

20 June 2011

Dear Ms Househam and Ms Wynhoven,

We wrote to the Global Compact on 28th March 2011 regarding Vinci's non-compliance with its Global Compact Commitments in relation to the first section of the Moscow – St. Petersburg motorway project. Our letter subsequently formed the basis of an enquiry to Vinci by the Business and Human Rights and Human Resource Centre, to which Vinci responded on 26th April 2011. Having carefully reviewed Vinci's response, we still believe that the company is not in compliance with its Global Compact commitments and are therefore sending you this additional letter. Please regard this letter as an addition to the first letter and consider the two letters together.

While taking into account the limitations of the Global Compact's remit in terms of ensuring compliance with the content of the Global Compact commitments, we would be grateful if you can take up correspondence with Vinci on this issue.

We would like to reiterate that although there is no evidence that Vinci's staff have been directly involved in any of the human rights abuses, the company has in our opinion *not undertaken sufficient steps* to prevent human rights abuses and unnecessary environmental destruction and has therefore made itself complicit in these abuses.

Below are our concerns about Vinci's responses, followed by the allegations which we believe still have not been adequately responded to.

"First of all let me assure you that VINCI fully condemns any use of violence against people and, though we certainly deplore the reported violent acts, we deny having any relation with such events and have no knowledge of a link, should there exist any, between them and the concessionaire, the company NWCC or more generally with the project as a whole."

While this condemnation of violence against people is welcome, it is severely weakened by Vinci's claim to having no knowledge of a link between the violence and the project. While we already clearly stated that we are not accusing Vinci of direct involvement in the violence, it is disingenuous to try to argue that the company is not aware of any link between the violence and the project.

While the reasons behind the brutal attacks on journalists Mikhail Beketov and Oleg Kashin and the activist Konstantin Fetisov, which did not take place directly at the project site - can always be debated, there is a strong connection between the cases in terms of the kind of attack and the victim's outspokenness *on this particular project*. What is *not* debatable in our opinion, is that peaceful activists have been attacked at the very site of the preparation works by security guards and unidentified thugs hired by the company which is contracted to do the preparation works *for this very project*. That unidentified thugs were hired by the company Teplotekhnika, now DorInzhStroyProjekt, has been acknowledged by the company's head, Mr Alexander Semchenko in an interview for Komsomolskaya Pravda.¹ Moreover illegal use of violence by police, security guards and thugs during April – May 2011 is clearly connected to the project since the violence was applied deliberately against those activists who tried to stop destruction of the forest on the site. Police even tried to charge activists with "sabotaging the project" – despite the fact that the companies carrying out the work failed to provide any permits for construction work even in court.²

¹<http://kp.ru/daily/24537/718423/> (August 11, 2010)

²See http://www.ecmo.ru/main/abuse_en/ for more details.

The fact that at least a part of the violence is directly associated with the project is therefore in our opinion undeniable. If VINCI is somehow not aware of this, it must be aware that not knowing is no defence.

“NWCC will realize this first section in compliance with applicable international standards, knowing that numerous compensatory or protective environmental measures are already incorporated in the Project scope, to minimize its ecological print”.

What international standards are being referred to here? Those which we are familiar with such as the EU Directive on Environmental Impact Assessment and national laws outlawing violence against people and guaranteeing freedom of speech certainly are not being adhered to.

As for the compensatory or protective measures, these appear to be more of a public relations exercise than a serious improvement to the project, for the following reasons:

- there is no free space for for planting new forest near Khimki,
- re-creation of an old growth forest is simply impossible in a short time,
- irreversible damage will occur to valuable natural objects such as the Klyaz'ma riverbed, the mesotrophic bog, and the oak grove, which cannot be compensated for or mitigated in any reasonable way
- severe fragmentation of the forest.

For more information see the March 2011 statement on this issue by leading Russian environmental NGOs: <http://www.ecmo.ru/news/n-1537n-1545/p114/n-1617/>

“Before the conclusion of the Concession Agreement NWCC had to rely on the decisions of the Russian authorities, as we indeed consider impossible to interfere in such decisions taken by the Government of the Russian Federation.”

“However and for your information, only the Russian Authorities, as per their legal and contractual scope and under their full responsibility, can select and/or modify the highway corridor and only them (sic) shall further acquire and prepare the land plots according to their selected route (this scope includes deforestation and utilities diversion). Indeed and in accordance with the signed contract NWCC did not during this preliminary phase take any active actions at site. Works under NWCC responsibility will start only after such land plots would have been delivered by the Grantor to the Concessionaire.”

While it is clear that VINCI did not take the *initial* decision on the route, it is not true to imply that the company is some kind of bystander with no influence on the routing.

First, VINCI had the choice whether to sign the concession agreement or not. By the time of the signing in 2009 Mikhail Beketov had already been permanently crippled in a brutal attack which was widely reported to be related to his outspokenness regarding the Moscow – St. Petersburg motorway. It was also clear by this time that no real public consultations for the project had taken place:

On 12 May 2005 public hearings on the Environmental Impact Study for the MRAR–Sheremetyevo-3 – *not the Moscow–St. Petersburg motorway km 15-58* - project were organised by Mosautodor as part of the state ecological assessment. However these were later claimed by the Russian authorities as hearings on the Moscow-St. Petersburg motorway project. The problem here is that different criteria would be used to assess the suitability of a route for a MRAR-Sheremetyevo-3 road than for the Moscow-St. Petersburg motorway, so conclusions from one hearing cannot be transferred to the other project.

Public hearings on the 'modernisation' of the Businovo interchange as part of the first section of the Moscow-St. Petersburg motorway project took place on April, 21 2009. They exposed strong opposition by residents toward the planned routing.³ However their results were completely discarded, and the 2005 year hearing on

³ See for example <http://www.youtube.com/watch?v=jTKIIR1y6Zc>

the MRAR-Sheremetyevo project is still used by the authorities to illustrate "compliance" of the project with principles of public participation.

In spite of all this, VINCI chose to sign the contract.

In April 2010, NWCC allowed public access to its own study which admitted that the chosen option was the worst one for the natural environment. Nevertheless, no feedback mechanism was implemented. No hearings at all were arranged: a volume with study results was merely laying on a table in the public library in Khimki. This cannot be regarded as a public consultation as the affected public did not have a mechanism by which to express their views in a way that would be treated systematically.

Even if the company had somehow been unaware of the human rights and environmental issues related with the project before signing the contract, for sure this was no longer the case by summer 2010 when activists set up a tent camp against illegal preparatory works and unidentified thugs wearing Nazi insignia on their clothes attacked the activists. At this point President Medvedev halted the works pending what were supposed to be further public hearings. Yet in contrast to VINCI's statement above that it is impossible to interfere in such decisions taken by the Government of the Russian Federation, **in September 2010 when President Medvedev suspended works in the forest pending new public hearings, the Chairman of the French Chamber of Commerce in Russia, Emmanuel Quidet, intervened and appealed to Medvedev to resume building of the road as soon as possible**, presumably at the request of Vinci.

Furthermore, it has recently come to our notice that **representatives of Vinci's NWCC consortium were present at the meeting of the Governmental Commission on Transportation and Telecommunication on December 14, 2010 where the 'final' decision about the motorway routing was made.**

The minutes of the commission's meetings are marked "Classified" - unacceptable practice for a "Public and Expert Discussion", however Russian activists have managed to access a copy.

The minutes contain a list of reasons not to change the routing cutting through the forest. The list begins with: "1.2. Any change of the approved routing would :

- give the concessionaire a legal pretext to cancel the concession agreement due to the grantor's failure, which could either cancel the construction of the motorway or require 36 billion rubles of additional financing from the State budget to proceed with the construction;
- an additional 5.5 billion rubles from the State budget would be paid as compensation to the concessionaire".

Thus, the main reason given for continuing with the contested route through the forest was the threat that NWCC LLC could withdraw from the project or demand additional financing if the route option through the forest was discarded. Vinci was clearly aware of this, since two representatives of NWCC LLC (namely Mr. Stadnikov and Mr. Stepanov) took part in the meeting, and their names were mentioned in the minutes. The minutes do not reflect any objection from their side, which allows us to conclude that NWCC LLC agreed with the decision and that it was complicit in advocating the option that would destroy much of the forest.

We therefore consider that at the very least, Vinci missed at least four opportunities to impact positively on the routing decision:

- 1) Vinci had a choice whether to sign a contract for a project where the route was vigorously opposed by local people and had not been subject to a formal environmental impact assessment process taking public comments into account. It nevertheless signed.
- 2) NWCC's own study showed that the Khimki Forest route option was the most environmentally harmful. However the company went ahead with the project.
- 3) In September 2010 there was a real chance to make changes to the route. Rather than consenting to the

<http://www.youtube.com/watch?v=R-bVNLKXKGs>

Russian government doing so, the French Chamber of Commerce, presumably representing VINCI, pressed the government to go ahead with building the road as soon as possible.

4) In December 2010 NWCC representatives had a chance to come to an agreement with the Russian government to waive the compensation or freeze the project while the route was changed. This could have been compensated by extending the concession for a few months. However the meeting minutes record no discussion on this, suggesting that representatives either sat by while the decision to keep the current routing was made or actively agreed with it.

These facts together cast doubt on VINCI's claims that it could not influence the route decision.

“Nevertheless NWCC has duly noted that all levels of judicial courts up till the Supreme Court of the Russian Federation have subsequently confirmed the legality of the project.”

“Every step of the process till today has nevertheless been followed by the Governments and the Authorities of both the Russian Federation and France, and have been formalized under the CEFIC⁴ (in particular the April 26th, 2010 Financial close).”

Here it must be stressed that, before the hearings in the Supreme Court, the decision to re-categorise the forest land was signed personally by Prime Minister Putin. It is well known that it is almost impossible to cancel a decision by Prime Minister in a Russian Court due to the lack of independence of the Russian judicial system⁵. Moreover, the Supreme Court decision was taken despite serious contradictions in the papers establishing the status of the lands. Those contradictions were not resolved during the case - the court merely ignored them.

“When NWCC would have contractually taken the responsibility of the management of the Project, the company will, in compliance with VINCI's sustainable development policy, enter into a dialogue phase with the stakeholders of the Project (local neighborhood, associations, authorities, civil society, etc.) We will thus resume the environmental and social public information, based on assessment performed according to international financial institutions assessment. These were initially published and further submitted to public exchange during a three-month period from February to April 2010 at the public liaison office opened in the Khimki district library.”

VINCI's apparent good intentions here are unfortunately not useful if it is already decided to go ahead with the routing through the Khimki Forest. The independent expert evaluation of the project published earlier this year concluded that no amount of mitigation measures can compensate for the damage to the forest⁶. Public consultation needs to take place within a legal framework that ensures feedback mechanisms for public comments to be taken into account, not as an ad-hoc activity after all the important decisions have been taken.

In summary, **VINCI's response does not address our concerns regarding either the environment or human rights. In our last letter we showed that VINCI had not followed any of the Global Compact's guidelines on avoiding complicity in human rights abuses or if it had, it had not reported them to the Global Compact or published them on its website.** Since then, the following changes have taken place:

- VINCI has condemned violence in general in its response, however this has been weakened by its denial of any link between the project and the violence against the local activists and journalists.
- VINCI accepted a request for a meeting with French and Brussels-based NGO representatives. This meeting took place on 11 May. While it appears to have been a useful exchange it did not bring changes to the allegations, with the exception that we acknowledge VINCI's readiness to meet with NGOs.

⁴ Conseil économique, financier, industriel et commercial franco-russe

⁵ For example the European Parliament noted in its Resolution of 17 February 2011 on the rule of law in Russia that “several trials and judicial proceedings over the last years have cast doubt on the independence and the impartiality of the judicial institutions of the Russian Federation”. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0066+0+DOC+XML+V0//EN&language=EN>

⁶ http://www.ecmo.ru/data/April2011/expert_examination_en.pdf

Taking into account the above, we ask the Global Compact Office to request from Vinci a response to the allegations and updates on what it is doing to rectify the issues in question. We also ask the Global Compact Office to consider applying further discretionary steps to resolve the matter.

We expect from Vinci:

- Considering that it is too late to prevent human rights abuses connected with the project, to withdraw from the Moscow – St. Petersburg motorway km 15-58 project or to propose a freezing period for the contract that would allow for route changes to take place and the contract to be re-signed.
- To express its concern to the Russian authorities and media regarding the human rights abuses that have taken place, including by publishing these on its website.
- To implement comprehensive stakeholder engagement practices – not in connection with this project, on which it is too late, but across the company's operations.
- To publish and implement a human rights policy which will outline how it intends to ensure that it is not complicit in human rights abuses.
- To strengthen its due diligence system on environmental and human rights issues and address issues thoroughly as they arise.
- To commit to refrain from putting pressure on national authorities during environmental review processes, including indirectly
- To develop a policy, or strengthen its policy if it already has one, on the use of security forces and human rights in projects in which it is participating, including before its contracts take effect.

We thank you for your time and look forward to seeing what action you now take.

Yours sincerely,

Mr Mikhail Matveev Movement to Defend Khimki Forest (EcoOborona), secretary

Ms Pippa Gallop Research Co-ordinator, CEE Bankwatch Network