

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES  
OF WILD FAUNA AND FLORA

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Fiftieth meeting of the Standing Committee  
Geneva (Switzerland), 15-19 March 2004

Interpretation and implementation of the Convention

Elephants

CONDITIONS FOR TRADE IN RAW IVORY

The attached document has been submitted by Kenya.



## COMMENTS BY KENYA

At CoP12 the Parties adopted an amended annotation, several decisions and one Resolution [Conf. 10.10. (Rev. CoP12)] relating to the conditions for a potential one off-sale of ivory stockpiles from Botswana, Namibia and South Africa. However, many of the conditions have not been sufficiently defined. This document provides suggestions as to the definition and interpretation of these conditions, so that the Standing Committee has a sound basis upon which to assess whether or not they have been met.

The conditions for trade in raw ivory, as noted in part (e) of the annotation to the Appendix-II Listing of *Loxodonta africana* for Botswana, Namibia, and South Africa, are as follows:

*Trade in registered raw ivory (whole tusks and cut pieces of ivory that are both 20 cm or more in length and one kilogramme or more in weight) subject to the following:*

- i) *Only registered government-owned stocks, originating in [Botswana, Namibia, or South Africa] (excluding seized ivory and ivory of unknown origin);\**

Comment: Recognizing that nearly two years have passed since the preparation of African elephant proposals for consideration at CoP12, the Standing Committee should review and approve an inventory of ivory that Botswana, Namibia and South Africa propose to export. This should be carried out prior to any decision on the export of ivory. To ensure that all ivory entering trade is registered according to CITES specifications and satisfaction and that ivory that was seized or is of unknown origin is excluded, an independent expert should carry out an on-site review of the government-owned ivory stocks in Botswana, Namibia and South Africa. The expert should evaluate and satisfy the registration, record-keeping and marking systems and the measures taken to secure the ivory and report its findings to the Standing Committee. The registration system must ensure that, once ivory is imported by the trading partner, it can be traced back to the original tusk in the exporting country. On site visits by the secretariat are essential to ensure compliance with the requirements of the annotation as the ivory stockpiles of Botswana and Namibia were last verified by the Secretariat in 1998. The South African stockpile has not been verified at all by the Secretariat. The suggested inventory should include information on the origin of the stocks and explain how the governments can be certain of the origin.

- ii) *Only to trading partners that have been verified by the Secretariat, in consultation with the Standing Committee, to have sufficient national legislation and domestic trade controls to ensure that the imported ivory will not be re-exported and will be managed in accordance with all requirements of Resolution Conf. 10.10 (Rev. CoP12) concerning domestic manufacturing and trade;*

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\* Note from the Secretariat: The relevant part of the annotation of these populations in the Appendices actually reads as follows:

*trade in registered raw ivory (for Botswana and Namibia, whole tusks and pieces; for South Africa, whole tusks and cut pieces of ivory that are both 20 cm or more in length and one kilogramme or more in weight) subject to the following:*

- i) *only registered government-owned stocks, originating in the State (excluding seized ivory and ivory of unknown origin) and, in the case of South Africa, only ivory originating from the Kruger National Park;*

Resolution Conf. 10.10 (Rev. CoP12)

*RECOMMENDS to those Parties in whose jurisdiction there is an ivory carving industry that is not yet structured, organized or controlled and to those Parties designated as ivory importing countries, that comprehensive internal legislative, regulatory and enforcement measures be adopted to:*

- a) register or license all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products;*
- b) establish a nationwide procedure, particularly in retail outlets, informing tourists and other non-nationals that they should not purchase ivory in cases where it is illegal for them to import it into their own home countries; and*
- c) introduce recording and inspection procedures to enable the Management Authority and other appropriate government agencies to monitor the flow of ivory within the State, particularly by means of:*
  - i) compulsory trade controls over raw ivory; and*
  - ii) a comprehensive and demonstrably effective reporting and enforcement system for worked ivory;*

Comment: This condition is problematic in that it requests the Secretariat and the Committee to predict what will happen in the future. However, for trading partners with existing domestic ivory markets, such as Japan, it is clearly important that this condition be met and we therefore suggest that the Secretariat, when carrying out on site visits in potential importing countries, verify that ivory is not currently being exported and is currently being managed in accordance with **all** the above requirements of Resolution Conf. 10.10 (Rev. CoP12) concerning domestic manufacturing and trade, as this will provide some basis for predicting how the ivory will be managed in future.

At CoP12 it was reported<sup>1</sup> that, in Tokyo, almost 40% of the 1,072-hanko retailers listed in the local telephone directory were unregistered and possibly operating illegally. It was also reported that there were still two separate recording systems for worked and raw ivory, with very weak linkages between the two systems. Given the 2002 seizure in Singapore of 6 tonnes of illegal ivory destined for Japan, and information to the effect that numerous previous shipments may have entered Japan successfully, there should be a demonstrably effective method of tracing the origin of any piece of worked ivory back to the tusk from which it originated.

As evidence of its commitment to enforcement measures, and prior to any further legal ivory imports, Japan should provide to the Committee a detailed report on its investigation of the intended recipient of the six tonnes of ivory seized in Singapore in 2002, the charges made and penalties imposed in this case, as well as information on any previous, successful shipments, as alleged by African enforcement authorities.

With regard to "sufficient legislation", all importing countries should be required to have category I CITES implementing legislation under the CITES national legislation project.

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<sup>1</sup> Black and Grey: *Illegal ivory in Japanese Markets*, Japan Wildlife Conservation Society, 2002.

- iii) *Not before May 2004, and in any event not before the Secretariat has verified the prospective importing countries, and MIKE has reported to the Secretariat on the baseline information (e.g. elephant population numbers, incidence of illegal killing);*

#### Related Decision

Decision 12.33 states:

*By its 49th meeting, the Standing Committee, in consultation with the MIKE Central Coordinating Unit and IUCN should define the geographical scope and the nature of the data that constitute the baseline information from MIKE that must be provided before any exports can be approved.*

Comment: The 49th Standing Committee meeting adopted a definition of MIKE baseline information. The baseline will consist of 45 sites in Africa and 14-16 sites in Asia. In accordance with SC49 Doc. 11.2 (Rev.), as agreed by the Committee, we expect the following information to be provided for each site: a) at least one population survey not older than three years; b) levels of illegal killing derived from a minimum of 12-months' data (Africa) / 6 months' data (Asia), obtained from patrol forms and carcass forms and summarized in monthly reports; c) a descriptive report on the patterns of influencing factors (including an analysis of how influencing factors were quantified); d) an assessment of the effort made in providing the illegal killing information; and e) a preliminary baseline analysis of paragraphs a) to d) above.

With regard to item b) above, we continue to be concerned about relying solely on passive reports from the field (patrol forms, carcass forms, monthly reports) to determine levels of illegal killing. Instead, we expect the reports on MIKE system to take into account other sources of data on illegal killing and that the authors will be pro-active in their efforts to seek out such information.

It is worrying that elephant mortality data from range states have not been availed to MIKE Technical Advisory group for scrutiny even from range states that have been implementing the system since 1999. The Standing Committee must insist that those countries submitting ivory trade proposal, must have submitted their elephant mortality proposal to MIKE Central Coordination Unit for scrutiny and annual reports from MIKE Central Coordinating Committee circulated to other range states.

In order to allow ample time for consideration of these reports, which will undoubtedly be voluminous and highly technical, and will require us to consult with our technical experts, we expect the reports to be made available to the Parties, in the three working languages of the Convention, at least 60 days in advance of any Standing Committee meeting where they will be discussed, in accordance with Rule 20 of the Rules of Procedure agreed at the 49th meeting of the Committee.

We are also concerned that MIKE sites were not chosen using different criteria in different parts of Africa, and in some instances only cover very selected areas (such as protected areas), which could bias results. This must be taken into consideration when analyzing and assessing the MIKE data.

With regard to the report on the patterns of influencing factors, it should be noted that it has been established already in the past that MIKE is unable to attribute a causal link between CITES decisions and illegal killing. It is therefore questionable

whether adequate conclusions can be drawn from patterns of influencing factors on the cause of illegal killing. Correlations observed between the CITES decisions and trends in illegal killing should therefore be regarded as sufficient evidence of the impact of the CITES decisions, independent of other influencing factors.

- iv) *A maximum amount of [20,000kg for Botswana, 10,000kg for Namibia, and 30,000kg for South Africa] of ivory may be traded, and dispatched in a single shipment under strict supervision of the Secretariat;*

Comment: Once a trading partner has been identified, the Secretariat should provide details to the Standing Committee on how it will strictly supervise the shipment. It is assumed that the Secretariat will be present both when the shipments are consigned and when they arrive at their final destination.

- v) *The proceeds of the trade are used exclusively for elephant conservation and community conservation and development programs within or adjacent to the elephant range;*

Comment: None of the range states involved in the 1999 export of ivory to Japan (Botswana, Namibia and Zimbabwe) have provided an official audit to the Standing Committee on the use of the proceeds from that sale. The Standing Committee should request and receive such a satisfactory detailed, official audit from Botswana and Namibia, demonstrating that proceeds of the 1999 auction were used exclusively for elephant conservation, before allowing additional ivory exports from those Parties under this condition.

For the second proposed sale, each exporting Party should produce a detailed plan for the use of the proceeds, for consideration by the Standing Committee.

Each exporting country should be verified to have to set up a conservation trust fund, into which all revenues from ivory stockpile sales must be deposited and which is managed through a Board of independent Trustees. A representative of CITES (e.g. from the Secretariat) should sit on such Boards, so as to facilitate reports-back to the Standing Committee.

- vi) *Only after the Standing Committee has agreed that the above conditions have been met. On a proposal from the Secretariat, the Standing Committee can decide to cause this trade to partially or completely cease in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations.*

#### Related Decisions

Decision 12.34 states:

*The Standing Committee shall determine how it would conclude that a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory.*

Decision 12.35 states:

*By its 49th meeting, the Standing Committee is encouraged to recommend measures for improving law enforcement coordination between ivory producing and ivory importing States.*

Decision 12.36 states:

*Parties, donors and organizations are requested to provide urgent financial and technical support to strengthen the implementation of Resolution Conf. 10.10 (Rev. CoP12) regarding control of internal ivory trade in elephant range States for, inter alia:*

- a) building capacity for law enforcement within elephant range States;*
- b) improving public awareness of the conservation impacts from unregulated national trade in ivory;*
- c) improving coordination and cooperation amongst national law enforcement agencies;*
- d) registering and marking raw ivory in public and private possession, and registering and licensing all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products;*
- e) introducing recording and inspection procedures as part of a system of comprehensive and compulsory national trade controls; and*
- f) urgently strengthening provisions in their national legislation concerning the regulation of internal ivory markets and the implementation of CITES in general where necessary.*

Decision 12.37 states

*The Standing Committee, at its 50th meeting, shall review the work conducted by the Secretariat and the Parties to comply with Decision 12.39 and shall consider whether additional measures are appropriate. In the case of non-compliance these may include recommendations to restrict the commercial trade in specimens of CITES-listed species to or from the Parties concerned.*

Decision 12.38 states

*The Secretariat shall assist range States as outlined in Decision 12.36 paragraphs a) to f).*

Decision 12.39 states:

- a) Contingent on the availability of funding, the Secretariat shall assess whether countries with currently active internal ivory markets (i.e. Cameroon, China, the Democratic Republic of the Congo, Djibouti, Ethiopia, Japan, Nigeria, Thailand, Uganda and the United States of America have established the comprehensive internal legislative, regulatory and enforcement measures specified in Resolution Conf. 10.10 (Rev. CoP12) regarding compliance with control of internal trade.*
- b) Where such assessments demonstrate that a Party does not have adequate measures, the Secretariat shall seek from that Party an action plan that is an outline of its programme to adopt measures to enable it to adequately regulate trade in ivory. The purpose of such a plan is to establish and commit to a timeframe for developing, approving, enacting and implementing such measures. The Secretariat shall provide technical assistance in the development of such plans.*

Comment: Condition vi) for export of raw ivory is very problematic and we look forward to reviewing the Secretariat's document on this subject which is being prepared for the 50th meeting, and which should be submitted 60 days in advance of SC50 in accordance with Rule 20 of the Rules of Procedure. Condition iv) states that the export is to be a "single shipment", which raises the questions of how the Standing Committee could cause the trade to cease in the event of non-compliance as indicated in condition vi); that is, by the time non-compliance is recognised or detrimental impacts have occurred, the "single shipment" will already have taken place so there is nothing for the Standing Committee to stop. In order to ensure that the spirit of this condition is addressed, we propose that after the Standing Committee agrees that conditions i) to v) have been met, this is announced via a Notification to the Parties. Parties and others should be given 60 days to provide the Secretariat with any information on non-compliance by exporting or importing countries or detrimental impacts of the CoP12 decision on other elephant populations. The Secretariat should investigate each allegation of non-compliance and report its findings in detail to the Standing Committee. Only when the Standing Committee is satisfied that each allegation has been fully investigated can it consider that condition to have been addressed. In the event that the Standing Committee agrees that the decision has had a detrimental impact, it should prevent the one-off sale from taking place.

#### Assessing Detrimental Impacts

It has already been recognised that it is impossible to prove or disprove that trade in ivory has caused a detriment to other elephant populations. However, this condition requires some method of assessing the likely causes of any detriment that may occur. It is imperative that the Standing Committee take a precautionary approach to the question of how it would conclude that "a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory." For example, a close time correlation between the approval of trade and any increases in illegal killing should not be dismissed as mere coincidence.

With regard to the Notification mentioned above, to be issued 60 days before a final decision, this should solicit information from Management Authorities in such a way that their views on perceived correlations can be expressed. In addition, Management Authorities in both the exporting and importing nations should ensure that those who violate the law with regard to illegal killing or illegal trade are questioned closely about their understanding of CITES' decisions and their responses should be taken into account. They should also be given the opportunity to report recent, substantial seizures of illegal shipments of ivory, particularly those involving the exporting or importing countries.

With regard to the compliance by exporting and importing countries required in condition vi) the Standing Committee should also consider the implementation of CITES in national legislation and its enforcement in all involved Parties. Importing as well as exporting countries should be required to have Category I CITES implementing legislation as assessed under the national legislation programme.

Verification of compliance in exporting countries should include on-site visits by an independent team of experts that assesses compliance with the requirements detailed in Decision 12.36 and Resolution Conf. 10.10 (Rev. CoP12) regarding control of internal ivory trade in elephant range States. Also MIKE Central Coordination Unit should put in place an on-site verification process of all mortality data received.



Regarding the related Decisions (12.34 – 12.39), whilst these are not conditions for trade in raw ivory, they are nonetheless important elements of the package of measures adopted regarding ivory trade. Substantial progress should be made on these Decisions before any ivory export is approved. In particular, it is important that substantial progress be made to improve legislative, regulatory and enforcement measures in countries with active internal ivory markets (Decisions 12.36 and 12.39) and to bring all such countries into compliance with Resolution Conf. 10.10 (Rev. CoP12).