



**Asian Development Bank Accountability Mechanism
Compliance Review Panel**

REPORT ON ELIGIBILITY

**To the Board of Directors
On
Compliance Review Panel Request No. 2011/2
On the CAREC Transport Corridor I (Bishkek-Torugart Road) Project 1
In the Kyrgyz Republic
Grant No. 0123-KGZ**

29 June 2011

ABBREVIATIONS

ADB	-	Asian Development Bank
CRP	-	Compliance Review Panel
MOTC	-	Ministry of Transport and Communications
NGO	-	non-government organization
OCRP	-	Office of the Compliance Review Panel
OSPF	-	Office of the Special Project Facilitator
RAR	-	Review and Assessment Report
SPF	-	Special Project Facilitator

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I. BACKGROUND

1. The Office of the Compliance Review Panel (OCRP) received a request for compliance review of the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project on the 23 May 2011. In accordance with the operating procedures for the CRP, the CRP obtained certain materials relating to the consultation phase from the Special Project Facilitator (SPF), including the SPF's determination on the eligibility criteria. The CRP and OCRP held telephone conversations with the representative of the affected persons. CRP has advised the Executive Director representing the Kyrgyz Republic; Management and senior staff from the Central and West Asia Department and the Regional and Sustainable Development Department of the process of determining eligibility. This request will form a parallel process of both compliance review and consultation during the implementation of the course of action agreed under the consultation process, in accordance with para. 55 of OM Section L1/OP.

II. DESCRIPTION OF THE ADB-ASSISTED PROJECT

2. The complaint concerns a portion of the Bishkek-Torugart road, part of a key transport corridor connecting Bishkek, the capital of the Kyrgyz Republic, to Kashi in the People's Republic of China (PRC). ADB is providing financing, in several portions, for rehabilitating this transport corridor. The request letter refers to the CAREC Transport Corridor I (Bishkek-Torugart Road), Project 2, Loan No. 2533, Tranche 0253-KGZ, but the project officer has already clarified to the SPF that the road section in question was covered instead by Grant No. 0123-KGZ. In the field, it is difficult to tell which sections of the road are covered by which portions of the ADB financing.

III. EFFORTS TO ADDRESS THE COMPLAINT THROUGH OSPF

3. The requesters filed a complaint to OSPF on 7 September 2010 which was duly acknowledged on 22 September 2010 and declared eligible on 12 November 2010. The SPF submitted a Review and Assessment Report (RAR) to parties on 28 December 2010 which recommended an eight step course of action. The consultation process will continue as a parallel process if the compliance review proceeds. This satisfies the requirements of OM Section L1/OP para. 45(viii).

IV. CONFIDENTIALITY

4. The request letter was unclear as to whether the requesters wished their identities to remain confidential. Therefore, their identities will be treated as confidential unless CRP receives written confirmation from the requestors that their identities may be disclosed. The representative of the requestors informed OCRP by telephone that she did not request that her identity remain confidential.

V. ELIGIBILITY

A. Filing of the request

5. The Central Asia and Caucasus Coordinator of the ADB NGO Forum (the Representative), Maya Yeralieva, sent the request letter with attachments to OCRP. The request was signed by five requesters and the Representative. On 10 June 2011, OCRP acknowledged receipt and registered the request.

B. Content of the request

6. The letter of request together with the additional information and clarifications provided during telephone conversations with CRP/OCRP, adequately covers the information required for the CRP to determine request eligibility for compliance review.

C. Eligibility criteria

7. Specific eligibility criteria are evaluated below together with a reference to the relevant paragraph of the operations manual operational procedures.

8. **Requester likely to be affected materially and adversely [OM Section L1/OP para. 45(i) and 45(iii)].** The request claims that damages and losses were encountered by the requesters, including the demolition of two shops.

9. **Harm will result from a failure of ADB to follow its operational policies and procedures [OM Section L1/OP para. 45(ii)].** According to the SPF RAR, the project was classified as category C for resettlement impact, and the RRP stated that "No relocation of households or acquisition of productive land is expected." The Summary Poverty Reduction and Social Strategy stated that ". . .the Project does not negatively impact people's livelihoods, social and cultural habits, incomes, and the way of participating in socioeconomic development activities of the local communities." No resettlement plan was prepared. ADB's assessment of the project area thus did not identify the loss of two shops (and the income they generate). Because these impacts had not been identified, the affected people were not compensated. In responding to the initial complaint from the affected people, CWTC accepted that MOTC's provision of gravel and cement constituted adequate compensation for the two shops, whereas the value of these materials was much less than that of the shops, lost income was not taken into account, and the complainants did not consider the materials to be adequate compensation.

10. **Identification and contact information [OM Section L1/OP para. 45(iv)].** In their letter, the requesters provide the address, phone number and email address of the Representative. The signatures of the affected people contained in the request letter and a subsequent letter confirming the appointment of the Representative, appear the same as the signatures verified by OSPF in the field. The CRP is satisfied that the requesting parties are affected persons.

11. **Representation [OM Section L1/OP para. 45(v)].** The request letter, and a second letter also dated 17 May 2011 state that the requesters, who are residents of Naryn Oblast, authorize the Representative, to file the complaint on their behalf. This fulfils the requirements of OM Section L1/OP para. 42.

12. **Brief project description [OM Section L1/OP para. 45(vi)].** The request letter contains the name and location of the project.

13. **Desired outcomes or remedies [OM Section L1/OP para. 45(vii)].** The complainants are seeking compensation for their lost assets—two shops. Although compensation is the main remedy being sought, in their complaint letters one complainant also asks for assistance in obtaining a permit for her new (replacement) shop, and one for a preferential loan to repay the existing loans for her shop.

D. Exclusions

14. In accordance with OM Section L1/OP para. 51, the request was examined against the following exclusions:

Not related to ADB's actions or omissions?	No
Procurement of goods and services, including consulting services?	No
Allegations of fraud and corruption?	No
PCR issued?	No
Complaint related to adequacy or suitability of an ADB policy?	No
Frivolous, malicious, trivial or generated to gain competitive advantage?	No
Within jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or related to ADB personnel matters?	No
About ADB's non-operational housekeeping matters, such as finance and administration?	No
Related to responsibilities of third parties?	No
Not involving ADB's failure to follow its operational procedures and guidelines?	No
Relating to government laws, policies and regulations?	No
Not been first filed with SPF?	No

VI. CONCLUSION

15. The request does not fall within any of the exclusions under the Accountability Mechanism policy for the Compliance Review Phase. It meets the requirements for eligibility stated in paragraph 45 of OM Section L1/OP. For these reasons, the CRP determines that the request is eligible for the Compliance Review Phase of the Accountability Mechanism.

VII. RECOMMENDATION

16. Based on the analysis outlined above, including the CRP's finding that the request for compliance review is a valid request, the CRP recommends that the Board authorize the CRP to conduct a compliance review in respect of this project, pursuant to Terms of Reference and timeframe to be cleared by the Board Compliance Review Committee in accordance with the Accountability Mechanism policy.

APPENDIX 1: ORIGINAL REQUEST LETTER

Confidentiality

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

Date: 17 may 2011
Compliance Review Panel Secretary,
Asian Development Bank,
6 ADB Avenue,
Mandaluyong City 1550
Philippines
Tel: 632 6324149
Fax: 632 6362088
Email: crp@adb.org

Honorable Secretary,

We are the one who signed this letter, and we live in Kyrgyz Republic, [redacted] (region), At-[redacted] district, [redacted] and [redacted] villages, that are affected by the said ADB Bishkek-Torugart Project (~~loan-2533~~-KGZ: CAREC Transport Corridor I (Bishkek-Torugart Road) ~~Project-2~~, further called "Project". **Note: Should be Grant 0123-KGZ, Project 1 as advised later by the requesters' representative.**

We are requesting that Compliance Review Panel (CRP) would assist us by conducting investigation whether ADB did implement its operational policies and procedures in regards the Project. We understand that CRP should first determine if our request is legally qualified.

We consider that ADB did not implement its operational policy and procedures, in particular relating to Involuntary Resettlement Policy and Public Communications Policy, and Executing Agency as well, represented by Ministry of Transport did not fulfill obligations given to ADB under the said Project.

As a result of these operational policy and procedure lack of implementation by ADB we encountered damages and losses, described below:

I, [redacted] purchased the store for [redacted] Som from my relative [redacted], from [redacted] City, without Purchasing Contract. In order to purchase the store I got a loan from three Funds "[redacted]", "[redacted]" and "[redacted]" which I am repaying until now. Due to store demolition I would lose [redacted] Som due to loan repayment conditions.

My Loan Repayment Schedule is as follows:

- From [redacted] Fund – [redacted] Som;
- From [redacted] Fund – [redacted] Som;
- From [redacted] Fund – [redacted] Som.

Total amounts to [redacted] Som.

Considering interest rate I should repay [REDACTED]

[REDACTED] Som. Repayment amount totals to [REDACTED]

[REDACTED] Som. In [REDACTED] I have repaid the loan from [REDACTED].
Therefore I still have to repay loans from the two remaining Funds.

I, [REDACTED] was informed by [REDACTED], Naryn oblast Road Directorate personnel, that [REDACTED], belonging to [REDACTED], with total area of [REDACTED] is subject to demolition without compensation. In summer of 2010 we have built a new store at the back of existing one that was to be demolished. Demolished store cost we are estimating at [REDACTED] Som plus [REDACTED] Som for the labor.

We would like that ADB will cover the losses as follows:

First, by paying the cash compensation for store demolition.

Second, by providing assistance in preparing registration of new store permits and by paying the costs in relation to registration of a new store in accordance with receipts, checks and orders.

Third, by including the name of [REDACTED] in favorable loan repayment program scheme under the said Project.

Earlier we have raised our issues to ADB staff and Special ADB Intermediary under the Project. Further below is the report on past activities:

CRPP confirmed that our complaint was received on 22 September, in November 2010 representatives of CRPP visited project site and on 12 November complaint was accepted as legitimate. CRPP conducted multilateral meeting and initially prepared Agreement on 6 December 2010, but Agreement was not signed. Analysis and Assessment Report from December 2010 included proposed schedule for complaint resolution that also was not implemented. Now it is May already and soon there will be years since we submitted complain, but it is not clear when we would start operating our stores.

Now we are requesting CRP to conduct investigation whether ADB is implementing its operational policy and procedures, since until today we are not satisfied with the results of complaint review procedure due to abovementioned reasons.

Besides abovementioned information there are also other documents that can help CRP while assessing our request on conducting compliance review.

Our names, addresses and information are listed below.

Signature [Indicate address of each person, and if any telephones, faxes and email addresses]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

4. [REDACTED]
5. [REDACTED]

We, [REDACTED] represent abovementioned persons that have submitted request. Please, connect us through Maya Zamirovna Yeralieva, Central Asia and Caucasus coordinator, ADB NGO Forum.

Email: maya@forum-adb.org

Additional contact information: 00996-555-680523

APPENDIX 2: NOTICE OF REGISTRATION



Asian Development Bank



10 June 2011

Requesters
(names withheld)

Representative:
Maya Zamirovna Eralieva
Central Asia and Caucasus Coordinator, ADB NGO Forum
Telephone Number: +996-555-680523
Email: maya@forum-adb.org

**Subject: Notice of Registration
Request for Compliance Review (Request No. 2011/2)
Kyrgyz CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project
1 (Grant No. 0123)**

The Compliance Review Panel (CRP) refers to your request for compliance review (Request) filed by your representative, Ms. Maya Zamirovna Eralieva and received by the Secretary, CRP by email on 23 May 2011.

We have not revealed your identities as we have not received your individual permissions to do so.

You have indicated that you are making this request as a parallel process of both compliance review and consultation, in accordance with paragraph 118 of ADB's policy on the Accountability Mechanism (R79-03, dated 8 May 2003).

Thus, in accordance with paragraph 30 of the CRP Operating Procedures (the CRP Procedures), the CRP now registers your Request in its Registry of Request as **Request No. 2011/2**. The Registry is at: <http://www.compliance.adb.org/dir0035p.nsf/alldocs/RDIA-8HF7NJ?OpenDocument>

The CRP will inform the ADB Board of Directors on the registration of this Request and will also issue a press advisory to be published on its website at: www.compliance.adb.org.

The registration of this request does not address the eligibility or the merits of your request for compliance review but only acknowledges receipt and notify you of the registration.

In accordance with paragraph 31 of the CRP Procedures, the CRP will determine the eligibility of this Request and inform you by **24 June 2011**.

Please confirm that all communications in connection with this Request will be sent and made through your nominated representative at the following contact information:

Maya Zamirovna Eralieva
Central Asia and Caucasus Coordinator, ADB NGO Forum
Telephone Number: +996-555-680523
Email: maya@forum-adb.org

In all your written communications to the CRP and OCRP, please indicate the registration number: **Request No. 2011/2.**

Yours sincerely,

A handwritten signature in black ink, appearing to read "Bruce Purdue". The signature is written in a cursive, flowing style.

Bruce Purdue
Secretary, Compliance Review Panel

ADB President
ADB Board of Directors
Chair, CRP

APPENDIX 3: PRESS ADVISORY

**Request No. 2011/2
Issued on 10 June 2011**

**ADB Compliance Review Panel Registers a Request for Compliance Review
of Grant No. 0123-KGZ: CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1**

Manila, 10 June 2011. The Compliance Review Panel (CRP) today registered a request for compliance review (the Request) for the following project: Grant No. 0123-KGZ: CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1. The Request was filed by a representative claiming to represent certain persons who claim to be affected people.

In accordance with the CRP Operating Procedures, by 24 June, it will determine whether the Request is eligible for compliance review and will inform the ADB Board of Directors and the Requesters, accordingly. If the CRP determines that the Request is eligible, it will recommend to the Board the authorization of a compliance review. If the CRP finds the Request as ineligible, it will so inform the Board of its decision.

The Notice of Registration and other information on this Request can be found in the Request Registry at the CRP website: www.compliance.adb.org

Contact

Bruce A. Purdue
Secretary
Compliance Review Panel
Email: crp@adb.org
Telephone: +63 2 632 4149