



Asian Development Bank

**REVIEW AND ASSESSMENT REPORT  
OF THE  
SPECIAL PROJECT FACILITATOR  
ON THE  
CAREC TRANSPORT CORRIDOR 1 (BISHKEK TO TORUGART ROAD) PROJECT  
KYRGYZ REPUBLIC  
ADB GRANT 123-KGZ (14 Nov 2008)**



December 2010

## ABBREVIATIONS

ADB	– Asian Development Bank
CWTC	– Transport and Communications Division, CWRD
CWRD	– Central and West Asia Department
LARP	– Land Acquisition and Resettlement Plan
MOTC	– Ministry of Transport and Communications
NGO	– nongovernment organization
OSPF	– Office of the Special Project Facilitator
PIU	– Project Implementation Unit
RAR	– Review and Assessment Report

**The original English version of this report was translated by OSPF consultants into Russian and Kyrgyz. In case of discrepancy, the English version will prevail.**

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## CONTENTS

	<b>Page</b>
EXECUTIVE SUMMARY	(iii)
I. BACKGROUND	1
A. The Project	1
B. The Complaint	1
C. Determination of Eligibility	1
II. REVIEW AND ASSESSMENT	1
A. Objectives and Methodology	1
B. Identification of Stakeholders	2
C. Identification of Issues	3
D. Identification of Options	3
E. Assessment of Problem-Solving Probability	4
III. RECOMMENDATIONS AND PROPOSED COURSE OF ACTION	4
A. Recommendations	4
B. Course of Action	5
C. Proposed Schedule	5
APPENDIX	
Ground Rules	6



## EXECUTIVE SUMMARY

The Bishkek-Torugart Road is part of the Central Asia Regional Economic Cooperation Corridor 1 linking the Kyrgyz Republic and the People's Republic of China and other Central Asian countries. The project<sup>1</sup> includes improvement of a 39 km stretch of the road as well as other components. The Office of the Special Project Facilitator (OSPF) received a complaint concerning the project on 20 September 2010 and acknowledged receipt on 22 September. The complainants asked for compensation for two shops and some trees that were being removed as part of the improvement of the road. OSPF found the complaint eligible in November 2010, and in early December OSPF conducted a review and assessment of the complaint.

The stakeholders include the complainants, the Ministry of Transport and Communications, ADB's Central and West Asia Transport and Communications Division, and two nongovernment organizations. The issues of the complaint are equitable compensation and information sharing, and the primary option for resolving them is to follow the requirements of ADB's resettlement policy. OSPF concluded that there is a high probability that the problems can be resolved through a Land Acquisition and Resettlement Plan (LARP) that embodies the complainants' entitlements in accordance with ADB's resettlement policy. This review and assessment proposes a course of action for preparing and implementing the LARP.

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<sup>1</sup> Grant No. 123-KGZ for \$20 million, approved on 14 November 2008.



## I. BACKGROUND

### A. The Project

1. The 500-km Bishkek-Torugart road is part of the Central Asia Regional Economic Cooperation (CAREC) Corridor 1 linking the Kyrgyz Republic and the People's Republic of China and other Central Asian countries. The project<sup>1</sup> includes improvement of a 39 km stretch of the road as well as other components. The improvement work was begun in April 2010 and was proceeding well before it was suspended in early November 2010 because of the start of the winter season.

### B. The Complaint

2. The Office of the Special Project Facilitator (OSPF) received a complaint concerning the project on 20 September 2010 and acknowledged receipt on 22 September. The complaint comprised three letters from three groups of two persons each.<sup>2</sup> Two of the groups were operating shops that had to be removed from the shoulder of the existing road as part of the road rehabilitation, and these complainants were seeking fair compensation for losing the shops. The third group was losing some land and 15 trees along the highway and was seeking compensation for the land and trees. In their three letters, the complainants authorized as their representative the head of a local nongovernment organization (NGO) who lived in the project area. During October 2010, OSPF exchanged communications with the representative, seeking clarification on several points.

### C. Determination of Eligibility

3. OSPF discussed the complaint with concerned Asian Development Bank (ADB) staff, reviewed documents, and fielded a mission to Kyrgyz Republic from 5 to 8 November 2010 to determine the eligibility of the complaint. The mission met with officials of the Ministry of Transport and Communications (MOTC), ADB staff in the Kyrgyz Resident Mission, and concerned NGOs, and visited the project site to confer with the complainants. The mission confirmed that the complainants were losing property (two shops and some trees) because of the project. Although Central and West Asia Department (CWRD) and MOTC were aware of this issue and had taken some action to address the complaint, the complainants losing shops believed that the compensation offered (some construction materials) was not adequate, and the complainant who lost trees and land had not been offered any compensation. The mission concluded that the complaint met OSPF's eligibility criteria, and OSPF declared the complaint eligible on 12 November 2010.

## II. REVIEW AND ASSESSMENT

### A. Objectives and Methodology

4. The objectives of the review and assessment were to (i) explore the history of the complaint; (ii) confirm the key stakeholders; (iii) identify the key issues of the complaint; (iv) explore the stakeholders' readiness for joint problem-solving; and (iv) recommend a course of action.

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<sup>1</sup> Grant No. 123-KGZ for \$20 million, approved on 14 November 2008.

<sup>2</sup> In the letters, the complainants said they did not request that their identities be kept confidential, but during the review and assessment mission, they asked that OSPF not make their names public.

5. The review and assessment included (i) a desk-based review of documents, including the Report and Recommendation of the President, and other information provided by CWRD; (ii) the findings of OSPF's eligibility mission in November 2010; (iii) interviews with ADB staff currently involved in the project; (iv) a review and assessment mission from 2 to 7 December 2010 that included interviews and other meetings with the complainants and concerned ADB staff, and interviews with government stakeholders, including staff of the Project Implementation Unit (PIU), and the State Secretary of the MOTC; (vi) the findings of a due diligence investigation carried out by CWRD's resettlement specialist; and (vii) a multistakeholder meeting held on 6 December 2010 during the review and assessment mission, at which the complaints and possible approaches to their resolution were discussed. The interviews were conducted using semi-structured questionnaires. OSPF's review and assessment mission coincided with a project review mission led by the project officer and including CWRD's resettlement specialist.

6. This Review and Assessment Report (RAR) seeks to present the issues as the different parties explained them to OSPF. It also tries to describe the different perceptions from the different parties' viewpoints. The report is provided to the complainants and MOTC in English, Russian and Kyrgyz. It is not intended to provide judgments on any issues related to the project, or evaluations of any stakeholder groups or individuals. It is also not a set of expert recommendations on how issues should be solved.

7. OSPF's role is to facilitate solutions to the issues as described by the different stakeholders, and to initiate and guide the consultation process. OSPF offers help to the parties involved in the project to resolve their issues through (i) setting the stage for the complainants' decision making, (ii) providing opportunities for them to meet and discuss strategies, and (iii) providing processes conducive for all parties to arrive at solutions. It is OSPF's responsibility to treat all parties with respect, care for them and assure a fair process. It is not OSPF's role to decide whether parties' actions, opinions, or perceptions are right or wrong, to solve problems, or to arbitrate in favor of one of the parties.

## **B. Identification of Stakeholders**

### **1. The Complainants**

8. The complainants comprise three groups of two persons each. In each group, one of the two persons took the lead in pursuing this complaint, and the second person was either a family member or friend. The complainants live along the road in At-Bashinsk Raion, Naryn Oblast. Two of the lead complainants have operated shops at a bus stop in the town of Kara Bulun since 2005 in one case and 2008 in the other case. The third lead complainant owns land along the road in the town of Kara Suu and had some trees growing on his property.

### **2. Government Agencies**

9. The MOTC is responsible for implementing the project. The PIU within MOTC handles the day-to-day project implementation for all ADB transport projects and those supported by most other international organizations. The PIU includes social safeguard specialists. The Ministry of Finance would need to be involved in any decisions with large financial implications.

### **3. Central and West Asia Department**

10. In ADB, the Transport and Communications Division of CWRD (CWTC) is responsible for administering the project. CWTC missions regularly monitor project implementation. The

Kyrgyz Resident Mission in Bishkek works together with CWTC staff from headquarters in project monitoring. The Office of the Director General, CWRD, has among its staff social development specialists who look after ADB's safeguard policy, including matters relating to resettlement.

#### **4. Nongovernment Organizations**

11. The complainants authorized the Acting Director of the local NGO, Bugu Maral, to represent them. The NGO Forum on ADB's coordinator for Central Asia and the Caucasus region, who is based in Bishkek, has also been monitoring implementation of the project.

#### **C. Identification of Issues**

12. This section summarizes the concerns expressed by the various stakeholders and organizes them around the two most pertinent issues. The purpose is not to validate or deny any issue but to describe the issues and concerns from the perspectives of the different parties.

13. The issues have been grouped into the following broad categories: equitable compensation, and information sharing.

##### **1. Equitable Compensation**

14. The main concern of the complainants is fair compensation for their property and income lost due to the improvement of the road. Initially, MOTC told them they would not receive any compensation because they were not legal owners of the land in question. Later, after CWRD raised the issue of compensation, the two shop owners were offered some construction materials, but they did not consider this adequate compensation; the owner of the trees was not offered any compensation. CWRD is concerned that the road be constructed on time, while making sure that affected persons are compensated in accordance with ADB policy. A CWRD resettlement specialist joined the project review mission in early December 2010, visited the project site, met the complainants and concluded that their complaints were legitimate, and that they were entitled to compensation based on ADB's safeguard policy. MOTC is also concerned with not delaying construction of the road. MOTC acknowledges the need to follow ADB's policies, but also must ensure that the laws of the Kyrgyz Republic are followed in any process of compensating the complainants. If there is to be compensation, the amount should be calculated by qualified specialists.

##### **2. Information Sharing**

15. The two shop owners said they did not know that there was a project to improve the road, and that they would be affected by the project, until one month before construction started. One said that if she had known earlier, she would not have taken out loans for her shop.

#### **D. Identification of Options**

16. The primary option for resolving the complaint is to follow the recommendation of CWRD's resettlement specialist and carry out the process embodied in ADB's resettlement policy, which in any case the government is bound to follow. This process includes formulating and implementing a Land Acquisition and Resettlement Plan (LARP), which will cover the three complainant groups and specify their entitlements to compensation. Only after the

compensation has been provided in accordance with the LARP, can road improvement be resumed.

17. The PIU head mentioned that another option is to redesign the road improvement project so that the two shops would not need to be moved.

#### **E. Assessment of Problem-Solving Probability**

18. The three parties have a number of common concerns but also different perspectives. There are divergent views on the adequate amount of compensation and on the process for reaching agreement.

19. All three parties (the complainants, the government, and CWRD) are convinced that the project is important and will bring progress to the project area. For different reasons, they are also interested in solving the problems as soon as possible. The shop owners want to be compensated for their losses so they can continue pursuing their livelihoods. The owner of the trees wants fair compensation for the trees. The concerned NGOs want to be sure that the complainants are treated in a just and fair way. CWRD and the government want the problems to be solved so that the project can proceed, with due attention to the requirements of government laws and ADB policies.

20. During OSPF's review and assessment mission, CWRD's resettlement specialist provided a description of the entitlements of the complainants and outlined a process for finalizing and providing their respective compensations through formulation of a LARP. These entitlements and the LARP are requirements of ADB policy, and preparation of the LARP constitutes a course of action to resolve the issues of the complaint.

21. The CWRD resettlement specialist already discussed the entitlements and the LARP process with the complainants and MOTC. MOTC wanted to see more details of the proposed course of action, which are provided in this RAR. The complainants appreciated the recognition of their entitlements and confirmed that they wanted to continue with the consultation process under the auspices of OSPF. They had no specific comments on the proposed course of action. Preparing and implementing a LARP is required under ADB policy, and this suggests that the probability of solving the problem is very high. The complainants have stated their desire to continue with the consultation process, and therefore it will be possible to proceed with the implementation of the course of action after receiving comments on this RAR from MOTC and CWRD.

### **III. RECOMMENDATIONS AND PROPOSED COURSE OF ACTION**

#### **A. Recommendations**

22. There is a need to improve the provision of information to the complainants on project activities that will affect them, and to provide a way for them to seek information and to express grievances they may have. Action is needed that recognizes and responds to the issues raised by the complainants. CWRD's resettlement specialist outlined the following entitlements, based on ADB's safeguard policy:

- The shop owners are entitled to compensation at replacement cost for the affected structures, assistance in registering their new shops to achieve legal status, compensation for lost income during construction of a new shop, and (in one case)

support for transporting goods and building materials to the new shop location. No deduction is to be made from the monetary compensation for income tax or any unpaid rent, lease or taxes that occurred in the past.

- The owner of the trees and land that had been taken is entitled to compensation for the trees based on the economic value of the trees and future harvest lost, for the land taken, and for reconstruction of part of his fence that had been removed for the road.

23. OSPF recommends that these entitlements be embodied in a LARP, following the involuntary resettlement safeguards in ADB's Safeguard Policy Statement. The LARP should be prepared by MOTC in consultation with the complainants and approved by CWRD.

## B. Course of Action

24. OSPF proposes a course of action that comprises the following steps, in accordance with the process prepared by CWRD's resettlement specialist:

- (i) In consultation with the complainants, MOTC will prepare a LARP that will detail the exact entitlements. The LARP is due by 15 January 2011.
- (ii) CWRD's resettlement specialist will provide advice to MOTC, oversee the preparation of the LARP and approve the LARP prior to its implementation.
- (iii) MOTC will establish a grievance redress mechanism.
- (iv) The three lead complainants will be kept informed by MOTC about the progress of the LARP, and they will be able to contact the Kyrgyz Resident Mission's external relations coordinator for further information.
- (v) Provision of the compensation and assistance should be completed by 31 March 2011 so that MOTC can continue the construction works, and the contractor can mobilize again on 1 April 2011 after the winter season.
- (vi) The parties agree to follow the ground rules shown in the Appendix.
- (vii) OSPF will conduct meetings and consultations with the parties as needed.
- (viii) OSPF will monitor the implementation of this course of action and close the complaint once the compensation and assistance has been provided.

## C. Proposed Schedule

Item	Date
Review and assessment report (RAR) in English for translation into Russian and Kyrgyz	13 Dec 2010
RAR translated into Russian and Kyrgyz, cross-checked and edited	27 Dec 2010
Submission of RAR to parties by e-mail and registered mail	28 Dec 2010
CWRD and MOTC provide comments on RAR <sup>a</sup>	15 Jan 2011
OSPF confirms course of action with parties Result: agreements on course of action	End of Jan 2011
Implementation of course of action	31 Mar 2011

<sup>a</sup> The complainants have already decided to continue with the consultation process.

25. OSPF will organize and facilitate meetings and consultations as needed, and document results and agreements. With inputs from all stakeholders, OSPF will finalize the objectives and agendas for the consultations. OSPF will cover complainants' transport costs for participating in consultations, if needed.

**GROUND RULES**

Interactions of all parties involved in the consultation process will be as follows:

- (i) Parties address one another in respectful ways, avoid side conversations and keep the discussion focused and constructive.
- (ii) Parties will not make personal attacks and will respect each others' views.
- (iii) Any disagreement must be focused on the issues, not on one another.
- (iv) In order to allow for maximum participation, parties will keep their comments short and to the point.
- (v) Only one person will speak at a time and no one will interrupt when another person is speaking.
- (vi) Each person will express his or her own views, or the views of his or her organization rather than speaking for others.
- (vii) No party will give interviews, make statements in the media or try to get messages across using the media.

The parties should discuss and agree on the ground rules, and add or remove or change them as they work out the course of action. Ground rules can always be revised if and when the parties consider that changes are necessary.