

27 September 2011

Dear Ms Househam and Ms Wynhoven,

Response to VINCI's claims regarding the Moscow-St. Petersburg motorway

We have examined Vinci's response¹ to our letter concerning the company's complicity in human right violations, environmental destruction and corruption in connection with the Moscow-St.Petersburg toll motorway project, section 15 – 58 km. Unfortunately, although we welcome the fact that VINCI is reinforcing its analytical and risk control tools with respect to fundamental Human Rights the company did not manage to provide satisfactory answers to our concerns. The main issue is that we do not believe that it is possible for VINCI to avoid complicity in human rights abuses and environmental destruction – and thus to live up to its Global Compact commitments - if it continues to participate in this project.

Below, we shall re-iterate our allegations, and comment on Vinci's arguments in each case.

I) Vinci's responsibility for promoting a project which will inflict serious damage on the environment due to the poor choice of motorway routing, which will lead to severe fragmentation of the forest .

First of all, we should remember that:

- according to the independent expert assessment: "*The motorway construction through Khimki forest (according to variant 3) will inevitably entail destruction of the majority of valuable natural complexes and objects. The suggested alignment of the road goes through the south-eastern part of Khimki forest, containing the most biologically valuable sectors of old-aged forest with prevailing or high percent of broad-leaved species of trees. Besides, the motorway is going to cross the ravines, existing in the south-eastern part of Khimki forest, currently being under minimal recreational impact and playing a key role in the whole forest massif biodiversity preservation*"²
- Moreover, according even to NWCC's own study: "*Environmental and Social Studies. Additional environmental and social analysis of alternatives*" "the existing routing of the motorway has the highest impact on biodiversity among all the considered routings."

As we stated in our previous letter, VINCI can still avoid involvement in this environmentally destructive project if it decides to take seriously Medvedev's decision to halt the works in August 2010. If the company signals publicly its readiness to wait for the revision of the project using another route – without demanding billions of EUR in compensation for the delay, instead extending the concession period as appropriate, then there is no reason why this should not happen.

1 <http://bankwatch.org/documents/ResponseVinciKhimki-26Aug2011.pdf>

2 Independent expert examination on Moscow - St. Petersburg Motorway (15-58 km)
http://www.ecmo.ru/data/April2011/expert_examination_en.pdf

Vinci's reasons for not initiating a discussion on the change of route with the Russian government are based on the following statements:

1. *"The project goes back to 1971. The land for the route was reserved in that year and then purchased by the Federal government the same year with a view to the construction of the motorway between Moscow and St. Petersburg. The choice of the route is the exclusive decision of the concession grantor and the concession company has no say whatsoever in this decision. Only the Russian authorities have contractual and legal responsibility for land use issues (notably choice of route, acquisition of land, forest clearance, displacement of utility networks, etc.), for which they are fully and comprehensively responsible".*
2. *"The project and its route were defined 40 years ago and with or without Vinci they will continue. Building on this fact, VINCI intends to work to ensure that the project goes forward under good conditions and environmental standards. We obviously gave thought to re-visiting the route and also to the many suggested alternative routes, but in all these cases, assuming the current route could be changed, such a change would delay the project by three or even four years, which cannot be considered, given the current state of deterioration of the Khimki Forest. Expert reports have indeed stated that without urgent action the forest would be doomed in the short term. Our objective is to conserve it".*

Point 1 here contains statements which openly contradict well-known facts. Indeed, no land was reserved, or, moreover, purchased in 1971 (purchase of lands was out of the question in the Communist USSR at any rate). The only thing that was done that year was that a preliminary decision was made to build a new motorway in this direction. Ideas about the motorway routing have been changed many times since 1971. For example, there were three options considered in 2005, as is clear from Decree 367-r (April 5, 2005) of the Head of Khimki Administration Mr. Strel'chenko. Only by this decree the motorway routing through the forest was preliminarily chosen over two other options. It was done despite the strict prohibition by the then Land Code and Forest Code of using forest park lands for any construction. The contradiction with the legislation, as well as a high degree of public discontent, forced the Khimki Administration to cancel this Decree a three years later. Meanwhile, according to the current General Plan of Khimki (adopted in 1999 and still in force), the road bypasses the Khimki Forest (see Annex 1) – so the routing through the forest still openly contradicts the main document governing all construction activity in Khimki.

The reservation of forest lands for the motorway was done only in 2009 by Mr Vladimir Putin himself (Decree 1642 r, November 2009), well after NWCC LLC won the concession agreement in 2008. To do this, the Forest and Land codes were changed to become less effective: The unconditional ban on the use of forest park lands for construction was lifted though only in the absence of alternative options. Since no independent procedures for verifying the absence of alternative options were specified, it made way for unlimited de-forestation near Moscow and other large cities. These changes were made completely behind closed doors. Nevertheless, many other remaining articles in the legislation have been violated (for example - the requirement about the absence of alternative routings, since in the case of the Khimki Forest alternative routings were clearly documented, the absence of public hearings on the project, etc.), and only the unwillingness of Russian courts to overrule a decision by Putin led to the otherwise illegal project being started in 2010. The motives behind Putin's decision were not disclosed. However, Mr. Arcady Rotenberg, one of the shareholders in NWCC LLC³, is

³ CEE Bankwatch/EkoOborona: Vinci: a cover for tax havens and oligarchs in Russia's first road PPP, 30 April 2011 http://bankwatch.org/documents/Vinci_oligarchs_taxhavens_Khimki.pdf

reportedly a close friend of Mr Putin⁴, and it is therefore hard not to suspect some form of nepotism.

Even after this decision made by Putin, the question of the routing was re-opened in August 2010, after President Medvedev stopped all the works and ordered additional “public and expert consultations”. This process was aborted in December 2010. The main official reasons for the abortion and returning to the routing through the forest were the billions of roubles of compensation that would need to be paid to VINCI (or more precisely to its subsidiary, NWCC LLC) for the delay, according to the official minutes of a Russian governmental commission meeting in December, 2011 (Annex 2, in Russian). What is essential is that two representatives of NWCC LLC attended that meeting so Vinci was well aware of its role in promoting the option most damaging to the forest.

Thus, although the guilt of Russian officials in the choice of the routing through the forest is obvious, VINCI has clearly condoned it.

All the aforementioned facts are well-known to VINCI and its subsidiary NWCC, and many of them were even described in NWCC’s own study in 2009. **The very fact that Vinci is disseminating deliberate disinformation about all the routing decisions being taken in 1971 in its official response to the Global Compact is very alarming.**

We strongly disagree with **Point 2**. There would be no pressing reason for the project to continue in its current form without VINCI. The main reason for not changing the route specified by the Russian governmental commission in its December 2010 meeting is the compensation it must pay to NWCC according to the concession contract. Thus, if VINCI withdrew from the project, or came forward with a suggestion to allow extra time to re-examine the route, there would be no particular barriers to doing so, unless there are special interests close to the Russian government which would prefer to maintain the current routing.

VINCI's excuse for not initiating a discussion on change of route are, frankly, quite odd.

Before the clearing that has taken place in the last two years, Khimki forest remained almost unchanged since the 18th century (see footnote 2). It is very surprising to find that “*it would be doomed in the short term*”, and it can be “conserved” only by cutting it down for the motorway! Such logic is extremely cynical: VINCI participates in a project which has led to a situation in which the forest “would be doomed in the short term”, and now tries to present itself as the company which will conserve the forest. In reality, field inspections have shown that works have been carried out in the habitats of Red Book species, which is a criminal offence according to Russian legislation⁵ - not exactly compatible with conserving the forest.

All in all we cannot conclude from Vinci's explanations that the company is “**supporting a precautionary approach to environmental challenges**”, as it has committed to do under Global Compact Principle 7.

II) Vinci's complicity in human right abuses.

4 Bloomberg: Putin's Judo-Playing Friend Says Premier Didn't Help Him Win Gazprom Deals, 28 April 2010 <http://www.bloomberg.com/news/2010-04-28/putin-s-judo-playing-friend-says-premier-didn-t-help-him-win-gazprom-deals.html> ; Reuters: Putin's judo partner jumps in Russia's rich list, 15 February 2011, <http://www.reuters.com/article/2011/02/15/us-russia-rich-idUSTRE71E1QN20110215>

5 <http://lesapodmoskovia.livejournal.com/5001.html#cutid1> (in Russian)

Since Russian subcontractors like Teplotekhnik, Vytyaz, Forward-trass, etc., have been hired to do all the “dirty work” by Avtodor State Company it is clear that we would not expect to find Vinci staff among their workers, security guards or hired thugs. Nevertheless, all the violence and crimes are a necessary part of the project as a whole, since violence is the only possible way to realize a project which is opposed by more than 2/3 of the population⁶. As we have mentioned above, Vinci is both a beneficiary and a participant of the project. Thus, the very fact that the “dirty work” is done by somebody else is not an excuse.

While we are glad to hear that VINCI has at least undertaken a few steps to look into the acts of violence and repression surrounding the case, we consider these far from sufficient or wholehearted. In the case of Evgenia Chirikova's parental rights mentioned in the letter, it is reasonable that VINCI would ask Avtodor for its opinion and response, but it is at the very least naïve to just ask one of the possible criminals⁷ - and then consider his answer as sufficient proof that the repression was not connected to the project. This is particularly the case with Avtodor, whose Vice President, Sergey Kelbach, has already been caught lying publicly with regard to the project.⁸

VINCI may not have grasped the seriousness of the repression against local activists in the case of Khimki, and the likely involvement of the local or national parties to the project, but even the Russian Criminal Police – not well known for their independence and freedom from political interference - have begun to implicate the parties to the project in these crimes. For example, at least one representative of the Khimki Administration is now in jail and considered as a main suspect in organizing the attempted murder of one of the environmental activists, Mr. Fetisov. In such a situation, Vinci's attempts to address the violent repression of activists is highly insufficient, and cannot be expected to bring any material changes.

Neither can participation in the Presidential Human Rights Council meeting on May, 23, 2011 be considered as a sufficient means to tackle criminal issues. The Council has no executive power, and the violence has continued since May 23⁹.

The only way for VINCI to have a serious impact on stopping the violence and repression of activists and to comply with its commitment to Principle 2 of the Global Compact – to make sure it is not complicit in human rights abuses - would be to suspend its participation in the project until all the cases are investigated and concluded, or to push for a change in the routing which would see an end to the protests and therefore to the violence against activists. Anything less simply allows those using violence to protect their interests in the current routing to get the result they wish for, and makes VINCI complicit in the abuses.

6 Results of public opinion polls: <http://www.levada.ru/press/2010091501.html>

7 The fabrication of a false criminal accusation of Mrs. Chirikova for poor treatment of her children is a criminal offence according to Russian law.

8 AVTODOR lies that there is no clearing of the forest - <http://www.ecmo.ru/news/p122/n-1720/>

9 Violence since May 2011: <http://khimkiforest.org/news/police-continues-using-violence-against-khimki-forest-defenders>, <http://khimkiforest.org/news/russian-police-again-beat-and-arrest-activists-pave-way-vinci%E2%80%99s-controversial-moscow-stpetersbu> , <http://khimkiforest.org/news/observatory-requests-your-urgent-intervention-arrested-supporters-khimki-forest>

On the basis of the above, we kindly ask the Global Compact to look into whether it considers VINCI's reporting on its Global Compact commitments to be sufficient, particularly regarding this extremely controversial case.

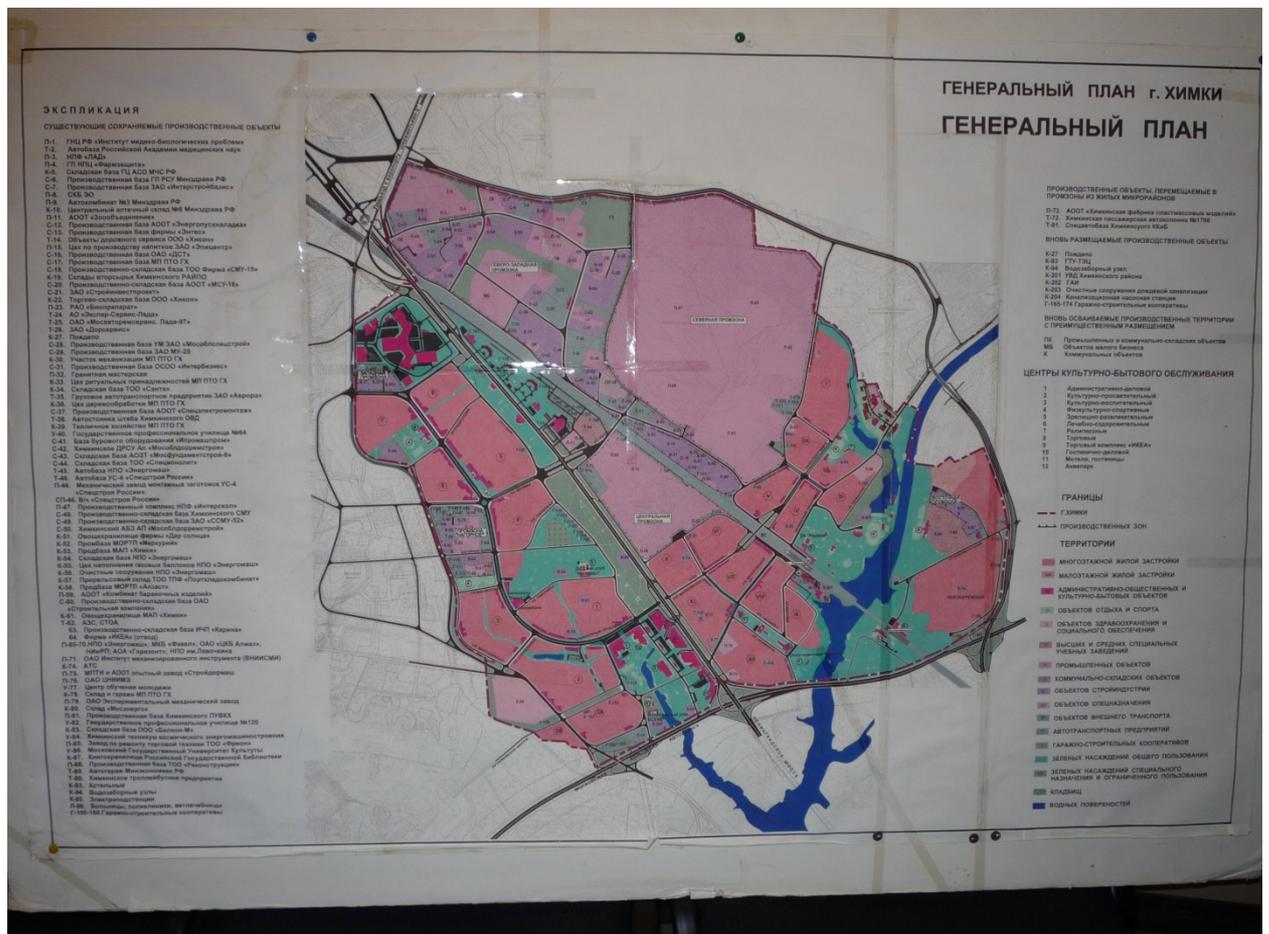
Yours sincerely,

Ms Pippa Gallop, CEE Bankwatch Network

Mr Mikhail Matveev, Movement to Defend Khimki Forest

Annexes:

Annex 1 - Current General Plan of Khimki



Annex 2 – minutes from the December 2010 governmental commission meeting with NWCC representatives present – in Russian. Available on request (large file).