

**Range States Meeting on the Institutional Framework and
next steps for the Central Asian Flyway**

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OPTIONS FOR AN INSTITUTIONAL FRAMEWORK FOR THE CENTRAL ASIAN FLYWAY

(Prepared by the CMS Secretariat)

Summary:

This document outlines suggested key principles for an institutional framework for international cooperation on the conservation and sustainable management of migratory birds and their habitats in the Central Asian Flyway (CAF). It presents relevant provisions and guidance on the development of CMS instruments, to support the Range States in their decision about and further development of the preferred legal and institutional framework for the CAF.

OPTIONS FOR AN INSTITUTIONAL FRAMEWORK FOR THE CENTRAL ASIAN FLYWAY

Background

1. As one of the world's nine great flyways, the Central Asian Flyway (CAF) covers a large continental area of Eurasia between the Arctic and Indian Oceans. It overlaps with the African-Eurasian and the East Asian–Australasian Flyway. It spans over 30 countries and is home to 606 species of migratory birds of 84 families. Yet, of all the global flyways, it currently lacks a coordinating mechanism or framework to facilitate such collaboration. This is in part due to the fact that not all of the 30 Range States are Parties to CMS, some are Parties to the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA), while some are Signatories of the Memorandum of Understanding on the Conservation of Migratory Birds of Prey in Africa and Eurasia (Raptors MOU). Only CMS covers all types of avian taxa (waterbirds, landbirds, raptors, seabirds). Over the past decades, discussions have taken place among Range States of the CAF and interested stakeholders, in numerous settings and over many years, regarding strengthening collaboration for conservation within the CAF. As a result, further action was taken at the thirteenth meeting of the Conference of the Parties to CMS (COP13), held in Gandhinagar, India in February 2020, to support advancement of a framework for the CAF.
2. One of the key outcomes of CMS COP13 was the adoption of a resolution and a decision calling for the development of an institutional framework for the CAF under CMS: [CMS Resolution 12.11 \(Rev.COP13\) Flyways](#). This resolution builds on previous discussions and decisions among the Range States, including an earlier approach that would develop such a mechanism within AEWA¹. One of the challenges of any approach is the fact that not all of the CAF Range States are Parties to AEWA: 17 of the 30 countries concerned by the CAF are Range States to AEWA, five of them being AEWA Parties. These five ones are also CMS Parties. Of the 30 CAF Range States, 21 are Party to CMS. 28 CAF countries are Range States of the Raptors MOU; 10 of them are Signatories to the Raptors MOU, and, in turn, nine of these Signatories are also Parties to CMS.
3. Considering the process and discussion over several years, and to guide the way forward, through Resolution 12.11 (Rev.COP13) *Flyways*, the COP

“8. Welcomes the further efforts by the Government of India to continue the collaborative process, in close consultation with the CAF Range States and with the CMS and AEWA Secretariats, to develop under the CMS an institutional framework, with the Secretariat provided by the CMS Secretariat along with a coordinating office hosted by the Government of India, to support the implementation of increased conservation action for migratory birds and their habitats in the CAF, as well as to support this initiative with resources, in coordination with the existing CMS avian-related instruments.”
4. The COP also adopted an action-oriented [Decision 13.46](#) for work in this intersessional period, in which it called Range States of the CAF to:
 - a) *collaborate with the Government of India and the Secretariats of CMS and AEWA during the intersessional period between the 13th meeting of the Conference of the Parties (COP13) and COP14 to further advance the process initiated in 2018 between the Government of India and both Secretariats;*
 - b) *establish, by COP14, under the umbrella of CMS, an institutional framework, under the leadership of India and in consultation with the other range states and relevant stakeholders with the aim to agree on,*

¹ Through Resolution 12.11 (Rev.COP13) *Flyways*, the CMS Conference of the Parties is recognizing the decision of the Range States of the Central Asian Flyway (CAF) to request AEWA Contracting Parties to incorporate the CAF Action Plan for Waterbirds and their habitats into AEWA as the preferred legal and institutional framework for the action plan as agreed during the CAF Range States' meeting held in Abu Dhabi, UAE 12 December 2012, and recalling the offer of India at COP12 in Manila (Resolution 12.11 *Flyways*) to champion this process.

inter alia, conservation priorities and related actions, and measures to support Parties with the implementation of conservation action for migratory birds and their habitats in the region, including by promoting research, studies, assessments, capacity-building and conservation initiatives thereby further strengthening the implementation of CMS and its avian-related instruments;

c) contribute to an inter-governmental meeting of the Range States of the Central Asian Flyway organized by the Government of India and the CMS Secretariat to agree on the modalities of the framework by COP14, to update the CMS Central Asian Flyway Action Plan for the Conservation of Migratory Waterbirds and their Habitats, and to consider supporting the process with resources, as applicable.”

Key principles related to an institutional framework for the CAF

5. With a view to furthering progress to put in place an institutional framework for the CAF, it is helpful to consider a number of key principles:
 - a) The overall number and severity of threats to migratory birds in the CAF region are likely to increase, not diminish, in the foreseeable future. An effective institutional framework needs to be in place in order to safeguard the migration of birds along the flyway through a coordinated, multilateral approach, and to enhance and support actions for the conservation and management of migratory bird populations and their habitats in the CAF region. The definition and implementation of an updated CAF Action Plan by all Range States and stakeholders, coordinated through a work programme, as relevant and appropriate, will be critical.
 - b) An effective institutional framework should provide a stable, recognized, neutral and inclusive platform which also provides synergies for other relevant avian processes and instruments and avoids overlaps and duplication with them.
 - c) Human and financial resources in governmental authorities, the Secretariats of the CMS, AEWA and other agreements, and implementing partner organizations are limited. Therefore, it is essential to facilitate and maximize cooperation, but avoid overlap and duplication of procedures, institutional structures and migratory bird conservation and management efforts. It is also important to consider the burden on Range States to report under the various relevant frameworks.
 - d) Additional resources will be required for all options. Maximizing synergies with existing international frameworks is also important to secure the support of potential international donors to provide resources for institutional needs and implementation of conservation measures.

Guidance on the Development of Agreements and related instruments² under CMS

6. There are numerous options for institutional arrangements or instruments under CMS, explained in the [Convention Text](#) and [CMS Resolution 12.8 Implementation of Articles IV and V of the Convention](#). In principle, Agreements may be legally binding or legally non-binding. Legally binding Agreements tend to have the title “Agreement”, while non-binding agreements tend to have the title “Memorandum of Understanding” (MOU).³

² Through Resolution 12.8 *Implementation of Articles IV and V of the Convention*, the CMS Conference of the Parties notes “that colloquially, and in this Resolution, the term “Agreements” is used to refer in a generic sense to AGREEMENTS, agreements and Memoranda of Understanding as the context may require,”

³ Legally binding agreements take the form of treaties which must be ratified. Non-binding agreements are designed not to formulate new legally-binding commitments but to provide a mechanism for more targeted and coordinated implementation of the Convention’s existing provisions. Of the 26 CMS agreements, seven are legally binding and have the title “agreement”. Four of these were concluded under Article IV.3 (ACAP, AEWA, EUROBATS and Gorillas), while three were concluded under Article IV.4 (ACCOBAMS, ASCOBANS and Wadden Sea Seals). The 19 non-binding agreements have the title “memorandum of understanding” and all of these were concluded under Article IV.4. See UNEP/CMS/COP11/Doc.22.2/Annex 1 - *Developing, Resourcing and Servicing CMS Agreements*: <https://www.cms.int/en/document/developing-resourcing-and-servicing-cms-agreements>

7. Through [CMS Resolution 12.8](#), the CMS COP compares legally binding (i.e. Agreements) and non-legally binding options of instruments. Examples of non-legally binding options include initiatives based on COP resolutions, administrative agreements, MOUs, concerted action or international species action plans. MOUs and initiatives are frameworks of cooperation that are open to accession by both CMS Parties, Non-Party Range States and other stakeholders. Furthermore, according to the resolution it is neither a requirement of such instruments to cover the whole of a range of the migratory species, nor to establish a legally binding Agreement as a further step based on such a non-binding instrument.
8. Resolution 12.8 also indicates a method for systematically assessing the opportunities, risks, appropriateness and relative priority of any new proposal to develop an Agreement. This involves testing such proposals against a set of criteria (Annex to Resolution 12.8).
9. Furthermore, through [Resolution 12.8](#), paragraph 12, the COP makes determinations with regard to the coordination and administration of agreements, including that the administration can be undertaken by a Party to it, or other national or international organization or by the CMS Secretariat (the latter after consent of the CMS Standing Committee), under consideration of flexibility for later changes.
10. In summary, the instruments and institutional arrangements that can support the implementation of the Convention:
 - may be legally binding (usually titled 'Agreement') or legally non-binding agreements (such as MOU or Initiatives);
 - may cover the whole range of the migratory species, or be limited to any population or any geographically separate part of the population of the migratory species or lower taxon;
 - may be open to accession by all Range States whether or not they are Parties to CMS, and provide various opportunities for international cooperation of countries and liaison with international organizations;
 - provide various options of secretarial arrangements;
 - can be tested for their utility in the specific or regional context in a straightforward way along a list of set criteria.

Options for the CAF institutional framework based on the range of CMS instruments

11. To assist in moving forward with the development of an institutional framework, the Annex of this document provides a brief overview of options of instruments under CMS, their key characteristics, potential advantages and disadvantages.
12. The options captured in the Annex range from a new binding Agreement for the CAF to an Initiative (non-legally binding) that would provide a framework of maximum flexibility for cooperation of CMS Parties and Non-Parties. As a summary, it can be noted that:
 - Legally binding instruments provide for more continuity of commitments made, a clear ownership by the Parties, regularity of meetings frequency and stability of the financial basis, and therefore viability in the long term.
 - Legally non-binding instruments (Memoranda of Understanding, Initiatives, Concerted Actions and Action Plans) mainly differ in procedural aspects, duration, regularity of meetings or reviews, and the flexibility in involving different treaties and multiple stakeholders. They do not include assessed contributions.
 - Among the non-legally binding options, Initiatives, Concerted Actions and Action Plans particularly provide lighter procedures, and can be available and operational within a relatively short term. They also provide for flexibility with regard to stakeholder involvement including Non-Parties through relevant other frameworks and institutions from various sectors under lighter formalities.

- An Initiative can provide a platform for different frameworks and treaties to join forces, a relevant advantage within the CAF context, and can involve multiple stakeholders from a wide range of sectors, serving as an umbrella for promoting flyway conservation. Such an Initiative may still benefit from the possibility of regular meetings for example back-to-back with meetings of frameworks and treaties involved, and support and advice from the governing and technical bodies of the treaties involved.
13. Considering the diversity of the region and the different Agreements already in place for some of the CAF Range States, a new institutional framework should be tailored to allow highest flexibility and minimal burden regarding reporting, with Range States reporting through the relevant MEA to which they are Party, or to the CAF Secretariat of the initiative directly, as applicable.
 14. Following this scenario, the administering CAF Secretariat could be of joint nature. In that case, AEWA-CAF overlapping Range States may report through AEWA to the joint CAF secretariat of the umbrella initiative, and Range States that are Parties to CMS but not to AEWA may report to the joint secretariat directly. Range States which are Signatories to the Raptors MOU but not Parties to CMS may report through the Raptors MOU on raptor species, and may be encouraged to send information on other species to the CAF secretariat.

Recommended actions:

15. The meeting is recommended to
 - a) consider the provisions and guidance adopted by the CMS Conference of the Parties with regard to the establishment of Agreements including the variety of instruments covered by this term;
 - b) discuss the options for a legal and institutional framework for the CAF based on the information provided in the Annex of the present document;
 - c) agree on the preferred option;
 - d) discuss and further develop the modalities for the coordination and implementation of the CAF, including by guidance on relevant documentation to be developed subsequent to this meeting, and potentially propose draft decisions to be submitted to the fourteenth meeting of the CMS Conference of the Parties, as appropriate.

GUIDANCE ON CMS INSTRUMENTS

Appendix I:

- **Obligation to** legally prohibit 'taking' and report on any exceptions granted
- **Endeavor to** take measures to 1) conserve and restore habitats; 2) enable migration/movement; 3) prevent risk factors

Appendix II:

- **Conclude AGREEMENTS or Agreements** - international cooperation to conserve the species and its habitats

Table of characteristics of different types of 'AGREEMENTS' and 'Agreements'

Characteristics	Legally binding 'AGREEMENTS'	Legally non-binding 'Agreements' (see Resolution 12.8)			
		Memorandum of Understanding	Initiatives	Concerted Actions	Action Plans
Short description	International, legally binding treaty and work programme. Covering the whole of the range of the species, or a geographically separate part of the population of the species.	International, non-legally binding agreement and work programme.	Cooperation framework with a programme of work.	Specific projects or activities, sometimes also leading to AGREEMENTS, MOUs, Action Plans or Initiatives.	Strategic objectives and actions.
Establishment	Can be initiated by CMS COP or Range State Party. Negotiated and ratified independently from the CMS COP.	Can be initiated by CMS COP or Range State Party. Negotiated and signed independently from the CMS COP.	Can be initiated by CMS COP or Range State Party. Adopted through Resolution by the CMS COP.	Can be initiated by CMS COP or Range State Party. Adopted through Resolution by the CMS COP.	Can be initiated by CMS COP or Range State Party. Adopted through Resolution by the CMS COP.
Duration	Open-ended	Open-ended	Open-ended	Time-bound	Open-ended or time-bound
Host/Secretariat	Mostly independent from CMS Secretariat. Co-located with CMS Secretariat or hosted by Range State.	Independent from OR serviced by CMS Secretariat. Co-located with CMS Secretariat or hosted by Range State.	Serviced by the CMS Secretariat, with the potential of including other frameworks'/treaties' secretariats (e.g. CITES, AEW, Raptors MOU, CAFF/AMBI, EAAFP).	Serviced by the CMS Secretariat and promoted by the proponents.	Serviced by CMS Secretariat.

Characteristics	Legally binding 'AGREEMENTS'	Legally non-binding 'Agreements' (see Resolution 12.8)			
		Memorandum of Understanding	Initiatives	Concerted Actions	Action Plans
Secretariat staffing	Mostly independent from the CMS Secretariat.	Mostly independent from CMS Secretariat OR serviced by the CMS Secretariat through dedicated or non-dedicated ⁴ staff.	Serviced by the CMS Secretariat through dedicated or non-dedicated staff, as well as staff of other convention secretariats involved (e.g. CITES, AEWA, Raptors MOU, CAFF/AMBI, EAAFP).	Serviced by the CMS Secretariat through non-dedicated staff.	Serviced by the CMS Secretariat through non-dedicated staff.
Membership	CMS Parties and Non-Parties	CMS Parties and Non-Parties	CMS Parties and non-Parties taking part in relevant legal instruments and initiatives (e.g. CITES, AEWA, Raptors MOU, CAFF/AMBI, EAAFP), as well as other relevant stakeholders (NGOs, academia, communities, etc).	CMS Parties	CMS Parties
Funding	Assessed or agreed contributions by AGREEMENT Parties as well as voluntary contributions.	Voluntary contributions by MOU Signatories or CMS COP.	CMS COP and COPs of other conventions involved (e.g. CITES, AEWA, Raptors MOU, CAFF/AMBI, EAAFP) through extra-budgetary resources.	CMS COP through extra-budgetary resources.	CMS COP through extra-budgetary resources.
Review of work programme and monitoring of implementation	Through regular Meetings of the Parties to the AGREEMENT.	Through regular Meetings of the Signatories to the MOU.	Through Range State meetings and through regular CMS COP meetings.	Through CMS COP at regular COP meetings and meetings of the Scientific Council.	No regular reviews.
Scientific and technical advice	Through scientific body of AGREEMENT.	Through scientific body of MOU.	Before submission to CMS COP, through CMS Scientific Council.	Regular review by CMS Scientific Council.	Before submission to CMS COP, through CMS Scientific Council.
Stakeholder involvement	As agreed by the Parties to the AGREEMENT.	As agreed by the Signatories to the MOU, e.g. official	As agreed by CMS COP. Observers at COP(s).	As agreed by CMS COP. Observers at COP.	As agreed by CMS COP. Observers at COP.

⁴ Dedicated staff = CMS COP-established position or extra-budgetary position specifically for this function as opposed to Secretariat staff also having other responsibilities.

Characteristics	Legally binding 'AGREEMENTS'	Legally non-binding 'Agreements' (see Resolution 12.8)			
		Memorandum of Understanding	Initiatives	Concerted Actions	Action Plans
	Observers at Meetings of the Parties. Experts for specific issues.	cooperating organizations also with technical coordination function. Observers at Meetings of the Signatories. Experts for specific issues.	Additionally, appointment of species or topical experts by Range States.	As provided in the Concerted Action.	As provided in the Action Plan.
Advantages	<ul style="list-style-type: none"> • Involves a legal commitment from Parties, securing the long-term viability of conservation actions and funds. • Stable financing through Parties. • Ownership is solely with Parties. • Can include any of the relevant migratory species Range States regardless of membership to CMS, as well as other States interested in conservation of the relevant migratory species. 	<ul style="list-style-type: none"> • Its more voluntary nature can appeal to a wider membership. • Ownership is solely with Signatories. • Can include any of the relevant migratory species Range States regardless of membership to CMS, as well as other States interested in conservation of the relevant migratory species. 	<ul style="list-style-type: none"> • The possibility to join forces with other frameworks/treaties offers a wider membership of Range States participating and the benefit of tackling the issue from different angles. • Appeals to wide range of governmental donors due to its affiliation to CMS and other frameworks/treaties. • Guaranteed regular meetings due to COP cycles but also dedicated Range State meetings possible. • Possibility to leverage support from CMS or frameworks'/treaties' governing bodies' meetings for dedicated staff. • Conservation of migratory bird species is a matter of all Parties to CMS, not only of the Range States of a particular species. 	<ul style="list-style-type: none"> • Since they can simply set out the process for developing more comprehensive tools and instruments, they can be a quick and easy first step for conservation action to agree on between Range States for submission to COP. • Do not require for resources to be immediately available for developing more comprehensive conservation plans. • Provide a good tool for focused planning and time-limited actions for a species. 	<ul style="list-style-type: none"> • Detailed, and usually have a long-term vision for species conservation.

Characteristics	Legally binding 'AGREEMENTS'	Legally non-binding 'Agreements' (see Resolution 12.8)			
		Memorandum of Understanding	Initiatives	Concerted Actions	Action Plans
Disadvantages	<ul style="list-style-type: none"> • May pose challenges to include States that lack the means or possibility of entering into a legally binding commitment. • Require financial and human resources for Secretariat services, including fundraising. 	<ul style="list-style-type: none"> • Depend on Signatory dedication, which can make them unstable. • Require financial and human resources for Secretariat services, including fundraising. 	<ul style="list-style-type: none"> • Without other frameworks/treaties, Range States that are not Parties to CMS might have some challenges to formally joining the initiative, but they could contribute informally 	<ul style="list-style-type: none"> • Usually limited in time between two COP meetings. 	<ul style="list-style-type: none"> • Do not require periodic meetings • Require financial and human resources for coordination, including fundraising.