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**ECONOMIC COMMISSION FOR EUROPE  
MEETING OF THE PARTIES TO THE  
CONVENTION ON ACCESS TO INFORMATION,  
PUBLIC PARTICIPATION IN DECISION-MAKING AND  
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

Third meeting

Riga, 11-13 June 2008

Item 6 (a) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention:

Reports on implementation

**REPORT ON THE IMPLEMENTATION OF THE AARHUS CONVENTION  
SUBMITTED BY KYRGYZSTAN\***

*Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to “keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties”. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.*

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\* The present document was submitted late due to resources constraints and a delay in the submission of the report by the party to the Convention.

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

1. The Ministry of the Environment and Emergency Situations prepared Kyrgyzstan's first national report on the implementation of the Aarhus Convention.
2. The draft of the second national report was drawn up by the State Agency on Environmental Protection and Forestry under the Government of Kyrgyzstan, with the direct participation of the Kyrgyz National Coordinator for the Aarhus Convention and Independent Environmental Assessment, a non-governmental organization (NGO). In August 2007, the national report was posted on the websites of the State Agency on Environmental Protection and Forestry ([www.nature.kg](http://www.nature.kg)) and of Independent Environmental Assessment ([www.eco-expertise.org](http://www.eco-expertise.org)). Information on the beginning of the drafting of the second national report and the text of the report was sent to ministries and departments and the country's NGOs; this was also done using electronic means.
3. On 18 May 2007 a round table entitled "Developing mechanisms for taking public opinion into consideration when drawing up the national report on implementation of the Aarhus Convention" was held in Bishkek with the participation of representatives of international organizations, State bodies and NGOs. The resulting proposals were taken into consideration and the draft national report was amended accordingly.

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

4. The procedure for environmental decision-making is laid down in both special laws and in sectoral and the corresponding subordinate acts. Each of these laws defines the competence and powers of the Government, local administrations and specially authorized State agencies.
5. Under the Constitution, the provisions of international agreements and treaties ratified by Kyrgyzstan 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, it is necessary to develop separate implementing mechanisms. There are financial constraints on the full implementation of individual provisions of the Convention.

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

6. Kyrgyzstan's existing legislation gives the public the right of access to information, including environmental information, the right to participate in decision-making and the right of access to justice.
7. The issues of access to information, participation in decision-making and access to justice are dealt with in the Constitution, and the acts on guarantees and freedom of access to information, environmental protection, the mass media, protection of State secrets, the profession of journalist, advertising, information technology, electrical and postal communications, licensing, the scientific and technical information system, copyright and related rights, expert

environmental assessment, local self-government and local government administration, town planning and architecture, consumer protection, the civil service, civil service ethics, energy, non-profit organizations, government regulations, health and disease control, the status of the Kyrgyz Republic, the basic principles of budgetary law, the basis of government youth policy, science and the basis of government scientific and technical policy, culture, freedom of religion and religious organizations, specially protected nature areas, health protection, standardization, unified measurements, joint-stock companies, and the procedure for considering citizens' proposals, petitions and complaints; the Tax, Land, Criminal and Civil Codes, the Code of Criminal Procedure, the Code of Civil Procedure, the Code on Administrative Liability and others. While these and other enactments, both sectoral and general, provide the necessary legislative underpinning, there is a need to develop separate procedures and mechanisms for their implementation, bearing in mind the provisions of the Convention. From 2005 to 2007, a series of legal acts, on access to information, public participation in decision-making and access to justice, were adopted; these include the revised Constitution of 15 January 2007 and acts on access to information held by State bodies and local administrations (14 November 2006), the procedure for considering communications from citizens (23 March 2007), State regulation and policy relating to greenhouse gas emissions and absorption (23 March 2007), State statistics (2 February 2007), protection of the ozone layer (19 October 2006), the national television and radio broadcasting corporation (8 June 2006), Government Decision No. 338 of 14 June 2000 on the licensing of subsoil use and the exploitation of small deposits of commonly occurring minerals, Presidential Decree No. 241 of 11 May 2006 on measures to extend, strengthen standards for and introduce forms of interaction among public authorities, local administrations and civil society, Government Decision No. 603 of 20 December 2007 on the means of analysing the effect of laws and regulations on entrepreneurial activities, the State strategy to combat corruption for 2006-2007 and the national development strategy for 2007-2010.

8. There has recently been an increasing number of cases in which the Government has taken decisions to allow the construction of facilities to begin, while at the same time planning the activities of the facility in question, in the absence of a positive environmental assessment (Government Decisions No. 611 of 23 December 2005 on the construction of a cement plant in Kyzyl-Kiya; No. 199 of 27 March 2006 on the construction of a cement and slate plant in Nookat district of Osh province); and No. 360 of 23 August 2007 on the construction of a ferro-alloy plant in Kyrgyzstan.

9. 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.

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

10. The State agencies responsible for access to information and public participation in decision-making are developing appropriate procedures and mechanisms to ensure the effectiveness of public participation.

11. Appropriate procedures and rules for ensuring such participation, in the form of civil society councils attached to ministries and departments, have been developed by individual branch departments.

12. The regulatory acts for ensuring public participation do not contain any provisions restricting the right of access to information on the basis of Kyrgyz citizenship.
13. 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.
14. According to the Act of 14 November 2006 on access to information held by public authorities and local administrations of the Kyrgyz Republic, “public authorities and local 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).
15. Under the national plan of action for the development of 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.
16. A Central Asian workshop for judges is being planned as part of the work of the Inter-State Commission on the Sustainable Development of Central Asia.

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

17. A number of national and political instruments address education for sustainable development. These include the guidelines for ongoing environmental education in Kyrgyzstan, which has been approved by two ministries - the Ministry of Education and Science and the Ministry of Environmental Protection; Government Decision No. 74 of 11 February 2005 on the establishment of a coordinating council on education for sustainable development; the State education doctrine, which establishes a strategic and tactical approach to education for the period up to 2025; the guidelines for the development of education up to 2010; the Kyrgyz National Plan of Action on Education for All, drawn up under the Dakar agreement; the Education Act; the “Human Resources for the Twenty-first Century” presidential education programme; the guidelines for environmental safety (2007); Agenda 21 in Kyrgyzstan-programme of action up to 2010, and many others. The Review of progress in education for sustainable development in the Kyrgyz Republic has been prepared on a voluntary basis.
18. Cooperation agreements in the field of environmental education have been concluded with the country’s institutes of higher education.
19. Every year, the State Agency on Environmental Protection and Forestry publishes a national report on the state of the environment, and the newspapers *Jer Ene* and *Les Tokoy* are published quarterly. Skill-enhancement workshops and courses are held jointly for staff of provincial environmental protection administrations, NGOs and commercial firms. Relevant information is available on the official site of the State Agency on Environmental Protection and Forestry ([www.nature.kg](http://www.nature.kg)).
20. An environmental journalism festival is held once a year by NGOs.

21. 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.

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

22. Kyrgyzstan has a sufficiently favourable legislative framework for the establishment of voluntary organizations. 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 recognized by international agreements and a number of regulatory acts; these include the Aarhus Convention; the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention); the Constitution of Kyrgyzstan; the acts on environmental assessment, town planning and architecture, and environmental protection; the Land Code; the acts on local self-government and local government administration, non-profit organizations, water users’ associations, and communities and their associations; the national forestry programme for 2005-2015, the Government decision containing guidelines for cooperation between voluntary associations, social funds, NGOs and State bodies; the regulations concerning communal forestry management in Kyrgyzstan, local administrations, and land-use issues that must be resolved in order for local administrations to grant their prior consent; the statutes of the local Bishkek municipal association; and others.

23. Under the Corporate Bodies (State Registration) Act, the Ministry of Justice and its local bodies at the place where the corporate body in question is located carry out State registration of corporate bodies, with the exception of certain cases set out by law.

24. 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 organizations, “founding documents” mean the decision of the founder, the founding agreement and/or statute (regulations), depending on the legal and organizational form, as stipulated by law.

25. Corporate bodies must register with the State within 10 days of the submission of their application. There is no fee for the registration of NGOs.

26. The State Agency on 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.

27. There are a number of regulatory acts on recognition of and support for local and mass (communal) organizations. These include the Local Self-government and Local Government Administration Act of 28 December 2001, the Water Users’ Associations Act of 15 March 2002, the Communities and Their Associations Act of 21 February 2005, the national forestry programme for 2005-2015 (2004), the government decision of 25 March 2004 containing guidelines for cooperation between voluntary associations, social funds, NGOs and State bodies, Regulation No. 377 of 27 July 2001 concerning communal forestry management, and others.

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

**Article 3, paragraph 7**

29. 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.

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

31. 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.

**Article 3, paragraph 8**

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

33. 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 with litigation.

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

34. Such obstacles include the following:

(a) The lack of a smoothly functioning mechanism for social interaction prevents the full implementation of the existing legislation;

(b) Information is not provided in a timely manner;

(c) 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);

(d) The public and members of the civil service are not sufficiently familiar with the Convention;

(e) The low level of professionalism of civil servants and of the civil sector also hampers effective public involvement in the decision-making process;

(f) Once adopted, decisions are not always implemented.

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

35. In general, Kyrgyz legislation is constantly being improved. 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. An NGO advisory board has been established under the State Agency on Environmental Protection and Forestry.

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

36. [www.gov.kg](http://www.gov.kg), [www.nature.kg](http://www.nature.kg), [www.caresd.net](http://www.caresd.net), [www.aarhuskg.caresd.net](http://www.aarhuskg.caresd.net), [www.kenesh.kg](http://www.kenesh.kg), [www.minfin.kg](http://www.minfin.kg), [www.minjust.gov.kg](http://www.minjust.gov.kg), [www.med.kg](http://www.med.kg), [www.mecd.gov.kg](http://www.mecd.gov.kg), [www.mtk.bishkek.gov.kg](http://www.mtk.bishkek.gov.kg), [www.kgs.bishkek.gov.kg](http://www.kgs.bishkek.gov.kg), [www.ecopage.freenet.kg/elaw.html](http://www.ecopage.freenet.kg/elaw.html), [www.gorkenesh.kg](http://www.gorkenesh.kg), [www.eco-expertise.org](http://www.eco-expertise.org), [www.ekois.net](http://www.ekois.net), [www.e-bishkek.kg](http://www.e-bishkek.kg), [www.carec.kz](http://www.carec.kz), [www.eco-portal.kz](http://www.eco-portal.kz).

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

37. Existing Kyrgyz legislation gives the public the right of access to information, including environmental information. These issues are dealt with in the Constitution, the acts on guarantees and freedom of access to information, environmental protection, the mass media, protection of State secrets, the profession of journalist, advertising, information technology, electrical and postal communications, licensing, the scientific and technical information system, copyright and related rights, expert environmental assessment, local self-government and local government administration, town planning and architecture, consumer protection, the civil service, energy, non-profit organizations, the regulations on civil service ethics, and the Criminal and Civil Codes, the Code on Administrative Liability and the Code of Criminal Procedure and the Code of Civil Procedure; and in the acts on access to information held by State bodies and local administrations (14 November 2006), the procedure for considering communications from citizens (23 March 2007), State statistics (2 February 2007), the national television and radio broadcasting corporation (8 June 2006), and in Government Decision No. 603 of 20 December 2007 on the means of analysing the effect of laws and regulations on entrepreneurial activities.

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

38. According to the Act of 14 November 2006 on access to information held by State bodies and local administrations of “each request for information shall be registered by the public authority and the local administration”. In accordance with the approved government regulations, public authorities register all incoming and outgoing letters, including requests for information. The corresponding replies are also registered. There is no practice of submitting reports.

39. 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.

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

40. The Act of 23 March 2007 on the procedure for considering of communications from citizens governs 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 informed accordingly, along with the reason for the delay. The delay may not exceed two weeks.

41. Under the Act of 14 November 2006 on access to information held by State bodies and local administrations, refusal to provide information, and any other action or decision by an official who violates the requirements of the act, may, at the decision of the person requesting the information, be the subject of a complaint to a higher official, the Ombudsman or 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.

42. According to the Code on Administrative Liability, “the wrongful refusal by an official to consider citizens’ communications; the violation, without a valid reason, of the time limits for considering such communications; the adoption of an unfounded decision that is contrary to the law; or a failure to restore the violated rights of a citizen, shall entail the imposition of an administrative fine of between 10 and 20 notional units” (art. 62).

43. Under article 63 of the Code, “the unjustified refusal to provide citizens with the possibility to consult documents, decisions and other materials affecting their rights or interests shall entail the imposition of an administrative fine on the official in question of between five and 10 notional units”.

44. Under article 400 of the Code, “the commission by officials of administrative offences resulting in the violation of, or failure to comply with, the requirements of acts, presidential decrees or decisions issued by the government or the Jogorku Kenesh (Parliament), shall entail the imposition of an administrative fine of between 50 and 100 notional units”.

45. Under article 138 of the Criminal Code, “the wrongful refusal by an official to provide, in accordance with the established procedure, documents and materials directly affecting a citizen’s rights and freedoms, or the deliberate provision of incomplete or false information, when such actions have caused substantial damage to citizens’ rights and legitimate interests, shall be punishable by a fine in the amount of up to 50 notional units”.

46. Under article 304, paragraph 1, of the Code, “the use by an official of his or her position to the detriment of the interests of the service, when such action results in a substantial violation of the rights and legitimate interests of citizens or corporate bodies, or of the legally protected interests of society or the State, shall be punishable by a fine of between 100 and 200 notional units, or by deprivation of liberty for a period of three to five years, with or without a confiscation of property”.

47. Under article 315 of the Code, “forgery by an official, i.e., the deliberate introduction by an official, a civil servant or an employee of a local administration of false information in official documents, as well as the introduction in such documents of modifications that distort their true content, when such actions are carried out for personal gain or other self-interest, shall be punishable by a fine of between 100 and 200 notional units, with deprivation of the right to hold certain posts or perform certain activities for up to three years, or deprivation of liberty for up to two years combined with deprivation of the right to hold certain posts or perform certain activities for up to three years”.

48. Under article 316, paragraphs 1 and 2, of the Code:

“1. Dereliction of duty, i.e., the non-performance or improper performance, on the part of an official, of his or her duties as a consequence of an unscrupulous or negligent attitude towards service, when this results in a significant violation of the rights and legitimate interests of citizens or organizations or of the legally protected interests of society or the State, shall be punishable by a fine of between 100 and 200 notional units, or by arrest for up to six months;

“2. The same acts, when they result in manslaughter by criminal negligence, major damage or other serious consequences shall be punishable by a deprivation of liberty for up to five years.”

49. Under article 262, paragraph 1, of the Code of Civil Procedure:

“1. Citizens are entitled to lodge appeals in court against a decision, action (or failure to act) of a public authority, local administration or official, if they consider that their rights and freedoms have been violated. They are entitled to appeal directly to a court or to the public authority body, local administration or official hierarchically superior to the body or official in question. If a citizen’s request, which has been filed with the appropriate body, does not result in a satisfactory response, or if a reply is not received within one month of the date of its submission, the citizen shall be entitled to appeal to a court.”

50. Under article 266, paragraph 1, of the Code:

- “1. Once a court has recognized a request as substantiated, it shall issue a ruling obliging the public authority, local administration or official in question to ensure the complete elimination of the violation of the citizen’s rights and freedoms.”

**Article 4, paragraphs 3 and 4**

51. In the absence of the requested information, the State Agency on Environmental Protection and Forestry sends a request to the department that has the required information, and subsequently issues an official reply.

52. Under the Act of 23 March 2007 on the procedure for considering of communications from citizens, if the subject of enquiry requires clarification, 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.

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

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

55. The Trade Secrets Act (1998) 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, paragraph 3, of the Act, information on environmental pollution and the extent of the damage it has caused cannot be treated as a trade secret.

56. 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.

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

58. Under the Act of 14 November 2006 on access to information held by public authorities and local administrations, 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.

**Article 4, paragraph 5**

59. Under the Act on access to information held by State bodies and local 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.

60. The information is made available in accordance with the Government-approved list of paid and unpaid services provided by public authorities. The State Agency on Environmental Protection and Forestry provides environmental information free of charge in response to official requests. Certain other types of information provided by State bodies 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 8**

61. 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 organizations 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.

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

63. Conduct of scientific research regulated by the list of paid services, subject to agreement with the client, based on the approved rate for one man-day of research [sentence incomplete].

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

64. 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.

65. 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 appraisal is the presence in the subject of appraisal of information constituting "a secret protected by law". The right of access to information on draft laws and subordinate acts is regulated by Government Decision No. 603 of 20 December 2007 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.

66. Draft laws and regulations are posted on the websites of the Jogorku Kenesh (Parliament), the Government, the Ministry of Justice and other ministries and departments in a timely manner.

67. There is no clear-cut system for the exchange of environmental information, although some efforts are being made. The State Agency on 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.

68. 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. There are no procedures for providing the public with information during the initial stage of a proposed activity. Another problem is the inability of the person making the request for information to formulate a proper request.

69. The principal regular sources of environmental information include the State Agency on Environmental Protection and Forestry, NGOs, international and national projects and programmes, international organizations and scientific institutions. Enterprises and commercial organizations do not provide environmental information, with the exception of large facilities which are under public scrutiny or which participate in the extractive industries' transparency initiative.

70. The implementation of legislation on access to information is being monitored at the initiative of the NGOs active in the field of human rights, the environment, journalism, women, and so forth.

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

71. The Government does not compile statistics on these indicators. However, specially authorized 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 on Environmental Protection and Forestry alone provides information in response to requests from about 1,000 addresses. All requests and complaints are registered. There is a hotline in the State environmental monitoring agency. 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 authorized government agencies in the field of environmental protection.

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

72. [www.gov.kg](http://www.gov.kg), [www.nature.kg](http://www.nature.kg), [www.caresd.net](http://www.caresd.net), [www.aarhuskg.caresd.net](http://www.aarhuskg.caresd.net), [www.kenesh.kg](http://www.kenesh.kg), [www.minfin.kg](http://www.minfin.kg), [www.minjust.gov.kg](http://www.minjust.gov.kg), [www.med.kg](http://www.med.kg), [www.mecd.gov.kg/](http://www.mecd.gov.kg/), [www.mtk.bishkek.gov.kg/](http://www.mtk.bishkek.gov.kg/), [www.kgs.bishkek.gov.kg/](http://www.kgs.bishkek.gov.kg/), [www.ecopage.freenet.kg/elaw.html](http://www.ecopage.freenet.kg/elaw.html), [www.gorkenesh.kg](http://www.gorkenesh.kg), [www.eco-expertise.org](http://www.eco-expertise.org), [www.ekois.net](http://www.ekois.net), [www.e-bishkek.kg](http://www.e-bishkek.kg), [www.carec.kz](http://www.carec.kz), [www.eco-portal.kz](http://www.eco-portal.kz).

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

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

73. 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. The decision of 14 December 2007 approved a unified set of requirements for the creation and support of websites of public authorities and of local administrations.

74. 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.

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

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

77. 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.

78. As for the question of whether any measures being taken to improve the flow of information and to harmonize data: 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 departments involved in environmental protection.

79. When statistical report forms are collected and forwarded to the National Statistical Committee, the report forms completed by enterprises are synthesized by the local environmental protection administrations of the State Agency on Environmental Protection and Forestry.

80. Information is provided on a real-time basis. Such information includes daily reports on weather, air quality and ionizing radiation (Kyrgyzgidromet, the national hydrometeorological service).

81. Public authorities and local administrations are obliged to publish, every year, accessible information on the level of protection of the population and the 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 organizations.

82. A central government body has been established and given a special mandate to administer and coordinate the government bodies that work to protect the public and territories against emergencies.

83. The obligation of representatives of industry and the private sector to provide information is set out in such legislation as the Access to Information (Guarantees and Freedom of) Act (1997, amended in 2002), the Radiation Safety Act (1999) and the Natural and Man-made Emergencies (Protection of the Population and Territories) Act (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.

84. 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.

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

85. 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.

86. 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.

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

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

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

88. 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.

**Article 5, paragraph 5**

89. 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 Laws and Regulations Act, the ministries and departments prepare draft laws on the basis of the Government's plan for draft legislation.

90. 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.

91. 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 Laws and Regulations Act and the act 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.

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

93. 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.

94. 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.

95. Access to laws and regulations is provided by the "Toktom" information centre, and to some extent also on the sites of the State Agency on Environmental Protection and Forestry, the Ministry of Justice and other bodies. In 2007, a strategy for disseminating information on the forestry sector was drawn up as part of the implementation of the national plan of action for the development of forestry in Kyrgyzstan; the strategy was approved by a decree of the State Agency on Environmental Protection and Forestry.

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

96. Under the Access to Information (Guarantees) Act, public authorities, local administrations, citizens, voluntary associations, enterprises, institutions, organizations 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.

97. 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.

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

98. When plans, programmes, strategies and policies are being drawn up, the State Agency on 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 development strategy, the national plan for strengthening law enforcement and administration in the forestry sector, the national plan of action 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.

99. 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 public authorities and local administrations information about the quality and safety of food products. A general technical regulation on environmental safety is in the process of being drafted; the working group includes representatives of NGOs.

100. 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**

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

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

102. 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.

103. Within the context of the preparatory work on the creation of a national comprehensive system of surveys and pollutant release and transfer registers accessible to the public, the State Agency on Environmental Protection and Forestry:

- (a) Together with State statistical agencies, has analysed existing data collection and processing systems;
- (b) Has studied the existing statistical reporting formats and the instructions for completing them, and has begun work to improve them;
- (c) Has estimated the reliability of the data collected on a sample of 20 enterprises in Bishkek and in Chui province;
- (d) Within the context of the compilation of a single catalogue of data sources of environmental information for the countries of Eastern Europe, the Caucasus and Central Asia, has recorded 133 data sources in Kyrgyzstan and has disseminated the information on the same site as the catalogue of data sources. 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.

104. As part of a project of the United Nations Development Programme (UNDP), the first national report on Kyrgyzstan's contribution to the stabilization of global climate change was prepared, and a strategy for reducing greenhouse gas emissions was proposed (2002). The second phase of the UNDP project, the preparation of a second report on climate change, has been in progress since 2005.

105. 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 the Greenhouse Gas Emissions (State Regulation and Policy) Act. An inventory has been taken of persistent organic pollutants, a register has been established and a list has been compiled of ozone-depleting substances, and other steps have been taken. A pollutant release and transfer register system has not yet been established.

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

106. The obstacles include:

- (a) Lack of a single centre for the collection and communication of environmental information;
- (b) Limited access to Internet resources in remote parts of the country;
- (c) 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;
- (d) The lack of sufficient funding for the State Agency on 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.

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

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

108. 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.

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

109. [www.gov.kg](http://www.gov.kg), [www.govservices.kg](http://www.govservices.kg), [www.nature.kg](http://www.nature.kg), [www.caresd.net](http://www.caresd.net), [www.aarhuskg.caresd.net](http://www.aarhuskg.caresd.net), [www.kenesh.kg](http://www.kenesh.kg), [www.gorkenesh.kg](http://www.gorkenesh.kg), [www.minfin.kg](http://www.minfin.kg), [www.med.kg](http://www.med.kg), [www.gorkenesh.kg](http://www.gorkenesh.kg), [www.eco-expertise.org](http://www.eco-expertise.org), [www.ekois.net](http://www.ekois.net), [www.e-bishkek.kg](http://www.e-bishkek.kg), [www.carec.kz](http://www.carec.kz), [www.eco-portal.kz](http://www.eco-portal.kz), [www.ojpen.kg](http://www.ojpen.kg), [www.tazar.kg](http://www.tazar.kg)

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

110. National legislation regulates the participation of the civilian sector in economic decision-making. The Constitution is the starting point for the granting of rights and freedoms to citizens and voluntary associations. These rights are governed by the acts on environmental protection, environmental appraisals, mountain areas, specially protected nature areas, water users' associations, water health and disease control, industrial and consumer waste, mineral resources, tailings dumps and slag heaps, consumer protection, electrical energy, building and architecture, and others.

111. In accordance with the Environmental Protection Act, civil society has the right to carry out public environmental appraisals, participate in the 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 damages and adverse effects on the environment.

112. One of the basic principles of the Environmental Appraisals Act is the principle that public opinion must be taken into account. In addition to State environmental appraisals, public appraisals are also possible. A public environmental appraisal may be organized and carried out

on the initiative of citizens, local administrations and duly registered voluntary associations. Public environmental appraisals may be carried out independently of State environmental appraisals.

113. 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.

114. 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 Local Self-Government and Local State Administration Act 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.

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

115. 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.

116. 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 appraisal in the State Agency on Environmental Protection and Forestry; if the findings of the appraisal are not favourable, permission for the project is not granted. Moreover, Kyrgyz legislation also provides for a public environmental appraisal, which may be conducted on the initiative of civil society. The findings of public appraisals have the status of a recommendation and are taken into account in the conclusions of the State environmental appraisal. The procedure for carrying out State and public environmental appraisals is laid down in the legislation.

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

117. 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.

118. Under national legislation, any civil society group qualifies as the public concerned.

119. 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.

120. Under the Act of 14 November 2006 on access to information held by public authorities and local administrations, refusal to provide information, and any other action or decision by an official who violates the provisions of the Act, may, at the decision of the person requesting the information, be the subject of a complaint to a higher official, the Ombudsman (*Akyikatchy*) or a court action, as provided by law.

121. 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.

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

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

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

123. 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.

124. In accordance with the legislation in force, the materials of an environmental impact assessment submitted to the State Agency on Environmental Protection and Forestry for purposes of a State environmental appraisal must contain the results of the public discussions. The responsibility for holding these discussions in good time rests with the initiator of the activity, who must give the public access to project documentation and conduct and summarize the discussions. 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.

125. Representatives of civil society may sit on State environmental appraisal boards. The law provides for the conduct of a public environmental appraisal.

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

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

127. 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**

128. 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.

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

130. 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**

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

132. 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**

133. 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 appraisal in the State Agency on Environmental Protection and Forestry.

134. 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 ...").

135. 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**

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

137. 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**

138. Under the current legislation on State environmental appraisals, if any changes are introduced into the project by the initiator of the activity or during its implementation, such changes are subject to a second State environmental appraisal, and another public discussion may also be held; everything depends on the nature of the changes introduced.

139. On the initiative of Independent Environmental Assessment, an NGO, a government decision transferring Chatyr-Kul from the category of specially protected territory to the category of a fishing area was rescinded. After public intervention, on 25 July 2005, Government Decision No. 310 was issued on the attribution to Chatyr-Kul of the status of an international water and wetlands preserve; at the same time, Government Decision No. 694 of 4 November 2003 on the transfer of Chatyr-Kul into the category fishing waters of State significance was repealed. On 23 February 2006, the secretariat of the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the Ramsar Convention) assigned Ramsar site number 1588 to Chatyr-Kul. The repeal of the decree led to a court case, during which civil society once again had to defend public environmental interests in law enforcement bodies and in the courts. The director of the Issyk-Kul State Reserve authorized the construction of a road through the Reserve. On the basis of a complaint lodged by Independent Environmental Assessment, criminal proceedings were initiated for violation of the national legislation.

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

140. 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**

141. The public is not being informed of planned activities in good time. Environmental protection laws are being violated; some 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 appraisal, 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).

142. 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.

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

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

- (a) A national development strategy with a section on environmental safety was drawn up with the direct participation of NGOs;
- (b) 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;
- (c) The civil society organization, Independent Environmental Assessment (Kyrgyzstan), and the “Green Salvation” environmental group (Kazakhstan) have halted a transboundary project involving the construction, without a positive State environmental appraisal, of the Chyrpykty-Chon-Kemin highway;
- (d) The State Agency on Environmental Protection and Forestry, working jointly with Independent Environmental Assessment and Ekoforum Kazakhstan, has carried out transboundary environmental impact assessment of the Andash copper and gold deposit;
- (e) A national plan has been drawn up jointly by the State Agency on Environmental Protection and Forestry, local administrations, international organizations and NGOs for the strengthening of law enforcement and administration in the forestry sector;
- (f) Local associations have drawn up and implemented projects for local plans of action to protect the environment;
- (g) Public environmental appraisals of draft laws and regulations, strategies, programmes, and economic projects are conducted by NGOs;
- (h) With the support of Milieukontakt International, a group of independent experts, including qualified specialists, NGO representatives and local residents, carried out a public environmental appraisal of the environmental impact assessment section on the development of the Andash gold deposit. The outcome of the public environmental appraisal was discussed at public hearings, a round table, a press conference and eco-café, and information leaflets were prepared and distributed to the public;
- (i) 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;

(j) With support from Milieukontakt, a group of independent experts, including qualified specialists, NGO representatives and local residents, carried out a public appraisal of the environmental impact assessment section on the development of the Taldybulak Levoberezhny gold deposit, located in Kemin district of Chui province. There are plans to hold public hearings on the outcome of the public environmental appraisal;

(k) In August 2007, the 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 prepared for inhabitants and visitors;

(l) At the initiative of the International Business Council, a round table was held in November 2007 to discuss the mineral resources bill.

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

144. [www.caresd.net](http://www.caresd.net), [www.eco-expertise.org](http://www.eco-expertise.org), [www.ekois.net](http://www.ekois.net)

#### **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**

145. Under the Constitution, the people of Kyrgyzstan is the bearer of sovereignty and the sole source of State authority. In accordance with the Environmental Appraisals Act, programmes, projects, long-term plans and development schemes are subject to expert, including public, appraisal. Moreover, under the Non-Profit Organizations Act, NGOs are entitled to participate in the development of plans and programmes.

146. The Town Planning and Architecture Act gives citizens the right to information on the environmental, town-planning and socio-economic state of populated areas and on the development and stage of implementation of programmes and projects 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.

147. The environmental impact assessment procedure provides for the development of environmental impact assessments prior to the implementation of plans, strategies and programmes and, as mentioned above, 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.

148. 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”.

149. 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**

150. 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**

151. 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 with 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.

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

152. In the national development strategy for the period 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 on Environmental Protection and Forestry, local administrations, international organizations and NGOs. A national plan for the implementation of the Stockholm Convention on Persistent Organic Pollutants has been drawn up with NGO participation. Local plans of action for environmental protection have been drawn up and implemented by local associations.

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

153. [www.gov.kg](http://www.gov.kg), [www.nature.kg](http://www.nature.kg), [www.caresd.net](http://www.caresd.net), [www.eco-expertise.org](http://www.eco-expertise.org)

**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**

154. Presidential Decree No. 241 of 11 May 2006 on measures to extend, strengthen standards for and introduce forms of interaction for public authorities, local administrations and civil society in the Kyrgyz Republic; Government Decision No. 603 of 20 December 2007 on the means of analysing the effect of laws and regulations on entrepreneurial activities.

155. Under the Environmental Protection Act, citizens have the right to participate in the development and implementation of environmental protection measures, including the law-making process. The Laws and Regulations Act stipulates that citizens and organizations may be enlisted as independent experts in the conduct of legal, financial and economic, environmental and other scientific specialized appraisals of draft laws and regulations at the decision of the law-making body.

156. 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.

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

158. Draft standards and regulations are not always posted on the Internet. The time frames in which representatives of civil society may express their views varies. For example, for the draft Environment Code, comments were received over a period of five months.

159. 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.

160. 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.

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

161. 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 expert appraisals. The laws adopted do not include procedures and mechanisms for their implementation. The government decision on the means of analysing the effect of laws and regulations on entrepreneurial activities makes it mandatory to inform the public about the drafting of laws and regulations.

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

162. On the initiative of Independent Environmental Assessment, an NGO, the government decision transferring Chatyr-Kul from the category of specially protected territory to the category of a fishing area was repealed. After public intervention, on 25 July 2005, Government Decision No. 310 was issued on the attribution to lake Chatyr-Kul of the status of an international water and wetlands preserve. The draft Environment Code was prepared and discussed with all interest groups (the working group was coordinated by Independent Environmental Assessment). NGO representatives were involved in the drafting of the general technical regulations on environmental safety.

## **XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8**

163. [www.gov.kg](http://www.gov.kg), [www.govservices.kg](http://www.govservices.kg), [www.nature.kg](http://www.nature.kg), [www.caresd.net](http://www.caresd.net), [www.eco-expertise.org](http://www.eco-expertise.org)

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

164. 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.

165. Kyrgyz 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.

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

167. 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. Specialized courts may be authorized under constitutional law.

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

169. There are no provisions for the specialization of judges to hear environmental cases.

170. The Constitution provides for the possibility of establishing *aksakal* courts (local courts of elders and prominent individuals) in accordance with a decision of a meeting of citizens, a local *kenesh* (assembly) or another representative local self-government body at the *aul* (township), village or municipal level, consisting of *aksakals* or other citizens commanding respect and authority. 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, and the purpose is to achieve reconciliation and a fair settlement consistent with the law. There is an established procedure in Kyrgyz law for appealing against a decision of an *aksakal* court.

171. 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.

172. 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.

173. 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.

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

175. 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**

176. The Information (Guarantees and Freedom) Act 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.

177. 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.

178. The Information Technology Act 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.

179. Under this Act:

(a) 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;

(b) 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;

(c) Directors and officials of government agencies and organizations 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**

180. 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.

181. 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.

182. There is no special interpretation of the text of the Convention in respect of "non-governmental organizations promoting environmental protection and meeting any requirements under national law". However, based on the standards of the environmental protection legislation, "non-governmental organizations promoting environmental protection and meeting any requirements under national law" are understood to be non-profit organizations (voluntary associations and funds) that have undergone government registration by specially authorized bodies, and whose aims and objectives, set out in their founding documents, are related to protection of the environment and the use of natural resources.

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

183. 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.

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

185. It is common practice for representatives of civil society 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**

186. 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.

187. Under the current legislation on civil procedure, 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 of State or public interests are exempted from State court fees.

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

188. Cases involving violations of environmental legislation are not considered in a timely manner. The legislation on civil procedure provides for the exemption of persons defending public interests from State court fees. However, the courts do not always adequately consider the question of recognizing a violation of environmental protection legislation as a public interest issue.

189. 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.

190. Under civil procedural legislation, the district court (or the municipal district court or municipal court) receives all civil cases except those under the jurisdiction of a garrison military court or an interdistrict court.

191. Under civil procedural legislation, if an incompetent decision or a decision violating environmental rights and freedoms is challenged, the interdistrict court is authorized to hear the case. However, when compensation for damages caused by a violation of environmental law is involved, the case is heard as a civil case, in the district court. If the decision has led to environmental damage, the case falls under the jurisdiction of the interdistrict court, even if a claim is filed for compensation.

192. 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.

193. 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.

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

194. Every year, some 200 cases involving infringements of the environmental protection legislation are referred to the courts.

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

195. [www.gov.kg](http://www.gov.kg), [www.govservices.kg](http://www.govservices.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**

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

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