Chapter 4:
The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

An overview of CITES

CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival (CITES 2017 at https://cites.org/eng/disc/what.php).

While many countries have had in place legislations, and regulations to protect species and habitats, it was perhaps in the 1950s that for the first time it was perceived that increasing wildlife trade and uncontrolled exploitation of species was leading to significant reductions of wildlife populations (Huxley in Curlier et al in Miles ed. 2002, pp 358).

The origins of CITES lie in a resolution adopted in 1963 at the General Assembly of the International Union for Conservation of Nature and Natural Resources (IUCN), now The World Conservation Union. This resolution called for “an international convention” on regulation of export, transit and import of rare or threatened wildlife species or their skins and trophies (Reeve 2007).

It is important to emphasise the deliberate choice of the word “regulate” in the very first draft of the resolution, as against “ban” or “prohibit”.

Subsequent draft texts were circulated and revised in 1969 and 1971 by the IUCN International Law Centre, keeping into account the comments received from governments and non-governmental organisations (NGOs).

The convention went through six drafts before the final text was agreed upon. It is interesting to note that the word “trade” first appeared only in the fifth draft (Curlier et al in Miles ed. 2002).
In the meantime, the USA had put in place a prohibition on the import of wildlife threatened with worldwide extinction, except for scientific or breeding purposes, under the provisions of the Endangered Species Conservation Act, 1969. For US traders, this was a situation of competitive disadvantage, which led to greater efforts to seek global consensus on an international convention on this theme (Reeve 2007).

The text of the Convention was finally agreed at a meeting of representatives of 80 countries in Washington, D.C., the United States of America, on 3 March 1973. Article XII of the Convention states “the present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government”. With this stipulation being met, CITES entered in force on 1 July 1975. The original of the Convention was deposited with the Depositary Government in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic.

CITES is an international agreement to which States (countries) adhere voluntarily. States that have agreed to be bound by the Convention (‘joined’ CITES) are known as Parties.

For many years CITES has been among the conservation agreements with the largest membership, with currently 183 Parties. (http://www.cites.org/eng/disc/parties/index.php accessed on 23rd Oct 2017).

**CITES Appendices**

Roughly 5,600 species of animals and 30,000 species of plants are protected by CITES against over-exploitation through international trade. The species are grouped in the Appendices according to how threatened they are by international trade. They include some whole groups, such as primates, cetaceans (whales, dolphins and porpoises), sea turtles, parrots, corals, cacti and orchids. However, in some cases only a subspecies or geographically separate population of a species (for example the population of just one country) is listed (CITES 2017).
Export or import of all CITES listed species and their derivatives is regulated by a system of permits.

Appendix I includes all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

A permit for the export of any specimen of a species included in Appendix I shall only be granted when:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

Similarly, a permit for the import of any specimen of a species included in Appendix I shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.
Bulk of the species listed under CITES are in Appendix II. This includes all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and other species which must be subject to regulation in order that trade in specimens of certain species referred to as above may be brought under effective control.

All trade in specimens of species included in Appendix II require an export or import permit. According to CITES an export permit shall be granted only subject to the following conditions being met:

(a) a Scientific Authority of the State of export has advised that such export shall not be detrimental to the survival of that species;

(b) a Management Authority of the State of export has satisfied himself that the specimen has not been obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export has satisfied himself that any such living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

The import of any specimen of a species included in Appendix II is similarly governed by the requirement of either an export permit or a re-export certificate.

Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

Thus, species can be listed unilaterally by parties in Appendix III for regulation within their territories.
The table below shows the number of species that are included in the CITES Appendices (http://www.cites.org/eng/disc/species.php accessed on 25th January 2017).

**Table 3: Species in CITES**

<table>
<thead>
<tr>
<th></th>
<th>Appendix I</th>
<th>Appendix II</th>
<th>Appendix III</th>
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<tbody>
<tr>
<td><strong>FAUNA</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mammals</td>
<td>300 spp. (incl. 11 popns) + 23 spp. (incl. 3 popns)</td>
<td>501 spp. (incl. 16 popns) + 7 spp. (incl. 2 popns)</td>
<td>45 spp. + 10 spp.</td>
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<tr>
<td>Birds</td>
<td>154 spp. (incl. 2 popns) + 10 spp.</td>
<td>1278 spp. (incl. 1 popn) + 3 spp.</td>
<td>25 spp.</td>
</tr>
<tr>
<td>Reptiles</td>
<td>80 spp. (incl. 8 popns) + 5 spp.</td>
<td>673 spp. (incl. 6 popns)</td>
<td>40 spp.</td>
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<tr>
<td>Amphibians</td>
<td>17 spp.</td>
<td>126 spp.</td>
<td>3 spp.</td>
</tr>
<tr>
<td>Fish</td>
<td>16 spp.</td>
<td>87 spp.</td>
<td>-</td>
</tr>
<tr>
<td>Invertebrates</td>
<td>63 spp. + 5 spp.</td>
<td>2162 spp. + 1 spp.</td>
<td>22 spp. + 3 spp.</td>
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<tr>
<td><strong>FAUNA TOTAL</strong></td>
<td>630 spp. + 43 spp.</td>
<td>4827 spp. + 11 spp.</td>
<td>135 spp. + 13 spp.</td>
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<tr>
<td><strong>FLORA</strong></td>
<td></td>
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<tr>
<td></td>
<td>301 spp. + 4 spp.</td>
<td>29592 spp. (incl. 162 popns)</td>
<td>12 spp. (incl. 2 popns) + 1 var.</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td>931 spp. + 47 spp.</td>
<td>34419 spp. + 11 spp.</td>
<td>147 spp. + 13 spp. + 1 var.</td>
</tr>
</tbody>
</table>

**From policy to implementation:**

**Management and Scientific Authorities:**

According to Article IX of the text of the Convention, it is stated that each Party shall designate one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and one or more Scientific Authorities.
Management and Scientific Authorities have been designated specific roles in the scheme of things to ensure that the objectives of CITES are met. Thus, a Scientific Authority is generally required to verify that such export or import will not be detrimental to the survival of that species. The role of the Scientific Authority is thus, embedded into a scientific evaluation of facts related to the ecological attributes of the species in question.

The Management Authority is entrusted with the responsibility of issuing permits or certificates and is thus fulfilling the actual administrative role of regulating export and import under the provisions of the Convention. The Management Authority is exercised with the task of carrying out due diligence to be satisfied that specimens for import and export were not obtained in contravention of any laws in force in that state for the protection of fauna and flora.

Thus, for export and import in species of Appendix I, the Scientific Authority of the State of import has also to be satisfied that the proposed recipient of a living specimen has the necessary infrastructure to house and care for it; Also, the Management Authority of the State of import has to satisfy himself that the specimen is not to be used for primarily commercial purposes.

In cases involving introduction from the sea of any specimen of a species included in Appendix I, the Management Authority is also expected to perform a role otherwise given to the Scientific Authority.

a) a Scientific Authority of the State of introduction has to provide a considered opinion that the introduction will not be detrimental to the survival of the species involved;

b) a Management Authority of the State of introduction has to be satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and also that the specimen will not be used for primarily commercial purposes.
It is also to be noted here that while the role of the Scientific Authority is largely "to advice" as per the articles of the Convention, the final decision making rests with the Management Authority who is authorised to issue permits and certificates.

For export of Appendix II specimens, a Management Authority of the State of export is also to be satisfied that any living specimen will be so prepared and shipped so as to minimize any possible risk of injury, damage to health or cruel treatment. (Article IV c)

(Article III, IV & V of the Convention)

**Compliance Mechanisms:**
Although CITES is legally binding on the Parties, it is different from other MEAs in that it does not take the place of national laws. The convention does not have any specific treaty article mandating enforcement of the Convention along a particular set of procedures. The Convention provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level.

Thus, Article VIII provides that Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof.

These shall include measures:
(a) to penalize trade in, or possession of, such specimens, or both; and
(b) to also provide for the confiscation or return to the State of export of such specimens.

Underlining its support for facilitating legal trade, this also provides that, "As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay." Article VIII(3).

By the above, CITES reinforces its recognition of the fact that people and States are and should be the best protectors of their own wild fauna and flora and that of national sovereignty over natural resources. Instead, its compliance
system has evolved through resolutions and decisions of the Conference of Parties and practice over four decades on the basis of broad provisions in treaty articles (Reeve 2007).

**Record keeping; Annual & Biennial Reports:**

Article VII (6) of the Convention states that each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

(a) the names and addresses of exporters and importers; and

(b) details including the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

Article VII (7) of the Convention further states that each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

(a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and

(b) a biennial report on various measures including legislative, regulatory and administrative, taken to enforce the provisions of the present Convention.

It also provides that the information referred to as above shall be available to the public where this is not inconsistent with the law of the Party concerned.

**Annual Reports**

In several countries, these annual reports constitute an important part of various outputs from a national information management system that records and tracks such daily trade-related and other activities undertaken by CITES authorities. Such record-keeping and reports assist national policy-makers in
defining, implementing and assessing their wildlife management and trade policies.

In order to have consistency in reporting and to facilitate easy computerisation, collation, comparison and analysis, CITES has laid down detailed guidelines for the preparation and submission of CITES annual reports. These were prepared by the Secretariat in accordance with Resolution Conf. 11.17 (Rev. CoP13) and were approved by the Standing Committee.

Thus, countries and entities in CITES reports are designated in accordance with the International Standard Codes for the representation of names of countries published by the International Organization for Standardization (ISO). Out-of-date names of countries and territories are retained for purposes of recording re-exports of specimens originating in those places. The ISO list is based on the list included in the United Nations Standard Country or Area Code for Statistical Use established by the Statistical Office of the United Nations.

These reports aim to encourage Parties to present information in a standard form, with two main objectives:

– to enable monitoring of the extent of world trade in each species included in the CITES Appendices and the identification of potentially harmful trade; and

– to enable monitoring of the implementation of the Convention and the detection of potentially illicit trade.

Each annual report should cover the period 1 January to 31 December and be prepared in any one of the three working languages of the Convention, i.e. English, French or Spanish. Annual reports should be submitted to the Secretariat before 31 October of the year following the year to which they relate. In accordance with Resolution Conf. 11.17 (Rev. CoP13), the Secretariat may approve a valid request from a Party for a reasonable extension of time to the 31 October deadline provided that the Party submits to
the Secretariat a written request, containing adequate justification before that deadline.

**CITES Biennial Reports**

CITES Notification No. 2005/35 of 6 July 2005 lays down a format for submission of biennial reports.

The biennial report format includes five parts as follows:

A. General information;

B. Legislative and regulatory measures: related to adoption and review of laws and regulations;

C. Various compliance and enforcement measures: related to compliance monitoring as well as administrative, civil or criminal enforcement;

D. Administrative measures: related to the structure and activities of CITES authorities; and

E. General feedback.

Biennial reports serve as an opportunity for Parties to share information regarding their overall implementation of the Convention, including their progress in the development and application of laws and regulations, administrative procedures, economic and social incentives and wildlife trade policies. Such reports may also contain information related to national compliance and enforcement efforts such as awareness-raising, training, monitoring, inspections, investigations, seizures, confiscations, prosecutions, convictions, penalties, court decisions, etc..

At the national level, biennial reports serve as a tool for self-assessment through which Parties can identify achievements, significant developments or trends, gaps or problems and possible solutions. At the international level, the comparison and synthesis of information in biennial reports can support substantive and procedural decision-making by the Conference of the Parties.

It is significant to note here that Resolution Conf. 11.17 (Rev. CoP13) clearly recognises the importance of the annual reports and biennial reports as the only available means of monitoring the implementation of the Convention and the level of international trade in specimens of species included in the Appendices;

Article XI (d) of the Convention further provides that at meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may receive and consider any reports that are presented before them by the Secretariat or by any Party; and where appropriate, make recommendations for improving the effectiveness of the present Convention.

This is in effect the cornerstone of the compliance and control mechanism under CITES, driven primarily by an obligation to Parties to submit annual and biennial reports as above and of various forums under CITES to evaluate such reports and make appropriate recommendations.

This periodic report based model of compliance under CITES also effectively translates into a huge volume of information available in the public domain on the working of the Convention. These records also constitute the primary source of information for this study.

**Institutional Mechanisms for Monitoring of Compliance:**

**The CITES Secretariat:**

Article XII of the convention provides that CITES will have a Secretariat. The Secretariat is the permanent institutional administrative body of the Convention. In its functioning, the CITES Secretariat may be provided assistance by suitable inter-governmental or non-governmental international or
national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora. (Article XII (1). Among various roles mandated to the Secretariat, it is also entrusted to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention.....(Article XII (2)(c).

Also, Article XV which specifies the mechanism for Amendments to Appendices I and II notes that “....the Secretariat shall consult the other Parties and interested bodies on the amendment....”.

These provide ample authority and opportunity for the CITES Secretariat to engage with Parties and/or other institutions including research organisations and NGOs to receive additional information including reports as above to assist in decision making.

The role of monitoring compliance under CITES rests with the CITES Secretariat. Thus, Article XII (2) (c) & Article XII (2) (d) mention that the function of the Secretariat shall be “.... to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;

and, to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;”

In addition, the Secretariat is also mandated to invite the attention of the Parties to any matter pertaining to the aims of the present Convention, to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request and to make recommendations as may be suitable for the
implementation of the aims and objectives of the CITES Convention, including the exchange of information of a scientific or technical nature;

It has been argued by Reeve (2007) that the CITES Secretariat plays an unusually strong role in implementation and compliance control, especially by making full use of the provisions giving it the mandate to make recommendations. He also flags the concern that such strong a role may compromise its neutrality.

According to Article XI, paragraph 7, of the Convention national non-governmental organizations, which have been approved, to attend a meeting of the Conference of the Parties (CoP) as observers shall have the right to participate in the meeting but they are not permitted to vote. CITES also acknowledges that for many of the issues submitted for discussion at meetings of the CoP, the greatest level of expertise is within the community of non-governmental organizations that attend as observers (Doc. 11.16, 11th meeting of the Conference of the Parties, Gigiri (Kenya), 10-20 April 2000).

As mentioned above, Article XII (1) provides that the CITES Secretariat may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora. Thus, many NGOs, notably IUCN and TRAFFIC have a close working relationship with the CITES Secretariat which routinely seeks reports on related matters from them and uses them to strengthen decision making. Thus, in 1989, TRAFFIC was mandated by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to create and manage a monitoring system to track trends in the illegal ivory trade over time. What is now known as the Elephant Trade Information System (ETIS) is the world’s foremost collection of ivory and other elephant product seizures. Today, it contains nearly 20,000 records from some 90 countries or territories worldwide since 1989 (www.traffic.org/species-reports/traffic_species_mammals74.pdf accessed 11Sep, 2013).
Since they often end up bringing out shortcomings on behalf of some Parties, the outputs provided by such NGOS are sometimes questioned, but overall they have played a very important role in the development of CITES policy.

**Committees:**
The Conference of Parties (CoPs) to CITES agreed to formalise a system for the appointment of committees of the Conference of Parties and to establish procedures to be followed when such committees are established. Thus, by Resolution Conf. 11.1 (Rev. CoP16)* and also taking into account the Resolution Conf. 9.1 (Rev.), which was adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 10th meeting (Harare, 1997), relating to the establishment of committees, the following was resolved:

a) there shall be a permanent Standing Committee of the Conference of the Parties, which shall be the senior Committee, and shall report to the Conference of the Parties;

b) there shall be an Animals Committee and a Plants Committee, which shall report to the Conference of the Parties at its meetings and, if so requested, to the Standing Committee between meetings of the Conference of the Parties;

c) the Conference of the Parties may appoint additional committees as the need arises;

It also resolved that the Conference of the Parties, the Standing Committee and the Animals and Plants Committees may appoint working groups with specific terms of reference as required to address specific problems. These working groups have a defined life span which shall not exceed the period until the next meeting of the Conference of the Parties, at which time they may be re-established if necessary. Working Groups established by the Conference of the Parties shall report to the Conference of the Parties and, if so requested, to the Standing Committee.

The Standing Committee and the Animals and Plants Committees can also appoint any subcommittees with specific terms of reference to implement the
tasks that are given to them. Unless otherwise agreed by through a Resolution or Decision of the Conference of the Parties, these subcommittees shall have a defined lifespan, which shall not exceed the period until the next meeting of the Conference of the Parties, at which time they may be re-established if necessary.

**Standing Committee**

The Standing Committee has the mandate to:

a) provide general policy and general operational direction to the Secretariat concerning the implementation of the Convention

b) provide guidance and advice to the Secretariat on the preparation of agendas and other requirements of meetings, and on any other matters brought to it by the Secretariat in the exercise of its function;

c) oversee, on behalf of the Parties, the development and execution of the Secretariat's budget as derived from the Trust Fund and other sources, and also all aspects of fund raising undertaken by the Secretariat in order to meet its roles and responsibilities including to carry out specific functions authorized by the Conference of the Parties, and to oversee expenditures of such fund-raising activities

d) provide coordination and advice as may be required from time to time to other committees and provide direction and coordination of working groups established by either itself or the Conference of the Parties;

e) carry out, between one meeting of the Conference of the Parties and the next, such interim activities on behalf of the Conference as may be necessary

f) prepare draft resolutions for consideration by the Conference of the Parties

g) report to the Conference of the Parties on the activities it has carried out between meetings of the Conference;

h) generally act as the Bureau at meetings of the Conference of the Parties, until such time as the Rules of Procedure are adopted; and
i) perform any other functions as may be entrusted to it by the Conference of the Parties;

To give it a representative character, the membership of the Standing Committee is as follows:

A. a Party or Parties elected from each of the six major geographic regions consisting of Africa, Asia, Central and South America and the Caribbean, Europe, North America and Oceania, according to the following criteria:

1) one representative for regions with up to 15 Parties;

2) two representatives for regions with 16 to 30 Parties;

3) three representatives for regions with 31 to 45 Parties; or

4) four representatives for regions with more than 45 Parties;

B. the Depositary Government (Switzerland); and

C. the host Party of the previous CoP and the host Party of the next CoP.

The Standing Committee is in effect the most important committee of the CITES Convention as it is designated as the “senior Committee”, and mandated to report directly to the Conference of the Parties while providing general policy and operational direction to the Secretariat concerning the implementation of the Convention. It also provides guidance and advice to the Secretariat on the preparation of agendas and other requirements of meetings etc.

**Animals and Plants Committees**

The Conference of Parties, keeping into account the lack of biological data and expert knowledge of animal and plant trade and management and that an effective method of evaluating whether a species is appropriately listed in the CITES Appendices requires a periodic review of its biological and trade status, has constituted the Animals and Plants Committees of the Conference of the Parties, with the following terms of reference:
A) The committees are required to provide scientific advice and guidance to the Conference of the Parties, the other committees, working groups and the CITES Secretariat, on all matters relevant to international trade in animal and plant species included in the Appendices, which may also include any proposals to amend the Appendices;

B) They will deal with nomenclatural issues by carrying on the following tasks:

i. cause the preparation of standardized nomenclatural references for animal and plant taxa, to the level of subspecies or botanical variety and also including synonyms, and also propose for adoption existing nomenclatural references, as may be appropriate, for all species listed in the Appendices to the Convention;

ii. upon its acceptance of a new or updated reference (or part thereof) for a given taxon, after following the procedure described below, present this to the Conference of the Parties for adoption as the standard reference for that taxon;

iii. ensure that the highest priorities in developing the standard reference lists of animal and plant names and synonyms be:

   a. species names of animals and plants listed at the species level in the Appendices;
   
   b. generic names of animals and plants listed at the genus or family level in the Appendices; and
   
   c. family names of animals and plants listed at the family level in the Appendices;

iv. They will also review the existing Appendices with regard to the correct use of zoological and botanical nomenclature;

v. Upon such request, they will also provide advice to Parties concerning nomenclature issues related to proposals to amend the Appendices;
vi. Upon request from the Secretariat, they will also review proposals to amend the Appendices to ensure that correct names for the species and other taxa in question are used;

vii. They will ensure that changes in nomenclature recommended by a Party do not alter the scope of protection of the taxon concerned; and

viii. They will also make recommendations on nomenclature to the Conference of the Parties, other committees, working groups and the Secretariat;

C) They will also assist the Secretariat with the implementation of the Resolution on the Identification Manual and Decisions related to it and, upon request of the Secretariat, review proposals to amend the Appendices with regard to possible identification problems;

D) They will cooperate with the Secretariat on the implementation of its programme of work to assist Scientific Authorities and provide scientific advice on training materials used in capacity building;

E) They will develop regional directories that list the botanists and zoologists in each region who are experts in CITES-listed species;

F) They will establish a list of those taxa included in Appendix II that are considered as being significantly affected by trade, and review and assess all available biological and trade information including comments by the range States on these taxa to:

i. exclude all species for which there is adequate information to conclude that trade is not having a significant detrimental effect on their populations;

ii. formulate recommendations for remedial measures for those species for which trade is believed to be having a detrimental effect; and

iii. establish priorities for projects to collect information for those species for which there is insufficient information available on which to base a judgement as to whether the level of trade is detrimental;
G) They will assess information on those species for which there is evidence of a change in the volume of trade or for which specific information is available to indicate the necessity for review;

H) They will undertake a periodic review of animal or plant species included in the CITES Appendices by:
   i. establishing a schedule for reviewing the biological and trade status of these species;
   ii. identifying any problems or potential problems concerning the biological status of any species being traded;
   iii. consulting the Parties on the need to review specific species, working directly with the range States in the selection process, and seeking their assistance in such reviews; and
   iv. preparing and submitting any amendment proposals resulting from such review as above, through the Depositary Government, for consideration at meetings of the Conference of the Parties;

I) make available advice on management techniques and procedures for range States requesting such assistance;

J) draft resolutions on scientific matters related to animals or plants, for consideration by the Conference of the Parties, with a budget for the work involved and an indication of the source of funding;

K) perform any other functions that may be entrusted to them by the Conference of the Parties or the Standing Committee; and

L) report to the Conference of the Parties and, if so requested, to the Standing Committee, on the activities they have carried out or supervised between meetings of the Conference;

This level of detail from the CITES Resolution has been included here mainly to highlight the expectation of the work that the Animals and Plants Committees are expected to undertake. Not surprisingly, the CoP in almost the same breath agrees that in giving instructions to the Animals and Plants
committees, due attention should be given to the fact whether they have the
time and personnel to undertake such work!

Other Mechanisms:

National Legislation Project (NLP)
According to Article VIII, paragraph 1 of the CITES Convention, each Party
needs to take appropriate measures to enforce the provisions of the
Convention and to prohibit trade in violation thereof.

Wildlife entities are treated as “sovereign resources’ within national
boundaries. As such, it is the prerogative of each Party itself as a sovereign
entity to decide how it incorporates CITES obligations into its national
legislation, taking into account its needs and legal practice. Resolution Conf.
8.4 (Rev. CoP15) on National laws for implementation of the Convention, as
initially adopted in 1992 establishes the basis for a CITES National Legislation
Project aimed at providing legislative assistance to Parties towards achieving
this.

In very broad terms, the NLP has identified three main options:

a) amend existing provisions in various legislative texts related to wildlife,
   Customs, import/export and environment;

b) include a specific chapter on CITES or a set of CITES provisions in
   comprehensive wildlife or biodiversity legislation; or

c) enact CITES-specific legislation.

All of these options involve one or more legally-binding and enforceable
instruments – Constitution, parliamentary laws, subsidiary legislation, decrees,
orders, norms, codes – through which governments comply with the
requirements of the Convention (CoP12 Doc. 28 http://www.cites.org/eng /
Accordingly, four requirements are identified in Resolution Conf. 8.4. These are discussed in brief as below:

a) Designation of National CITES Authorities:
Parties are mandated by Article IX, paragraph 1 of the Convention to designate one or more Management & Scientific Authorities responsible for the implementation of CITES. However, the NLP takes into account whether the designation of such authorities is an administrative decision or there is a legal instrument (law, regulation, decree) that authorizes designation of both CITES authorities or expressly designates those authorities. Thus, if the national laws of any Party do not provide for the designation of a Management or Scientific Authority, it would be deemed inadequate. Also, the NLP would take into account whether CITES authorities are “clearly and precisely” given the necessary powers to carry out their responsibilities (power to grant permits and certificates, power to establish export quotas, etc.).

b) Prohibition of trade in violation of the Convention
This is perhaps the most important of the requirements in that it evaluates whether existing legislation covers all specimens of all species (animals and plants, live and dead, and parts and derivatives) included in the three Appendices of the Convention. It further considers whether all types of transactions as envisaged under the Convention, including exports, imports, re–exports, introduction from the sea and transit and transshipment between Parties and non Parties are covered. In essence, this encompasses a set of components as laid down in Articles II, III, IV, V, VI and VII of the Convention.

c) Penalization of illegal trade
The legal basis for the third requirement is stated in Article VIII, paragraph 1 (a), which includes also the possession of CITES specimens acquired in violation of the Convention. The analysis verifies that domestic legislation clearly lists the activities that are prohibited and specifies that the breach of any prohibition constitutes an offence. These include at a minimum the import or export of CITES specimens without a permit, the use of invalid or forged permits and the possession of and trade in specimens that were illegally imported or otherwise acquired. It also considers the nature and level of
penalties which may be imposed for violation of CITES provisions and the procedures that must be followed.

It is essential that the departments and agents responsible for enforcing the Convention are clearly designated by the legislation and that enforcement agents are appointed and given the necessary powers to carry out their tasks.

Finally, given that illegal trade in CITES specimens may constitute a violation of more than one law, such as the Penal Code, Forest and Wildlife law, Customs legislation etc. it is important to specify which specific legal provisions apply to CITES-related offences and penalties.

d) Authorization to confiscate specimens illegally traded or possessed
The legal basis for the fourth requirement is given in Article VIII, paragraph 1(b). The NLP verifies that domestic legislation provides for the confiscation or return of specimens illegally traded or possessed. It also verifies that other related aspects such as which authorities may confiscate; the extent of their confiscation powers (e.g. specimens, containers, equipment and vehicles involved in an offence); the procedures that must be followed; and the final disposal of confiscated specimens are sufficiently clear in law.

The Secretariat strongly emphasises that general administrative authority and discretion is not an adequate substitute for legislative changes that can be used to adapt existing legislation to CITES requirements.

The Secretariat conducts periodic evaluation of the national legislation of various parties to verify if they meet all requirements (Category 1), some (Category 2) or none (Category 3).

Countries that are evaluated to be in Category 2 or 3 are required to provide a time bound action plan to bring their national legislation up to date with CITES requirements.
Thus, at its 46th meeting (Geneva, March 2002), the Standing Committee agreed that 73 Parties should provide an outline of their programme to comply with their obligation to adopt adequate legislation to implement the Convention, in the form of a CITES legislation Plan. The purpose of this plan is to establish and commit to a timeframe for the adoption of national legislation pursuant to Resolution Conf. 8.4 and Decisions 11.18 and 11.19. Failure to submit such a CITES Legislation Plan within a given time frame could lead to the Secretariat recommending a suspension of commercial trade in specimens of CITES-listed species with any such Parties. (Notification No. 2002/023 Dated 9th April 2002).

The Review of Significant Trade

The Review of Significant Trade in CITES listed species is an important tool in the CITES process. CITES provisions of Article IV, paragraph 2 (a), provide that, as a condition for granting an export permit, a Scientific Authority of the State of export should be able to advise that such export will not be detrimental to the survival of the species concerned. Also, Article IV, paragraph 3, requires a Scientific Authority of each Party to monitor exports of Appendix-II species and to advise the Management Authority of any suitable measures that need to be taken to limit such exports so that such species may continue to be maintained throughout their range at a level consistent with their role in the ecosystem. Similarly, Article IV, paragraph 6 (a), requires, that as a condition for granting a certificate of introduction from the sea, that a Scientific Authority of the State of introduction from the sea should provide advise that such introduction will not be detrimental to the survival of the species concerned;

However, there is concern that some States permitting export of Appendix-II species are not effectively implementing these measures, including such as population assessments and monitoring programmes and that information on the biological status of many species is frequently not available. Accordingly, it has directed the Animals and Plants Committees, in cooperation with the Secretariat and experts, and in consultation with range States, to review the biological, trade and other relevant information on such species listed on CITES Appendix-II which are subject to significant levels of trade, and also to
identify problems and solutions concerning the implementation of Article IV, paragraphs 2 (a), 3 and 6 (a) of the convention.

This procedure reviews the status of species listed in Appendix II that are believed to be traded in significant numbers.

Thus, based on a summary from the CITES database of annual report statistics showing the recorded net level of exports for Appendix-II species over the five most recent years, or on the basis of recorded trade levels and information available to the Animals or Plants Committee, the Secretariat, Parties or other relevant experts, species of priority concern shall be taken up for review by the Animals or Plants Committee, irrespective of whether or not such species have been the subject of a previous review. In exceptional cases where new information indicates an urgent concern, the Animals or Plants Committee may add a species to the list of species of concern.

Once such species have been identified, the Secretariat approaches the Range state(s) for comments in implementing Article IV, paragraph 2 (a), 3 or 6 (a) with regard to the species.

After receiving comments as above, the Secretariat may, if considered necessary, engage consultants to compile information about the biology and management of and trade in the species who shall contact the range States or relevant experts to obtain information in this regard.

Based on such studies regarding the implementation of Article IV, the selected species are provisionally divided into three categories:

i) ‘species of urgent concern’ shall include any such species for which the available information indicates that the provisions of Article IV, paragraph 2 (a), 3 or 6 (a), are not being implemented;
ii) ‘species of possible concern’ shall include any such species for which it is not clear whether or not these provisions are being implemented; and

iii) ‘species of least concern’ shall include any such species for which the available information appears to indicate that these provisions are being met;

Before any such report prepared by the Secretariat, or consultant, is placed before the Animals or Plants Committee for its consideration, the Secretariat sends it to the relevant range States, seeking comments and, where appropriate, additional information within a given time frame.

Based on the above, the Animals or Plants Committee shall, in consultation with the Secretariat, formulate recommendations for species other than those identified as of “least concern.” For species of urgent concern, these recommendations propose specific actions, including short term and long term, to address problems related to the implementation of Article IV, paragraph 2 (a), 3 or 6 (a).

These may include, for example:

i) the establishment of administrative procedures, cautious export quotas or temporary restrictions on exports of the species concerned;

ii) the application of adaptive management procedures to ensure that further decisions about the harvesting and management of the species concerned will be based on the monitoring of the impact of previous harvesting and other factors; or

iii) the conducting of taxon- and country-specific status assessments, field studies, or evaluation of threats to populations or other relevant factors to provide the basis for a Scientific Authority’s non-detriment finding, as required under the provisions of Article IV, paragraph 2 (a) or 6 (a).
**Non Detriment Finding (NDF)**

An NDF is defined as a conclusion by a CITES Scientific Authority that the export of specimens of a particular species will not negatively affect the survival of a species in the wild. (Chris R. Shepherd 2011).

The preamble to the CITES Convention clearly acknowledges that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade, and recognizes also the urgency of taking appropriate measures to this end. However, the point at which such over-exploitation starts has never been defined by the Parties.

Terms used in the Convention text such as “threatened with extinction” (Article II, paragraph 1) and “utilization incompatible with their survival” [Article II, paragraph 2. (a)] in relation to inclusion of species in the Appendices have been largely defined through the adoption of Resolution Conf. 9.24 (Rev. CoP17) on Criteria for amendment of Appendices I and II. However, related concepts linked with the issuance of permits, such as “…detrimental to the survival of that species” [Article III, paragraphs 2. (a), 3. (a) and 5. (a); and, Article IV, paragraphs 2. (a) and 6. (a)] and “maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs” [Article IV, paragraph 3], have been little clarified by the Parties. These have become collectively known as the “non-detriment findings” (NDFs). (CITES http://www.cites.org/eng/prog/ndf/index.shtml).

Article IV of CITES requires a non-detriment finding (NDF) be carried out prior to the export of an Appendix II-listed species.

The following are presented as generic principles applicable to the NDF process in CITES regardless of the taxa being considered.

- The non-detriment finding (NDF) for Appendix I and II species is a process to verify that traded volumes within the range state are not detrimental to the survival of that species.
– The NDF considers whether the species is maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs.

– The data requirements for an NDF are so tailored to appropriate precision so as to adequately reflect the resilience or vulnerability of the target species.

– The implementation of an adaptive management scheme based on regular monitoring is an important consideration in the NDF evaluation process.

– The NDF is based on resource assessment methodologies.

– The NDF process also employs appropriate broad-scale assessment, such as total harvest assessments.

(CITES CoP15 Doc. 16.3, March 2010)

These detailed processes very strongly emphasise the scientific basis of decision making for permitting or prohibiting trade under CITES.

Resolution of Disputes

It is also important to flag here, the mechanism for resolution of disputes as laid down under Article XVIII of the Convention:

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

Thus, it is abundantly clear that from the very beginning, CITES has emphasised on consensus as the key to its compliance.
This is also further reinforced by its preference for a two-thirds majority of Parties present and voting for taking significant decisions. (eg XIV (1) (b), XVII (1).

**Technical and political missions:**

The CITES Secretariat and the Plants and Animal Committees undertake Technical and Political Missions from time to time to strengthen the implementation of the Convention.

Thus, by Decision 10.66 b) at its 10th meeting (Harare, 1997), the CoP mandated that the Standing Committee shall, in consultation with interested Parties and where appropriate, undertake technical and political missions to various tiger range and consumer states, to assist in the development of strategies for improving control of tiger trade and related activities. Doc. SC.41.7, Geneva (Switzerland), dated 8-12 February 1999 spells out the Terms of reference of such a mission on tigers. In accordance with the above Decision, the CITES Tiger Missions Technical Team undertook a mission to 14 tiger range and consumer States in 1999.

In fulfilment of Decision 15.44, the Secretariat has also conducted technical missions to Cameroon and Gabon to assess current enforcement activities relevant to the conservation of and trade in great apes and to identify best practices and challenges in these gorilla range States. (CoP16 Doc. 49 Annex 2 http://www.cites.org/eng/cop/16/doc/E-CoP16-49-A2.pdf 9accessed on 11th Sept 2013).

An orang-utan technical mission was conducted in Indonesia from 8 to 15 May 2006 and to Thailand and Cambodia from 23 to 28 April 2007.

In Girgiri, at its 11th meeting of the Conference of the Parties in 2000, CITES established the CITES Tiger Enforcement Task Force (TETF), with the objective of combating illicit trade in tigers and tiger parts and derivatives.
Further, at its 13th meeting (Bangkok, 2004), the Conference of the Parties adopted Decision 13.22, which directed the Secretariat to convene a special meeting of the TETF to “examine, in particular, the issue of illicit trade in Asian big cat skins with a view to facilitating and improving the exchange of enforcement information and the coordination of investigations”.

Thus, resolution Conf. 11.3 (Rev. CoP16) on compliance and enforcement measures, while acknowledging the engagement of the Secretariat has taken with the International Criminal Police Organization (ICPO-INTERPOL) and the World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes, welcomes the establishment of the International Consortium on Combating Wildlife Crime (ICCWC) and urges ICPO-INTERPOL to support the attendance of a representative from its Wildlife Crime Working Group at meetings of the Conference of the Parties to CITES.

Such engagements bring about additional opportunities of generating and sharing information, including as reports.