

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 TURSUNBAYEVICH NYSANOV, representing individuals residing in the villages of Kurlyk, Taskeshu, Komesbulak, 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 Dutbaevich Dauletbakhov;
- Kaipbek Zhorayevich Akhmedov;
- Rakhyshevich 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.

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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.