

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Fifteenth meeting of the Conference of the Parties
Doha (Qatar), 13-25 March 2010

Interpretation and implementation of the Convention

Compliance and enforcement

NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

1. This document has been prepared by the Secretariat.
2. At its 14th meeting (CoP14, The Hague, 2007), the Conference of the Parties adopted the following Decisions:

Directed to Parties

14.25 *Before the 58th meeting of the Standing Committee, any Party or dependent territory that has been party to the Convention for five or more years, with legislation in Category 2 or 3, should:*

- a) *submit to the Secretariat, in one of the working languages of the Convention, newly enacted legislation for implementation of the Convention; or*
- b) *provide adequate justification for its failure to do so.*

Directed to the Standing Committee

14.26 *With respect to Parties and dependent territories that do not comply with Decision 14.25 or decisions of the Standing Committee in relation to national laws for implementation of the Convention, the Standing Committee shall consider appropriate compliance measures, which may include recommendations to suspend commercial trade in specimens of CITES-listed species to and from such Parties.*

Directed to the Secretariat

14.27 *The Secretariat shall:*

- a) *compile and review the information submitted by Parties on legislation adopted before the 15th meeting of the Conference of the Parties (CoP15) to fulfil the requirements laid down in the text of the Convention and Resolution Conf. 8.4 (Rev. CoP14);*
- b) *prepare or revise the analyses of national legislation and the categories, and advise the Parties concerned of the initial or revised analyses, specifying any requirements that are not yet met;*
- c) *provide technical assistance to Parties requesting advice in the formulation of legislative proposals for CITES implementation by providing, to the extent resources are available:*
 - i) *legal guidance in the preparation of necessary legislative measures;*

- ii) *training of CITES authorities and other relevant bodies responsible for the formulation of wildlife trade policies or legislation; or*
- iii) *any specific support relevant to the fulfilment of the legislative requirements for the implementation of CITES and also consider assisting Parties requesting it to assist implementing agencies with advising their governments of the need to enact adequate national laws;*
- d) *on the basis of information, inter alia, provided in Parties' biennial reports, compile good examples and prepare specialized material for the development of more effective legislation, especially in relation to verification of the legal acquisition of specimens in trade, incorporation of exemptions and special procedures, adoption of appropriate and proportionate penalties and enactment of legislation for specific species or specimens;*
- e) *report at the 57th and 58th meetings of the Standing Committee on Parties' progress in enacting adequate legislation and, if necessary, recommend the adoption of appropriate compliance measures, including suspension of trade;*
- f) *identify for the Standing Committee any countries that require attention as a priority under the National Legislation Project; and*
- g) *report at CoP15 on:*
 - i) *the legislation adopted by the Parties to implement the Convention and any recommendations relating to Parties that have not adopted adequate legislation for implementation of the Convention; and*
 - ii) *any progress concerning technical assistance provided to the Parties in the development of their national legislation for implementation of CITES.*

These Decisions provided the basis for continued operation of the CITES National Legislation Project. In operation since 1992, the Project primarily concerns the analysis and categorization of legislation in relation to four minimum requirements derived from the Convention, and described in Resolution Conf. 8.4 (Rev. CoP14). It also involves the provision of legislative advice and assistance to Parties and dependent territories.

3. At CoP14, the Conference of the Parties also adopted Resolution Conf. 14.2 containing the *CITES Strategic Vision: 2008-2013*. Goal 1 is to ensure compliance with and implementation and enforcement of the Convention. Objective 1.1 under that Goal is that "Parties comply with their obligations under the Convention through appropriate policies, legislation and procedures". The first indicator under that Objective is "[t]he number of Parties that are in Category 1 under the National Legislation Project". These provisions clearly show that Parties see appropriate legislation as a primary factor in ensuring that the Convention achieves its purpose. Nevertheless, approximately half of the Parties still lack appropriate legislation.
4. It was hoped that the legislation of all Parties would have been placed in Category 1 by the present meeting. A great deal of legislative progress has been made by Parties and dependent territories, but full compliance has not yet been realized. The *CITES Strategic Vision: 2008-2013* expressly anticipates that the legislation of all Parties will be placed in Category 1 by the 16th meeting of the Conference of the Parties in 2013. In order for this to happen, the Conference of the Parties will need to increase the momentum of legislative enactment. The proposed revisions to Resolution Conf. 8.4 (Rev. CoP14), contained in Annex 1 to this document, are intended to support this effort.

Legislation adopted to implement the Convention

5. The Secretariat reported at the 57th (SC57, Geneva, July 2008) and 58th (SC58, Geneva, July 2009) meetings of the Standing Committee on Parties' progress in adopting adequate legislation (see documents SC57 Doc. 18 and document SC58 Doc. 18). The most recent legislative status chart is contained in the Annex to document SC58 Doc. 18. The chart will be updated again in time for consideration at the 59th meeting of the Standing Committee (Doha, March 2010) and the present meeting. Some graphics illustrating the progress made since CoP14 will be included in the updated chart.

6. Since CoP14, the legislation of five Parties (Brunei Darussalam, El Salvador, Namibia, Papua New Guinea and Uruguay) has been placed in Category 1 under the National Legislation Project (i.e. legislation that is believed generally to meet the requirements for implementation of CITES). This has brought to 81 the total number of Parties with legislation in Category 1.
7. Several Parties have adopted enabling legislation to implement the Convention but, at the time of writing, were still in the process of adopting implementing regulations. Other countries have adopted legislation, but such legislation requires certain amendments to ensure an effective implementation of the Convention.
8. The Secretariat originally considered that the legislation of French Polynesia and Wallis and Futuna Islands could be placed in Category 1, and this was reflected in the legislative status chart provided at SC58. France later advised the Secretariat that this re-categorization was not yet warranted, as additional legislation was still needed. Accordingly, the legislation of both dependent territories will be placed in Category 2 when the legislative status chart is next updated.
9. As indicated in the Secretariat's reports for SC57 and SC58, a number of legislative reviews and amendments have been or are being undertaken by Parties whose legislation is placed in Category 1. The results of their efforts should be useful to other Parties, particularly in terms of making legislation simpler, more coherent and generally more effective.

Recommendations relating to Parties that have not adopted adequate legislation

Recommendations to suspend trade

10. Djibouti (since April 2004), Mauritania (since July 2004), Rwanda (since April 2004) and Somalia (since July 2004) unfortunately remain subject to recommendations to suspend trade for the failure to report legislative progress. Using external funds provided by Japan, a legislative workshop for North Africa is tentatively planned in Tunisia during December 2009, to which Djibouti, Mauritania and perhaps Rwanda would be invited.

Written cautions

11. As reflected in the Secretariat's reports for SC57 and SC58, a number of Parties and dependent territories have developed or revised CITES legislation plans and draft legislation. It was agreed at SC57 to "remind Parties and dependent territories affected by Decision 14.25 that the Standing Committee would be determining at SC58 whether they had submitted to the Secretariat newly enacted legislation by that time or provided adequate justification for their failure to do so". Reminders sent thereafter by the Secretariat prompted the submission of additional information about the legislative progress achieved by Parties and dependent territories. Nevertheless, by SC58, a number of Parties had not yet provided newly enacted legislation or adequate justification for their failure to do so. The Standing Committee consequently agreed to issue a written caution (one of the compliance measures identified in Resolution Conf. 14.3 on *CITES compliance measures*) to those Parties. The written caution would formally advise a Party that it was not in compliance with Decision 14.25, request action that would bring the Party back into compliance and offer technical assistance. Similar written cautions have been successfully used in the past to assist Management Authorities in obtaining high-level political support for the enactment of CITES-implementing legislation.

Countries requiring attention as a priority

12. At SC58, the Standing Committee identified Bolivia, El Salvador and the United Republic of Tanzania as countries requiring attention as a priority under the National Legislation Project. Other priority countries are: Algeria, Belize, Comoros, Djibouti, Guinea Bissau, Kazakhstan, Kenya, Liberia, Malaysia, Mauritania, Mozambique, Nigeria, Pakistan, Paraguay, Peru, Rwanda, Somalia, South Africa and Venezuela (Bolivarian Republic of). El Salvador has now enacted adequate legislation for implementation of the Convention (see paragraph 6 above), so it can be deleted from the list of priority countries.

Countries not affected by Decision 14.25

13. The legislative progress by Parties and dependent territories not affected by Decision 14.25 (i.e. which had been party to the Convention for less than five years) was reported to the Standing Committee at both SC57 and SC58. No recommendations were adopted by the Standing Committee in relation to these Parties and territories.

Possible future action

14. The Secretariat believes that compliance-related aspects of Decisions 14.25 - 14.27 should be incorporated into Resolution Conf. 8.4 (Rev. CoP14). This would put the National Legislation Project at par with compliance-related provisions for national reports and the review of significant trade. Accordingly, several revisions to the Resolution have been proposed in Annex 1 to this document.

Progress concerning technical assistance

Legal advice and assistance

15. As reported at SC57 and SC58, the Secretariat has continued to provide new and revised legislative analyses to Parties and dependent territories. It has also provided written comments on draft legislation. It responds, on a regular basis, to specific legislative queries received from Parties.
16. Since CoP14, legislative assistance missions have been undertaken to Kenya, Peru, Rwanda, Uganda and the United Republic of Tanzania. These missions were conducted back-to-back with other missions and were supported by the Trust Fund and external funds provided by Japan and the International Tropical Timber Organization.
17. The Secretariat has also provided legislative assistance to Parties in the margins of CITES meetings (e.g. the Animals Committee, Plants Committee and Standing Committee) and workshops (e.g. the Regional Workshop for Arabic-Speaking Countries on Wildlife Trade Policy Reviews).

Training

18. In October 2008, the Secretariat participated for the second time in a national workshop for French magistrates and prosecutors on *Justice, environnement, développement durable et risques industriels*. The CITES Management Authority of France also participated, allowing complementary presentations to be made on international and national aspects of species protection under CITES.
19. The Secretariat was invited to participate in two back-to-back capacity building workshops for countries that are parties to the Dominican Republic - Central America - United States Free Trade Agreement (CAFTA-DR), as well as Panama. The workshops were organized under a Memorandum of Understanding between the Secretariat and the United States Department of the Interior (DOI).
20. The regional legislative workshop was held from 3 to 5 August 2009 in Guatemala City. Participants included representatives of the judiciary, enforcement and Customs agencies, and other departments and agencies with legal and police powers, from Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic. A report on the findings and recommendations of the workshop will be made available as an information document at the present meeting.
21. In addition to the regional legislative workshop for North Africa mentioned in paragraph 10 above, the Secretariat intends to provide legislative assistance in connection with the regional capacity-building workshops envisaged for Anglophone Africa and South/Southeast Asia during 2009, and in three other regions during 2010 (using funds provided by the European Union).
22. Legislative assistance activities have been supported by specifically-designated external funds as well as general capacity-building funds that enabled the provision of multilateral or bilateral legislative assistance. The Secretariat is very grateful for all of this support.

Specific support – transport of live specimens

23. Under Decision 14.59 on the *Transport of live specimens*, the Secretariat prepared an initial but fairly comprehensive analysis of legal texts and activities related to the transport of live specimens. The related report for the 24th meeting of the Animals Committee (AC24, Geneva, April 2009) included historical information on live specimen transport under the Convention, transport guidance provided by international organizations and other entities, relevant provisions of the Convention and Resolution Conf. 10.21 (Rev. CoP14) on *Transport of live specimens*, a description of legislative materials and advice under the National Legislation Project, an analysis of Parties' legislative provisions on the transport of live specimens, and draft legislative guidance for the transport of live specimens (see document AC24 Doc. 15.2).

24. The Secretariat's analysis showed that Parties' legislative provisions on the transport of live specimens related to the: preamble, definitions and effect on other legislation; powers and duties of the Management Authority; conditions of trade; trade restrictions and other stricter domestic measures; permit and certificate applications and forms; invalidity, suspension or revocation of a permit or certificate; registration; recordkeeping; designation of ports; transit and transshipment; travelling exhibitions; compliance monitoring; offences and penalties; and confiscation and disposal.
25. On the basis of a recommendation from its Transport Working Group, the Animals Committee agreed that the Secretariat should incorporate the transport-related guidance found in paragraphs 77-89 of document AC24 Doc. 15.2 into the National Legislation Project. The guidance was later brought to the attention of the Standing Committee at SC58 (see document SC58 Doc. 18, particularly Annex 2). The Committee took note that such guidance would be added to the legislative guidance materials already available under the National Legislation Project.
26. The Secretariat has begun sharing the transport-related guidance with Parties that are developing or revising draft legislation. The experience gained with this work has caused the Secretariat to realize that the transport-related provisions of the Convention require more attention under the National Legislation Project and perhaps also a reference in Resolution Conf. 8.4 (Rev. CoP14).

Conclusions

27. Decisions of the Conference of the Parties, underlying the National Legislation Project, have been adopted at a number of meetings. It now seems both appropriate and timely to incorporate into Resolution Conf. 8.4 (Rev. CoP14) aspects of those Decisions that are compliance-related and that are continuing in nature. These changes might take into account similar provisions which exist in other Resolutions of the Conference of the Parties, such as Resolution Conf. 11.17 (Rev. CoP14) on *National reports*.
28. The legislation of a number of Parties and dependent territories still does not qualify for placement in Category 1 under the National Legislation Project. It is therefore necessary to continue the Project, in particular the legislative analyses and assistance provided under its auspices.

Recommendations

29. It is recommended that the Conference of the Parties adopt the draft revised Resolution Conf. 8.4 (Rev CoP14) contained in Annex 1 to this document and the draft decisions contained in Annex 2.

PROPOSED REVISIONS TO RESOLUTION CONF. 8.4 (REV. COP14) ON
NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

NB: Text to be deleted is ~~crossed-out~~. Proposed new text is underlined.

RECALLING that Article VIII requires all Parties to take appropriate measures to enforce the provisions of the Convention, ~~and to prohibit trade in specimens in violation thereof,~~ and to ensure that specimens pass through any formalities required for trade with a minimum of delay; and that Article IX requires that each Party designate at least one Management Authority and one Scientific Authority;

RECALLING ALSO that Articles III, IV, V, VI and VII require Parties to regulate trade in specimens of species included in the CITES Appendices by, *inter alia*: making findings related to legal acquisition, non-detriment and living specimens; issuing and accepting permits and certificates; and implementing exemptions and special provisions;

ACKNOWLEDGING the adoption of Resolution Conf. 14.2 on the CITES Strategic Vision: 2008-2013, particularly Objective 1.1 that Parties comply with their obligations under the Convention through appropriate policies, legislation and procedures;

RECOGNIZING that the CITES National Legislation Project was established in 1992 and has provided legislative analyses and assistance to Parties and dependent territories since that time;

~~RECALLING Resolution Conf. 11.3 (Rev. CoP14), adopted by the Conference of the Parties at its 11th meeting (Gigiri, 2000) and amended at its 13th and 14th meetings (Bangkok, 2004; The Hague, 2007), which expresses the Parties' conviction that enforcement of the Convention must be of constant concern to the Parties if the objectives of the Convention are to be fulfilled;~~

~~NOTING that the Environmental Law Centre of IUCN has prepared a report for the Secretariat on guidelines for the development of model legislation for CITES implementation; [delete]~~

~~BELIEVING~~ NOTING that a substantial number of progress has been achieved, but that approximately half of the Parties, and a number of dependent territories, have not yet taken the appropriate measures to enforce the provisions of the Convention;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

DIRECTS the Secretariat, within available resources:

- a) to identify those Parties and dependent territories whose ~~domestic measures~~ national legislation does not provide them with the authority to:
 - i) designate at least one Management Authority and one Scientific Authority;
 - ii) prohibit trade in specimens in violation of the Convention;
 - iii) penalize such trade; or
 - iv) confiscate specimens illegally traded or possessed;
- b) to seek from each Party so identified information indicating the procedures, action and time-frames that are ~~needed envisaged~~ in order to ~~establish~~ adopt, as a matter of the highest priority, the legislative measures necessary to properly enforce for effective implementation of the provisions of the Convention; and
- c) to report its findings, recommendations or progress to the Standing Committee and at each meeting of the Conference of the Parties;

URGES all Parties that have not adopted ~~the~~ appropriate ~~measures~~ legislation ~~to fully~~ for effective implementation of the Convention to do so and inform the Secretariat when such measures have been adopted;

DECIDES that the lack of appropriate legislation for effective implementation of the Convention constitutes a major concern regarding compliance with the Convention, which the Secretariat shall refer to the Standing Committee for a solution in accordance with Resolution Conf. 14.3;

INSTRUCTS the Standing Committee to determine, on the basis of reports presented by the Secretariat, which Parties have not adopted appropriate legislation for effective implementation of the Convention;

ALSO INSTRUCTS the Standing Committee, with regard to Parties that have not adopted appropriate legislation for effective implementation of the Convention, to consider appropriate compliance measures, which may include recommendations to suspend commercial trade in specimens of CITES-listed species to and from such Parties;

DIRECTS the Secretariat to seek external funding to enable it to provide technical assistance to Parties in the development of their ~~measures~~ national legislation to implement the Convention; and

INVITES all Parties, governmental, intergovernmental and non-governmental organizations, and other sources to provide financial and technical assistance for the development and effective implementation of ~~such measures~~ national legislation.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Directed to Parties

- 15.xx Parties and dependent territories should submit to the Secretariat, in one of the working languages of the Convention, appropriate legislation which has been adopted for effective implementation of the Convention.
- 15.xx Any Party or dependent territory, which has not adopted appropriate legislation for effective implementation of the Convention, should submit to the Secretariat a justification for not having done so.

Directed to the Standing Committee

- 15.xx The Standing Committee shall review at its 61st and 62nd meetings the legislative progress of Parties and dependent territories.

Directed to the Secretariat

- 15.xx The Secretariat shall:
- a) compile and analyze the information submitted by Parties on legislation adopted before the 16th meeting of the Conference of the Parties (CoP16) to fulfil the requirements laid down in the text of the Convention and Resolution Conf. 8.4 (Rev. CoP14);
 - b) provide, to the extent resources are available, legal advice and assistance to Parties on the development of appropriate legislation for effective implementation of the Convention, including legislative guidance for and training of CITES authorities, legal drafters, policy makers, the judiciary, parliamentarians and other relevant government officials responsible for the formulation and adoption of CITES-related legislation;
 - c) cooperate, in the provision of legislative assistance, with the legal programmes of United Nations bodies and intergovernmental organizations such as UNEP, the Food and Agriculture Organization, the World Bank and the Organization of American States;
 - d) report at the 61st and 62nd meetings of the Standing Committee on Parties' progress in enacting adequate legislation and, if necessary, recommend the adoption of appropriate compliance measures, including suspension of trade;
 - e) identify for the Standing Committee any countries that require attention as a priority under the National Legislation Project; and
 - f) report at CoP16 on the progress made with regard to the implementation of Resolution Conf. 8.4 (Rev. CoP14) and Decisions 15.xx, 15.xx, 15.xx and 15.xx.