

A Case of Irresponsible Asset Return?

**The Swiss-Kazakhstan
\$48.8 million**

**Professor Kristian Lasslett
and Thomas Mayne**

About the Authors

Kristian Lasslett is Professor of Criminology and Head of School (Applied Social and Policy Sciences) at Ulster University. He has pioneered world-leading investigative methods for documenting the social networks, processes and transactions essential to the organisation of grand corruption and kleptocracy. The resulting findings have featured in a wide range of leading international scientific journals and two monographs.

Thomas Mayne is a freelance researcher and writer from London. For twelve years he was responsible for Eurasian investigations at Global Witness, an anti-corruption NGO that campaigns to end the exploitation of natural resources.

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Development Grant or Returned Assets? An Ambiguous “Restitution”

During 2011 Swiss authorities confiscated \$48.8 million in assets allegedly stolen from the Kazakh public. It **was announced** on 21 December 2012 that the assets will be restituted in order to ‘benefit the people of Kazakhstan’.



- **2011 Swiss Prosecution**
Accused(s) consented to asset return, their identity has been withheld

\$48.8 million



- **Swiss Agency for Development and Cooperation**
Swiss Agency for Development and Cooperation transferred restituted assets to the World Bank through a grant

\$48.8 million



\$21.76 million
Energy Efficiency Program



\$21.76 million
Youth Corps Program

- **The Kazakh Ministry of Education and Science and the JSC “Institute of Electricity Development and Energy Saving”** are the implementing agencies



- **The World Bank**
The World Bank agreed to monitor and re-grant the \$48.8m to Kazakhstan for an Energy Efficiency Program and Youth Corps Program



- **Government of Kazakhstan**
Washed of its origins, the Government of Kazakhstan has referred to this money as a grant rather than restituted assets.

The ‘restituted’ funds traversed a route that washed the assets of their origins. This allowed the Government of Kazakhstan and World Bank to frame the returned assets as Swiss development grants, which would be split between an Energy Efficiency Program and a youth program named Youth Corps, or Zhas in Kazakh.

Due to the secrecy surrounding repatriation, there is no way to determine whether these funds will directly or indirectly benefit those implicated in the original Swiss prosecution.

Responsible Asset Return: The International Standard

To assist state parties responsibly return stolen assets, the UNCAC Coalition's Civil Society Working Group on Accountable Asset Return has issued **guiding principles**. 📌 Drawn from international law and human rights norms, they are designed to ensure restituted funds benefit victims and are not further abused by corrupt regimes.

Standard 1:

Stolen assets that are recovered should be returned to the country of origin, in line with UNCAC Article 51.

Standard 2:

Returning and receiving countries agree to apply the highest possible standards of transparency at all stages of the recovery and return process.

Standard 3:

Both returning and receiving countries should commit to apply the highest possible standards of accountability in the management and disposal of recovered and returned stolen assets.

Standard 4:

Returned stolen assets should be used to remedy the harm their theft caused, including by providing planned services or procurements lost through their removal and in line with SDG 16.

Standard 5:

Where regular budgeting and accounting processes lack transparency and accountability and where a receiving country is non-compliant with UNCAC Articles 9, 10 and 13, resulting in a lack of effective oversight of returned funds, returning and receiving countries should in consultation with a broad spectrum of relevant experts and non-state actors find alternative means of managing the stolen assets.

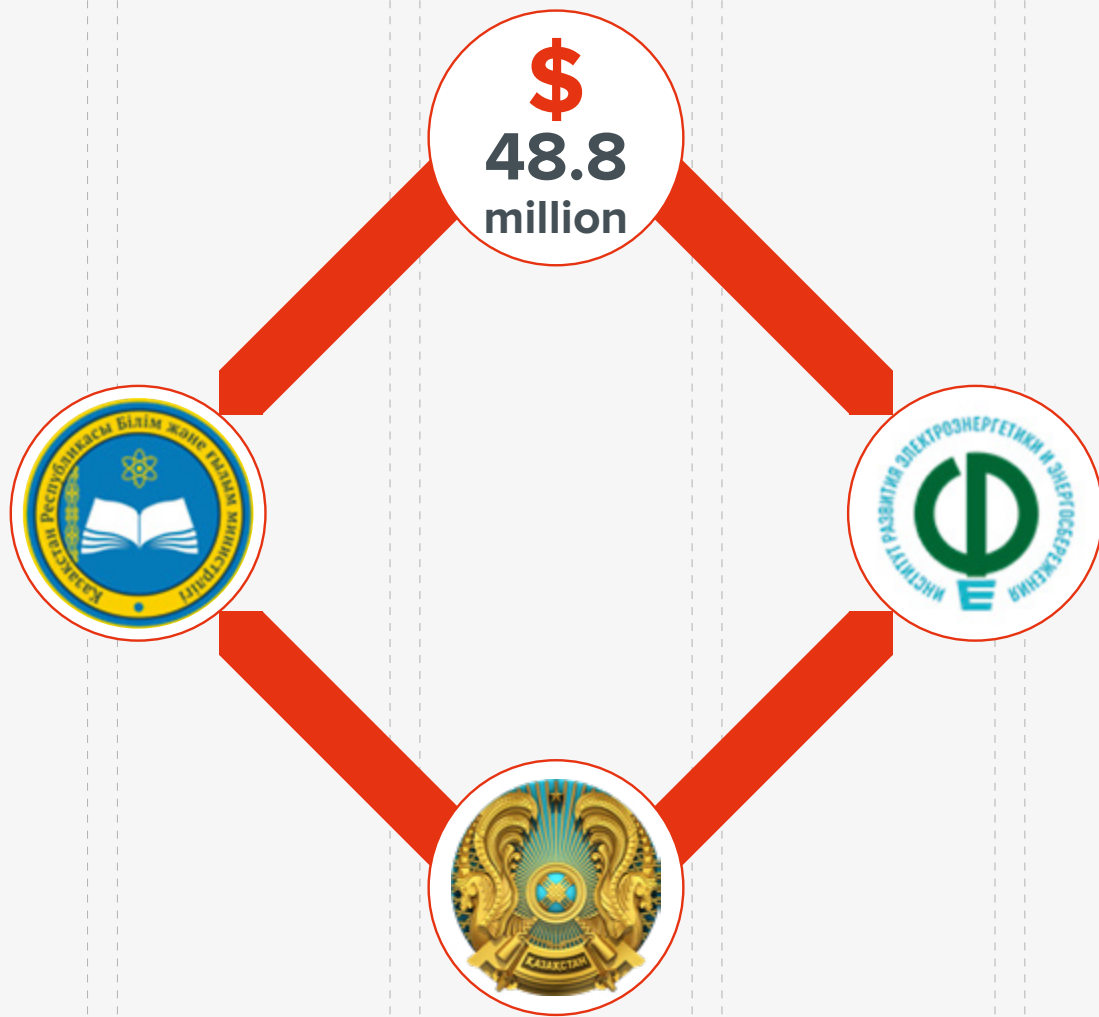


In 2008 an independent Foundation named BOTA was established by the US, Swiss and Kazakh governments, with support from the World Bank. BOTA would implement the return of \$115.8m linked to the 'Kazakhgate' scandal. This return process has been **labelled Kazakhstan I** by the Swiss Government, while the most recent return of \$48.8m has been **called Kazakhstan II**.

To guard against abuse (Standard 5), and to ensure Standards 1, 2, 3 and 4 would be achieved, an MoU establishing the Foundation for Kazakhstan I **stated** it 'shall be independent of the Government of the Republic of Kazakhstan, its officials, and their personal or business associates'. It was stipulated that 'neither the funds nor any property of the BOTA Foundation shall be used for payments or other benefits, directly or indirectly... to the Government of the Republic of Kazakhstan, its officials, or their personal or business associates'.

A subsequent **report explains**: '[T]he need to be independent of the Government of the Republic of Kazakhstan was born out of concern that the GoK would influence how the money was spent or even benefit from the funds'. Given that corruption is systemic and state-organised in Kazakhstan, this objective ensured that those involved in corruption did not benefit from restituted assets.

A High Risk Return Strategy



In contrast to Kazakhstan I, in Kazakhstan II the \$48.8m was returned to the Government of Kazakhstan under the stewardship of the World Bank who has a fiduciary responsibility to ensure the funds were applied in a responsible manner.

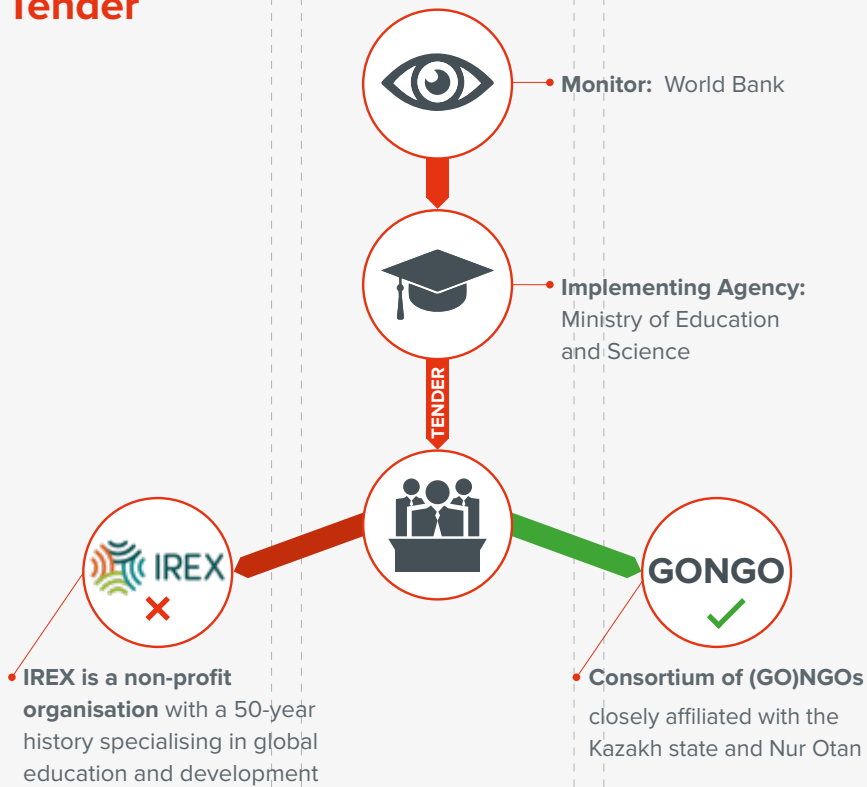
This has imposed a significant oversight burden on the World Bank, given that the Kazakh Government is among the most corrupt and repressive in the world. Global Witness has labelled Kazakhstan a kleptocracy, **arguing** it is 'a country run primarily in the interests of the ruling family [Nazarbayevs] and its associates.

Members of Nazarbayev's family are reportedly worth billions of dollars and hold senior positions in state businesses'.

World Bank analysts evaluating the Youth Corps Program **warned** of an environment marked by 'weak PFM [Public Finance Management] capacity and significant fiduciary risk due to high perceived corruption'. World Bank experts also **warned** of high risks 'based on experience from past and ongoing Bank-financed projects in Kazakhstan, general public procurement environment and the current capacity of the Committee on Youth Affairs (CYA) of the Ministry of Education and Science (MOES) in administering procurement'.

GONGOS Take the Lead

Project Coordinator Tender



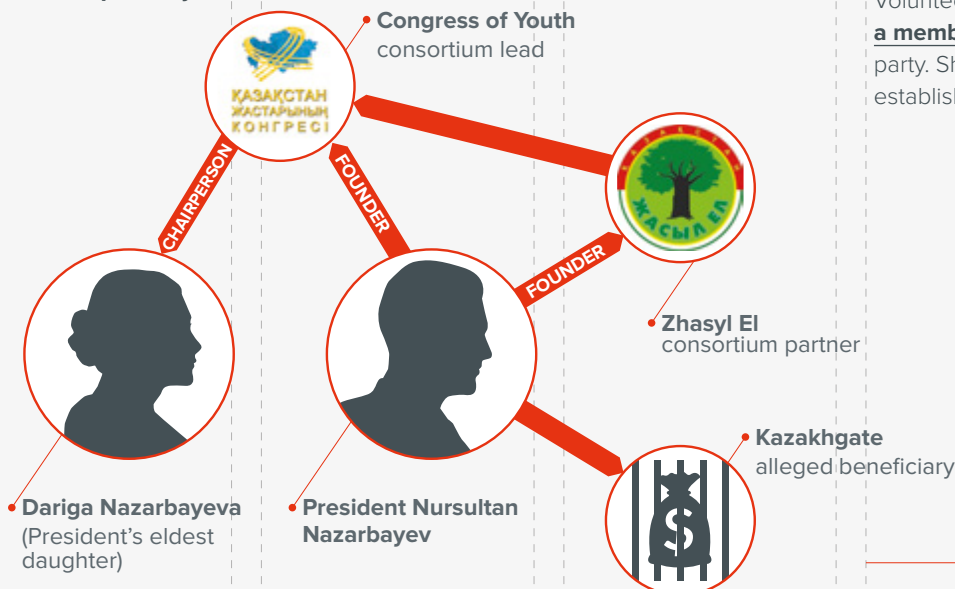
The Corruption and Human Rights Initiative investigated the Youth Corps restitution process. This inquiry revealed that the Project Coordinator responsible for administering the project was selected through a competitive tender overseen by the World Bank. The respected development non-profit, **IREX**, was rejected **in favour** of a GONGO consortium (Government-organized NGOs). In collaboration with the autocratic Kazakh regime, consortium members aim to promote values such as patriotic consciousness, duty to the Motherland, public spirit and personal growth, within the nation's youth.

The Congress of Youth is consortium leader. It was created **at the initiative** of President Nursultan Nazarbayev. His eldest daughter, Dariga Nazarbayeva, is the Congress' Chairperson. She is also a senior politician in her own right from the ruling Nur Otan party, which tolerates no substantive political opposition or dissent. The Congress' **Executive Director**, Tokhtar Bolysov, is a former Deputy Chairman of Zhas Ulan. Zhas Ulan is a youth body created by the Kazakh President to cultivate patriotic duty to the Motherland.

Consortium partner Zhasyl EI, another youth body created at the initiative of President Nazarbayev, was recently the subject of a **corruption scandal** after a senior manager defrauded the organisation using forged invoices.

Keeping it in the family

- Youth Corps' Project Coordinators



The final consortium member is the National Volunteer Network. Its Chairperson Vera Kim is **a member** of President Nazarbayev's Nur Otan party. She is also **head** of the Coordinating Agency established by the GONGO consortium.

Procurement and Expenditure



KZT 8.694m

- Zhas Otan**

Youth wing of the President's ruling party Nur Otan, known as **Zhas Otan**, won an **8.694 million KZT tender** to conduct a Youth Corps awareness raising campaign. It has also been selected as a **host organization**



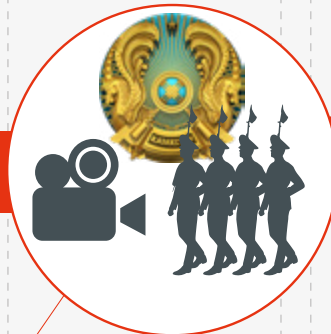
\$1,800 versus \$90 for similar service

- \$1,800 is to be paid per article** promoting Youth Corps, and **\$1500 per social media post** with 150+ likes. **BOTA paid approx. \$90 for similar services**



- Kazakh Patriots**

Kazakh Patriots is a Youth Corps **host organization**. Its head is Chairman of the Public Council of Ust-Kamenogorsk and a former Executive Secretary at Zhas Otan



- Patriot Media LLC was contracted** to produce **videos**, they extol the President and the 'Eternal Nation'

There has been a lack of transparency with respect to procurement. On the basis of limited documentation unevenly and inconsistently published on the World Bank, Ministry and Zhas Project websites, it is impossible to fully verify (i) the methodology and rigour of procurement processes; (ii) the terms of reference governing contracts, or; (iii) the beneficial owners of companies awarded contracts. No auditing data has been uncovered, except for a procurement notice tendering for an independent auditor.

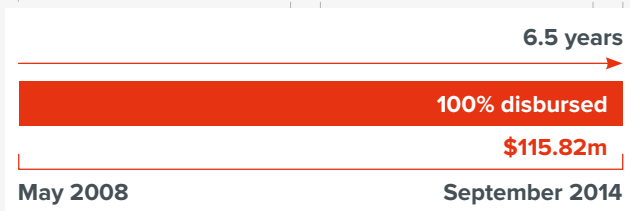
From the limited available procurement data, examples have been uncovered of lavish spending on promotional material, awards to the ruling party's youth wing, expenditure on materials that have a propagandistic function, and the selection of 'host organizations' that are predominantly GONGOs, some of which are run directly by public officials and politicians espousing strong commitment to the President's national ideology. It is not clear how conflicts of interest have been managed by the consortium, for instance awarding a tender to the youth wing of Nur Otan, the political party of the Congress of Youth's Chairperson.

Finally, because the individuals and organisations implicated in the Swiss prosecution have not been disclosed, it is impossible to verify whether individuals and entities implicated in the case have benefited from the restituted assets.

Why Not BOTA II?

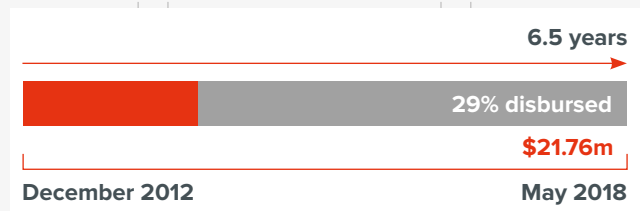
Kazakhstan I (BOTA) timeline

Established May 2008, finished September 2014



Kazakhstan II (Youth Corps) timeline

Established December 2012



The Government of Switzerland justified opting out from a BOTA style arrangement, **arguing**: 'Restitution through a foundation proved to be administratively cumbersome'. In contrast the independent assessor of BOTA **concluded**: 'Overall the qualitative evaluation has confirmed that the BOTA programs have been implemented across all three activities with high levels of effectiveness for those that receive the benefit'.

By opting out of an independent foundation model, abuse and misuse risks increased significantly. To mitigate these risks a fiduciary duty was placed on the World Bank to ensure funds were transparently applied in a socially responsible manner. In executing this duty the World Bank is governed by its own Charter which **states**:

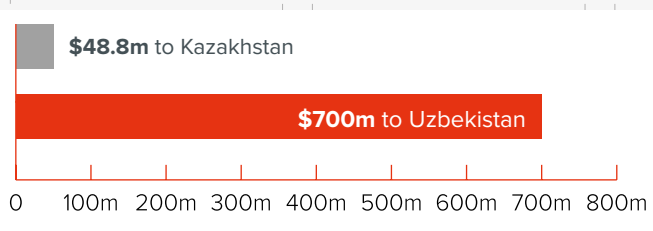
6 *The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned'.*

Given that World Bank grant funds have been awarded to (i) a range of organisations initiated by President Nazarbayev to promote his party's national ideology, and (ii) organisations headed by politicians – most notably the President's eldest daughter – and individuals linked to the ruling Nur Otan party's youth wing, there is a case to be argued that restituted funds have contributed towards political organisations in violation of the World Bank Charter.

Why does this matter? Kazakhstan and Beyond

Kazakhstan II v Uzbekistan I

Switzerland may shortly retribute \$700m to Uzbekistan



TI Corruption Perception Index 2017

1 is the least perceived corrupt. 180 is the most perceived corrupt



This investigation raises a range of important issues with respect to Kazakhstan II:

- The assets returned from Switzerland to Kazakhstan were restituted through a series of mechanisms which gave the false appearance that the funds were Swiss development grants. Associated World Bank and Kazakh government press releases were explicitly misleading. This was not transparent return, nor does it qualify as restitution if victims and the wider public are not fully informed.
- The misleading modality of return meant that the restituted assets have not been subjected to the same intensity of civil society and media scrutiny they would ordinarily receive.
- Despite no substantive change in the governance environment since Kazakhstan I, the restituted assets were returned to a government impacted by systemic and systematic corruption.
- With respect to the Youth Corps Program, a series of GONGOs linked to President Nazarbayev and his ruling party were given the onerous responsibility of project coordination. This notably contrasts with Kazakhstan I which required strict

independence in decision making and oversight, in a bid to ensure entities implicated in corruption did not benefit from the restituted assets.

- Restituted assets have, in part, contributed towards activities and assets that further the ideology and interests of the ruling Nur Otan party; and the interests of bodies closely affiliated to the President. In so doing this may directly, or indirectly, benefit those implicated in the original Swiss prosecution. Because the identity of implicated parties/entities has been concealed, it is impossible to verify or discount this concern.
- When returned assets have strengthened a regime that denies citizens elementary freedoms and human rights, it raises questions over whether restitution to victims has actually taken place.
- The available procurement information is incomplete and inadequate for ensuring transparency and integrity. Restituted assets have been used to fund a lavish PR campaign, propagandistic materials, the youth wing of the ruling Nur Otan party, and organisations initiated by the President to promote his party's ideology and enduring grip on power.
- The pace of return has been slow and seriously impacted by bureaucratic weaknesses evident within the Kazakh government.

- There is a case to argue that the World Bank grant to the Government of Kazakhstan has violated the former's Charter, which prohibits interfering in the political affairs of any member.
- With significant sums of stolen assets being stored within Swiss financial centres, the return practices employed by the Government of Switzerland has a sizable policy and practical effect, with respect to the rights of victim populations, who deserve transparent and responsible restitution. Kazakhstan I and II thus are precedent setting return cases which deserve close scrutiny.

The concerns raised above have serious implications for responsible asset return more generally:

- Kazakhstan II reveals numerous weaknesses associated with high risk return approaches in highly corrupt and authoritarian political environments. It underlines the enduring importance of using independent, arms-length return mechanisms that include victim voices.

- The Swiss Government will be a key decision maker in how approx. \$700m in alleged stolen assets belonging to the people of Uzbekistan are returned, in a governance environment that is even more degraded than Kazakhstan.
- Despite a change in President, all objective measures demonstrate Uzbekistan remains a country deeply impacted by corruption, repression, lack of transparency, no meaningful checks and balances (including independent courts of law), human rights abuses, the suppression of elementary freedoms, and a lack of a free and independent media or civil society.
- It is critical that the lessons drawn from Kazakhstan I and II, are used to construct a transparent, independent, accountable, inclusive, and efficient methodology for restituting assets to the people of Uzbekistan, and for other cases tied to highly corrupt environments. The evidence strongly indicates that a mechanism modelled on BOTA, building on lessons learnt, would be optimal for an environment such as Uzbekistan – a conclusion reached by notable Uzbek activists, journalists, scholars and advocates.

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www.corruptionandhumanrights.org

School of Applied Social and Policy Sciences

University of Ulster

Jordanstown Road
Newtownabbey BT37 0QB
Northern Ireland

E kak.lasslett@ulster.ac.uk

T +44 (0) 28 9036 6248

School of Law

Queen Mary University of London

Mile End Road
London E1 4NS
United Kingdom

E f.kanji@qmul.ac.uk

T +44 (0) 20 7882 6414

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