

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

Eleventh meeting of the Conference of the Parties
Gigiri (Kenya), 10-20 April 2000

Interpretation and implementation of the Convention

National laws for implementation of the Convention

NATIONAL LEGISLATION PROJECT

1. This document has been prepared by the CITES Secretariat pursuant to Decision 10.115. It provides an overview of the measures taken by the Parties concerned to implement Decisions 10.19, 10.21 and 10.23 and outlines a legal capacity-building strategy prepared by the Secretariat to assist the Parties in the development of national legislation for implementation of CITES.

Background

2. CITES contains a number of explicit and precise obligations whose implementation can be readily evaluated. Furthermore, CITES is the only multilateral environmental agreement for which the Parties have precisely defined an approach, the National Legislation Project, for reviewing and evaluating domestic measures to implement the Convention. Three categories and four criteria are used to assess a Party's legislation. The project, having started in 1992, is currently in its third phase.
3. The following progress has been made in the seven years since the project started:
 - a) the analysis and review (or update thereof), of the national legislation of 136 Parties has been carried out;
 - b) recommendations to suspend trade with some Parties for non-compliance have been undertaken;
 - c) concerning technical assistance provided to the Parties in the development of their national legislation, a package of technical support documents (checklist, models of law, questionnaires, guidelines) has been prepared by the Secretariat; and
 - d) a database incorporating the National Legislation Project findings, and other legal information, has been created in the Secretariat.
4. CITES is the only convention that seeks to protect wildlife solely by the regulation of international trade (even if trade restrictions exist also in numerous other agreements). Implementation of CITES involves two quite different interests: wildlife conservation and foreign trade. In a State Party, each of these aspects may have its own specific legislation, procedures and authorities. There may also be several other laws applicable to particular aspects of international trade in wild animals, plants and the parts and derivatives thereof. There may be domestic controls on indigenous protected species, forestry or fisheries laws, laws establishing controls on wildlife trade for public health, veterinary or phytosanitary purposes, and rules controlling the introduction of alien species. Consequently, the National Legislation Project's reviews and analyses have taken into account a great diversity of existing legislation and legal systems.
5. Article VIII, paragraph 1, is the key paragraph of the Convention regarding the enforcement of CITES at the national level. The provisions of this Article require each Party to implement the provisions of the Convention through their domestic legislation. Resolution Conf. 8.4 (National laws for implementation of the Convention) identifies four basic domestic measures that Parties are expected to have implemented:
 - a) designate Management and Scientific Authorities;
 - b) prohibit trade in specimens in violation of the Convention;

- c) penalize trade in violation of the Convention; and
 - d) confiscate specimens illegally traded or possessed.
6. Phases 1, 2 and 3 of the project determined the ability of Parties to implement the Convention. The Secretariat suggests, however, that the near-completion of Phase 3 provides an opportunity to set different goals for the project.
 7. The Secretariat has therefore designed a strategy to assist Parties that are preparing legislation to implement the Convention. Unfortunately, a lack of resources often limits the ways in which the Secretariat is able to assist Parties. Since national laws and cultures vary among Parties, the Secretariat believes that it should assist in a way that takes better account of this diversity.
 8. The challenge remains to encourage the Parties in categories 2 and 3 to adopt appropriate national measures to implement the Convention. The Secretariat has prepared a draft decision for the 11th meeting of the Conference of the Parties (see document Doc. 11.21.1 Annex) regarding those Parties that are in category 3 and that are engaged in high-volume trade in specimens of CITES-listed species. The Secretariat suggests, however, that an opportunity is now available to provide practical support to assist Parties in categories 2 or 3. A proposed change of approach to achieve this is described below.

Progress of the National Legislation Project: Phases 1 to 3

9. The National Legislation Project was initiated pursuant to Resolution Conf. 8.4.
10. In Phase 1 of the Project, analyses of the domestic legislation of 80 Parties were prepared by the IUCN Environmental Law Centre (African and European Parties) and TRAFFIC USA (Parties in Asia, Central and South America and the Caribbean, and Oceania) and presented at the ninth meeting of the Conference of the Parties.
11. In Phase 2, initiated pursuant to Decision 9.7, analyses of the domestic legislation of a further 44 Parties were reported at the 10th meeting of the Conference of the Parties.
12. In Phase 3, based on the responses received from 63 Parties of the 103 that were contacted (since 1997), the analysis of the legislation of nine Parties (Belarus, Jamaica, Latvia, Mongolia, Myanmar, Swaziland, Turkey, Uzbekistan and Viet Nam) and 12 Overseas Territories and Crown Dependencies of the United Kingdom was performed, and for 30 Parties the previous analyses were revised (Argentina, Barbados, Bolivia, Brazil, China [including the Special Administrative Region of Hong Kong], Cuba, Colombia, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Greece, Guyana, Honduras, Indonesia, Islamic Republic of Iran, Malaysia [including Peninsular, Sabah and Sarawak], Mexico, Nicaragua, Panama, Paraguay, Peru, Philippines, Senegal, Singapore, Spain, United Arab Emirates, Uruguay, Venezuela, Zimbabwe). Additionally, Mauritius and Cambodia have sent texts of their legislation and have received preliminary comments and questions (see Annex 1).
13. The analysis or review of legislation was sent to 30 Parties on 12 January 1999 and to the United Kingdom for the 12 territories on 28 December 1998. By the end of July 1999, seven Parties and territories (British Virgin Islands, China, Hong Kong, Jamaica, Latvia, Philippines and Turkey) had acknowledged receipt of the document and explained that they were working on draft legislation or amendments of existing texts (see Annex 1).
14. The National Legislation Project has revealed that approximately 75 per cent of the Parties reviewed did not have the full range of national legislative and administrative measures needed to give effect to all aspects of the Convention and related resolutions of the Conference of the Parties.
15. The legislation of 37 Parties (26%) is classified as Category 1. Fifty-two Parties (36%) are in Category 2 and 47 Parties (32%) are in Category 3 (as summarized in the Annex 2).
16. These results do not include six of the Parties that were contacted during Phase 3 and that did not respond to the Secretariat's request for information.
17. The results take account of the progress made by 19 Parties whose legislation had been first classified in category 2 or 3 and was later upgraded to category 1 or 2. Re-classification was often a consequence of the interest in legal matters raised by the project during the seven years of contact and follow-up with the

Parties. In those 19 countries, the staff of the relevant ministries collected additional information and/or prepared draft laws that were adopted by the government. Their new laws significantly improved the implementation of CITES by these Parties.

18. The Secretariat notes that some Parties whose legislation was analysed in Phase 3, namely, Fiji, Turkey, Viet Nam and Yemen have a high volume of international trade in specimens of CITES species, according to the database of annual report statistics maintained by WCMC.
19. It should be noted that at least 11 countries acceded to the Convention after 1996 and are still in the process of adopting implementing legislation.

New strategy for the National Legislation Project

20. The number of legal instruments received by the Secretariat is now so great that there are sometimes important delays in reviewing them. Consequently the Secretariat is seriously reconsidering the value of, or need for, the continued review of legislation that may be adopted at any time. The Secretariat believes that, instead, the National Legislation Project should evolve toward the provision of assistance to the Parties in the development of adequate measures to implement the Convention.
21. In order to achieve this, the Secretariat presented, at the 42nd meeting of the Standing Committee (Lisbon, 28 September – 1 October 1999), a proposal for a new strategy to assist Parties in the development of appropriate national legislation. The Standing Committee endorsed this proposal, which the Secretariat is therefore now presenting to the Conference of the Parties for confirmation.
22. Many Parties have asked the Secretariat for advice or assistance in the development of legislation to implement CITES. The Secretariat has responded in a variety of ways, including drafting models of law, developing a legislation checklist, directing requests for assistance to the relevant UNEP regional offices (e.g. for certain Latin American countries), missions by Secretariat staff, and providing written advice and/or comments on draft legislation.
23. As part of the proposed new strategy, the Secretariat suggests that the previous practice of relying on consultants to develop national laws should not continue. Rather the responsibility for this work should remain at the national level, with a group of national experts. Such experts, through participatory and consultative processes, would develop the necessary national legislation in their countries. The Secretariat would provide initial training, technical assistance, legal material and information to the national experts.
24. The National Legislation Project could integrate compliance and enforcement concerns in a long-term, holistic development of domestic legislation to implement the Convention.
25. The Secretariat proposes to establish a legal-capacity-building strategy for implementing CITES obligations in the domestic sphere. The strategy would have as its main purpose enhancement of the capacity of each Party to implement the Convention. The strategy would determine the relationship between implementation, compliance, enforcement and effectiveness. The strategy would guide the development of a capacity-building programme using regional workshops and technical documents in support of law-making process. Finally, the strategy would aim to achieve harmonization of laws and procedures to implement and enforce the Convention.
26. Given the great diversity of legal systems around the world, the models of law must take into account the Parties' expertise and the similarities in legal systems, cultures and languages. Since the form of national legislation and the terminology used vary according to legal traditions, administrative and governmental structures and other factors, the strategy would be organized by region. Nevertheless, as far as possible, efforts have to be made to propose model provisions that can be incorporated in national law without any major changes, in order to harmonize the legislation.
27. The implementation of the strategy would be organized as a series of building blocks.
 - a) First block: Development of technical documents.

These should include a questionnaire on the national legal system, in order to identify the existing gaps and shortcomings in domestic law for implementation of CITES, and a checklist describing provisions that are required under the text of the Convention and that the Conference of the Parties has recommended through the adoption of resolutions.

b) Second block: Organization of regional workshops.

The main purpose of the workshops will be to develop regional models of law, which should make legislation manageable, comprehensible and usable for relevant bodies (CITES authorities, enforcement officers, judges, traders, etc.).

c) Third block: Provision of support to law-makers and enforcement bodies.

The strategy identifies three target groups that should be involved in the capacity-building process:

- i) Policy makers and senior government officers, whether at the national or local level, responsible for the formulation of environmental policies requiring legislation;
- ii) Legal officers and legal draftsmen with responsibility for the preparation of draft legislation; and
- iii) Management Authorities and enforcement agencies.

28. These target groups constitute a framework for structuring the formulation of legislative proposals to enable congressional (or other legislative body) approval and subsequent enactment and enforcement of national legislation.

Recommendations

29. The Secretariat requests the Conference of the Parties to endorse the strategy outlined above, which has already been presented and agreed at the 42nd meeting of the Standing Committee. (If this approach is endorsed, the Secretariat intends to undertake Phase 4 of the National Legislation Project, focused on legal capacity building, immediately after the 11th meeting of the Conference of the Parties.)

30. The Secretariat recommends to the Conference of the Parties the adoption of the draft decision in Annex 3 to this document

Parties and territories analysed in Phase 3

Phase 3	Rating
Antigua and Barbuda	3
Belarus	3
Cambodia	3
Dominica	3
Fiji	3
Georgia	3
Jamaica	3
Latvia	3
Mongolia	3
Mauritania	3
Myanmar	3
Saudi Arabia	3
Somalia	3
Swaziland	3
Turkey	3
Uzbekistan	3
Viet Nam	3
Yemen	3
UK-Bermuda	2
UK-British Virgin Islands	2
UK-Cayman Islands	2
UK-Falkland Islands	3
UK-Gibraltar	1
UK-Isle of Man	2
UK-Montserrat	2
UK-Pitcairn Islands	3
UK-Saint Helena and Dependencies	3
UK-South Georgia and the South Sandwich Islands	3

National Legislation Project by region

Region	Category 1	Category 2	Category 3	Analysis ongoing
Africa	3	20	23	2
Asia	3	9	12	3
Central and South America and the Caribbean	6	15	7	3
Europe	19	7	5	1
North America	3			
Oceania	3	1		1
Total	37	52	47	10

National legislation by category

Category	Party	Percent
1	37	26
2	52	36
3	47	32
Analysis ongoing	10	6
Total	146	100

National legislation by phase

Phase	Party	
	Analysed	Reviewed analysis
1	80	
2	44	
3	12	40
Analysis ongoing	10	
Total	146	

Category 1: legislation that is believed generally to meet the requirements for implementation of CITES

Category 2: legislation which is believed generally not to meet all requirements for the implementation of CITES

Category 3: legislation that is believed generally not to meet the requirements for the implementation of CITES

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES TO REPLACE DECISION 10.115

Directed to the Secretariat

Regarding implementation of Resolution Conf. 8.4

The Secretariat shall:

1. consider the information on specific provisions adopted by the Parties to give effect to obligations specified in Article VIII of the Convention and Resolution Conf. 8.4 and amend the analyses of legislation and the ratings accordingly;
2. advise the Parties concerned of any amendments to the analyses of their legislation and to their ratings, indicating the actions that they should take to give effect to obligations under the Convention;
3. provide technical assistance to Parties requesting advice in the formulation of legislative proposals for CITES implementation, giving priority to those Parties identified as having national legislation that is believed generally not to meet the requirements to implement the Convention (Category 3). The Secretariat shall co-operate with the Parties, and to the extent possible with available resources shall provide:
 - a) guidelines for the preparation of the appropriate measures;
 - b) training for the CITES authorities and others responsible for the formulation of environmental policies requiring legislation; and
 - c) any specific support requested by the Parties relevant to the fulfilment of the requirements; and
4. report at the 12th meeting of the Conference of the Parties:
 - a) the legislation adopted by the Parties to implement the Convention and any recommendations relating to Parties that have not adopted such legislation;
 - b) any progress concerning technical assistance provided to the Parties in the development of their national legislation for implementation of CITES; and
 - c) the conclusions of the analysis of legislation updated or begun since 1999.