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Green Salvation



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From the Editor

**GREEN
SALVATION
HERALD**

The *Green Salvation Herald 2002* is the third annual English-language digest and supplement to the *Bulletin of Green Salvation*, the journal of the Ecological Society Green Salvation, headquartered in Almaty, Kazakhstan. The *Herald 2002* contains materials covering the range of Green Salvation's activities over the past year—expert analyses, civil actions and campaigns, and even the text of a documentary film. All of these activities are devoted to the organization's primary mission: defending the right of Kazakhstan's citizens to a healthy environment, working with state bodies and non-governmental organizations to improve the environmental situation in the Republic of Kazakhstan and beyond, and spreading environmental awareness and appreciation among people of all ages.

The *Green Salvation Herald's* purpose is to provide information on environmental issues in Kazakhstan to an ever-widening circle of readers both within the former Soviet Union, and in the world beyond—in Europe, the United States and Canada, and elsewhere—where events in Central Asia are often little known. We hope that these materials will open readers' eyes, offer them a fresh understanding, and, perhaps, spur them to action in support of the efforts of environmental organizations in the region.

The *Herald 2002* is divided into three main sections, each focusing on an area of environmental policy that is vital to Kazakhstan today. The first, entitled "The National Fund of the Republic of Kazakhstan," deals with the decision by President Nursultan Nazarbayev to create a special fund to accumulate and invest Kazakhstan's growing oil revenues, using the model of similar funds created in the United States, Norway, and elsewhere. The opening article in this section, by Valeriy Nesterenko, provides a detailed comparison of the National Fund of Kazakhstan with three existing oil funds: in the U.S. state of Alaska, the Canadian province of Alberta, and the Kingdom of Norway. Nesterenko shows that significant differences exist among these funds, and between all of them and Kazakhstan's new national fund; in particular, the latter was formed by a decree from above, without input or support from the public, and without any checks to prevent the money from being misused. In Nesterenko's opinion, the creation of the National Fund is premature, and he proposes

instead that Kazakhstan's Soviet-era network of local and regional environmental protection funds, founded on the basis of pollution payments from industrial enterprises, be restored.

An interview with Academician Sergei Bobylev of Moscow State University gives a view from Kazakhstan's neighbor Russia, with a discussion of Russia's use of its natural resources and the prospects for the creation of an oil fund there. Returning to Kazakhstan, the section's final article is an analysis of the National Fund's creation written by a pair of Russian lawyers, who demonstrate that the Fund, as it currently exists, rests on uncertain and legally questionable ground.

The second section, "Social-Ecological and Legal Problems of Nature Protection," shifts the focus to the intersection of environmental, economic, and social issues, and the manner in which they impact people's lives. "The Price of Economic Stabilization," by Sergei Kuratov, shows how, in the first ten years of Kazakhstan's independence, the government's one-sided quest for economic growth has led to a weakening of environmental legislation and protection measures, and inflicted environmental damage that will cost the country far more in the long run. Shamil Mamilov, in his article "Sustainable Agriculture," sees a viable agricultural base as the foundation of civilization, and addresses the issues of land ownership, land use, and sustainability in Kazakhstan and other nations of the world.

During the Soviet era, the term "telephone law" was used to describe cases in which higher authorities, through a simple phone call, decreed the results of political, economic, scientific, and judicial decisions. As demonstrated in the article "'Telephone Law' Is Alive and Well," this system continues in new forms in Kazakhstan today. The residents of the Gornyi Gigant (Mountain Giant) district of the city of Almaty have spent the last two years fighting an illegal construction project, supported by the Almaty mayor's office, that has resulted in the building of a high-voltage power line running through their residential neighborhood, blocking their streets and hanging literally over their heads. The article details the residents' long legal battle, with support from Green Salvation and other organizations, to assert their rights as citizens.

The third and final section of the *Herald*, "Anti-Nuclear Campaign," addresses an issue crucial to Kazakhstan today: the proposal by the state nuclear power agency, Kazatomprom, and a group of deputies in Parliament to allow the import and burial of foreign radioactive waste in Kazakhstan, allegedly to earn money for solving the country's problems. This proposal has already sparked a counter-movement, the Anti-Nuclear Campaign of non-governmental organizations (NGOs) of Kazakhstan, to oppose it.

The first part of this section is in fact the text of a half-hour documentary film, “Legacy of the Nuclear Age,” addressing the issue; the film was produced by Green Salvation in Russian, Kazakh, and English. Within the film, Kazakhstani and Russian scientists and environmentalists explain their concerns regarding the proposed plan: the safety and transportation issues; the small chance of real earnings, and the likelihood that they will be abused; and finally, the lack of wisdom in importing nuclear waste to a country that already holds more than its fair share. The second part, “Nuclear Myths and Legends of a Non-Nuclear Power,” is a brochure published by Green Salvation in support of the Anti-Nuclear Campaign; it further exposes the holes in Kazatomprom’s plan.

In addition to the main articles, further commentary is provided in the pages of the *Herald 2002* by respected environmental experts of the former Soviet Union: Aleksei Grigoriev of the International Social-Ecological Union in Moscow, Russia; Yuriy Eidinov of the Kazakh Agency for Applied Ecology; and Marat Mailibaev, a geologist and expert on mineral resources. Their incisive remarks help to deepen our understanding of the environmental issues that Kazakhstan faces.

The volume that you hold contains a wide range of views and approaches—from detailed legal analysis to reflections on the underpinnings of peoples and societies, from national and international issues to the struggles of people in a single neighborhood. We hope that you will find it informative, thought-provoking, and helpful in understanding both the issues discussed and their underlying causes, as well as the quest for their solutions. After all, in the final analysis, all of us live together on one Earth, and each of these individual questions is part of a single whole. Environmental problems are no respecters of national boundaries, and we must learn to reach across them as well, helping each other to lay the stepping-stones to a better future.

By Glenn Kempf.



The Ecological Society
Green Salvation



Green Salvation (GS) is a non-governmental, public organization, established in 1990 and registered as an Almaty city organization. Green Salvation's goal is to defend the human right to a healthy and fruitful life in harmony with nature, and to assist in improving socio-ecological conditions in Kazakhstan.

The activities of Green Salvation are guided by the following principles:

- asserting the universality, indivisibility and interdependence of all human rights;
- ensuring the rights of individuals in contemporary society and of future generations to a healthy and fruitful life in harmony with nature;
- fulfilling the need for general environmental education and awareness;
- enhancing cooperation among governmental bodies, private entities and non-governmental organizations to resolve environmental problems.

The main areas of Green Salvation's activities include:

1. Participation in the development of legislation for environmental protection in the Republic of Kazakhstan. The organization has participated in official discussions on the law "Protection of the Environment in the Kazakh SSR" (1991) and on the laws of the Republic of Kazakhstan entitled "On Environmental Protection" (1997), "On Environmental Expertise" (1997), "On Specially Protected Natural Territories" (1997), "On Radiation Safety for the Population" (1998), and the law "On Land" (2001) as well as the draft Forestry Code of the Republic of Kazakhstan. In 2002, at the request of the Committee on Issues of Ecology and the Use of Natural Resources in the lower house of Parliament, Green Salvation conducted non-governmental environmental expertise regarding the draft of the Forestry Code.

2. The spread of environmental knowledge and information for sustainable development. Since 1992, Green Salvation has held seminars on humanitarian-ecological themes. Since 1995, the organization has published the officially registered *Bulletin of Green Salvation*; since 2000, this journal has been published in English as well. The bulletin focuses on issues such as sustainable development, environmental education, environmental legislation, the administration of specially protected natural territories as well as other socio-environmental problems. In 2002, Green Salvation began a video

program, aimed at preparing video films on socio-ecological themes. In the same year, the organization opened a Web site in Russian and English.

3. Promotion of environmental education and the inclusion of environmental perspectives in thinking about current social and economic issues and culture. GS devised a special course “Conception of Sustainable Development” for students of higher educational institutions. The information was published as a textbook in 1997. Informational and consulting support is provided to schoolchildren, students, teachers and lecturers of higher educational institutions. Since 1996, an annual summer environmental camp has been held in the mountains of the Ile-Alatau Governmental National Nature Park.

4. Environmental action. Green Salvation is collaborating with the Ile-Alatau National Park administration in an effort to include the park on the list of World Heritage Sites. The organization is an active participant in the Anti-Nuclear Campaign of non-governmental organizations of the Republic of Kazakhstan, which opposes plans for the import and burial of foreign radioactive waste on our country’s territory. GS also takes part in the international campaigns International Right to Know and Publish What You Pay.

5. Collection and dissemination of information about the environmental situation in the Republic of Kazakhstan. Green Salvation has gathered documents and reference materials on a wide spectrum of environmental problems, which is stored in an electronic database and a library.

Since 1993, the organization has belonged to the Association “Environmental Education”. Since 1995, GS has been a member of The World Conservation Union (IUCN). Green Salvation cooperates with the International Socio-Ecological Union (SEU), the International Society for Ecological Economics (ISEE), and a number of environmental NGOs in Kazakhstan, Central Asia, and Russia, as well as other countries. GS collaborates with subdivisions of the Ministry of Environment, other governmental structures and officials at all governmental levels.

The Ecological Society Green Salvation is ready to collaborate on efforts within the aforementioned areas.

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*The National Fund
of the Republic of Kazakhstan*

**GREEN
SALVATION
HERALD**

ON THE SYSTEM OF FUNDS CONNECTED WITH THE USE OF NATURAL RESOURCES ON THE TERRITORY OF THE REPUBLIC OF KAZAKHSTAN*

*Valeriy Nesterenko,
consultant for the Ecological Society Green Salvation,
Almaty, Kazakhstan.*

Received 10 July 2002

Natural resources are one of the most important factors of a nation's wealth (Golub and Strukova, 1998; L'vov, 2002). Resource rent (the income received by the owner of a natural resource from its use) has played a leading role in many national economies.

It is widely known that Soviet Russia, in the first years of the establishment of Soviet power, was able to overcome the economic collapse following the Civil War of 1918-1922 through the massive export of timber. In so doing, it made use of the slave labor of the enormous mass of the repressed, reducing production costs to a minimum, and the high prices for wood in Western Europe, which in that period was experiencing a construction boom connected to the aftermath of the First World War, guaranteeing a high level of rental payments. Resource rent played a leading role in the establishment and development of many countries: in the 17th century, it served as a stimulus for Sweden's economic development; the same role was played by the export of coffee for Brazil, and of gold and diamonds for South Africa (Steiner, 2001). Expert evaluations show that in Russia, the natural resources component of national wealth, calculated per capita, may provide a serious foundation for lifting the nation's economy (L'vov, 2002).

The Republic of Kazakhstan, in its volume of potential natural resources, occupies one of the leading places in the world. Its enormous reserves of nonferrous metals—copper, zinc, lead, and uranium ores, coal—represent a great opportunity for increasing its volume of rental income. In the last ten years, Kazakhstan has announced its ambition to become one of the

world's leading suppliers of crude hydrocarbons. The oil and gas reserves detected in the Caspian region open up great possibilities for the solution of many of its social and economic problems.

Together with this, however, an analysis of the economic situation in a number of oil-producing countries shows that the link between high rental incomes from oil and accelerated economic development is not an unconditional one (Steiner, 2001).

In his speech to the Russian State Duma on April 23, 2001, Professor Richard Steiner quotes the eloquent words of one of the founders of OPEC, Juan Pablo Perez Alfonso of Venezuela, which vividly characterize the situation that has arisen:

“You think we are lucky. I don't think so. We are dying of indigestion... I call petroleum the ‘devil's excrement.’ It brings trouble. Look around you. Look at this locura – waste, corruption, consumption, our public services falling apart... And debt, debt we shall have for years. We are putting our grandchildren in debt.”

The use of oil revenues in a number of oil-producing countries shows that there are serious grounds for making such a negative statement.

Above all, everyone understands that prosperity founded on high incomes from oil must come to an end, since crude hydrocarbon reserves are essentially limited. The experience of Norway shows that the productivity of that country's petroleum industry has reached its maximum, and that serious measures are required to develop a long-term policy for the support of its current prosperity in the post-oil era.

To do so will not be easy, since society has already grown accustomed to steadily rising social expenditures, based on increasing rental payments from oil, and it will now be very difficult to reduce those expenditures, in order to preserve their level in the future.

An ambiguous role in this regard may be played by the layer of state bureaucracy that has grown as a result of oil revenues, and which is interested in emasculating the planned reforms of administrative and regulatory structures in the social sector, and creating a negative attitude toward them on the part of voters. The organization of public debates on reforming the system for spending oil revenues creates the risk of distracting public opinion from the need for structural reform—in particular, in the consumer and labor markets, which remain central to the creation of conditions for economic growth as a whole, and in the transition to the post-oil era (See: IMF Country Report..., 2002).

An economy founded on oil revenues is distinguished by extreme instability, connected to wide fluctuations in the prices for crude

In my view, the only correct decision is to direct money to so-called oil funds for the building of a new economy, for education, and for the development of new technology and trade. For example, the nations of the Persian gulf have transformed themselves into a major trading center. That is, the task of society is not to eat up "oil" money, but to try to create a healthy economy capable of solving the problems that exist in our country.

However, in our country's current condition there exists a real threat that the funds may turn into a convenient "toy" in the hands of those in power, which will be used to cultivate the population's loyalty and distract it from solving the real problems.

That is, previously the population received virtually nothing, and now look: the state has come forth to meet the people. The fund has been created. Discussion on this topic will begin within the society. The most loyal will receive a few crumbs from the fund. A competition will arise: who is more loyal, and who less? The people will be occupied; they will be happy; they will do what the ruling elite needs, in order to preserve the *status quo*. What will be the result? People become accustomed to this state of affairs; they become dependents, "clients," looking into the eyes of their "masters."

Therefore, it is strategically important that revenues from the oil funds help people to independently stand on their own feet, to work and earn enough for a sufficient living. Then people, with the help of "oil" money, will truly establish normal production and seek out their place in the new economy.

Aleksei Yurievich Grigoriev,

Expert at the International Social-Ecological Union (SEU).

hydrocarbons. In countries dependent on oil exports, the period of prosperity continues as long as oil prices are high and the U.S. dollar is sufficiently strong, but a change in one of these conditions for the worse is enough for the country to slip to the edge of financial catastrophe. A vivid example of such a failure in economic policy is the situation created in the Russian Federation in August 1998, when a deep and prolonged drop in oil prices effectively led that country to the point of default.

It has been established that high rental incomes from oil lead to a sharp increase in state expenditures. An analysis of the expenditure of money received in Alaska in the form of rent from the extraction of hydrocarbons has shown that billions of dollars were wasted on the implementation of

development programs that had not been sufficiently thought through. The state invested the revenues in fisheries, agriculture, real estate, fox breeding, and so forth; none of these projects yielded solid results. More ambitious projects were also planned: the construction of a bridge across the Bering Strait, building dams on the Yukon River, use of atomic bombs to remove glaciers, transferring the state capital from Juneau to a newly built city, building cities beneath protective domes, and others. Only after Alaska suffered the most severe oil spill in history did sobriety set in (Steiner, 2001).

Oil revenues also stimulate an increase in state expenditures for the support of the administrative apparatus. A rise in the number of officials can be noted in all countries engaging in the development of petroleum deposits. This is particularly characteristic of nations that already possess strong bureaucratic traditions. The consequence of the increasing layer of bureaucrats is red tape, hindered decision-making, abuse, and especially corruption.

The latter phenomenon is characteristic of all nations, but it is displayed particularly vividly in countries with a transitional economy.

Officials, receiving, as a rule, miserly salaries, must deal with entrepreneurs working in complete violation of the law, and therefore not hesitating to use all possible means to accomplish their goals. Under such circumstances, bribery and the purchase of official posts become a universal practice. If in Western countries such officials fear being uncovered, in transitional economies the firing of an official is not a fatal catastrophe; they lose only their miserable salaries and can always count on the aid of their former partners—the entrepreneurs. With regard to loss of reputation, under the conditions of a transitional economy an official risks losing his or her reputation more from the honest fulfillment of his or her duties, since in the narrow-minded consciousness of others, this is testimony of that person's lack of business sense, cowardice, and absence of initiative.

The practice of making use of the close ties between oil companies and decision-makers has become widespread in oil-producing nations. In order to do so, money is constantly invested in the chosen companies. An entire system has been developed making it possible to exert influence on state administrative bodies in favor of industry leaders.

On such means has acquired the name of “the revolving door.” In its implementation, conditions are created for the transfer of state employees and lawmakers to high-paying positions in oil companies, and vice versa. In this fashion, the informal ties between state administrative bodies and business are strengthened, the boundaries of responsibility are blurred, and conditions are created for making backroom decisions, closed to the public, along a course that benefits the oil companies (Steiner, 2001).

Past practice in oil operations shows that they inflict enormous harm on the environment. The public pays attention to major accidents and catastrophes: explosions and fires at oil wells, accidents involving oil tankers, and pipeline breaks. However, the actual share of these major incidents in the overall picture of environmental impact is insignificant. Far greater damage is done to natural systems by the regular, everyday activities of oil companies and their consequences.

Among the main forms of damage from the prospecting, extraction, and transport of oil can be included the following:

1. Physical removal of land from its traditional use, or reduction of the area of natural biocenoses.

2. Emissions of natural gas into the atmosphere. In high-quality work, they are substantial in the initial stages of prospecting and experimental industrial exploitation, when the burning of casing-head gas is permitted. In later stages, utilization of gas should be mandatory.

3. Wastewater discharges. These are, for the most part, waters from within sedimentary strata, which are, as a rule, highly mineralized and contain large quantities of oil. Their volume grows at the end of a deposit's exploitation. This situation is exacerbated further by the fact that as natural pressure within the strata falls in many deposits, water is pumped into the strata from the surface. The injected water, in turn, requires not only (highly expensive) purification, but also additional territory for collecting ponds.

4. Destruction of land in the course of construction work.

5. Pollution of soil and groundwater resulting from spills of oil and drilling solvents.

6. Introduced, secondary radioactivity of spilled water from sedimentary strata and of equipment; this does not occur everywhere. As a rule, it is characteristic of oil deposits in Western Kazakhstan.

7. Physical presence of infrastructure objects, as a factor of concern for representatives of the animal world.

8. Social aspects—changes in the usual lifestyle of the population.

Yuriy Itskhokovich Eidinov,

Deputy Director of the Kazakh Agency for Applied Ecology.

The quest to open up oil deposits located in protected zones arouses particular alarm. Thus, in the United States discussion is currently underway regarding the question of permitting exploratory drilling in search of oil and gas in the National Arctic Wildlife Refuge, located along the Arctic shoreline of Alaska (Steiner, 2001).

Summarizing the aforesaid, we may conclude that oil can be both a great blessing and a great curse for the country where it is produced. It has become a great blessing for such countries as Norway, where the society has not given in to euphoria over high oil revenues, but regulates the flow of petrodollars tied to rising oil prices in a well-planned and targeted manner. The macroeconomic administration of these revenues in recent years has guaranteed economic stability, and careful expenditure of the funds has reinforced the foundations of a modern economy. In doing so, the fact that the country's level of oil extraction will soon reach its peak, and that it is necessary to refrain from the temptation to spend the nation's current oil wealth at once without restrictions, has been taken into account. The financial possibilities that opened up provide time for the calm and sober thinking through of a long-term economic policy, the choice of which now confronts Norwegian society. The choice made today will determine future support for the current prosperity, and the scale at which benefits to present and future generations of Norwegians can be increased (See: IMF Country Report..., 2002).

For many countries, however, enormous oil revenues have become a great evil, as they have led to the economic stratification of society, loss of political stability, growing radical feelings, rising crime, unfettered inflation, economic collapse, the degradation of branches of industry not connected with oil extraction and refining, abuses in the economic and political spheres, extreme growth in the bureaucracy, general corruption, and, finally, to pollution of the environment on an enormous scale.

Examples of countries unable to deal with the tasks of using oil rent, and who have failed to use it to strengthen their overall economic foundations, might include such nations as Algeria, Ecuador, Indonesia, Nigeria, Trinidad and Tobago, and Venezuela (Steiner, 2001).

The choice between the models described above for the use of petrodollars now confronts Kazakhstan, which at the present time is confidently entering the ranks of the world's ten largest oil-producing nations.

The specific conditions present in Kazakhstan are largely determined by its location at the intersection of Europe and Asia. To the north and west, Kazakhstan borders Russia; to the south, Uzbekistan, Kyrgyzstan, and Turkmenistan; and to the southeast, China. Such a location enables it to

forge close economic ties with these countries, and the wealth of its mineral base makes possible the intensive development of its mineral deposits.

For a long time, the primary factor in the development of Kazakhstan's productive forces has been its rich resource potential. The size and diversity of its mineral deposits has given rise to proud announcements that Kazakhstan contains all of the elements in Mendeleev's periodic table. Deposits of nonferrous metal ores (copper, zinc, lead, and others), as well as iron ore, have been discovered, many of them of worldwide significance. Kazakhstan's economy relies on its powerful energy base; its reserves of coal and uranium enable Kazakhstan to maintain complete energy independence.

Kazakhstan's mineral resources include up to 60% of total tungsten reserves in the CIS nations, 50% of lead, 40% of zinc and copper, 30% of bauxite, 25% of phosphorite, 15% of iron ore, and more than 10% of coal and 90% of chromites (NEAP, 1999).

In recent years, increasingly confident announcements have been made regarding the gathering forces of the petroleum sector. The opening of enormous deposits of oil at Tengiz and gas at Karachaganak has placed Kazakhstan among the world's major suppliers of crude hydrocarbons.

According to estimates by specialists, the Western Kazakhstan region, above all the Caspian, may become the world's largest supplier of oil and gas in the next century. According to research data, the reserves of the northern Caspian shelf total 3-3.5 billion tonnes of oil, and 22.5 trillion cubic meters of gas (NEAP, 1999).

In the current period, Kazakhstan stands on the threshold of an oil era, in which an increasing flow of petrodollars will pour into the country. Whether this oil rent will become a great blessing or a great curse for Kazakhstan depends in large measure on the country's leadership, and on its public.

It must be noted that at the present time the oil rent entering the country as a result of the sale of crude hydrocarbons on the world markets has thus far failed to have a substantial impact on the economic situation in the republic.

It is also worth stating that socioeconomic conditions, after nearly a decade of catastrophic decline, have stabilized in the last 2-3 years at an extremely low level.

However, the big money received from oil rent has already begun to appear, in the form of large-scale state expenditures on a variety of prestigious projects.

Such expenditures undoubtedly include the construction of the new capital city of Astana. This work had to be carried out under extremely unfavorable natural conditions and virtually from scratch, since the infrastructure of the provincial center of Akmolinsk, Astana's predecessor,

Kazakhstan fails to receive an enormous amount of funds, as the state's current oil strategy is aimed at maximum extraction and export, rather than the in-depth refining of oil within the country and the manufacture of the subsequent products. Kazakhstani oil is distinguished by its high quality; no fewer than 450 valuable components can be extracted from it. To do so, the country needs to build oil-distilling plants, in which the most up-to-date technology should be used. Prices on final products from the refining of oil and accompanying natural gas remain stable, at the same time that the price of oil fluctuates constantly. Deep refining would bring 20-30 times more profit than the intensive extraction and export of oil. That profit is currently being received by foreign companies, who will never invest their own money in the complex refining of oil in Kazakhstan.

Marat Muradovich Mailibaev,

*Candidate of Geological and Mineralogical Sciences,
decorated mineral prospector of the Republic of Kazakhstan.*

could not satisfy the requirements claimed for the capital of a sovereign state. At the same time, the former capital, Almaty, has not completely lost its capital status; it has retained part of the functions of a capital for itself. As a result, state employees spend a significant part of their working time on trains and airplanes, which, of course, is negatively reflected in the quality of their work, and greatly increases expenses.

It has become fashionable in Kazakhstan to hold various kinds of festivals, anniversaries, and sports competitions at state expense.

All of this is taking place against a background of a catastrophic rise in poverty, which has acquired the character of an avalanche over the last ten years, caused by the closure of enterprises, their bankruptcy, and massive unemployment. The increasing poverty is connected to the loss of the right to compensation for unemployment and miserly pensions; the majority of pensioners receive less than \$30 US a month, which, according to UN standards, constitutes a deep level of poverty.

The drop in per capita GNP in 1991-1999 also testifies to the fall in the standard of living for the majority of Kazakhstan's population. If in 1990 Kazakhstan occupied 37th place in the world in its standard of living, by 1999 it had slid to 113th place (Mukhtarova, 2000).

The volume of the population's consumption of staple food items has fallen significantly, affected by the change in prices and real family incomes.

Consumption of all food items has shrunk, with the exception of bread and bread products. In particular, consumption of high-protein and high-calorie foods (dairy products, eggs) and meat, as well as fruits and vegetables, fails to reach minimal norms. According to the data of the Ministry of Agriculture's Institute of Nutrition, at the present time 39.2% of the republic's population receive insufficient protein and calories, 42% are prone to obesity, and 5% are underweight. The consequences of this situation include high child and maternal mortality, low birth rates, and progressive illnesses, the level of which now present a serious threat to the nation's health (Mukhtarova, 2000).

A sharp decline has occurred in Kazakhstan's index of human development, which determines the priorities of state policy and is composed of three components: life expectancy, education, and standard of living.

Analysis shows that the main "contribution" to lowering the index of human development has been provided by the economic downturn, whose share covers 84% of the overall drop, while 13% is due to the reduction in the population's life expectancy, and 3% to a lowering in the level of education. It should also be noted that in connection with the slowing of the economic decline in recent years, the 1997 index of human development stabilized itself, albeit at an extremely low level.

One consequence of socioeconomic conditions in the republic has been a loss of population as a result of emigration. The main flow of emigration has been to other CIS countries (80%), including Russia (72.4%), Uzbekistan and Ukraine (2% each), and Belarus (1%), as well as abroad to Germany (18.4%), Israel (0.6%), and the United States (0.3%) (NEAP, 1999).

As a result of the market reforms carried out in Kazakhstan, a very small part of the well-off population has come out in a winning position. The greater part of the nation's people lost out. The rich became richer, and the poor, poorer.

Such catastrophic results of reform are above all connected to the fact that the main part of the population considers the reforms themselves immoral. The idea that the reforms are conducted in the interests of a specific circle of individuals, who enrich themselves not due to their own contributions to the development of production, but by taking over the objects of value created during the preceding period by the entire population of the republic, has become deeply rooted in public awareness.

The result of such a situation has been a moral and psychological crisis for the greater part of Kazakhstani society, which is displayed increasingly clearly in the form of social apathy and despair. Most people battle to solve the problems of primitive survival. As a result, aggression and

intolerance are accumulating within the society, leading to radical feelings, organized crime, murder, and conflict. Drug addiction is spreading at a growing rate.

Under these circumstances, state administrative bodies and Parliament might have played a decisive role in stabilizing the situation. Unfortunately, however, it must be said that developments here have proceeded according to a familiar scenario: corruption and idolatry, self-serving informal ties between business and the authorities, all have become an everyday phenomenon.

Enormous damage has been inflicted by oil and gas companies on the environment in the territories covered by their activities. These companies occupy first place among the various branches of industry in their volume of investment. Despite this, in the main regions of oil and gas extraction and refining—the Atyrau and Mangystau regions—obsolete and worn-out equipment is used in technical operations, resulting in a rising accident rate and an increase in unsanctioned oil spills. As a result, the overall area polluted by oil in Western Kazakhstan totals 194,000 hectares, and the volume of spilled oil is more than 5 million tonnes (NEAP, 1999).

The situation is exacerbated by the fact that in many cases, it is currently already impossible to establish who is to blame for the pollution that has been uncovered. During the last decade, the ownership structure of Kazakhstan's oil business has changed drastically; state oil companies, who previously engaged in oil production, have been liquidated, and the new masters that have taken their place refuse to take responsibility for the environmental damage inflicted in the preceding period.

The practice of burning casing-head gas in flares also causes significant environmental and economic harm. The increased thermal background and oxidation of components of the environment surrounding the deposits caused by the burning of casing-head gas has an impact on the adjacent region's soil and its plant and animal life; the emissions of carbon dioxide occurring in such instances contribute to strengthening the greenhouse effect. At the same time, the irrecoverable losses of gas total more than 740 million cubic meters per year. The relationship between increased levels of illness among the population in the zone of the Tengiz oil and gas deposits (more than six times higher than the average for the region) and pollution of the atmosphere by sulfur dioxide and nitrous oxides has been noted.

As a result of the Caspian's rising levels and the failure to take preventative measures, more than 200 oil wells and deposits, including some of the largest—the Kalamkas and Karazhanbas, have been flooded, creating a threat to biological diversity not only in the flooded regions, but

throughout the entire ecosystem of the Caspian Sea—a unique natural object, in which are concentrated more than 90% of the world's sturgeon population, many bird species, and the Caspian seal, which is endemic to the region. Over the last ten years, commercial fishery catches have declined tenfold (NEAP, 1999).

It has been established that the primary factors of production are labor, capital, and natural resources. They also form the resulting part of production—income or rent, the dimensions of which are established as the difference between the earnings from the sale of production and the costs of carrying it out. The size of this income is determined by many factors, among which natural resources play the main role.

Financial inputs from the nature-exploitation sector—resource rent—are, in the final analysis, distributed among the owners of natural resources: to society in the person of the state, paid in the form of taxes, rental fees, and other payments, as well as to the enterprises, who receive their share in the form of pure income; that is, the part of the resource rent that remains with the enterprise after taxes have been paid.

Such a scheme for the distribution of resource rent has always existed, and has already been highlighted by traditional economic science. It should be said, however, that it does not correspond sufficiently to existing realities, as it fails to take into account the fact that in addition to labor and capital, whose interests are defended by society and the private sector, in the form of the companies, respectively, there is a third factor, the most important, that takes part in resource rent—the natural resources themselves, which are a part of the natural environment.

In this context, we believe that petroleum resource rent should be shared in three directions; in its distribution, the following factors should be taken into account equally:

- the economic interests of the oil and gas complex—companies, enterprises, and organizations directly involved in the production and sale of hydrocarbons;
- the social and economic interests of society, in the person of the state, performing the function of guaranteeing the social needs of society and its security;
- the environmental and economic interests of the natural environment, the protection of which requires long-term environmental measures against the consequences of oil and gas use.

According to existing practice, the social and economic interests of society and the environmental and economic interests of the natural

environment are united in the single concept of the society's economic interests. However, the consequence of such unification is the complete domination of socioeconomic interests over "eco-economic" ones.

This takes place especially frequently in developing countries and countries with transitional economies, where social problems are particularly acute. Therefore, there is always a temptation to channel resource rent for their solution.

Thus, in Kazakhstan at the beginning of the 1990s fines for pollution, which until then had gone into environmental protection funds, were redirected to the state budget. To soften the blow inflicted by this decision on the financing of environmental measures, it was decided to transfer 70% of the fund received by the budget into environmental protection. This decision was not carried out for two years, and the actual transfers totaled only 40-45%; in the following years, the normative share was reduced to 65%, but this norm was not fulfilled either—actual transfers fell to 30-35%. After that, no norm for transfers was set at all, and financing of environmental measures finally acquired a residual nature.

The economic interests of oil companies, who have taken all possible measures to increase their share of resource rent, have been even more antagonistic toward the other two groups. The protection of oil companies' interests functions smoothly, upheld by the activities of highly paid and first-class lawyers and economists. The revenues received in the distribution of resource rent are used by corporations to expand their production and capture new markets.

The socioeconomic interests of society lie in attracting the maximum possible share of resource rent, with the help of tax mechanisms (rental fees, profit tax, VAT, royalties, bonuses, excise taxes), in order to provide financing for the society's social needs and guarantee its security. To do so, society, in the form of state bodies, creates a powerful fiscal apparatus that compels taxpayers to pay their taxes as established by law. The funds received are spent by society to pay pensions and to finance education, health care, public safety, and other social needs. It would be fitting to use these funds to finance environmental protection measures as well; however, as already indicated above, in developing countries and transitional economies the state is, in fact, unable to deal with this task, and therefore the development of special protective mechanisms in this area is needed.

The "eco-economic" interests of the natural environment consist of the need to attract part of the resource rent for environmental protection measures, using pollution fines, payments for environmental conservation and restoration, and special payments to form funds for the reclamation

and rehabilitation of polluted areas. The eco-economic interests of the natural environment are more poorly protected than those of the other two sides. In the system of state administrative bodies, specialized ministries have been created to solve environmental issues. However, their very attachment to this system weakens their opportunities in cases where the socio-economic interests of society and the eco-economic interests of the natural environment contradict each other.

Therefore, in order to defend these interests, fullest use must be made of the possibilities of non-governmental environmental societies, who, by putting pressure on corporations and state bodies and mobilizing public opinion accordingly, can create a situation in which the interests of environmental protection will be met.

As noted above, the interrelationship between all three groups of interests may be antagonistic in nature. Increasing the share of resource rent to one of them will inevitably lead to a reduction in the shares of the other two. Therefore, a battle is constantly underway between the three groups, in which, unfortunately, the eco-economic interests of the natural environment have thus far been losing. However, this cannot continue for long; the opposing tactical interests of all three groups are indivisibly tied in the strategic plan, and a loss by one group will inevitably lead to the defeat of them all. The worsening state of the environment may cost the oil companies and society dearly.

The goal of state policy on the distribution of petroleum resource rent should be the normalization of the economic interests of:

- companies engaged in the extraction, transport, and refining of crude hydrocarbons;
- society in the person of the state, responsible for satisfying citizens' social needs;
- the natural environment, in need of protection from the consequences of the technogenic impacts of the extraction, transport, and refining of crude hydrocarbons.

In evaluating the results of activity toward reaching this goal, it should be noted that not one country has succeeded in fully harmonizing the interests of these very different groups.

The chief obstacle to progress in this direction has been, and remains, the aggressive policies of the oil companies, who use all means, both legal and semi-legal, to increase their share of the resource rent.

Thus, in the state of Alaska, for example, oil companies were able to create a tax climate maximally favorable for themselves. The absence of separate accounting for their sources of income allowed them to use lower

revenues overseas to lower their official income in Alaska, rather than paying taxes within the state's borders.

The amicable agreement between the oil industry and state authorities gave oil companies the opportunity to obtain additional income by raising transport tariffs for oil on the Trans-Alaska Pipeline.

Ninety-five percent of the oil in this region is produced by three companies, BP, Exxon, and Philips Petroleum, who jointly own 95% of the Trans-Alaska Pipeline System (TAPS), enabling them to keep in their own hands the greater part of revenues from the transport of oil through the pipeline. The oil companies also received a further concession, included in an agreement on payment for TAPS' services, which allowed them to use more than \$1.5 billion designated for the pipeline's future dismantling as they saw fit.

The oil companies in this state have developed an entire system for exerting influence on decision-makers; however, the simplest and most effective means is by financing their election campaigns. A set of measures has been created, with the goal of creating a political climate favorable to the companies (Steiner, 2001).

In 1998, Feinberg calculated that over the previous six years (1993-1998) the total economic rent from oil extraction in Alaska was distributed in the following manner:

Oil industry	- \$15.6 billion	42.5%
Budget of the state of Alaska	- \$12.4 billion	33.7%
Federal budget	- \$8,7 billion	23.8%
Total	- \$36.7 billion	100.0%

Oil companies pursue even more aggressive policies in developing countries such as Kazakhstan. Here, using the undeveloped state of national legislation, they actively interfere in the lawmaking process. More than seventy of the world's nations have rewritten their laws regulating extraction of mineral resources, including hydrocarbons, in order for their countries to become more attractive for investment by transnational corporations (Kuratov, 2000). There are no grounds to suggest that they will behave differently in the CIS countries.

Thus, the amendments to Article 28, point 2, "The State Nature Reserve Zone in the Northern Part of the Caspian Sea," in Kazakhstan's 1997 law "On Specially Protected Natural Territories" might well have been initiated with the help of the oil companies. In accordance with these amendments, "state geological studies, prospecting and extraction of crude hydrocarbons, taking special environmental requirements into account" were permitted within the reserve zone.

At the present time, oil has been found in the shelf of the northern Caspian, and efforts are underway to annul the territory's reserve status and "special environmental requirements," with the aim of untying oil producers' hands. The amendments to the law "On Specially Protected Natural Territories" introduced for consideration by Parliament on May 22, 2000, proposed eliminating the ill-fated Article 48 on the special status of the northern Caspian altogether.

Kazakhstan's Parliament is currently considering a series of amendments to environmental legislation, the essence of which boils down to the softening of previously established environmental requirements. The recent changes to the structure of state administrative bodies for environmental protection in Kazakhstan and Russia, and their uniting with the ministries overseeing the use of natural resources, has been extremely beneficial for the transnational corporations (Kuratov, 2000) (On August 28, 2002, the Ministry of Natural Resources and Environmental Protection (MNREP) was reorganized into the Ministry for Environmental Protection, or MEP—Ed.).

Oil companies working in Kazakhstan are highly interested in lowering fines for environmental pollution. In 1998, Kazakhstan's MNREP, under clear pressure, decided to re-examine the limits on atmospheric emissions established for the company Tengizchevroil, increasing them to the levels actually reached by the enterprise. As a result, the regional fund for environmental protection lost several million tenge in fines from pollution exceeding the established limits.

The West Kazakhstan department of environmental protection, attempting to fine the Karachaganak Petroleum Operating Company, discovered to its amazement that the company had been freed from payment of all fines for the violation of environmental protection laws. The twenty-fourth article of the production-sharing agreement stated that "the contractor will be freed from payment or responsibility for payment of all environmental protection fines...and it will be compensated for any environmental protection lawsuits."

Oil companies working in Kazakhstan have made their "contribution" to the spread of corruption. According to data from the *Wall Street Journal*, foreign companies must spend 4.7% of their income in Kazakhstan in order to pay off officials (Kuratov, 2000).

Kazakhstan's state budget fails to receive over \$500 million annually due to price transfers. Major foreign oil, gas, and metallurgical firms sell raw materials for lowered prices through offshore companies (*Panorama*, Sept. 1, 2000). In the opinion of official bodies, a number of oil companies,

including Hurricane Kumkol Munai and Tengizchevroil, export their oil at prices three to four times lower than world levels. We are speaking here of deliberate lowering of profits from export operations, that is, of a hidden form of capital flow from Kazakhstan (*Delovaya nedelya*, Feb. 11, 2000).

As noted above, the social and economic interests of society in the distribution of oil resource rent are defended by the state, speaking on its behalf; with the help of a system of taxes on natural resource users, it confiscates part of the resource rent and accumulates it in the state budget for financing social needs. The state's tasks are to obtain the maximum possible income from the exploitation of natural resources, which belong to the society as a whole. Its relationship with natural resource users should be regulated by law, taking into account the interests of both the natural resource users and the state.

In the United States (Alaska), the state, in the person of the Alaska state government, receives its share of resource rent from oil and gas production in the following forms:

- a property tax, in the form of a tax on equipment for the extraction, refining, and transport of oil, at a tax rate of 2%. The overall estimated cost of oil-related property in 2000 totaled \$13.3 billion;
- a tax on the processing (extraction) of oil, at 15% of its production value. At less profitable deposits, this may be reduced, but must be no lower than 80 cents per barrel;
- a royalty of 12.5% of the production value of the oil extracted, charged for the right to its extraction, although royalties for some sites are higher and/or lower, on a sliding scale;
- a corporate income tax, at a rate of 9.4% of net profits received by the company in Alaska proper, as well as the aggregate net profit received worldwide.

The greater part of tax revenues go to the state budget (the General Fund) and are spent on the state's needs; 25-50% of revenues from royalties are directed to the Permanent Fund, while 0.5% are allocated to the Public School Support Fund (Steiner, 2001).

In the Russian Federation, the basis for the modern system of taxation in the oil-producing sector of the economy is found in the law "On Mineral Resources" (1992).

The primary forms of payment for use of natural resources are as follows:

- direct payments for the use of natural resources;
- allocations for the restoration of the mineral-resource base.

Payment for the use of mineral resources in the case of hydrocarbon extraction are taken at a rate of 6 to 16% of the costs of production in rubles at the official exchange rate. The actual rate is determined when a licensing contract

is concluded by the organization issuing the license, and depends on the accessibility and quality of the resources, and the profitability of the deposit.

Payments for the restoration of the mineral-resource base (for hydrocarbons) are set at 10% of the production costs in internal prices. These payments are not taken (or are taken only in part) from resource users who have paid for geological information from a licensed state body, or led independent geological prospecting in the designated area.

In addition to the aforementioned taxes for the use of natural resources, there exist other taxes, with the aid of which resource rent is taken indirectly, including excise taxes, VAT, export fees, and the profit tax.

In 1994, overall payments for the natural resource use in the Russian Federation totaled 4717.7 billion rubles, or 0.027% of budget revenues, or 0.007% of gross national product (L'vov, 2002).

In the Republic of Kazakhstan, taxes for the use of mineral resources include the following:

- a tax on excess profits;
- special payments by mineral resource users:
 - (a) bonuses—subscription and commercial;
 - (b) royalties.

The republic's tax code stipulates two models for the tax regime of mineral resource users:

- the first stipulates payment by resource users of all forms of taxes and other mandatory payments;
- the second stipulates payment (transfer) by resource users of the Republic of Kazakhstan's share according to a production-sharing agreement, as well as payment of all forms of taxes and other mandatory payments, with the exception of the following: excise taxes on crude oil, the tax on excess profits, the land tax, and the property tax.

The subscription bonus is set when a contract is concluded with the natural resource user, and is a one-time fixed payment by the user; its size depends on the economic value of the proposed deposit.

The commercial bonus for discovery is paid when a mineral deposit that is economically feasible for extraction is discovered within the boundaries of the contract territory. A separate bonus is set for each commercial discovery leading to an increase in extractable reserves above the initial estimate.

Those paying royalties include mineral resource users conducting the extraction of crude hydrocarbons.

The size of a royalty is determined by the volume of extractable crude hydrocarbons (oil, natural gas, or gas condensate), the price for their

realization, and the royalty rate set in the contract, based on the economics of the project, for all forms of extractable raw materials. The minimum royalty rate should be no less than 0.5%.

The rate of royalties on hydrocarbons is set on a sliding scale as a share, determined according to the volume extracted, using one of the following methods:

- (1) from the volume of accumulated hydrocarbons extracted for the entire period of activity established in the contract;
- (2) at the level of accumulated hydrocarbons extracted for each year of activity under the contract.

Those paying the tax on excess profits are resource users who receive an internal profit norm of over 20%. This does not include resource users operating according to production-sharing agreements.

The tax rate for excess profits is established as a percentage of net profit, and fluctuates within the limits of 4 to 30 percent.

Production-sharing agreements are widespread in Kazakhstan. They are concluded between the state, in the person of state-owned companies, and foreign companies for a fixed time period, including prospecting for crude hydrocarbons. The state, in the person of the national oil company, forms a joint venture with the foreign firm and participates actively in all of the work. The foreign contractor guarantees financing for the project and organizes its implementation. It covers its own costs through the extraction of oil in a quantity no greater than a fixed percentage. The remaining compensation for the resources extracted is divided according to previously determined proportions between the Republic of Kazakhstan and the contracting company.

The contracting firm pays state royalties for the part of the production it receives.

Taxes on mineral resource users go to the republican budget and the National Bank of the Republic of Kazakhstan.

The eco-economic interests of the environment should be protected by the state; however, in practice this function is carried out only in developed countries. In transitional economies and developing countries, the creation of special tax mechanisms for defending eco-economic interests is necessary.

Kazakhstan is a typical country with a transitional economy, and therefore all of the aforesaid fully applies to it as well. A system of payments for the pollution of the environment by emissions of polluting substances into the atmosphere, discharges into wastewater, and dumping of production and consumer wastes has been created in Kazakhstan and functions there.

The payment system works on the basis of limits on environmental pollution, established for users of natural resources. If the user, in the process of carrying out its activities, remains within the limit established for it, it pays only the set payments for pollution within the established limit, which presents no difficulty for it, as the user includes them in its production costs, and in fact transfers them to the consumers of its products.

The situation changes if the natural resource user exceeds the established limit. In this case, a payment for the entire volume of excess emissions is taken at a rate consisting of a multiplier of the normative payment for resource use, and the greater the limit is exceeded, the greater the multiplier. The effectiveness of payments for excess pollution is also strengthened by the fact that these payments are taken from the user's net profits, that is, the part remaining after taxes have been paid. The special role of these payments as a stimulus lies in the fact that their application is directly tied to the user's implementation of environmental protection measures. The logic here is quite simple: if the user failed to implement a particular environmental protection measure constituting one of the conditions under which the limit was set, it is completely natural that, all else being equal (nonstop operations, steady quantity and quality of raw materials and fuel, unaltered technology), it will exceed the limit. And if its failure to implement protective measures is of a regular nature, the volume of excess payments may rise to a level that leads to user to bankruptcy.

Thus, the system of pollution payments in Kazakhstan has two main tasks:

- first, to stimulate natural resource users to implement environmental protection measures. By setting payments for pollution both within and in excess of established limits, it compels the user to spend part of the resource rent remaining at its disposal for such measures;
- second, to confiscate part of the resource rent (in the use of natural resources, particular, crude hydrocarbons), with the goal of creating a source of financing for nation-wide environmental protection measures (Nesterenko, 1999).

In the Russian Federation, the system of pollution payments was created in accordance with the 1991 law "On Environmental Protection."

According to this law, three forms of pollution payments are established:

- for activities not exceeding the normative levels of emission, discharges, solid wastes, and harmful impact established for a given resource user;
- within established limits (temporarily agreed norms);
- for pollution exceeding the limits.

The system of payments for environmental pollution existing in the Russian Federation fulfills the same tasks as that in Kazakhstan (Economic Funds..., 1995). The same system is active in nations with developed market economies.

Thus, in Norway collections are taken for urban wastewater treatment. Local authorities are responsible for setting the size of this collection.

In accordance with that country's law on environmental protection (1983), licensed bodies have the right to levy pollution fines in the event that conditions for emissions (discharges) are violated, or the norms are exceeded. The collection is not a fine as such, but it is set at a level that guarantees that the costs of equipment for reduction of emissions (discharges) are covered (Economic Funds..., 1995).

In the United States, a system of pollution payments in the usual sense of the term does not exist. However, in amendments to the Clean Air Act in 1977, a legal mechanism was developed based on the activation of market ties. It relies on the opportunity to "sell" emissions and grants industrial enterprises under construction in "dirty" areas the right to carry out work to lower emissions at current enterprises at their own expense, in order to use the lowered emissions to cover their own.

In addition, enterprises polluting the atmosphere have the opportunity to buy the right to these emissions from the government. The enterprise becomes the "owner" of these rights and can, in turn, sell them if necessary to other enterprises located in the same "bubble"—a territory within whose boundaries the enterprises have agreed on their level of emissions (Krasnova, 1992).

Furthermore, the state of Alaska, for instance, extracts payments for the damage to the environment caused by massive discharges of oil, at a rate of 3 cents a barrel (Steiner, 2001).

It should be said that the socioeconomic interests of society with regard to the use of the share of resource rent received from the use of exhaustible natural resources, such as hydrocarbon reserves, are not homogeneous. In this regard, the socioeconomic interests of current generations should be distinguished from those of future ones. There will always be a temptation to use the currently enormous oil revenues for short-term excess consumption, leaving future generations a devastated country and a population that has grown unaccustomed to working.

Taking into account the dangers of such attitudes, many oil-producing nations have established oil funds, in which oil revenues exceeding the level of current consumption are accumulated for future use. In particular, such funds have been created in the United States (the state of Alaska), Canada (the province of Alberta), Norway, and Kazakhstan.

Alaska's Permanent Fund was created in 1976 through the passage of a constitutional amendment, for which a qualified majority of the state's voters voted in favor. The fund's creation was preceded by a public discussion, in which nearly all residents of Alaska took part; in the process, the Fund's goals and tasks and the procedure for its formation and use were strictly defined.

The Alberta Heritage Savings Trust Fund of the province of Alberta, Canada, was created in 1976 through normal legislative procedures, as a result of which a legislative act was passed determining the Fund's system of administration, its goals and tasks, the rules for investment operations, and organizational principles. Such a system of administration for the Heritage Fund greatly simplified the procedure for amending the normative bases for its functioning; if Alaska's Permanent Fund requires a constitutional amendment for such changes, for correction of the Alberta Heritage Fund's basic principles only the vote of a simple majority of lawmakers is required.

The Norwegian Government Petroleum Fund was created in June 1990, in accordance with a legislative act by the Parliament of Norway.

The National Fund of the Republic of Kazakhstan was established in accordance with Decree of the President of the RK No. 402, "On the National Fund of the Republic of Kazakhstan," on August 23, 2000, which set forth the organizational basis for the Fund and gave the government the task of submitting two draft laws to Parliament for consideration, entitled "On the Introduction of Changes and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Questions of the Functioning of the National Fund of the RK" and "On the Introduction of Changes and Additions for the Law of the RK 'On the Republican Budget for 2001' Necessary for the Formation and Use of the National Fund of the RK."

The primary goals of the Alaska Permanent Fund are defined as follows:

- the creation of an investment base capable of yielding future income, so that by the time oil revenues fall a source of financing will be preserved for meeting the socioeconomic needs of Alaska residents;
- legislative allocation of a significant portion of the income received from oil under the government's oversight, with the goal of not permitting wasteful state expenditures;
- turning a non-renewable source of wealth into a renewable one.

The Permanent Fund's main task is to maximize its value through a range of long-term investments, and to protect its primary capital, in order to earn revenues in the interests of all generations of Alaska residents.

Discussion of the chief goals of the Alberta Heritage Fund did not occupy much time; therefore, they are not especially clear. Like many other

territories rich in natural resources, the province of Alberta has attempted to find a balance between savings for the future and expenditures in the present. In this context, the goals of the heritage Fund are defined as follows:

- saving for the future;
- reducing the province's need for outside loans;
- improving the quality of life for the province's population;
- diversifying the territory's economy.

The insufficiently clear formulation of the Heritage Fund's goals have determined the unclearness of the tasks fulfilled; as a result, situations often arise in which the solving of one task obstructs the fulfillment of others.

Funds are accumulated in the Norwegian Government Petroleum Fund in order to accomplish two goals:

- the creation of a buffer to soften fluctuations in the volume of oil revenues, tied to price instability; this gives the government great freedom for maneuvering in the event of a reduction in prices for crude hydrocarbons, or a fall in oil sector activity;
- the creation of an instrument helping the government to meet the challenge of an aging population, against a background of falling oil revenues.

The goals of the National Fund of the Republic of Kazakhstan are the following:

- accumulating funds for the state (the savings function);
- lowering the dependence of republican and local budgets on world price structures for oil, gas and other forms of mineral resources and products of their processing, exported by the republic.

The Alaska Permanent Fund, according to the initial constitutional amendment, was formed on the basis of 25% of outgoing rental payments for the division of income from mineral resources. In 1980, this rate was raised to 50%.

The procedure for forming the Alberta Heritage Fund, in connection with the ease of amending it provided by its legislation, has changed repeatedly during the Heritage Fund's existence. In the initial period, 30% of income from gas and oil was sent to the fund. From 1984 to 1987, the provincial government reduced this rate to 15%. When it became clear that oil prices continued to fall, the government froze inputs to the fund in 1987. According to the initial project, the fund was to perform the function of shielding savings from inflation, and a portion of its revenues were marked for doing so; however, in 1987 the provincial government consolidated this portion with its general budget revenues, leading to a de facto reduction in the amount of money in the fund.

The Norwegian Government Petroleum Fund was created as a means of helping the government of that country achieve maximum transparency in the process of organizing and using its oil revenues. Therefore, according to the approved procedure, the fund receives all income from the sale of raw hydrocarbons. The Fund is part of the state's general budget; according to established procedure, net profits are not placed in the fund unless the tax budget shows an excess.

Inputs into the National Fund of the Republic of Kazakhstan are organized depending on their localization within the fund.

Finances forming the base for carrying out the National Fund's stabilizing function are accumulated through the allocated of excess taxes and other mandatory payments to the state budget from organizations engaged in the extraction and refining of raw hydrocarbons and non-ferrous metal ores (copper, zinc, lead, and others) in the following forms:

- income taxes on legal entities;
- the value-added tax (VAT);
- the tax on excess profits;
- bonuses;
- royalties;
- the share of the Republic of Kazakhstan from production-sharing agreements, according to contract.

A list of these organizations was confirmed by Resolution of the Government of the RK No. 369A on March 19, 2001.

The confirmed totals of inputs to the republican and local budgets from organizations included on the list is calculated according to the average prices for the sale of raw material goods by Kazakhstani producers, established by a five-year inductive plan for socioeconomic development based on conservative predictions of the dynamics of world prices for crude oil, gas, and non-ferrous metals.

Finances forming the base for carrying out the National Fund's savings function are accumulated from the following:

- official transfers from the republican and local budgets, calculated at 10% of planned revenues from the aforementioned taxes and other mandatory payments;
- investment income from administration of the fund;
- other inputs and income not prohibited by Kazakhstani law.

The use of money from the Alaska Permanent Fund is determined by the features of its organization. The Permanent Fund's principle capital cannot be spent without the voters' agreement. Income received by the fund is used in two ways:

- one part of the income is spent to shield the Permanent Fund from inflation;
- a second part is paid annually to all residents of the state, who are the actual owners of the fund, in the form of dividends.

The direction of expenditures from the Alberta Heritage Fund is determined by its goals. However, as a consequence of the instability of the Heritage Fund's legislative base, the priorities in achieving these goals have changed over time. When the Heritage Fund was first created, priority was given to saving money for the sake of the future diversification of the provincial economy. With time, as Alberta's debts rose, and prospects for improving its economic structure became problematic, the legislation governing the Heritage Fund was amended, and the priority task became the use of the Fund's revenues to reduce the provincial debt. Money from the fund was used to finance normal state expenditures. When the Heritage Fund's principle capital was reduced as a result of this, the provincial government restructured the fund in 1997, simplifying it by accenting its savings functions and changing the procedure for investing its money.

Money from the Norwegian Government Petroleum Fund is used for the following:

- investment in the foreign markets of Europe, North America, Asia, and Oceania, with the goal of earning income that will be used to protect the Fund from inflation;
- supplementing the state budget, in order to cover the budget deficit.

According to established rules, the National Fund of the Republic of Kazakhstan may be used for the following:

- inputs from the National Fund to the republican and local budgets to compensate losses, defined as the difference between planned and actual inputs from taxes and other mandatory budget payments from organizations in the raw-materials sector included on the government's approved list;
- targeted transfers from the fund to the republican and local budgets for goals determined by the President of Kazakhstan;
- covering expenses connected to the fund's administration and conducting of its audit;
- investment in reliable and liquid foreign assets, with the goal of its protection and the receipt of income from the fund's investments.

The details of the organization of funds in different countries depend on the characteristic features of their systems of administration.

The Alaska Permanent Fund is administered by a state-owned corporation, created in accordance with state legislation. This structure oversees the Fund's assets and makes decisions regarding their investment.

The corporation is subordinate to a council of six trustees, appointed by the governor of the state.

Management of the Alberta Heritage Fund is conducted by the provincial government, and is also administered as part of the provincial treasury. The government may make decisions regarding investment of up to 80% of the fund's money without agreement from lawmakers.

The Norwegian Government Petroleum Fund, according to the legislative act on its creation, is administered by the Ministry of Finance. Responsibility for the fund's operational administration is assigned to the Norwegian Bank—the central bank of Norway. The Norwegian Bank administers the fund in accordance with rules approved by the Ministry of Finance.

According to the decree of the President of Kazakhstan on the creation of the National Fund of the RK, management of the fund is undertaken by the President himself, under whom a Council on Administration of the National Fund is formed, consisting of representatives of the government, Parliament, the President's administration, and the National Bank of the Republic of Kazakhstan.

The fund's administration is carried out by the government of Kazakhstan, who, on the basis of an agreement, transfers the fund to be administered in trust by the National Bank.

The regularity and completeness of reports on operations conducted are of great importance for strengthening public control over the funds' activities.

Accounting for the activities of the Alaska Permanent Fund are regular in nature. The corporation administering the fund presents its report to the governor, and informs all residents of the state—the actual owners of the fund.

Information regarding the activities of the Alberta Heritage Fund, in the time since management of its functioning has rested with the provincial government, has acquired a more closed character. These limitations are due to political reasons. In this way, the government shields itself from legislators' criticism. Auditing of the fund's activities is performed by the province's auditors, not by inviting independent auditing agencies from outside; the audit includes a market evaluation of the fund's investment policy.

The Norwegian Bank reports to the Ministry of Finance on the activities of the Norwegian Government Petroleum Fund four times a year. The report is published both in print and on the Internet. In addition, the Norwegian Bank is required to present an annual report. The first annual report, on the fund's activities in 1998, was presented on March 15, 1999.

The Norwegian Ministry of Finance has hired the British consulting firm Bacon and Woodrow to evaluate the results of the fund's economic

activities. The firm is required to present a report to the Ministry at the end of each quarter. In addition, at year's end it presents the Ministry a report on the results of the fund's administration for the year, which the Ministry publishes on the Internet.

A report on the activities of the National Fund of the Republic of Kazakhstan must be presented annually by the government of Kazakhstan, jointly with the National Bank, by February 1 of the following year. The government submits an annual report on the formation and use of the fund, together with the results of an external audit, by April 1 for the President's approval. Information regarding the annual report and audit results is published in the mass media.

An external audit is performed annually, with the aim of guaranteeing the transparency of activities concerning the National Fund's administration. The choice of an independent auditor is made on a competitive basis, according to the procedure established by the government of Kazakhstan.

As of the middle of May 2002, the annual report of the activities of the National Fund of the RK and the results of an independent audit had already been completed, and after their approval by the President they will be published in print and on the National Bank's Web site (Askarov, 2002).

The results of the activities of the different funds examined are quite diverse.

The market value of the Alaska permanent fund exceeds \$26 billion, of which \$20 billion constitute principle capital. Approximately 37% of the fund's assets are invested in stocks of American companies, 16% in stocks of international companies, 35% in U.S. bonds, 2% in foreign bonds, and 10% in real estate. The Permanent Fund is among the world's 100 largest investment funds.

The value of the assets in the Alberta Heritage Fund have risen slowly, and by 1998 reached a peak of \$13 billion; however, as a result of the provincial government's policies, its value began to fall, and currently totals \$12.1 billion, less than half that of the Alaska Permanent Fund.

At the end of 2001, the value of the assets in the Norwegian Government Petroleum Fund totaled 613.7 billion Norwegian kroner (roughly \$90 billion—Ed.). Over the entire period of the fund's existence, the Norwegian Ministry of Finance has carried out transfers totaling 567.2 billion Norwegian kroner (roughly \$83 billion—Ed.).

According to data published in the press at the end of 2001, the National Fund of the Republic of Kazakhstan contained 189.8 billion tenge (about \$1.2 billion). Inputs for that year totaled 197.4 billion tenge. Within the framework of the fund's stabilizing function, a total of 7.5 billion tenge

was allocated to the republican and local budgets (4.7 billion and 2.8 billion, respectively). Investment revenues from the fund's administration totaled 10.1 billion tenge (*Kazakhstanskaya pravda*, May 7, 2002).

It should be noted that the degree to which the population has been drawn into the process of the fund's creation and oversight of their activities varies widely.

As stated previously, the Alaska Permanent Fund was created on the basis of an amendment to the state constitution. Passage of this amendment required the maximal inclusion of the population in discussing the question of the fund's creation; therefore, work with the public was pursued purposefully and energetically. The experts included in this work traveled around the country and, in meetings with state residents, explained the reasons for the creating the fund and answered their questions. These public discussions made it possible to create an organization with clear goals and a well-thought-out structure.

In addition, the Permanent Fund is the only such fund that pays dividends directly to its owners—the state's residents. These payments have led to a sharp increase in interest in the fund's activities among residents. In 1999, a referendum was held, in which the question was raised of using the fund's expenditures to pay for the state government's activities. An overwhelming majority of Alaska residents opposed the move.

The government of the province of Alberta also made efforts to include the population in the creation of the Heritage Fund; however, these efforts were insufficiently energetic; after all, the fund was formed on the basis of a legislative act, and no constitutional amendments were required. As a result, the fund was created without clearly expressed approval by the public; the province's citizens placed the burden of its creation on their lawmakers' shoulders.

In Alberta, the tradition of the government's leading role is more strongly developed than in the United States. Therefore, the decision was made to leave the Heritage Fund's revenues in the hands of the state, rather than distributing them to province's residents as dividends. The government has used these revenues to accomplish many goals, including the creation of savings for the future, improving the province's economic structure, and lowering its dependence on oil. However, participation by citizens in making these decisions has been highly insufficient. As Warrick and Kedde have stated, "The residents of Alberta have forgotten what their own Heritage Fund was created for."

In Norway, from the moment of the Norwegian Government Petroleum Fund's creation, the understanding has been widespread among the public that the productivity of Norway's oil and gas deposits has reached its peak,

and that to support the prosperity of Norwegian society at the present level, the creation of such a fund is necessary, in order to refrain from the temptation to spend the nation's oil wealth now, and to provide time to consider a long-term policy for creating an economic foundation for the post-oil era.

In Norwegian society, trust of the government is traditionally high, and therefore all questions concerning the fund's creation and functioning were entrusted to it by the public.

In Kazakhstan, the creation of the National Fund received no public resonance. No study on public opinion on the issue has been conducted, but with a great degree of confidence it can be said that the overwhelming majority of Kazakhstan's population have no idea either that such a fund was created or what its goals and tasks might be. The small part of society aware of the fund's creation regards it with great skepticism; such citizens feel that the fund was created in order to legalize the money scattered in accounts overseas. The announcement that \$200 million has been transferred to the National Fund from secret foreign accounts may serve as circumstantial confirmation of this opinion (*Kazakhstanskaya pravda*, May 9, 2002; *Izvestiya-Kazakhstan*, April 18, 2002).

In resolving the question of the National Fund's creation, the public took no part whatsoever; moreover, the country's Parliament also did not participate. The initiative to create the fund belonged entirely to the President of Kazakhstan and his administration (Decree of the President of the Republic of Kazakhstan No. 402...).

As indicated above, the eco-economic interests of the natural environment as part of the distribution of resource rent require the development and implementation of special protective measures. This is a particular concern in developing countries and transition economies, where the drive to solve current economic problems at the expense of the environment is especially strong.

In conditions of economic instability and falling central investments from the state budget for environmental measures, environmental funds should become the most important source of financing in this area.

Until recently, a system of environmental protection funds for accumulating money from pollution payments, including the funds of regional administrations and a republican fund, existed in the Republic of Kazakhstan.

It should be stated that public oversight over these funds' expenditures is completely absent; despite their status as legal entities, their role has been

reduced essentially to the level of pockets for the ministry (or at the regional level, for the local administrations) from which these authorities draw money, in spite of the fund's targeted environmental nature. Thus, in 1998 the greater part of the money entering the Republican Fund for Environmental Protection was spent to build housing for ministry employees, renovate its offices, and purchase furniture and office equipment. There was not even enough money to pay scientific institutes for the work they performed; these debts were postponed for the future (Nesterenko, 1999).

Taking these circumstances into account, as well as the fact that the government had virtually lost all interest in environmental problems, it submitted a proposal to Parliament to introduce amendments to the law of the Republic of Kazakhstan "On Environmental Protection." In accordance with one of these, the system of environmental protection funds, according to Law of the RK No. 205-II on June 4, 2001, was completely eliminated, and now all money from pollution payments remains in the republican and local budgets; how much of it will be spent on environmental measures depends entirely on the whim of the prime minister and the regional *akims* (governors). Considering Kazakhstan's tense social situation, it can be expected that such allocation will be miserly indeed.

According to the 1991 law "On Environmental Protection," a system of environmental protection funds was created in the Russian Federation, including the Federal Environmental Fund of Russia, regional environmental funds, and local environmental funds for administrative districts and cities.

The funds received from pollution payments in Russia are distributed among the system of funds as follows:

- 60% - to funds of administrative districts and cities;
- 30% - to regional funds (oblasts, krais, and autonomous republics);
- 10% - to the Federal Environmental Fund of Russia.

The system of environmental funds created in the Russian Federation continues to function at the present time (Economic Funds..., 1995).

Such environmental funds have, however, also been created in highly developed countries.

Thus, in Norway the Environmental Fund was established on January 31, 2001. At the time of its organization, the Norwegian Ministry of Finance transferred 2 billion Norwegian kroner (roughly \$300 million) to the new fund. The new fund is part of the Norwegian Government Petroleum Fund, and is administered by the National Bank.

The fund invests in companies that lower their technogenic impact on the environment. It may also invest in companies that prove, in the reports

they present, that they are able to improve the environmental situation, and also possess a sufficiently high level of environmental administration (NGPF, 2002).

In Alaska, the Oil Liability Trust Fund has been established, with the goal of accumulating funds for eliminating the consequences of accidental spills. In the event that the fund holds less than \$50 million, an additional two-cent tax is taken for each barrel of oil extracted (Steiner, 2001).

In the United States, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund, was passed in 1980, permitting the creation of a scheme for discovering and cleaning up spills of chemicals and inactive toxic wastes presenting a danger to the environment and to people's health. According to this law, the government would launch an initiative to start work on neutralizing pollution, and then determine the responsibility of each party with regard to expenses. If a party capable of paying could not be found, all work would be performed at the expense of Superfund itself. In accordance with amendments introduced in 1986, \$8.5 billion could be spent toward this goal over the course of five years; the money was to be obtained in the form of a tax on industry as a whole, and the chemical and oil industries in particular. However, primary cleanup expenses were to be paid by the companies and firms to blame for the pollution (Krasnova, 1992).

It should be noted that the majority of pollutants enter the environment in the course of regular oil-extraction and refining activities. Each such incident may be small-scale in and of itself, but they are very numerous, and therefore present a far greater total danger than emergency situations.

Therefore, oil companies should work directly and constantly to warn of and liquidate minor pollution incidents; for these tasks, part of the resource rent remaining at their disposal should be held in reserve in environmental protection funds for such measures. These funds should be used to accumulate money for the rehabilitation of territory and the restoration of damaged landscapes after oil production has ceased.

An analysis of the material presented above might lead to the following conclusions:

1. In the distribution of resource rent from oil in Kazakhstan, the economic interests of oil companies are well protected; the companies make use of gaps in national legislation, self-serving ties with the authorities, and other legal and semi-legal methods in their own interest.

The economic interests of society are protected by a powerful tax apparatus; however, due to opposition from the oil companies, flawed

legislation, and other causes, it does not fully succeed in defending these interests.

The eco-economic interests of environmental protection are not protected at all. In Kazakhstan, the previous system of environmental protection funds has been eliminated, and as a result, such measures have come to be financing according to a residual principle. Since the fall in the population's standard of living has not been successfully halted, the state has de facto removed itself from the solution of environmental problems, concentrating its attention on social ones instead.

2. In the use of the resource rent received by society, there is a conflict between the interests of the current generation, on the one hand, and future generations, on the other. The temptation to spend everything now, without thinking about the future, will always exist; therefore, it is necessary to create a system of funds that can protect the interests of future generations.

3. The fund created in Kazakhstan to protect the interests of future generations, the National Fund of the republic of Kazakhstan, differs in several respects from other analogous funds, such as the Alaska Permanent Fund (U.S.), the Norwegian Government Petroleum Fund, and the Alberta Heritage Savings Trust Fund (Alberta, Canada):

- the National Fund of the RK was created at a time when Kazakhstan is only at the start of its oil era. While possessing enormous proven reserves of crude hydrocarbons, Kazakhstan has thus far not attained a sufficiently high level of development. In Alaska, Alberta, and Norway, the level of oil and gas extraction has practically reached its peak, and the prospect of its decline is in view;
- the United States, Canada, and Norway belong to the group of highly developed countries that have achieved economic prosperity; therefore, the standard of living of the population of these countries is quite high. Kazakhstan created the National Fund at a historic moment when Kazakhstani society is undergoing a deep crisis: the poverty of an overwhelming majority of the population, unemployment, lowered life expectancy, and emigration beyond the borders of the republic have become characteristic features of the country's social situation;
- the Alaska Permanent Fund was created on the basis of a constitutional amendment, approved by a referendum in which the entire population of the state of Alaska took part; the funds of Norway and the province of Alberta were established in accordance with a legislative act by their parliaments. The National Fund of Kazakhstan was formed by a decision by the President of Kazakhstan; the republic's parliament was presented with a *fait accompli* and was merely given the opportunity to

pass a law amending Kazakhstan's budget law, in connection with the fund's creation;

- the population of the state of Alaska, the province of Alberta, and Norway actively participated in the process of organizing their funds; the degree of participation varied, but most importantly, in the societies of these countries there exists an understanding of the goals and tasks of the funds that were created, and a high degree of agreement regarding their organization. In Kazakhstan, the population took virtually no part in discussing the question of the fund's establishment, and its functions are carried out in an atmosphere of indifference and apathy from the majority of the republic's citizens.

4. The National Fund of the Republic of Kazakhstan bears some external similarity to the Norwegian Government Petroleum Fund. Like the Norwegian fund, Kazakhstan's fund is fully included in the state budget process. The fund is directed by the government, as in Norway, and both funds are administered by the National Banks of their respective countries.

5. However, the Norwegian Government Petroleum Fund is also different from the National Fund of Kazakhstan, in several fundamental ways:

- the Norwegian fund exists as a united whole, performing a savings function—that is, the accumulation of revenues from oil and from its own investments—as well as a stabilizing function, the allocation of part of the fund's money to cover the state budget deficit, formed as a result of the activities of the non-oil sector of the economy. The National Fund of Kazakhstan was divided from the start into two parts—savings and stabilizing, each of which is formed in its own way;
- the use of money from the two funds differs substantially. The Norwegian fund's money is spent only for stabilization goals; the Kazakhstani fund, in addition to expenditures for stabilization, is marked for use to accomplish goals defined by the President of the RK. Such a formulation for directing the National Fund's expenditures, in our view, creates wide opportunities for the arbitrary use of its money;
- the system for the National Fund of Kazakhstan's management is extremely complex; if the Norwegian fund is directed by that country's Ministry of Finance and the Norwegian National Bank, in Kazakhstan the analogous fund is directed by the following: the President, together with the Council of the Fund, consisting of representatives of Parliament, the President's administration and other power structures, the government of the republic, and the National Bank. It should be stated that such a complex administrative structure will inevitably lead to a

blurring of responsibilities. It must also be noted that in the rules approved for regulating the fund's activities, no mechanisms exist to assist the public in influencing its activities;

- in Norway, all oil revenue is directed to the Petroleum Fund, while in Kazakhstan, the National Fund receives only a portion—10% (in its savings portfolio), as well as excess taxes received from the sale of Kazakhstani production at prices higher than planned. These allocations come not from all, but only from a part of the enterprises, in accordance with the approved list, which, in addition to the oil companies, also includes mining operations and some enterprises engaged in non-ferrous metallurgy;
- the stabilization function of the Norwegian fund is oriented toward supporting the high standard of living that has been achieved, as reflected by Norway's significant government expenditures. The stabilization function of the National Fund of Kazakhstan is oriented toward an average level of state expenditures, guaranteed by a conservative prognosis of prices for Kazakhstan's raw materials. Thus, the Norwegian fund stabilizes the level of prosperity; the Kazakhstani fund, the level of poverty;
- the Norwegian fund is open to the public; its quarterly and annual reports are published on the Internet on the National Bank of Norway's Web sites. It is difficult thus far to judge the openness of the Kazakhstani fund, but the fact that a report of its activities has yet to be published (although, according to the rules established, it should have been presented on April 1, 2002) gives cause for concern; nor is there a report on the results of its audit. The procedure approved for choosing an independent auditor also arouses doubt; the auditor must be chosen on a competitive basis, but according to the procedure established by the government of Kazakhstan, which, in our view, makes the auditor dependent on the body to be audited;
- in the organization of the Norwegian fund, significant attention was paid to the environmental aspect of its activity; within its structure, the Norwegian Environmental Fund was created, with the primary goal of improving the state of the environment. In the National Fund of Kazakhstan, the environmental aspect is entirely absent.

6. Summarizing our analysis of the situation that has been created around the National Fund of Kazakhstan, we can say with confidence that it was organized prematurely. Currently, it is still early to be worried about future generations, since the survival of the present generation is still a matter of concern. If the current situation continues developing in the same

direction as it is now, then 90% of Kazakhstan's population will either die or flee, and the remaining prosperous 10% will be unable to restore the nation's labor potential. Of course, a work force might be brought in to work behind a cordon, but whether the newcomers will labor uncomplaining for these prosperous souls is a major question.

7. On the territory of Kazakhstan, and in the oil-producing regions in particular, neglected dumps and waste storage sites have become widespread. Their number has grown in the last ten years, as the state-owned sector of the economy has been liquidated, and the new owners, on entirely legal grounds, have refused to take responsibility for the environmental obligations of the previous owner—that is, the state.

8. In the oil-producing regions, a practice has taken root in which organizations working deposits of crude hydrocarbons have abandoned worked-out deposits without conducting reclamation work or closing off their wells. As a result, their former work sites have become sources of pollution for the adjacent territories.

Appendix

In order to improve the state of affairs that has been created, we offer the following suggestions:

1. Acknowledge that the decision to create the National Fund of the RK was not a timely one. Transfer the money accumulated in the fund at the present time to the state budget and use it to improve the state of education and health care, and to increase pension payments. Return to the question of the fund's creation after the tasks set in the Presidential Program 2030 have been accomplished, and the population's standard of living has reached the indicators of highly developed countries.

2. Restore Kazakhstan's system of environmental funds, through the accumulation of money from pollution payments, develop a mechanism for public oversight of their activities, and require by that that funds be independently audited. In order to do this, a corresponding legislative act should be developed and passed by Parliament.

3. In order to remove neglected dumps and waste storage sites, create a structure in the Republic of Kazakhstan analogous to Superfund in the United States, developing and passing a legislative act describing its goals and tasks, similar to the American Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

4. Create within the oil companies active in Kazakhstan, using part of the resource rent received, an environmental protection fund for financing current environmental protection measures and accumulating money for the reclamation and closing off of worked-out hydrocarbon deposits. The

money sent to this fund will be freed from the profit tax through its deduction from the companies' tax base; to do this, the Tax Code should be amended accordingly.

5. Develop and pass a law of the Republic of Kazakhstan "On Oil," in which the country's accumulated experience on the activities of the oil sector under market conditions is used to establish a legislative base for regulating the relationship between the state and foreign and domestic companies, clarifying the taxation of the oil business, and setting the main directions for environmental policy.

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*The National Fund
of the Republic of Kazakhstan*

**GREEN
SALVATION
HERALD**

“IT’S CLEAR THAT WE ARE LOSING A GREAT DEAL”

An Interview with Sergei Bobylev.

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Sergei Nikolaevich Bobylev is a full professor at Moscow State University, a doctor of economics, and an academician of the Russian Ecological Academy and the Russian Academy of Natural Sciences.

Question: Does the population of Russia receive any real income from the exploitation of natural resources owned by the state?

Answer: The answer, of course, is unequivocal—no. On the basis of an analysis of the reforms carried out in our countries following the collapse of the Soviet Union in 1991, I believe that our state committed a tragic error. They failed to immediately set the “rules of the game” in the natural sector, and above all, in the sector of natural resource use, and in fact enabled natural rent to be privatized. That is, the state determined the companies and enterprises that would exploit natural resources, and in practice, they privatized the natural rent—the additional income obtained as a result of their activity. As a results, Russian citizens, and, I think, the citizens of all other countries of the former Soviet Union in effect failed to receive the full measure of this enormous rent. Its dimensions are variously estimated.

According to different estimates, at the present time \$250-300 billion have been transferred abroad from Russia. If you take any directory and look at the article “Russia’s Exports,” you can be sure that more than 80% consists of the export of natural resources: 50% is oil and gas, a substantial amount comes from ores, timber, diamonds, initial raw materials, and so on.

I think that it would not be an exaggeration to say that 80% of this illegal “fleeing” capital has a “natural ancestry”; that means that the entire Russian population was robbed of about 200 billion dollars.

However, I want to draw an important distinction. For instance, our country has many millionaires, and even billionaires. As we know, not long

ago a list of the richest people in the world was published, which included three or four Russian citizens. It's not difficult to predict that these were the presidents of oil companies. I have to say that there are many such millionaires against whom, from the economic point of view, I have no complaints, although I do, of course, have moral ones. Our vodka kings, for example, however awful that might sound; our pharmaceutical kings, and so on. These people nevertheless invested some brains, some effort; they created something. How legally they did it is another issue.

The second group of our new millionaires, however—these are people “from nature,” who, crudely speaking, were simply permitted to “swipe” the natural rent and who became rich without investing any kind of effort whatsoever. This was, I think, a tragic mistake, which naturally slowed reform in our countries. A colossal social rift arose.

I am the editor-in-chief for Russia of the United Nations Report on Human Development. This year, we calculated the difference between the incomes of the 10% poorest and the incomes of the richest Russians. According to official statistics, the difference is about 14 times. Our experts, on the basis of circumstantial data, in the course of fairly interesting research calculated that there is in fact a 40-fold difference.

It can be hypothesized that the state failed to pay attention to this colossal source of income either unconsciously, or deliberately, due to corruption (the concept of corruption is familiar to our countries). Whatever the case may have been, the mechanisms for the confiscation of natural rent, privatization, and the impoverishment of the population were set in motion. Throughout the world, oil and gas companies are very wealthy, but nowhere else on earth have such events taken place.

In any developed capitalist country, the state clearly establishes the “rules of the game” and extracts the entire natural rent, to be used for the good of society. I was in England, where some Englishmen, particularly those connected with the oil sector, complained that in some years the government even takes their profits.

Of course, in theory it's completely understood that natural rent belongs to the community. It's simply difficult to extract it, but all of the world's developed countries have already passed through this stage.

A normal government should act as follows: prime cost plus average profit to the company; all the rest—the natural rent—belongs to the community. In certain years, for instance, in Great Britain the government even encroached on profits; there was simply a sharp flurry of tax extraction. Everything depends on the rules of the game that have been established.

The second extremely important issue that the state passed up is, of course, the lack of transparency of the activities of all of these raw-materials companies. I remember that when Boris Nemtsov first became vice-premier [of Russia], one of his first announcements was, “I will make the accounts of the oil companies and [the natural gas monopoly] Gazprom transparent.” After half a year, however, Nemtsov left, and the problem has not yet been solved. I think that last year President Vladimir Putin said that it is nonetheless crucial to make the accounts of our oil companies clear and understandable—to make them transparent. In particular, he was talking about natural rent.

Incidentally, I don’t know how well known it is, but Putin’s candidate’s dissertation was devoted to the effectiveness of the use of Russia’s raw natural resources. A year ago practically all journals in Russia published his article. It had been first published about two years ago in a fairly specialized publication, the *Mining Journal*. A year ago, however, when he became president, it was published almost everywhere. Incidentally, take a look; I think it was in *Green World*. A very rational article; it talked very correctly about rent, and about sustainable development, and about the environment. Unfortunately, though, what we see in Russia...might be called the de-ecologization of the process of administration. For instance, Russia abolished first the Ministry, and then the Committee for Environmental Protection; I don’t know, did it remain in Kazakhstan?

Question: How do you comment on the idea of the creation of an oil fund in Russia? How expedient and beneficial is this for Russia?

Answer: The idea is absolutely wonderful and sensible, because in accordance with the concept of sustainable development, the total capital of a country should not decrease with time. This means labor capital, natural capital, physical capital (funds, buildings, structures), and so forth. It’s understood that our country has sunk itself fairly deeply into its natural capital. By various estimates, Russia has about 20 years left in which to economically effectively exploit its oil, 50 years for gas, and so on. I think that the overall picture is the same—the deposits are increasingly poor, and it is more and more expensive and difficult to extract natural resources.

Therefore, in economic theory there exists a completely clear postulate that a state should conserve part of its natural rent and invest that rent in other forms of capital, above all in labor, equipment, education, technology, and so forth. And it should place that capital in the banks for the following generations, so that they do not run into a situation in which the natural wealth has already vanished, but they have to live somehow.

As far as I know, such funds are currently active in the oil-producing Arab countries, in Europe—in my opinion, a very good example is Norway. There is a similar fund in Alaska; it isn't called a fund for future generations, but something a little different.

Fixed deductions from the extraction of natural resources are also a form of income. Thus, in my view, the creation of an oil fund is quite proper, and might be the only thing possible in the current situation. We can't tell our governments that the development of the energy sector and the extraction of resources is an anti-sustainable process. It's clear that the market we're creating now is anti-sustainable development. I think that this is very easy to show—it's elementary.

I remember the words of [Aleksandr] Livshits—there was such a vice-premier of Russia, who was greatly criticized. I think that in '94 he already said it fairly clearly, appealing to the new Russian oligarchs, to the rich: "You need to share." It's not that they need to share; they need to give back what belongs to everyone.

From a social point of view, to tell the truth, I feel sorry most of all for our older generation. This are people who were not paid their share, who were placed in collective and state farms by force, while colossal oil deposits were developed using the "rescued" funds, and colossal transport lines and oil and gas pipelines were built. All this was created using the labor of the people of our entire country. After '91, a few oligarchs appeared, and the government told them, "Own it, have it; everything you take is yours!" This utterly contradicts the principles of social justice, common sense, and anything else you like.

Question: How, in your view, might the right of access to natural resources be realized?

Answer: I am an economist, and it seems to me that it would be more accurate to talk about the population's right to a certain share of the natural pie used by our countries. This is closer to the right to receive part of the natural rent, which belongs to society as a whole. This rent, I think, is quite significant. It's possible that the distribution of the rent might take place in the form of monetary payments. For example, in some Arab countries the population is paid a certain amount, in hundreds or thousands of dollars. In others, special educational funds have been created, thanks to which each resident can receive free education at the best universities in Europe or America.

I don't think that in Russia, Kazakhstan, and other CIS countries the rent should be distributed in the form of donations. It might, however, be used for increasing expenditures for social needs: construction of homes

for the elderly, improving medical services for the poorer parts of the population.

It seems to me that here there are very many paths, but the most important thing that the government and society should look after is the creation of a fund for future generations, or an oil or natural resource fund (you could call it different things). This should be a fund that will be under the control of the community, and belong to the community as a whole. Maybe such a fund should be headed by a council of trustees, to which would be elected not bureaucrats, not officials, but people whom the population trusts. These might be politicians, and artists, as writers—whomever you like. At the end of each year, the council, for example, confirms the fund's budget, and deals with distributing those funds. It's understood that these funds should accumulate; we can't spend them. Nevertheless, however, there is a widespread practice in the world, in which the annual interest that grows from the capital invested in a natural fund is regularly distributed. Thus, the right of access to natural resources might be realized through the fund itself and through its structures for distributing money for social needs.

Question: Is a comparison being made between the damage inflicted on the environment and the income received by the government, the population, and the oil companies? Does any research devoted to this issue exist?

Answer: That's a very difficult question. At present, for our countries, for Russia (and, I think, for Kazakhstan as well), the damage from pollution of the environment is estimated at 10-15% of the gross national product; this is an enormous figure. In developed countries, this figure is 3-5%. In comparing the benefits and the losses that we obtain from the extraction of natural resources, we run into a very complicated problem.

The modern market, whatever good things we might say about it, unfortunately has a colossal flaw in terms of environmental protection and the use of natural resources. Therefore, in modern economic theory there exists a standard term: "market failure."

There is also such a concept as "external effects," or externalities. This is damage that occurs to others. As a result, we fail to take into account the damages losses distributed among society as a whole. For example, a car travels, emitting exhaust fumes, or a factory is smoking—all this spreads along the street and affects the population. In this case, when we talk about externalities connected to the extraction of oil, gas, and other natural resources, evaluating them is very difficult. It's clear that the damage is colossal, and that which the oil companies show us in official documents, unfortunately, relying on modern economic theory, we cannot evaluate. In

No one has seriously attempted to evaluate the losses suffered by the Republic of Kazakhstan due to the extraction of hydrocarbons, either in natural or in monetary form. No scientific research has been conducted on the subject. Bits and pieces of information exist in official statistical sources and in the works of individual specialists. However, the majority of this data reflects losses from pre-existing economic activity, from the time of the Soviet Union. Evaluating the scale of the damage inflicted during the period of Kazakhstan's independence is problematic, due to the lack of an environmental monitoring system and the poor condition of science within the country.

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each specific case, however, direct or potential loss is possible in the form of pollution of the land, soil erosion, and the depletion or cutting of forests.

Now we are entering an interesting situation, particularly after the signing of the Kyoto protocol, in which humanity, in economic theory, is posing the question of so-called ecosystem functions, which also are not free: those connected with carbon, water-regulating functions, and so on. According to the calculations of Professor Robert Constanza and his colleagues, nature, in one year, provides such allegedly free services equivalent to \$30-35 trillion, if memory serves me right. The human race creates goods each year equal to a total of about \$18 trillion. That is, what we produce, in its estimated cost, turns out to be half of what nature provides us free of charge.

The tragedy of this situation is that we do not know how to take good account of the degradation of nature, its environmental services, and its assimilational potential. In recent years, the value of undamaged natural territories has become increasingly clear. It is thought that Russia, for instance, possesses the greatest wealth from the standpoint of guaranteeing the sustainability of the biosphere—this means territories untouched by economic activity. These constitute about 60-65% [of Russia's territory]. They play a very important role in the complex environmental balance. These are the so-called global goods, which belong to all of humanity, and no one can lay claim to them.

Not long ago a major article appeared, devoted to the prospects for extracting gas from the Yamal [the Yamal peninsula, on Russia's Arctic

coast]. It's understood that the ecosystem there, even if the necessary environmental measures are taken, will be virtually wiped out. It will already be an anthropogenic system, not a natural one. How can we evaluate such a colossal loss?

The losses from oil extraction are complex, and pollution is far from the worst thing that the development of the oil industry brings. We recently analyzed the situation in Western Siberia. Over the course of thirty years, the region has changed completely. The traditional way of life has virtually disappeared. Whether it was good or bad is a controversial question, but people lived that way for centuries. Now their psychology, culture, and attitude toward life has become completely different. An urban population has appeared; people have arrived who want only to earn a lot of money, without putting down deep roots or tying themselves to the Siberian land. This loss cannot be calculated. It is equal to the replacement of a civilization.

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It's clear that we are losing a great deal. Therefore, comparing the benefits from the extraction of oil to the damage to the Caspian, I think that in many cases we need to take into account what technologies are used. In theory, of course, humanity possesses sufficiently clean technologies for oil extraction on the coastal shelf, in the sea, and so forth. However, we all know from our own countries' example that often the following principle is at work: we wanted the best, but it turned out like it always does. And it's not a fact that these technologies are clean. To be honest, I don't believe in clean technologies; in any case accidents are possible, breakages, international terrorism—God forbid—and so on. In this case, the environmental damage will be hundreds of times greater than the benefits that we possess.

Thus, however much our government, your government, and traditional economists assure us that we know that the market knows best, that let's start working, that the prices are all well-founded from the standpoint of high economic theory (any theoretical economist can confirm this), unfortunately, the market, in the area of environmental protection, in the area of natural resources use, operates with flaws. Therefore, government

intervention is essential: that is, so-called market corrections, corrections of the market's failures. Both in the process of extraction of natural resources, and the means by which the state strives to prevent future environmental damage, strives to take into account in advance expenditures for the prevention of environmental losses and for their compensation, depend largely on the ability, intelligence, and foresight of the state.

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*The National Fund
of the Republic of Kazakhstan*

**GREEN
SALVATION
HERALD**

LEGAL ASPECTS OF THE CREATION, FORMATION, USE, AND ADMINISTRATION OF THE NATIONAL FUND IN THE REPUBLIC OF KAZAKHSTAN

(Theses for a Statement of the Problem)*

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1. Legal Basis for the National Fund of the Republic of Kazakhstan

1.1. An analysis of the Decree of the Republic of Kazakhstan No. 402 "On the National Fund of the Republic," Jan. 29, 2001, and No. 543, "On Certain Questions Regarding the National Fund of the Republic of Kazakhstan," on the basis of which the National Fund of the Republic of Kazakhstan (RK) was created, and the Rules for the Formation and Use of the National Fund of the RK were confirmed, enables us to come to the conclusion that the National Fund cannot be assigned to any of the existing types or forms of legal entities; that is, it is neither a subject nor an object of the law. It is neither a commercial nor a non-commercial organization, nor a government establishment. In other words, the National Fund is not a legal entity, and, therefore, in accordance with the Civil Code of the Republic of Kazakhstan (Article 33 of the CCRK), it:

- does not have the right to own property, or to engage in economic activity or the operative administration of isolated property;
- is not responsible for this property and its obligations;
- cannot, on its own behalf, acquire or exercise property-related or personal non-property-related rights and obligations;
- cannot be a plaintiff or a defendant in court;
- cannot possess an independent bank balance or budget.

In accordance with the Rules for the Formation and Use of the National Fund of the RK, as confirmed by the Decree of the President of the RK No. 543 “On Certain Questions Regarding the National Fund of the Republic of Kazakhstan”:

“4. The Fund is an aggregate of financial assets, concentrated in the account of the Government of the RK at the National Bank”...

7. With the goal of fulfilling the goal of its savings function, the Fund is formed on the basis of the following revenue sources:

...

2) investment revenues from the Fund’s administration;

In accordance with Article 7, point 1, sub-point (b) of the Law of the Republic of Kazakhstan no. 357-1, “On the Budget System”:

Article 7. Receipts into the Republican Budget.

Receipts into the republican budget include:

Income into the republican budget, consisting of:

...

b) non-tax receipts:

...

receipt of dividends on packets of shares that are the property of the republic.”

If investment revenues from administration of the Fund include revenues (dividends) from securities, these revenues should first be allocated to the state budget, not directly to the National Fund, as stipulated by the Rules.

Thus, the National Fund, by its legal nature (Article 115 of the Civil Code), constitutes the property, or, more accurately, the money (since only revenues from securities are included in the fund’s assets, not the securities themselves) located in a special account of the government, administered in trust by the National Bank.

Money cannot be created; it can only be allocated, received, or earned. Therefore, it would be more appropriate to speak not of the creation of the National Fund, but of the opening of a special (national) account by the government.

1.2. Authority of the President in the Creation of the National Fund of the RK

In accordance with Article 44, point 21 of the Constitution of the Republic of Kazakhstan and Article 19, point 21 of the Constitutional Law of the Republic of Kazakhstan No. 2733, “On the President of the Republic of Kazakhstan,” December 26, 1995 (with amendments introduced by Constitutional Law No. 378-1, May 6, 1999), the President of the RK possesses authority in accordance with the Constitution and the laws of the republic.

Neither the Constitution, nor the laws of the RK grant the President authority to open a special account of the government in the National Bank—that is, the creation of a National Fund.

Thus, in issuing his decree on the creation of the National Fund, the President exceeded his authority.

2. Questions of Ownership

Property (money) may belong to a particular party, or be without an owner. The National Fund (its money), all things considered, is state property, although nothing is said about this in the normative acts regulating the creation, formation, and use of the Fund.

State property in the Republic of Kazakhstan can take one of two forms (Article 192 of the Civil Code of the RK)—republican [national] or communal. If the National Fund is republican property, the Civil Code (Article 192) stipulates that:

“... ”

2. Republican property consists of the state treasury and property assigned to state republican legal entities in accordance with legislative acts.

Funds from the republic’s budget, gold reserves, and the diamond fund, objects of state property listed in Article 193 of the current Code, and other state property not assigned to state legal entities, constitute the state treasury of the Republic of Kazakhstan.”

Thus, the National Fund is either part of the state treasury, or property assigned to the Government of the RK. It is unclear from the acts signed by the President and government whether the Fund is assigned to the government. However, if we take into account the fact that the agreement regarding administration of the Fund was signed by the government, which is the entity gaining benefit from the agreement, we may conclude that the Fund is nevertheless assigned to the government.

3. Administration of the National Fund of the RK

From the Rules for the Formation and Use of the National Fund of the Republic of Kazakhstan (see Decree of the President of the RK No. 543, January 29, 2001), it follows that the following bodies administer the National Fund:

3.1. The President of the Republic of Kazakhstan

“5. Composition and Functions of the Council

19. With the goal of implementing the authority of the President of the Republic of Kazakhstan for the administration of the Fund, a consultative and advisory body is formed under the President of the Republic of Kazakhstan—the Council.”

However, according to the Constitution and Constitutional Law of the RK No. 2688 “On the Government of the Republic of Kazakhstan,” December 18, 1995, it is the government that administers state property.

3.2. The National Bank of the RK (point 2, sub-point 2 of the Decree of the President of the RK No. 402, August 23, 2000)

According to Decree of the President of the RK No. 402, August 23, 2000, point 2, sub-point 2,

“2) administration of the Fund’s assets is carried out by the National Bank of the Republic of Kazakhstan.”

In this connection, we would like to note that:

3.2.1. The list of authorized functions of the President with regard to the National Bank, stipulated in Article 15 of the Constitutional Law “On the President of the Republic of Kazakhstan,” is an exhaustive one. According to the aforementioned law, the President does not have the right to place any obligations on the National Bank, including the obligation of administering the assets of the National Fund, as done by the President in Decree No. 402 of August 23, 2000.

3.2.2. According to Article 7 of the Law of the Republic of Kazakhstan No. 2155 “On the National Bank of the Republic of Kazakhstan,” March 30, 1995, the tasks of the National Bank of Kazakhstan are as follows:

- *“guaranteeing the internal and external stability of the national currency of the Republic of Kazakhstan;”*
- *“the development and implementation of state policy in the field of monetary circulation, credit, organization of monetary transfers between banks and their clients, and currency relations, enabling the goals of Kazakhstan’s economic development and its integration into the world economy to be achieved;*
- *assisting in guaranteeing a stable monetary, credit, and banking system;*
- *protecting the interests of creditors and clients through the passage of normative legal acts regulating banking activities, and overseeing their execution.”*

It is unclear how administration of the National Fund’s assets will enable the National Bank to fulfill its tasks. In addition, according to Article 1 of the aforementioned law:

“The National Bank of Kazakhstan, in fulfilling its tasks, should not be guided by the goal of receiving profits.”

Effective administration of the National Fund implies the receipt of profits. Thus, in administering the National Fund, the National Bank either fulfills tasks other than its own, or else breaks the law.

3.2.3. The Republic of Kazakhstan possesses specially authorized state bodies whose tasks consist of the administration of state property.

The Ministry of Finances of the RK, which, according to the statute affirmed by Government Resolution No. 1640 of November 21, 1997:

- *“is the central executive body of the Republic of Kazakhstan in the sphere of administering state finances;”*
- *“performs the function of the authorized body for the use, possession, and dispensation of republican property.”*

“V. Rights.

30. The possession, use, and dispensation of property under state ownership, and the administration of state packets of shares, within the limits of its competency.”

The Department of Administration of State Property and Assets of the Ministry of Finances, which, according to the statute affirmed by Government Resolution No. 980 of June 17, 1997:

“1. ... is the state administrative body having authority for the possession, use, and dispensation of state property of the Republic of Kazakhstan.

3. The primary tasks of the Department within the sphere of its activities are: representing the interests of the state regarding questions of property on the territory of the Republic of Kazakhstan and beyond its borders;

4. Proceeding from its primary tasks, the Department: has authority over the possession, use, and dispensation of state property through..., the signing of contracts (treaties, agreements) regarding the transfer of objects of state property... to administration in trust...

...is the holder of packets of shares belonging to the state.”

In addition, the Concept for the Administration of State Property and Privatization in the Republic of Kazakhstan (approved by Resolution No. 1095 of the Government of the Republic of Kazakhstan on July 21, 2000) stipulates that the following must be determined:

“as a subject, the right of ownership of all forms of state property by a single authorized body.”

Thus, assigning the functions of other state bodies to the National Bank is, at the very least, inexpedient.

3.3. Agreement on the Administration in Trust of the National Fund of the RK (approved by Resolution No. 655 of the Government of the Republic of Kazakhstan, May 18, 2001)

This agreement states that the administration in trust of the fund is performed in the interests of the government, which is the beneficiary of the agreement.

However, the Civil Code of the RK (Article 884) stipulates that:

“3. The beneficiary (person in whose interests the property is administered) may be any person who is not the administrator in trust, as well as the state or an administrative-territorial unit.”

It is unclear why, in the use of state property, the state as a whole [as opposed to the government, that is, the executive branch —Ed.] is not considered the beneficiary.

An agreement regarding the administration of property in trust of, according to the Civil Code of the RK (Article 886), should stipulate the following (the substantive conditions of the agreement):

“2) the composition of the property transferred to administration in trust.”

The above agreement fails to indicate this composition.

“5) a statement of the person [entity] receiving the entrusted property in the event that the agreement for the property’s administration in trust ceases.”

The agreement fails to indicate this person as well.

According to Article 393 of the Civil Code:

“1. An agreement is considered concluded when agreement regarding all of its substantive conditions is reached by both sides, in a form required for and appropriate to the case [in question].

Substantive conditions are those involving the subject of the agreement, conditions admitted by existing legislation or necessary for agreements of the given kind, and also conditions that, according to a statement by one of the parties involved, should be achieved by the agreement.”

In the agreement on the administration in trust of the National Fund, agreement is not reached regarding all of the substantive conditions stipulated by law. Therefore, it can be said that the given agreement was never concluded.

The following statute of the agreement is completely incomprehensible:

“2.2.8. jointly with the Government, to determine legal counsel, which, if needed, will represent the interests of the Fund in foreign states, and in resolving legal disputes arising during the administration in trust of the Fund;”

“3.2. The Government is obligated to:

3.2.1. determine, on a competitive basis and jointly with the Bank, legal counsel, which, if needed, will represent the interests of the Fund in foreign states, and in resolving legal disputes arising during the administration in trust of the Fund.”

It is unclear how the interests of property (money) can be represented. Money itself cannot possess interests.

“2.3. The Bank bears responsibility for losses suffered by the Fund as a consequence of inappropriate fulfillment of its obligations according to the current Agreement.”

Money cannot suffer losses. Losses can be suffered by the money’s owner.

“3.1. The Government has the right:

3.1.2. jointly with the Bank, to make decisions regulating the Fund’s activities, in accordance with normative legal acts of the Republic of Kazakhstan.”

“3.2.3. to assist in presenting documentation clarifying the Fund’s status, as well as any other documentation dealing with the Fund’s activities that may be required by taxation or other corresponding bodies of foreign states.”

“3.2.7. to guarantee the conducting of an annual external audit of the Fund at the Fund’s expense.”

The activities of property and money cannot be regulated. Money does not carry out activities. The activity is the administration of the fund (dispensing of money). An audit of money also cannot be conducted. An audit is a verification of annual accounts.

The impression is created that the state bodies are constantly confused by the fact that the Fund is nevertheless a subject of the law, and not an object. In that case, a legal entity would need to be created

Below we provide our conclusions, constituting only some of the remarks arising during the analysis of the legal nature of the National Fund of the RK. They do not pretend to be complete or all-encompassing, and are the private opinions of jurists who have studied the normative acts of the RK regarding the given question; they are bound by the framework of theses for a statement of the problem.

Conclusions

1. The activities of the National Fund of the RK are regulated by a complicated system of normative acts of the RK, the main part of which are sub-legal normative acts by the President and Government of the Republic of Kazakhstan, containing a number of contradictions that require deeper analysis. In our opinion, it would be expedient to adopt a single normative act on the level of legislation, unifying all questions regarding the legal regulation of the functioning of the National Fund.

2. The National Fund of the Republic of Kazakhstan is an object of law (property). An object can have no goals; it cannot carry out activities; it cannot suffer losses.

The National Fund of the RK, being “an aggregate of assets concentrated in an account of the Government,” therefore has the attributes not of a subject, but of an object of law; in connection with this, the declared goals of its creation cannot be realized. It would be more expedient, in our view, to create a subject of the law—a legal entity (perhaps in the form of a state establishment), that would be fully engaged in the activity of accumulating the Fund’s revenues,

investing them, and overseeing their use. The main focus of such an organization's activities would be the achievement of the Fund's goals. At the present time, the Fund is an amorphous concept of "assets," the administration of which contains attractive goals; but what hides behind those goals? It can be imagined that the single goal of the Fund's creation that is fully embodied is covering Kazakhstan's budget deficit. However, the remaining, more global goals set by the President, i.e.:

- the country's stable socioeconomic development;
- accumulation of finances for future generations;
- have no chance of being attained in the absence of an organizational-legal form (that is, a subject).

If the formation of the fund's assets takes place chiefly due to inputs from companies in the raw-materials sector of the economy, it would be fitting to stipulate the expenditure of these funds on:

- restoration goals (decreasing the consequences of the activities of companies in the raw-materials sector);
- liquidating accidents of a technogenic nature;
- reclaiming and conserving worked-out [mineral] deposits; goals should be stipulated for restoration, for insurance, for compensation of losses inflicted on the environment by accidents; etc.

3. The President of the RK, in issuing his decree regarding the creation of the National Fund and assigning to the National Bank the obligation of administering it, exceeded his authority as stipulated by the Constitution of the RK and the Constitutional Law "On the President of the Republic of Kazakhstan."

Decree of the President of the Republic of Kazakhstan No. 402 "On the National Fund of Kazakhstan" of August 23, 2000, stipulated that the Fund will be spent in the form of targeted transfers by the Fund, transferred from the Fund to republican and local budgets to meet goals determined by the President of the Republic of Kazakhstan.

It is unclear how the President will determine the goals on which the Fund's money will be spent. Such broad discretion by a single individual for the use of funds that constitute national property cannot help but lead to distortions in the policy of their use and the direction of money from the Fund toward the financing of programs and areas that are not of high priority in public awareness, but valued as such by the President of the Republic. Such a situation is not connected with the personal qualities of a specific individual, but is the logical result of assigning one person virtually unlimited authority over the use of the Fund's money.

In addition, the goals of expenditures from the state budget can only be determined by the republic's highest legislative body, in the annual law "On the Republican Budget...".

4. In the administration of the National Fund, the role of the public is effectively absent. Everything is in the hands of one person—the President of the RK. It is clear to us that changes in the Fund's administration—a broadening of oversight by society in the use of its money, even if its current form is retained—would have a beneficial effect on its functioning within the framework of the goals of its creation. At the present moment, we see before us an aggregate of monetary funds, the source of whose formation is tax receipts, but which are accumulated not for increasing the components of the state budget in proportion to the increased receipts (they are used for this goal only to cover its deficit), but for entrepreneurial activities by investing these funds in foreign assets on behalf of the Government and President of the RK, under cover of the attractive aim of "accumulating finances for future generations."

5. The normative acts do not clearly define to whom the Fund belongs, whose property it is, and by what right it is assigned to the government. They also do not define who owns the securities acquired in the course of the Fund's administration.

6. The National Bank, in administering the Fund according to the agreement for administration in trust, performs a function not inherent to it.

In the Republic of Kazakhstan, specially authorized government bodies for the administration of state property already exist.

7. The agreement regarding the administration in trust of the National Fund of the RK does not correspond to existing civil legislation.

8. The Fund is placed in reliable and liquid foreign financial assets, with the goal of preserving it and receiving investment income.

In doing so, two questions arise.

First: Why is the Fund's money not invested within Kazakhstan? After all, one of the Fund's goals, according to Decree of the President of the Republic of Kazakhstan No. 402, "On the National Fund of the Republic of Kazakhstan," August 23, 2000, is guaranteeing the country's stable socioeconomic development. The Fund's enormous financial opportunities, which are visible even to non-specialists, make it possible to conclude that investment of this money in the development of Kazakhstan's domestic economy might enable the improvement of the country's socioeconomic situation. The lack of confidence in the country's economy and unwillingness to invest funds in the economy of Kazakhstan displayed in the given documents cannot be judged as a positive element for attracting foreign investment.

Investing money in foreign assets may enable the Fund to be “preserved,” but it does not answer the country’s interests, tied to the development of its economy.

The second question: not one of the normative acts regulating the Nation Fund’s legal status establishes a clear procedure for returning income from the Fund’s investments “in reliable and liquid foreign assets” back to the Fund. Therefore, here doubts arise: will it be returned at all?

In addition, investment income (dividends on securities belonging to the state) from the Fund’s administration cannot be allocated immediately to the government’s specially account; they must first be allocated to the state budget.

9. The normative acts regulating the legal status of the National Fund do not contain a procedure for its liquidation. In the event that an authorized state body adopts an act liquidating the Fund (closing its account), the further fate of this property—the National Fund itself—is unclear.

When a procedure for liquidation is not stipulated in the legislation, it leaves more opportunities for abuse.

The normative and legal database “Jurist,” in its condition as of July 3, 2002, was used in the preparation of this material <www.zakon.kz>.

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THE PRICE OF ECONOMIC STABILIZATION

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Over the last several years, Kazakhstan's fundamental macroeconomic indicators have noticeably improved. In noting this positive tendency, on the threshold of the passage of the law regarding the republican budget for 2003 the press was literally stuffed with statistics demonstrating the country's economic achievements: rising GNP, falling inflation, stability of the national currency, and an increase in the minimum wage (*Kazakhstanskaya Pravda*, Nov. 1, 2002; Nov. 16, 2002).

The increase in the indicators mentioned has served as the basis for official announcements that the socioeconomic situation as a whole has improved as well. However, numerous facts fail to testify in favor of such a conclusion; rather, information regarding Kazakhstan's socioeconomic situation largely reveals the opposite. The destruction and pollution of the environment continues, natural resources are exhausted, the population grows poorer, and corruption is on the rise (*Toward a Society Without Corruption*, 2001, no.1(6), pp. 4-7).

Have Kazakhstan's citizens paid too high a price for economic stabilization?

Economic Growth as a Panacea

Economic growth at any cost: the economic policy pursued by the government of Kazakhstan during the first ten years of independence can thus be characterized. However, economic development aimed at intensifying exploitation of natural resources, above all fossil fuels, leads not only to economic growth, but also to increasingly negative consequences for the population, the environment, and business.

The government's errors in its contracts with transnational corporations (TNCs) for the extraction of fossil fuels are already well known. Questions have repeatedly been raised regarding lowered prices on exported raw materials, accelerated amortization, and the lowering of environmental fines for pollution in the case of TNCs (*Panorama*, Nov. 22, 2002). The problems of increasing urban air pollution, destruction of the forests, reduced soil fertility, water shortages, increased levels of illness among the population, and other issues have been discussed no less heatedly (*A Survey...*, pp. 12-14). As a result of increased environmental strain, the state loses 10-15% of the country's GDP (see the interview with S.N. Bobylev on page 46). The damage inflicted on people's health is incalculable.

The wealth of natural resources sacrificed for economic growth is the property of the nation as a whole, and therefore all citizens of Kazakhstan should theoretically receive the benefits from its use. However, the overwhelming majority of citizens do not even suspect that this is the case. At the present time, the government disposes of natural resources virtually unilaterally. Irrational resource use, justified by the need to accelerate economic growth, as well as the government's own mistakes, lie on the shoulders of Kazakhstan's citizens, and constitute one reason for their increasing poverty.

The National Fund created in 2000 has not led to radical changes in economic policy, nor has it brought tangible benefits to the population, despite the fact that the fund was formed "with the goal of guaranteeing the stable socioeconomic development of the country, the accumulation of funds for future generations, and a reduction in the economy's dependence on the impact of external factors."

Furthermore, the National Fund's creation has evoked an unambiguous reaction from the population, local and foreign politicians, environmentalists, specialists, and journalists. The reason for this has not been the idea of the creation of the National Fund itself, which, in principle, many welcome, but the fact that neither Parliament, not the population took part in creating the Fund, and have no opportunity to influence its activities. The Fund's creation has thus been determined above all by political reasons. It was necessary to show tangible results of economic growth and improve the image of the existing political regime, both at home and abroad.

The focus on economic growth at the expense of intensified exploitation of natural resources has led to the hypertrophied growth of the extracting sectors, which has exacerbated disproportions in the country's economic development. From 75% to 90% of crude oil and gas condensate, clay and

iron alloy, iron ore pellets, zinc, and lead are supplied for export (*Delovoye obozreniye "Respublika"*, Oct, 1, 2002). The government has admitted that a "special structure of the economy, with a predominantly raw-materials orientation" has been formed, dependent on the prices for natural resources on the world market (*Kazakhstanskaya pravda*, Nov. 28, 2002); it had admitted that the situation must be changed.

Absence of an Environmental Policy

So far, however, no further confessions have followed, and economic priorities, as before, take precedence over the social and environmental interests of society. Vivid confirmation of this has been demonstrated by the fact that in more than ten years of independence for Kazakhstan, an official environmental policy has yet to be developed. The project "Fundamentals of Environmental Policy," already developed in 1994-5 by the Ministry of Ecology and Bioresources, was lost in the prime minister's chancellery and never reached Parliament.

In spite of the enormous number of official programs, projects, plans, conferences, and seminars, in spite of countless announcements by officials about Kazakhstan's dedication to the principles of Rio-92, to date the country has no strategy for sustainable development, nor has its national "Agenda 21" been prepared. This fact was officially acknowledged in "A Survey of 10 Years of Progress in Kazakhstan on Fulfilling Agenda 21," prepared with the support of the UNDP especially for the Rio-92 + 10 world summit in Johannesburg (*A Survey...*, 2002, p. 19). To date, Kazakhstan has not confirmed its National Environmental Action Plan ("Jurist" catalog system), nor has it adopted a program for the rational use of its natural resources. It should be noted that the "Survey of 10 Years of Progress..." itself has not been able to withstand any form of criticism. Furthermore, it casts doubt upon announcements by the country's leadership regarding Kazakhstan's adherence to the principles of Rio-92.

The dominance of economic priorities is perfectly clear in the state's budget policy. A total of 3,071,109,000 tenge (\$20,934,621) was allocated for the construction of the Eurasian University in the capital of Astana alone, which is one and half times more than total expenditures for the protection and restoration of forest lands, the conservation of specially protected natural territories, protection of bioresources, the conservation and liquidation of abandoned uranium mines, and the burial of industrial wastes (*Report of the Government...*, 2002, pp. 137, 140, 141). In the budget discussions for 2003, out of numerous environmental problems adequate attention was paid only to supplying the population with safe drinking water (*Kazakhstanskaya pravda*, Nov. 30, 2002).

A clear demonstration of the absence of a systematic approach to solving environmental problems is provided by the repeated reorganizations of the Committee, and later the Ministry of Ecology, which have turned it into a third-class governmental body.

Finally, one might argue with regard to the degree to which the consequences of economic growth have enabled sustainable development to be achieved. However, there is nothing to argue about, since the only indicators of sustainable development used for Kazakhstan are those approved by the government (*Indicators...*, 2002, p. 54), while traditional macroeconomic indicators are not well suited for obtaining an objective picture.

The result of a purely formal approach to the solution of environmental problems has been an almost total loss of control over the environmental situation in the country, which is not controlled either by Parliament, by the government, or by other state bodies. The actions of various governmental structures in the sphere of natural resource use and environmental protection have been inconsistent and uncoordinated. The development of the environmental situation in Kazakhstan is determined not by a targeted environmental policy, but by the influence of spontaneous socioeconomic processes.

“Softening” of Environmental Legislation

In recent years, a consistent “softening” of environmental legislation has taken place, with the goal of speeding economic growth and eliminating the obstacles hindering the use of natural resources and the revenues received from their exploitation. Since 1997, when the chief existing environmental laws were passed, to the present, numerous amendments have been introduced, literally distorting their initial concepts. The law “On Environmental Protection” has been especially “improved”; it has been amended and supplemented six times. The law “On Specially Protected Natural Territories” has been amended three times. The law “On Land,” passed after lengthy debate in January 2001, was supplemented twice in that same year, and plans have been made to replace the new Land Code, the draft of which has already been submitted to Parliament for consideration.

As a result of such lawmaking, in the opinion of a number of specialists who have participated directly in the development of environmental legislation, at the present time numerous contradictions have arisen in the current laws, which will be extremely difficult to remove. In other words, it will be easier to prepare and pass a number of new laws, than to eliminate the contradictions created as a result of incompetent actions by state structures with regard to the interests of particular individuals.

The quality of the laws, their instability, and the “unjustified frequency of amendments introduced” are described in a message by the Constitutional Council of the Republic of Kazakhstan to Parliament in 2001 (*Address by the Constitutional Council...*, 2001, p. 9). Sixty percent of existing laws, presented for expert examination by the Academy of Sciences, were declared unsatisfactory (*Economy, Finance, Markets*, no. 16, Oct. 4, 2002).

World Bank specialists, preparing the report “Kazakhstan. Systems for Administration and Provision of Services: A Report of Diagnostic Research,” uncovered “an especially pernicious form of corruption, known as ‘lobbying for legislation,’ that has influenced the preparation of laws and resolutions” (*Kazakhstan. Systems for Administration...*, 2002, p. XVI).

It should be noted that in passing laws and introducing amendments and additions, procedural violations have taken place. This was demonstrated particularly flagrantly in consideration of the new Forest Code. State environmental expertise of the project was performed for form’s sake, to the extent that the Parliament turned to a non-governmental organization with a request that additional public environmental expertise be performed. However, judging from the reaction of a number of parliamentary deputies, the formal conducting of various forms of expertise for draft laws or its complete absence is a standard practice, which alarms nobody.

In implementing state economic policy, it is not surprising that the function of Parliament in the area of rational natural resource use and environmental protection is not defined in current environmental legislation. Lawmakers have not the slightest doubt that Parliament’s role is thereby minimized, which runs counter to the authority invested in it by the law “On the National Security of the Republic of Kazakhstan” (Article 10)*.

In 2000, an attempt was made to remove from Article 5 of the 1997 law “On Environmental Protection” a point regarding the right of citizens to an environment favorable for their life and health, motivated by the absence of a analogous right in Kazakhstan’s Constitution. The authors of the amendments were not bothered in the least that Kazakhstan had signed the 1992 Rio-de-Janeiro Declaration on the Environment and Development and the 1998 Aarhus Convention, which proclaim this right. Nor were they disturbed that, according to the Constitution, “International treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when the application of an international treaty shall require the promulgation of a law” (Article 4, point 3). Fortunately, the amendments were not passed, and Article 5, in which Kazakhstani lawmakers can take pride, was preserved in its previous form.

However, the attempt in question is indicative in and of itself as an action aimed at limiting citizens' right of access to natural resources. It is well known that restricting access to natural resources for the mass of the population enables a small part of society to possess unlimited access to natural riches.

Finally, the poor observance of the laws is worth mentioning. This can be explained by the poor quality of many laws, the arbitrary rule of local executive authorities (*akims*—mayors or governors—Ed.), an overall atmosphere of contempt for the law, legal nihilism, and other causes. At the same time, it should be noted that violations of the law are noticeable at virtually all levels of state power.

Destruction of the Economic Mechanisms for Rational Use of Natural Resources and Environmental Protection

The economic mechanisms for stimulating the rational use of natural resources and environmental protection, which had only begun to form in independent Kazakhstan, have also become a victim of economic growth. The destruction of the economic mechanism for rational resource use has become especially visible in the period from 1997 to 2002, as it had become an obstacle on the path to carving up the country's resources and intensifying their exploitation.

The economic mechanism for rational resource use cannot work effectively when the owners of natural resources and their rights are not clearly defined, authority over property is not clearly divided between state bodies, defense of property rights are not guaranteed, and the right of the country's citizens of access to natural resources belonging to the nation as a whole is not observed.

However, unclear ownership rights over natural resources enable the ruling elite to more easily earn money, and are the reason for the endless battle for division of these resources. The nation's mineral wealth is under the control of the ruling elite; therefore, its distribution takes place in relatively hidden form (Olcott, 2002, pp. 264-267). At the same time, a fierce battle is underway for possession of other resources, such as land and timber.

One of the main forms by which property is divided is through privatization, carried out through the artificial depreciation of state property and the creation of the image that state enterprises are non-sustainable. The methods and results of privatization in Kazakhstan have been repeatedly criticized. However, the situation has remained substantially unchanged, as the opinion of the European Bank for Reconstruction and Development (EBRD) shows. EBRD has described the Kazakhstani government's privatization policies as "unclear," and noted the large-scale involvement of officials in private business (*Panorama*, Nov. 29, 2002).

Transnational corporations (TNCs) have also taken active part in the division of natural resources and revenues from their exploitation, making use of the unclear property rights. They have also done their part in the collapse of the economic mechanisms for rational resource use, although for the sake of objectivity it must be noted that in and of themselves their enterprises cause less damage to the environment than domestic firms.

First, a well-known example is the secret production-sharing agreements that enable the companies to capture not only their profits, but part of the rent due the owners of the natural resources in question. The press has repeatedly raised the question of the lowered prices by which foreign extraction companies export their raw materials (*Panorama*, Sept. 2, 2000; *Delovaya nedelya*, Feb. 11, 2000). In addition, in the opinion of Kazakhstani and Russian specialists, some companies—the oil firms, for instance—lower the real volume of their extraction by 15-25%.

Second, several years ago amortization privileges were introduced for resource-extracting companies (Code of the Republic of Kazakhstan “On Taxes...”, Article 110). Currently, the government is under fire in the mass media for proposing yet another project with Tengizchevroil, using amortization benefits (*Panorama*, Nov. 1, 2002). In the first years of independence, accelerated amortization of “primary productive conservation funds” and “accelerated amortization of environmental objects” were introduced in accordance with the law of the Kazakh SSR “On Environmental Protection in the Kazakh SSR” (Article 32, point 1) with the goal of “stimulating rational use of natural resources and protection of the environment.” Today we see another picture: accelerated amortization has become an instrument for intensifying the exploitation of natural resources.

Third, TNCs, to put it mildly, have behaved scornfully toward observing Kazakhstan’s environmental legislation. For example, in 2000 Chevron pressured the government to lower its payments for polluting the atmosphere. Not long ago, the Atyrau Regional Court found Tengizchevroil guilty of violating environmental norms for storing sulfur, and fined the company 11 billion tenge (*Panorama*, Dec. 6, 2002). The aforementioned actions by TNCs under the ceaseless carving up of natural resources not only do not help to bring the economic mechanisms for rational resource use to life; on the contrary, they act directly counter to them.

It will be extremely difficult to stand against such tendencies, as the state budget receives significant revenues from foreign resource-extracting companies. Tengizchevroil alone, for instance, paid more than \$500 million to the state budget in 2001.

Another vivid example of the destruction of the economic mechanism for rational resource use is the liquidation of environmental protection funds. Since the beginning of the 1990s, with the collapse of the economy and state budget deficits, the money allocated to environmental protection funds has increasingly drawn the attention of government executive bodies. By making use of the executive branch's strengthened powers, lessened accountability and factual impunity, local authorities have begun to use the money from such funds for a variety of expenditures. This was made possible by the imperfect mechanism for accumulating money in these funds, which were collected by local authorities and only then transferred to the funds themselves. By the end of the '90s, the misuse of revenues designated for environmental protection had become a normal phenomenon. On June 4, 2001, amendments were passed to the 1997 law "On Environmental Protection" that eliminated the funds; payments began to flow directly to the state budget.

In a similar fashion, when the new Tax Code was passed in 2001, the statute regarding payments for the conservation and restoration of natural resources was re-examined, and these payments were eliminated. Thus, the financing of environmental measures became dependent on the distribution of state budget funds.

Other methods for stimulating environmental protection activities in Kazakhstan are virtually unused. In 1995, only four years after the law "On Environmental Protection in the Kazakh SSR" had been passed, the law's most radical statute, Article 32, which defined methods for stimulating environmental protection, was removed by presidential decree. In particular, point 2, aimed at implementing the "polluter pays" principle, was removed: "Loss of budget revenues due to the introduction of tax privileges (for enterprises manufacturing environmental protection equipment, monitoring devices, environmentally clean production, etc.—Ed.) should be compensated through the indirect taxation of enterprises engaged in environmentally hazardous production or using environmentally hazardous technology."

In the new law "On Environmental Protection" of 1997, stimulating rational use of natural resources is mentioned in only the most general terms: "Economic stimulation of environmental protection will be carried out using an environmentally oriented policy of subsidies to legal entities engaged in resource use who effectively protect the environment, and by other means of a stimulatory nature" (Article 31, point 1).

There are no plans to use the money in the National Fund, created in 2000, for environmental protection or prevention of environmental disasters or the liquidation of their consequences, in spite of the fact that the National Fund was formed primarily on the basis of the exploitation of natural

resources, specifically the funds allocated by twelve major resource-extracting companies.

One of the chief results of the destruction of the mechanisms for rational resource use is the transformation of firms' internal costs into external ones, which places an additional burden on the state and society. Firms do not take responsibility for many forms of environmental destruction and pollution—the production and provision of products and services of poor environmental quality, for example. The firms can easily ignore environmental norms, although such norms are mandatory throughout the territory of Kazakhstan. Local authorities, whose interests coincide with those of the firms, are often involved in deviations from environmental norms. However, there is nothing at all surprising in this, as such practices agree fully with the policy of “economic growth at any cost.”

Yet another possible factor opposing the rational use of natural resources is the planned transfer of agricultural land to private ownership. According to the current ideas of our mid-level businessmen regarding private land ownership, which differ little from those of English yeomen in the middle of the 17th century, land will become an object of money-making and speculation. The land's fertility, which grows less with every year, will be undermined still further. Furthermore, the practice of assuming private land ownership that has appeared in Kazakhstan, ignoring the laws almost completely, has already become a tool for arbitrary rule, allowing the concentration of wealth in the hands of the ruling elite, making access by the mass of the population to natural resources more difficult, and significantly worsening their material conditions (Berentaev).

The State of the Environment

The government's economic policy is directly reflected in the state of Kazakhstan's environment, which may be characterized as extremely difficult.

Environmental pollution, following a significant decrease at the beginning of the 1990s, caused by the economic collapse, began to rise again in the mid-'90s, and according to a number of indicators has exceeded that recorded in the USSR (Slazhneva et al., 2001). In this regard, Kazakhstan's cities in particular have suffered, as have the mountainous regions, forests, and bodies of water adjacent to them.

Pollution of the soil continues. Private land ownership has been partially instituted, and at the present time the privatization of agricultural land is planned. However, to date, no state policy for the rational use or conservation of land has been developed or passed, and state property has not been divided between authorities at different levels. The Ministry of

Agriculture “assured deputies” that a land cadastre was finally ready only in December 2002 (*Kazakhstanskaya pravda*, Dec. 11, 2002).

A number of specialists believe that privatization of land in the absence of a unified policy will lead to the exhaustion of soils, a drop in fertility, the transfer of a significant portion of agriculture lands to fallow status, a worsening of the quality of agricultural production, pollution of land, and accelerated erosion and desertification (see *Kazakhstanskaya pravda*, Dec. 14, 2002; *Private Land...*, 2002).

An extremely difficult situation has emerged with regard to Kazakhstan’s forests, which play a vital role in soil conservation, water conservation, and climate formation, and occupy only 4.2% of the republic’s territory. Over the last several years, massive logging has been noted in virtually all regions of the country, as well as the burning of forest land for further illegal use and the seizure of forested territories. The worsening state of the forests is accompanied by a total dismantling of the nation’s forestry system. According to Government Resolution No. 1239 of November 22, 2002, state agencies for forest conservation and protection of animal life will be made the property of regional executive bodies, despite numerous protests on the part of specialists and the public. In turn, local authorities are not against inviting foreign timber firms for joint logging activities (see www.greensalvation.org>; Decision of the Akim...). These change in Kazakhstan’s forestry system have taken place chaotically, as the country has no forestry policy or even a long-term state program that corresponds to the “Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests” adopted in 1992 in Rio-de-Janeiro.

The uncontrolled cutting of its forests has worsened the water regime in Kazakhstan. The powerful impact of intensive logging in lowering the annual flow of the Bukhtarmy River was noted as early as 1989. “The lowering of the mean annual flow of the Bukhtarmy River to 18 cub. m/sec. signifies a loss of 567 million cubic meters for this river alone, which causes tangible harm to the economy” (*Report on the Basis...*, 1989, p. 35). The overall loss of water resources throughout the country as a result of logging has already caused tangible harm, which the nations’ leaders should take into account no less than China’s proposed diversion of water from the Ili and Irtysh rivers (*Panorama*, Nov. 12, 2002). Such an attitude toward our forests, in a country suffering from insufficient water resources and land degradation in arid and semi-arid regions, arouses bewilderment at the very least.

The uncontrolled use of Kazakhstan's biological resources continues as well. One of the most flagrant examples is the use of endangered species for hunting, sale abroad, and so forth. For instance, in the last five years more than a thousand Saker falcons exported from Kazakhstan have been sold on the black markets of the Arab countries (<www.gazeta.kz>, Nov. 21, 2002).

The destruction of unique natural monuments, including sites eligible for inclusion on the World Heritage List, has not ceased. On the outskirts of Almaty, one of the national parks included in the preliminary list of the Convention for Protection of the World Cultural and Natural Heritage has been subjected to severe pollution (Seversky, 2000, p.151). The park's ecological system is being destroyed; its territory is being steadily reduced to enable the construction of prestigious homes and cottages. The aforementioned actions are inspired not by economic expediency, but by the ambitions of Kazakhstan's ruling elite.

In the summer of 2001, yet another environmental problem was added to those already existing in Kazakhstan. The national atomic energy company Kazatomprom proposed a change in the fundamental principles of state atomic energy policy. Company representatives are working actively with members of Parliament and the government to pass amendments that would "correct" policy and remove the ban on the burial of foreign radioactive waste on Kazakhstan's territory.

The Republic of Kazakhstan's fulfillment of the international obligations that it has taken on by its ratification of environmental conventions leaves much to be desired. Its unsatisfactory fulfillment of the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (the Aarhus Convention) has aroused particular alarm. Fulfillment of the Convention had been reduced to a plethora of conferences, seminars, and meetings. In practice, the massive violations of constitutional human rights has been acknowledged even by the Constitutional Council of the Republic of Kazakhstan: "Roughly half of court rulings on civil affairs are "hanging," unfulfilled, which leads to a violation of the constitutional and human right to legal defense..." (*Address by the Constitutional Council...*, 2001, p. 7).

Public access to decision-making is reduced at best to authorized bodies listening to the opinions of the population, while in practice paying them no heed. Parliamentarians bear no accountability to those who elected them; to date, no procedure exists for Parliament to work with the public.

Access to information remains restricted as well. At times, requested information cannot be obtained even through the courts.

Conclusion

The government's focus on economic growth has led to numerous socioeconomic problems, requiring careful study. However, even a brief analysis of the current situation makes clear its full depth and seriousness.

1. Kazakhstan's natural resources are no longer seen as "the material basis for its sovereignty," as they have in fact become the material basis for the prosperity of the ruling elite and the strengthening of a bureaucratic state that has even officially set itself apart from its own people. The state has removed itself from the solution of environmental problems. The establishment covers itself with excuses about the economic difficulties of the transition period and the shortage of finances.

2. The people have been virtually deprived of their right of ownership of the nation's natural resources, and of access to them. Increasing revenues from the extraction of oil and other fossil fuels have not improved the well-being of the majority of Kazakhstanis. Even that insignificant part of the resources and benefits that still fall into the hands of simple workers through the right to private property are not protected from all manner of infringement on the part of officials and entrepreneurs.

3. The observance and defense of human rights go poorly in Kazakhstan with the policy of economic growth. Massive human right violations are determined in large measure by economic causes, above all, by the battle for possession of natural resources, for their redistribution, and by the quest to place the environmental costs on the shoulders of ordinary taxpayers. In other words, human rights violations have become a market category; they are profitable! Only in the last year, in connection with numerous international scandals revealing the machinations carried out with oil money, the government's secret accounts abroad, and other violations, has the establishment begun to make desperate attempts to improve its image.

4. Kazakhstan's economy has become blatantly oriented toward the extraction of raw materials. The pseudo-market economic model predominant in the country may be defined as market extremism. In this model, people and the environment are merely tools for the achievement of economic growth. The concept of sustainable development serves as an ideological screen, hiding the true state of affairs.

5. Economic growth in the republic is accompanied by growing corruption (*Toward a Society Without Corruption*, no. 4(12), Aug. 2002).

6. The growing environmental strains have become one of the most important causes of increasing social tensions.

7. Environmental protection agencies carry out the will of the ruling elite without complaint. As a result, they have lost all trust on the part of the population.

8. Under conditions of market extremism, foreign assistance in the sphere of rational use of natural resources and environmental protection fails to bring the desired results, and appears as an ineffective waste of time and resources.

9. Over the last ten years, such previously unknown social phenomena as unemployment, poverty, severe economic stratification, illiteracy, and growing illness have become constant companions in our lives. Poverty and destruction of the environment go hand in hand. If in 1990 Kazakhstan occupied 37th place in the world in its standard to living, by 1999 it appeared in 113th place.

The true price paid by the people of Kazakhstan for macroeconomic stabilization bears its own specific name: it is ecocide.

Notes

* According to the law in question, one of the principles for guaranteeing national security is “the unity, interrelation, and balance of all forms of national security” (Article 3, point3). Environmental security is defined by the law as “the state of protection of vitally important interests and the rights of individuals, society and the state against threats arising as a result of anthropogenic and other impacts on the environment” (Articles 1 and 21).

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SUSTAINABLE AGRICULTURE

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Sustainable development is a topic of interest to many people: agricultural producers, scientists, and political actors. Beyond a doubt, this is one of the most important problems of modern civilization, putting forth the cardinal question: “To be, or not to be?” Experts dealing with the problem suggest that sustainable development cannot be achieved without fundamental changes in the roots of our thinking, a re-examination of ethical values and moral foundations, and a more critical attitude toward our religious beliefs (Harremoes, 1996). The path to sustainable development lies in sustainable agriculture. This is the only self-sufficient area of human activity. In order to pursue business, science, and politics, smelt steel or extract oil, people must have enough to eat. The need for sufficient nutrition can be met only by balanced and sustainable agriculture. The great actors of world science—K.A. Timiryazev, V.V. Dokuchaev, V.I. Vernadsky, and N.I. Vavilov—in addressing fundamental environmental problems, suggested that the basis of economy and social life lies in agriculture. The main productive labor is the labor of the peasant. The peasantry is the sole productive class, since the conceptual basis for their labor is the transformation of unlimited solar energy into the primary production of cultivated crops and fodder, and the secondary production of livestock. It is this class that does not thoughtlessly rob future generations, greedily draining the Earth’s resources to the point of utter exhaustion; it does not live on single-use products that clutter the Earth and destroy the natural environment.

It is on the peasantry, their hard work, morals, and professional preparation, that the state of the biosphere and the renewability of the resources of the planet that feeds us depend.

At the royal colloquium “The Baltic Sea Countries: Agriculture and Sustainability,” the king of Sweden, Carl XVI Gustav, noted that the farmer is not only a producer of food, but also a manager, a steward of a valuable natural resource. This natural resource is the soil, which we can no longer continue to use improperly. In hindsight, it is clear that numerous problems have been created by barbaric and thoughtless land use. Without the conducting of sustainable agriculture, sustainable development is impossible (The 1996 Royal Colloquium, 1997).

The crisis in Kazakhstan’s agrarian sector, beginning from the time of its entry onto the path of a market economy, has, of course, made it necessary to seek a way out of this dead end—to search for analogies and to analyze the successes and failures of other states. Critical periods and crises exist in the history of every people. It is important to emerge from the situation with honor, not letting matters lead to environmental and social collapse, without humiliating national achievements by accepting foreign aid, grants from the IMF, or the advice of any (dubious) foreign experts. Critical consideration of one’s own experience and that overseas, of errors, miscalculations, achievements, and successes—this is the only true path.

In rural Finland, people have battled for 25 years from their villages, in order to preserve them in the face of market development, which has literally swept people into the city in search of a better life, and even beyond the country’s borders (Pietila, 1997). This all began in the middle of the 1960s. People were drawn from Finnish villages in large numbers. From 1961 to 1975, roughly 500,000 peasants moved to the cities, and almost 200,000 emigrated to Sweden in search of a “better life” and high wages. The authorities, concerned with economic growth, took no measures to support the Finnish countryside. People understood that they could rely no longer on their irresponsible government, and that they needed to take matters into their own hands. The first movement in this direction was the establishment of village committees on the west coast of Finland at the beginning of the 1970s. By 1980, there were around a thousand such committees, and five years later another thousand had been added. Since that time, the movement has grown rapidly. Currently, some 3,000 village committees exist. The number of people actively participating in the daily organizational work totals around 30,000. Their work has already had a significant impact on the lives of at least half a million people in rural

Finland, constituting the largest popular movement in Finland today. Of course, there have also been many difficulties. One of the most obvious lies in the fact that the committees have almost no money. However, this obstacle has been overcome by highly motivated work and the recruitment of qualified agrarian specialists. They are inspired by the Finnish tradition of collective labor, called *talkoot*. People have devoted thousands of unpaid voluntary labor, in order to achieve the goals they have set for themselves. *Talkoot* has ensured the construction of roads, athletic fields, and boat stations, in order to make the villages attractive. Traditional culture has begun to be revived, and old festivals and celebrations have been renewed. This had shown people how important—*psychologically* important—it is for them to know about their past, about village life and traditions, and by following that path, to create a real social identity. The most important thing is that all this has been done without help from the authorities. On the contrary, the authorities have frequently sought to show that all this is useless and unnecessary, because it fails to contribute to economic growth. The Finnish village movement is a clearly expressed reaction against the tendency to see progress only in monetary and material form, and to bring it about through industrialization and commercialism. The people of the countryside are fighting for a more harmonious form of progress, which takes into account the right of people to choose their own lifestyle, to live in small communities, close to their roots, in a clean and natural environment.

The wave of economic development in India arrived a bit later. At the beginning of the 1980s, residents of northeastern Rajasthan became involved in a process presented throughout the world as an inevitable part of economic progress. The environmental and social consequences of such “progress” proved to be extremely destructive. As a result of unsystematic and disorderly mine workings, as well as the cutting of forests by contracts obtained through payments and bribery, a once flourishing region with fertile soils was transformed into a desert. The Greater Ruperail River, the beauty and pride of Rajasthan, dried up. Rivers teeming with fish, which had flowed peacefully and freely year-round, became dry only a few days after the end of the plentiful monsoon rains. The bare soil, hardened under the burning rays of the sun, held no moisture at all. Springs and wells disappeared. Villages emptied one after another. Migration to the city became the main route for young people, who filled the urban slums; the elderly turned to alcohol (Goldsmith, 1998).

Everything changed when a small non-governmental organization, Tarun Bharat Saugh (TBS), proposed and carried out a project, the returns

of which are incalculable. The organization's headquarters were located in a region marked on the government lists as the "Dark Zone." In 1986, TBS helped peasants to construct the first of eleven traditional *johads*, used already by their distant ancestors. Johads are small, semicircular ponds, constructed from local materials and painstakingly fitted to the local relief. Their purpose is to retain and preserve atmospheric moisture to the degree that rain falls, serve as a reserve for groundwater, and support a sufficient level of water in local wells. The effect became visible immediately: a four- to tenfold increase in the productivity of corn, wheat, and mustard was noted. By 1996, more than a million trees had been planted in the region. Painstaking and careful protection of the forests prevented summer droughts and floods during the period of the monsoon. The consequences were immense, not only for the improved environmental situation, but for the restoration of the villages' social structure and the awareness of the dignity and goals in life of the entire community. For the first time in many years, liquor stores and shops began to lose revenue and close down. Migration to the city in search of menial labor and dubious wages ceased to be a problem.

Of course, there is some truth to the sayings that "what's done cannot be undone," "there's no way back," and "history doesn't reverse itself." However, a return to historical roots, when modern principles have proven their absurdity and fatality, is absolutely crucial.

Modern civilization is such that there are developed countries, and less developed ones, which are called "developing." These are, for the most part, peoples who were freed at some point from the colonial yoke. Why have they not become developed, however, even though they have long considered themselves to be independent and sovereign? Colonization may have formally ended, but the global market insistently pulls developing countries, including the republics of the former Soviet Union, into intellectual and spiritual enslavement, spread through the imperial path of dependence on the World Trade Organization, the International Monetary Fund, and various transnational corporations. This has made colonialism the reality of the modern world, and there are no examples in which a developing country has become a developed one. Experts studying this question note that colonized peoples have a choice of three paths: to become "good subjects," accepting all of the delights of the modern West without unnecessary questions; to become "bad subjects," always ready for mutiny, viewing the new colonizers with revulsion; or to become "non-subjects," not accepting at all that which is called "the modern West," and by which the West binds the entire world.

The unique example of “non-subjects” includes the native inhabitants of the Peruvian Andes (Appfel-Marglin, 1997). The non-governmental organization PRATEC (Projecto Andino de Tecnological Campesinas), organized in 1987 by scientists and government officials remaining in state service, devoted itself to studying the lifestyle, worldview, and traditional technologies of the Andes. PRATEC noted that the peasants have lived in the Andes for more than 10,000 years, and possess resources and dynamism that enable them to preserve themselves, their way of life, and their clean, beneficial environment. Today, the native inhabitants of the Andes have fully recovered from the demographic collapse that followed the *conquista*, and in fact constitute a majority of the Peruvian population. With the loud failure of the greater part of the Peruvian government’s development programs, the experience of many centuries in dealing with the Earth has spread spontaneously throughout the Andes. From an environmental and biospheric point of view, preserving the purity of the nature of the Andes is extremely important—preservation of full richness and diversity of plant life and agricultural crops. It is enough to say that some 3,500 strains of potatoes, a tremendous range of medicinal plants (1,500 types of cinchona trees [from which quinine is derived]), and a great diversity of other useful plants are known here. [Russian biologist] N.I. Vavilov considered Peru to be one of the world’s centers for the origin of cultivated crops, and it remains such a center. Other centers of origin for crops, such as Ethiopia and Afghanistan, have long since lost their natural wealth, and famine has become a constant companion. Indonesia, one of the centers that gave the world rice cultivation, has lost more than 1,500 types and strains of rice (Vandemann, 1998).

The grandiose Earth Summits of 1972, 1992, and 2002 are testimony to the fact that, in stepping into the 21st century, society has begun to become aware of its own tremendous potential for self-organization. Non-governmental organizations are the current in which society is seeking the path to natural sustainable development. This is fundamentally different from the clumsy, violent forms of organization into which various political parties have attempted to pull human society. One the important factors distinguishing environmental movements for political ones is the search for alternatives to economic growth. The majority of the world’s political leaders, both in the poorly developed South and the industrial North, suggest that continuing industrial expansion is needed if we wish to overcome hunger and raise people’s standard of living. For environmentalists, this is a dangerous myth. The maniacal quest for economic growth may lead to an economic catastrophe (Tokar, 1987; Brown, 1992).

From the first Earth Summit in 1972 to the recent meeting in September 2002, fundamental changes have taken place in the world. With the fall of the “Evil Empire,” as our homeland was called, the world has become no better. This means that not everything in our history was wrong. On the contrary, much has been learned from us, including collective, communal ownership of the earth. One can imagine the pride of American farmers, who by uniting have succeeded in returning to life streams that dried up 40 years ago, making it a full-bodied river once more (*Our American ...*, 1987). After all, it took considerable effort to breach the barrier of the psychology of private property. What do we need to raise such barriers for? We have so many dried-up streams! The world develops, it improves, it seeks the way to sustainable development, and we increasingly reconcile ourselves to the idea of the sale of land, like used clothing, tirelessly repeating, “That’s the way it’s done in civilized countries.” The idea of “second-hand,” together with the countless numbers of stores selling used clothing by its weight, have, unnoticed, become our ideology, our mentality. Why waste money on science? We’ll copy everything from the “civilized” West.

People, the Earth, and humanity’s relationship with the earth—these are the deciding factors in sustainable development, sustainable agriculture, and the rebirth of the *aul* [village]. Until the peasantry believes in its own strength, becomes aware of its own significance, acquires pride, and takes its fate into its own hands, the *aul* will not be reborn. No Agrarian Party, no other party, no good intentions or plans by the government will help.

Throughout the world, the attitude of people toward the land is changing from one of private property, of consumption, from the Abrahamic concept (the patriarch Abraham knew perfectly well what the land existed for—to give forth milk and honey into his—Abraham’s—mouth), toward a broader understanding of land as a community, a union. This has occurred, in large measure, thanks to the great American naturalist Aldo Leopold. His book *A Sand County Almanac* is no less famous in our country than in its homeland. The “land ethic” is not just a form of literature; it is a concrete term, used in scientific literature from biology to jurisprudence. Leopold’s ideas have not only been embraced mentally; they are already being implemented in the most highly developed countries. And only the nations of the Third World and the republics of the former Soviet Union, where the itch from the recent criminal privatization and fantastic enrichment of a small group of people at the cost of the property of the people as a whole has not yet subsided, bind themselves stubbornly and inseparably to private property and the sale of land, seeing in it their one source of income. One reflection of the fact that the laws on private land ownership in developed

countries is being rethought is Eric Freyfogle's article "Ethics, Community, and Private Land" (Freyfogle, 1996). The author notes that despite the increasing development of ethics and ecology, despite the fact that we know more now about the relationship of humanity to the land than ever before in our history, our laws on private property remain our most archaic. The greater part of the blame here rests with the legislators and those who comment on the laws—those who until recently have not paid attention to the most burning and urgent question of environmental well-being. If they had been more vigilant, they would have caught this wisdom decades earlier. They would also have noticed that this new understanding forced them to adopt a broader concept of land—not as a thing, a product, real estate, but as a community of people, of the land, of all living things, including the current generation and the generations to come. And then the awareness of the fact that we cannot be absolute owners of the land, that we merely rent it for the span of our lifetimes in order to pass it on to the next generation, would have come entirely naturally. Then would come the awareness of our responsibility before the future generations. Responsibility signifies care, and this is our one source of hope.

The fact that Kazakhstan's land is ill, and requires careful attention, is known not only in Kazakhstan. The entire world has heard about our environmental problems—the Aral Sea, Lake Balkhash, the Semipalatinsk nuclear test site, and the Caspian Sea region. A total of 179.9 million hectares, or 66% of the nation's territory, suffers from land degradation and desertification. These numbers figure constantly in the reports of government officials. But what can be done to solve the problem? The National Plan to Combat Desertification, put forward by the Academy of Sciences, hangs in the air. Since 1995, the debate over the need to pass a law for the sale of land has not ceased, nor has the unanimous silence regarding the law for soil conservation. It is as if these problems do not exist at all.

Judging by the actions of our officials, problems that are priorities throughout the world seem not to concern Kazakhstan. In a UNESCO report, Herman Verstappen (Verstappen, 1996) notes that land degradation is inseparably tied to the degradation of society. Erosion, desertification, and other forms of soil degradation go hand in hand with economic collapse, falling food production, a worsening environmental situation, and a decrease in people's health. The social context of soil degradation is extremely alarming and ominous. Above all, it is necessary to develop and carry out a global plan to combat desertification, in accordance with Agenda 21, adopted at the Earth Summit in 1992. Rehabilitating the soil is not an end unto itself, but a necessary condition for the well-being of humanity.

In calling attention to property laws regarding land and actual land ownership, it is necessary to educate people, and to nourish initiatives based on communal land ownership.

If we want the rebirth of the *aul*, if we want sustainable development for Kazakhstan for the endless line of coming generations, without excesses, cataclysms, or catastrophes, we must fundamentally change our relationship with the land. A new generation will grow, to whom we will provide an example of a consuming and barbaric, or a caring attitude toward the earth. No flourishing state can be built on dead, infertile soil.

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“TELEPHONE LAW” IS ALIVE AND WELL

The Mechanism for Violation of Human Rights
from the Example of the Gornyi Gigant district and MVD settlement,
city of Almaty, the Republic of Kazakhstan

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More than two years ago, with the goal of providing a stable supply of electrical power to consumers in the southern zone of the city of Almaty, the municipal authorities gave permission to the closed joint-stock company Almaty Power Consolidated (referred to below by its Russian abbreviation, APC) for the design and construction of a high-voltage surface power line with a voltage of 110 kV (kilovolts). The line was planned to run through the territory of the residential district of Gornyi Gigant (“Mountain Giant”).

The design and construction of 110-kV power lines is regulated by the “Rules for Protection of Electrical Power Grids with a Voltage Higher Than 1000 Volts,” No. 1436 (referred to below as the Rules), which were confirmed by a resolution of the government of the Republic of Kazakhstan on October 10, 1997.

The Rules clearly state that “the laying of the path of surface and underground lines through residential territory of urban and rural settlement

must be guided by the requirements set forth in points 7.8-7.13 of the Construction Norms and Rules-89 of July 2, 2001 (below, CNR 7.02.01-89) on ‘Urban Construction: Planning and Construction in Urban and Rural Settlements’.”

CNR 7.02.01-89, in the section “Electrical, Heating, Cooling, and Gas Supply, Communications, Radio Transmission, and Television” (points 7.8 and 7.9), states that “surface lines for electrical power transmission **with a voltage of 110 kV and higher must be located outside the boundaries of residential territory.**” Analogous requirements are set forth in the CNR of the Republic of Kazakhstan (RK) B.2.2-1-96 (points 7.14 and 7.18) on “Planning and Construction of Districts of Individual Residential Housing.”

The Rules “are applicable to all **current, planned and under construction** high-voltage networks of the Republic of Kazakhstan **and their fulfillment is mandatory on its territory** for all legal and physical persons, land users, and landowners.” However, the Almaty city authorities have “preferred” to give permission for the construction of a surface line, rather than rebuilding the existing line or laying a new underground cable, which is permitted even in a residential zone.

The inhabitants of the aforementioned neighborhoods, dissatisfied with the city authorities’ illegal decision, stood in defense of their own interests. More than two years of legal proceedings, including participation by the Supreme Court; direct appeals to the President of Kazakhstan, deputies of Parliament, and city deputies; support for residents from local human rights and environmental non-governmental organizations (NGOs); and finally, an appeal for help from the Almaty center of the Organization for Security and Cooperation in Europe (OSCE) and from Transparency International in Almaty—these are the main stages in the fight for observance of citizens’ right to life and a healthy environment, against the illegal construction.

How did a completely ordinary situation spread beyond the boundaries of a neighborhood and attract the attention of the national and international public? The development of events can be followed in the materials from various state agencies, collected by residents over a two-year period.

A CHRONICLE OF EVENTS

Actions by the City Administration

On **November 15, 2001**, the *akim* (mayor) of the city of Almaty, Victor Khrapunov, approved the selection and agreement of a plot of land for the construction of a 110-kV surface power line along Nurlybaev, Ivanilov, and Azerbaev Streets in the district of Gornyi Gigant. Representatives of the Department of Architecture and Urban Construction, the Department

of Ecology and Bioresources, the City Sanitary-Epidemiological Center (below, CSEC), and several other municipal departments gave their agreement with this document, thus acknowledging it to be legally in force.

These officials made their decision in violation of the norms mentioned above, which are mandatory for all physical and legal persons on the territory of the Republic of Kazakhstan.

On **January 19, 2001**, the mayor of Almaty passed an official resolution regarding the construction of the 100-kV power line.

The local authorities possess considerable experience in violating environmental legislation. Under their “sympathetic” leadership, in the last ten years alone more than 200 gas stations have been constructed in flagrant violation of official norms; massive tree-cuttings have taken place along a number of city streets, in Almaty’s Gorky Park, and in the Baum Grove; and the Medeu Nature Park has been illegally established and illegal fees demanded for entering its territory. Many other “environmental” events have been held as well.

It is possible that things would have gone as smoothly this time, if local residents had been more agreeable. However, they did not wish to serve as guinea pigs for the local authorities’ experiment. On **June 8, 2001**, I.N. Bendzya, on behalf of the local residents, filed a suit in the City Court requesting that the mayor’s resolution be reversed, and the power line’s construction prohibited. The resident’s determined protests attracted the attention of deputies in Parliament, who on **August 3, 2001**, appealed to the prime minister with a request to clarify the situation. In this way, what had been a local conflict emerged on the national level.

On **September 6, 2001**, the mayor of Almaty, in a letter to Prime Minister Kasymzhomart Tokaev, indicated that “a number of technical and economic reasons” made it impossible to restore the underground power cable, which was frankly untrue. Therefore, Mayor Khrapunov wrote, “I made the decision on January 19, 2001, regarding the construction, in place of the damaged underground line, of a surface 110-kV line.”

In the same letter, it was indicated that the project fully corresponded with the “Rules for Protection of Electrical Power Grids with a Voltage Higher Than 1000 Volts” and the “Rules for Establishment of Electrical Stations (PUE-96), part II, point 2.5, “Laying of Power Lines in Populated Areas.” Citation of the latter point was inappropriate, as the Gornyi Gigant district and the Ministry of Internal Affairs (MVD) settlement are classified not as “populated,” but as “built-up” zones, where the laying of such power lines is not permitted. The letter kept quiet about the requirements of CNR 7.02.01-89 on “Urban Construction: Planning and Construction in Urban

and Rural Settlements,” and said nothing about the requirements of CNR RK B.2.2-1-96 on “Planning and Construction of Districts of Individual Residential Housing.” According to these norms, a 110-kV line must be located outside the zone of residential buildings.

The mayor’s letter also noted that “the project includes the conclusions of State Environmental Expertise No. 3-4-6-568 from April 3, 2001 (see below regarding this expertise—Ed.) regarding correspondence with the requirements of current legislation on environmental protection and agreement with the Sanitary-Epidemiological Department of the city of Almaty.”

In this fashion, the mayor deliberately made a decision violating the indicated regulations, thereby violating the citizens’ right to a healthy environment. Nevertheless, he reported to the prime minister that he had acted within the boundaries of the law.

The mayor’s actions clearly contradict Article 31 of the Constitution of Kazakhstan, which states that “Officials shall be held accountable for the concealment of facts and circumstances endangering the life and health of the people in accordance with law.” Only an official who is unafraid of being called to account for violation of the Constitution could act in such a fashion.

The Opinion of Medical Experts

On November 30, 2001, an unforeseen obstacle arose regarding the construction of the 110-kV power line. The Kazakh Republican Sanitary-Epidemiological Station (KRSES), in the conclusions of its sanitary-epidemiological expertise regarding the power line project, indicated that the project had been developed “without the agreement of the sanitary service of the city of Almaty.” “The project is not presented in full; the act authorizing the selection and agreement of the plot of land for the design and construction of the object within the city of Almaty, confirmed by the mayor of the city, was not presented, not were the conclusions regarding the allocation of land for construction, No. F-310\u (a special document required in such cases—Ed.).

“The path of the power line runs across the land of the city of Almaty in close conditions, in a zone of residential construction along Murlybaev, Ivanilov, and Azerbaev Streets, through the territory of a sports complex, and along Zharketskaya and Taimanov Streets.”

Although the given expertise does not mention the CSRs prohibiting the construction of 110-kV lines in residential areas, the KRSES nevertheless did not agree with the project.

On November 9, 2001, the Bostandyksky District Court made an inquiry to the KRSES regarding the impact of the power line on people’s health;

on **December 3, 2001**, they received the conclusions of the service's experts, which proved to be not very clear. The report stated: **"Since a sanitary zone for the 110-kV line is absent, but a protective zone is stipulated, regulated by the required safety norms for the energy industry, in order that the 110-kV line does not create an electromagnetic field at a level higher than that permitted on the territory of residential buildings, the requirements of the "Rules for Establishment of Electrical Stations" must be observed."**

On **December 13, 2001**, the City Sanitary-Epidemiological Department (CSED) of Almaty, an entire year late, issued a positive "Conclusion on the allocation of Land for Construction" (form no. 310\0u). However, no one was bothered by such procedural delicacies. The conclusion, in particular, stated that, first, the power line **"does not affect** the environment or hygienic living conditions of the population"; and, second, "the 110-kV line passes at a distance of 4 meters from residential housing."

In this fashion, the leadership of the CSED clearly understood that they were required to justify the mayor's actions. It was necessary to remain silent about the requirements of CNR 2.07.01-89 and CNR RK B.2.2-1-96, according to which the power line should pass outside the residential zone. Now the mayor's actions were reinforced by all of the necessary documents.

However, the residents doubted the objectivity of the CSED's conclusions. At their request, a deputy of the Almaty City Maslikhat (council) appealed to the Scientific Center of Hygiene and Epidemiology of the Kazakhstani Ministry of Health for an explanation of the dangers of a 110-kV to people's health. On **February 25, 2002**, specialists from the Center prepared a report noting that "the project for the construction of the 110-kV high-voltage power line was completed in flagrant violation of the legislation of the Republic of Kazakhstan," and that **"the protest by residents against the construction of the 110-kV surface power line in the Gornyi Gigant district... is entirely justified with regard to protecting the health of the population** residing on the given district's territory."

On **April 10, 2002**, specialists from the National Center for Labor Hygiene and Professional Illnesses, at the request of district residents, prepared an expert evaluation. Their report stated clearly that the requirements of a number of CNRs had been violated, and therefore the specialists believed that "the concern of the population living in the Gornyi Gigant district of the city of Almaty with regard to the construction of the 110-kV power line are entirely justified..."

However, the opinion of authoritative commissions from the two scientific centers clearly contradicted the intentions of the city authorities and the management of APC.

By order of the Bostandysky District Court, KRSES specialists compiled a second sanitary-epidemiological report. Within the framework of the report, by application to and with the agreement of APC, the level of the electromagnetic field was measured instrumentally. Citing the measurements taken, which, in the opinion of APC's management, were in accordance with Sanitary Procedural Norm No. 3.01.036-97, APC appealed to the KRSES on **June 17, 2002**, with a request to "give a positive conclusion" regarding the construction project. The fact that the electrical field exceeded the limits in three cases during the measurements was not taken into account.

Ignoring the aforementioned CNRs and Article 35 of the law "On Environmental Protection," which clearly states that "exceeding the established norms for environmental quality or replacing them with temporary or lowered norms is prohibited," on **June 21, 2002**, the KRSES gave its consent to the project.

The Opinion of Builders and Energy Experts

Construction and energy experts were significantly less restrained in their opinions than the medical experts.

On **April 27, 2001**, the deputy director the southern branch of Gosekspertiz, a state-owned company under the Kazakhstani Committee on Construction, prepared a governmental inter-agency report.

The report's conclusion states that "the 110-kV power line presents no danger to the environment, as it does not pollute the air, ground, or water..."

Protection of the population against the impact of the electrical field of such a power line, in accordance with the requirements of the Rules for Establishment of Electrical Stations and the Rules for Protection of High-Voltage Networks, as well as the 'Sanitary Norms and Rules for Protection of the Population Against Industrial-Frequency Alternating Current,' is not required, nor is the establishment of a sanitary protective zone." "With account taken of the corrections made, the working project for the high-voltage 110-kV line from the Gornyi Gigant 220-kv substation to the Samal substation is **recommended for approval.**"

The **Committee for State Energy Inspection** attempted weakly to resist, but then swiftly surrendered its position. On **May 28, 2001**, the Committee suggested that the Energiya Institute and APC "replan the 110-kV surface line to bypass the Gornyi Gigant settlement," which, in the Committee's opinion, "would correspond to the 'Rules for Protection of Electrical Networks With a Voltage Exceeding 1000 Volts.'"

However, on **August 10, 2001**, the Committee's opinion had already become less clear. "Paying attention to the arguments put forth by you (APC—Ed.) in letters No. 001-1893 of June 15 and 002-2569 of August 9,

the Committee for State Energy Inspection will permit the construction of the line of electrical transmission to the Samal substation in the manner established, with observance of current legislation and normative legal acts.”

On **September 21, 2001**, the Committee announced that the Department for Inspection of the Legality of the Activities of State Bodies of the General Prosecutor’s Office of the Republic of Kazakhstan had adopted a decision stating that “control over the observance of norms and rules in the construction of the 110-kV power line has been assigned by the Committee to its Southern Regional Department (city of Almaty).”

The latter two documents are worthy of special attention. The Committee permitted the power line’s constructions in the established manner and **under the conditions of existing legislation**. The actions of the Southern Regional Department, assigned to monitor the observance of norms and rules in the line’s construction, were predictable. On July 4, 2002, public hearings were held, to which, in violation of existing legislation, the residents living on the streets where the construction was taking place were not invited. At the hearings, the head of the Southern Regional Department openly defended his client’s [APC’s] interests.

It should be specially noted that neither the Committee for State Energy Inspection, nor its Southern Regional Department even mentioned the need for an examination to be conducted by energy experts (Government Resolution No. 1065, July 26, 1999). Thus, the Committee’s documents, as well as those of a number of other organizations, justified the actions of the local executive bodies.

State Environmental Expertise

The entire history of the actions by the Ministry of Natural Resources and Environmental Protection (below, MNREP) should be specially noted. (On August 28, 2002, the MNREP was reorganized into the Ministry for Environmental Protection, or MEP).

On **April 3, 2001**, the Almaty City Territorial Department for Environmental Protection (below, the ACTDEP) issued the conclusions of its State Environmental Expertise, which stated that the project for the power line’s construction corresponded to the requirements of existing legislation on environmental protection. At the end of the year, as a result of action by the public, parliamentary deputies, and scientists, the situation changed somewhat, and the MNREP became involved.

On **December 24, 2001**, the MNREP reported in a letter to the head of the General Department of the Presidential Administration, M.Kh. Zhakypov, that the ministry “has studied the question of declaring the conclusions of state expertise from April 3, 2001, No. 3-4-6-568, on the

indicated project to be invalid.” The letter stated that in conducting state environmental expertise on the project, Article 15 of the law “On Environmental Expertise” has been violated: “the project was accepted for expertise without the results of an account of public opinion.” It is this report by experts that the mayor cites in his reply to the prime minister on September 6. An ordinary procedural mix-up?

However, the ministry failed to see any violations of construction norms and rules in the conclusions of state expertise from April 3 (No. 3-4-6-568).

In spite of this, the Almaty City Department of Environmental Protection continued to insist on having its own way. On **February 14, 2002**, it sent a reply to an inquiry by the Medeu District Court, where local residents had filed a suit to declare the conclusions of state environmental expertise from April 3 invalid. The department’s reply stated that “the plaintiff’s case is unfounded and does not correspond to reality.” “The document introduced above (the results of the expertise—Ed.) was compiled legally, with account taken for the requirements of the norms of environmental legislation.”

However, on **January 22, 2002**, under pressure from the public and parliamentary deputies T.U.Syzykov and T.G.Kvyatkovskaya, the Almaty City Department of Environmental Protection, on orders from the MNREP’s Committee for Environmental Protection, was forced to conduct a second round of expertise.

The compilers of the second report displayed great inventiveness, in order to stand by the mayor’s position and leave local residents without the slightest hope for a favorable outcome. Here are only a few excerpts from the experts’ conclusions:

“As a result of complaints by residents of the Gornyi Gigant settlement, at the request of APC in the presence of plaintiff I.N.Bendzya and personal representative R.Dzhumalieva, the Kazakh Republic Sanitary-Epidemiological Station conducted instrumental measurements (31 measurements) of the tension of an industrial-frequency electromagnetic field on the territory of residential housing located near a functioning 110-kV power line, to evaluate the electromagnetic situation on an analogous inhabited territory (8 addresses)... The measurements conducted testified that the tension of the electrical field was significantly lower than the norms (below 1.0 kV/m) regulated by point 3.1 of Sanitary Procedural Norms of the RK 3.01.036-97, ‘Protection of the Population From the Impact of Electrical Fields Created by High-Voltage Alternating-Current Electrical Transmission Lines of Industrial Frequency.’ The measurements were conducted at a height of 1.8 m, in accordance with the requirements of

Methodological Indicators 3.05.037-97, both in direct proximity to homes and fences, and at a distance of 4 m from the projection of the outer line (conclusion No. 41-2/11-3908, November 29, 2001).”

“110-kV surface lines present no threat to the environment in their use; they do not pollute the air, the ground, or the soil. Environmental damage during construction is kept to a minimum.”

“On the basis of a letter of guarantee from the client (No. 001-4342, December 19, 2001), the protective zone has been reduced, and limited to the shoulders of existing streets, as permitted in the PUE.” However, this condition does not apply to built-up areas, such as the Gornyi Gigant district or the MVD settlement.

“In accordance with CNR RK A.2.2.-1-96, “Instructions on the Order of Development, Agreement, Confirmation, and Composition of Project Documentation on the Construction of Enterprises, Buildings, and Structures,” Appendix A, discussions with the public regarding an object’s construction have the status of recommendations.”

“The results of public opinion are not presented [here], in light of the absence of a sublegal act in the form of an ‘Order’ confirmed by the Committee for Environmental Protection. However, to the application regarding the environmental consequences is attached a protocol from a joint meeting of representatives of the residents of the Gornyi Gigant settlement with the administration of the Medeu District and representatives of inspection bodies.” According to the law “On Environmental Protection” (Article 15), **public** hearings should have been held, not a joint meeting.

“On the basis of the aforementioned, and guided by the fact that nowhere in legislation is it indicated that, in the case of negative public opinion, state environmental expertise lacks the right to issue (form) a positive conclusion regarding the subject of expertise,” the ACTDEP once again gave its consent to the section “Protection of the Natural Environment” of the working project for the power line’s construction.

On **May 15, 2002**, the MNREP’s Committee for Environmental Protection sent a letter to the ACTDEP in connection with an inquiry by parliamentary deputy G.Kaymov and a collective letter by the residents of Gornyi Gigant. The letter stated that “the Department of State Environmental Expertise, having examined the conclusions of the second round of environmental expertise by the Almaty City Territorial Department of Environmental Protection from January 22, 2002, No. 3-8-144, in the section “Protection of the Natural Environment” of the working project “110-kV Electrical Transmission Line from the Gornyi Gigant 220-kV Substation to the Samal Substation (Transfer of Subterranean to Surface

Line)” note that in violation of Article 15 of the law of the Republic of Kazakhstan “On Environmental Expertise,” the expertise was conducted **without taking public opinion into account.**”

On the basis of Article 17 of the law “On Environmental Expertise,” the MNREP’s Committee for Environmental Protection rescinded the conclusions of the ACTDEP’s expertise “until all of the circumstances connected to the complaints of the local population have been made clear.”

On **June 24, 2002**, the MNREP informed the deputy of its decision, stating “that some disputed points remain regarding the evaluation of the influence of the [given] objects on the sanitary-epidemiological situation and the health of the population.”

Taking into account “the significant negative public resonance on the part of the population living in the given district,” the ACTDEP was ordered, together with the Sanitary-Epidemiological Service, to “hold additional public hearings on the given project to clarify all problematic questions.” The final decision was postponed until the results of the public hearings had been received.

The leadership of the Committee for Environmental Protection was ordered to travel to Almaty to acquaint themselves with the construction site.

On **July 4, 2002**, at “the **initiative** of the Committees for Public Local Government and the **residents** of Gornyi Gigant,” and under the chairmanship of the deputy administrator of the Medeu district (!), the “**final**” public hearings were hastily organized. At the hearings, the decision was made that “taking into account the interests of the various groups of the population, the construction of the 110-kV power line in the settlement of Gornyi Gigant...is the sole correct decision for supplying the southeastern part of the city of Almaty with electrical energy.” Residents living on the streets in question, where construction of the power line was already in full swing, were not even invited to the hearings; **they were successfully replaced by the residents of other streets**, and the decision was adopted.

On **August 6, 2002**, the MNREP, having received the materials from the given hearings, “annulled the order to halt the actions of state environmental expertise from January 22, 2002.” The final obstacle had been evaded, and now neither the CNRs, not the laws, nor international conventions, nor human rights could obstruct the successful completion of the power line’s construction. By the end of October, the line had been installed.

Actions by Legal Bodies and the Public Prosecutor’s Office

On **June 8, 2001**, I.N.Bendzya filed a suit with the City Court on behalf of local residents, calling for the mayor’s decision to be reversed and the power line’s construction prohibited.

On **June 25, 2001**, the City Court refused to satisfy the demands of Bendzya's suit.

However, on **September 18, 2001**, the Supreme Court, after considering an appeal from the plaintiff on behalf of the residents, annulled the decision of the City Court and sent the case back to the Bostandyksky District Court to be considered anew. In its statement, the Supreme Court indicated that "the court's conclusions cannot be called well-founded; they do not stem from the materials of the case." The Supreme Court also stated that "in its new examination of the case, the court should...verify the correspondence of the project for construction of the power line with existing normative acts regulating such [projects]...[and] clarify whether the rights and interests, protected by law, of the residents of the Gornyi Gigant district, have been violated."

On **January 19, 2002**, L.I.Yegorova, on behalf of the local residents, filed a new (second) suit at the Medeu District Court. The residents called for the mayor's decision regarding the allocation of land for the power line's construction to be declared invalid. However, at APC's request, the case was transferred to the Bostandyksky District Court.

On **February 5, 2002**, the judge of the Bostandyksky District Court to whom the Supreme Court's resolution regarding new consideration of the (first) case had been sent, issued a decision in favor of APC, silently bypassing the Supreme Court's requirements.

An appeal by residents to the City Court brought no results. On **April 12, 2002**, the City Court left the district court's decision in force.

On **May 8, 2002**, the General Prosecutor's Office of the republic halted the decision of the Bostandyksky District Court from **February 5** and began an inspection of the case.

However, on **May 23, 2002**, the General Prosecutor's Office, without any explanation, suddenly reversed its resolution halting the district court's decision.

On **June 1, 2002**, a judge, after considering the second suit, halted the power line's construction, as the residents had requested. However, the City Court swiftly annulled his resolution and removed the judge from the case.

On **September 13, 2002**, the Bostandyksky District Court resolved to "refuse to satisfy the demands of the suit" by the residents I.N.Bendzya of the Gornyi Gigant district and L.I.Yegorova of the MVD settlement with regard to all of their suits (first and second), including:

- Declaring the Resolution No. 3/328-343 of the Mayor of Almaty on December 14, 2001 providing land for free and temporary use to APC in the Medeu District to be invalid;

- Declaring the act authorizing the selection and agreement of a plot of land for the planning and construction of the power line to be invalid;
- Declaring the conclusions of State Environmental Expertise No. 3-4-6-568 from April 3, 2001, to be invalid and illegal;
- Declaring Conclusion No. 7-27/2001 of the Southern Branch of the state company Gosekspertiz to be invalid;
- Declaring the actions of the Military Institute, which permitted the construction of the power line on the institute's territory, to be illegal;
- Compensation for moral losses to the sum of 50,000,000 tenge [approximately \$333,000 US];
- and other demands.

On **September 18, 2002**, the KRSES created a commission including representatives of all of the city's services. The commission's goal was to provide an answer to an inquiry by parliamentary deputy S.A.Abdildin regarding the situation that had formed in connection with the power line's construction. Knowing about the court's September 13 decision, the commission's members prepared a reply fully justifying APC's actions, and even accusing the local residents of illegally seizing land along the streets where the construction was taking place. The circle closed: on the basis of this dishonest document, the court's decision was made, and then, citing the court's decision, a final reply was prepared.

On **October 14, 2002**, the residents received a reply from the chairman of the Supreme Court's Collegium for Civil Affairs, S.I.Raimbaev, with regard to their appeal of the Bostandyksky District Court's ruling of **February 5** and the City Court's ruling of **April 12**. The document stated, "In this manner, at the present time specially authorized bodies have finally determined that the **construction of the power line** (it is unclear why the construction, and not the use—Ed.) will not harm the lives or health of the Gornyi Gigant district, and clarified the issue under dispute.

In connection with the given circumstances, the re-examination of the appealed court ruling, on the basis of the formal grounds given in the appeal, was not found to be possible."

On **November 22, 2002**, the collegium of the City Court, after considering the residents' appeal against the ruling of the Bostandyksky District Court from **September 13**, refused to satisfy the suit's demands.

CONCLUSION

On **October 28, 2002**, a representative of the Organization for Security and Cooperation in Europe (OSCE) visited the power line's construction site. On **November 15, 2002**, information regarding the situation in Gornyi

Gigant and the MVD settlement was presented to participants at a conference held by Transparency International. The conflict has thus drawn the attention of international organizations.

Why has this case, seemingly ordinary at first glance, acquired such resonance? Thanks to the residents' persistence in defending their interests, thanks to the public and deputies in Parliament, light has been cast on a typical scenario and typical mechanism for the violation of human rights in Kazakhstan, and the means for restricting the public's action to decision-making, as well as citizen's access to legal recourse.

Events have followed a similar scenario in the construction of numerous gas stations in the city of Almaty and throughout the country, in the construction of ash pit No.3 by the Thermo-Electric Power Plant in Ust-Kamenogorsk, and in the creation of the Medeu Nature Park in Almaty. These are only a few cases for which information has reached the public at large.

In all of the instances listed, the mechanism for violating human rights acts according to the following scheme:

1. Economic decisions, as before, are made without participation by the public. At best, the opinion of local residents is listened to; at worst, it is simply ignored. Public hearings are formally held, often in the absence of the residents whose interests are directly affected. In cases where the population succeeds in organizing itself and hearings involving all interested person are successfully held, the results of the hearings are kept quiet or altered. Various forms of pressure are used against residents, beginning with bribery and ending with beatings and prosecution for their resistance to the authorities.

2. Not only is the opinion of residents ignored, but also the opinions of scientists, specialists, expert reports by specialized and scientific organizations, and the results of public expertise. Moreover, in the case of Gornyi Gigant, a representative of the ACTDEP accused one scientist, an employee of the Scientific Center for Hygiene and Epidemiology, who defended the residents' interests, of "calling for anarchy and disorder."

3. The rules and norms regulating economic and other activities are increasing **looked upon as not mandatory**. More and more, they are arbitrarily interpreted in favor of a wealthy client, creating a threat to people's lives, damaging their health and property, and harming the natural environment. At the same time, the right to private property and the right of inviolability of one's home, as before, remain rights only on paper.

4. The agencies that ought to take responsibility for protection of the environment and the sanitary well-being of the population almost entirely obedient to local government authorities, upon whom they directly depend. It might be said that they fulfill the orders of their informal masters.

5. In this manner, local executive authorities can determine the court's ruling in advance, having received the corresponding expertise and other documents.

6. Judges, in making their rulings, rely on official documents, not even attempting to cast doubt on their objectivity. It is not even worth mentioning that the judges frequently are subjected to pressure on the part of the authorities.

Unsurprisingly, a World Bank survey of public opinion regarding the population's trust for the judicial system in Kazakhstan demonstrated a lack of trust toward the courts on the part of a majority of those surveyed; in fact, the courts were named the most corrupt bodies in the government (*Kazakhstan. Systems of Administration and Provision of Services: a Report of Diagnostic Research*. World Bank, 2002, p. 31).

7. As in the USSR, sublegal acts and resolutions cancel the effects of higher-level legal acts. The direct impact of the laws is practically paralyzed.

8. The constitutional rights of citizens are completely ignored (see Appendix).

9. The resolutions and principles of international conventions signed and ratified by the Republic of Kazakhstan, particularly the Aarhus Convention, are completely ignored.

All of the facts described above constitute, if not direct, than at least circumstantial evidence that the tradition of "telephone law" inherited from the USSR has been preserved, as well as the absence of openness in decision-making, corruption, and massive violation of the human right to an environment favorable for life and health. The current system for violating human rights is reinforced by the extremely low effectiveness with which existing legislation is enforced.

In order to end such practices, which have reached threatening levels, the efforts of state structures, the population, and the public abroad are not enough. Active assistance should be provided by the international community.

First, any decisions by international organizations, states, or commercial structures regarding the provisions of loans, investment, or aid should be made taking into account how human rights in Kazakhstan are observed. Otherwise, such assistance should be provided in kind directly to needy groups of the population.

Second, the international community should help the Kazakhstani public to secure direct access to international organizations that can provide real aid in defending human rights.

Third, the international community should demand that Kazakhstan fulfill the international obligations accepted by the republic.

APPENDIX

Violation of Citizens' Constitutional Rights

As a result of the actions of the local authorities of the city of Almaty regarding the construction of the 110-kV power line in the Gornyi Gigant district and the MVD settlement, the following constitutional rights of citizens of the Republic of Kazakhstan were violated:

Constitution of the Republic of Kazakhstan, August 30, 1995 (amended October 7, 1998).

Article 1.

1. The Republic of Kazakhstan proclaims itself a democratic, secular, legal and social state whose highest values are **the individual, his life, rights and freedoms.**

Article 6.

1. The Republic of Kazakhstan shall recognize and by the same token protect state and **private property.**

Article 12.

1. **Human rights and freedoms** in the Republic of Kazakhstan **shall be recognized and guaranteed** in accordance with this Constitution.

2. Human **rights and freedoms** shall belong to everyone by virtue of birth, **be recognized as absolute and inalienable**, and define the contents and implementation of laws and other regulatory legal acts.

Article 14.

1. **Everyone shall be equal before the law and court.**

2. No one shall be subject to any discrimination for reasons of origin, **social, property status**, occupation, sex, race, nationality, language, attitude towards religion, convictions, **place of residence** or any other circumstances.

Article 15.

1. Everyone shall have the **right to life.**

Article 17.

1. **A person's dignity shall be inviolable.**

2. No one must be subject to torture, violence or other treatment and punishment that is cruel or **humiliating to human dignity.**

Article 29.

1. Citizens of the Republic of Kazakhstan shall have the **right to protection of health.**

Article 31.

1. The state shall set an objective to protect the environment **favorable for the life and health of the person.**

2. Officials shall be held accountable for the concealment of **facts** and circumstances **endangering the life and health of the people** in accordance with law.



Anti-Nuclear Campaign

**GREEN
SALVATION
HERALD**

LEGACY OF THE NUCLEAR AGE

Received 10 October 2002

In August 2002 the Ecological Society Green Salvation and the Eremurus Environmental Club produced the film “Legacy of the Nuclear Age.” The film deals both with Kazakhstan’s own nuclear legacy, and with a new threat that has appeared: an initiative by members of Parliament and the state nuclear energy company Kazatomprom to import foreign nuclear waste to Kazakhstan for storage and burial. The proposal has already sparked a campaign by Kazakhstani NGOs to oppose it.

The members of Green Salvation made the decision to publish the text of “Legacy” in the *Herald 2002* because we feel that this issue is one that Western readers will find both interesting and enlightening. The film provides a view of the nuclear waste issue from a corner of the world that remains little known to many.

In particular, we wish to appeal to our colleagues overseas—Western NGOs that deal with nuclear issues in their own countries. After all, these problems are two sides of the same coin: if Kazatomprom’s plans to import nuclear waste from abroad are carried out, Kazakhstan’s chief customers will be the nations of the developing world: Japan, France, Great Britain, and the United States. In order to combat such plans, we need to unite all of our forces—both at the source of such waste, and at its final destination.

“Legacy of the Nuclear Age” is available in Kazakh, Russian, and English. Copies of the film may be ordered from the coordinators of the Anti-Nuclear Campaign:

Kaisha Atakhanova—Eco-Center, Karaganda.

Tel.: 7 (3212) 562922, <kaisha@nursat.kz>.

Gulsum Kakimzhanova—IRIS Regional Public Association, Semipalatinsk.

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TEXT

In the year 2000, public opinion in Russia was stirred to action by an initiative from the Ministry of Atomic Energy, or Minatom.

The Ministry proposed that environmental legislation be amended to allow the import of spent nuclear fuel from other countries onto the territory of Russia for further processing.

In spite of active opposition from the public, in spite of the fact that 80% of those surveyed were categorically against importing spent nuclear fuel, in spite of the fact that some two and a half million signatures were collected in support of a Russia-wide environmental referendum, no such referendum was held, and in 2001 the amendments were passed.

Following in the footsteps of Russia's Minatom, in the summer of 2001 in Kazakhstan the national atomic energy company Kazatomprom spoke in favor of amending environmental legislation to remove the ban on the import and burial of foreign radioactive waste on Kazakhstan's territory.

Thus, the public of both countries stand face-to-face with a new and challenging environmental problem.

The optimism during the second half of the twentieth century regarding the wide use of atomic energy has gradually faded away. The industry allegedly giving the world the cheapest and environmentally cleanest form of energy in fact produces the most dangerous wastes in the history of human development—radioactive waste.

Vladimir Sliviyak

International environmental organization "Ekozashchita!" (Ecodefense!)

"A very unfortunate situation has arisen, and not only in comparatively poor countries; it exists in rich ones as well. It's a common problem—the problem of dealing with and utilizing radioactive waste. In the second half of the twentieth century, a huge amount of low, mid, and high-level radioactive waste has been produced. And now the moment has come when humanity needs to isolate these wastes effectively, and develop effective technology, so that the radiation doesn't enter the environment or harm people. Unfortunately, the enormous, insane volumes of radioactive waste that have accumulated throughout the world today are our payment for the arms race, for the creation of nuclear weapons, for the use of atomic energy. When they were all invented, people had other goals—no one was interested in what to do with radioactive waste and, in general, nobody thought that it would appear in large quantities."

According to official data, beginning in the 1950s, more than 237 million tonnes of radioactive wastes have accumulated in Kazakhstan, presenting a danger both to humans and to the environment as a whole.

However, “the radioactive wastes that have accumulated in the republic are not limited only to the byproducts of uranium mining and processing enterprises.” At the beginning of 2001, more than 39,000 sources of ionizing radiation requiring burial were registered, belonging to 342 enterprises and organizations.

In 2001, the government of Kazakhstan admitted that despite the passage of resolutions aimed at improving the situation with regard to radiation, and the corresponding laws, “work on recovering mining and tailing sites is not being carried out. Radioactive wastes are accumulating.”

In the opinion of the head of Kazatomprom, Mr. Dzhakishev, the chief obstacle to solving this problem is the lack of financing. He asserts that lifting the ban on the import and burial of radioactive waste from other countries on the territory of Kazakhstan will enable the country to earn 30 to 40 billion dollars over the next 30 years. Part of these funds could be used for the burial of Kazakhstan’s own nuclear waste.

At first glance, the idea looks enticing. However ...

Aleksei Yablokov

Center for Environmental Policy of Russia

“Kazakhstan’s misfortune is our misfortune as well, since we are neighbors. What happens to us concerns you, and what happens to you concerns us too, after all. My commentary will be very short. For a start—it’s stupidity.”

Viktor Inyushin

Doctor of biology, professor at Al-Farabi Kazakh State University

“I was truly amazed when Parliament so optimistically discussed how wonderful it would be for us to import large quantities of radioactive waste, even low and mid-level ones, and how we’ll all live much better because of this. We were already under enough stress from nuclear testing; we’re already under enough stress about our own uranium mines.”

Gulsum Kakimzhanova

Regional Public Association IRIS, Kazakhstan

“In my view, the initiators of this project probably haven’t paid attention to the moral and ethical side of the given question, but it exists—both visibly and invisibly. Our republic bears the heavy burden of forty years of nuclear testing at the Semipalatinsk test site, and our organization knows many specific people, many specific victims—these

are children, these are young people as well—and we see all this every day."

Valery Menshchikov

Center for Environmental Policy of Russia

"In general, of course, this will be a unique precedent for a normal, major country. I have great respect for Kazakhstan and consider it to be a truly civilized and normal country, but it will set a precedent. For the first time, a country of this rank will accept wastes onto its territory. Well—it's probably not necessary to offend African and other developing countries, but somehow it reminds me of when firms sent dangerous toxic wastes there in barrels—it was on the level of a deal with some corrupt African government. I wouldn't want to draw even a close analogy, but nevertheless, it will be a very dangerous precedent, from my point of view, destroying, in general, even respect toward your country, creating an outright negative attitude on the part of the rest of the civilized world toward your country."

Mels Eleusizov

Environmental Union of Associations and Enterprises of Kazakhstan
"Tabighat" (Nature)

"It's a criminal undertaking—that's how I see it, and there's no other way to see it. In general, these people are not thinking at all about their country's future, or about the people who will live here. They simply want to make money, and I don't see anything else in it."

Obviously, lifting the ban on the import and burial of foreign radioactive wastes on Kazakhstan's territory raises a number of legal, economic, technical, and, finally, moral problems.

In 1997, Kazakhstan proclaimed the main principles for state policy regarding the use of atomic energy, one of which was the prohibition of the import and burial of waste from other states on the territory of Kazakhstan.

Only four years had passed when in 2001 officials at Kazatomprom proposed not only amending the laws, but, in fact, rethinking government policy. What might such political flexibility lead to in another four years? Perhaps to a renewal of nuclear weapons testing?

Kaisha Atakhanova

Karaganda Ecological Center (Eco-Center), Kazakhstan

"Sufficiently strong legal grounds exist for implementing the laws on radiation safety, on the use of atomic energy, and so forth. These laws already exist. Kazatomprom, by failing to follow them, is already contradicting itself. You see? It already doesn't do what it should. They

announced that there is no state program, that the country has no money, and that means that the laws that have been passed aren't being executed. That's already a contradiction; it's already a fact. Now they say that in order to fulfill the law, they need to amend it, to change it, to weaken that law, make it a commercial one, import foreign waste, and thus fulfill that law. In other words, it's a very strange manipulation of the law."

Mels Eleusizov

Environmental Union of Associations and Enterprises of Kazakhstan
"Tabighat" (Nature)

"This is something that we can't exclude, because for us it's a normal, usual phenomenon—we can easily remake any law to suit the ruling circles, since, after all, no one there thinks about the people, and the deputies in Parliament were elected by nobody. I think that it's the fault of our entire people. There's total silence—and that's led to total lack of control."

Why, against the fundamental principle of state atomic energy policy, has Kazatomprom nevertheless proposed importing foreign radioactive waste into Kazakhstan for burial? After all, not even the poorest countries in the world have done so. And Kazakhstan has money; every year, funds are allocated from the state budget for improving the radiation situation.

Mels Eleusizov

Environmental Union of Associations and Enterprises of Kazakhstan
"Tabighat" (Nature)

"Kazakhstan is one of the wealthiest countries in the world; with such a small population, we possess all kinds of natural resources, beginning with all of the elements of the periodic table and ending with oil and everything else. We can be an absolutely self-sufficient country."

Kaisha Atakhanova

Karaganda Ecological Center (Eco-Center), Kazakhstan

"Our government's latest announcements declare that we are now a very rich country, since yet another oil deposit has been found, and so forth. We're a very rich country, and we ought to have a lot of money; how we distribute it is another question. At the same time, to call ourselves poor, impoverished—it's simply not correct. We're not a poor country."

Viktor Inyushin

Doctor of biology, professor at Al-Farabi Kazakh State University

"The main aspect is this—they mine uranium, they sell uranium. We know about this—the press has reported on it. And the United States and France manufacture fuel pellets in Ust-Kamenogorsk, at the

Ulbinsk Metallurgical Combine. That is, revenues are coming in. Why can't that money be spent to reclaim mining sites? It would be completely logical. You mined, you ruined the land; that means that you give a certain amount back."

--- TITLE ---

Resolution of the Government of the Republic of Kazakhstan
No. 1006, July 25, 2001

"On Confirmation of the Program of the Conservation of Uranium-Mining Enterprises and the Liquidation of the Consequences of Working Uranium Deposits for 2001-2002."

"The primary source of financing for all work on the conservation of inactive uranium-mining enterprises and liquidation of the consequences of working uranium deposits is the republican budget. This does not exclude, however, the possibility and the need to attract extra-budgetary funds, particularly targeted funds from uranium-mining and processing companies."

Perhaps the burial of foreign radioactive wastes really will bring significant benefits to the state, which will increase the well-being of every Kazakhstani citizen?

Here, it would be appropriate to pay attention to the experience of Russia, which has made plans to earn money from the processing of spent nuclear fuel.

Valery Menshchikov

Center for Environmental Policy of Russia

"We have precedents, in which the Russian Ministry of Atomic Energy, or Minatom, from our point of view, also made incorrect decisions, while announcing their own utterly fantastic ideas. And every time, they said that it was all for the solution of environmental problems. From the import of spent nuclear fuel, they promised the magic number of 20 billion dollars, which, starting this year, should already be flowing into Russia's state budget, Minatom's budget, and the budgets of the territories to be rehabilitated. In the near future, nothing of the kind will happen. As the Russian Minister of Atomic Energy, Mr. Rumyantsev, confirmed recently in a meeting with ecologists, in the next few years not even any contracts will be signed—there is no market, or it's blocked by competitors."

Excerpt from the tv program “Hero of the Day”:

Russian Minister of Atomic Energy Aleksandr Rumyantsev

Host: “Aleksandr Yurievich, a year ago there was also talk about fairly large revenues that the treasury might receive thanks to this law and to the import of spent nuclear fuel into Russia. What kind of figures are we talking about?”

Rumyantsev: “Certainly, there was talk about super-profits. I myself say now what I said a year ago. We pursued two goals in passing this law. The delivery of fresh nuclear fuel abroad, with the legal right to its return. And, second, the construction of atomic power stations abroad, where we will also return fuel. This will correspond to all of our country's international obligations.”

Host: “So, that means that when you say...”

Rumyantsev: “And about revenues, yes—there was talk about revenues...Well, the upper estimates by Minatom were about ten percent of the total amount of fuel. That means twenty thousand tonnes. The average price is approximately a thousand dollars a kilogram. If we multiply that, we get twenty billion dollars over the course of ten years. That's the figure that was mentioned a year ago.”

Host: “Tell me—at that time, a year ago, a great deal was said about the fact that there are many competitors for this market, that, in principle, there is a lot of money to be made—is this so?”

Rumyantsev: “It's all true. That's why, in the last year, we were unable to enter the market.”

Host: “And now?”

Rumyantsev: “And now we still can't enter it yet.”

Host: “Because...and why not?”

Rumyantsev: “Well, because we have competitors.”

Valery Menshchikov

Center for Environmental Policy of Russia

“We warned the people who deal with this situation right away that there would be no 20 billion dollars. God willing, there might be some small deliveries. But all that seemingly went unheard. Today, it's simply plain fact. That's why I can say ahead of time that it's a fantasy. Not 2 billion, not 20 billion, not 40 billion—these are just exaggerated numbers that exist somewhere in the raving heads of Kazakhstan's Minatom. Maybe it's pleasant to go to sleep with such figures. But that's not the real situation.”

Of 100 former uranium mining sites on the territory of Kazakhstan, the 13 most dangerous, urgently requiring reclamation measures, have been identified. These include:

- The tailing site of the Ulbinsk Metallurgical Factory;
 - The Kurdai deposit;
 - The Bota-Burum deposit;
 - The Manybai deposit;
- and others.

In order to picture the cost of reclaiming just one of these sites, we will take as an example the Kurdai deposit, the closest to the southern capital of Almaty. According to experts, in order to carry out thorough reclamation work to improve radiation conditions there will require 550,000 US dollars, or 79,750,000 tenge—comparable to the cost of one or two of the homes for the wealthy sprouting like mushrooms on the outskirts of Almaty.

Perhaps Kazakhstan possesses unique technology, enabling it to simply and easily solve the waste problem?

Mels Eleusizov

***Environmental Union of Associations and Enterprises of Kazakhstan
“Tabighat” (Nature)***

“We have no such technology; we haven't dealt with this problem before. Where would we have it from? We have only one major reactor in Aktau, which has already been shut down, and now we need to build a shield over it. Where would we get it? We never had this technology—it was in Russia.”

The republic has no enterprises performing the licensed burial of radioactive waste. At the present time, the only licensed enterprise for the temporary storage of radioactive waste is the Baikal-1 site in the city of Kurchatov.

Vladimir Kuznetsov

Independent expert on the safe use of atomic energy, Russia

“The problems that exist in Stepnogorsk and Ust-Kamenogorsk, including the problem of low and mid-level radioactive wastes, plus the storage of thorium monoxide (on the order of a hundred thousand tonnes) in Ust-Kamenogorsk, as well as the metallic thorium that is stored there... It's a colossal problem in and of itself. And to saddle yourself with still more problems—I don't understand it. First you need to solve the problems that exist in Kazakhstan at this stage, and only then talk about new ones—the import of radioactive wastes that the country can accommodate. Incidentally, to do that you need to have some kind of regional storage sites, which Kazakhstan doesn't have.

You need to have installations for processing the radioactive waste. There aren't any. That is, there's no personnel, no opportunities, no technology. What these people are hoping for—I just don't know."

Viktor Inyushin

Doctor of biology, professor at Al-Farabi Kazakh State University

"Who will guarantee safety—that the given storage site will be totally isolated from the point of view of the mechanical dispersal of isotopes? No one can give that kind of guarantee, because rare, but very strong seismic tremors can split any storage container. Or a meteorite strike: we've had such incidents in Kazakhstan; there are craters up to 70 km in diameter. That means they did happen millions of years ago, and there will be more—who knows? In general, no one can give such guarantees."

On of the most important technical problems, extending far beyond the borders of Kazakhstan, is the problem of transporting wastes to the burial site.

Maksim Shingarkin

Greenpeace Russia

"The export of radioactive materials is only possible through the territory of the neighboring countries. It's well known that the transporting of radioactive materials is the riskiest part of the nuclear fuel cycle. It's the weak link at which the interests of terrorist groups are directed, and it's the point at which the fate of peoples hangs on the whim of chance. Therefore, no neighboring countries can look calmly on this discussion."

Aleksei Yablokov

Center for Environmental Policy of Russia

"I think that Russia won't allow the waste to pass. Kazakhstan, after all, is surrounded by other countries. China probably won't allow it, or only if it can dump its own waste on you. Mongolia won't allow it, Uzbekistan even more so—none of the Central Asian states will let waste pass through to you. It's a big problem. You will look in the eyes of the entire world not only eccentric, but somehow—how can I put this gently?—half-witted. Forgive me, for God's sake."

Maksim Shingarkin

Greenpeace Russia

"In addition, there also exists public opinion, which the neighboring states will stir up. Let's put it this way: We will do everything possible to exclude the transport of radioactive waste across the territory of the

Russian Federation. And we will find arguments to convince the neighboring states that it cannot be done, if the final goal will be the Republic of Kazakhstan. We, our organization, Greenpeace Russia and Greenpeace International, will do everything that depends on us."

With so many unresolved legal, economic, and technical problems, the question arises: doesn't Kazatomprom's initiative contradict the national interests of the Republic of Kazakhstan?

In the 1998 law "On the National Security of the Republic of Kazakhstan," in Article 21, "Guaranteeing Environmental Security," it is stated that:

"The obligation of the corresponding state bodies and organizations, regardless of form of property, are as follows:

- protection of the environment, and the rational use and conservation of natural resources;
- prevention of the radioactive or chemical pollution, or bacteriological contamination of the country's territory;
- liquidation of the negative environmental consequences of economic or other activities."

It is entirely doubtful that the citizens of Kazakhstan and the country as a whole will receive any benefit if Kazatomprom's plans are realized. The question then arises: who *will* benefit?

Aleksei Yablokov

Center for Environmental Policy of Russia

"By analogy with Russia, I can say that these are the interests of a small group of people involved with the nuclear industry. They won't lose out, no matter what happens. As long as some small star of foreign investment is shining, there will be a nice flow of government budget allocations in order to do something, and that they're already getting something from it—that's definite."

Kaisha Atakhanova

Karaganda Ecological Center (Eco-Center), Kazakhstan

"Definitely, a certain nuclear legacy has been left to us. That includes nuclear scientists, who are now experiencing not the best of times. And it's probably possible from that standpoint to understand Kazatomprom, which is trying in this way to survive. That is, the first part is the attempt to support scientists, its own specialists, its own laboratories, and the nuclear sector as a whole, through these kinds of projects. On the other hand, it's clear that they don't have a very creative approach to earning money and creating progressive, civilized

programs that could give scientists the opportunity to develop their own ideas and concepts. The means in question, I think, is a barbaric one—to support the sector this way. Or secondly—after ten years of utter inaction—nothing has been done, there wasn't any money and won't be any money, as they promise us, and thus it's simply blackmail. Either we import waste from other countries and make money off of it, and clean everything up, or else you can stay the way you are. Then what do we need this kind of sector for?"

Mels Eleusizov

*Environmental Union of Associations and Enterprises of Kazakhstan
"Tabighat" (Nature)*

"More than 80% of the population of Kazakhstan is categorically against it. I've met with many people, and held conversations on many different levels. Even the majority of officials are categorically against it. This is a small group of thus far unknown people, who are lobbying for this idea and simply want to profit themselves from it. We have thousands of examples of this. With such terrible corruption in our country, to talk about some kind of good works, that the funds will be used properly—it's all a lie. It's an utter, impossible lie."

Vladimir Kuznetsov

Independent expert on the safe use of atomic energy, Russia

"Those people who are fighting for this... A human lifetime is incredibly short compared to the lifetime of radioactive waste. Of course, once they've gotten their share from this waste, they'll—please excuse me, I may be rude in saying this—but they'll skip the country. They could absolutely care less what happens in Kazakhstan with these radioactive wastes, because after 30 or 40 years these storage sites begin to leak, these installations will cease to exist. The Kazakhstani government will face the fact that in order for these installations to stay in working order, they'll have to pay for them. If they buy foreign installations, that means they'll have to buy foreign spare parts, and unfortunately, they won't come cheap. These people, these five people, won't be paying for these installations out of their own pocket."

Viktor Inyushin

Doctor of biology, professor at Al-Farabi Kazakh State University

"Always, when the green light is given for low and mid-level wastes, high-level wastes will follow. For that, of course, there will be a certain payment, and it might follow the line of corrupt ties."

Maksim Shingarkin

Greenpeace Russia

"The entire sector of industry will hardly receive this income. The income will be received by certain individual managers within that sector. And they will get it through clearly expressed financial ties, and that money will never show up either in the economy of Kazakhstan or in any other current economy. It will be surrender money for the sale of territory. It's black money, that doesn't bring happiness even to its owners."

Kazakhstan is a rich and beautiful country with an ancient history and a distinctive culture and traditions. The hospitable, generous, and hard-working people of Kazakhstan have the right to decide their own fate. A people's happiness cannot be bought at the cost of polluting the land of their ancestors with radioactive waste; their descendants cannot be doomed to suffer for the sake of short-term profit.

Aleksei Yablokov

Center for Environmental Policy of Russia

"The Kazakhs are a proud people; they have, if you will, a great self-confidence. It's impossible for this proud nation to accept such humiliating laws. That's my commentary."

Gulsum Kakimzhanova

Regional Public Association IRIS, Kazakhstan

"The question is a fairly complicated one, but at the same time, I don't know of any other countries that would have come up with such an initiative, because it turns out that if the given bill is passed in Kazakhstan, the inhabitants of Kazakhstan will be forced to pay for the comfortable living conditions of the populations of other countries."

Mels Eleusizov

***Environmental Union of Associations and Enterprises of Kazakhstan
"Tabighat" (Nature)***

"We say now, 'The Great Silk Road... we want people to come to us, to develop tourism...' But as soon as people on earth hear that the world's nuclear dump is located here, they'll go *around* Kazakhstan; they won't even fly over the territory of Kazakhstan."

Kaisha Atakhanova

Karaganda Ecological Center (Eco-Center), Kazakhstan

"In nature, there are no closed systems—sooner or later, the radiation will come out onto the earth's surface; sooner or later, it will

have an impact on living things. We can't say that by burying waste in the ground, we've solved the problem; it's just not true."

Maksim Shingarkin

Greenpeace Russia

"Today, two countries in the world deliver uranium to the world market for bargain-basement prices, and through these contracts support the leadership and upper management of this industry. And this creates unique conditions, under which, using the money received from uranium sales, they can buy politicians, officials, and even public opinion. This is vividly demonstrated today both in Russia and in Kazakhstan. And from this comes the short-sighted policy of transforming the territory of two great countries into international nuclear dumps. This means changing both Russian and Kazakh legislation. These are not merely links in a single chain—it's the natural merging of the interests of the nuclear agencies of the two countries, and the closing of the technological chain. Russian will reprocess spent nuclear fuel, and deliver the waste to Kazakhstan. Two peoples, the Russians and the Kazakhs, will perform the dirtiest, most dangerous work for the well-off countries—for Japan, France, Great Britain, and the United States. These are the peoples that the world's nuclear establishment has chosen for the role of cleaners for their own nuclear toilets. And nothing is left for these peoples, except to tell their own governments that this should not happen. The peoples of Russia and Kazakhstan have the right to set their own priorities and create working economies, producing high-tech products, and to save their own land from a foreign invasion of radioactive materials."

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Anti-Nuclear Campaign

**GREEN
SALVATION
HERALD**

NUCLEAR MYTHS AND LEGENDS OF A NON-NUCLEAR POWER

*By the Ecological Society Green Salvation
Almaty, Kazakhstan.*

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NUCLEAR MYTHS AND LEGENDS OF A NON-NUCLEAR POWER

We, the children of the 21st century, are not left in peace by the glory of our ancestors, who left us a rich heritage of mythology. Unfortunately, our age has no Homer to call its own. People have changed, and subjects as well. The ancient Greeks created myths to glorify their gods and their native Hellas. Modern mythmakers create them in order to absolve themselves of all responsibility and to sell off their own country more cheaply.

The myth of how Kazatomprom suddenly saw the light.

In the year 2001 A.D., Kazatomprom [Kazakhstan's state nuclear power company] had a sudden revelation: the country faced a severe problem of radioactive contamination, which had to be solved.

Evidently, Kazatomprom's bureaucrats are suffering from a loss of memory. How else can one explain the fact that they seem to have suddenly remembered this problem, while the entire country knew about it already at the beginning of the 1990s? At that time, the Cabinet of Ministers of the Republic of Kazakhstan passed Resolution No. 1103, "On Urgent Measures for Improving the Radiation Situation in the Republic of Kazakhstan," on December 31, 1992. The resolution should have served as a guide for immediate action. Instead, however, the state agencies mentioned in the resolution probably took it as a New Year's greeting—there is no other way to explain the cause of their modest silence, when the question the results of its fulfillment are raised (1).

Why were the laws "On the Use of Atomic Energy" (1997), "On Environmental Protection" (1997), and "On the Radiation Safety of the

Population” (1998) passed? Why was the 1996 government resolution “On Procedures for Maintaining a State Cadastre [List] of the Burial of Hazardous Materials, Radioactive Wastes, and Discharges of Wastewater and Minerals” on the territory of Kazakhstan adopted? Finally, why was National Action Plan for Environmental Hygiene for the Republic of Kazakhstan created in 2000, including the section “Radiation Safety of the Population”?

Moreover, in the 1998 law “On the National Security of the Republic of Kazakhstan,” in Article 21, “Guaranteeing Environmental Security,” it is stated that “the prevention of radioactive and chemical pollution and the biological contamination of the country’s territory” is “the obligation of the appropriate state bodies and organizations, regardless of the form of property, officials, or citizens involved” (2).

However, the “appropriate state body” saw the light only in 2001. It turns out that the country is in danger! In order to save it, however, Kazatomprom, rather than suggesting that the existing laws be carried out, proposed amending them.

The time has come to think: where is the real environmental threat coming from? From radioactive wastes left without sufficient attention, or from utter disregard for the country’s laws?

The myth of Kazakhstan’s fantastic poverty.

In order to earn money for to solve the problem of its own radioactive waste, Kazatomprom proposes importing and burying waste from other countries, since Kazakhstan has no money of its own!

To do this, the country’s existing legislation needs to be amended to permit the import and burial of foreign radioactive waste. The supporters of such imports believe that cleaning up Kazakhstan’s radioactive contamination will require \$1.11 billion (3).

It’s true that announcements that the country has no money are already a surprise to no one. Far more interesting was hearing a chorus of voice saying, “There *is* money!” “The country does have money,” admitted deputies, specialists, scientists, and virtually all those present at the conference “The Import and Burial of Radioactive Waste in Kazakhstan: A Dialogue Between Government and Civil Society,” on October 29-20, 2001.

The aforementioned Resolution 1103 of 1992 had already prescribed that “The State Committee on the Economy and the Ministry of Finances of the Republic of Kazakhstan, in developing their annual predictions and budget plans, will stipulate the allocation of funds to for targeted financing of environmental work on radioecology” (Point 2).

On July 25, 2001, Resolution No. 1006 of the Government of Kazakhstan, “On Confirmation of the Program for Conservation of Uranium-Mining Enterprises and Liquidating the Consequences of the Working of Uranium Deposits for 2001-2010” was issued. The resolution indicated that **“the chief source of financing for all work for the conservation of uranium-mining enterprises and liquidation of the consequences of working of uranium deposits is the state budget. This does not exclude, however, the possibility and the need to attract non-budgetary funds, particularly targeted funding from uranium-mining and processing companies.”**

Furthermore, in 2001 150 million tenge were allocated from the state budget, which constitute “100% of the stipulated annual plan,” “for the conservation and liquidation of uranium mines, as well as for the burial of man-made wastes” (4).

Finally, in 2001 the National Fund of the Republic of Kazakhstan was created, which currently contains \$1.6 billion (*Kazakhstanskaya pravda*, May 9, 2002). Why not use its money for the benefit of future generations and solve a painful problem?

All the same, Kazatomprom insists on the import and burial of waste! There argument? We need money!

Why aren't there enough funds for burying our own waste? Because they mysteriously disappear. Just like in a fairy tale, also the reason is far from magical: the shadow economy, corruption, and flat-out theft. Evidently, in Kazakhstan it's easier to import radioactive waste than to get rid corruption, which has reached alarming levels (5).

However, it should not be forgotten that there are not that many around the world who want to stain themselves with radioactive money. Even a tiny country like the Marshall Islands refused to allow the construction of a plant for processing radioactive waste from other countries, even though it has no large oil reserves, no coal, and no other mineral resources, our country's countless reserves of which are trumpeted on every street corner (Marshall Islands Journal, April 8, 1998).

The myth of Greeks bearing gifts.

Kazatomprom claims that the burial of foreign radioactive waste will bring Kazakhstan enormous revenues.

It predicts that over the course of 30 years, the burial of foreign radioactive waste could yield on the order of \$30-40 billion (*Panorama*, April 26, 2002).

Why on earth do our nuclear officials' colleagues overseas so easily refuse to take advantage of such a profitable business? Because the hopes of receiving enormous profits are entirely illusory.

Isn't this a case of Greeks bearing gifts?

Virtually all countries having a nuclear industry take care of the burial of their own radioactive wastes. At the same time, in the opinion of the authors of the *Nuclear Encyclopedia*, not one country in the world to date had buried wastes from elsewhere on its own territory (6). The world market for low- and mid-level radioactive wastes, cited by Kazatomprom and the parliamentary deputies initiating the amendments (7), simply does not exist!

However, even though the world lacks any such cases, the supporters of waste imports are easy to understand. They simply can't forget about the gift of Prometheus. They cannot stand not to capture the "glow" of radioactive waste on the investing Olympus and bring it to their own people. Only—what kind of investment reputation will be formed about a country after such an operation, and what kind of international precedent might be created? About this, unfortunately, they have not taken the time to think.

It only takes stepping onto this path even once, and the radioactive trail will last for many, many generations to come... And, as usual, the full weight of the burden will lie on the shoulders of ordinary people, not the initiators of the imports!

To date, not even the technological and economic grounds for the project have been presented for consideration by parliament, nor have the results of environmental expertise. All calculations, according to specialists, have been done hastily, literally "scribbled on someone's knee." After all, even Russia, which has high technology and the necessary staff of specialists, in the opinion of experts, cannot hope to receive \$20 billion from the reprocessing of other countries' spent nuclear fuel (8).

The myth of a miracle.

The money received as payments for the burial of waste will go toward improving Kazakhstan's socio-economic situation.

Dear readers, if you seriously think that, please let us ask you one single question. If enormous sums of money have disappeared in our country thus far, what will keep them from disappearing this time? Even the World Bank has begun to reconsider its conditions for providing aid to Kazakhstan, making them directly dependent on the implementation of political and institutional reforms and transparency in the management of oil revenues. Therefore, it has developed three possible scenarios for the provision of credit to Kazakhstan (9): first—the money will disappear as before; second—it will disappear, but not so quickly; third—it will hardly disappear at all. In the third case, evidently, it is presumed that a miracle will have occurred!

The myth of the strict observance of the law.

In order to observe the strictest possible legality in resolving the aforementioned problem, a number of parliamentary deputies have put forward a new definition of “law.”

Dura lex, sed lex—“the law is harsh, but it is the law,” the ancient Romans believed. A group of deputies—the initiators of the new amendments—have developed a new definition; the law is “a formal limitation.” This is the point of view from which they look at the articles of current laws that prohibit the import and burial of foreign radioactive waste (3). Will these “formal limitations” be removed or not? It looks as though this question is increasingly devoid of meaning, since the legal acts previously passed to guarantee the population’s radiation safety have not been fulfilled. Moreover, the people in charge prefer not even to remember them.

How far democracy has come in our country! Another step, and we will be unable to distinguish democracy from anarchy, or from arbitrary rule!

The myth of creation, or how Kazatomprom knows better than anyone else!

Kazatomprom has not even left its opponents the hope for an alternative solution to the problem of radioactive waste. Where does such lack of appeal, such self-confidence, come from? Does Kazatomprom really know the situation with radioactive waste so well? Is there really a possibility of quickly and effectively dealing not only with our own waste, but with that of others as well?

Truth does not vanish, however, and eventually it comes to light. And the remarkable fact is revealed that “there are no enterprises performing the licensed burial of radioactive waste in the republic. At the present time, the sole licensed enterprise for the temporary burial of radioactive waste (ampoule sources of ionized radiation) is the Baikal-1 site in the city of Kurchatov” (10). It turns out that Kazakhstan lacks any cadastre of contaminated territories. In the opinion of some experts, there are not even the technology and specialists necessary for dealing with waste in a civilized fashion (8).

Will it or no, the question arises: what is Kazatomprom counting on? Is it thinking about repeating the divine act of creation, bringing into being in a week or two the most advanced technology, the specialists, the necessary information, comfortable laws, and “an obedient people”?

Incidentally, dealing with the people may be easier. The head of Kazatomprom has announced that he is against holding a nationwide referendum on importing waste, since the number of informed people greatly exceeds the number of informed ones, and he does not have enough time in

his entire life to spend explaining the essence of the issue to each one (*The Globe/Vremya po...*, October 23, 2001).

Myths are one thing, but the reality may turn out to be far more prosaic. More than once already in our country, the illegal actions of certain “interested persons or agencies” have been legalized by the passage of amendments to existing legislation. In doing so, both the laws’ creators and legislators have demonstrated miraculous flexibility in finding grounds for changing the law.

Is the situation repeating itself this time? Might Kazatomprom already be pursuing some kind of operation, violating state atomic energy policy and the country’s laws? Might its efforts be aimed at legalizing these actions? Perhaps that is why our atomic agency is not hurrying to account for its actions to improve the radiation situation in Kazakhstan?

And is that the reason why its bureaucrats do not want to hear about the human right to a healthy environment, the observance of which would be a serious obstacle to the blossoming of their agency?

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8. From an interview with Vladimir Kuznetsov. Vladimir Kuznetsov is a member of an association of independent experts on the safe use of atomic energy in the Russian Federation, an expert for a number of committees of the Federal

Assembly State Duma of the Russian Federation. He is an engineer and thermal physicist, a former employee of the Chernobyl nuclear power station and former head of the inspection service for nuclear and radiation safety of the Russian Federation.

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CASPIAN REVENUE WATCH

The resource-rich states of the Caspian Basin today face the very real prospect of unprecedented revenues from the sale and transport of oil and natural gas, and from mining. Until now, most attention has focused on how these resources will enter the market, and which companies and which national interests will benefit. But if we look beyond the pipeline routes, swap deals and mining concessions, there are even more fundamental questions for these countries: Who will control these resources, and how will they be used?

The Caspian Revenue Watch, a project of the Open Society Institute, seeks to promote transparency and accountability in the management of oil and gas revenues by governments of the Caspian region. The Caspian Revenue Watch produces research on the management of oil and gas revenues, conducts advocacy, and works with local NGO's to build up their capacity for monitoring hydrocarbon revenues. With its local partners in Azerbaijan and Kazakhstan, the Caspian Revenue Watch will be publishing a report about "best practices" and "lessons learned" from relevant global models and comprehensive pictures of the State Oil Fund of the Azerbaijan Republic and the National Fund of the Republic of Kazakhstan, to be available in Russian and English in winter of 2002. This report will be followed by a series of open meetings to discuss the Caspian Revenue Watch's recommendations on how to improve government accountability in the management of natural resource wealth.

For more information about the Caspian Revenue Watch, please contact:

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PUBLISH WHAT YOU PAY UPDATE

The campaign's current focus is on two key areas: 1) specific implementation measures for revenue disclosure requirements; and 2) broadening international support for the campaign.

1. We are currently pursuing 4 specific mechanisms through which disclosure can be required:
 - Legislation covering shares, stocks, bonds and other securities issued by companies, requiring information disclosure (designed to protect investors). This legislation includes the EU "Prospectus Directive" and "Regular Reporting Directive." These are both currently under review at EU level. There may be similar opportunities in other countries, including the U.S.
 - Company law can be adapted to require additional disclosure by companies. EU and UK company law reviews are currently ongoing, and there is scope for influencing the outcomes.
 - International or national accounting rules could similarly be adapted. International Accounting Standards are also currently under review, providing an opportune time for input.
 - IFI conditionality for loans / project participation for extractives. Scope to lobby on disclosure in World Bank / other IFI meetings. IFC has already expressed public support for increased disclosure. World Bank has been proposed as a consolidation point for information, so that it can show how much a government receives overall.
2. We are currently focusing on a number of key international targets:
 - National Governments: so far, 5 countries have signed up to the UK-led Transparency Initiative: the Central African Republic, South Africa, Italy, Norway and Indonesia. **Getting others on board is the crucial next step of the Campaign and the Initiative.** Thus, we are focusing on getting further support from international NGOs who can subsequently put pressure on their own governments to push for revenue transparency.
 - IFIs: The World Bank and IMF support the increased disclosure, but need to be brought on board with our suggested implementation measures.

- Oil, Gas and Mining companies:
- BP and Shell support the concept of disclosure and have argued that a level playing field is needed (i.e., mandatory disclosure is needed), and are prepared to put peer pressure on other oil companies. Chevron-Texaco has also indicated an interest in signing up to the Blair Initiative.
- Investors: investors, especially the SRI community, are fully supportive, and we hope to get a written statement supporting the campaign.

BLAIR INITIATIVE

The Campaign has prompted the creation of a Transparency Initiative, initially UK government-led but aimed at becoming an international process. However, this is by no means perceived as the only or best solution by the Campaign, but only signifies a starting point for international policy dialogue on possible solutions.

The Initiative was launched on 2nd September at the WSSD in Johannesburg. UK Prime Minister Tony Blair announced that the UK government would lead a **multi-stakeholder process to find a solution to problems regarding revenue transparency**: <<http://www.number-10.gov.uk/output/Page5996.asp>>. The PWYP coalition warmly welcomed and is participating in the Prime Minister's initiative. UK NGO members of PWYP are members of a UK working group set up by the government, which includes government departments, companies and NGOs. The government is committed to pursuing PWYP objectives, although it is keeping an open mind about mandatory vs. voluntary solutions. **The Central African Republic, South Africa, Italy, Norway and Indonesia have also signed up to the Blair Initiative.** An international meeting will be held in London in February 2003, hosted by the UK government and aimed at gathering further support for the Initiative.

The PWYP Coalition expects to increase its own activities around this event, monitoring the Initiative's progress and working further with global civil society to ensure a framework for revenues disclosure offers maximum potential for all citizens to hold their governments accountable for the management of these resources.



ABOUT THE INTERNATIONAL BUDGET PROJECT

Mission

The International Budget Project of the Center on Budget and Policy Priorities assists civil society organizations and researchers in their efforts both to analyze budget policies and to improve budget processes and institutions. The project is especially interested in assisting with applied research that is of use in ongoing policy debates and with research on the effects of budget policies on the poor. The overarching goal of the project is to make budget systems more responsive to the needs of society and, accordingly, to make these systems more transparent and accountable to the public. The project works primarily with researchers and NGOs in developing countries or new democracies.

In Africa and Latin America, for example, the IBP collaborates with groups and researchers such as:

- Poder Ciudadano, Argentina
- Brazilian Institute for Social and Economic Analysis (IBASE), Brazil
- Public Administration Research Center (PARC), Egypt
- Integrated Social Development Centre (ISODEC), Ghana
- Centro de Investigacion y Docencia Economicas (CIDE), Mexico
- Fundar Research and Analysis Center, Mexico
- Centro de Investigacion de la Universidad del Pacifico, Peru
- Institute for Democracy in South Africa (IDASA), South Africa
- Tanzania Gender Networking Programme (TGNP), Tanzania
- Uganda Debt Network, Uganda

Contact information and further details about these and other groups can be found at: <<http://www.internationalbudget.org/groups/index.htm>>.

Activities

The IBP helps organize conferences and workshops; prepares educational materials; maintains a resource base of NGO budget work; conducts research on budget issues; facilitates the exchange of information among budget researchers and groups; provides technical assistance and training; and strives to raise the profile of applied budget work. Some highlights of our work include:

Information

- The IBP web site <www.internationalbudget.org> features the world's most comprehensive resource base on civil society budget work, including linkages to over 50 civil society organizations that engage in budget analysis and training. The web site also contains a language translation program.
- A bimonthly Newsletter <www.internationalbudget.org/resources/newsletter.htm> intended to disseminate information about the publications, projects and other initiatives undertaken by civil society organizations working with budgets around the world. As of November 2002, the newsletter was sent to almost 800 subscribers in 80 countries.
- Engaging in and supporting joint research projects, such as a methodology for measuring "Budget Transparency and Participation in the Budget Process," which has been adapted by civil society groups in 13 countries.
- Providing training and technical assistance on budget analysis and the budget process, as well as on organizational development, budget advocacy, and information communication and dissemination. Training may involve standardized courses, such as an annual introduction to budget work seminar, or may be specifically geared to an organization or context.
- Identifying and assisting NGOs in Africa, Asia, Eastern Europe, and Latin America to act as resource organizations for groups in their region. For instance, the IBP has a partnership with the Institute for Democracy in South Africa (Idasa) to support budget work in Africa.
- Organizing international conferences and seminars. The proceedings of the most recent international conference, held in India in November 2000, can be found at: <<http://www.internationalbudget.org/conference/index.htm>>.

Recent IBP publications of interest:

- **A Guide to Budget Work for NGOs (2001)**
<<http://www.internationalbudget.org/resources/guide/index.htm>>
This guide is a comprehensive description of the basic principles of applied budget work, with links to many examples of best practices throughout the world and useful references. The guide is available on the IBP web site, in hard copy, and on CD-ROM.
- **Can civil society add value to the budget process? (2001)**
<<http://www.internationalbudget.org/resources/library/civilsociety.pdf>>
A review of civil society budget work around the world and a framework for the assessment of their impact on national budgeting.

- **A Taste of Success. Examples of the Budget Work of NGOs (2000)**
<<http://www.internationalbudget.org/resources/success.pdf>>
A compilation of a dozen case studies from Croatia, India, Israel, Kenya, Mexico, Russia, South Africa, and Tanzania, illustrating successful civil society experiences in conducting budget analysis, training, and advocacy.
- **Transparency and Participation in the Budget Process in South Africa (2000)**
<<http://www.internationalbudget.org/resources/library/transparencyfinal.pdf>>.
This paper measures budget transparency and participation in the budget process in South Africa. It served as a pilot report to test a survey methodology that the IBP developed together with Idasa, and has now been adapted in several countries.

IBP Staff

The full-time staff of the International Budget Project consists of project director Warren Krafchik and program associate Rocio Campos. Joel Friedman and Isaac Shapiro, the founder of the IBP, are senior fellows at the Center who work part-time for the IBP. The project also draws on other Center staff—such as the Center’s deputy director, Iris Lav; its legislative director, Ellen Nissenbaum; and its deputy director of communications, Michelle Bazie—for help with particular aspects of the project. For more information on the staff go to:

<<http://www.internationalbudget.org/about/staff.htm>>.

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Information

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HIVOS

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Mission statement

Hivos is convinced that poverty is a consequence of unequal opportunities and an unfair distribution of knowledge, power, production and income – on a global scale and within national states. Our world can only be a sustainable and fair place to live if more people have access to the resources and the decision-making processes that determine their future. Nowadays, the information revolution offers us new ways of achieving this. Access for all is a motto that succinctly expresses the ideology and policy of Hivos.

Hivos, the Humanistic Institute for Development Cooperation, wants to increase opportunities for people in the South and give them greater scope to develop themselves. Local organisations and community groups can play a key role in this. They support groups of citizens who defend their own interests and who fight for human rights and democratisation. Such groups build the foundations on which the structure of society is erected.

Hivos supports autonomous non-governmental organisations that contribute to sustainable development. Hivos is their ally in the political debate on international cooperation. As an active member of Dutch and European networks, Hivos lobbies for a foreign policy that gives consideration to the interests of developing countries.

Policies

Hivos does not carry out projects or programmes itself, nor does it post development workers overseas. Hivos provides financial support and advice to local NGOs. These organisations carry out a wide range of activities at many different levels of society. They play a role in the way in which their society develops. Hivos always seeks out partners that are not afraid to point the way, that are not dogmatic and that welcome innovation.

Hivos takes an institutional approach in supporting organisations that enable people to stand up for their rights and that increase their access to decision-making. This entails support not only to the activities of the organisation, but also to the organisation itself: organisational and policy development, financial control, internal democracy and public accountability. Based on this same approach, Hivos encourages and fosters cooperation between organisations, social movements and national umbrella organisations.

Hivos supports organisations that are secular, autonomous and without government ties. Hivos places great value on association with large organisations and interest groups from the local community, selecting them on the basis of its policy priorities. At a national level, such organisations can be powerful champions of the interests of underprivileged groups. Community-based organisations constitute a second important group. Such grassroots initiatives can demonstrate that things can be done differently and better. Organisations that combine these two elements (influence at a national and a grassroots level) are particularly valuable. Hivos also supports NGOs that act as intermediaries and service providers if the services they offer are related to Hivos policy, if they are effective facilitators and promote access to decision-making. Network and umbrella organisations also receive support on a limited scale.

Hivos concentrates its activities geographically in a limited number of countries and regions. In Central Asia it limits its work to Kazakhstan and Kyrgyzstan.

In allocating its funding, Hivos gives priority to five special themes and sectors, which it likes to refer to as policy spearheads. They are:

1. economy and credit facilities
2. culture and the arts
3. gender, women and development
4. sustainable development
5. human rights and AIDS

In the course of time Hivos' programme in Central Asia has stabilized.

In 2001 it was at a funding level of almost 1.2 million euro on an annual basis: 0.7 million in Kazakhstan and 0.5 million in Kyrgyzstan. In Kazakhstan, Hivos puts a strong emphasis on environmental issues and sustainable development. In 2001, 40% of the funds in Kazakhstan was transferred to environmental NGOs: Green Salvation and the Green Women in Almaty, EcoCenter Karaganda and EcoMuseum in Karaganda, and Milieukontakt Oost-Europa in Amsterdam and Almaty. Other significant funding in Kazakhstan was provided to NGOs in the sphere of gender/women's development (20%) and the cultural sector (19%).

Environment: sustainable development

In 1999, a new policy paper defined Hivos' strategy on the environment. This strategy revolves around sustainable development: economic, political and socio-cultural developments cannot be taken out of their ecological context, which is formed by the limited natural resources available to us.

The new strategy—development from the perspective of the environment—emerges from Hivos' experience with environmental policy in the past ten years. Hivos has successfully established a sound collaborative structure with organisations prominent in the field of sustainable development. However, it has been extremely difficult to convince other partners to integrate sustainable development into their activities.

The policy paper presents a long-term vision of how this integration can be accomplished: it concretely defines the common ground between human rights, gender and the environment, such as the right to live and work in a healthy environment. Hivos supports organisations that work on that common ground—for example, organisations that advocate local ownership of natural resources. The paper also explains how economic and ecological development can be integrated. The new policy gives high priority to groups that promote technologies and production processes, which are friendly to humankind and the environment alike. In formulating and elaborating this environmental policy, Hivos works together with organisations such as Vereniging Milieudefensie, Friends of the Earth International and IFOAM (International Federation of Organic Agricultural Movements).

Green Salvation in Almaty was one of the first partners of Hivos in Central Asia. The start of our cooperation dates back to mid-1994.

If you would like further information, please contact us at the address mentioned above. Documentation (in English and Russian) is available on the basic principles, criteria and implementation of overall Hivos policy and policy in respect of the special priorities.