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22. Options of a review Process for the Convention on Migratory Species

CMS COP12 Regional Preparatory Workshop
for Africa

[name]

[title]

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Working Group on the establishment of a Review Process for CMS - origin

The Conference of the Parties of the Convention on Migratory Species at its 11th meeting adopted Resolution 11.07 on *Enhancing the effectiveness of the convention through a process to review implementation*:

- 1) Launches an intersessional process to explore possibilities for strengthening implementation of the Convention through the development of a review process;
- 2) Instructs the Secretariat to propose terms of reference for a working group to be considered for adoption by the Standing Committee at its 44th Meeting;
- 3) Instructs the Standing Committee at its 45th Meeting to review any progress, if a working group is established, and report to the 12th Meeting of Conference of the Parties;
- 4) Instructs the Secretariat to support the process;
- 5) Requests UNEP, Parties and other donors to provide financial assistance to support the development of the review process; and
- 6) Requests the Secretariat, where possible, to reduce costs by convening potential meetings of the Working Group in the most cost-effective way.



Working Group on the establishment of a Review Process for CMS - mandate

The Standing Committee at its 44th meeting (StC44, Bonn, October 2015) adopted the following Terms of Reference:

Members of Working Group: One member of the Standing Committee from each region (or one alternate), while remaining open to participation by other interested Governments. Elected one Chair (Australia) and Vice-Chair (Uganda). Representative of Latin America and Caribbean: Argentina

Terms of Reference for the Working Group

- Discuss a comparative analysis of best practices of existing review mechanisms of MEAs, including the CMS Family agreements, taking into account their advantages, disadvantages and the cost involved;
- Discuss an assessment of the feasibility for an existing body within CMS to exercise the functions of a review process (e.g. Standing Committee);
- Prepare options for a CMS review process, including: determination of what parts of the instrument and its resolutions be part of the review process; cost analyses; and financial and institutional implications for CMS.



Meetings and methodology of Working Group

Members of Working Group:

- Africa: Uganda, South Africa
- Asia: Mongolia, Kyrgyzstan
- Europe: France, Norway, Switzerland, Ukraine
- South & Central America and the Caribbean: Argentina, Bolivia and Costa Rica
- Oceania: Australia, The Philippines

Meetings:

- 19-20 September 2016 in Bonn, Germany
- 7-8 November 2016 in Bonn, Germany, back-to-back with the 45th meeting of the Standing Committee



Meetings and methodology of Working Group

- **Represented Multilateral Environmental Agreements:**
- AEWA (CMS, African-Eurasian Waterbird Agreement)
- ACCOBAMS (CMS, Agreement on the Conservation of Cetaceans in the Black Sea Mediterranean Sea and Contiguous Atlantic Area)
- CBD (Convention on Biological Diversity - Cartagena and Nagoya Protocols)
- Bern Convention
- Ramsar Convention
- CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora)
- Aarhus Convention
- UNFCCC (United Nations Framework Convention on Climate Change)



Outcome of first meeting: Best practices of other MEAs

- **What are the benefits of a review process?**
 - allows for the identification of specific challenges faced by Parties and of targeted actions to help resolve them;
 - provides an early warning to all Parties on non-implementation of collective commitments;
 - allows for the identification and addressing of systemic challenges and thus priorities for strategic actions;
 - ensures transparency among Parties on the implementation of commitments; and
 - increases the credibility of a Convention.
- There are additional incentives of having a review process that can materialize even if the whole process is not fully followed through to the final outcome.
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- **What should be the scope of a review process?**
- Focus on legally-binding Convention obligations
- Enhance the conservation of migratory species
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- **What are proven valuable triggers for a review process?**
- Triggers of review: Parties, the COP and its subsidiary bodies, Secretariat and/or Third Parties;
- National reports as well as other sources on a case by case basis;
- Dual system that is based both on the review of national reports and can also deal with cases of non-implementation that are raised intersessionally.
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- **Who could run a review process?**
- Subsidiary body rather than the governing body;
- Good examples: AEWA, using both its Technical and Standing Committees; and CITES, using both its Scientific Committees and Standing Committee;
- The CMS Scientific Council could provide necessary technical expertise both from its councillors and COP-appointed councillors;
- Exploring synergies, when appropriate, with other review processes: joint field missions conducted by the Ramsar Convention, AEWA and Bern Convention. Allows for sharing of resources.



Outcome of first meeting: Best practices of other MEAs

What are proven valuable modes of implementation of a review process?

- Establishing a positive, problem-solving approach (first step: Secretariat liaises with Party to resolve case);
- Cost effective options, including use of voluntary contributions;
- Minimum thresholds for admitting cases in the form of a checklist and/or information sheet, filtering system through technical experts;
- Rules of cost-efficiency: handling matters by electronic means, holding meetings to discuss cases electronically (or at least back-to-back with pre-existing gatherings);
- Establishing a list of possible actions following a review to maximise transparency and predictability for Parties;
- Handling implementation reviews face-to-face within a small body that is representative of the Party membership of a Convention;
- Involving other Partners in the review process, where appropriate, as well as in assisting Parties to fulfil their Convention obligations, in order to save on costs and make maximum use of external expertise;
- Allowing third party comments and information on any matter within a specific timeframe can ensure that the review committee has access to a maximum of information when a case is under review;
- Provide for in-country fact-finding/advisory missions, when needed. Helps to enhance liaison among national authorities, where issues are cross-cutting.



Outcome of second meeting: Fundamental elements of any review process

General principles	<p>a) A supportive and facilitative approach is taken towards implementation matters, with the aim of ensuring long-term compliance.</p> <p>b) Implementation matters are handled in a time-efficient manner. Implementation measures are applied in a fair, consistent, transparent and consultative manner.</p> <p>c) Findings, reports and communications in implementation matters are treated in an open and transparent manner.</p> <p>d) Reviews are done in a synergistic and cooperative manner with other relevant processes, if needed and if time allows.</p> <p>e) The principles of flexibility and adaptability are incorporated to enable the review process to remain efficient over time.</p> <p>f) Reviews are guided by the principle of cost-effectiveness.</p>
Scope of review	All legally binding obligations, including that of reporting, as set out in Annex I.
Basis for review	Triennial review of National Reports and information submitted when a matter of non-implementation arises.
Initial information can be submitted by	<p>[Self-reporting by Party]</p> <p>[Party-on-Party reporting]</p> <p>[Secretariat]</p> <p>[Review Body]</p> <p>[Third Party]</p> <p>Note that these options are not mutually exclusive and more than one can be chosen.</p>
Filtering/screening of information submitted	The Secretariat with the assistance of the Scientific Council / Sessional Committee, if needed, according to set criteria and thresholds.
Bodies of review	<p>[The Standing Committee with the support of the Scientific Council/Sessional Committee, if needed.]</p> <p>[A Subcommittee of the Standing Committee with the support of the Scientific Council/Sessional Committee, if needed.]</p> <p>[A separately established independent Implementation Committee with the support of the Scientific Council/Sessional Committee, if needed.]</p>
Sources of information to be drawn upon after commencement of the review process	National Reports and any type of information that the review body deems relevant and reliable.
Basic mechanics of review	See flowchart below.



Outcome of second meeting: Fundamental elements of any review process

<p>Measures to achieve implementation</p>	<p>Following identification of non-implementation, and when a Party has not taken remedial measures, any of the following measures may be recommended by the review body:</p> <ul style="list-style-type: none"> a) provide further advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned; b) request special reporting from the Party concerned; c) issue a written caution, requesting a response and offering assistance; d) alert other relevant Parties that a Party requires assistance with regard to a particular implementation issue; e) issue a warning to the Party concerned; f) request an implementation action plan (developed in consultation between the review body and the Party concerned) to be submitted to the review body by the Party concerned identifying challenges and appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion; g) provide in-country assistance, technical assessment or a verification mission, upon consultation and agreement with the Party concerned.
<p>Cost analyses and institutional implications</p>	<p>Note that currently the synthesis of national reports prepared for each meeting of the Conference of Parties is covered by voluntary contributions.</p> <p>Depending on the choice of review body and the volume of cases, costs may vary.</p> <p>There would be limited financial ramifications associated with using either the Standing Committee or a Subcommittee of the Standing Committee as the review body. However, depending on the workload of the review body, additional funds may be required for meetings.</p> <p>Approximate costs of a one-day meeting (assuming that the meeting would be conducted in English only):</p> <ul style="list-style-type: none"> - Standing Committee (back-to-back with regular Standing Committee meeting): Euro 3,500 - Subcommittee of Standing Committee (5 members, one from each region, back-to-back with regular Standing Committee meeting and Subcommittee members are the same as Standing Committee members): Euro 1,800 - Independent Implementation Committee (5 members): Euro 8,500



Report to COP12: UNEP/CMS/COP12/Doc.22

- The Working Group expressed a general recommendation to establish a review mechanism, which should contain all the identified fundamental elements.
- Variabilities of review mechanism for which the Working Group provided several options:
 - Trigger of review: Parties, Subsidiary body, Secretariat, Third Parties
 - Review body: Standing Committee, Subcommittee of Standing Committee, Review Committee
- Task of COP: Discussion of variabilities as well as draft Resolution and Decisions submitted by Working Group

