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# **Green SALVATION**

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the Ecological Society Green Salvation**

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Editor **Glenn Kempf**

Translator **Michelle Kinman**

Designer **Anton Diakov**

Typesetter **Irina Manuilenko**

The photographs on the cover pages were taken by **Alexander Zhdanko** and **Vladimir Abdulov**

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for their financial support of the organization's activities, particularly our work in the courts, without which many of the articles in this issue would not be possible, as well as for the publication of the Herald.

We are indebted to many individuals and organizations for their support and assistance in completing this book. Special recognition is due to Michelle Kinman, Glenn Kempf, and Kate Watters, who played an invaluable role in the preparation of this issue.

Finally, the Ecological Society Green Salvation wishes to thank all who helped us to prepare this issue.



FROM THE EDITOR

**Glenn Kempf**

The Green Salvation Herald 2006 is the latest English-language supplement and digest to the Bulletin of Green Salvation (in Russian, Vestnik “Zelenoe spasenie”), the journal of the Ecological Society Green Salvation, headquartered in Almaty, Kazakhstan. Founded in 1990, Green Salvation is one of Kazakhstan’s oldest and most respected environmental organizations; its members have worked for many years to protect their country’s natural environment and to defend the rights and well-being of its citizens. The 2006 Herald contains articles by members of Green Salvation, as well as by outside partners and specialists.

The first section concerns Kazakhstan’s compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Kazakhstan became a signatory to the Convention in October of 2000 and hosted the second meeting of its member nations in May 2005; however, the provisions of the Convention itself are far from being fulfilled there.

In the first article in the section, Sergey Kuratov examines one of the key provisions of the Aarhus Convention, the public’s access to information regarding environmental issues and the actions of the government and corporations affecting the environment and public health. Svetlana Katorcha provides a case study of Green Salvation’s own efforts in the legal arena to call government agencies to task for failing to meet their own legal responsibilities concerning violations of citizens’ rights in Almaty and beyond. Nataliya Medvedeva provides a broader overview of the issue of compliance with the Aarhus Convention in Kazakhstan, as well as a timeline of Green Salvation’s activities. The section closes with the text of recent communications with the Aarhus Convention Compliance Committee in Geneva. Green Salvation was one of the first parties to bring an appeal before the Committee; in every instance, their arguments regarding violations of the Convention in Kazakhstan have been accepted, but the Kazakhstani government has all too often failed to respond.

The second part of the Herald provides a vivid snapshot of three case studies regarding environmental problems in Kazakhstan today. Nataliya Yakovleva describes an ambitious project to study public health issues in Ust-Kamenogorsk, a heavily polluted industrial city in northeastern Kazakhstan. Green Salvation’s Sergey Solyanik and Kate Watters of the U.S. organization Crude Accountability paint a picture of the trials of the residents of Berezovka, a small village in Western Kazakhstan located on the edge of



the Karachaganak oil and gas field, describing the health threats posed by foreign drilling projects at the field and the residents' long search for justice and assistance, as well as the obstacles that local authorities and media outlets have placed in their way. Finally, Svetlana Spatar and Sergey Solyanik take a look at an international financial institution active in Kazakhstan, the European Bank for Reconstruction and Development (EBRD), examining the Bank's current review of its public information policy, as well as the ways in which this policy may still fall short.

The final section of the Herald marks an important date: the tenth anniversary since the founding of the Bulletin of Green Salvation, the Herald's Russian-language parent publication, an event that was celebrated with a round-table meeting and exhibit in Almaty. Over the years, the journal's circle of readers has expanded, along with the scope of its coverage and Green Salvation's own efforts; we hope that it will continue to grow further in the years to come.

The Aarhus Convention...public information...the residents of Berezovka and the children of Ust-Kamenogorsk... In every case, the message of this issue is that issues such as environmental protection, public health, and the use of natural resources are not matters to be kept apart as the exclusive preserve of such abstract entities as governments, international bodies, and large corporations; they touch the lives of millions of ordinary citizens, and those citizens deserve the chance to gain both insight and input into those issues that affect them, as well as the opportunity to state their case. It is said that a journey of a thousand miles begins with a single step; if thousands of people gain the ability to take that step, perhaps there is yet hope that we can lead the world, and ourselves, in a better direction.

**In order to enable foreign readers to understand certain terms that they will encounter in the Herald's articles, a brief glossary is given below.**

**Akim:** a representative of the President and government of the Republic of Kazakhstan who heads a local executive body called an Akimat; the term may refer to leadership on either the local (city or district) or oblast (provincial) level.

**Akimat:** a local executive body led by an Akim.

**"Kazgidromet":** the national government enterprise "Kazgidromet", of the Ministry of Environmental Protection, is Kazakhstan's national hydro-meteorological service, which conducts government monitoring of the environment, particularly air monitoring.

**Region:** a region is a small administrative or territorial unit within an oblast or city. In the 2006 Herald, the word "region" is translated as "district" when signifying an administrative unit. In original documents, the author's text is accompanied by an editorial note (Ex: Court of Medeusky Region [District]). In the remaining cases, the word "region" is used to signify any small territory.





## THE ECOLOGICAL SOCIETY GREEN SALVATION

The Ecological Society Green Salvation was founded in 1990 and is registered as a public organization of Almaty city. Green Salvation's goal is to protect the human right to a healthy and productive life in harmony with nature, and to foster improvements to the socio-ecological situation in the Republic of Kazakhstan.

Green Salvation is guided by the following principles in its activities:

- the universality, indivisibility, interdependence and interconnection of all human rights;
- observance of the right of the present and future generations to a healthy and productive life in harmony with nature;
- the need for general environmental education and awareness;
- the necessity of collaboration between government bodies, commercial entities, nongovernmental organizations and the public in resolving environmental problems.

Membership in the organization is based on personal initiative and participation in specific projects. Green Salvation's staff is comprised of people from various professions who combine their organizational work with their professional activities. Honorary members and volunteers make a substantial contribution.

### **Main activity focus of the Ecological Society Green Salvation**

#### **1. Defending the human right to a favorable environment**

The organization defends the rights of humans and nature through judicial methods, seeking strict observance of national legislation and international agreements. Green Salvation upholds the right of citizens to access to environmental information, seeking the repeal of conclusions from state environmental assessments conducted in violation of the laws; and contests the inactivity of government bodies. Among the organization's more important activities are lawsuits concerning the withholding of information about "Kazatomprom", recognition of the invalidity of the state environmental assessment's conclusion for the project to construct a 110 kV high-voltage power line in the Mountain Giant District, and the resumption of work of the Plant for Construction Materials and Structures No. 3.



In 2004, as a result of lawsuits, appeals were filed with the Aarhus Convention's Compliance Committee. In the case of two of the appeals, the Committee acknowledged noncompliance with Convention statutes in the Republic of Kazakhstan and violations of citizens' rights to participate in decision-making processes and to access to justice with regard to environmental concerns.

## **2. Participation in the development of environmental protection legislation**

Green Salvation participated in the official discussions concerning the law "On Protection of the Natural Environment in the Kazakh Soviet Socialist Republic" (1991) and the laws of the Republic of Kazakhstan "On Environmental Protection" (1997), "On Environmental Assessment" (1997), "On Specially Protected Territories" (1997), "On Land" (2001), "On Tourist Activities in the Republic of Kazakhstan" (2001), the Forestry Code (2003), the Land Code (2003) and others. In 2002, at the request of the Committee for Environmental and Nature Management Issues of the Lower House of Parliament, Green Salvation conducted a public environmental assessment of the draft Forestry Code.

## **3. Environmental awareness and education**

Green Salvation tries to draw public attention to environmental problems by publishing materials in the domestic and foreign press, participating in television and radio programs, and organizing exhibitions. Special courses are developed and textbooks are published for students. Methodological, informational and consultative assistance are provided to teachers at the middle and high school levels.

Since 1995, the organization has published the "Green Salvation" Bulletin, with a supplement in English since 2000. The Bulletin's thematic issues are related to environmental protection legislation and the protection of human rights, environmental education, the development of a network of national parks, and other socio-ecological problems. To date, more than 25 publications have been produced in Russian, Kazakh and English. Green Salvation regularly collaborates with libraries in Kazakhstan and other countries.

In 2002, Green Salvation began a video program through which films have been shot in Russian, Kazakh and English. The film titles speak for themselves: "Legacy of the Nuclear Age", "The Riches of Nature—In Whose Hands?", "Passengers in Forgotten Way Stations", "Canyon" and "The Earth Does Not Belong to Man...". Several of these films have been awarded prizes at international festivals.



In 2002, Green Salvation launched a website in Russian and English containing varied information on the activities of the organization and its partners.

#### **4. Environmental actions**

Green Salvation is collaborating with the Ile-Alatau State National Nature Park administration in an effort to include the Park in the World Heritage List of the Convention Concerning Protection of the World Cultural and Natural Heritage. Together with the environmental club “Berendei” (Kapchagai), Green Salvation has repeatedly conducted summer environmental schools in the Park.

Green Salvation actively participated in the anti-nuclear campaign conducted by public organizations that were against the plan to import and bury radioactive waste from other countries in the Republic of Kazakhstan. Green Salvation also participated in the following international campaigns: International Right to Know, Publish What You Pay, and Caspian Revenue Watch.

#### **5. Data collection on the Republic of Kazakhstan’s environmental situation**

Green Salvation has brought together various documentary, reference and training materials in its electronic databases, library and video collection. These materials are used by activists from nongovernmental organizations, specialists, teachers, college students and schoolchildren.

Green Salvation collaborates with a number of environmental NGOs in Kazakhstan, the countries of the CIS and abroad: the “Biosphere” Environmental Club (Kazakhstan), the International Socio-Ecological Union (Russia), Crude Accountability (USA), and CEE Bankwatch Network.

Green Salvation maintains regular working contacts with the Ministry of the Environment, other government bodies, and deputies at various levels.

The Ecological Society Green Salvation is open to collaboration.

#### **Our address:**

050000, Republic of Kazakhstan, Almaty, Shagabutdinova Street 58, apt. 28

Telephone: (327) 234-17-60

Website: [www.greensalvation.org](http://www.greensalvation.org)

E-mail: [grsalmati@mail.ru](mailto:grsalmati@mail.ru)





# C OMPLIANCE WITH THE AARHUS CONVENTION IN KAZAKHSTAN



## ACCESS TO ENVIRONMENTAL INFORMATION IN THE REPUBLIC OF KAZAKHSTAN

**Sergey Kuratov,  
the Ecological Society Green Salvation,  
Almaty, Kazakhstan**

*Received 29 September 2006*

It is difficult to overestimate the role of information in the resolution of environmental issues. The 1998 signing of the Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters is confirmation of this fact.

In 2000, the Republic of Kazakhstan ratified the Aarhus Convention, adopting international legal obligations regarding access to information. The first step was taken. However, realization of the right to information access presumes that this right will be recognized, observed, and defended. Yet how, in reality, is the right of access to information observed, and how are the Convention's provisions put into practice in Kazakhstan? The materials that follow are devoted to these questions.

### **Recognizing the right of access to environmental information**

In Kazakhstan, citizens and individuals without citizenship, as well as foreigners on the territory of the republic, have the right of access to information about the state of the environment and measures to improve it. This right is guaranteed in the country's Constitution (1995, Article 18, Point 3; Article 20, Point 2), the law "On Environmental Protection" (1997, Articles 5, 6, 71), and the law "On Organizing Information Resources" (2003, Article 14).

Access to information about specific types of activities, directly or indirectly related to environmental issues, is regulated by the following laws: "On Specially Protected Natural Territories" (2006, Articles 3, 12, 13); "On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan" (2002, Article 13, Point 1); "On the Sanitary-Epidemiological Well-Being of the Population" (2002, Article 18, Point 1); "On the Use of Atomic Energy" (1997, Article 21); "On Protection of the Rights of Consumers" (1991, Articles 6 & 11); and others.

The right of access to environmental information is recognized and



guaranteed by Kazakhstan's ratification of the following international agreements: the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (ratified in 2000); the Convention Concerning the Protection of the World Cultural and Natural Heritage (ratified in 1994); the Convention on Environmental Impact Assessment in a Transboundary Context (joined in 2000); the Convention on Climate Change (ratified in 1995); and other international agreements.

The actions of officials who impede in various ways, the receipt of information may be appealed in court in accordance with the law "On Environmental Protection" (1997, Article 71) and the "Code of the Republic of Kazakhstan on Administrative Violations of the Law" (2001, Article 84). The law "On State Secrets" (1999, Article 15, Point 4) presumes the right to appeal the unfounded "attribution of knowledge of state secrets".

Criminal responsibility is stipulated for concealing information about "events, facts or occurrences posing a threat to the life or health of people or the environment" by those obliged to provide the population with such information" ("Criminal Code of the Republic of Kazakhstan", 1997, Article 268).

It should be noted that, in agreement with the country's Constitution, "International agreements ratified by the republic supersede national laws, effective immediately, except in cases when an international agreement requires the passing of a new law" (Article 4, Point 3). In theory, this eliminates all contradictions between national legislation and international legal norms effective in the country.

### **Shortcomings of national legislation**

There are no clear-cut criteria in national legislation differentiating between closed (secret) information, particular commercial information, and open information. This gives business people and government bureaucrats the opportunity to broadly interpret the concept of a "commercial secret", as given in the law "On the Protection and Support of Private Enterprises" (1992, Article 21), and enables them to conceal a significant amount of information. At the national seminar "Problems of Modernizing Technology at Kazakhstan's Mineral-Processing Enterprises: Science and Practice", it was recognized that references to commercial secrets are used everywhere to conceal violations of laws and actions directed against government interests (Panorama, October 18, 2002).



The issue of the legal basis for gathering information remains unresolved. In accordance with the law “On Environmental Protection” (Articles 24 & 25), governmental and industrial monitoring of the environment and natural resources is conducted in Kazakhstan.

Governmental monitoring is conducted by the authorized body in the environmental protection field. Private and governmental industrial enterprises are obliged to conduct industrial monitoring.

However, in connection with the lack of financial resources for conducting governmental monitoring, it has become common to arrange agreements, for instance, between the subdivision of the Republican Government Enterprise “Kazgidromet” and companies, in order to conduct industrial monitoring (Informational Environmental Bulletin..., p.22; Panorama, December 15, 2000). In so doing, the state institutions expand their budgets. And private enterprises do not remain on the sidelines.

For example, “Karachaganak Petroleum Operating, B.V.” (KPO) finances the activities of the firm “Gidromet Ltd.”, which conducts industrial environmental monitoring for the company (Priuralye, January 28, 2006).

The participation of government enterprises and private firms in industrial monitoring calls into question the objectivity of the information obtained. Such activity contradicts the aforementioned articles from the law “On Environmental Protection”, in which there is no indication that third-party private companies have the right to conduct industrial monitoring.

In order to legalize this practice, in 2006 the Ministry of Environmental Protection developed “Standard Rules for Industrial Monitoring”, in which it is stated, in particular, “Industrial monitoring of natural resource users is conducted independently or under agreement with accredited laboratories” (Point 11). Clearly, it does not embarrass the leaders of the Ministry of Environmental Protection that this contradicts legislation and common sense. After all, one of the main purposes of monitoring is to collect information, which state bodies use to “support the making of economic decisions” and to control their execution (“On Environmental Protection”, Article 24).

To date, the creation of a Single Governmental System for Monitoring the Environment and Natural Resources, as stipulated in the law “On Environmental Protection” (Article 24, Point 1), has not been completed. There is mention of this in the state program “Protection of the Environment of the Republic of Kazakhstan in 2005-2007”: “In accordance with legislation, it is necessary to ensure the functioning and future development of a single governmental system for monitoring the environment and natural resources...” (Section 5.1.4).

The destruction of the governmental monitoring system has led to a



situation in which administrative bodies do not handle the collection of the necessary information for public knowledge and decision-making. Currently, the governmental network contains only 20% of the optimal number of environmental monitoring observation points. Given this deficiency and the deterioration of the technical resources for observation and measurement, the volume and reliability of information obtained has diminished. The weak coordination of the ministries and authorities conducting monitoring does not enable a complete, objective assessment of the state of the environment and the receipt of timely, efficient information (Kazakhstanskaya Pravda, December 10, 2003; ADB...).

As a result of the legal limitations to monitoring, there is virtually no independent system for collecting information on the state of the environment in Kazakhstan.

This was noted in a report by a World Health Organization (WHO) mission, which was invited by governmental bodies to conduct research in the region of the Tengiz Field. "The timely use of an independent (from Tengizchevroil—TCO) system for assessing the quality of the environment and informing the public of the findings would contribute to improvements in the health and quality of life of the population of Sarkamys village" (WHO Mission Report..., p.14).

Other shortcomings of the legislation include the lack of "clear regulation and leadership in terms of the responsibility of government bodies to provide information to the public." This was emphasized in decision II/5a, "Observation by Kazakhstan of its Obligations According to the Aarhus Convention" (Point 1), made at the Second Meeting of the Parties to this Convention. Government bureaucrats, utilizing the ambiguity of the legislation, narrow the circle of subdivisions responsible for providing information to the public, excluding from the circle such enterprises as the national atomic company "Kazatomprom."

To date, the "minimal configuration of indicators for government statistical accounts and a procedure for managing government statistics in the field of environmental protection" has not been determined, despite the requirements of the law "On Environmental Protection" (Article 72). In the "List of Forms of General Government Statistical Accounts of the Republic of Kazakhstan", only three indicators are included. Two of these characterize environmental pollution, and the third covers financial costs for environmental protection measures, the amount of payments for pollution, and use of resources (List...). In actuality, other data are published in the statistical collections (Brief...).

Indicators of sustainable development in Kazakhstan have not been developed either, although this issue has been raised more than once and



steps have been taken toward its development (Indicators..., Kazakhstanskaya Pravda, April 7, 2006).

The procedures for private enterprises, including foreign enterprises, to provide environmental information have not been defined in legislation. It is worth singling out this particular problem, as many extraction and industrial refining enterprises became private property as a result of privatization. Private enterprises are not obligated to provide information to the public. They pass on data from industrial monitoring and records of their environmental impact to “the authorized bodies in the field of environmental protection...[and] local executive bodies...” (“On Environmental Protection”, Article 25, Point 3).

In accordance with the 2003 law “On Organizing Information Resources”, “the procedures for accessing non-governmental informational resources, not containing government secrets, are defined by the owners of the informational resources, not in contradiction to this law” (Article 14).

However, in accordance with the “Standard Rules for Industrial Monitoring”, private and governmental natural resource users must ensure “public access to the environmental monitoring program and the data covered in its reports” (Standard Rules..., Point 13). This contradicts Article 25, Point 3 of the law “On Environmental Protection”; therefore, this issue remains unresolved.

### **Provision of information**

“Records of overall statistical data regarding requests for environmental information are not kept in Kazakhstan. It is possible only to cite quantitative data obtained from individual territorial divisions of the Ministry of Environmental Protection” (Report on Implementation...). Relying on the given statistics, it is possible to conclude that, in the majority of cases, parties receive answers to their inquiries.

However, the experience of the Ecological Society Green Salvation demonstrates that not all government departments provide information to an equal extent. For example, Parliamentary committees and bodies of the executive branch respond inadequately to public inquiries on environmental issues. It is not uncommon for the only way to obtain information from these bodies to be through the courts.

Government bodies provide a portion of environmental information free of charge. However, statistical information is provided for individuals and legal entities on a paid basis, in accordance with the price list “Prices for the Service of Providing Statistical Information”, approved by Decree No. 17 of the Government Committee of the Republic of Kazakhstan on Pricing and Anti-Monopoly Policies, dated March 31, 1997.

The Committee on Technical Regulation and Metrology (Gosstandart)



also provides information on a paid basis, citing the “List of Work and Services Performed by Subjects of Market Relations in Established Legal Procedures”, from Decree No. 343 by the government of the Republic of Kazakhstan, “On Development of a Market of Individual Types of Work and Services”, dated March 31, 1999.

At times, the high price is the main obstacle to obtaining information (Report of the Republican Government Enterprise “Kazgidromet”...). This contradicts Article 4 of the Aarhus Convention, in which it is specified that the sale of information is permitted, but “such charge shall not exceed a reasonable amount”; that is, information must be truly accessible.

For the residents of outlying population centers, access to information is complicated by the fact that the requested information may be obtained only in the administrative centers, and not at the local institutions where the data is collected. At the same time, information posted on the Internet is not accessible for many Kazakhstanis.

Clearly, some of the supposedly accessible information is intentionally concealed. Under any pretext, it is not provided to the public, even under order from the courts. Its publication may lead to undesirable consequences for the authorities and business leaders.

Official documents also do not always end up in the media. The decision of the Aarhus Convention’s Compliance Committee and the decisions of the Second Meeting of the Parties to the Convention were not published in the press. The websites of the government, the General Public Prosecutor, and the Ministry of Foreign Affairs also did not cover the meeting, although it took place in Almaty in May 2005. Only a brief note was posted about the event on the Supreme Court’s website.

A few months after the Meeting of the Parties, a number of the meeting documents were posted on the Ministry of Environmental Protection’s website. In September 2006, the information was removed from the site. Thus, the decision of the Second Meeting of the Parties on “Kazakhstan’s Observation of its Obligations to the Aarhus Convention” (Decision II/5a) is not on any of the official sites.

Information about the activities of transnational corporations (TNCs) in Kazakhstan is the most confidential information. For instance, in July 2005, the media reported that a Memorandum of Understanding had been signed between the Ministry of Environmental Protection, the Akim of West Kazakhstan Oblast, and the international consortium “Karachaganak Petroleum Operating, B.V.”. According to the former Minister of



Environmental Protection, A. Samakova, “the signed document should ensure the transparency of environmental protection measures performed by the major enterprises of the region” (Panorama, July 1, 2005). However, the Ministry of Environmental Protection’s response to a public request for the Memorandum was that “the given information falls under the category of confidential commercial and industrial information, and is safeguarded by law for the purposes of protecting economic interests” (Response from the Ministry of Environmental Protection).

These same companies are trying to conduct accommodating policies, attempting to support “good-neighbor relations” with the public. For example, KPO provided rather detailed responses to requests from the public, pointing out that, under the law, environmental information may be provided by the authorized environmental protection bodies (KPO Response...).

The pace of information distribution also leaves much to be desired. Updates to the Ministry of Environmental Protection’s website, created in 2003 with the assistance of the Danish government, are not timely. For instance, there are reports on the state of the environment in Kazakhstan’s regions for 2002 and 2003 only. The 2003 report was published only in early 2005, immediately preceding the Second Meeting of the Parties to the Aarhus Convention (Report on the State...).

It is impossible to call the distribution of urgent information satisfactory. For example, in March 2005 in the city of Ust-Kamenogorsk, harmful substances were emitted into the atmosphere. As a result, dozens of residents were hospitalized, as there was not any timely notification of the danger. For a long time after the incident, the city residents were not able to obtain information from the environmental protection and sanitary-epidemiological services about what had happened (<http://www.zakon.kz/our/news/news.asp?id=38220>, April 20, 2005).

The high level of corruption in Kazakhstan is yet one more reason that access to information is difficult. According to Transparency International, in 2003, Kazakhstan took 101st place out of 133 countries in terms of corruption levels (Towards a Society without Corruption, No. 4/17, 2003, p.7). In 2004, it ranked 122nd out of 146 countries (Corruption Index 2004, Transparency International), and in 2005, Kazakhstan took 107th place out of 158 countries ([www.transparency.org/surveys](http://www.transparency.org/surveys)).

### **Quality of information**

Due to its quality—contradictory or incomplete—officially presented information is often not useful for decision-making. For instance, contradictory information will be provided by various governmental departments in the



very same journal. The Ministry of Environmental Protection announced that “the composition of the marine water close to the ‘Sunkar’ drilling platform (OKIOC: Offshore Kazakhstan International Operating Company) has not changed in comparison to background concentrations, and the discharge of decontaminated industrial waters has not had any observable impact.” Yet according to the Atyrau Oblast Public Prosecutor, “the water within a radius of 500 meters from the drilling is highly toxic, particularly dangerous for all ichthyo- and ornitho-fauna” (Ecology and Sustainable Development, No. 6, 2001, p.15, 28).

In response to requests from the public to clarify legislation, the Public Prosecutor’s offices often provide answers that are confined to generally known regulations that do not address the heart of the issues.

Governmental departments present high-quality information only when the issue in question does not affect their activities or their interests.

World Bank specialists note the general character of official information, for instance, information about emissions produced by extraction companies or information on the National Fund of Kazakhstan. In their view, “three obvious commitments can be made immediately:

- unilaterally commit to disclose the oil revenues received by the treasury from each of the 51 legal entities operating in the oil and gas industry (and any new one that may be established);
- encourage each legal entity operating in the sector,...to make available to any interested party the amounts of tax they pay...;
- revamp the information base available to the general public on the National Fund of the Republic of Kazakhstan, including publishing the auditor’s opinion and management letter, as well as detailed reporting on the financial results of the fund ...” (Republic of Kazakhstan..., Article XIV).

The websites of the TNCs suffer from another extreme. These sites contain a large amount of technical and financial information, which require specialized knowledge to comprehend. This violates the principles of “Agenda 21”, which states, “Special emphasis should be placed on the transformation of existing information into forms more useful for decision-making and on targeting information at different user groups” (Agenda 21, p.509).

The incompleteness and unreliability of information afflicts more than just environmental statistics. UNDP specialists in Kazakhstan note that the officially available data does not allow for a complete analysis of poverty in Kazakhstan for the last ten years (UNDP..., p.14). Several economists even talk about the lack of reliable economic statistics for Kazakhstan (Literaturnaya Gazeta, June 2, 2004).

### **Trial defense of citizens’ right to information access**

Kazakhstan’s courts are considering lawsuits on the withholding of



environmental information by government bodies. For instance, the courts have filed cases against the Ministry of Environmental Protection, the national atomic company “Kazatomprom”, the Forestry and Game Committee, the Almaty District Public Prosecutor of Almaty city, and the city administration of Almaty, due to lawsuits by Green Salvation. In the majority of cases, the lawsuit demands were satisfied (see [www.greensalvation.org](http://www.greensalvation.org)).

However, appealing to the courts entails certain complications. Evidently, in order to hinder cases from being filed against government bodies, it is not unusual for the courts to refuse to accept lawsuits, stating that the cases must be considered by other courts. The courts indicated then similarly refuse to accept the lawsuits, citing the very same reason. Such “games” can continue for months. Once lawsuits are accepted, procedural ruses will be used, in effect, to deny consideration of the case. The procedures for handing down decisions are violated. Green Salvation had an experience in which a court decided in favor of the defendant, but in prejudication acknowledged the defendant’s action as illegal.

After obtaining a positive decision from the court, the plaintiff does not always receive all of the information requested. Moreover, it is not unusual for the implementation of lawsuit verdicts to be delayed for many months. Considering the lack of a mechanism for compensation by government bodies for lawsuit expenses, nongovernmental organizations have to exert considerable effort to obtain compensation.

### **Actions by the offices of the public prosecutor**

There is no information to be found in official sources about the activities of the Public Prosecutor for oversight of the observance of legality in ensuring access to information. Green Salvation’s trial experience demonstrates that the Public Prosecutor exercises practically no oversight over accurate and uniform application of laws. Despite the numerous instances of arbitrary interpretations of the laws by defendants and the courts in the course of trial processes, only twice has the Public Prosecutor’s office supported the lawsuit demands put forth by Green Salvation. However, they later respond to protests without any explanation of the reasons.

Some isolated instances have been known, however, in which the Environmental Public Prosecutor of the city of Almaty assisted the public in collecting information.

### **Actions of international organizations**

Once the Republic of Kazakhstan signed and ratified the Aarhus Convention, Kazakhstan’s public obtained the opportunity to defend its right to information access on the international level.

One of the first appeals to the Convention’s Compliance Committee was made in a statement by Green Salvation in early 2004 (ACCC/C/2004/01). On February 18, 2005, the Committee, having reviewed the statement,



concluded “The Committee finds that, by having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Kazakhstan was not in compliance with that article”. The Committee’s conclusions were confirmed at the Second Meeting of the Parties to the Convention in May 2005 ([www.unece.org/env/pp](http://www.unece.org/env/pp); [www.greensalvation.org](http://www.greensalvation.org)).

Unfortunately, there is no sense in hoping that the rights of citizens will be restored in the courts based on the decisions of the Committee, as Kazakhstan’s legal bodies consider these decisions not to be obligatory.

## Conclusion

This summary identifies only the fundamental problems of recognizing, observing and defending the right of the public of access to environmental information in Kazakhstan.

On the whole, the legal basis for the realization of this right in Kazakhstan may be acknowledged as satisfactory. However, due to poor fulfillment of the laws, the arbitrary rule of bureaucrats, thriving corruption, and disregard for international law, access to information is significantly hindered.

The fundamental obstacle is concealed censorship, that is, not distributing or distorting facts for political or commercial reasons. The scale and impact of censorship can be judged only on the basis of circumstantial data, due to the lack of evidence.

Government bodies do not guarantee high-quality collection and efficient distribution of data on the state of the environment, environmental improvement measures, etc.

At practically all levels, bureaucrats are unfamiliar with the normative legal acts that regulate the provision of information. Often they are not knowledgeable about their official obligations, which include assisting the public in obtaining information. They must be informed, at last, of the international obligations accepted by Kazakhstan regarding this issue.

The Supreme Court does not exercise constant supervision over the activities of the courts of general instances with regard to defending the rights of the public to obtain information.

International organizations, foremost the OSCE, react inadequately to the Republic of Kazakhstan’s violations of its international obligations.

Unfortunately, at this time, the Aarhus Convention has not developed a mechanism for monitoring compliance to the Convention by the member parties, thereby also not contributing to Kazakhstan’s compliance with the requirements of its international agreements.



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## LAWSUIT ON THE INACTIVITY OF THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

**Svetlana Katorcha,**  
**Lawyer for the Ecological Society Green Salvation,**  
**Almaty, Kazakhstan**

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In November 2005, two Kazakhstani organizations, the Ecological Society Green Salvation and the Ecological Club “Biosphere,” filed a lawsuit in the Saryarkinsk District Court in the city of Astana. The basis for the lawsuit was inactivity on the part of the government, the Ministry of Environmental Protection, the Ministry of Justice, the Ministry of Foreign Affairs, and the General Public Prosecutor, which resulted in violations of the right of citizens to participate in decision-making processes regarding the environment, one of the fundamental provisions of the Aarhus Convention.

Courts of all instances, including the Supreme Court, refused to admit the lawsuit, alleging that the plaintiffs cannot provide proof of violations of rights, freedoms, or the legal interests of citizens (Decision of the Supreme Court’s Oversight Board). Thus, the authorized government bodies did not recognize the decision of the Aarhus Convention’s Compliance Committee and the Second Meeting of the Parties, which concluded that the “government of Kazakhstan has not fully ensured compliance” with a number of the Convention’s provisions, resulting in violations of the right of citizens to participate in decision-making processes and the right of access to justice.

### **The public right to participate in decision-making**

On March 18, 1997, the Republic of Kazakhstan passed the law “On Environmental Assessment.” In accordance with Article 15, Point 1, Subpoint 2 of this law, the Ministry of Environmental Protection is obligated to develop procedures for taking public opinion into account, which is one of the compulsory conditions for conducting a state environmental assessment. In this way, those who created the law intended for the public to be able to influence decisions regarding the environment.

This law is in accordance with the constitutional right of citizens to participate directly in the management of the government (Constitution,



Point 1, Article 33). Moreover, Article 3 of the law “On Government Service” secures as a “priority the rights, freedoms and legal interests of citizens before the interests of the state”.

Signed and ratified by Kazakhstan on October 23, 2000, the Aarhus Convention strengthened people’s confidence that, in the near future, they would receive a genuine instrument with which to defend their right to a favorable environment. At first glance, it seemed that they needed only to wait for the passing of a normative legal act to define the procedures for public participation in the decision-making process.

### **Actions of the Ministry of Environmental Protection**

State bodies, first and foremost the Ministry of Environmental Protection, have not been in a hurry to fulfill the requirements of the Aarhus Convention and the law “On Environmental Assessment.” Procedures for taking public opinion into account and for public participation in decision-making have still not been developed. Over the course of nine years, only general conversations have taken place, and attempts to incorporate public participation have been mere formalities.

A clear example is found in the “Instructions on Conducting Environmental Impact Assessments (EIA) of Planned Economic or Other Activities During the Development of Pre-Plan, Pre-Project and Project Documentation”, approved by the Ministry of Environmental Protection on February 28, 2004 (Decree No. 68-P).

According to Zh. Bekzhanov, Vice Minister of Environmental Protection (Dispatch. 3-2-1-6/882-1, May 6, 2005), the Instructions were approved and registered in the Ministry of Justice in order to apply Statute 1, Point 20 of the Aarhus Convention in Kazakhstan. The Instructions were developed based on the law “On Environmental Assessments”, Article 15, Point 1, Subpoint 2. “In accordance with the given Instructions, consideration of public opinion is guaranteed by the participation of the public in the preparation and discussion of EIA materials, and is organized by the customers of the planned economic or other activity”. Mr. Bekzhanov maintained that “in Kazakhstan, there is currently a normative strengthening of the procedures for public participation.”

The Vice Minister equated consideration of public opinion with public participation in the preparation and discussion of EIA materials, although the latter is only one of the forms of expressing public opinion. The Vice Minister did not even remember the procedures



for public participation in decision-making processes related to the environment. Such arbitrary treatment of the law fully suits the customers of planned environmental activities, as well as the Ministry of Environmental Protection.

In 2005, while reviewing the communications from Kazakhstan's public to the Aarhus Convention's Compliance Committee, the Ministry of Environmental Protection repeatedly referred to these Instructions as an example of fulfilling the principles of the Aarhus Convention. It did not trouble them that the Instructions were adopted in violation of national legislation and the provisions of the Convention.

Firstly, the Instructions were prepared without presentation for discussion among the general public, although this directly and substantially affects the public's rights.

Secondly, in accordance with the law "On Normative Legal Acts" (Article 36, Point 6), "it is mandatory to officially publish normative legal acts related to the rights, freedoms and responsibilities of citizens". Despite the clear requirements of the law, the Instructions were only published on August 26, 2005, half a year after they were approved by the Ministry, and only after the Astana City Court handed down the decision on July 14, 2005 that the Instructions are not a normative legal act.

Thirdly, it does not bother the bureaucrats that Point 37 of the Instructions states that "consideration of public opinion is guaranteed... by means of existing established legislation...", but no references are made to specific laws, because there are not yet any such norms in the existing legislation of the Republic of Kazakhstan.

Moreover, state bodies, including the Ministry of Environmental Protection, grossly violated the period for developing the procedures for considering public opinion and those for public participation in the decision-making process. In accordance with Article 40-3 of the governmental ruling "On Regulating the Government of the Republic of Kazakhstan" (No. 156, February 23, 1999), the government departments responsible for preparing bylaws and the timeline for their development must be assigned within one month of the date that the law in question comes into effect.

### **Position of the government and other state bodies**

According to Articles 9 and 13 of the law of the Republic of Kazakhstan "On the Government of the Republic of Kazakhstan" (No. 2688, December 18, 1995), the government "develops and implements measures to protect and defend the rights and freedoms of citizens... [and] guarantees the execution of the Republic's laws, and controls their implementation through the ministries



and other central and local executive bodies.”

In this case, why was it necessary for Kazakhstan’s public to appeal to the Aarhus Convention’s Compliance Committee? One of the reasons is that, for all practical purposes, the government does not exercise control over the Ministry of Environmental Protection’s compliance with the requirements of environmental protection legislation, including the law “On Environmental Assessments” and the provisions of the Convention.

The lack of procedures for considering public opinion and for public participation led to gross violations of the rights of Almaty residents with regard to the construction of a high-voltage power line and the opening of a construction materials factory; of residents of the city of Ust-Kamenogorsk in regards to the construction of an ash dump; of residents of the village of Berezovka with the beginning of active exploitation of the Karachaganak Oil and Gas Condensate Field, and other similar instances.

The General Public Prosecutor also did not ensure oversight for the implementation of the Aarhus Convention’s provisions and the law “On Environmental Assessments”, despite the General Public Prosecutor’s ruling “On Management of International Relations of the General Public Prosecutor of the Republic of Kazakhstan” (No. 80, April 28, 2001).

Furthermore, in responses to Green Salvation from the General Public Prosecutor (Dispatch. 7-4803,10-04, February 18, 2005; Dispatch. 7-7725-05, May 16, 2005; Dispatch. 7-15999-05, September 07, 2005), it was firmly stated that the “Instructions for Conducting Environmental Impact Assessments (EIA) of Planned Economic or Other Activities During the Development of Pre-Plan, Pre-Project and Project Documentation fully regulate the procedures for considering public opinion”, a statement that contradicts Article 37 of these Instructions.

The General Public Prosecutor’s Office did not verify the facts, indicated in these letters regarding the inactivity of the Ministry of Environmental Protection.

For its part, the Ministry of Justice either did not conduct a legal assessment of the Instructions, or only did so formally. In accordance with the “Book of Instructions on Conducting Legal Assessments of Draft Normative Legal Acts”, approved by the Vice Minister of Justice on March 19, 2000, one of the tasks of a legal assessment is the verification of conformity of draft normative legal acts with agreements ratified by the Republic of Kazakhstan, as well as with the country’s other international obligations. As a result, a normative legal act was passed that on many points contradicts Kazakhstan’s legislation and the Aarhus



Convention. Thus, the Ministry of Justice violated the requirements of Point 19 of the “Regulations on State Registration of Normative Legal Acts”, in which it is stated that “if an act infringes upon established legislated rights and freedoms of citizens, and contradicts a normative legal act of a higher level”, the registration of this normative legal act must be denied.

Finally, the Ministry of Foreign Affairs did not conduct general observation of the execution of the international agreement in accordance with Point 98 of the Republic of Kazakhstan’s ruling “On Regulating the Government of the Republic of Kazakhstan” (No. 1300, December 10, 2002).

Through this attitude to their direct responsibilities, members of the government, the leadership of the Ministries, and the General Public Prosecutor have created a negative attitude among citizens and a lack of trust in their activities.

Not waiting for a just reaction from the government and other state bodies, in 2004 the residents of the Mountain Giant District and the MVD Settlement, and Green Salvation, appealed to the Aarhus Convention’s Compliance Committee, which issued a fair decision.

### **Recognition of human rights violations**

The Second Meeting of the Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was held in Almaty on May 26, 2005. At the meeting, the “Compliance by Kazakhstan With Its Obligations Under the Aarhus Convention” was passed, in which it is stated that “The Government of Kazakhstan did not comply fully with article 6, paragraph 1 (a), and annex I, paragraph 20, of the Convention, and, in connection with this, article 6, paragraphs 2, 3, 4, 7 and 8;...

- By having failed to ensure that bodies performing public functions implement the provisions of article 4, paragraphs 1 and 2, of the Convention, Kazakhstan was not in compliance with that article;...

- The lack of clear regulation and guidance with regard to the obligations of bodies performing public functions to provide information to the public and with regard to the implementation of article 9, paragraph 1, constitutes non-compliance with the obligations established in article 3, paragraph 1, of the Convention.”

As a result, the government of Kazakhstan was recommended to:

- “Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to article 6 of the Convention, without in any way reducing existing rights of public



participation;

- Ensure that public authorities at all levels, including the municipal level, are fully aware of their obligations to facilitate public participation;...

- Consider introducing stronger measures to prevent any construction work going ahead prior to the completion of the corresponding permitting process, with the required level of public participation;...

- ...submit a report to the Meeting of the Parties, through the Compliance Committee, no less than four months before the third meeting of the Parties on measures taken to implement the recommendations.”

Thus, the international community confirmed the fact that the government of the Republic of Kazakhstan failed to fulfill the requirements of international and national legislation, and recognized the lack of proper control on the part of the government for over the activities of the Ministry of Environmental Protection and other state bodies responsible for complying with the Aarhus Convention.

### **The plaintiffs’ demands**

The Ecological Society Green Salvation and the Ecological Club “Biosphere”, guided by Articles 279-282 of the Civil Procedural Code and the law “On Government Service” (No. 453-1, July 23, 1999), put forth the following demands:

1. To acknowledge the inactivity of the government and the Prime Minister in not ensuring compliance with the Aarhus Convention and not ensuring control over the activities of the Ministry of Environmental Protection with regard to executing legislation and the requirements of the Convention.

2. To acknowledge the inactivity of the Ministry of Environmental Protection in not recognizing normative legal acts that ensure public participation in decision-making processes, and to guarantee consideration of public opinion regarding environmental matters.

3. To acknowledge as illegal and, therefore, invalid the actions of the Ministry of Justice in registering the Instructions as a normative legal act without conducting a legal assessment.

4. To acknowledge the Instructions, approved by a decree from the Ministry of Environmental Protection, to be illegal.

5. To acknowledge the inactivity of the Ministry of Foreign Affairs in not exercising control over the implementation of the provisions of the Aarhus Convention.

6. To acknowledge the inactivity of the General Public Prosecutor in not ensuring oversight for the legality of signing and executing the



Aarhus Convention; and for not conducting measures to restore the legal interests and rights of citizens, which were recognized by the Aarhus Convention's Compliance Committee and the Second Meeting of the Parties to the Convention.

7. To require the government to fulfill and oversee the implementation by all state bodies of international obligations made by the Republic of Kazakhstan in accordance with the Aarhus Convention.

8. To require the government and the Ministry of Environmental Protection to restore the rights of citizens by ceasing exploitation and dismantling the 110 kV high-voltage power line in the Mountain Giant District and MVD Settlement (Almaty).

9. To require the government and the Ministry of Environmental Protection to publish in the mass media all of the materials from the Second Meeting of the Parties regarding Kazakhstan's compliance with the Aarhus Convention.

10. To require the government and the Ministry of Environmental Protection to conduct an extensive session with the Prime Minister, authorized representatives of the Ministry of Environmental Protection, the Ministry of Foreign Affairs, the Ministry of Justice, the General Public Prosecutor and the Supreme Court with the goal of:

- analyzing what led to the violation of the provisions of the Aarhus Convention in the Republic of Kazakhstan; and
- developing strategic measures to implement the decisions of the Second Meeting of the Parties and to ensure strict compliance with the provisions of the Aarhus Convention.

11. To require the government and the Ministry of Environmental Protection to fulfill the requirements of Article 15 of the Republic of Kazakhstan's law "On Environmental Assessment" and the requirements of Article 3 of the Aarhus Convention to develop and approve procedures for considering public opinion and regulating public participation in decision-making on environmental matters.

12. To require the government and the Ministry of Environmental Protection to ensure full consideration of public opinion and effective public participation in decision-making on environmental matters.

13. To require the government to charge the Ministry of Environmental Protection with verifying the conclusions of state environmental impact assessments for construction sites in the Republic of Kazakhstan, with the goal of revealing assessments conducted without consideration of public opinion and in violation of the right of citizens to participate in decision-making with regard to environmental matters. To require the Ministry of Environmental Protection to take appropriate measures to bring violations



to light.

14. To require the government and the Ministry of Environmental Protection to strictly control the organization of construction projects and not to permit any construction projects until such time as all necessary permission has been issued, including fully considering public opinion and ensuring full public participation in the decision-making process with regard to environmental matters.

15. To recover from the Ministry of Environmental Protection the trial fees incurred by Green Salvation in connection with the submission of the lawsuit in question, in accordance with documents submitted.

### **Trial process and the court's decision**

As indicated earlier, in November 2005, the plaintiffs submitted a lawsuit to the Saryarkinsk District Court in the city of Astana. On November 15, the Court refused to receive the lawsuit, declaring it to be a “matter outside of the jurisdiction of this court”, falling instead under the jurisdiction of the Specialized Inter-District Economic Court (SIEC).

Without appealing this decision, Green Salvation filed a lawsuit in the SIEC of Astana. On December 1, 2005, the SIEC rendered a verdict regarding repayment of resources to the plaintiffs for the lawsuit “on the basis of the fact that the given lawsuit was not under the jurisdiction of the SIEC, but under the jurisdiction of the court of general jurisdiction.”

On December 15, 2005, Green Salvation appealed to the Astana City Court with a complaint regarding the Court's verdict, requesting its assistance in gaining an understanding of the legislation. In its verdict, the Astana City Court decided to send the lawsuit “on disputing the inactivity of state bodies” to the SIEC of the city of Astana.

On January 14, 2006, having reviewed the materials from the trial, the judge of the Astana SIEC decided to deny its admission, indicating that “it was not subject to review and settlement as civic legal proceedings.”

On February 28, 2006, a Board on Civic Affairs of the Astana City Court, with the participation of the Prosecutor, reviewed Green Salvation's private complaint and decided that the SIEC's verdict would remain unchanged; the private complaint was not fulfilled. The Court substantiated its denial of the private complaint as follows: “The lawsuit filed in the Court by Green Salvation does not correspond to the named requirements of procedural law in form and content. Thus, violations or threats of violations to the rights, freedoms and legal interests of citizens were not specifically referenced in the lawsuit. Therefore, proceeding on the premise that trial defense is applicable only to violated rights and



interests, the Court correctly decided to return the lawsuit” (Decision of the Board on Civic Affairs...).

Clearly the judges forgot the requirements of Article 279 of the Civil Procedural Code, in which it is stated that the creation of “obstacles to a citizen exercising his rights and freedoms, as well as to a legal entity exercising its rights and protected legal interests” is an act that can be contested in court.

Moreover, the Board’s decision indicates that there is nothing in the legislation about violating an international agreement or about the inactivity of state bodies.

The Oversight Board of the Astana City Court maintained the decision of the Board on Civic Affairs, without making any changes.

On July 5, 2006, the Oversight Board of the Supreme Court officially closed the books on this matter, confirming the conclusions of the SIEC and both Boards of the Astana City Court.

Future complaints regarding the decisions of the Courts will not be considered under the Civil Procedural Code of the Republic of Kazakhstan.

## **Conclusion**

In June 2006, the Aarhus Convention’s Compliance Committee issued a decision regarding the communication from L. Gatina, A. Gatin and L. Konyshkova (ACCC/C/2004/06). This was the third communication from the public of the Republic of Kazakhstan. Based on the facts contained in the communication, it was acknowledged, for the third time, that Kazakhstan is not in compliance with the provisions of the Convention.

If the first play by the government can be characterized as an accident, and the second as a coincidence, by the third instance there is already a pattern attesting to the fact that human rights violations have become a usual occurrence in Kazakhstan.

State bodies have not made any conclusions based on the decisions of the Aarhus Convention’s Compliance Committee and the Second Meeting of the Parties to the Convention, as the trial process reviewed above graphically demonstrates.

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## MONITORING THE IMPLEMENTATION OF THE AARHUS CONVENTION IN THE REPUBLIC OF KAZAKHSTAN\*

**Nataliya Medvedeva,**  
**the Ecological Society Green Salvation,**  
**Almaty, Kazakhstan**

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On October 23, 2000, the Republic of Kazakhstan ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). It entered into force on October 30, 2001. As of that date, all of the Convention's provisions became legally binding for the Parties to the Convention.

In contrast to other international agreements in which the Parties to the Convention fulfill obligations only before one another, this Convention goes further, aiming to guarantee the rights of citizens and not simply the rights of the Parties. It obliges that "each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters" (Aarhus Convention..., Article 1).

Based on the provisions of Article 15 of the Convention, the Parties to the Convention resolved at the First Meeting of the Parties in Lucca in October 2002 to create a Compliance Committee. The Committee is obligated to review communications from the public regarding non-compliance with the Convention's norms.

The Aarhus Convention's Compliance Committee began its operations at the end of 2003. Two communications (ACCC/C/2004/01 and ACCC/C/2004/02) submitted to the Committee from the citizens of Kazakhstan and the Ecological Society Green Salvation (Almaty, Kazakhstan) in 2004 were among the first that it received.

Having reviewed these communications at the end of 2004 and beginning of 2005, the Committee found Kazakhstan in violation of a number of the Convention's requirements. The Committee's conclusions and recommendations were confirmed at the Second Meeting of the Parties in May 2005 by decision II/5a. In accordance with this document, by the end of 2005, Kazakhstan was to present to the Compliance Committee "a strategy, including a time schedule, for transposing the Convention's provisions into national law and developing practical mechanisms and implementing legislation that would set out clear procedures for their implementation."

The course of events from April 2005 to August 2006 is described in the following summary.



## Legislation

Literally a few days after the completion of the Second Meeting of the Parties, on May 30, 2005, the law “On International Agreements of the Republic of Kazakhstan” was passed. Article 20 of the law states:

“1. Every active international agreement of the Republic of Kazakhstan is subject to obligatory and conscientious execution by the Republic of Kazakhstan.

2. In the event of a contradiction between international agreements of the Republic of Kazakhstan and the laws of the Republic of Kazakhstan, international agreements of the Republic of Kazakhstan are subject to change, suspension or termination of force.”

The provisions of Point 2 threaten Kazakhstan’s compliance with the Aarhus Convention and contradict Article 4, Point 3 of the Constitution of the Republic of Kazakhstan, which states:

“International agreements ratified by the Republic supersede national laws, effective immediately, except in cases when an international agreement requires the passing of a new law.”

On September 13, 2005, a Deputy of the Mazhilis of Parliament officially raised the question of repealing this article.

On October 22, the government found that Article 20, Point 2 of the law in question is “an obvious violation of Article 27 of the Vienna Convention on the Law of Treaties, in accordance with which a government does not have the right to refer to the provisions of its domestic law as justification for not fulfilling its agreements.” The government noted that the application of Point 2 in practice has already caused difficulties and a negative reaction abroad (Letter from the Government of the Republic of Kazakhstan, October 22, 2005, No. 12-8/5206).

On January 25, 2006, the Mazhilis found Article 20, Point 2 of the law “On International Agreements of the Republic of Kazakhstan” in contradiction with the Constitution and came out in favor of its repeal (Reference System “Yurist”, June 2, 2006).

As of our date of publication, no changes to the law had been made.

In early 2006, preparation of Kazakhstan’s Environmental Code was initiated. According to statements by official bodies, one of the goals of developing the Code is to bring national environmental protection legislation into conformity with the provisions of the Aarhus Convention.

## Actions by state bodies

On June 3, 2005, the newspaper “Panorama” (No. 21) published a piece on the results of the Second Meeting of the Parties of the Aarhus Convention in Almaty, with a commentary by the Minister of Environmental Protection, A.S. Samakova. In particular, she said that “one should consider the fact that representatives of Kazakhstan submitted appeals to the Committee as recognition of the real work of the Aarhus Convention (rather than the work



on the Protocols) in the Republic. In the course of a few months, a lawsuit will come to trial, brought by an Almaty resident against a cement factory that, in the opinion of the plaintiff, is in violation of environmental norms. In terms of the remaining appeals, the leadership of the Convention's Compliance Committee considered the government's actions to be optimal and sufficient to stabilize the conflicts."

A panel from the Ministry of Environmental Protection met on July 7, and on the agenda was the issue of "Progress Implementing International Conventions in the Field of Environmental Protection." The presenter, the Director of the Department of Normative/Legal Security and International Collaboration, A.G. Bragin, offered general information on Kazakhstan's compliance with ratified conventions and protocols. He noted that, "the work to implement conventions does not bear a systemic character: rather, it is observed only in the periods when quarterly reports are presented." In the portion of the presentation entitled "About Primary Conventions" nothing was said about the work to implement the Aarhus Convention or the results of the Second Meeting of the Parties.

On September 22, the Commission for Human Rights under the President of the Republic of Kazakhstan discussed questions regarding the protection of citizens' environmental rights. Based on the information presented by the Deputy Minister of Environmental Protection, S. Kesikbaev, the meeting participants came to the conclusion that the right of citizens to an environment favorable for life and health is substantially limited as a result of the influence of such factors as insufficient financing for environmental protection measures and violations of the norms of environmental legislation ([www.earthwire.org/cache.cfm?aid=97996](http://www.earthwire.org/cache.cfm?aid=97996)).

On October 4, the "Planned Steps to Achieve the Decisions of the Second Conference of Parties to the Aarhus Convention"\*\*\* was published on the website of the Ministry of Environmental Protection ([www.nature.kz/obsuzhdenie/Orhus/plan\\_orhus.pdf](http://www.nature.kz/obsuzhdenie/Orhus/plan_orhus.pdf)).

On November 21, a public hearing was held at the Kazakh Society for the Protection of Nature regarding the submission of additions to the comprehensive program for improving the environmental situation of the city of Almaty, which is reviewed periodically. In the updated version of the document, there is no mention of measures to improve the environmental situation in the Mountain Giant District and the MVD Settlement, measures that should have been taken in connection with the decision of the Aarhus Convention's Compliance Committee.

On January 1, 2006, the deadline expired for the Republic of Kazakhstan's presentation of its strategy and planned measures for executing decision II/5a. On February 3, the Compliance Committee had been sent only the draft strategy, which the Committee began reviewing on March 29-31 at its 11th meeting.

As of the printing of this article, the government had not yet confirmed the draft strategy.



### **Actions by the Ecological Society Green Salvation**

As an interested party, the Ecological Society Green Salvation continued to send inquiries to governmental establishments, attempting to clarify what measures are being taken to implement the decisions of the Second Meeting of the Parties to the Aarhus Convention.

On July 28, 2005, in response to Green Salvation's inquiry (No. 077, July 22, 2005), the Deputy Director of the Ministry of Environmental Protection, E. Aitkenov, sent "Information on Fulfilling the Obligations of the Republic of Kazakhstan to International Environmental Conventions." The document consists of general information about compliance to conventions ratified by Kazakhstan.

In particular, the document states that the country has "the greatest experience in the region in terms of implementing the Aarhus Convention." Yet nothing is said about the Committee's decisions for Kazakhstan or about the results of the Second Meeting of the Parties.

On December 21, the General Prosecutor's office responded to an inquiry from Green Salvation regarding the procedure for the application of the statutes of the Aarhus Convention. In the response, it was pointed out that the Convention's statutes "must be applied on the territory of the Republic of Kazakhstan". It was also noted that it is necessary to develop and adopt a legal act "regulating the procedure for prescribing, listening to, and then taking into account public opinion on issues" related to the environment.

On February 16-17, 2006 in Geneva, a representative of Green Salvation participated in the work of the Task Force on Access to Justice of the Meeting of the Parties to the Aarhus Convention. Questions were raised about Kazakhstan's execution of decision II/5a ([www.unece.org/env/documents/2006/pp/ece.mp.pp.wg.1.2006.4.e.pdf](http://www.unece.org/env/documents/2006/pp/ece.mp.pp.wg.1.2006.4.e.pdf)).

On February 21, Green Salvation sent a letter to the Ministry of Environmental Protection requesting that it report on the measures being taken to execute decision II/5a and to report whether or not the plan of action had been sent to the Compliance Committee.

On February 28, representatives of Green Salvation met with the leader of the National Center for Human Rights, V.A. Kalyuzhny, and discussed issues related to the Aarhus Convention's Compliance Committee. In April, Green Salvation sent V.A. Kalyuzhny a summary of its judicial experience.

An Internet search on April 7 revealed that the "Strategy for Executing the Recommendations of Decision II/51 of the Second Meeting of the Parties to the Aarhus Convention" was not published on any official site. It was not discussed with the public, but nevertheless was sent to the Compliance Committee. Therefore, Green Salvation requested that the Ministry of Environmental Protection provide this document.

On April 26, Green Salvation received a response from the Ministry, from which it was clear that the requested document is a draft strategy. It was suggested that Green Salvation participate in the discussion of the document and prepare remarks and suggestions.



## Experience with the courts

Following the Second Meeting of the Parties, the Ecological Society Green Salvation continued to defend in the courts the rights of citizens to access to information, participation in decision-making processes and access to justice in environmental matters. Green Salvation's judicial experience graphically demonstrates how the Convention is "observed" in Kazakhstan.

### *Lawsuit on acknowledging as invalid the second conclusion of the environmental assessment for the construction of the 110 kV high-voltage power line in the Mountain Giant district and the MVD settlement of Almaty city*

Based on the decision of the Committee regarding communication ACCC/C/2004/02 ([www.unece.org/env/pp/compliance.htm](http://www.unece.org/env/pp/compliance.htm)), the Ecological Society Green Salvation again filed a lawsuit. On April 27, 2005, a lawsuit was filed "On Newly Disclosed Circumstances" against the Almaty City Territorial Department on Environmental Protection.

In accordance with Article 174, Point 1 of the Civil Procedural Code, "Civil matters are to be reviewed and settled within two months' time." Yet the review of the primary allegation began only on October 7 (after a delay of more than three months).

On October 10, the court determined that Green Salvation did not satisfy trial requirements. The court considers the decisions made by the Aarhus Convention's Compliance Committee for Kazakhstan, and the decisions of the Second Meeting of the Parties to the Convention to be voluntary, bearing only the force of recommendations. Therefore, it is not possible to consider them as newly disclosed circumstances.

On October 11, Green Salvation filed an appellate complaint to the Collegium for Civil Affairs of the City Court regarding this determination.

On November 10, the Collegium made the decision to deny the appellate complaint, as it recognized the conclusions of the District court as correct.

On December 1, Green Salvation sent an inquiry to the General Prosecutor requesting clarification on the procedures for applying the statutes of the Aarhus Convention in Kazakhstan.

In the response, received by Green Salvation on December 21, it is explained that the statutes of the Convention "must be applied on the territory of the Republic of Kazakhstan."

Following the Second Meeting of the Parties, the situation in the Mountain Giant District was not once raised in the media. It should be noted that the newspaper "The Country and the World" published the article "The Price of Cynicism, or is it Worth it to Knowingly Enhance Absurd Precedents?" (December 23, 2005). In this article,



a comprehensive critical analysis was given of the actions of government bodies, indicating the need to implement the Aarhus Convention.

On May 31, 2006, Green Salvation appealed to the Collegium for Civil Affairs of the City Court of Almaty with a complaint for review regarding the determination of the District Court and the ruling of the Appellate Collegium.

On June 28, the Collegium for Civil Affairs of the City Court of Almaty reported that the complaint for review was halted in connection with an inquiry undertaken by the Supreme Court.

On August 31, following the return of this matter from the Supreme Court, the Collegium reviewed the complaint. The complaint was denied.

### ***Lawsuit contesting the legality of a normative-legal act***

On February 28, 2004, the Ministry of Environmental Protection approved the “Instructions on Conducting Environmental Impact Assessments for Planned Economic or Other Activities During the Development of Pre-Plan, Pre-Project and Project Documentation.” The public did not participate in the discussion of this document. The Ministry believes that the Instructions aid the public in achieving its rights. Point 37 of the Instructions states that “consideration of public opinion is guaranteed...as established in active legislation...” Yet there is no legal act in Kazakhstan that guarantees consideration of public opinion or public participation in the decision-making process.

In order to realize the rights of the public, Green Salvation considers it necessary for the Instructions to be recognized as invalid, and a legal act to be developed in accordance with the requirements of the Aarhus Convention.

On June 22, 2005, Green Salvation and the Ecological Club “Biosphere” (Ridder) filed a lawsuit in the City Court of Astana, seeking acknowledgement that the Instructions are invalid and contradictory to legislation.

On July 14, having reviewed the lawsuit, the Court acknowledged the Instructions as an invalid normative-legal act, as it had not been published. Thus, for over a year and a half the Ministry had been citing a document that did not have legal force.

It was not until August 26 that the Instructions were published in “The Legal Newspaper” without changes to their wording.

On September 4, following the publication of the Instructions, Green Salvation again filed a lawsuit in the Astana City Court to acknowledge their invalidity in connection with newly disclosed circumstances.

The Court decided not to accept the lawsuit. According to the Court, the publication of the Instructions does not qualify as newly disclosed circumstances.

Green Salvation did not appeal this particular decision, as it had filed a lawsuit on the inactivity of the government and other state bodies, in other words, on non-compliance with an international agreement, the decisions of



the Compliance Committee and the Second Meeting of the Parties to the Aarhus Convention.

***Lawsuit to declare invalid the conclusions of the 2003 and 2004 environmental assessments for the Plant for Construction Materials and Structures No. 3, located in Almaty city***

In 2004, citizens L. Gatina, A. Gatin, and L. Konyshkova submitted a communication to the Aarhus Convention's Compliance Committee. The basis for the appeal (ACCC/C/2004/06; [www.unece.org/env/pp/compliance.htm](http://www.unece.org/env/pp/compliance.htm)) was the violation of their right to access to justice on environmental matters. The review of the communication began in May 2005.

On November 16, 2005, at the request of L. Gatina and A. Gatin, Green Salvation filed a lawsuit in the Medeusky District Court against the Almaty City Territorial Department on Environmental Protection to recognize as invalid the conclusions of the state environmental assessments for the project to reconstruct the Plant for Construction Materials and Structures No. 3. These assessments were conducted without consideration of public opinion, in violation of national legislation and the Aarhus Convention.

From December 5 to 7, the 10th meeting of the Committee reviewed communication ACCC/C/2004/06.

On January 18, 2006, the Court decided to reject the lawsuit. The District Prosecutor asked the Court to meet the trial requirements, indicating that the Court ignored gross violations by the plaintiffs of national legislation and norms of the Aarhus Convention regarding the execution of environmental assessments. The Court disregarded both the opinion of the District Public Prosecutor and the explanation by the General Prosecutor about the Court's obligation to apply the Aarhus Convention's statutes.

On January 18, the District Public Prosecutor issued a protest against the Court's ruling of January 18, 2006.

On February 1, Green Salvation submitted an appellate complaint to the Collegium for Civil Affairs regarding the District Court's decision.

On March 23, the Collegium reviewed Green Salvation's appellate complaint and denied it. The District Prosecutor retracted its earlier protest of the Court's decision of January 18, 2006.

On March 29-31, the Committee continued reviewing the communication submitted by citizens L. Gatina, A. Gatin and L.G. Konyshkova at its 11th meeting in Geneva.

On April 24, Green Salvation submitted a complaint for review with the City Court.

At its 12th meeting on June 14-16, the Committee made its final decision regarding communication ACCC/C/2004/06, finding the



Republic of Kazakhstan not to be in compliance with the requirements of Article 9, Points 3 and 4 of the Convention.

On June 28, the Collegium reviewed Green Salvation's complaint for review and rejected it.

On July 14, Green Salvation sent a complaint for review to the Supreme Court based on the court rulings the Collegium for Civil Affairs of the City Court of Almaty

On August 10, the Supreme Court reviewed the complaint and did not find grounds for the complaint. This ruling is final; the law does not stipulate its appeal.

***Lawsuit on the inactivity of the government and other state bodies; in other words for non-compliance with an international agreement, the decisions of the Compliance Committee and the Second Meeting of the Parties to the Aarhus Convention***

On November 2, 2005, Green Salvation and the Ecological Club "Biosphere" (Ridder) filed a lawsuit in the Saryarkinsk Court in Astana regarding the inactivity of the government and other state bodies with regard to their non-compliance with an international agreement, the decisions of the Compliance Committee and the Second Meeting of the Parties to the Aarhus Convention.

The Court made the decision not to accept the lawsuit. The Court indicated that the Specialized Inter-District Economic Court must review the lawsuit.

On November 23, a lawsuit was filed with the Specialized Inter-District Economic Court of Astana. The Court made the decision not to accept the lawsuit. According to the Court, the Saryarkinsk District Court must review the matter.

On December 9, Green Salvation appealed to the Astana City Court in order to determine which court should review the given lawsuit. The Court determined that the Specialized Inter-District Economic Court must consider the lawsuit.

On January 14, 2006, the Specialized Inter-District Economic Court decided for a second time not to accept the lawsuit, justifying its decision by stating that "non-compliance by the government of an international agreement is not subject to review and settlement by way of civic legal proceedings."

On January 19, an appellate complaint was submitted to the Astana City Court regarding the decision of the Specialized Inter-District Economic Court.

On February 28, the Collegium for Civil Affairs of the City Court reviewed the appellate complaint, acknowledging the arguments of the Court as legal.

On April 11, a complaint for review was filed with the Collegium for Civil Affairs of the Astana City Court.

On May 2, the Collegium reviewed the complaint for review and rejected the complaint on the same grounds.



On June 5, the Supreme Court reviewed the complaint for review and declared it unfounded. Moreover, the Court indicated that “concrete violations or the threat of violations to the rights, freedoms and legal interests of the subjects are not reflected in the lawsuit.” This ruling is final; the law does not provide for its appeal.

In each instance, from the District Court to the Specialized Inter-District Economic Court to the Supreme Court, there was no acknowledgement of human rights violations as a result of the actions of government bodies, even with regard to those cases that were acknowledged by the Committee.

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Citing this summary, we would like to stress again that violations of the rights of citizens to access to information, public participation in decision-making processes, and access to justice regarding environmental matters are observed at all levels of governmental authority. The fact that rights are being violated is recognized by international organizations.

Kazakhstan does not ensure the observation of human rights. Green Salvation has had a wide range of experience with the arbitrary interpretation of national laws and the statutes of the Aarhus Convention. The courts are not governed by the requirements of the Convention. Many bureaucrats, including officials at the Ministry of Environmental Protection, are not familiar with the Convention.

Kazakhstan does not currently have any legal mechanisms to take into account public opinion or any mechanisms for effective public participation in decision-making processes regarding environmental issues.

There are laws in effect in Kazakhstan that impede compliance with the Aarhus Convention.

One of the main reasons for non-compliance with the Convention is that it fosters the real democratization of society and the effective defense of human rights, but this is contradictory to the interests of the ruling elite.

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\* This summary was prepared based on the lawsuits filed by the Ecological Society Green Salvation and on the basis of documents obtained by the organization from April 2005 to August 2006.

\*\* The Ecological Society Green Salvation sent suggestions and additions to the Plan to the Ministry of Environmental Protection. The text of this letter (No. 095), dated October 7, 2005, is archived on our site ([www.greensalvation.org](http://www.greensalvation.org)).



## COMPLIANCE COMMITTEE COMMUNICATIONS FROM THE PUBLIC\*

Disclaimer: The text of the communication and any other information provided by the communicant are posted here in order to facilitate public access to information related to compliance. The documents are posted as received (and as translated, where appropriate) with no editorial changes or amendments (except where and if confidentiality of certain information was requested in accordance with Chapter VIII of the annex to decision I/7 of the Meeting of the Parties). Their presence on the website does not imply endorsement of the content by the Compliance Committee or by UNECE.

<http://www.unece.org/env/pp/compliance/C2004-06/communication/CommunicationEng.doc>

### **Communication ACCC/C/2004/06 to the Compliance Committee of the Aarhus Convention**

#### **I. Information on correspondent submitting the communication**

Applicants:

1. Mrs. Lubov Anatoljevna Gatina

Address:...

2. Mr. Aleksei Georgievich Gatin

Address:...

3. Mrs. Ludmila Gennadievna Konyshkova

Address:...

Contact person: Mrs. Lubov Anatoljevna Gatina

Address:...

#### **II. State concerned**

Republic of Kazakhstan

#### **III. Facts of the communication**

On August 6, 2000, the signers to this communication appealed to a court of Medeuski Region [district] of Almaty city with regard to inaction of the City Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection. The case concerns a large industrial enterprise engaged in storing cement (6 immovable containers by



height of 25 meters, and 4000 tons in volume), coal (a warehouse with the annual cargo turnover—48400 tons), and production of construction materials that require the use of cement. The containers for unloading and storing of cement are located in close vicinity to the living houses (at a distance of 13 meters to the closest houses). Unloading the cement into the worn-out containers, made of railcars, results in major discharge of cement dust into the air, —cement is swept down from railcars, or blown out by compressed air.

Since 1990 this enterprise has been idle for a quite long period of time due to the wear and tear of industrial equipment, however since 1998 it resumed its activity. The enterprise does not have the sanitary-hygienic zone, the establishment of which is envisaged by law, therefore it carries out industrial activity harmful to people's health and the environment. It systematically violates the legislation requirements on discharges of pollutants into the air and allowed levels of noise. Thus, we repeatedly revealed facts of discharging pollutants without obtaining the license, and exceeding the set discharging standards.

Starting from May 1998, as a result of fact that the enterprise resumed its activity and use of very old life-expired equipment, we have sent a large number of appeals to the City Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection demanding to take measures with regard to this industrial enterprise, which violates the requirements of laws on environmental protection and protection of citizens' health. For instance, Article 49 of Law "On Environmental Protection" of July 15, 1997, contains requirements to sanitary-hygienic zones of enterprises, and according to SN\*\* 245-71 "Sanitary Norms of Planning Industrial Enterprises" the aforementioned enterprise is required to have a sanitary-hygienic zone of no less than 300 meters (see the conclusion of state ecological expertise as of February 21, 2003). However, these state bodies have not taken effective measures in order to make the industrial enterprise eliminate violations of legislation concerning the creation of sanitary-hygienic zone, stop discharging pollutants into the air without obtaining the license and exceeding the allowed levels, stop carrying out industrial work, which exceeds the allowed level of noise, and so on. The sanitary-epidemiological department and the department on environmental protection only forfeited the enterprise on several facts of violations, but have not taken necessary measures in order to ensure that the activity of the enterprise was carried out in compliance with legislative requirements.

On August 6, 2000 we filed a lawsuit to court with regard to inaction and violation of the acting legislation by the Almaty City Department on Environmental Protection and the Sanitary-Epidemiological Department of Almaty city, and compensation of moral harm inflicted thereof. Also, in our statement of claim we asked to recall from the enterprise the permission for special nature management and the conclusion of



state ecological expertise as not meeting requirements of legislation on environmental protection, as well as sanitary and construction standards. On June 20, 2001 the court of first instance—the court of Medeuski Region of Almaty city fully rejected the lawsuit of A. G. Gatín, L. A. Gatina, L. G. Konyshkova, N. A. Cherepova, V. I. Cherepov, P. A. Gmerintsev, and M. V. Gmerintsev. The judge N. K. Sharipova grounded her decision on that we did not provide the proof of sending our appeals, which were left unconsidered by state bodies. As far as the rest 17 written appeals, which were responded, the court admitted the presence of the formal answer from state bodies as sufficient proof of taking all “possible and appropriate measures for considering appeals and complaints of plaintiffs” by them.

On September 7, 2001 basing on our complaint, the decision of the court of first instance was reversed by panel of judges dealing with civil cases of Almaty city court (judge Ivanova—chair, Kozhagulov and Esbergenov). The decision of the court of Medeuski Region of Almaty city as of June 20, 2001 was repealed, and the case was sent back for reconsideration to the court of first instance. At that the decision of the court of appeal noted that the court of first instance did not satisfy our requirements made to state bodies-defendants with regard to inaction to take necessary measures to eliminate violations of environmental and sanitary-epidemiological norms. Particularly it was pointed on groundlessness of actions of the judge of Medeuski Regional Court confining the case by compensation of moral harm only, and not taking into consideration of the issue concerning the securing the environmental safety of living conditions of citizens living near the industrial enterprise.

On November 27, 2001 a new consideration of our case took place in the court of first instance—the court of Medeuski Region of Almaty city. Despite the decision of the court of appeal, the judge A. A. Altaeva again considered the case only with regard to compensation of moral harm. Basing on the fact that another court—the court of Zhetisujski region, considered our case on compensation of damage basing on the suit filed against “SUCCESS” LLP (at that time it was the owner of the enterprise on storage of cement and coal), the consideration of case on inaction of the Almaty City Department on Environmental Protection and Sanitary-Epidemiological Department of Almaty City was suspended until the adoption of the decision on the case considered on the lawsuit against the enterprise-polluter. Thus, the court of Medeuski Region again did not consider issues of inaction of state bodies-defendants. We again made an attempt to appeal the decision of the court of first instance, however, the penal of judges on civil cases of the Almaty city court (chair-judge S. A. Karakuzieva, and members L. P. Matveenko and K. A. Kamalova) made a decision to leave our claim without consideration.

Further, on June 27, 2002 the judge Altaeva, not informing the plaintiffs and without the participation of both parties, and despite the fact that the court proceedings on the suit against “SUCCESS” LLP went on, made a decision to leave our case concerning the inaction of the Almaty City Department on Environmental Protection and the Sanitary-Epidemiological Department of



Almaty city without consideration. As the ground for making such a decision the judge pointed “default in appearance by parties without good reasons”, however the continuing court proceedings on the suit against the enterprise-pollutant was not even mentioned in the decision. Though, according to Article 246 of the Civil Procedural Code “the procedure on case is resumed after removing circumstances that caused its suspension basing on the application of persons participating in the case, or at the initiative of the court” and “when resuming the case procedure the court informs persons participating the in case in accordance with general rules of civil judicial proceeding.” Moreover, none of the plaintiffs received copies of decision of the Medeuski Regional Court made in June 27, 2002. The copy of this judicial document, which is attached to the communication, was received in May 2004 only, when we tried to resume the consideration of this case.

On May 14, 2004 A. G. Gatin and L. A. Gatina filed the application to the Medeuski Regional Court in order to resume the suspended case with regard to inaction of the Almaty City Department on Environmental Protection and the Sanitary-Epidemiological Department of Almaty city. At the moment of preparing this communication, we have not received the response to this application.

In June 2004, L. A. Gatina sent the application to the Ministry of Environmental Protection concerning the fact that the City Department on Environmental Protection did not take necessary effective measures in order to stop the activity of enterprise, which pollutes the environment. Particularly, she mentioned about a document written by the Department on March 20, 2003 stating the absence of violations by enterprise, which was presented in court. Mrs. Gatina also attached copies of documents proving the fact of discharging pollutants into the air within the period from January 2001 to December 31, 2002 without obtaining the appropriate license (a copy of the letter from the Almaty territorial department on environmental protection as of February 4, 2004, certificates from “Kazakhstan Temir Zholy” CJSC concerning the supply of cement to the enterprise, and other). On July 14, 2004 Gatina received the response from Mr. N. Isakov, Vice-Minister. However, the letter did not contain the answer to the main question, to wit regarding the inaction of the City Department on Environmental Protection towards the enterprise carrying out discharges of pollutants into the air without obtaining the proper license during 2 years, and not creating the sanitary-hygienic zone, which is envisaged by the law.

Meanwhile the enterprise continues violating the requirements of legislation on environmental protection. Up to August 2004 it discharged pollutants without obtaining the license in bodies dealing with environmental protection issues.



#### **IV. Nature of alleged non-compliance**

This complaint concerns the non-compliance by the Republic of Kazakhstan of requirements of Article 9 of the Aarhus Convention on access to justice by the public. It includes issues of considering appeals of citizens in administrative and judicial procedure with regard to violations of legislation on environmental protection.

In the administrative procedure, despite our repeated appeals, the City Sanitary-Epidemiological Department and the City Territorial Department on Environmental Protection mainly confined their actions by imposing small administrative fines to the enterprise. The abovementioned bodies did not take adequate and effective means of legal protection, which are necessary in order to eliminate the revealed breaches of environmental protection laws. As a result of their inaction in 2001-2002 the enterprise did not obtain the permission to discharges, and in 2004 up to August it continues to discharge pollutants into the air (the cement dust, acetic acid, sodium hydroxide, acetaldehyde and other substances) without a special permit, which is issued by bodies dealing with environmental protection issues. An issue of sanitary-hygienic zone the creation of which is envisaged by both, the currently acting legislation as well as sanitary standards, which were valid in the period when the enterprise started to operate, still remains open.

When considering our case within the framework of judicial proceedings, we, as representatives of the public (a group of citizens of the Republic of Kazakhstan), were deprived the access to justice with regard to:

1) impugment of inaction of state bodies—the City Sanitary-Epidemiological Department and the City Territorial Department on Environmental Protection, and violation by them of the legislation on sanitary-epidemiological well being of the population and environmental protection;

2) restricting in administrative procedure by competent state bodies of the activity of the enterprise, which exerts harmful impact on environment and health of citizens, and violates the requirements of the legislation of the Republic of Kazakhstan on environmental protection.

In the decision of the appealing body as of September 7, 2001 there was given a special attention to the necessity of consideration of our statement of claim not only with regard to compensation of moral harm, but also in part of ensuring by competent state bodies that the activity of the industrial enterprise is carried out in compliance with the set environmental requirements. Nevertheless on November 27, 2001 the court of first instance repeatedly reduced the consideration of the case to the issue of compensation of moral harm. As a result our case was not decided by court in terms of eliminating violations of law on environmental protection and protection of citizens' health. In addition, the court of first instance with no grounds delayed the consideration of the statement of claim with regard to bringing the activity of the enterprise in compliance with the set environmental requirements, even though this issue could have been considered separately from the issue of compensating the moral harm.



One should separately pay attention to the fact that the judge Altaeva of the Medeuski Regional Court of Almaty city on June 27, 2002 made a decision to leave the suit without consideration, at that not prior informing plaintiffs and without their participation in court session. The copy of this decision was given only in May 2004, when plaintiffs made an attempt to resume the consideration of the case, which was suspended by the same judge on November 27, 2001. We, as representatives of the public, were deprived the access to the text of the court decision on our case and, hence, the possibilities to appeal it in the procedure established by law.

## **V. Provisions of the Convention relevant for the communication**

### **Article 9. Access to justice**

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

## **VI. Use of domestic remedies or other international procedures**

The signers to this communication repeatedly made numerous unsuccessful attempts to solve this issue in the administrative procedure by way of submitting complaints to higher state bodies—the Ministry of Environmental Protection, Administration of the President, Commission on Human Rights. The last attempt was taken in June 2004, which also became unsuccessful (a copy of application of Ms. L. A. Gatin and the response to it from the Ministry of Environmental Protection as of July 14 are among supporting documents attached to communication).

The statement of claim applied to the Medeuski Regional Court of Almaty city concerning the compensation of moral harm due to the inaction of the City Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection was submitted on August 6, 2000. For this period of time we exhausted all available means of judicial protection. The case twice was in the court of first instance (Medeuski Regional Court), but it had not been considered in essence.

Moreover, the consideration of issue concerning the inaction of state bodies was groundlessly delayed by court for extremely long period, and then stopped without informing citizens about it. The application to



resume the suspended case submitted to Medeuski Regional Court in May 14, 2004 remained unanswered.

We have not appealed to other international procedures.

## **VII. Confidentiality**

Not required.

## **VIII. Supporting documents**

1. The statement of claim as of August 6, 2000 to the court of Medeuski Region of Almaty city.

2. Addendum to the statement of claim as of August 6, 2000.

3. Decision of the first instance—court of Medeuski Region of Almaty city as of June 20, 2001.

4. Decision of the court of appeal—panel of judges on civil cases of Almaty city court of September 7, 2001.

5. Decision of the court of Medeuski Region of Almaty city of November 27, 2002 concerning the suspension of consideration of the case.

6. Decision of the panel of judges on civil cases of Almaty city court as of February 8, 2002 concerning the decision of Medeuski Regional Court on suspension of consideration of the case.

7. Decision of the court of Medeuski Region of Almaty city as of June 27, 2002 concerning the rejection to consider the suit.

8. Response of the Almaty City Department on Environmental Protection as of February 4, 2004 to inquiry of Almaty city Bar.

9. Application as of May 14, 2004 concerning the resumption of suspended case.

10. Application of Mrs. Gatina to the Ministry of Environmental Protection as of June 14, 2004.

11. The letter from the Ministry of Environmental Protection as of July 14, 2004.

12. Conclusion of the state ecological expertise as of February 21, 2002.

“ 7 “ September 2004

Signatures:

Mrs. Lubov Anatoljevna Gatina

Mr. Aleksei Georgievich Gatin

Mrs. Ludmila Gennadievna Konyshkova

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\* The original spelling is maintained in this text.

\*\* SN—Sanitary Norms.



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E



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ECONOMIC COMMISSION ON THE EUROPE

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

Compliance Committee

Twelfth meeting  
Geneva, 14-16 June 2006

**Report of the Meeting\***  
Addendum

FINDINGS AND RECOMMENDATIONS

with regard to compliance by Kazakhstan with the obligations under the Aarhus Convention in the case of access to justice in the court of Medeuski Region [district] of Almaty  
(Communication ACCC/C/2004/06 by Ms. Gatina, Mr. Gatin and Ms. Konyushkova (Kazakhstan))

Adopted by the Compliance Committee on 16 June 2006

**Introduction**

1. On September 3, 2004, Ms. Gatina, Mr. Gatin and Ms. Konyushkova of Almaty, Kazakhstan (hereinafter the communicant), submitted a communication to the Compliance Committee alleging non-compliance by Kazakhstan with its obligations under article 9, paragraphs 3 and 4, of the Aarhus Convention.

2. The communication concerns access to justice in appealing the failure of the Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection to enforce domestic environmental law with regard to operation of an industrial facility for storage of cement and coal and production of cement-based materials (hereafter “the facility”). The communicants claim that their right of access to administrative or judicial review procedures guaranteed under article 9, paragraph 3, of the Convention were violated when a court repeatedly failed to consider a part of a lawsuit related to the failure to act by the public authorities. The communicants



further claim that unjustified delay in review of the claim, failure to notify the plaintiffs of the scheduled court hearing, review by the court of the claim in absence of the parties and failure by the court to inform the plaintiffs of its decision in the case constituted breach of the requirements of article 9, paragraph 4, of the Convention with regard to fair, equitable and timely procedures providing adequate and effective remedies. The communication is available in full at <http://www.unece.org/env/pp/pubcom.htm>.

3. The communication was forwarded to the Party concerned on October 22, 2004, following a preliminary determination by the Committee as to its admissibility.

4. A response was received from the Party concerned on March 18, 2005, indicating, *inter alia*, that:

(a) By purchasing their residential property in the vicinity of the facility in 1996, the communicants had accepted to reside in an industrial zone;

(b) The environmental inspectorate had been carrying out regular monitoring of the facility in response to the communicant's complaints;

(c) The monitoring had established that since the latest change in ownership of the facility (which occurred earlier in 2004), several pieces of clean-up equipment had been installed in the facility;

(d) The new management of the facility had developed and submitted for approval to the environmental authorities a draft environmental protection plan in 2004;

(e) Administrative penalties in the form of fines had been imposed on the facility for failure to comply with environmental legislation;

(f) Contrary to the communicants' claim, the court decision of June 27, 2002 stated that the parties had been notified of the date and time of the hearing; and

(g) The failure of the court to notify the communicants of the decision in their case fell outside the competence of the Ministry of Environment.

5. In addition to the comments in writing, the representatives of the Party concerned further pointed out, during the discussion at the Committee's eighth meeting, that judicial procedures and the performance of the courts were outside the scope of the authority of the Ministry of Environment.

6. The Committee at its fifth meeting (MP.PP/C.1/2004/6, para. 26) determined on a preliminary basis that the communication was admissible, subject to review following any comments received from the Party concerned. Having reviewed the response of the Party concerned and having further consulted with both parties at its eighth meeting, the Committee hereby confirms the admissibility of the communication.

7. The Committee discussed the communication at its eighth meeting (May 22–24, 2005), with the participation of representatives of both the Party concerned and the communicant, both of whom provided additional information.

8. In accordance with paragraph 34 and with reference to paragraph 36 (b)



of the annex to decision I/7, the Committee prepared draft findings and recommendations at its ninth meeting were forwarded for comment to the Party concerned and to the communicant on October 18, 2005. Both were invited to provide comments, if any, by November 17, 2005. Comments were received from the communicant on November 9, 2005. At the request of the Party concerned, the Committee extended the commenting deadline to February 1, 2006. The Party concerned provided its comments on February 7, 2006. The Committee, having reviewed the comments, took them into account in further developing the draft findings and recommendations at its eleventh meeting. It then allowed a further period for comments for the Party concerned before finalizing and adopting them at its twelfth meeting.

### **I. Summary of facts<sup>1</sup>**

9. An industrial facility for storage of cement (6 stationary containers of 25 metres in height and 4,000 tons in volume) and coal (a warehouse with the annual cargo turnover of 48,400 tons) and production of construction materials resumed its operation in 1998, following seven years of inactivity. Tsentr beton Ltd. facility is located in the immediate proximity of the residential area where the communicants live (with some of the installations within 50 metres of residential houses) in the Djetysuiski district of Almaty.

10. Since 1998, the communicants repeatedly requested the Almaty Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection to enforce environmental standards pertaining to the operation of the facility. The communicants maintain that the authorities failed to take successful enforcement measures.

11. On August 6, 2000, seven residents of the area, including the communicants, filed a lawsuit with the district court of Medeu [Medeuski Regional Court] alleging a failure of the Almaty Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection to enforce environmental legislation with regard to the facility. The plaintiffs requested the court to, *inter alia*:

1) Require the defendants to develop a proper environmental management plan for the facility that would take into account all the relevant requirements of the environmental legislation;

2) Revoke the conclusions of the governmental environmental assessment ("expertise") and the environmental permit issued to the facility as failing to satisfy the requirements of environmental, sanitation and construction legislation; and

3) Require the defendants to provide compensation for pain and suffering caused by their failure to act.

12. On June 20, 2001, the court of first instance rejected the plaintiff's



second and third claims, pointing out that as of July 2000, the facility complied with the conditions of its permit, that the authorities in question had addressed all the complaints of the plaintiffs and had taken administrative and other enforcement measures and that therefore no compensation was to be awarded to the plaintiffs. It is not address the first claim.

13. On September 7, 2001, the appellate court reversed the decision of the district court, noting its failure to address the first claim of the plaintiffs. The decision of the appellate court also noted that the district court had failed to properly investigate the matter with regard to both the actual enforcement measures taken by the authorities and the actual environmental performance by the facility and its compliance with the legislative requirements. The case was returned to the district court for review.

14. On November 27, 2001, the district court suspended the review with regard to the third claim pending the outcome of a civil case filed by the communicants against the facility with a different district court. The court's decision again failed to address the first claim and also did not resolve matters raised in the second claim. The appellate court reviewed the case in February 2002 but this time left the decision of the district court standing.

15. On June 27, 2002, despite the fact that the civil case was still pending with a different court, the judge of the district court on her own initiative resumed the hearing of the case with regard to the third claim. It dismissed the case without considering it due to the failure of both parties to appear in court. The court decision refers to multiple notifications of the place, date and time of the hearing being sent to the parties. The communicants however maintain that no such notification was received by any of the seven plaintiffs. The communicants also did not receive a copy of the court's decision until May 2004 when they filed a petition with the district court to resume the hearing of the case. In the course of discussing the communication at the Committee's eighth meeting on May 24, 2005, the representatives of the Party concerned indicated that they were not in a position to verify whether or not the notifications or the decision had been indeed delivered to the communicants in a timely manner.

16. Despite suspension of its environmental permit in 2001, the facility continued to operate. In February 2003, a new environmental assessment of the facility's operation was approved by the environmental authorities. Its conclusions established multiple breaches of Kazakh environmental legislation: e.g. the level of cement dust content in the air exceeding maximum allowed concentration by 114 times, background air pollution exceeding permissible levels (paras. 17.4 and 17.5 of the Conclusions) and existence of residential houses within the prescribed buffer zone (para. 17.1 of the Conclusions). Despite this, the conclusions conditionally approved operation of the facility subject to effective implementation of measures foreseen in the proposed environmental management plan. The facility however still failed to obtain an environmental permit. In May 2004, the communicants appealed



to the Ministry of Environment to take steps to stop the pollution by the enterprise.

17. On July 20, 2004, the communicants filed another lawsuit with the Medeu district court. In the lawsuit they petitioned for a writ to require the Almaty City Territorial Department on Environmental Protection and the City Sanitary-Epidemiological Department to bring a court action for suspension of the facility's operation. The communicants maintain that they were not in a position to directly request injunctive relief for fear of an expensive counter-claim by the facility.

18. On July 29, 2004, the district court rejected the claim, pointing out that while article 77 of the Environmental Protection Law granted the public authorities a right to file a lawsuit to restrict or suspend an activity, it did not establish an obligation to do so. The court considered, *inter alia*, that imposing an administrative fine on the facility provided an alternative course of action for the public authorities in fulfilling their obligations. The decision was subsequently unsuccessfully appealed to the court of second instance and the office of the public prosecutor.

## II. Consideration and Evaluation by the Committee

19. Kazakhstan deposited its instrument of ratification of the Convention on January 11, 2001. The Convention entered into force for Kazakhstan on October 30, 2001.

20. The Convention, as a treaty ratified by Kazakhstan, is part of the Kazakh legal system and is directly applicable, including by the courts.

21. Noting that some of the activities described in the communication took place prior to the Convention's entry into force for Kazakhstan, the Committee will only address the activities that took place after October 30, 2001.

22. The communicants' standing was not disputed in any of the court instances. In the Committee's view, this sufficiently establishes that they meet the criteria under Kazakh law for access to review procedures as stipulated in article 9, paragraph 3, of the Convention. The argument of the Party concerned with regard to the communicants' consent to reside in the area (para. 4 above) is not relevant in this consideration. Leaving aside the fact that the purchase of property occurred when the facility was not operational, the communicants do not challenge legitimate operation of the facility, but rather allege failure of the public authorities to bring about compliance with environmental legislation and their own failure to obtain access to justice in the context of the Convention.

23. The Almaty Sanitary-Epidemiological Department and the Almaty City Territorial Department on Environmental Protection both fall under the definition of a "public authority", as set out in article 2, paragraph 2 (a).

24. With regard to the argument presented by the representatives of the Party concerned that they do not have authority over courts (paragraph 5



above), the Committee notes that judicial independence, both individual and institutional, is one of the preconditions in ensuring fairness in the access to justice process. Such independence, however, can only operate within the boundaries of law. When a Party takes on obligations under an international agreement, all the three branches are necessarily involved in the implementation. Furthermore, a system of checks and balances of the three branches is a necessary part of any separation of powers. In this regard, the Committee wishes to point out that, the three branches of power need each to make efforts to facilitate compliance with an international agreement. So, for example, bringing about compliance in the field of access to justice might entail analysis and possible additions or amendments to the administrative or civil procedural legislation by bodies usually mandated with such tasks, such as, for example, ministries of justice. Should such legislation be of primary nature, the legislature would have to consider its adoption. In the same way judicial bodies might have to carefully analyze its standards and tests in the context of the Party's international obligations and apply them accordingly.

25. While the communication presents a lot of information with regard to violations that continually occur in the operation of the facility, as illustrated in paragraphs 9 and 15 above, it is not within the Committee's mandate to assess these alleged violations or verify the information. The Committee will however consider the judicial procedure in question from the point of view of compliance with article 9, paragraphs 3 and 4.

26. With regard to the court decision of November 27, 2001, the court had in front of it three claims: to require the public authorities to take certain actions (i.e. develop a management plan), to revoke the conclusions of the earlier environmental assessment and the related permit and to award compensation of damages. The decision addressed the third claim but failed to address the request for an environmental management plan to be developed for the facility to bring its operation into compliance with the national legislation. It also did not resolve the matter of appeal against the conclusions of the governmental environmental assessment. Without an in-depth analysis of the domestic legislation the Committee is not able to establish whether an omission to develop such a plan would be in contradiction with environmental legislation and therefore fall under article 9, paragraph 3, of the Convention. Should this have been positively established, the failure by the courts to address this claim would constitute a denial of access to judicial review procedures in the meaning of article 9, paragraph 3. The Committee therefore would like to bring the attention of the Party to this situation.

27. The opinion of the appellate instance issued on September 7, 2001 (see para. 13 above) indeed pointed to an earlier first instance decision's failure to address the same particular claim. It refers to the requirement of the Kazakh Civil Procedure Code that all claims presented in a lawsuit have to be addressed by the court. The failure to comply with the Convention, in



this particular instance, does not seem to be embedded in the legislative system but rather points to failures in the judicial system.

28. With regard to the decision of the court of first instance of June 27, 2002 and the subsequent developments described in paragraph 13 above, the Committee is of the opinion that a procedure which allows for a court hearing to commence without proper notification of the parties involved (including a confirmation that notifications have indeed been received), cannot be considered a fair procedure in the meaning of article 9, paragraph 4, of the Convention. Although the court decision refers to the multiple notifications being sent to the plaintiffs, no evidence was presented in support of this by the Party. In absence of such evidence the Committee considers that the claim of the communicants that they were not duly notified has not been reputed. In the view of the Committee the shortcoming lies with the compliance by the courts with the existing requirements of procedural legislation, rather than the legislation itself.

29. The Committee also finds that the failure to communicate the court decision to the parties, as described in paragraph 15, constitutes a lack of fairness and timeliness in the procedure. At the Committee's eighth meeting, the representatives of the Party concerned argued that even if the decision was not communicated directly to the plaintiffs, they still had a possibility to access the text of the decision in the court records. Clearly, while public accessibility of decisions is commendable, it does not in itself satisfy the fairness of the procedure. A fair and timely procedure requires that a decision should be communicated to the parties within a short time to enable them to take further actions, including filing an appeal.

30. The judicial procedures referred to in paragraph 17 above were initiated to challenge the public authorities' failure to act to bring about compliance with national environmental law. In this regard, it is important to distinguish three issues:

(a) Whether the communicant had access to a review procedure in order to challenge the alleged failure of enforcement by the public authorities. The Convention clearly applies here, and it appears that the communicants did have such access, even if the courts' decisions did not go in their favour;

(b) Whether the public authorities were legally obliged (as opposed to merely permitted) to enforce the relevant laws and regulations. The Committee is not in a position to interpret substantive environmental and administrative legislation of the Party where it falls outside the scope of the Convention, nor is it in a position to dispute the court's opinion that the public authority has a right to judge which of the courses of actions available to it are best suited to achieve effective enforcement. The



Committee is, generally speaking, reluctant to discuss the courts' interpretations of substantive provisions of environmental or other domestic legislation. However, a general failure by public authorities to implement and / or enforce environmental law would constitute an omission in the meaning of article 9, paragraph 3, of the Convention, even though the specific means proposed by the plaintiff to rectify this failure might not be the only ones or the most effective ones;

(c) Whether the public authorities did in fact effectively enforce the relevant laws and regulations. There is certainly, in the view of the Committee, a freedom for the public authorities to choose which enforcement measures are most appropriate as long as they achieve effective results required by the law. Public authorities of the kind referred to in paragraph 17 above often have at their disposal various means to enforce standards and requirements of law, of which initiation of legal action against the alleged violator is but one. The Committee notes however, that actions with regard to the facility undertaken by the public authorities in the course of the past seven years (e.g. imposing fines) consistently failed to ensure effective results, as demonstrated by the information presented in paragraphs 4 (e), 10 and 16 above.

31. It is the Committee's opinion that the procedures fall under article 9, paragraph 3, of the Convention, triggering also the application of article 9, paragraph 4. Furthermore, it appears that there were significant problems with enforcement of national environmental law. Even though the communicants had access to administrative and judicial review procedures on the basis of the existing national legislation, this review procedure in practice failed to provide adequate and effective remedies and, therefore, was out of compliance with article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

32. The Committee notes that the more direct route for the communicants to challenge the contravention of environmental laws would have been to take a lawsuit directly against the polluting company, but the communicants were concerned about the financial risk they could face and therefore opted for the second route of taking a lawsuit against the relevant public authorities. This concern over what is known as strategic lawsuits against public participation also point out to obstacles in access to justice.

33. The Committee also notes with regret that whereas the case taken by the plaintiff could have provided a trigger for more effective enforcement of the laws and regulations relating to the environment, the decisions taken by the judiciary as a whole effectively ensured that this did not happen.

### **III. Conclusions**

34. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.



**A. Main findings with regard to non-compliance**

35. The Committee finds that the failure by Kazakhstan to provide effective remedies in a review procedure concerning an omission by the public authority to enforce environmental legislation as well as failure to ensure that courts properly notify the parties of the time and place of hearings and of the decision taken constitutes a failure to comply with the requirements of article 9, paragraph 4, in conjunction with article 9, paragraph 3, of the Convention.

**B. Recommendations**

36. Noting that the Party concerned has agreed that the Committee take the measure listed in paragraph 37 (b) of the annex to decision I/7, the Committee, pursuant to paragraph 36 of the annex to decision I/7, and taking into account the recommendations adopted by the Meeting of the Parties with regard to compliance by Kazakhstan (ECE/MP.PP/2005/2/Add.7), recommends that Kazakhstan:

(a) Additionally include in its strategy, prepared in light of decision II/5a of the Meeting of the Parties, publication of the courts' decisions and statistics related to environmental cases and allocate specific significance to capacity-building activities for the judiciary;

(b) Thoroughly examine, with appropriate involvement of the public, the relevant environmental and procedural legislation in order to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review;

(c) Take the findings and conclusions of the Committee into account in further consideration of the specific matter raised by the communicant; and

(d) Include in its report to the Meeting of the Parties to be prepared pursuant to paragraph 8 of decision II/5a of the Meeting of the Parties information on the measures taken to implement these recommendations.

37. The Committee requests the secretariat and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to Kazakhstan as necessary in the implementation of these measures.

38. The Committee resolves to review the matter no later than three months before the third meeting of the Parties and to decide upon what recommendations, if any, to make to the Meeting of the Parties, taking into account all relevant information received in the meantime.

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\* The original spelling is maintained in this text.

1. This chapter includes only the main facts considered relevant to the question of compliance, as presented to and considered by the Committee.





# ECOLOGICAL PROBLEMS OF KAZAKHSTAN



## THE ENVIRONMENT AND HEALTH OF THE POPULATION OF THE CITY OF UST-KAMENOGORSK

**Nataliya Yakovleva,**  
**Candidate of Medical Science,**  
**Corresponding member of the International Academy of Science,**  
**Ecology, Human and Environmental Safety,**  
**The Center for Health Protection and Environmental Projects,**  
**Almaty, Kazakhstan**

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The city of Ust-Kamenogorsk (East Kazakhstan Oblast) is a major industrial and transportation crossroads of the Rudny Altai, located on the upper reaches of the Irtysh River. It is one of Kazakhstan's major centers for the extraction of non-ferrous metals, automobile manufacturing and the chemical industry. Among the city's enterprises are a lead/zinc plant and a titanium/magnesium plant, automobile manufacturing plants, a hydroelectric plant, and a thermal power station. As of January 1, 2004, the city's population totaled 305,000. Intense polluting of the environment by industry along with unfavorable natural/climatic conditions have created a difficult medical/demographic situation in the city.

Improving the health conditions of the Republic of Kazakhstan's population is one of today's pressing needs. It is impossible to resolve this problem without considering and preventing the impact of negative factors—including pollution of the air, drinking water, vegetation and soil—on the human body. The Constitution of the Republic of Kazakhstan and the laws "On Protecting the Health of Citizens" (2006) and "On the Sanitary-Epidemiological Well-Being of the Population" (2002) guarantee the right of citizens to a safe environment and timely information about factors influencing their health.

Nevertheless, the negative impact of the environment on the population's health is far from decreasing. This problem is becoming especially acute in environmentally unfavorable regions, including, without a doubt, Ust-Kamenogorsk.

The geographic state and natural/climatic conditions of the city, the large quantity of industrial enterprises polluting the environment, the immediate proximity of residential areas to industrial zones, and the growth in automobile traffic all speak negatively to the state of the population's health. Therefore, in order to conduct effective preventative measures, it is necessary



to disseminate information on the influence of various factors—socio-economic, sanitary-hygienic and environmental.

However, for a number of objective reasons, extensive studies to assess the impact of environmental factors on the population's health were not conducted prior to 2004 in the city of Ust-Kamenogorsk. Earlier studies only shed light on particular aspects of the complex process of shaping the health of various age, gender and professional groups within the population.

As a result of a decision by the city's Soviet of People's Deputies, in 1990-1991 an expert commission of the Supreme Soviet (Council) of the USSR and the Committee for Public Assessment of the USSR conducted a study in Ust-Kamenogorsk. It was determined that the health status of the city's children and adults had reached a dangerously critical level during these years, and steadily irreversible changes were occurring in the natural/anthropogenic environment. Unfortunately, the commission's recommendations to improve the population's living and health conditions were not made a reality. And the state of the population's health was not monitored.

Thus, there is an urgent need to conduct a general assessment of the current health level of the city's population, to discover the factors influencing the development of health conditions, and to create measures for improving the situation.

As a result of an assignment by the East Kazakhstan Oblast Administration for the Implementation of Environmental Protection Programs (led by V.M. Savateeva), an extensive study of the state of the environment and health of the population of Ust-Kamenogorsk was conducted in 2004-2005. The research was conducted by public company "Ecoservice and C." and "The Center for Health Protection and Environmental Projects." This study revealed health risk factors and led to the development of an environmental passport of the city, which includes a medical section. A system was proposed for monitoring health indicators that are dependent on environmental factors. The results of the study were released at public hearings. They struck a chord among specialists and the city's residents alike.

Such work demonstrates how effective the results of studies can be if the efforts of specialists are supported by the leaders of the city's environmental and medical services. For the first time in thirteen years, it has become possible not only to determine the truly significant factors influencing health, but also to dispel a few of the "myths" on the impact of the factors that played a strong role during the period of intensive industrial activity.

### **What was truly established?**

As a result of the 2004 study, a general assessment of the environmental situation and state of the population's health was made, the primary risk factors were revealed, and an improvement program was proposed. Indicators of poor health among the population caused particular alarm. In-depth analysis of the medical/demographic situation established that the mortality of the



Ust-Kamenogorsk population is dependent on environmental factors to a greater extent than in other regions.

Surveys of parents with preschool-age children and young schoolchildren revealed the low level of health among children and adults, the primary environmental factors influencing health, and the lack of reliable differences between regions. Important results were obtained by conducting immunology and cytogenetic studies, identifying metals in blood samples.

At the same time, according to data from a telephone survey and a survey conducted through the mass media, it is possible to conclude that, in comparison to the early 1990s, positive progress has been achieved in the city's economy. The well-being of the city's residents has increased, and the number of people whose material well-being is unsatisfactory has decreased from 56.0% to 39.2%. Improvement of the environmental situation has been observed, allowing it to be classified as poor and strained, but not catastrophic. Whereas 80% of city residents assessed the environmental situation as catastrophic in 1991, according to current research, only 21.8% do so today. The majority of residents (55.3%) consider the environmental situation to be poor, while 22.9% consider it satisfactory.

A supposition has been put forth, based on the studies conducted. The low health level of the current population of Ust-Kamenogorsk can be explained by the influence of present-day living conditions, ways of life, work conditions, socio-economic factors, etc., and as a consequence of recent changes to the environment and health of the population. It may be presumed that Ust-Kamenogorsk's current generation is experiencing the consequences of the environmental catastrophe that took place in the late 1980s to early 1990s.

Thus, the study was the first in thirteen years to provide a comprehensive evaluation of the health status of the city's residents, and to determine the threat level for both individual factors and the combination of various factors.

It also revealed a number of problems requiring further research and the need to conduct monitoring of fundamental health indicators among the population: illness, mortality, etc. It is also necessary to conduct observations for immunological and cytogenetic changes, and the level of heavy metal accumulation in the bodies [биологические среды] (blood, hair) of individual groups of city residents.

It would be important to clarify the specific regional nature of the proliferation of oncological pathologies and to compare the indicators discovered with data from other regions of Kazakhstan, using standardization methods. The calculated risk levels for carcinogenic and non-carcinogenic influences of environmental factors attest to the need to create a model for monitoring health risks. The survey demonstrated



that the population considers air pollution to be the primary negative factor. Therefore it would be necessary to conduct in-depth studies of the specific nature of the impact of air pollutants on illness, and to discover the environmentally contingent conditions.

As a result of research conducted in 2005, a medical-environmental section of the city's environmental passport was developed, comprising two segments.

- I. The overall characteristics of the medical-environmental situation.
- II. Modeling and prognosticating health status in connection with changes in environmental quality.

It is worth stressing that the city's environmental passport was developed not simply to establish the situation. It is an instrument to control and manage medical-environmental processes; it is a new organizational form for conducting research, as well as planning and implementing preventative programs.

Also proposed were principles for forming and using the medical-environmental section of the passport, and for determining the frequency for updating the information. The effective use of this section must be based on consolidating the efforts of various departments and a new system of relations between them, enabling its potential to be fully maximized. Improvement of the medical segment will allow not only for changes in current conditions to be tracked, but also for changes in the population's health to be predicted under the influence of environmental factors. An important condition is to discover reliable interconnections between the prevalence of illness among the population and air quality.

Mathematical/statistical analysis was conducted in order to resolve this task. The analysis compared the quantity of daily visits by children and adults to preventative/medical establishments and to emergency medical care facilities, as well as the frequency of various symptoms among children of preschool age and the data from permanent observation posts on concentrations of polluting substances in the air. Specialists from the city's medical services actively participated in the research, including the Department of Public Health of the City of Ust-Kamenogorsk, the Sanitary-Epidemiological Station (SES), and the East Kazakhstan Branch of the Republican State Public Enterprise "The National Center for Sanitary Labor and Disease Prevention."

This research established that the body's reaction to air pollution is of an unspecific character. In other words, analogous symptoms may appear, for instance, due to a cold, food poisoning, etc., which substantially complicates diagnosis. This is especially characteristic of the influences of substances found in the environment in insignificant quantities. The symptoms appear, as a rule, not on the day of contact, but after some delay. It was discovered that even an insignificant concentration of polluted substances in the air can have an impact on human health. According to data from the polyclinic (consulted for medical assistance), the following substances have the greatest impact in



increasing the level of illness among the population: suspended matter, sulfurous acid, carbon monoxide, nitrogen dioxide and sulfur dioxide. According to the emergency care services, the list includes suspended matter, sulfuric acid and carbon monoxide.

Emergency care visits for severe and chronic bronchitis and allergies are indicators of children's health.

The first indicators to appear, based on observation journals, were reactions by the children of Ust-Kamenogorsk to air pollution. The greatest impact came from suspended matter, sulfuric acid, hydrogen fluoride and sulphur dioxide. The most common symptom was high temperature. In addition, the following symptoms were noted among children: increased coughing; expectoration; hoarse throat; irritation of the eyes; colds and stuffy nose; upset stomach/bowels; nosebleeds; vomiting; headaches; hoarse, sibilant breathing; and feeling poorly overall. Since these changes in the health status of the children are of an unspecified nature, this complicates a differential diagnosis of those illnesses caused by pollutants and those caused by other factors<sup>1</sup>.

The connection revealed between the state of the population's health and pollution of the environment must, on the one hand, serve as a reference base for fundamental reactions by the human body to the influence of different pollutants. On the other hand, it must serve as a real instrument to forecast changes in the health of the city's residents. It is worth noting that during the implementation of this project, monitoring of the influence of air pollution on the population's health was, in fact, conducted. It is necessary for management of the population's health status and environmental quality management to simultaneously become ongoing efforts, which have paramount significance for the creation and use of the city's environmental passport. Based on the results of the research, a program was proposed with measures to prevent the negative health impacts of unfavorable meteorological conditions.

The prevalence of malignant growths is one of the most important problems facing humanity. This problem assumes particular severity in environmentally unfavorable regions where there are factors fostering the carcinogens. Ust-Kamenogorsk can be categorized as such a region. Specialists from the Oblast Oncological Health Center and the Republican Institute of Oncology and Radiology actively participated in the work to assess the oncological situation in the city. The research was conducted with the use of customary and standardized indicators, which enabled the specialists to level the impact of the age factor. Analysis was conducted of multi-year data on the prevalence of malignant growths of Ust-Kamenogorsk residents. The analysis attests to the steady growth in the number first-time registered cases of malignant growths.

The prevalence of malignant growths increased by 95% between 1990 and 2004. Those most registered are malignant growths of the trachea, bronchial tubes and lungs, stomach, mammary glands, large intestines



and skin. The levels of cancer and cancer-related deaths in Ust-Kamenogorsk were compared with analogous data from Almaty, Chimkent, Karaganda, Pavlodar, Petropavlosk, as well as some of Kazakhstan's oblasts. The level of illness for practically all age groups in Ust-Kamenogorsk is higher than in other regions, though it is similarly high in Petropavlosk and Pavlodar. The incidence of cancer increases with age among both men and women in all of the territories studied.

To level the age factor, the indicators for cancer illnesses and death were standardized<sup>2</sup>, using the age structure of the population in the Republic of Kazakhstan as a standard. After standardization, the figures for cancer illnesses and deaths decreased for the populations of Ust-Kamenogorsk, Pavlodar, Petropavlosk and Karaganda, as well as in the corresponding oblasts. However, the figures increased in Chimkent, South Kazakhstan and Almaty Oblasts.

As a whole, the standardized figures for cancer illnesses among the entire population of Ust-Kamenogorsk and Pavlodar were equal, but considerably exceeded parallel figures from the southern regions.

Analysis of the standardized figures for the city of Ust-Kamenogorsk indicates that the numbers are determined by the age composition of the population. The decrease in the figures after standardization attests to this fact. At the same time, it is possible to assert that there is a combination of specific regional factors at play in the city and, for this reason, the calculated standardized figures are higher in Ust-Kamenogorsk than in many other regions. It is worth noting that it is impossible to link the prevalence of cancer with the environmental situation alone, ignoring harmful habits and work conditions. In particular, the high numbers of men who die from cancers of the trachea, bronchial tubes and lungs, can evidently be explained by the fact that men more often smoke and work in industrial settings with significant air pollution than women. In order to determine the environmentally created carcinogens in Ust-Kamenogorsk, the presence of substances in the environment with a carcinogenic effect was studied. The substances found were cadmium, arsenic, lead, and persistent organic pollutants.

Immunological research was conducted together with the leading immunologists of the Republic of Kazakhstan: specialists from the Karaganda State Medical Academy (led by Professor N.V. Kozachenko, Doctor of Medical Science) with active participation from medical employees of the city, particular the city's chief OB/GYN and chief pediatrician. Three hundred and twenty people were studied: newborns, one-year olds, preschool-age children, mothers of one-year olds, women who had just given birth, and women of childbearing age. The percentages of those who were healthy in terms of immunology ranged from 25% (children under 7 years) to 52% (women of childbearing age). In practically all of the age groups, toxins were found, requiring further research in order to determine the reason for their appearance.

One of the important aspects of the work was a cytogenetic survey of a select



group of Ust-Kamenogorsk residents. Leading cytogenetic specialists of the Republic of Kazakhstan participated in the work, including associates from the Laboratory of Medical Genetics of the Republican Scientific Research Center for the Protection of the Health of Mothers and Children of the Ministry of Public Health (led by Professor G.S. Svyatov, Doctor of Medical Science, and Senior Implementer, G.Zh. Abil'dinov, Doctor of Medical Science). The biological indicator of the frequency and spectrum of chromosomal changes was conducted with modern methods, enabling subtle and complicated chromosomal violations to be detected. Cytogenetic research was conducted on 50 women aged 19-35, who have lived in Ust-Kamenogorsk for more than 10 years and who do not work in harmful industries.

For the first time in Ust-Kamenogorsk, biological dosimetry was conducted to reconstruct individual and collective absorbed doses<sup>3</sup>. The average absorbed dose for the study group was 0.099 Gray<sup>4</sup>, which does not exceed the natural radiation background level. The dosimetry and analysis of the distribution of cell aberrations demonstrates that the cytogenetic parameters obtained are the initial spontaneous level of chromosomal aberrations for the population of Ust-Kamenogorsk. The obtained results may be used to control the intensity of spontaneous and induced mutation processes in the Ust-Kamenogorsk population. The fundamental principles of cytogenetic monitoring were developed. All of the prerequisites (political, scientific, skilled personnel) have come together in Ust-Kamenogorsk to make it the first city in Kazakhstan in which it is possible to conduct cytogenetic monitoring of the population.

Emissions from Ust-Kamenogorsk's industrial enterprises contain heavy metals. Therefore, there must be laboratory monitoring for these concentrations in the bodies [биологические среды] (blood, hair) of the population. Therefore, analysis was conducted of 50 women who do not work in harmful industries to detect the recent entry of metals in the body, by determining concentration levels in the blood. Simultaneously, children were studied to determine the chronic accumulation in the body of indicator metals, in the maximum quantities contained in the industrial emissions. Fifty hair samples were taken for this study. The Center of Biotic Medicine in Moscow conducted the blood and hair analysis for concentrations of lead, cobalt, cadmium, copper, thallium, zinc, antimony and arsenic.

It was determined that, compared to the 1990s, a substantial decrease had occurred in the concentration of metals in the population's bodies [биологические среды], attesting to the decrease in the anthropogenic load.

However, it was discovered that the concentration of lead in the children's hair exceeds the normative level (in 66% of the samples). These



results are in line with the data from a laboratory study of blood samples in 2004. Consequently, lead is the primary toxic element presenting a threat. This element must be an indicator of the anthropogenic impact of the city's industrial emissions on the health conditions of children. At the same time, it is impossible to discount everyday sources of lead exposure to the body.

The analysis attests to the fact that, in addition to the children's chronic exposure to lead, there is a deficit of vitally necessary elements—zinc and cobalt. The concentration of zinc was less than an acceptable level in 50% of the samples. In 2004, a study of preschool-age children showed a decreased concentration of zinc in 99% of blood sampled. Consequently, the insufficiency of zinc in the blood of preschool-age children is a stable phenomenon. Zinc is absolutely necessary for supporting hundreds of the body's functions, including the sense of taste, sense of smell and vision. This element is a component of more than 200 enzymes. A zinc deficit in humans usually leads to repeated and prolonged sickness due to colds and infectious diseases.

An increased concentration of toxic metals was not detected in the blood of the women tested, which attests to a lack of recent entry to the body. In all, an insignificant increased concentration of antimony was detected in 4% of the samples. It is worth noting that the imbalance of microelements is manifested less in the adults than in the children. Correlated analysis was conducted between the various elements found in the biological samples. It was determined that the accumulation of arsenic and lead in the body leads to a decreased concentration of zinc.

Considering the high social significance of protecting children's health, we undertook preventative work with parents regarding the general health of preschool-age children.

To ensure maximum effectiveness, this work was conducted individually with parents. Three hundred preschoolers and older children from various parts of the city were given medial checkups by highly qualified specialists from Almaty: pediatricians, neurologists and ear, nose and throat doctors (otorhinolaryngologists).

Only 9% of preschool age children were found healthy. Functional disruptions of the cardiovascular system were often found. A high percentage of children were revealed to have residual pathologies—28.78 out of 100 studied<sup>5</sup>. Deserving of attention is the high level of regional ear, nose and throat (otorhinolaryngology) pathologies, the level of which is 6.5 times higher than in Almaty.

Improving the health of the children of Ust-Kamenogorsk requires wide-scale preventative measures in order to lower the negative impact of external factors. The high research results confirm the need to organize monitoring not only for concentrations of toxic indicator elements, but also for vitally necessary elements.

The wide-scale study of the state of the environment and health of the



population allowed for the first-ever evaluation in Ust-Kamenogorsk of the risk level of emissions from the city's main industrial enterprises on the population's health. Based on this approach, the researchers succeeded in defining an emissions impact zone, proposing a system for monitoring the level of risk created by individual industrial sites, and dividing the city into environmental sections in order to determine the most hazardous and the cleanest parts of the city.

The information obtained allowed for a comparative analysis of the risk level of emissions from individual industrial enterprises and determination of the pollutants representing the maximum threat to the population's health.

It was established that the publicly-traded company Kaztsink emits more sulphur dioxide than other enterprises. The publicly-traded company Ust-Kamenogorsk Titanium-Magnesium Plant is the leader in chlorine discharges. Emissions from the Ust-Kamenogorsk Thermal Power Station contain the maximum quantity of nitrogen dioxide. These enterprises create the threat of brief and / or chronic influence of the aforementioned elements on human health.

Air pollution causes reactions in the human body, the nature of which may be predicted on the basis of epidemiological data. Utilizing scientific methods, this study predicted possible changes in the state of the population's health in various areas of the city. The data from daily observations of the level of air pollution, obtained by Gidromet's permanent air pollution control posts, was used during this process. During the study period, only sulfur dioxide presented a threat to the population's health. Isolated instances were noted of brief exposure to chlorine and nitrogen dioxide, the concentrations of which insignificantly exceeded the acceptable risk level. It was established that likelihood of impact from air pollution on the population is especially high in the areas adjacent to control posts No. 1 and No. 5.

One of the goals of the research was to determine the main entry paths of heavy metals in the human body from pollution of the air, soil, drinking water, vegetables (from dacha gardens) and fish from local water sources. It was revealed that the air presents the main threat to the population's health. Pollution of produce and fish was not established.

The soil is a long-term accumulator of the substances that have fallen onto it from the air. Considering that, according to the environmental research data, an increased concentration of toxic metals is observed in the topsoil layer in Ust-Kamenogorsk, it can be suggested that the soil may be a source of entry for polluted substances as a result of dust and geophagy (as children have dirty hands). We calculated the influence on the health of children and adults of the primary toxic polluters of the city's soil: lead, cadmium, arsenic and mercury. The figures were



minimal, according to the criteria for risk evaluation, not posing a threat to the population's health.

It is necessary to pay particular attention to the quality of water from decentralized water sources. In a number of the samples of drinking water, arsenic was found in concentrations that present a threat to the health of the population.

In terms of making administrative decisions, given the limitations of public resources, it is important to correctly select priorities. Ignoring the most serious problems or concentrating on second-tier problems leads to an irrational use of public resources. The result is a decline in the population's health, pollution of the environment, and the deterioration of the public's welfare. Therefore, based on our observations of the population's health status, we developed principles for determining priorities for making administrative decisions.

In 2004, the recurring theme of medical-environmental work was the assessment of risk of negative environmental factors on the population's health; in 2005, it was monitoring health conditions. Further research must be focused on more extensive study of the factors influencing the health of Ust-Kamenogorsk residents, and developing preventative programs and a scientific basis for making administrative decisions.

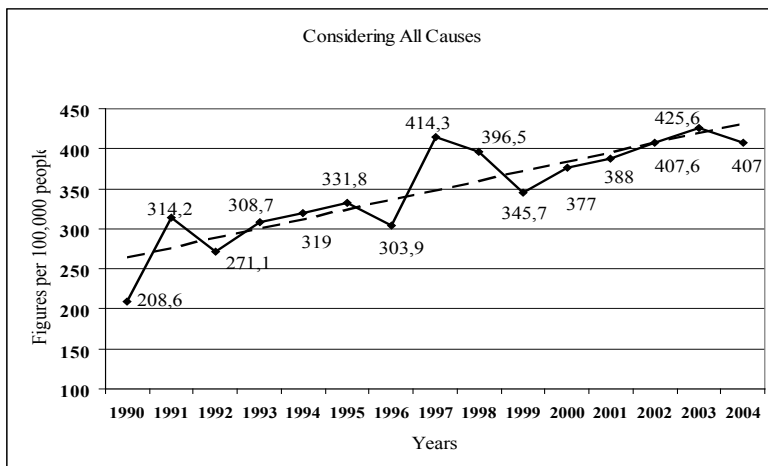
As a whole, the experience of conducting this wide-scale medical-environmental research may also be useful for other regions of the Republic of Kazakhstan facing the serious problem of protecting the population from the negative influence of environmental factors.

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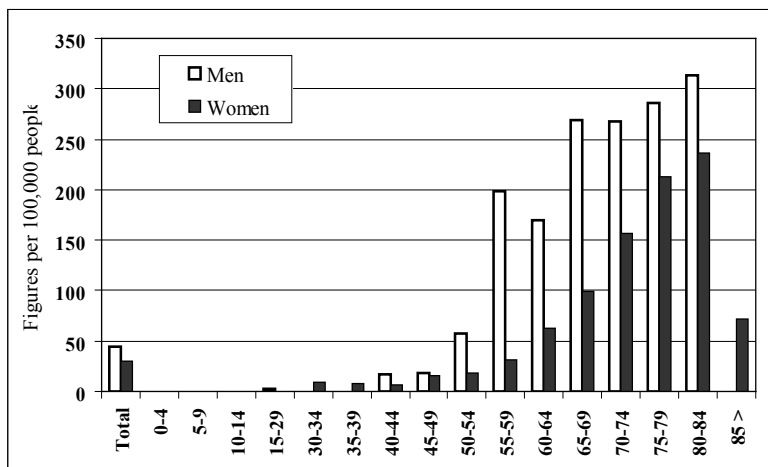
1. Most often, the reactions of organisms to the influence of environmental polluters are of an unspecific nature. For instance, analogous symptoms occur with a cold, food poisoning, etc., which significantly complicates diagnosis. Very often, unspecific reactions are caused by substances found in the environment in insignificant quantities. For a specific reaction, there must be the characteristic appearance of symptoms for which it is possible to say with certainty which pollutants they were caused by. For example, the specific reaction of the body to the influence of CO (carbon monoxide) is an increased concentration of carboxyhemoglobin in the blood.

2. The level of illness and death from malignant growths increases with age. If indicators are compared, for instance, in two regions with populations of different age configurations, the high level of illness in one of these may be explained by a large number of elderly people. For example, the population of the southern regions of Kazakhstan is younger than those regions of the north. Thus, we faced the task of determining whether Ust-Kamenogorsk actually has one of the highest levels of cancer illnesses or if this level can be explained by a relatively high percentage of elderly people. For this very reason, the standardization was conducted. The result of the standardization was a model allowing comparisons of the illness and death levels under conditions in which the territories in question have populations of identical age compositions.



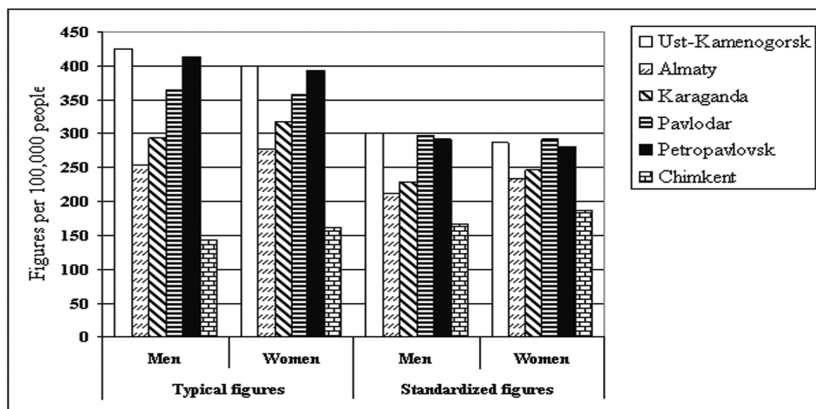


**Figure 1.** Initial Incidence of Malignant Growths in the City of Ust-Kamenogorsk (Considering All Causes). The dotted line shows a steady tendency.



**Figure 2.** Distribution of Malignant Stomach Growths of the Men and Women of Ust-Kamenogorsk by Age.





**Figure 3.** Typical and Standardized Indicators of Overall Oncological Illness in Ust-Kamenogorsk and a Number of Kazakhstan's Regions for 2000-2004 (Considering All Causes).

3. Biological dosimetry is one of the most informative and promising methods for assessing absorbed doses of radiation. It is based on analysis of the frequency and spectrum of chromosomal aberrations in a lymphocyte culture of the peripheral blood of the individuals exposed to the radiation. See The Experimental Basis of the Principles of Monitoring Genetic Mutations of Humans. // Reports from the Academy of Sciences of the USSR. 1978. v. 243, No. 2, p.1313-1316. Radiation Sensitivity of the Lymphocyte Chromosomes of Humans during Mitosis. M., 1987. I.P. Danilov, Z.I. Danilova. Possibilities of Cytogenetic Analysis in Clinical Evaluation of Doses of Radiation Exposure // Public Health of Belarus. 1992, No. 4, p.67-73.

4. Gray—the number of absorbed doses in the International System of Units. It represents the amount of energy of ionized radiation absorbed by the number of masses of some physical body, for example body tissue. 1 Gray = 1 Joule/kg.

5. Residual pathology develops during the period of fetal development, birth and in the first two years of life: prenatal and postnatal—as a consequence of the partial detachment of the placenta, especially premature birth, asphyxiation at birth and brain trauma; postnatal—this includes sepsis, cerebral complications from infection, severe brain injuries and concussions. As a whole, residual pathology is found in 8.5% of children with neuroses, without appreciable differences in the sexes.

Antenatal—during pregnancy (ante + the latin natus for birth—the period of the organism's development from the moment of the zygote's development to the beginning of birth).

Perinatal—up to and after birth. The perinatal period is the period from the 28th week of pregnancy, including the birth period and ending 168 hours after birth.

Postnatal—after birth.



## HOPE FOR BEREZOVKA: RELOCATION BECOMES A TOPIC FOR DISCUSSION AMONG POLITICIANS IN KAZAKHSTAN

**Kate Watters,**  
**Executive Director, Crude Accountability,**  
**Alexandria, Virginia, USA**

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### **Background**

Since 2003, Crude Accountability has been working with the Berezovka Initiative Group defending the rights of the villagers of Berezovka, which have been violated by Karachaganak Petroleum Operating, B.V., the international consortium of oil companies active at the Karachaganak Oil and Gas Condensate Field. Berezovka is a small agricultural village located five kilometers from the Karachaganak Field. The consortium includes some of the largest petroleum giants in the world: Chevron, British Gas, Italy's ENI/Agip and Russia's Lukoil. With \$150 million dollars in financing from the International Finance Corporation, the private sector arm of the World Bank, KPO has built an enormous enterprise on the Karachaganak Field, which occupies 280 square kilometers of territory and holds 1,200 million tons of oil and condensate and over 1.35 trillion cubic meters of gas.

The villagers of Berezovka suffer from environmental and health problems, which are the result of toxic emissions from the Field. Forty-five percent of the population is chronically ill, livestock and wild animals are exhibiting genetic mutations, and the water and soil are polluted with toxins from petroleum extraction and production on the Field. With training from Crude Accountability (our staff are certified air monitoring trainers who use an air monitoring system accredited by the US Environmental Protection Agency), between August 2004 and September 2005, the villagers conducted certified, independent air monitoring in Berezovka, which revealed the presence of over 25 toxic substances in the air. Many of these were at levels several times over the Kazakhstani Maximum Permissible Concentrations. Many of these chemicals are known carcinogens, and the symptoms among the villagers coincide directly with symptoms of toxic exposure to carbon disulfide, hydrogen sulfide, toluene and other toxins the villagers found in the air. Because of the toxicity of their environment, the Berezovka villagers have been forced to demand relocation to a clean and healthy environment and compensation for damages and suffering.



Under the leadership of villager Svetlana Anosova, the Berezovka Initiative Group has struggled to protect its rights against the violations of KPO. Appealing to the authorities, traveling to Washington, DC, to talk with KPO's funders at the World Bank, and conducting scientific and sociological research to understand the problems in the village, Svetlana and her Initiative Group colleagues have tried to garner support from the authorities for their demands. Until very recently, they have been largely ignored by their government, slandered in the press, and treated with disdain by KPO. The World Bank has investigated the situation at Karachaganak, but, to date, no positive change has improved the lives of Berezovka residents. Local authorities have actively scorned the work of the Initiative Group and have called Crude Accountability staff "agents of western interest." Articles published in the regional and national press stated that Crude Accountability was attempting to foment a "color" revolution in Berezovka. Its director was disdainfully called "a khokhlushka" by local authorities.

Therefore, the recent interest in Berezovka's problems by the Environmental Prosecutor's Office of Western Kazakhstan Oblast and the region's Parliamentary Deputy, Amanzhan Zhamalov, have given new hope to the villagers that their story may be heard, and that the government may finally decide to do what is right for the community and relocate it to a clean and safe environment.

In response to this interest, on May 25, 2006, Crude Accountability assisted the environmental NGO, TAN, based in Atyrau, in organizing a public hearing in Uralsk on the topic of environmental and social problems in communities around the perimeter of the Karachaganak Oil and Gas Condensate Field. Deputy Zhamalov and Elmira Umargalieva, from the Environmental Prosecutor's Office, attended the meeting and spoke in support of the villagers.

The following report chronicles my most recent trip to Berezovka and to participate in the public hearing.

### **1. Overall goals and purpose of trip**

I traveled to Almaty, Uralsk and Berezovka, Kazakhstan from May 19-May 30 in order to:

- a) participate in a public hearing organized by TAN, which addressed the environmental and social issues connected to relocation of the village of Berezovka in western Kazakhstan;
- b) work together with Green Salvation and Svetlana Anosova to determine our goals for the hearing and to discuss possible follow-on strategies connected to relocation for the village;
- c) work with the village Initiative Group to prepare for the hearing and work on articulating a common statement and set of demands from the villagers regarding relocation.



The importance of the public hearing was twofold. First, it provided an excellent podium for the villagers to raise their concerns in a public way. It was critical for Deputy Zhamalov to hear from the villagers and to engage them in a serious discussion about the future of the village. Second, this was a crucial moment psychologically for the members of the Initiative Group. It was the first such opportunity to talk with the Deputy and to state in a public forum their concerns, problems and demands for the future. It was important to them to be able to face the Oblast Environmental Department and Energy Ministry officials and talk about the environmental and health problems in the village. Furthermore, the presence of the media ensured their story would be told in the local press.

## 2. Environmental and health problems in Berezovka

After several days in Almaty preparing for the public hearing with colleagues from Green Salvation, I spent approximately a week in Berezovka, with a short trip to Uralsk in order to prepare for the Public Hearing with Shynar Izteleyova, head of the Atyrau-based NGO, TAN.

In Berezovka, in addition to meetings with the Initiative Group, several topics were of key interest and importance in the village, and were the focus of many conversations. It became clear from these conversations that relocation is more necessary than ever as the environmental and health condition in the village continues to deteriorate. Villagers are increasingly concerned about the long-term health costs of living in the village as the situation becomes more dire. The key problems, as described by the villagers, are outlined here:

**A. Water:** The Berezovka River flows along the edge of the village and is a major source of water for gardens and livestock and a home to the fish that subsidize the village diet. For years, a small dike has slowed the water flow as it passes the village, ensuring that there is enough water for all the village needs. Last autumn, KPO began constructing a new dam, which was supposed to ensure a constant water supply to Berezovka. Villagers state that the old dike was in need of repair, but that KPO and the local akim (mayor) decided they would, instead, build a new dam. The new dam was built further down the river, closer to Karachaganak, and since its completion in the spring of 2006, the width of the Berezovka River as it passes the village has shrunk almost by half. The dam, which, according to villagers was built at the wrong spot and at the wrong height, has created a pooling effect of water around the dam, but has not slowed the flow of the river enough to keep an adequate supply of water in the village. Berezovka residents have placed a generator and a pump in the water, which loudly brings water through a hose to the



village. Unfortunately, the water pressure is not strong enough to bring an adequate supply of water to many parts of the village. In a community where household gardens provide the lion's share of produce—not only for summer use, but also for canning and preserving food for the long winter—the specter of losing this water supply in the hottest months of the summer is a scary prospect. According to local accounts, the number of fish in the river has also decreased. Fishing provides a large part of the villagers' diet; without the normal harvest of fish, the Berezovka community will need to subsidize this part of their diet as well.

A second water concern is the drinking water supply for the village. Last year KPO dug a new well and created a new water supply for the village. However, because of problems in the construction, the water doesn't actually flow to the village and they are still using the old water, which flows through the old pipes. This water is loaded with chlorides and salts, and was determined by the Orenburg Oblast water authority to be "not of drinking water quality." Again, the cost of the project and the ineffectiveness of its implementation are difficult for the villagers to understand. "We are afraid," said Svetlana Anosova, "of the next 'good' idea the local authorities and KPO will come up with. What further harm will the next set of ideas do to our community?"

**B. Produce:** Last year's harvest was the worst in the history of the village. Many residents with whom I spoke talked about the problems with their vegetables: black, rotten potatoes; hard, white, inedible tomatoes; soft carrots and woody eggplant. In the middle of August, many of the vegetables went bad. During the course of the winter, villagers learned from each other the extent of the problem. Many of the vegetables that were harvested were not good enough to withstand pickling and canning.

**C. Livestock:** A number of animals were born this spring with serious birth defects. A lamb was born with legs twice as long as they should have been. A calf was born with no mouth or nose; another was born with a misshaped mouth and no nose.

**D. Human birth defects and stillborns:** A baby was stillborn this spring, despite the fact that the mother stated the pregnancy was normal. Another baby was born with severe birth defects. The villagers I spoke with did not know what became of the baby as the parents won't talk about it.

**E. Illness among women in the village:** Members of the Initiative Group talked about the fact that virtually every woman of childbearing age in the village has some form of "women's illness" or cancer. Cancer is a taboo topic, but many women suffer from ovarian cancer, breast cancer or other illnesses.

**F. Renovation of the village community center:** In addition, I spoke with villagers about the renovation of the village community center, which KPO is financing. The renovation is almost complete, and at first glance



looks good. However, the floors, which were previously made of wood, are made of DVP, a form of paper, which is only guaranteed for two years and, according to the villagers, will most definitely fall apart before that. Secondly, KPO informed the village residents that it couldn't afford to build a toilet for the community center (there is no indoor plumbing in the village, so this would have only entailed building an outhouse). The villagers, who are aware of the annual \$10,000,000 social fund, find this explanation difficult to understand.

### **3. Public hearing in Uralsk on environmental and social problems around the Karachaganak oil and gas condensate field**

On May 25th, in Uralsk, Kazakhstan, TAN organized a public hearing, with support and assistance from Crude Accountability. Mr. Amanzhan Zhamalov, the Parliamentary Deputy representing Western Kazakhstan Oblast, was present at the hearing and after giving a short presentation during which he outlined the major reasons that the question of relocation for Berezovka should be re-examined, he listened to presentations from five Berezovka residents. Zhamalov questioned the data published by KPO that states that the environmental conditions around the Field are safe. He presented the Ministry of the Environment's official calculations of emissions from the Field for the past several years, which continue to increase at alarming rates. He questioned how everything could be "alright" in Berezovka when the emissions levels are as high as they are and when KPO pays the amount of fines it pays every year. He read correspondence from the Ministry of Environment that stated toxic emissions in the air and soil have steadily increased since 2003 and questioned how the Oblast Ecology Department could suggest that the conditions around the field were healthy.

Zhamalov also stated that a Special Commission proposed by Minister of Health Anatolii Belonog would soon begin work and would conduct research into the environmental conditions around Karachaganak during a two-month period. The Commission is comprised of a group of experts from the Ministries of Health and Environment, including Zhamalov, plus other academic and medical experts. Minister Belonog invited Green Salvation to participate in the Commission; they have declined, suggesting instead that Svetlana Anosova be named to the Commission as an observer.

In preparation for the public hearing, the Initiative Group members worked hard on their presentations. The first two presenters, Aigul Emirbekova and Lyubov Gladishchenko discussed health impacts from Karachaganak emissions on the villagers, particularly children. Aigul talked about her own daughter, and how at the age of 8 she cannot play



with other children because she cannot breathe properly. Her asthma has been attributed to Karachaganak by numerous doctors, but she cannot get them to commit to a diagnosis on paper. Lyuba talked about the general condition of health among the villagers, including a recent case when over 70 teenagers, who were hanging out on the street in the evening, came down with high fevers, sore throats, skin rashes, and other symptoms. All the children stated that they had noticed a bad smell in the air while they were hanging out.

Rosa Khusainova talked about the recent birth defects among village livestock, and Svetlana Gummenaya talked about the failed crops from last summer's harvest. Svetlana Anosova talked about the public slander the village has endured, and asked for a public apology given the fact that the Public Prosecutor's office had confirmed the villagers' concerns about emissions from the field. Svetlana also answered questions from Deputy Zhamalov about the villagers' desires for relocation. She stated that over ninety percent of the villagers want to be relocated, and the majority of them want to be relocated together. She stated that seeking relocation was difficult—no one wants to leave their home. But, because of the toxic emissions from Karachaganak, the villagers have no option but to leave.

I gave a presentation about the role of international organizations at Karachaganak, including that of the World Bank, and explained why Crude Accountability is involved in the Caspian region (see attachment 1).

Other participants in the hearing included: Mr. Vladimir Khon, representative of the Western Kazakhstan Oblast Ecology Department. He defended KPO and stated, as he has many times before, that there is no problem at Karachaganak, that Maximum Permissible Concentrations are not exceeded, and that the villagers of Berezovka live better than many other people in the region.

A representative of the Ministry of Energy—who refused to formally introduce himself—was present and also supported KPO. He talked about the lack of evidence to support Berezovka's claims, saying that there are incidents of asthma, birth defects and other problems around the world. Berezovka's problems, he stated, are not related to Karachaganak. He, along with the representative from KPO, laughed at the villagers' descriptions of their sick children and the genetic mutations among the livestock.

Elmira Umargalieva, a representative from the Environmental Prosecutor's Office, was present and fully supported Deputy Zhamalov's claims that the Sanitary Protection Zone around Karachaganak had been improperly reduced. She stated that their office will continue to research the problem. She was sympathetic to the villagers' concerns and extremely professional during the entire meeting. She stated that her office has a website where all this information is posted.

A representative from the Regional Sanitary-Epidemiological Station also



attended the hearing, but did not officially introduce himself or make a formal presentation. At the end of the meeting, he approached the Berezovka residents and offered his support.

KPO sent a representative who had no authority to speak and who sat and listened to presentations and looked extremely uncomfortable. He contributed nothing to the meeting, except to laugh with the representative from the Ministry of Energy while the Berezovka residents talked about the environmental and health problems in their community.

Although representatives from the Burlinsky District and Western Kazakhstan Oblast Akimat (local administration) were invited, neither office chose to send a representative to the meeting. Similarly, no one from the Ministry of Environment was present (except Khon, representing Oblekologia). Galina Chernova was invited to represent EcoForum and she also failed to attend. Representatives from other villages around Karachaganak were invited, but did not attend.

Four or five journalists from local newspapers attended the hearing, but no one from television or radio showed up. “Uralskaya Nedelya” and “Talap” sent reporters, as did two other papers. Each of the journalists asked hard questions, mostly challenging the Oblast Environmental Department’s claim that the environmental data they publish is accurate.

At the end of the hearing, we presented recommendations to those assembled (see attachment 2), and discussed next steps. Deputy Zhamalov requested that the Berezovka residents think hard about what they wanted and be prepared to present a unified front. If relocation is the issue, then a unified position must be presented to the authorities. He asked that they send him a copy of the videotape that shows the birth defects among livestock. We agreed that we would send it to him and that we would continue to be in contact. He asked for my business card and said he would invite Crude Accountability to participate in meetings he organizes.

#### 4. Next steps

Following the public hearing, members of the Initiative Group who attended the hearing gathered to discuss next steps. Members of the Initiative Group decided register as an official organization. I did a mini-training with them on how to create an organization: the importance of creating a vision, mission, goal, tasks, and continuing to work on the same issues they have worked on all along, but with more focus.

I also engaged in discussion with the Initiative Group about what relocation and compensation might cost. I encouraged them to discuss at length the issues that are central to their demands, issues they might be willing to negotiate, and other concerns.



To come up with an estimate of expenses associated with compensation, we began by reviewing the cost of a three-room apartment in Uralsk (the equivalent of what Tungush residents received in their relocation). The current price is approximately \$50,000. There are approximately 400 families in Berezovka, so if each family received a house worth that much, the cost of relocation would be \$20 million. In addition, compensation would be paid to each family; the Initiative Group is figuring out what they think that sum should include.

The majority of Berezovka villagers want to be relocated together. They want to be moved into a new village, which would be built for them in an environmentally clean place on the steppes in Western Kazakhstan Oblast. The relocation experience of Tungush has been an important lesson for Berezovka: they know this is not what they want, and they have become much clearer about their own future.

Tungush, the other village located closest to Karachaganak, was abruptly relocated in 2004 when its residents were moved into an apartment building on the edge of Uralsk. The relocation was a disaster for the village, resulting in high levels of unemployment, alcoholism and dissatisfaction among the villagers. Berezovka looks upon the Tungush relocation as an example of how not to be relocated!

The Initiative Group and Crude Accountability will be working on two new projects: one on women's health and another analyzing food products in the village in order to understand more fully the extent of toxic exposure and contamination in the village. The purpose of these projects is not only to more fully understand and address the environmental health problems in the village, but also to help the community assess the amount of compensation necessary to cover the losses and long-term impacts of the toxic exposure from Karachaganak.

## **5. Trip conclusions and campaign concerns**

The public attention focused on the Karachaganak campaign is more positive than it has ever been. We are encouraged by the concern expressed by Deputy Zhamalov, and by the concern of the Ministry of Environment and the Western Kazakhstan Prosecutor's office. It is possible that this concern, together with attention by the media and continued pressure on the international level, can work in the villagers' favor. If the Commission, which will be investigating the situation in the village, works honestly and transparently, it is possible that there may be a decision about the Sanitary Protection Zone and relocation by the end of the summer. Then, of course, if the decision is positive about relocation, the long negotiation begins.

However, it is equally possible that the political games and machinations around Karachaganak will only grow. Will the Deputy stand firm on his



statements that Berezovka should be relocated and KPO should operate more cleanly? Will the Ministry push the local authorities to abide by national legislation? Will the local authorities resist attempts by KPO to push them to negotiate away the rights of the villagers? These questions remain unanswered at the present time.

### *Attachment 1*

## **The True Cost of Oil Extraction at Karachaganak**

**Public hearing address by Kate Watters,  
Executive Director, Crude Accountability**

*25 May 2006*

Thank you for the opportunity to speak at this important meeting. I am grateful for the chance to address this distinguished audience and to discuss the environmental and social impact of the activity at Karachaganak on the local population around the field.

Some people wonder why Crude Accountability is involved in this activity—why does a foreign, international nongovernmental organization participate in this work? Why do we care about what happens at Karachaganak? Aren't there enough problems in the United States that we could simply spend our time solving them?

The answer to these questions is very simple: the environmental problems at Karachaganak impact the entire world. The gas flares at Karachaganak burn constantly; the atmospheric emissions from the field are enormous: let me remind you that in 2004 the Western Kazakhstan Oblast Environmental Department determined that 56 thousand tons of toxic emissions were emitted from Karachaganak. Poor water quality, children who are sick from the poor environmental conditions in their community, a lack of transparency, lack of access to information—these are problems that affect the entire world. We all understand that oil and gas extraction is one of the main sources of global warming. We see the impact as the polar ice caps melt, weather patterns change, and people suffer as a result of these changes to the natural world. Global warming is an accepted scientific fact, which is recognized by scientists and the world's leaders. However, oil and gas extraction has increasingly become an area in which not only governments operate, but first and foremost,



multinational corporations, which receive annual profits much larger than the annual budgets of some countries in this part of the world.

There is also a human toll of oil and gas extraction. This is the focus of our discussion today. And the villagers of Berezovka have described it very well.

In recent years, the Caspian region has attracted the attention of the entire world. My organization, Crude Accountability, understands our responsibility for the actions of oil companies from Western Europe and the United States, particularly in the Caspian region.

The company operating at Karachaganak is an international consortium. American, British, Italian and Russian companies hold shares in KPO. These companies are among the wealthiest, largest corporations in the world. They have signed on to codes of conduct, which dictate that they should operate according to the highest standards in the world. Their activity should have a positive impact on local populations and protect the environment.

Furthermore, KPO has received \$150 million in loans from the International Finance Corporation, which is part of the World Bank. The World Bank is an international institution, which uses public money—that is, taxpayers' dollars—to finance its projects. Projects financed by the Bank should improve the lives of people impacted by those projects. All projects are reviewed by the Board of Directors of the World Bank, which is required to demonstrate that they support the Mission of the Bank. The Mission of the World Bank is to alleviate poverty around the world. And, projects receiving funding from the World Bank must improve the quality of life of the population impacted by the project. If we take a look at the impact of Karachaganak, we ask the following questions: Has the quality of life for the residents of the villages around Karachaganak improved since KPO started working there? Are the lives of Berezovka, Zharsuat, Uspenovka, Zhanatalap, Karachaganak and other village residents improved because of the World Bank's investment in KPO? Has water quality improved? Have atmospheric emissions decreased? Are children healthier? As we have already heard, the answer to these questions is, "No."

The International Finance Corporation, the World Bank, Chevron, British Gas, ENI/Agip and Lukoil—the international institutions involved at Karachaganak—must comply with both their own and international standards and laws, and they must comply with Kazakhstani laws. The Republic of Kazakhstan has signed and ratified the Aarhus Convention, which requires access to information and participation in decision-making regarding environmental issues. The residents of the villages around Karachaganak



have a right to participate in the decision-making processes pertaining to the impact of KPO's work on the health of the population and on the environment. KPO is required to comply with the legal framework of the Republic of Kazakhstan. The World Bank is required to abide by the laws of the countries in which it works.

Each and every one of us has a right to a clean environment. Each of us has a right to be healthy and to have healthy children. But everyone should understand the actual cost of oil and gas. Each of us who uses petroleum products must know how oil and gas is extracted, and how people suffer so we can be comfortable.

The companies extracting oil and gas must understand that the value of a human life cannot be purchased. The value of human life is the most important thing in our world.

The Berezovka villagers and residents of other villages are protecting their rights, which have been violated by KPO. We must value each human life and create a sustainable future for ourselves. For everyone present at this public hearing, the first step toward reaching this goal is to listen carefully to the residents of Berezovka and the other villages and take seriously their demands in defense of their rights.

Thank you very much.

## *Attachment 2*

### **Recommendations of Public Hearing on the Theme: "Environmental and Social Problems in the Village of Berezovka and Other Villages Located on the Perimeter of the Karachaganak Field, which Has Been Developed by KPO B.V."**

*Uralsk, Kazakhstan, 25 May 2006*

With the goal of defending the rights of the residents of the villages around the perimeter of the Karachaganak Field, the participants of the public hearing recommend the following:

To the Parliament of the Republic of Kazakhstan:

1. To review the parts of the Production Sharing Agreement between the company, KPO, BV and the government of the Republic of Kazakhstan that relate to environmental safety issues and Kazakhstani environmental law, and the ratification by Kazakhstan of international conventions (in particular, the Aarhus Convention).



To the Ministry of Environmental Protection and the Ministry of Public Health and to the Oblast level Akimat:

1. Include environmental NGOs and village residents in the Public Health Ministry's Commission, which is examining the question of the determination of the border of the Sanitary Protection Zone.

2. Follow-up on work undertaken by the Ministry of Environmental Protection and the Ministry of Public Health of the Republic of Kazakhstan in 2002 on relocating Berezovka, based on the work of the Special Commission.

To the Deputies of the District and Oblast Maslikhats of Western Kazakhstan Oblast:

1. Conduct analysis of the effectiveness of resources taken from various levels of the government budget to research the impact of KPO on the community.

2. Hold a meeting of Deputies of the Oblast Maslikhat with residents of Berezovka and other villages on the perimeter of the Karachaganak Field, at which complete information will be given about how each Deputy will resolve the problems facing the villagers.

To NGOs:

1. Conduct seminars together with local NGOs, Deputies of Maslikhats on all levels, and government bureaucrats on ways to ensure that citizens have access to environmental information and participation in decision-making (Aarhus Convention).

2. Interact with Deputies and government officials in order to solve the problems of the villages around the perimeter of the Karachaganak Field.

3. Conduct seminars on the legal literacy of the population.

4. Together with Deputies, conduct an analysis of the effectiveness of the use of resources from the government budget in carrying out research into the impact of KPO.

To mass media:

1. Provide accurate, verified and accessible information to the public.

To the villagers:

1. Gather information on the question of relocation.



## AN OIL DEMOCRACY, OR THE STORY OF BEREZOVKA

**Sergey Solyanik,**  
**the Ecological Society Green Salvation,**  
**Almaty, Kazakhstan**

*Received 16 November 2006*

Since 2001, the residents of the village of Berezovka, which was formerly a thriving state farm (Burlinsky District, West Kazakhstan Oblast), have been standing up for their right to live in a healthy environment. They have found themselves hostage to transnational corporations and the natural resource exploitation politics of the government of the Republic of Kazakhstan.

### **Background**

The village of Berezovka is located adjacent to one of the largest oil and gas condensate fields in the world—Karachaganak. It was opened in 1979, but active development of the field began relatively recently. In 1998, a Production Sharing Agreement was signed between the Republic of Kazakhstan and well-known oil extraction companies ENI (Italy), British Gas (UK), Chevron (USA) and LUKOIL (Russia). The resulting consortium “Karachaganak Petroleum Operating B.V. (KPO)”, obtained the right to extract the oil and gas ([www.kpo.kz](http://www.kpo.kz), June 19, 2006).

A distinctive feature of the field is the high concentration of hydrogen sulfide in the natural gas—from 4% to 4.3% (CAO Assessment Report, 2005, p.5). Hydrogen sulfide is a strong nerve toxin that causes the cessation of breathing, leading to death (Reference book, 1977, p.50-54). Therefore, the Karachaganak Field is an enterprise of unparalleled danger and the Ministry of Environmental Protection (MEP) has listed it as a particularly dangerous entity (Procedures..., 2003).

As Berezovka lies within the enterprise’s five-kilometer Sanitary Protection Zone (SPZ), in accordance with the legislation of the Republic of Kazakhstan, the village residents should have been relocated to a safe location (Letter No. 2-2-2-12/300-2).

Once the active development of the Karachaganak Field began, and in spite of KPO’s use of new technology, the environmental situation in Berezovka rapidly began to decline. This was immediately noted by state environmental protection bodies (Informational Ecological Bulletin, 1998, p.30-37). Medical studies conducted by local doctors and central scientific research institutes proved that the unfavorable environmental situation is



having a disastrous effect on people's health (Burlinsky Vesti, June 22, 2002; Proceedings..., 2002).

Originally, the Oblast Environmental Protection Administration was concerned about the fact that the villages of Berezovka and Tungush were located in the enterprise's SPZ. An accident at the Field could threaten the lives of thousands of people (Proceedings..., 2002). The Ministry supported this opinion by the Oblast Administration. It "developed a project" in which it is stated that the local authorities and the company should "resolve the issue of relocating the population of the villages from the Sanitary Protection Zone." Moreover, the Ministry raised the question of increasing the size of the SPZ (Letter No. 02-05-09/1639; Burlinsky Vesti, June 22, 2002).

However, despite the unanimity of the environmental protection departments and the public, the relocation of Tungush and Berezovka residents did not begin in 2002. Local authorities took an indecisive position, and the consortium obviously did not rush to ensure people's safety (Burlinsky Vesti, June 22, 2002). Inquiries by members of Parliament to the Prime Minister were also futile, in spite of the fact that the Prime Minister's predecessor had stated that the question of relocation was being resolved (Deputy Inquiry..., April 24, 2002).

### **The course of events**

In accordance with the Constitution of the Republic of Kazakhstan, the individual and his/her rights and freedoms are of the highest value to our government (Article 1). The government aims to protect the environment, ensuring that it is favorable for life and human health (Article 31). Government employees must guard the interests of the country's citizens and defend their rights and freedoms ("On Government Service", 1999). These provisions are also guaranteed in other legislative acts.

However, government bodies are far from fulfilling their obligations on a regular basis.

In December 2002, ten months after the Ministry of Public Health established Karachaganak's five-kilometer Sanitary Protection Zone, bureaucrats "by means of qualifying developments, proved the possibility of reducing the normative dimensions of the zone to 1500 meters" (Conclusion..., December 24, 2002). That is a reduction to less than a third of the original size! Such a proposal evidently led to outrage on the part of some bureaucrats. Debates ensued, resulting in the 2003 decision to establish a three-kilometer SPZ (Letter No. 2-2-1-35/k/E-16). As such, the village of Berezovka found itself outside the newly established Sanitary Protection Zone.

The bureaucrats were not the least bit embarrassed that the reduction of Karachaganak's SPZ was implemented in violation of the statutes of the Aarhus Convention and the requirements of Kazakhstan's environmental protection legislation. A state environmental assessment was not conducted, the opinion of the residents was not taken into consideration, and the residents



were not allowed to participate in the decision-making process (Letter No. 3-2-2-12/2). The government bodies did not even attempt to justify their illegal actions. Instead, they announced that KPO was introducing new environmental protection technology and that this was sufficient basis for reducing the SPZ (Mikhailov, 2005; Gubenko, 2005; Letter No. 07-21-8056).

Yet perhaps there is another reason? The relocation of a few thousand people requires significant expense, while the reduction of the SPZ spares both the authorities and the consortium from additional costs.

Nevertheless, the residents of Tungush were relocated as the village remained within the boundaries of the new SPZ (Joint Committee..., 2003). They were moved into an empty high-rise apartment building on the outskirts of Uralsk, and not to a village with 21st century standards, as was earlier promised by the authorities and the consortium (Sokovnin, 2003). This caused great upheaval for many. People were torn from the land; their whole way of life changed. By way of compensation, they received a meager sum. Later, the District Court recognized this violation of their rights, but it was only after two years' time that people received additional funds from the consortium (Akhmedyarov, 2005).

After the reduction of the SPZ, the position of the bureaucrats changed. Earlier they had advocated for the relocation of Berezovka's residents. At this point in time, they began to make assurances that the emissions of polluted matter from Karachaganak did not exceed the Emission Limits, that the level of illness in the village is the lowest in the region and these illnesses are not related to the development of the Field. Therefore, there is no basis for concern or relocation (Letter No. KE-118/2; Letter No. 1018). As if by magic, when the SPZ was reduced, the problems in the village disappeared.

The residents of Berezovka continued to appeal to the government, Parliament and the President of the country. The responses consisted of familiar phrases: the village is located outside the SPZ boundaries, monitoring results attest to the improvement of environmental conditions, etc. (Letter No. 2-2-1-42/1146; Letter No. 07-21-7830; Letter No. KE-50/1). Even the Republic of Kazakhstan's Human Rights Representative did not uncover any violations of the rights of Berezovka residents (Letter No. 669/03-1959).

In this increasingly complicated situation, people tried to conduct independent monitoring of environmental conditions and to defend their legal rights, as many did not trust the authorities. One singular form of protest against the bureaucrats was the refusal by 225 Berezovka residents to participate in a comprehensive medical examination in 2004 (Menzhanova, 2006).

The authorities obviously did not appreciate this lack of cooperation and persistent reluctance to come to a compromise. They began to put



pressure on activists from the local Initiative Group. The police and district Akimat tried to disrupt a seminar on protecting human rights, organized by nongovernmental organizations. This nearly led to conflict between some of the residents and the police, who openly hindered them from giving blood for independent analysis (Akhmedyarov, 2004; Appeal, 2005).

However, at the end of 2005 the situation changed again. In November 2005, the Uralsk City Public Prosecutor for Environmental Protection and the Public Prosecutor of Burlinsky District tested KPO's compliance with sanitary-epidemiological requirements. They came to the conclusion that there was no basis for the reduction of the SPZ and that, as in the past, the residents of Berezovka were at risk (Kalashnikova, 2005). These results were given to the Public Prosecutor of West Kazakhstan Oblast, who sent them to the General Public Prosecutor. On March 27, 2006, the General Public Prosecutor objected to the conclusion issued by the Senior Sanitary Doctor, which served as the basis for the reduction of the SPZ, recognizing the conclusion as illegal (Letter No. 7-21-06).

In April 2006, the Ministry of Public Health suspended the conclusion and decided to create a commission to research the air in population centers and the basis for the size of the SPZ. In particular, the commission established that atmospheric emissions of polluted matter were significantly greater in 2004-05 than in 2002! The Ministry gave the following explanation for this phenomenon: "The increase in the volume of emissions is connected to the introduction of new technology and exploratory adjustment work on the technological lines" of KPO. However, the Ministry did not find substantial reasons for the change in the size of the SPZ, though it acknowledged that the introduction of new technology is connected to "risks of emergency situations." Thus, the Ministry proposed that an independent assessment be conducted to determine the "definitive basis for the size of the Sanitary Protection Zone" (Letter No. 07-21-6887).

We are not calling into question the objectivity of the conclusions made by the Ministry of Public Health's commission. Yet it is not clear why the Ministry's specialists did not verify the legality of the established SPZ boundaries, but instead conducted another atmospheric study. They should know that the minimum SPZ boundaries for gas extraction enterprises with a high concentration of hydrogen sulfide are already established by "Sanitary Norms of Planning Industrial Enterprises" No.1.01.001-94 at no less than 5000 meters.

At the same time, the Ministry of Environmental Protection changed its position with regard to this problem. As in 2002, it supported the idea of relocation ([www.kz-today.kz](http://www.kz-today.kz), May 17, 2006). In contrast to the Ministry of Environmental Protection, the Oblast Environmental Protection Administration sided with the consortium, asserting that there is no hazardous pollution in Berezovka (Akhmedyarov, 2006).

In this case, members of Parliament did not rise to the occasion. Only one



Deputy from the Mazhilis continues to actively support the residents in the resolution of their questions (Zhamalov, 2006).

### **KPO's position on relocation**

In one way or another, all of the companies that comprise KPO make statements about the necessity of observing human rights (BG Group, June 13, 2006). As advocates of responsible business, they are obliged to conduct their activities with respect to the rights of local communities and in a manner that protects the environment (ENI, June 13, 2006). For instance, in early 2006, Chevron published a document in which it stated its intention to conduct operations in accordance with the Universal Declaration of Human Rights (Chevron, June 13, 2006). The Russian company LUKOIL considers one of its priorities to protect the health of populations living in the areas in which it operates, as well as to protect a healthy natural environment (LUKOIL's..., June 14, 2006).

However, the companies' grand statements are often inconsistent with their actions. The companies violate not only their own principles, but also the provisions of national legislation and international agreements.

Officially, KPO is not against the relocation of the residents from the Sanitary Protection Zone. However, after the reduction of the SPZ's boundaries, the village of Berezovka found itself outside its boundaries, therefore creating the appearance that the consortium is not violating any laws. Yet it is worth remembering that one of the official reasons for the reduction of the SPZ was the introduction of "technology to reduce air pollution" at the Field and beyond. Specialists from the authorized government bodies did not verify the effectiveness of this technology. Yet this work was conducted, under commission by KPO, by the public company "Kompaniya Kenesary", the public company "EcoProekt", the public company "Ekogidroanalitik", the public company Informational/Production Center "Kazgidromet", and the public company "AktubNIGRI" (Letter No. 07-21-8056). This did not prevent government bodies from reducing the size of the SPZ in 2003 in violation of "Sanitary Norms of Planning Industrial Enterprises" No.1.01.001-94.

Yet whether or not the air pollution around the Field was in fact reduced remains an unanswered question, as monitoring is conducted in violation of Articles 24 and 25 of the law "On Environmental Protection." According to the requirements of these articles, government monitoring of the environment, including on the territory of population centers, must be conducted by authorized bodies in the field of environmental protection.

In 1998, due to a lack of resources, the government stations that monitored "Kazgidromet" were closed in West Kazakhstan Oblast.



At the same time, in violation of Kazakhstan's environmental legislation, KPO and a number of other major natural resource users began to finance "Kazgidromet's" services. This calls into question the objectivity of the data obtained by "Kazgidromet" (Informational Ecological Bulletin, 1999, p.22; Yeslyamova, 2000).

For its part, aside from conducting industrial monitoring, KPO created air quality observation stations in the ten nearest towns (Letter No. VD/Out/02362). In fact, the "company took upon itself uncharacteristic functions—monitoring environmental pollution in the population points located beyond the boundaries of the contract territory and the established Sanitary Protection Zone" (Skakov, 2005).

The consortium signed a contract with the private venture "Gidromet Ltd." to conduct industrial monitoring for KPO, the results of which are provided to government environmental protection bodies on a regular basis (Burlinsky Vesti, December 28, 2004; Zhusupkaliev, 2006). At present, KPO and Tengizchevroil are the primary customers of "Gidromet Ltd."

However, the General Public Prosecutor recognized even in 2002 that a violation had occurred, given that data from private enterprises that conducted industrial monitoring were used for the preparation of "government monitoring conclusions" (Atyrau City Court Decision, 2000).

Evidently, such remarkable "flexibility" in monitoring enabled KPO's leadership to announce that the concentration of harmful matter in the air around the Karachaganak Field is a result of the local population's use of heating stoves (Sokovnin, 2003).

KPO's introduction of new technology, without having obtained a positive government environmental assessment, is yet another gross violation of Kazakhstan's environmental protection legislation (Letter No. 3-2-2-12/2). Yet this is precisely how the SPZ was reduced in 2003. And this led to an increase in pollutant emissions into the air in 2003-2005 (Letter No. 03-01-01-10/8182). By early 2005, emissions had increased more than twice the 2002 level (Letter No. 07-21-6887).

Violations also took place of Articles 15 and 36 of the law "On Environmental Assessment", which concern the necessity of taking public opinion into consideration during decision-making processes. Moreover, there were violations of the provisions of six articles to the Aarhus Convention on public participation in decision-making processes.

It is incomprehensible how this is reconciled with the socially responsible business behavior of which KPO proclaims itself a supporter!

It is not surprising that to the question of what responsibility the company has to the residents of Berezhovka in the event of an accident at the Field, a representative of the nongovernmental organization Crude Accountability received the following answer from KPO's leadership: "Only moral [responsibility]..." (Akhmedyarov, 2004).



## The IFC

It is worth remembering still another player that has substantial influence on the course of events in the village of Berezovka. This player is the International Finance Corporation (IFC), which is part of the World Bank Group. Its mission is to promote sustainable private sector investment in developing countries, helping to reduce poverty and improve people's lives. The IFC acknowledges that the observation of human rights is becoming an increasingly important aspect of corporate responsibility (IFC, 2006, p.2).

Based on these principles, in 1999 the IFC created the Office of the Compliance Advisor/Ombudsman (CAO) to review complaints about projects financed by the IFC. For instance, in 2002 the IFC gave LUKOIL a \$150 million loan for development of the Karachaganak Field. The CAO is independent from the IFC management and reports directly to the President of the World Bank ([www.cao-ombudsman.org](http://www.cao-ombudsman.org)), which allows it to provide an objective review of complaints.

Having learned of this office, the residents of Berezovka, who had been unsuccessfully trying to defend their rights for several years, decided in September 2004 to appeal to the Office of the Compliance Advisor/Ombudsman with a complaint. Several problems caused by the development of the Field were raised in the complaint: the pollution of the environment, lower quality of drinking water, declining health of the population and the deterioration of the population's material well-being. Nevertheless, as a result of the unfounded reduction of the SPZ, the village residents were not relocated outside of this dangerous zone.

The CAO promptly reacted to the complaint, and in December of that year its representatives visited Berezovka. They met with local residents and the consortium's leadership. In April 2005, a report was published with the results of the complaint review.

According to the Assessment Report, KPO is operating in compliance with the IFC's standards. The environmental problems that were brought to light during the review are explained by the "legacy of poor environmental standards and practices from previous field owners" (CAO Assessment Report, 2005, p.9). The Assessment Report also stresses that due to a lack of quality information, it is not possible to determine how the oil extraction is impacting the population's health. Attempts to more carefully examine this issue were unsuccessful. The consortium did not provide the CAO with all of the materials from the studies conducted by the Kenesary Centre of Preventative Medicine (Almaty). In 2001, KPO commissioned the Centre to study the health status of the population living in the immediate proximity of the field.

The CAO pointed out KPO's insufficient transparency concerning its activities and, for all intents and purposes, acknowledged the consortium's violation of the right of local residents of access to information. The



general public was not made familiar with the results of the medical studies or with the basis for changing the size of the SPZ (CAO Assessment report, 2005, p.11,19). Therefore, the report recommends that KPO conduct regular consultations with the public, provide free access to the results of the studies conducted by the Kenesary Centre, and reconsider the practice of concealing environmental information (CAO Assessment Report, 2005, p.12).

However, the fundamental problem—the violation of the rights of Berezovka residents to live in a healthy environment—is not raised in the Assessment Report. The legality of the SPZ reduction was not analyzed (CAO Assessment Report, 2005, p.17). Despite the fact that representatives from the CAO's office paid attention to the Berezovka residents' complaint and tried to find a compromise, the IFC has, in fact, risen to the defense of the consortium's interests.

In February 2006, representatives from the CAO's office again visited the Karachaganak Field in order to check on the implementation of the Assessment Report's recommendations. One of the areas under consideration was the progress of the village councils, which were created to provide KPO and the public with a forum through which to discuss problems. They noted KPO's initiative regarding interaction with the village councils as a positive factor in the interaction between the consortium and local residents (CAO Progress Report, 2006, p. 2). However, the members of the Berezovka Initiative Group reacted coolly to the consortium's proposals, though they acknowledged that the proposals were a step forward. Many of the residents do not trust the village councils since their members were not elected, but appointed by the local akims. There is also no trust in the initiatives that KPO has begun to implement following the signing of a Memorandum of Understanding with local authorities in August 2005 (CAO Progress Report, 2006, p.7-8).

Another positive factor noted by the CAO representatives is KPO's proposal to conduct air quality monitoring with the participation of all interested parties (CAO Progress Report, 2006, p.3). The Berezovka residents also declined to participate in this program, despite the insistent recommendations of the representatives from the CAO's office (Letter, June 26, 2006).

First of all, there are doubts as to the legal status of this initiative. There are no provisions in the legislation of Kazakhstan regarding independent monitoring. Organizations that conduct monitoring must have official permission; otherwise government bodies may not pay attention to their results.

Secondly, KPO is trying to avoid a legal resolution of the problem, all the while trying to maintain its image as a law-abiding enterprise, which is increasingly expensive to do. At the same time, it is as if the consortium has not noticed that the illegality of the SPZ reduction has been repeatedly acknowledged by government representatives. One gets the impression that the policy of keeping quiet is at the hands of both the consortium and the IFC. In addition to Berezovka, there are other villages near the Field; therefore it is



disadvantageous for KPO to create precedent in terms of relocation.

Thirdly, all of the proposed measures create the semblance of resolving problems, while in fact indefinitely delaying the relocation of the villagers from this dangerous zone.

### **Press coverage of the relocation question**

This account would not be complete without mention of the position of the journalists who are covering the events in Berezovka. They are divided into two groups. The majority are those who react sympathetically to changes in official opinion. Those who try to be objective, unfortunately, are in the minority.

On January 11, 2002, there was an article in one of the central newspapers, "Kazakhstanskaya Pravda", about the consortium's violation of the country's environmental protection legislation, and the need to relocate the residents of Berezovka and Tungush (Korina, 2002). Following the reduction of the SPZ, Berezovka residents began to actively defend their rights, and they were supported by several nongovernmental organizations. This was not expected by the authorities. In January 2005, the very same newspaper began to regard the legal demands of the Berezovka residents as a "suitcase mentality" or a desire to get rich at the expense of the government and consortium. The newspaper stated that the Berezovka residents had been falsely roused by "guests" from "countries near and far" (Korina, 2005). The very same author wrote both articles!

The signals from above were heard, and the persecution of Berezovka residents and the public organizations that support them was taken up by a number of journalists.

The "vigilant" journalists wrote about everything other than the violation of human rights in Berezovka! The disgraceful "Berezovka idyll"—local and foreign public organizations—aim to "excite the public, to influence the public against its own government." Therefore, "the environmental problem of the residents of Berezovka threatens to develop into a major political conflict." Today they "dwell in small villages. Tomorrow the line might reach to the big cities where orange or rose revolutions will occur" (Kenzhegalieva, 2006).

So that the average citizen would know who "undermines" the foundations of the sovereign government, the names and passport information of foreign citizens representing the public organizations were published (Burlinsky Vesti, December 28, 2004).

The residents and NGOs were accused of trying "to spoil KPO's image, to provoke conflict between the government and foreign investors, to introduce dissension into their constructive, partnership relations." The result is a "puppet theater in which the strings are being pulled somewhere offstage, and yet a movement is being created in Berezovka" (Zhusupkaliev, 2006).



There was no doubt that the “sham” of local residents and the NGOs had been well paid. “The Initiative Group has the support of wealthy sponsors and does not take money into consideration” (Alekseev, 2006).

The “vigilant” journalists have written about everything other than the violations of the rights of Berezovka residents due to illegal acts by the authorities and KPO.

It is noteworthy that the majority of the aforementioned articles have been published on KPO’s website ([www.kpo.kz](http://www.kpo.kz), May 25, 2006).

Fortunately, not everyone is under the reigns of the authorities and the consortium. It is worth noting the position of the journalists from the local newspaper “Uralskaya Nedelya”, who strive to objectively and consistently cover the situation in Berezovka.

It is also worth mentioning the authorities’ relationship with foreign journalists. For instance, the well-known BBC television station commissioned a film about the confrontation between the Berezovka’s residents and the consortium. The film was shown in Europe on the BBC World Channel, but in Kazakhstan only those who participated in the filming have any knowledge of its existence.

### **Democratic weeds**

Five years have passed since the Berezovka’s residents began their struggle for their rights. Unfortunately, during this time nothing has changed for the better. Every day people feel the “toxic breathing” of Karachaganak, the authorities pretend that nothing is happening, and the consortium cares only about its profits.

This is not surprising. The situation in Berezovka reflects the typical problems faced by numerous Kazakhstanis living close to major extraction enterprises belonging to domestic and foreign companies. The picture is one and the same in Balkhash, Temirtau, Ust-Kamenogorsk, Ridder and other cities.

The authorized ministries and departments do not display particular zeal in fulfilling their official obligations. They do not follow the letter of the law, but are oriented instead toward internal political conditions and relationships of the establishment with foreign companies. Even in those situations in which government bodies act as champions of the law and defend the interests of citizens, there is a lack of trust in their actions. This gives rise to well-founded fears that sincere intentions are being concealed for populist demagoguery about human rights and the need to protect nature. In fact, the purpose of these government departments is to apply pressure to the companies in order to obtain additional profit and concessions. This explains the inconsistency in the actions of the government bodies described above.

Foreign companies, backed quietly by the government of Kazakhstan, treat the people of this country as they see fit. If it is possible to ignore the country’s legislation and international conventions, taking refuge in



“special” relations with the leadership of Kazakhstan, why not!

Announcements by companies about their adherence to the principles of socially responsible business are increasingly at odds with their actions. Even in those cases in which the companies provide social assistance, it does not change their position. In Berezovka, a series of measures—gasification, and capital reconstruction of the village’s water system, school and cultural center—have been undertaken with the money provided annually by KPO as a stipulation in its contract (www.kpo.kz, September 7, 2006). However, Berezovka residents do not feel gratitude towards KPO and the local authorities, as the quality of this work has garnered much criticism. The reconstruction of the water line in Berezovka is still not finished. Following the construction of a new dam on the local river, the water has disappeared. The repairs in the village school and cultural center are atrocious (Akhmedyarov, 2006). The Berezovka residents are developing the impression that this assistance is necessary only in order to demonstrate KPO’s involvement in the resolution of village problems. The consortium is not interested in the fate of the people. Wouldn’t it be better to use these millions of dollars to relocate the residents of Berezovka!?

The loss of human life and the resulting strike at the Mittal Steel enterprises in Temirtau in the fall of 2006 demonstrated that neither “leading businesses” nor “wise authorities” are insured against accidents caused by human error or social upheaval. So who wins as the toxic cloud over Berezovka grows heavier? And what is to be done by people living in a country with a thriving oil democracy?

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News & Information Agency Kazakhstan Today: [www.kz-today.kz](http://www.kz-today.kz)



## EBRD REVIEWS ITS PUBLIC INFORMATION POLICY

**Svetlana Spatar and Sergey Solyanik,  
the Ecological Society Green Salvation,  
Almaty, Kazakhstan**

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In early 2006, the European Bank for Reconstruction and Development (EBRD)\* began the second review of the Public Information Policy it adopted in 2000. This process included consultations, comparing the experiences of other international financial institutions, preparing and publishing a draft revised policy, and reviewing and commenting on written suggestions. In addition, a series of meetings with NGO representatives was held.

The Public Information Policy regulates the process of discussing, distributing and publishing information on all aspects of the Bank's activities. The success with which the Bank implements the policy depends on the policy's relevance. Therefore, the Bank reviews and revises the policy every three years. Moreover, the Bank recognizes that it is necessary to increase the amount of accessible information and to facilitate access to this information.

In the countries of Central and Eastern Europe, and the Commonwealth of Independent States, which includes Kazakhstan, the EBRD actively participates in the fulfillment of various projects that influence the socio-economic and environmental situation. The public must have access to information about these projects in order to prevent economic activities in their countries that may bear negative consequences.

During the course of discussions on the Bank's policy, public organizations such as the CEE Bankwatch Network ([www.bankwatch.org](http://www.bankwatch.org)), Global Transparency Initiative ([www.ifitransparency.org](http://www.ifitransparency.org)), Bank Information Center ([www.bicusa.org](http://www.bicusa.org)) and others prepared comments.

What follows are the comments that the Ecological Society Green Salvation prepared in 2006 in regards to the EBRD's Public Information Policy.

These comments were supported by the following public organizations of Kazakhstan and Central Asia: The TAN Fund (Atyrau, Kazakhstan), Center "Globus" (Atyrau, Kazakhstan), The Institute of Local Government Development (Petropavlovsk, Kazakhstan), "Mountain Club Dzhabagly-Manas" (Taraz, Kazakhstan), Environmental Center "TAU", (Almaty,



Kazakhstan), EcoMuseum (Karaganda, Kazakhstan), Environmental Law Center “Armon” (Tashkent, Uzbekistan), “Independent Ecological Expertise” (Bishkek, Kyrgyzstan), and “Eco Zhoomart” (Naryn, Kyrgyzstan).

### **Basic principles of public information**

The European Bank for Reconstruction and Development “recognizes that sustainable development must rank among the highest priorities” and it “will endeavour to ensure that its policies and business activities promote sustainable development” (Environmental Policy, p.3).

Drawing on the principles of Agenda 21, the bank should recognize and fulfill the human right to access to information that is necessary and adequate for decision-making (Agenda 21, Chapter 40). It must be clearly stated in the Public Information Policy that its purpose is to assist the Bank in fulfilling the human right to access to information about EBRD activities that can influence or are influencing the state of the environment, and human health and welfare. Such an approach will correspond fully to the basic provisions of the Aarhus Convention, “the general spirit, purpose and ultimate goals” of which the Bank intends to adhere to in its environmental protection activities (Public Information Policy, p.3).

### **Project Summary Documents**

The Bank’s Project Summary Documents (PSD) do not contain sufficient information for decision-making and are not sufficient for ascertaining the environmental results of projects (Environmental Policy, p.11). Therefore, it is necessary to include more detailed information in these summaries about the environmental aspects of the projects, or to indicate the EBRD information resources through which it is possible to become familiar with the details of the projects.

The publication periods for the PSDs should be the same for projects in the private and public sectors. They should be published 60 days prior to the start of project discussion by the Board of Directors. It is necessary to provide the public with equal opportunities to influence the decision-making processes in both sectors.

It is necessary to more clearly determine the PSD revision period, as the initial information about the projects is outdated. More precise information should be provided at least once a year. This observation relates primarily to those projects that will last for several years. Take, for example, the PSD for Project No. 3324 “Ispat-Karmet Steel Works—Mittal Steel Termitau.” The information on the EBRD website about this project was updated in 2006, nine years after the start of the project, at the point of its conclusion.



The summaries should consist of information about the course of the project implementation and its influence on the environment. This will enable the public to use the information in the discussion of similar projects.

### **Environmental information disclosure**

The EBRD recognizes that the “ultimate success of the Public Information Policy will be in its proper implementation” (Public Information Policy, p.9). Therefore, the Bank must clearly explain in its Public Information Policy its commitments and “procedures to ensure that information is provided to interested parties concerning the EBRD’s environmental activities” (Environmental Policy, p.11). That is, it must define the rules of the game from the outset.

Currently, there is no such detailed explanation in either the Environmental Policy or the Public Information Policy, although reciprocal citations are given (see Public Information Policy, p.8 and Environmental Policy, p.11).

This lack of clear procedures hinders the acquisition of information. For example, the Ecological Society Green Salvation spent five months corresponding and negotiating with various subdivisions within the Bank in order to obtain information about environmental measures planned for the “Ispat-Karmet Steel Works” project.

It should be clearly indicated in the Public Information Policy which subdivision of the Bank is responsible for providing various types of information, thereby avoiding lengthy correspondence with the EBRD headquarters in London and additional administrative costs.

The Bank should determine a list of EBRD documents on environmental issues that are open to the public. First to be guaranteed should be access to environmental information from projects or references to the informational resources of clients who have this information at their disposal (Environmental Policy, p.11). Regardless of whether the project takes place in the public or private sector, Project Evaluation Documents should be included in this list of accessible information. Particular attention should be given to information about the environmental impact of projects implemented in the private sector. Concealing such information makes it easier to shift the environmental costs of private enterprises onto the shoulders of the government and taxpayers.

The information should be adequate for making competent decisions. Currently, many of the published documents, for instance, the Annual



Environmental Report on the Implementation of the Environmental Policy (Environmental Policy, p.11) and the Project Summaries, contain only the most basic information. Figuratively speaking, this is equivalent to information “about the average temperature of patients in a hospital.” The Bank recognizes the right of the public to obtain information, but the Bank itself determines the volume and quality of this information. This does not allow the public to realize the full extent of its rights.

It is advisable for the EBRD’s local representative offices to have copies of the documents related to projects in the countries they cover. This will simplify public access to the documents.

When determining the timeline in which requested information is to be provided, the Aarhus Convention’s provisions can provide guidance. As such, information “shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and complexity of the information justify an extension of this period up to two months after the request” (Aarhus Convention, Article 4.2). Similar timelines for providing information are in effect in the vast majority of countries in the United Nations Economic Commission for Europe region (ECE) (An Implementation Guide to the Aarhus Convention, p.58).

Finally, the accountability for Bank employees who do not provide information or who create obstacles to obtaining information has not been determined.

### **Board of Director Reports on public sector projects**

The Bank decision that “the Board Report on a public sector project will be made available to the public on request once the project has been approved by the Board of Directors” complicates information access (Public Information Policy, p.8).

Therefore, reports on public sector projects must be accessible to the public regardless of specific inquiries.

### **Project Evaluation Department documents**

The documents from this department should include the basic procedures for obtaining information.

### **Implementation and monitoring of the policy**

The policy’s success is measured in the ability of the public to fully realize its rights to access to information. To achieve this, it is necessary to work with the public to develop clear principles on informing the public and to rigorously observe them.



### Information considered confidential

The Bank must make all information related to environmental measures financed by EBRD projects, the impact of these projects on human health and welfare, and violations of the human right to a favorable environment accessible to the public to a maximum extent. The commercial interests of private and public companies must not be an obstacle to obtaining this information.

Such an approach is in accordance with the spirit and provisions of international agreements, in particular the Aarhus Convention, as well as with the provisions of legislation for a whole series of ECE country members, specifically Council Directive 96/61/EC from September 24, 1996. These principles should be clearly proclaimed in the Public Information Policy.

On May 16, 2006, the Bank's Board of Directors approved a new version of the policy. Additions were adopted that broaden access to information. The Bank has taken it upon itself to publish protocols of meeting rules, information on the salaries of managers and directors, draft strategies of Bank activities in individual countries up until their approval, and a black list of clients proven guilty of corruption and fraud, as well as to translate the Project Summary Documents into the language of the client-countries.

However, despite the Bank's statement that the collection of comments and suggestions made by public organizations was "extensive", practically all of the comments presented to them were ignored.

One of the main comments expressed by representatives of the public to the Bank's leadership was that the Bank has not developed public participation procedures for decision-making processes. The lack of such procedures allows public opinion to be ignored in the process of discussing fundamental documents and in the process of making decisions on specific projects.

The process of discussing the Information Policy with the public was poorly organized. Representatives of the public were the initiators of the meetings, and not Bank employees. In this sense, the EBRD lags behind other international financial institutions, such as the International Finance Corporation and the Asian Development Bank. Following the disappointing revision of the Information Policy, a number of public organizations proposed that the Bank conduct a survey of the policy next year, rather than waiting for the three-year period to end.

In response to this proposal, in the fall of 2006 the Bank developed



an addendum to the policy on “Implementing Procedural Provisions for Information Request and Appeals.” However, a number of the provisions of this document also cause concern, as they are not in accordance with the statutes of the Aarhus Convention.

This raises the question of the purpose of discussing the EBRD’s Information Policy...is the goal to show that the Bank is conducting a constructive dialogue with the public?

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\* The European Bank for Reconstruction and Development is a regional intergovernmental bank, created in 1991. Its shareholders are comprised of 60 countries and two intergovernmental organizations. It provides long-term credit to the countries of Central and Eastern Europe and the Commonwealth of Independent States. The Bank’s mission is to create economic and democratic reform and the development of private enterprises. The EBRD finances various projects of banks, enterprises and companies, investing in production expansion and modernization, etc. In accordance with its founding agreement, the Bank must promote environmentally sound and sustainable development ([www.ebrd.com](http://www.ebrd.com)).





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NFORMATION



## THE BULLETIN OF GREEN SALVATION—10 YEARS ON

On March 24, 2006, a round table entitled “Literature on Ecology and the Ecology of Literature” was held in the conference hall of the National Library. The reason for this meeting with readers within the walls of the National Library was a significant one. The Bulletin of Green Salvation is now ten years old, and the organization itself, fifteen.

To the meeting came writers, illustrators, photographers, and volunteers, all of whom have taken part in the creation of Green Salvation’s print and video productions. A fascinating conversation was held, covering topics suggested by the guests. The materials from the round table will be published in a future issue of the Bulletin, entitled “The Environmentalization of Consciousness.”

An exhibit of photographs, drawings, and other materials related to the history of Green Salvation’s publication activities and filmmaking was shown. The editorial staff of the Bulletin prepared an exhibit revealing the painstaking work spent on the publication, including manuscripts and proofs for individual issues, and the work of the photographers and illustrators.

During all these years, the non-governmental Ecological Society Green Salvation has defended the human right to a healthy and productive life in harmony with nature, and, together with this, has fought for the purity of literary language.

The first issue of the humanitarian popular-science journal Bulletin of Green Salvation (in Russian, Vestnik “Zelenoe spasenie”) appeared in the spring of 1995, with a print run of 200 copies. Since then, 17 issues have been published, devoted to a variety of problems: “The Rights of Man and Nature”, “The Environmentalization of Consciousness”, “Summer Environmental School”, “World Heritage”, “Children’s Environmental Club”... With time, their print run has risen to 1000 copies.

Since 2000, with the assistance of our American colleagues, a supplement to the Bulletin, the Herald of Green Salvation, has been published in English.

The themes of certain issues proved to be particularly timely, and were developed further in separate publications. These include “Oil, Business, and Politics”, “Toward the Second Meeting of Parties to the Aarhus Convention”, and “Green Objective.”

The textbook “Sustainable Development”, by Green Salvation member Ludmila Semyonova, candidate of historical sciences, was one of the first devoted to the new paradigm of eco-economic development for humanity.



In all, the Ecological Society Green Salvation has produced more than 25 print publications in Russian, Kazakh, and English.

The editorial staff collaborates with an international collective of authors: leading scientists—Nadir Mamilov, Shamil Mamilov, Richard Steiner, Richard Feinberg, Emil Shukurov; specialists—Valery Krylov, Valery Nestorenko, Marat Mailibaev, Yuri Eidinov, Svetlana Katorcha; teachers and NGO activists—Glenn Kempf, Tamara Pfaff, Ludmila Vorobyova, Elena Melnikova, Evgeniya Zatoka; and others.

The publication editors are Sergey Kuratov, Nadezhda Berkova, Nataliya Medvedeva, and Sergey Solyanik. Proofreaders are Inga Tretyakova and Nataliya Budarina.

The illustrators of the Bulletin include Nataliya Kulshina, Andrei Poltoratskikh, Elana Kudinova, Ivan Medvedev, Anastasia Kuratova, and Anton Dyakov.

For the layout of Green Salvation's publications, the photographers Vladimir Abdulov, Alexander Zhdanko, Viktor Gorbunov, Evgeny Soldatkin, Oleg Belyalov, Vladimir Starygin, and others have provided their photos.

Green Salvation's publishing activities would not be possible without the sponsorship of the Humanistic Institute for Development Cooperation (HIVOS, the Netherlands), the Open Society Institute, and the National Endowment for Democracy (NED, USA).

All of the organization's print publications are distributed free of charge in Kazakhstan and the countries of the near and far abroad. Regular recipients of the Bulletin include dozens of city, university, and school libraries, NGO activists, scientists...

Beginning in 2002, the organization's members have been producing video films reflecting the same critical environmental problems highlighted in the pages of the Bulletin. "Legacy of the Nuclear Age", "The Riches of Nature—In Whose Hands?", "Passengers in Forgotten Way Stations", "Canyon", "The Earth Does Not Belong to Man..."—the films' titles, by and large, speak for themselves. In order to expand their circle of viewers, the films have been translated into Kazakh and English. Some of them have been awarded prizes at international festivals. Assistance in producing Green Salvation's films has been provided by camera operators Denis Kopeikin and Leonid Kuzminsky.

In producing its print publications and video films, Green Salvation's members understand that the "environmentalization" of consciousness is impossible without a caring regard toward one's native language, helping one to care for natural and cultural values as well.



**Gulnara Khalykova**, director of the National Library's center for cultural programs:

"This organization has taken on itself a very important burden, because it teaches us to live in harmony with nature."

**Sergey Kuratov**, chairman of Green Salvation:

"We speak out against market extremism, against the planting of the idea of a consumer relationship with regard to nature and man."

**Nadezhda Berkova**, Green Salvation:

"This publication is already 10 years old. The forms of our work are diverse. These include not only the Bulletin, supplements to it, brochures, flyers... They also include the video program and practical activities."

**Olga Burabaeva**, director of the School of Entrepreneurs:

"I like the fact that you try to show how beautiful the Earth is. I would like for people to care for it like loving children, and not out of fear of a universal catastrophe."

**Nataliya Kovalenko**, deputy head for library work at the Zhambyl State Children's Library:

"The small collective of the Bulletin of Green Salvation has done tremendous work in popularizing environmental culture."

**Marat Sembin**, historian; has taken part in the production of Green Salvation's films:

"We once dreamed that we would have a society for harmony between humanity and nature, but unfortunately these dreams have not yet been realized."

Translated by Glenn Kempf



## THE AARHUS COMPLIANCE COMMITTEE ACKNOWLEDGES A VIOLATION OF CITIZEN'S RIGHTS IN KAZAKHSTAN

**(in recognition of the fifth anniversary of the date on which the Aarhus Convention entered into force)**

On the 21st of November 2006, the environmental NGO Green Salvation held a press conference dedicated to the level of compliance with the Aarhus Convention in Kazakhstan at the Kazakhstan Press Club. Specifically, the press conference focused on Decision II5/a Compliance by Kazakhstan with its Obligations under the Aarhus Convention, which was approved at the Second Meeting of the Parties, May 25-27, 2005, Almaty.



The Republic of Kazakhstan (RK) ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) on October 23, 2000. The Convention came into force on the 30th of October, 2001. From this date, all articles of the Convention are legally binding for signatories.

Unlike other international conventions, which place binding obligations on the governments of signatory nations in their interactions with the governments of other signatory nations, the Aarhus Convention places clear obligations on government bodies in their interactions with the public.

In 2004, the environmental organization Green Salvation (GS), together with citizens whose rights GS was working to defend in court, sent several



communications concerning compliance with the Aarhus Convention to the Aarhus Compliance Committee. These were communications ACCC/C/2004/01 and ACCC/C/2004/02 and they were among the first communications ever considered by the Compliance Committee.

The Compliance Committee acknowledge the failure of the RK government to comply with a number of obligations of the Aarhus Convention as well as a number of cases of violation of citizens' right to participate in the decision making process and the right to access to justice on environmental matters. A report outlining the Compliance Committee's findings and recommendations with respect to compliance by Kazakhstan was approved at the Second Meeting of the Parties of the Convention (Almaty, May 2005).

At the Second Meeting of the Parties, the decision was taken that Kazakhstan should develop a strategy and implementation plan for implementing Decision II/a by the end of 2005.

A year and a half has passed since this deadline, however:

- The decisions of the Compliance Committee have not been carried out
- The strategy and implementation plan for implementing Decision II/a of the Second Meeting of the Parties has still not been approved by the RK government
- RK courts continue to consider the obligations under the Aarhus Convention to be only recommendations and not legally binding
- RK environmental legislation has still not been adapted to meet international standards.

In 2006, the Compliance Committee acknowledged yet another violation of citizen's right to access to justice in Kazakhstan (communication ACCC/C/2004/06, residents of the city of Almaty: L. Gatina, A. Gatina and L. Konoshkova).

The anniversary of the fifth year of the entry into force of the Aarhus Convention has been uniquely 'celebrated' by Kazakhstan. The experiences of GS in courts and the appeals from citizens of Kazakhstan to the Compliance Committee on issues of compliance reveal dark tendencies in the country. Access to justice in RK is limited to appealing to the courts. Participation in the decision making process is limited to being able to speak freely. Detailed Information is often hidden and released information is often too simply or general to be useful in making informed decisions. Violations of citizens' right to a favorable environmental situation have lead to an increase in social strife, poverty and disease.

For more detailed information, see  
[www.greensalvation.org](http://www.greensalvation.org)  
[www.unece.org/env/pp/compliance.htm](http://www.unece.org/env/pp/compliance.htm)



