

The measures taken to incorporate comments of the Decision V/9i «About Kazakhstan's compliance with its obligations under the Convention in the draft law "On amendments and additions to some legislative acts of Kazakhstan on environmental issues"»

In order to fulfill the recommendations of the Decision V/9i of the Fifth Meeting of the Parties to the Aarhus Convention the following work to improve the legislation is carried out:

1. On April 8, 2016 changes in Environmental and Tax codes were made by the Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of Kazakhstan on environmental issues", in particular:

1) The conclusions of the state ecological expertise shall be published on the website of the local executive authorities within five days of their receipt by natural resource users;

2) A list of procedures for public participation in decision-making on issues of environmental protection (Article 57-1 of the Environmental Code) is identified:

- Conducting public hearings;
- Conducting public environmental expertise;
- Carrying out public ecological control;
- Submission of comments and suggestions to the state authorities at carrying out the state ecological expertise;
- Participation in public councils under government bodies.

3) Reports on emissions of large natural resources of 1 category (over two thousand) into environment are publicly available as well as data on their payments to the budget, checks of the state environmental control, environmental action plan and its implementation.

4) An National report on the state of environment and use of natural resources is annually developed and published.

5) Natural and legal persons are exempt from tax when filing lawsuits in court on environmental issues.

2. On July 21, 2016 the "Regulations for conducting public hearings" are amended by the Order of the Minister of Energy of the Republic of Kazakhstan № 260.

3. On June 10, 2016 "The list of economic activities, which projects to be submitted to a public hearing" is approved by the Order of the Acting Minister of Energy №240.

4. On April 6, 2016 the Law of Kazakhstan "On Legal Acts" regulating public participation in the development of instruments of state planning system is signed.

5. On June 30, 2016 "Rules of placement and public discussion of the draft concepts of the bills and draft regulations on the website of public normative legal

acts" are authorized by the Order of the Minister of Information and Communications №22.

6. On November 2, 2015 the Law of the Republic of Kazakhstan №383 "On public councils" is signed.

7. On February 26, 2016 the list of members of "Public Council of the Ministry of Energy" is approved by the Order of the Minister of Energy №29.

Measures taken to incorporate comments on the Decision V/9i

№	Observations of the Compliance Committee	The proposals of the Compliance Committee	Measures taken
1.	<p>a) by not providing <u>the requirement for informing the public in a timely manner</u>, and by not specifying the means of informing the public other than publication in the mass media, the Party concerned fails to ensure that the public is informed in an adequate, timely and effective manner and thus fails to comply with article 6, paragraph 2, of the Convention;</p>	<p>a) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;</p>	<p>Article 57-2 of the Environmental Code of the Republic of Kazakhstan established that the local executive bodies <u>for the twenty days prior</u> to the public hearings <u>provide the public access</u> to environmental information relating to the impact assessment on the environment of the planned economic and other activities and to <u>decision-making process</u> for this activity through the online resource, as well as using <u>other means of informing</u>.</p> <p>Rules of public hearings provide for:</p> <ul style="list-style-type: none"> - On an Internet resource of a local executive body, a special heading "Public Hearings" to be created on the form, according to appendix 1 to this Regulation; - Local executive bodies <u>for twenty days prior</u> to the public hearings shall provide the public access to environmental information relating to the procedure of environmental impact assessment of planned economic and other activity and to decision-making process for this activity through the online resource, as well as using other methods of informing; - Customer pre-negotiates with the local executive body the time and place of public hearing, a <u>preliminary list of the public concerned and justifies the most effective ways of informing (ads in the media, newsletters, stands, written requests)</u>. <ul style="list-style-type: none"> - Local executive body shall approve <u>the list of the public concerned, the way of informing, time and venue of the public hearing</u>, identifies the individual responsible for the conducting public hearings. - The Customer shall inform the public concerned in the state and Russian languages <u>no later than twenty days prior to the public hearings</u>. - Customer shall send <u>announcement of the public hearing, draft documents</u> to place on an Internet resource of the local executive body.

2.	<p>b) <u>by not establishing consistent and clear legal requirements</u> for making the information relevant <u>to decision-making accessible</u> for the public, the Party concerned fails to comply with article 6, paragraph 6, of the Convention;</p>	<p>c) There is a clear responsibility of the relevant public authorities to:</p> <p>(i) Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;</p> <p>(ii) Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;</p>	<p>Legislation of the Republic of Kazakhstan provides for clear procedures for promptly informing on discussion of the EIA projects and regulations.</p> <p>1. Rules of public hearings regulate procedures for documents publication at the discussion of the EIA of projects, in particular on the website of the local executive bodies shall be published:</p> <ul style="list-style-type: none"> - The text of announcement of the public hearing, the name of the local executive body and the contact details of the person responsible for organizing the public hearing and receipt of comments and suggestions; - The name of a public authority on conducting state ecological expertise; - Name of customer; - The address of Internet resource of local executive body, where the documentation on the project shall be placed; - Name of developer of documentation; - Date, time and venue of public hearings; - Notes and (or) proposals of public concerned on the project documentation; - Answers of customer to comments and (or) offers of public concerned; - The protocol of public hearings. <p>2. In accordance with paragraph 62 of the Decree of the President of the Republic of Kazakhstan dated on June 18, 2009 № 827 "On the System of state planning in the Republic of Kazakhstan", the participants in the processes of state planning systems are public authorities, legal entities with state participation, <u>representatives of public</u>, academic and private organizations, <u>individuals</u>.</p> <p>All documents of state planning system (with the exception of Kazakhstan Development Strategy up to 2050) are normative legal acts.</p> <p>Public participation in the development of instruments of state planning system is regulated by the Law of the Republic of Kazakhstan on April 6, 2016 "On Legal Acts" (before 6 April 2016 - "On normative legal acts")</p>
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Law of the Republic of Kazakhstan).

The order of placement and public discussion of draft laws and regulations is regulated by the Rules of placement and public discussion of draft concept of the bills and draft regulations on the website of publicly open regulations, approved by order of the Minister of Information and Communications of the Republic of Kazakhstan dated June 30, 2016 № 22 (hereinafter - Rules).

In accordance with the Rules on the Portal of "electronic government" draft regulations (hereinafter - ANP) are posted together with explanatory notes and comparative tables in the Kazakh and Russian languages.

The period of public discussion of draft NLAs may not be less than ten working days from the date of their placement on the Portal. All comments and suggestions received on the draft NLAs are published in the open access.

State authorities-developers of draft NLAs within three business days after the completion of public discussion shall consider the observations and (or) the public suggestions and decide on their acceptance or rejection indicating justification. After that, state bodies shall form and publish a preliminary version of the report on the completion of the public discussion on the draft.

Within one working day after publication of the draft report on completion of public discussion on-line public vote shall be held on draft NLA presented by public authority and comments and suggestions of the public.

After the voting state authority-developers of draft shall form and publish the final version of the report on the completion of public discussion.

This report shall contain the following information:

- commented structural part of the PPA;
- text of notes, and (or) a proposal from the public;
- text of response of state authority;
- number of votes "for" and "against" the draft NPA proposed by state

authority-developer;

number of votes "for" and "against" on the comments and suggestions from the public on the draft NLA.

Additionally, in the annex, we represent links, confirming plans, programs to discuss with the public on environment issues.

Thus, public participation in decision-making at development of plans, programs and policies on environmental protection issues is not governed by Article 57-2 of the Environmental Code "Public Hearings". At a public hearing the documentation on environmental impact assessment shall be submitted, that has been made on the construction of the ski resort "Kok Zhaylau".

Public participation in decision-making at development of plans, programs and policies on environmental issues is regulated by:

- The seventh paragraph of Article 57-1 of the Environmental Code of the Republic of Kazakhstan;

- Paragraph 62 of the Decree of the President of the Republic of Kazakhstan dated June 18, 2009 № 827 "On the System of state planning in the Republic of Kazakhstan";

- Article 18 of the Law of the Republic of Kazakhstan "On Legal Acts";

- Rules of placement and public discussion of the draft concepts of the bills and draft regulations on the website of public regulations, approved by order of the Minister of Information and Communications of the Republic of Kazakhstan.

3. Another tool of public participation in decision-making is the public councils under government bodies. Any citizen of Kazakhstan can become a member of public council. To do this, citizen shall submit an application to the address of the state body.

As part of the Public Council of the Ministry of Energy there is Commission on ecology consisting of 14 representatives of environmental NGOs.

Since its inception in February 2016 the Commission on ecology has considered following issues:

	<p>c) by allowing the submission of public comments only on the OVOS report at the stage of State environmental expertise, and by limiting the range of the public comments only to those containing reasoned argumentation, the legislation of the Party concerned fails to guarantee the full scope of the rights envisaged by the Convention and thus fails to</p>	<p>b) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;</p>	<p>- Problems of ecological state of the Kazakhstan sector of the Caspian Sea and adjacent coastal areas, including areas where there is a conflict of interest on conservation of biological resources, environment and subsurface use, in accordance with international requirements; - The problem of creating a unified information system on the results of environmental monitoring; Also on a permanent basis discussion of all draft environmental NLAs is conducted. Members of the Commission shall take a decision on the need to submit draft NLA to public hearings for a broader discussion among the population. On the website of the Ministry of Energy all information on the activities of the Public Council is published http://energo.gov.kz/index.php?id=8107 Also Public councils operate in all central local executive bodies.</p>
<p>3.</p>			<p>1. Article 57-1 "Public participation in decision-making on issues of environmental protection" is introduced in the Environmental Code: Public participation in decision-making on issues of environmental protection is carried out through: conducting public hearings; conducting public environmental expertise; carrying out public ecological control; submission of comments and suggestions to the state authorities at conducting state ecological expertise; participation in public councils under government bodies; comments and suggestions on the draft normative legal acts on environmental issues, including the draft documents of state planning system. 2. Environmental Code specifies requirements for the projects required to conduct public hearings (new Article 57-2 "Conducting public hearings"). Public hearings shall be held on the projects:</p>

comply with article 6, paragraph 7, of the Convention;

- 1) in the areas of agriculture and forestry, mining and manufacturing industries, construction, transport, electricity, heating, water supply, sewerage, waste management and other sectors of economy according to the list determined by the authorized body in the field of environmental protection;
- 2) providing placement of facilities in water protection zones and belts and zones of sanitary protection of water sources;
- 3) providing placement of facilities on the lands of the state forest fund;
- 4) providing for felling in the lands of the state forest fund, including landscaping trees within the boundaries of settlements;
- 5) providing a nature activity in protected areas and the former Semipalatinsk nuclear test site;
- 6) is an object of the state ecological expertise referred to subparagraphs 1), 6), 8), 9) and 10) of paragraph 1 of Article 47 of this Code, namely:
 - 1) pre-project documentation of the planned activities that impact on environment, with its accompanying materials of environmental impact assessment in accordance with the stages set out in Article 37 of this Code;
 - 6) projects of natural science and feasibility studies for the establishment and expansion of protected areas, the elimination of state nature reserves and state protected areas of the republican values and a decrease in their territory;
 - 8) projects of general development plans (development) of cities and territories, including the territories of special economic zones and territories with special regime of economic activity;
 - 9) materials of areas of inspection justifying the assignment of these areas to zones of ecological disaster or environmental emergency;
 - 10) projects of economic activities which may have an impact on the environment of neighboring states or for which carrying out is necessary to use natural objects common with the neighboring states, or which affect the interests of neighboring countries, including the complex "Baikonur" as defined by international treaties of the Republic of Kazakhstan;

4.	d) by not establishing appropriate procedures to promptly notify the public about the environmental expertise conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention;		<p>1. At the legislative level (Article 57) the obligation of publication of the state environmental expertise on the Internet site of the local executive authorities within five working days of receipt by the nature user is introduced.</p> <p>2. The Rules of conducting public hearings (approved by the Order of the Minister of Environmental Protection of the Republic of Kazakhstan dated May 7, 2007 № 135-p) provides that:</p> <ul style="list-style-type: none"> - the results of public hearings are designed in the protocol, which is hosted on an Internet resource of local executive body not later than seven working days after the public hearing.
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