

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		