

NGO COOPERATION ON ENERGY AND CLIMATE CHANGE IN THE REPUBLIC OF KAZAKHSTAN"

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**Analytical materials for non-governmental organizations on
issues relating to climate change**

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Introduction

This analytical material has been produced to provide Kazakhstan's non-governmental environmental organizations with information on issues of global climate change and to participate in the development of Kazakhstan's position in the negotiations within the framework of the existing international debate and beyond. We examine the legal framework established in Kazakhstan in order to fight against climate change and to fulfil the international commitments made by Kazakhstan within the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol (KP). This text tries to offer a retrospective analysis of the position of Kazakhstan in the UNFCCC and other platforms. We also investigate the possible gaps and inconsistencies in policies at national and international level and their possible consequences. We conclude with recommendations for NGOs involved with Kazakhstan at national and international level and the main key points for future advocacy on the issue of global climate change in Kazakhstan.

The issue of anthropogenic climate change is a major global environmental problem and it may, in the near future, become a most serious obstacle to sustainable development, which most developed countries seek. For small island states, climate change poses a threat not only to their well-being, but also to their very existence, as a result of rising sea levels and threats to food security. The current problem of climate change is extremely complex, both in terms of scientific study and understanding of its physical origins, and from the viewpoint of the practical actions needed to prevent and combat its negative effects.

The present analysis cannot claim in any way to provide a comprehensive or exhaustive coverage of the problem and its multiple aspects, including legal, financial, economic and political aspects, which are the subject of a complex international negotiation process. The task at hand is rather to give Kazakhstani NGOs information on the main areas of action in which they could contribute more actively, taking part in the development and advocacy of policies, plans and programs at local, regional and international levels.

1. Analysis of Kazakhstani legislation on climate change and reduction of CO₂ emissions

1.1 International Requirements

The UNFCCC (United Nations Framework Convention for Climate Change, 1992) was introduced (and came into force in March 1994) as a key instrument of international cooperation in the prevention of human-induced climate change's adverse effects and to reduce the human impact on the atmosphere of the Earth. In connection with this purpose, the UNFCCC works to ensure the application of major principles of the common but differentiated responsibility of all its Member States, taking into account the differences in socio-economic development between them. Industrialized countries and countries with economies in transition (the so-called Annex I countries to the UNFCCC) must play an important role in the fight against climate change and its adverse effects, as in the course of their economic development they have made a greater contribution to the total amount of anthropogenic emissions of greenhouse gases. The UNFCCC also takes into account the principle of historical responsibility of countries in their contribution to the global emissions of greenhouse gases (GHGs).¹ After the ratification of the Kyoto Protocol, Kazakhstan began to take active steps towards assessing its potential to reduce GHG emissions and possible GHG-reduction scenarios and towards the implementation of KP-sanctioned mechanisms in the regulation of GHG emissions. In response to the policies adopted internationally in global agreements on climate change, Kazakhstan established an environmental regulatory framework for the implementation of its commitments under the UNFCCC and the KP. Kazakhstan's obligations under the UNFCCC include the adoption, development, and implementation of policies, plans and programs aimed at combating global climate change, collaboration with other UNFCCC Parties, and the reporting of these actions. Report statements must include the provision of national inventories "of anthropogenic emissions by sources and removals by pollution sinks of all greenhouse gases not regulated under the Montreal Protocol".

As a country included in Annex 1 (for the purposes of the Kyoto Protocol), Kazakhstan

¹ The UNFCCC put in place only general guidelines to combat global climate change. Realizing the need for stronger measures to combat climate change, in 1997, in addition to the UNFCCC, the international community adopted the Kyoto Protocol (KP). The KP and the UNFCCC stipulate that the responsibility for global warming must be held, first of all, by the world's industrialized countries. The Kyoto Protocol provides for the adoption of specific quantitative commitments to reduce or limit greenhouse gas emissions.

must provide annual national inventories of emissions to the UNFCCC Secretariat. These reports became available in 2010 and will be yearly submitted to the scrutiny of international review and published on the website of the secretariat.

1.2 State regulation of emissions and removals of greenhouse gases

The first elements of state regulation in the field of emissions and removals of greenhouse gases appeared in the Environmental Code (Glava 45, 09.01.2007), which laid down the principles for the reduction of emissions and defined legislative framework for the implementation of measures aimed at the reduction and removal of greenhouse gas emissions in the country. The legal framework for the annual national inventory of emissions and removal of greenhouse gases was established, with all relevant data being added to the state inventory of greenhouse gas emissions, which is one of the main international commitments under the UNFCCC and the KP. The Environment Code of 2007 first introduced the need for production control and systematic inventory of GHG emissions by enterprises. The Environmental Code defined the procedure and determined the responsibility of enterprises for the reporting of GHG emissions to the state authorities. It introduced the concept of "quotas" limiting emissions of greenhouse gases, set by the Ministry of Environment for certain types of GHG sources. Reported calculations of GHG emissions will serve as a basis for the determination of emission allowances. Therefore, enterprises are expected to conduct the most accurate calculation of the amount of GHG emissions from their existing activities to avoid underreporting, and, as a consequence, the underestimation of maximum permissible emissions. This was designed to ensure the sustainable development of enterprises and help to identify sectors where desirable and possible reduction of GHG emissions can be made. In Kazakhstan's case, the maximum allowable GHG emissions level must not exceed the level of greenhouse gas emissions in the base -year (which was ruled eventually to be 2010).² In 2010-2011, the Government of

² The MEP (Ministry of Environment) is the body responsible for public administration in the field of climate protection in the Republic of Kazakhstan. MEP also has overall responsibility for the preparation of GHG inventories at national level, coordination and quality control of the inventory of greenhouse gas emissions. The methodology was based on that of the Intergovernmental Panel on Climate Change (IPCC), recommended and adopted by the Conference of the Parties to the UNFCCC. It has been adapted to the conditions of Kazakhstan and is based on the specificities of the country. The Ministry of Environmental Protection, in collaboration with other ministries and departments, has developed a procedure for the formation and functioning of the state system of accounting and reporting of GHG emissions data with the list of state statistical reports, as well as information on the methods of data collection and processing. In line with this, executive authorities should ensure the annual submission of information to the Ministry of Environmental Protection. Relevant data and activity data on sources of greenhouse gas (companies) in the energy, industrial, agricultural, forestry and other sectors of the economy, as well as the necessary methodological Information

Kazakhstan returned to the issue of establishing a national emissions quota and trading system. Said system of quotas should cover the major industries sources of greenhouse gas emissions and it is expected that about 200 companies operating in Kazakhstan will be concerned, thus covering more than half of the national volume of emissions. Kazakhstan's system of quotas and trade of greenhouse gas emissions was created by analogy to the European emissions trading scheme. Requirements for the quotas apply only to large installations of energy, oil and gas, mining, smelting and chemical industries, transport and agriculture.

Key elements of the system of quotas and trade of GHG emission regulation, as stated in the Environmental Code, include the following:

- Quotas for greenhouse gas emissions on the basis of national allocation plans for emissions quotas by issuing emissions certificates;
- Monitoring, reporting and verification of greenhouse gas emissions by regulated companies and facilities;
- An internal mechanism for the implementation of projects aimed at reducing emissions and increasing the absorption of greenhouse gases, including quota-free facilities;
- monitoring, reporting and verification of emissions reductions and removals of greenhouse gases increase in internal projects;
- operations with carbon units, including units of quotas and planning units;
- Trading of units derived from quotas and units derived from internal projects.
- implementation of internal projects aimed at reducing emissions and increase the removal of GHG.³

The economic incentive behind the promotion such projects will be the possibility to use

collected on the basis of published data of the state statistical reporting, information and analytical materials of the ministries and departments, national registry, international organizations, enterprise data.

³ Relevant projects are not subject to the requirements of development mechanisms and joint implementation of the Kyoto Protocol to the UN Framework Convention on Climate Change. This is due to the uncertain status of the KP countries, which is why Kazakhstan is a Party to Annex I, but not included in Annex B of the Kyoto Protocol and therefore does not have any rights to participate in joint implementation projects, or in projects for CDM development. Their realisation would provide for the implementation of internal projects to reduce GHG emissions in the following sectors of the economy:

- 1) Mining and Metallurgy (in terms of utilization of coal mine methane projects);
- 2) agriculture;
- 3) housing and utilities;
- 4) The planting of forest and grassland areas;
- 5) prevention of land degradation;
- 6) renewable energy;
- 7) processing municipal and industrial waste;
- 8) Transport;
- 9) energy-efficient construction.

reduction units generated through the implementation of such projects, for the redemption of quotas for greenhouse gas emissions. Many aspects of this national quota system and greenhouse gas emissions trading have benefited from more detailed regulation in May and August 2012 within Government decisions and orders of the Ministry of Environment. In addition to the Environmental Code of the Republic of Kazakhstan as amended from December 3, 2011, the Law "On supporting the use of renewable energy sources", adopted July 4, 2009 in Kazakhstan, has significant importance within State legislation. This law encourages the use of renewable energy sources as a key tool to carry out international obligations to reduce greenhouse gas emissions. It introduced the basic concepts of national legislation relating to renewable energy, defined the approaches, shape and direction state support must take with regards to RES (renewable energy sources). It established the Government's competence in this area, and that the local executive bodies.⁴ The second part of this law is defined in the section "Supporting the use of renewable sources of energy" and is based on compulsory purchasing of energy produced from RES. Admittedly, the provisions of this part of the law has also not been realized in practice. There are yet no objects that could qualify for the mandatory purchase of electricity produced by them using RES.⁵ The new law (based on Law of 25 December 1997 "On Energy", which was, like the Act of 2009 "Support for the use of renewable energy sources" purely declarative, and its provisions were not applied in practice) concerns the active implementation of the country's energy management tools, energy conservation and energy efficiency expertise,

⁴ The competence of the government covers a wide range of features, including:

- implementation of public policies in support of renewable energy, including through the adoption of industry-specific and regional programs;
- development of legislative frameworks and technical regulations to support renewable energy sources;
- adoption of a plan for the accommodation facilities for the use of renewable energy sources;
- providing renewable energy sources with connections to the electrical or thermal networks;
- support for compulsory purchasing of electricity produced from renewable energy sources;
- regulation and support of construction projects that use renewable energy capacity of up to twenty five megawatts, as well as construction projects that use renewable energy to generate heat;
- monitoring of the use of renewable energy sources.

The majority of these features are not implemented in practice.

⁵ One of the weaknesses of the Law "On support for renewable energy," is admittedly the lack of established procedures and clearly defined responsibilities for the application of its provisions. Its provisions are formulated in a rather general way and are to be considered as a "declaration" to support the use of renewable sources. Yet no law was adopted to implement it. This is regarded as one of the main reasons that this law has not been implemented in practice yet. On the other hand, the necessary institutional framework for its implementation was lacking for a long time, although the law includes an article giving competence to act to the relevant authority. To fill this role, the Ministry of Energy and Mineral Resources was considered first but did not show a significant interest in the development of renewable energy sources because of the need to revise the tariffs for consumers in the event of extensive development. Said Ministry was completely revamped in 2010. The support and regulation of the use of renewable energy sources is now a function executed by the Ministry of Industry and New Technologies.

energy regulation, energy audits, monitoring and evaluation of the energy saving and energy efficiency requirements of government agencies and organizations.

The requirements for mandatory registration and annual reporting on the implementation of energy conservation and energy efficiency deserve a particular mention. Another important regulatory tool is the required examination and documentation of all new or on-going construction or expansion projects on new or existing buildings and structures with energy resources consumption requirements equivalent to five hundred or more tons of fuel per year. This includes government agencies, enterprises and companies.

The Regulation Act of July 7, 2006 "On Specially Protected Areas" provides for the establishment of ecological corridors and ecological networks that maintain the integrity of natural ecosystems, thanks to the delimitation of ecological corridors and protected area networks. This allows for a response to threats to ecosystems associated with the desertification towards the north and to the north and increased fragmentation of ecosystems in interjacent zones.⁶

On December 1, 2008, an official report on natural and man-made disasters that could potentially affect Kazakhstan in the near future was published. It identifies, among other things, dangerous hydrological phenomena (floods, congestion, rivers drying up), debris flows, landslides, hazardous weather events (heavy rainfall, droughts), human epidemiologic diseases, all directly linked to climate change. However, it is still unclear how such reports will be used for the development and planning of adaptation measures in the water sector, which could be carried out by the Committee on Water Resources, the Ministry of Agriculture and local executive bodies.

Upon examination of different legal documents, such as the Environmental Code, the Water Code, Land Code, Forest Code, the Public Health and Welfare Code, the Law on Protected Areas, the Law on Mandatory Environmental Insurance and the Law on Compulsory Insurance in Crop Production in the light of adaptation potential to climate change and its consequences, it becomes clear that they do not contain any binding

⁶ It should be noted that, so far, regulatory framework in national legislation for the implementation of adaptation actions on ecosystems has been formulated by local executive bodies, neither on the creation of transboundary biosphere reserves, nor on the inclusion of the conservation of landscape and biological diversity in the process of spatial planning.

legislation on the protection of natural ecosystems and the health and safety of the population.

Nevertheless, the Strategic Plan of the Republic of Kazakhstan till 2020 created a good basis for the development of measures to mitigate climate change and reduce greenhouse gas emissions. It sets the reduction of greenhouse gas emissions, reducing energy intensity and increasing the share of renewable energy in total energy consumption as strategic objectives.

Quotas on large plants will be implemented in power engineering, production and transportation of oil and gas, chemical manufacturing, mining and metallurgical industries. A package of binding measures to save energy and improve energy efficiency for use at the level of public authorities, public organizations, large energy users, designers and constructors of buildings, structures and facilities, manufacturers and suppliers of energy-consuming devices is also being introduced. The legislative framework for adaptation to climate change in Kazakhstan is not in place yet, as adaptation measures themselves are not fully developed and strictly defined.

1.3 Domestic carbon market

Given Kazakhstan's status under the Kyoto Protocol and the lack of quantitative commitments, the only cost-effective mechanism in such a situation could be a domestic carbon market. This market-based mechanism is seen as a valuable tool to limit and reduce greenhouse gas emissions. Only after the adoption of the Act of December 3, 2011 № 505 "On amendments and additions to legislative acts of the Republic of Kazakhstan regarding environmental issues," real action began to be taken to develop a domestic carbon market, to introduce a quota system of large enterprises and to formulate national allocation plans (NAP) for greenhouse gases in Kazakhstan. Kazakhstan became the first country in the CIS, where an internal system of carbon trading was introduced.

If they exceed the set volume of quotas for greenhouse gas emissions, "polluters" have the right to sell their obligations and to compensate by buying or selling units to another "polluter", who kept GHG units in reserve and who has too many, possibly as a reward for implementing green projects. This is in essence the basic principle of a market mechanism. A "polluter" can also sell his quotas to other "polluters" who may need more.

To obtain a emission trading certificate, "polluters" are required to submit to the environmental protection authority the following documents, verified by an independent accredited organization:

- 1) a report on the inventory of greenhouse gas emissions for the year;
- 2) passports for all facilities and machinery;
- 3) an internal program to reduce greenhouse gas emissions;
- 4) A plan for the implementation of projects to reduce greenhouse gas emissions.

These documents must be certified by an independent accredited organization.

The difficulty for Kazakhstani enterprises lies in the fact that organizations qualified to do so are very few. Even those who have been accredited so far have very little experience of the process. Therefore, it has been necessary to establish a "pilot period" first, to allow businesses to get some experience of the whole process. During the first NAP, "polluters" who would exceed their set allowed emissions quotas will be spared the fines they will be expected to pay after the end of this pilot period.

It will also be possible for companies to sell quotas on the Kazakhstani stock and commodity exchange. It is, however, not yet possible, as the domestic stock exchange has not fully launched yet. In time, the process should be facilitated when market mechanisms are stable. But with potential sellers and buyers of this process will be settled market mechanism.

2. Kazakhstan's participation in the UNFCCC. A retrospective analysis of the position of Kazakhstan in the UNFCCC and other platforms on climate.

The Republic of Kazakhstan has been a Party to the United Nations Framework Convention on Climate Change (UNFCCC) since August 15, 1995, and ratified the Kyoto Protocol on 17 September 2009, thereby obtaining the status of an Annex 1 Party for the KP. Prior to the ratification of the Kyoto Protocol, the Government of Kazakhstan made no move towards making quantitative commitments to the UNFCCC. After ratification, Kazakhstan began taking active measures for the implementation of the Kyoto Protocol and the establishment of the legal framework for state regulation of emissions and removal of greenhouse gas emissions, notably through the creation of a domestic carbon market and of national plans for assigning emission of GHGs (NAPs). At the same time, steps were taken to include Kazakhstan in the list of countries making quantitative commitments for the reduction of GHGs. During sessions of the Conference of the Parties to the UNFCCC and the KP Meeting of the Parties (COP / CC), questions on Kazakhstan, particularly its desire to be included in Annex B of the KP, was discussed repeatedly

during the first commitment period (2008-2012). Unfortunately, no decision on the inclusion of Kazakhstan in Annex B has been taken over the years. It is clear that Kazakhstan is not yet ready for KP's market-based requirements. In this situation, there is only one way for Kazakhstan to participate by instigating and encouraging domestic projects and programs (within the framework of governmental policies and measures) aimed at fighting climate change, and by pursuing the creating of a domestic emissions trading system and carbon market.

3. Comparison with the reality, the research gaps, inconsistencies in policies at national and international level.

Commitments under the UNFCCC and the Kyoto Protocol have not only legal (international and domestic), but great political significance. It is now possible to speak of the need, for Kazakhstan, to take active part in these international negotiations, as a statement of withdrawal from them would cause irreparable harm to the country's international standing

3.1 Harmonisation of Kazakhstan's legal framework and international law

When creating a state emissions regulation and removal of greenhouse gases system, Kazakhstan needed to take into account the fact that, as a Party to the UNFCCC and the KP, it has had to harmonize its domestic legal framework with international law. Past experience of GHG emissions regulation in various countries around the world shows that the creation of carbon markets is one of the most cost-effective and promising policies aimed at reducing emissions. For the establishment and correct functioning of market mechanisms, a variety of economic and administrative instruments may be used.

At present, Kazakhstan's carbon trading market and emissions trading systems are composed of the following key elements:

- allocation of quotas to all major "polluters" for greenhouse gas emissions based on national allocation plans;
- monitoring, reporting and verification of greenhouse gas emissions by all companies and installations under regulation;
- trading of quotas and other carbon units through designated marketplaces (the stock exchange)

GHG emissions certificates, the state register of carbon units, the accreditation of independent entities engaged in documents validation, the verification and confirmation of

the reports on the inventory of companies' emission volumes have all become new instruments of emissions regulation, imposed by new legislation. The Environmental Code imposes penalties for exceeding the permitted level of emissions. Under a decision of the MEP, this system of fines will not be implemented for the duration of the first NAP. It is expected that an analysis of this first experience will bring to light other possibilities for further harmonization of the Kazakhstan legislation on its emissions trading system with the Kyoto Protocol's international requirements. Kazakhstan's newly introduced carbon market is still beyond the KP's requirements and participates indirectly in global emissions reduction, through its contribution to the reduction of domestic emissions.

The foundations for joining Kazakhstan's domestic carbon market with foreign and international markets, like the European trading scheme, are still missing because of Kazakhstan's unusual status within the the Kyoto Protocol and its lack of the so-called "eligibility criteria", which are crucial for the inclusion into Annex B. International requirements are fulfilled within a normative regulatory framework, but in practice, they are not effective yet.

3.2 Gaps in legislation on climate change and necessary amendments in accordance with international regulations

Constant efforts are made to improve Kazakhstan's legislation on the regulation of GHG emissions. The contradictions and inconsistencies that these efforts bring to light are mentioned in the Ministry of Environment Protection's plans for further legislation.

Some changes are made quickly in response to emerging issues. Thus, since the beginning of the year, several amendments were made to the Decree of the Government of the May 7, 2012 № 584 "On approval of the issuance of quotas on greenhouse gas emissions to postpone the reception of documents regarding quota allocation from February 1 to May 1. This was provoked by the fact that, in reality, companies/"polluters" do not dispose of enough time to put together the documentation required for quota allocation, verification and obtention of certificates. The system of companies' GHG monitoring and reporting is also very imperfect and causes significant problems. The methodology in place for calculating and quantifying emission volumes for the inventory, reporting and evaluation of GHG emissions levels also requires serious improvement. In most cases, businesses

use the by-default values of the specific GHG emission coefficients, not by their own emission volume, which would have to be calculated on the basis of laboratory tests. Using "default" coefficients, which can be found in the international IPCC methodology, may lead to distortion of results, as they do not illustrate the specific fuels and technologies used by Kazakhstani industries or the country's specificities. This results in verifiers returning inventory reports uncertified to those who sent them. At present, this has become a serious issue, as companies are often unable to receive a timely certification of their GHG emissions.

The problem still lies in the fact that Kazakhstan has not yet made a decision on the ratification of the Doha Amendments, due to the lack of clarity regarding the applicability of paragraph 3.7 ter, which would result in an increase in its obligations. An analysis of all possible consequences of these amendments for Kazakhstan is currently going on and international lawyers are being consulted on the very feasibility of a ratification.

4. Recommendations for non-governmental organizations on the basis of this analysis and main key points for future advocacy on climate change

Based on the analysis of domestic and international legal aspects of Kazakhstan's legislation on greenhouse gas emissions regulation, as well as the progress of international negotiations and the status of Kazakhstan to the UNFCCC and KP, we conclude that it is desirable for Kazakhstani non-governmental environmental organizations to play a more active role in actions taken against climate change. NGOs' key efforts should be combined and focused on working with the Government and local authorities to amend governmental and local programs regarding matters of climate and energy. We propose to use the experience of non-governmental organizations in Russia and study the materials found in the "Climate and Energy" report of the Russian branch of the World Wildlife Fund (published on their website http://www.wwf.ru/about/what_we_do/climate).

Recommendations for NGOs (international action):

1. Using the Conference of the Parties to the UNFCCC and the Kyoto Protocol as an

- interactive platform to promote Kazakhstan's position in international negotiations;
2. Encouraging representatives of Kazakhstani mass media to participate in conferences on climate and putting light on the negotiation process;
 3. Conducting a strict analysis of the decisions and draft decisions concerning the interests of Kazakhstan to be taken within the framework of KS19/SS9, which will be held in Warsaw in November 2013;
 4. Tracking the validity and date of offers from other countries on the formation and content of the new agreement, as well as proposals for the implementation of all elements of the solution 1/SR.17;

Recommendations for NGOs (activity within the country):

1. To assist local agencies in developing and implementing projects to reduce GHG emissions;
2. To work to identify the problems associated with the reporting of GHG emissions by "polluters" and production of emissions certificates;
3. To assist in addressing gaps and inconsistencies in national legislation regarding the functioning of Kazakhstan's internal carbon market;
4. To take part in discussions on the development and support of the national goal of Kazakhstan to reduce GHG emissions in the second commitment period of the Kyoto Protocol by 2020 and according to agreements legislating the period after 2020;
5. To take an active part in the annual meetings of NGOs with the Minister of Environmental Protection and promote discussion on climate change and prevention of its adverse effects.