

Strasbourg, 18 May 2020  
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T-PVS/Files(2020)35

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

40<sup>th</sup> meeting  
Strasbourg, 1-4 December 2020

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**Other complaints**

**Lack of protection of the Scottish Wildcat (*Felis  
silvestris*)  
(UK)**

**- COMPLAINT FORM -**

*Document prepared by  
Wildcat Haven Community Interest Company*

**Convention on the Conservation of  
European Wildlife  
and Natural Habitats**



**COMPLAINT FORM**

**Bern Convention Secretariat**

Directorate of Democratic Participation

Council of Europe

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**1. Please state the reason of your complaint (refer also the Contracting Party/es involved and the Articles of the Convention which might be violated).**

This complaint demonstrates systemic and ongoing failures by the devolved government in Scotland to comply with the obligations incumbent on the United Kingdom, as a Contracting Party to the Bern Convention; in particular, in respect of its failure to comply with the obligations to conserve and protect the endangered Scottish wildcat species (*Felis silvestris*).<sup>1</sup> The wildcat is listed in Appendix II to the Convention thereby requiring its strict protection.<sup>2</sup> The failures alleged highlight failings in both the legal and administrative arrangements at the national level by the Contracting Party, as well as the enforcement of existing measures. These grounds of complaint are supplemented in the Annex 1 (Statement of Complaint) attached and are summarised as follows:-

1. The National Level: No comprehensive national survey has been undertaken to adequately assess remaining population size and distribution of the species and no cohesive national action plan exists to protect the remaining populations in the wild. These failings are heightened by the fact that at no point since the ratification of this Convention has any site been designated for its population of wildcats (the rarest mammal in Scotland) by the Contracting Party. Recently, a new – in our submission highly detrimental – shift in policy has emerged where the national authorities are now focussing almost solely on captive breeding programmes as ‘the’ tool for conservation. This new policy is now being implemented in a manner which risks the extinction of the remaining wild population of the species. Notwithstanding empirical evidence presented to the relevant competent authorities to the contrary by our client, the species has recently been declared as “*functionally extinct*”. This is, in our submission, a stance which has been adopted as mere administrative convenience, to justify a captive breeding agenda and for reasons of expediency, in the face of flawed data and knowledge gaps therein, and contrary to the precautionary principle. It is also conveniently aligned with the launch of legal interventions by our client challenging the status quo, as well as development related / consent decision-making. Our client’s real-world, empirical field work demonstrates to the contrary that it is not too late to save the wildcat population in Scotland. We submit that the Contracting Party has failed to sufficiently or robustly make the case (both legally and scientifically) that the population is functionally extinct given the known existence of remaining populations.

We submit that the captive breeding programme now under way is a diversionary and conflicted endeavour. The major partner for this programme is the Royal Zoological Society of Scotland, which runs two zoos. Our client can present data from the Scottish wildcat studbook that demonstrates clearly that this programme is highly dysfunctional and non-viable; for example, over a 4-year period there have been 21 wildcat births at RZSS. Of that number, 14 of the off-spring have since been neutered, 5 are dead and there is no formal data available for the remaining 2 wildcats. **If unchallenged, these actions and inactions collectively undermine the Convention objectives, specific articles referred to and conservation efforts overall, both for this species and others like it.**

While it is acknowledged that there is a difference of scientific view in relation to the means of identification of wildcat, our client emphasises that genetic testing can only ever be a proxy for pelage scoring. Furthermore, the wildcats identified by our client in Scotland have to date included wildcats that clearly demonstrate higher purity than those held in the Government’s captive breeding programme. For the reasons detailed, we submit that the administrations are also erring as a matter of law in their assessment of the implications of species hybridisation on their legal obligations as Contracting Party to the Convention and, again, are failing to apply the precautionary principle.

2. The Regional Level (Urgent Matters):

a) We submit that there has been past and ongoing failure to apply and uphold environmental laws designed to protect this strictly protected species from disturbance; specifically, as a result of

<sup>1</sup> The species in Scotland has been referred to formally as *Felis Grampia* and is genetically and evolutionary distinct. Article 2 extends to sub-species and local genotypes. Since the introduction of captive breeding programmes, this naming seems to no longer be applied.

<sup>2</sup> Appendices to the Convention and Amendments thereto available online at: <https://www.coe.int/en/web/bern-convention/appendices> (Last modified 2001).

**commercial logging activities** ongoing at the Clashindarroch forest, near Huntly, Aberdeenshire. This is a commercial forest plantation where industrial operations are being undertaken without sufficient policy measures in place to protect the resident population and, moreover, without EPS licence from the national competent authorities. The Government agency is now, in our submission, deliberately (as that term has been interpreted by case-law of the ECJ) undertaking such activities close to den and resting sites, including during the sensitive breeding season. Environmental information requests obtained by our client illustrate moreover that the concerns of those national authorities' own expert ecologist advisers are being overruled. Where proven, such disturbance is an offence under national law. While activities were halted temporarily following complaints lodged by our client, works have resumed with insufficient mitigation. The Contracting Party is not implementing and adhering to the 1992 Guidelines or 1995 Recommendations (cited below), and forestry operations remain largely unmitigated or adapted from industrial operation and harvesting.

b) We further submit that there has been past and ongoing failure to enforce and uphold the Convention (as well as EIA laws) in respect of a **planned windfarm development by Vattenfall Wind Power Limited**. For present summary purposes, this includes failure to require thorough baseline surveys and failure to follow the 'avoid-mitigate-compensate' decision-making hierarchy. A demonstrably non-compliant phase of development has already been authorised/consented and operational at this site since 2015. Post-construction monitoring ("PCM") is poor and aspects of planned mitigation remain undelivered. A further phase of this windfarm development (known as Clashindarroch II) is now seeking consent from the national competent authorities. The latest proposal attempts to obtain consent by 'salami-slicing' the EIA assessment in respect of the impacts on this species, amongst others. If permitted, it will result in a doubling-down of previously poor and non-compliant decision-making of anticipated ecological impacts, including for the wildcat and other protected species present. Our client submits that it risks extirpation of a remaining critical population nucleus of at least thirteen (13) individuals of the species so far identified as being present at the site. Indeed, the Government agencies have themselves previously referred to the Clashindarroch forest as a "Wildcat wonderland" and other commentators have ranked it as the first-to-second best remaining site for the species. The issue of hybridisation is now being used as a blanket justification for inaction in terms of protecting the site from development, contrary to a correct legal interpretation of the obligations which are incumbent on the Contracting Party (particularly in the face of failures to comprehensively survey).

By virtue of these (and further) derelictions of duty by the Scottish Government, our client alleges that the UK, as State Party, is in violation of the following articles of the Convention:-

- Article 2 (General Objects) – such a population requires to be well above that at which a species is in danger of extinction;
- Article 3(1) (National Policies) & (2) (Planning and Development Policies);
- Article 4(1) (Protection of Habitats);
- Article 6 (Protection of Species) – requiring appropriate and necessary legal and administrative measures to ensure the special protection of the wildcat (listed in Appendix II);
- Article 8 (Prohibition on indiscriminate means of capture/killing etc);
- Article 9 (Derogations & Reporting Obligations).

The facts pertaining now demonstrate wilful disregard by the national competent authorities of –

1. **The Guidelines No.2 on the Conservation of the Wildcat (*Felis silvestris*)** (adopted 04/12/1992);
2. **Recommendation No.43 (1995) on the Conservation of Threatened Mammals in Europe** (adopted 24/03/1995). That recommendation highlights, *inter alia*, the need to give special conservation attention to all small populations of mammal species which are endangered or vulnerable at the European or regional level; the need to carry out extensive monitoring; and to consider recovery plans (including, the need to give protection status to the core areas of the population and improve their habitat);
3. **Recommendation No.109 (2004) of the Standing Committee on Minimising Adverse Effects of Windpower Generation on Wildlife** (adopted 03/12/2004);

**4. Recommendation No.173 (2014) of the Standing Committee** (adopted 05/12/2014). That recommendation deals specifically with the question of hybridisation between wild grey wolves (*Canis Lupus*) and domestic dogs (*Canis lupus familiaris*). We submit the same considerations in law apply equally to the Scottish wildcat species, which is also threatened, *inter alia*, by hybridisation. (See the Supporting Annex further).

**2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)**

The species around which this complaint centres is the Scottish wildcat (*Felis silvestris*). Our client is a recognised expert in the field of protection of this species and other felids and submissions are made on this basis. The Chief Scientific Advisor for Wildcat Haven was from 2012 – 2015 the only person in Scotland competent to hold a species license to trap and sedate Scottish wildcats for DNA sampling and collaring. He is also a published author on wildcat genetics; leading an effort to bring the lynx back to the UK; and is involved in major international feline research projects, including being an expert advisor for the IUCN Cat Classification Task Force. As a result of this he is a co-author on the defining classification publication for every member of the Felidae. Our client has undertaken detailed empirical field work which has identified a population of (at least) 13 wildcats resident within the Clashindarroch forest and are surveying other areas in Scotland. They have indicated that they are prepared to share their fieldwork with national competent authorities only subject to the condition that such data is not used to transfer wild populations of the species to captive breeding programmes. To date, neither the competent authorities nor developers have been willing/able to accede to this basic requirement.

**3. What might be the negative effects for the specie/s or habitat/s involved?**

Extirpation of perhaps the key remaining population nucleus of the Scottish wildcat in the wild via; i) destruction / loss of habitat; ii) disturbance of breeding & resting sites; and iii) failure to uphold the rule of law – operations are being allowed to be undertaken without EPS from the national competent authority (SNH). This sets a dangerous precedent if left unchallenged, including to the private sector.

**4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald network site?**

On the basis of its wildcat population, Clashindarroch Forest will have exceeded the qualifying criteria for national/international designation (e.g. Site of Special Scientific Interest) at various times since the Convention was signed/ratified. The failure of relevant national governments to have moved to designate the site will have been explicable until recent times on simple grounds that its acute importance for the species was unknown. That exception has not applied since 2015, and we submit that it is a failure of the obligations under (*inter alia*) Article 2 of the Convention for the Scottish government not to have utilised the statutory site protection mechanisms and the duty that goes with them, to afford the site due protection. The absence of such protection has been instrumental in allowing the situation to develop whereby the site and its wildcat population is now threatened by development.

**5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?**

- At the international level: complaints are also being lodged with i) the National Contact Point to the OECD Guidelines for Multi-national Enterprises; ii) Vattenfall's Head of Corporate and Legal Integrity directly; and 3) (In due course) the UNECE Aarhus Convention Compliance Committee.

- At the national level: attempts to remedy the situation have included legal complaints to \*the Scottish Government & Ministers; \*the Forest Agencies (Forestry and Land Scotland & Scottish Forestry (and statutory predecessors)); \*Scottish Natural Heritage (competent authority licensing); \*Police Scotland (wildlife crime). As the U.K. is currently in non-compliance also with its obligations under the Aarhus Convention, substantive review of (in)actions of competent authorities cannot be obtained fully before domestic courts. There is currently no mechanism in place to address the governance deficit being left by the removal of the oversight of the European Commission due to Brexit. The urgency of the current situation, specialist / technical nature of issues involved & potentially irremediable impacts (particularly if our client's planning objection to the Phase II Vattenfall windfarm development is not sustained) warrant referral now to the Standing Committee. We respectfully request that the actions sought at para 25 & 26 of the Supporting Annex to this Complaint are taken.

**6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)**

See Addendum.

**Supporting materials to the complaint:**

- Supporting [annex](#) to the complaint
- Supporting [enclosures](#) to the complaint (or [here](#))
- Scottish National Heritage [response](#) regarding planning permission for the Vattenfall windfarm