

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

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 based on Resolution Conf. 8.4 (Rev. CoP15) on *National laws for implementation of the Convention*.
2. At its 15th meeting (CoP15, Doha, 2010), the Conference of the Parties adopted Decisions 15.38 to 15.41, which read:

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.*

3. At its 61st and 62nd meetings (SC61, Geneva, August 2011, and SC62, Geneva, July 2012), the Standing Committee considered the Secretariat's reports on Parties' progress in adopting appropriate measures for the effective implementation of the Convention and related assistance (see document SC61 Doc. 23 and its Annexes and document SC62 Doc. 23 and its Annex, respectively).
4. Since CoP15, the Secretariat has monitored legislative progress made by 175 Parties and 29 dependent territories in accordance with Resolution Conf 8.4 (Rev. CoP15). The Secretariat has also monitored legislative progress in two dependent territories of the United Kingdom of Great Britain and Northern Ireland that will only be covered by the Convention when they have enacted Category-1 legislation. A new Party (Bahrain) will join the Convention on 17 November 2012, bringing the total number of Parties to 176.
5. The legislation of five Parties (Equatorial Guinea, Iceland, Malaysia, Nigeria and South Africa) and two dependent territories (the British Indian Ocean Territory and the Isle of Man) has been placed in Category 1 under the National Legislation Project. This has brought to 88 (or 50 %) and 15 (or 52 %), respectively, the total number of Parties and dependent territories with legislation in Category 1.
6. Further to the progress described in paragraph 5 above, another 20 Parties and two dependent territories have enacted CITES-implementing or CITES-relevant legislation. The Secretariat is now preparing revised legislative analyses of this legislation. Any resulting change in the categorization of the legislation will be included in the Secretariat's report for the 63rd meeting of the Standing Committee (SC63, Bangkok, 2 March 2013). Moreover, an additional seven Parties and one dependent territory have submitted legislation for enactment.
7. The updated legislative status chart contained in Annex 2 to this document reflects the progress made by all Parties and dependent territories since the last update for SC62 on 15 June 2012. It shows that legislative progress in the form of legislation plans and draft legislation continues to be made by many Parties, but the slow pace of submission for parliamentary, Cabinet or ministerial approval and subsequent enactment has not necessarily increased the number of Parties and territories in Category 1. In addition, 38 Parties have not provided written indications of their legislative progress (e.g. revised CITES legislation plans or draft and enacted legislation) since 2011. At SC62, the Standing Committee asked the Secretariat to send a letter on its behalf to those Parties seeking information on progress. Those letters will be sent by the Secretariat in November 2012.
8. Past Secretariat reports to the Conference of the Parties on the subject of national legislation have stressed that "Parties see appropriate legislation as a primary factor in ensuring the Convention achieves its purpose" and that "Effective implementation of, compliance with and enforcement of the Convention depend on [the enactment of Category-1] legislation" (see document CoP15 Doc. 20, paragraph 3, and document CoP14 Doc. 24, paragraph 23, respectively). It could be argued that Parties whose domestic measures are not adequate for implementation of the Convention should generally not be engaging in trade under the Convention – whether that trade is commercial or non-commercial in nature. Moreover, the enactment of Category-1 legislation is a necessary precursor to effective law enforcement. The Conference of the Parties, in Resolution Conf. 8.4 (Rev. CoP15), reflected the importance of legislation in instructing 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". The Conference also recognized, however, the need to provide Parties with financial or technical assistance for the development and effective implementation of their measures to implement the Convention.

Planned technical and financial assistance activities

9. The Secretariat is working closely with the Standing Committee, Parties with legislation in Category 1 and entities with relevant expertise in legislative drafting to enhance the capacity of the Secretariat to support legislative progress, with further details provided below.

10. Efforts to lift the legislative pace have been twofold:
 - a) technical and financial assistance activities undertaken by: regional bodies such as the Amazon Cooperation Treaty Organization (ACTO), individual Parties such as New Zealand, or externally-funded activities of the Secretariat (e.g. using funds provided by the European Commission or Japan); and
 - b) more intensive compliance monitoring by the Standing Committee (e.g. its decision at SC62 to recommend a suspension of commercial trade in specimens of CITES-listed species with certain Parties, if they had not submitted updated information to the Secretariat on progress made with the submission of legislation for parliamentary, Cabinet or ministerial approval by 1 October 2012).
11. A few Parties have requested that key legislative information be placed on the CITES website in a more visible manner (e.g. the current legislative status chart), and the Secretariat will do this as soon as possible. In the future, individual Parties should be able to upload and maintain information on their CITES-implementing legislation through country factsheets that will be accessible on the CITES website and under their control.
12. The Secretariat is in bilateral discussions with several Parties about proposed legislative missions. It has also started consulting with those Parties that have submitted general requests for legislative assistance. The aim of those discussions is to identify the specific activities and budget that are proposed, and to then determine whether existing external funds are sufficient to cover the relevant budget. If so, a related small-scale funding agreement can be concluded.
13. Using the external funds mentioned in paragraph 10 above, the Secretariat participated in a subregional legislative workshop organized by ACTO in Tena, Ecuador, on 30 and 31 October 2012. The Secretariat will also undertake two or more legislative assistance missions to individual Parties by March 2013. Such work is envisaged to include the provision of special support to lusophone countries (e.g. Mozambique and Guinea-Bissau, initially).
14. The Secretariat has been working with the Organization of American States (OAS) to develop a cooperation agreement which would focus, *inter alia*, on legislative support to OAS member countries whose legislation is not yet sufficient for inclusion in Category 1 under the National Legislation Project. Initial discussions have also been held with the World Bank about future cooperation on legislative assistance and similar discussions are anticipated with other potential donors before March 2013.

Current and future compliance measures

15. Since mid-2004, Mauritania and Somalia have been subject to a recommendation to suspend commercial trade in specimens of CITES-listed species for their failure to provide a revised CITES Legislation Plan or draft or enacted legislation (see Notification to the Parties No. 2004/055 of 30 July 2004). In response to a reminder sent by the Secretariat in July 2012, Mauritania submitted a revised legislation plan later the same month. The revised plan indicates that Mauritania may have already prepared initial draft legislation and the Secretariat has asked Mauritania to clarify this point before it issues a Notification withdrawing the current trade suspension. In its report on national legislation for SC62, the Secretariat advised that Somalia had provided "a list of the current legislation related to CITES, expressed its commitment to enacting legislation for adequate implementation of the Convention and requested related assistance". The Secretariat further advised that it would request Somalia to submit a CITES national legislation plan and, upon submission of the plan, would issue a Notification withdrawing the current recommendation to suspend trade (see document SC62 Doc. 23). Somalia informed the Secretariat in July 2012 that it would discuss the issue of legislation with relevant parties in the country and thereafter contact the Secretariat. At the time of writing (October 2012), no full CITES legislation plan, with steps and a timetable for enacting legislation, had been received from Somalia.
16. The four Parties potentially affected by the SC62 recommendation to suspend commercial trade mentioned in paragraph 10 above (i.e. the Comoros, Guinea-Bissau, Paraguay and Rwanda) provided updated information to the Secretariat by 1 October 2012 on the progress made for the submission of legislation for parliamentary, Cabinet or ministerial approval. In this regard, the Secretariat would like to congratulate Paraguay for its adoption of a Presidential decree on 28 September 2012, which provides a comprehensive set of regulations for CITES implementation. A revised legislative analysis is now underway, with a particular focus on subparagraphs iii) and iv) of paragraph a) of Resolution Conf. 8.4 (Rev. CoP15) and the results will be reported at SC63. The Secretariat will also report at SC63 on the

nature of the information submitted by the other three Parties and may make related recommendations to the Standing Committee.

17. The Secretariat will report as well at SC63 on the Parties that will or will not have responded to the reminder letters mentioned in paragraph 7 above. It will recommend that the Standing Committee consider appropriate compliance measures, including recommendations to suspend trade, for Parties that did not respond.
18. The legislative status chart contained in Annex 2 to this document reflects legislative progress by all Parties (e.g. a CITES legislation plan, draft legislation, submission of legislation for enactment or enactment of legislation), particularly those that have been party to the Convention for more than five years and whose legislation is in Category 2 or 3. In an attempt to encourage more rapid legislative progress among a smaller group of Parties, the Secretariat identified for the Standing Committee countries that required attention as a priority under the National Legislation Project, in compliance with Decision 15.41, paragraph e). There are now 17 priority countries at various stages of legislative progress (see Table 1 contained in Annex 2 to this document).
19. As stated in the Secretariat's report on national legislation for the 13th meeting of the Conference of the Parties (CoP13, Bangkok, 2004), the requested submission of CITES legislation plans by affected Parties was intended to give direction and momentum to their legislative progress [document CoP13 Doc. 22 (Rev. 2)]. It appears that this approach worked for some Parties. Other Parties, however, seem to have become trapped in a perpetual cycle of revised legislation plans or revised draft legislation that has not yet resulted in any legislative enactments.
20. In order to break this cycle, the Secretariat suggests enhanced technical support coupled with a set of measures. Parties whose legislation is in Category 1 should be encouraged to provide technical or financial assistance to one or more Parties whose legislation is in Category 2 or 3. Other sources of financial assistance should also be tapped to provide specific support to those Parties which need it. Those States whose legislation remains in Category 2 or 3, and which have been party to the Convention for more than five years, should be directed to enact legislation by the 66th meeting of the Standing Committee (scheduled for June – July 2015). Parties that fail to meet this deadline should be subject to a Standing Committee recommendation to suspend commercial trade that would take effect 60 days after the conclusion of SC66. Should exceptional circumstances prevent a Party from enacting legislation by SC66, the Standing Committee would have the authority to review this situation and determine appropriate measures for addressing it. If this approach is adopted, the list of countries requiring attention as a priority under the National Legislation Project can be discontinued.

Strengthened links between legislation and law enforcement support

21. Legislation and law enforcement are two sides of the same coin. Each one depends upon and supports the other. As a result, virtually any activity related to law enforcement will include references to and consideration of legislation. This close interrelationship is most recently reflected in Part I (Legislation) of the new *Wildlife and Forest Crime Analytic Toolkit* developed by the International Consortium on Combating Wildlife Crime (ICWC) comprising CITES, ICPO-INTERPOL, the United Nations Office on Drugs and Crime, the World Customs Organization and the World Bank. More details on ICWC are provided in document CoP16 Doc. 15.
22. Just as the development of policy should ideally precede the development of legislation, so too should the development of legislation ideally precede the development of law enforcement. Although reality does not usually match this ideal scenario, closer ties are being and should continue to be forged among these three elements. A recent draft analysis of selected national reports, undertaken by the UNEP World Conservation Monitoring Centre for consideration by the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), shows that Parties to all biodiversity-related conventions have identified legislation and policy development, implementation and enforcement as one of their key capacity-building needs.
23. At CoP15, the Conference of the Parties adopted Resolution Conf. 15.2 on *Wildlife trade policy reviews* in which it recognizes "the importance of effective governance systems in the implementation of the Convention, national policies and legislation related to CITES and management plans for CITES-listed species." In the context of a project on transnational environmental crime, undertaken by a team of Australian researchers, the policy responses of six countries in the Asia-Pacific region to transnational wildlife crime are being examined. All of the selected countries (Australia, Fiji, New Zealand, Papua New Guinea, Thailand and Viet Nam) have Category-1 legislation under CITES. Their policy responses have

been initially described under the following headings: legislation implementing CITES, agencies involved in enforcing CITES legislation, agency policy, other national policy, cooperation between countries or agencies, and other relevant treaties and policies (e.g. the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime). In May 2012, during the meeting of the Issue Management Group on Biodiversity of the Environment Management Group (a United Nations System-wide coordination body), CITES emphasized that the implementation as well as the revision of National Biodiversity Strategies and Action Plans (NBSAPs) were important. In this connection, the Secretariat has considered that revised NBSAPs should include provisions on compliance and enforcement.

24. The Secretariat is increasingly looking for opportunities to strengthen the links between legislative advice or assistance and law enforcement support. In this connection, the Secretariat's current structure places legal affairs and trade policy services as well as enforcement support services under 'Regulatory Services'. This organization has enhanced the coordination between these two areas of work, recognizing that they overlap in a number of areas. The secondment of a senior environmental prosecutor from the Attorney General of Sao Paulo, Brazil, who works across both teams, has also facilitated their closer coordination. An initial Brazilian prosecutor was seconded to the Secretariat from October 2011 to October 2012, and a second prosecutor will be seconded from November 2012 to November 2013. It is expected that the latter will be able to assist the Secretariat in providing both legislative assistance and law enforcement support to lusophone countries. The Attorney General of Sao Paulo has indicated that secondments of this kind may continue.

Coherence in legislative matters under CITES Resolutions

25. A search of the Resolutions adopted by the Conference of the Parties indicates that the term 'legislation' occurs in a large number of them. The overall importance of national legislation is highlighted in Resolution Conf. 8.4 (Rev. CoP15), Resolution Conf. 11.3 (Rev. CoP15) on *Compliance and enforcement*, Resolution Conf. 12.3 (Rev. CoP15) on *Permits and Certificates*, Resolution Conf. 14.2 on *CITES Strategic Vision: 2008-2013* and Resolution Conf. 14.3 on *CITES compliance procedures*.

26. References to legislation also occur, *inter alia*, in:

- Resolution Conf. 5.10 (Rev. CoP15) on *Definition of 'primarily commercial purposes'*;
- Resolution Conf. 9.7 (Rev. CoP15) on *Transit and transshipment*;
- Resolution Conf. 9.10 (Rev. CoP15) on *Disposal of confiscated and accumulated specimens*;
- Resolution Conf. 9.14 (Rev. CoP15) on *Conservation of and trade in African and Asian rhinoceroses*;
- Resolution Conf. 9.19 (Rev. CoP15) on *Registration of nurseries that artificially propagate specimens of Appendix-I plant species for export purposes*;
- Resolution Conf. 9.24 (Rev. CoP15) on *Criteria for amendment of Appendices I and II*;
- Resolution Conf. 9.25 (Rev. CoP15) on *Inclusion of species in Appendix III*;
- Resolution Conf. 10.7 on *Disposal of confiscated live specimens of species included in the Appendices*;
- Resolution Conf. 10.8 (Rev. CoP14) on *Conservation of and trade in bears*;
- Resolution Conf. 10.10 (Rev. CoP15) on *Trade in elephant specimens*;
- Resolution Conf. 10.14 (Rev. CoP14) on *Quotas for leopard hunting trophies and skins for personal use*;
- Resolution Conf. 10.15 (Rev. CoP14) on *Establishment of quotas for markhor hunting trophies*;
- Resolution Conf. 10.19 (Rev. CoP14) on *Trade in traditional medicines*;
- Resolution Conf. 10.21 (Rev. CoP14) on *Transport of live specimens*;
- Resolution Conf. 11.7 on *Conservation of and trade in musk deer*;
- Resolution Conf. 11.8 (Rev. CoP13) on *Conservation of and control of trade in the Tibetan antelope*;
- Resolution Conf. 11.9 (Rev. CoP13) on *Conservation of and trade in tortoises and freshwater turtles*;
- Resolution Conf. 12.5 (Rev. CoP15) on *Conservation of and trade in tigers and other Appendix-I Asian big cat species*;
- Resolution Conf. 12.7 (Rev. CoP14) on *Conservation of and trade in sturgeons and paddlefish*;
- Resolution Conf. 13.4 on *Conservation of and trade in great apes*;
- Resolution Conf. 13.7 (Rev. CoP14) on *Control of trade in personal and household effects*;
- Resolution Conf. 13.10 on *Trade in alien invasive species*; and
- Resolution Conf. 15.2 on *Wildlife trade policy reviews*.

References to legislation are also often found in various Decisions adopted by the Conference of the Parties.

27. The number and variety of references to legislation in the 'hard law' and 'soft law' of the Convention may be confusing or overwhelming for Parties. Just as Parties are working to improve coherence in reporting requirements under the Convention (see document CoP16 Doc. 30 on *National reports*), so might they wish to improve coherence in the handling of legislative requirements and recommendations under the Convention. In this connection, Parties might consider whether some consolidation of legislative recommendations under the Resolutions is needed and whether generic legislative guidance materials may assist Parties with matters such as:

- determining whether specimens have been legally obtained;
- disposing of confiscated specimens;
- ensuring effective border and inland control of CITES trade; and
- investigating and penalizing those involved in illegal trade in or possession of CITES specimens (e.g. criminal offences and penalties for CITES violations, controlled deliveries and other specialized investigation techniques, asset forfeiture, anti-corruption, and international cooperation).

Such consolidation and guidance could help Parties develop and improve their legislation on key issues in a more clear, prioritized, uniform, efficient and effective manner.

Recommendations

28. The Secretariat recommends that the Conference of the Parties adopt the draft decisions contained in Annex 1 to this document.
29. The Secretariat believes that Decisions 15.38 – 15.41 have been implemented and should therefore be deleted.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

National laws for implementation of the convention

Directed to Parties

- 16.A By the 66th meeting of the Standing Committee (SC66), Parties whose legislation is in Category 2 or 3 under the National Legislation Project and which have been party to the Convention for more than five years as of March 2013 should submit to the Secretariat, in one of the working languages of the Convention, appropriate measures that have been adopted for effective implementation of the Convention.
- 16.B Should exceptional circumstances prevent any Party affected by Decision 16.A from adopting appropriate measures for effective implementation of the Convention, that Party should advise the Secretariat in writing of those exceptional circumstances by SC66.
- 16.C Parties whose legislation is in Category 1 under the National Legislation Project are encouraged to provide technical or financial assistance to one or more Parties whose legislation is in Category 2 or 3 under the National Legislation Project.

Directed to the Standing Committee

- 16.D The Standing Committee shall review at its 65th, 66th and 67th meetings the progress of Parties in adopting appropriate measures for effective implementation of the Convention.
- 16.E At its 66th meeting, the Standing Committee shall recommend a suspension of commercial trade in specimens of CITES-listed species with those Parties that have failed to adopt appropriate measures for the effective implementation of the Convention. This recommendation shall take effect 60 days after the conclusion of SC66. Should exceptional circumstances prevent a Party from enacting legislation by SC66, the Standing Committee shall review the situation and determine appropriate measures for addressing it.

Directed to the Secretariat

- 16.F The Secretariat shall:
- a) compile and analyse the information submitted by Parties on measures adopted before the 17th meeting of the Conference of the Parties (CoP17) to fulfil the requirements laid down in the text of the Convention and Resolution Conf. 8.4 (Rev. CoP15);
 - b) subject to external funding, provide 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, policymakers, 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 the Food and Agriculture Organization of the United Nations, UNEP, the World Bank and regional development banks, as well as regional organizations such as the Africa, Caribbean and Pacific Secretariat, the Amazon Cooperation Treaty Organization, the Association of South East Asian Nations, the League of Arab States, the Organization of American States and the Pacific Regional Environment Programme;
 - d) report at the 65th, 66th and 67th meetings of the Standing Committee on Parties' progress in adopting appropriate measures for effective implementation of the Convention and, if necessary, recommend the adoption of appropriate compliance measures, including recommendations to suspend trade; and

- e) report at CoP17 on progress made with regard to the implementation of Resolution Conf. 8.4 (Rev. CoP15) and Decisions 16.A, 16.B, 16.C, 16.D, 16.E and 16.F.