# AARHUS CONVENTION IMPLEMENTATION REPORT

**The following report is submitted on behalf of Kazakhstan in accordance with decision I/8 and II/10.**

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## IMPLEMENTATION REPORT
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## I. PROCESS BY WHICH THE REPORT HAS BEEN PREPARED

1. This national report has been based on an analysis of previous national reports of the Republic of Kazakhstan, national legislation, programme documents, plans, declarations, and materials from seminars, training events and forums. Written enquiries were sent to the Ministry of Justice, the Ministry of Health, the Ministry of Agriculture, the Ministry of Culture and Information, the Ministry of Emergency Situations, the Ministry of Education and Science, the Supreme Court, and the Regional Environmental Centre of Central Asia (REC CA). A significant quantity of information was received from the TACIS project "Strengthening Public Participation and Civil Society Support to Implementation of Aarhus Convention". In addition materials were used from the *Training and practical manual on the application of provisions of the Aarhus Convention by judges in the Republic of Kazakhstan*, Library of the Supreme Court of the Republic of Kazakhstan, Astana, 2008; the public foundation the Centre for the Development of Local Self-government (Ust-Kamenogorsk city); the Forum of Environmental NGOs of Kazakhstan; the public association EKOM; and Professor M.K. Suleymenov, Doctor of Legal Science. Information on GMOs was received from the Foundation for the Integration of Ecological Cultivation. In addition, the public association Legal Initiative was also involved in producing the report. Contradictions revealed during independent analysis of sectoral legislation may serve as a good basis for public participation in law-making in accordance with Article 8 of the Aarhus Convention.

2. In order to facilitate broad public discussion, the draft national report was posted on the Ministry of Environmental Protection's website (www.eco.gov.kz) and on the web portal of the national Aarhus Centre (www.aarhus.kz) on 8 November 2010.

## II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

3. Under Article 4(3) of the Constitution, on ratification the Aarhus Convention became an international agreement with priority over national law, and its provisions and norms are directly applicable.

4. This national report for the most part contains information about events that occurred after presentation of the first and second national reports on implementation of the Aarhus Convention. It also covers events that for one reason or another did not appear in the first and second national reports.

5. An analysis of laws that contain provisions on the rights of natural persons, public associations and other legal persons in the fields of environmental protection,[1] protection and efficient use of natural resources,[2] public health[3] and radiation safety,[4] and architectural, town planning and construction activities,[5] allows procedural environmental rights to be classified into the following categories:

[1] Articles 13 and 14 of the Environmental Code, Articles 12 and 13 of the Act on Specially Protected Natural Territories
[2] Articles 62 and 63 of the Water Code, Article 66 of the Forest Code
[3] Articles 18 and 19 of the Sanitation and Disease Prevention Act
[4] Articles 19-21 of the Act on Public Radiation Safety
[5] Article 13 of the Act on Architectural, Town Planning and Construction Activities

- the right to appeal to state bodies on environmental issues including observance of the environmental rights of natural persons, environmental public associations and other legal persons;[6]
- the right of access to environmental information;[7]
- the right to participate in the decision-making processes of state bodies on building and reconstruction projects that have a potential impact on the environment;
- the right to use administrative[8] or judicial procedures to demand the cancellation of decisions on the location, construction, reconstruction and bringing into operation of enterprises, facilities and other installations which pose an environmental risk;
- the right to use administrative[9] or judicial procedures to demand the limitation or cessation of economic or other activities that negatively affect the environment and human health;
- the right to compensation for damage to health and property caused by violations of environmental legislation;
- the right to participate in discussions about draft environmental legislation and the elaboration by state bodies of environmental plans and programmes;
- the right to conduct public environmental compliance assurance and to raise the question of making natural and/or legal persons accountable;
- the right to suggest or initiate, conduct and participate in public environmental review;
- the right to unite with the aim of conducting activities for environmental protection and to protect environmental rights, including by creating public associations and foundations;
- the right to exercise environmental rights and interests by participating in gatherings, meetings, pickets, marches and demonstrations, and referenda in the field of environmental protection in accordance with legislation.[10]

6. Under the Aarhus Convention, "the public" holds the right of access to environmental information and the right to participate in environmentally-significant decision-making by state bodies. "The public" means any natural or legal person, and also associations they have created in accordance with national legislation. National legislation recognises natural persons as bearers of the right to an environment favourable to life and health. The recognition that natural persons hold these rights means that citizens of Kazakhstan, foreign citizens and stateless persons enjoy these rights equally. National legislation uses a range of approaches to define the bearers of procedural environmental rights.

7. Financial considerations do not pose an obstacle to the application of the Aarhus Convention.

## III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3

[6] Article 13(1(6)) of the Environmental Code
[7] Articles 13(1(7)) and 14(7) of the Environmental Code
[8] Under Article 8(4) of the Administrative Procedures Act, the administrative procedure for exercising the right to request cancellation of such decisions should be understood as making a request to a higher-level authority.
[9] See the explanation given in footnote 8.
[10] Articles 13(1(5)) of the Environmental Code

8. In order to implement the provisions of the Aarhus Convention, by Order of the Ministry of Environmental Protection No. 35-θ of 20 March 2009, Kazakhstan created a national Aarhus Centre on the basis of the Environmental Information and Analysis Centre.

9. In 2009, on the basis of Order No. 221 of the Minister of Environmental Protection, an inter-agency working group was created to oversee implementation of the Aarhus Convention. The working group includes representatives of:

- the Ministry of Environmental Protection,
- the Supreme Court,
- the Ministry of Agriculture,
- the Ministry of Health,
- the Ministry of Culture and Information,
- the Ministry of Emergencies,
- the Ministry of Education and Science,
- the Ministry of Energy and Mineral Resources,
- the *Akimiat* (municipal administration) of Astana city,
- the Environmental Forum of NGOs of the Republic of Kazakhstan,
- the Kazakhstani Association of Nature Users for Sustainable Development,
- the Nevada-Semipalatinsk International Antinuclear Movement, and
- the Institute of Plant Biology and Biotechnology.

10. The Zhaik-Caspian Aarhus Centre was established in accordance with a memorandum between the Ministry of Environmental Protection, the state administration of Atyrau, the OSCE Centre in Astana and the NGO Ecoforum.

11. A special working group created within the Supreme Court with the support of the OSCE Centre in June 2007 prepared a summary of relevant court cases heard in the Supreme Court and local courts from the ratification of the Aarhus Convention. At the end of 2007, the working group prepared a draft training and practical manual for judges, which was then sent for discussion to all provincial courts and the Almaty and Astana city courts, and also posted on the Supreme Court website (www.supcourt.kz) for wider examination and discussion under the heading *Implementation of the Aarhus Convention*. The material was received with considerable interest among Kazakhstani and foreign judges at an international conference organized by the Supreme Court and the OSCE to commemorate the tenth anniversary of signing of the Aarhus Convention. Many written comments and suggestions were received, which were drawn upon in the final version of the manual. At the same time, the Supreme Court monitored judges' compliance with the provisions of the Aarhus Convention on public access to justice. The training and practical manual is also used at the Institute of Justice and in professional development activities for judges at the training centres that have been created at every provincial court. Issues and practical examples from the manual are included in professional development programmes on environmental law for judges and officials in the court system.

12. With regard to **paragraph 3,** the following activities take place in Kazakhstan:

- posting of environmental information on the Aarhus Centre web portal (www.aarhus.kz);
- coverage of environmental issues in the media by the press services of the Ministry of Environmental Protection and the Supreme Court;
- dissemination of publicly-available environmental information by the State Environmental Information Archive;

- an electronic consultative and information service: orhus@iacoos.kz;
- environmental awareness raising and outreach; and
- publication of a monthly specialized newspaper entitled *Ecology of Kazakhstan*.

13. Articles 181-184 of Chapter 25 of the Environmental Code specify the aims and primary objectives of environmental education, along with the organizational principles of environmental education and awareness-raising and the mechanisms by which the state provides support to environmental education and awareness-raising. The aim of environmental education and awareness-raising is to foster a proactive attitude among citizens and a culture of environmental responsibility in society, based on the principles of sustainable development. Under Article 184 of the Environmental Code, the state provides support to environmental education and awareness-raising in the following key areas:

- defining a long-term action plan for education for sustainable development;
- improving the practical and theoretical basis of environmental education and awareness-raising;
- training qualified specialists in environmental protection;
- ensuring the availability of learning and teaching materials on environmental education and awareness-raising; and
- supporting the development of organizations that seek to raise awareness of environmental issues in society and in the family.

14. Measures taken by the state include:

- financing environmental education in educational institutions (work and initiatives to develop training materials for environmental education and awareness-raising, and continuing professional development) as part of various national, sectoral and regional programmes;
- active participation of state bodies in drawing up state education tenders for training specialists;
- awarding state tenders for theoretical research into education for sustainable development;
- awarding state public-service tenders to public associations working in the field of environmental education and awareness-raising; and
- carrying out environmental education and awareness-raising, continuing education and retraining of officials as part of environmental protection programmes.

15. The universality and continuity of environmental education and the legal and ecological focus of environmental protection is underpinned by the relevant sections of the national Conceptual Framework for Environmental Security, the Acts on Education, Natural and Anthropogenic Emergency Situations, and the Civil Service, and various Government decisions.

16. In 2002, the national Conceptual Framework for Environmental Security was developed in accordance with fundamental legislation and also Government Decision No. 137 on Approval of the Action Plan for Implementation of the Conceptual Framework for Environmental Security of 3 February 1997. The Conceptual Framework for Environmental Security was approved by Orders of the Ministries of Education and Science and Environmental Protection on 9 December 2002. A sub-regional network on education for sustainable development (the Regional Environmental Centre for Central Asia) operates in the country and works on environmental education through the NGO Ecoforum, the Network of Birdwatcher Clubs and the Association for the Preservation of the Biodiversity of Kazakhstan.

17. The State Procurement Act provides a simplified procedure for public associations to participate in tenders. For example, applications from public associations do not require bank guarantees, which would be a significant hurdle for NGOs. At the same time it is important to note the low level of civil society participation in bids for state tenders.

18. With regard to **paragraph 7**:
Kazakhstan is a State Party to the following international agreements:

- the Universal Declaration of Human Rights, ratified by Kazakhstan in 1991. Article 19 enshrines the right to freedom of information;
- the International Covenant on Civil and Political Rights (ICCPR) adopted by the UN General Assembly in 1966;
- the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Human Rights Defenders Declaration) adopted by UN General Assembly Decision No. 53/144 of 8 March 2008;
- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Document E/CN.4/2000/63, 2000, paragraph 42;
- UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention);
- UN Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention);
- Document of the Copenhagen Meeting of the Conference for Security and Co-operation in Europe (CSCE) on the Human Dimension, adopted in 1990;
- Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted by a group of experts convened by Article 19, 1 October 1995;
- interstate agreements on access to information adopted by members of the Commonwealth of Independent States from 1991 to 2008, including the Convention of the Commonwealth of Independent States on Human Rights and Basic Freedoms, Minsk, 26 May 1995.

19. The OSCE commitments on media legislation provide important guidance. They give clear criteria for the openness of information that is important to the public in OSCE member states. Kazakhstan adopted these commitments at the 15$^{th}$ OSCE Ministerial Council, held in Madrid in 2007 and work is currently underway to fulfil them and bring national legislation into conformity with them.

20. In 2004, UNESCO developed Policy Guidelines for the Development and Promotion of Governmental Public Domain Information. These Guidelines set out joint actions by UN member states through UNESCO and every individual government to improve access to information created by state bodies.

21. Article 192(1) of the Environmental Code of Kazakhstan establishes a mechanism to enable interstate cooperation in the field of environmental protection and use of natural resources. Representatives of state bodies and the public actively engage in international forums and conferences, exchange environmental information, present national reports on implementation of international obligations, and evaluate compliance with international

commitments, among other activities. NGOs regularly take part in various international forums and are members of various international thematic networks (such as the Global Water Partnership, the International POPs Elimination Network, and the European ECO-forum).

22. Through the regulations and practice of the Interstate Commission for Sustainable Development of Central Asia (ICSD), public representatives (i.e. the ICSD Public Council and the Central Asia Youth Network), in partnership with Ministry of Environmental Protection officials and the ICSD research centre, draft programmes, participate in the preparation and discussion of programmes and documents presented at ICSD meetings, and directly participate in these meetings. Moreover, the public participates in interstate consultations between Kazakhstan and Kyrgyzstan on transborder environmental impact assessments in fulfilment of the Espoo Convention.

23. Within the reporting period, no amendments were made to legislation to prohibit harassment of natural persons. All relationships are regulated by Act No. 221-III on the procedure for consideration of communications from natural and legal persons of 12 January 2007. To date, not one case has been reported of persecution of public representatives exercising their rights under the Convention.

## IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3

24. Under Article 7 of the Public Associations Act, public associations can operate at national, regional or local level. Geographical limitations on activities restrict the environmental rights of individual public associations, thus contradicting Article 3(9) of the Aarhus Convention, which forbids discrimination between legal persons "as to where it has its registered seat or an effective centre of its activities."

25. Under Article 163(1) of the Environmental Code, environmental information can only be classified as restricted information on the basis of national legislation. Current laws allow the following limitations on access that can be applied to environmental information:

- Official and trade secrets;[11]
- Intellectual property rights;[12]
- Police work, initial enquiries and pre-trial investigations[13]
- Privacy;[14] and
- Data protection.[15]

26. Under Article 5 of the Public Associations Act: "The creation and activities of a public association that harm the health and morals of citizens, and activities undertaken by unregistered public associations, are forbidden." This means that sanctions may be taken against unregistered associations such as informal groupings formed spontaneously to defend common environmental interests, or against the Forum of Environmental NGOs of Kazakhstan as an unregistered association.

[11] Article 126 of the Civil Code
[12] Article 125 of the Civil Code
[13] Article 53 of the Criminal Procedural Code; Police Work Act
[14] Article 144 of the Civil Code
[15] Articles 11-13 of the State Statistics Act

## V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3

27. The right of access to information is not enshrined in the Constitution of Kazakhstan, but Article 20 recognizes the right of citizens to freely receive information. This article also forbids censorship. Government Decision No. 995 of 13 October 2006 adopted a Programme to Reduce Information Inequality 2007-2009. The Programme seeks to overcome information inequality in the country and promote widespread use of ICT. The Programme is a step towards realising the right of citizens to information.

28. Article 4(5(2)) of the National Security Act of 26 June 1998 forbids "dissemination in the territory of Kazakhstan of printed materials or television or radio broadcasts of foreign media that undermine national security." Such laws are essential in any modern open society. However, without a law on access to information, such laws are a "high risk zone" for human rights and create the possibility that they could be violated. Public discussions are currently underway in the regions of Kazakhstan on a draft Act on Access to Public Information. The draft Act is scheduled for consideration by parliamentary deputies by the end of 2010.

29. Act No. 451-I on the Media of 23 July 1999 regulates media activities and *de facto* provides for the right to free speech.

30. The Copyright and Related Rights Act defines property rights to intellectual and creative works, including information products. Respect for the right to information must coexist with respect for copyright.

31. Defamation legislation influences disclosure of information about public officials and politicians.

32. In accordance with Article 8 of the State Statistics Act, "Ensuring the Confidentiality and Security of Data Provided", it may be problematic for the public to receive data about emissions, discharge and waste disposal from specific enterprises.

33. Information requested may be categorized as an official secret. Article 13(4) of the Administrative Procedures Act states that information can only be categorized as an official secret by a decision of the head of the state body or organization.

34. In order to evaluate the scale of future emissions (discharges), information must be used which is neither about the state of the environment nor about pollution. This could include, for example, information about the output of a plant, sources of raw materials, the number of shifts and the financing of environmental protection measures. Such information could be classified as trade secrets under Article 126 of the Civil Code. In addition, some project documentation, including environmental impact assessments, could be covered by copyrights or patents and regulated by Article 964 of the Civil Code and Articles 15 and 20-22 of the Act on the Electronic Provision of Information ("Informatization").

35. The new draft Act on Subsoil and Subsoil Use requires transparency only with respect to the tender for user rights; the terms of the contract, including those regarding environmental protection, are secret. The new draft Act loses the provision that "all interested public

associations have the right to receive information about the effects of existing or planned subsoil use operations on the environment."

36. Bilateral agreements about the encouragement and mutual protection of investment say almost nothing about openness. Some agreements mention openness with regard to national legislation.

37. Only the Agreement between the Governments of Kazakhstan and Austria on the encouragement and mutual protection of investment (Vienna, 12 January 2010) contains a special article on transparency:

> "1. Each party shall without delay publish or otherwise make publicly accessible its laws, rules and procedures, and also its international agreements, that may influence the validity of this Agreement in accordance with the national legislation of its state.
> 2. Each party shall without delay answer special questions and provide at the request of the other party information about any measures and issues referred to in paragraph 1 of this article.
> 3. Neither side shall require that access or permission to access be granted to information about individual investors or investments, the disclosure of which would impede compliance with law or contravene national legislation on protection of confidentiality."

38. Article 20(2) of the Energy Charter Treaty of 17 December 1994 states:

> "Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor."

39. Thus the transparency rules set out in many international agreements regarding the use of natural resources only apply to laws, judicial decisions and administrative regulations. They do not affect the confidentiality of contracts.

40. Kazakhstan's legislation includes the concept of "model contracts". These are regulated by both the old Act on Subsoil and Subsoil Use of 27 January 1996 (Article 1(40)) and the Act of 24 June 2010 (Article 1(71)). The new Act provides the following definition:

> "71) A model contract is a template contract approved by the Government of the Republic of Kazakhstan that sets out the particular features of various types of contract to conduct various types of subsoil use operations, and is used as a basis for drawing up draft contracts."

41. Model contracts are approved by the Government (Article 16(11) of the Act).

42. The model contract for subsoil use operations approved by Government Decision No. 1015 of 31 July 2001 is currently valid. The model contract contains an article specifically dealing with confidentiality:

"Section 24. Confidentiality
24.1 Information received or obtained by either Party in the performance of the contract is confidential. Parties may use confidential information to produce the necessary reports as required by state legislation.

24.2 Parties do not have the right to pass confidential information to Third Parties without the consent of the other Party, with the exception of cases where:
- Information is used during court proceedings;
- Information is provided to a Third Party which is providing services to the Contractor, on the condition that the Third Party accepts the obligation to treat that information as confidential and to use it strictly for the purposes established by the Parties and within the time frame specified by the Parties;
- Information is provided to a bank or other financial institution from which the Contractor receives finance, on the condition that that bank or other financial institution accepts the obligation to treat the information as confidential and use it for the stated purposes.

24.3. The Parties, in accordance with state legislation, shall define time limits for observing the confidentiality of all documents, information and reports concerning … [state type of Subsoil Use Operation] in the Contract Area."

43. Article 61 (2) of the new Act on Subsoil and Subsoil Use states:

"2. The terms of the contract, with the exception of a contract (agreement) for state geological subsoil prospecting, must be drawn up to take into account the provisions of the model contracts for types of subsoil use approved by the Government, and must include the following:
- definitions;
- purpose of the contract;
- duration of the contract;
- contract area;
- ownership of property and information;
- the right of the state to obtain and requisition natural resources;
- the general rights and duties of the parties;
- the time period for prospecting or extraction (depending on the type of contract);
- commercial equipment;
- dimensions of natural resources;
- subcontracting;
- financing;
- taxation;
- accounting;
- insurance;
- suspension or abandonment and abandonment fund;
- conservation of the subsoil and environment;
- safety of the public and personnel;
- liability of the subsoil user for breach of contract;
- *force majeure*;
- confidentiality;
- assignment of rights and responsibilities;

- applicable law;
- dispute resolution procedure;
- guarantees for contract stability;
- conditions for suspending and terminating the contract; and
- language of the contract."

44. Thus, subparagraph 21 establishes confidentiality as a compulsory term of a contract.

45. Both national legislation and international agreements contain provisions on trade secrets and the right to confidentiality of the parties to a contract on subsoil use. There are currently no legal ways or means to compel subsurface users and the Government to disclose the contents of contracts.

## VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3

46. www.goverment.kz, www.e.gov.kz, http://e.gov.kz, www.eco.gov.kz, www.carecnet.org, www.pravstat.kz, www.aarhus.kz, www.orhus-atyrau-2009.kz, www.iacoos.kz; www.supcourt.kz, www.zakon.kz.

## VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4

47. As indicated in previous reports, the basic legislative and regulatory measures that define the legal basis for public access to environmental information were adopted before ratification of the Aarhus Convention. They regulate the public's right to receive and the duty of state bodies and organizations to provide information requested. The main legislative text regulating this is the Environmental Code (Article 159).

48. Electronic government has been instituted through a state programme approved by the President. Under Article 29 of the 2007 Act on the Electronic Provision of Information ("Informatization"), state bodies provide electronic services either independently or through the electronic government web portal.

49. Presidential Decree No. 1050 (28 March 2003) created a Committee for Legal Statistics and Special Records of the Prosecutor General. This is a government department that, under the competence of the Prosecutor General, is responsible for producing legal statistics and keeping special records. The Committee's website (www.pravstat.kz) provides legal statistics for various ministries and government departments.

50. The procedure and timescales for state bodies to consider requests from the public for environmental information are regulated by Article 165(2) of the 2007 Environmental Code. The Article sets a deadline of not more than one month from the date of receipt of a request for the environmental information requested to be provided, with the exception of cases indicated in Article 165(1) of the Code, Article 8(1-2) of the 2007 Act on the Procedure for Consideration of Communications from Natural and Legal Persons, and the Administrative Procedures Act.

51. Under the legislation cited above, state bodies are required to provide information which does not require further study and verification not less than 15 days after receiving the request, while information that requires further study and verification must be provided not less than 30 days after the request is received. Observance of these deadlines is guaranteed under the procedure for government departmental record-keeping, under which all information received must be entered into a register for monitoring purposes and can only be exempted from entry into this register by decision of the head of the state body or his/her deputy in accordance with the established procedure. Answers to requests must be provided in the form stipulated in the request or, if a form has not been stipulated, in writing in accordance with Article 16(4) of the Administrative Procedures Act of 2000 and in accordance with Article 15(4) of the Act on the procedure for consideration of communications from natural and legal persons of 2007 – in either hard or soft copy.

52. Possible grounds for refusal to provide environmental information are set out in Article 167 of the 2007 Environmental Code. Refusals should be provided in writing and state the grounds for refusal.

53. In accordance with Article 5 of the 2007 Act on the Procedure for Consideration of Communications from Natural and Legal Persons, anonymous communications and communications in which a question is not provided are not considered.

54. A refusal to provide environmental information on the basis that it contains restricted information and data is grounded in the following legislation: the Civil Code (trade secrets and intellectual property), the Criminal Procedural Code (police work, initial inquiries and pre-trial investigation), the Act on the Electronic Provision of Information ("Informatization") (violations of the right to a private life), and Act No. 98-1 on State Statistics of 7 May 1997 (guaranteed confidentiality of primary statistical data of natural and legal persons).

55. Under Article 164 of the Environmental Code, the public has the right to receive environmental information in the form requested unless there are sound reasons to provide it in another form. Under Article 165(4) of the Environmental Code, state bodies that do not possess the environmental information requested forward the request to the competent state body within the timescale envisaged in law. Article 6 of the Act on the procedure for consideration of communications from natural and legal persons makes it obligatory to forward the communication to the body responsible not more than three working days of its receipt.

56. Under Article 166(1) of the 2007 Environmental Code, payment can be required for the provision of environmental information which does not exceed the actual cost of copying, retrieving and preparing the information. Payment is not required for provision of environmental information by state bodies through open access electronic registers and inventories of environmental information. Sometimes individual commercial, non-state and state enterprises exercise their commercial right to provide environmental information to a limited group of state bodies, and provide this information to other state bodies and non-state consumers at high cost.

57. Despite the presence of sections for the specialized statistics of various ministries and government departments, the website of the Committee for Legal Statistics and Specialized Record Keeping of the Prosecutor General (www.pravstat.kz) does not provide statistical data.

58. Standards documents, catalogues and directories and publications of these are provided to users on a contractual basis by authorized state bodies on standardization, metrology and certification and also by state enterprises authorized by them.

59. The state record of legislation adopted by central state bodies is maintained by the Ministry of Justice. The state record includes a centralized repository of such legislation and acts as a database of national legislation for reference and monitoring purposes.

60. The Ministry of Justice is creating a unified legal information system and provides assistance to ministries, state committees and other central state bodies. Citizens and public associations can receive official legal information for a fee through the specially created Republican Centre for Legal Information under the Ministry of Justice. The Centre officially codifies all legal information in the country. If citizens or associations wish, they can pay a fee to the Centre to install a database of legal information on their own computer, with daily email updates to the database.

61. Legal information systems are also available – Yurist and Adilet published by AdiletPress and YurInfo, and Kazakhstan's legislative internet portal www.zakon.kz. All the legal information on these systems is unofficial, despite the fact that it is received from state bodies and state administrative bodies under direct cooperation agreements on the electronic provision of legal information. There is a charge for access.

62. Fees for provision of environmental information are regulated by Article 166 of the Environmental Code:

> "For provision of environmental information, fees may be levied that are not higher than the actual cost of copying, retrieving and preparing the information.
>
> Fees shall not be levied for provision of environmental information by state bodies through open-access electronic registers and inventories of environmental information."

63. Article 14(1) of Act No. 170 on the Protection of the Health of Citizens (7 July 2006), also regulates free-of-charge provision by state bodies and organizations of reliable information on factors that can influence health, including the state of the environment.

64. Analysis of these legal norms shows that Kazakhstan's current legislation in general meets the standards of Article 4(8) of the Aarhus Convention. However, an Act on Additions to Article 15-2(8) of the Administrative Procedures Act should be introduced, specifying that state bodies should post on their websites their fees for informational services provided to natural and legal persons. Unfortunately, citizens do not always have free access to official legal databases. At the same time, many state bodies and NGOs publish legislative texts and draft legislation in their own publications and on their own websites. It is important to note that such sources are not official and that often documents posted on the internet do not include amendments and additions to the legislation.

65. Under Article 4(2) of the Aarhus Convention, environmental information should be provided as soon as possible after a request is received, but not later than one month after the request is received, "unless the volume and complexity of the information justify an extension of

this period up to two months after receipt of the request." The party requesting information must be notified of any extension and the reasons justifying it.

66. However, the wording of current national legislation, and particularly of the Act on the Procedure for Consideration of Communications from Natural and Legal Persons, is unclear. Thus, Article 8(4) of the Act states:

> "If a lengthy period is required to resolve the issues raised in the communication, the communication shall be entered into the register for the purposes of additional monitoring until it is fully dealt with, and the applicant shall be notified accordingly within three calendar days."

67. A comparison of the provisions of the Convention and the Act reveals that Article 8 of the Act is somewhat ambiguous, and so does not meet the spirit and requirements of Article 4(2) (where the maximum time period to answer a request is set at one month plus one month) and the general provisions of Article 3 of the Aarhus Convention, on which Kazakhstan's modern legislation should be based.

68. It is also important to note that this norm has not been adjusted to the time frame set by the Civil Procedure Code for complaints from citizens or legal persons (NGOs) for action or lack of action from officials:

> "Article 280. Time frame for applications to a court
> Citizens and legal persons have the right to file an application to a court within three months of the day when they became aware of a violation of their rights, freedoms and legally protected interests."

69. As Article 165(1) of the Environmental Code is a reference provision prescribing that time frames and procedures for providing environmental information by state bodies are established by national legislation on administration procedures and the procedure for consideration of communications from citizens, it is hence essential to bring the Administrative Procedures Act and the Act on the procedure for consideration of communications from natural and legal persons (Article 8) into compliance with Article 4(2) of the Aarhus Convention.

## VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

70. The last paragraph of Article 4(4) of the Aarhus Convention covers the need to disclose classified information (or restricted information) if there is a public interest in disclosure, taking into account whether the information relates to emissions into the environment and pollution (the "public interest test").

71. Current national legislation contains fundamental provisions that would allow development of a procedure to disclose classified or restricted information in the circumstances outlined above. Article 31 of the Constitution stipulates that the State must seek to protect an environment that is conducive to human life and health. At the same time, Article 31(2) states that officials who conceal facts or circumstances that present a threat to human life and health shall be held accountable in accordance with the law. Thus the basic law of the Republic of

Kazakhstan – the Constitution – makes public safety, including environmental security, paramount.

72. This approach permeates all relevant national legislation in the field of national and environmental security. Act No. 233-I on National Security (26 June 1998) includes the concept of "environmental security" in its list of basic concepts: "the state of protection of vital interests of the individual, society, natural environment from threats resulting from anthropogenic and natural impacts on the environment".

73. Shortcomings in or absence of legislation on the protection of national interests are also deemed a threat to national security (Article 5(13)). The first national interest stated in the Act is "the protection of human and civil rights and freedoms" (Article 4(1)). Access to environmental information, public participation in environment-related decision-making, and access to justice "in environmental matters" are hence enshrined in national legislation as a priority national interest that is protected.

74. Article 126(1) of the Civil Code outlines the concept of official and trade secrets:

> "Civil legislation shall protect information which constitutes an official or a trade secret where the information has actual or potential commercial value by virtue of being unknown to third parties, if there is no access thereto on a legitimate basis and the possessor of the information makes efforts to protect its confidentiality."

Lack of lawful unrestricted access to information is hence one of the criteria for it to be considered a trade or official secret.

75. Under Article 17(1(2)) of the 1999 State Secrets Act, environmental information cannot be classified as a state secret. The same principle is reflected in the Act on the Electronic Provision of Information ("Informatization"). An analogous provision is also found in the Environmental Code: under Article 163, environmental information is publicly accessible. In turn the Environmental Code includes information about emissions into the environment when defining publicly accessible environmental information (Article 159(2)).

76. This approach is also reflected in Article 164(3) of the Environmental Code: natural and legal persons conducting activities in Kazakhstan must provide environmental information relating to impact on human life and health on request. This requirement primarily relates to environmental impact assessments and state environmental reviews of planned non-state economic or other activities with the potential for significant environmental effects.

## IX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 4

77. The Committee for Legal Statistics of the Prosecutor General administers a unified register of communications from citizens.

78. Article 4 of the Environmental Code lists the environmental foundations for the country's sustainable development. These include observance of the universal right of access to environmental information and across-the-board public participation in decision-making on environmental and sustainable development issues.

79. Article 14 of the Environmental Code sets out in more detail the rights of public associations in the field of environmental protection, including the right to participate in environmental decision-making by state bodies; the right to receive timely, full and reliable environmental information from state bodies and organizations; and the right to cooperate and take concerted action in the field of environmental protection with state bodies and international organizations, conclude agreements with them and carry out on their behalf activities specified by legislation on a contractual basis.

80. The Rules on access to environmental information relating to the environmental impact assessment procedure and the procedure for decision-making on planned economic and other activities regulate this issue in more detail. These Rules were adopted under Ministry of Environmental Protection Order No. 238-p of 25 July 2007. They are applicable to project (or pre-project) documentation on planned economic activities that pertains to the environmental impact assessment (henceforward EIA) during a state environmental review. This information includes the materials of the state environmental review. The initiator of the activity publishes a notice in specialist environmental publications and on the Ministry of Environmental Protection's website to the effect that the draft EIA is being submitted for state environmental review. Interested parties can access the materials of the state environmental review by sending a written request to the responsible body. This body, within 15 calendar days, must provide a written reply stating the place and time where the environmental review materials may be examined. The initiator of the economic or other activity provides the project (pre-project) documentation, excluding any confidential information, to the responsible body to share with interested parties. Interested parties can submit suggestions and comments in writing to the responsible body about the draft EIA. The responsible body is obliged under law to consider the communication and answer within 15 calendar days. If further research is required, the time frame for consideration can be extended to not more than 30 calendar days, with notice of this given to the applicant within three calendar days.

81. It should be noted that provision of environmental information may be refused within a maximum period of one month after the day the request is received on the basis of grounds enumerated in Article 167 of the Environmental Code. The refusal should be made in writing stating the reasons and grounds for the refusal and possibilities for the applicant to appeal. If the refusal is because the state body does not have the requested environmental information, the request is forwarded to the competent state body, and the applicant is notified accordingly.

82. Refusal to provide, non-provision, or provision of incomplete or inaccurate environmental information, as well as the unfounded classification of publicly accessible environmental information as restricted information, can be appealed to a higher-level state body and/or official, or to a court.

83. Article 4(6) of the Aarhus Convention aims to effectively balance the interests of different sectors of society where possible. Article 3(7) of the Administrative Procedures Act can be seen as the basic provision introducing this rule into national legislation. As stated in Article 24(1) of the same Act, "The Relationship of this Act to other Legislation", the provisions of this Act are the basis for the drafting and adoption of legislation regulating different types of administrative procedure. Other legislation may establish administrative procedures for performing state functions with reference to this Act.

84. The rules on access to environmental information related to EIA procedures and decision-making on planned economic and other activities (as confirmed by the Ministry Order No. of 25 July 2007) simply regulate access to environmental information in connection with the conduct of an EIA, and do not cover access to environmental information without an interest having to be stated, as required under Article 4 of the Aarhus Convention.

## X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

85. www.government.kz, www.akorda.kz, www.eco.gov.kz, www.carecnet.org, www.pravstat.kz, www.supcourt.kz, www.osce.org/astana, www.osce.org/almaty, http://www.greensalvation.org/ and others.

## XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5

86. In general, adequate legislative measures are in place in Kazakhstan for implementation of obligations under Article 5 of the Aarhus Convention. Thus, Article 4(4) of the Constitution states that: "All laws and international agreements to which the Republic is party shall be published. Official publication of legislation concerning the rights, freedoms and duties of citizens shall be a necessary condition for their application." In addition, the Environmental Code contains a host of articles regulating the active dissemination of environmental information by the State.

87. However, adequate implementation of the requirements of Article 5(1)(a) and (b) and Article 5(2) of the Aarhus Convention is problematic. In Kazakhstan state bodies and organizations have a duty to create state information resources, for the purposes, among others, of satisfying public requirements. Under Article 161 of the Environmental Code, the State Environmental Information Archive registers and stores environmental information including inventories of environmental resources; a pollutant release and transfer register and other registers of environmental information; a list of environmentally hazardous factories; environmental monitoring data; EIA and state environmental review materials with the agreement of the developer of the planned activity; and legislation and technical standards documents in the fields of environmental protection and use of natural resources.

88. Under Article 166 of the Environmental Code, legal persons are required, in cases established by legislation, to provide essential information to state bodies, including hard copy and electronic documents.

89. The State Environmental Information Archive is responsible for consolidating environmental information accumulated in electronic databases and its subsequent provision to the public through public networks (under Minister of Environmental Protection Order No. 243-θ of 13 October 2009). In addition, "electronic government" also allows provision of environmental information to the public. Under Article 160(5) of the 2007 Environmental Code, state bodies in the field of environmental protection within the scope of their competence must disseminate the following types of environmental information by posting it on the internet and otherwise: reports on the state of the environment; progress toward achieving strategy documents

in the field of environmental protection; violations of environmental protection legislation and measures taken in response; and information included in the list of basic electronic government services in the field of environmental protection. State bodies may engage natural and legal persons in dissemination of environmental information under the established procedure.

90. The website of the Ministry of Environmental Protection regularly provides updated information about legislation and programme documents; international conventions and agreements on environmental protection and efficient use of natural resources, and national reports on their implementation; reports on the state of the environment; and a register of environmental problems in Kazakhstan. While draft laws and programmes are being developed, the public is given the opportunity to examine the texts and to make suggestions and comments. Information about implementation of the "schedule for basic environmental protection activities" is posted on the site.

91. The Aarhus Centre web portal (www.aarhus.kz) was created in November 2008 to fulfil national obligations under the Aarhus Convention. The developers drew on the experience of creating Aarhus Centre websites in Azerbaijan (www.aarhuscenter.az), Albania (www.aic.org.al), Georgia (www.aarhus.dsl.ge), Tajikistan (www.ygpe.tj), Belarus (www.aarhusbel.com), Crimea (www.arhus.crimea.ua), Kyrgyzstan (www.aarhus.nature.kg/), and Dushanbe (www.aarhus.tj), as well as the Aarhus Convention Secretariat webpages on the UN Economic Commission for Europe website (www.unece.org/env/pp/treatytext.htm).

92. The web portal of Kazakhstan's Aarhus Centre was designed based on experience of website development for other Aarhus Centres. Its graphic design is tailored to the portal's purpose of providing access to information, supporting public participation in decision-making, and providing access to justice in environmental matters. The sections (rubrics) of the Aarhus Centre web portal were developed in accordance with Article 5 of the Aarhus Convention and Article 159 of the national Environmental Code.

93. In addition to other content, the site contains information about environmental legislation, state inventories of natural resources, and a corpus of environmental information. Environmental information is collected and updated on the web portal on an on-going basis. The Committee for Environmental Regulation and Monitoring of the Ministry of Environmental Protection, Ministry departments and members of the working group on implementation of the Aarhus Convention can provide information for the Aarhus Centre web portal under Ministry Order No. 221-θ of 7 October 2009. The web portal is maintained in the state language (Kazakh), Russian and English.

94. The following information is posted on the Aarhus Centre web portal:

- General information about the Aarhus Convention:
    - the text of the Convention;
    - the amendment procedure;
    - status of ratification;
    - status of implementation;
    - GMO amendments; and
    - procedural rules.
- National reports on implementation of the Convention.

- Information on the Protocol on Pollutant Release and Transfer Registers (PRTR)
    - the text of the PRTR Protocol;
    - documents and meetings on the PRTR;
    - activities of the international coordination group;
    - PRTR capacity building; and
    - the PRTR working group.

## XII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5

95. Act No. 98-1 on State Statistics of 7 May 1997 guarantees natural and legal persons confidentiality of primary statistical information. This may limit provision to the public of primary information on emissions, and is also an obstacle to implementation of the PRTR Protocol.

## XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5

96. In fulfilment of Article 5 of the Aarhus Convention, documents collected since 2005 were systematically inventoried in 2009. The following databases (registers) were created:

- legislation and technical standards documents on environmental protection and the use of natural resources in electronic format (EkoInfoPravo – 803 items);
- reports from scientific research conducted from 2005 to 2008 in electronic and hard format – a total of 321 items;
- technological and economic feasibility studies for environmental protection projects (13 items);
- informational and analytical digests in the field of environmental protection (8 items);
- informational bulletins about the state of the environment in the country and regions (the basins of the Nury and Balkhash rivers, the Aral Sea area, the Caspian Sea, the port of Aktau, Astana, and the Shchuchinsk-Borovoe area) (120 items in hard and electronic format);
- reports about the state of the environment in Kostanay, Kyzylorda and Zhambyl provinces (13 items);
- periodicals from 2004-2009; and
- maps.

97. The Collmate database tool is being used to facilitate rapid access to the Archive's collection. It has been used to inventory scientific works published between 1991 and 2008.

98. The Foundation for the Integration of a Culture of Environmental Responsibility has issued and distributed 80 manuals for the media entitled *Increasing public awareness of problems in the use of GMOs*. More than 100 reports have been made on GMOs on national television channels.

99. In accordance with Order No. 243-θ of the Minister of Environment Protection of 13 October 2009, and as part of the state "*Zhasyl damu*" programme, the State Environmental Information Archive plans to develop a Pollution Release and Transfer Register by 2013.

100. The state maintains inventories of natural resources. These are computerized systems for collecting, systematizing, storing, processing and displaying the spatial coordinates of the

country's natural resources, as well as interpreting and analyzing this data so that it can be used to carry out administrative, industrial and scientific tasks concerning the protection, restoration and preservation of the country's natural resources. These state inventories include forest, fish, and animal inventory databases and an inventory database of specially protected natural areas.

101. The Environmental Code includes Section 5 "Monitoring and Inventories" (Chapters 16-20 and 22).

102. A three-volume National Atlas has been issued and it is proposed to develop this integrated information resource at regional level.

## XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5

103. www.akorda.kz, www.parlam.kz, www.procuror.kz, www.government.kz, www.mvd.kz, www.minzdrav.kz, www.edu.gov.kz, www.nature.kz, www.minagri.kz, www.emer.kz, www.minplan.kz, www.auzr.kz, www.stat.kz, www.e.gov.kz, www.almatyeco.kz, www.meteo.kz, www.almaty.kz, www.scpc-ca.kz, www.iacoos.kz.

## XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6

104. The second Meeting of the Parties in 2005 recognized that Kazakhstan had not met the requirements of Article 3(1), Article 4(1 and 2), and Article 9(1), and had not fully met the requirements of Article 6(1a) and annex I(20) and, in this connection, Article 6, paragraphs 2,3,4,7 and 8. Decisions III/6 and III/6/a to f of the Third Meeting of the Parties to the Aarhus Convention in Riga in June 2008 stated that Kazakhstan must take appropriate measures to address this (http://www.unece.org/env/pp/mop3_key.htm).

105. The Second Meeting of the Parties to the Aarhus Convention (Almaty, 2005) adopted Decision II/5a, "Compliance by Kazakhstan with its obligations under the Aarhus Convention". Paragraph 7 of the decision made three recommendations to the Government of Kazakhstan on the implementation of Convention provisions, including paragraph 7(a): "Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to Article 6 of the Convention, without in any way reducing existing rights of public participation."

106. In Kazakhstan the requirements of Article 6 of the Aarhus Convention on public participation in decision-making on certain activities are applied not only to the large-scale installations and activities listed in Annex 1 to the Convention, but also to all planned economic and other activities that undergo environmental impact assessment. More detailed information was presented in the previous national reports. To date, the following legislation has been adopted and is being implemented in fulfilment of Article 6: the 2007 Environmental Code (Articles 17, 45, 46, 49, 57 and 135); the Rules on the conduct of state environmental review, adopted by Order No. 207 of the Minister of Environmental Protection of 20 June 2007; the Rules on the conduct of public hearings, adopted by Order No. 135 of the Minister of Environmental Protection of 7 May 2007 (No. 4687 of 30 May 2007 in the State Register of

Legislation); and the Rules for monitoring the environmental review activities of local government bodies, adopted by Order No. 160 of the Minister of Environmental Protection of 24 May 2007.

107. The Environmental Code grants public associations the following rights in their performance of activities in the field of environmental protection:

- to take part in the decision-making process of state bodies on environmental protection according to the procedure established by law;
- to cooperate and take concerted action in the field of environmental protection with state bodies and international organizations, to conclude agreements with them and carry out on their behalf activities specified by legislation on a contractual basis;
- to take part in discussions on draft legislation on environmental protection issues at the preparatory stage and present comments to the drafters;
- to participate in the production of environment-related plans and programmes; and
- to receive from state bodies and organizations timely, full and reliable environmental information, and so forth (Article 14).

108. State bodies can engage natural and legal persons on a voluntary basis to expose violations of environmental legislation. In order to facilitate cooperation and concerted action, the mandated authority for environmental protection creates a list of public associations with articles of association that include the function of public environmental compliance assurance (Article 136). This means that public participation can be restricted if an organization does not appear on this list or if its articles of association do not include the function of public environmental compliance assurance. However, under the Aarhus Convention, environmental NGOs are *a priori* an interested party and can protect public environmental interests in judicial and non-judicial procedures.

109. State environmental review is conducted by the mandated body in the field of environmental protection and local government authorities [i.e. local branches of central government] within the scope of their competence in accordance with the Environmental Code (Article 48).

110. The procedure for state environmental review is determined by the mandated body in the field of environmental protection (Article 49), under which panels of experts are created for state environmental review which function as consultative and deliberative bodies. Public representatives may be members of these expert panels (Article 56). At the same time all interested citizens and public associations have the opportunity to express their opinions during a state environmental review (Article 57).

111. Order No. 207-p of the Minister of Environmental Protection (28 June 2007) adopted the Rules on the conduct of state environmental review. Documentation presented for state environmental review must include the outcome of public opinion (paragraph 12 of the Rules). The results of the state environmental review take the form of an “expert conclusion”. This conclusion uses the findings of sectoral reviews by other state bodies as a basis and findings of a public environmental review as recommendations (paragraphs 27 and 28).

112. In addition public hearings are held about projects which, if implemented, could directly affect the environment and human health. The relevant local government authority is required to organize public hearings during a state environmental review (Article 20 of the Environmental

Code). The rules for conducting public hearings are set out in Order No. 135-p of the Minister of Environmental Protection of 7 May 2007. They are based on the principle of ensuring the constitutional rights of citizens and public associations to receive sufficient, full and timely information about the state of the environment and to participate in the environmental decision-making process.

113. Public hearings to discuss the environmental impact assessment documentation are organized by the developer (the initiator) of the planned administrative, economic, investment or other activity (paragraph 8 of the Rules). The developer firstly agrees the time and place of the public hearing with local government authorities and publishes a notice in the media about the hearing, specifying the place and time. The notice must appear in Kazakh and Russian at least 20 days before the date of the hearing (paragraph 9). From the day the hearing is officially announced, the developer provides public representatives with access to the draft EIA and accepts and registers comments and suggestions (paragraph 11). A representative of the local government authority opens the public hearing, and the developer's representatives make presentations on the planned economic activity and the EIA results. Interested public representatives then state their opinions and ask questions, which the developer's representatives answer. Hearings give everyone who wishes the chance to speak within an established time limit as they are intended to provide all interested parties with an equal chance to give their considered opinions on the issue after studying all relevant non-confidential documents (paragraphs 6 and 13-16). The developer submits the record of the public hearing and the project including the results of the EIA for state environmental review. The project must be redrafted to take public opinion into account if it is well grounded and based on national legislation, and must also contain a commentary on public suggestions which the developer does not consider grounds for amending or adding to the project (paragraph 20).

114. After the decision is made on the conclusion of the state environmental review, all interested parties are given the opportunity to receive information about the subject of the review (Article 57). Disagreements over the review are resolved through negotiations or in court (Article 58).

115. The necessity of EIA is one of the fundamental principles of environmental legislation (Article 5 of the Environmental Code). The environmental impact assessment is a procedure to evaluate the possible effects of economic or other activities on the environment and human health, and to develop measures to prevent adverse consequences (the destruction, degradation, damage and depletion of ecosystems and natural resources) and to restore the environment taking into account the requirements of environmental legislation (Article 35). EIA is compulsory for any type of economic or other activity which may have a direct or indirect effect on the environment and human health (Article 36).

116. The EIA documentation includes documents reflecting public opinion in the form of records which contain the findings of public consultations on the environmental impact of planned activities. Based on the findings of the EIA, the developer (initiator) prepares and presents a statement about the environmental consequences of the planned or on-going activity, which informs the decision about whether it can go ahead (Article 41).

117. The provisions of the Environmental Code on EIA are implemented through the Instructions for the conduct of environmental impact assessments of planned economic and other

activities during the drafting of pre-investment, investment, pre-project and project documentation, as adopted by Order No. 204-p of the Minister of Environmental Protection of 28 June 2007. The instructions elaborate eight principles for environmental impact assessment, which include public participation. This means that during an EIA the public is provided with access to information about the EIA and public hearings are held to discuss EIA documentation. Section 8 of the instructions directly regulates public participation in the EIA process. The basic ways in which public opinion is registered are:

- Public hearings. The developer (or drafter) of the pre-project or project documentation organizes an open hearing of public opinion by organising a meeting with representatives of the public. To this end, the developer (or drafter of the documentation) publishes a notice in the media in good time about the hearing, the procedure for public access to the draft EIA, and the date, time and place when the hearing will be held. Representatives of the public concerned take part in the hearings, along with the developer and drafter, local government authorities, and local branches of the Ministry for Environmental Protection;
- Collecting written suggestions and comments directly from the public. The developer (drafter) informs the public through the media about how to access the draft EIA materials and present suggestions and comments in order for public opinion to be taken into account. The developer (drafter) organizes a reception and registration point for suggestions and comments;
- Collecting written suggestions and comments through a survey of the population in the area where the activity is planned. To conduct this survey the developer (drafter) informs the public in the media about the findings of the draft EIA and the procedure for access to draft EIA documentation, and about the time frame and conditions of the survey (Instructions, paragraph 52).

118. The Environmental Code defines public environmental review as a type of activity conducted on a voluntary basis by panels of experts created by public associations. Public environmental review considers whether any economic or other activity meets the public interest of preserving an environment that is conducive to human life and health. This review can be initiated by a natural person or a public association whose interests would be affected if the activity was carried out (Article 60).

119. A public association on behalf of which a notice is filed to the authorities about plans to conduct a public environmental review and steps are taken to set up a panel of experts acts as organizer. Such an organizer has the right:

- to request documents and materials essential for conducting the review from the developer of the project under review;
- to create a panel of experts to conduct the review; and
- to present its conclusion to local government authorities and financial institutions.

120. It also has the duty:

- to conduct the review in accordance with the requirements of the Environmental Code;
- to notify the public about the review and its findings, and also to take account of public opinion when drafting the conclusion; and
- to ensure that the conclusion of the public environmental review is accessible to all interested parties (Article 61).

121. The developer is required to provide the documents and materials necessary for such a review (Article 63).

122. Public environmental review is financed by the public association organizing and conducting it at its own expense, and also by voluntary donations, grants and other sources not forbidden under national legislation (Article 64).

123. Public environmental review is subject to the condition that a notice of its conduct submitted by the organizer is registered by the local government authority in the area where the activity is planned. Local government authorities are obliged within 10 working days of receipt of the notice to register it or refuse registration. A notice which is not rejected within this time period is deemed registered. The local government authority may refuse to register the notice in the circumstances outlined in the Environmental Code. The local government authority must inform the initiator and organizer of the public environmental review of this in writing, stating the grounds for the refusal (Article 65).

124. The findings of the public environmental review are presented in the form of a conclusion which is recommendatory in nature. The conclusion is sent to the local government authority that registered the public environmental review; the body conducting the state environmental review of the project; the developer; the bodies responsible for decisions on the project; and the media (Article 66).

125. The developer is required to consider the conclusion and its findings and recommendations and to send a commentary to the body conducting the state environmental review and the organizer of the public environmental review within a month of its receipt. The conclusion of the public environmental review can also be taken into consideration in decision-making by local government authorities, financial institutions and the developer (Article 66).

126. The Ministry of Environmental Protection has adopted special rules for various aspects of public participation in decision-making, and specifically on public hearings,[16] access to environmental information related to the environmental impact assessment procedure and decision-making process on planned economic and other activities,[17] and public environmental review.[18] Under the Sanitation and Disease Prevention Requirements for the Planning of Industrial Installations, adopted by Order No. 334 of the acting Minister of Health on 8 July 2005, public participation is compulsory with regard to certain types of economic activity which are deemed environmentally hazardous and appear in a list approved by Government Decision No. 543 of 27 June 2007.

127. The EIA Instructions outline three different types of activity that can be conducted to gauge public opinion:

- public hearings;
- collection of written suggestions and comments; and

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**16** Order No. 135-o of the Minister of Environmental Protection on the approval of the rules for the conduct of public hearings of 7 May 2007 (henceforward the Rules for the conduct of public hearings)

**17** Order No. 238-p of the Minister of Environmental Protection on the approval of the rules for access to environmental information related to the environmental impact assessment procedure and decision-making on a planned economic or other activity of 25 July 2007

**18** Order No. 149-p of the Minister of Environmental Protection on the approval of the rules for state registration of public environmental review by local government authorities on the territory of which the reviewed activity is planned of 29 May 2004

- collection of written suggestions and comments through a survey of the population in the area where the activity is to be conducted.

128. The choice of activity is subject to agreement with the mandated authority for environmental protection.[19]

129. National legislation establishes time frames with regard to:
- publication by the organizer of the notice of public hearings to discuss environmental impact assessment materials;
- responses from the mandated state body to requests from the public regarding access to documentation from the state environmental review of project (pre-project) documentation; and
- Answers from the mandated state body to written comments and suggestions from the public about the above-mentioned state environmental review documentation.

130. With regard to the first of these, paragraph 9 of Order No. 135-p of the Minister of Environmental Protection of 7 May 2007 establishes a time frame of no later than 20 days before the public hearing. With regard to the second, under paragraph 6 of Order No. 238-p of the Minister of Environmental Protection of 25 July 2007, the authority responsible for state environmental review is required within 15 calendar days to provide a written response stating when and where the public can examine the requested materials. Paragraph 9 of the above Order specifies the same time frame for answers to comments and suggestions from the public on state environmental review materials on the proposed activity.

131. On the basis of Article 13(1(4)) and Article 14(1(3)) of the Environmental Code, the public has the right to participate in decision-making by state bodies on issues affecting the environment according to the procedure established by national legislation.

## XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6

132. Paragraph 21 of the Rules on the conduct of public hearings ("Public hearings are held regardless of the number of representatives of the public participating, including of the public concerned, who have arrived at the specified time") means it is possible to conduct a purely formal public hearing which does not take into account all the possible consequences of the planned activity. This would violate the basic principles of both EIA (EIA Instructions, paragraphs 2(5(2,4,6)) and environmental review (Chapter 7, Article 46 of the Environmental Code, Section 3 of the Rules on State Environmental Review), and thus could lead to non-objective decision-making, failure to comprehensively cover all risks, a growth in social tension, a rise in legal nihilism in all sectors of society, a growth in corruption and lack of trust in the authorities that could shake the foundations of law and order.

133. These considerations are particularly relevant when an economic activity is planned in sparsely populated (rural or mountainous) regions, where it is extremely difficult to bring citizens together in one place at one time because of distance, seasonal agricultural work, the passivity of the local population and other factors.

[19] See paragraphs 52 and 53 of the EIA Instructions

134. The current Rules on the conduct of state environmental review do not contain procedural rules on public participation in state environmental reviews.

135. The Environmental Code and legislation detailing the procedures for conducting EIA and public hearings state and prescribe that the provision of information at the earliest stage of the planning of proposed economic activities is a fundamental principle of national environmental policy. One of the aims of this legislation is to establish a detailed procedure for such provision, including identification of the potential "public concerned" – citizens and NGOs – who may be affected by the planned activity. However, the legislation does not involve the public in the environmental decision-making process at the crucial very earliest stage – the selection and earmarking of a plot of land for the planned activity. The Land Code does not envisage any public participation at all in this process (see Article 43(1)) of the Land Code).

136. The contradiction between the basic provisions of land and environmental law – Chapter 6 of the Environmental Code and the Rules on the conduct of state environmental review of 28 June 2007 (Order No. 207-p, "the Rules"), may lead to a conflict of rights and complicate implementation of Article 6(4) of the Aarhus Convention. The Rules establish requirements for the form and content of materials submitted to state environmental review. Under paragraphs 2, 11.1 and 18 of the Rules, the site selection certificate and land use documentation are not in themselves subject to state environmental review, though these documents are submitted with other documentation to state environmental review. Neither does the documentation include records of public consultations at the stage of site selection as an essential component of EIA.

137. At later stages of project planning, the project decisions all relate to the specific characteristics of a specific land plot. This means that the developer has already spent significant time, money and effort on drawing up documentation and has used resources to obtain various permissions and conduct an EIA, including public hearings or other activities to gauge public opinion, in accordance with paragraph 8 of the 2007 Instructions for the conduct of environmental impact assessments of planned economic and other activities during the drafting of pre-investment, investment, pre-project and project documentation. At this stage it is very difficult to "take public opinion into account" and amend something in pre-project or project documentation presented to state environmental review.

138. Problems may occur with regard to fulfilling the provisions of Article 6 on the timely and adequate participation of all interested groups of society at the earliest stage of decision-making, as this requirement does not feature in the Environmental Code, relevant articles of the Land Code, nor the Rules on the conduct of state environmental review.

139. In addition, public organizations in Kazakhstan question the objectivity of information provided to the public, including during discussions of the EIA, as the monitoring system does not meet modern requirements and the information normally has to be paid for.

140. Paragraph 3(3) of the Rules on the conduct of public hearings, as adopted by Order No. 135-p of the Minister of Environmental Protection of 7 May 2007, establishes that "Public hearings are a procedure for ascertaining public opinion with the aim of taking it into account in decision-making on issues that may negatively impact the environment." If this text is interpreted literally, it means that the state body's final decision should take into account the

procedure rather than the content and findings of the public hearing (the word "it" in the Russian text grammatically refers to the procedure rather than public opinion). To avoid the possibility of different interpretations, amendments and additions should be made to this paragraph of the Rules. This would strengthen the paragraphs of the Rules that relate to the procedure for taking public opinion into account as a mechanism for real public participation in important environmental decision-making, which was previously enshrined in the Environmental Review Act as the responsibility of the Ministry of Environmental Protection.

141. The procedural rules of the 2007 Rules on the conduct of public hearings do not cover the full variety of forms and criteria for effectiveness (timeliness, fullness, and adequacy) of public participation in the decision-making process on environmental issues. All the necessary parameters for effective public participation in decision-making on specific types of planned economic activity should therefore be more clearly set out in secondary legislation, taking into account the comments of Kazakhstan's NGOs (in particular, see the Report of Green Salvation to the Third Meeting of Parties to the Aarhus Convention in Riga on 11-13 June 2008 on the website http://www.greensalvation.org/).

## XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6

142. Articles 13 and 14 of the Environmental Code set out the rights of natural persons and public associations respectively to participate in environmental decision-making. However, the Aarhus Convention and national environmental legislation recognize the public more broadly as the bearer of this right, and this means that any natural or legal person has the right to express their opinion on any planned economic activity. However, the chapter of the Environmental Code on environmental review, the EIA Instructions and the Rules on the conduct of public hearings refer to holders of the right as "interested citizens", "interested parties" and "interested communities." Their interest in this case relates to the impact of decisions made on individual persons, in connection, for example, with their place of residence, ownership of property, and right to use the environment in the area that could potentially be affected by the planned activity. The reference to this interest conveys the requirement of environmental legislation that specific target public groups, whose rights and interests could be directly affected if the activity goes ahead, be involved in the decision-making process, in particular through notification of opportunities for public participation and invitations to public hearings.

143. Article 60(3) of the Environmental Code states that: "Public environmental reviews may be initiated by natural persons or public associations whose interests would be affected if the activity to be reviewed is carried out." In other words, public associations are obliged to prove that their interests "would be affected if the activity to be reviewed is carried out".

144. Under Article 61(3(2)) of the Environmental Code, the organizer of a public environmental review is obliged to "ensure information is provided to the public about the conduct and findings of the public environmental review and that public opinion is taken into account in its conclusion." This provision forces organizers to notify the public and hence to pay for this notification.

145. Public environmental review is subject to the condition that a notice of its conduct submitted by the organizer is registered by the local government authority in the area where the activity is planned. Local government authorities are obliged within 10 working days of receipt

of the notice to register it or refuse registration. A notice of conduct which is not rejected within this time period is deemed registered. The local government authority may refuse to register the notice in circumstances outlined in the Environmental Code. The authority must inform the initiator and organizer of the public environmental review of this in writing, stating the grounds for the refusal (Article 65).

146. A decision to limit the number of public reviews would be a violation of national antimonopoly and anticorruption policy. Groundless restrictions relating to their registration and the time frame for registration are also unlawful barriers. Many projects subject to review fall outside the competence of local government authorities, which cannot forbid the public from conducting public reviews and expressing opinions on the project in question. Registration has in itself become permission. As public review must be conducted either before or in parallel with state review, a ten-day delay in registration may deprive the public of the right to conduct public review. At the same time the question of what happens in cases where the project in question falls outside the competence of local government authorities has not been resolved. Moreover, local government authorities do not take account of the time frame for state environmental review. To prevent the violation of the right to conduct a public environmental review, it is essential to suspend state reviews while the question of registration is examined. This is difficult to do while draft legislation is being agreed.

## XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6

147. www.eco.gov.kz, www.osce.org/astana, www.osce.org/almaty, http://www.greensalvation.org/, www.aarhus.kz, www.iacoos.kz.

## XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7

148. In Kazakhstan it is standard practice for draft programme documents relating to environmental protection to be widely discussed, and suggestions from the public to be collected and taken into consideration. Public representatives – in the form of non-governmental environmental organizations, mandated state bodies, specialized expert organizations, ecology experts, scientists and academics from prominent higher educational institutions – participate in these discussions. Draft documents are posted on the Ministry of Environmental Protection's and the Ministry of Agriculture's sites. The 28 June 2007 Instructions for the conduct of environmental impact assessments of planned economic and other activities during the development of pre-investment, investment, pre-project and project documentation are in force, as are the 25 July 2007 Rules for access to environmental information concerning the procedure for environmental impact assessment and the decision-making process on planned economic and other activities.

## XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PROVIDED PURSUANT TO ARTICLE 7

149. Current national legislation on preparation and development of such environmentally-significant strategic decisions as plans, programmes and policies has laid the basis for involving the public in the process. This includes legislation referred to above with regard to Article 6 of the Aarhus Convention – Articles 13, 14, subparagraphs 2, 7 and 8 of paragraph 3 of Article 47 and paragraph 2 of Article 49, Articles 57 and 60-67 and Chapter 6 of the Environmental Code; Act No. 107 on Administrative Procedures of 27 November 2000; and Act No. 221-III on the procedure for consideration of communications from natural and legal persons of 12 January 2007.

150. **Article 14 of the Environmental Code** (on the rights of public associations in the field of environmental protection) includes the following:

151. Paragraph 1(3): "to participate in the decision-making process of state bodies on environmental issues according to the procedure established in the legislation of the Republic of Kazakhstan".

152. A raft of secondary legislation also regulates public participation in the development of plans, programmes and policies: the Rules on the conduct of state environmental review of 28 June 2007 (207-p); the Rules on the conduct of public hearings (adopted by Order No. 135-p of the Minister of Environmental Protection of 7 May 2007); and the Rules for the environmental impact assessment of planned activities during the development of state, sectoral and regional development programmes in sectors of the economy and schemes for locating the forces of production, adopted by Order No. 129-p of the Minister of Environmental Protection of 9 June 2003.

153. In the light of the analysis above of Articles 6 and 7 of the Aarhus Convention, it seems appropriate to introduce corresponding additions to the current Rules on the conduct of public hearings (adopted by Order No. 135-p of the Minister of Environmental Protection of 7 May 2007) as their procedural rules do not cover the full variety of forms of public participation and the criteria for its effectiveness (timeliness, fullness and adequacy).

154. In order to more clearly define the parameters essential for effective public participation in making such decisions, these additions need to be complemented by "procedural tuning" of the Rules for the environmental impact assessment of planned activities during the development of national, sectoral and regional development programmes in sectors of the economy and schemes for locating the forces of production, adopted by Order No. 129-p of the Minister of Environmental Protection of 9 June 2003.

## XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7

155. The Rules on the conduct of public hearings (adopted by Order No. 135-p of the Minister of Environmental Protection of 7 May 2007) and the Rules for the Environmental Impact Assessment of Planned Activities (adopted by Order No. 129-p of the Minister of Environmental Protection on 9 June 2003) do not fully cover the full variety and criteria for effectiveness (timeliness, fullness and adequacy) of public participation in making environmentally-significant decisions while developing state, sectoral and regional development programmes for sectors of the economy and schemes for locating the forces of production.

156. As yet there has been no experience of conducting strategic environmental assessments of plans, policies and programmes.

## XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7

157. Public participation in the development of strategies, policies and programmes is often purely formal. There are no mechanisms for feedback between decision makers and the public on the issues under discussion.

## XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

158. www.eco.gov.kz, www.aarhus.kz.

## XXIV. EFFORTS MADE TO PROMOTE PUBLIC PARTICIPATION DURING THE PREPARATION OF RULES AND REGULATIONS THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8

159. National legislation does not contain any discriminatory provisions that limit the participation of natural and legal persons in discussion and preparation of suggestions about draft legislation. Thus, Article 14(9 and 10) of the 2007 Environmental Code states that environmental public associations have the right to participate in discussion of draft legislation on environmental protection at the preparatory stage, and to present their comments to the drafters, and also to participate in the development of environment-related plans and programmes. Article 312(2) of the Environmental Code states that draft programmes for protecting the climate and ozone layer can be submitted for discussion by citizens and public associations in order for their suggestions to be taken into account during the planning and implementation of activities to prevent and mitigate the consequences of climate change (including global climate change) and ozone layer depletion. In recent years there have been public discussions about most draft environmental laws. Environmental NGOs take part in these discussions, along with associations of entrepreneurs and natural resource users, ecologists, lawyers specialising in the environment, and higher education representatives. Draft documents are posted on the relevant ministries' websites, disseminated by email and in certain cases published in specialized publications. The mandated state body collects comments and suggestions on draft legislation.

## XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8

160. The right of the public to participate in law-making is enshrined in legislation, but a smoothly running mechanism is needed to enforce any legal norm. In practice, many aspects of public participation in law-making are not underpinned by legislation. It is not mandatory to include public suggestions in comparative tables of amendments to draft laws. There are practically no mechanisms to provide feedback on public suggestions.

161. Draft legislation is subject to environmental review, including public review. Registration requirements and the possibility of refusing registration hinder public environmental review of draft legislation.

162. The lack of the necessary mechanisms at legislative level for citizens to exercise their right means that this right cannot be exercised. As a result, often the public does not have a real opportunity to participate in law-making, with the exception of isolated cases.

## XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8

163. The gaps and contradictions in national legislation revealed during the drafting of this national report may serve as a good basis for public participation in law-making in accordance with Article 8 of the Aarhus Convention.

## XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7

164. www.eco.gov.kz, www.memr.gov.kz.

## XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9

165. The Environmental Code defines environmental protection as a system of state and public measures to preserve and restore the environment, prevent any negative impact of economic and other activities on the environment and rectify the consequences of any such impact.

166. Article 14(2(1)) of the Environmental Code states that, when carrying out their activities in the field of environmental protection, public associations are required to: 1) contribute to the implementation of measures to promote efficient use of natural resources, protect the environment and ensure environmental security.

167. The Environmental Code envisages state (Chapter 12), industrial (Chapter 14) and public (Chapter 15) environmental compliance assurance. Public environmental compliance assurance seeks to engage society in the state's environmental problems. The procedure for conducting public environmental compliance assurance is decided by public associations in accordance with their articles of association (Article 135).

168. In order to facilitate public environmental compliance assurance, legislation requires the provision of information and other forms of cooperation. Natural and legal persons must have access to information about the work of the state bodies responsible for ensuring compliance with legislation on environmental protection and the protection, replenishment and use of natural resources, and the results of such work. The state bodies that ensure compliance with legislation on environmental protection and the protection, replenishment and use of natural resources publish reports from individual inspections and an annual report. In order to facilitate cooperation and concerted action, the mandated authority for environmental protection draws up a list of public associations whose articles of association include the function of public environmental compliance assurance. State bodies have the right to engage natural and legal persons on a voluntary basis to identify breaches of environmental legislation (Article 136).

169. In the reporting period since the first and second reports on the implementation of the Aarhus Convention, no significant amendments have been made to national legislation.

Procedures for public access to justice in environmental disputes are enshrined in the following legislation: the Constitution, the Aarhus Convention, the Civil Procedure Code, the Environmental Code, the Forest Code, the Water Code, the Act on Specially Protected Natural Territories, the Act on the Protection, Replenishment and Use of Animals, the Act on Architecture, Town Planning and Construction, the Sanitation and Disease Prevention Act, the Act on Natural and Anthropogenic Emergencies, and the Public Associations Act as well as in the Supreme Court Plenary Decision on the application by judges of environmental protection legislation.

170. Kazakhstan has court and non-court mechanisms to protect rights. The court mechanism takes the form of initiating court actions, for example for compensation for losses, rectification of the consequences of a violation of environmental law, compensation for non-pecuniary ("moral") damage, and special litigation to challenge the decisions and actions (or inaction) of state bodies, local self-government, public associations, organizations, officials, and civil servants. It still takes one to two months for claims and applications to be examined. Legislation provides for provisional injunctive remedies – that is, an application can be made to the court for a provisional remedy at the same time as a claim is filed. Procedural law allows the public to appeal legal determinations in appellate, cassational and supervisory procedures. Judgments are provided in written form and available to the public. The losing side pays court costs. However, the state fee for non-property related claims remains low enough for everyone to afford. Current tax legislation does not specify a state duty to be levied for review of court decisions. When judgments come to be executed, the court may also order enforced performance by enforcement agencies.

171. The environmental prosecutor and the human rights ombudsman also provide means of legal redress. They examine communications from citizens on the actions and decisions of officials and organizations that infringe rights and freedoms as guaranteed by the Constitution, legislation and international agreements.

172. Provincial and equivalent courts and the Supreme Court are empowered to review court decisions on cases heard under Article 9 of the Aarhus Convention. Judgments of first instance courts which have not yet come into force can be appealed under the appellate procedure. The parties and other persons participating in a case have the right to appeal a court judgment. Persons not participating in the case have the right to appeal about rights and duties ruled on by the court (Article 332 of the Civil Procedure Code). The Civil Procedure Code specifies the courts that hear appeals and notices of opposition on judgments that have yet not come into legal force.

173. Appeals and notices of opposition are heard by a single judge at provincial and equivalent courts (Article 333 of the Civil Procedure Code).

174. Appellate judges have the right, at the petition of the party making the appeal or notice of opposition, to suspend execution of the first instance judgment on the merits, except with regard to judgments on cases listed in Article 237 of the Civil Procedure Code, which require immediate performance (Article 343).

175. During appeal proceedings, the court verifies in full the legality and validity of the first instance judgment. The appellate court can establish new facts within the scope of the action

brought and hear new evidence which a party for good reason did not have the chance to present to the court of first instance (Article 345).

176. Appeals must be considered within a month of being received by the court (Article 349).

177. The appellate court has the right: 1) to leave the judgment unvaried and not grant the appeal or notice of opposition; 2) to vary the court of first instance's judgment; 3) to overturn the court of first instance's judgment and hand down a new judgment; 4) to overturn the judgment and refer the case back to the court of first instance if violations of procedural rules are established, as envisaged in Article 366. The appellate court does not have the right to prejudge the reliability or unreliability of evidence, the comparative weight of evidence, or the outcome of the re-examination; or 5) to overturn the judgment in full or in part and dismiss the case with or without prejudice on the grounds stipulated in Articles 247 and 249 (Article 358).

178. The Civil Procedure Code specifies which courts can hear cassational appeals or notices of opposition about judgments that have come into force.

179. Cassational appeals or notices of opposition relating to the decisions and non-substantive rulings of appellate courts are heard by provincial or equivalent courts sitting as panels of not less than three judges (Article 383(2)).

180. The parties and other persons participating in a case have the right to make a cassational appeal with regards to decisions and non-substantive rulings by appellate courts. Persons not involved in the case have the right to make a cassational appeal with regard to rights and duties on which the court ruled.

181. A prosecutor involved in an appeal hearing has the right to file a cassational notice of opposition about an appellate court decision or non-substantive ruling. The Prosecutor General and Deputy Prosecutor Generals, provincial and equivalent prosecutors also have the right file notices of opposition regarding appellate court decisions and non-substantive rulings irrespective of whether or not they participated in the case (Article 383(1)).

182. When hearing a cassational appeal, the court checks the legality and validity of the first instance and appellate court determinations using case documentation that relates to the grounds of the appeal or notice of opposition. Within the scope of the action brought, the cassational court examines new evidence which was not presented to the first instance and appellate courts for good reason (Article 383(13)).

183. The cassation court must hear the cassational appeal or notice of opposition within a month of its receipt (Article 383(14)).

184. The cassational court has the right: 1) to leave the appellate court's decision or non-substantive ruling unvaried and not grant the appeal or notice of opposition; 2) to overturn the appellate court's decision or ruling in full or in part and refer the case back to the court of first instance or the appellate court to be heard by a different formation of judges if mistakes made by the appellate court cannot be rectified by the cassational court. The cassational court does not have the right to prejudge the reliability or unreliability of evidence, the comparative weight of evidence, or what the outcome of the re-examination should be; 3) overturn the appellate court's

decision or non-substantive ruling either in full or in part and dismiss the case with or without prejudice on the grounds specified in Articles 247 and 249 of the Civil Procedure Code; 4) overturn the appellate court's decision or ruling and leave in place the court of first instance's judgment; 5) vary the decision or issue a new one, overturning the first or appellate court's judgment, without referring the case back for reconsideration, if the case does not require the gathering or additional checking of evidence and the court of first instance or the appellate court fully and correctly established the circumstances of the case, but mistakes were made in the application of substantive law (Article 383(20)).

185. A cassational court judgment comes into legal force from the moment it is made (Article 382(23).

*Review of court decisions that have come into force in supervisory proceedings*

186. Determinations of local and other courts that have come into force can be re-examined in supervisory proceedings by the Supreme Court upon a petition from persons participating in the case or a notice of opposition from the Prosecutor General.

187. Orders to pay a debt and non-substantive rulings made by first instance or appellate courts that have come into force, with the exception of non-substantive rulings by these courts that prevent the further progression of a case, are not subject to review.

188. Supreme Court judgments made in supervisory proceedings can be reviewed in exceptional circumstances if it is established that the judgment could lead to serious irreversible consequences for human life or health, the economy or national security (Article 384).

189. Determinations of local and other courts that have come into force can be challenged by the parties and others participating in the case who have the right to make an appellate or cassational appeal directly to the Supreme Court.

190. The Prosecutor General has the right to file a notice of opposition with regards to a determination that has come into force to the Supreme Court. A notice of opposition can be made on the Prosecutor's own initiative or on petition by one of the persons indicated above. The petition is appended to the notice.

191. Until the case is examined in supervisory proceedings, a petition or protest can be revoked by the persons who made it by making a statement to the court. The court informs persons participating in the case of the revocation. The revocation of a petition or notice of opposition ends supervisory proceedings.

192. The rules laid out in Articles 393-395 of the Civil Procedure Code do not apply to notices of opposition filed by a prosecutor, which are directly examined in supervisory proceedings. The court withdraws to the retiring room to determine whether the grounds set out in Article 387 for the case to be reviewed in supervisory proceedings are present, after which it considers the prosecutor's notice of opposition. If these grounds are absent, the court issues a refusal to re-examine the case in supervisory proceedings (Article 385).

193. The Supreme Court sitting as a panel of no less than five judges hears petitions and notices of opposition from the Prosecutor General about legal determinations of local and other courts that have come into force.

194. The Supreme Court sitting in plenary session on the grounds stipulated in Article 384(3) of the Civil Procedure Code considers cases lodged by the President of the Supreme Court or notices of opposition filed by the Prosecutor General about Supreme Court judgments (Article 386).

195. A petition or notice of opposition can be made within one year of the entry into force of a judgment on the merits, non-substantive ruling or decision by a court.

196. The time period for lodging a notice of opposition can be extended by a court if a petition requesting that a notice of opposition be filed was submitted to the prosecutor within the proper time frame but a decision was not made. The notice of opposition must mention this (Article 388).

197. Concurrently with a review application, the President of the Supreme Court and the Prosecutor General have the right to order a stay of execution of a court determination for a period of not more than three months for the determination to be verified in supervisory proceedings (Article 396).

198. When reviewing a case in supervisory proceedings, the court checks the legality and validity of determinations made by the court of first instance, the appellate court and the cassational court using the case materials within the scope of the grounds of the petition or notice of opposition.

199. In the interests of legality, the supervisory court has the right to go beyond the scope of the petition or notice of opposition and check the legality of the impugned or opposed judgment in full. The court checks the legality and validity of decisions of first instance, appellate court and cassational courts in the cases listed in Chapters 25-29 of the Civil Procedure Code, in full (Article 397).

200. After it has heard a case in supervisory proceedings, the court withdraws to the retiring room and makes one of the following decisions: 1) to leave unvaried the judgment of the first instance, appellate court or cassational court and not to grant the petition or notice of opposition; or to refuse to consider the case in supervisory proceedings owing to the absence of grounds stipulated in Article 387 of the Civil Procedure Code; 2) to overturn the judgment of the first instance, appellate court or cassational court in full or in part and refer the case back to the first instance, appellate court or cassational court. The supervisory court does not have the right to establish or consider proven circumstances that were not established in the original judgment or were refuted by it, to prejudge the reliability or unreliability of evidence, the comparative weight of evidence, or the outcome of the re-examination of the case; 3) to overturn a decision of the first instance, appellate or cassational court in full or in part and dismiss the application with or without prejudice; 4) to leave in force one of the judgments made on the case; 5) to vary the judgment of the first instance, appellate or cassational court or overturn it and issue a new judgment, without referring the case back for reconsideration, if mistakes were made in the application and interpretation of substantive law (Article 398).

201. Judgments by the supervisory court come into legal force as soon as they are passed (Article 400).

202. Court judgments, ruling and decisions that have come into force can be reviewed if new evidence comes to light on the grounds stipulated in Article 404.

203. Real possibilities have been created at the legislative level for the courts to ban an activity challenged while a claim filed by public representatives is examined in court. Such issues are regulated by Chapter 15 of the Civil Procedure Code. In particular, under Article 158 the court can order provisional remedies following applications from persons participating in national or international arbitration proceedings. A provisional remedy is allowed with regard to any aspect of the case, if failure to take such measures could make executing the court judgment more difficult or impossible.

204. Provisional measures can include: 1) seizure of property; 2) prohibiting the defendant from taking a certain action; 3) prohibiting other persons from transferring the defendant's property to the defendant or fulfilling obligations to the defendant; and 4) stay of execution of an impugned decision of a state body, organization or official (except in stipulated cases).

205. If necessary, the court can order several provisional measures. If one of the prohibitions (i.e. injunctions to refrain from a certain action) under Article 159(1(2 and 3)) of the Civil Procedure Code is infringed, the guilty parties are held administratively liable. In addition, the claimant has the right to file a court application for compensation from such a person for damage caused by non-performance of the provisional order. Legislation requires that provisional measures are proportionate to the claim. These issues are also reflected in legislative Decision No. 2 of the Supreme Court on application by judges of several rules of civil procedure legislation of 20 March 2003.

206. In 2008, a training and practical manual was produced on the application of the Aarhus Convention by Kazakhstan's judges. This contains in-depth studies of cases involving the environmental rights of the public and their defence in court. In addition, the course at the Institute of Justice of the Presidential Academy of State Administration as well as training programmes for judges cover environmental legislation and issues arising in cases relating to the implementation of the Aarhus Convention.

207. Statistical data from 2009 indicates that 616 applications were made to courts by natural and legal persons, including prosecutors and mandated State bodies, on environmental issues. Of these, 291 were granted by judges. The number of applications in 2010 has not yet been ascertained. In the first nine months of the year a total of 485 applications were made to courts by natural and legal persons on environmental issues, including 13 from natural persons and 159 from public environmental associations. A total of 159 were granted by the courts, including two from natural persons and 53 from public environmental associations.

208. Training centres are in operation in all provincial courts. These run courses for judges on considering problematic issues that arise while hearing a case, including issues concerning the application of the Aarhus Convention.

209. The Supreme Court and provincial courts regularly monitor the quality of court proceedings, including those on environmental disputes. Provincial courts are opening electronic information kiosks to more fully ensure openness and access to justice and to notify the population about court activities.

210. An agreement has been concluded with the OSCE to train judges and environmental NGOs on the implementation of the Aarhus Convention in partnership with the Union of Judges of the Republic of Kazakhstan.

## XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

211. The Public Associations Act, which gives public associations the right to initiate court proceedings to protect the rights and legitimate interests of their own members, needs to be brought into line with the Aarhus Convention and the Environmental Code, under which environmental NGOs have the right to apply to court with environment-related claims to protect the interests of an unspecified group of people, and not just their own members.

212. Under the Environmental Code, state bodies can engage natural and legal persons on a voluntary basis to identify violations of environmental legislation. In order to allow cooperation and concerted action, the mandated authority for environmental protection creates a list of public associations whose articles of association include the function of public environmental compliance assurance (Article 136). This provision could restrict public participation on the grounds of non-appearance in "the list of the mandated body for environmental protection" and the need to include the "function of environmental compliance assurance" in their articles of association. Under the Aarhus Convention, environmental NGOs *a priori* are parties concerned and can protect public environmental interests in court and non-court procedures.

## XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9

213. The manual for judges on application of the Aarhus Convention in Kazakhstan (OSCE/Supreme Court of the Republic of Kazakhstan) provides a complex analysis of national laws, including provisions on the rights of natural persons, public associations and other legal persons in the field of environmental protection (Articles 13 and 14 of the Environmental Code, and Articles 12 and 13 of the Act on Specially Protected Natural Territories); protection and efficient use of natural resources (Articles 62 and 63 of the Water Code, and Article 66 of the Forest Code); public health and radiation safety of the population (Articles 19-21 of the Act on the Radiation Safety of the Population); and architecture, town planning and construction (Article 13 of the Act on Architecture, Town Planning and Construction). The draft was presented and discussed in June 2008 at the international conference on access to justice in Astana held to mark the 10$^{th}$ anniversary of the Aarhus Convention.

214. In order to meet their obligations in an adequate and tangible fashion and to prevent adverse impacts on the environment and human health, public environmental associations must enjoy the necessary scope of rights, including the right of access to justice not just through actions to defend the rights and interests of specific citizens when specific damage has been caused (Article 14(1(1 and 11)) of the Environmental Code, and paragraph 13 of legislative Decision No. 16 of the Supreme Court Plenum of 22 December 2000) and in requests for "… the

overturning in administrative or court proceedings of decisions on the location, construction, reconstruction and putting into operation of enterprises, facilities and other environmentally hazardous installations, as well as decisions to limit, suspend or terminate an economic or other activity of natural and legal persons which have an adverse effect on the environment and human health", but also through claims aiming to protect the rights and legitimate interests of an unspecified group of people.

215. It is clear that the legal standing of public associations in the situations described is limited by several criteria:

- There must be obvious violations of the rights and interests of citizens;
- There must have been specific damage to human health and the environment;
- It must be proved that the specific activity "negatively affected the environment and human health."

## XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

216. www.e.gov.kz, www.aarhus.kz, www.supcourt.kz, www.procuror.kz, www.fiec.kz, www.greensalvation.org, http://www.supcourt.kz/index.php

## XXXII. GENERAL COMMENTS ON THE CONVENTION'S OBJECTIVE

217. The Aarhus Convention provides public associations and citizens of Kazakhstan with essential experience of using international mechanisms to protect environmental rights, and state bodies with experience of considering alleged cases of non-compliance at international level. In addition, compliance with the Aarhus Convention means that the constitutional rights of citizens are observed and activities and measures to be undertaken by state bodies are specifically designed to enhance public access to environmental information, take public opinion into account in environmental decision-making and simplify procedures for the public to challenge violations of environmental protection legislation by enterprises and state bodies. Crucially, implementation of the Convention has also contributed to an improvement of national legislation and a growth in public awareness of environmental issues.

## XXXIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING PROVISIONS ON GENETICALLY MODIFIED ORGANISMS PURSUANT TO ARTICLE 6-bis AND ANNEX I-bis

218. In as much as GMOs are specifically referred to in the definition of environmental information in Article 2(3(a)) of the Convention, the provisions of Articles 4 and 5 of the Convention are generally applicable to this area.

219. Act No. 301 on Food Safety of 21 July 2007 made it a legal requirement for food labels to include information on their content, including the presence and quantity of food additives, animal feed additives and biologically active additives to food and GMOs. This significantly simplifies access to environmental information and fulfils the requirements of Article 5(6-8) of the Aarhus Convention.

220. Article 282 of the Environmental Code generally outlines the basic requirements for genetic engineering: paragraph 1(4) stipulates that users of natural resources that produce foodstuffs and animal feed produced from genetically modified ingredients must notify consumers accordingly.

221. Agricultural users of natural resources must use labelling to notify buyers of their crops that they are purchasing a genetically modified product, and maintain a register of buyers to whom they deliver their produce (Article 282(2)).

222. State bodies apply labelling regulations to all genetically modified foodstuffs and animal feed. All foodstuffs and animal feed are labelled if they contain, consist of, or were produced from genetically modified ingredients. Labelling aims to inform consumers of the properties of a foodstuff or animal feed.

223. The Government has taken a range of measures to regulate GMOs.

224. The definition of GMO is given in the Environmental Code, which came into force on 1 January 2007, in the Food Safety Act of 1 January 2008, and the hygiene requirements for the safety and nutritional value of foodstuffs approved by a Ministry of Health Order of 11 June 2003. These documents also give definitions of genetically modified product (GMP) and genetically modified food source.

225. Article 17 of the Food Safety Act also requires that buyers be notified of the presence and quantity of GMOs. Article 34 of the Act states that until GMOs have been scientifically proven to be safe in food, foodstuffs may not contain levels higher than those set by EU states (0.9 per cent). Under Ministry of Health Order 447 on approval of the hygiene requirements for the safety and nutritional value of foodstuffs, production of genetically modified ingredients, as well as their initial import into the country, is only allowed after their state registration under the procedure set by the mandated state body for public health.

226. The production of genetically modified organisms is classified as an environmentally hazardous economic activity under Government Decision No. 543 on the approval of the list of environmentally hazardous types of economic and other activity of 27 June 2007. Act No. 93-III on Compulsory Environmental Insurance of 13 December 2005 requires natural and/or legal persons producing GMOs to hold environmental civil liability insurance.

227. The Seed Production Act of 8 February 2003 forbids the sowing of varieties of seed developed through genetic engineering (genetic modification) that are not included in the State Register of Products of Selective Breeding.

228. Kazakhstan has hence enacted 37 pieces of legislation which include rules relating to GMOs and GMPs, and the legislative framework ensures that products made with GMOs are labelled. On 26 June 2008, the country ratified the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

## XXXIV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6-bis AND ANNEX I-bis

229. The environmental requirements for the production and use of GMOs and GMPs are laid out in Articles 195, 248, 281 and 282 of the Environmental Code. Under Article 282 of the Code, users of natural resources are obliged to use labelling to notify consumers of any foodstuffs or animal feed produced from GMOs. The Code does not fix a level (in percentage terms) for the GMO content of products and makes labelling compulsory for all products containing, consisting of, or produced from GMOs, without exception.

## XXXV. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6-bis AND ANNEX I-bis

230. The National Centre for Biotechnology has developed a draft Act on the State Regulation of Genetic Engineering. This has been posted on the Aarhus Centre web portal (www.aarhus.kz) for discussion and comments. It has also been presented to the *Mazhilis* (lower house of parliament) for discussion. The main purpose of the draft law is to institute state regulation of genetic engineering and to regulate genetically modified organisms produced by modern biotechnology. In order to coordinate genetic engineering, the draft law creates a National Commission on Genetic Engineering under the Ministry of Education and Science. The Commission will include representatives of the state bodies concerned and scientists. The draft law will also set out procedures to permit activities using genetically modified organisms, their registration, conditions for export and import, classification of risk levels, and general requirements for genetic engineering.

231. In order to improve public awareness of the issues around GMOs, a section of the Aarhus Centre web portal has been designed on current GMO developments, which contains general information on GMOs, along with the Food Safety Act and the Almaty Amendments adopted at the Second Meeting of Parties on 25-27 May 2005 in Almaty.

232. On 13 August 2010, a round table discussion on Prospects for the Development of an Environmentally-sound Food Industry was organized at the Ministry of Environmental Protection by the Aarhus Centre to discuss the issue of environmental labelling. Participants included senior figures and specialists from the Ministry and its subdivisions, manufacturers, the Ministry of Agriculture, the Committee for Technical Regulation and Metrology at the Ministry for Industry and New Technology, the International Environmental Academy, NGOs, the media, and other interested organizations.

233. The Ministry of Health has adopted Rules for the registration of genetically modified food sources, and the Ministry of Education and Science has begun to develop a technical programme to regulate marketing of GMOs. About USD 10 million from the national budget for 2008-2010 has been allocated for this. In 2008, there were plans to set up five laboratories to identify genetically modified food sources as part of the network of laboratories of the sanitary and disease prevention service. The Ministry of Health fully supports the introduction of a moratorium on the production of foodstuffs using GMOs until adequate facilities have been put in place to study them. Under Government Decision No. 959 on the complex of measures to develop the biofuels market of 17 October 2007, the *Akims* (governors) of provinces and the Ministry of Agriculture will, every year until 2010, develop a complex of measures to prevent the sowing of genetically modified seeds.

## XXXVI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION

234. www.aarhus.kz, www.ncbt.nauka.kz, www.biocenter.kz.