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## Public to play a role in enforcing international law

A new type of international compliance regime was launched in Geneva this week when the Compliance Committee established under the Aarhus Convention<sup>1</sup> held its first meeting. Under the new compliance mechanism, the public, including non-governmental organizations, will have the right to formally challenge Governments that they believe are failing to comply with their obligations under the Convention.

The Aarhus Convention is a relatively new UNECE treaty that provides the public with the right to have access to information, to participate in decision-making and to have access to justice in environmental matters. Compliance is increasingly recognized as a key issue for all international environmental treaties and the development of an innovative compliance mechanism under the Aarhus Convention has been of particular interest to international lawyers.

The new compliance mechanism reflects the principles of transparency and participation that are the hallmarks of the Convention itself. For example, non-governmental organizations are entitled to nominate candidates for the Committee, although all its members serve in a personal capacity and not as representatives of the organizations or Governments that nominated them. Information held by the Committee is generally public and may be kept confidential only in limited and clearly defined circumstances, e.g. where a person making a complaint does not want their identity to be revealed, or where the Committee needs to examine information claimed by a Party to be confidential under the Convention to decide whether the claim is justified.

Another aspect of the Aarhus Convention compliance regime that sets it apart from compliance mechanisms developed under other environmental agreements is that from 23 October 2003 it will allow the public to bring cases of alleged non-compliance directly to the attention of the Committee, which will then be obliged to make a determination on these cases. Thus it will provide a direct means for the public to support the implementation of the Convention and the enforcement of its provisions.

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<sup>1</sup> The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted in the Danish city of Aarhus in June 1998 and entered into force in October 2001. To date, it has 23 Parties.

Mr. Kaj Bärlund, Director of the UNECE Environment and Human Settlements Division, stressed the importance of the new Committee's role at the opening of the meeting: "Many legally binding agreements have been negotiated under the auspices of UNECE but now it is crucial that we put more emphasis on implementing the agreements that have already been adopted. Compliance mechanisms play a key role in that process. The compliance mechanism being launched today promises to be particularly dynamic by allowing public input."

A particular challenge for the Committee, according to Mr. Bärlund, will be the need to reconcile the supportive, non-confrontational, non-judicial nature of the mechanism, which is one of its defining features, with the fact that it will be deciding upon complaints from the public.

One of the main issues discussed by the Committee during its first meeting was the issue of whether meetings should be open or closed. Reflecting the Convention itself, it was agreed that, in principle, all meetings should be open to the public, and that the parties concerned would have the opportunity to participate in discussions of their particular case. However, as in all bodies arbitrating on cases where individual rights are at stake, the Committee will hold its final deliberations in closed session when deciding on a particular case.

Mr. Veit Koester (Denmark) was elected as Chair of the Committee and Prof. Svitlana Kravchenko (Ukraine) as Vice-Chair.

For further information, please contact:

Jeremy WATES  
Secretary to the Aarhus Convention  
UNECE Environment and Human Settlements Division  
Palais des Nations, office 332  
CH - 1211 Geneva 10, Switzerland

Phone: +41 (0) 22 917 23 84 or +41 (0) 79 217 30 36

Fax: +41 (0) 22 907 01 07

E-mail: [jeremy.wates@unece.org](mailto:jeremy.wates@unece.org)

URL: <http://www.unece.org/env/pp/compliance.htm>