International Economic Law Clinic

ASSESSING NATIONAL LAWS FOR THE IMPLEMENTATION OF CITES

PUBLIC MEMO

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Submitted by

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TradeLab

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Executive Summary

This TradeLab project analyses the domestic legislation of 14 developing countries in implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The present memo summarises the main findings across the 14 Parties.

This memo finds that most assessed Parties have implemented the CITES' core requirements, and recommendations provided in the resolutions of the Conference of the Parties (CoP). The project identifies a minority of three African countries for which the CITES Secretariat may wish to review their Category 1 status. These Parties fall short of all or several of the following elements: they failed to appropriately designate Management and Scientific Authorities by law, circumscribe the Authorities' tasks and responsibilities, or – by exclusively regulating native species – appear not to comprehensively cover species listed in the Convention's three Appendices.

Furthermore, the innovative approaches of several Parties have provided fertile ground for this project's analysis of seven suggested elements that may enhance the effectiveness of CITES implementation: (1) national laws should present clear and precise steps for implementation; (2) laws should reflect CITES instruments and language; (3) legislation should cover the actions of corporate entities; (4) individual discretion of government officials should be limited; (5) CITES implementation could be strengthened through budgetary independence; (6) designation of ports of entry and exit may improve the effectiveness of inspection and enforcement, and (7) involvement of civil society may enhance accountability and transparency.

This memo finds that the laws of three Parties may serve as positive examples and potentially provide guidance to other CITES Parties: The Bahamas, Fiji, and South Africa, which have extensively implemented CoP recommendations and developed innovative approaches to implementation. In sum, the positive findings of this memo instil confidence in the ability of developing economies to enforce CITES obligations through robust domestic legal instruments.

1. Introduction

The main objective of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, hereafter referred to as "the Convention") is the "protection of certain species of wild fauna and flora against over-exploitation through international trade."[1] The Convention aims to regulate trade in listed species in a sustainable, legal and traceable manner. To assist and monitor State Parties' adoption of domestic legislation to implement CITES, the CITES Secretariat maintains the National Legislation Project (NLP).[2]

The present TradeLab project is designed to support the NLP by assessing the extent to which Parties' national legislation implements the obligations prescribed by the Convention. This project reviews the legislative measures of a group of developing economies previously placed in Category 1 of the NLP. With a view to updating the NLP's findings since its establishment in 1992, the project will analyse whether the assessed Parties remain compliant. Further, the project will discuss general trends and practices observed across the assessed countries, as well as comment on the salient features of each Party's method of implementing CITES through its domestic laws.

This TradeLab memo unfolds as follows. Chapter 2 provides an overview of the methodology. Chapter 3 summarises findings relating to questions posed by the CITES Secretariat under the NLP, identifying trends across the analysed jurisdictions. This Chapter is divided into five sections, each corresponding to an area of regulation: 1) general questions, 2) the designation of Management and Scientific Authorities, 3) the prohibition of trade in violation of CITES, 4) the penalisation of such trade, and 5) confiscation. Chapter 4 presents cross-cutting elements identified across all domestic legislation assessed. Chapter 5 concludes the present report.

This is the publicly available version of the project memo. References to Parties have therefore been removed or anonymised and some sections shortened.

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[1] See Preamble, CITES.

[2] See Resolution Conf. 8.4 (Rev.CoP15).

2. Methodology

The methodology employed by this TradeLab project can be outlined in five steps: 1) selecting focus countries, 2) collecting relevant legal instruments, 3) outlining the amendment history of the legislation, 4) analysing national legislation, and 5) analysing outcomes and findings.

2.1. Step 1: Selecting Focus Countries

The project team selected countries with a view to balancing regional representation, accounting for the linguistic constraints of project members and considering the availability of legal documents in online databases.[3] Owing to these considerations, 14 countries are assessed and listed below. Twelve countries have publicly available CITES-related legislation in English, and two countries were assessed based on their laws in French: the Democratic Republic of the Congo (DRC) and Morocco. The countries are:

Continent	**Parties**
Asia / Pacific	Brunei, Fiji, Indonesia, Malaysia, Papua New Guinea, Viet Nam
Americas	The Bahamas, Guyana
Africa	Democratic Republic of Congo, Ethiopia, Morocco, Namibia, Nigeria, South Africa

2.2. Step 2: Collecting Relevant Legal Instruments

Legal documents were primarily sourced from the FAOLEX/ECOLEX databases. FAOLEX/ECOLEX are a comprehensive source of information on national and international environmental law. This project's assessment is

[3] In particular, Spanish is not spoken by any of the team members. Only legislation available in English or French was analyzed.

based on the FAOLEX/ECOLEX databases and thus limited to the English or French legislation available on these sites.

Information beyond FAOLEX/ECOLEX was sourced to address three specific questions: 1) to understand the legal status of international law in Parties' Constitutions, 2) to examine relevant provisions on e-commerce and online trade with respect to the regulation of trade in specimens of wild animals and plants, and 3) to identify penalties for the trading and possession of specimens of wild animal and plants where they are contained in the penal code of a Party. Specifically, information beyond FAOLEX/ECOLEX was sourced in national legislation databases, the websites of MAs, the Constitutions of assessed countries, and secondary academic literature. These sources were also consulted, where accessible in English or French, to verify the completeness of the legislation found through FAOLEX/ECOLEX. The comprehensiveness of the collection of legislation follows these constraints.

2.3. Step 3: Outlining the Amendment History of the Legislation

Based on the findings of Step 2, the collected CITES-related legal instruments of a given Party were sorted in chronological order to understand the amendment history of CITES-related laws. All legislative amendments were considered in the assessment of compliance, accounting for the possibility that previously compliant laws were later amended by the CITES Party in question.

2.4. Step 4: Analyzing National Legislation

Based on the legal instruments collected in Step 2, each country is assessed against a set of questions provided by the CITES Secretariat. The questions are divided into five sections: 1) general questions, 2) designation of the Management Authority and Scientific Authority, 3) prohibition of trade violating CITES, 4) penalisation of illegal trade, and 5) confiscation. Each section contains questions corresponding to the minimum requirements of compliance, as well as additional recommendations and interpretations found in resolutions adopted by the CITES CoP pursuant to Art. XI:3(e) of the Convention. Based

on the rules contained in the Vienna Convention on the Law of Treaties, CoP resolutions can qualify either as a "subsequent agreement" or "subsequent practice" between the Contracting parties that informs the interpretation of the CITES Convention and its provisions.[4] As a result, States' compliance with the Convention must be assessed against this common understanding of its provisions. Certain other relevant international documents are also taken into account. For example, UN General Assembly A/RES/69/314 on tackling illicit trafficking in wildlife is relevant to assessing Parties' level of penalties for offences under CITES.[5]

2.5. Step 5: Analysing the Outcomes and Findings

Upon completing national legislation assessments, the project team will extract trends from existing laws, inclusive of innovative approaches and recurring problems or policy failures among the practices adopted by the assessed Parties. Such findings will be presented in the ensuing sections of this memo.

[4] See Art. 31.3(a)-(b) Vienna Convention on the Law of Treaties (1969).

[5] See United Nations General Assembly Resolution A/RES/69/314.

3. Addressing CITES Obligations in National Legislation: Assessment Questions

In this section, findings relating to the questions posed by the CITES Secretariat will be summarised. For each question, the present section will succinctly present the issue of assessment, the rationale for its analysis and a summary of the findings across the sample of 14 assessed countries.

The following table provides an overview of the assessment questions. In bold are the criteria considered essential by the Secretariat and taken into account in assessing Category 1 status.

General questions	• Direct applicability or transformation of CITES • Specific or several legal instruments
Designation of Management Authority and Scientific Authority	• **Designation of authorities by legal instrument** • **Roles and responsibilities of Authorities** • Separate and independent Authorities • Coordination between authorities
Prohibition of trade in violation of CITES	• **General prohibition** • **Coverage of all species** • **Incorporation of lists** • **Update of lists** • Introduction from the sea • Transport of live specimens • Inspection of transit • Online trade
Penalisation of illegal trade	• **Definition of prohibited actions and activities** • **Designation as punishable offences** • Possession of illegally acquired specimens • Penalties
Confiscation	• **Confiscation provided for in legislation** • Costs of care of confiscated live specimens

3.1. General Questions

This section addresses general questions on the applicability of CITES in domestic law, as well as its implementation through legislative acts.

3.1.1. Direct Applicability or Transformation of CITES

Direct applicability or incorporation of CITES	Number of Assessed Parties (out of 14)
Direct Applicability	5
Incorporation	9

Depending on the status accorded to international law in the Constitution, an international treaty like CITES may be directly applicable in a country (monist system) or may need to be transposed into domestic law by the parliament (dualist system). In practice, many States follow a 'mix' between the two approaches. Both systems allow States to effectively legislate on CITES-related matters. However, a monist system makes it possible to refer directly to the Convention, which may compensate for incomplete domestic legislation. In addition, certain provisions in CITES (e.g. on penalties, the establishment of Authorities) inevitably require legislative action, since the Convention's provisions need to be implemented or put into place in domestic law even if CITES as such is directly applicable.

3.1.2. Specific or Several Legal Instruments

Specific or several legal instruments	Number of Assessed Parties (out of 14)
Specific	12
Several	2

The implementation of CITES in domestic legislation may manifest itself in the adoption of laws specifically created to implement the Convention, and thus only regulating international trade in endangered species. However, it is also possible to implement CITES obligations by introducing new provisions to existing legislation on customs, wildlife, criminal law, and other areas. Both methods are capable of effectively implementing CITES, and each has its advantages and disadvantages. For example, on the one hand, creating a specific legal instrument makes all CITES-related legislation more coherent and easily accessible. On the other hand, adding provisions into existing laws may better integrate CITES obligations into the activities of national enforcement

agencies, but entails the risk of distorting legal obligations by including them in legal instruments which have objectives other than CITES implementation.

3.2. Designation of Management Authority and Scientific Authority

This section discusses how MAs and SAs are designated in legal instruments, how their roles and responsibilities are defined therein, and how their independence and coordination are addressed.

	Designation of authorities by legal instrument	**Roles and responsibilities of authorities**	**Separate and independent authorities**	**Coordination between authorities**
Total compliant Parties (out of 14)	12	12	11	11

3.2.1. Designation of Authorities by Legal Instrument

Article IX:1 of the Convention requires each State Party to designate at least one Management Authority (MA) and at least one Scientific Authority (SA). Articles IX:2 and IX:3 of the Convention require Parties to communicate the contact details of their MA and SA to the depositary upon ratification of the Convention, and any changes thereto to the Secretariat, which communicates this information to all other Parties. It is considered essential that Parties designate their Authorities through a legal instrument or administrative act, in order to clearly delineate the MA and SA's respective responsibilities and provide stable legal standing.[6]

3.2.2. Roles and Responsibilities of Authorities

For the MA and SA to effectively fulfil their respective mandates, it is necessary for domestic legislation to list their tasks and powers. This is critical to ensuring that the MA and SA are authorised under domestic law to fulfil the tasks

[6] See Resolution 18.6, para. 2(a).

assigned to them in the Convention. Most importantly, this includes the power of the MA to issue or refuse permits for the importation and exportation of specimens covered by CITES Appendices I-III.[7]

3.2.3. Separate and Independent Authorities

On the designation and role of the SA, CITES recommendations suggest Parties to designate SA(s) that are separate and independent from the Party's MA(s).[8] This is because the SA is intended to serve as an evidence-based check on the policy actions of the MA. This separation of powers and responsibilities is important with regards to the designation of authorities.

3.2.4. Coordination Between Authorities

On the designation and role of MAs, CITES recommendations suggest that the "main responsibility of coordinating all national governmental agencies with a role in the implementation of the Convention" lies with the MA.[9] Furthermore, on compliance and enforcement, CITES resolutions recommend the establishment of coordination mechanisms between MA, SA, and enforcement agencies such as border customs or police authorities.[10] Such coordination mechanisms, if used effectively, can contribute to a better understanding of CITES-related issues among all concerned authorities, thus enhancing the efficiency and scientific basis of government enforcement.

3.3. Prohibition of Trade in Violation of CITES

The present section on the prohibition of trade in violation of CITES addresses the issues of general prohibition, coverage of all species (native and exotic), incorporation and update of lists, transport of live specimens (IATA Regulations), inspection of transit and online trade.

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[7] See Resolution Conf. 18.6, para. 2(a).

[8] See Resolution Conf. 10.3, para. 2(a).

[9] See Resolution 18.6, para. 10.

[10] See Resolution 18.6, paras. 11-12; Resolution 11.3 (Rev. CoP 18), para. 10.

	General Prohibition	Coverage of all species: native and exotic	Incorporation of lists	Update of lists	Introduction from the Sea	Transport of Live Specimens: IATA Regulations	Inspection of Transit	Online trade
Total compliant Parties (out of 14)	14	5 (+8)[11]	13	12	11	6	9	2

3.3.1. General Prohibition

Arts. II-VII of the Convention stipulate the conditions under which trade in specimens of CITES-listed species is legal or illegal. To ensure that illegal trade practices under the Convention are also banned under domestic law, domestic legislation should contain a general, 'catch-all' clause prohibiting any trade in violation of CITES.

3.3.2. Coverage of All Species: Native and Exotic

As Art. II:4 of the Convention requires Parties to "not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention," it is essential that national legislation covers all species contained in CITES Appendices I-III. This criterion specifies that although Parties may perceive only the regulation of native species to be in their interest, the orderly functioning of the CITES system requires Parties to regulate exotic, non-native species as well.

[11] The bracketed number corresponds to the number of Parties where no explicit mention of coverage of both native and exotic species was found in the law, but such coverage was assumed from the context.

3.3.3. Incorporation of Lists

In order to ensure that all species contained in CITES Appendices are covered by domestic legislation, CITES Appendices must be incorporated into national legislation. Such incorporation can take the form of a simple reference to the Convention and/or the CITES Secretariat's website. Alternatively, national laws can also reproduce CITES Appendices in the annex to a piece of legislation or publish the list of species separately in the national gazette. While each of these mechanisms has their own advantages and challenges, reproducing the list of regulated species may hold the benefit of enhancing the accessibility of the Appendices, helping domestic stakeholders who might not know where to access CITES-related information.

3.3.4. Update of Lists

In accordance with Art. XV of the Convention, CITES Appendices I and II can be amended by the CoP, which usually meets every three years. Appendix III, containing unilaterally listed species, can be amended at any time by a Party's communication of the listing to the Secretariat. The procedures for this communication are described in Art. XVI of the Convention. Thus, in order to ensure coverage of all CITES-listed species, Parties need to transpose amendments to the Convention's Appendices into domestic law. At a minimum, this updating process should take place after every CoP.

3.3.5. Introduction from the Sea

Introduction from the sea (IFS) is defined in Art. I(e) of the Convention as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State." Arts. III:5 and IV:6 require the granting of a certificate by the MA for Appendix I and II species, respectively. CITES resolutions recommend that certain instances of IFS be treated as a situation of exportation and importation, rather than one of IFS as such.[12] Namely, where specimens are taken by a vessel under the flag of one

[12] See Resolution 14.6 (Rev. CoP 16), para. 2.

State and brought on land in another State, the transaction should be treated as an export from the flag State and an import into the port State.[13]

3.3.6. Transport of Live Specimens: IATA Regulations

Arts. III-V of the Convention regulate trade in Appendix I, II and III species, respectively. Each of these Articles contains the requirement "that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment."[14] These provisions prescribe that the MA of the (re)exporting State ought to ensure that this requirement is fulfilled before issuing a (re)export permit. On the transport of live animals, Resolution 10.21 states that the *IATA Live Animals Regulations*, the *IATA Perishable Cargo Regulations* for plants, and the *CITES guidelines for the non-air transport of live animals and plants* are deemed to meet CITES' transport requirements.[15]

3.3.7. Inspection of Transit

According to Art. VII:1 of the Convention, no export or import permits are required for transit or the transhipment of specimens through the territory of a Party, insofar as the specimens remain in customs control. The CoP recommends that every Party inspect specimens in transit or transhipment to verify that the specimens are accompanied by a valid CITES permit.[16] Furthermore, it is recommended that Parties "adopt legislation allowing them to seize and confiscate specimens in transit or being transshipped without a valid permit or certificate or proof of the existence thereof."[17]

3.3.8. Online Trade

As online trade emerges as a global trend, it is foreseeable that illegal wildlife trade will also take place through online channels. On compliance with and

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[13] See Resolution 14.6 (Rev. CoP 16), para. 2.

[14] See Art. III:2(c), III:4(b), IV:2(c), IV:5(b), IV:6(b) and V:2(b) CITES.

[15] See Resolution 10.21 (Rev. CoP16), para. 2(d).

[16] See Resolution 9.7 (Rev. CoP15), para. 2(b).

[17] See Resolution 9.7 (Rev. CoP15), para. 2(e).

enforcement of the Convention to the online trade of CITES-listed specimens, CoP resolutions offer guidance to Parties by recommending that Parties develop domestic policies to combat illegal wildlife trade taking place online.[18]

3.4. Penalisation of Illegal Trade

The section on penalisation of illegal trade addresses the definition of prohibited actions/activities, their designation as punishable offences, the penalisation of possession of illegally acquired specimens as well as penalties.

	Definition of Prohibited Actions/Activities	**Designation as Punishable Offences**	**Possession of Illegally Acquired Specimens**	**Penalties for illegal trade**
Total compliant Parties (out of 14)	13	14	7	8 (providing for a maximum penalty of at least 4 years of imprisonment)

3.4.1. Definition of Prohibited Actions and Activities

Art. XIII:1(a) of the Convention requires that Parties penalise trade in specimens in violation of the Convention, in addition to penalising possession of such specimens. In order to effectively implement this requirement in domestic law, it is necessary that the legislation describes in sufficient detail which actions are prohibited.

3.4.2. Designation as Punishable Offences

In order to comply with the requirement discussed in the preceding section, domestic legislation should not only specify which acts are prohibited but also that these acts constitute punishable offences. This legal grounding allows national authorities to prosecute such acts and enables the judiciary to punish violations of the Convention.

[18] See Resolution 11.3 (Rev. CoP18), paras. 12-13.

3.4.3. Possession of Illegally Acquired Specimens

While Art. VIII:1(a) of the Convention requires Parties to penalise possession of illegally traded specimens, some Parties have gone further by establishing a general prohibition on owning specimens of certain CITES-listed species, unless legal acquisition can be documented by the owner.

3.4.4. Penalties

In Resolution 69/314, the UN General Assembly issued its recommendation that States consider "illicit trafficking in protected species of wild fauna and flora involving organised criminal groups" as a "serious crime" as defined by the United Nations Convention against Transnational Organized Crime. This UN Convention prescribes that "serious crimes" should be offences "punishable by a maximum deprivation of liberty of at least four years."[19]

3.5. Confiscation

The section on confiscation addresses how Parties implement the provisions regarding the confiscation of illegally traded specimens and how they deal with the apportionment of costs for the care of confiscated live specimens.

	Confiscation Provided for in Legislation	**Costs of Care of Confiscated Live Specimens**
Total compliant Parties (out of 14)	14	9

3.5.1. Confiscation Provided for in Legislation

Art. VIII:1(b) of the Convention requires Parties to provide for the confiscation or return of illegally traded specimens to the State of export. Confiscation is understood to mean permanent confiscation, as opposed to temporary seizure during investigations.

[19] See Art. 2(b) United Nations Convention Against Transnational Organized Crime and The Protocols Thereto.

3.5.2. Costs of Care of Confiscated Live Specimens

Art. VIII:2 of the Convention allows Parties, if they deem necessary, to provide for "any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention." On the disposal of illegally traded and confiscated specimens of CITES-listed species, the CoP recommends that Parties implement this provision by requiring importers or carriers violating the Convention to bear the costs of "confiscation, custody, storage, destruction or other disposal, including returning specimens to the country of origin or re-export."[20] In the absence of such domestic legislation, it is recommended that the country of origin bears the costs of returning confiscated specimens if it wishes the specimens' return.[21]

3.6. Conclusion: Recommendations to the NLP

The legislation of all but three of the assessed countries contain the essential elements for CITES' implementation and should, thus, remain in Category 1.

Regarding these three countries that are falling out of compliance with core CITES requirements, all of which are in Africa, the following changes should be made. The first African country should remedy the absence of a legal basis establishing the MA and the SA. It should also amend the relevant provisions as to regulate the illegal trade of *all* CITES-listed species. Particular attention should be paid to ensuring the coverage of the three CITES Appendices, both native and exotic species, and species introduced from the sea. This country should further enact relevant provisions to govern the incorporation and updating of lists of species.

The second African country's legislation should make sure that its coverage is consistent with the Convention's Appendices, as the laws appear to only cover native species. Furthermore, the status of this country's revised law – which

[20] See Resolution Conf. 17.8, para 5(a).

[21] See Resolution Conf. 17.8, para 5(b).

resolved several inadequacies in the previous legislation – should be clarified. The legal status of the new law is currently ambiguous, as the amendment adopted in recent years continues to refer to provisions of the previous version of the law.

Lastly, the third African country's legislation has been found exemplary in many regards. However, the SA should be designated in the law, and the roles and responsibilities of MA and SA prescribed therein.

Pending the suggested legislative changes and on the basis of the information available, it is the recommendation of the project team to consult with the three African countries to clarify the mentioned issues and to potentially review their Category 1 status if necessary.

4. Findings: Cross-Cutting Elements to Enhance the Implementation of CITES

This section identifies cross-cutting elements to enhance the implementation of CITES. To clarify, the elements discussed in the present section are not found in the Convention nor CoP resolutions; rather, they are the analytical conclusions of the project team. Therefore, the recommendations of this section did not factor into the assessment of a country's compliance with CITES. However, according to the project team's view, these elements could be taken into account for enhancing the implementation of CITES and its effectiveness.

The cross-cutting issues discussed here are (i) the clarity and precision of domestic laws, (ii) domestic laws' reflection of CITES provisions and language, (iii) regulation of corporate actors, (iv) concentration of power in the Executive, (v) budgetary independence of Authorities, (vi) mechanisms relating to inspection and enforcement, and (vii) involvement of civil society.

4.1. National laws should present clear and precise steps for CITES implementation

With respect to procedures that national agencies need to follow in the enforcement of CITES-related legislation, clarity and precision are conducive to effective implementation of the Convention. This criterion thus contrasts practices that demonstrate clear and careful drafting by the legislator with other pieces of legislation that are incomplete or less accessible.

To identify a few gaps between law and practice, the laws of one African country describe the need to obtain a trade permit yet offer no criteria for the issuance of such permits. The laws also do not explain how the permit inspection process unfolds at the border.

Another illustration is a Party in Asia that establishes four SAs with different expertise but provides neither a clear delineation of responsibilities nor mechanisms for coordination between the entities. In addition, the penalties attached to a breach of the Convention do not feature in the law pertaining to

trade in fauna and flora. Rather, information about penalties is found in the country's Penal Code. It is not until a determination has been made of the value and quantity of the species or timber at stake that the illegality and penalty incurred can be calculated. In other words, the Penal Code only applies to CITES-related crimes once a minimum threshold of value or quantity is met, i.e. crimes of lower severity may not be penalised in a criminal context.

With respect to the clarity and precision of domestic legislation, one innovative practice identified among the assessed countries is the provision of sample certificates, permits, and application documents as an appendix to the legislative text. The inclusion of sample documentation plays an instrumental role in providing clarity to the permit application process and setting regulatory expectations. Another innovative practice is found in the laws of one Asian country. In order to clarify potentially ambiguous provisions, this country's legislation annexes "explanations" to a selection of legal instruments, providing definitions of terms and context for the regulations.

Lastly, translating the relevant legislation into one of CITES' working languages (English, French, Spanish) enables the Secretariat, other Parties, and international traders to consult domestic legislation. This also enhances transparency and allows third parties to assess Parties' implementation.

4.2. Laws should reflect CITES instruments and language

To ensure the effective implementation of CITES obligations, Parties should incorporate the core terminology and key instruments of the Convention.

Several CITES Parties make explicit reference to the Convention in their national laws, stating that the instrument in question is an Act to implement CITES. Furthermore, several Parties explicitly enshrine the treatment of non-CITES parties into their legislation. According to one African country's legislation, specimens confiscated upon importation are preferably returned to their country of origin, except if the country of origin is not a CITES party. Another African country's legislation states that a specimen listed in CITES Appendices cannot transit through its territory if the country of origin is not a

party to CITES. The laws of one Party in the Asia-Pacific provide that domestic legislation applies equally to trade with any country, regardless of whether the destination country is a party of CITES. Another African country's legislation specifies the conditions attached to the permit when trading with non-CITES Parties.

With regards to species introduced from the sea, several countries' laws include a near-customary understanding that introduction from the sea includes species from the "airspace, seabed and subsoil." This phrase is replicated across national laws and found in CITES Resolution 14.6. In contrast, the laws of one African State deviates from the Convention's definition of IFS by including importation from other States' marine areas in its definition of IFS' scope.

4.3. Legislation should cover the actions of corporate entities

While most CITES-related provisions focus on offences committed by individuals, several Parties have introduced separate provisions that pertain to the liability of businesses. The laws of these countries provide for liability and sanctions thereafter of both the corporate body and the offender when there is a demonstration of consent, connivance or negligence on the part of either a company officer or any person who was purporting to act in such capacity. In a less elaborate manner, the law of one African country states that any offences under the relevant law can be attributed to corporations, in which case the penalties are tripled.

Several Parties introduced more stringent penalisation measures for companies than for individual offenders. The laws of one Asian country and another African country add a paragraph after each prohibited action to specify the penalties applicable to corporations violating the law. A general provision also provides for the liability of company officers. Though defences may be availed by company officers, the provisions make clear that the defences for an individual do not affect the liability of the corporation.

Another innovative approach is found in the law of an African country, which includes a provision specifically governing offences committed by airlines, shippers, or cargo providers.

4.4. Individual discretion of government officials should be limited

In the same way that MA(s) and SA(s) should be functionally independent, it is important for CITES enforcement to unfold through the checked power of government officials and institutions. However, in one African and one Asian country, the relevant Minister and head of State respectively have extensive power to amend CITES-related provisions. In several CITES Parties, the Minister can at his/her discretion define the list of species subject to the permit system, irrespective of CITES Appendices, amendments or time frames.

As for another Asian country, many aspects of its CITES implementation remain in development, as the regulation of many CITES-related issues is explicitly left to the head of State, who is assigned exclusive power to create regulations on these aspects in the future. The matters left to such discretion include the inspection of species in transit and recovery of costs of care for confiscated specimens. As such regulations have not yet been established, it appears that the aforementioned issues are more appropriately addressed by the legislature, rather than left to the executive.

One of the assessed African Parties established its MA as a Commission comprised of members nominated by different actors, including various ministries, the parliamentary opposition, the university system, and the private sector. The Minister responsible for wildlife only nominates a maximum of five out of the Commission's eleven members. Such a mechanism may ensure that the powers of the responsible Minister are checked and that the MA's decisions take into account differing interests.

4.5. CITES implementation should be strengthened through budgetary independence

One innovative practice identified among the assessed countries is the positive revenue loop of fines and care services. When CITES authorities have a separate revenue cycle financed by collected fines and penalties, this ensures that the authorities benefit from sustainable financial resources that are independent from government budget allocations. Such measures also offer regulatory institutions a certain extent of autonomy from other CITES-related counterparts within the same government.

In the case of one country in the Americas, a separate fund was established for wildlife conservation and the implementation and enforcement of CITES. The fund is financed by fines and fees, and it can be used, *inter alia*, for the establishment of rescue centres to care for confiscated and seized species. Such mechanisms may ensure some autonomy from the government budget and help to prevent corruption and bribery in the enforcement of the Convention. A similar system is in place in another country in the Americas, where the domestic laws state that the MA receives funds from fines to finance its operations, maintaining an extent of revenue independence from the Ministry. In the case of another country in the Asia-Pacific, the laws state that donations can be deposited in a trust fund. In contrast, the laws of another Asian country explicitly stipulate that the revenues from auctioning confiscated specimens are to be deposited in the State treasury.

4.6. Designation of ports of entry and exit may improve the effectiveness of inspection and enforcement

Inspection of imports and exports may be facilitated and improved by designating specific ports of entry and exit through which all specimens of CITES species must pass. This possibility is envisaged in Art. VIII:3 of the Convention. This system may allow for faster processing and enable States to limit the entry and exit of specimens to border crossing-points where enforcement officers with the necessary expertise on the identification of CITES

species and relevant procedures are present. Alternatively, such ports could also be designated where staff from the MA and SA are in physical proximity. In several CITES Parties, the possibility of restricting trade to such ports of entry and exit is spelt out in the legislation.

4.7. Involvement of civil society may enhance accountability and transparency

Several assessed Parties involve civil society actors in their decision-making procedures by including their representatives in the MA and/or SA. In one Asian country, both the MA and the SA take the form of a Council on which environmental NGOs are represented. This country's MA additionally comprises of representatives of wildlife traders. The inclusion of civil society representatives may contribute to ensuring that diverse interests, expertise, and perspectives are represented in the Authorities. However, it should also be borne in mind that such organisations have their own advocacy agenda and, unlike the government, are neither accountable to the wider public nor bound by CITES or international law more generally. Therefore, a consultative role for these stakeholders might be preferable to their direct participation in decision-making through their membership in the MA or SA.

The engagement of civil society and the general public can also be enhanced through awareness-raising and educational activities. In Resolution 18.6, the CoP urges MAs to conduct such activities.[22] Several Parties include public outreach activities in their legislation as one of the MA's tasks. Notably, the laws of one of the assessed Asian countries state that the functions of the lead MA include communication with other countries, the CITES Secretariat, and the general public through training, education and information-sharing.

Another innovative approach is observed in the laws of one assessed CITES Party in Asia. In addition to devoting specific provisions to the roles of universities, other scientific institutions, NGOs and associations monitoring

[22] See Resolution Conf. 18.6, para. 23.

trade – all of which provide capacity building and assist in strengthening CITES-related law enforcement – the legislation of this Asian country further enshrines the government's commitment to "encourage and develop conservation awareness" and mobilise citizens in the conservation of natural resources. This commitment is included in a legal provision labelled "citizen participation".

5. Conclusion

This TradeLab memo analyses national legislation for the implementation of CITES in a selected group of 14 developing countries. While most Parties implemented all elements required by the Convention, some laws were found to be lacking in aspects that are key to the effective implementation of CITES. Three assessed countries' legislation falls short of all or several of the following elements: they failed to appropriately designate MAs and SAs by law, circumscribe the Authorities' tasks and responsibilities, or – by exclusively regulating native species – appear not to comprehensively cover species listed in the Convention's three Appendices.

Several assessed countries adopted not only the essential legislative actions required by the Convention but further implemented recommendations made by the CoP through its resolutions. In addition to the minimum requirements of the Convention and the recommendations inscribed in CoP resolutions, this project identifies a number of innovative measures, including measures regarding the organisation of the MA and SA, penalties, and encouragement of cooperation with the authorities.

Beyond the questions posed by the NLP, a number of cross-cutting elements were identified as having an enhancing effect on the Convention's implementation. These include the importance of clear and precise legislation reflecting CITES terminology and instruments, regulating corporate actors, checking the financial and decisional discretion of Authorities and policymakers, strengthening budgetary independence, designating ports of entry and exit, and involving civil society actors.

A significant takeaway from the present project is that, although developing economies may have limited capacity, it is indeed possible for them to implement CITES in a meaningful way. This observation may serve as a basis for enhanced exchange between Parties to learn from each other's measures in enforcing the Convention. For example, The Bahamas, Fiji, and South Africa, whose legislation has been found to have effectively implemented CITES requirements and recommendations and adopted innovative approaches, could provide valuable reference to other Parties in their regions. In particular, The

Bahamas could serve as an example for the Caribbean region, where the Secretariat noted a high number of Parties without adequate legislation.[23] Similarly, South Africa could provide guidance to the three African countries that appear to fall out of compliance in improving their legislation.

[23] See CITES Secretariat report to the 71st meeting of the Standing Committee (SC71 Doc. 9), para. 16.