Basic principles of legislation to implement CITES
Treaty incorporation

- CITES is an international treaty which is **not self-executing** upon a country’s adherence (i.e. agreement to be legally bound by its provisions)

- The implementation of CITES obligations requires that policy, powers, rights, duties and procedures be set forth in national legislation

- Effective CITES implementation is impossible without an adequate legal basis at national level

- Trade should not be allowed unless adequate legislation is in force
What is legislation?

• Legislation represents national policy on why, how and which wildlife resources must be managed

• It creates an administrative framework and procedures for managing those resources

• It authorizes the collection and evaluation of relevant information and the taking of decisions

• It places obligations and restrictions on people who handle the resources and provides incentives

• It encourages proper use, monitors compliance and punishes illegal practice
Socio-economic aspects of legislation

• Legislation reflects the State’s policy choice on the management of its biological resources
  – e.g. trade in all wildlife, trade in selected species, trade in captive bred or artificially propagated specimens, non-commercial trade, trade ban

• It determines the ownership of those resources, whether and how they will be commercialized as well as who will benefit

• Sound national legislation helps to change people’s attitudes and behaviours
How is legislation developed and applied?

• **Conception:** analysis of the problem, policy options, objectives, means and future evaluation

• **Development:** writing of legislative text, choice of the form (law, decree, ordinance), choice of procedure (parliamentary or administrative), choice of compliance scheme and enactment

• **Implementation:** application, compliance monitoring and enforcement

• **Future evaluation:** assessment of the legislation’s effectiveness, that is, whether its objectives are achieved
Legislative elements

• GENERAL PROVISIONS
• INSTITUTIONS
• REGULATION OF TRADE
• COMPLIANCE MEASURES
General provisions

- Purpose
- Conformity with CITES
- Scope (all animals and plants in CITES Appendices)
- Definitions (consistent with Convention and Resolutions)
- Links to related legislation (environmental, natural resource, customs/trade, criminal/civil codes)
Institutions

• Designation
• Structure
• Powers, functions (MA, SA, enforcement authorities)

• Relationships with other authorities and coordination
• Role of traders, public and NGOs
• Funding mechanism
Regulation of trade

- Import/export/re-export/introduction from the sea (transit / transhipment)
- Permits/certificates/marking/transport conditions
- Licensing/registration/records (trade, breeding)
- Border and internal trade control (limited entry points)
- Exemptions and special provisions
Compliance measures

- Prohibit trade/transit without proper documents
- Prohibit possession, transport, and trade without proof of legal acquisition
- Penalize fraud/non-compliance
- Confiscate specimens illegally traded/possessed
- Education/incentives
Compliance measures

• Adequacy of penalty in relation to offense
• Increased on subsequent offenses
• Fine, imprisonment, ban on future trade activities, forfeiture, other
• Corporate liability
• National/regional harmonization
• Fines directed towards enforcement
Elements to consider when preparing legislation

- Legislation should be **realistic** in the context of human and financial resources available to implement it
- Legislation should be **flexible** and should take into account special circumstances of the country
- Legislation should be **simple** and **clear**
- New or amended legislation should be viewed in relation to existing, relevant legislation
- Holistic biodiversity legislation should be considered
- If stand-alone legislation is chosen, fragmentation should be avoided
Domestic legislation could be a maze

- Constitution
- Ratification Act
- Organic law
- Customs
- Trade
- Endangered Species Protection Act
- Criminal law
- Public health
- Agriculture
- Wildlife
- Fauna
- Flora
- Forestry
- Fisheries
Legislation in a broader international context
CITES Secretariat
Geneva