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ECONOMIC COMMISSION FOR EUROPE

Meeting of the Parties to the  
Convention on Access to Information,  
Public Participation in Decision-making and  
Access to Justice in Environmental Matters

(Second meeting, Almaty, Kazakhstan, 25-27 May 2005)  
(Item 6 (a) of the provisional agenda)

**CONCLUSIONS ON THE REPORTING PROCESS  
AND IMPLEMENTATION TRENDS<sup>i</sup>**

Prepared by the secretariat with the assistance of a consultant<sup>\*/</sup>

1. The national implementation reports submitted contain a wealth of useful information on the status of implementation of the Convention in most countries that are Parties to the Convention. Each report provides 'baseline' information that can be built upon in successive reporting cycles. The reports should be of value to a wide range of stakeholders, including the general public. They are also expected to provide important contextual information for the Compliance Committee.
2. The process of preparing and submitting of reports has, for the most part, gone smoothly. Most Parties (24 out of 30) submitted reports and most reports were submitted within the deadline. The issues of length limits, editing and translation, combined with the tight timetable, have presented some logistical challenges. One innovative feature of the reporting mechanism, the requirement that the public should be consulted in the preparation of the national report, does not appear to have posed any particular problems for Parties, though it may be premature to

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<sup>\*/</sup> This document was submitted late due to the fact that several national implementation reports were received by the secretariat from the Parties concerned after the deadline set out in decision I/8 of the meeting of the Parties and various first-time problems had to be overcome as this is the first reporting cycle under decision I/8. This was compounded by the fact that a considerable volume of other documentation being prepared for the second meeting of the Parties had to be processed during the same period.

assess whether the reports fully reflect the perspective of those seeking to exercise their rights under the Convention.

3. While the national reports provide valuable insights into how individual countries are meeting the requirements of the Convention, it is important to keep in mind certain limitations when attempting to draw general conclusions on the status of implementation of the Convention, notably the following:

(a) Approximately one quarter of the Parties failed to submit national implementation reports;

(b) The reports that were submitted were of varying quality, with some well presented and others incomplete or contradictory;

(c) The short time available for the preparation of the synthesis report, exacerbated by the fact that several national reports were received late, has constrained the possibilities for making a detailed and exhaustive examination of the national reports, or for seeking clarifications from Parties or soliciting their feedback on draft text;

(d) The restrictions on the length of both the national reports and the synthesis report, while necessary under United Nations rules, have limited the level of detail in the reports;

(e) Certain types of information are inherently difficult to gather through a process whereby Parties are relying on their public authorities to report on their own performance (e.g. data on the number of information requests ignored by public authorities). It is conceivable that academic or non-governmental sources would provide different and possibly even conflicting information in some cases.

Notwithstanding these limitations, some tentative conclusions may be drawn.

4. In general, Parties from all parts of the region appear to be committed to actively pursuing the implementation of the Convention. Several of the national reports acknowledged in strong terms the importance of the Convention, e.g. referring to it as the most significant international instrument on the protection of citizens' right to a healthy environment and, particularly in EECCA, highlighting its exceptional role in promoting democracy and furthering the openness and transparency of decision-making processes. Despite this, the level of implementation of the Convention varies significantly across the UNECE region, depending inter alia upon countries' legal traditions and experiences in democratic governance.

5. In EU member States and other West European countries, the necessary implementing legislation has generally been put in place prior to ratification. The legislative measures being taken by the EC to prepare for ratification have been a driving force in EU countries, especially for the access to information and public participation pillars of the Convention. In general, implementation is quite advanced, with the greatest difficulties arising in regard to access to justice.

6. While much progress has been made in most EECCA and SEE countries, implementation is generally less advanced in those parts of the region. A significant problem is the failure by some of these Parties to introduce the necessary implementing legislation, possibly because they are relying on the fact that, under their constitutions, the Convention applies directly and/or has precedence over national laws. These Parties overlook the fact that procedural mechanisms that they often recognize as still missing need to be introduced by implementing legislation.

Nevertheless, it is important to acknowledge the considerable efforts made to implement the Convention by most of these Parties. Among the problems or challenges identified in these countries are:

- (a) Poor implementation by public authorities at the local and provincial levels;
- (b) Poor implementation by public authorities other than MoEs; and
- (c) Lack of financial resources.

7. Parties appear to have had the least problems in implementing the access to information provisions, although in EECCA and SEE, important obstacles to implementing measures allowing for information requests remain. Problems that were reported related to a lack of awareness of the public's rights, the absence of a clear and comprehensive legislative base, discrepancies in the conditions under which authorities could refuse information requests and the lack of adequate Internet access for the public. Indeed, there appears to be a need across EECCA and SEE to establish further practical measures to make the general public and officials aware of their rights and obligations under the Convention.

8. Implementation of the public participation pillar appears to be somewhat more problematic. Problems noted by countries included the lack of uniform regulations on EIA and a culture of resistance to public participation generally. Difficulties in enforcing legislative provisions implementing article 7 was one problem mentioned in the reports. On the implementation of article 8, countries provided limited responses on their efforts and acknowledged the existence of various obstacles.

9. Implementation of the access to justice pillar appears to present the main challenge for Parties from all parts of the UNECE region. Problems with the judicial system, the low level of independence of judges and the absence of trust in the judiciary were problems noted by several EECCA countries. The slow pace of judicial proceedings and the need for pro bono legal services were emphasized among the challenges by SEE countries. Although many EU and West European countries did not identify particular problems with access to justice, some national reports mentioned that financial barriers and lengthy court proceedings were obstacles to implementation. Other sources show that requirements on members of the public to demonstrate a sufficient interest represent additional problems in several countries. Sharing experiences in providing efficient access to justice may help all countries of the UNECE region to formulate and improve their practices in this area.

10. Several reports from EECCA countries indicate the positive impact that technical assistance projects such as those carried out by the EU-TACIS, the Danish Environmental Protection Agency, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations Institute for Training and Research (UNITAR)<sup>ii</sup> have had in speeding up implementation. In some cases, such projects have supported the preparation of implementation reports.

11. As this is the first reporting cycle, it has inevitably been a learning experience, both for Parties preparing reports and for the secretariat. The second meeting of the Parties will provide a valuable opportunity to learn lessons not only regarding the substantive aspects but also regarding the reporting process itself. Taking into account the various logistical challenges referred to in paragraphs 2 and 3, one option that the Meeting may wish to consider for the future would be to have an earlier deadline for the submission of national reports, e.g. six months

before the meeting of the Parties, allowing a more extended period for preparation of the synthesis report. The Meeting may also wish to consider inviting those organizations involved in the Convention's capacity-building coordination framework to examine the material gathered through the reporting process at their next meeting, provisionally scheduled for autumn 2005, and to analyse it with a view to identifying priorities in particular countries or subregions and targeting capacity-building efforts where most needed. Finally, some consideration could be given to ways of presenting the information in a transparent way, e.g. through the use of a matrix, possibly making use of the clearing house for this purpose.

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<sup>i</sup> These conclusions are drawn from the Synthesis report on the status of implementation of the Convention (ECE/MP.PP/2005/18).

<sup>ii</sup> Further documented in the report on capacity-building activities (ECE/MP.PP/2005/16).