

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



Fifty-seventh meeting of the Standing Committee
Geneva (Switzerland), 14-18 July 2008

Interpretation and implementation of the Convention

Compliance and enforcement issues

NATIONAL LAWS FOR IMPLEMENTATION OF THE CONVENTION

1. This document has been prepared by the Secretariat.

Background

2. At its 14th meeting (CoP14, The Hague, 2007), the Conference of the Parties adopted the following Decisions on National laws for implementation of the Convention:

Directed to Parties

14.25 *Before the 58th meeting of the Standing Committee, any Party or dependent territory that has been party to the Convention for five or more years, with legislation in Category 2 or 3, should:*

- a) *submit to the Secretariat, in one of the working languages of the Convention, newly enacted legislation for implementation of the Convention; or*
- b) *provide adequate justification for its failure to do so.*

Directed to the Standing Committee

14.26 *With respect to Parties and dependent territories that do not comply with Decision 14.25 or decisions of the Standing Committee in relation to national laws for implementation of the Convention, the Standing Committee shall consider appropriate compliance measures, which may include recommendations to suspend commercial trade in specimens of CITES-listed species to and from such Parties.*

Directed to the Secretariat

14.27 *The Secretariat shall:*

- a) *compile and review the information submitted by Parties on legislation adopted before the 15th meeting of the Conference of the Parties (CoP15) to fulfil the requirements laid down in the text of the Convention and Resolution Conf. 8.4 (Rev. CoP14);*
- b) *prepare or revise the analyses of national legislation and the categories, and advise the Parties concerned of the initial or revised analyses, specifying any requirements that are not yet met;*

- c) *provide technical assistance to Parties requesting advice in the formulation of legislative proposals for CITES implementation by providing, to the extent resources are available:*
 - i) *legal guidance in the preparation of necessary legislative measures;*
 - ii) *training of CITES authorities and other relevant bodies responsible for the formulation of wildlife trade policies or legislation; or*
 - iii) *any specific support relevant to the fulfilment of the legislative requirements for the implementation of CITES and also consider assisting Parties requesting it to assist implementing agencies with advising their governments of the need to enact adequate national laws;*
- d) *on the basis of information, inter alia, provided in Parties' biennial reports, compile good examples and prepare specialized material for the development of more effective legislation, especially in relation to verification of the legal acquisition of specimens in trade, incorporation of exemptions and special procedures, adoption of appropriate and proportionate penalties and enactment of legislation for specific species or specimens;*
- e) *report at the 57th and 58th meetings of the Standing Committee on Parties' progress in enacting adequate legislation and, if necessary, recommend the adoption of appropriate compliance measures, including suspension of trade;*
- f) *identify for the Standing Committee any countries that require attention as a priority under the National Legislation Project; and*
- g) *report at CoP15 on:*
 - i) *the legislation adopted by the Parties to implement the Convention and any recommendations relating to Parties that have not adopted adequate legislation for implementation of the Convention; and*
 - ii) *any progress concerning technical assistance provided to the Parties in the development of their national legislation for implementation of CITES.*

3. At its 55th meeting (SC55, The Hague, June 2007), the Standing Committee did not have time to consider and decide upon the two recommendations made by the Secretariat in document SC55 Doc. 14 on *National laws for implementation of the Convention*. One of these recommendations concerned the identification of Algeria, Djibouti, Guinea Bissau, Kenya, Liberia, Mauritania, Mozambique, Rwanda, Somalia, South Africa, Suriname and the Bolivarian Republic of Venezuela as countries requiring attention as a priority under the National Legislation Project. The Secretariat also recommended that the Standing Committee review at the present meeting the legislative progress of all Parties and dependent territories that had not enacted adequate legislation by that time.
4. A postal procedure was initiated in October 2007 to address those SC55 agenda items that had not been considered in June 2007. During this procedure, a Committee member asked the Secretariat to report on the consultations it had conducted during CoP14 with the countries mentioned above in paragraph 3. The Secretariat informed the Committee that it had held consultations regarding legislation with Kenya, Liberia, Mozambique, Rwanda, South Africa, Suriname and the Bolivarian Republic of Venezuela. All of these countries provided additional information (including revised CITES legislation plans, revised draft legislation, new legislative texts or requests for additional assistance) on their progress in enacting adequate legislation. The Secretariat did not receive any requests for, and did not have an opportunity to undertake, legislative consultations with Algeria, Guinea-Bissau or Mauritania. Neither Djibouti nor Somalia were represented at CoP14. Of these countries, only Suriname asked to be deleted from the list of countries proposed for priority attention under the National Legislation Project. On the basis of its consultations with Suriname and the information provided by its delegation at CoP14, the Secretariat amended its proposal to the Standing Committee, to delete the reference to Suriname.

5. The Standing Committee thereafter agreed to adopt the Secretariat's recommendations, as amended. This decision, together with other decisions resulting from the postal procedure, was communicated to CITES Parties through Notification to the Parties No. 2008/004 of 28 January 2008.

Legislative progress

6. In order to ensure that it reflects the latest available information, an updated legislative status chart will be provided during the present meeting as an Annex to the present document.

Countries identified as requiring attention as a priority under the National Legislation Project

7. Over the course of several meetings, the Standing Committee has identified a total of 19 countries as requiring attention as a priority under the National Legislation Project. The legislative progress made by each of them is summarized below.

Belize

8. Belize undertook a series of consultations with stakeholders who would be affected by its draft CITES legislation, and the resulting input was incorporated into a revised draft of the legislation. A copy of the most recent draft will soon be sent to the Secretariat for comment.

Guinea Bissau

9. Since 2004, Guinea-Bissau has been subject to a recommendation to suspend trade for the failure to provide any written indication of its legislative progress (see Notification to the Parties No. 2006/073 of 14 December 2006). It recently provided the Secretariat with a French translation of Decree-Law No. 2/2004 of 30 April 2004 on the regulation of hunting. The Secretariat is now reviewing this legislation.

Kenya

10. In August 2007, following a national wildlife trade policy review workshop in Uganda and using funds provided by Japan, the Secretariat travelled on to Kenya for discussions on the draft Wildlife (Conservation and Management) Bill, 2007. The Bill was reviewed in detail over the course of several meetings with national CITES authorities and their legal counsel. The Secretariat later provided a written summary of the points that had been addressed, so as to assist Kenya's preparation of a revised draft text. It is hoped that Kenya's legislative momentum will continue and that its revised draft legislation may be completed by the present meeting.

Liberia

11. Since 2004, Liberia has been subject to a recommendation to suspend trade for the failure to provide any written indication of its legislative progress (see Notification to the Parties No. 2006/073). Liberia announced during CoP14 that it had adopted a law on national forestry reform in 2006 and later provided a copy of this law to the Secretariat. On the basis of this legislation, Liberia requested that the recommendation to suspend trade be withdrawn. The Secretariat's review of the law revealed that one of its sections addressed international trade in wild animals, protected animals and wildlife. Within this section, one subsection referred to CITES. However, as another section of the law mandated the development and enactment of comprehensive and complementary wildlife conservation legislation, the Secretariat determined that more consultation was needed with Liberia on this point. The Secretariat recently learned, from a legal consultant who has worked with Liberia, that the Government has begun drafting a wildlife conservation law. The Secretariat is now seeking confirmation from Liberia.

Malaysia

12. At the May 2008 meeting of the ASEAN Expert Group on CITES, the Secretariat learned that Malaysia's parliament passed the International Trade in Endangered Species Act 2007 (Act 686) in December 2007. Malaysia thereafter provided an electronic copy of the Act and advised that the King had signed the legislation in February 2008. It is expected that the legislation will be gazetted in

the near future. Malaysia is now in the process of drafting implementing regulations, which will later be shared with the Secretariat. The new Act is an important achievement because it establishes a sound basis for the coordination of CITES implementation at the federal level.

Mauritania

13. Since 2004, Mauritania has been subject to a recommendation to suspend trade for the failure to provide any written indication of its legislative progress (see Notification to the Parties No. 2004/055 of 30 July 2004). Mauritania recently informed the Secretariat of its intention to take the steps that are necessary to achieve compliance with its national reporting and legislation obligations under the Convention.

Mozambique

14. In response to a request from Mozambique for technical assistance to develop legislation, the Secretariat provided information and a package of legal guidance material. This was communicated through a Fauna and Flora International cooperation project. The Secretariat thereafter visited Mozambique, in relation to the domestic control of trade in elephant ivory, and reminded the CITES Management Authority of the need to adopt adequate legislation as a matter of priority.

Nigeria

15. Since 2005 Nigeria has been subject to a recommendation to suspend trade for its failure to make progress on its action plan to improve implementation of CITES (see Notification to the Parties No. 2005/038 of 19 June 2005). Among other things, the plan provides for the adoption of adequate legislation. In January 2008, the Secretariat asked about the current status of Nigeria's efforts to adopt adequate legislation for implementing the Convention. The Secretariat mentioned that Nigeria had been identified as a country requiring attention as a priority and asked how it might be able to assist Nigeria's legislative efforts. No response has yet been received.

Pakistan

16. In August 2007, Pakistan provided the Secretariat with a copy of the draft Federal Cabinet Act that had been endorsed by the Law and Justice Division of the Government of Pakistan. The cover message explained that Pakistan, with the assistance of IUCN-Pakistan, was in the process of preparing a related bill of enactment.

Paraguay

17. In May 2008, the Secretariat was invited to Paraguay to participate in a regional training programme on environmental law and policy organized by UNEP's Regional Office for Latin America and the Caribbean. This was an excellent opportunity to meet ministerial legal advisors, prosecutors and judges from Spanish-speaking countries in the region. The Secretariat used this mission to discuss with Paraguay its progress in the development of adequate legislation to implement the Convention. In addition, it had discussions with CITES authorities about Paraguay's voluntary moratorium on trade in CITES species, which was adopted by the country in 2003 and which remains in effect (see Notification to the Parties No. 2003/058 of 29 September 2003). It was agreed that Paraguay and the Secretariat should implement in a gradual manner a series of cooperative actions aimed at ensuring that the requisite conditions are in place for lifting the moratorium.

Peru

18. In May 2008, at the request of both Peru and the United States of America and in connection with the United States – Peru Trade Promotion Agreement (PTPA), the Secretariat undertook a legislative assistance mission to Peru. ITTO provided both financial and technical support to the mission. The mission was aimed at finalizing draft legislative texts that would render Peru's legislation adequate for CITES implementation. The texts were to be enacted under Peru's special, limited executive authority to adopt legislation, which is scheduled to expire at the end of June 2008. CITES authorities from Peru, trade authorities from both Peru and the United States and government lawyers from Peru were involved in the legislative discussions. The critical weakness of Peruvian

legislation is its inadequate penalization of trade in and possession of specimens of CITES-listed species that occurs in violation of national law and the Convention. Amendments to the environmental crimes chapter of the Penal Code have therefore been drafted, and it is hoped that these reforms will be adopted before Peru's special executive authority to enact legislation expires (see also document SC57 Doc. 36).

Rwanda

19. Since 2004, Rwanda has been subject to a recommendation to suspend trade for the failure to provide any written indication of its legislative progress (see Notification to the Parties No. 2006/073). In response to a longstanding request, the Secretariat is planning a mission to Rwanda during the second half of this year to assist them in the preparation of adequate legislation.

South Africa

20. In 2007, South Africa promulgated Threatened or Protected Species Regulations under the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004). It provided a printed copy of this legislation to the Secretariat at CoP14 but indicated that additional implementing regulations were still needed for adequate implementation of CITES. In response to a request from South Africa earlier this year, the Secretariat sent legislative guidance material. Recently, the Secretariat received and responded to a request for legislative guidance material from a consultant who is helping South Africa to develop legislation for the designation of its Scientific Authority. The Secretariat understands that South Africa may include a legal advisor in its delegation to the present meeting, in order to have detailed legislative discussions with the Secretariat. The Secretariat would nevertheless encourage South Africa to accelerate its legislative efforts, in order to ensure that adequate legislation is enacted by SC58.

Venezuela (Bolivarian Republic of)

21. Legislative progress in the Bolivarian Republic of Venezuela has slowed down. The Secretariat encourages the country to step up its efforts to ensure the enactment of adequate legislation by SC58.

Other countries

22. The Secretariat has not yet received any written indication of legislative progress from Algeria, the Comoros, Djibouti, Kazakhstan or Somalia. In the meantime, Djibouti and Somalia remain subject to a recommendation to suspend trade for the failure to provide written indication of their legislative progress (see Notifications to the Parties No. 2006/073 and 2004/055, respectively). Should it receive additional information from any of these countries before SC57, the Secretariat will include such information in its oral report.

Other Parties and dependent territories affected by Decision 14.25

23. Since the legislative status reports provided at CoP14 and SC55, the Secretariat has learned that the following Parties and dependent territories have enacted CITES-implementing legislation:

Brunei Darussalam (Wild Fauna and Flora Act enacted in December 2007)

Saint Lucia (International Trade in Wild Fauna and Flora Act enacted in September 2007; implementing legislation to be developed before the commencement order is issued)

Zambia [The Zambia Wildlife (International Trade in Endangered Species of Wild Fauna and Flora) Regulations 2007]

24. The regional report for Oceania for this meeting (document SC57 Doc. 40.6) indicates that Papua New Guinea has adopted amended implementing regulations under its primary CITES legislation, but they are still to be gazetted.

25. During the discussions on national legislation at CoP14, Eritrea announced that it had adopted a Forestry and Wildlife Proclamation in 2006 and was working on a draft CITES proclamation. It requested technical and financial assistance to finalize the draft proclamation. Mauritius said that its draft CITES legislation was being vetted by the State Law Office. Trinidad and Tobago said that they had received useful comments from other national agencies on their draft CITES legislation and indicated that the legislation would be enacted in the near future.
26. After CoP14, Afghanistan advised the Secretariat that it was drafting implementing regulations for CITES under its Environment Act, which had been amended in 2006 and gazetted in 2007. Azerbaijan informed the Secretariat in April 2008 that it was consulting with various ministries on its draft CITES legislation. Ghana provided the Secretariat with a revised draft of the Wildlife Act in June 2007, on which the Secretariat provided comments. Ghana provided a further revised draft Act in January 2008, together with a draft explanatory memorandum and draft Cabinet memorandum that would be submitted in support of the draft Act as well as draft Wildlife Conservation (Off-Reserve) Regulations. In May 2008, Guyana provided the Secretariat with draft legislation for amending the Species Protection Regulations made under the Environmental Protection Act of 1996. It advised that two stakeholder consultations on this legislation were scheduled for June and August 2008. The Asian regional report for the present meeting (document SC57 Doc. 40.2) indicates that Myanmar has developed new draft legislation. Tunisia has submitted draft legislation to the Secretariat for comment. As the text appears to need substantial revision, the Secretariat is considering the possibility of a legislative mission to Tunisia.
27. Bolivia, Ecuador and El Salvador requested legislative assistance to move their legislation from Category 2 or 3 to Category 1. Bolivian legislation was discussed during the Secretariat's mission to the country in November 2007, under the auspices of Bolivia's national Biotrade programme. The Secretariat is undertaking a mission to El Salvador in June 2008 to provide legislative and other assistance in the context of the United States – Central American and Dominican Republic Free Trade Agreement. Funds have not been yet identified to provide legislative assistance to Ecuador. Final draft legislation is expected from Bolivia and El Salvador before the present meeting.
28. The Secretariat met separately with representatives from the Philippines and Zambia, while they were in Geneva for meetings of the CITES scientific committees, to compare their CITES-related legislation with the requirements set forth in Resolution Conf. 8.4 (Rev. CoP14). It was agreed that certain matters required additional clarification and possibly follow-up action. These will be highlighted in the written discussion summary that the Secretariat undertook to provide to each Party before the present meeting.
29. In April 2008, following a national wildlife trade policy review workshop in Uganda and using funds provided by Japan, the Secretariat travelled on to the United Republic of Tanzania for discussions on the CITES implementing regulations adopted in 2005. The regulations were reviewed in detail over the course of several meetings with national CITES authorities and their legal counsel. On the last day of the mission, the Secretariat provided a written summary of the points that had been addressed, so as to assist the United Republic of Tanzania in its preparation of amended or new legislation. It is worth noting that the Secretariat's accommodation and meal expenses in Dar-Es-Salaam were paid by the CITES Management Authority of the United Republic of Tanzania.
30. As mentioned in paragraph 28 above, the Secretariat travelled to Uganda in April 2008 for a national consultative workshop organized under the wildlife trade policy review project. The Secretariat thereafter met with the CITES Management Authority of Uganda to review in detail its draft CITES legislation. The Secretariat undertook to provide Uganda with a written discussion summary before the present meeting.
31. The national reports of Belarus, Georgia, Moldova, Serbia and Uzbekistan contain information on recent, CITES-related legislative developments in those countries. The Secretariat will now consult with the respective Management Authorities to obtain additional details.
32. In the context of the United States Department of Interior's Middle East Partnership Initiative, the United States of America has been working with the Secretariat to assist Jordan and Morocco in their efforts to resolve pending legislative issues.

33. The United Kingdom of Great Britain and Northern Ireland confirmed to the Secretariat that Bermuda's Endangered Animals and Plants Act 2006 has entered into force and could now be reviewed to determine its adequacy. It requested an analysis of the penalty provisions within legislation adopted by the British Indian Ocean Territory and provided justification for Montserrat's failure to make legislative progress. In February 2008 the Secretariat met with two legal consultants who were assisting the Isle of Man (and potentially Guernsey and Jersey) with their legislative efforts. The Secretariat later provided the consultants with a package of legislative guidance materials. During the same month, the Secretariat provided the United Kingdom with requested background information on the Cayman Islands in support of a mission being undertaken there. The United Kingdom and the Secretariat are continuing to communicate on the legislative progress of other dependent territories.
34. Should it receive additional information from any additional countries before SC57, the Secretariat will include such information in its oral report.

Parties not affected by Decision 14.25

35. In accordance with Decision 14.25, those States that have been party to the Convention for less than five years do not need to submit enacted legislation by SC58 or provide adequate justification for their failure to do so. These countries comprise: Albania, Bhutan, Cape Verde, Kyrgyzstan, the Lao People's Democratic Republic, Lesotho, the Libyan Arab Jamahiriya, Montenegro, Oman, Palau, Samoa, Serbia, the Solomon Islands and the Syrian Arab Republic.
36. Nevertheless, a number of these countries have reported on their efforts to adopt adequate CITES-implementing legislation. During the May 2008 meeting of the ASEAN Expert Group on CITES, which the Secretariat attended, the Lao People's Democratic Republic reported that it had enacted new forestry and wildlife legislation in January 2008. In response to an October 2006 request from the Secretariat regarding its management of falcon species, Oman provided the Secretariat with an English translation of its Law on Nature Reserves and Wildlife Conservation (Royal Decree No. 6/2003). Albania provided the Secretariat with comprehensive draft legislation on which the Secretariat commented. Palau also provided the Secretariat with comprehensive draft legislation for comment, and Kuwait advised that it was in the process of developing draft legislation. The regional report for Oceania for the present meeting indicates that the Solomon Islands has reviewed its existing legislation relevant to CITES and organized a consultative workshop for stakeholders. It is now working on amendments to its legislation. The same report indicates that Samoa would benefit from assistance in reviewing its existing legislation related to CITES. The 2005-2006 biennial report of Serbia indicates that it is developing new legislation for implementation of the Convention.
37. Should it receive additional information from any additional countries before SC57, the Secretariat will include such information in its oral report.

Developments concerning legislation placed in Category 1

38. Jamaica, New Zealand, Slovakia, Switzerland and the European Union, on behalf of its Member States, have provided the Secretariat with copies of recently enacted legislation. This generally concerns the domestic incorporation of amendments to the CITES Appendices that were adopted at CoP14. The newly enacted Swiss legislation, however, is quite comprehensive. Among other things, it authorizes the sale of confiscated specimens, if permitted under CITES, and provides that the proceeds of any sale may be used to support CITES-related research and implementation projects, if possible in the countries where the specimens originated. The Secretariat has learned that the European Union, with the assistance of TRAFFIC International, is in the process of gathering electronic versions of all CITES-related legislation in the Member States. This effort coincides with the Secretariat's intention to make available on or through the CITES website the full text of CITES-implementing legislation that has been placed in Category 1. The Secretariat would welcome any advice that the Standing Committee might wish to provide on how this could best be done.

39. Norway has advised that it is working on a set of comprehensive amendments to its CITES legislation. At Norway's request, the Secretariat provided it with a package of legislative guidance materials for reference.
40. Additional legislative developments in Australia, Fiji, Japan, Singapore, Thailand, the United States, Vanuatu and Viet Nam are described in the regional reports for the present meeting.
41. Application of the new United States regulations on CITES has raised a discussion among some Parties as to whether export endorsement or clearance is a legally-binding obligation under the Convention. This issue might benefit from consideration by the Standing Committee and, if necessary, the Conference of the Parties. In the meantime, the Secretariat has been asked by one Party to identify examples of legislative provisions that expressly require export endorsement or clearance.

Recommendations

42. The Secretariat recommends that the Standing Committee identify Bolivia, El Salvador and the United Republic of Tanzania as countries requiring attention as a priority under the National Legislation Project. The addition of the above countries would result in a total list of 22 priority countries under the National Legislation Project and would provide the Secretariat with a specific focus for its legislative assistance until CoP15.
43. The Secretariat also recommends that the Standing Committee issue a written caution to Mozambique, South Africa and Venezuela (Bolivarian Republic of) advising them of the need to accelerate their efforts to enact adequate legislation by SC58.
44. The Secretariat recommends that the Standing Committee remind Parties and dependent territories affected by Decision 14.25 that it will be determining at SC58 whether they have submitted to the Secretariat newly enacted legislation by that time or provided adequate justification for their failure to do so.