

## AARHUS CONVENTION IMPLEMENTATION REPORT

The following report is submitted on behalf of the Kyrgyz Republic in accordance with decisions I/8 and II/10.

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### REPORT ON IMPLEMENTATION

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

1. The draft third National Report was drawn up on the basis of analysis of the two previous National Reports of the Kyrgyz Republic, Kyrgyzstan's legislation, programmatic documents, plans, declarations, and materials from seminars, training events and forums. The Report was prepared with the support of the UNDP's Environment Programme by the NGO Independent Environmental Expertise and with active participation from environmental NGOs and the public.

Requests were made to all interested state structures for the necessary information. The information received has been included in the report.

The draft Report was posted for discussion on the website of the State Agency for Environment Protection and Forestry ([www.nature.kg](http://www.nature.kg)), and also on the sites of the CARNet network "Environmental and Sustainable Development in Central Asia and Russia" ([www.caresd.net](http://www.caresd.net)) and the NGO Independent Environmental Expertise ([www.eco-expertise.org](http://www.eco-expertise.org)).

On 19 November 2010, a roundtable discussion was held with the participation of representatives of interested ministries, government departments, business structures and non-governmental organisations.

The draft National Report was redrafted taking into account comments and suggestions made at the round table, and also in accordance with information received in written form from NGOs and the wider public, and then reposted on the website for discussion.

## **II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT**

2. The procedure for environmental decision making in the Kyrgyz Republic is laid down in both special laws and in sectoral and corresponding subordinate acts. Each of these laws defines the competence and powers of the Government, local self-government and specially authorised state agencies.

3. Under the Constitution of the Kyrgyz Republic, the provisions of international agreements and treaties ratified by the Kyrgyz Republic are incorporated into national legislation, where they are given precedence. This also applies to the Aarhus Convention. Most of the provisions of the Convention are reflected in national legislation, and there is no need to adopt new laws to implement them. However, separate implementing mechanisms do need to be developed. There are financial constraints hindering full implementation of individual provisions of the Convention.

4. From 2005, reforms were carried out in the Kyrgyz Republic with the aim of concentrating all power in one pair of hands and weakening the role of Government, and the parliamentary majority was in the hands of the pro-presidential party. All political, economic, and law-enforcement levers were concentrated in the hands of the ruling elite. In April 2010, a change in power took place and the form of government changed (in accordance with the new Constitution of the Kyrgyz Republic, adopted in June 2010, the Kyrgyz Republic transformed from a presidential state to a parliamentary republic). The President was stripped of his functions. The Jogorku Kengesh (Parliament) and the Constitutional Court were dissolved by the Decree of the Interim Government of 7 April 2010. The legislative mandates and functions of the Jogorku Kengesh were assumed by the Interim Government until the election of a new Jogorku Kengesh. Changes were made to the Constitution and an Interim President was elected through a referendum held on 27 June 2010,. Public opinion was essentially ignored in the drafting of the new Constitution. Elections to the new parliament took place on 10 October 2010, but at the time of

preparation of this Report, it had not yet began to operate. During this period, the following types of legislative acts were drafted and adopted: Interim Government (IG) decrees, IG instructions, and IG resolutions. According to a 19 May 2010 IG Decree: “Until a newly elected President of the Kyrgyz Republic takes power in accordance with the new Constitution of the Kyrgyz Republic, the position of Interim President is introduced.” The political situation meant that the leadership of ministries and government departments changed frequently between April and October. During this period the entire legislative process was not carried out in accordance with law and was chaotic. The right of access to information about draft legislation and public participation in the decision making process was violated. This period was a “transitional” period, and its unusual nature needs to be borne in mind when analysing the situation in the country.

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

5. The issues of access to information, participation in decision making and access to justice are dealt with in the Constitution and national legislation.

6. In practice, the Ombudsman has no experience in applying the Aarhus Convention. However, the Ombudsman’s office has been involved in protecting public environmental interests.

7. Between 2007 and 2010 a raft of legislation added to and clarified provisions that had been developed in earlier legislation in the fields of access to information, public participation in decision making processes and access to justice. Procedures and mechanisms are being developed to implement provisions of the Convention both in sectoral and in general legislative acts. The Law on State Statistics (No. 40 of 2 February 2007), Regulations on the Interagency Commission on Information Security (Government Instruction No. 136 of 18 June 2007), the Law Introducing Amendments to the Law on Trade Secrets (No. 125 of 26 June 2007), the Law Introducing Amendments to the Law on the Ombudsman (Akyykatchy) (No. 97 of 15 May 2007), the Kyrgyz Republic’s Conceptual Framework for Environmental Security (Government Resolution no. 469 of 16 October 2007), the Law Introducing Additions and Amendments to the Law on the Procedure for Considering Communications from Citizens (No. 16 of 18 January 2008; No. 214 of 11 June 2009), Regulations Confirming the Standards for Conduct of Various Types of Specialised Audit of Draft Laws in the Jogorku Kengesh (Jogorku Kengesh Resolution No. 75-IV of 1 January 2008), the Law on Optimising the Legislative Basis for Regulation of Entrepreneurial Activities (No. 55 of 21 February 2008), Instructions on Completing Report Forms on Progress towards Implementing the Law on Access to Information held by State Authorities and Local Self-administrations of the Kyrgyz Republic (Prime Ministerial Instruction 210 of 22 April 2008), the Law on Local Self-government and Local State Administration (No. 99 of 10 April 2008), the Law on Additions and Amendments to the Law on the Protection of Consumer Rights (No. 158 of 6 June 2008), the Law on State Public Service Procurement (No. 162 of 5 June 2008), the Law on the General Technical Regulations for Ensuring Environmental Security (No. 151 of 12 May 2009), the Law on Public Private Partnership (No. 154 of 11 May 2009), Presidential Decree on Urgent Measures to Reform Management of the Mining Industry (No. 272 of 12 June 2009), the Law on Guaranteed State Legal Aid (No. 227 of 17 July 2009), the Law on Legislation (No. 241 of 20 July 2009), the Action Plan to Strengthen Law Enforcement and Management in the Forestry Sector (Government Resolution 534 of 15 August 2009), the Law on State Registration of Legal Persons and Subsidiaries (Representative Offices) (No. 57 of 20 February 2009), Regulations on Receiving the Public (Government Resolution No. 182 of 25 March 2010), the Constitution of the Kyrgyz Republic (27 June 2010).

#### **Article 3, paragraph 2**

8. The state authorities responsible for access to information and public participation in decision making

are developing appropriate procedures and mechanisms to ensure the effectiveness of public participation.

9. Appropriate procedures and rules for ensuring such participation, in the form of public councils attached to ministries and government departments, have been developed by individual line departments.

10. The legislative acts for ensuring public participation do not contain any provisions restricting the right of access to information on the basis of citizenship of the Kyrgyz Republic.

11. A Presidential Decree has established environmental protection funds, the resources of which can be used to encourage NGOs, individual citizens and groups of enterprises engaged in important work in the field of environmental protection.

12. According to the Law on Access to Information held by State Authorities and Local Self-administrations of the Kyrgyz Republic (henceforward the Law on Access to Information), “state authorities and local self-government administrations shall establish sub-units and appoint officials responsible for directly providing information to the public”. The portal of government services for citizens is [www.govservices.kg](http://www.govservices.kg).

13. Under the National Action Plan for the Forestry Sector for 2006-2010 and the National Forest Programme (2005-2015), a strategy has been drawn up for disseminating information on the forestry sector; there are also plans to increase the capacity of the main interest groups in this field.

14. Public reception centres have been opened at ministries and government departments, websites have been created, library stocks of official information have been created, and registries of official documents at ministries may now be freely accessed. A Council on Information and Communications Technology has been created under the Government of the Kyrgyz Republic.

15. In 2008, Instructions on Completing Report Forms on Progress towards Implementing the Law on Access to Information held by State Authorities and Local Self-administrations of the Kyrgyz Republic (henceforward Instructions on Completing Forms) were adopted. These define the requirements for provision of information in accordance with the rules, conditions and procedure for responding to requests to provide information held by state authorities and local self-government administrations, and also set out the grounds to refuse to provide such information. If a citizen or representative of the business sector makes a complaint about unreliable or incomplete information, or untimely provision of the service, the head of the relevant authority, the department head and heads of organisations and enterprises within its authority all bear responsibility.

16. Pursuant to Presidential Decree 212 on Improving Cooperation between State Authorities and Civil Society (29 September 2010), public oversight councils have been created at ministries and agencies. The Councils were created at 10 pilot ministries and departments, including the State Agency for Environmental Protection and Forestry.

### **Article 3, paragraph 3**

17. A number of national and political instruments address education for sustainable development.

18. Cooperation agreements in the field of environmental education have been concluded with the country's institutes of higher education.

19. The State Agency for Environmental Protection and Forestry produces a national report on the state of the environment, and publishes the newspapers *Jer Ene* and *Les Tokoy* quarterly. Professional development workshops and courses are held jointly for staff of provincial environmental protection

directorates, NGOs and commercial firms. Relevant information is available on the official site of the State Agency for Environmental Protection and Forestry. An environmental journalism festival is held once a year by NGOs.

20. Environmental protection NGOs take part in activities to raise awareness of environmental problems. They engage in such activities at their own expense or with assistance from the National Environmental Protection Fund and donors.

21. In order to promote sustainable development in the country, and with the support of the Institute for Advanced Studies at the UN University in Japan, the first EECCA Regional Centre for Sustainable Development Expertise was created in 2007 at the State Agency for Environmental Protection and Forestry.

22. In March 2010, with the support of the OSCE Centre in Bishkek, a project “Integration of Environmental Security and Sustainable Development Issues into the Education Sector in Kyrgyzstan” was carried out in order to support sustainable development. In 2010, work began to introduce the issues of environmental security and sustainable development into state education standards.

23. The environmental movement BIOM has issued more than 10 different environmental posters, covering issues such as food safety, climate change and health. These have been widely distributed in all regions of the country.

24. Despite the fact that there is a range of programmatic documents which cover education for sustainable development, they are not reflected at all in the workplans of the Ministry of Education.

#### **Article 3, paragraph 4**

25. Kyrgyzstan has a relatively favourable legislative framework for the establishment of voluntary organisations. Article 21 of the Constitution establishes that “citizens of the Kyrgyz Republic have the right of association”. The public’s right to access to information and to take part in decision making is recognised by international agreements and a number of regulatory acts.

26. Under the Law on Legal Persons (State Registration), the Ministry of Justice and its local bodies at the place where the legal entity in question is located carry out state registration of legal entities, with the exception of certain cases set out by law.

27. The registering body receives a package of founding documents, consisting of the statute (regulations), or the founding agreement and statute, or simply the founding agreement, unless otherwise specified in legislative acts. For non-profit organisations, “founding documents” mean the decision of the founder, the founding agreement and/or statute (regulations), depending on the legal and organisational form, as stipulated by law.

28. Legal persons must register with the state within 10 days of the submission of their application. There is no fee for the registration of NGOs.

29. The State Agency for Environmental Protection and Forestry has an NGO advisory board; the Inter-State Commission on the Sustainable Development of Central Asia also has a civil society council and a young people’s environment network. The mining and extraction industry has undertaken a transparency initiative, and there is a comprehensive Central Asian strategy for the sustainable management of land resources. There is also a water users’ association, a rural association of drinking water consumers and an international business council.

30. There are a number of regulatory acts on recognition of and support for local and mass (community) organisations.

31. The Government does not provide financial support for environmental protection NGOs.

32. From the definition of the term “non-commercial organisation” in Article 153 of the Tax Code of 2009, it follows that non-commercial organisations are not now obliged to receive a certificate from the tax service stating that the organisation is noncommercial. This is a positive change which simplifies tax registration procedures for non-commercial organisations.

33. Section 12 of the Tax Code of the Kyrgyz Republic (“Sale Tax”) separately recognises the work and services carried out by non-commercial organisations and charitable organisations. One of the types of charitable activity envisaged is activities for protection of the environment and animals.

34. In accordance with the Law on State Public Service Procurement non-commercial organisations which work in the field of environmental protection are eligible to compete in tenders to provide public services. However, as of today not one state public service tender has been registered in the field of environmental protection.

### **Article 3, paragraph 7**

35. Kyrgyzstan is actively engaged in international processes, including those involving environmental protection. It is currently a party to 13 environmental conventions. Representatives of NGOs participate actively in international forums. One example of such participation is the NGO representatives’ civil society council under the Inter-State Commission for the Sustainable Development of Central Asia, the members of which take part in all regional projects initiated by the Inter-State Commission. At the national level, activities are carried out under the mining and extraction industries’ transparency initiative, and also under the Europe and North Asia Ministerial Conference on Forest Law and Governance international process. An environment and security initiative is being carried out in the Fergana valley.

36. It is common practice to include NGO representatives in government delegations taking part in international negotiations on environmental matters.

37. Internal consultations are held between officials responsible for the Aarhus Convention and those who take part in other international forums on environmental matters in order to address the implementation of the guidelines. However, the consultations are not systematic.

38. Non-governmental organisations regularly take part in international forums and are members of international thematic networks (such as the International POPs Elimination Network (IPEN), and the European Ecoforum).

39. In accordance with the regulations and practice of the Interstate Commission on Sustainable Development (ICSD), public representatives (the ICSD Public Council and the Youth Environmental Network of Central Asia) in partnership with officials at the State Agency, the Ministry of Economic Development and the ICSD Research and Development Centre, design programmes, participate in preparatory work and discussions on programmes and documents presented at ICSD meetings, and directly participate in ICSD sessions.

40. In addition, transboundary consultations between Kazakhstan and Kyrgyzstan on transboundary EIAs are undertaken with the participation of the public in fulfillment of the Espoo Convention

### **Article 3, Paragraph 8**

41. Kyrgyzstan has legislation governing liability for the persecution of people exercising their rights under the law.

42. There have been no known cases in which provisions on defamation and slander or any similar provisions of civil or criminal law have been invoked in the context of environmental decision making, nor have there been any cases in which an NGO was ordered to pay damages in connection with its environmental protection activities in defence of state interests or in relation to litigation.

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

43. Such obstacles include the following:

- The lack of a smoothly functioning mechanism for social interaction prevents the full implementation of the existing legislation;
- Information is not provided in a timely manner;
- There is insufficient or no information on many aspects of the state of the environment (this is due to failures of the primary data collection system owing to inadequate infrastructure and resources for continuous environmental monitoring);
- The public and members of the civil service are not sufficiently familiar with the Convention;
- The low level of professionalism of civil servants and of civil society also hampers effective public involvement in the decision making process; and
- Once adopted, decisions are not always implemented.

*De jure*, access to information, public participation in the decision making process and access to justice on issues of environmental protection in Kyrgyzstan are enshrined in national legislation, but *de facto* information requested is often not provided at all, provided incompletely or not provided to the necessary standard. The websites of state authorities do not always provide all the essential information required. Public participation in the decision making process is usually just for show. The public rarely goes to court when their rights have been violated because they do not believe that the legal system is fair.

Internet access is limited in remote regions of the country. There are few, if any, programmes on television about environmental protection and ecology, and no programmes at all in the Kyrgyz language. The standard of environmental journalism is low.

All these factors mean that environmental problems are only tackled by a small group of specialists, as the majority of the population is not informed. This is one of the reasons for the environmental illiteracy of the population. As of yet, no attempts have been made in the country to develop a general communication strategy on environmental issues that would take into account the actual needs of the population as well as the interest of various groups in society.

The volume of information published on the environment and sustainable development does not meet the demand of the population, particularly in the regions. Environmental education issues are not sufficiently reflected in national strategic documents. There is no conceptual approach to environmental education in schools. School leavers do not have a broad understanding of environmental issues, and recruiting ecology teachers is problematic.

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

44. In practice, national legislation has the necessary basic regulatory mechanisms. However, there is a need to develop more clearly defined procedures, which are referred to in the text of the report. Access to information is not restricted, except in the circumstances mentioned in the relevant legislation. Civil society participates in the adoption of both economic and strategic decisions. Recently, joint work on legal instruments has increased. Although there are no restrictions on access to justice, in practice there are few court cases, since disputes are still being settled out of court. There have been some precedents in which actions have been brought against users of natural resources for infringements of environmental protection legislation.

45. In 2009, a national website was created to raise awareness of the Aarhus Convention in Kyrgyzstan ([aarhus.nature.kg](http://aarhus.nature.kg)).

46. NGOs in the Kyrgyz Republic are playing a key role in raising awareness of environmental issues and informing the public about environmental problems.

47. A network of seven resource centres has been created in the framework of the European Union project “Civil society network on access to information, participation in the decision making process and access to justice on environmental issues in the Kyrgyz Republic”, which is being implemented by the Regional Development Centre and the BIOM Environmental Movement (henceforward the Support Network).

48. The Support Network has produced three short radio broadcasts on the Aarhus Convention, which were aired on 25 June, the anniversary of the signing of the Aarhus Convention, on radio stations in all provinces of the country.

49. An Aarhus Information Centre operates in Osh city.

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

50. [www.gov.kg](http://www.gov.kg), [www.kenesh.kg](http://www.kenesh.kg), [www.kyrgyz-el.kg](http://www.kyrgyz-el.kg), [/aarhus.nature.kg](http://aarhus.nature.kg), [www.nature.kg](http://www.nature.kg), [www.water.kg](http://www.water.kg), [www.minfin.kg](http://www.minfin.kg), [www.mes.kg](http://www.mes.kg), [www.stst.kg](http://www.stst.kg), [www.med.kg](http://www.med.kg), [www.dgsen.kg](http://www.dgsen.kg), [www.meteo.knet.kg](http://www.meteo.knet.kg), [geo.gov.kg](http://geo.gov.kg), [www.minjust.gov.kg](http://www.minjust.gov.kg), [www.sudsystem.kg](http://www.sudsystem.kg), [www.prokuror.kg](http://www.prokuror.kg), [www.mfa.kg](http://www.mfa.kg), [www.caresd.net](http://www.caresd.net), [www.ekois.net](http://www.ekois.net), [www.carec.kz](http://www.carec.kz), [www.ecoport.kz](http://www.ecoport.kz), <http://eco-expertise.org>, [www.treelife.org.kg](http://www.treelife.org.kg), [www.eiti.org.kg](http://www.eiti.org.kg), [www.biom.org.kg](http://www.biom.org.kg), [/unison.kg](http://unison.kg)

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

51. Existing Kyrgyz legislation gives the public the right of access to information, including environmental information.

52. In May 2007, a Presidential Decree was issued on implementation of the Law on Access to Information in which it was decreed that state authorities should bring their regulations into conformity with the Law.

53. The term “state authorities” encompasses organisations permanently constituted under the Constitution, constitutional and other laws, and presidential decrees, which are empowered to exercise

legislative, executive or judicial state power and to make binding decisions and ensure their implementation, and which are financed from the national budget, as well as any territorial subdivision or structural unit that carries out a function or part of a function of a central state authority.

54. Under the Law on Access to Information and the Instructions on Completing Forms, the “requesting individual” is a citizen of the Kyrgyz Republic or a legal person independent of its form of ownership and type of organisation, or its subsidiaries or representative offices. Foreign citizens and stateless persons, legal persons of foreign states, their subsidiaries and representative offices also enjoy the right of access to information.

55. In accordance with the Law on the Procedure for Considering Communications by Citizens, “Citizens have the right to make communications in the state, official or any other language of the peoples of the Kyrgyz Republic. Answers to written communications from citizens are given in the language of the communication. If it is impossible to give an answer in the language of the communication, the state or the official language of the Kyrgyz Republic shall be used.” “Citizens who have come from remote regions of the Republic have the right to be received as a priority. Refusal of reception is not permitted.”

#### **Article 4, paragraph 1**

56. According to the Law on Access to Information, “each request for information shall be registered by the state authority and the local self-government”. In accordance with the approved government regulations, state authorities register all incoming and outgoing letters, including requests for information. The corresponding replies are also registered. There is no practice of submitting reports.

57. Under the aforementioned government regulations and in accordance with record-keeping requirements, the person filing the request is under no obligation to state the reason for it. The person requesting the information is entitled to include in the request a contact telephone number, as well as any other information that he or she believes may facilitate the fulfilment of the request.

58. When copies of documents created by state authorities or local self-government are provided in response to a request, they are formatted in line with the requirements of the Standard Instructions for Government Document Management (Record Keeping), approved by Government Resolution 370 of 25 August 1995.

59. The Regulations on Instructions on Completing Forms apply to requests for information received by state authorities and local self-government in the form of direct verbal requests, requests by telephone, and written requests transmitted directly, by post, by courier or by electronic means of communication, in a form and with a content that meets the requirements of national legislation.

60. Written requests for information should be completed on standard information request forms. The standard request forms should be posted on the websites of state authorities and local self-government.

61. The procedure and conditions for providing information by email or on the the internet are also defined in the Law on Information Technology, the Temporary Regulations on the Procedure for Disseminating Information on the State Internet Portal (Presidential Decree 10 of 15 January 2010), and also Government Resolution 594 of 14 December 2007 on Confirming the Standard Requirements for State Authorities and Local Self-administration for Creating and Supporting Websites.

#### **Article 4, paragraph 2**

62. The Law on the Procedure for Considering Communications from Citizens sets out the deadlines for refusals to provide information. If a reply to a request cannot be prepared within two weeks, the person who filed the request is notified, and given the reason for the delay. The delay may not exceed two weeks.

63. Under the Law on Access to Information, refusal to provide information, and any other action or decision by an official which violates legislative requirements, may, at the decision of the person requesting the information, be the subject of a complaint to a higher official or the Ombudsman, or the subject of a court action, as provided by law. Persons who do not fulfil, or improperly fulfil, their obligation to provide information are subject to criminal, administrative, civil, disciplinary or material penalties, as established by law.

64. The provision of information held by state authorities and local self-government is one of the duties of the heads of these bodies or, by their written authorisation, other officials within the scope of their authority. Heads of state authorities and local self-government are personally responsible for ensuring compliance with and implementation of the Law on Access to Information and the Instructions for Completing Forms, as well as ensuring that requests are properly managed.

65. Special structural subdivisions (services) are established within state authorities. Regulations are approved under established procedures about these services and subdivisions, including terms of reference of staff members. These regulations, besides setting out the titles, rights, duties and responsibilities of officials, must also contain details of categories of information provided, the forms of state and additional services needed to provide it (including the procedure for accessing electronic information systems), the procedure for payment for services provided, and other conditions of provision of access.

66. A written request for information (preparation of a response) should be answered within a two week period. The head of the body may, however, specify a shorter period, which is set out in his/her instructions. The period for making information available can only be extended by order of the head if issues emerge during preparation of the response that make meeting the deadline difficult. The party requesting information must be notified of any extension and of the reasons justifying it. The deadline for providing information must not be extended by more than two weeks. Non-provision of a response within the period established by the Instructions on Completing Forms, or a failure to inform the requesting party about an extension to the response period, is deemed a refusal to provide a response.

#### **Article 4, paragraphs 3 and 4**

67. If the State Agency for Environmental Protection and Forestry does not hold the information requested, it sends a request to the department that has the required information, and subsequently issues an official reply.

68. Under the Law on the Procedure for Considering Communications from Citizens, if it is necessary to clarify the subject of the enquiry, the person responsible for preparing the reply may, on his or her own initiative, clarify the subject of the enquiry with the requesting party by using their contact telephone number. If there is no contact telephone number, the person responsible for preparing the reply clarifies the subject of the enquiry independently.

69. Each ministry and department maintains a list of officials working with documents with a stamp for official use.

70. Kyrgyz legislation does not provide for any special restrictions on access to information on administrative procedures.

71. The Law on Trade Secrets establishes the legal basis for the protection of trade secrets in the Kyrgyz Republic. "Trade secret" means information which is not a state secret and which relates to the production, technology, management, or financial or other activity of a business enterprise, the disclosure of which might harm the interests of the enterprise. Under Article 5(3) of the Act, information on

environmental pollution and the extent of the damage it has caused cannot be treated as a trade secret.

72. The concept of “private data” is not defined in Kyrgyz legislation. Corporate bodies may avail themselves of the right to protect private data in matters relating to copyright and intellectual property.

73. Once classified information has been published through any channel, the confidentiality of such information is no longer protected.

74. Under the Law on Access to Information, in order to ensure that the confidentiality of information is maintained, an evaluation is conducted with a view to establishing the parts of the documents and materials that should have restricted access. The parts of the documents and materials that do not contain confidential information must be prepared for public scrutiny and must be accessible within one week after the relevant document is signed. State secrets and confidential information are considered to be restricted-access information. Information is classified as a state secret in accordance with the legislation on state secrets.

75. Law 125 on Introducing Amendments to the Law on Trade Secrets made the following amendment: “the following types of information cannot be considered trade secrets: information about the size and composition of the work force; the salary of the head of the organisation and members of its collegiate executive board; the pay scheme; working conditions, including health and safety; information about the number of people suffering injuries and professional diseases; and the number of job vacancies.”

#### **Article 4, paragraph 5**

76. Under the Law on Access to Information held by State Authorities and Local Self-administrations, the reply to a written request is prepared within two weeks. If, in accordance with requirements, the request must be referred to another public authority or local administration, the time limit for the reply is counted from the day the request is received by the other public authority or local administration, which is required by law to provide the information. If a reply to a request cannot be prepared within two weeks, the person who filed the request is informed accordingly, along with the reason for the delay. The delay may not exceed two weeks.

77. The information is made available in accordance with the Government-approved list of paid and unpaid services provided by public authorities. The State Agency for Environmental Protection and Forestry provides environmental information free of charge in response to official requests. Certain other types of information provided by State authorities are made available on a paid basis, but only as set out in the schedule of charges approved by Kyrgyzstan’s Anti-Monopoly Committee.

#### **Article 4, paragraph 6**

There is no information on non-provision of environmental information as a consequence of a trade secret.

#### **Article 4, paragraph 7**

78. A refusal to provide information should give the following information: the reason for refusal, including concrete references to national legislation, and information on how to appeal the refusal (the Law on Access to Information).

#### **Article 4, paragraph 8**

79. The information is made available in accordance with the Government-approved list of paid and unpaid services provided by public authorities. Public authorities and local administrations prepare replies to requests from citizens and organisations free of charge. Fees are charged for the postal delivery of the reply, and there is a fee for copying services when more than five pages are to be copied.

80. Public authorities and local administrations may exempt persons from socially vulnerable groups from paying a fee for information.

81. Conduct of scientific research is regulated by the list of paid services, subject to agreement with the client, based on the approved rate for one person-day of research.

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

82. Most of the laws on access to environmental information are subject to fairly broad interpretation, and the procedures and mechanisms for facilitating these provisions have not been sufficiently developed. The problem is not so much access to information on request (passive information) 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.

83. Information on the state of the environment is neither a state nor a trade secret. The justification for refusing to provide documentation in connection with a public environmental audit is the presence in the subject of audit of information constituting “a secret protected by law”. The right of access to information on draft laws and subordinate legislation is regulated by the Government Decision on the means of analysing the effect of laws and regulations on entrepreneurial activities and by other regulatory legislation. However, citizens are not always informed about draft legislation; that is why they cannot participate in the discussions and exercise the aforementioned right.

84. Draft legislation is posted on the websites of the Jogorku Kengesh (Parliament), the Government, the Ministry of Justice and other ministries and government departments in advance.

85. There is no clear-cut system for the exchange of environmental information, although some efforts are being made. The State Agency for Environmental Protection and Forestry is currently providing opportunities for posting information on its own web page; however, this is insufficient for building an effective information network.

86. Users of natural resources lack a departmental monitoring structure and, consequently, do not have reliable information about their own enterprises and may distort information on discharges and emissions, the state of treatment plants, and emergencies that threaten the environment and public health. Failure to provide timely information on decision making poses the most difficult problem. Another problem can be the inability of the person making the request for information to formulate a proper request.

87. The principal regular sources of environmental information include the State Agency for Environmental Protection and Forestry, NGOs, international and national projects and programmes, international organisations and scientific institutions.

88. Implementation of legislation on access to information is monitored by NGOs working on issues including human rights, the environment, journalism and women. Despite the fact that in recent years the law has set out procedures and mechanisms for providing information with sufficient clarity, in practice state authorities do not always duly fulfil these requirements.

89. Receiving information from businesses is problematic.

90. Libraries have been created in ministries and government departments with the aim of implementing

the Law on Access to Information. However, procedures and mechanisms have not been developed to provide access to these libraries for the public.

91. Despite the fact that the Presidential Decree on Implementation of the Law on Access to Information envisages “awareness-raising among the population with the support of the mass media about the procedure for realising opportunities granted by the Law to receive information and the annual publication in the mass media of reports on the implementation of the Law”, such activities have only been carried out to a very limited extent.

92. The majority of requests for information submitted to local self-government and to provincial and district state administrations have not been answered (including a request to the provincial administration of Chuy Province from 26 August 2009 and a request to the Bishkek Mayor’s Office from 3 April 2010).

93. Answers to written requests to state authorities are not always provided within the required period, or are not full.

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

94. The Government does not compile statistics on these indicators. However, specially authorised government agencies that possess environmental information are doing everything possible to ensure access to such information for all those wishing to obtain it. Kyrgyzstan has adopted legislation on processing citizens’ letters and requests; this legislation establishes the procedure for interaction. In the course of a single year, the State Agency for Environmental Protection and Forestry alone provides information in response to requests from about 1,000 addresses. All requests and complaints are registered. A hotline is in operation. Moreover, information is regularly updated on the website and is disseminated in the media. The same can be said of the work being done in this connection by the other specially authorised government agencies in the field of environmental protection.

95. With the aims of ensuring access to information and informing the public of the categories of information available to the population from state authorities or local-self government, registers are being created of open access official documents. These include the name, date of adoption, reference number and publication data of every published document, and also other information decided by the body creating the register.

96. In 2009, 95 communications were made by citizens to the State Agency for Environmental Protection and Forestry. Of these, 91 were acted upon and four were not corroborated with facts. In 2009, senior officials received 129 citizens on various issues. In 2010, 166 communications were received directly. Of these, 108 were resolved favourably, 18 were refused, 12 were not corroborated with facts and 22 were clarified.

97. The mandates of many NGOs include environmental awareness-raising and ensuring access to environmental information.

98. The Support Network has carried out seminars for NGOs, the mass media, the population, representatives of provincial administrations, territorial branches of the State Agency for Environmental Protection and Forestry and other organisations in all provinces of the country about the procedures for access to environmental information.

99. As part of a project, in 2008 the international NGO Milieukontakt carried out research into public

access to environmental information and developed recommendations to improve access to environmental information.

100. The Support Network has made more than 70 requests to state authorities and local self-government for information. It has analysed the length of time taken to receive answers and the level of completeness of the information provided.

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

101. See paragraph 50.

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

##### **Article 5, paragraph 1**

102. Public authorities holding environmental information are required to provide timely access to reliable updated environmental information, in accordance with the regulations governing their activities. Kyrgyzstan is currently creating an “electronic government”. The implementation of this programme provides for a series of measures to ensure that individuals and corporate bodies have access to information bases on the activities of public authorities. A government decision has approved a unified set of requirements for the creation and support of websites of public authorities and of local administrations.

103. The principal holders of environmental information have websites on which information is permanently displayed and updated. Information is exchanged between ministries and departments holding environmental information.

104. Work is under way to establish a public information clearing house in the State Agency for Environmental Protection and Forestry, the executing agency for the fulfilment of obligations under the Convention.

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

106. There is no institutional system for the transfer of data among public authorities in certain branches of government. Information from public authorities is received on request. Environmental data is provided free of charge.

107. Following the Ministerial Conference of the United Nations Economic Commission for Europe (UNECE) held in Kyiv, environmental indicators were drawn up and sent to all ministries and government departments involved in environmental protection.

108. When statistical report forms are collected and forwarded to the National Statistical Committee, the report forms completed by enterprises are synthesised by the local environmental protection directorates of the State Agency for Environmental Protection and Forestry.

109. Information is provided on a real-time basis. Such information includes daily reports on weather,

air quality and ionising radiation (Kyrgyzhydromet, the national hydrometeorological service).

110. Public authorities and local administrations are obliged to publish, every year, accessible information on the level of protection of the population and territories against emergencies, on measures taken to ensure their safety, on forecast and actual emergencies and on ways and means of protecting the population, as well as other information that public authorities and local administrations are required by law to provide to citizens and organisations.

111. The obligation of representatives of industry and the private sector to provide information is set out in such legislation as the Law on Access to Information (Guarantees and Freedom of) (1997, amended in 2002), the Law on Radiation Safety (1999) and the Law on Natural and Anthropogenic Emergencies (Protection of the Population and Territories) (2000). Practically all large enterprises prepare annual reports on their compliance with environmental protection measures. The reports are posted on their respective websites, and are also available upon request.

112. After the clean-up of the cyanide accident by the Kumtor Gold Company, the public was informed about the parties held liable, the reasons for the emergency and the measures taken to prevent future accidents.

113. State authorities are obliged to create registers of official documents that are freely accessible (Law on Access to Information).

114. Every quarter, the State Customs Service provides consolidated data to the State Agency for Environmental Protection and Forestry about the import and export of ozone-depleting substances and products which contain them, including the company details of importers and exporters. This is used to create a report for the Montreal Protocol Secretariat (Regulations on State Regulation of Import and Export of Ozone-depleting Substances and Products which Contain Them). The Ministry of Justice administers the State Register of Laws and Regulations (Regulations on the Procedure for the Administration of the State Register of Laws and Regulations). The Ozone Centre administers a database of ozone-depleting substances.

115. Enterprises annually provide reports about the composition and actual volume of emissions and discharges of pollutants and waste handling to state statistical bodies, the specially authorised state authority for environmental protection and the state body for recording negative effects on the environment (General Technical Regulations on Ensuring Environmental Safety).

116. In December 2008, an agreement was signed to create a Eurasian Economic Community information system in the field of technical regulations, and sanitary and phytosanitary measures.

117. In 2008, the first national forestry inventory began. A National Evaluation of Forestry and Arboreal Resources database will be created using its findings.

118. In 2007, the Government adopted the Regulations on Coordination of the Unified State Register of Statistical Units of the Kyrgyz Republic with the Official Registers of State Authorities and the Procedure for Informational Cooperation between Interested State Authorities". However, these regulations do not mention the specialised mandated body in the field of environmental protection.

119. The Ministry of Emergency Situations operates an emergency warning system. Kyrgyzhydromet (part of the Ministry) carries out environmental monitoring, and its official site carries information about the weather, the quality of atmospheric air and surface water and radiation levels. It also carries warnings about severe weather and sudden weather changes.

### **Article 5, paragraph 2**

120. There is a fairly well-developed legislative framework for ensuring access to information and transparency. There is a system of measures establishing penalties for non-compliance.

121. Regarding environmental metadata bases, a list of all enterprises has been prepared as part of a case study on the transition to a system of comprehensive environmental permits.

122. Recently the Ministry of Justice has recommended removing provisions on the powers of state authorities from draft and current laws. The Ministry cites the Constitution and the Law on the Government, under which it falls within the competence of the Government to define the mandates of ministries and government departments. When provisions on ministries and departments were adopted in December 2009 some functions were lost, duplication took place and parallel functions appeared. Moreover, changes to provisions have made it difficult to receive information about functions of state authorities and the dividing line between their responsibilities.

123. Most websites of state authorities only carry information in the official language. Not all ministry and department websites meet the Unified Requirements for Creation and Support of Websites by State Authorities and Local Self-government.

124. In accordance with the Law on Access to Information and the Presidential Decree on Implementation of the Law on Access to Information, state bodies are obliged to create conditions for receiving and examining information, and for taking extracts from documents and materials and making copies of them.

### **Article 5, paragraph 3**

125. Practically all specially authorised public authorities have electronic databases containing information on the state of the environment and environmental protection.

126. In accordance with the Unified Requirements for Creation and Support of Websites by State Authorities and Local Self-government, information carried on the websites of state bodies should be of appropriate quality, both with respect to its appearance and style (graphic design) and with respect to the completeness of information provided, including general dynamic resources.

### **Article 5, paragraph 4**

127. Since 1997, a national report on the state of the environment has been issued regularly. The National Statistical Committee also regularly issues a statistical bulletin on environmental indicators.

128. In connection with the development of ICT, the website of the State Agency for Environmental Protection and Forestry carries reports on environmental conditions by component over time, starting from 2000.

129. In accordance with the requirements of the Framework Convention on Climate Change and the Kyoto Protocol, records are kept of emissions of greenhouse gases and precursor gases. Reports are prepared irregularly (two national reports have been produced, in 2003 and 2008) and only with technical support from international organisations.

130. In 2009 the UNECE published its second review of environmental activities in Kyrgyzstan.

131. In 2009, with the support of the GEF, the State Agency for Environmental Protection and Forestry prepared the fourth national report on preservation of biodiversity.

132. Kyrgyzhydromet publishes annual reports on environmental pollution (air quality, surface water and

radiation).

133. On a regular basis the Ministry of Health issues a digest on trends in morbidity and the impact of the environment on public health and a state report on public health and epidemiology.

#### **Article 5, paragraph 5**

134. The right of access to information on draft laws in preparation is governed by a number of laws and regulations. In accordance with Article 21 of the Law on Legislation, the ministries and departments prepare draft laws on the basis of the Government's plan for draft legislation.

135. Proposals received from citizens and their associations are taken into account when draft plans for draft legislation are prepared. The complete texts of draft laws can be obtained from the relevant committee or on the website of the Jogorku Kenesh (Parliament), provided that the draft is not confidential. However, not all texts of draft laws are posted on the website in a timely manner. Thus, citizens exercise their rights mostly on their own initiative.

136. International agreements in force (except for agreements of an interdepartmental nature) are officially published in the Parliamentary Gazette, the compendium of presidential acts and laws and the official government publications, in accordance with the Law on Legislation and the Law on the Procedure for Publishing Laws. International agreements of an interdepartmental nature are published in the official publications of the relevant departments or in government publications. The public authorities disseminate information through the media, communication measures, the internet and special publications.

137. Almost all ministries and departments have a press service or public relations office for liaising with the media. Common methods of working with the media include press conferences and press releases. The provincial administrations also have press secretaries. Communication events (seminars, conferences, round tables) are mostly used within the context of projects financed by international organisations. A large number of government sites (presidential, electronic government, and also the sites of various secretariats and State programmes and ministerial sites) and NGO sites have recently appeared.

138. Special publications, reviews, reports, pamphlets and bulletins are mostly issued within the context of international donor projects. Under Kyrgyz legislation, the public authorities are obliged to provide information upon written request within the established time limit.

139. Draft laws and other regulations that have been evaluated by independent analysts are posted on the information site for wide discussion. Through voting and comments on the site's forum, government agencies are able to acquaint themselves with public opinion about the issues under discussion. Those without access to the internet can obtain information and express their opinions through the media.

140. Access to laws and regulations is provided by the "Toktom" information centre, and to some extent also on the sites of the State Agency for Environmental Protection and Forestry, the Ministry of Justice and other bodies.

141. The website of the State Agency for Environmental Protection and Forestry includes a database on laws and regulations on the environment – [www.nature.kg/lawbase](http://www.nature.kg/lawbase).

#### **Article 5, paragraph 6**

142. Under the Law on Access to Information, public authorities, local self-government, citizens, voluntary associations, enterprises, institutions, organisations and officials are required to provide information. Access to information is ensured through the publication and dissemination of the relevant

materials in periodicals, on television and radio programmes and on websites.

143. Measures similar to those mentioned in Article 5, paragraph 6, and which are specially intended for small and medium-sized enterprises, have not been taken.

144. National legislation enshrines the right of the population to be informed about risks which they may face in certain locations in the country and about essential safety measures (Law 239 on Civil Protection of 20 July 2009). However, state bodies and enterprises are not legally obliged to provide information about their possible impact.

#### **Article 5, paragraph 7**

145. When plans, programmes, strategies and policies are being drawn up, the State Agency for Environmental Protection and Forestry collects the required proposals by disseminating information on the drafts in preparation and by issuing invitations for partnership. Thus, Kyrgyzstan's Country Development Strategy, the Action Plan to Strengthen Law Enforcement and Management in the Forestry Sector, the Action Plan to Implement the Stockholm Convention on Persistent Organic Pollutants, the Environment Code, the Forestry Code, the guidelines for environmental safety and a number of other laws and regulations were drawn up through joint efforts.

146. Kyrgyzstan has signed the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. Citizens have the right to a favourable living environment that does not have harmful effects on humans, and to obtain from the state authorities and local government information about the quality and safety of food products.

147. Information on the state of the environment, monitoring, the activities of environmental protection departments, environmental policy priorities, analytical surveys and other information are included in publications.

#### **Article 5, paragraph 8**

148. At present, there are no legal requirements and/or practice regarding public participation in the attribution or monitoring of the use of eco-labelling.

149. In 2008, amendments were made to the Law on Consumer Protection making it compulsory to provide information about a foodstuff (labelling) if it contains genetically modified ingredients.

#### **Article 5, paragraph 9**

150. The Protocol on Pollutant Release and Transfer Registers has not been ratified owing to a lack of experience in establishing national registers. Kyrgyzstan is planning to sign the Protocol once it acquires the appropriate technical basis for establishing a register. In 2006, a list of all enterprises was prepared as part of a case study on the transition to a system of comprehensive environmental permits in Kyrgyzstan.

151. As part of the implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a memorandum of cooperation on clean development mechanisms was signed and ratified between the Governments of Kyrgyzstan and Denmark. Kyrgyzstan has adopted a Law on Greenhouse Gas Emissions (State Regulation and Policy). An inventory has been taken of persistent organic pollutants, a register has been established and a list compiled of ozone-depleting substances, and other steps have been taken.

152. A pollutant release and transfer register system has not yet been established.

153. In the framework of GEF/UNDP projects, two National Reports have been prepared on the

Framework Convention on Climate Change.

154. In order to implement the Environmental Security Conceptual Framework of the Kyrgyz Republic, a set of measures was developed for the period up to 2010, which included activities to prepare for and ensure signature of the Protocol on PRTRs.

155. The National Statistical Committee collects, collates and presents statistics about emissions of pollutants, discharges into water, and handling of waste, in accordance with standards of statistical reporting.

156. Kyrgyzgydromet monitors meteorological conditions, environmental pollution, air quality in towns and cities, the quality of surface water and radiation. The information is published on its website.

157. A system and methodological recommendations for classifying hazardous waste have been developed. These were approved in Government Resolution 9 of 15 January 2010.

158. The project “Strengthening Public Participation and Civil Society Support to Implementation of Aarhus Convention” was implemented between 2007 and 2009 with EU support. As part of the project, an assessment was made of the country’s potential to implement the Protocol.

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

159. The obstacles include:

- The lack of a single centre for the collection and communication of environmental information;
- Limited access to internet resources in remote parts of the country;
- Information is not being provided in a timely fashion. Lack of a single national environmental monitoring system is preventing access to reliable, up-to-date information on the state of the environment;
- The lack of sufficient funding for the State Agency for Environmental Protection and Forestry is preventing the national report on the state of the environment from being widely circulated. The national report and statistical handbooks have had small print runs.

160. In the period 2007-2010, mechanisms to disseminate information were defined and enshrined in law. However, data collection and database management remain problematic. The limited ICT skills of civil servants and poor awareness do not allow this means of providing information to be used to its full potential.

161. Environmental information is not sufficiently disseminated in the mass media or on the websites of state bodies.

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

162. The government agencies responsible for environmental protection issues are constantly receiving various kinds of requests, both from individual citizens and from NGOs.

163. Draft laws and other regulations that have been evaluated by independent analysts are posted on the information site for wide discussion. Through voting and comments on the site’s forum, government agencies are able to acquaint themselves with public opinion about the issues under discussion. Those without access to the internet can obtain information and express their opinions through the media.

164. In 2008, a Council on Information and Communications Technology was created reporting to the Government. This is the body that coordinates the development and implementation of state policy in information and telecommunications (Regulations passed by Government Resolution 468 of 22 August 2008).

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

165. See paragraph 50.

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

166. National legislation regulates the participation of civil society in economic decision making. The Constitution is the starting point for the granting of rights and freedoms to citizens and voluntary associations.

167. In accordance with the Law on Environmental Protection, civil society has the right to carry out public environmental audits, participate in verification of compliance with environmental protection legislation, demand the prosecution of officials guilty of infringing environmental legislation, obtain information on planned construction projects, and bring claims and actions against enterprises and officials for compensation for damage and adverse effects on the environment.

168. One of the basic principles of the Law on Environmental Audit is the principle that public opinion must be taken into account. A public environmental audit may be organised and carried out on the initiative of citizens, local self-government or duly registered voluntary associations. Public environmental audits may be carried out independently of state environmental audits.

169. Under the Land Code, Kyrgyz citizens and voluntary associations have the right to participate in the consideration of issues of public interest relating to the use and protection of land, through meetings, assemblies and other means.

170. Public authorities must inform the population about the allocation and granting of land as a site for facilities whose activities affect the public interest. The Law on Local Self-Government and Local State Administration stipulates that local self-government is a right guaranteed by the Constitution, and establishes that local communities are entitled to manage affairs of local importance through representative and executive bodies and through the direct participation of citizens.

171. The following legislation has been passed: the Conceptual Framework for Environmental Security (Presidential Decree 506 of 23 November 2007); Standards for the Conduct of Various Types of Specialised Audit of Draft Laws in the Jogorku Kengesh (Jogorku Kengesh Decision 75-IV of 18 January 2007), Law 55 on Optimising the Legislative Basis for the Regulation of Entrepreneurial Activities (of 21 February 2008), Law 99 on Local Self-government and Local State Administration (10 April 2008), Law 162 on State Public Service Procurement (5 June 2008), Law 151 on the General Technical Regulations for the Conduct of Environmental Audit (12 March 2009), Law 154 on Public Private Partnership (11 May 2009), and Presidential Decree 212 on Improving Cooperation between State Authorities and Civil Society (29 September 2010).

### **Article 6, paragraph 1**

172. 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 is a party to the Espoo Convention and applies the provisions of that Convention with respect to facilities having a transboundary impact.

173. The development of an environmental impact assessment is mandatory for project documentation relating to the activities listed in annex I. The procedure for developing environmental impact assessments is described in the relevant instruction registered by the Ministry of Justice. Paragraph 3 of the instruction requires public participation in public hearings concerning a specific facility. The documents containing the materials of the environment impact assessment are subjected to a state environmental audit in the State Agency for Environmental Protection and Forestry; if the findings of the audit are not favourable, permission for the project is not granted. Public environmental audit, may be conducted on the initiative of civil society. The findings of public audits have the status of a recommendation and are taken into account in the conclusions of the state environmental audit. The procedure for carrying out state and public environmental audits is laid down in the legislation.

### **Article 6, paragraph 2**

174. The public is informed of the proposed activity within the context of the preparation of the environmental impact assessment, which is conducted at the very beginning of the planning process. Before the assessment is prepared, a declaration of intent is drawn up and submitted to the local authorities in order to enable them to decide on a choice of site.

175. Under national legislation, any civil society group qualifies as “public concerned”.

176. Under Kyrgyz law, public participation is mandatory when major environmental decisions are taken. The regulations of the National Environmental Protection Fund encourage participation, including public participation.

177. Under the Law on Access to Information, refusal to provide information, and any other action or decision by an official which violates the provisions of the Law, may, at the decision of the person requesting the information, be the subject of a complaint to a higher official, the Ombudsman (Akyikatchy) or subject to a court action, as provided by law.

178. Under Kyrgyz law, persons guilty of not fulfilling or improperly fulfilling their obligation to provide information are subject to criminal, administrative, civil, disciplinary or material penalties.

179. In accordance with the Presidential Decree on Improving Cooperation between State Authorities and Civil Society, long-term sustainable mechanisms have been introduced to enable cooperation between the authorities and civil society in the processes of making and implementing decisions, and in creating the conditions for the implementation of civic initiatives. This is considered a priority area for state authorities and local self-government. For this reason, public observation councils have been attached to state authorities.

### **Article 6, paragraph 3**

180. As a rule, information on public hearings is disseminated in the media and by local self-administrations two months prior to the hearings. After the hearings, comments may be submitted within one month.

### **Article 6, paragraph 4**

181. Before any decisions are taken, an environmental impact assessment, which must contain the

materials of the public discussion of the proposed project, must be carried out. Public participation is mandatory at all stages of the assessment procedure.

182. In accordance with the legislation in force, the materials of an environmental impact assessment submitted to the State Agency for Environmental Protection and Forestry for purposes of a State environmental audit must contain the results of the public discussions. The responsibility for holding these discussions in good time rests with the initiator of the activity. In accordance with the procedures adopted, the materials of the environmental impact assessment must include alternative technologies and sites, which should also be considered in the discussions with civil society. In order to notify the public of the proposed activity, the initiator of the project can make use of the media and websites.

183. Representatives of civil society may sit on state environmental audit panels.

#### **Article 6, paragraph 5**

184. The initiator of the activity carries out and takes responsibility for the work involved in holding discussions with the interested public.

185. The initiator of the activity, together with the persons involved in the preparation of the environmental impact assessment, ensures public participation in the assessment process by informing the public of the planned activity and involving it in the assessment. The initiator also takes part in the public hearings on the planned activity.

#### **Article 6, paragraph 6**

186. Under 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 relevant laws.

187. All other information under Article 6, paragraph 6, of the Convention is provided to the interested public by the initiator of the activity.

188. There have been no cases in which all documents relating to an environmental impact assessment were classified for reasons of commercial confidentiality or the protection of intellectual property.

#### **Article 6, paragraph 7**

189. The public hearing and discussion procedures provide for obtaining the opinions of the public on the proposed activity.

190. The methods for holding multilateral discussions are of great importance. They depend on the stage of the environmental impact assessment and the extent of the facility's possible impact on the environment.

#### **Article 6, paragraph 8**

191. The results of public participation are recorded, collected, analysed and communicated to the initiator of the activity, and are taken into account by the initiator, if justified, and are submitted, together with the materials of the environmental impact assessment, for a state environmental audit in the State Agency for Environmental Protection and Forestry.

192. When numerous comments are received from the public, there is no set procedure for taking them into consideration. In practice, however, comments that are well-founded are taken into account. If a comment from civil society points to a violation of the law, then instead of being considered a recommendation, it may become binding. Otherwise, the relevant standards of criminal or administrative

law enter into force (“action or failure to act ...”).

193. During the entire comments procedure, comments that have already been received from the public are accessible to other representatives of civil society.

#### **Article 6, paragraph 9**

194. Under the legislation in force, the results of State environmental audits are made known to the public. The audit sets out the reasons for its conclusions.

195. The part of the decision that sets out the corresponding reasons makes reference to factual, professional and legal arguments raised during the procedure.

#### **Article 6, paragraph 10**

196. Under the current legislation on state environmental audits, if any changes are introduced into the proposal by the initiator of the activity or during the activity’s implementation, such changes are subject to a second state environmental audit, and another public discussion may also be held; everything depends on the nature of the changes introduced.

197. On the initiative of the NGO Independent Environmental Expertise, a government decision transferring Chatyr-Kul from the category of specially protected territory to the category of a fishing area was rescinded.

#### **Article 6, paragraph 11**

198. Kyrgyzstan has now ratified the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, and is currently preparing the relevant regulatory acts.

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

199. The public is not being informed of planned activities in good time. Environmental protection laws are being violated, and some of these violations restrict the right of the public to participate in the decision making process. For example, the Government has issued decisions approving the construction of facilities, while at the same time construction plans have been drawn up without a positive environmental audit, and the public has not been informed of or given an opportunity to participate in the environmental impact assessment procedure (for example, government decisions of 23 December 2005 on the construction of a cement plant in Kyzyl-Kiya, of 27 March 2006 on the construction of a cement and slate plant in Nookat district of Osh province, and of 23 August 2007 on the construction of a ferro-alloy plant in Kyrgyzstan).

200. There are no procedures for providing feedback to civil society on its proposals once they are adopted. Project proposals from civil society are not well founded.

201. The rights of the public to participate in decision-making in environmental matters is enshrined in many pieces of legislation, but they are often just virtual rights, Not one legislative act sets out concrete mechanisms for the public to influence decision-making. The public can express opinions, but state authorities are only required to consider them (the wording is vague): there is no element of compulsion.

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

202. State statistical agencies do not compile statistics on public participation in decision making with respect to specific projects. Below are a few examples of the practical application of Article 6:

- A national development strategy with a section on environmental safety was drawn up with the direct participation of NGOs;
- A campaign has been conducted by the Network for the Defence of Public Environmental Interests in Kyrgyzstan for the ratification of the Stockholm Convention on Persistent Organic Pollutants;
- The civil society organisation Independent Environmental Expertise (Kyrgyzstan), and the Green Salvation environmental group (Kazakhstan) have halted a transboundary project involving the construction, without a positive state environmental audit, of the Chyrpykty – Chong Kemin highway;
- The State Agency for Environmental Protection and Forestry, working jointly with Independent Environmental Expertise and Ekoforum Kazakhstan, has carried out transboundary environmental impact assessment of the Andash copper and gold project;
- A national plan has been drawn up jointly by the State Agency for Environmental Protection and Forestry, local self-governments, international organisations and NGOs for strengthening law enforcement and administration in the forestry sector;
- With the support of Milieukontakt International, a group of independent experts, including qualified specialists, NGO representatives and local residents, carried out a public environmental audit of the environmental impact assessment section of the project documentation for the Andash gold deposit. The outcome of the public environmental audit was discussed at public hearings, a round table, a press conference and an eco-café, and information leaflets were prepared and distributed to the public;
- With support from Milieukontakt, the Impuls youth fund carried out public monitoring of the environmental effects of filling stations in Moskovsky district of Chui province, and recommended that action be taken to remove the environmental violations that were detected and to improve the environmental situation at the district's filling stations;
- With support from Milieukontakt, the community carried out a public audit of the environmental impact assessment section of the project documentation for the Taldybulak Levoberezhny gold deposit, located in Kemin district of Chui province; and
- In August 2007, members of the AGAT club, together with an expert from Milieukontakt's participation group, monitored the beaches along the southern shore of Issyk-Kul with the aim of detecting natural and man-made radioactive anomalies. On the basis of the outcome, recommendations on safe leisure activities were produced for inhabitants and visitors.

203. A working group, in partnership with the public association Independent Environmental Expertise, has developed "Procedures (guidelines) for carrying out EIAs in a transboundary context for the countries of Central Asia." These guidelines have not been approved by regional states.

204. Public hearings are carried out with the participation of NGOs.

205. In the framework of the project "Elimination of acute risks of obsolete pesticides in Kyrgyzstan" Mileukontakt, in partnership with partner NGOs Eko-oy, Bios, and Protection of Motherhood and Childhood, made an inventory of old pesticide warehouses in Osh province and repacked about 90 tonnes of pesticides in accordance with international standards.

206. In 2009 Milieukontakt, as part of a project, carried out research to ascertain the general level of understanding among interested parties of the benefits of use and introduction of alternatives to DDT.

207. In 2010 Millieukontakt, with the support of the Dutch Association Personele Samenwerking met Ontwikkelingslanden, implemented a project entitled "Building a partnership between eco-NGOs and local self-government for resolving environmental problems at local level."

208. In 2008, the Osh Aarhus Centre carried out a public hearing on the construction of the South

Kyrgyz Cement cement factory in Kyzyl Kiya. In 2009, in Batken province a public hearing took place on the activities of Batkeneftegaz and others.

209. The Support Network has carried out seminars for local self-government and territorial branches of the State Agency for Environmental Protection and Forestry on procedures for involving the public in decision making covering EIA procedures, taking public environmental audits into consideration, and organising public hearings.

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

210. See paragraph 50.

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

211. Under the Constitution, the people of Kyrgyzstan are the bearer of sovereignty and the sole source of State authority. In accordance with the Law on Environmental Audit, programmes, projects, long-term plans and development schemes are subject to expert, including public, audit. Moreover, under the Non-Profit Organisations Act, NGOs are entitled to participate in the development of plans and programmes.

212. The Law on Town Planning and Architecture 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 involving changes in land use and development, and entitles them to participate in considering and discussing town-planning programmes and projects that affect the interests of groups or individual citizens.

213. The environmental impact assessment procedure provides for the development of environmental impact assessments prior to the implementation of plans, strategies and programmes and also provides for public participation. NGOs may participate in the development and implementation of almost any environmental protection programme that is drawn up. Before being approved, each programme must be subject to procedures for consideration and consultation and for obtaining comments and proposals.

214. Presidential decrees, national laws and government decisions, at the departmental level, orders, regulations and decisions of collegial bodies are considered to be decisions “affecting the environment”.

215. There is no distinction between plans, programmes and policies in the national legislation.

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

216. Under the legislation in force, there are practically no obstacles to the participation of civil society in the preparation and implementation of environmental programmes and policies, and these rights are exercised fairly successfully as rights of partnership. Practically all programmes, plans and policies in the field of environmental protection are prepared with the participation of experts from NGOs and receive extensive coverage at all stages of the decision making process.

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

217. Lack of funding, which makes programme development and implementation ineffective. Poor interdepartmental coordination in programme development and implementation leads to overlapping and inefficiency. There is no effective feedback procedure; the proposals received from civil society are often unprofessional in nature and do not correspond to the state budget. Because there is a general lack of initiative on the part of civil society, the interests of certain more motivated and active groups receive greater attention.

218. Plans, programmes and strategies are developed more publicly at national level than locally. This is connected both with the difficult economic situation of local self-government and its low level of capacity.

219. In most cases, the principle of timely participation and provision of information to the public is violated. This has led to socio-economic conflicts in almost all provinces of the country. For example, when licence 17-69-AP for use of the subsoils of the Dolpran site for geological prospecting by TK Geo Resource Joint Stock Company and the licence to use the subsoils of Kamator deposit by SHG Golden and Silver Ltd. were awarded, local communities were not informed in a timely manner and this led to a host of conflicts.

220. Discussion of draft legislation by posting it on the websites of ministries and departments has not been successful. The Ministry of Justice is not interested in resolving this problem and receiving feedback from the population.

221. The ways in which public opinion must be taken into account are not defined with sufficient clarity.

222. The processes of providing information and decision-making are entirely separate.

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

223. In the Country Development Strategy for the period UP to 2010, a section on environmental safety was drawn up with the direct participation of NGOs. This is the first time environmental safety concerns have been among the country's development priorities. A national plan for strengthening law enforcement and administration in the forestry sector has been drawn up jointly by the State Agency for Environmental Protection and Forestry, local administrations, international organisations and NGOs. A National Plan for Implementation of the Stockholm Convention on Persistent Organic Pollutants has been drawn up with NGO participation. Local action plans for environmental protection have been drawn up and implemented by local associations.

224. NGOs actively participated and public hearings were held during the preparation of the Country Development Strategy 2009-2011, the Conceptual Framework for Environmental Security, the Issyk Kul Concept and Programme for Sustainable Environmental and Economic Development, the Plan for Strengthening Law Enforcement and Management in the Forestry Sector in the Kyrgyz Republic and other key strategies.

225. In the framework of the Support Network, Coordination Councils have been established at the

provincial administration level to develop local action plans for environmental protection.

226. In May 2010, during the constitutional reform process, and based on the Standards for the Conduct of Various Types of Specialised Audit of Draft Laws in the Jogorku Kengesh, a range of public associations (the Aleyne environment movement, BIOM, Ekopartner and others) carried out an environmental audit of the draft Constitution of 16 May 2010. The conclusion was presented to the Constitutional Convention. The amendments did not appear in the final text of the Constitution.

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

227. See paragraph 50.

### **XXIV. EFFORTS 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 PURSUANT TO ARTICLE 8**

228. Presidential Decree No. 241 of 11 May 2006 on Measures to Extend, Legally Strengthen and Introduce Forms of Interaction between State Authorities, Local Self-administrations and Civil Society in the Kyrgyz Republic; Government Decision No. 603 of 20 December 2007 on a Methodology for Analysing the Effect of Legislation on Entrepreneurial Activities.

229. Under the Law on Environmental Protection, citizens have the right to participate in the development and implementation of environmental protection measures, including the law-making process. The Law on Legislation stipulates that citizens and organisations may be enlisted as independent experts in the conduct of legal, financial and economic, environmental and other scientific specialised audits of draft laws and regulations at the decision of the law-making body.

230. 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.

231. There are no requirements for public participation when legislation is being prepared.

232. Draft standards and regulations are not always posted on the internet. The timeframes in which civil society representatives may express their views vary.

233. The comments received from civil society during the participation process outlined in Article 8 of the Convention are often sent on to the bodies of the legislative branch.

234. There are no specific mechanisms for encouraging public participation in the preparation by public authorities of executive regulations and of other generally applicable legally binding rules that may have a significant effect on the environment.

235. The following laws and regulations were adopted in the period 2007-2010: the Law on Legislation, the Law on the Principles of Technical Regulation, the Law on Optimising the Legislative Basis for the Regulation of Entrepreneurial Activities, the Standards for the Conduct of Various Types of Specialised Audit of Draft Laws in the Jogorku Kengesh, the Regulations on the Procedure for Managing the State Register of Legislation, and the Government Resolution on the Sources of Official Publication of Legislation.

236. In accordance with the Law on Legislation and the the Law on Optimising the Legislative Basis for the Regulation of Entrepreneurial Activities, draft laws and regulations regulating entrepreneurial activities must be accompanied by a statement of rationale based on an analysis of their regulatory impact.

237. Draft legislation on ensuring constitutional rights, freedoms and duties; the legal status of public associations and the mass media; the state budget and the tax system; environmental security; law enforcement; and the introduction of new types of state regulation of entrepreneurial activity should be subject to legal, human rights, gender, environmental, anti-corruption and other types of specialised audit (the Law on Legislation).

238. Draft legislation that directly affects the interests of citizens and legal persons and also that which regulates entrepreneurial activity, as well as background information, is made available for public discussion by posting on the website of the body that drafted the legislation. The body that drafted the legislation must accept, consider and summarise suggestions made by participants in the public discussion. The consolidated information is reflected in the statement of rationale accompanying the draft legislation. The costs of organising and holding public discussions are covered by the body that prepared the draft legislation, as well as other sources of funding allowed under national legislation (the Law on Legislation).

239. The Osh Aarhus Centre has organised discussions of draft laws in regions which have poor access to the internet.

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

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

241. In April 2010, a change in power occurred in Kyrgyzstan, as a result of which the form of government was changed (under the new Constitution adopted in June 2010). Kyrgyzstan has changed from a presidential into a parliamentary republic. This period can be considered a “transition period”.

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

242. The draft Environment Code was prepared and discussed with all interest groups. NGO representatives were involved in the drafting of the general technical regulations on environmental safety.

243. State authorities, in cooperation with public associations, have developed a range of legislation and analysed the regulatory effects of legislation in the area of environmental protection.

244. At the end of 2009 and beginning of 2010, the Ministry of Natural Resources developed a range of legislation, including the draft Law on Introducing Amendments to and Suspending Articles 20, 22 and 23 of the Law on Legislation. These articles provide for the conduct of legal and other specialised audits,

and also the organisation of public discussion of draft legislation. After active intervention from the public by means of a public audit, this draft Law was not adopted.

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

245. See paragraph 50.

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

246. Cases relating to the overturning of decisions in accordance with Article 9 of the Convention are handled by respective civil courts for the various categories of cases. Under civil procedural legislation, appeals may be lodged against such decisions in both courts of appeal and courts of cassation, and the decisions can be overturned.

247. National legislation governing relations in the field of public access to justice includes criminal, civil, criminal procedural and civil procedural legislation, as well as the Code on Administrative Liability.

248. The text of the Convention is not applied directly by the courts.

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

250. Under the Constitution, judges are independent and are subject only to the law.

251. There are no provisions for the specialisation of judges to hear environmental cases.

252. The Constitution provides for the possibility of establishing *aksakal* courts (local courts of elders and prominent individuals). The work of *aksakal* courts is governed by the *Aksakal Courts Act*. *Aksakal* courts hear cases that are submitted to them, as specified by law, with the consent of the parties. The cases relate to property, family or other disputes. There is an established procedure under national law for appealing against a decision of an *aksakal* court.

253. As part of the judicial reform, a constitutional innovation was introduced into the justice system with the adoption of a jury system. The relevant amendments have already been made to legislation on criminal procedure. A draft law on juries is currently in preparation.

254. The National Council for Judicial Affairs has been established for the selection and nomination of candidates to vacant judgeships in local courts, and for conducting performance evaluations of local court judges in order to decide whether or not to relieve them of their duties.

255. In accordance with the regulations of the National Council for Judicial Affairs attached to the Office of the President of Kyrgyzstan, the Council's membership includes NGO representatives. Work is carried out with civil society to discuss ways of ensuring the effectiveness of the institution of judicial self-administration.

256. Despite continuing reform, the judicial system is still not effective enough to protect and restore infringed rights.

257. A Millennium Challenge Account threshold programme is currently under way in Kyrgyzstan. It is aimed at fighting corruption, supporting the rule of law and ensuring that the courts operate effectively.

#### **Article 9, paragraph 1**

258. The Law on Information (Guarantees and Freedom) governs matters arising in the implementation of the universal right to seek, obtain, research, produce, communicate and disseminate information freely and without impediment. Requests for information may (but do 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 are registered. Information concerning the rights and legitimate interests of the requesting party is provided free of charge.

259. 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 on 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 or information on a wrongful act, are laid down in procedural law.

260. The Law on Information Technology establishes conditions for the protection of the legitimate interests and rights of the State and of corporate bodies and individuals in carrying out activities involving the creation, accumulation, storage, transmission and dissemination of information using information technology.

261. Under this Act:

- Refusal to grant access to information in the public domain and the provision of information known to be unreliable can be the subject of a court appeal. In all cases, persons who have been denied access to information and those who have received unreliable information have the right to claim damages;
- The courts hear disputes concerning the unjustified classification of information as restricted, claims for damages, cases involving the unjustified denial of information to users, and other infringements of users' rights and of treaty obligations;
- Directors and officials of government agencies and organisations guilty of unlawfully restricting access to information or infringing the procedure for protecting information are punishable under criminal and civil law and legislation on administrative offences.

#### **Article 9, paragraph 2**

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

263. The decisions of an administrative body are subject to review both out of court and in court proceedings. Under the first option, an appeal may be filed with the next highest body with the same remit; under the second, it may be filed with a court.

264. An action or failure to act by state authorities, local self-government, public associations, enterprises, institutions, organisations and officials which limits the rights of citizens to receive information can be appealed at the discretion of the individual seeking the information to a higher official, the Ombudsman (Akyykatchy) or to a court in accordance with national legislation.

265. Courts of arbitration play an important role in the legal system as an extrajudicial mechanism to protect rights and legal interests.

### **Article 9, paragraph 3**

266. By law, the public has the right to challenge, before a court or other body, the actions or failure to act on the part of officials and private concerns when the provisions of environmental protection legislation are violated.

267. Representatives of civil society may initiate administrative cases by filing petitions, complaints or appeals.

268. It is common practice in Kyrgyzstan for civil society representatives to challenge decisions, such as those governed by the provisions of Articles 7 and 8 of the Convention, by indicating how they violate the national environmental protection laws.

### **Article 9, paragraph 4**

269. Kyrgyz legislation provides for criminal, administrative, civil, disciplinary or material penalties when officials fail to perform their duty to provide access to information and ensure public participation. The type of liability depends, first of all, on the nature of the act committed by the official and also on the consequences of the refusal to grant access to information or failure to ensure public participation.

270. Under the Civil Procedural Code, persons taking cases to court in circumstances established by law with the aim of defending the rights, freedoms and legally protected interests of others or state or public interests are exempted from state court fees.

271. With adoption of the Law on Guaranteed State Legal Aid, the Kyrgyz Republic guarantees every citizen who does not have the resources to defend his or her legal rights and interests qualified legal assistance funded by the state budget.

272. Another important step is that court fees are no longer payable when the case is initiated. Now the state fee is recovered based on the court decision.

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

273. Cases involving violations of environmental legislation are not considered in a timely manner. The Civil Procedure Code allows persons defending public interests to be exempted from state court fees. However, the courts do not always recognise a violation of environmental protection legislation as a matter of public interest.

274. It is still difficult to repeal administrative decisions taken at the level of the Government and the President. The introduction of a new institution in the court system, the interdistrict court, has raised certain jurisdictional complications for cases involving environmental protection.

275. Under the Civil Procedure Code, the district court (or the city district court or town court) hears all civil cases except those under the jurisdiction of a garrison military court or an interdistrict court. If an incompetent decision or a decision violating environmental rights and freedoms is challenged, the interdistrict court is competent. However, when compensation is sought for damage caused by a violation of environmental law, the case is heard as a civil case in a district court. If, however, a decision leading to environmental damage is challenged, the case falls under the jurisdiction of the interdistrict court, even if a claim is filed for compensation.

276. The absence of guidance on the application of the legislation on civil procedure complicates the selection of the court competent to hear such disputes, and also slows down the redress procedure.

277. Furthermore, when appeals are heard by the interdistrict court, the state court fee is significantly higher. The rates adopted by the Government are not listed in full by type of dispute, which also complicates the submission of claims in court. For example, there is no information on the rate for invalidating laws and regulations of public authorities and local administrations. There is also no established practice for the application by courts of the provisions of the Aarhus Convention.

278. The abolition of the Constitutional Court as a separate institution in the court system and the creation of the Constitutional Chamber of the Supreme Court casts doubt on this body's independent and objective decision-making, as a potential conflict of interests is possible in many cases when the Chamber has to judge the constitutionality of a law or regulation that has already formed the basis for a decision made by the Supreme Court.

279. Provisions introduced into the Civil Procedural Code that make it impossible to appeal refusal of a petition to reject a judge also give the judge the chance to make unlawful decisions even if a party mistrusts him/her. This is thus a mechanism for corruption.

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

280. Kyrgyzstan's courts hear about 200 cases of violations of environmental protection legislation a year.

281. In 2007, the public association Independent Environmental Expertise (IEE) filed a claim to the inter-district court of Bishkek city "on recognising that Government Resolution 360 on construction of a ferro-alloy factory in the Kyrgyz Republic contradicts national legislation", which claimed that "building while designing" contradicted national legislation. During examination of the claim, the court decided to repeal the paragraph of the Resolution on Building while Designing.

282. In 2009, IEE, the Osh Aarhus Centre and the Judges' Training Centre approved a training module for judges.

283. In 2009-2010, the Support Network, the Osh Aarhus Centre, IEE, and Biom, in partnership with the Supreme Court Judges' Training Centre, the professional training centre at the General Prosecutor's Office, and the Lawyers' Training Centre organised seminars for judges in all provinces of Kyrgyzstan.

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

284. <http://aarhus.nature.kg>, [www.sudsystem.kg](http://www.sudsystem.kg), [www.prokuror.kg](http://www.prokuror.kg), [www.caresd.net](http://www.caresd.net), [www.ekois.net](http://www.ekois.net), <http://eco-expertise.org>, [www.treelife.org.kg](http://www.treelife.org.kg), [www.eiti.org.kg](http://www.eiti.org.kg), [www.biom.org.kg](http://www.biom.org.kg)

### **XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION 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**

No information was provided under this heading.

### **XXXIII. LEGISLATIVE, NORMATIVE AND OTHER MEASURES TO MEET THE REQUIREMENTS OF ARTICLE 6-BIS AND APPENDIX I-BIS ON GENETICALLY MODIFIED ORGANISMS**

285. In 2005, Kyrgyzstan acceded to the Cartagena Protocol on Biosafety to the Convention on Biodiversity.

286. Kyrgyzstan participates in the Biosafety Clearing House of the Cartagena Protocol on Biosafety.

287. In 2009, a draft Law on Biological Safety was prepared.

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

No information was provided under this heading.

### **XXXV. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6-BIS AND APPENDIX I-BIS**

288. The structure of a national website to fulfil the country's obligations under the Cartagena Protocol has been developed as the national node of the central BCH portal. The site is being populated.

289. In 2008-2009 a range of training events were held on the BCH. All interested parties took part.

### **XXXVI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6-BIS AND APPENDIX I-BIS**

290. <http://aarhus.nature.kg>, <http://bch.cbd.int>, <http://kg.biosafetyclearinghouse.net>