

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

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

Interpretation and implementation of the Convention

Elephants

IVORY STOCKS IN BURUNDI

The attached document has been submitted by Burundi.

NOTE TO THE ATTENTION OF THE MEMBERS OF THE STANDING COMMITTEE OF CITES

I. INTRODUCTION

The Burundi Government is very concerned about the large ivory stockpiles that are on its territory and wishes to find, in collaboration with CITES, a final and constructive solution to this recurrent problem.

With a view to enhancing the clarity of the present note, the Government will first review the background of the problem (II) before reflecting on possible solutions (III).

II. BACKGROUND

The government finds it relevant to quote here the minutes of the meetings held by various CITES bodies.

A) Notification n°27 dated 28 June 1988, relating to ivory, states the following facts:

1. On 26 October 1987, the Secretary General and the Deputy Secretary General were received by the Burundi Ambassador to Switzerland at the request of the CITES secretariat.
2. On 5 November 1987, the Council of Minister (of Burundi) decided to ban the trade of ivory in Burundi and expressed its commitment to the protection of all endangered species and its wish to support the resolutions of all institutions involved in nature preservation.
3. The Deputy Secretary General and Mr Ian Parker, in his capacity as WWF consultant, stayed in Bujumbura from 29 March to 1 April 1988 where they met with official representatives of the Burundi Government

CITES tried to convince Burundi to join. During these negotiations, Prince Sabudin came to Burundi where he met President Bagaza; in an effort to solve the currency problem that Burundi was faced with, he suggested that a hotel be built in the Cankuzo Park; this hotel, situated in a nature reserve and destined for tourists was given the role of compensating for the loss in currency caused by the ban on the ivory trade.

Moreover, CITES had declared to the Burundi authorities that the existing stock of ivory could be sold as was the case in countries like Singapore.

CITES had already granted Burundi export certificates for the export of over 80 tonnes of ivory to Japan that same year.

It is based on these decisions and reassuring intentions that Burundi joined CITES.

4. The Burundi customs and the INCN (Institut National pour la Conservation de la Nature) drew up an inventory of all existing ivory stocks on Burundi territory. Official government figures indicate that 16,437 tusks/87,562.5 kg are owned by Gaspard Ndikumasobo, Jamal Nasser and Tariq Bashir (3 of the 4 stock owners in 1986) and were imported into the country before 5 November 1987, that is to say before the governmental ban on ivory trade entered into force.

5. On 20 June 1988, the Secretary General to the Presidency of the Republic sent a letter to the President of the Standing Committee through the CITES secretariat. This letter stated in particular that:

- _ Seals were affixed on existing stocks in order to avoid manipulations;
- _ Seized ivory was confiscated by the government, as will be the case for any new consignment;
- _ The government takes up the cause of the CITES;
- _ The President of the Republic has just officially declared that Burundi joins the CITES.

6. The notification thus concludes:

The Burundi Government's decision to ban the trade of ivory in order to stop the traffic of illegal ivory in the country is encouraging and Burundi must be congratulated for its responsible behaviour. However, given that Burundi believes it has no legal authority to seize illegal ivory stocks and that the emission of re-export certificates is impossible, it may be tempted to export ivory outside Burundi without any CITES documentation. A large quantity of the illegal ivory which passed through Burundi was exported to the United Arab Emirates, to Dubai in particular.

It should be noted that Burundi did not give in to the temptation: the ivory is still in the warehouses and, if necessary, Burundi authorities are willing to cooperate with inspections related to this matter.

B. A solution to this problem was foreseen: the minutes of the 7th session of the Conference of the parties held on 9 and 10 October 1989 read:

It must be noted that the ivory was legally imported into Burundi according to the legislation in force in the country at the time. All the traders involved held the necessary permits issued by the last Government. This explains why the present government finds itself unable to seize this ivory.

The Secretary is of the opinion that, and this was also the opinion of the United States Ambassador and of the EEC Representative in Bujumbura, such an agreement should stipulate that the ivory would be bought from the traders by the Burundi Government, at the lowest possible price (not higher than the price paid by the traders themselves), in order to ensure that they do not benefit from their activities, and that the Burundi Government would be authorised to export this ivory under the same conditions as those accepted for seized ivory.

By banning all trading of ivory on its territory, the Government of the Third Republic of Burundi rose to all the expectations of the Conference of the Parties, thus putting an end to one of the most common ways of avoiding an ivory trade inspection. Burundi joined the Convention and became a party with the same rights and duties as any other party. In addition, it accepted several conditions on the sale of seized ivory, in the form of conditions which had not been imposed on any other party to date.

Burundi now finds itself in a very difficult position, with large quantities of ivory which represent a large capital. This is why, the Secretariat strongly believes that, whatever the decision taken by the Conference of the Parties, the worst would be to maintain the

situation. Such decision would be against the interest of Burundi, the CITES and against the preservation of African elephants.

The present Burundi Government has shown much patience and facts demonstrate that, from now on, it intends to play fair within the CITES. It therefore hopes to have gained the support of all the other members of the CITES family to which it is proud to belong. Burundi completely supports all worldwide efforts in favour of endangered species, in particular the efficient and long-standing protection of the African elephant.” (end of quotation)

One can also read in the minutes of the Standing Committee dated 27/02/89 – 3/3/89:

The Chairman notes that a change of Government has come into force in Burundi and that the new Government has joined CITES and has been very cooperative.

It should be noted in the Burundi Government’s favour that the stocks were seized instead of sold before the prohibition came into force.

The Malawi representative supports this recommendation and requests that Burundi be helped and not criticised, given the commitment undertaken by the new Government as regards conservation. The Nepal representative also supports this proposal.”

So, CITES accepted that the stocks of ivory be freed up and sold. A public auction of the stock was organised in Lausanne in 1990, but no one came as the professionals of the ivory trade already knew that the legal regime concerning the African elephant would be passed in the framework of the CITES Convention, and that the elephant would go from the status of annex II to that of annex I.

The owners, who were holders of a valid export permit and based on the fact that the species in question had been transferred from annex II status to annex I status on January 18, 1990, two years after the confiscation, summoned the State of Burundi in order to sentence it to repair the damage that they suffered through the illegal confiscation of the ivory. They requested damages with interest with no other solution as the said confiscation prevented them from exploiting their merchandise.

It is necessary to note that the war which has been rife in Burundi since 1993, preceded by the bloody events in Ntega-Marangara (in the north of the country) in 1988, meant that the Government was not able to regularly or continually follow-up on this ivory file, which also explains the multiple redeployments of administrative and political personnel in a young country exposed to profound and cyclical changes.

Happily, the peace process which began with the Arusha Agreements of August 28, 2000 is coming to maturity and this means that proceedings can be started again in view of finding a definitive solution.

III. THOUGHTS

We would like to draw your attention to the following points:

1. Such a stock of ivory, worth so much, causes feelings of covetousness in a country where security remains a factor which is not yet back under control, even after the war.
2. The State of Burundi is being pursued by the private owners for the confiscation of their ivory which was carried out illegally in 1987.

Indeed, the legal basis is as mentioned, missing from point II b), c), e) of the communication of June 20, 1988 in which the CITES Secretariat carried out an update on the situation relating to the trade of ivory for Burundi.

We know that it became forbidden to sell the African elephant after the decision was voted in at the 7th session of the Conference of Parties at Lausanne in October 1989.

This decision entered into force on January 18, 1990.

The sanction adopted by the Burundi Government was not provided for at the time by any legal standard because ***the ivory was confiscated before the amendments voted for in Lausanne came into force in October 1989.***

Even if we acknowledged that the ivory was illegally exported to Burundi, which remains to be proven, the ivory was re-exported from Burundi, a couple of months previously in an entirely legal manner using CITES certificates. The goal was to sell all the ivory stocks in the country before Burundi joined the convention; furthermore, consultation of the CITES resolutions clearly illustrates that the confiscated ivory cannot stay in a warehouse forever, and the disposal of the ivory must be considered. (see Resolution 9.10)

At the time of the confiscation of the stock, Burundi had not yet joined CITES because it joined in 1988 and the stocks were confiscated in 1987.

Incidentally, the Convention (see Conf. 9.10 rev.) organises the use of specimens traded illegally, confiscated and stored. It takes into account the fact that no harm will be done to the species, harm that it would be impossible for Burundi to cause.

This International Convention can therefore not be opposable to signatories and their citizens before this date.

Private owners are therefore within their rights (and they know it) to recover the value of their ivory.

Moreover, the fact that this ivory has been frozen for many years has caused them a large loss in earnings.

The amounts that we are being asked to pay are very large and as the State of Burundi has already been condemned in proceedings where it has been found liable to pay out enormous sums to private individuals as indemnities, we would like to avoid being in such a situation again.

3. Burundi is amongst the countries in the world which respects private property and this is a right which is sacred to and protected by its Constitution. It does not wish to have to violate its own constitution by taking goods away from private owners who acquired these goods legally and in accordance with national laws and regulations.
4. Burundi is ready to collaborate with the CITES authorities and all the inspections carried out in the framework of the MIKE programme are, of course, welcome.

The Government of Burundi takes this opportunity to invite MIKE, through the CITES Secretariat to come to Burundi as soon as possible to carry out a physical qualitative and quantitative stock take *in situ* of the stock of seized ivory.

5. At past meetings, namely in Santiago in November 2003, authorisations were given to other countries to go ahead and sell their stock of ivory under supervision. Burundi's situation is indeed exceptional. The presence of ivory on Burundi territory is a historical and circumstantial phenomenon. Burundi does not produce ivory, is not at all familiar with the ivory trade (ivory no longer passes through Burundi, as Burundi strictly observes CITES' rules) and in this case the goal was to sell a large stock which will not be restored, under CITES supervision, in the spirit of resolution 11.3 of the convention. Export certificates were granted in the past for ivory in similar circumstances.

We believe that this authorisation must, on the basis of the above, also be granted to Burundi.

CONCLUSION

The Government of Burundi therefore requests permission to sell its stock in close collaboration with CITES from which it requests that ad hoc certificates be issued.

Done at Bujumbura, on January 22, 2004.

FOR THE GOVERNMENT OF THE REPUBLIC OF BURUNDI,

PROXYHOLDERS:

Gérard NGENDABANKA

General Prosecutor for the Republic

Athanase GAHUNGU

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