р.Ш.

5 мая 2011 года Департаментом автодорог выплачена компенсация и земля изъята по Договору.

В отношении остальных четырех землепользователей Департаментом автодорог совместно с местным акиматом инициируется судебный иск о пересмотре предыдущего Акта оценки в связи с завышенной суммой компенсации.

4.

I. Налицо нарушение Операционной политики Банка "Вынужденное переселение", Документа по политике переселения, законодательства Республики Казахстан.

II. Налицо нарушения Операционной политики Всемирного Банка ОР 4.01 "Экологическая оценка".

III. Данным заявлением мы констатируем факт нарушения права ОО «НАИР» на участие в процессе принятия государственными органами решений по вопросам, касающимся окружающей среды в порядке, установленном законодательством Республики Казахстан (статья 14 Экологического Кодекса Республики Казахстан от 9 января 2007 года номер 212-III ЗРК), и факт ограничения возможности ОО «НАИР» выразить свое мнение в период проведения государственной экологической экспертизы.

В соответствии со статьей 6 «Участие общественности по конкретным видам деятельности» Конвенции о доступе к информации, участии общественности в процессе принятия решений и доступе к правосудию по вопросам, касающимся окружающей среды (Орхусская Конвенция):

«7. Процедуры участия общественности позволяют ей представлять в письменной форме или, в необходимых случаях, в ходе публичного слушания или рассмотрения вопроса с участием подателя заявки любые замечания, информацию, анализ или мнения, которые, как она считает, имеют отношение к планируемой деятельности.

8. Каждая Сторона обеспечивает, чтобы в соответствующем решении надлежащим образом были отражены результаты участия общественности.

9. Каждая Сторона обеспечивает, чтобы после принятия решения государственным органом общественность была незамедлительно информирована об этом решении в соответствии с надлежащими процедурами. Каждая Сторона предоставляет общественности текст решения вместе с указанием причин и соображений, положенных в основу этого решения».

Именно данные положения не были соблюдены уполномоченными государственными органами.

Наконец, нарушены положения:

- пункта 15 Операционной Политики Всемирного Банка «Экологическая Оценка»: «По всем проектам категории А в процессе ЭО заемщик проводит с группами населения и местными НПО, которых затрагивает данный проект, консультации по экологическим аспектам проекта и учитывает их мнения»;
- пункта 12 Операционного Руководства Всемирного Банка ВР 4.01 Банковские Процедуры, январь 1999 года: «По проектам категории А особое внимание уделяется характеру консультаций с затрагиваемыми проектом группами и местными НПО и тому, насколько мнения этих групп были приняты во внимание»;
- подпункта h пункта 2 Приложения В Операционной Политики Всемирного Банка «Экологическая Оценка»: «iii) В документах по консультациям с группами населения и местными НПО перечисляются все средства, которые применялись в дополнение к консультациям для выяснения позиций групп населения и местных НПО, интересы которых затрагиваются проектом».

IV. Налицо нарушения Операционной политики Всемирного Банка ОР 4.12 «Вынужденное переселение», а именно:

- пункта 10. Осуществление мер по переселению увязывается с реализацией инвестиционного компонента проекта таким образом, чтобы изъятие земель или ограничение доступа к ним производилось только после реализации всех необходимых мер, связанных с переселением... В частности, изъятие земли и другого имущества может осуществляться только после выплаты соответствующих компенсаций.

5.

I. АБУБАКИР Б.М. неоднократно в течение 2009-2011 годов обращался в Туркестанскую городскую администрацию, областной Департамент автодорог, в другие уполномоченные органы, а также в Проектный Департамент Всемирного Банка. Департамент автодорог считает, что АБУБАКИР Б.М. имеет полное право на получение компенсации. Представители Проектного Департамент Всемирного Банка в своем ответе 13 апреля 2011 года заявили, что не намерены решать конкретные проблемы отдельных землепользователей и собственников это – прерогатива Комитета автодорог и Консультанта по управлению проектом. А утвержденный Банком План полностью

удовлетворяет представителей Проектного Департамента. Туркестанский акимат отказывает АБУБАКИРУ Б.М. в праве на получение компенсации за прямое воздействие проекта.

II. К данному Запросу прилагаются письма, с которыми мы обращались во все инстанции. Мы считаем, что Банк имеет право потребовать от Заказчика выполнения своей политики.

III. Мы обращались к Руководителю Проекта Всемирного Банка и в Астанинское представительство Всемирного Банка в октябре 2010 года путем направления письма электронной почтой с приложением Замечаний ИСАЛИЕВА Б.М. и МОЛДАБЕКОВА С.Б. по отчету ОВОС ТОО «ГрадСтройЭкоПроект» по проекту «Обход села Темирлановка». Ответа мы не получили.

IV. Мы обращались в Проектный Департамент Всемирного Банка по поводу нарушений, связанных с реализацией Плана мероприятий по переселению по Южно-Казахстанской области, но 13 апреля 2011 года получили недвусмысленный ответ о том, что Банк не намерен решать конкретные проблемы отдельных землепользователей и собственников, это – прерогатива Комитета автодорог и Консультанта по управлению проектом. А утвержденный Банком План полностью удовлетворяет представителей Проектного Департамента.

Мы обращались в Департамент автодорог (письмо и ответ прилагаются), и только 13 июня 2011 года мы получили письмо специалиста КУПа по Южно-Казахстанской области, в котором он нас проинформировал, что проблема по 4 землепользователям разрешена, а по остальным 4 землепользователям состоится судебное рассмотрение.

6.

Просим Инспекционный Совет рекомендовать Исполнительным директорам Всемирного Банка провести расследование указанных вопросов по всем четырем эпизодам, а по участку микрорайон Ынтымак города Шымкент внести изменения в Проект Коридора.

АБУБАКИР БАУЫРЖАН МУХТАРОВИЧ и ДУСЕБАЕВА ГУЛЗИРА АБДУГАФФАРОВНА, Республика Казахстан, Южно-Казахстанская область, город Туркестан, ул. Бабай батыра, дом 16, тел: 87021023232, 87022528101, 8(72533)41288.
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CLARIFICATIONS (Original Russian)

June 24, 2011

...

Данная информация является официальным дополнением к нашему сводному Заявлению о проведении инспекции от 15 июня 2011 года по четырем эпизодам.

Для следующего процедурного шага Инспекционный Совет Всемирного Банка интересовал ответ на два вопроса, как это мы с Вами установили во время телефонной конференции 21 июня 2011 года. Суть вопросов:

Первое. Какое физическое экологические и социальное воздействие может оказать проект строительства автодороги Западная Европа-Западный Китай на участке «Обход села Темирлановка» в случае проведения строительно-подрядных работ по проекту с учетом мероприятий оценки воздействия на окружающую среду, выполненных ТОО «ГрадСтройЭкоПроект» (далее Эколог) по Техническому Заданию ТОО «Дорис»?

Второе. Каков круг уполномоченных стейкхолдеров, к которым обращалась Общественная Мониторинговая Группа ОО «НАИР» и представители местных сообществ по всем четырем эпизодам Заявления о проведении инспекции? Насколько удовлетворены заявители ответами этих стейкхолдеров?

Содержание ответов:

По первому вопросу. В пункте 4.7. «Оценка воздействия объекта на состояние растительного покрова» отчета ОВОС Эколога указано: «В районе расположения промплощадки видов растений, занесенных в красную книгу, нет. Воздействие объекта на состояние растительного покрова определяется выбросами вредных веществ в атмосферу», а в пункте 4.8. «Оценка воздействия объекта на состояние животного мира» указано; «В зоне влияния производства видов животных, занесенных в красную книгу Республики Казахстан, нет. Эпидемия животных в зоне влияния объекта хозяйственной деятельности не зарегистрирована. Ввиду отсутствия существенного воздействия объекта на состояние фауны, изменений в животном мире и последствий этих изменений не ожидается».

Такая информация Эколога позволяет сделать вывод о том, что Эколог либо не проводил необходимых полевых исследований для составления отчета, либо провел их поверхностно. Возникает ощущение, что проектируемая трасса по указанному участку пройдет через пустыню. На самом деле все выглядит диаметрально иначе.

В соответствии с проектом «Обход села Темирлановка» через пойму реки Арысь шириной 1,4 километра предусмотрено строительство моста длиной 350 метров и дорожной насыпи. В этой пойме находится участок тугайного леса, где произрастают ивы, серебристая джида, перевитая лианой-ломоносом, на полянах растут чий, тамариск, джидгиль. Весной и осенью в этих лесах масса разнообразных грибов. Из представителей фауны здесь обитают утки, цапли, фазаны, пернатые хищники, шакалы; в самой реке – усачи, сомы, мелкая рыба. Для тысяч жителей расположенного всего в 30 км от среднего течения реки Арысь города Шымкент ее берега стали местом доступного отдыха и разнообразного активного досуга. Что произойдет с этим участком тугайного леса после ввода в эксплуатацию проектируемой трассы? Каков план природоохранных мероприятий по вышеназванным видам флоры и фауны? Этого нет в отчете ОВОС Эколога. Следовательно, произойдет прямое необратимое физическое воздействие проекта на экосистему реки Арысь на небольшом участке. По данным ученых НИИ промышленной экологии и биотехнологии Южно-Казахстанского государственного университета имени Мухтара Ауэзова река Арысь по химическим показателям относится к высоко загрязненным водам, по качеству вод относится к средне загрязненным водам 3 класса. Альгфлора реки представлена 6 видами диатомовых водорослей. Зоопланктон реки представлен 3 видами животных жгутиконосцев, по одному виду амебы и инфузории. Источниками загрязнения вод являются нитриты, нитраты, соли аммония, сульфаты, медь, свинец, цинк, ионы магния и продукты нефти. Концентрации перечисленных источников загрязнения в 2-7 раз превышают предельно-допустимые концентрации. Как не допустить роста загрязнения реки Арысь после ввода в эксплуатацию автодороги? Как снизить неблагоприятное экологическое воздействие проекта? Что предлагают в этом плане сделать специалисты, эксперты? Судя по отчету ОВОС, они вообще ничего не предлагают, кроме посадки деревьев вдоль трассы вблизи селитебной зоны.

В отчете ОВОС Эколога отсутствует комплекс исследований по социальному блоку: медико-биологические, демографические, социокультурные. Не дана характеристика населенного пункта, через который пройдет обход села Темирлановка – аул Кажымукан:

- численность и половозрастной состав населения, трудовые ресурсы, занятость, распространенные виды заболеваний, связанных с экологическим воздействием, досуг и так далее. Какие произойдут изменения по этим индикаторам после ввода в эксплуатацию проектируемой автотрассы? Каков план снижения неблагоприятного воздействия? В отчете ОВОС нет ни исследований, ни плана мероприятий. А между тем Южно-Казахстанская область лидирует в республике по уровню заболеваемости рожениц анемией, по уровню детской смертности в возрасте до 1 года. Вредное экологическое воздействие окружающей среды является одной из ведущих причин этих и других заболеваний.

Кроме того, будучи учителем системы образования области, я констатирую факт, что в школах области преподавание школьникам знаний по безопасности передвижения на проезжей части носит бессистемный и поверхностный характер. В области впервые строится автодорога первой технической категории: скоростная, с высокой интенсивностью движения, со своей транзитной спецификой. В отчете ОВОС необходимо было указать уровень, объем и специфику программы распространения в школах минимума информации о самой автотрассе и о безопасности детей в особых условиях скоростного автобана.

Экологом не дана оценка подтопления домов жителей села Темирлановка, как это произошло в ночь на 27 февраля 2008 года, когда талые воды переполнили арык Найман и прорвали его. Поток были повреждены дороги и мосты, школа и водопровод, пострадали жители 30 домов.

По второму вопросу. По проекту стейкхолдерами, уполномоченными рассматривать и разрешать проблемы, изложенные в Заявлении на проведение инспекции по четырем эпизодам, являются:

- Южно-Казахстанский областной Департамент автодорог;
- Комитет автодорог Минтранскома Казахстана;
- аким и подразделения акимата.

В случае неудовлетворительных результатов заявители вправе сообщить о проблеме в Проектный Департамент Всемирного Банка и в офис Консультанта по управлению проектом.

Все эти вышеназванные инстанции были извещены о проблемах своевременно и полностью. Содержание ответов нас не удовлетворяет.

Поэтому мы подтверждаем свое предложение о проведении инспекции Инспекционным Советом Всемирного Банка.

На момент отправки Заявления в Инспекционный Совет комиссия по рассмотрению жалоб и предложений согласно Документу по Политике переселения не действовала, она стала работать только в июне 2011 года.

С уважением, руководитель ОМГ ОО «НАИР» Исалиев Бауыржан.

Translated from original Russian

June 15, 2011

To: EXECUTIVE SECRETARY

THE INSPECTION PANEL

1818 H Street, NW, Washington, DC 20433, USA

Fax: 202-522-0916; or c/o the appropriate World Bank Country Office

REQUEST FOR INVESTIGATION

1. We, citizens of the Republic of Kazakhstan:

I. BAUYRZHAN MUKHTAROVICH ABUBAKIR and GULZIRA ABDUGAFFAROVNA DUSEBAYEVA, residing at the address: St. Babai Batyra, 16, city of Turkestan, South Kazakhstan Oblast, Republic of Kazakhstan, represented by BAUYRZHAN MOMYNZHANULY ISALIYEV.

II. BAUYRZHAN MOMYNZHANULY ISALIYEV and YELENA ALEKSANDROVNA SHVETSOVA representing individuals residing in the Yntymak residential neighborhood, city of Shymkent, South Kazakhstan Oblast, Republic of Kazakhstan.

III. The National Analytical Information Resource Public Association (“NAIR”) represented by BAUYRZHAN MOMYNZHANULY ISALIYEV, DMITRY MIKHAILOVICH BURMINSKY and SERIK BIUZAKOVICH MOLDABEKOV, residing in the city of Shymkent, South Kazakhstan Oblast [SKO], Republic of Kazakhstan, represent the interests of the residents of SKO.

IV. BAUYRZHAN MOMYNZHANULY ISALIYEV and BAUYRZHAN TURSYNBAYEVICH NYSANOV, representing individuals residing in the villages of Kurlyk, Taskeshu, Komeshbulak, Shirkin and Aksukent, in Sairamsky Rayon, South Kazakhstan Oblast, Republic of Kazakhstan.

Our addresses are attached.

2. We may incur damage as a result of deficiencies or omissions by the World Bank during implementation of the project “South-West Roads Development: Western Europe-Western China International Transit Corridor (CAREC 1B & 6B),” (IBRD Loan No. 7681-KZ) (Corridor Project), which is under way in the Republic of Kazakhstan.

3.

I. The project design calls for a section of the planned road through the city of Turkestan to run along an existing bypass. At the intersection of M. Shokai and Zh. Karmenov streets along the planned route there is a parcel of land that is privately owned by a citizen B. M. ABUBAKIR.

A commercial facility, selling construction material, has been built on this land. To construct this building, the owner invested his entire family capital, as well as loans from close acquaintances, business colleagues, and from a bank in the amount of US\$45.000 with an interest rate of US \$3.000 a year. B. M. ABUBAKIR received a notification on the start of the Western Europe-Western China highway rehabilitation project precisely at the time when he finished constructions, but he was unable to start its operation and obtain the anticipated income. As a result, he became insolvent; his arrears on all the loans he received are growing every month. Therefore, it is necessary on the basis of available financial documents to calculate the amount of forgone gain from the aforementioned business facility. In addition, a parking lot has been built on public land for the facility's customers. These costs must also be compensated. Based on an appeal filed by B. M. ABUBAKIR at the cassation level, the South Kazakhstan Oblast Court ruled in favor of legalizing the facility. However, the Turkestan City Administration refused to issue B. M. ABUBAKIR documents allowing him to operate the store. Furthermore, representatives of the local government authority did not formalize their refusal in writing, and thereby deprived B. M. ABUBAKIR of an opportunity to file a claim with the court against the their actions. At the same time, abusing their official powers, they have repeatedly attempted to raze the parking lot in front of the store with the help of the building contractor DENA RAHSAZ CONSTRUCTION Co., with which the Government of the Republic of Kazakhstan has entered into a contract on lot km 2057-km 2111 of the road between the Russian Federation border (toward Samara) and Shymkent.

II. Another problem concerns the project "Reconstruction of the road from the Russian Federation border (toward Samara) to Shymkent, km 2231-km 2260." On July 30, 2009, at a meeting on implementation of the "Western Europe-Western China" project through South Kazakhstan Oblast with the participation of representatives from the World Bank, the Oblast *Akimat*, the Committee for Roads of the Republic of Kazakhstan Ministry of Transport and Communication, the Oblast Department of Roads, interested members of the public and design, land-management and other stakeholders, the following question, among others, was raised:

- The project engineer asserts that calculations done in the locations of the construction, taking into account the presence of 2-3 meters high walls, acting as protective barriers, show that the concentration of toxic substances in emitted gases (carbon oxides, hydrocarbons, carbon black, and lead compounds in the air) is within the permissible standards at a distance of 35-40 meters from the nearest traffic lane and will not have a negative impact on the environment. In reality, in the Yntymak residential neighborhood, located 5 km along the road, the distance between the residences' construction lines opposite each other in the widest part of the road is 54.7 meters. Given a projected roadway width of 15 meters, what is left for each side of the road up to the construction line is a maximum of 20 meters, rather than the 35-40 that the project engineer contends.
- The project designer's assertion that the distance from the projected road to the community of Yntymak is 40 meters does not reflect reality. It is 15-20 meters.

- The project engineer says that noise will not have a negative impact on living conditions of the population in the settlement of Yntymak provided that fences are installed at a distance of 10 meters from the road. Therefore, the fences must be installed at a distance of 5 meters from the construction lines of the residences.
- According to the project engineer, the existing forest areas along the road being reconstructed are located 30-40 meters from the center line of the roadway, whereas the required width of the right-of-way for reconstruction of a road is 16 to 28 meters from the center of the roadway. Hence, when the road is reconstructed, existing forest areas do not have to be cut down. In reality, however, there are the trees that are planned alongside of existing roads in Yntymak will be felled during the implementation of the project.

We raised a general question: to what extent does this meet the standards of environmental safety?

In his response, N. B. UMIRBAYEV, Deputy Chairman of the Committee for Roads, said that interested members of the public can make their criticisms after contracts are entered into with building contractors. The Technical Specifications of the contracts will take account of and incorporate the instructions to the contractors if they are justified. N. B. UMIRBAYEV said that measures may be recommended in regard to environmental requirements for the Yntymak residential neighborhood.

We raised this problem with the Shu-Talas Department of the Environment of the Republic of Kazakhstan Ministry of Environmental Protection in September 2009.

In early June 2011, we received the Technical Specifications for this lot from the office of the Project Management Consultant (PMC) and from the Committee for Roads. Upon studying the document, we discovered that the project engineer's recommendations in the EIA report for construction of a noise-control barrier and planting decorative plants with a full technical description were not taken into account.

Based on the foregoing, we insist that revisions be made to the Technical Specifications of the contract of Kukdong Engineering & Construction Co. Ltd to fulfill the World Bank's environmental safety requirements and standards and the environmental laws of the Republic of Kazakhstan, specifically:

- 1) to build a noise-control barrier at km 2255 to km 2258 of the projected road on both sides of the street in the Yntymak residential neighborhood;
- 2) to plant decorative plants at km 2255-2260 of the projected road.

III. On the third issue, pursuant to the terms of the Loan Agreement signed between the Republic of Kazakhstan and the International Bank for Reconstruction and Development on June 13, 2009, and ratified by Republic of Kazakhstan Law No. 172-4 of July 10, 2009, the Borrower shall implement the Corridor Project in South Kazakhstan Oblast through the Republic of Kazakhstan Ministry of Transport and Communications with the assistance of the Project Management Consultant of the Canadian company SNC Lavalin.

In October 2010, the EIA report for the “Temirlanovka Bypass”, by the “GradStroyEkoProyekt” Limited Liability Partnership (LLP) (hereinafter, the Environmentalist), was sent to the South Kazakhstan Oblast Office of Natural Resources and Resource Management (hereinafter, the Expert) of the Shu-Talas Department of Environmental Protection (EP) of the Republic of Kazakhstan Ministry of EP for the state environmental experts’ conclusions.

This report does not comply with the Instructions on Conducting Environmental Impact Assessment of Planned Commercial or Other Activities when Pre-planning, Planning, Pre-design and Design Documents, which was approved by Order No. 204-p of the Republic of Kazakhstan Ministry of EP of June 28, 2007, and the standards of the World Bank Operational Policies OP 4.01, Operational Policy “Environmental Assessment,” of January 1999.

As a result, in October 2010, B. M. ISALIYEV and S. B. MOLDABEKOV, representatives of “NAIR”, sent the Expert their Comments on the EIA report suggesting to return the report to the Environmentalist for further study and impact assessment of the “The Temirlanovka Bypass” project to comply with all the requirements and standards of the World Bank and the laws of the Republic of Kazakhstan.

Subsequently, the authorized body, the Oblast’s Department of the Committee for Roads of the Republic of Kazakhstan Ministry of Transport and Communications, failed to meet the requirements of the Instructions for Incorporating Public Opinion on the EIA project, specifically:

- failed to confirm the registration of the letters with “Comments” from the “NAIR” representatives;
- failed to analyze comments and suggestions received from the public;
- failed to prepare the relevant report;
- failed to present its comments on the suggestions from the public.

The Expert, in turn, gave an unsatisfactory response (No. 08/4778 of December 7, 2010) to our letter of November 25, 2010, which was e-mailed to the Expert:

“The materials regarding the working design for construction of the section of road ‘Temirlanovka Bypass’ are under review by the state environmental experts’ panel and, pursuant to Article 50 of the Republic of Kazakhstan Environmental Code, the time frame for the review by the environmental experts’ panel should not be 3 months from the time the application is submitted. We also inform you that, pursuant to Article 53 of the Republic of Kazakhstan’s Environmental Code, Article 9 of the Republic of Kazakhstan’s Law “On the Civil Service”, and the Decree on Civil Service, government employees serving as State environmental experts shall ensure the safekeeping of the documentations by preventing the disclosure of information entrusted to them and shall carry out the administration’s orders and directives and the decisions and instructions of higher-ranked agencies to the extent of their authority.”

IV. Concerning the “Shymkent Bypass” section of the projected road from km 2231 of Route M-32 “Russian Federation border via Samara to Shymkent” to km 674 of Route A-2 “Khorgos via

Almaty and Shymkent to the Republic of Uzbekistan border”, the Project runs through agricultural land belonging to the following citizens of the Republic of Kazakhstan:

- Bekzada Dzhumabayeva (represented by Serik Yermekovich Alzhanov);
- Daniyar Dutbaeyvich Dauletbakhov;
- Kaipbek Zhorayevich Akhmedov;
- Rakhyshe Shirinbekovich Meirbekov;
- Murat Serikovich Bulegenov;
- Nakypbek Sabituly Nasi;
- Tleukabyla Kozhabayev;
- Arman Mannatov.

The content of their grievances is the following:

a) in the spring of 2011, the contractor Azerkorpu/Tepe JV began excavation work on the land of R. Sh. Meirbekov and B. Dzhumabayeva before the Agreement on the Amount of Compensation for Losses Resulting from the Expropriation was signed. On April 4, 2011, the South Kazakhstan Oblast Department of Roads entered into the above Agreement with these individuals, and terminated it by a letter of April 12, 2011.

b) in the spring of 2011, the contractor Azerkorpu/Tepe JV began excavation work on the land of T. Kozhabayev without formalizing an Agreement on the Amount of Compensation for Losses Resulting from the Expropriation of Land.

c) with regard to the land of the other individuals, excavation works have not begun on the lands of other citizens only because of the spontaneous resistance of these landowners.

According to a letter from a specialist in the office of the PMC of SNC Lavalin of June 13, 2011, the following individuals:

- B. Dzhumabayeva
- D. D. Dauletbakhov
- K. Zh. Akhmedov
- R. Sh. Meirbekov

were paid compensation on May 5, 2011 by the Department of Roads and their land was confiscated under the Agreement.

With regard to the other four land users, the Department of Roads and the local Akimat are initiating a lawsuit to revise the previous Assessment Report due to an allegedly inflated amount of compensation.

4.

I. This is a clear violation of the Bank’s Operational Policy “Involuntary Resettlement,” the Resettlement Policy Document and the laws of the Republic of Kazakhstan.

II. This is a clear violation of the World Bank's Operational Policy OP 4.01 "Environmental Assessment."

III. With this statement we conclude that there is a violation of NAIR's right to participate in decision-making processes on matters related to the environment under the procedure prescribed by the laws of the Republic of Kazakhstan (Article 14 of the Republic of Kazakhstan Environmental Code of January 9, 2007, No. 212-III ZRK) and a restriction of NAIR's right to express its opinion during the environmental expertise review.

Pursuant to Article 6, "Public Participation in Decisions on Specific Activities" of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention):

"7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analysis or opinions that it considers relevant to the proposed activity.

"8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

"9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based."

These precise provisions were not complied with by the authorized government bodies.

Finally, the following provisions were violated:

- clause 15 of the World Bank's Operational Policy "Environmental Assessment": "For all Category A projects during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account";
- clause 12 of the World Bank's Operational Manual BP 4.01 "For Category A projects this review gives special attention to [...] the nature of the consultations with affected groups and local NGOs and the extent to which the views of such groups were considered";
- clause 2 (h) of Annex B of the World Bank's Operational Policy "Environmental Assessment": "iii) Record of [...] consultations with public groups and local nongovernmental organizations (NGOs) specifies any means other than consultations [...] that were used to obtain the views of affected groups and local NGOs."

IV. This is a clear violation of the World Bank's Operational Policy OP 4.12 "Involuntary Resettlement," specifically:

- clause 10. Resettlement measures are linked to the implementation of the investment component of the project so that the confiscation of land or the restriction of access to it is carried out only after implementation of all necessary measures related to resettlement... In particular, land and other property may be confiscated only after the appropriate compensation is paid.

5.

I.

B. M. ABUBAKIR between 2009 and 2011 has repeatedly sought assistance from the Turkestan City Administration; the Oblast Department of Roads; and other authorized bodies, as well as the Project's Department of the World Bank. The Department of Roads contends that B. M. ABUBAKIR is fully entitled to receive compensation. Representatives of the Project's Department of the World Bank, in their response of April 13, 2011, stated that they do not intend to solve specific problems of individual land users and land owners, and that it is the prerogative of the Committee for Roads and the Project Management's Consultant, and that the Plan approved by the Bank fully satisfies the representatives of the Project's Department. The Turkestan Akimat denies B. M. ABUBAKIR the right to receive compensation for the direct impact of the project.

II. Attached to this Request are the letters with which we appealed to all the agencies. We believe the Bank has the right to demand that the Client enforce its policy.

III. We appealed to the Project Leader of the World Bank and to the Astana office of the World Bank in October 2010 by e-mailing a letter with an attachment of Comments by B. M. ISALIYEV and S. B. MOLDABEKOV regarding the EIA report by GradStroiEkoProyekt LLP on the "Temirlanovka Bypass" project. We received no response.

IV. We appealed to the Project's Department of the World Bank regarding the violations related to the implementation of the Resettlement Action Plan for South Kazakhstan Oblast, but on April 13, 2011, we received an unequivocal reply that the Bank did not intend to address specific problems of individual land users and owners and that this is the prerogative of the Committee of Roads and the Project Management Consultant and the Plan approved by the Bank fully satisfies the representatives of the Project's Department.

We appealed to the Department of Roads (the letter and reply are attached), and not until June 13, 2011, did we receive a letter from the PMC for South Kazakhstan Oblast in which he informed us that the problem for the 4 land users had been solved, and for the other 4 land users a judicial review would take place.

6.

We ask the Inspection Panel to recommend to the Executive Directors of the World Bank to conduct an investigation into the aforementioned matters in regard to all four situations, and to

make revisions to the Corridor Project regarding the area of the Yntymak residential neighborhood in the city of Shymkent.

BAUYRZHAN MUKHTAROVICH ABUBAKIR and GULZIRA ABDUGAFFAROVNA DUSEBAYEVA, St. Babai Batyra, 16, city of Turkestan, South Kazakhstan Oblast, Republic of Kazakhstan, telephone: 87021023232, 87022528101, 8(72533)41288.

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CLARIFICATIONS (translated from original Russian)

June 24, 2011

...

This information is an official addition to our joint Request for Inspection dated June 15, 2011, relating to four issues.

As we have established during the conference call on June 21, 2011, for the next procedural step, the World Bank Inspection Panel was interested in the response to two questions. These questions are:

1. What may be the environmental and social impact of the construction of the “Western Europe-Western China” Project on the “Bypass in Temirlanovka” section in case the construction activities are carried out with this environmental impact assessment prepared by LLC “GradStroyEkoProekt” (the Environmentalist) for the technical assignment of LLP “Doris”?
2. What is the range of authorized stakeholders to which the Public Monitoring Group “NAIR” and representatives of local communities appealed with regard to all four cases of the Request for Inspection? How satisfied are the applicants with the responses of these stakeholders?

The content of the responses is:

Regarding the first issue. Clause 4.7, “Impact assessment of the project on the condition of vegetation,” in the EIA report by the Ecologist states: “In the area of the construction site, there are no plant species that have been added to the Red Book. The impact of the project on vegetation is determined by the emission of hazardous substances into the atmosphere,” while clause 4.8, “Impact assessment of the project on wildlife,” states: “There are no animal species that have been added to the Republic of Kazakhstan Red Book in the area affected by construction. No epidemic among animals in the affected zone of the business activity project has been reported. Considering the absence of any significant impact from the project on the condition of fauna, no changes or consequences from these changes in wildlife are expected.”

This information from the Ecologist suggests that the Ecologist either did not conduct the necessary field research to compile the report or conducted it in a superficial manner. The impression is such that the project route in the above section will run through a desert. In reality everything is precisely opposite.

The design for the Bypass of the Village of Temirlanovka calls for the construction of a 350 meters long bridge and a road embankment across the floodplain of the Arys River, which is 1.4 kilometers wide. There is a section of tugai forest in this floodplain where willows and silvery oleaster interwoven with Clematis vine grow; needle grass, tamarisk and chingil grow in the fields. In the spring and fall, there are a great many diverse mushrooms in these forests. Fauna is represented, among others, by ducks, herons, pheasants, feathered predators and jackals; in the river itself are barbs, catfish and small fish. For thousands of residents, situated only 30 km from

the middle reaches of the Arys River of the city of Shymkent, its banks have become a place of accessible relaxation and various kinds of recreation. What will happen to this section of tugai forest after the project route is put into service? What is the plan for environmental actions for the aforementioned species of flora and fauna? None of this is in the EIA report by the Environmentalist. Hence, the project will have a direct, irreversible physical impact on the ecosystem of the Arys River over a small section. According to data from scientists at the Industrial Ecology and Biotechnology Research Institute of Mukhtar Auezov South Kazakhstan State University, in terms of chemical characteristics, the Arys River is a highly polluted body of water, and the quality of the water falls under Class 3 medium-polluted waters. The algal flora of the river is represented by six species of diatomic algae. The zooplankton in the river is represented by three species of animal flagellates and one species each of amoeba and infusorian. The sources of water pollution are: nitrates, ammonium salts, sulfates, copper, lead, zinc, ions of magnesium, and petroleum products. Concentrations of these pollutants are two to seven times higher than the maximum permissible levels. How is an increase in the pollution of the Arys River to be prevented after the road is put into service? How is the adverse environmental impact of the project to be decreased? What do the specialists and experts propose to address this? Judging by the EIA report, they do not propose anything at all except planting trees along the route near the development zone.

The EIA lacks any series of studies on social issues: medical-biological, demographic, and social-cultural. No description is provided of the residential area through which the bypass around the village of Temirlanovka will run – the settlement of Kazhymukan:

- the numerical size, gender, and age composition of the population, the labor force, employment level, common types of diseases related to environmental impact, recreation and so forth. What changes will take place in terms of these indicators after the project route is put into service? What is the plan to reduce the adverse impact? The EIA report contains neither analysis nor mitigation plan. Yet South Kazakhstan Oblast leads the republic in the prevalence of anemia among new mothers and in infant mortality up to 1 year of age. The hazardous environmental impact is one of the leading causes of these and other diseases.

In addition, as a teacher in the oblast's education system, I would like to point out that instruction in the oblast's schools concerning safe crossing of the roadway is nonsystematic and superficial. This is the first time that a road of the first technical category is being built in the Oblast: high speed, heavy traffic, with its own specific transit characteristics. The EIA should have specified the level, scope, and specific nature of a program to disseminate a minimum of information regarding the road itself and children's safety in the particular conditions of a high-speed highway.

The Environmentalist failed to provide an assessment of the flooding of residents' homes in the village of Temirlanovka, as occurred on the night of February 27, 2008, when snowmelt overflowed the Naiman irrigation ditch and burst through it. The stream damaged roads and bridges, a school and a water pipeline, and residents of 30 homes suffered losses.

Regarding the second issue. According to the project design, the stakeholders authorized to review and resolve the problems set out in the Request for Inspection regarding four issues are:

- the South Kazakhstan Oblast Department of Roads;
- the Committee of Roads of the Kazakhstan Ministry of Transport and Communications;
- the akim and subdivisions of the akimat.

If the results are unsatisfactory, the applicants are entitled to report the problem to the Projects Department of the World Bank and the Project Management Consultant's office.

All of the aforementioned levels were notified of the problems promptly and fully. The substance of the responses does not satisfy us.

Therefore, we reaffirm our Request for Inspection by the Inspection Panel of the World Bank.

As of the time the Request was sent to the Inspection Panel, the Complaint and Suggestion Review Commission pursuant to the Resettlement Policy Document was not operational; it did not begin its work until June 2011.

Sincerely, Bauyrzhan Isaliyev, Director, NAIR Public Monitoring Group.

ANNEX II

MANAGEMENT RESPONSE

**MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
REPUBLIC OF KAZAKHSTAN
WESTERN EUROPE-WESTERN CHINA INTERNATIONAL TRANSIT
CORRIDOR (CAREC-1b & 6b) – SOUTH WEST ROADS PROJECT
(IBRD LOAN NO. 7681-KZ)**

Management has reviewed the Request for Inspection of the Republic of Kazakhstan: Western Europe-Western China International Transit Corridor (CAREC-1b & 6b) – South West Roads Project (IBRD Loan No. 7681-KZ), registered by the Inspection Panel on August 17, 2011 (RQ11/02). Management has prepared the following response.

September 16, 2011

CURRENCY EQUIVALENTS
(Exchange Rate Effective: September 1, 2011)

Currency Unit = Kazakhstan Tenge (KZT)
US\$1.00 = KZT 146.575

GOVERNMENT FISCAL YEAR:

January 1 – December 31

WEIGHTS AND MEASURES:

Metric System

ABBREVIATIONS AND ACRONYMS

APL	Adaptable Programmatic Loan
BP	Bank Procedure
CAREC	Central Asia Regional Economic Cooperation
EA	Environmental Assessment
EARF	Environmental Assessment Review Framework
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
IBRD	International Bank for Reconstruction and Development
IFI	International Financial Institution
IPN	Inspection Panel
MoTC	Ministry of Transport and Communications
NGO	Nongovernmental Organization
OP	Operation Policy (of the World Bank)
PMC	Project Management Consultants
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SIL	Specific Investment Loan
WE-WC	Western Europe – Western China

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EXECUTIVE SUMMARY

On August 17, 2011, the Inspection Panel registered a Request for Inspection, (hereafter referred to as “the Request”), concerning the Republic of Kazakhstan: Western Europe-Western China International Transit Corridor (CAREC-Ib & 6b) – South West Roads Project (IBRD Loan No. 7681-KZ) financed by the International Bank for Reconstruction and Development (IBRD, the Bank). The Inspection Panel has previously registered a Request for Inspection (IPN Request RQ 10/04) on April 29, 2010, concerning the same Project (the First Request).

The Project

The Kazakhstan: Western Europe-Western China International Transit Corridor (CAREC-Ib & 6b) – South West Roads Project (the Project) was approved by the Board of Executive Directors on April 30, 2009 and is currently under implementation.

The Project is a major part of the overall Government led effort to develop the Western Europe to Western China (WE-WC) Transit Corridor. The specific Project Development Objective (PDO) is to increase transport efficiency along the road sections between the Aktobe/Kyzylorda oblast border and Shymkent and to improve road management and traffic safety in Kazakhstan.

This will be achieved through: (a) Upgrading and reconstruction of 1,062 km of road sections within South Kazakhstan and Kyzylorda *oblasts* (regions); (b) Strengthening the capacity of the Committee for Roads and implementing a road management system for planning and budgeting of road maintenance, rehabilitation and construction on the national road network; (c) Increasing the capacity of the Ministry of Transport and Communications (MoTC) and the Committee for Roads to monitor and supervise Project implementation with particular emphasis on procurement, financial management and safeguards; and (d) Improving road safety and facilitating the provision of services along the WE-WC Corridor.

Request for Inspection

The Request for Inspection was submitted by a representative of the Kazakh nongovernmental organization (NGO), *The National Analytical Information Resource Public Association (NAIR)*, on his own behalf and on behalf of NAIR and 24 Project Affected Persons.

The Request raises issues related to potential loss of assets and livelihood in connection with land acquisition for the Project, as well as potential adverse environmental impacts with regard to different sections of the Project. These claims are focused on the following four issues:

- A claim by an individual in Turkestan Rayon that Bank omissions may result in failure to compensate adequately for assets and investments due to land acquisition.
- A claim that the roadway design through a densely populated area of the Yntymak neighborhood would generate environmental harm, such as noise and safety concerns.
- A claim that their comments on the draft Environmental Impact Assessment (EIA) for the proposed Temirlanovka Bypass section of the Project have not been taken into account and that the current draft EIA does not adequately assess the environmental impact of the proposed bypass.
- A claim that a contractor operating in Sairam Rayon initiated works on lands for which compensation to owners or leaseholders had not yet been finalized.

Management Response

In Management's view the Request for Inspection is based on assumed harmful outcomes of ongoing activities and a misplaced assumption that no actions are being taken to address the issues raised by the Requesters. All issues referred to in the Request have been acknowledged by the Bank and by the Committee for Roads and are being addressed through the appropriate channels, such as the Project's grievance redress mechanism, local courts, the *akimats*, the Committee for Roads, and the Bank, as relevant. Management considers that the issues raised are typical for a project of this scope and complexity and recognizes that such issues need to be identified and addressed as they arise in the course of Project implementation, as is being done. Some of the issues are also similar to Project issues that were satisfactorily addressed in the First Request for Inspection of this Project.

With respect to the claim concerning pending compensation by the individual in Turkestan Rayon, the Bank has made clear its position to the Turkestan Rayon *akimat* and to the Committee for Roads that works that affect this property cannot begin until the issue is resolved. Management wishes to point out that the Requester's rightful ownership of the respective plot including the question of the plot's actual size is currently being considered by a civil court in Kazakhstan. The compensation process stipulated in the Resettlement Action Plan (RAP) will build on the outcome of this court case and the Requester will be eligible for compensation or assistance under the RAP in line with Bank policy.

With respect to the issues associated with the Yntymak roadway redesign, Management notes that the Bank and the Committee for Roads have remained actively engaged in responding to community concerns. In fact, the redesign process being undertaken is in response to earlier community concerns. The Committee for Roads is actively working on a solution to address the concerns raised by local residents. In accordance with the Loan Agreement, the Government has committed to resolving all design issues in a manner consistent with Bank policy requirements before beginning any works in this vicinity.

With respect to the issues associated with the EIA for the Temirlanovka Bypass, Management agrees that effective and timely public consultation is essential. Management, however, wishes to point out that the EIA referred to in the Request is regarded by the Bank as a draft which currently is not at a sufficiently advanced stage for meaningful public consultation. The Bank has advised the Borrower that consultations should occur as soon as possible after the Bank finds the draft EIA acceptable for this purpose. Therefore any claim of violation of Bank policy in connection with this issue is premature. The Bank will continue to support the Committee for Roads in its efforts to prepare an EIA that will be acceptable.

With respect to the allegations of a premature start of works in Sairam Rayon, Management has made its position clear to the Committee for Roads that resolution of remaining issues is necessary before works can proceed on the one land parcel for which compensation is still in dispute. Management understands that one contractor was misinformed and prematurely entered privately leased land for one day prior to the payment of compensation to the property lease holders. Management was advised by the Committee for Roads that the contractor immediately withdrew from the property upon instruction from the Committee for Roads, and no material harm was caused during the one day of incursion. Management notes that the Committee for Roads has been responsive on this matter and that compensation has subsequently been paid to seven out of the eight affected Requesters in accordance with the RAP for the Project. Management notes that the Requesters do not claim that any material harm resulted from the incursion. The Bank continues to seek confirmation that no harm has occurred.

Management is concerned that the multiple roles of the Lead Requester in relation to this Project contribute to premature claims and reflect a potential conflict of interest on his part. The Lead Requester has taken the initiative, on an ongoing basis throughout the implementation of the Project, of actively collecting individual concerns and communicating such issues to the Project's grievance redress mechanism and directly to the Bank. Management notes the role that the Lead Requester has performed in bringing potential issues to the attention of the Bank and to the Committee for Roads, though in most cases those issues were already known and in the process of being resolved. However, Management has increasing concern about the role of the Lead Requester in two areas: firstly, that actions of the Lead Requester have the effect of escalating these issues under the assumption of a harmful outcome before the ongoing efforts to resolve them have been exhausted; secondly, that the Lead Requester's other activities in connection with the Project may lead to confusion or even a conflict of interest on his part. Management notes that the Lead Requester was involved as a consultant to the road designers hired by the Committee for Roads, and was responsible for organizing public consultations on the EIA for the Temirlanovka Bypass, obtaining clearances for the document from relevant authorities, and performing other administrative duties on behalf of the road designers.

This Project has multiple channels to identify and address issues promptly and on an ongoing basis. The Project has supplemented the existing domestic channels for grievance redress with a project level grievance mechanism which provides for

grievance coordinators appointed by the supervision consultant for each section of the road. Project supervision has been carried out regularly by a high level interdisciplinary team of Bank staff and the Bank has allocated a significantly higher supervision budget to this Project. In addition, Regional management, including the ECAVP, the Country Director and the Sector Manager have on various occasions visited the Project sites and stressed to senior Government officials the importance of providing an effective and responsive grievance redress mechanism, as well as ensuring strict compliance with all relevant safeguard policies of the Bank.

Management believes that the Bank has made diligent efforts to apply its policies and procedures in the context of the planning for, and implementation of, this Project. In Management's view, the Bank has followed its policies and procedures applicable to the matters raised by the Request. Management believes that neither the Requesters' rights nor interests have been adversely affected by a failure of the Bank to implement its policies and procedures. Management welcomes the opportunity to clarify the issues and questions raised by the Requesters.

I. INTRODUCTION

1. On August 17, 2011, the Inspection Panel registered a Request for Inspection, IPN Request RQ 11/02 (hereafter referred to as “the Request”), concerning the Republic of Kazakhstan: Western Europe–Western China International Transit Corridor (CAREC-1b & 6b) – South West Roads Project (IBRD Loan No. 7681-KZ, the Project) financed by the International Bank for Reconstruction and Development (IBRD, the Bank). The Inspection Panel has previously registered a Request for Inspection (IPN Request RQ 10/04) on April 29, 2010, concerning the same Project (the First Request).

2. ***Structure of the Report.*** The document contains the following sections: Section II presents the Request; Section III provides background on the Project; Section IV discusses special issues related to the Request; Section V presents Management’s response and Section VI contains the conclusion. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in matrix format. Other Annexes include an overview of supervision missions and site visits, and a list of the Bank’s relevant communications with the Lead Requester. Map 1 shows the Project area and Map 2 shows details of the locations of affected areas described in the Request.

II. THE REQUEST

3. The Request for Inspection was submitted by a representative of the Kazakh nongovernmental organization (NGO) “National Analytical Information Resource” (hereafter “NAIR”), on his own behalf¹ and on behalf of NAIR and 24 Project Affected Persons (hereafter referred to as the “Requesters”). The Request was complemented by clarifications which are included as part of the Request.

4. No further materials were received by Management in support of the Request.

5. The Request contains claims that the Panel has indicated may constitute violations by the Bank of various provisions of its policies and procedures, including the following:

- OP/BP 4.01, Environmental Assessment
- OP/BP 4.04, Natural Habitats
- OP/BP 4.12, Involuntary Resettlement
- OP/BP 13.05, Project Supervision
- OMS 2.20, Project Appraisal
- The World Bank Policy on Access to Information dated July 1, 2010.

¹ While the Notice of Registration states that the Request was submitted by the Lead Requester, a representative of NAIR, “on his own behalf and on behalf of NAIR and 24 Project-affected people,” it is not clear from the Request whether the Lead Requester is indeed claiming on his own behalf, the harm to which his claim might relate and which Bank policy or procedure may have been violated.

III. PROJECT BACKGROUND

A. THE PROJECT

6. **The strategic vision of the Government of Kazakhstan for economic development is based on diversification and integration of the economy into the global market.** This requires both investment in the economic sectors as well as improvements in the investment climate. The geography, population, economy and trade flows of Central Asia have an important bearing on transportation challenges in Kazakhstan. Within the region, distances are substantial (around 3,000 km across Kazakhstan) and access to major markets involves very long travel distances. There are significant physical and non-physical barriers to trade within the region, which have been the subject of discussion at the Central Asia Regional Economic Cooperation (CAREC).² Trade with Russia continues to be important for the region mainly for historical reasons, with much of this trade transiting through Kazakhstan. China is growing in importance as a trading partner for Central Asia, with Kazakhstan taking the largest share. The CAREC countries have designated six major international transport corridors that link Central Asia with China, Russia, South Caucasus, South Asia, Turkey and Western Europe. The Project is financing improvements to parts of the CAREC corridors that pass through Kazakhstan.

7. **The overall objectives for the transport sector in Kazakhstan are identified in the Government's Transport Sector Development Strategy 2006-2015 and the Road Sector Development Program 2006-2012.** These Government documents define investment programs that include rehabilitation of the Republican (National) road network and the provision of selected additional infrastructure, particularly along the CAREC corridors. The transport strategy also aims to harmonize current legislation with international norms and standards and the promotion of innovative technologies. The strategy also includes as an objective the provision of services to users along the corridors, including improvements in road safety. Roads are a key element of the Kazakhstan transport system, playing an important role in the provision of basic access to rural areas, in addition to providing essential transit corridors for trade. Much of the road network was constructed during the Soviet era and has significantly deteriorated due to lack of adequate maintenance. While financing for the road sector has considerably increased over the past decade, the main reasons for poor performance of the roads are the lack of proper planning, insufficient institutional capacity and a rapid growth in motorization brought about by the transition to a free-market economy after the collapse of the Soviet Union.

8. **The Project was conceived as part of the Government's strategy to stimulate economic growth and reduce poverty in the poorest parts of the country, by improving access to the two concerned regions, as well as providing employment in the construction sector and related services.** Not only will the Project provide efficient

² CAREC comprises: Afghanistan, Azerbaijan, People's Republic of China (focusing on Xinjiang Uygur Autonomous Region), Kazakhstan, Kyrgyz Republic, Mongolia, Tajikistan and Uzbekistan.

transport links for the poorest regions of Kazakhstan, it will also provide an efficient transit corridor for other countries in the region, particularly Tajikistan and the Kyrgyz Republic. The improvement of the corridor will facilitate movements of goods and people and will improve road safety. It will also facilitate industrial, agricultural, and commercial activities, with improved trade and services along the road and in adjacent towns and cities.

9. **The Government's Road Sector Development Program includes financing for improvements to the 2,840 km road corridor linking Western Europe to Western China through Kazakhstan and Russia.** The overall objective of the Program is *to improve transport efficiency and safety, and promote development along one of Kazakhstan's main strategic road transport corridors*. Transport and trade efficiency are expected to be improved through provision of better infrastructure and services along the entire corridor, leading to reduced transport costs, and gradual reforms of the entities responsible for all categories of roads in Kazakhstan.

B. PROJECT OBJECTIVE

10. **The Bank financed Project is a major part of the overall Government led effort to develop the WE-WC Transit Corridor.** The specific Project Development Objective (PDO) is *to increase transport efficiency along the road sections between the Aktobe/Kyzylorda oblast border and Shymkent and to improve road management and traffic safety in Kazakhstan*. This will be achieved through:

- Upgrading and reconstruction of 1,062 km of road sections within South Kazakhstan and Kyzylorda oblasts along the WE-WC Corridor from the Aktobe/Kyzylorda oblast border to Shymkent (including the northern bypass to Shymkent city);
- Strengthening the capacity of the Committee for Roads and implementing a road management system for planning and budgeting of road maintenance, rehabilitation and construction on the Republican road network;
- Increasing the capacity of the Ministry of Transport and Communications (MoTC) and the Committee for Roads to monitor and supervise Project implementation with particular emphasis on procurement, financial management and safeguards; and
- Improving road safety and facilitating the provision of services along the WE-WC Corridor.

11. **The Project will lead to more efficient and safer transport, lower road transport costs, improved traffic safety, and better road services along the WE-WC Corridor.** For the Project objectives to be fully achieved it was recognized that there is a need to strengthen the planning and management capacity of the Committee for Roads in order to improve the efficiency of Project implementation and the utilization of resources allocated to the sector, and hence lower the economic costs of transport nationally and particularly along sections of the WE-WC Corridor. The Project will also assist in developing plans for improving road safety and road services. This will lead to lower

social costs stemming from reduced road traffic injuries and improved movement of goods and passengers.

C. PROJECT COMPONENTS

12. The Project comprises five components:

- **Component 1:** Upgrade and reconstruction of road sections within Kyzylorda oblast (excluding the bypass to Kyzylorda), estimated at a total cost of US\$1,334.5 million equivalent, excluding physical and price contingencies, and the costs of consulting services for supervision of the construction. About 788.5 km of road sections (most of which will be 2-lane) in Kyzylorda oblast will be rehabilitated or upgraded with modern structural design to lower the life-cycle cost of the road asset, including road safety features and road services. Land acquisition and road design costs are financed by the Borrower.
- **Component 2:** Upgrade and reconstruction of road sections within South Kazakhstan oblast from the Kyzylorda oblast border to Shymkent, including the bypasses to Kyzylorda and Shymkent, at an estimated cost of US\$879.1 million equivalent, excluding physical and price contingencies, and the costs of consulting services for construction supervision. About 273.4 km of road sections, all of which will be dual carriageways with 4 lanes, will be reconstructed or upgraded to include road safety features and road services. Land acquisition and road design costs are also financed by the Borrower.
- **Component 3:** Project Management Consultants (PMC) estimated at US\$6.5 million equivalent. The consultant services are designed to assist the Committee for Roads with the management of all activities associated with the projects financed by international financial institutions (IFIs),³ including the supervision of all safeguard and fiduciary aspects, as part of a joint effort by all IFIs and the Government to ensure efficient and transparent implementation of the WE-WC Corridor program. Additional financing towards the full PMC costs will be made by the other participating IFIs, estimated at another US\$6 million. The main beneficiaries will be the Committee for Roads and the MoTC from improved efficiency in Project implementation and management of the road network.
- **Component 4:** Institutional development and preparation of action plans to improve road safety and road services estimated at US\$3.5 million equivalent. The component comprises consulting services for: (i) a study to review options for strengthening the Committee for Roads and improving the overall condition of the road network; (ii) a training program to enhance capacity of Committee staff in project management, with particular emphasis on fiduciary and safeguards aspects; (iii) development and implementation of a road management system comprising a computerized database system for planning and scheduling road interventions; (iv) preparation of plans for improving road services along the

³ Other sections of the WE-WC Transit Corridor are financed by the Asian Development Bank, the European Bank for Reconstruction and Development, and the Islamic Development Bank.

Project road; (v) improvement in the oversight of environmental protection; and (vi) improvement in road safety through preparation of a road safety design manual, road safety audit, identification of accident black spots, strengthening of road accident research and estimation of the social cost of road accidents. Related civil works along the Corridor, such as improvements of links to local roads, construction of bus terminals, road/rail terminals, etc., will be financed through Components 1 and 2.

- **Component 5:** This will finance consulting services for supervision of civil works under Components 1 and 2, estimated at US\$55.0 million. This also includes review of detailed engineering designs and supervision of the implementation of Environmental Management Plans (EMPs) prepared for each road section.

13. **During Project preparation, the Bank discussed and agreed with the Government and with the other IFIs on the use of the PMC to assist the Committee for Roads with the management and implementation of the WE-WC Corridor development program.** The PMC is funded by the participating IFIs through the corresponding project loans. The specific role of the PMC is to undertake quality control in the management of all contracts, monitor safeguards implementation and oversee the work of supervising engineers employed under separate consulting services contracts. The PMC is responsible for preparing bidding documents, bid evaluation reports, quality control reports, and other progress reports for the entire WE-WC Corridor. In addition to the transfer of skills through training and day-to-day operations, the PMC interaction with the Committee of Roads is expected to lead to better control of the implementation schedule and will provide quality assurance for the executed works. This is designed to ensure strict adherence to all contract specifications, including full compliance with environmental and social safeguards requirements.

14. **During the initial stages of preparation, the Project was designed to be financed as separate phases of an Adaptable Programmatic Loan (APL), but this was later changed to a Specific Investment Loan (SIL), with implications for safeguards procedures.** Phase 1 of the APL would have comprised road sections placed in environmental screening Category B, for which the Environmental Assessment Review Framework (EARF) and Resettlement Policy Framework (RPF) had been prepared and disclosed. It was anticipated that a subsequent Phase 2 would be a Category A operation involving involuntary resettlement. However, during the appraisal mission, the Government requested that the entire Loan be committed upfront, as was done for the road sections financed by other IFIs. Consequently, the proposed financing instrument was changed from an APL to a SIL as this was the only Bank instrument that would fulfill the request by the Government. With the change of the lending instrument from an APL to a SIL at appraisal, the entire Project was reclassified as environmental Category A, involving involuntary resettlement. The implication of this re-classification was that the EARF was no longer sufficient for the requirements under OP 4.01, which specify that a detailed Environmental Assessment (EA) report covering all road sections under the Project, incorporating site-specific EMPs, should be completed, disclosed and consulted upon, prior to appraisal. With regard to OP 4.12, compliance requires completion and disclosure of a Resettlement Action Plan (RAP) prior to appraisal if all

affected persons and the land to be acquired can be identified at that time – otherwise an RPF can be an appropriate form of resettlement instrument.

15. **As a consequence of the change of lending instrument from an APL to a SIL at appraisal, a request was made to senior Bank management for a waiver to be sought from the Board of Executive Directors to exempt the Project from the requirement for the EA report and the RAPs to be completed and disclosed prior to appraisal.** The request to senior Bank management dated October 6, 2008,⁴ was made on the understanding that the EA report and the RAPs would be completed to the satisfaction of the Bank prior to presentation of the Project to the Board of Executive Directors. The EARF and RPF were subsequently withdrawn from the InfoShop because their disclosure had been superseded by the waiver request. It was agreed that an EA and RPF would be completed prior to Board presentation, while preparation of the site-specific EMPs and RAPs would be carried out during the Project implementation phase.

16. **As of August 2011, Project implementation is progressing mostly as planned.** A total of 21 civil works contracts have been issued for the 1,065 km of roads financed under this Project (with the exception of the bypass to Temirlanovka settlement). Project supervision has been regularly carried out by a high level interdisciplinary team of Bank staff (including two staff based in Kazakhstan). The Bank has allocated significantly higher supervision budgets to this Project from the outset – approximately 2.5 times the average for supervision of projects in Central Asia.

IV. SPECIAL ISSUES

17. **This is the second Request for Inspection of this Project.** The First Request related to a different section of the WE-WC road corridor, focused on the proposed improvements at Birlik settlement along the existing bypass to Turkestan city. Management was satisfied that the revised designs for the road segment at Birlik settlement were amended and other additional measures were taken by the Borrower to address issues raised by local residents. The Inspection Panel, in light of the satisfactory resolution of key matters of concern to the requesters and the positive response to the requesters concerns documented in the management response, did not recommend an investigation.

18. **Management believes that the Requesters' claims reflect issues typically encountered in a project of this scope and complexity. Resolving such issues can take considerable time and, indeed, efforts are already underway to resolve all of the complaints raised.** The Project record indicates that the Committee for Roads has consistently taken steps to resolve issues that arise in a manner consistent with domestic law and practice and with Bank policies. It should be noted that in Kazakhstan at the present time, resolution of issues such as compensation for land expropriation is

⁴ The initial request to seek a waiver was approved by senior Bank management on October 6, 2008. This was subsequently amended on March 30, 2009. The waiver was approved by the Board concurrently with the approval of the Project on April 30, 2009.

undertaken in a careful and methodical manner, in part due to concerns that the Financial Police⁵ will investigate and possibly find fault with authorities' decisions or with the use of public funds. As a result it is common practice for parties to refer grievances to courts for judgment, and the legal process (including appeals) can take several months or years to be completed.

19. While the Project grievance process is not raised in the Request, Management notes that the Project has a two-channel grievance redress mechanism.

One channel, as is traditionally the case in Kazakhstan, involves Project Affected Persons lodging complaints or concerns with local government officials (the *akimat*), who are generally the local officials designated to deal with ownership, property valuation and compensation issues. This is supplemented by a second channel provided for under the Project comprising grievance coordination functions undertaken by designated staff employed by supervision consultants for each road section financed through the Project. The role of the grievance coordinators is to deal with complaints or concerns relating to contractor performance and to any damages that might be caused as a result of the civil works in remote locations.

20. Each channel is intended to record systematically complaints and concerns, as well as the steps taken to address them.

The Committee for Roads through the PMC is required to maintain an overall grievance database and to report on results. The Project has made significant efforts to inform local residents about grievance redress opportunities. Brochures describing procedures and providing contact information have been disseminated, and were available to the public in the offices of *akimats* visited by the Bank in April 2011. As part of its effort to enhance the operation of the grievance redress mechanism, the PMC has provided standardized reporting formats to the *akimats* and has committed to undertake regular visits with the *akimats* and the supervision consultants in order to achieve more effective reporting on complaints received and actions taken as a result.

21. Many complaints have been addressed in a satisfactory manner, and additional measures are being introduced to improve the systematic recording of grievances and reporting on actions taken.

Regarding the *akimat* channel, the Bank has interviewed *akimat* officials, who indicate that local concerns generally continue to be addressed in an ad-hoc manner. Concerns beyond the purview of the *akimat* typically are referred to the Committee for Roads at the oblast level for consideration, or are referred to the courts for legal review. Officials and complainants appear to have little interest in formal registration of complaints, which runs counter to usual domestic practice. Because of the structure of the Project grievance mechanism, which relies on grievance coordinators appointed by the supervision consultants, it is taking time for the second channel to become fully operational. With regard to the Requesters' claims, Management notes that these have all been previously raised through the *akimat* channel and/or directly to the PMC.

⁵ Agency of the Republic of Kazakhstan for Fighting Economic and Corruption Crimes (Financial Police).

22. **The Bank has also promoted two other grievance mechanisms to bolster Project responsiveness to concerns and complaints.** A “Tripartite Committee” was established in 2009, in which the Lead Requester as an NGO representative, the Committee for Roads and the PMC would meet to discuss identified concerns. After a brief period of initial success, the NGO representative indicated that he did not wish to continue as he felt that it was not sufficiently responsive to his views. During the Bank’s field missions in April and in August 2011, the NGO representative agreed to participate in an attempt to revitalize that process. The Bank subsequently initiated a process to establish a Multi-Stakeholder Group (MSG) to coordinate activities between the MoTC, NGOs and the IFIs to facilitate NGO engagement in monitoring all aspects of the implementation of the WE-WC transport corridor. A Memorandum of Understanding among the Committee for Roads, the PMC and the NGOs is currently being negotiated.

23. **As was the case in the First Request, Management is committed to examine diligently all complaints brought forward.** Recognizing that it will take time to integrate existing national grievance resolution channels with those established by the Project, the Bank has sought to facilitate grievance resolution as described above. Regional management, including the ECAVP, the Country Director and the Sector Manager have on various occasions visited the Project sites and stressed to senior Government officials the importance of providing an effective and responsive grievance redress mechanism, as well as ensuring strict compliance with all relevant safeguard policies of the Bank.

24. **Management is concerned that the multiple roles of the Lead Requester in relation to this Project contribute to premature claims and reflect a potential conflict of interest on his part.** The Lead Requester has taken the initiative, on an ongoing basis throughout the implementation of the Project, of actively collecting individual concerns and communicating such issues to the Project’s grievance redress mechanism and directly to the Bank. Management notes the role that the Lead Requester has performed in bringing potential issues to the attention of the Bank and to the Committee for Roads, though in most cases those issues were already known and in the process of being resolved. However, Management has increasing concern about the role of the Lead Requester in two areas: firstly, that actions of the Lead Requester have the effect of escalating these issues under the assumption of a harmful outcome before the ongoing efforts to resolve them have been exhausted; secondly, that the Lead Requester’s other activities in connection with the Project may lead to confusion or even a conflict of interest on his part. Management notes that the Lead Requester was involved as a consultant to the road designers hired by the Committee for Roads, and was responsible for organizing public consultations on the EIA for the Temirlanovka Bypass, obtaining clearances for the document from relevant authorities, and performing other administrative duties on behalf of the road designers.

V. MANAGEMENT'S RESPONSE

25. **In Management's view the Request for Inspection is based on assumed outcomes and a misplaced assumption that no actions are being taken to address the issues raised by the Requesters. All issues referred to in the Request are in the process of being resolved through the appropriate channels, such as the Project's grievance redress mechanism, local courts, the *akimats*, the Committee for Roads, and the Bank, as relevant.** In Management's view these issues are frequently encountered in a project of this scope and complexity, and it is part of the role of the Project to identify and address such issues as they arise throughout implementation. Some of the issues are also similar to Project issues that have been satisfactorily addressed and resolved, such as in the First Request for Inspection of this Project. Hence, Management believes that the issues raised are already being adequately dealt with by the Bank and/or the Committee for Roads.

26. **Management observes that the Project involves road improvements across a 1,065-km alignment, requiring implementation in multiple jurisdictions.** As is commonly the case in projects of such technical and administrative complexity, planning and implementation issues can arise at any point in time, reflecting unanticipated situations relating to particular cases or locations, as is the case with this Request. Management acknowledges that adverse impacts could occur if the Requesters' issues were not addressed. In the context of the Project, however, the issues raised by the Requesters have been acknowledged by the Bank and by the Committee for Roads and are being addressed by the appropriate channels. In fact, some of the issues raised by the Requesters relate to redesign processes that are ongoing. For example, the Temirlanovka Bypass and the Yntymak section, redesigns are being undertaken directly in response to earlier concerns expressed by local residents.

27. **Management recognizes that the Committee for Roads, acting on behalf of the Borrower, has actively engaged with the Requesters in response to issues raised.** To date, the Committee's record is strong in resolving complaints, as evidenced by several measures to redesign particular road segments in response to consultations with local communities. Management recognizes the importance of supporting and further strengthening the capacity of the Committee for Roads to manage projects in a manner consistent with Bank policies and procedures. As a way of providing such support, the Bank has closely followed up and intensively supervised Project implementation and performance (see Annex 2 for site visit and supervision missions). Efforts to strengthen the formal recording and reporting aspects of the Project grievance redress mechanism are ongoing. Specifically, the PMC has developed and is circulating formats to standardize recording and reporting. The formats are to be used both by grievance coordinators and by *akimats*. To date, recourse to *akimats* remains a more familiar and accessible process for local residents. Management believes that the Bank and the Committee for Roads have shown consistent and appropriate efforts to identify and address planning and implementation issues, including being accessible to Project Affected Persons and other stakeholders, and have demonstrated continued commitment to meeting all Bank policy and procedure requirements.

28. **Regarding road design issues, Management confirms that in line with Bank policies road designs will not be approved, and works will not start, until plans and designs are finalized based on full and due consideration of the issues involved, including meaningful consultations with local communities and other stakeholders,** and all required documents have been approved by the Bank. Management remains committed to ensuring that the Committee for Roads meets its Project obligations to avoid harm, or to mitigate harm that occurs, or may have occurred during implementation of the Project.

29. **Management's response is focused on the four issues raised by the Requesters:**

- A. A claim by an individual in Turkestan Rayon that Bank omissions may result in failure to compensate adequately for assets and investments due to land acquisition.
- B. A claim that the roadway design through a densely populated area of the Yntymak neighborhood would generate environmental harm, such as noise and safety concerns.
- C. A claim that their comments on the draft Environmental Impact Assessment (EIA) for the proposed Temirlanovka Bypass section of the Project have not been taken into account and that the current draft EIA does not adequately assess the environmental impact of the proposed bypass.
- D. A claim that a contractor operating in Sairam Rayon initiated works on lands for which compensation to owners or leaseholders had not yet been finalized.

A. THE CLAIM BY AN AFFECTED PERSON IN TURKESTAN RAYON

30. This complaint relates to a parcel of land on which the Requester has constructed a commercial building, and which may be subject to land acquisition. The Requester is seeking compensation for anticipated profits from commercial operations and the cost for constructing a car park. There are ongoing disputes regarding the amount of land that he owns and whether or not he was prevented by the local authorities from commencing commercial operations. These disputes so far have led to three court cases with a fourth case pending.

31. Management notes that a RAP is in place that specifically identifies the Requester as a potentially Project Affected Person and provides for his compensation, which will be based on both the final determination regarding his property and land requirements of the Project. At present the Requester's rightful ownership of the plot, including the question of the actual size of this plot, is being clarified by a civil court case in Kazakhstan. Court proceedings rendered judgments in October 2010, February 2011, and April 2011, with appeals still ongoing. The Requester will be eligible for compensation or assistance under the RAP in line with Bank policy. The actual amount will depend on the outcome of the court case and the final design. The Bank has made clear its position to the Turkestan Rayon *akimat* and to the Committee for Roads that works that would affect this property cannot begin until the issue is resolved.

32. The Committee for Roads in South Kazakhstan Oblast is considering whether minor road redesign may reduce the impact on the Requester's property. Based on site visits in August 2011 and interviews with the Requester, the Bank is of the view that even with the proposed redesign the road works would still result in some impacts that would require compensation. The Committee for Roads has been engaged in seeking resolution to the issue, with the direct involvement of high-ranking Project officials in discussions with the Requester and the rayon *akimat*. The Bank has also informed the Committee for Roads that the compensation that would be due to the Requester will need reassessment, based on the actual impacts that eventually may occur, and taking into account inflation that may have occurred since the initial assessment (as is consistent with domestic practice).

B. ISSUES ASSOCIATED WITH YNTYMAK ROADWAY REDESIGN

33. The Requesters' claim states that the planned upgrading of a 5-km stretch of road in a densely populated peri-urban area from two lanes to four lanes will cause noise and safety problems for residents. The Requesters propose specific remedies, including construction of a noise control barrier and decorative plant barriers throughout the affected Yntymak neighborhood.

34. Management notes that a redesign process is being undertaken, in response to earlier concerns expressed by the local community to the Committee for Roads. The initial design was motivated, in part, by an intention to minimize land acquisition and population displacement in a densely populated area. The Bank and the Committee for Roads have remained actively engaged in responding to community issues. In a recent (August 2011) site visit, the Bank found that prospects for effective redesign – satisfying city road design standards and local residents – are limited by the spatial constraints of this narrow area in which the alignment must be situated. The Bank has made suggestions regarding possible means to reduce or mitigate environmental risks, but at present it is not possible for the Bank to state whether an appropriate design can be achieved without recourse to further land acquisition and population displacement.

35. Based on interviews with residents and the Lead Requester, the Bank believes that a significant part of continuing community concern relates to progress with the proposed redesign. Management notes that the first consultations on the preliminary designs for this road section were held in July 2009, and did not identify concerns with the design. However, subsequent consultations with the local population on the detailed designs carried out by the road designer in March 2011, in the presence of the Lead Requester and senior officials from the Committee for Roads, identified community concerns with the detailed designs. Following this, a review by the PMC of the original design was carried out in June 2011. The PMC recommended changes to the design utilizing a narrower road cross section. The PMC also recommended carrying out an analysis of the impacts of this changed design. The Committee for Roads agreed with the PMC recommendations and instructed the designers to prepare a new design based on these recommendations. The Bank will ensure that consultations take place as soon as a draft of the revised design is available.

36. The Bank has reminded the Committee for Roads that an updated site-specific EMP together with an updated site-specific RAP (if additional land acquisition is found to be necessary), will need to be prepared, based on the final design. The Bank will not issue its No Objection for the commencement of road works until all required documents have been reviewed and approved by the Bank.

C. ISSUES ASSOCIATED WITH TEMIRLANOVKA BYPASS EIA

37. The Requesters state that Project agencies have failed to follow appropriate procedures relating to public consultation regarding the proposed Temirlanovka Bypass, and that the EIA does not adequately assess the environmental impacts of the proposed bypass. The Requesters state that the process to date violates provisions regarding consultation on environmental matters under the Bank's OP 4.01, domestic regulations and the Aarhus Convention. The Requesters claim that there has been a failure to comply with national law and specifically a failure to register and analyze public comments on the EIA and to report on this analysis. With respect to OP 4.01, the Requesters cite the requirements for the Borrower to consult project affected groups and NGOs during the EA process and to take their views into account.

38. Management notes that the proposed bypass around Temirlanovka was the result of consultations held in January 2009 with local communities on the original design for a proposed 2.3 km elevated highway through the middle of the settlement. Local residents rejected plans for the elevated roadway and the road bypass was accepted as the alternative after further public consultations. The Committee for Roads awarded a contract to a design consultant in 2010 to prepare a design for the bypass. Consequently, this required the preparation of an EIA and a RAP for the bypass.

39. The Requesters state that the EIA document lacks specific reference to a range of environmental issues that may be relevant in constructing a road bypass in the proposed location. The Bank concurs and has provided extensive comments on two successive versions of the preliminary draft EIA to this effect. Specifically, the Bank has noted that the current draft EIA is largely generic and is lacking in information and analysis regarding site-specific conditions and issues.

40. Management agrees that effective and timely public consultation is essential. However, in order to have meaningful consultations the document needs to be of sufficient quality. The existing EIA document has not been approved by the Bank and, in the Bank's view, does not meet the required standard for consultation and disclosure. The Bank formally communicated in April 2011 to the Borrower that the draft EIA was not acceptable in its current form and content and made it clear that completion of a satisfactory EIA and an EMP with meaningful consultation as required in OP 4.01 as well as by national law and the Aarhus Convention (and completion of a site-specific RAP) for the new road bypass remains necessary before designs are finalized and works may commence. Once the EIA has been revised and improved to a state acceptable to the Bank, it will be duly shared with the public and consultations organized. The Bank will continue to support the Committee for Roads in its efforts to prepare an EIA that will be acceptable.

41. Management further notes that OP 4.04 was not triggered at the time of appraisal of the Project because the EIA indicated that no significant impacts on any natural habitats were anticipated. Management wishes to point out that the Temirlanovka Bypass was not included in the Project design at that time, as it was introduced as a redesign solution in response to concerns expressed by local residents about the original design for an overpass. OP 4.04 would now be triggered only if the EIA for the Temirlanovka Bypass (when completed) indicates that this redesign involves potential impacts on natural habitats. However, preliminary assessments by the Bank based on site visits by staff in August 2011 indicate that the proposed area for the bypass construction is in close proximity to a rayon center, and both the river and adjacent land areas are already significantly degraded as a result of heavy human use. Therefore, the affected area is unlikely to qualify as a natural habitat and OP 4.04 is unlikely to apply. This will be confirmed through the EIA process currently being carried out.

D. ALLEGATIONS REGARDING PREMATURE START OF WORKS IN SAIRAM RAYON

42. The Requesters claim that a contractor initiated works in Spring 2011 in two locations that were still subject to agreement on, and payment of, compensation due to land acquisition by the Project. The Requesters claim that such actions were in violation of OP 4.12, Involuntary Resettlement.

43. In response to information provided to the Bank, a field visit was conducted by Bank staff in August 2011 to clarify the situation. During the visit, the Bank was informed that a contractor had moved equipment onto private property and initiated works on lands for which compensation arrangements were still subject to dispute, and for which compensation had not been paid at the time. The Bank was advised by the Committee for Roads that the contractor had mistakenly been informed that works could begin on the land parcels involved. Following receipt of complaints from property leaseholders, the contractor stopped work in the area. The Bank was advised that the incursion lasted about one day and the extent of works undertaken involved some initial scraping and removal of topsoil.

44. Management notes that the Committee for Roads has been working with the affected households to reach agreement on compensation. The Committee for Roads has informed the Bank that as of August 31, 2011, seven of the eight affected households had reached agreement on compensation, and one case remains pending.

45. The Bank has made its position clear to the Committee for Roads that resolution of remaining issues is necessary before works can proceed on the one land parcel for which compensation is still in dispute. The field visit by the Bank in August 2011 confirmed that no works have been in progress since then involving this land plot for which compensation issues remain outstanding.

46. Management further observes that the Requesters do not claim that any material harm resulted from the incursion, and do not propose any specific remedial measures. The Bank continues to seek information relating to any appreciable harm that may be associated with these events. In the absence of specific claims, and in the absence of

information indicating that appreciable harm has occurred, Management believes that no further action is required in relation to this incursion.

VI. CONCLUSION

47. **The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1. In Management's view, the Bank has been fully responsive to the issues raised, and has made every reasonable effort to apply its policies and procedures in the context of the Project.** As a result, Management is of the view that the Requesters' rights or interests have not been, nor will be, adversely affected by a failure of the Bank to implement its policies and procedures. Management will continue to monitor all aspects of implementation, including the issues raised by the Requesters, to ensure full compliance with Bank policies.

ANNEX 1
CLAIMS AND RESPONSES

No	Claim	Response
1.	<p>We may incur damage as a result of deficiencies or omissions by the World Bank during implementation of the project "South-West Roads Development: Western Europe-Western China International Transit Corridor (CAREC 1B & 6B)," (IBRD Loan No. 7681-KZ) (Corridor Project), which is under way in the Republic of Kazakhstan. . .</p> <p>The project design calls for a section of the planned road through the city of Turkestan to run along an existing bypass. At the intersection of M. Shokai and Zh. Karmenov streets along the planned route there is a parcel of land that is privately owned by a citizen [the Requester].</p> <p>A commercial facility, selling construction material, has been built on this land. To construct this building, the owner invested his entire family capital, as well as loans from close acquaintances, business colleagues, and from a bank in the amount of US\$45.000 with an interest rate of US \$3.000 a year. [the Requester] received a notification on the start of the Western Europe–Western China highway rehabilitation project precisely at the time when he finished constructions, but he was unable to start its operation and obtain the anticipated income. As a result, he became insolvent; his arrears on all the loans he received are growing every month. Therefore, it is necessary on the basis of available financial documents to calculate the amount of forgone gain from the aforementioned business facility. In addition, a parking lot has been built on public land for the facility's customers. These costs must also be compensated. Based on an appeal filed by [the Requester] at the cassation level, the South Kazakhstan Oblast Court ruled in favor of legalizing the facility. However, the Turkestan City Administration refused to issue [the Requester] documents allowing him to operate the store. Furthermore, representatives of the local government authority did not formalize their refusal in writing, and thereby deprived [the Requester] of an opportunity to file a claim with the court against the their actions. At the same time, abusing their official powers, they have repeatedly attempted to raze the parking lot in front of the store with the help of the building contractor DENA RAHSAN CONSTRUCTION Co., with which the Government of the Republic of Kazakhstan has entered into a contract on lot km 2057-km 2111 of the road between the Russian Federation border (toward Samara) and Shymkent.</p> <p>This is a clear violation of the Bank's Operational Policy "Involuntary Resettlement," the Resettlement Policy Document and the laws of the Republic of Kazakhstan.</p>	<p>In Turkestan, there is a registered complaint in the Grievance Redress Database from a Requester who has stated that he obtained commercial use rights for a piece of land in 2008, and built business facilities there. He has not yet received any compensation because the legality of his claim to ownership has been contested by the rayon <i>akimat</i>. The Requester has referred the matter to the courts. According to the latest information available to the Bank, the court proceedings have not yet resolved issues regarding the Requester.</p> <p>Given the uncertainty surrounding his situation, the Requester states that he has been unable to launch his business, leaving his facilities unutilized in the interim. Though court proceedings are continuing, it appears that the Requester has been informed that his claim would be compensable under the laws of Kazakhstan if he were to obtain <i>akimat</i> documentation confirming his use rights.</p> <p>Under Bank policy terms, the Requester is potentially a Project-Affected Person, and RAP data tables indicate he is to be compensated.</p> <p>The Bank was informed that the Committee for Roads would prepare and review redesign options. Based on a site visit and interview with the Requester in August 2011, however, the Bank observed that redesign within the existing alignment would likely cause safety, parking and access issues that would require careful consideration. In any event, compensation would remain necessary for loss of assets and land that would still fall within the alignment.</p> <p>The Bank recommended that the Committee for Roads intervene directly to ensure that the final design provides adequate safety and access measures and that the Requester is fully compensated for land and assets that would be acquired.</p> <p>During the August 2011 site visit, the Bank also met representatives of the contractor and the supervision team. There was no evidence that any works had started on the Requester's property. The contractor's representatives and the supervision teams confirmed that they will not move forward with civil works that affect the property until further notice.</p>

No	Claim	Response
2.	<p>Another problem concerns the project “Reconstruction of the road from the Russian Federation border (toward Samara) to Shymkent, km 2231-km 2260.” On July 30, 2009, at a meeting on implementation of the “Western Europe-Western China” project through South Kazakhstan Oblast with the participation of representatives from the World Bank, the Oblast <i>Akimat</i>, the Committee for Roads of the Republic of Kazakhstan Ministry of Transport and Communication, the Oblast Committee for Roads, interested members of the public and design, land-management and other stakeholders, the following question, among others, was raised:</p> <ul style="list-style-type: none"> • The project engineer asserts that calculations done in the locations of the construction, taking into account the presence of 2-3 meters high .walls, acting as protective barriers, show that the concentration of toxic substances in emitted gases (carbon oxides, hydrocarbons, carbon black, and lead compounds in the air) is within the permissible standards at a distance of 35-40 meters from the nearest traffic lane and will not have a negative impact on the environment. In reality, in the Yntymak residential neighborhood, located 5 km along the road, the distance between the residences’ construction lines opposite each other in the widest part of the road is 54.7 meters. Given a projected roadway width of 15 meters, what is left for each side of the road up to the construction line is a maximum of 20 meters, rather than the 35-40 that the project engineer contends. • The project designer’s assertion that the distance from the projected road to the community of Yntymak is 40 meters does not reflect reality, it is 15-20 meters. • The project engineer says that noise will not have a negative impact on living conditions of the population in the settlement of Yntymak provided that fences are installed at a distance of 10 meters from the road. Therefore, the fences must be installed at a distance of 5 meters· from the construction lines of the residences. • According to the project engineer, the existing forest areas along the road being reconstructed are located 30-40 meters from the center line of the roadway, whereas the required width of the right-of-way for reconstruction of a road is 16 to 28 meters from the center of the roadway. Hence, when the road is reconstructed, existing forest areas do not have to be cut down. In reality, however, there are the trees that are planned alongside of existing roads in Yntymak will be felled during the implementation of the project. <p>We raised a general question: to what extent does this meet the standards of environmental safety?</p>	<p>Management notes that a redesign process is being undertaken, in response to earlier concerns expressed by the local community in the Yntymak residential neighborhood to the Committee for Roads. The original design was motivated, in part, by an intention to minimize land acquisition and population displacement in a densely populated area.</p> <p>Management is aware of the spatial constraints and related technical difficulties associated with the design of the portion of the road running through Yntymak, which is a peri-urban neighborhood of Shymkent. Legitimate concerns have been raised by residents about the construction of a four lane road based on the current design. Management notes that this road section is being redesigned, following meetings between the Committee for Roads, the designer, the Project Management Consultants (PMC) whose responsibility was to review the design, and consultations with the local residents. Field visits by Bank staff confirmed that the original design would have caused significant negative impacts on local residents’ lives and businesses, in varying degrees on some properties along the 5 kilometer section of road through Yntymak.</p> <p>Management would like to point out that the concerns of the residents have been recognized both by the Bank and the government, and the Committee for Roads is now considering alternative designs to the Yntymak section. The current strategy of the Committee for Roads is to redesign the 4 lane road with narrower lanes, thus allowing more space between abutters and the roadway.</p> <p>The Bank visited the road section and discussed the new design during the field trip in August 2011, and requested the Committee for Roads to meet with local residents again to discuss and adjust the new design prior to finalization. In the site inspection, the Bank found that prospects for effective redesign – satisfying city road design standards and local residents – are limited by the spatial constraints of this narrow area in which the alignment must be situated. The Bank has made suggestions regarding possible means to reduce or mitigate environmental risks, but at present it is not possible for the Bank to state whether an appropriate design can be achieved without recourse to further land acquisition and population displacement.</p> <p>It should be noted that the section through Yntymak is not on a critical time path for construction and therefore there is still time to adjust the new design</p>

No	Claim	Response
	<p>In his response, N.B. UMIRBAYEV, Deputy Chairman of the Committee for Roads, said that interested members of the public can make their criticisms after contracts are entered into with building contractors. The Technical Specifications of the contracts will take account of and incorporate the instructions to the contractors if they are justified. N. B. UMIRBAYEV said that measures may be recommended in regard to environmental requirements for the Yntymak residential neighborhood.</p> <p>We raised this problem with the Shu-Talas Committee for the Environment of the Republic of Kazakhstan Ministry of Environmental Protection in September 2009.</p> <p>In early June 2011, we received the Technical Specifications for this lot from the office of the Project Management Consultant (PMC) and from the Committee for Roads. Upon studying the document, we discovered that the project engineer's recommendations in the EIA report for construction of a noise-control barrier and planting decorative plants with a full technical description were not taken into account.</p> <p>Based on the foregoing, we insist that revisions be made to the Technical Specifications of the contract of Kukdong Engineering & Construction Co. Ltd to fulfill the World Bank's environmental safety requirements and standards and the environmental laws of the Republic of Kazakhstan, specifically:</p> <p>1) to build a noise-control barrier at km 2255 to km 2258 of the projected road on both sides of the street in the Yntymak residential neighborhood;</p> <p>2) to plant decorative plants at km 2255-2260 of the projected road.</p> <p>This is a clear violation of the World Bank's Operational Policy OP4.01 "Environmental Assessment."</p>	<p>following consultations with local residents to ensure that the design is optimized to answer both the demand of road users (better traffic flow, better road safety, etc.) and the demand of local residents for sufficient mitigation of anticipated negative impacts. The Bank requested the Committee for Roads to develop a catalogue of design solutions for noise protection, parking / business access and greening, and present this to the public in the context of a continuing dialogue between local residents and designers. The Bank will ensure that consultations take place as soon as a draft of the revised design is available.</p> <p>The Bank notes that regardless of the technical solution that will be adopted, the traffic on this section of the road will significantly decrease once construction of the north-eastern bypass of Shymkent (also financed under the Project) is completed and the bypass is opened to traffic (in about 24 months). The road will become safer because transit/through traffic will be diverted to the bypass, and the road through Yntymak will be used primarily by local traffic (which tends to be slower, comprising on average lighter vehicles).</p>
3.	<p>On the third issue, pursuant to the terms of the Loan Agreement signed between the Republic of Kazakhstan and the International Bank for Reconstruction and Development on June 13, 2009, and ratified by Republic of Kazakhstan Law No. 172-4 of July 10, 2009, the Borrower shall implement the Corridor Project in South Kazakhstan Oblast through the Republic of Kazakhstan Ministry of Transport and Communications with the assistance of the Project Management Consultant of the Canadian company SNC Lavalin.</p> <p>In October 2010, the EIA report for the "Temirlanovka Bypass", by the "GradSroyEkoProyekt" Limited Liability Partnership (LLP) (hereinafter, the Environmentalist); was sent to the South Kazakhstan Oblast Office of Natural Resources and Resource Management (hereinafter, the Expert) of the Shu-Talas Committee for Environmental</p>	<p>Management notes that the proposed bypass around Temirlanovka was the result of consultations held in January 2009 with local communities on the original design for a proposed 2.3 km elevated highway through the middle of the settlement. Local residents rejected plans for the elevated roadway and the road bypass was accepted as the alternative after further public consultations. The Committee for Roads awarded a contract to a design consultant in 2010 to prepare a design for the bypass. Consequently, this required the preparation of an EIA and a site-specific RAP.</p> <p>The current version of the draft EIA was reviewed by the Bank in April 2011 and was deemed not acceptable to the Bank. The Borrower subsequently asked the consultant to revise the document and this</p>

No	Claim	Response
	<p>Protection (EP) of the Republic of Kazakhstan Ministry of EP for the state environmental experts' conclusions.</p> <p>This report does not comply with the Instructions on Conducting Environmental Impact Assessment of Planned Commercial or Other Activities when Pre-planning, Planning, Pre-design and Design Documents, which was approved by Order No. 204-p of the Republic of Kazakhstan Ministry of EP of June 28, 2007, and the standards of the World Bank Operational Policies OP 4.01, Operational Policy "Environmental Assessment," of January 1999.</p> <p>As a result, in October 2010, [two of the Requesters], representatives of "NAIR", sent the Expert their Comments on the EIA report suggesting to return the report to the Environmentalist for further study and impact assessment of the "The Temirlanovka Bypass" project to comply with all the requirements and standards of the World Bank and the laws of the Republic of Kazakhstan.</p> <p>Subsequently, the authorized body, the Oblast's Committee for the Committee for Roads of the Republic of Kazakhstan Ministry of Transport and Communications, failed to meet the requirements of the Instructions for Incorporating Public Opinion on the EIA project, specifically:</p> <ul style="list-style-type: none"> failed to confirm the registration of the letters with "Comments" from the "NAIR" representatives; failed to analyze comments and suggestions received from the public; failed to prepare the relevant report; failed to present its comments on the suggestions from the public. <p>The Expert, in turn, gave an unsatisfactory response (No. 08/4778 of December 7, 2010) to our letter of November 25, 2010, which was e-mailed to the Expert:</p> <p>"The materials regarding the working design for construction of the section of road 'Temirlanovka Bypass' are under review by the state environmental experts' panel and, pursuant to Article 50 of the Republic of Kazakhstan Environmental Code, the time frame for the review by the environmental experts' panel should not be 3 months from the time the application is submitted. We also inform you that, pursuant to Article 53 of the Republic of Kazakhstan's Environmental Code, Article 9 of the Republic of Kazakhstan's Law "On the Civil Service", and the Decree on Civil Service, government employees serving as State environmental experts shall ensure the safekeeping of the documentations by preventing the disclosure of information entrusted to them and shall carry out the administration's orders and directives and the decisions and instructions of higher-ranked agencies to the extent of their authority."</p>	<p>was re-submitted to the Bank in July 2011. During the mission in August 2011, the Bank reviewed the revised version of the EIA, and found that it was still unacceptable. The mission included a field visit to the bypass alignment by the Environmental Specialist on August 17, 2011. Further Bank comments on the revised EIA were submitted to the Borrower on August 18, 2011.</p> <p>Management notes that the EIA in its current state is not ready for disclosure. The draft EIA still does not comply with the standards required by the Bank and is thus a work in progress. The criticism brought forth by the Requesters of the poor quality of the EIA is shared by the Bank and this has been clearly and unambiguously communicated to the Borrower. During the August 2011 mission, the Bank issued clear recommendations and guidance to the Committee for Roads on how the EIA could be improved. Once the EIA has been revised and improved to a state acceptable to the Bank, it will be duly shared with the public and consultations organized in compliance with OP 4.01, national laws and the Aarhus Convention.</p> <p>During the site visit, the Bank observed that the majority of the bypass alignment will run through agricultural and range land. The Bank further noted that there are two short sections (both about 1 km of length) with relatively higher environmental sensitivity;</p> <ol style="list-style-type: none"> 1) The settlement along a road heading east from Temirlanovka, which would be traversed by the bypass alignment. 2) A road section of about 1.5 km length, that traverses the Arys River floodplain and crosses the Arys River by means of a four lane bridge of about 350m. <p>The preliminary assessments based on the August 2011 site visits by the Bank indicate that the proposed area for the bypass construction is in close proximity to a rayon center, and both the river and adjacent land areas are already significantly degraded as a result of heavy human use. Therefore, the affected area is unlikely to qualify as a natural habitat and OP 4.04 is unlikely to apply. This will be confirmed through the EIA process currently being carried out.</p>

No	Claim	Response
	<p>With this statement we conclude that there is a violation of NAIR's right to participate in decision-making processes on matters related to the environmental under the procedure prescribed by the laws of the Republic of Kazakhstan (Article 14 of the Republic of Kazakhstan Environmental Code of January 9, 2007, No. 212-III ZRK) and a restriction of NAIR's right to express its opinion during the environmental expertise review.</p> <p>Pursuant to Article 6, "Public Participation in Decisions on Specific Activities" of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention):</p> <p>"7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analysis or opinions that it considers relevant to the proposed activity.</p> <p>"8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.</p> <p>"9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based."</p> <p>These precise provisions were not complied with by the authorized government bodies.</p> <p>Finally, the following provisions were violated:</p> <ul style="list-style-type: none"> • clause 15 of the World Bank's Operational Policy "Environmental Assessment": "For all Category A projects during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account"; • clause 12 of the World Bank's Operational Manual BP 4.01 "For Category A projects this review gives special attention to [...] the nature of the consultations with affected groups and local NGOs and the extent to which the views of such groups were considered"; • clause 2 (h) of Annex B of the World Bank's Operational Policy "Environmental Assessment": "iii) Record of [...] consultations with public groups and local nongovernmental organizations (NGOs) specifies any means other than consultations [...] that were used to obtain the views of affected groups and local NGOs." 	

No	Claim	Response
4.	<p>Concerning the “Shymkent Bypass” section of the projected road from km 2231 of Route M32 “Russian Federation border via Samara to Shymkent” to km 674 of Route A-2 “Kborgos via Almaty and Shymkent to the Republic of Uzbekistan border”, the Project runs through agricultural land belonging to the following [eight] citizens of the Republic of Kazakhstan:</p> <p>The content of their grievances is the following:</p> <p>a) in the spring of 2011, the contractor AzerkorpU/Tepe JV began excavation work on the land of [2 of the citizens] before the Agreement on the Amount of Compensation for Losses Resulting from the Expropriation was signed. On April 4, 2011, the South Kazakhstan Oblast Committee for Roads entered into the above Agreement with these individuals, and terminated it by a letter of April 12, 2011.</p> <p>b) in the spring of 2011, the contractor AzerkorpU/Tepe JV began excavation work on the land of [one of the citizens] without formalizing an Agreement on the Amount of Compensation for Losses Resulting from the Expropriation of Land.</p> <p>c) with regard to the land of the other individuals, excavation works have not begun on the lands of other citizens only because of the spontaneous resistance of these landowners.</p> <p>According to a letter from a specialist in the office of the PMC of SNC Lavalin of June 13, 2011, the following [four] individuals: ...were paid compensation on May 5, 2011 by the Committee for Roads and their land was confiscated under the Agreement.</p> <p>With regard to the other four land users, the Committee for Roads and the local <i>Akimat</i> are initiating a lawsuit to revise the previous Assessment Report due to an allegedly inflated amount of compensation.</p> <p>This is a clear violation of the World Bank’s Operational Policy OP 4.12 “Involuntary Resettlement,” specifically:</p> <ul style="list-style-type: none"> • clause 10. Resettlement measures are linked to the implementation of the investment component of the project so that the confiscation of land or the restriction of access to it is carried out only after implementation of all necessary measures related to resettlement ... In particular, land and other property may be confiscated only after the appropriate compensation is paid. 	<p>Enquiries by the Bank during the field visit in August 2011 indicated that the Contractor had prematurely entered some private agricultural land for which compensation arrangements were still under dispute. After initiating some topsoil scraping and removal, the Contractor subsequently stopped the works once he was informed of the situation, and the works have not resumed since.</p> <p>To date, according to the Sairam Rayon <i>akimat</i>, seven of the eight land users have reached agreement while one case remains pending. At present, and in accordance with OP 4.12 requirements, construction has been halted and will not proceed on the relevant parcel until the issue has been resolved. In the remaining case, the Committee for Roads has sought court determination as to whether the proposed compensation is excessive. In August 2011, the court ruled that the assessment and proposed compensation is appropriate. The Committee for Roads has not yet decided whether to appeal the court’s decision.</p> <p>The Bank has stated to the Committee for Roads and PMC that, if the value of the property were to be reassessed and if the compensation amount were lowered below that provided by the RAP, a detailed review would be required to demonstrate that the revised compensation remains sufficient to obtain a replacement asset of equivalent market value. The Bank has made its position clear to the Committee for Roads that resolution of remaining issues is necessary before works can proceed on the one land parcel for which compensation is still in dispute. The field visit by the Bank in August 2011 confirmed that no works have been in progress since then involving this land plot for which compensation issues remain outstanding. The Bank also requested the Committee for Roads to provide a formal response as to whether the Contractor entered private land before the compensation process was agreed upon, and whether any appreciable property damages occurred as a result. In the absence of specific claims, and in the absence of information indicating that appreciable harm has occurred, Management believes that no further action is required in relation to this incursion.</p>
5.	<p>[One of the Requesters] between 2009 and 2011 has repeatedly sought assistance from the Turkestan City Administration; the Oblast Committee for Roads; and other authorized bodies, as well as the Project’s Committee for the World Bank. The Committee for Roads contends that [the Requester] is fully entitled to</p>	<p>In responding to the Requester’s concern, the Bank intended to clarify the appropriate channels through which issues such as these can be raised and addressed. As is standard practice, the Bank prefers to allow domestic processes to run their course before the Bank directly intervenes. But in all cases,</p>

No	Claim	Response
	<p>receive compensation. Representatives of the Project's Committee for the World Bank, in their response of April 13, 2011, stated that they do not intend to solve specific problems of individual land users and land owners, and that it is the prerogative of the Committee for Roads and the Project Management's Consultant, and that the Plan approved by the Bank fully satisfies the representatives of the Project's Department. The <i>Turkestan Akimat</i> denies [the Requester] the right to receive compensation for the direct impact of the project.</p>	<p>outcomes consistent with Bank policy standards are required. In this Project, compensation to individual Project Affected Persons is addressed in the RAP. The Bank will continue close supervision to ensure full implementation of the RAP.</p> <p>This message was also passed to the Lead Requester during a meeting held between the Bank and the Requesters in Shymkent in April 2011.</p> <p>The status of the case related to the Requester's property in Turkestan is described under Item 1.</p>
6.	<p>Attached to this Request are the letters with which we appealed to all the agencies. We believe the Bank has the right to demand that the Client enforce its policy.</p> <p>We appealed to .the Project Leader of the World Bank and to the Astana office of the World Bank in October 2010 by e-mailing a letter with an attachment of Comments by [two of the Requesters] regarding the EIA report by GradStroyEkoProyekt LLP on the "Temirlanovka Bypass" project. We received no response.</p> <p>We appealed to the Project's Committee for the World Bank regarding the violations related to the implementation of the Resettlement Action Plan for South Kazakhstan Oblast, but on April 13, 2011, we received an unequivocal reply that the Bank did not intend to address specific problems of individual land users and owners and that this is the prerogative of the Committee of Roads and the Project Management Consultant and the Plan approved by the Bank fully satisfies the representatives of the Project's Department.</p> <p>We appealed to the Committee for Roads (the letter and reply are attached), and not until June 13, 2011, did we receive a letter from the PMC for South Kazakhstan Oblast in which he informed us that the problem for the 4 land users had been solved, and for the other 4 land users a judicial review would take place ..</p>	<p>Management notes that the letters referred to in the Request were not provided.</p> <p>Management agrees that the Bank is responsible for ensuring that the Borrower implements the Project in full compliance with Bank policies. The Loan Agreement provides remedies that the Bank can call upon in the event that the Borrower fails to meet its obligations.</p> <p>The Bank has been in contact with the Lead Requester and informed him that the Bank concurred with him regarding the deficiencies in the draft EIA and that the document had not been approved by the Bank.</p> <p>In responding to the Requester's concern, the Bank intended to clarify the appropriate channels through which issues such as these can be raised and addressed. As is standard practice, the Bank prefers to allow domestic processes to run their course before the Bank directly intervenes. But in all cases, outcomes consistent with Bank policy standards are required. In this Project, compensation to individual Project Affected Persons is addressed in the RAP. The Bank will continue close supervision to ensure full implementation of the RAP.</p> <p>The process of resolving land acquisition issues in Sairam is continuing. Since the reported incursion, seven of the eight households involved in the complaint subsequently have reached agreement on compensation.</p>
7.	<p>We ask the Inspection Panel to recommend to the Executive Directors of the World Bank to conduct an investigation into the aforementioned matters in regard to all four situations, and to make revisions to the Corridor Project regarding the area of the Yntymak residential neighborhood in the city of Shymkent.</p>	<p>See Item 2 for the details about the status of the Yntymak residential neighborhood new design.</p>
8.	<p><i>What may be the environmental and social impact of the construction of the "Western Europe-Western China" Project on the "Bypass in Temirlanovka" section in case the</i></p>	<p>See Item 3 for details on the Bank's views regarding the quality of the current draft EIA for the Temirlanovka Bypass.</p>

No	Claim	Response
	<p><i>construction activities are carried' out with this environmental impact assessment prepared by LLC "GradStroyEkoProyekt" (the Environmentalist) for the technical assignment of LLP "Doris"?</i></p> <p>8a. Regarding the first issue, Clause 4.7, "Impact assessment of the project on the condition of vegetation," in the EIA report by the Ecologist states: "In the area of the construction site, there are no plant species that have been added to the Red Book. The impact of the project on vegetation is determined by the emission of hazardous substances into the atmosphere," while clause 4.8, "Impact assessment of the project on wildlife," states: "There are no animal species that have been added to the Republic of Kazakhstan Red Book in the area affected by construction. No epidemic among animals in the affected zone of the business activity project has been reported. Considering the absence of any significant impact from the project on the condition of fauna, no changes or consequences from these changes in wildlife are expected."</p> <p>This information from the Ecologist suggests that the Ecologist either did not conduct the necessary field research to compile the report or conducted it in a superficial manner. The impression is such that the project route in the above section will run through a desert. In reality everything is precisely opposite.</p> <p>The design for the Bypass of the Village of Temirlanovka calls for the construction of a 350 meters long bridge and a road embankment across the floodplain of the Arys River, which is 1.4 kilometers wide. There is a section of tugai forest in this floodplain where willows and silvery oleaster interwoven with Clematis vine grow; needle grass, tamarisk and chingil grow in the fields. In the spring and fall, there are a great many diverse mushrooms in these forests. Fauna is represented, among others, by ducks, herons, pheasants, feathered predators and jackals; in the river itself are barbs, catfish and small fish. For thousands of residents, situated only 30 km from the middle reaches of the Arys River of the city of Shymkent, its banks have become a place of accessible relaxation and various kinds of recreation. What will happen to this section of tugai forest after the project route is put into service? What is the plan for environmental actions for the aforementioned species of flora and fauna? None of this is in the EIA report by the Environmentalist. Hence, the project will have a direct, irreversible physical impact on the ecosystem of the Arys River over a small section. According to data from scientists at the Industrial Ecology and Biotechnology Research Institute of Mukhtar Auezov South Kazakhstan State University, in terms of chemical characteristics, the Arys River is a highly polluted body of water, and the quality of the water falls under Class 3 medium-polluted waters. The algal flora of the river is represented by six</p>	

No	Claim	Response
	<p>species of diatomic algae. The zooplankton in the river is represented by three species of animal flagellates and one species each of amoeba and infusorian. The sources of water pollution are: nitrates, ammonium salts, sulfates, copper, lead, zinc, ions of magnesium, and petroleum products. Concentrations of these pollutants are two to seven times higher than the maximum permissible levels. How is an increase in the pollution of the Arys River to be prevented after the road is put into service? How is the adverse environmental impact of the project to be decreased? What do the specialists and experts propose to address this? Judging by the EIA report, they do not propose anything at all except planting trees along the route near the development zone.</p>	
	<p>8b. The EIA lacks any series of studies on social issues: medical-biological, demographic, and social-cultural. No description is provided of the residential area through which the bypass around the village of Temirlanovka will run - the settlement of Kazhymukan:</p> <p>-the numerical size, gender, and age composition of the population, the labor force, employment level, common types of diseases related to environmental impact, recreation and so forth. What changes will take place in terms of these indicators after the project route is put into service? What is the plan to reduce the adverse impact? The EIA report contains neither analysis nor mitigation plan. Yet South Kazakhstan Oblast leads the republic in the prevalence of anemia among new mothers and in infant mortality up to 1 year of age. The hazardous environmental impact is one of the leading causes of these and other diseases.</p> <p>In addition, as a teacher in the oblast's education system, I would like to point out that instruction in the oblast's schools concerning safe crossing of the roadway is nonsystematic and superficial. This is the first time that a road of the first technical category is being built in the Oblast: high speed, heavy traffic, with its own specific transit characteristics. The EIA should have specified the level, scope, and specific nature of a program to disseminate a minimum of information regarding the road itself and children's safety in the particular conditions of a high-speed highway.</p>	<p>See Item 3 for details of the Bank's views regarding the quality of the current EIA document for Temirlanovka Bypass. These elements have all been brought to the attention of the CR and the firm in charge of finalization of the EIA.</p>
	<p>8c. The Environmentalist failed to provide an assessment of the flooding of residents' homes in the village of Temirlanovka, as occurred on the night of February 27, 2008, when snowmelt overflowed the Naiman irrigation ditch and burst through it. The stream damaged roads and bridges, a school and a water pipeline, and residents of 30 homes suffered losses.</p>	<p>See Item 3 for details of the Bank's views regarding the quality of the current draft EIA for Temirlanovka Bypass. This element will also be brought to the attention of the Committee for Roads and the firm in charge of finalization of the EIA.</p>

Annex 2
Overview of Supervision Missions and Site Visits (July 2010 to August 2011)

#	Mission Dates	Mission members	Areas Visited
1	July 29 – August 1, 2010	<ul style="list-style-type: none"> • Task Team Leader • Operations Officer • ET Consultant - Engineer 	<ul style="list-style-type: none"> • Astana • Kyzylorda Oblast
2	September 27 – October 1, 2010	<ul style="list-style-type: none"> • Task Team Leader • Senior Environmental Specialist • JPA Engineer • Operations Officer • ET Consultant - Engineer 	<ul style="list-style-type: none"> • Astana • Kyzylorda Oblast
3	December 7-14, 2010	<ul style="list-style-type: none"> • Sector Manager • Task Team Leader • Operations Officer 	<ul style="list-style-type: none"> • Astana
4	January 19-23, 2011	<ul style="list-style-type: none"> • Lead Social Development Specialist • Operations Officer 	<ul style="list-style-type: none"> • Astana • South Kazakhstan Oblast
5	April 12-17, 2011	<ul style="list-style-type: none"> • Task Team Leader • Senior Environmental Specialist • Operations Officer • ET Consultant - Engineer 	<ul style="list-style-type: none"> • Astana, • South Kazakhstan Oblast
6	June 2, 2011	<ul style="list-style-type: none"> • Country Director • Country Manager • Sector Manager • Operations Officer 	<ul style="list-style-type: none"> • Astana, • South Kazakhstan Oblast • Kyzylorda Oblast
7	August 8- August 31, 2011	<ul style="list-style-type: none"> • Task Team Leader • Senior Environmental Specialist • Lead Social Development Specialist • Operations Officer • ET Consultant - Engineer 	<ul style="list-style-type: none"> • Almaty • South Kazakhstan Oblast • Kyzylorda Oblast • Astana

Note: Excludes missions by the Bank fiduciary team

Annex 3
List of the Bank's Relevant Communications with the Lead Requester
(November 2010 – August 2011)

FROM	DATE	TO	SUBJECT
Lead Requester	11/25/2010	INT, Task Team Leader	Complaint to the WB
Lead Requester	11/25/2010	Task Team Leader	Environmental Impact on Temirlanovka
Lead Requester	11/25/2010	Sametova, Task Team Leader	Request to provide the outcomes of the state ecological expertise
Task Team Leader	11/25/2010	Lead Requester	Concerns regarding EIA
Lead Requester	12/04/2010	Task Team Leader	Sharing on the successful campaign on ADB monitoring
Lead Requester	12/05/2010	Task Team Leader	Request for the WB policies
Task Team Leader	12/10/2010	Lead Requester	Info on civil works is unavailable
Lead Requester	12/20/2010	Task Team Leader	Resettlement plan
Lead Requester	12/24/2010	Task Team Leader	New version of the monitoring project and update on the NGO activities and request for the new budget allocation of 33000 USD
Lead Requester	02/15/2011	INT, Task Team Leader	Reminder on the status of two complaints
Task Team Leader	02/23/2011	Lead Requester	Circulating draft letter to Project Team and suggest audio conference
Lead Requester	03/03/2011	UNECE, EC, Task Team Leader	Complaint
Lead Requester	03/03/2011	Task Team Leader	Reminder on the violation of the Operational Policy on the Resettlement issues
Lead Requester	03/03/2011	MOTC, Task Team Leader	Notification to the GOR that complaint will be forwarded to the EC
Lead Requester	03/04/2011	Task Team Leader	Additional historical info on Khurlug town
Lead Requester	03/05/2011	UNECE, Task Team Leader	Statement on observing the standards of the Aarhus Convention
Task Team Leader	03/08/2011	Lead Requester	Your e-mail dd Feb. 15 about SKO RAP
Lead Requester	03/14/2011	Task Team Leader, IP	Claim on damage and meeting the environmental standards of the WB
Task Team Leader	03/15/2011	Lead Requester	Response on the letter fm ShymkentKazdorproekt with claims
Lead Requester	03/16/2011	Task Team Leader	Request for the Inspection
Lead Requester	03/16/2011	Task Team Leader	Requesting assistance to get responses from KZ Road Agencies
Lead Requester	03/16/2011	Task Team Leader	Corrigendum of the attachments
Lead Requester	03/24/2011	Task Team Leader	New complaint fm ShymkentKazdorproekt
Task Team Leader	03/25/2011	Lead Requester	Response on the complaint fm ShymkentKazdorproekt
Lead Requester	03/27/2011	Task Team Leader	Letter response on letter dd. 03/25 – Absence of conflict of interest between Lead Requester and Designer
Lead Requester	03/28/2011	Task Team Leader	Reassurance not to raise any political or social issues around Temirlanovka during the field trip
Task Team Leader	03/28/2011	Lead Requester	Confirmation of the field trip and participation of the Sr. Environment Specialist
Task Team Leader	03/28/2011	Lead Requester	Acknowledge of e-mail and schedule of the trip

FROM	DATE	TO	SUBJECT
Lead Requester	04/09/2011	Task Team Leader	Reconfirming the field trip once again
Task Team Leader	04/09/2011	Lead Requester	Reconfirming the field trip once again fm the WB side
Lead Requester	04/19/2011	IP, Task Team Leader	Complaint to IP
Lead Requester	06/02/2011	Task Team Leader	Request for the feedback on the facts stated in the letter fm ShymkentKazdorproekt
Lead Requester	08/25/2011	Task Team Leader	Petrol Station and Inspection Panel
Task Team Leader	08/30/2011	Lead Requester	Petrol Station and Inspection Panel