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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)

IMPLEMENTATION REPORT

Kyrgyzstan^{*/}

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 Ministry of the Environment and Civil Defence (MECD) has signed a Memorandum of Understanding with the United Nations Institute for Training and Research (UNITAR), in accordance with which Kyrgyzstan has prepared, in the established format, a national self-assessment of the possibilities of implementation of the Convention. The non-governmental organizations (NGOs) that responded to the invitation to participate (Independent Environmental Assessment, Green Women, Partner Initiative Coalition, Biom, etc.) assisted in the preparation

^{*/} Unofficial translation as received by the secretariat. 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.

of the review, together with the various government departments involved in the implementation of the Convention (the Ministries of Health, Economic Development, Trade and Industry, Justice, Foreign Affairs, Agriculture, Water Management and the Processing Industry, the State Forestry Service and the Government Energy Agency). The materials obtained in the course of preparing the national review were used as the basis for the national report.

Since 25 November 2004, the national report has been available to the public on the official site of the Department of Ecology and Environmental Management (DEEM) of the MECD and all the interested parties were so informed. The proposals received were studied and corrections were made to the draft National Report. Moreover, with the support of the Organization for Security and Co-operation in Europe (OSCE), on two occasions discussions on the national report, to which representatives of the NGOs and government departments were invited, were held in the southern and northern regions. Various proposals for amendments and additions to the national report were also made during these discussions.

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).

The procedure for making environmental decisions is laid down in both special and sectoral laws and in the corresponding subordinate legislation. Each of these laws determines the competence and powers of the Government, the local authorities and the specially authorized State agencies.

Under the Constitution, the provisions of international agreements and treaties ratified by Kyrgyzstan are incorporated in the national legislation, where they are given precedence. This also applies to the Convention. Most of the provisions of the Convention are reflected in the national legislation and there is no need to pass new laws in order to implement them. However, it is necessary to develop separate implementing mechanisms.

There are financial constraints on the full implementation of individual provisions of the Convention.

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.

The existing legislation gives the public the right of access to information, including environmental information, the right to participate in decision-making and the right of access to justice.

The issues of access to information, participation in decision-making and access to justice are dealt with in the Constitution, and the laws on guarantees and freedom of access to information, environmental protection, the mass media, protection of State secrets, the profession of journalist, advertising, information technology, electrical and postal communications, licensing, the scientific and technical information system, copyright and related rights, expert

environmental appraisal, local self-government and local government administration, town planning and architecture, consumer protection, the civil service, civil service ethics, energy, non-profit organizations, Government regulations, sanitary-epidemiological well-being, the status of Kyrgyzstan, the basic principles of budgetary law, the basis of government youth policy, science and the basis of government scientific and technical policy, culture, freedom of religion and religious organizations, specially protected nature areas, health protection, standardization, unified measurements, joint stock companies, the procedure for considering citizens' proposals, petitions and complaints, the Tax, Land, Criminal and Civil Codes and the Codes of Criminal and Civil Procedure, the law on administrative responsibility, etc. These and other enactments, both sectoral and general, provide the necessary legislative underpinning, but there is a need to develop separate procedures and mechanisms for their implementation with account for the provisions of the Convention.

(a) The State agencies responsible for access to information and public participation in decision-making are developing appropriate procedures and mechanisms for ensuring the effectiveness of participation. A procedure for public participation in decision-making has been developed and approved and is constantly being improved and perfected in the light of experience. Appropriate procedures and rules for ensuring this participation have been developed by individual agencies; for example, the Government Energy Agency has developed a whole package of such rules, which are being successfully applied;

(b) The situation with respect to general environmental education is described in the Kyrgyz Ecological Security Concept and the Continuous Environmental Education Concept, developed and adopted thanks to the joint efforts of educators, teachers, university lecturers and the non-governmental organizations (Bigl', Biom, the Expert Association "Wildlife Management", Tree of Life). The main task is to provide for environmental education on a continuing basis and at all levels;

(c) Kyrgyzstan has a quite favourable legislative framework for the establishment of non-profit organizations. Article 8 of the Constitution reads as follows: "Voluntary associations based on free will and community of interests may be established in Kyrgyzstan. The State shall ensure respect for the rights and legitimate interests of voluntary associations".

The enactments aimed at ensuring public participation do not contain any provisions limiting the right of access to information on the basis of citizenship.

Nature Conservation Funds, whose resources can be used to encourage NGOs, individual citizens and groups of enterprises doing important work in the field environmental protection, have been established and are operating by Presidential Decree;

(d) Kyrgyzstan is actively engaged in international processes, including those in the field of environmental protection. The country is now party to 11 environmental conventions. Representatives of the NGOs are participating actively in international forums. Examples of such participation include the process of preparation for the World Summit on Sustainable Development (Johannesburg) and the Fifth Ministerial Conference "Environment for Europe" (Kiev, May 2003). A draft Environmental Strategy of the EECCA countries has been developed and discussed. The work of the representatives of the NGOs on the Intergovernmental

Commission on Sustainable Development for Central Asia, as members of the public council, is enabling the NGOs to participate in all the regional projects initiated by the Commission, etc.;

(e) Legislation is in force governing questions of liability for the persecution of people exercising their rights under the law.

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

- (a) The public is not sufficiently familiar with the Convention, its obligations and the possibilities for public participation in the process of environmental management;
- (b) Lack of a smoothly functioning mechanism of social interaction, which is preventing the full implementation of the existing legislation;
- (c) Low level of public involvement in general, including in the law-making process.
- (d) Information not being provided in good time;
- (e) The non-professionalism of the civil sector also militates against its effective involvement in the decision-making process;
- (f) Complete absence or shortage of information on the state of the environment with respect to many parameters (attributed to failures of the primary data collection system due to inadequate infrastructure and resources for continuous environmental monitoring;
- (g) The decisions taken are not always being implemented (see (b)).

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

In general, the legislation is in the process of being steadily improved. In practice, the national legislation has the necessary basic regulatory mechanisms. However, there is a need to develop the more clearly defined procedures referred to in the text of the report. Access to information is not restricted, except in the circumstances mentioned in the corresponding legislation. The public participates in the making of both economic and strategic decisions. Recently, moreover, joint work on legal documents has been encouraged. Likewise, although there are no restrictions on access to justice, in practice the courts are not much used since disputes are still being settled without judicial intervention. Actions are being brought against users of natural resources for infringements of the environmental protection legislation (seeking damages, cessation of activities, etc.).

A Public Council, set up within the Office of the President, considers *inter alia* environmental issues. Every year, the President organizes “Round Tables” to which representatives of the NGOs, the mass media, political parties and government agencies are invited. Appropriate decisions are taken in the light of the proposals submitted within the context of the work of the round tables.

6. Give relevant web site addresses, if available:

www.mecd.gov.kg - Ministry of the Environment and Civil Defence.

www.ecomon.kg - DEEM MECD KR.

ARTICLE 4

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

The existing legislation gives the public the right of access to information, including environmental information.

These issues are dealt with in the Constitution, the laws on guarantees and freedom of access to information, environmental protection, the mass media, protection of State secrets, the profession of journalist, advertising, information technology, electrical and postal communications, licensing, the scientific and technical information system, copyright and related rights, expert environmental appraisal, local self-government and local government administration, town planning and architecture, consumer protection, the civil service, energy, non-profit organizations, the regulations on civil service ethics, and the Criminal and Civil Codes, the law on administrative liability and the Codes of Criminal and Civil Procedure.

The Constitution guarantees freedom of speech and expression, stipulating that every citizen of the country has the right “to free expression and the dissemination of thoughts, ideas and opinions, to freedom of literary, economic, scientific and technical creation, freedom to publish, transmit and disseminate information” (art. 16). “Culture, art, literature, science and the media shall be free” (art. 36, para. 1).

“The adoption of laws that restrict freedom of speech or of the press is not permitted”. According to the Guarantees and Freedom of Access to Information Act, a request for information may (but does not have to) be in writing, in the form of a registered letter. Information concerning the rights and legitimate interests of the person making the request is provided free of charge. For the provision of other information, by agreement between the parties, a charge may be made (in accordance with the approved list of free and chargeable State services provided by executive agencies and their subdivisions).

Central and local government authorities, voluntary associations, enterprises, institutions, organizations and officials are under an obligation to provide information.

Access to information is ensured by publishing and disseminating the corresponding materials in periodicals, on television and radio news programmes, on websites, etc.

The media may not disclose State or trade secrets or publish information known to be false, etc.

The Information Technology Act is aimed at creating favourable conditions for satisfying the information requirements of citizens, institutions, organizations and government agencies on the basis of the creation of a modern information infrastructure and its integration into international information networks and systems.

Users – legal and natural persons, central and local government authorities, and voluntary associations – have equal rights of access to State information resources, are not obliged to justify to the holder of those resources the need to obtain the requested information, except for information to which access is restricted. Holders (owners) must provide users with information

from information resources on the basis of approved provisions or agreements free of charge or at agreed prices for information services. A refusal to provide generally accessible information from State information resources may be appealed in the courts. A refusal to grant access to open information and providing users with information known to be unreliable may also be appealed in the courts.

The Environmental Protection Act confirms the right of voluntary associations of citizens to obtain full and timely information on the state of the environment, the conclusions of State environmental impact assessments (EIAs), and information on construction projects.

Ministries, departments and other agencies holding environmental information must provide such information at the request of citizens and organizations. They have six weeks in which to consider a request.

These articles of the Act are binding and differ from the provisions of the Convention with respect to time limits (one month). This matter is being considered with a view to introducing amendments and additions to the legislation, but the primacy of international law, as laid down in a ratified document such as the Convention, still applies.

The Protection of State Secrets Act and the Trade Secrets Act govern the treatment of information as a State or trade secret. Although the Protection of State Secrets Act may be viewed as restricting the human right of access to information, it gives a definition of State secrets (divided into State, military and official secrets) and distinguishes them from non-State secrets (trade secrets, information for official use, not for publication, confidentiality of investigations, medical, personal and other forms of confidentiality).

The following may not be classified as secret: information concerning natural disasters and emergencies that threaten the health of the population; accidents and their consequences; the state of affairs with respect to the environment, the use of natural resources, public health, sanitation, culture, agriculture, education, trade, and law and order.

Citizens may be provided only with such information constituting State secrets as they need to perform their duties.

The Trade Secrets Act establishes the legal basis for the protection of commercial confidentiality in the country. According to the Act, a trade secret should be taken to mean information which is not a State secret relating to the production, technology, management, or financial or other activity of an economic operator, the disclosure of which might harm that operator's interests. Information on the pollution of the environment and the extent of the damage it has caused cannot be treated as a trade secret.

The Copyright and Related Rights Act governs copyright relations. Moreover, Kyrgyzstan has signed the Commonwealth of Independent States (CIS) Agreement on intellectual property rights.

In 1997, the Legislative Act Publication Procedure Act was adopted. According to the Law on the procedure for the consideration of citizens' proposals, petitions and complaints, all government agencies must ensure citizens, under the Constitution and the laws, the right to

submit, in written or oral form, to State, public and other organs, enterprises, organizations and institutions proposals to improve their activities, petitions, and complaints about the actions of their officials. This law lays down the procedure for the processing of citizens' letters and petitions by public authorities.

The laws and regulations do not provide for restrictions on access to information relating to judicial proceedings. At present, there is no practice of appealing to the courts in cases relating to access to environmental information.

Environmental information is held by the MECD, the State Forestry Service, the State Geological and Mineral Resources Agency, the Ministry of Agriculture, Water Management and the Processing Industry and the Ministry of Health. Under the laws and regulations, in accordance with their powers and official functions, these ministries and departments collect, analyze and disseminate environmental information.

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

Most of the laws on access to environmental information are capable of fairly broad interpretation and the procedures and mechanisms that enable their provisions to be implemented are not sufficiently well developed.

The problem is not so much access to information on request as keeping the public informed in order to facilitate considered decision-making (active information). Lack of funds, the absence of clear-cut procedures and ignorance of rights make it difficult to ensure that the public is kept properly informed.

Information on the state of the environment is neither a State nor a trade secret. The justification for a refusal to provide documentation in connection with a public environmental appraisal is the presence in the subject of appraisal of information constituting "a secret protected by law" since the subject of environmental appraisal is not merely information but actual documents containing a quantity of "non-environmental information". In order to estimate the extent of the effect of a project it is necessary to use information on the capacity of the plant, the raw material supply, the storage area, the number of shifts, etc., i.e. matters which can be regarded as trade secrets.

The right of access to information on draft laws in preparation is governed by a whole series of enactments. However, citizens are not always informed of legislation in preparation and therefore cannot participate in the discussions and thus exercise that right.

For lack of funds the complete texts of draft laws are not published and the site of the Ministry of Justice is periodically inaccessible. The complete texts of draft laws are freely obtainable in the corresponding committee of the Parliament (Zhogorku Kenesh) provided that the draft is not confidential. Thus, citizens mostly exercise their rights on their own initiative.

It follows that, theoretically, draft legislation can be accessed in the decision-making stage but genuine procedures are not always provided. There is a legal basis for timely access to information in order to participate in decision-making in connection with the planning of

economic activity, but as practice shows the initiative displayed by the citizens themselves with respect to the procedures in question is fairly weak.

The information received by the user is sometimes of poor quality, incomplete or inaccurate. There may be a lack of interdepartmental coordination, expressed in the preparation of replies by different departments. There is no clear-cut system for the exchange of environmental information, although some efforts are being made. The MECD is now providing opportunities for information to be placed on its own web page, but this is insufficient to build an effective information network.

The shortage or complete absence of information on the state of the environment with respect to many parameters is attributable to failures of the primary data collection system due to the lack of infrastructure and resources for continuous environmental monitoring.

Users of natural resources lack a departmental monitoring structure and, consequently, do not possess reliable information on their own enterprise and may distort information on discharges and emissions, the state of treatment plants and emergencies that threaten the environment and human health.

One of the worst problems is the failure to provide timely information on decision-making. There are no procedures for providing the public with information in the initial stage of a proposed activity.

Another problem is the inability of the person requesting access to information to make out a proper request.

The principal regular sources of environmental information include the MECD, the State Forestry Service, NGOs, international and national projects and programmes, international organizations and scientific institutions. Information is occasionally provided by local authorities and educational institutions. Enterprises and commercial organizations do not provide environmental information, with the exception of the Kuntor Operating Company, which is a focus of public interest.

The implementation of the legislation on access to information is being monitored at the initiative of the active NGOs (those concerned with the protection of rights, the environment, the interests of journalists, women, etc.).

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?

The Government does not compile statistics on these indicators. However, the specially authorized government agencies which hold environmental information are doing everything possible to ensure access to that information for all those wishing to obtain it. Legislation adopted on processing citizens' letters and petitions lays down the procedure for such interaction. In the course of a single year, the MECD alone provides information in response to requests from about 1,000 addresses. Moreover, information is regularly updated on the web site and placed in the mass media. Mention should also be made of the work being done in this

connection by the other specially authorized government agencies in the field of environmental protection.

10. Give relevant web site addresses, if available:

www.mecd.gov.kg - MECD

www.ecomon.kg - DEEM MECD

www.minjust.gov.kg - Ministry of Justice

www.gov.kg - State Internet Portal

www.law.kg - Public Fund to Aid the Development of the Legal Infrastructure and Legal Education

www.ecopage.freenet.kg/elaw.html - Current legislation

ARTICLE 5

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

(a) Public authorities holding environmental information are required to provide timely access to reliable updated environmental information, in accordance with the regulations governing their activities.

The principal holders of environmental information have websites on which information is permanently displayed and updated. The exchange of information between ministries and departments holding environmental information has been organized.

Work is in progress to establish a coordination centre for communications with the public within the MECD, as the executive agency for the fulfilment of obligations under the Convention.

An emergency warning system capable of disseminating information rapidly and without delay is in operation;

(b) There is a fairly well-developed legislative framework for ensuring access to information and transparency. There is a system of measures for establishing liability for non-compliance;

(c) Practically all the specially authorized government agencies operate electronic databases containing information on the state of the environment and environmental protection;

(d) Since 1997, the MECD has regularly issued a national report on the state of the environment giving a fairly complete account of the situation, jointly prepared by all the ministries and departments involved. These reports can be consulted on the official website of the DEEM MECD.

The National Statistical Committee also regularly issues a statistical bulletin on the environmental indicators;

(e) The right of access to information on draft laws in preparation is governed by a whole series of enactments. In accordance with Art. 21 of the Regulations Act, the ministries and departments prepare draft laws on the basis of the Government's bill schedule, which is available on the site of the Ministry of Justice but, for lack of resources, cannot be published in any form for general discussion. Information on the Government's activities relating to the preparation of draft laws is provided through a government electronic database organized by the Ministry of Justice on the basis of the draft laws and other documents passing through the Ministry.

This electronic database is managed by the Information and Legal Centre of the Ministry of Justice, which provides access to the database for legal and natural persons under the procedure laid down.

Proposals received from citizens and their associations are taken into account in developing draft schedules for the preparation of draft laws.

In 1997, the Law on the procedure for publishing legislative acts was adopted.

The right of access to information on draft laws in preparation is governed by a whole series of enactments. However, citizens are not always informed of the progress of the bill and therefore cannot participate in the discussions and hence exercise that right. The complete texts of draft laws can be obtained in the corresponding committee, provided that the draft is not confidential. Thus, citizens exercise their right mostly on their own initiative. It follows that although, theoretically, there is access to the draft documentation in the decision-making stage, genuine procedures are not always provided.

International agreements in force (except for agreements of an interdepartmental nature) are officially published in the Parliamentary Gazette, the collection of acts and laws of the President and in the official publications of the Government, in accordance with the laws on regulations and the procedure for publishing laws. International agreements of an interdepartmental nature are published in the official publications of those departments or the Government.

The public authorities disseminate information through the media, communication measures, the Internet, and special publications.

Almost all the ministries and departments have a press service or public relations office for liaising with the media. A common tool for working with the media is the press conference (mainly in the capital) and press releases. The oblast administrations also have press secretaries.

Communication measures (seminars, conferences, round tables) are mostly used within the context of projects financed by international organizations. Reports, pamphlets, and accounts of the work done on projects and the problems identified are among the materials distributed to participants, who include representatives of the NGOs and journalists.

Numerous government sites have recently appeared (presidential, electronic government, the sites of various secretariats and State programmes, and ministerial sites).

Special publications, reviews, reports, pamphlets and bulletins are mostly issued within the context of international donor projects.

Under the legislation, public authorities are obliged to provide information upon written request within the period laid down. In accordance with the Regulations Act, the preparation of draft laws by ministries and departments is based on the Government bill schedule. According to representatives of the Ministry of Justice, it is placed only on the ministerial site and, for lack of resources, cannot be published in any form for general discussion.

Draft laws and other enactments which have been expertly appraised by independent analysts are being proposed for wide discussion on an information site. Through voting and comments, on the site's forum, government agencies are able to acquaint themselves with public opinion on the problems discussed. Those without access to the Internet can obtain information and express their opinions through the media;

(f) Under the Guarantees of Access to Information Act, central and local government authorities, citizens, voluntary associations, enterprises, institutions, organizations and officials are required to provide information.

Access to information is ensured by publishing and disseminating the corresponding materials through periodicals, on television and radio news programmes, websites, etc.

Enterprises and commercial organizations do not provide environmental information, with the exception of Kumtor Operating Company, which is a focus of public attention. The legislation provides for an environmental audit system, by means of which an enterprise can obtain information about its environmental situation; the environmental certification of enterprises also makes it possible to obtain information. However, entrepreneurs are not interested in disclosing this information, although there are economic levers for incentivizing enterprises and private individuals actively engaged in work involving the environment, in particular as regards openness and transparency;

(g) In developing plans, programmes, strategies and policies the MECD gathers the necessary proposals by giving out information about developments in preparation and inviting partnerships. The Ecological Security Concept, the Comprehensive Development Framework, the National Poverty Reduction Strategy and the Continuing Environmental Education Concept, *inter alia*, were jointly prepared in this way.

Kyrgyzstan has not signed the Cartagena Protocol on Biosafety but the United Nations Environment Programme/Global Environment Facility (UNEP/GEF) "Development of Framework Biosecurity Structures" project is currently being implemented. Under this project, enactments are being inventoried with a view to improvement, and the situation with respect to the monitoring of production in the provinces is being investigated. Under the legislation, citizens have the right to a favourable living environment whose factors do not have a harmful effect on man and to obtain from the central and local government authorities information about the quality and safety of food products.

Food products must satisfy human physiological needs and must not have a harmful effect. Food products, food additives and ingredients must comply with the sanitary regulations. In producing food products it is permissible to use food additives authorized under the procedure laid down.

The production, application (use) and marketing of novel kinds (developed and produced for the first time) of food products, food additives and ingredients are permitted if sanitary-epidemiological certificates have been issued;

(i) The Protocol on Pollutant Release and Transfer Registers (PRTRs) has not been ratified. Nevertheless, Kyrgyzstan is planning to sign the Protocol, as officially announced at the Conference of Ministers in Kiev.

Within the context of the preparatory work on the creation of a national comprehensive system of surveys and pollutant release and transfer registers accessible to the public, the Ministry:

- (1) Together with the State statistical agencies has analyzed the existing systems for the collection and processing of data;
- (2) Has studied the existing statistical reporting forms and the instructions for completing them and begun working on their optimization;
- (3) Has estimated the reliability of the data collected on a sample of 20 enterprises in Bishkek and the Chui oblast;
- (4) Within the context of the compilation of a single Catalogue of Data Sources (DSC) of environmental information for the EECCA countries has recorded 133 data sources in Kyrgyzstan and has disseminated the information on the site on which the DSC has been placed.

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

- (1) Lack of a single centre for the collection and communication of environmental information.
- (2) Lack of funds is preventing access to reliable, up-to-date and complete environmental information.
- (3) The inaccessibility of the sites to the general public.
- (4) Information is not being provided in a timely fashion.
- (5) Lack of a single national environmental monitoring system is preventing access to up-to-date reliable information on the state of the environment.
- (6) Obsolete technology and the lack of sufficient funding is preventing the national report on the state of the environment from being widely circulated. Small print runs for the national report, collections of statistics, etc.
- (7) The chief problems with the web pages are that they are not sufficiently informative and that the opportunities for user access are restricted by the generally inadequate information technology (IT) infrastructure and poor communication.

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?

The government agencies responsible for environmental protection issues are constantly receiving requests of different kinds, both from individual citizens and from NGOs, about the state and protection of the environment, both in individual districts and with respect to proposed activities. In connection with the legislation on the processing of letters, the site of the Ministry of Finance can be cited as an example of efficient operation. It contains material on regulations in preparation and in force, budgetary information and information on the environmental protection measures of all the government agencies. At present, with the support of donors, plans are being made to convert the information into a format accessible to citizens.

Another example is the partnership project “Open Kyrgyzstan” of the Soros-Kyrgyzstan Fund and the Secretariat of the National Council on Good Governance.

Draft laws and other enactments which have been expertly appraised by independent analysts are placed on the information site for wide discussion. Through voting and comment, on the site’s forum, government agencies are able to acquaint themselves with public opinion on the issues discussed. Those who do not have access to the Internet can obtain information and express their opinions through the media.

Moreover, the MECD reports on environmental matters, regularly and widely, in the media.

14. Give relevant web site addresses, if available:

www.mecd.gov.kg - MECD

www.ecomon.kg - DEEM MECD

www.minjust.gov.kg - Ministry of Justice

www.minfin.kg - Ministry of Finance

www.mfa.kg - Ministry of Foreign Affairs

www.president.kg - website of the President

www.gov.kg - Government Internet Portal

www.cdf.gov.kg/ru/cdf – Comprehensive Development Framework up to 2010.

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

The national legislation regulates the participation of the civil sector in economic decision-making. The Constitution is a starting point for the granting of rights and freedoms to citizens and voluntary associations. These rights are governed by the laws on environmental protection, expert environmental appraisal, mountain areas, specially protected nature areas, water users' associations, water, the sanitary-epidemiological well-being of the population, industrial and consumer waste, mineral resources, tailings dumps and slag heaps, consumer protection, electrical energy, building and architecture, etc.

In accordance with the Environmental Protection Act, the public has the right to carry out a public environmental appraisal, participate in the verification of compliance with the environmental protection legislation, request that officials guilty of infringing that legislation be called to account, obtain information on planned construction projects, and bring claims and actions against enterprises and officials for compensation for injury and adverse effects on the environment.

One of the basic principles of the Environmental Appraisal Act is the principle that public opinion must be taken into account. In addition to State environmental appraisals, public appraisals are also possible. The specially authorized body responsible for carrying out State environmental appraisals must:

- (1) Send the organs of local State administration and local self-government, voluntary organisations (associations) and citizens that have submitted reasoned proposals concerning the environmental aspects of the implementation of a proposed activity materials showing that these proposals have been taken into account in carrying out the State environmental appraisal;
- (2) Provide the media, at their request, with information on the results of a State environmental appraisal.

The organs of local State administration and local self-government in the corresponding area must:

- (1) Assign experts to the expert committees to participate in the environmental appraisal of projects it is intended to carry out in their area and also in cases of possible environmental impact of an economic activity being planned for a neighbouring administrative-territorial unit;
- (2) Make and implement, within the limits of their powers, decisions on questions of environmental appraisal on the basis of the results of public discussions, referenda, surveys, and the petitions of voluntary environmental organizations and movements;
- (3) Organize public environmental appraisals at the request of the local population.

Before any decisions are taken, an EIA, which must contain the materials of the public discussion of the proposed project, must be carried out.

An EIA must be available in all forms and stages of development of the project documentation, and serves as a basis for the decision of the public authority specially authorized to make environmental appraisals.

A public environmental appraisal may be organized and carried out at the initiative of citizens, organs of local self-government and duly registered voluntary associations. It can be carried out independently of the State environmental appraisal.

Under the Land Code, citizens and their voluntary associations have a right to participate in the consideration of issues of public interest relating to the use and protection of land, through meetings, gatherings, etc.

State agencies must inform the public about the allocation and granting of land as a site for facilities whose activities affect the public interest.

The Local Self-Government and Local State Administration Act stipulates that local self-government is a right, guaranteed by the Constitution, and confirms the capacity of local communities to manage affairs of local importance through representative and executive organs of government, as well as through the direct participation of citizens.

(a) Kyrgyzstan applies the provision of the Convention concerning public participation in decisions on whether to permit proposed activities listed in the annex. The procedures are laid down in the national legislation referred to above. Moreover, Kyrgyzstan, being a Party to the Espoo Convention, also applies its corresponding provisions with respect to objects having a transboundary impact.

The development of an EIA is mandatory for project documentation relating to the activities listed in annex I. The procedure for developing EIAs is described in the corresponding Directive registered by the Ministry of Justice. Paragraph 3 of that Directive requires the participation of the public in public hearings concerning a specific object. The documents containing the EIA materials are subjected to a State environmental appraisal in the MECD, and if the resulting opinion is not favourable the project cannot be carried out. Moreover, the legislation also provides for a public environmental appraisal, carried out at the initiative of the public. Its conclusions have the status of a recommendation and are taken into account in the conclusions of the State environmental appraisal. The procedure for carrying out State and public environmental appraisals is laid down in the legislation.

Geographically, Kyrgyzstan is a small and largely mountainous country and is therefore highly susceptible to anthropogenic influences. The State has therefore been forced to take measures to protect the unique natural heritage by tightening up various nature conservation aspects of the legislation. Thus, environmental protection clauses are being included in almost all proposed projects involving activities that might harm the environment. These include, for example, geological works, tanneries with a capacity of less than 12 tons per day, etc. The EIA procedure covers almost all activities capable of having a harmful effect, but if this effect is not significant,

then the environmental clauses may be cancelled and public hearings may not always be required;

(b) The public is informed of the proposed activity within the context of the preparation of the EIA, which is carried out at the very beginning of the planning process. Before the EIA is prepared, a declaration of intent is drawn up and submitted to the local authorities for them to decide on the choice of a site;

(d) In accordance with the legislation in force, EIA materials submitted to the Ministry for purposes of State environmental appraisal must contain the results of the public discussions and the responsibility for holding these discussions in good time rests with the initiator of the activity who must give the public access to the project documentation and conduct and summarize the discussions. In accordance with the procedures adopted, the materials of the EIA must include alternative technologies and sites, which should also be considered in the discussions with the public. For notifying the public of the proposed activity the initiator of the project can use the media and web sites;

(e) The initiator of the activity carries out and takes responsibility for the work involved in holding discussions with the interested public;

(f) Under the national legislation, access to information on a specific activity is provided free of charge. There are restrictions on access to information if the information relates to a State or trade secret falling within the scope of the corresponding laws. All other information under article 6, para. 6, of the Convention is provided to the interested public by the initiator of the activity. This is reflected in the national legislation;

(g) The public hearing and discussion procedures provide for obtaining the opinions of the public on the proposed activity;

(h) The results of public participation are recorded, collected, analyzed and communicated to the initiator of the activity who will take them into account, if justified, and submit them, together with the EIA material, for State environmental appraisal in the MECD;

(i) Under the legislation in force, the results of the State environmental appraisal are made known to the public. The appraisal sets out the reasons for its conclusions;

(j) Under the current legislation on State environmental appraisals, if any changes are introduced into the project by the initiator of the activity or another appraisal, and hence perhaps another public discussion, takes place during its implementation, everything will depend on the nature of the changes introduced;

(k) Kyrgyzstan has not yet ratified the Cartagena Protocol on Biosafety, but is doing extensive preparatory work on its ratification, including preparation of the corresponding legislation.

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

- The public is not being informed of planned activities in good time;
- There are no procedures for feedback from the public, i.e. for keeping informed about its proposals;
- The passivity of the public;
- Inadequate grounds for proposals by the public concerning projects.

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.

The State statistical agencies do not compile statistics on public participation in decision-making with respect to specific projects. The MECD collects and generalizes experience of public participation in decision-making with respect to specific projects.

Examples include:

- (1) During consideration of the construction of a refuse treatment plant in Bishkek the project was discussed in all stages of decision-making. There was no support for the construction of the plant.
- (2) Construction of a gold-mining plant in Talas oblast. Public hearings were held, including with the public in the surrounding area, and the materials are now being generalized in connection with the completion of an EIA.
- (3) The operations of a waste treatment plant in Ivanovka were halted on the basis of the reasoned proposals of the public concerned.
- (4) Consideration of the construction of the Kyrgyz-China paper factory in Chui-Tokmok. On the basis of the interaction between the government agencies and the public the production of cellulose, the most environmentally harmful feature of the technology in question, was eliminated from the project.

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.

Under the Constitution, the nation of Kyrgyzstan is the bearer of sovereignty and the sole source of State authority.

In accordance with the Environmental Appraisal Act, programmes, projects, long-term plans, development schemes, etc. are subject to expert, including public, appraisal.

Moreover, under the Non-Profit Organisations Act, NGOs are entitled to participate in the development of plans and programmes.

The Building and Architecture Act gives citizens the right to information on the environmental, town-planning and socio-economic state of populated areas and on the development and stage of implementation of programmes and projects associated with changes in land use and development; and to participate in considering and discussing town-planning programmes and projects affecting the interests of groups or individual citizens.

The EIA procedure provides for the development of EIAs to precede plans, strategies and programmes and, as already mentioned, for public participation. Anyone wishing to do so may participate in the development and implementation of almost any environmental protection programme. Before being approved, each programme must pass through the procedures for consideration and agreement and for obtaining comments and proposals.

A good example of the partnership relations between civil society and government is the process of preparation of the Comprehensive Development Framework and the National Poverty Reduction Strategy, which are strategic documents on a national scale and include an environmental chapter.

These documents went through all the stages, namely, public discussion; focus groups; organization of dialogue in the form of "Round Tables"; creation of advisory groups; and the holding of seminars.

The leadership of a number of groups was assigned to representatives of NGOs. Such a strategically important group as that on the improvement of environmental policy and the legal framework was headed by a representative of an environmental NGO.

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

Under the legislation in force, there are practically no obstacles to the participation of civil society in the development and implementation of environmental programmes and policies, and these rights are being exercised fairly successfully as rights of partnership.

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

- Lack of funding, which is making the development and implementation of programmes ineffective;
- Poor interdepartmental coordination in the development and implementation of programmes, which is leading to duplication and inefficiency;
- A primitive feedback procedure: proposals received from the civil sector are often non-professional and incompatible with the State budget;
- The lack of initiative on the part of the civil sector means that the interests of the more active individual groups which display greater interest are being reflected.

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

NGOs have participated in the development of national State programmes such as the Araket, Manas, Ardager and Bilim programmes, the strategy “Comprehensive Development Framework for Kyrgyzstan up to 2010”, the National Poverty Reduction Strategy, the National Plan of Action for the Protection of the Environment, the Programme of Social and Economic Development of Bishkek 2004-2008, the Continuing Environmental Education Concept, the Forest Sector Development Concept, the National Forestry Programme, the Programme for the Social and Economic Development of Small Towns, etc.

23. Give relevant web site addresses, if available:

www.mecd.gov.kg - MECD

www.ecomon.kg - DEEM MECD

www.cdf.gov.kg/ru/cdf - Comprehensive Development Framework for Kyrgyzstan up to 2010.

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

Under the Environmental Protection Act, citizens have the right to participate in the development and implementation of environmental protection measures, including the law-making process.

The Law on regulations stipulates that citizens and organizations may be enlisted as independent experts in carrying out legal, financial-economic, environmental and other scientific specialized appraisals of draft enactments, as decided by the law-making body.

Under the Constitution, the Criminal Code and the Civil Code, all forms of discrimination are prohibited. Any manifestation of discrimination is liable to prosecution under the law.

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

- For lack of funding, it is not always possible to publish draft legislation in the media;
- Because information about draft legislation in preparation is not available in good time, the public is unable to participate in the decision-making, as a result of which laws need to be supplemented and amended almost immediately after adoption;
- The regulations are usually not subject to environmental expert appraisals;
- The laws adopted do not include procedures and mechanisms for their implementation.

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

A draft Decree repealing Government Decree No. 694 of 4 November 2003 on the transfer of Lake Chatyr-Kul' into the category "fishing waters of State significance" as inconsistent with the obligations under the Biodiversity Convention (on the basis of a petition by the NGO Independent Environmental Appraisal) has been prepared and is being agreed.

In 2003, at the proposal of the Government Committee on the Development of Entrepreneurship, article 13 on "Prohibition of the release of pollutants into the atmosphere from static sources of pollution" was removed from the Protection of the Atmosphere Act. This decision violated the logic underlying the order of exposition of the rules and provisions of the Act and eliminated the most important mechanism of government regulation, namely, prevention of the unjustified pollution of the atmosphere, which can lead to a sharp uncontrolled decline in air quality. The MECD's experts have prepared a draft law to restore this article. In connection with the consideration of this draft, members of Parliament have pointed out the need for coordination with industry and the NGOs. The minutes of the Round Table served as a basis for steering this initiative through the government into Parliament. In parallel with the official procedure, the voluntary associations Independent Environmental Appraisal and Green Women organized the collection of signatures for the submission of a petition on the restoration of the prohibition on the release of pollutants into the atmosphere to the Government and a number of members of the Legislative Assembly. The draft law has now been voted down by Parliament.

At the wishes of the public, as expressed in the partnership forum in which representatives of the media, the NGOs, the political parties and executive organs of government participated, Presidential Order No. 269 of 5 December 2003 and Government Decree No. 395 of 30 July 2001 on the interaction between government agencies and the public, including the law-making process, were issued.

27. Give relevant web site addresses, if available:

ARTICLE 9

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

The legislation governing relations in the field of public access to justice consists both of the legislation described in article 3 and the Criminal and Civil Codes, the Code of Administrative Liability, and the Codes of Civil and Criminal Procedure. The Guarantees and Freedom of Information Act governs matters arising in the process of implementation of the universal right to seek, obtain, research, produce, communicate and disseminate information freely and without impediment.

A request for information may (but does not have to) be expressed in writing (with indication of the full name and address of the requesting party and identification of the information requested or its nature) and registered. Information concerning the rights and legitimate interests of the requesting party is provided free of charge

The law provides for the possibility of instituting legal proceedings against acts or omissions that infringe a citizen's right of access to information (articles 138 and 257 of the Criminal Code and the Code of Administrative Liability) under the procedure laid down in the legislation. The rules on the procedure for providing information, for example, the time frame, the amount of information to be provided, the commission of a wrongful act, are laid down in the procedural law.

The Information Technology Act establishes conditions for the protection of the legitimate interests and rights of the State and of legal and natural persons in carrying out activities connected with the creation, accumulation, storage, transmission and dissemination of information using information technology means.

Under this Act:

- (1) A refusal to grant access to open information and providing information known to be unreliable can be appealed in the courts. In all cases, those who have been denied access to information and those who have received unreliable information have the right to claim damages.
- (2) The courts will hear disputes concerning the unjustified assignment of information to the restricted category, actions for damages, cases of unjustified denial of information to users, and other infringements of the rights of users and treaty obligations.
- (3) Heads and officials of government agencies and organizations guilty of unlawfully restricting access to information or infringing the protection of information regime are liable under the criminal and civil codes and the code on administrative offences.

The judicial system is established by the Constitution and the laws, and consists of the Constitutional Court, the Supreme Court and district courts. Specialized courts may be authorized under constitutional law.

Under the Code of Civil Procedure, any interested party may institute legal proceedings to protect his rights and legitimate interests where they have been infringed or not enforced. In the cases provided for by law, the government and other departments have the right to institute legal proceedings for the protection of State public interests.

The Constitution provides that, in accordance with a decision of a meeting of citizens, the local *kenesh* or another representative organ of local self-government in villages (aiyls), settlements or towns, aksakal (elders') courts may be set up from among the aksakals or other citizens of good repute and authority. The aksakal courts consider property, family and other cases specified by law, submitted for their consideration with the consent of the parties, for the purpose of achieving the reconciliation of the parties and fair settlements consistent with the law. The decisions of the aksakal courts can be appealed under the procedure laid down by the legislation. Under the legislation, bailiffs are required to enforce the decisions of the court in civil, arbitration and administrative cases, as well as judgements and decisions in criminal cases involving claims relating to ownership. The Code of Arbitral Procedure provides for final court decisions to be binding on all central and local government authorities and other departments, enterprises, officials and citizens throughout the territory.

Despite continuing reform, the judicial system is still not effective enough in protecting and restoring infringed rights. An advisory committee on the judicial system is making a study of the legal sector (with the technical support of the Asian Development Bank) with a view to improving the quality, transparency and efficiency of the judicial system in accordance with the judicial reform provisions of the Comprehensive Development Framework (CDF).

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

There are delays in trying cases associated with infringements of the environmental legislation.

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?

Every year, about 200 cases involving infringements of the environmental protection legislation are referred to the courts for trial.

31. Give relevant web site addresses, if available:

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.

Ensuring public access to information, decision-making and justice in environmental matters is helping to protect the right of every member of present and future generations to live in an environment conducive to his or her health and well-being.