

► **BOOK**

How to control illegal wildlife trade in the Himalayas

As Nepal's greatest natural resources approach extinction, the stakes could hardly be higher

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Cites Implementation in Nepal and India – Law, Policy and Practice

by Ravi Sharma Aryal

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The book is divided into seven chapters addressing a range of topics related to CITES implementation in Nepal and India. Chapter One provides a general introduction to the concept of endangered species, and to the state and importance of biodiversity. Chapter Two briefly summarizes the history of cultural and legislative efforts to protect forests and wildlife in Nepal and India. Chapter Three explains the concept and principles of CITES, discusses issues raised and progress made during the COP (Conference of Parties), and reports on typical cases of infringement of CITES in Nepal and India.

While neither Nepal nor India has drawn up specific legislation to implement CITES provisions, both countries have adopted numerous policies, laws, and conservation measures bearing on the implementation of this treaty. These are presented in Chapters Four and Five, the centerpiece of Aryal's book. Article 26.4 of the Constitution of the Kingdom of Nepal (1990) provides directives for the protection of the environment at large; the National Parks and Wildlife Protection Act (1973), the Forest Act (1995), Nepal Biodiversity Strategy (2002)³, and other related Acts and policies are fulfilling the objectives of CITES in Nepal. Implementation of CITES in Nepal is further strengthened by the 1991 Nepal Treaty Act (NTA) which specifies that when a matter in a treaty is inconsistent with the existing domestic laws, the domestic laws shall be void to the extent of the inconsistency, and the provision of the

The international trade in wild animals, plants, and wildlife products is big business, with worldwide transactions of over US\$ 5 billion a year. Most of it is entirely legal, regulated by national laws and international treaties. But about one-fourth to one-third of the trade entails unlawful commerce in rare and threatened species that are usually poached or collected illegally and smuggled across frontiers. The trade in endangered fauna and flora is diverse, ranging from live animals and plants to a vast array of wildlife products derived from them, including food products, rare and exotic leather goods, tourist curios and medicines. Such illegal trade is one of the main engines driving species to extinction.

Although population increase and poverty are generally cited as the indirect causes of poaching and illegal collection, the major threats are conflicting laws and perverse incentives on the part of rich and influential consumers. An important challenge, at present, is to systematically study the population of threatened fauna and flora so as to understand their status and conservation requirements¹.

The decline in biological resources in Nepal has been due largely to the lack of policies to guide legal, institutional and operational developments in this sector. Biodiversity policy in Nepal has usually been shaped by political and economic motives rather than ecological and social considerations².

An international treaty, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),

came into force on July 1, 1975. That same year, Nepal became a party to the treaty, and to date 165 countries have agreed to adhere to CITES. Its enforcement is the responsibility of the signatory states, and governments are required to submit reports and trade records to the CITES Secretariat.

Regulation of international trade in wildlife and wildlife products is an intersectoral endeavor, with social, economic, ecological, cultural, and political dimensions. Aryal's book covers the spectrum of issues, focusing on the gaps and weaknesses in the laws, policies, and implementation measures in Nepal and India, countries that cover a major part of the Himalayas. Aryal also discusses cross-sectoral issues, which must be addressed in order to control smuggling across international borders.



CREDIT: Ravi Sharma Aryal

RESOURCE REVIEW

The international illegal trade in wildlife and wildlife products is one the major engines driving species to extinction. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which defines standards for use of wildlife and their products, represents a major global commitment to reverse this trend. It remains to be seen whether the terms of this treaty will be enforced. Focusing on Nepal and its neighbors, Aryal discusses the obstacles to its successful implementation: imprecise legislation, inconsistent policies, lack of coordination among relevant institutions (particularly, those responsible for regulating international trade), and the deadly threat posed by poachers determined to protect their endangered livelihoods. Aryal's recommendations are detailed, far-reaching, and compelling.

treaty shall prevail as the law of Nepal. Strangely, Aryal is silent about the Local Self-Governance Act (1998). According to this law, the District Development Committee (DDC) is the implementing body of the local government. Section 189(g) (1) of the Local Self-Governance Act requires the DDC to formulate and implement plans for the conservation of forests, vegetation, biological diversity and soil. Section 189(g) (2) further requires the DDC to protect and promote the environment. Similarly, Section 28(h) (2) requires that the Village Development Committees (VDCs), the next smallest unit of local governance, formulate and implement programs for the conservation of forests, vegetation, biological diversity, and soil.

In Chapter Five, Aryal compiles the scattered laws impinging on control of illegal exploitation of wildlife in India. The Constitution of India as amended in 1976 (Articles 48.A and 51-A9g) directs the government to protect the environment. The Indian Forest Act of 1927, the Forest (Conservation) Act of 1980, the Biological Diversity Act of 2002 and other relevant laws are important tools for the protection of endangered species.

Medicinal plants, many of which are rare and threatened, are used in two ways: first, in medications prescribed by traditional systems, and second, in medications that have become accepted in Ayurvedic, Tibetan, and allopathic (or Western) medicine. In general, the collection of medicinal plants for traditional local use is not a problem since this use has developed gradually and in harmony with nearby natural ecosystem¹. Accordingly, the 1991 amendment of the 1972 Wildlife (Protection) Act of India allows scheduled tribes in India to use locally available medicinal plants in a sustainable fashion. Such protection of customary rights is not found in any Nepalese law, and Aryal takes issue with the provisions of the Indian Wildlife (Protection) Act. I believe, however, that through this law the government of India gives due recognition not only to the rights of indigenous peoples to preserve their culture, but also to the importance of safeguarding the transmission of

indigenous knowledge from one generation to another.

Aryal has rightly mentioned the importance of transboundary cooperation. The CITES treaty could play a crucial role in the interdiction of smuggling across the Nepal-India and Nepal-China borders. The protection of wildlife is currently hampered by differences in the degree of protection among the three countries. For example, in China a person can be sentenced to death for killing an individual of an endangered species such as the giant panda⁴. In Nepal and India, however, the penalty is imprisonment for few years or nominal fine or both. Tri-national consultative meetings on biodiversity conservation will be vital in plugging the gaps and untangling the legal inconsistencies.

In Chapter Six, Aryal undertakes a review and detailed analysis of existing plans, policies, and regulations, as well as interview survey conducted in some border areas and in the capital of India about the administrative practice and constraints in order to expose the obstacles impeding effective implementation of CITES. The problems are diverse, ranging from lack of clarity in legislation to lack of coordination among the relevant institutions, from dubious nomenclature and out-of-date species lists to lack of competent staff in the field to threat for guards posed by the poachers.

Chapter 7, "Conclusion and Suggestion," presents Aryal's astute recommendations for improvements in strategy and administrative structure that would facilitate implementation of CITES in Nepal and India. I would cluster all the Aryal's recommendations at three levels.

Recommendations at the systemic level include:

- translation of international treaties to national legislation
- amendments in laws and policies with the view to closing existing loopholes
- strict enforcement of existing legislation
- implementation and monitoring of trans-boundary wildlife trade regulatory mechanisms.

Recommendations at the institutional level include:

- development of strong linkages among the relevant institutions
- development of technical infrastructure, publication and dissemination of information, and promotion of skills pertinent to CITES enforcement among police, custom officers, and immigration officials
- insulation of CITES administration from political interference.

Recommendations at the individual level include:

- development of professional ethics and accountability
- expanded professional networking
- enhancement of job security, benefits, and incentives, including life insurance
- expanded opportunities for career advancement.

I might offer a few reservations about the book itself. Although the printing is of good quality, the high price may discourage some readers for whom the book would be a useful reference. The small font used in the footnotes is also rather frustrating. The book is illustrated with photographs, a number of which are redundant. A useful supplement would be a compilation of photographs of all endangered fauna and flora listed under CITES.

Nonetheless, the book will be a valuable resource for policy makers, politicians, wildlife traders, protected area managers, conservationists, national and international agencies, NGOs and INGOs, professors, students and general readers. ■

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