

QUESTIONNAIRE FOR LAWYERS AND LEGAL DRAFTSMEN WITH RESPONSIBILITY FOR THE PREPARATION OF CITES LEGISLATION

THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW

1. How is CITES incorporated into the national legal system?
 - a) Which procedures are foreseen in the Constitution for approval of international treaties?
 - b) What is the hierarchy of international treaties compared to domestic laws?
 - c) Are the provisions of CITES self-executing or do they require executory legislation?
 - d) Do some of the provisions of the Convention conflict with your country's Constitution or national legislation? What is foreseen in this event?
 - e) Does the Constitution specifically recognise the right to a "decent" (healthy) environment?
 - f) Are other rights recognized, for instance the right to property, which could limit the legal protection of the threatened species?
 - g) Did the government adopt legal mechanisms to incorporate in the national legislation the Resolutions, Decisions and the amendments to the appendices adopted by the Conference of the Parties?
 - h) How the wildlife property rights are defined by the Constitution and the law?

IMPLEMENTING CITES PROVISIONS IN THE DOMESTIC SPHERE

2. Does national law contain special provisions for the implementation of CITES regarding:
 - a) The import, export, re-export, introduction from the sea and transit of CITES specimens?
 - b) The possession of and domestic trade in CITES specimens?
 - c) The control of import and export of medicinal products containing parts or derivatives of CITES-listed species (review by the Secretariat requested under Decision 10.143)?
 - d) Are the provisions corrective or preventive?
3. Are existing provisions part of civil, penal, administrative or environmental law?
 - a) Where are the legal measures for the implementation of the Convention to be found:
 - i. solely in the legislation ratifying the Convention?
 - ii. in the current general legislation?
 - iii. in a specific piece of legislation (Act, decree)?
 - iv. in an administrative regulation?
 - v. others?
 - b) If the provisions are purely administrative, are they enforced by courts, Management Authority(ies), inspectors (e.g. Customs) or whom?
4. Taking into account the result of the analysis of your national legislation, is it currently under review and/or will new legislation be adopted for the implementation of CITES?

- a) if there are no penal provisions concerning illegal trade in CITES-listed species, are there plans to create such provisions?
- b) if there are penal provisions, do they comply with the provisions of the Convention, especially Article VIII?

CITES AUTHORITIES (Article IX)

- 5. Which legal provisions designate the Management and Scientific Authorities responsible for the application of the Convention?
 - a) Are all of the functions clearly laid out for the implementation of the Convention?
 - b) Are there provisions that govern the functioning of the Management Authority?
 - c) Are there provisions that govern the functioning of the Scientific Authority?
 - d) Is authority granted to CITES Authorities to investigate cases and impose sanctions?
 - e) Does the Management Authority have the capacity to request from persons applying for permits all the information necessary to issue a CITES permit or certificate?
 - f) Does the Management Authority have the capacity to intervene in litigation before a court in any matter related to CITES implementation?

PERMITS and CERTIFICATES (Article VI)

- 6. What documents must accompany shipments of specimens of CITES-listed species destined for international trade?
 - a) What documentation is required for the export, import, re-export and/or introduction from the sea of CITES specimens:
 - live (plant, pet animals, ornamental fish, animal bred in captivity, artificially propagated plants, etc.);
 - dead (hide, trophy, etc.);
 - parts and derivatives (manufactured products [finished or unfinished], leather, etc.)?
 - b) Does domestic law have provisions that specify in detail the form of CITES permits and certificates (Resolution Conf. 10.2 (Rev.)) and all the information they should contain (in compliance with Annex 1 of Resolution Conf. 10.2 (Rev.))?
 - c) The Convention is not explicit regarding the validity of re-export certificates and import permits. Does the national legislation set limits? If so, are they in compliance with Resolution Conf. 10.2 (Rev.) (i.e. six months for re-export certificates and 12 months for import permits)? If not, what are the provisions?
 - d) What is the procedure set by the legislation for the issuance of CITES documents? Does it comply with Resolution Conf. 10.2 (Rev.), Part I, under "RECOMMENDS"?
 - e) Are there provisions to regulate or prohibit the transference of CITES permits and certificates? If so, please describe them.

- f) Are there provisions that allow the retroactive issuance of permits and certificates? If so, please describe them.

FINAL DESTINATION OF CONFISCATED SPECIMENS

7. Does the legislation establish a procedure for accepting the return of CITES specimens exported by or originating in your country and confiscated in the country of transit or destination? If so, what are the relevant provisions.
8. What is the procedure for returning CITES specimens that were confiscated in your country to the country of consignment or the country of origin (transportation, costs and conservation, etc.)?
9. What provisions exist concerning the final disposal of CITES specimens of fauna confiscated or seized live in your country (ref. Annex 1 of Resolution Conf. 10.7)?
- a) Captivity in the country import, export or origin
 - zoo
 - rescue centres
 - lifetime-care facilities
 - specialist societies
 - private individuals
 - laboratories
 - sale
 - b) Return to the Wild
 - c) Euthanasia
10. What provisions exist concerning the final disposal of CITES specimens of flora confiscated or seized live in your country (ref. Annex 2 of Resolution Conf. 10.7)?
- a) Maintenance in cultivation
 - b) Return to the Wild
 - c) Destruction
11. What provisions exist concerning final disposal of CITES specimens of fauna and flora confiscated or seized dead, and their parts and derivatives?

CIVIL RESPONSIBILITY

12. Is there a legal obligation in the domestic law to make reparation (amends) of the damage caused to populations of a CITES-listed species following legal or illegal behaviour/activities?
13. What kind of civil responsibility is foreseen in environmental regulations?
- a) Contractual and non-contractual responsibility
 - b) Subjective and objective responsibility (person without fault)
 - c) Direct and indirect responsibility
14. Does the legislation provide for moral and material compensation for the damage that has been done?
15. How is reparation made for the damages and who receives indemnification?
16. In the event of economic evaluation of moral prejudice, how does the legislation foresee reparation for damage consisting in the disappearance of a CITES-listed species?

17. Does the legislation foresee exoneration of civil responsibility, in the following cases:

- a) External uncontrollable events
- b) Inexcusable fault of a victim
- c) Prescription
- d) Others reasons

17bis. Does national law provide for "aggravating or attenuating" circumstances applicable to infractions against CITES?

18. What are the legal means available to enforce indemnification?

CRIMINAL LIABILITY

19. How does the legislation define "infractions" against the Convention in domestic law?

- a) introduction into, or export, or re-export of a CITES specimen without a valid CITES document;
- b) shipment into or out of, or in transit via, your country of specimens without a valid CITES document;
- c) using a false, falsified or invalid CITES document or one altered without the authorization of the authority responsible for issuing the permit;
- d) use of a CITES document for any specimen other than one for which it was issued;
- e) failure to comply with the stipulations specified on the CITES import permit;
- f) making a false declaration or knowingly providing false information to obtain a CITES document;
- g) use of specimens of species listed in Appendix I other than in accordance with the authorization given at the time of issuance of the CITES document;
- h) purchase, offer to purchase, acquisition for commercial purposes, use for commercial gain, display to the public for commercial purposes, sale, keeping for sale, offering for sale or transporting for sale of specimens in contravention of CITES provisions;
- i) falsification or alteration of any CITES document;
- j) obstruction of an officer responsible for the implementation and enforcement of the Convention;
- k) alteration or deletion of a mark relevant to the implementation of CITES;
- l) shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment;
- m) are there other definitions? If so, please describe them.

20. Who may be criminally liable for infractions committed against CITES?

a) Physical persons?

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| - The importer | - The exporter |
| - The owner | - The possessor |
| - The shipper | - The depository |
| - The informant | - The intermediary |
| - The public official | - Other |

- b) Legal persons such as corporations?
 - The importing company
 - The exporting company
 - The transportation company
 - The producing company
 - Another private entity
 - c) Governmental agencies?
 - The administration (national, regional or municipal)
 - Public enterprises of State
 - A moral/legal person of public law
 - Others
 - d) Groups, associations and other collectives not recognized as legal persons?
 - the indigenous people
 - Groups or organizations not recognized as legal persons
 - Others
21. Under national law can criminal liability for infractions against the Convention be imputed to persons other than prime offenders? Can it be imputed to:
- a) Helpers and abettors?
 - b) Inciters?
 - c) Persons that attempt an infraction?
 - d) Conspirators?
22. Can infractions against CITES in your law be committed by:
- a) Omission (inactivity)?
 - b) by systematic activity, e.g. continued courses of conduct?
 - c) by mere endangerment without actual harm?
23. According to the legislation, what are the potential circumstances of infractions against the Convention:
- a) by a person in the absence of his/her fault
 - b) by rashness
 - c) by negligence
24. Are there legal justifications for infractions against CITES?
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| a) physical impossibility | d) mistake or ignorance of fact |
| b) acting under legal authority | e) necessity |
| c) acting under superior orders | f) others |
25. What penalties or sanctions are called for in the case of infractions of CITES?
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| a) Fine | e) Arrest |
| b) Seizure | f) Imprisonment |
| c) Confiscation | g) Others |
| d) Temporary or definitive closure of the business | |
26. With respect to the imposition of penalties, what is the maximum punishment that can be imposed by a judge for a crime committed against CITES?
27. Concerning the imposing of monetary sanctions, what is the maximum fine and which authority is

competent to impose it?

28. What are the limits of the competence of the court?
- a) Is it limited to infractions fully committed on the territory of the country?
 - b) Does it extend to other areas?

JURISDICTION and PROCEDURE

29. Which court is competent to judge infractions against CITES?
30. What is the legal/judicial procedure for transmitting information regarding infractions against CITES?

GENERAL ASPECTS

31. Does the Management Authority have rescue centres to house confiscated specimens?
32. Which ports of entry and exit are designated for processing the import and export of specimens covered by CITES?
33. Which CITES-listed species are subject to the highest level of trade?
- a) At a national level (domestic trade)?
 - b) At a international level (external trade)?
34. What other measures does the CITES Management Authority propose for the application of the Convention (awareness campaigns, local community education, training of officials, etc.)?