

Monitoring the implementation of the Bern Convention

By Iva Obretenova, Secretary of the Bern Convention, 16/09/2016

The Standing Committee of the Bern Convention,- its governing body composed of Contracting Parties and observer States and organisations, including INGOs and NGOs- has a range of tools for reviewing compliance of Parties and for supporting their efforts in implementing the Convention.

1. The reporting system

There are different types of reporting under the Convention, although only one of them is compulsory:

- **Biennial reports:** the only compulsory report for Parties, as provided for in Article 9 of the Convention. According to Art. 9 of the Convention, all Parties making use of the exceptions allowed in accordance with the provisions of the article, must submit a report on these exceptions every two years, including a scientific assessment of the impact of these exceptions on the protected species listed in the Appendices.

The Secretariat makes a compilation of these reports and presents these to the Standing Committee at its annual meeting.

- **Advantages:** Adopting the ORS (on-line reporting system) has triggered more and timely compliance by parties to their reporting obligations. The Secretariat extracts the reports from the system in order to make a compilation. These reports and the information they provide are thoroughly used when the alleged cases of violation (complaints through the case-files system of the Convention – see point 2) are debated.
 - **Disadvantages:** These reports and the information they provide are still underused, mainly because making an analysis of the information they provide would result in additional costs.
- **General reports:** in 1995, the Standing Committee created a voluntary system of reporting by Parties on the national implementation of the Convention, covering the previous 4-year period. The last period covered by currently received general reports is 2010-2014.

The Secretariat makes a compilation of these reports and present these to the Standing Committee at its annual meeting each year.

- **Advantages:** The general reports provide important and very useful information on both the legal and scientific aspects of the application of the Convention.
- **Disadvantages:** These reports and the information they provide are largely underused, mainly because making an analysis of the information they provide would result in additional costs. Part of the difficulty in using these reports more is the fact that they are sent with important delays and that generally it is usually the same countries that are sending them.

- **Legal reports:** every year the Standing Committee has the possibility to commission a legal and policy report to an independent expert on the implementation of the Convention in a given Contracting party. The report is presented to the Standing Committee and the party concerned is given the opportunity to comment.

The Secretariat prepares the ToR for the independent expert, launches the procedure for the contract signature and manages its further production according to the contract.

- Advantages: the costs involved in the production of these reports (mainly expert fees) are not very high, depending on the specificities of the ToR and the report that is requested. These reports are extremely useful when a case-file (see point 2) is open against a country on which the report is commissioned.

- **Thematic reports:** Reports prepared under the different thematic Groups of Experts, addressing specific conservation problems, which may give birth to new standard setting through recommendations. In addition, Parties may be asked to report on different issues in relation to the topics of the agenda of the Groups of Experts. These are also reviewed and presented to the Standing Committee and might result in the adoption of new Recommendations.

Usually, these thematic reports are commissioned to independent experts. The Secretariat prepares the ToR for the independent expert and launches the procedure for the contract signature and manages its completion. The Secretariat usually supports and reviews the work of the expert in order to ensure an optimal result according to the expectation of the Committee and which could allow new standard setting when necessary.

- Advantages: the costs involved in the production of these reports (mainly expert fees) are not very high, depending on the specificities of the ToR and the report that is requested.

- **Follow-up of Recommendations:** The Standing Committee reviews the implementation of a selection of previous recommendations (184 Recommendations adopted by the Committee by September 2016). Parties are requested to submit their reports on the implementation of the given recommendation.

- Advantages: the review of implementation through follow-up of previous recommendations is practically non-existing, although the Secretariat is charged to prepare a summary of the reports received in order to facilitate the assessment by the Standing Committee.

2. Case-file system (including on-the-spot appraisals):

The case-file system of the Convention is a unique monitoring tool based on complaints for possible breaches of the Convention that can be submitted by NGOs or even private citizens. Its establishment results from a decision taken by the Standing Committee at its 3rd meeting in 1984. The complaints are processed by the Secretariat, the Bureau of the Convention and the Standing Committee according to the merits of the alert received.

The complains which are considered as serious are sent by the Bureau to the Standing Committee, which decides (after discussion and after giving the opportunity to the complainant to present its arguments and to the country to respond to the allegations) whether to open a case against the country concerned or not. The Committee has unfettered discretion regarding the procedure to be followed in cases where the case-file is open and may decide to close a case file. Normally, the Committee decides by consensus.

In some cases, the Committee may consider that further information is necessary and can instruct the Secretariat to organise an “on-the-spot” appraisal, but only if such a review visit is agreed by the relevant Party. The appraisals are entrusted to independent experts, who then provide the Standing Committee with their findings and propose recommendations to the Party. The experts’ recommendations can become those of the Standing Committee itself if adopted through an official Recommendation.

- **Advantages:** Through the case-file system, it is the Standing Committee that reviews the implementation of the Convention in a given Party and thus remains free to find a solution in each case, without being constraint by strict obligations. This flexibility of action for the Standing Committee is at the basis of the success of the case-file system. Contracting Parties voluntarily submit themselves to the peer review and thus to possible international pressure but also support in solving an eventual issue that may arise related to wild species and habitats under threat.

The system has proved to be a good tool for achieving the aims of the convention through international co-operation and peer review.

The costs involved in the production of these reports (mainly expert fees) are not very high. In the case of an on-the-spot appraisal, normally it is the hosting country that bears the costs for its implementation (aside of the expert fees and the costs for travel and subsistence for the expert and at least one Secretariat member).

- **Disadvantages:** The case-file system can be a lengthy tool and in some cases it has reached its limits, in particular when the complaint has been submitted too late and when for instance, the implementation of a development project has already started.

In addition, the case-file system is one of the most time-consuming tasks for the Secretariat of the Convention, but also for the Standing Committee. Around 10 to 15 new complaints are received each year and their processing represents a big work burden for a small Secretariat. These new complaints come on top of all the other files that are already open or considered as possible and still discussed by the Standing Committee.