

Kazakhstan's Implementation of its OSCE Obligations to Observe the Human Right to a Healthy Environment

Introduction

In 2011, the three-year period in which the Republic of Kazakhstan has served as Chair of the Organization for Security and Cooperation in Europe (OSCE) will come to an end.

The decision for Kazakhstan to assume the chairmanship was made in 2007 at a meeting in Madrid of the Ministers of Foreign Affairs of the participating States, after Kazakhstan had made promises about moving forward to democratize political and public life, including liberalizing legislation and law enforcement practices related to human rights.¹

In 2009, Kazakhstan's Secretary of State announced that one of the country's priorities in its post as OSCE Chair would be to draw Europe's attention to the resolution of environmental problems in Central Asia and in all post-Soviet countries, and to provide international support to environmental protection efforts, including obligations under the OSCE.²

The given obligations are stipulated in the Bonn Declaration on Economic Cooperation in Europe, the 2003 Maastricht Treaty on environmental and security issues, the 2007 Madrid Declaration and other OSCE documents. Since 2002, the OSCE has also supported the implementation of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Forty OSCE participating States are party to the Aarhus Convention, including Kazakhstan.³

However, during the period in which Kazakhstan's leadership held all three positions constituting the Troika and the post of OSCE Chair (2010), the government system for protecting human rights in Kazakhstan failed to improve in any way. Moreover, the government of Kazakhstan has shown open disrespect for its international obligations in the area of human rights and freedom, and has been subject to harsh criticism from national and international civic organizations and intergovernmental institutions.⁴

Unfortunately, despite criticism from well-known human rights organizations and international institutions, Kazakhstan's compliance with the human right to a healthy environment and the right to access natural resources has remained problematic. With the exception of several environmental organizations, notably the Ecological Society "Green Salvation," insufficient attention is paid to this problem in Kazakhstan.⁵

Traditional monitoring of human rights and freedoms in Kazakhstan reflects only the tip of the iceberg in terms of the massive violations of human rights. The massive violations of human rights are, to a great extent, defined by the economic policy of the country's leaders,

¹ Coalition "Kazakhstan-OSCE 2010," Report "Kazakhstan-OSCE 2010: Progress or Regress," 2011, p.3. <http://www.nhc.no/filestore/Publikasjoner/Rapporter/2011/CoalitionYearbookOSCE2010.PDF>.

² Irina Sevostyanova, "Ot predsedatelstva Kazakhstana v OSCE vyigraet I Evropa, I Aziya", Panorama, 22.05.2009.

³ <http://www.osce.org/eea/43654>, 07.06.2011.

⁴ Coalition "Kazakhstan-OSCE 2010," Report "Kazakhstan-OSCE 2010: Progress or Regress," 2011, p.7. <http://www.nhc.no/filestore/Publikasjoner/Rapporter/2011/CoalitionYearbookOSCE2010.PDF>

⁵ <http://www.greensalvation.org/index.php?page=prava-cheloveka>, 7 June 2011.

which is focused on: the destructive exploitation of natural resources; the quest by officials and businessmen to possess and redistribute these resources, shifting the environmental costs onto the shoulders of ordinary taxpayers; the inability of government bodies to fulfill their responsibilities; non-compliance with international and national legislation; a lack of access to justice; flagrant corruption; and the arbitrariness of officials.⁶ Violations to the right to a healthy environment and access to natural resources threatens the life, health, means of subsistence and well-being of Kazakhstan's population and is one of the principal causes of poverty and the growth of social tensions in the country.

This report is an overall assessment of the environmental human rights situation in Kazakhstan and the existing mechanisms to protect these rights on the national and international level. The purpose of this report is to raise the need for developing and adopting additional mechanism to protect the human right to a healthy environment under the auspices of the OSCE and other international bodies in order for the rights of citizens in Kazakhstan and other CIS countries to be restored. At present, Kazakhstan's state bodies simple receive recommendations for improving the situation.

Review of Kazakhstan's State Environmental Protection System

International Obligations

Currently, Kazakhstan's Ministry of Environmental Protection is responsible for fulfilling seventeen international agreements in the field of environmental protection, environmental impact assessments and public participation.⁷ There are another seven international agreements regulating environmental issues that fall under the rubric of Kazakhstan's ministries of transport, culture, energy, emergency situations and agriculture.⁸

Kazakhstan's ratification of the Aarhus Convention in 2000, which entered into force in 2001, has particular significance in terms of protecting the human right to a healthy environment. Unlike other international agreements in which the participating states fulfill obligations only before one another, this Convention imposes distinct obligations before the public. The Convention connects the protection of the environment and human rights, and gives the citizens and public organizations of the country an opportunity to appeal to the Convention's Compliance Committee for protection of the right to access to information, participation in the decision-making process and justice.

In 2009, Kazakhstan ratified the First Optional Protocol to the International Covenant on Civil and Political Rights, which gives the citizens of the country the opportunity to file complaints with the UN's Human Rights Committee if their rights—including the right to a healthy environment—have been violated by Kazakhstan's state bodies.

Kazakhstan's OSCE Chairmanship has not resulted in anything new in regards to the organization's environmental obligations, despite Kazakhstan's stated prioritization of these problems. In the OSCE's Astana Declaration, adopted as a result of the high-level December

⁶ "Narushenie prav cheloveka na blagopriyatnyuyu okrushayuscshuyu sredu v Respublike Kazakhstan", Vestnik "Green Salvation" No.19, 2010, pp.15-16.

⁷ <http://www.eco.gov.kz/sotrudnichestvo/konv1.php>, 07.06.2011.

⁸ <http://www.eco.gov.kz/sotrudnichestvo/konv2.php>, 07.06.2011.

2010 meeting, it is simply acknowledged that there remains much to be done in order to ensure the full compliance and realization of the fundamental principles and obligations adopted concerning military-political, economic-environmental and human changes.⁹

Kazakhstan's lack of compliance with the requirements of international environmental protection conventions is a significant problem. Violations to the Aarhus Convention serve as a clear example. To date, Decision II/5a of the Second Meeting of the Parties and Decision III6/c of the Third Meeting of the Parties of the Aarhus Convention have not been implemented.¹⁰ These decisions, adopted as a result of citizen appeals to the Aarhus Convention's Compliance Committee, declare a need to incorporate into Kazakhstani state bodies the provisions of the Convention regarding access to information, procedures through which the public can actively participate in decision-making processes, and access to justice.¹¹ In June 2011, at the Fourth Meeting of the Parties, Decision IV/9c was adopted, in which Kazakhstan was issued a warning regarding its lack of compliance with the Convention's provisions and the preceding decisions.¹² Throughout the course of its existence, the Aarhus Convention's Compliance Committee has received six appeals from citizens and public organizations in Kazakhstan, comprising 10% of the total number of appeals received by the Committee from all countries, which speaks to the serious problems of implementing the Convention's provisions in Kazakhstan.¹³ The history of appeals to the Committee is outlined below.

National Legislation

At the dawn of its independence, Kazakhstan made attempts to reject an economy based on raw materials and to create a legal basis for the resolution of environmental problems. In 1991, Kazakhstan adopted the Law on Environmental Protection, one of the first in the former Soviet Union. The Constitution of 1993 secured the human right to a favorable environment. Ownership of natural resources was assigned to representatives of the country's bodies of power. Attempts were made to develop state environmental policy and to create economic mechanisms for the rational use of natural resources. The right of the public to participate in the decision-making processes regarding environmental matters was recognized.¹⁴

The subsequent evolution of environmental protection legislation has become weaker over time in order to satisfy the interests of the country's leadership and the clans that support the leadership, as well as the interests of the transnational extraction companies, whose efforts are focused on the destructive exploitation of natural resources. The human right to a favorable environment disappeared from the Constitution in the 1995 version. Instead, the government merely sets as a goal to preserve an environment favorable to human life and health (Article 31). The property rights for natural resources have been transferred to the

⁹ http://www.osce.org/documents/html/pdftohtml/48226_ru.pdf.html, 07.06.2011.

¹⁰ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

¹¹ "Zayavlenie 'Earthjustice' k "Universalnomu periodicheskomu obzoru po Respublike Kazakhstan, 2010", Vestnik "Green Salvation" No19, 2010, pp.93-98.

¹² http://www.unece.org/env/pp/mop4/Documents/ece_mp_pp_2011_L_14_r.doc, 15.06.2011.

¹³ <http://live.unece.org/env/pp/pubcom.html>, 15.06.2011.

¹⁴ Sergey Kuratov, "Evolyutsiya prirodokhrannogo zakonodatelstva Kazakhstana," Vestnik "Green Salvation" No19, 2010, p.17.

executive bodies of power, in particular the right to land management. The strength of legislation and environmental standards is being diluted to the benefit of major natural resource users. There has been a refusal to create mechanisms for the rational use of natural resources, which has affected business interests in decreasing the pollution level.¹⁵

For instance, existing air pollution norms are economically based and do not encourage pollution reduction. It is more advantageous for businesses to pay a fine than to incorporate environmental protection technology. This situation prevents, among other things, the realization of the provisions of the Kyoto Protocol.¹⁶

As a result of these reforms, environmental protection legislation in Kazakhstan has become less effective than in 1991.¹⁷ Current legislation possesses contradictions and discrepancies with the norms of international law, in particular with the Aarhus Convention's provisions regarding public participation in decision-making processes and access to justice

There have been efforts to revise Kazakhstan's environmental protection legislation, including efforts supported by international organizations, such as UNDP.¹⁸

In general, when speaking about Kazakhstan's legislation, it is important to note that it is losing its systemic character. As early as 2001, a message from the Constitutional Council of the Republic of Kazakhstan "On the State of Constitutional Law in the Republic" noted that legislation is not always developed systematically, which breaches communication between various branches, frequently leads to the introduction of unfair changes, and fails to ensure the stability and quality of laws.

In the twenty years of independence, Kazakhstan's Constitution has been changed twice, the Law on Environmental Protection – three times, the Law on Land – four times, the Law on Specially Protected Natural Territories – two times, and the Forestry and Water Codes have been changed twice.¹⁹

Despite the lack of a state environmental policy and the weakness and imperfection of Kazakhstan's environmental protection legislation, the main problem is the lack of compliance with international and national legislation by authorities at all levels in Kazakhstan.

State Environmental Protection Bodies

Changes in the priorities of Kazakhstan's economic policy and environmental protection legislation are reflected in the evolution of the primary state environmental protection body.

In 1992, a specialized environmental protection body was created for state oversight—the Republic of Kazakhstan's Ministry of Ecology and Bioresources, which was assigned of the State Committee on Ecology and Natural Resource Use of the Kazakh Soviet Socialist Republic,

¹⁵ Ibid, pp.17-19.

¹⁶ Anna Shaternikova, "Eksperty otmechayut nedostatok sistemnogo podkhoda v reshenii aktualnykh dlya Kazakhstana ekologicheskikh voprosov", *Panorama*, 23.07.2010.

¹⁷ Sergey Kuratov, "Evolyutsiya prirodookhrannogo zakonodatelstva Kazakhstana," *Vestnik "Green Salvation"* No19, 2010, p.18.

¹⁸ Press service CARNet Kazakhstan, Press release "UN i Ministerstvo okhrany okruzhayushchei sredy RK nachinayut sovместny proekt po sodeistviyu v realizatsii Kontseptsii perekhoda Respubliki Kazakhstan k ustoichivomu razvitiyu", 06.06.2007.

¹⁹ <http://pravo.zakon.kz>, 01.07.2011.

formed in 1990. The decisions of the Ministry and its local branches had a binding character for all state bodies and businesses, irrespective of forms of ownership and departmental affiliation.

However, as the country's environmental protection legislation was diluted, the central environmental protection body began to lose its authority and the state oversight functions began to fall increasingly under the influence of the executive branch of authority. In 2007, following the adoption of Kazakhstan's Ecological Code, a portion of the functions of the Ministry of Environmental Protection was transferred to local bodies of authority, including the role of conducting state environmental assessments for several types of economic activities. Moreover, the executive bodies of power obtained the right to conduct assessments of their own projects.²⁰

It is necessary to note as well that the frequent reorganization of the Ministry of Ecology and the two separate relocations of the central power structures from one city to another negatively impacted the level of professionalism at the Ministry due to the departure of leading experts and the loss of continuity between generations of specialists. The country's central environmental protection body was reorganized a total of five times from 1991 to 2011.²¹

As a result of the government's low level of interest in the resolution of environmental problems, the Ministry of Environmental Protection plays a supporting role in the government of Kazakhstan and has insignificant influence on decision-making processes regarding the country's key development questions and the use of the country's natural resources. Economic and industrial development programs are frequently developed without taking into account environmental considerations.²² As one of the leaders of the Ministry of Ecology stated, "Just as soon as we begin to operate, we are immediately taken by the hands and told that people must be given the opportunity to work, to live and to establish production enterprises." The Ministry had turned into an appendage of the state's economic system, needed simply to collect as many environmental fines as possible, rather than to resolve environmental problems.²³

Kazakhstan lacks a systematic approach to the resolution of environmental problems and sequencing in the actions of government bodies. As a result, new structures and programs appear on an average of every two years, and the tasks established in previous documents are forgotten and not implemented.²⁴ According to an expert from the European Union's project "Development and Improvement of Environmental Policy Instruments," "The development of policy, programs and concepts of business in Kazakhstan are in good standing, but there are many failures in terms of their practical implementation."²⁵ The lack of implementation of state environmental protection programs can be seen, for example, in the condition of landfills

²⁰ Sergey Kuratov, "Evolutsiya prirodookhrannogo zakonodatelstva Kazakhstana," Vestnik "Green Salvation" No19, 2010, pp.24-26.

²¹ Ibid.

²² Anna Shaternikova, "Eksperty otmechayut nedostatok sistemnogo podkhoda v reshenii aktualnykh dlya Kazakhstana ekologicheskikh vopropsov", *Panorama*, 23.07.2010.

²³ Irina Sevostyanova, "Ekologicheskaya politika v Kazakhstane ne mozhet pokhvatat effektivnostyu", *Panorama*, 18.03.2010.

²⁴ Anna Shaternikova, "Eksperty otmechayut nedostatok sistemnogo podkhoda v reshenii aktualnykh dlya Kazakhstana ekologicheskikh vopropsov", *Panorama*, 23.07.2010.

²⁵ Irina Sevostyanova, "Ekologicheskaya politika v Kazakhstane ne mozhet pokhvatat effektivnostyu", *Panorama*, 18.03.2010.

in Kazakhstan, which have remained nearly unchanged since the adoption—ten years ago—of a special Ministry of Environmental Protection program against waste.²⁶

The level at which environmental protection programs are financed influences their implementation. In recent years, local executive bodies have allocated for these purposes a sum that represents not more than 27% of the overall total collected in environmental pollution fines. The lowest level of financing has been allocated in those oblasts in which the largest polluting enterprises are located. The Ministry of Environmental Protection, together with the Parliament, should have raised as an issue the fact that local authorities should use all of the collected funds for environmental protection measures and not spend these resources on other purposes.²⁷

The high level of systemic corruption in the country impacts the effectiveness of the actions of the Ministry and its local divisions. According to Transparency International's Corruption Perceptions Index, Kazakhstan ranks 105 out of 186 countries.²⁸

Kazakhstan's environmental protection bodies have not avoided high-profile corruption scandals. In 2007, the head of the Ministry's department in Eastern Kazakhstan Oblast was arrested for taking bribes.²⁹ Then Minister of Ecology N. Isakov announced a war on corruption within his agency and acknowledged: "Corruption not only flourishes in the regional departments, but an entire system of corrupt offenders has been created, including not only leaders, but a number of inspectors."³⁰ However, in 2009, he and two vice ministers from the Ministry of Environmental Protection were arrested and condemned for plundering especially large amounts of state resources.³¹ In 2010, a scandal erupted when a former employee of the Zhaik-Kaspiiskii Ecology Department of the Ministry of Environmental Protection publicly accused the department's management of easing oversight over the actions of natural resource users, including Tengizchevroil, and failing to collect fines from them for environmental damages.³²

International Assessment of Kazakhstan's Observance of the Human Right to a Healthy Environment

Despite the fact that Kazakhstan has held the leadership of the "Troika" and the post of OSCE Chair, and despite the country's declarations that environmental issues would be one of the priorities of its chairmanship, violations of environmental human rights have not been adequately reflected in international reports on human rights in Kazakhstan.

²⁶ Tamara Vaal, "Borba s otkhodami kak sposob dokhoda", <http://www.respublika-kz.info/news/society/9520>, 16.06.2010.

²⁷ "MOOS RK stavit vopros o napravlenii ekologicheskikh nalogov akimami oblastei na prirodookhrannye meropriyatiya", <http://kt.kz>, 24.06.2010.

²⁸ <http://www.transparencykazakhstan.org/content/296.html>, 01.07.2011.

²⁹ <http://www.caresd.net/site.html?en=0&id=14161>, 23.10.2007.

³⁰ Lyubov Podolyak, "Zachistka territorii", *Liter*, 03.06.2008.

³¹ <http://spy.kz/Sit/Gorsud-Astany-ostavil-bez-izmeneniya-prigovor-v-otnoshenii-ehks-ministra-prirodoohrannogo-vedomstva>, 16.12.2009.

³² Dulat Tasymov, "Vrediteli" ne nado proverjat?", <http://www.respublika-kz.info/news/society/8194/>, 25.03.2010.

The United States Department of State, which systematically ascertains violations of rights and freedoms in Kazakhstan in its annual reports, does not cover environmental problems in the country.³³

Similarly, the European Union (EU), for which Kazakhstan is a priority country in Central Asia, does not mention this subject in its assessment of its strategy “The EU Strategy for a New Partnership with Central Asia.”³⁴ Though human rights and the environment form one of the priorities of the European Union’s strategy in the region.³⁵

Finally, the OSCE itself, whose mandate includes environmental protection matters, does not evaluate Kazakhstan’s compliance with the human right to a healthy environment, including the fulfillment of its obligations to the Aarhus Convention. That said, in 2009 the OSCE Center in Astana assisted in the opening of two Aarhus centers in Astana and Atyrau.³⁶ However, the actions of the latter have fallen under criticism from a number of public organizations in Atyrau, who maintain that the regional Aarhus Center has turned into an extension of the local authorities and has discredited the Convention and the OSCE as a whole in Kazakhstan due to its non-transparent procedures for selecting personnel and for interfering in the work of the local akimat.³⁷

Among the few international organizations that have given attention to this problem, it is important to note Earthjustice, which sent an appeal in 2009 to the UN Office of the High Commissioner for Human Rights regarding the Universal Periodic Review of Kazakhstan in 2010. The submission contains information on a number of violations by Kazakhstan of the provisions of the Aarhus Convention and human rights, as well as violations of Decisions II/5a and III/6c, which resulted from meetings of the Parties to the Convention.³⁸

It is possible that the reason for such inattention lies in the fact that the transnational corporations of Europe and the US provide essential contributions to natural resource use, pollution and violations of environmental human rights in Kazakhstan. Another explanation might be found in the conditions of universal political correctness in which the discussions of fulfilling human rights obligations are conducted at the international level. As Evgenii Zhovtis, one of the leading human rights defenders in the country bitterly noted, “There is an impression that the developed democratic states and international organizations are playing an original game of hide-and-seek with the dictatorial and authoritarian regimes. You pretend that you agree with us on issues of ensuring human rights, democracy and the rule of law, and we pretend that we do not see how you violate your obligations.”³⁹

Observation of the Human Right to a Healthy Environment in Kazakhstan

³³ <http://www.state.gov/documents/organization/160465.pdf>, 01.07.2011.

³⁴ http://eeas.europa.eu/delegations/kazakhstan/documents/eu_kazakhstan/joint_progress_report_eu_ca_strategy_en.pdf, 01.07.2011.

³⁵ http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/EU_CtrlAsia_EN-RU.pdf, 01.07.2011.

³⁶ http://aarhus.kz/index.php?option=com_content&task=view&id=46&Itemid=40, 01.07.2011.

³⁷ Azamat Maitanov, “Orkhusskii tsentr OSCE prevratilsya v otdel kazakhskogo akimata, govorit kritiki”, http://rus.azattyq.org/content/aarhus_convention_centre_atyrau/2051818.html, 25.05.2010.

³⁸ http://www.earthjustice.org/sites/default/files/library/legal_docs/earthjustice-upr-submission-kazakhstan-2010.pdf, 01.07.2011.

³⁹ Coalition “Kazakhstan-OSCE 2010”, report “Copenhagen-2010”, 2010, p.4.

The Right to Access National Natural Resources

In terms of area, Kazakhstan is the ninth largest territory in the world and the second largest in the former Soviet Union. There are nearly 16 million people in this enormous territory. Kazakhstan is rich in mineral resources and possesses significant oil and gas reserves, which rank as the 7th and 6th largest reserves in the world, respectively. As such, the country is among the largest oil extracting states in the world.⁴⁰

The twenty years of Kazakhstan's independent development have demonstrated that the country's economy is clearly oriented toward strengthening the exploitation of natural resources. For example, from 1990 to 2007, the extraction of oil and gas condensate in Kazakhstan has grown 2.5 times, and the extraction of natural gas has grown fourfold.⁴¹ This has led to the excessive growth of the extraction sector, which has exacerbated disproportions in the country's economic progress. Kazakhstan's great economic growth during the course of the last decade has resulted from the increase in the extraction and export of mineral resources. From 2000 to 2010, oil and gas condensate comprised 85% of the country's total volume of exports.⁴² The use of raw materials accounts for a powerful part of the country's budget revenue. In 2010, entities in the oil sector contributed 2,256.3 billion tenge (\$15.3 billion) in direct taxes to the National Fund of the Republic of Kazakhstan; representing 52.5% of the total state budget revenue for that year.⁴³

However, revenue from the exploitation of the country's rich resources has not brought tangible benefits to the majority of citizens and has not improved their well-being. Moreover, social phenomena previously unknown in the country, such as unemployment, poverty, the deep stratification of property, illiteracy, and an increase in illnesses, have only become constants in the life of ordinary Kazakhstani citizens during the years of independence. According to recent research from Federal State Statistics Service of the Russian Federation, it is impossible to consider 99.9% of citizens even among the middle-class. Those most in need account for more than a quarter of the population (26.7%), the relatively needy account for more than half (66.8%) and the relatively poor make up 6.4%. Practically all Kazakhstani citizens are in need or in poverty, and only 0.1% of the country's residents can be considered middle-class. This is the result of the anti-social model of revenue distribution in the county.⁴⁴

Poverty flourishes in rural areas, where there is often no access to basic goods such as drinking water, health care and education. According to statistics, rural poverty in Kazakhstan's

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http://www.akorda.kz/ru/kazakhstan/general_information/general_information_about_the_republic_of_kazakhstan 16.06.2011.

⁴¹ A. Tleppaev, report "Problemy effektivnogo ispolzovaniya dokhodov syrevogo sektora dlya diversifikatsii ekonomiki Kazakhstana", http://www.rusnauka.com/12.APSN_2007/Economics/20711.doc.htm

⁴² Yurii Nagorny, "Resursnoe proklyatie", *Liter*, 21.05.2011.

⁴³ Information on the use of the 2010 state budget:

<http://www.minfin.kz/structure/data/%D1%81%D0%B0%D0%B9%D1%82%20%D0%93%D0%91%202010%20%D0%B3.doc>, 16.06.2011.

⁴⁴ Aleksandr Kuznetsov, "Pochti vse naselenie Kazakhstana – niscshie!", www.respublika-kaz.info, 02.06.2011.

primary oil and gas extraction regions is at 64% in Mangistau Oblast, 24% in Kyzylordinsk Oblast and 17.5% in Atyrau Oblast.⁴⁵

Kazakhstan occupies a leading position among the countries of the former Soviet Union and Europe in terms of the incidence of tuberculosis. The number of registered cases of tuberculosis in recent years has exceeded the World Health Organization's epidemiological indicator by 2 to 3 times. Tuberculosis is related to social illnesses, stemming from a lack of food and living in unhealthy conditions, including poor environmental conditions. The highest incidence of tuberculosis is observed in the Kazakhstan's western oblasts, which are rich in oil and gas fields.⁴⁶

As the "Index of Global Prosperity" concludes, Kazakhstan has very serious problems in the healthcare field. Indicators of child mortality and mortality from respiratory illnesses are higher than the world average. According to the researchers, Kazakhstani citizens rank below average in terms of securing adequate food and housing.⁴⁷ According to information from the International Crisis Group, life expectancy in Kazakhstan decreased significantly in the 1990s and has not returned to the level experienced during the Soviet period. According to 2008 statistics, life expectancy is 67.1 years.⁴⁸

The reason for this developing situation is that officials are manipulating and single-handedly managing national natural resources in their own interests, basically depriving the people of Kazakhstan of their right to resource ownership and to receiving the benefits from exploitation of the resources. This is one of the primary reasons for poverty in Kazakhstan. Although, according to the 1995 Constitution of Kazakhstan (Article 6), natural resources are under "state ownership" and theoretically all citizens should benefit from their exploitation.

The government basically single-handedly uses the revenues from natural resource extraction at its own discretion. In particular, these revenues have been used for a variety of prestigious projects, such as the construction of Astana and the organization of all sorts of international forums and meetings. More than 11 million Euros was spent to host the OSCE Summit in Astana, and approximately \$30 million was spent from Kazakhstan's State Treasury to advertise the forum in the media.⁴⁹ In comparison, in 2011, support for the National Center for Human Rights was earmarked at only 20 million tenge total, or not quite \$130,000.⁵⁰ Even the financing of programs that are needed by the people of Kazakhstan results in inefficiency, wasted spending and a high level of corruption.

For example, the "Drinking Water" program was allocated \$2.3 billion, which was almost completely dissolved. After eight years (2002-2010), the program had almost nothing to boast, except for the volume of spent resources. Corrosion of the network was reduced by only 2%, nearly 140 water pipes remained inoperational, almost 4000 settlements remain without

⁴⁵ <http://integrity.kz>, 29.06.2011.

⁴⁶ O. Rakhmatulin, Analiz zaboлеваemosti tuberkulezom v Respublike Kazakhstan, <http://iwep.kz/index.php?newsid=129>, 25.10.2010.

⁴⁷ Derya Atabaev, "Doklad o globalnom protsvetanii otrazil rost detskoi smertnosti v Kazakhstane", <http://www.algadvk.kz/ru/wencountry/129/>, 26.10.2010.

⁴⁸ Amina Dzalilova, "Soglasno issledovaniyu, sotsialnaya infrastruktura stran Tsentralnoi Azii nakhoditsya v plachevnom polozhenii", *Panorama*, 11.02.2011.

⁴⁹ <http://www.zonakz.net/blogs/user/bolatboy/14738.html>, 24.12.2010.

⁵⁰ Sapa Mekebaev, "Pochem prava cheloveka?" *Vremya*, 18.06.2011.

water, and the availability of the centralized water supply has increased by only 7%.⁵¹ Kazakhstan's Public Prosecutor's Office has long recognized the "Drinking Water" program as a nest of corruption. Nearly all of the Public Prosecutor's assessments of the program revealed that state funds were spent to no purpose and that officials, as is typical, had failed to act as required. There were many notorious exposes, but no one incurred responsibility.⁵²

A significant portion of the country's wealth is concentrated in the hands of a narrow group of people belonging to the family of Kazakhstan's president and the clans who support them. Scandalous information about the president's family participating in the plunder of the state's property, corruption deals and raids of domestic and foreign business does not come from the pages of the oppositional press. In 2011, the Arbitration Court of the World Bank found T. Kulibaev, public servant and the son-in-law of Kazakhstan's president, guilty of raid participation, and ordered the government of Kazakhstan to pay \$125 million to Turkey's Insurance Fund for the loss of business to Turkish companies in Kazakhstan.⁵³ In the opinion of M. Ablyazov, a political opponent of the regime, President N. Nazarbaev now controls no less than 80% of Kazakhstan's economy.⁵⁴

The transnational corporations (TNCs) operating in Kazakhstan play an active role in parceling out the natural riches and the revenues from their exploitation. This is easily seen in the oil and gas sector, in which the Chevron Corporation (United States) is the largest private oil extraction company in Kazakhstan. Chevron has a 20% interest in the Karachaganak Field and a 50% interest in Tengizchevroil (TCO), which is developing the Tengiz Field. TCO accounts for more than 30% of the oil extracted in Kazakhstan.⁵⁵ In total, 25% of Chevron's confirmed worldwide reserves are located in Kazakhstan.⁵⁶ It is difficult to determine how much profit TNCs are making from their operations in the country as the Production Sharing Agreements signed between the leadership of Kazakhstan and the TNCs are considered confidential agreements and information published by the companies does not reflect the true state of affairs.⁵⁷

Implementation of the Extractive Industries Transparency Initiative, which Kazakhstan joined in 2005, is more likely a PR move on the part of the companies and the authorities in order to improve their image and distract the attention of the public than an actual commitment to improve their transparency and accountability before the public.

The solid position enjoyed by foreign companies in Kazakhstan results from their "special relationships" with Kazakhstan's leadership. The Kazakhgate corruption scandal, in which the country's leadership took many millions of dollars in bribes from some of the leading oil extraction companies in the world in exchange for access to Kazakhstan's oil fields, is well known. Over the course of the multiple year proceedings in the US against D. Giffen, former advisor to Kazakhstan's president, details emerged about the participation of both Mobil and

⁵¹ Irina Sevostyanova, "Pravitelstvo initsii ruet novuyu programmu po obespecheniyu naseleniya pitevoi vodoi c mnogokratnym uvelicheniem finansirovaniya", *Panorama*, 16.07.2010.

⁵² Ainur Balakeshova, "Sukhoi zakon", *Liter*, 26.06.2009.

⁵³ Tikhon Alekseev, "Kupil za tisyachu a prodal za 350,000,000?", *Golos Respubliki*, №14, 15.04.2011.

⁵⁴ Timur Azamat, "Utemuratov 'sdal' Nazarbaeva", *Vzglyad*, №20, 01.06.2011.

⁵⁵ Elena Butyrina, "TCO v 2010 rodu do 25.9 mln ton uvelichilo neftedobychu", *Panorama*, 11.02.2011.

⁵⁶ The True Cost of Chevron, An Alternative Annual Report, May 2011, p.43.

⁵⁷ Amanzhan Zhamalov, "Kak inostrannye kompanii popolnyayut budzhet strany?", *Karavan*, 17.09.2010.

Amoco in bribing President Nazarbaev and N. Balgimbaev, Minister of Oil and Gas, for the right to take part in the Tengiz project and the Caspian Pipeline Consortium project, as well as other corruption deals.⁵⁸ In 2007, the Regional Court of Houston, Texas found the American company Baker Hughes, which is a contractor at the Karachaganak Field, guilty of bribing Kazakh officials in order to obtain an advantageous contract.⁵⁹ Among the recent scandals it is also worth noting the appeal from M. Abliyazov to Kazakhstan's Public Prosecutor, which has been supported by documentation, regarding the illegality of the deal made by T. Kulibaev with the China National Petroleum Company (CNPC) for the sale of the state share in the joint-stock company "CNPC-Aktobemunaigaz" for a devalued amount. As a result of this deal, he received a bribe of \$165.9 million from the Chinese company.⁶⁰

Even the insignificant portion of the resources and goods that manage to fall into the hands of ordinary citizens in the way of private property is not protected from all manner of encroachments from officials and businessmen.

A vivid example is found in the manipulation of the land that occurred following the adoption of the Land Code of 2003, in accordance with which the executive bodies of power obtained the right to manage one of the main natural resources. The confiscation of land from ordinary citizens supposedly for "state needs," but in fact for commercial construction, has led to bloody conflicts, mass protests and hunger strikes in Almaty and Astana. Land plots have been seized from people in return for scanty compensation, and in some cases, they lost the property all together under the pretext of not having legalized papers.⁶¹ The officials, assured of their impunity, have not even tried to conceal these massive violations of the law. For example, in just three months in 2006, 1433 citizen appeals were submitted to the Akimat of Southern Kazakhstan Oblast from Kazakhstan's Public Prosecutor's Office, and 330 from the Administration of the President of Kazakhstan in regards to violations of legislation on land.⁶²

Large latifundists close to the authorities were responsible for the adoption of the 2003 Land Code, having lobbied for the anti-people's law in order to obtain ownership of Kazakhstan's most fertile agricultural grounds. They manipulated land plots that rural residents obtained following the dissolution of former collective farms. As a result, more than a million Kazakhs have been deprived of their allotments. All those whose livelihoods depended upon the agricultural community—hired agricultural workers, pensioners, rural teachers and doctors.⁶³ The descendants of nomads could find nowhere to graze their cattle as local officials began to turn public pastures into private property. For instance, in the Birlik Rural District of Northern Kazakhstan Oblast, officials managed to give 75% of public pastures to private owners.⁶⁴

Scandals have also accompanied the illegal privatization and purchase of lands in Specially Protected Natural Territories as well as construction activities in water protection zones. Ordinary visitors to national parks have collided with "private property" in the form of

⁵⁸ Tikhon Alekseev, "Milliony 'zelenykh' dlya Nazarbaeva", *Golos Respubliki*, №16, 30.04.2010.

⁵⁹ <http://www.greensalvation.org/index.php?page=berezovka>, 13.07.2011.

⁶⁰ <http://www.respublika-kz.info/news/politics/7279/>, 26.01.2010.

⁶¹ Irina Sergeeva, "Naprasnye nadezhdy", *Respublika*, 03.11.2006.

⁶² Maksim Erokhin, "Slovo – srebro, a deistvie – zoloto", *Respublika*, 19.01.2007.

⁶³ Vladimir Katkov, "Zemelny komiks", *Liter*, 12.07.2008.

⁶⁴ "Bezzemelnoe zhitovnovodstvo", *Karavan*, 19.08.2011.

new fences and cottages that prevent access to riverbanks and mountain gorges. As ordered by Kazakhstan's President, a government commission was created in 2007. In the course of its inspections, it was established that more than 50% of the objects on the territory of Almaty Oblast's nature protection zone were constructed in violation of the law.⁶⁵ Despite a direct interdiction in the acting legislation, the executive power of Almaty city and Almaty Oblast proceeded to seize land plots from natural and national parks for private property.⁶⁶

Most likely, one of the results of the repartitioning of land and the "shortage" of land in the country was the idea, born in the bowels of the government and picked up by the National Nuclear Center, to restore 95% of the grounds of the Semipalatinsk Nuclear Test Site to economic use. During the forty years of its operation, 468 nuclear explosions were conducted at this site.⁶⁷ However, according to a report presented by the center to the government, these grounds are absolutely safe and can be used for agricultural activity and mineral extraction. In no other country in the world has transferring land on which nuclear testing occurred back to economic use been considered to date. Kazakhstan's officials have decided to kill two birds with one stone: to "support" local residents and business, and at the same time to free itself from the responsibility of conducting measures to protect the population, by changing the status of the range. The transfer of the range to economic use will lead to secondary radiation pollution, which will be reflected in the health of the local population, but this aspect of the issue thus far disturbs only Kazakhstan's public.⁶⁸

In addition to the land question, the problem of access to safe drinking water is equally serious. In terms of water security, Kazakhstan is one of the countries of Eurasia most lacking in water supply.⁶⁹

Though officials declare that practically 90% of the population has access to water, this does not mean that it is safe. According to research by experts from the UK, in Kazakhstan the accepted concept of access to safe water does not include factors such as distribution, delivery, quality and reliability of delivery. If these factors are considered, no more than 30% percent of people in Kazakhstan actually have access to safe water. Experts consider the lack of reliability and the quality of the water supply to be among the most disturbing problems. For instance, in the village of Zhanakal in Western Kazakhstan Oblast, water is supplied once a day at one hour.⁷⁰ In the city of Ekibastuz, the drinking water contains contaminants that exceed maximum permissible norms: 2.7 times the maximum permissible norms for heavy metals, 116.3 times the amount of zinc, 32.3 times the amount of aluminum, and 1.4 times the amount of strontium.⁷¹

Following the failure of the "Drinking Water" program, in 2011 the government of Kazakhstan adopted a new program "Akbulak" with frequent increases in financing. According to the program planned for 2011-2020, the program is to receive an annual allocation of 60

⁶⁵ www.inform.kz, 21.09.2007.

⁶⁶ www.respublika.kz, 28.09.2007.

⁶⁷ <http://www.poligon.kz/certificate.shtml>, 24.06.2011.

⁶⁸ Arman Dzhakub, "Poligon vozvrascshat ranovato", www.respublika-kaz.info, 07.07.2011.

⁶⁹ <http://www.undp.kz/pages/9.jsp>, 07.07.2011.

⁷⁰ Gulnaz Imamniyazova, "Voda u nas – beda!", *Ekspress K*, 17.05.2008.

⁷¹ Shamgon Musin, "Libo ishak sdokhnet, libo khan umret!..", *Respublika*, 06.04.2007.

billion tenge (more than \$400 million).⁷² Given the high level of corruption in the country, pitiful results are expected from this program.

The Right to Freedom from Pollution and Environmental Degradation

The government's economic policy is directly reflected in the country's incredibly complex environmental situation. Following a significant reduction in environmental pollution in the early 1990s, caused by economic recession, pollution began to increase again in the mid-1990s, and according to a number of parameters, exceed the pollution levels of Soviet times.⁷³ Air pollution in the basins of large cities is increasing due to the steady growth of motor vehicle transport, accounting for 60% of air pollution. Industrial enterprises in Kazakhstan contribute approximately 3 million tons of atmospheric emissions each year, 85% of which are produced by 43 major enterprises. Ten percent of emissions and the formation of a significant share of toxic wastes are produced by oil and gas extraction companies.⁷⁴ Kazakhstan is included on the list of countries with the highest levels of greenhouse gas emissions per capita, placing 15th among 186 countries worldwide.⁷⁵ A third of the country's residents breathe polluted air and more than two million people breathe very dirty air.⁷⁶

A large quantity of people is forced to live in the Sanitary Protection Zones (SPZ) of polluting industries. This problem is especially severe in areas where these enterprises play a city-forming role. In the majority of cases, the responsible state bodies not only fail to take active measures to protect the environmental rights of citizens, but also side with the polluting industries, allowing the latter to shift their own environmental costs onto the shoulders of average Kazakh citizens. In addition to negative health impacts, damage is caused to citizens' property by polluting the land, water and vegetation, which negatively affects the well-being of the population.⁷⁷ Following are examples from various corners of the country.

The city of Balkhash in Karaganda Oblast, population 66,220 (2009 data).

The city-forming enterprise is the Kazakhmys brass-works, whose shares are traded on the London Stock Exchange.⁷⁸ The plant is located in the immediate proximity of the city's residential quarters. Over the course of many years, the air, Lake Balkhash and the surrounding area have become polluted. In 2007, the weight of emissions per year on one city resident totaled 6.5 tons, of which sulfur dioxide accounted for nearly 6 tons. Allergies and asthma have become ordinary illnesses among the residents of Balkhash. All the birds have long left the city. Numerous articles, inquiries from deputies and regulations to halt the pollution have not had any impact. Moreover, under a directive from the akim of Karaganda Oblast, the Kazakhmys corporation was granted the right to pay for only 10% of the harmful air emissions, ostensibly because the company agreed to promptly introduce equipment to neutralize sulfur

⁷² <http://www.zakon.kz/198368-po-programme-akbulak-ezhegodno-budet.html>, 04.02.2011.

⁷³ <http://www.stat.kz/digital/ohrana/Pages/default.aspx>, 30.06.2011.

⁷⁴ Strategicheskii plan Ministerstva okhrany okruzhayuscshoi sredy Respubliki Kazakhstan na 2010-2014 gody, 30.12.2010, p.2.

⁷⁵ Ruslan Bakhtigareev, "Sektor gaza", *Vremya*, 07.09.2011.

⁷⁶ Yuliya Mamyrbayeva, "Gde v Kazakhstane zhit khorosho?" *Izvestiya-Kazakhstan*, 14.03.2008.

⁷⁷ "Narusenie prav cheloveka na blagopriyatnyuyu okruzhayuscshuyu sredyu v Respublike Kazakhstan", *Vestnik "Green Salvation"* No19, 2010, pp.10-13.

⁷⁸ www.kazakhmys.com, 15.07.2011.

dioxide.⁷⁹ In the mid-2000s, a ton of sulfur dioxide emitted into the atmosphere cost the US approximately \$100, cost Europe about \$90, and Kazakhmys paid a total of...7 cents.⁸⁰ In 2007, deputies from the Karaganda Oblast Maslikhat allocated 600 million tenge from the state budget from recultivating land belonging to Kazakhmys. Why ordinary taxpayers should pay for a company that is far from poor itself remains a question for the local community.⁸¹

The city of Zhanatas, Zhambyl Oblast, population 23,367 (2010 data).

During the course of implementing Kazakhstan's Strategy for Innovative Industrial Progress, local authorities decided to locate a steel plant and a cement plant within the city. In addition to these two factories, there are two more industrial enterprises nearly within the city center—an asphalt manufacturing plant and a bitumen plant. All of these plants have been constructed near residences, in violation of sanitary norms and rules. In response to complaints from residents that there is nothing left to breathe in the city, local authorities simply suggest that the residents be patient as it is a question of implementing the country's development strategy. Therefore, simple citizens should be guided not by environmental concerns, but by patriotism.⁸²

The city of Ust-Kamenogorsk, Eastern Kazakhstan Oblast, population 3000,342 (2010 data).

Ust-Kamenogorsk has long been recognized as one of the most environmentally disastrous cities in the country. The reason is that there are 166 industrial enterprises in the city, including a concentration of large metallurgical and energy complexes. When the air is calm in Ust-Kamenogorsk, or in the official language, when there are "adverse meteorological conditions," the city becomes the equivalent of a gas chamber. The level of the concentration of polluting substances in the surface layer exceeds maximum permissible norms by 8-10 times. On such days, the emergency situations department warns for people not to go outdoors without dire need and to keep windows closed.⁸³ In 2004, on days when emissions exceeded maximum concentrations, the local television station announced that pregnant women could undergo abortions for free as doctors could not guarantee that the births would be successful and that the children would be healthy due to environmental factors.⁸⁴ It is the leading city in the country in terms of respiratory and blood illnesses, diabetes, and cancer—including among teenagers and children.⁸⁵ Despite the actions of various programs and allocated resources, the environmental situation in the city has not improved in any fundamental way. Periodically, a high level of pollution will be registered in the city, but the officials who are responsible for environmental protection are not able to determine the source of the air pollution. The Ust-Kamenogorsk lead-zinc plant—one of the primary polluters of sulfur dioxide—regularly reports a reduction in toxic emissions, however the concentration of sulfur dioxide found in the air

⁷⁹ Dmitrii Boiko, "Kogda I kto zaschitit balkhashtsev?", *Respublika*, 08.06.2007.

⁸⁰ Tatyana Ten, "Kazakhmys" travit Balkhash" Karavan, 16.07.2010.

⁸¹ Tatyana Ten, "Kazakhmys": my nagadim, a vy ubirajte!", *Karavan*, 23.07.2010.

⁸² Shukhrat Khashimov, "Antinarodnaya strategiya?" www.respublika-kaz.info/news/society/5450, 23.09.2009.

⁸³ <http://www.seu.ru/members/ucs/ucs-info/1009.htm>, 25.06.2003.

⁸⁴ <http://forum.zakon.kz/lofiversion/index.php/t258.html>, 16.07.2011.

⁸⁵ "Ekologicheskaya situatsiya v Ust-Kamenogorske trebuet neotlozhnykh mer – oblastnoe sovescshanie", www.inform.kz, 08.09.2007.

continues to be high.⁸⁶ The enterprise belongs to the Kazzinc company, whose general investor is the Swiss “Glencore International AG”.⁸⁷ In the opinion of the local community, all that can be done is to declare the city an extreme environmental zone. Prior to the dissolution of the Soviet Union, a governmental commission working in the city established that the soil layer was full degraded in the residential zone adjoining the lead-zinc plant and the Ulbinsk metallurgical factory. There was a decision at the city level to announce Ust-Kamenogorsk as an environmental catastrophe zone, and to demolish the residences located in the Sanitary Protection Zone (SPZ). But the city’s status was not conferred.⁸⁸ In independent Kazakhstan, in 2008, the nation’s president instructed city authorities and the polluting industries to relocate 3,900 people from the SPZ to an environmentally clean part of the city.⁸⁹ However, things are right where they started.⁹⁰ There is nowhere for ordinary citizens of Ust-Kamenogorsk to live, unlike officials in Astana.

The village of Berezovka in Western Kazakhstan Oblast, population 1530 (2011 data).

The village is located on the border of the SPZ for the Karachaganak Oil and Gas Condensate Field, which has a high concentration of hydrogen sulfide. The international consortium Karachaganak Petroleum Operating B.V. (KPO), which includes ENI (Italy), BG (UK), Chevron (US) and Lukoil (Russia), is developing the field.⁹¹ The active development of the field has led to intense environmental pollution that is destroying the health of Berezovka’s residents and their garden plots. According to independent research, approximately 45% of residents suffer from chronic illnesses. Since 2002, the residents of Berezovka have tried unsuccessfully to protect their right to live in a healthy environment. Their numerous appeals to the authorities and to KPO to resettle the village have not been successful.⁹²

It is difficult to assess the health of those who work in the industrial sector as well as the health of local populations who are impacted by harmful factors. According to official statistics and data provided by industrial enterprises, Kazakhstan has the healthiest working class and nowhere in the world is there as low a level of occupational illnesses as in Kazakhstan. In 2008, in Karaganda Oblast only 187 cases of occupational illnesses were registered, which is a fantastic achievement for a region in which almost half of all laborers work in harmful and dangerous production activities. In comparison, Finland registered 35 times this amount. In Kyzylorda Oblast, not one case of occupational illness was registered from 2006 to 2008. The practice of enterprises concealing worker illnesses is widespread as the employer is responsible for paying for disability in the case of occupational illnesses. For instance, when the ArselorMittal company arrived in Karaganda, the level of occupational illnesses among miners was reduced ten-fold. The quality of medical examinations of workers leaves much to be desired given the lack of pathology experts.

⁸⁶ Olga Ushakova, “Otravitel vozdukha neizvesten”, <http://www.respublika-kz.info/news/society/8121/>, 18.03.2010.

⁸⁷ http://www.kazzinc.com/index_next.php?id=1&lang=0, 17.07.2011.

⁸⁸ Natalya Shimolina, “Stalkery s Zavodskoi”, *Vremya*, 04.06.2009.

⁸⁹ <http://www.zakon.kz/our/news/news.asp?id=30359965>, 20.11.2008.

⁹⁰ <http://www.yk.kz/news/show/9483?print>, 30.06.2011.

⁹¹ <http://www.kpo.kz/about-kpo.html?&L=0>, 01.08.2011.

⁹² <http://www.crudeaccountability.org/en/index.php?page=karachaganak>, 01.08.2011.

Statistics are distorted and simple bribes are made in return for clearance to work. Often times, workers conceal their illnesses up to the very end for fear of losing work. A 2008 inspection of the Kazakhmys corporation by a commission from the National Center for Worker Hygiene and Occupational Illnesses revealed 24 cases in which workers were simply fired after a long period of general diseases. As a result, according to the National Center, almost 50% of patients who come to them have not been treated in time.⁹³

It is necessary to note that TNCs contribute significantly to the country's pollution. The unattractive facts about their operations in Kazakhstan—marked by violations of local residents' rights and large-scale environmental pollution—are hidden behind the façade of these supposedly high tech, socially and ecologically responsible companies. For example, Tengizchevroil (TCO) has a long history of harming the environment and human health. In 2009, TCO was found to be one of the largest polluters in Atyrau Oblast, as determined by the size of the resulting environmental fines.⁹⁴ And in 2010, TCO was one of Kazakhstan's environmental pollution leaders. State bodies imposed nearly \$64 million in fines on the company. The KPO consortium's activities are no better. In 2010, KPO was fined \$13.5 million and the state bodies filed \$12.9 million in claims for compensation for damages from excess emissions.⁹⁵ The ArselorMittal company, which is one of the main polluters in Karaganda Oblast, demanded in 2008 that the government of Kazakhstan fix its expenses on its environmental program and cancel its environmental penalties and payments ostensibly because of the economic crisis.⁹⁶

The Right to Obtain Authentic and Complete Information on the State of the Environment

The right of citizens to access environmental information in Kazakhstan is stipulated in national legislation and in the Aarhus Convention (Article 4). Theoretically, all of the country's citizens have free access to environmental information, which cannot be considered a state or industry secret. However, in practice even the authorities acknowledge that the legislative basis for access to information exists, but does not work in full. Rather, the primary supplier of information—state bodies—work in a regime of partial openness.⁹⁷ There are many reasons for this.

The environmental protection bodies themselves do not have a full picture of what is happening in the country due to the collapse of the environmental monitoring system created during Soviet times. Numerous attempts to create a national environmental monitoring system remain on paper alone. The 2011-2015 strategic plan of the Ministry of the Environment includes plans to prepare documents for the creation of a single state system at the national

⁹³ Tatyana Ten, "Bespravnye raby ili zolotoi fond?" *Karavan*, 09.01.2009.

⁹⁴ The True Cost of Chevron, An Alternative Annual Report, May 2010, p.43.

⁹⁵ The True Cost of Chevron, An Alternative Annual Report, May 2011, pp.43-44.

⁹⁶ Tatyana Smirnova, "Zaprosy na voprosy", *Izvestiya-Kazakhstan*, 30.10.2008.

⁹⁷ Amina Dzhaliylova, "Prezentovannyi zakonoproekt prizvan transformirovan pravo gosorganov predostavlyan informatsiyu v obyazannost", *Panorama*, 27.08.2010.

level for monitoring the environment and natural resources.⁹⁸ Therefore, given the scale of pollution, the government and local authorities basically rely on information provided by the polluting industries, which are interested in downplaying their negative environmental impact. As admitted by the akim of Atyrau Oblast, where the country's largest concentration of oil and gas extraction and refining industries is located, he doesn't know the true scale of environmental impacts as no one is verifying the information provided by the companies.⁹⁹

Thus, the residents of the village of Berezovka do not trust the information provided by the state bodies and KPO, which state that the consortium's activities are harmless, particularly when KPO pays the private company Gidromet Ltd. to conduct its industrial monitoring and provide this data to the local environmental protection bodies. Kazgidromet's state observation stations have been closed in Western Kazakhstan Oblast since 1998 due to a lack of funding. Therefore, there is nothing to compare KPO's data against.¹⁰⁰

Even the information that is collected by state bodies is not complete and prepared. Often times, due to a lack of financing, the authorized bodies are not able to determine all of the substances that are polluting the environment. For instance, Kazgidromet's monitoring stations in Ust-Kamenogorsk record atmospheric emissions of 12 compounds. However, as environmental scientists have discovered, there are more than a thousand chemical components emitted into the air, including substances of the highest level of toxicity, which it is impossible for Kazgidromet to track because it lacks the necessary equipment.¹⁰¹ A similar situation is occurring in another of the country's industrial cities—Pavlodar. Local environmental bodies do not have sufficient equipment to measure the volume and composition of emissions from industrial enterprises. Applications for purchasing equipment are, as a rule, discarded from consideration by the Department of Economics and Budget Planning, which alleges that such equipment is superfluous.¹⁰² Even in the southern capital of Almaty, where there aren't any significant industrial enterprises, but there is a high level of air pollution, monitoring is not conducted for the most dangerous substances. The city's residents lack information on real time air quality and there are no warnings about dangerous levels of pollution, as is required, for instance, by the legislation of the European Union.¹⁰³

The people of Kazakhstan sometime encounter cases in which the authorized state bodies require unreasonably high payment in return for environmental information, in violation of the provisions of the Aarhus Convention. For example, take the state enterprise Kazgidromet, which has granted a number of requests for information on a paid basis.¹⁰⁴ Kazgidromet has become of interest to the Agency for Protection of Competition, which in the course of its investigation, revealed that there were signs that the enterprise had abused its

⁹⁸ Strategicheskii plan Ministerstva okhrany okruzhayuscshoi sredy Respubliki Kazakhstan na 2010-2014 gody, 30.12.2010, p.3.

⁹⁹ Svetlana Grigoreva, "Ryskaliev pytaetsya vynyrnut iz Urala", <http://www.respublika-kaz.info/news/society/10490/>, 03.09.2010.

¹⁰⁰ Sergey Solyanik, An Oil Democracy, or the Story of Berezovka, Green Salvation Herald, 2006, pp.86-87.

¹⁰¹ «Ekologicheskaya situatsiya v Ust-Kamenogorske trebuetsya neotlozhnykh mer – oblastnoe sovescshanie», www.inform.kz, 08.09.2007.

¹⁰² Sergei Azarov, "Chto v vozdukh tebe moem", *Respublika*, 13.10.2006.

¹⁰³ <http://kt.kz/?lang=rus&uin=1133168098&chapter=1153519055>, 10.06.2010.

¹⁰⁴ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

position by establishing exceedingly high prices for supplying information on background concentrations of polluting substances in the air.¹⁰⁵

Finally, state bodies frequently conceal environmental information, making it necessary to go to court in order to obtain this information. Let's take the experience of the Ecological Society Green Salvation, which submits more than 150 inquiries to state bodies each year. In 2010, 71% of Green Salvation's 173 inquiries received replies; 29% were ignored. And the information obtained is often incomplete and lacking in quality.¹⁰⁶ Green Salvation has been forced to appeal to the courts ten times from 2007 to 2010 in connection with a lack of information from state bodies. But even appeals to the courts do not guarantee that complete information will be obtained.¹⁰⁷

Private businesses also conceal information in Kazakhstan, although according to Kazakhstan's Environmental Code, information regarding industrial environmental monitoring is to be open and companies are obliged to provide the public with access to this information. However, businesses either fail to fulfill this requirement or they alter the timeline for providing this information. For instance, Green Salvation has been forced to negotiate with KPO and Tengizchevroil for several months before receiving information.¹⁰⁸ Private firms as well as officials frequently justify their refusal to provide environmental information by stating that it is a commercial or even a state secret. For instance, the leadership of the Atyrau Oil Refinery categorically refused to provide information on the civil engineering design of the project to construct an aromatic hydrocarbon production complex, citing state secrets. The Atyrau public wanted to obtain these documents in order to conduct an independent environmental assessment of the project.¹⁰⁹

The Right to Participate in Decision-making

The right of Kazakhstan's citizens to participate in decision-making processes regarding environmental matters, which is guaranteed in national legislation and the Aarhus Convention (Article 6), is consistently violated. The public is either not at all engaged in the decision-making process or is involved only after a decision has already been made. Often times, public hearings are held after decisions have already been made by state bodies, and without proper notification. If notification about public hearings is even published, it is placed in the back pages of newspapers in a small font. From these announcements it is unclear whether public hearings will be held, and if so where and on what topics. There is no mechanism in Kazakhstan for taking public opinion into account. Therefore, both state bodies and private businesses regard public hearings as a mere formality. Cases in which the opinion of the public is falsified are far from rare.¹¹⁰

¹⁰⁵ Irina Sevostyanova, "Antimonopolnoe vedomstvo obvinyayet "Kazgidromet" v zloupotreblenii dominiruyuschim polozheniem", *Panorama*, 04.06.2010.

¹⁰⁶ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

¹⁰⁷ <http://www.greensalvation.org/index.php?page=sudebnye-dela>, 30.06.2011.

¹⁰⁸ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

¹⁰⁹ Dulat Tasymov, "U ANPZ est cvoi gossekrety?!", <http://www.respublika-kz.info/news/society/7518/>, 09.02.2010.

¹¹⁰ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

Take the case of the village of Berezovka, a portion of which falls within the five-kilometer Sanitary Protection Zone of the Karachaganak Field and, as such, should have been relocated according to the legislation. At KPO's initiative, the SPZ was reduced to three kilometers in 2003, rendering the village outside of the zone's borders and invalidating the legal basis of the residents' resettlement demands. The state bodies made the decision to reduce the size of the SPZ in violation of the provisions of the Aarhus Convention and the requirements of the country's environmental protection legislation. A state environmental assessment was not conducted, the opinion of the residents was not taken into account, and the residents were not admitted into the decision-making process. The state bodies have not even attempted to justify their illegal actions. They announced that KPO introduced new environmental protection technology and that this was sufficient basis for reducing the SPZ. Moreover, the authorities did not like that the villagers were being intractable, and the authorities began to put pressure on activists from the local initiative group.¹¹¹

Even in cases that have received widespread publicity outside of the country and have been the subject of decisions by international bodies, the situation has not changed. State bodies continue to ignore the decisions made by the Parties to the Aarhus Convention. In 2005, Decision II/5a was made at the Second Meeting of the Parties to the Convention.¹¹² The decision concerned, among other things, the situation in the Mountain Giant microregion of Almaty city, where a 110 kV high-voltage transmission line was constructed directly above local residents' houses. Public opinion was ignored and the results of public hearings were falsified.¹¹³ Nevertheless, following the adoption of Decision II/5a, the state bodies have done nothing to resolve the residents' problem or to create mechanisms to ensure the public's right to participate in the decision-making process. Moreover, situations similar to the Mountain Giant case continue to occur. In 2011, authorities in the city of Pavlodar decided to construct a 110 kV high-voltage transmission line near apartments, despite the written objections of citizens and protest meetings. The promises of local authorities to conduct public hearings and take down transmission poles have not been fulfilled.¹¹⁴

The Right to Access to Justice regarding Environmental Matters

The crisis of the justice system takes on a sharp character in Kazakhstan and is a reflection of the general crisis of state bodies in the country. Judges in Kazakhstan are appointed directly by the president and it is completely arbitrary to speak of their independence. Justice is fully dependent upon the executive bodies of power. There are overwhelming grounds with which to say that the courts carry out the political orders of the authorities rather than carrying out justice. Indeed, they have been turned into a tool of the ruling class on behalf of the family clans and they serve these clans by violently suppressing political opponents, economic competitors and unsatisfied ordinary citizens.

The situation is complicated by the high level of corruption in which the judicial system is deeply mired. In April 2011, six judges from Kazakhstan's Supreme Court were fired from

¹¹¹ Sergey Solyanik, *An Oil Democracy, or the Story of Berezovka*, Green Salvation Herald, 2006, pp.83-86.

¹¹² <http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.7.r.pdf>

¹¹³ <http://www.unece.org/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.2.r.pdf>

¹¹⁴ Natalya Yakovleva, "Lozh techet po provodam", *Vzglyad*, №25, 06.07.2011.

their posts and accused of corruption. Criminal cases have been brought against them for abusing their authority, resulting in serious consequences.¹¹⁵

Experienced lawyers ascertain that access to justice in Kazakhstan has become significantly worse than during Soviet times. As a result, the population's trust in the justice system has fallen catastrophically. According to research from the International Republican Institute (IRI), 76% of the country's residents do not trust the courts.¹¹⁶ This, in turn, leads to the growth of social tensions and creates the threat that the resolution of problems will be sought outside of the legal field.

For example, in October 2007 more than one hundred residents of Almaty picketed the building of the Almaty City Court, opposing court decisions on the seizure of property and the land plots by city authorities for construction purposes. During the picket, the protestors rushed into the court building where there was a clash with the police.¹¹⁷ In June 2011, a woman set herself on fire at a public reception for the pro-presidential party "Nur Otan" in Astana. She decided to do so in protest of the unfair, in her opinion, decision of the court regarding her son's business. She died from the burn wounds.¹¹⁸ Two weeks after this incident, a resident in the city of Alga burnt himself before the building of the Regional Public Prosecutor's Office, revolted by the lack of activity regarding the murder of his nephew.¹¹⁹

The Ecological Society Green Salvation, which has many years of experience defending the environmental rights of citizens in Kazakhstan through the courts, identifies the following fundamental problems that are impeding access to justice:

- The high financial costs of appealing to the courts is a fundamental obstacle for average citizens and public organizations;
- Appealing to the courts is significantly complicated by judges who manipulate the norms of procedural rights;
- The principle of equality of the parties in the judicial process is violated;
- The courts are under pressure from the executive bodies of power and draw their conclusions from the defendants of state bodies;
- The implementation of court decisions is not guaranteed, often drawn out, or not done completely.¹²⁰

An excellent illustration of the aforementioned problems is found in the court proceedings on the defense of the rights of the residents of Berezovka, who appealed to the country's public organizations for legal assistance. On June 19, 2008, the Ecological Society Green Salvation, the Kazakh International Bureau for Human Rights and Rule of Law and the Nationwide Public Association Shanyrak filed a lawsuit against the government of Kazakhstan for its failure to act, leading to the violation of the rights of Berezovka's residents. The government and authorized state bodies violated national legislation and the Aarhus Convention by reducing the SPZ and failing to take measures to ensure the safety of Berezovka's residents. The plaintiffs demanded that the reduction of the SPZ be acknowledged

¹¹⁵ Anastasiya Prilepskaya, "Sistema prognila" *Vremya*, 16.04.2011.

¹¹⁶ Arsen Saidov, "Kazakhstantsy ne doveryayut otechestvennym sudam", *Liter*, 05.06.2010.

¹¹⁷ www.respublika.kz, 05.10.2007.

¹¹⁸ Margarita Nikitina, "Ne vyshla iz ognya...", *Vremya*, 22.06.2011.

¹¹⁹ Akmaral Maikozova, "Prokuroram – plamennyi privet", *Vremya*, 07.07.2011.

¹²⁰ <http://www.greensalvation.org/uploads/Arhus/20110615kritika-natc-doklada002.rtf>, 15.06.2011.

as illegal and that the government be required to resolve the question of resettling the villagers of Berezovka and providing them with compensation for material and moral harm. For nearly nine months and under a variety of pretexts, Astana city courts refused to accept the lawsuit for review, and then refused to review the core issue. Finally, in April 2009, the lawsuit was reviewed with numerous violations of procedural norms and it was determined that the reduction of the SPZ was, in fact, illegal. The court did not find in favor of the plaintiff's remaining demands. In December 2009, the plaintiffs appealed the decision in Kazakhstan's Supreme Court and the lawsuit was redirected for a new review by the same court. On April 30, 2010, the Astana city court held an on-site meeting in the village of Berezovka. On June 1, 2010, the court decided in favor of resettling residents and providing compensation to farmers whose houses and land are located within the five-kilometer SPZ. This decision affects only a few of Berezovka's residents. Despite subsequent complaints, appeals and petitions to the Supreme Court on the part of Green Salvation, the court decision took legal effect on November 11, 2010. The eposée of its implementation began. The writs of execution were sent three times to the Department for Executing Court Acts of Western Kazakhstan Oblast. Special oversight over the execution of the decision has been mandated through weekly reporting from the department, but nothing has been put in motion. As a result, as of July 2011 the court decision had not been implemented. The people continue to live in an environmentally dangerous area, and Green Salvation cannot afford to pay the legal costs.¹²¹

The crisis of Kazakhstan's justice system causes concern at the international level. In Decision IV/9c, adopted at the Fourth Meeting of the Parties of the Aarhus Convention in June 2011, it was proposed that Kazakhstan satisfy the following condition "it has thoroughly examined, with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review."¹²²

Kazakhstan is not part of the Council of Europe and it is not a party to the European Convention on the Protection of Human Rights and Fundamental Freedoms, which means that Kazakhstan's citizens cannot appeal to the European Court on Human Rights (Strasbourg). At present, the Strasbourg court is one of the few tools through which the arbitrariness of authorities can be restricted in the post-Soviet space given that its decisions have a binding character. Only the most hopeless cases, which have not been satisfied in any other court of instance, are filed in Strasbourg as a last resort. For example, in Russia it has become basically the only chance for citizens to obtain justice from the authorities and their deep pockets. Russia is the absolute record-holder in terms of the number of claims submitted to the Strasbourg court.¹²³ Nevertheless, despite the accruing stream of cases and the large sums paid in compensation, the leaders of Russian authority significantly aid in these activities in an attempt to reform the country's judicial and law enforcement system.¹²⁴

¹²¹ <http://www.greensalvation.org/index.php?page=sudebnye-dela>, 19.07.2011.

¹²² http://www.unece.org/env/pp/mop4/Documents/ece_mp_pp_2011_L_14_r.doc

¹²³ <http://europeancourt.ru/statistika-evropejskogo-suda-za-1959-2009-gody/#XVI>, 23.08.2011.

¹²⁴ Aleksandr Karavaev, "Kazakhstan v OSCE: evropragmatizm v uscherb grazhdanskomu razvitiyu", <http://ia-centr.ru/expert/6924/>, 15.01.2010

Appeals to International Bodies

The lack of action on the part of government bodies and the lack of access to justice forces Kazakhstan's average citizens and public organizations to look to international bodies to resolve problem. The experience of such appeals for the protection of the human right to a healthy environment is limited and not entirely positive. Nevertheless, it is an important step on the road to protecting the rights of citizens. Following are a few examples of the problems outlined earlier.

Office of the Compliance Officer/Ombudsman

In 2002, the International Finance Corporation (IFC), a part of the World Bank Group, provided Lukoil—a member of KPO—with \$150 million in loans for the development of the Karachaganak Field. This enabled the residents of Berezovka, with assistance from the public organizations Crude Accountability and Green Salvation to submit three complaints to the Office of the Compliance Officer/Ombudsman (CAO). The CAO is an independent body within the World Bank, which considers complaints about the companies that are implementing projects financed by the IFC and Multilateral Investment Guarantee Agency (MIGA).¹²⁵

In the first complaint to the CAO (2004), the residents of Berezovka expressed concerns about the impact of the Karachaganak Field on their health and economic well-being, and in the second (2007) and third (2008) complaints they documented confirmed facts regarding the illegal reduction of the SPZ, and KPO's long and consistent violations of the requirements of international and national legislation. In all of the complaints, the residents demanded that the IFC aid in resolving the question of resettlement and compensation.¹²⁶

In response to the first complaint, the CAO attempted to establish a more trusting relationship between the residents of Berezovka and KPO, and put forward a number of initiatives that did not find support among the residents as they did not resolve the main issue of resettlement.¹²⁷ After these negotiations failed, the CAO conducted an audit, as a result of which it was officially acknowledged that the air emissions and air quality monitoring conducted by KPO was not in accordance with the IFC's requirements. One of the most serious of the violations was the revelation that there is no monitoring data on hydrogen sulfide emissions from 2003 to 2006. It was in these very years that the residents of Berezovka complained that they suffered health problems due to hydrogen sulfide emissions. In fact, the CAO recognized that the residents received unreliable information from KPO, in violation of not only the IFC's policies, but also national legislation and the Aarhus Convention. In response to the second and third complaints, due to the residents' refusal to engage in negotiations with KPO, the CAO decided not to conduct an audit, alleging that the question of the Sanitary Protection Zone's reduction and the resettlement of the village is outside the jurisdiction of the IFC. In so doing, the CAO has renounced consideration of violations of human rights, violations

¹²⁵ www.cao-ombudsman.org, 23.08.2011.

¹²⁶ <http://www.crudeaccountability.org/en/index.php?page=campaign>, 23.08.2011.

¹²⁷ Sergey Solyanik, An Oil Democracy, or the Story of Berezovka, Green Salvation Herald, 2006, pp.83-86.

of international and national legislation, and violations of the IFC's own policy on involuntary resettlement.¹²⁸

Summarizing the Berezovka villagers' five-year experience filing complaints with the CAO, it is necessary to recognize that the mechanism for reviewing complaints at the World Bank is not capable of adequately and timely reviewing and resolving the serious socio-environmental problems caused by the IFC's project at Karachaganak. Although the CAO staff devoted a great amount of time and energy to resolving the conflict, the office's limited mandate and the unwillingness of the IFC to fulfill its obligations has meant that the Berezovka residents' problem remains unresolved. On the positive side, appealing to the CAO has elevated the problem on the international arena, which has provided a certain level of protection to Berezovka's residents who have openly opposed KPO and state bodies. Furthermore, in January 2009, Lukoil paid back its loan ahead of schedule, which may be a result of the heightened interest in this public campaign. Most likely, the IFC and Lukoil were motivated by a desire to avoid further public pressure through the CAO.

The Aarhus Convention's Compliance Committee

One of the bodies of the Aarhus Convention is the Compliance Committee, to which the public can appeal regarding violations of the Convention's provision. The primary role of the Committee consists in reviewing submissions and developing recommendations for the Meetings of the Parties to the Convention, at which decisions are made on future actions.¹²⁹

In early 2004, the Committee received a submission from Green Salvation, the first submission in the history of the Committee. Submission ACCC/C/2004/01 was filed against the state company Kazatomprom, which refused to provide information on the import and burial of foreign radioactive waste, which could cause serious damage to the environment and health of the country's population. Submission ACCC/C/2004/02 was filed by Green Salvation on behalf of the residents of the Mountain Giant microregion of Almaty, where a high-voltage electricity line was constructed without consideration of public opinion and in violation of safety norms. In early 2005, the Committee acknowledged that, in both cases, Kazakhstan had not complied fully with a number of the Convention's points regarding access to information and participation in the decision-making process. The Committee's decision was confirmed at the Second Meeting of the Parties to the Convention in May 2005 and Kazakhstan was given a series of recommendations for improving the situation. Also in 2004, the Committee received submission ACCC/C2004/06 from Almaty residents who were suffering from emissions from Construction Materials Plant #3 (KCMK-3) and were not able to defend their rights in court. In June 2006, the Committee acknowledged that the citizens' right to access to justice was being violated.¹³⁰ Thus, thanks to the "efforts" of officials, Kazakhstan has entered its page in the history of international law.

In April 2005, on the basis of Decision II/5a resulting from submission ACCC/C/2004/02, Green Salvation again appealed to the court to protect the rights of the residents of the Mountain Giant microregion. A lawsuit was filed requesting that the court's decision on this

¹²⁸ <http://www.crudeaccountability.org/ru/index.php?page=khronika>, 23.08.2011.

¹²⁹ <http://live.unece.org/env/pp/cc.htm>, 24.08.2011.

¹³⁰ <http://live.unece.org/env/pp/pubcom.html>, 24.08.2011.

case be reconsidered in light of newly revealed circumstances. However, the court refused to reconsider the case. In the court's opinion, decisions made by the Compliance Committee and the Second Meetings of the Parties are not obligatory, but are merely recommendations, and therefore cannot be considered newly revealed circumstances. The conclusions of the court of the first instance were supported by the Supreme Court, despite the fact that Kazakhstan's Public Prosecutor's Office acknowledged the binding character of the Aarhus Convention's provisions.¹³¹ A similar situation occurred in the case of the lawsuit filed by citizens residing near KCMK-3. In November 2005, with the assistance of Green Salvation, they again filed a lawsuit in the hopes of restoring justice. Despite the Committee's positive decision on submission ACCC/C/2004/06, and the fact that violations of national legislation and the Aarhus Convention had been presented during trial, courts of all instances refused to recognize the violations of the citizens' right to access to decision-making.¹³²

As a result of the appeals to the Aarhus Convention's Compliance Committee, the very human rights violations that have been cast into doubt by Kazakhstan's courts have been acknowledged on the international level. The Committee's decision on Kazakhstan's failure to implement the provisions of the Convention was painful for local officials. Kazakhstan was given recommendations for improving the overall situation. This is, undoubtedly, a moral victory for the people of Kazakhstan. However, the cases won in the Committee have not led to a resolution of the problems of the residents of the Mountain Giant microregion and the KCMK-3 area, who continue to live under high-voltage wire and to breathe the cement dust, and whose rights continue to be trampled by industry, local bodies of authority and the courts. Unfortunately, the Aarhus Convention is not intended as a mechanism through which to restore specific violations of human rights. In turn, Kazakhstan's officials are not in any hurry to implement the Committee's recommendations and to comply with the Convention's provisions. This situation undermines public confidence in the Aarhus Convention as an effective tool to protect environmental human rights.

Conclusions

Kazakhstan's twenty-year period of independence has demonstrated that there has not been a fundamental change in the direction of the government's development since the dissolution of the Soviet Union. Instead of constructing a legal society and diversifying the economy, state institutions have been degraded and civil rights and freedoms have been suppressed by political authority. Kazakhstan has turned into a raw materials appendage of the industrialized countries of the West and China. Massive violations of the human right to a healthy environment and access to natural resources have become one of the main reasons for poverty and environmental destruction in Kazakhstan. These violations are also violations of the fundamental human rights and freedoms that fall within the OSCE's traditional scope of concern.

¹³¹ "Sudebnaya praktika Ekologicheskogo obschestva "Zelenoe spasenie", Vestnik "Green Salvation" No19, 2010, pp.28-29.

¹³² "Sudebnaya praktika Ekologicheskogo obschestva "Zelenoe spasenie", Vestnik "Green Salvation" No19, 2010, pp.31-32.

Kazakhstan's economy has a strongly pronounced raw materials orientation. During the years of independence, the scale of natural resource extraction has increased significantly. The country's economic policy is shaped by transnational corporations, who actively participate in the partitioning of the country's riches and provide essential support to the authoritarian regime. The lion's share of the revenues from the sale of natural resources ends up not in the state treasury, but in the pockets of a narrow group of people who are especially close to the president. Even that insignificant portion of the resources and wealth that remain with average citizens is unprotected from every possible sort of encroachment from the repressive/bureaucratic regime, calling into question private property guarantees in Kazakhstan.

The increasingly large gap between the rich and the poor, the latter comprising practically the country's entire population, is assuming a threatening scale. Due to the dissolution of the agrarian sector, land repartition and the lack of intelligent social policies, unemployed residents from rural areas are setting forth for the cities, where there are similarly unresolved questions of employment and housing. As a result of this internal migration, so-called "shahid belts" are being formed around major cities, comprised of destitute citizens living in difficult social conditions against a backdrop of the elite compradors' splendid mansions.¹³³

Due to the unfair mechanism for distributing the revenue and reaping the benefits of the exploitation of public natural resources, discontent and protest are increasing, especially in the oil and gas extracting oblasts, threatening to develop into a social outburst, the consequences of which could be thoroughly grim for the sovereignty and territorial integrity of the country.

The destructive exploitation of natural riches has led to the intense pollution and destruction of the environment, which is accompanied by the shifting of environmental costs from the polluting industries to the shoulders of ordinary taxpayers. Tens of thousands of people face discrimination due to the close proximity of their homes to dangerous industries or due to the fact that they work at these industrial facilities. This is occurring in both cities and in rural locations where the local population has had the "luck" of finding itself near a large petroleum field. Pollution is accompanied by a growth in diseases and a decrease in the standard of living of average Kazakh citizens. An enormous number of people, particularly those in rural areas, are without access to safe drinking water. This violates the right to live in a healthy environment.

According to many parameters, the environmental situation in Kazakhstan has become worse than during the Soviet period. Although officials and a number of international organizations are fond of citing the difficult environmental legacy of the Soviet period, the time has come to talk about the no less difficult environmental legacy of the period of independence. State bodies have, for all intents and purposes, lost the ability to fulfill their functions and to control the environmental situation in the country, to ensure compliance and

¹³³ At present, the words "compradors" and "comprador bourgeois" are interpreted as official/bureaucrats and businessmen/oligarchs, who acquire capital on the foreign sale of domestic natural resources and trade in foreign goods, then storing the money in foreign banks, motivated by their own self interest and not thinking about the consequences for the national economy. Translated from <http://ru.wikipedia.org>, 25.08.2011.

protect the human right to a clean environment, and to protect the interests of future generations.¹³⁴

In Kazakhstan there is recognition of the public rights to access to information, access to the decision-making process and access to justice on environmental matters, but there are no mechanisms to realize these rights. Access to information is greatly complicated by the unsatisfactory execution of the law and the arbitrariness of officials, who maintain a monopoly on providing information. Average citizens cannot fully realize their right to access to information. The public is basically excluded from participating in decision-making processes. The officials, understanding that public participation in the decision-making processes of state bodies will result in the further development of democratic institutions in the country, do everything to prevent this.¹³⁵ This is quite clear in the examples of the appeals from the residents of Kazakhstan to the Aarhus Convention's Compliance Committee. The same people are deprived of the right to participate in the management of government affairs. Justice takes on a strongly pronounced class character when average citizens are basically unable to defend their rights in court when the cases concern officials or wealthy individuals. This discredits and undermines public confidence in the judicial system.¹³⁶ The right to judicial protection has become ephemeral in Kazakhstan.

Kazakhstan has ratified 24 international agreements in the field of environmental protection. However, even this cursory summary of Kazakhstan's lack of observance of the human right to a clean environment and its failure to implement international agreements clearly demonstrates that Kazakh officials continue to consider conventions as a sham category of foreign policy, necessary only to create the image of a democratic state. Inside the country, officials can regard them as formalities or simply ignore them all together, without fear of being called to account as there are no international legal tools to compel them to act.

Disregard for the norms of national and international law, the disorder within state bodies and flourishing corruption have all led to legal chaos in Kazakhstan. **No one can put an end to this legal chaos—not the public prosecutor, not the courts, not the government, not the parliament, not the president.**

Likewise, existing international bodies are not in a position to propose adequate mechanisms for controlling and bringing Kazakhstan into compliance with its own obligations under the multilateral agreements on environmental human rights. An example is the Aarhus Convention's Compliance Committee, which has limited opportunities to verify information provided by violating countries, particularly in the former Soviet Union, and has no effective mechanisms for influencing violating countries in the event that they fail to act upon the Committee's decisions, with the exception of excluding the country due to moral censure.

Following are recommendations for the OSCE and international organizations. Although the recommended measures may seem unrealistic, they are realistic to some extent for Kazakhstan as well as other countries of the former Soviet Union, which face similarly negative situations regarding the observance of the right to a healthy environment and access to natural

¹³⁴ *Vestnik "Green Salvation" №19, 2010, pp.4-5.*

¹³⁵ "Republic of Kazakhstan's Fulfillment of the Decisions of the Second Meeting of the Parties", *For the Third Meeting of the Parties to the Aarhus Convention*, Ecological Society "Green Salvation", 2008, pp.23-24.

¹³⁶ *Vestnik "Green Salvation" №19, 2010, pp.4-5.*

resources. Otherwise, the lack of action on the part of international bodies is not only silent support of authoritarian regimes, but also an indicator of their own powerlessness. In the words of Vaclav Havel, “some international organizations are dying of being polite.”¹³⁷

Recommendations

1. The OSCE and international organizations should begin to assess the environmental human rights situation in Kazakhstan and the country’s implementation of its obligations under international environmental protection agreements, through reports on compliance with human rights in the country.

2. It is necessary for the international community to make efforts around Kazakhstan’s entry to the Council of Europe and to its accession to human rights protection measures, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms. For Kazakhstan’s authorities, this will be not only a display of political will and a commitment to international obligations, but it will also contribute to reforming the country’s corrupt legal system, and increase the accountability of judges and law enforcement bodies.

3. It is necessary to develop and adopt an international mechanism—whose decisions are binding—to restore specific violated rights to a healthy environment. This type of mechanism could operate under the auspices of the Aarhus Convention, thanks to the expansion of the Compliance Committee’s authority, or through another international body. The experience of applying the Moscow Mechanism of the OSCE (Appendix 1) could serve as the basis for the development of a new tool for protecting human rights. Integrating the approaches of the Aarhus Convention’s Compliance Committee and the principles and methods of the OSCE’s Moscow Mechanism may provide new impetus for expanding the Aarhus Convention’s authority , based on the OSCE experience.

The key elements of this type of human rights instrument should include the following:

- In each case when the authorities and the public are unable to come to a mutually satisfactory resolution of problems, a special commission is created, including representatives from all interested parties:
 - state structures;
 - the public, national and international NGOs;
 - invited independent experts;
 - representatives of the contractual body;
- The given commission conducts research directly at the place where the dispute has arisen. As a result of this research, the commission creates a conclusion document, which includes opinions from all parties and the judgment of independent experts;

¹³⁷ <http://www.osce.org/odihr/18372>

- The conclusion document should possess legal force:
 - within the limits of the contractual mechanism and serve as proof of compliance or non-compliance of the contractual regime;
 - as the basis for appeals to international courts, including the European Court of Human Rights, if the state does not independently take measures to resolve the problem.

Attachment 1

Moscow Mechanism of the OSCE

The Moscow Mechanism of the OSCE is a control procedure that was adopted at the Conference on Human Dimension in Moscow in 1991. This mechanism allows for the formation of a mission of independent experts to evaluate the situation in any OSCE participating State that is systemically violating its human rights obligations, and to provide assistance resolving specific problems. The resulting investigative report is reviewed by the OSCE's governing bodies, which then adopt decisions on regulatory measures. The Moscow Mechanism is aimed at fostering dialogue with the government of the country whose standing is being evaluated. The country's authorities can include representatives in the mission that is conducting the investigation. However, if the country refuses to cooperate with the mission, the report will be prepared and reviewed all the same. The Moscow Mechanism is one of the few OSCE instruments whose decisions do not require consensus from all of the participating States and it may be initiated by no fewer than 10 participating States.¹³⁸

During the course of its existence, the Moscow Mechanism has been invoked seven times, two of which were applied to OSCE participating States from the former Soviet Union. On December 20, 2002, the Moscow Mechanism was invoked by a group of 10 OSCE participating States in regards to Turkmenistan, for the purpose of studying the problem that had arisen regarding an investigation of the alleged assassination attempt on President Niyazov occurred on November 25, 2002. On April 6, 2011, fourteen OSCE participating States adopted a decision to initiate the Moscow Mechanism in connection with the human rights situation in the Republic of Belarus following the presidential elections on December 19, 2010.¹³⁹ It is remarkable that, in the latter case, there was an appeal made to the OSCE by civil society representatives from the beginning. In January 2011, more than 130 leading nongovernmental organizations from the majority of the OSCE countries sent an appeal to all of the participating States in the organization on the need to initiate the Moscow Mechanism procedures in regards to Belarus on the basis of public information regarding civil rights following the events of December 19th.¹⁴⁰

¹³⁸ <http://hrwatch-by.org/moskovskii-mekhanizm> 17.06.2011.

¹³⁹ <http://www.osce.org/odihr/43666>

¹⁴⁰ <http://hrwatch-by.org/moskovskii-mekhanizm> 17.06.2011.

In both cases, the individual responsible for the report was Emmanuel Decaux, Professor of International Law at the University of Paris. The authorities of Turkmenistan and Belarus refused to cooperate with the mission and to appoint their co-report writer. Moreover they have not permitted the expert to enter their countries. Nevertheless, the missions were completed and reports on the situation in the countries were prepared and presented to the OSCE's Permanent Council in Vienna. It is necessary to underscore that the reports were prepared based on data provided by the public, which is regarded as authentic.

The report on Turkmenistan mentions the large-scale violations of all the principles of justice during the investigation into the attempted assassination of President Niyazov. In particular, false arrests and show trials, torture and reprisals by various characters against "enemies of the people," including the eviction of relatives to desert areas, and terrible conditions of detention of political prisoners, that make their life expectancy is very low. Given all of the limitations of the report, a horrifying picture emerges of how much the stated rights differ from the real terror and fear in the country. The report lists practical recommendations for inside the country as well as outside of the country, underlining in particular the need for the international community to put forth its best efforts to influence the situation in Turkmenistan as it represents an extremely severe violation of the fundamental principles of international law.¹⁴¹

The report on Belarus records numerous and systematic human rights violations following the 2010 presidential election, including violations of Belarus' obligations under the OSCE. The report is not political in nature and exclusively reviews the legal and humanitarian component of the human rights crisis in the country. Recommendations have been made to the government of Belarus for legal measures to resolve the situation with prisoners connected to the events of December 19, 2010, as well as recommendations about changing situation related to freedom of expression, association and meeting. In addition, the report contains recommendations for the authorities to implement a wide array of obligations that the country has accepted under the auspices of the United Nations.¹⁴²

It is important to note that neither report was intended to be confrontational, rather to create the opportunity for dialogue with the authorities of Turkmenistan and Belarus in order to change the situation. However, official representatives of these countries continue to insist that they fulfill all of their obligations under the OSCE and the United Nations. Therefore, these reports are only a starting point, one of the steps of the Moscow Mechanism, activated for larger-scale measures to protect human rights in Turkmenistan and Belarus on the part of the OSCE, the Participating States of the OSCE and international institutions. The international community should conduct ongoing monitoring of the situation in these countries, and international financial institutions, national governments and businesses should consider the information in these reports when forming relationships with the authorities of Turkmenistan and Belarus.

Author: Sergey Solyanik, consultant Crude Accountability.

¹⁴¹ <http://www.osce.org/odihr/18372>

¹⁴² <http://www.osce.org/odihr/78705>