

INFORMAL TRANSLATION

Questionnaire for the

REPORT OF **KAZAKHSTAN** FOR 2003-2005 ON THE IMPLEMENTATION OF THE ESPOO CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT

for the period mid-2003 to end of 2005

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PART I – CURRENT LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE IMPLEMENTATION OF THE CONVENTION

Please provide the information requested below in Part I, or revise any information relative to the previous report. Describe the legal, administrative and other measures taken in your country to implement the provisions of the Convention. This part should not be used to describe your experience of applying the Convention, i.e. just the framework for its implementation.

Article 2

General Provisions

DOMESTIC IMPLEMENTATION OF THE CONVENTION

1. *List the general legal, administrative and other measures taken in your country to implement the provisions of the Convention (Art. 2.2).*

- Law of the Republic of Kazakhstan of 21 October 2000, No. 86-II “On the Adhesion of the Republic of Kazakhstan to the Convention on Environmental Impact Assessment in a Transboundary Context”;
- Law of the Republic of Kazakhstan “On the Protection of the Environment”;
- Law of the Republic of Kazakhstan “On Environmental Expert Review”;
- Law of the Republic of Kazakhstan of 13 December 2005, No. 97 “On Ratification of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea”;
- Instruction on Conducting Assessment of Environmental Impact of Planned Economic and Other Activities for Pre-feasibility, Pre-project and Project Documentation, given effect by Ministerial Order of 28 February 2004, No. 68-P;
- Guidelines on the Application in Practice of the Convention on Environmental Impact Assessment in a Transboundary Context;
- Guidelines on Public Participation in Environmental Impact Assessment in a Transboundary Context;
- Guidelines on the Carrying Out of Environmental Impact Assessment in a Transboundary Context for the Countries of Central Asia.

TRANSBOUNDARY EIA PROCEDURE

2. *Describe your national and transboundary EIA procedures and authorities (Art. 2.2):*

a. *Describe your EIA procedure and indicate which steps of the EIA procedure include public participation.*

The EIA procedure is regulated by the Law of the Republic of Kazakhstan "On Environmental Expert Review". Environmental impact assessment is conducted in order to determine environmental and other consequences of implementing administrative or business decisions, to develop recommendations to improve the environment and to prevent destruction, degradation, depletion and exhaustion of the eco-system and natural resources.

The EIA results are reflected in a document at the appropriate point in the procedure. The document is an essential part of pre-project and project documentation at the appropriate level.

Stages of EIA:

1. environmental audit,
2. preliminary environmental impact assessment (preEIA),
3. environmental impact assessment (EIA),
4. "Environmental Protection" division.

The developer is obliged by law to make the results of the first three stages of the EIA available for public hearings.

- b. *Describe how the different steps of the transboundary EIA procedure mentioned in the Convention fit into your national EIA procedure.*

The stages of national EIA correspond to the stages of transboundary EIA with the exception of paragraph i) of Appendix II.

- c. *List the different authorities that are named responsible for different steps of the transboundary EIA procedure. Also list the authorities responsible for the domestic EIA procedure, if they are different.*

The authorities responsible for the different stages of transboundary EIA are the Ministry for the Protection of the Environment and area offices for the protection of the environment.

The authorities responsible for EIA procedures within the country are:

- The Ministry for the Protection of the Environment of the Republic of Kazakhstan and its area offices;
- Developers (initiators of the activity) planning economic activity and other forms of activity subject to EIA and state environmental expert review;
- Experts participating in the processes of EIA and state environmental expert review;
- Representatives of NGOs, the general public, the local population with an interest in participating in the EIA process, or one of the above-mentioned parties planning to participate in the activity in the future (e.g. students).

The divisions responsible for state environmental expert review work together with technical divisions of other departments – the Ministry of Health, the Ministry of Science and Education, the Ministry of Energy and Mineral Resources, Committees of the Ministry of Agriculture for Water, Fisheries, Forestry, etc.

- d. *Is there one authority in your country that collects information on all the transboundary EIA cases under the Convention? If so, name it. If not, do you intend to establish such an authority?*

There is no specialized authority that collects information on all transboundary EIA cases in Kazakhstan. The Ministry for the Protection of the Environment is the authority responsible for coordinating transboundary EIA.

3. *Do you have special provisions for joint cross-border projects (e.g. roads, pipelines)?*

There are no special provisions for joint cross-border projects in Kazakhstan. For the countries of Central Asia, there are the Guidelines on the Carrying Out of Environmental Impact Assessment in a Transboundary Context.

IDENTIFICATION OF A PROPOSED ACTIVITY REQUIRING EIA UNDER THE CONVENTION

4. *Is your country's list of activities subject to the transboundary EIA procedure equivalent to that in Appendix I to the Convention?*

The national list of activities subject to transboundary EIA procedures comprises the activities listed under Appendix I to the Convention as well as other activities included in

the Second amendment to the Espoo Convention adopted by decision III/7 at the third Meeting of Parties to the EIA Convention in Cavtat in 2004.

5. *Please describe:*

- a. *The procedures and, where appropriate, the legislation you would apply to determine that an “activity”, or a change to an activity, falls within the scope of Appendix I (Art. 2.3), or that an activity not listed should be treated as if it were (Art. 2.5);*

In order to determine whether an activity is transboundary, the initiator of the activity must determine whether the activity is listed in Appendix I of the EIA Convention. If the given activity does not come under Appendix I, then the initiator must refer to Appendix III, “General Criteria to Assist in the Determination of the Environmental Significance of Activities not Listed in Appendix 1”.

- b. *How a change to an activity is considered as a “major” change;*

On the basis of an analysis of the effect upon the natural and socio-economic environments resulting from the implementation of the proposed activity.

- c. *How such an activity, or such a change to an activity, is considered likely to have a “significant” adverse transboundary impact (Art. 2.5, Guidelines in Appendix III); and*

On the basis of the nature and scale of the planned activity, its economic significance, the complexity of environmental conditions, etc.

- d. *How you would decide whether it is “likely” to have such an impact. (Art. 2.3)*

The structure of the pre-EIA and the volume and detail of information may be expanded to reflect the nature and scale of the planned activity.

PUBLIC PARTICIPATION

6. *Do you have your own definition of “the public” in your national legislation, compared to Article 1(x)? How do you, together with the affected Party, ensure that the opportunity given to the public of the affected Party is equivalent to the one given to your own public as required in Article 2, paragraph 6?*

The term “the public” is defined by the legislation of the Republic of Kazakhstan. The participation of the public is provided for by the legislation of Kazakhstan.

Article 3

Notification

QUESTIONS TO PARTY OF ORIGIN

7. *Describe how you determine when to send the notification to the affected Party, which is to occur “as early as possible and no later than when informing its own public”? At what stage in the EIA procedure do you usually notify the affected Party? (Art. 3.1)*

No practical experience.

8. *Describe how you determine the content of the notification? (Art. 3.2)*

There has been no practical experience. However, if the need arises to draft a Notification, we will refer to Article 3 of the Convention on Environmental Impact Assessment and the Guidance.

9. Describe the criteria you use to determine the time frame for the response to the notification from the affected Party (Art 3.3, “within the time specified in the notification”)? What is the consequence if an affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?

No practical experience.

10. Describe when you provide relevant information regarding the EIA procedure and proposed activity and its possible significant adverse transboundary impact as referred to in Article 3, paragraph 5. Already with the notification or later in the procedure?

No practical experience.

11. How do you determine whether you should request information from the affected Party (Art. 3.6)? When do you normally request information from the affected Party? What kind of information do you normally request? How do you determine the time frame for a response from the affected Party to a request for information, which should be “prompt” (Art. 3.6)?

No practical experience.

12. How do you consult with the authorities of the affected Party on public participation (Art. 3.8)? How do you identify, in cooperation with the affected Party, the “public” in the affected area? How is the public in the affected Party notified (what kinds of media, etc are usually used)? What is normally the content of the public notification? Does the notification to the public of the affected Party have the same content as the notification to your own public? If not, describe why not. At what stage in the EIA procedure do you normally notify the public of the affected Party?

No practical experience.

13. Do you make use of contact points for the purposes of notification as decided at the first meeting of Parties (ECE/MP.EIA/2, decision I/3), and listed on the Convention website at http://www.unece.org/env/eia/points_of_contact.htm?

No practical experience. If the need for notification arises, we well refer to the Convention website for information.

14. Do you provide any information to supplement that required by Article 3, paragraph 2? Do you, furthermore, follow the proposed guidelines in the report of the first meeting of the Parties (ECE /MP/2, decision I/4)? If not, in what format do you normally present the notification?

No practical experience.

QUESTIONS TO AFFECTED PARTY

15. Describe the process of how you decide whether or not you want to participate in the EIA procedure (Art. 3.3)? Who participates in the decision-making, for example: central authorities, local competent authorities, the public and environmental authorities? Describe the criteria or reasons you use to decide?

For the adoption of a decision on participation in the EIA procedure.

16. When the Party of origin requests you to provide information relating potentially affected environment: (a) how do you determine what is “reasonably obtainable” information to include in your response; and (b) describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “promptly” in the context of responding to a request for information? (Art. 3.6)

- a. “reasonably obtainable” information

- b. the procedure of “prompt” provision of information to the requesting party is not provided for by the legislation of Kazakhstan. Instead of the term “promptly”, the legislation refers to “the obligation to provide information”.

Article 4

Preparation of the EIA documentation

QUESTIONS TO PARTY OF ORIGIN

17. *What is the legal requirement for the content of the EIA documentation (Art. 4.1)?*

In accordance with the Law of the Republic of Kazakhstan “On State Environmental Expert Review”, an environmental impact assessment shall include:

1. a determination of the type and level of the environmental impact of the planned activity, including ecological risk;
2. the predicted effects on the environment from the implementation of the proposed activity and their socio-economic consequences;
3. measures to protect the environment during the implementation of the planned activity;
4. an analysis of all legal requirements in this area.

18. *Describe your country’s procedures for determining the content of the EIA documentation (Art. 4.1).*

The Environmental Impact Assessment is carried out for all stages of project planning, taking account of:

1. the state of the environment around the site of implementation of the proposed activity;
2. alternative means of achieving the goals of the planned activity, including not proceeding with the activity;
3. the outlook for socio-economic development in the region;
4. other environmental requirements in the current legislation of the Republic of Kazakhstan.

19. *How do you identify “reasonable alternatives” in accordance with Appendix II, alinea (b)?*

“Reasonable alternatives” are alternatives considered during the impact assessment, which have different technological, social, design and economic project specifications, including the “zero” alternative i.e. not proceeding with the proposed activity.

20. *How do you identify “the environment that is likely to be affected by the proposed activity and its alternatives” in accordance to Appendix II, alinea (c), and the definition of “impact” in Article 1(vii)?*

The term “the environment” comprises potentially affected parts of the environment (possibly also including vulnerable ecosystems, rare and endangered species of flora and fauna, sites of natural and cultural significance and other elements which may be affected by the implementation of the planned activity).

21. *Do you give the affected Party all of the EIA documentation (Art. 4.2)? If not, which parts of the documentation do you provide?*

No practical experience.

22. *How is the transfer and reception of the comments from the affected Party organized? How does the competent authority in your country (as the Party of origin) deal with the comments? (Art. 4.2)*

No practical experience.

23. *Describe the procedures and, where appropriate the legislation you would apply to determine the time frame for comments provided for in the words “within a reasonable time before the final decision” (Art. 4.2)? What is the consequence if the affected Party does not comply with the time frame? If an affected Party asks for an extension of a deadline, how do you react?*

No practical experience.

24. *What material do you provide, together with the affected Party, to the public of the affected Party?*

No practical experience.

25. *Do you initiate a public hearing for the affected public, and at what stage, whether in the affected Party, in your country or as a joint hearing? If a public hearing is held in your country, as Party of origin, can the public of the affected Party, public authorities, organizations or other individuals come to your country to participate?*

No practical experience.

QUESTIONS TO AFFECTED PARTY

26. *Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of the words “within a reasonable time before the final decision”, this being the time frame for comments (Art. 4.2)?*

“A reasonable time before the final decision” is the period required for considering the project documentation under state environmental expert review. This period is defined in Kazakhstan’s legislation on environmental expert review.

27. *Who is responsible for the organization of the public participation in the affected Party? Is the public participation normally organized in accordance with your legislation as the affected Party, or with the legislation of the Party of origin, or with ad hoc procedures, or with bilateral or multilateral agreements?*

In accordance with the Law of the Republic of Kazakhstan “On State Environmental Expert Review”, local authorities organise public participation. Public participation must be organised in accordance with the law of the country that is the affected Party.

Article 5

Consultations

QUESTIONS TO PARTY OF ORIGIN

28. *At which step of the EIA procedure does the consultation in accordance with Article 5 generally take place? Describe the procedures and, where appropriate, the legislation you would apply to determine the meaning of “undue delay”, with regard to the timing of entry into consultation? Do you normally set the duration for consultations beforehand? If there seems to be no need for consultation, how do you determine not to carry out consultations?*

No practical experience.

29. *On what level do you arrange for consultation: national, regional or local? Who usually participates in the consultation? Describe the responsibilities of the authorities involved. By what means do you usually communicate in consultations, for example by meeting, exchange of written communications?*

No practical experience.

QUESTIONS TO AFFECTED PARTY

30. *On what level is the consultation normally held: national, regional or local? Who normally participates in the consultation? By what means do you usually communicate in consultations, for example by meeting or by the exchange of written communications? How do you indicate if there is no need for consultations?*

The need for consultations shall be determined in each specific case.

Article 6

Final decision

QUESTIONS TO PARTY OF ORIGIN

31. *Describe what is regarded as the “final decision” to authorize or undertake a proposed activity (Art. 2.3). Do all projects listed in Appendix I require such a decision?*

In accordance with the legislation of the Republic of Kazakhstan, a positive decision from state environmental expert review is the necessary condition for the adoption of a final decision on the planned activity, including those activities listed in Appendix I.

32. *How does the EIA procedure (including the outcome) in your country, whether or not transboundary, influence the decision-making process for a proposed activity? (Art. 6.1)*

The environmental impact assessment is an obligatory and indispensable part of pre-project documentation. Without a positive decision from state environmental expert review, the implementation of a project is prohibited in Kazakhstan.

33. *Are the comments of the authorities and the public of the affected Party and the outcome of the consultations taken into consideration in the same way as the comments from the authorities and public in your country (Art. 6.1)?*

The comments of the authorities and the public are taken into consideration.

34. *How is the obligation to submit the final decision to the affected Party normally fulfilled? Does the final decision contain the reasons and considerations on which the decision is based? (Art. 6.2)*

No practical experience.

35. *If additional information comes available according to paragraph 3 before the activity commences, how do you consult with the affected Party? If need be, can the decision be revised? (Art. 6.3)*

No practical experience.

Article 7

Post-Project Analysis

36. *How do you determine whether you should request a post-project analysis to be carried out (Art. 7.1)?*

The need for conducting a post-project analysis is determined.

37. *Where, as a result of post-project analysis, it is concluded that there is a significant adverse transboundary impact by the activity, how do you inform the other Party and consult on necessary measures to reduce or eliminate the impact pursuant to Article 7, paragraph 2?*

No practical experience.

Article 8

Bilateral and multilateral agreements

38. *Do you have any bilateral or multilateral agreements based on the EIA Convention (Art. 8, Appendix VI)? If so, list them. Briefly describe the nature of these agreements. To what extent are these agreements based on Appendix VI and what issues do they cover? If publicly available, also attach the texts of such bilateral and multilateral agreements, preferably in English, French or Russian.*

There are no agreements based on the EIA Convention.

39. *Have you established any supplementary points of contact pursuant to bilateral or multilateral agreements?*

No, none have been established.

Article 9

Research programmes

40. *Are you aware of any specific research in relation to the items mentioned in Article 9 in your country? If so, describe it briefly.*

There has been no specific research in relation to the items mentioned in Article 9 of the EIA Convention.

Ratification of the amendments to the Convention and of the Protocol on SEA

41. *If your country has not yet ratified the first amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Not ratified. Ratification is planned (2008-2010), after adoption of the Environmental Code.

42. *If your country has not yet ratified the second amendment to the Convention, does it have plans to ratify this amendment? If so, when?*

Not ratified. Ratification is planned (2008-2010), after adoption of the Environmental Code.

43. *If your country has not yet ratified the Protocol on SEA, does it have plans to ratify the Protocol? If so, when?*

Not ratified. Ratification is planned (2008-2010), after adoption of the Environmental Code.

PART II – PRACTICAL APPLICATION DURING THE PERIOD 2003-2005

Please report on your practical experiences of applying the Convention (not your procedures described in Part I), whether as Party of origin or affected Party. The focus here is on identifying the best practice as well as difficulties Parties encountered in applying the Convention in practice to enable Parties to share solutions. Parties should therefore provide appropriate examples highlighting application of the Convention and innovative approaches to improve application of the Convention.

CASES DURING THE PERIOD 2003-2005

44. *Do you have any practical experience of applying the Convention in this period (yes/no)? If you do not have any such experience, why not?*

The Republic of Kyrgyzstan sent the Republic of Kazakhstan, as the affected Party, notification of a planned activity, namely the construction of facilities to mine gold deposits at Dzheru. Kazakhstan expressed the desire to participate in the EIA process.

45. *Does your national administration have information on the transboundary EIA procedures that were underway during the period? If so, please list these procedures, clearly identifying for each whether your country was the Party of origin or the affected Party. If you have not provided a list of transboundary EIA procedures in connection with previous reporting, also provide a list of those procedures. If possible, also indicate for each procedure why it was considered necessary to apply the Convention.*

No practical experience.

46. *Are there other projects than those mentioned above for which a transboundary EIA procedure should have been applied, but was not? Explain why.*

There have been other projects, but because the affected Party (the People's Republic of China) is not a Party to the EIA Convention, the transboundary EIA procedure was not followed.

47. *Provide information on the average durations of transboundary EIA procedures, both of the individual steps and of the procedures as a whole.*

No practical experience.

EXPERIENCE OF THE TRANSBOUNDARY EIA PROCEDURE IN 2003-2005

48. *If you have had practical experience, has the implementation of the Convention supported the prevention, reduction or control of possible significant transboundary environmental impacts? Provide practical examples if available.*

No practical experience.

49. *How have you interpreted in practice the various terms used in the Convention, and what criteria have you used to do this? Key terms include the following: “promptly” (Art. 3.6), “a reasonable time” (Art. 3.2(c), Art. 4.2), “a reasonable time-frame” (Art. 5), and “major change” (Art. 1(v)). If you are experiencing substantial difficulties interpreting particular terms, do you work together with other Parties to find solutions? If not, how do you overcome the problem?*

No practical experience.

50. *Share with other Parties your experience of using the Convention. In response to each of the questions below, either provide one or two practical examples or describe your general experience. You might also include examples of 'lessons learned' in order to help others.*

- a. *How in practice have you identified transboundary EIA activities for notification under the Convention, and determined the significance and likelihood of adverse transboundary impact?*

No practical experience.

- b. *Indicate whether a separate chapter is provided on transboundary issues in the EIA documentation. How do you determine how much information to include in the EIA documentation?*

EIA documentation is compiled on the basis of the Instruction on Conducting Assessment of Environmental Impact of Planned Economic and Other Activities for Pre-feasibility, Pre-project and Project Documentation.

- c. *What methodology do you use in impact assessment in the (transboundary) EIA procedure (for example, impact prediction methods and methods to compare alternatives)?*

Prediction methods and methods to compare alternatives are used in the environmental impact assessment procedure.

- d. *Translation is not addressed in the Convention. How have you addressed the question of translation? What do you usually translate? What difficulties have you experienced relating to translation and interpretation, and what solutions have you applied?*

There have been no difficulties with regard to translation, since documents communicated between CIS states are written in Russian.

- e. *How have you organized transboundary public participation in practice? As Party of origin, have you organized public participation in affected Parties and, if so, how? What has been your experience of the effectiveness of public participation? Have you experienced difficulties with the participation of your public or the public of another Party? (For example, have there been complaints from the public about the procedure?)*

No practical experience.

- f. *Describe any difficulties that you have encountered during consultations, for example over timing, language and the need for additional information.*

No practical experience.

- g. *Describe examples of the form, content and language of the final decision, when it is issued and how it is communicated to the affected Party and its public.*

No practical experience.

- h. *Have you carried out post-project analyses and, if so, on what kinds of projects?*

No practical experience.

- i. *Do you have successful examples of organizing transboundary EIA procedures for joint cross-border projects? Please provide information on your experiences describing, for example, any bilateral agreements, institutional arrangements, and*

how practical matters are dealt with (contact points, translation, interpretation, transmission of documents, etc.).

No practical experience.

- j. Name examples of good practice cases, whether complete cases or good practice elements (e.g. notification, consultation or public participation) within cases. Would you like to introduce your case in a form of Convention's fact sheet?*

No practical experience.

CO-OPERATION BETWEEN PARTIES IN 2003-2005

- 51. Do you have any successful examples of how you have overcome difficulties arising from different legal systems in neighbouring countries?*

No practical experience.

EXPERIENCE IN USING THE GUIDANCE IN 2003-2005

- 52. Have you used in practice the following guidance, recently adopted by the Meeting of the Parties and available on-line? Describe your experience of using these guidance documents and how they might be improved or supplemented.*

- a. Guidance on public participation in EIA in a transboundary context;*

No practical experience.

- b. Guidance on subregional cooperation; and*

No practical experience.

- c. Guidelines on good practice and on bilateral and multilateral agreements.*

No practical experience.

CLARITY OF THE CONVENTION

- 53. Have you had difficulties implementing the procedure defined in the Convention, either as Party of origin or as affected Party? Are there provisions in the Convention that are unclear? Describe the transboundary EIA procedure as applied in practice, where this has varied from that described in Part I or in the Convention. Also describe in general the strengths and weaknesses of your country's implementation of the Convention's transboundary EIA procedure, which you encounter when actually applying the Convention.*

No practical experience.

AWARENESS OF THE CONVENTION

- 54. Have you undertaken activities to promote awareness of the Convention among your stakeholders (e.g. the public, local authorities, consultants and experts, academics, investors)? If so, describe them.*

An Information Analysis Centre has been set up within the Ministry for the Protection of the Environment. Each year it runs a training seminar on the environment for representatives of all concerned government and non-government organisations and users of natural resources. The seminar's programme includes a session on the Republic of Kazakhstan's international obligations, where information is given on the EIA Convention.

55. Do you see a need to improve the application of the Convention in your country and, if so, how do you intend to do so? What relevant legal or administrative developments are proposed or on-going?

To improve the application of the Convention it is necessary to supplement the national legislative framework with EIA Convention guidance documents.

SUGGESTED IMPROVEMENTS TO THE REPORT

56. Please provide suggestions for how the report may be improved.

There could be fewer repetitive questions.