

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



Sixty-first meeting of the Standing Committee
Geneva (Switzerland), 15-19 August 2011

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 15th meeting (CoP15, Doha, 2010), the Conference of the Parties adopted Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention* which is contained in Annex 1 to this document. Under the Resolution, the Conference of the Parties instructs the Standing Committee:

to determine which Parties have not adopted appropriate measures for effective implementation of the Convention and to consider appropriate compliance measures, which may include recommendations to suspend trade, in accordance with Resolution Conf. 14.3 [on CITES compliance procedures];

3. In document CoP15 Doc. 20, the Secretariat noted that:

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 revisions made to Resolution Conf. 8.4 (Rev. CoP15) should support this effort.

4. Decisions 15.38 - 15.41 on *National laws for implementation of the Convention* were also adopted at CoP15 and they provide as follows:

Directed to Parties

- 15.38 *Parties should submit to the Secretariat, in one of the working languages of the Convention, appropriate measures which have been adopted for effective implementation of the Convention.*
- 15.39 *Any Party which has not adopted appropriate measures for effective implementation of the Convention should submit to the Secretariat a justification for not having done so.*

Directed to the Standing Committee

- 15.40 *The Standing Committee shall review at its 61st and 62nd meetings the progress of Parties in adopting appropriate measures for the effective implementation of the Convention.*

Directed to the Secretariat

15.41 *The Secretariat shall:*

- a) *compile and analyse the information submitted by Parties on measures 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. CoP15);*
- b) *provide, to the extent resources are available, legal advice and assistance to Parties on the development of appropriate measures 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 adopting adequate measures 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. CoP15) and Decisions 15.38, 15.39, 15.40 and 15.41.*

Legislative progress

5. An updated legislative status chart, reflecting legislative progress reported to the Secretariat after the 59th meeting of the Standing Committee (SC59, Doha, March 2010), will be provided during the present meeting as Annex 2 (English only).
6. The nature and extent of progress shown in the legislative status chart have persuaded the Secretariat that there is a need to contemplate a diverse range of options for increasing legislative momentum across the more than 90 Parties (and 16 dependent territories) with legislation still in Category 2 or 3. The Standing Committee may wish to complement innovative approaches to legislative assistance with appropriate measures provided in Resolution Conf 8.4 (Rev, CoP15), specifically recommendations to suspend trade with priority countries temporarily, where it is justified and may help countries to rapidly accelerate their efforts to comply with long-standing legislative commitments. Any approaches and measures undertaken should be aimed at ensuring that all CITES Parties and dependent territories have Category-1 legislation by CoP16. Innovative approaches to legislative assistance, perhaps already used by certain countries, include:
 - Twinning arrangements or partnerships between a Party or dependent territory with legislation in Category 1 and a Party or dependent territory with legislation in Category 2 or 3, with a particular emphasis on South-South cooperation;
 - Use of bilateral or regional trade agreements as a vehicle for providing legislative assistance;
 - Joint action by regional bodies (e.g. the Amazon Cooperation Treaty Organization, Association of Southeast Asian Nations, Central American Commission for Environment and Development, Organization of American States and Organisation of Eastern Caribbean States) for the development and strengthening of national legislation;
 - Incorporation of CITES-related legislative assistance into existing or new technical assistance projects being undertaken by UNEP, the Food and Agriculture Organization of the United Nations (FAO) or other UN bodies, the World Bank and other financial institutions, intergovernmental bodies or national governments; and
 - Dissemination of existing rosters of legal consultants (e.g. those maintained by FAO, the World Bank or IUCN's Commission on Environmental Law).

The Secretariat considers that a government-to-government partnership to provide legislative support is a powerful and appropriate tool. Involvement of local legal experts or organizations, with whom a target government has already worked or would like to work, has proven to be particularly effective in the context of such partnerships. The Secretariat could facilitate this process and has already reached out to many partner organizations which could lend support to such an initiative, as indicated in paragraph 25 below.

7. Some limited funds are available, through the CITES Trust Fund, and targeted external funds, to assist Parties in Categories 2 and 3 with the development of national legislation to implement the Convention. Such funding levels, however, do not permit any significant extension of the legislative assistance provided under the Convention. The Secretariat therefore suggests that the Standing Committee consider how relevant financing, including Global Environment Facility (GEF) funds, might be accessed for the development of CITES-implementing legislation (see document SC61 Doc. 16)

Countries currently subject to a recommendation to suspend trade

8. Three Parties are currently subject to a recommendation to suspend trade for their failure to make legislative progress or to justify why progress has not been made: Djibouti (see Notification to the Parties No. 2011/010 of 19 January 2011), Mauritania (see Notification to the Parties No. 2004/055 of 30 July 2004) and Somalia (see Notification to the Parties No. 2004/055 of 30 July 2004).
9. Mauritania has provided the Secretariat with copies of existing legislation related to CITES and an oral explanation of its plans for making progress in the development and adoption of appropriate measures for effective implementation of the Convention. As soon as the Secretariat receives a revised CITES Legislation Plan in writing, setting out the steps and timetable which Mauritania intends to follow, it will issue a Notification withdrawing the current recommendation to suspend commercial trade with this country.
10. The Secretariat has identified external funds for undertaking a country mission to Djibouti and will soon be contacting Djibouti to see whether it would accept such a mission.
11. It appears that Somalia's ability to make legislative progress is still hampered by the country's socio-political difficulties.

Countries that were affected by Decision 14.25

12. At SC59, the Standing Committee agreed that a recommendation to suspend commercial trade in specimens of CITES-listed species should be issued in relation to those Parties that had not complied with Decision 14.25 by 30 September 2010.
13. The Secretariat obtained information on legislative progress, in the margins of and following CoP15, from Parties which had not yet complied with Decision 14.25. Since 30 September 2010, it has been liaising with a number of Parties to obtain written confirmation of status information that was provided orally. The results of its follow-up consultations will be reflected in the updated status chart mentioned in paragraph 5 above.
14. The Secretariat has reviewed enacted legislation from Botswana, Iceland, Kazakhstan, Malaysia, Montenegro, the Philippines, the Republic of Moldova, Serbia and South Africa, and is consulting with them about the results of those reviews. The review of Armenia's enacted legislation cannot take place without an English translation of the text, and Armenia is trying to identify the resources to undertake such a translation.
15. CITES-related legislation has been submitted for parliamentary approval in Bangladesh, Nigeria, Nepal, Sudan and Swaziland.

Countries requiring attention as a priority

16. Peru's legislation has been placed in Category 1, and Peru was therefore deleted from the list of priority countries. As indicated in paragraph 14 above, Kazakhstan, Malaysia and South Africa have enacted additional CITES-implementing legislation. Algeria, Nigeria and the United Republic of Tanzania have developed comprehensive draft legislation. Other priority countries Belize, the Bolivarian Republic of Venezuela, Comoros, Guinea-Bissau, Kenya, Liberia, Mozambique, Pakistan, Paraguay, the Plurinational

State of Bolivia and Rwanda have continued to make legislative progress but at a rather slow rate. Finally, as mentioned in paragraph 8 above, information on legislative progress is still awaited from Djibouti, Mauritania and Somalia.

17. In view of the large number of countries currently requiring attention as a priority, the Secretariat has not identified any additional priority countries at this time. The Standing Committee might consider requiring all existing priority countries, which have not already done so, to present CITES-implementing legislation for parliamentary, Cabinet or ministerial approval by its 62nd meeting (July 2012).

Parties in Categories 2 and 3 that were not affected by Decision 14.25

18. In May 2010, the Secretariat was able to have brief legislative discussions with Palau, Samoa and the Solomon Islands in the margins of a CITES workshop organized in Oceania. Cape Verde participated in the CITES Workshop for Portuguese-speaking Countries Community (Lisbon, September 2010) where national legislation was one of the topics addressed. The Secretariat had substantial legislative discussions with Bhutan in the margins of the Capacity Building Workshop on Non-detriment Findings and Review of Significant Trade in Plant Species (Kathmandu, Nepal, January 2011). In May 2011, TRAFFIC East/Southern Africa provided the Secretariat with a 2010 report on the "Review of Lesotho's laws and regulations governing the wild harvesting of natural resources and related processes and trade activities with specific reference to the medicinal plant *P. sidooides*" (prepared for IUCN by FEIKE, natural resource management advisors). The report's analysis of enacted and draft legislation relevant to CITES, and the recommendations resulting from that analysis, offer Lesotho a useful basis for making progress on the development of CITES-implementing legislation.

Developments concerning legislation placed in Category 1

19. The Czech Republic, Greece, Slovakia, Zimbabwe and the European Commission have provided the Secretariat with new or amended legislation that has been adopted since CoP15.

General legislative assistance

20. Consultations about legislative progress were held with Kazakhstan, Mongolia and Uzbekistan in the margins of the Workshop on the Conservation and Sustainable Use of Saiga antelope (Urumqi, China, September 2010). Legislative consultations were also held with countries in the margins of the Third African Elephant Meeting and the Workshop on Enhancing the Capacity of CITES Negotiators (Nairobi, November 2010).
21. A workshop on "Strengthening the CITES implementation capacity of developing countries to ensure sustainable wildlife management and non-detrimental trade" was held in Bogota, Colombia, from 7 to 9 December 2010. The workshop was made possible through the generous funding by the European Commission under project EC PROJECT EUROPEAID/DCI-ENV/2008/149804/TPS. One of the three Working Groups focused on legislation and enforcement. The Bolivarian Republic of Venezuela, Chile, Ecuador and Plurinational State of Bolivia requested the organization of a tailored workshop to assist in the finalisation and enactment of their national legislation.
22. Legislative and policy issues were addressed during the Kathmandu workshop mentioned in paragraph 18 above, which was attended by CITES authorities from Bangladesh, Bhutan, China, India, Myanmar, Nepal and Sri Lanka, as well as the regional representative from Asia to the Plants Committee (from Indonesia). The workshop offered an opportunity to obtain information from participating countries about how they satisfy themselves that specimens are obtained in accordance with applicable national law (e.g. regulating who can harvest as well as when, how, where, and how much they can harvest). The Secretariat is grateful to Japan for the external funds which allowed its participation in the workshop.
23. A video conference between the CITES Management Authority of the United Kingdom of Great Britain and Northern Ireland and the Secretariat, to discuss the legislative progress of overseas territories and Crown dependencies, is scheduled for 20 June 2011. The aim is to review the substantial progress that has been made to date, to determine whether adopted or draft legislation is now adequate and, if not, to specify what remains to be clarified or done.
24. The Secretariat has been encouraging and supporting active participation by CITES Parties in the review and revision of National Biodiversity Strategies and Action Plans (NBSAPs). In this context, it would remind Parties of the opportunity to include the development of effective and coherent CITES-implementing

legislation and related policies in their NBSAPs, which may in turn lead to GEF funding (see document SC61 Doc. 16).

25. Discussions have been held with UNEP, the FAO, the World Bank, the International Network on Environmental Compliance and Enforcement (INECE) and IUCN's Commission on Environmental Law about how they might cooperate in assisting Parties with the development of CITES-implementing legislation. These initial discussions will be followed up by information exchange regarding the specific countries in which CITES-related legislative activities could be supported.
26. With the launch of the new CITES homepage, the CITES Virtual College and InforMEA, there are now improved platforms available for making legislative guidance materials, examples and presentations accessible to Parties.

Support to the judiciary

27. In June 2011, the Secretariat received a letter from the Director of UNEP's Division of Environmental Law and Conventions inviting the CITES Secretariat to become a co-sponsor of the World Congress on Justice, Governance and Law for Environmental Sustainability being organized by UNEP in Rio de Janeiro during June 2012, immediately before the United Nations Conference on Sustainable Development (UNCSD or Rio+20). The Secretariat has accepted the invitation. INTERPOL, the World Bank and IUCN, among others, have received similar invitations. The World Congress will bring together attorneys-general and chief prosecutors, auditors-general (*Cour des comptes*), senior judges, and parliamentarians from around the world. The Secretary-General is a member of the Executive Steering Committee for the Congress. For more information, see: <http://www.unep.org/delc/worldcongress/index.asp>
28. The CITES Secretariat asked the Secretariat of the Basel Convention to represent its interests in a brainstorming symposium on integrated capacity building of the enforcement chain. This meeting was organized by UNEP to assess the need and means for capacity building beyond Customs officers to facilitate greater involvement of the judiciary and prosecutors in tackling illegal trade in ozone depleting substances (Paris, June 2011).
29. The Attorney-General of the State of Sao Paulo, Brazil has generously offered to second a public prosecutor with specialized experience in environmental matters to the Secretariat for 12 months. This secondment responds to Resolution Conf. 11.3 (Rev. CoP15) on *Compliance and enforcement* where the Conference urges "Parties to offer secondment of enforcement officers to assist the Secretariat in addressing law-enforcement issues". The Secretary-General interviewed two candidates for the secondment during his recent mission to Brazil and submitted the name of the Secretariat's preferred candidate to the Attorney-General in June 2011. Subject to final approvals being obtained within the Ministry, the secondment should occur in late 2011. If this arrangement proves to be successful, there is a possibility that future secondments from the same office and for the same 12-month time period will occur.

Recommendation

30. The Secretariat recommends that the Standing Committee invite Parties and dependent territories to make use of the means listed in paragraph 6 above to increase legislative momentum in those Parties and dependent territories with legislation in Category 2 or 3.
31. The Secretariat also recommends that the Standing Committee consider appropriate compliance measures for those priority countries mentioned in paragraph 16 above which have not submitted CITES-implementing legislation for parliamentary, Cabinet or ministerial approval by SC62.

Conf. 8.4 **(Rev. CoP15)***

National laws for implementation of the Convention

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, including measures to penalize trade in, or possession of, such specimens, and to provide for the confiscation or return to the State of export of such specimens;

RECALLING ALSO that Article IX requires that each Party designate at least one Management Authority and one Scientific Authority;

RECALLING FURTHER that Article VIII, paragraph 3, requires each Party, as far as possible, to ensure that specimens pass through any formalities required for trade with a minimum of delay;

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 since that time;

RECALLING Resolution Conf. 11.3 (Rev. CoP15), adopted by the Conference of the Parties at its 11th meeting (Gigiri, 2000) and amended at its 13th, 14th and 15th meetings (Bangkok, 2004; The Hague, 2007; Doha, 2010), 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 substantial progress has been achieved, but that approximately half of the Parties 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 whose domestic measures do 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 envisaged in order to adopt, as a matter of the highest priority, the measures necessary for effective implementation 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 appropriate measures for effective implementation of the Convention to do so and inform the Secretariat when such measures have been adopted;

* Amended at the 14th and 15th meetings of the Conference of the Parties.

INSTRUCTS the Standing Committee to determine which Parties have not adopted appropriate measures for effective implementation of the Convention and to consider appropriate compliance measures, which may include recommendations to suspend trade, in accordance with Resolution Conf. 14.3;

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

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