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in Decision-making and Access to Justice
in Environmental Matters

Compliance Committee

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Item 7 of the provisional agenda

Communications from members of the public

Findings and recommendations with regard to communication ACCC/C/2010/59 concerning compliance by Kazakhstan

Adopted by the Compliance Committee on 28 March 2013

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I. Introduction

1. On 13 March 2011, the Kazakh public association, National Analysis and Information Resource (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging a failure of Kazakhstan to comply with its obligations under article 6, paragraphs 7, 8 and 9, of the Convention.
2. The communication alleges that by limiting the communicant's opportunity to participate in the decision-making on and to express its opinion during the conduct of the state environmental review (*expertiza*) for the "South West Roads Project: Western Europe-Western China International Transit Corridor" (Road Corridor Project), in the South Kazakhstan Oblast, a project financed by the International Bank for Reconstruction and Development (IBRD), among others, the Party concerned failed to comply with the provisions of article 6, paragraphs 7, 8 and 9, of the Convention.
3. At its thirty-second meeting (11–14 April 2011), the Committee determined on a preliminary basis that the communication was admissible.
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 13 May 2011. On the same date, a number of questions were sent to the communicant soliciting clarification and additional information on a number of issues in the communication.
5. At its thirty-fourth meeting (20–23 September 2011), the Committee agreed to discuss the content of the communication at its thirty-fifth meeting (13–16 December 2011).
6. The communicant responded to the Committee's questions on 11 October 2011. The Party concerned responded to the allegations contained in the communication on 12 October 2011.
7. The Committee discussed the communication at its thirty-fifth meeting, with the participation of representatives of the communicant. The Committee confirmed the admissibility of the communication and expressed its concern that the Party concerned had chosen not to participate in the discussion of the communication. At the same meeting, the Committee agreed on a set of questions to be sent to the parties.
8. The communicant and the Party concerned addressed the Committee's questions on 28 and 29 February 2012, respectively.
9. The Committee prepared draft findings at its thirty-ninth meeting (11–14 December 2012), and in accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and to the communicant on 19 February 2013. Both were invited to provide comments by 19 March 2013.
10. The communicant and the Party concerned provided comments on 6 and 20 March 2013, respectively.
11. At its fortieth meeting (25–28 March 2013), the Committee adopted its findings and agreed that they should be published as a formal pre-session document for the Committee's forty-second meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

II. Summary of facts, evidence and issues¹

A. Legal framework

Public associations

12. The Environmental Code (Act No. 212–III of 9 January 2007, amended on 27 July 2007),² provides for the rights and duties of public associations in Kazakhstan in the sphere of environmental protection. Accordingly, public associations have the right to participate in decision-making processes of State bodies on matters concerning environmental protection under the procedure set forth in the legislation and to receive from State bodies and organizations timely, full and reliable environmental information (Environmental Code, art. 14).

Review procedures on access to information

13. When public authorities refuse to provide environmental information, provide incomplete or misleading information or illegally limit access to environmental information, which should normally be public (Environmental Code, art. 167, para. 4), members of the public have access to review procedures before the superior authority and the courts.

Development control framework

14. The development control system in Kazakhstan follows the model applied in many countries of Eastern Europe, the Caucasus and Central Asia whereby, the decision-making process includes an OVOS (*Оценка воздействия на окружающую среду* (OVOS)) procedure carried out by the developer and the State environmental *expertiza* conducted by the competent authority. The OVOS procedure starts with the developer submitting the application to proceed with the project (*заявка*), continues with the developer commissioning the preparation of the OVOS report, including the organization of public participation, and ends with the developer submitting the final OVOS report (*отчет по оценке воздействия на окружающую среду*), including the report on public participation, to the authorities responsible for the *expertiza*. The competent authority considers the project design, including the OVOS report, and issues its *expertiza* conclusions which, together with the construction permit, constitute the decision of a permitting nature. In the end, it is the conclusions of the environmental *expertiza* that are considered as a decision whether to permit a project and the positive *expertiza* conclusion is a compulsory condition for the banks and other financial institutions to approve funding for economic or other activities (see also Environmental Code, art. 51, para. 4).

Public participation provisions

15. Public participation in the preparation of the environmental impact assessment is regulated by Order No. 204– II of the Ministry of Environmental Protection of 28 June 2007 on the Approval of the Instructions for the Conduct of Environmental Impact

¹ This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

² The communication and other documentation submitted by the parties concerned is available on a dedicated web page for the communication on the Committee's website (<http://www.unece.org/env/pp/compliance/Compliancecommittee/59TableKZ.html>). References to national laws herein rely on the information contained in this documentation.

Assessment of Planned Economic or Other Activities during the Drafting of Pre-Plan, Plan, Pre-Project and Project Documentation (2007 OVOS Instructions).³ Specifically, chapter 8 (paras. 51 and 58–61), provide the following:⁴

51. Public opinion shall be considered during the drafting of OVOS materials for pre-plan, plan, pre-project or project documentation for an economic or other activity.

...

58. The following public consultation procedure must be carried out:

From the date of the announcement of the organization of a public consultation on the draft OVOS report, the developer (drafter) shall ensure access by public representatives to the draft OVOS report and the reception and registration of comments and suggestions.

...

60. Procedure for public consultation through collection of written suggestions (including through a survey). In this procedure the developer (drafter) shall:

- Organize premises (an office) where public representatives are granted access to the draft OVOS report for inspection.
- Organize the registration of written suggestions from the public on the draft OVOS report (including the reception of the survey).
- Analyse comments and suggestions from the public on the draft OVOS report and take a decision on amending the draft OVOS report to take public opinion into account.
- Submit for State environmental expertiza, together with the OVOS materials, copies of suggestions from the public in the form of a record, as well as a commentary on suggestions from the public.

61. The developer (drafter) shall ensure that the public consultation process is documented (in the form of stenographic records, photographs and video recordings, audio recordings and other materials), including:

- The making of an announcement on the conduct of a public consultation.
- The provision of information to the media on the outcomes of the OVOS.
- The registration of people inspecting the draft OVOS report.
- The listing of participants in public hearings.

³ The development control systems in most former Soviet countries are largely based on an OVOS/expertise (*expertiza*) mechanism with OVOS preceding the State environmental expertise. “OVOS” is an acronym the terms of which in direct translation can be rendered as “assessment of impact upon the environment”. The OVOS, however, should not be understood as an environmental impact assessment as it is used in EU legislation. The OVOS and *expertiza* stages are closely interlinked and together constitute the system of environmental decision-making. The *expertiza* is to review the OVOS statement by the competent public authority and issue a positive or negative conclusion which has a permitting nature.

⁴ English translation based on the translation provided by the communicant in the original communication of 1 June 2011. Some terminology was customized.

- The registration of written suggestions and comments on the draft OVOS report.
- The compilation of a record of public hearings which establishes the main subjects of discussion and dispute between the public and the developer.
- The preparation of a commentary on the consideration of suggestions and comments from the public in the project documentation.

16. In particular, the procedure for the public hearings is established by Order No. 135–IIa of the Minister of Environment of 7 May 2007 on Approval of Rules for Public Hearings. Specifically (chap. 1, paras. 4, 6 and 9; and chap. 2, paras. 16–20):⁵

4. Public hearings are carried out for the projects, implementation of which may directly impact the environment and health of citizens.

...

6. Public hearings presuppose equal rights for all to express his/her reasoned opinion on the subject under discussion, based on the study of relevant documentary information, which does not contain confidential information.

...

9. The developer pre-negotiates with local agencies the time and place for public hearings and publishes an announcement in the media to hold public hearings on the content of OVOS materials of planned economic activities on the environment, setting out the time and locations. An announcement should be published in the national and Russian languages 20 days prior to the date of public hearing.

...

16. According to the established regulation, everyone is granted the opportunity to express his/her view at the public hearing and pose questions to the responders. Responders answer the questions of the representatives of the public.

17. The developer arranges the recording and collecting of reports, questions, answers and speeches. Audio and video recordings are also possible.

18. The results of public hearings are incorporated in the protocol signed by the chairman and secretary. A copy of the protocol is transmitted to the local executive bodies.

19. The developer conducts an analysis of the results of the public hearings and decides on the finalization of the project, taking into account the opinions expressed.

20. The developer submits for State environmental *expertiza* the protocol of the public hearings and the draft proposal with OVOS results, revised in the light of the comments of the public, if made on a qualified basis, according to normative legal acts of Kazakhstan, as well as comments on the suggestions by the public that the developer considers to be an unreasonable basis for making changes or additions to the project.

17. By the Order of the Environmental Protection Minister of 2 April 2012, No. 88–II On Introducing Amendments into the Order of the Environmental Protection Minister of

⁵ English translation based on the translation provided by the communicant during the discussion with the Committee on 14 December 2011. Some terminology was customized.

7 May 2007, No. 135-II On Approval of Rules for Public Hearings, changes and additions were made to the existing regulation, specifically:⁶

- All participants of the public hearing should be informed if an audio- or video recording is being made by official mass media representatives.
- Requirements are established providing for: (1) the submission to the local executive authorities of a copy of the protocol on the results of projects the implementation of which may directly impact on the environment and health of citizens; (2) the submission of a draft plan of activities aimed at environmental protection to the body responsible for issuing permits in accordance with clause 3 of article 71 of the Environmental Code of Kazakhstan.
- The provision requiring publication of the announcement of the public hearing 20 days prior to the hearing date is omitted (para. 9 in the earlier Order).
- The provision which prescribed which project-related documentation needed to be submitted for State environmental *expertiza* is also omitted (para. 20 in the earlier Order).

18. In addition, Order No. 238-п of the Minister of Environment of 25 July 2007 on Approval of Rules of Access to Environmental Information Relevant to the OVOS Procedure and Decision-making Process on Proposed Economic and Other Activities (2007 Rules on OVOS-related Environmental Information) establishes requirements for the public participation procedure:

4. The developer of an economic or other type of activity publishes information in special environmental publication sources, as well as on the website of the Ministry of Environmental Protection of Kazakhstan, concerning the submission of the draft OVOS report to the State environmental *expertiza*.

...

8. Interested persons may submit written suggestions and comments to the authority on the draft OVOS report. The written comments and suggestions should contain ... reasoned suggestions and comments.

9. The competent body, in accordance with the Law, within 15 calendar days, shall review the application and provide an answer. If the case requires additional investigation, the consideration period may be extended for no more than 30 calendar days from the notification of the applicant, allowing three days for receipt of the notice.

Environmental *expertiza* and review procedures

19. Concerning the transparency of the State environmental *expertiza* and public access to decisions, “all interested citizens and public associations shall be granted the opportunity to express their opinion during the period of conduct of State environmental *expertiza*” (Environmental Code, art. 57, para. 2); and “after a decision has been made on the conclusion of the State environmental *expertiza*, all interested parties shall be granted the opportunity to receive information on the subject of *expertiza* under the procedure set forth in this Code” (ibid., para. 5).

20. With respect to disputes relating to the State environmental *expertiza*, the Environmental Code (art. 58) provides that these should be examined through negotiations

⁶ Adapted from an English translation of the original Russian provided by the Committee.

or in court proceedings. Negotiations are carried out by the competent body for environmental protection at the request of any interested party, including the developer of the planned activity or the local government body. However, a negative conclusion of the State environmental *expertiza* is not subject to review.

B. Facts

21. The Road Corridor Project is carried out by the Party concerned through its Ministry of Transport and Communication and financed, inter alia, by IBRD. Under the terms of the Loan Agreement concluded on 13 June 2009 between the Party concerned and IBRD, the Party concerned is to carry out the Road Corridor Project in compliance with the requirements, criteria, organizational mechanisms and operational procedures set out in the project documentation, including the Resettlement Policy Document and the draft OVOS report, and it cannot transfer, introduce changes to, revoke or waive any position of the project documentation without the prior agreement of the Bank.

22. The Loan Agreement contains provisions for the preparation of the final OVOS report (section I.5, appendix) and the requirements for the project implementation in accordance with the requirements, criteria, organizational arrangements and operating procedures specified in the OVOS report (section I.1).

23. In October 2010, GradStroi EkoProekt limited liability partnership (Ekolog), the project developer, sent an OVOS report on the Road Corridor Project to the South Kazakhstan Oblast Directorate for Natural Resources and Regulation of Natural Resource Use of the Chu-Talas Department of Environmental Protection of the Ministry of Environmental Protection (Directorate of Natural Resources), the authority responsible for issuing the State environmental *expertiza*.

24. The notice that the OVOS documentation was available for the public to inspect was published in the regional social and political newspaper *Yuzhny Kazakhstan* (No. 128 of 6 October 2010) and in *Ontustik Kazakhstan* (No. 151 of 7 October 2010). The OVOS documentation was made available in the reading room of a research library.

25. Based on the review of the OVOS documentation, the communicant formed the view that the OVOS report did not comply with the 2007 OVOS Instructions and World Bank Operational Policy (OP)/Bank Procedure (BP) 4.01 on Environmental Assessment of January 1999.

26. By letter of 29 October 2010, the communicant's representative, Mr. Issaliyev, sent comments on the OVOS report to the Directorate of Natural Resources and suggested that the report should be returned to Ekolog for further research and environmental impact assessment in line with Bank's requirements and Kazakh legislation.⁷ The Directorate responded by letter of 2 November 2010.

27. Separately, by letter of 1 November 2010, another representative of the communicant, Mr. Moldabekov, also sent comments on the OVOS report to the Directorate of Natural Resources. The Directorate responded by letter of 4 November 2010.

⁷ The communicant copied the letter to the Highways Committee of the Ministry of Transport and Communications, the South Kazakhstan Oblast Highways Department, the main contracting organization for the project (Dongsong Engineering) and its subcontractor (Doris TOO Ltd.), which had been commissioned to carry out the research on the OVOS statement.

28. On 25 November 2010, the communicant's representative Mr. Issaliyev, sent an e-mail to the Deputy Director of the Directorate of Natural Resources,⁸ requesting information on the outcome of the Directorate's consideration of the communicant's comments on the OVOS report and, if an *expertiza* conclusion had been reached, a website address where the conclusion would be made available to the public. The communicant received the response of the Directorate by letter dated 7 December 2010, stating:

The detailed design for the construction of the Temirlanovka By-pass section of the highway is currently undergoing a State environmental *expertiza*. Under article 50 of the Environmental Code, the State environmental *expertiza* must take place within three months of submission of the application. We also bring to your attention that under article 53 of the Environmental Code and article 9 of the Civil Service Act, and also the job descriptions laid down in Provisions of the Directorate, a civil servant who is an expert carrying out the State environmental *expertiza* must keep documentation secure and not allow the disclosure of information entrusted to him, and carry out the orders and instructions of managers and decisions and directions of higher authorities within the scope of their competence.

C. Substantive issues

29. The communicant alleges that it was denied its rights under article 6, paragraphs 7, 8 and 9, of the Convention with respect to the decision-making for the construction of a road corridor. In particular, the communicant's allegations relate to the decision-making for the section of the Western Europe-Western China Road Corridor known as the Temirlanovka By-pass (kilometres 2,217–2,231 of the Corridor) between the Russian border (Samara) and Shymkent.

30. The communicant alleges that it is the content of the letter of the Directorate of 7 December 2010 that constitutes the basis of its communication to the Committee. The communicant alleges that the mandated body, the South Kazakhstan Oblast Department of the Roads Committee of the Ministry of Transport (Roads Committee), has failed to fulfil the requirements of the 2007 OVOS Instructions and article 6, paragraphs 7, 8 and 9, of the Convention, for the following reasons:

- (a) It did not confirm registration of the letters containing comments from the communicant's representatives;
- (b) It did not analyse the comments and proposals from the public;
- (c) It did not draw up the corresponding record;
- (d) It did not provide its own comments on the suggestions from the public.

31. The Party concerned contends that it did not fail to comply with article 6 of the Convention with respect to the Road Corridor Project. The Party concerned concedes that the "working project" (i.e., the documentation required, along with the OVOS report for submission to State environmental *expertiza*, including construction documentation, studies and documents related to public participation procedure), "Reconstruction of the road: Samara (Russian border)-Shymkent ... by-passing Temirlan Village", was returned twice for revision due to a failure to hold public hearings in accordance with the regulations for public hearings. However, public hearings were subsequently conducted (annex 2 to the response of the Party concerned of 12 October 2011). The Party concerned informed the

⁸ Annex 5 to the communicant's additional information submitted on 11 October 2011.

Committee that, as a result of those public hearings, it was decided to move the axis of the route, by-passing the section of Temirlan Village.

32. The Party concerned also reported that, on 26 March 2010, the Director of the Roads Committee, a representative of the communicant, Mr. Issaliyev, and a representative of the Consultant on Project Management (SNC-Lavalin) signed an agreement to establish a consultative body to discuss and monitor the implementation of the project (annex 3 to the response of the Party concerned of 12 October 2011).

33. The Party concerned asserts that the communicant's comments on the OVOS report sent by letters of its representatives on 29 October and 1 November 2010 were taken into account. On 7 December 2010, the State environmental *expertiza* reached a positive conclusion.

34. The Party concerned also notes that the project website,⁹ available on the Internet since 1 July 2010, provides general information about the project, as well as more specific information on environmental protection, the acquisition of land and real estate, public relations, etc.

Use of domestic and other international procedures

35. At the time the communicant submitted its communication to the Committee, it had not been provided with the State environmental *expertiza* conclusion, and hence there was no document for it to challenge before the court. However, the communicant mentioned at the hearing that it might consider the possibility of challenging the conclusion of the State environmental *expertiza* before the court.

36. The Party concerned contends that the communicant did not exercise its rights under national law to use domestic procedures. In particular, the communicant did not exercise its rights under the article 58 of the Environmental Code to request that its disagreement with the State environmental *expertiza* be examined by the mandated body for environmental protection (in this case, the Ministry of Environmental Protection) or the courts. Nor did it exercise its rights under article 167, paragraph 4, of the Environmental Code (see para. 13 above) to challenge the alleged refusal of the authorities to provide information or the alleged provision of incomplete or misleading information before the Ministry of Environmental Protection. Similarly, the communicant did not attempt to seek access to judicial review in accordance with article 9, paragraph 1, of the Convention.

37. With respect to other international procedures, on 5 February 2010 the communicant's representative, Mr. Issaliyev, and another individual, Ms. Shevtsova, filed a request to the World Bank Inspection Panel for inspection of the related IBRD-financed project to determine whether IBRD had complied with its operational policies and procedures (including social and environmental safeguards, such as World Bank OP/BP 4.01), and to address any harm that might have been caused. The request was supported by 45 families from the village of Birlik, Karashik rural district of Turkestan, South Kazakhstan Oblast. After receiving the Bank Management's response and undertaking a fact-finding mission in the field, on 28 June 2010 the Inspection Panel recommended that an investigation not be undertaken with respect to the allegations contained in the request, because it appeared that any disagreement was minor and that steps had already been taken to address them (see also annex 4 to the communicant's response of 11 October 2011).

⁹ See www.europe-china.kz (in Russian and English).

38. The communicant filed a second request with the Inspection Panel, on 15 June 2011, which specifically related to the Temirlankova road segment. The Inspection Panel, after receiving the Management's response and undertaking another mission in the field, issued its report on 18 October 2011. It considered that no further investigation was necessary, because, although there had been agreement between the requesters and IBRD management that there had been flaws in the environmental impact assessment procedure, steps were already under way to address them.

III. Consideration and evaluation by the Committee

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

A. The scope of the considerations of the Committee

40. The communicant's allegations relate to the application of the Convention with regard to a specific project and do not pertain to the compliance in general of the relevant national legal framework with the provisions of the Convention.

41. The Committee notes that the communicant did not use domestic remedies, but in its oral submission during the discussion of the case it did not exclude the possibility of doing so in the future. The Committee welcomes the efforts of the Party concerned and the communicant to start a dialogue, though this began after the submission of the present communication.

42. Since the communicant did not use available domestic remedies, the Committee, rather than examining issues arising from the decision-making concerning the Road Corridor Project, decides to examine some general features of the relevant national legal framework in the light of recent legal developments. However, the Committee considers it necessary to examine also the specific allegations raised with respect to article 6, paragraphs 6 and 8, in order to assess how the regulatory scheme works in practice.

B. General considerations on the application of article 6

43. Under national law, the Road Corridor Project is subject to mandatory OVOS/State environmental *expertiza*, including public participation. The Road Corridor Project is also an activity within the ambit of article 6, paragraph 1 (a), of the Convention, on the basis of paragraph 8 of annex I to the Convention. Therefore, the public participation provisions of article 6 apply.

44. Here, the Committee recalls its observations with regard to the nature of the OVOS/*expertiza* system as a development control mechanism followed in many countries of Eastern Europe, the Caucasus and Central Asia (cf., findings on communication ACCC/C/2009/37 concerning compliance by Belarus (ECE/MP.PP/2011/11/Add.2, para. 74)). In the view of the Committee, the OVOS and the *expertiza* in this system should be considered jointly as the decision-making process constituting a form of environmental impact assessment procedure.

45. Considering the role of the developer in the OVOS, including in the public participation procedure, under the legislation of the Party concerned, the Committee stresses that the developers or the consultants hired by them, as "project proponents" may not ensure all the conditions necessary to guarantee the proper conduct of the public participation. The Committee thus draws the attention of the Party concerned to the fact that

reliance solely on the developer to provide for public participation is not in line with the provisions of the Convention (cf. ECE/MP.PP/2011/11/Add.2, para. 80; and findings on communication ACCC/C/2006/16 concerning Lithuania (ECE/MP.PP/2008/5/Add.6, para. 78)), and that due responsibility must be undertaken by the public authorities during the public participation procedure. As noted earlier by the Committee, “these observations regarding the role of the developers (project proponents) shall not be read as excluding their involvement, under the control of the public authorities, into the organization of the public participation procedure (for example conducting public hearings) or imposing on them special fees to cover the costs related to public participation” (ECE/MP.PP/2011/11/Add.2, para. 81).

46. The Committee notes that despite similarities to the OVOS/*expertiza* system, the law of the Party concerned has specific features, since it provides for some possibilities for the public to participate also at the *expertiza* stage, by granting an opportunity to all interested citizens and public associations to express their opinion while the State environmental *expertiza* is being conducted by submitting written suggestions and comments directly to the competent authority.

47. The Committee notes that the legislation of the Party concerned, in addition to the terms “the public” (*общественность*) and “the public concerned” (*заинтересованная общественность*), for the purpose of public participation also uses the term “interested persons” (*заинтересованные лица*). Since “interested persons” is not defined and there are no criteria to distinguish it from the other two terms, this, in the view of the Committee, may lead to confusion.

C. Notification of the public (art. 6, para. 2)

48. The Committee notes that the rules on public hearings, as amended in 2012, do not provide for any mandatory requirement for the public notification to be timely. In contrast, the previous regulation of 2007 established a 20-day period prior to the public hearing for the public notification to be made. Therefore the Committee finds that the new regulation of the Party concerned does not meet the requirements of article 6, paragraph 2, of the Convention, in terms of timely notification.

49. The Committee further notes that there are different legislative arrangements for informing the public at the OVOS stage and at the *expertiza* stage.

50. At the OVOS stage, Kazakh legislation does not provide for any detailed mandatory requirements regarding methods of informing the public about the public participation procedure other than publication of an announcement in the mass media. Other sources for public notification may be used on a voluntary basis. Although in the present case the public was informed about the project by the notice in two newspapers, and also through the information on the website of the developer, the Committee considers that the Party concerned failed to establish detailed mandatory requirements regarding public notice to ensure that the public is informed in an adequate, timely and effective manner (cf. ECE/MP.PP/2011/11/Add.2, paras. 83, 86).

51. For the *expertiza* stage, the legislation of the Party concerned requires the developer to ensure publication of information in special environmental publication sources, as well as on the website of the Ministry of Environmental Protection, concerning the submission of the draft OVOS report to the State environmental *expertiza*.

52. The Committee considers that, although the obligation of the developer to publish information on the website of the Ministry of Environmental Protection at the *expertiza* stage carries elements of public notification, it is not sufficient to ensure effective public participation. The submission of the draft OVOS report to the State environmental *expertiza*

appears later in the decision-making procedure, and does not compensate for the insufficient public notification at the OVOS stage. Therefore, the Party concerned fails to comply with article 6, paragraph 2, of the Convention.

D. Provision of information to the public (art. 6, para. 6)

53. Under the law of the Party concerned, “interested persons” are able to access general information about the project — including the final OVOS report, as well as more specific information about issues relating to the environment and the acquisition of land — via the website of the project proponent only, and not via the website of the competent public authority. The Committee notes, in this connection, that the relevant information for the construction of the Temirlanovka by-pass segment of the Road Corridor Project was not made available in parallel on the website of the public authority responsible for decision-making, as required by article 6, paragraph 6, of the Convention.

54. The Committee further notes that the OVOS report was made available only on the website of the developer, which is not in accordance with the Convention, even if in this case the developer was a public authority, i.e., the Ministry of Transport and Communication. Rather, the OVOS report should have been made available to the public by the decision-making authority, which in this case was the Ministry of Environment. Therefore, the Committee finds that the Party concerned is not in compliance with article 6, paragraph 6, of the Convention.

E. Procedures for public participation — submission of comments (art. 6, para. 7)

55. The legislation of the Party concerned provides for opportunities for members of the public to submit comments, information, analysis or opinions at both the OVOS and the State environmental *expertiza* stages.

56. According to the 2007 OVOS Instructions, comments by the public at the OVOS stage can be submitted during the public consultation period, which includes public hearings and the collection of written suggestions, including a survey of public opinion.

57. According to the 2007 Rules on OVOS-related Environmental Information, at the stage when the final OVOS report along with project-related documentation is submitted to the competent authority for State environmental *expertiza*, interested persons may submit to the authority written suggestions and comments on the OVOS report. The public authority has to review the application and provide a response within 15 calendar days — or longer if additional investigation is required. This regulation limits the right of the public, which may submit comments only on the OVOS report but not on all the project-related documentation relevant for decision-making which has a wider meaning than the OVOS report alone. Therefore, the current legal arrangements, which narrow the right of the public to submit comments only on the OVOS report, are not in line with the requirements of the article 6, paragraph 7, of the Convention.

58. In addition, the Committee notes that the legislation of the Party concerned regulating the procedure for public hearings requires the public comments to be reasoned and based on the study of documentary information that has been legally received relevant to the matter. At the stage of State environmental *expertiza* the scope of written comments is also limited to reasoned ones. On this occasion, the Committee recalls its previous observation that when national legislation requires that comments are “motivated proposals”, i.e., containing reasoned argumentation, then the law fails to guarantee the full scope of the rights envisaged by the Convention (cf. ECE/MP.PP/2008/5/Add.6, para. 80).

59. Considering the legislative arrangements of the Party concerned, both in terms of limiting the opportunity of the public to submit comments only on the final OVOS report at the *expertiza* stage and the application of criteria for the consideration of the comments submitted (i.e., they must be “reasoned”), the Committee finds that the Kazakh legislation fails to guarantee the full scope of the rights envisaged by the Convention and therefore, does not comply with article 6, paragraph 7, of the Convention.

F. Due account taken of the outcome of public participation (art. 6, para. 8)

60. According to the 2007 OVOS Instructions the developer is responsible for gathering, registering, compiling and analysing the results of public participation which should be taken into due account and, if necessary, the OVOS report should be amended. The developer is also in charge of transmitting the outcome of the public participation procedure to the public authority mandated to issue a conclusion on the State environmental *expertiza*.

61. The Committee notes that, although the procedure for dealing with public comments at the OVOS stage is clear, the key function of assessing the comments received at this stage and incorporating them in the OVOS report, as appropriate, rests solely with the developer. This means that the comments received from the public are sent to the developer, who is in charge of making amendments to the OVOS report and then returning it to the public authority.

62. The Committee does not possess sufficient information on the practical application of the scheme just outlined to conclude whether its features amount to a systematic inconsistency and, therefore, a failure of the Party concerned to comply with article 6, paragraph 8. The Committee considers that the regulatory framework of the Party concerned, according to which the developer is in charge of managing the outcome of the public participation procedures, creates a risk that all public comments are not taken duly into account. However, given the information before it, the Committee is not able to determine whether in this case there was any further outcome of the public participation, besides the comments accepted, that could have been taken into account in the *expertiza* conclusion. Therefore, the Committee is not in a position to assess whether the Party concerned was in compliance with article 6, paragraph 8, of the Convention in this particular case.

G. Prompt information on the final decision (art. 6, para. 9)

63. The legislation of the Party concerned does not establish a clear requirement to inform the public of when the State environmental *expertiza* conclusions are issued and the possibilities for accessing the text of the conclusions along with the reasons and considerations upon which they are based. The Environmental Code provides that “after a decision has been made on the conclusion of the State environmental *expertiza*, all interested parties shall be granted the opportunity to receive information on the subject of the *expertiza* under the procedure set forth in the Code”. This provision does not meet the requirement of article 6, paragraph 9, of the Convention, which creates a straightforward obligation for public authorities to promptly inform the public of the decision and to make accessible to the public the text of the decision along with the reasons and considerations upon which the decision was made. The present communication shows that when the communicant requested information on the decision by letter of 25 November 2010, the authorities in their response of 7 December 2010, instead of facilitating access to the positive conclusion of the *expertiza* issued on that same day, did not disclose it, by referring to limitations set in the Environmental Code and the Civil Service Act.

64. The Committee finds that by not establishing appropriate procedures to promptly notify the public about the environmental *expertiza* conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, the Party concerned fails to comply with article 6, paragraph 9, of the Convention.

IV. Conclusions and recommendations

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

A. Main findings with regard to non-compliance

66. The Committee finds that by not providing the requirement for informing the public in a timely manner, and by not specifying the means of informing the public other than publication in the mass media, the Party concerned fails to ensure that the public is informed in an adequate, timely and effective manner and thus fails to comply with article 6, paragraph 2, of the Convention (paras. 47 and 51 above).

67. The Committee finds that the Party concerned, by not establishing consistent and clear legal requirements for making the information relevant to decision-making accessible for the public, fails to comply with article 6, paragraph 6, of the Convention (para. 53 above).

68. The Committee further finds that by allowing the submission of public comments only on the OVOS report at the stage of State environmental *expertiza*, and by limiting the range of the public comments only to those containing reasoned argumentation, Kazakh legislation fails to guarantee the full scope of the rights envisaged by the Convention and thus fails to comply with article 6, paragraph 7, of the Convention (paras. 56 and 58 above).

69. The Committee also finds that the Party concerned, by not establishing appropriate procedures to promptly notify the public about the environmental *expertiza* conclusions and by not establishing appropriate arrangements to facilitate public access to these decisions, fails to comply with article 6, paragraph 9, of the Convention (para. 63 above).

B. Recommendations

70. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) and (c) of the annex to decision I/7, recommends that the Party concerned:

(a) Pursuant to paragraph 37 (b) of the annex to decision I/7, take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(i) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;

(ii) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;

(iii) There is a clear responsibility of the relevant public authorities to:

a. Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

b. Maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;

(b) Pursuant to paragraph 37 (c) of the annex to decision I/7, draw up an action plan for implementing the above recommendations with a view to submitting it to the Committee by 30 November 2013.
