

**CRP REQUEST NO. 2011/2 – REQUEST ON THE CAREC TRANSPORT CORRIDOR I
 (BISHKEK-TORUGART ROAD) PROJECT 1
 IN THE KYRGYZ REPUBLIC
 (ASIAN DEVELOPMENT BANK GRANT NO. 0123–KGZ)**

Introduction

1. These Terms of Reference (TOR) have been prepared by the Compliance Review Panel (CRP) for undertaking a compliance review of the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1 pursuant to a request for compliance review (the Request) (Appendix 1).
2. On 29 June 2011, the CRP determined the Request eligible, and recommended to the ADB Board of Directors (Board) to authorize a compliance review. On 20 July 2011, the Board authorized the compliance review. Subsequently, the affected persons clarified the identity of the project affecting them. A revision to the eligibility report was circulated to the Board on 8 August 2011 to reflect a change.
3. Under paragraph 122 of the Accountability Mechanism policy¹ and paragraph 37 of the CRP Operating Procedures, these TOR, which cover the scope of review, methodology and timeframe, are submitted for clearance to the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and all stakeholders, and post them on the CRP website within 14 days from receipt of Board authorization of a compliance review.

The Request for Compliance Review

4. Brief particulars of the Request and the Project are summarized below:

| | |
|---------------------|---|
| Project Name | CAREC Transport Corridor I (Bishkek-Torugart Road) Project 1 |
| Country | Kyrgyz Republic |
| Borrower | The Government of Kyrgyz Republic |
| Requesters | The five requesters authorized Ms. Maya Yeralieva, Central Asia and Caucasus Coordinator of the ADB NGO Forum, to file the complaint on their behalf. |
| Allegations | Non-compliance with operational policy and procedures, in particular, relating to Involuntary Resettlement Policy and Public Communications Policy |

¹ ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Manila.

| | |
|--|--|
| ADB operations department responsible | Central and West Asia Department |
| Project categorization | Category B for resettlement impact |
| Project Description | The Project 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. ADB is providing financing, in several portions, for rehabilitating this transport corridor. |
| Project Status | The ADB grant for the Project was approved by the Board on 14 November 2008; became effective on 6 January 2009. Original loan closing date is on 30 September 2012. Approximately 28% of the ADB grant has been disbursed. |
| Project Implementation Arrangement | The executing agency is the Ministry of Transport and Communications, Kyrgyz Republic. |
| CRP | Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review. The CRP will be supported by the Office of the Compliance Review Panel. |
| Contact person: | Mr. Rusdian Lubis, Chair, CRP Mr. Geoffrey R. Crooks, Officer-in-Charge, OCRP Email: crp@adb.org Tel: +632 632 4149 |

Purpose and Scope of Compliance Review

5. The purpose of the CRP is to investigate alleged violations by ADB of its operational policies and procedures in the Project that directly and materially harm project affected people in the course of the formulation, processing, or implementation of the Project. The purpose of the compliance review is to focus on ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project, and not to investigate the borrower or the executing agency. The conduct of these other parties will be considered only to the extent directly relevant to an assessment of ADB's compliance with its operational policies and procedures. After carrying out a compliance review, the CRP will issue to the Board its findings and recommendations, including recommendations, if appropriate, for any remedial changes to be implemented by Management in the scope or implementation of the Project.

Allegations of Non-compliance with ADB Policies

6. The requesters claim that ADB did not implement its operational policies and procedures, in particular in regard to the ADB involuntary resettlement policy and public communications policy.

7. Based on the allegations by the requesters of non-compliance with specific provisions of ADB policies, and CRP's findings in its eligibility review of the Request, the CRP will consider

ADB's operational policies and procedures that were in effect at the time of Board approval, and any staff instructions relating to the formulation, processing, or management of the Project.

Conduct of Compliance Review and Methodology

8. The CRP will carry out its work expeditiously, transparently and in a manner to ensure that there is engagement with Management and staff, the requesters, project affected people, the Government of the Kyrgyz Republic, and the Board, including the Executive Director representing the Kyrgyz Republic.

9. The compliance review will include the following all of whom will be given an opportunity to record their views, as necessary:

- (i) review of ADB files and other documents related to the Project;
- (ii) conduct of site visits with the prior consent of the Government of Kyrgyz Republic;
- (iii) consultation with all concerned stakeholders, including interviews with:
 - ADB Management, staff and consultants,
 - staff from the Office of the Special Project facilitator (OSPF) on its engagement at the consultation phase of the Accountability Mechanism,
 - requesters, project-affected people,
 - officials from the Government of the Kyrgyz Republic,
 - the Board, including the Executive Director representing the Kyrgyz Republic;
- (iv) use of consultants as appropriate, to assist the CRP in carrying out its work; and
- (v) apply any other review methods that the CRP considers appropriate in complying with its mandate.

10. The CRP will exercise discretion and maintain a low profile in conducting the compliance review. The CRP will not give any media interviews at any stage of the compliance review. CRP members will be subject to ADB's confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. Any material or information submitted to any CRP members or the OCRP on a confidential basis from any party will not be released to any other parties without the consent of the party that submitted it. Compliance review is not intended to provide judicial-type remedies and the CRP's findings and recommendations are not adjudicative. The Chair and members of the CRP will be subject to the CRP's protocol on conflicts of interest that mandates disclosure of all potential conflicts of interest so that the Chair (or CRP members if the Chair has a potential conflict of interest) can decide the appropriate course of action.

11. After conducting its compliance review, the CRP will issue a draft report of its findings and recommendations to the Management and the requesters for comments. Both the Management and the requesters will have 30 days to comment on the draft report. Within 14 days from receipt of the comments on the draft report, the CRP will consider the comments and finalize the report, and issue its final report to the Board, including its findings and recommendations. If appropriate the recommendations may include any remedial actions for ADB Management to implement, in order to bring the Project back into compliance with ADB policies.

Timeframe

12. The CRP will carry out the compliance review in accordance with the compliance review phases set out in the Policy on the Accountability Mechanism, the corresponding Operations Manual (OM Section L1/BP) and the CRP Operating Procedures.

| Step | Event | Timeframe |
|------|--|---|
| 6 | CRP Draft report. CRP will issue its draft report of its findings and recommendations to the Management and the Requesters for comments. | Not time-bound |
| 7 | Management's and Requesters' responses to CRP draft report | 30 days from submission of the draft report |
| 8 | CRP's Final Report. CRP finalizes its Report, based on comments received, and issues CRP's final Report to the Board, with responses from Management and the Requesters as attachments. | 14 days from receipt by CRP of comments from the Bank's Administration and from the Requesters |
| 9 | Board Decision: Board consideration of the CRP's Final Report Release of the Board Decision and CRP's Final Report | 21 days from submission of CRP final report. |

13. This timeline does not take into account any additional time requested for filing responses. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance.

/S/ Rusdian Lubis
Chair, Compliance Review Panel
9 August 2011

Appendix:
Request for Compliance Review

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,

[REDACTED]
[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]
[REDACTED] City, without Purchasing Contract. In order to purchase the store I got a loan from three Funds [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:

[REDACTED]
[REDACTED]
[REDACTED]

Total amounts to [REDACTED] Som.

Considering interest rate I should repay [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

We, ADB NGO Forum 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