

LESSONS LEARNT: CITES, DEVIL'S CLAW AND LIVELIHOODS
(document prepared by the Devil's Claw Range State Working Group¹)

This document is being distributed at the request of the Plants Committee following Dec.12.63, 12.64 and 12.65.

Introduction

At the Eleventh Conference of the Parties (CoP11) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), held in 2000, there was a proposal from Germany to list Devil's Claw (*Harpagophytum* spp.) on Appendix II of the convention. If passed this would have subjected the trade to a degree of international regulation and oversight. The proposal – which proved controversial – was an attempt to persuade the international community to intervene in the Devil's Claw market chain for the purposes of conservation.

Part of the controversy was caused by doubts about whether there was sufficient evidence of the threatened status of the plant to justify the listing. But perhaps the greater part of the controversy resulted from the claim that the listing would have a severe impact on the livelihoods of thousands of very poor harvesters who depend on the trade in Devil's Claw to provide them with a small but vital cash income.²

Although the original proposal was withdrawn, the Parties to CITES retained an interest in Devil's Claw, through the passing of Decisions at CoP11 and again at CoP12. Some of these decisions addressed issues of human development as they relate to the trade in Devil's Claw. At a time when the Parties to CITES may be about to reduce the attention paid to *Harpagophytum*, it is worth examining how CITES has dealt with the trade in this species. There are some broader lessons that can be drawn, particularly with regard to how CITES handles livelihoods.

Devil's claw within CITES

a) The proposal at CoP11

Devil's Claw first entered the CITES arena when Germany submitted its proposal to list *Harpagophytum procumbens* and *H. zeyheri* on Appendix II. The proposal was submitted in November 1999, in time for consideration at the Eleventh Conference of the Parties that was held in Gigiri, Kenya in April 2000.

The proposal stated that *H. procumbens* should be listed on Appendix II in accordance with Article II 2 (a). This requires an Appendix II listing for 'all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilisation incompatible with their survival'. It also proposed that *H. zeyheri* should be listed on Appendix II in accordance with Article II 2 (b) for look-alike problems. This clause allows the listing of species for which, although they themselves may not be threatened, the trade needs to be regulated in order to effectively control the trade in species listed in accordance with Article II 2 (a).

The chief ground for listing the *H. procumbens* cited by the proposal was the increase in harvesting over preceding years, with a consequent decline in the population numbers. Several pieces of evidence were cited for the decline of the species, including the reports of declines in populations in

¹ Drafting assistance was provided by Barney Dickson of Fauna & Flora International.

² The term 'livelihood' is used here in a non-specialist sense to refer to a person's means of living. In this sense the harvesting and sale of Devil's Claw contributes to the livelihoods of the harvesters.

communal areas³ where harvesting was known to be taking place and the smaller size of root slices entering the trades, indicating that the larger, older plants were no longer so plentiful. Moreover, the proposal painted a picture of rising demand leading to a further increase in exploitation which, it was predicted would have 'an increasingly severe impact on the wild population' (CITES Prop 11.60). The conclusion was that 'With an increase in demand and thus exploitation, one can therefore expect the trade to become a major threat to the survival of *H. procumbens*.' (CITES Prop 11.60).

Resolution Conf 9.24 sets out the detailed criteria for listing species on the Appendices and outlines the required format of listing proposals. Quite consistently with this resolution, Germany's proposal did not refer to the livelihoods of the harvesters of *Harpagophytum*, the role that harvesting plays in their livelihoods or the possible impact on them of an Appendix II listing.

TRAFFIC, the wildlife trade monitoring network, in its recommendations on the proposals, judged that both species satisfied the relevant criteria for inclusion in Appendix II and it recommended acceptance of the proposal (TRAFFIC Network, 2000). The CITES Secretariat, in its provisional assessment of the proposals, also supported Germany's proposal (Convention on International Trade in Endangered Species of Wild Fauna and Flora, 2000).

The tenor of the debate changed significantly when, in the run-up to CoP11, CRIAA SA-DC (a Namibian NGO that works with harvesters), circulated a petition urging the rejection of the proposal (Anon n.d.). At CoP11 this was supported by governments and non-state actors, particularly from southern Africa.

The main point made in the petition was that listing the species on Appendix II 'will do enormous harm to tens of thousands of extremely poor rural harvesters'. This would happen because the listing would send 'a wrong and negative message to the market about a safe, effective and abundant herbal remedy'. The reasoning was that the listing would cause a drop in demand leading to a disastrous loss of income for harvesters who had few other livelihood opportunities. The petition queried the empirical evidence for the proposal and claimed that 'There is no scientific basis that *Harpagophytum* is endangered'. It noted that the listing would encourage the commercial cultivation of the plant that, if successful, would further marginalize the harvesters on whose traditional knowledge the trade was based.

While, as has already been noted, the criteria for listing species on Appendix II made no reference to the livelihoods of those affected by the listing, the issue was at the forefront of the petition. In an email response that was widely circulated at the time, the head of Germany's Scientific Authority for Plants accepted the importance of the human dimension. He stated that 'our overall aim is the sustainable and long-term utilisation of the species to the financial benefit of local harvesters which by this will have an incentive to conserve the plant and its ecosystem' (Schippmann 2000). He shared the concerns about the effects of the development of commercial cultivation.

Despite this defence, the range states also made clear their opposition to the proposal and Germany withdrew it before it was put to a vote. Undoubtedly, the questions that had been raised about whether the plant was as threatened as Germany suggested played a part in this. The Parties did, nevertheless, pass two 'Decisions' which meant that despite the fact that *Harpagophytum* species were not listed on the CITES appendices, the Parties formally retained their interest and involvement in the issue. These decisions were designed to generate information about the biological and trade status of the plant rather than about the livelihoods of the harvesters. The first decision (Decision 11.63) was directed to the Parties and called on range and importing states to 'submit to the Secretariat all available information concerning the trade, management and biological status of *Harpagophytum* species and regulatory measures applying to them'. The second decision (Decision 11.111) required the Plants Committee to prepare a report based on this information in time for the Twelfth Conference of the Parties.

³ In southern African the expression 'communal area' refers to land to which rural residents have access for the use of the land and its natural resources, although ownership is vested in the state. See, for example, Jones, 1998.

b) Postscript to CoP11

Although Germany's proposal was withdrawn the view was subsequently put that even the *consideration* of the proposal had had a negative impact on livelihoods (Lombard and du Plessis, 2003). The authors claimed that the proposal, although withdrawn 'had immediate and measurable short-term impacts (some of which are likely to be medium or long-term effects)'. Two effects, in particular, were singled out. First, in 2000, there was a drop in exports from Namibia of around 230 tonnes, compared to 1999. It was said that this could have 'led to some 3,500 fewer harvesters earning an average of N\$480 (US\$48) in 2000'. The authors attribute this drop to the discussion at CITES. They cite conversations with private sector representatives, who saw the listing on CITES as presenting a serious commercial risk. This perception led to reduced demand for Devil's Claw or, perhaps, stockpiling prior to the CITES meeting. The second consequence that was said to result from the consideration of Germany's proposal was an accelerated drive towards commercial cultivation.

c) Devil's Claw and CITES after CoP11

In accordance with Decision 11.111 a report on Devil's Claw was prepared under the auspices of the Plants Committee and presented to the Twelfth meeting of the committee in Leiden in May 2002 (Raimondo and Donaldson, 2002). Consistent with the wording of Decision 11.111, the report did not examine the livelihoods aspect of the trade in Devil's Claw, although it did briefly mention the exploitation of marginalized harvesters (Raimondo & Donaldson, p.16). Instead it focused on the trade, management and biological status of *Harpagophytum*. The authors concluded that despite the additional information that they had gathered, the overall population status of the plant was still unknown. They said that the available information suggested that it would not be classified as threatened using the Red List criteria of IUCN The World Conservation Union. They noted that the main threat was from over-harvesting, but that there were many areas where it was not harvested at all. They also highlighted some of the inconsistencies in the available trade data.

At the Leiden meeting consideration was given to promoting sustainable management of the resource and equity in the international trade. Of the four recommendations that were issued from the meeting regarding Devil's Claw, three were subsequently adopted – with almost unchanged language – at CoP12, held in Chile in November 2002. Thus the Parties continued to retain an interest in Devil's Claw, despite the fact that it was not listed on the Appendices. Of these three Decisions, two dealt with socio-economic aspects of the trade. Decision 12.64 called on range states and importing states to 'negotiate with the devil's claw industry to obtain support for management programmes that promote sustainable use and the development of communities that are managing the resource'. Decision 12.65 urged range states to 'explore how processes and mechanisms in other international treaties can be used to provide support for sustainable resource use and fair trade'. Both decisions state that the Parties can request support from CITES bodies in this work. The change in emphasis from the decisions made at CoP11, towards a focus on promoting sustainable use, community development and fair trade, represents a significant shift towards a concern with the human development aspects of the trade in Devil's Claw.

Nevertheless, in practice the impact of Decisions 12.64 and 12.65 does not seem to have been great. When the range states reported on the implementation of these decisions at the Thirteenth and Fourteenth meetings of the Plants Committee, while it was clear that the range states were undertaking significant work in promoting sustainable use and community development, the role of CITES bodies in assisting them was not great. This led to a recommendation from the *Harpagophytum* range state meeting at the Fourteenth meeting of the Plants Committee that no further CITES decisions in this area were needed.

Lessons

At the centre of the treatment of Devil's Claw within CITES there was a disjunction or mismatch. On the one hand, the Parties paid significant attention to the livelihood aspects of the trade in Devil's Claw. Concerns about livelihoods influenced how the Parties viewed the original listing proposal and the decisions that were passed at CoP12.⁴ On the other hand, the formal listing criteria make no provision for the consideration of livelihood issues.

This disjunction helps to explain the controversy at CoP11 when the proposal to list *Harpagophytum* spp. on Appendix II was first introduced. Some of the controversy might have been avoided if the proponent had engaged in more thorough consultations with the stakeholders in the range states at an earlier stage. Indeed, this is one of the lessons of the Devil's Claw case. But even if there had been more consultation the mismatch between the formal listing criteria and the actual concerns of Parties would have remained.

A mismatch of this sort is not conducive to either transparent or consistent decision-making. Thus, one of the chief lessons from the treatment of Devil's Claw within CITES is that there is a case for Parties to adjust the CITES decision-making mechanisms to allow them to address livelihood issues in an explicit and consistent way. A failure to address livelihood issues in a case such as this is likely to undermine the achievement of conservation goals. Moreover, as long as CITES fails to address the impact of its decisions on the livelihoods of the very poor, it may be that some species will not be listed on Appendix II because of concerns about livelihoods.

The way in which CITES addresses livelihood issues is important. In the example of Devil's Claw there was a concern about the impact of an Appendix II listing on the livelihoods of the very poor harvesters. One way to address this concern in a systematic way would be to have a requirement that CITES listing decisions (and perhaps other measures) should avoid negative impacts on the livelihoods of the very poor. An advantage of this requirement is that it acknowledges that the primary concern of Parties to CITES (*qua* Parties to CITES) may be to ensure that no wild species is subject to unsustainable exploitation for international trade. What the proposed requirement entails is that, in pursuing this primary goal, there should not be a negative impact on the livelihoods of the very poor. It constitutes a constraint on the way in which Parties to CITES pursue their conservation goal.

In order to ensure that this requirement is satisfied, two things are necessary. First, the Parties must be aware of the potential impacts of CITES measures on the very poor and second, they should then avoid adopting measures that have a negative impact. With regard to the first, it might be proposed that, in relation to listing decisions, proposals to add species to (or remove them from) CITES Appendices should include information on the effect, if any, of the proposed change on the livelihoods of the very poor. This option is similar to one put forward by Roe and her co-authors (Roe *et al.*, 2002) where they apply it not just to listing decisions but also to significant trade reviews. If such an option was adopted it would be necessary to specify the type of information that is needed, bearing in mind the possible difficulties of acquiring such information and the limited resources of many CITES Management and Scientific Authorities.

Once the information has been presented the second and decisive step is to ensure that the adopted measures do not have a negative impact on the livelihoods of the very poor. Putting these two steps into practice is likely to require some care and it may be that a more thorough investigation is necessary to prepare proposals that build on the lessons learnt from CITES engagement with Devil's Claw.

⁴ *These concerns were consistent with a number of other commitments and statements – not specifically related to Devil's Claw – made by the Parties and others involved in CITES. For example: Resolution Conf 8.3 recognises that commercial trade in wild species may be beneficial to the development of local people; the Strategic Vision Through 2005, which sets out the primary conservation goal of the treaty, also notes that the trade in wild species can make a contribution to sustainable development; and in his opening remarks to the 2002 Conference of the Parties, the Secretary General of CITES suggested that the key to overcoming the low priority given to the convention by some Parties was by increasing public awareness of its importance in sustainable development and poverty alleviation.*

Conclusion

The livelihoods of the harvesters of Devil's Claw – and the possible impact of CITES measures on the harvesters – have been an important factor in CITES engagement with *Harpagophytum*. On the one hand, formally there is no place for consideration of livelihood issues in the making decisions on listing proposals, while on the other hand livelihoods were an important consideration in shaping responses to the listing proposals and in some of the subsequent Decisions taken about *Harpagophytum*. If this disjunction is to be avoided in future cases, then a mechanism is needed by which CITES status as a conservation treaty is acknowledged while providing it with the means to take into account the impact of CITES measures on the livelihoods of the poor. The first move towards this could be to explore possible mechanisms in greater depth.

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