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ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice in
Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)
(Item 6 (a) of the provisional agenda)

REPORTS ON IMPLEMENTATION

KAZAKHSTAN*

based on the reporting format annexed to decision I/8

1. Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

The preparation of this report began with a preparatory meeting held with the support of the United Nations Development Programme (UNDP) in Almaty on 28 September 2004. The

* This document was submitted late due to the fact that various first-time problems had to be overcome as this is the first reporting cycle under decision I/8 of the meeting of the Parties. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

meeting was attended by officials from the Ministry of Environmental Protection, representatives of local environmental non-governmental organizations (NGOs) and international organizations active in Kazakhstan, and environmental specialists. Based on the outcome of the meeting, recommendations were made on a conceptual approach to drafting the national report, and the main sources of information for preparing the report were identified. The participants in the meeting stressed the importance of holding discussions on the draft national report in the various regions of Kazakhstan, in addition to collecting proposals and comments on the report by electronic mail.

The national report has been prepared on the basis of a study of existing legislation, programme documents, plans, declarations, the materials of individual court cases, seminars and training courses. It is also based on the results of the project to assist Kazakhstan in implementing the Aarhus Convention, which was carried out in 2001-2002 with the assistance of the Danish Environmental Protection Agency, and of the ECO Forum project of NGOs of Kazakhstan on monitoring the implementation of the Aarhus Convention. A large volume of information was received by special request from the Supreme Court, territorial environmental protection administrations and the environmental NGOs Ekotsentr in Karaganda, IRIS in Semipalatinsk, the Kazakh Environmental Protection Society, the Environmental Press Centre, Green Salvation in Almaty and *Zhensky luch* in Stepnogorsk.

On 22 November 2004, the text of the draft national report was placed on the Ministry's web site (www.nature.kz) for public consultation. In order to ensure that public opinion was taken fully into account, the Centre of the Organization for Security and Co-operation in Europe (OSCE) provided assistance in holding hearings on the draft national report on the implementation of the Aarhus Convention, with the participation of NGOs and environmental activists, competent State authorities, scientists, teachers and students from specialized universities, journalists, and environmental specialists of industrial enterprises. The hearings were held in the following cities and towns in Kazakhstan:

Date	Venue	Number of participants	Record of the hearings available on:
10 November	Semipalatinsk	About 100	www.nature.kz .
23 November	Stepnogorsk	About 300	www.nature.kz .
25 November	Karaganda	32	www.nature.kz .
30 November	Almaty	40	www.nature.kz
2 December	Ust-Kamenogorsk	57	www.meteo.host.kz .
6 December	Aktau	68	www.nature.kz .
10 December	Astana	40	www.nature.kz .

The hearings in each of the aforementioned cities and towns were held jointly with the territorial subdivisions of the Ministry of Environmental Protection and the NGO from the relevant region. Information on how public opinion regarding the national report on the implementation of the Aarhus Convention was taken into account is available on the web site www.nature.kz.

2. Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

Pursuant to article 4, paragraph 3, of the Constitution of Kazakhstan, the Aarhus Convention is a ratified international agreement and takes precedence over the laws of Kazakhstan. The provisions and norms of the Convention are applied directly. Thus, after ratification of the Aarhus Convention, there was no need to adopt any additional laws or other regulatory acts in order to implement its provisions and norms.

This national report includes information on measures taken and events held during the period from 30 October 2001, i.e. the date on which the Aarhus Convention entered into force, to 31 December 2004. However, in some cases, earlier legislative and regulatory acts are mentioned, since they have direct bearing on the implementation of the Convention's provisions and norms in Kazakhstan.

Article 3

3. List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.

Pursuant to the Conceptual Framework, for Environmental Safety for 2004-2015, which was approved by the Presidential Decree of 3 December 2003, public access to environmental information and public participation in the solution of environmental problems are basic principles of environmental safety in Kazakhstan. The public authorities have a specific task: to ensure that the public has appropriate access to environmental information and to take measures to improve the quality, usefulness and topicality of the materials available. In addition, it should be noted that the Forestry Code and the Water Code, which were adopted in the past two years, and the Protection, Reproduction and Use of Fauna Act provide legislative guarantees of the principle of the participation of citizens and voluntary associations in the protection and rational use of the relevant natural resources.

In order to improve its work with the public, in 2001 the Ministry of Environmental Protection adopted Guidelines on Cooperation between Specially Authorized Public Authorities and Voluntary Associations in Environmental Monitoring. In accordance with this regulatory instrument, the Ministry's territorial subdivisions must provide the public with timely, complete and reliable information on the state of the environment and on measures to improve the quality of the environment, and also develop active cooperation with environmental NGOs in environmental monitoring.

With respect to Kazakhstan's adoption of measures to promote education and environmental awareness, note should be taken of the Conceptual Framework for Environmental Education, which was approved by orders of the Ministry of Education and Science and the Ministry of Environmental Protection in September 2002. According to the Conceptual Framework, the main task of environmental education is to form, develop and consolidate models of behaviour that enable citizens to take environmentally informed decisions and to act in

accordance with the provisions of environmental legislation. In particular, 77 million tenge (about US\$ 592,000) will be allocated from the national budget in 2005 to provide information on environmental issues in the media.

Legislation on the founding, registration, activities and taxation of NGOs in Kazakhstan was adopted long before ratification of the Aarhus Convention. Moreover, practically all special environmental protection acts include articles on the rights of citizens and environmental NGOs. The State considers questions relating to support for the non-governmental sector and, to this end, the Government of Kazakhstan approved, on 17 March 2003, the Programme of State Support for NGOs for 2003-2005, for which 37.6 million tenge (about US\$ 290,000) have been appropriated from the national budget. The aforementioned programme document provides for special measures to ensure broad public access to environmental information, involve NGOs in the solution of environmental problems, and improve awareness of the legal aspects of environmental protection issues.

With respect to article 3, paragraphs 7 and 8, no special legislative or regulatory measures have been taken since Kazakhstan's ratification of the Aarhus Convention. With regard to paragraph 8, it should be noted that article 96 of the Code of Administrative Offences of Kazakhstan of 30 January 2001 provides for an administrative fine for officials for taking punitive measures against a person who has lodged a justified complaint.

4. Describe any obstacles encountered in the implementation of any of the paragraphs of article 3 listed above.

(a) During the hearings on the national report on the implementation of the Aarhus Convention, representatives of one of the territorial environmental protection administrations, from a region with good traditions of support for environmental NGOs, noted the following problem relating to the implementation of this norm of the Convention. The overwhelming majority of requests for environmental information is not related to environmental protection activities or the exercise of environmental rights but to students' needs for environmental information in order to prepare reports, and businesses' needs for information in order to carry out various commercial projects.

(d) A number of environmental NGOs in the Caspian region have noted the lack of effective mechanisms for public participation in the drafting and ratification of international environmental conventions and protocols to them. In order to remove existing obstacles in this area, at the end of March 2004 environmental NGOs and activists from Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation and Turkmenistan established the Working Group on the Initiative to Adopt the Framework Convention for the Protection of the Marine Environment of the Caspian Sea. The Working Group conducts activities to mobilize public support for ratification of the convention at the current stage, and also to enable the public to participate in the mechanism for monitoring its observance.

(e) The materials submitted by the Anti-Nuclear Campaign of NGOs of Kazakhstan contain references to two cases involving the administrative prosecution of environmental activists who opposed a bill on the import into and burial in Kazakhstan of foreign low- and

medium-grade radioactive waste. In both cases, the activists were prosecuted for conducting signature-collection campaigns which were considered by officials of environmental protection agencies as public actions, for which special authorization is required.

5. Provide further information on the practical application of the general provisions of the Convention.

At present, the central administration and almost all the territorial administrations of the Ministry of Environmental Protection have appointed staff who cooperate with and provide assistance to the general public. Representatives of environmental NGOs are also involved in the work of a number of environmental protection bodies. The interdepartmental Council on Sustainable Development, which was established in March 2004, and the Public Council of the Ministry of Environmental Protection may be cited as examples. At present, work is under way in Kazakhstan to establish councils for the protection and rehabilitation of bodies of water, with the participation of the public, water users and environmental NGOs.

With respect to measures to promote education and environmental awareness, the following projects may be cited. As part of the project of the Regional Environmental Centre for Central Asia, in 2004 a textbook and a training module on environmental education were prepared for schoolteachers, and a specialized environmental education library was created. With the support of the Ministry of Environmental Protection, the voluntary association Environmental Press Centre holds annual festivals of environmental journalism and master classes for journalists specializing in the environment.

Among the measures taken to recognize and provide government support for NGOs, one should mention the Civic Forum, held in 2003 with the participation of the President of Kazakhstan, Mr. Nursultan Nazarbaev, and delegates from NGOs from all regions of Kazakhstan, and the Open Competition to Select Socially Significant Projects of Not-for-Profit Organizations for Government Support, which was held by the Ministry of Information. The participation of NGOs in environmental protection was discussed at both of the aforementioned events.

6. Give relevant web-site addresses, if available:

Name of organization

Ministry of Environmental Protection

Anti-Nuclear Campaign of NGOs of Kazakhstan

International Centre for Not-for-Profit Law

Regional Environmental Centre for Central Asia

Article 4

7. List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

In Kazakhstan, the basic legislative and regulatory acts that lay the groundwork for implementing the provisions on public access to environmental information were adopted before the Aarhus Convention was ratified. Such acts regulate the right of the general public to receive, and the obligation of State bodies and organizations to provide, requested environmental information, and also the procedure and time limits for providing such information, and sets out the grounds for refusing to provide information and the responsibility for failing to supply information. Thus, the basic requirements of article 4 of the Aarhus Convention were reflected in Kazakh legislation before 2001. For this reason, the main efforts to implement the aforementioned provisions in Kazakhstan were directed at improving the work of civil servants in handling requests for environmental information.

In November 2004, the Ministry of Environmental Protection, with assistance from the OSCE Centre, published the Guidelines for Handling Public Requests for Environmental Information. The Guidelines were developed with a view to familiarizing civil servants with the basic provisions of the Aarhus Convention as they apply to issues and problems that arise in handling public requests for environmental information. The Guidelines include detailed information about the relevant requirements of the Convention and Kazakh legislation, the distribution of the tasks involved in handling requests for environmental information among the various State bodies and organizations and web sites of key departments that possess environmental information. The Guidelines comply with all the provisions of article 4 of the Aarhus Convention and seek to implement them as norms that have direct effect. Five hundred copies of the Guidelines were published in Kazakh and Russian; the Guidelines were introduced at public hearings in seven Kazakh towns. Moreover, the Guidelines were submitted for consideration to the Deputy Prime Minister of Kazakhstan and were also sent, with covering letters, to interested ministries and agencies, local self-government bodies, all the territorial subdivisions of the Ministry of Environmental Protection and to courts of different levels. The text of the Guidelines in Russian and English is currently accessible on the web sites of the Ministry of Environmental Protection and the Organization for Security and Co-operation in Europe.

On 10 November 2004, the President of Kazakhstan approved the State Programme for Creating an “Electronic Government” for 2005-2007, which provides for measures to create in central and local government bodies “virtual reception rooms” for considering and tracing citizens’ requests for information, and to provide access to documents in electronic form. Specifically, in the field of environmental protection, the acceptance of citizens’ requests is one of the basic services of the “electronic Government”, which will be implemented in the context of the approved Programme.

Legislative measures for implementing article 4 of the Aarhus Convention in Kazakhstan:

1. The concept of “environmental information” is defined in article 71 of the 1997 Environmental Protection Act and fully corresponds to the definition of “environmental

information” contained in the Aarhus Convention. The 2003 Information Act includes the concept of “State information resources”, including both paper and electronic documents.

2. Under the Information Act, individuals and corporate bodies in Kazakhstan have the right of free access to publicly available State information resources. Moreover, special provisions on the right of individuals and voluntary associations to receive environmental information are contained in articles 5 and 6 of the 1997 Environmental Protection Act and in a number of other acts in the field of environmental protection and the rational use of natural resources. This right applies not only to citizens of Kazakhstan but also to stateless persons and foreigners. At the same time, the Act stipulates that not only State bodies but also State organizations have an obligation to consider requests for environmental information from citizens and voluntary associations.

3. The public has a right to request environmental information in a specific form. If the form of the reply was not indicated in the request, then, pursuant to article 16, paragraph 4, of the 2000 Administrative Procedures Act, State bodies and officials must provide a reply in the form of a letter.

4. The procedure and time limits for State bodies’ consideration of public requests for environmental information are governed by the 1995 Presidential Decree having the force of the Procedure for Considering Citizens’ Requests Act and the Administrative Procedures Act. Kazakh legislation stipulates that State bodies have an obligation to provide, within 15 days, information that does not require further study or verification; information requiring further study or verification must be provided within one month of the date on which the request was received. In order to ensure that these time limits are observed, requests are recorded in special registers and are monitored; monitoring of requests may be discontinued only by a decision by the director of a State body or his or her deputy on the basis of a duly prepared document (official memorandum or note) concerning the results of the consideration of the request. With regard to the obligatory requirements for the formulation of requests, we should like to point out that only anonymous requests that do not indicate the name, first name and patronymic of the person making the request and do not contain a signature or information about the applicant’s place of residence, work or study, are not considered.

5. In Kazakhstan, refusal to provide the public with access to environmental information is permitted only on the grounds provided in legislative acts. This requirement is established by article 15 of the Information Act of 8 May 2003. Currently, grounds for refusing access to information are set forth in the Civil Code (trade secrets and protection of intellectual property rights), the Code of Criminal Procedure (secrecy of police work, initial inquiries and pre-trial investigations), the Information Act (violation of the inviolability of private life, divulging of information provided to a State body on a voluntary basis and without the right to public disclosure) and several other acts. At the same time, in accordance with the 1999 State Secrets Act, environmental information may not be classified as a State secret.

6. In accordance with the Presidential Decree having the force of the Procedure for Considering Citizens’ Requests Act, a public authority that does not hold the information requested must refer the request to the competent public authority within five days and inform the applicant accordingly.

7. Under article 16, paragraph 4, of the Administrative Procedures Act, when a public authority refuses to provide environmental information it must reply only in letter form stating the reasons for the refusal.

8. Describe any obstacles encountered in the implementation of any of the paragraphs of article 4.

With respect to article 3, paragraph 9, one of the court decisions examined during the preparation of this report stated that the right of voluntary associations to access to environmental information is restricted by their territorial status. The reason for this is that, in Kazakhstan, voluntary associations are subdivided, depending on the territorial sphere of their activities, into:

- (a) Local: registered in the territory of one oblast or in the city of Almaty or the city of Astana;
- (b) Regional: registered in the territory of two or more oblasts or in the city of Almaty or the city of Astana;
- (c) National: Registered in more than half of Kazakhstan's oblasts and in the cities of Almaty and Astana.

However, this discriminatory approach has not been widely applied. As a rule, NGOs send requests for environmental information and receive replies to them regardless of their territorial status.

With respect to article 4, paragraph 2, Kazakh legislation establishes even stricter maximum time limits for providing information under the Aarhus Convention, namely within 15 days of requests that do require further study or verification. In practice, however, any requests by citizens for information are often handled within a month's time, which [rest of sentence is missing]

9. Provide further information on the practical application of the provisions on access to information, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Kazakhstan does not keep a record of general statistical data concerning requests for environmental information. We can only provide quantitative data received from individual territorial administrations of the Ministry of Environmental Protection. Thus, over a nine-month period in 2004, the Karaganda territorial environmental protection agency received 25 requests and the North Kazakhstan territorial environmental protection agency received 42 requests (all from citizens). The East Kazakhstan territorial environmental protection agency submitted data for the third quarter of 2004, during which it received 21 requests for environmental information.

In the course of a project on the transparency of State radiation safety programmes, which was carried out in 2004, the Anti-Nuclear Campaign of NGOs of Kazakhstan, and NGOs from various regions of Kazakhstan, sent a series of requests for information to various State bodies and organizations. In the case of the information requests submitted by the Anti-Nuclear

Campaign, the main problem with their consideration by State bodies and organizations was the failure to supply copies of the requested documents. Moreover, in a number of cases, replies to the requests were not received within the legally established time limits.

10. Give relevant web-site addresses, if available:

Name of organization	Web-site address
Ministry of Environmental Protection	www.nature.kz
OSCE Centre in Almaty	www.osce.org/almaty

Article 5

11. List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.

In Kazakhstan, State bodies and State organizations are responsible for creating State information resources which, inter alia, meet the needs of the general public. Such bodies and organizations must, within the scope of their competence, collect, process, store and disseminate information. In order to ensure that these tasks are carried out, individuals and corporate bodies must, in the cases established by Kazakh legislation, provide State bodies with the necessary information, including both paper and electronic documents. The aforementioned legislative measures to implement article 5, paragraph 1, of the Aarhus Convention are contained in article 11 of the 2003 Information Act.

In accordance with article 4, paragraph 2, of the Information Act, in Kazakhstan information must be disseminated on the basis of the principle of equality, i.e. without any discriminatory requirements for individuals or corporate bodies.

Kazakhstan's Environmental Protection Programme for 2005-2007, which has been approved by the Government, provides for the creation of a unified system for providing information on environmental protection using up-to-date technology. For this purpose, 86.1 million tenge (about \$662,000) will be allocated from the national budget. These measures are geared to implement article 5, paragraph 2, of the Aarhus Convention.

In 2003-2004, the Government of Kazakhstan adopted new regulations on State monitoring of bodies of water, forests and lands, as well as water, forest and land registers. The new regulations take account of the measures to be implemented under article 5, paragraphs 1 to 3, of the Aarhus Convention. Specifically, they make the competent State authorities and organizations responsible for creating and replenishing the most important sources of information on the state of environmental resources, including in electronic form. The regulations also establish the conditions for the free exchange of data on monitoring and registers of natural resources between State bodies, and for public access to such information.

Over the past two years, virtually all central government bodies have created their own web sites. It should be noted that the web site of the Ministry of Environmental Protection contains reports on the state of the environment in most of Kazakhstan's oblasts, since the dissemination of such information is required under article 5, paragraph 4, of the Aarhus Convention. The web sites of the Ministry of Environmental Protection, the Ministry of

Agriculture and the Ministry for Emergency Situations contain a rather large volume of information on legislation and programme documents and international conventions and agreements in the field of environmental protection and the rational use of natural resources.

Presidential Decree of 10 November 2004 approved the State Programme for Creating an “Electronic Government” for 2005-2007. The implementation of this programme provides for a package of measures to ensure that citizens and organizations have access to databases on the activities of State bodies. The basic services provided by the “electronic Government” in the field of environmental protection include:

- (a) Provision of information on the state of the environment and environmental pollution, the ecological state of individual land areas and bodies of water, and the impact of economic activities on the environment;
- (b) Provision of information on the implementation of strategic documents in the field of environmental protection;
- (c) Provision of information on violators of environmental protection legislation, and the measures taken against them;
- (d) Provision of information on investment in environmental protection measures and on payment of fines for polluting the environment;
- (e) Provision of access to the data of registers of natural resources;
- (f) Provision of weather forecasting information;
- (g) Provision of information on investment in environmental protection measures, on payment of fines for polluting the environment and on compensation for damage caused to the environment as a result of violations of environmental protection legislation;
- (h) Receipt of communications from citizens concerning environmental protection.

On 3 April 2002, Kazakhstan adopted the Industrial Safety at Hazardous Facilities Act. The Act provides that corporate bodies that have hazardous facilities must immediately inform the population and workers of any accidents.

The Food Products (Quality and Safety) Act, adopted on 8 April 2004, established for the first time the legislative requirement to include in the labelling of food products information concerning the raw materials and genetically modified vegetable and/or animal products used in their preparation.

During the reporting period, no steps were taken to establish a nationwide system of pollution inventories or registers.

12. Describe any obstacles encountered in the implementation of any of the paragraphs of article 5.

Many State bodies, particularly in Kazakhstan's regions, do not have electronic databases on environmental information. Even in the central Government, many ministries and committees have been equipped with computer technology only in the past several years, and in the regions many State bodies continue to experience serious problems with technical equipment. According to information from the territorial administrations of the Ministry of Environmental Protection, most of them do not have electronic databases.

During preliminary consultations with the public concerning the national report, a serious problem was pointed out, namely that the functions of collecting, processing and storing environmental information are often carried out by State enterprises that have the status of commercial organizations. The work that they do is paid in part from the "State purchases" item of the national budget; however, as a rule, such enterprises make their information available to only an extremely limited number of State bodies, setting very high payment rates for most other State bodies and non-State users.

13. Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?

There are no statistics on environmental information published by State bodies in Kazakhstan. It is possible to cite individual examples of the practical implementation of the provisions of article 5, which have been submitted by the territorial administrations of the Ministry of Environmental Protection. On the whole, information is actively disseminated by the territorial administrations mainly through publications in the media, the holding of lectures for target audiences and the organization of round tables and seminars.

Over a nine-month period in 2004, the Zhambyl oblast territorial environmental protection agency disseminated environmental information through the holding of 71 lectures, 14 round tables in schools, pre-school establishments, colleges and higher educational establishments, and at enterprises and organizations in the oblast, through the publication of 60 articles in oblast and national newspapers, and through 15 appearances on oblast television and radio.

Over a nine-month period in 2004, specialists of the Pavlodar oblast territorial environmental protection agency, together with representatives of other organizations and the public, provided advice and information to over 2,530 persons (2,500 persons in 2003). In addition, every year the agency publishes "Information on the state of the environment in Pavlodar oblast", which is distributed to the oblast's libraries. Access to such information in electronic form is provided by the agency, the Oblast General Science Library, the Pavlodar branches of the National Scientific and Technical Library and the Scientific and Technical Information Centre.

East Kazakhstan oblast has established a regional information centre on environmental monitoring, one of whose main tasks is to provide State bodies, resource users and the public with materials on the environment and environmental protection. Work is currently under way

to create a unified database for regional environmental monitoring, and data and software are being developed with a view to creating, supporting and managing databases with the use of Geographical Information System (GIS) technologies. The Centre's web site publishes materials on the state of the environment and data on environmental monitoring in East Kazakhstan oblast.

14. Give relevant web-site addresses, if available:

Central government web sites

Name of State body	Web-site address
President	www.president.kz
Parlament of Kazakhstan	www.parlam.kz
Office of the Procurator-General	www.procuror.kz
Government	www.government.kz
Ministry of Internal Affairs	www.mvd.kz
Ministry of Health	www.dari.kz
Ministry of Education and Science	www.edu.gov.kz
Ministry of Environmental Protection	www.nature.kz
Ministry of Agriculture	www.minagri.kz
Ministry for Emergency Situations	www.emer.kz
Ministry of Economy and Budget Planning	www.minplan.kz
Ministry of Energy and Mineral Resources	www.minenergo.kz
Land Resources Management Agency	www.auzr.kz
Statistics Agency	www.stat.kz

Web sites of local State bodies and organizations

East Kazakhstan regional information centre for environmental monitoring	www.meteo.host.kz
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Article 6

15. List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.

In Kazakhstan, the provisions of article 6 of the Aarhus Convention on public participation in decisions on specific activities are implemented not only with regard to large-scale facilities and types of activities included in annex I to the Convention but to all projects involving economic or other activity, which are subject to the environmental impact assessment procedure. Such a broadening of the scope of article 6 in Kazakhstan is the result of the adoption by the Ministry of Environmental Protection, on 28 February 2004, of a new instruction on the procedure for assessing the environmental impact of a proposed economic or other activity by developing pre-plan, pre-project and project documentation. Paragraph 5 of this regulatory document sets forth the principle of mandatory public participation in the environmental impact assessment procedure. This means that in Kazakhstan decisions on any type of activity subject to environmental impact assessment must be taken in strict conformity with the provisions of article 6 of the Aarhus Convention. This provision is based on

paragraph 20 of annex I of the Convention, which provides that article 6 applies to cases “where public participation is provided for under an environmental impact assessment procedure in accordance with national legislation”.

Section 6 of the 2004 instruction on environmental impact assessment sets out in detail the prospective applicant’s obligation to ensure public participation in environmental impact assessment. Such obligations include adequate and timely notification of the public at the initial stage of the decision-making procedure, the applicant’s identification of what members of the public may be interested in the assessment, and subsequent discussion of the proposed activity with the public, provision of access to the materials of the environmental impact assessment, holding of public hearings and soliciting of comments and proposals in written form. On the whole, the instruction on environmental impact assessment includes provisions for implementing the requirements of article 6, paragraphs 2 to 7, of the Aarhus Convention.

The initiator of the proposed activity must inform the public at the initial stage of the environmental impact assessment, the “survey of the state of the environment”. Pursuant to the instruction on the survey of the state of the environment, if it is found that facilities involving economic or other activity pose a heightened environmental risk, the oblast and national media must inform the public about the proposed activity. In the case of the proposed construction of small business facilities that have an insignificant impact on the environment and whose buffer zone does not exceed 100 metres, when such facilities are situated near or in living areas (car parks, petrol stations and so forth), the public concerned are informed through the placement of leaflets, posters and other information materials in prominent places in the area of the proposed activity.

With regard to providing the public concerned with all the necessary information regarding the decision-making process, the instruction places this obligation on the initiator of the proposed activity. The latter must submit to the competent public authorities, in accordance with official procedure and prior to the holding of public hearings, materials on the survey of the state of the environment. The established mandatory list of information to be provided to the public concerned for examination reflects the minimum requirements of article 6, paragraph 6, of the Aarhus Convention.

With regard to taking account of public opinion, the new instruction requires the initiator of the proposed activity to collect and consider written proposals and comments from the public, and also to hold public hearings. Agreement must be reached with environmental protection agencies on the conditions and the time frame for holding the hearings.

In accordance with the provisions of article 9, paragraph 2, of the 1997 Environmental Assessment Act, the body that conducts the environmental assessment, after completing the assessment at the public’s request, must within one month’s time provide information about the conclusions of the assessment, including the way in which public opinion was taken into account, in the mass media or in another form.

With regard to article 6, paragraph 10, of the Aarhus Convention, we should like to point out that the provisions of the instruction on public participation are being applied, inter alia, to the conduct of environmental impact assessments of projects to expand, refurbish and re-equip enterprises, facilities and industrial complexes.

On 29 May 2004, the Ministry of Environmental Protection approved the regulations on State registration of public environmental assessments. The conclusions of public environmental assessments are an important additional means of taking account of the results of public participation in decision-making on proposed activities. The approved regulations set out the procedure for State registration of the public environmental assessment in accordance with the provisions of the Environmental Assessment Act.

During the reporting period, Kazakhstan did not undertake the legislative measures referred to in article 6, paragraph 11, of the Aarhus Convention.

16. Describe any obstacles encountered in the implementation of any of the paragraphs of article 6.

Consultations held with representatives of environmental NGOs, judges and environmental protection procurators in November and December 2004 indicated that the target groups were not very aware of the new instruction on the survey of the state of the environment and its requirements relating to public participation in decision-making concerning specific activities and facilities that could have a negative impact on the environment. For this reason, very little use has been made of the broad opportunities for public participation in the environmental impact assessment procedure.

The materials of one of the court cases studied and the public hearings on the draft national report indicated that there is no clearly regulated procedure for taking account of the opinion of the public concerned when conducting an environmental impact assessment procedure. In practice, the members of the public who are affected by proposed construction are to a large extent identified by the initiator (applicant) at his own discretion, and often account is taken only of the opinion of persons who are in favour of the proposed activity.

The public hearings on the draft national report in the regions of Kazakhstan also revealed the following serious obstacle to the implementation of article 6 of the Aarhus Convention. At present, even when very large industrial facilities are built, the public often does not show any interest in participating in public hearings or in examining the materials of the environmental impact assessment. The following cases were cited as indicative examples: when only three persons participated in public hearings, or when only one visitor showed any interest in the materials of the environmental impact assessment available to the public.

17. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes?

According to the information submitted by the territorial administrations of the Ministry of Environmental Protection, a very small number of projects on specific activities are currently

open to public discussion. In particular, over the past two years, at the national level, State environmental assessments were made of 15 projects, on which public hearings were held. The following are a few examples:

- (a) Project on the construction of an incinerator plant in Ust-Kamenogorsk;
- (b) Project on an environmental impact assessment of the construction of exploratory wells Nos. 1 and 2 in the Kurmangazy oil field;
- (c) Project on a preliminary environmental impact assessment of sea oil operations in the Nursultan, Rakushechnoe Sea and Ulytau sectors;
- (d) Project on a preliminary environmental impact assessment of sea oil operations in the Tyub-Karagan and Atash sectors;
- (e) Project on the pumping of drilling sludge into ground by the Agip Kazakhstan North Caspian Operating Company;
- (f) Project on a preliminary environmental impact assessment of the construction of the Karachaganak gas refinery;
- (g) Project on the construction of the Atasu-Alashankou oil pipeline.

With regard to the aforementioned projects, more detailed information can be provided concerning the hearings on the oil projects of KazMunaiTeniz and LUKOIL Overseas companies at the Tyub-Karagan and Atashsky sites on the Caspian Sea. On 19 December 2003, public hearings were held in Aktau on the project involving a preliminary environmental impact assessment of seismic prospecting at the Tyub-Karagan and Atashsky sites in Kazakhstan's sector of the Caspian Sea shelf. On 14 April 2004, the aforementioned companies held public hearings on the project involving the environmental impact assessment of geological surveys as part of the implementation of the Tyub-Karagan and Atashsky sea projects. In both cases, the discussions resulted in the adoption of a decision and signing of a protocol, which reflected the opinion of the public concerned regarding the implementation of the oil projects.

In 2001-2002, a pilot project was conducted on public participation in the discussion of a project to construct a car wash in Pavlodar. The outcome of this project led to the preparation and publication of guidelines on public participation in decision-making in environmental issues, which was primarily intended for local government bodies and State environmental assessment bodies.

In the town of Temirtau, in connection with public concern about the felling of trees for the construction of small and medium-sized business facilities, citizens began to organize meetings on the basis of apartment owners' cooperatives. The results of the public discussion were recorded in the written minutes of the meetings, and there have been cases in which trees were spared in compliance with the decisions of the citizens' meetings.

18. Give relevant web-site addresses, if available:

Article 7

19. List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

On 9 June 2003, the Ministry of Environmental Protection approved the regulations governing the assessment of proposed activities on the environment in the preparation of State, sectoral and regional economic development programmes and plans for the placement of productive forces. This document specifies public access to information as one of the principles for conducting environmental impact assessments. At the same time, in accordance with the approved regulations, the initiators of the programmes must:

- (a) Provide preliminary information about the proposed programmes to the interested parties (the population, voluntary environmental organizations);
- (b) Take account of public opinion by collecting proposals through the media or at special information collection points, and also through the holding of public hearings;
- (c) Record the results of the public hearings in the minutes in accordance with the established requirements;
- (d) Reflect the outcome of measures to take due account of public opinion in a separate chapter or in an annex to the programme materials for subsequent submission to a State environmental assessment;
- (e) Keep the public informed of the outcome of any decisions taken.

In order to collect proposals from the public, a default time limit of 30 days has been established.

In recent years in Kazakhstan, the preparation of individual drafts of State programme documents involving environmental protection has included the collection and consideration of proposals made by the public. In practice, the discussion of draft programme documents involves, as a rule, the participation of representatives of environmental NGOs and the affected local communities, authorized State bodies, specialized expert organizations, environmental specialists, and scientists and teachers from specialized higher educational establishments.

The Ministry of Environmental Protection and the Ministry of Agriculture have placed drafts of the most important programme documents relating to environmental protection and the rational use of natural resources on their web sites for public discussion.

20. Explain what opportunities there are for public participation in the preparation of policies relating to the environment.

In Kazakhstan, there are various means for ensuring public participation in the preparation of an environmental policy. One of them is public participation in the procedure for assessing the environmental consequences of State strategies, programmes and plans under consideration; the assessment procedure is conducted by the initiator of the relevant draft document. Another means is the public environmental assessment of State programmes and plans, which can be carried out on a voluntary basis by expert commissions established on the initiative of individual population groups, voluntary associations and scientific organizations.

In recent years, the practice of establishing councils to promote interaction between State bodies and NGOs, and public councils attached to individual government bodies, and the practice of including representatives of NGOs in such interdepartmental bodies as the Council for Sustainable Development, are becoming widespread. The participation of NGOs in such bodies provides additional opportunities for taking account of public opinion in decisions and documents considered and adopted by them.

21. Describe any obstacles encountered in the implementation of article 7.

To date, public participation in State programmes and plans has generally been limited to the programmes currently being carried out. Public participation in the discussion of, and the submission of proposals and comments on, draft State programme documents and plans has not yet become a widespread practice.

22. Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.

In Kazakhstan, there are various means for ensuring public participation in the preparation of an environmental policy. One of them is public participation in the procedure for assessing the environmental consequences of State strategies, programmes and plans under consideration; the assessment procedure is conducted by the initiator of the relevant draft document. Another means is the public environmental assessment of State programmes and plans, which can be carried out on a voluntary basis by expert commissions established on the initiative of individual population groups, voluntary associations and scientific organizations.

23. Give relevant web-site addresses, if available:

Name of organization	Web-site address
Ministry of Environmental Protection	www.nature.kz
Ministry of Agriculture	www.minagri.kz

Article 8

24. Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

Kazakh legislation does not contain any restrictions of a discriminatory nature regarding the participation of individuals and corporate bodies in the discussion and preparation of proposals concerning draft legislative and regulatory documents. We should like to add that article 6 of the Environmental Protection Act defines the right of voluntary associations to participate in the discussion of bills on environmental protection as one of the most important conditions for their environmental protection activities.

In recent years in Kazakhstan, most bills and individual drafts of regulations that relate directly to environmental protection and the rational use of natural resources have been open to public discussion. In practice, invitations for public discussion of draft regulations, as a rule, are sent to environmental NGOs, associations of entrepreneurs and resource users, environmental specialists, lawyers specializing in environmental law, and so on. Draft regulations are posted for discussion on the web sites of the relevant ministries and disseminated by electronic mail; in some instances, they are issued in special printed publications. Comments and proposals on draft regulatory acts are usually collected by a specially designated person or the responsible department (office) of a public authority. In order to ensure that maximum consideration is given to proposals, in a number of cases, prior to government approval of the draft under discussion, meetings have been held between the authors of the comments and proposals and the persons who drafted the document.

In accordance with the plan of action of the Ministry of Agriculture concerning cooperation with NGOs in 2004, public hearings on the draft act on the protection, reproduction and use of fauna, and the draft act on natural areas under special protection, were planned and held.

25. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

26. Describe any obstacles encountered in the implementation of article 8.

With regard to the implementation of article 8 of the Aarhus Convention in Kazakhstan, problems have been encountered in ensuring that public opinion and the opinion of independent experts are duly reflected in the final version of a regulatory instrument. In many cases, discussions of draft regulations are held but the results of such discussions are not recorded in any special minutes. The standard form of the executive summary for government decisions and bills does not contain a special section to reflect the results of discussion. Moreover, when bills are considered in Parliament, the proposals of representatives of the public, including members of the public who have been included in the relevant official working group, do not have to be included in the comparative table of amendments to the bill.

27. Provide further information on the practical applications of the provisions on public participation in the field covered by article 8.

Specific examples of public participation in the drafting of regulatory documents over the past two years include participation in the drafting of the following bills: on the protection, reproduction and use of fauna; on natural areas under special protection; and the Forestry Code. With regard to the role and significance of public participation, the bill on the removal of legislative bans on the import into and burial of foreign radioactive waste in Kazakhstan, which was introduced by a group of parliamentary deputies in the summer of 2001, deserves special mention. The public's negative attitude towards this legislative initiative, which included the opinion of the population living in the area designated for the burial of the radioactive waste, was the main argument for adopting a decision on the removal of the aforementioned bill from consideration by Parliament and the Government at the end of 2002 and the beginning of 2003.

Give relevant web-site addresses, if available:

Name of organization	Web-site address
Ministry of Agriculture	www.minagri.kz
ECO Forum of NGOs of Kazakhstan	www.ecoforum.kz
Anti-Nuclear Campaign of NGOs	www.antinuclear.kz

Article 9

28. List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.

Kazakhstan has established the necessary legislative conditions for public access to administrative and judicial procedures in all three categories of "Aarhus" cases (access to environmental information; participation in decision-making in specific projects involving economic or other activity; appeals against the actions (inaction) of private persons and State bodies that violate environmental protection legislation). It is important here to single out the 2000 Administrative Procedures Act and the 1999 Code of Civil Procedure. For example, the Code of Civil Procedure establishes a separate procedure for cases contesting decisions and actions (inaction) of State bodies, local self-government bodies, officials and civil servants.

During the reporting period, Kazakhstan focused most of its efforts to implement the provision of the Convention concerning access to justice on improving the practice of administrative and judicial review of environmental cases brought by the public. In 2002, as part of a project to assist Kazakhstan in implementing the Aarhus Convention, which was carried out with the support of the Danish Environmental Protection Agency, training courses were held in Kazakhstan and Ukraine for representatives of environmental NGOs, ministries and Supreme Court lawyers and judges. The main objective of the training was to familiarize the participants with the experience of NGOs that were involved in judicial proceedings involving environmental issues in Ukraine, Denmark and Moldova. The training courses were geared towards the implementation of article 9, paragraph 5, of the Aarhus Convention, which deals with the provision of information to the public on access to administrative and judicial review procedures.

From 1 to 4 November 2004, with support from the OSCE Centre, seminars on the Aarhus Convention were held for judges and environmental procurators from all oblasts of Kazakhstan. During the seminars, judges and procurators were made aware of the requirements of the Aarhus Convention concerning public access to justice. It should be pointed out that, during the seminars, problems of access to administrative and judicial review procedures were discussed using examples of specific cases relating to Kazakhstan. In particular, attention was drawn to long delays in courts' consideration of environmental cases brought by citizens and NGOs, unjustified refusals to consider statements, and the refusal to recognize NGOs as representatives of citizens' interests in court. The seminars covered the measures contained in article 9, paragraphs 1 to 5, of the Aarhus Convention.

With regard to article 9, paragraph 5, of the Aarhus Convention, it should be noted that measures are currently being taken to develop the human rights functions of the procurator's office, including in the field of environmental protection. Thus, according to the instruction on the organization of procuratorial supervision of the application of laws and the observance of human and civil rights and freedoms in the social and economic sphere of 22 November 2002, attention is drawn to the need for procuratorial offices to institute court proceedings in order to eliminate mass violations of legality that affect the rights and freedoms of a substantial number of citizens. In other cases, procuratorial bodies must make it clear that everyone has the right to defend his or her rights and freedoms in court.

29. Describe any obstacles encountered in the implementation of any of the paragraphs of article 9.

Based on the materials of a number of court cases that were examined in the preparation of the national report, the following obstacles to public access to justice may be noted:

- (a) Long delays in the administrative and judicial review of complaints and lawsuits brought by citizens and NGOs concerning violations of environmental protection legislation;
- (b) Unjustified refusal by courts to consider statements by citizens and NGOs in a number of cases;
- (c) Lack of any real opportunities for courts to prohibit or suspend an activity that is the subject of a complaint brought by representatives of the public, for the duration of the consideration of the case.

The last point refers to the fact that in practice a court can prohibit an activity that is the subject of a complaint at the request of representatives of the public only when it has upheld the claim. This means that, after the decision to dismiss a case enters into force, the respondent is entitled to sue the plaintiff for compensation for losses incurred by the measures that were taken to institute proceedings at the plaintiff's request. Bearing in mind that representatives of the public often lose such cases, this poses a serious obstacle to the possibility for citizens and NGOs to apply to a court for a restraining order.

During the seminars for judges and environmental procurators, held in November 2004, the participants also drew attention to the predetermined outcome of many environmental cases owing to the fact that priority is given to the economic interests of the State or a particular region.

30. Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?

According to Supreme Court data for 2002-2003 and the first half of 2004, there were 1,734 civil lawsuits involving environmental protection. There are no data on the percentage of court cases brought by the public. At the same time, the records of individual courts in Kazakhstan indicate that the number of such cases is extremely small and that the majority of such cases are instituted by State environmental protection bodies and procuratorial bodies.

31. Give relevant web-site addresses, if available:

Name of organization	Web-site address
Supreme Court	www.supcourt.kz
Office of the Procurator-General	www.procuror.kz
OSCE Centre in Almaty	www.osce.org/almaty

32. If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.

Provided that they are adapted to the needs of the population of each individual region, the provisions and norms of the Aarhus Convention directly affect the interests of a very large segment of the Kazakh population. In Soviet times, many large-scale projects that had extremely serious environmental consequences were carried out in Kazakhstan; for a long time, the public had no access whatsoever to information about such projects. It is sufficient to cite the open testing of nuclear weapons at the Semipalatinsk test site, where the population of the affected districts to this day continue to suffer from the harmful consequences of long-past decades. For this reason, there is great demand in Kazakhstan for environmental information not only about proposed activities but also about many projects that were carried out in past decades; public participation is largely related to efforts to overcome the environmental problems inherited from the Soviet period.

From an international legal standpoint, the Aarhus Convention is also of special importance to Kazakhstan. The Convention is only one of two international legal mechanisms for the observance of human rights based on individual communications from citizens, which are available to Kazakhstan. The other mechanism began to operate when Kazakhstan ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Aarhus Convention thus provides citizens and voluntary organizations in Kazakhstan with the necessary experience in using international mechanisms to protect environmental rights; the Convention also provides State bodies with experience in considering alleged cases of non-observance in an international instance.

Lastly, the Aarhus Convention plays an extremely important role in Kazakhstan in the implementation of the constitutional norm intended to protect citizens' environmental rights. Article 31, paragraph 1, of the Constitution states that "the State shall commit itself to preserving an environment that is conducive to human life and health". The Convention creates a good and constantly evolving basis for implementing this constitutional norm, specifying the actions and measures to be taken by public authorities to improve public access to environmental information, to ensure that decisions affecting the environment take account of public opinion, and to make it easier for citizens and NGOs to file complaints against violations of environmental protection legislation by various enterprises and State bodies.
