



Office of the High Commissioner for Human Rights
Palais Wilson, 52 rue des Pâquis, CH-1201 Geneva, Switzerland

8 September 2009

**Re: Universal Periodic Review of the Republic of Kazakhstan, 2010
Submission of Earthjustice**

I. SUMMARY

1. Recalling UN Geneva Assembly Resolution 60/251, adopted on 15 March 2006, UN Human Rights Council Resolution 5/1 adopted on 18 June 2007, and Decision 6/102 adopted on 27 September 2007, and in accordance with the Information Note for NGOs regarding the Universal Periodic Review mechanism (8 October 2007), Earthjustice respectfully submits to the Human Rights Council the following information regarding human rights in the Republic of Kazakhstan for its universal review.

2. The Information and Guidelines for Relevant Stakeholders regarding the Universal Periodic Review mechanism, issued July 1, 2008, states that stakeholders may draw attention to specific conclusions and recommendations made by international and regional human rights mechanisms, and refer to the extent of implementation of those recommendations by the State under universal review. Kazakhstan is a party to the UN Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, also known as the Aarhus Convention. The Aarhus Committee is an important instrument for the protection of human rights in Europe and Central Asia, including the rights of **access to information**, to **public participation** and of **access to justice**, along with the right to a **healthy and sustainable environment**. Government decision-making without public participation, access to information or access to justice can result in environmental damage that, in turn, can infringe upon many international human rights, including the rights to: **health; work; an adequate standard of living; a means of subsistence; property; adequate housing; freedom of movement and residence; and culture and traditional knowledge**; as well as the rights of **indigenous peoples**, including the right to **self-determination**.

3. In considering public submissions related to situations in Kazakhstan, the Aarhus Convention Compliance Committee (Committee) has documented Kazakhstan's human rights violations over the last five years. In June 2008, the third Meeting of the Parties (MOP) of the Aarhus Convention found that the Government of Kazakhstan is not in full compliance with the principles of the Convention. We respectfully request that the Human Rights Council: 1) take into consideration the concerns of the Committee with regard to Kazakhstan; 2) urge Kazakhstan to ensure its public has access to information, avenues for participation, and access to justice; and 3) encourage Kazakhstan to accept assistance, including assistance from the Committee, to remedy the infringement of human rights resulting from a lack of access to justice.

4. Via this submission, Earthjustice seeks to contribute to the protection of human rights in Kazakhstan, including all the rights, described above, that are protected through the Aarhus Convention's guarantees of participatory rights.

II. BACKGROUND

5. Kazakhstan has ratified several of the most prominent human rights instruments, including the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Kazakhstan also ratified without reservation the Aarhus Convention on 11 January 2001.

6. The Fourth Ministerial Conference in the "Environment for Europe" process adopted the Aarhus Convention in 1998, in order to guarantee that the human right to participate in government extends to activities affecting the environment. This agreement requires national governments to guarantee three core rights: the right to information about the state of the environment and activities that might harm it; the right to participate in decisions about potentially harmful activities; and the right to access to justice if the activities violate environmental or other laws. The Aarhus Convention grants citizens of signatory states enforceable rights and is monitored by a Compliance Committee, similar to the Human Rights Treaty Bodies, to which members of the public may communicate concerns regarding a Party's compliance with the Convention.

7. The Aarhus Convention by its scope is not just an environmental law treaty. It links the fields of the environment and human rights. Because the Aarhus Convention grants enforceable rights and imposes on Parties and public authorities obligations regarding access to information, public participation and access to justice, it is often considered in the list of human rights instruments. To date, the Compliance Committee has received 41 communications from the public and one submission by a Party against another. Five of these communications were about Kazakhstan, of which three were considered as admissible.

III. HUMAN RIGHTS VIOLATIONS

Public Communications to the Aarhus Compliance Committee about the State of Human Rights in Kazakhstan

8. On 7 February 2004, Green Salvation, a Kazakh non-governmental organization, submitted a communication to the Committee alleging that Kazakhstan was out of compliance with Aarhus' principles of access to information and access to justice. The communicant claimed that it requested information regarding a proposed draft concerning the import and disposal of radioactive waste prepared by the state-owned nuclear company (Kazatomprom), but the communicant's request was never answered. The information was purportedly about a proposal to import and dispose of foreign radioactive waste in Kazakhstan. According to the communicant, subsequent appeal procedures in courts of various jurisdictions failed to meet the Aarhus Convention's requirements on access to justice.¹

¹ ECE/MP.PP/C.1/2005/2/Add.1 (11 March 2005).

9. On 17 March 2004, Green Salvation submitted a communication to the Committee alleging that Kazakhstan failed to provide an adequate public participation procedure during the permitting process for the construction of high-voltage overhead electric power lines in the Gornyi Gigant district in Almaty, Kazakhstan. According to the communicant, various court proceedings had thus far failed to resolve the matter.²

10. On 3 September 2004, three inhabitants of Almaty, Kazakhstan, submitted a communication to the Committee alleging Kazakhstan's non-compliance with regard to access to justice. According to the communicants, Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection failed to enforce domestic environmental law in the operation of an industrial facility storing cement and coal and producing cement-based materials. The communicants asserted that a court repeatedly failed to consider a part of a lawsuit against the public authorities aimed at remedying this situation.³ Communicants allege violations of their rights to access to administrative or judicial review procedures, guaranteed under Article 9, Paragraph 3 of the Convention.

Human Rights Violations as Documented by the Aarhus Convention Compliance Committee and Aarhus Meeting of the Parties

11. The Committee followed its normal information gathering procedures and organized hearings at its sixth meeting (15-17 December 2004) on the communication of Green Salvation and at its eighth meeting (22-24 May 2005) on the communication of the three inhabitants of Almaty. Representatives of the Government of Kazakhstan and of the communicants participated in these hearings and provided additional information.

12. The Committee found that Kazakhstan was not in compliance with the Convention in all three cases. In particular, the Committee found that:

- 1) Kazakhstan had not ensured the public had access to information. It had failed to implement Aarhus Convention's provisions on access to information in the bodies performing public functions. Also, it had not provided clear regulation or guidance to these bodies with regard to these obligations.
- 2) Kazakhstan had not fully complied with the procedures necessary to ensure real participation by the public concerned with these matters.
- 3) Kazakhstan had not provided access to justice. Its lengthy judicial review procedure and denial of standing to the non-governmental organization in a lawsuit on access to environmental information was not in compliance with the Convention. It also failed to provide effective remedies when a public authority failed enforce environmental legislation. In addition, it failed to ensure that the courts properly notified the parties of the time and place of hearings and of the adopted decisions.

13. The second MOP was held in Almaty, Kazakhstan on 25-27 May 2005, and endorsed the

² ECE/MP.PP/C.1/2005/2/Add.2 (14 March 2005).

³ ECE/MP.PP/C.1/2006/4/Add.1 (28 July 2006).

position of the Committee in Decision II/5a.⁴ It invited the Government of Kazakhstan to submit to the Compliance Committee a strategy, including a time schedule, for transposing the Convention's provisions into national law. The MOP also requested that Kazakhstan develop practical mechanisms and implement legislation establishing clear procedures for training on the Guidelines on Handling Public Requests for Environmental Information to all public officials in relevant public positions at various levels of the administration.

14. In the follow-up process in early 2006, the Government of Kazakhstan submitted to the Committee the draft strategy referred to in Decision II/5a. The draft strategy focused primarily on the draft Environmental Code, which would include some of the legislation and provisions requested by the Committee, and included several capacity-building measures.

15. The Government of Kazakhstan also submitted a report on the measures taken to implement the recommendations of Decision II/5a in February 2008. The report outlined a number of legislative and capacity-building measures undertaken by the Party. With regard to the recommendation concerning the development of the implementation strategy, the report stated that the adoption of the Environmental Code achieved most of the goals set out in the draft strategy.

16. The third MOP, held from 11 to 13 June 2008 in Riga, took note of the progress made by the Party in Decision III/6c.⁵ The MOP reviewed the implementation of Decision II/5a, especially with regard to the relevant legislative and regulatory developments. It noted progress in Kazakhstan's detailed procedures for access to information and public participation in decision-making, as well as the provisions of the new Environmental Code that further facilitates access to justice. It also took note of the relevant capacity-building initiatives for the judiciary and other legal professionals initiated by the Supreme Court of Kazakhstan.

17. Nevertheless, the third MOP found that the Government of Kazakhstan has not yet achieved full compliance with regard to access to justice. In particular, it is concerned that the public will not have the ability to appeal a decision or bring public authorities to court if they fail to act.

IV. CONCLUSIONS AND RECOMMENDATIONS

18. Kazakhstan's failure to be in full compliance with the Aarhus Convention affects Kazakhstani's human rights to access to justice, participation and information. These rights are essential to the protection of a number of other rights, including, but not limited to, the rights to life, health, water, work, culture, development, information, participation, shelter and housing, and the rights of indigenous peoples.

19. Because one of the objectives of the UPR is to encourage "full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights,"⁶ Earthjustice urges the Human Rights Council in its review of Kazakhstan to take into consideration the concerns of both the Aarhus Convention Compliance Committee and Meeting of the Parties. In addition, we urge the Human Rights Council to recognize that Kazakhstan's infringement of the rights of access to justice has broad consequences for the rights and freedom of the people of Kazakhstan.

⁴ ECE/MP.PP/2005/2/Add.7 (13 June 2005).

⁵ ECE/MP.PP/2008/2/Add.11 (26 Sept. 2008).

⁶ A/HRC/RES/5/1.

20. While Kazakhstan has made considerable progress in incorporation the Aarhus Convention's principles into its laws and has communicated this progress with Aarhus's MOP and Compliance Committee, it is important to monitor the application of these principles in practice and to encourage Kazakhstan to further its work on ensuring these rights.

21. In accordance with Decision III/6c of the Meeting of the Parties of the Aarhus Convention, Earthjustice recommends the Human Rights Council request the Government of Kazakhstan to 1) thoroughly identify how judicial and other review authorities can provide adequate and effective remedies in the course of judicial review and, in doing so, ensure the appropriate involvement of the public; 2) strengthen and effectively implement legislation and detailed procedures to provide the public with effective means of participation in decision-making, taking into account public comments; and 3) ensure that governmental activities are not carried out prior to the completion of a permitting process that includes real and effective public participation.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin Wagner". The signature is written in a cursive, flowing style.

Martin Wagner, Managing Attorney
International Program, Earthjustice