

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

COMMENTS FROM SPECIFIED STAKEHOLDERS ON 'DECISION-MAKING MECHANISMS AND
NECESSARY CONDITIONS FOR A FUTURE TRADE IN AFRICAN ELEPHANT IVORY'

This document has been compiled by the Secretariat in relation to agenda item 36 on *Decision-making mechanism for a process of trade in ivory*.¹

¹ The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with their authors.

BOTSWANA

1. Potential ivory trading system

General comments

All African elephant range states will continue to accumulate ivory from natural mortalities and problem animal control activities. This ivory could potentially be disposed through the CISO. It would be necessary under such circumstances to remove split-listing and place the African elephant on Appendix II with zero quotas for those who are unsuitable to trade in ivory or do not wish to trade in ivory.

The structure and location of the “Central Ivory Selling Organisation” must be agreed by range states that intend to participate in such an arrangement.

We agree that ivory must be sold from a single source directly to ivory carvers in processing countries. Exports must be sealed by CISO and unsealed by management authorities of consuming countries.

Raw ivory must not be sold on by the ivory carvers.

Elephants must not be killed with the specific intention of providing ivory to the CISO. Ivory so disposed must come from government stocks (legal) which include natural mortalities, problem animal control, cropping and culling.

Ivory from trophy hunting is deemed personal property and cannot find its way into the CISO.

Pg 61 No intra-African trade in raw ivory

This is too prescriptive. This may be advisable while systems are not in place to ensure leakage or entry of illegal ivory but in future it may become possible for one range state with a well developed ivory carving industry to purchase raw ivory from another if own supplies are not sufficient to meet requirements of its industry. Such a country would have to be certified by the CISO.

Pg 62 Exporting range states

(d) Concur that revenues accrued must primarily be used for elephant conservation and management and community development especially within the elephant range however, such revenues accrued from sales of ivory would still need to be managed and a trust fund under the auspices of the government structures of the concerned country remains the best way to monitor utilisation of disbursed funds.

Point (6.1.3 (d)) suffix would defeat the criteria used for using government owned stockpiles. Hence the above argument.

Pg 63 Ivory sales

Concur that CISO must set prices for each parcel of ivory to avoid collusion by buyers to drive down prices which may happen during auctions.

Point 6.1.5(c) would prefer that “parcel” will be created from ivory from one country and preferably batch coded to facilitate traceability on the finished product on which manufactures will be required to reference to, in addition to their own manufacture item numbers.

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Structure of the CISO

Criteria for admission of countries would be agreed to by the Conference of Parties. It would then be sufficient for countries on Appendix II to have their applications to become suppliers to the CISO approved by the CISO and not referred to the CITES Secretariat. A notification of approval by the CISO to the CITES Secretariat will be sufficient. The CITES Secretariat will, however, need to approve the annual quotas.

Supplying countries must have the capacity to sort own ivory and be able to price it accordingly to ensure that revenues generated by CISO are in fact fair market price.

Parcels should only comprise ivory from a single supplier range state to avoid complications in determining how to divide money earned from each parcel.

It may also be important to propose that for the purposes of transparency and accountability, the composition of members of the CISO be such as would be seconded by countries that could demonstrate heterogeneous approach to elephant conservation issues and have been admitted by the Conference of Parties. The Chair of the Standing Committee and Law Enforcement official of the Secretariat must become ex – officio members of the Board of Directors.

2. Decision making mechanism

The hierarchical decision making mechanisms recommended by the consultants are key to ensure buy-in particularly by those who live side by side with elephants.

Joint management frameworks for shared elephant populations are important and the existence of the SADC Regional Elephant Management Strategy demonstrates commitment by Southern African elephant range states to jointly manage such populations. We are, however, concerned that a decision making mechanism should not be solely reliant on detailed operational management plans developed for each shared population through the management strategy evaluation framework as such plans could potentially take very long to develop and implement especially where it involves different countries with their own sovereign imperatives and differing CITES listings. Provided that countries are able to demonstrate that their populations are growing or stable and that country management plans are being implemented, this should suffice for those countries to apply to the CISO for supplier status.

MIKE is an important monitoring tool to assist range states in the conservation and management of their elephants. It is, however, critical that the functioning of an ivory trade system should not be linked to the continued existence of MIKE as a formal programme particularly in light of the uncertainty about funding for MIKE in future. It is also clear from comments made by the opponents of a legal trade that they do not believe that MIKE will ever show a link between ivory sales and illegal killing and that efforts may be made to undermine MIKE as a programme.

CENTRAL AFRICAN REPUBLIC

From: Mamang Jean-Baptiste <jeanbaptistemamang@yahoo.fr>
To: tom.de-meulenaer@cites.org, elena.kwitsinskaia@cites.org, john.scanlon@cites.org
Date: 29.08.2012 18:50
Subject: Decision-making mechanism

Dear Mr De Meulenaer,

After reviewing the study on the “*decision-making mechanism for a process of trade in ivory*”, document SC62 Doc. 46.4, Annex, I would like to express my profound disappointment with it on behalf of my country. The study is obviously in favour of authorizing ivory trade. On a number of points, it also presents poor arguments and proposals that are impossible to implement in practice without resulting in serious consequences regarding the poaching crisis in our countries. This seems inapplicable and unacceptable to us. Furthermore, we consider that the system recommended in the proposals made by the consultant is a mechanism to regulate trade rather than a decision-making mechanism on trade, which does not correspond to the mandate set out in Decision 14.77.

We also note that the study assumes that it is possible to establish a trade in ivory “*that minimises corrupt practices and the laundering of illegal ivory by creating conditions that are advantageous for a legal trade*” and that introducing such conditions will be enough to reduce the illegal killing of elephants (Subsidiary assumptions and principles, page 3 of document SC62 Doc 46,4 annex). This seems to indicate that this study does not consider the applicability of its proposals and should therefore be entirely rejected. Indeed, we consider that it would be impossible for any cartel to control all supply and demand of ivory in Africa. The study does not provide any explanation on this; yet, if the cartel does not totally control supply and prices, it will not be possible to guarantee that illegal ivory will not be smuggled into the market at lower prices than the ivory sold in the framework of the proposed system. We believe that it will be impossible to control supply, given that elephants occur in 37 range States in Africa and that, in many cases, such States do not have the capacity to control poaching and illegal trade in ivory. Consequently, legal trade will allow the laundering of illegal ivory to go unchecked. We consider that the only way to reduce the illegal killing of elephants would be to decrease both demand and the availability of ivory in consumer States, an issue that is totally ignored in the document submitted.

Another of the aspects of this study that is most concerning to our country is that the proposed mechanism does not include a role for non-trading range States like ours. We consider the argument presented on page 35 to justify this voluntary exclusion of our countries particularly shocking:

One of the concerns raised is that a legal trade through the CISO for countries listed on Appendix II will have no beneficial effect for the remaining countries listed on Appendix I and that the present illegal trade will continue as before. We observe that the present Appendix II countries have more than 50% of the Africa's elephants so that, if the legal trade achieves its objectives, at a minimum it will benefit half of the elephants in Africa. If Tanzania (which proposed the transfer of its elephant population to Appendix II at CoP13, CoP14 and CoP15), Zambia (which proposed the transfer of its elephant population to Appendix II at CoP12), Malawi (which holds a reservation against the Appendix I listing of its population) and Mozambique (which is involved in transfrontier conservation areas with South Africa and Zimbabwe) were able to achieve the criteria for selling ivory via the CISO, more than 75% of Africa's elephants would be included in the new system. This could approach the tipping point where the legal trade might gain control of the illegal market and would place peer pressure on those countries holding the remaining 25% of Africa's elephants.

Based on this statement and the reasoning followed in the rest of the study, it seems that the authors of the document see the transfer of elephant populations to Appendix II as a goal and that the proposed system is aimed at “encouraging” range States like ours, whose elephant populations are listed on Appendix I, to transfer them to Appendix II despite the crisis elephants are currently facing in our sub-region due to the recent and intense resurgence of poaching. Although the study encourages us to transfer our elephant populations to Appendix II, it does not include any recognition or analysis of the potential impact of such transfers on poaching and illegal trade in countries like ours, which seek to prevent ivory trade. Therefore, this proposal seems to be aimed at creating a process that will exert pressure on countries that are against ivory trade in order to encourage them to transfer their populations to Appendix II regardless of the state of such populations rather than creating a decision-making mechanism on trade in ivory. In our opinion, a decision-making mechanism should define precautionary conditions that should be set to ensure that, if trade were to be permitted, it would not have a detrimental effect on elephant populations. Therefore, the study does not meet the terms of reference and is even contrary to them, since they specifically state that “*the*

study is not to determine whether there should or should not be international trade in ivory.”

Moreover, we note that, although Decision 14.77 calls for the creation of a decision-making mechanism “*under the auspices of the Conference of the Parties*”, the authors of the submitted document do not include a role for the Conference of the Parties other than that of delegating decisions to an independent cartel, which we consider unacceptable.

To conclude, I kindly ask the Standing Committee not to use document SC62 Doc 46,4 Annex as a basis for further discussions on the decision-making mechanism for a process of trade in ivory for the reasons explained above. We consider that it is necessary to prolong Decision 14.77 until CoP17 and clarify it to ensure that the decision-making mechanism that will be developed meets the expectations of CITES Parties. We also believe that it is important to clarify in the revised version of Decision 14.77 that consultations on this issue should be fully conducted in English and French.

It is unfortunate that the document on which the study is based (SC62 Inf.2) was not available in French when the consultations were made. The absence of a translation directly excluded us from the consultation process that we were entitled to. It seems to me that this breach is an additional violation of the terms of reference regarding the consultation of African and Asian elephant range States. We consider that our exclusion from the initial consultation process contributed to the production of a study that does not meet the terms of reference provided to the consultant; if we had had the chance before the study was completed, we would have been able to guide the consultant before submitting his work to the Standing Committee. In the current state of affairs, the resulting document does not satisfactorily implement Decision 14.77.

On behalf of my country, concerned about the impact that the proposals submitted in this study might have on the most vulnerable populations of our Asian and African elephants, I kindly ask you to give due consideration to this letter. Please also make the full extent of my remarks available when submitting the revised document to CoP16.

Sincerely,

Jean-Baptiste Mamang-Kanga
CITES Management Authority of the Central African Republic

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CHINA

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31 August 2012

Mr. John Scalon
Secretary General
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RE: COMMENTS ON DECISION-MAKING MECHANISM

Dear Mr. John Scalon,

In response to the recommendation adopted at the SC62 about the decision making mechanism on future authorizing the trade in ivory, we would like to make the following comments,

1. Sustainable use of biodiversity has been recognized by Resolution Conf. 13.2 (Rev. CoP14) and all Parties should follow the Addis Ababa Principles and Guidelines.
2. The current wild population of African elephant could sustain a regular international trade in legally obtained and/or confiscated ivory and meet the Asian demand by supplying 200 tons raw ivory every year.
3. Majority of wild African elephants are distributing in Southern and Eastern African countries, and these countries should benefit from their sound conservation program by allowing their international trade in ivory.
4. In principle, we support the outcomes of the study contained in Annex of SC62 Doc. 46.4.
5. Whether establishing a CISO should follow the advices of the African elephant range states with the Appendix II population.
6. We agree with the proposal that only the officially designated ivory manufacturers can directly buy the tusks from CISO, but oppose the proposal that the imported elephant tusks are not allowed for transacting among the officially designated ivory manufacturers because it will increase the costs of the small sized ivory manufacturers for buying the tusks from CISO and block the normal trade among the officially designated ivory manufacturers.

Thank you very much for your consideration of our comments in advance.

Best regards,

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CÔTE D'IVOIRE

Dear Mr De Meulenaer,

After carefully reading the study on the “*decision-making mechanism for a process of trade in ivory*”, document SC62 DOC 46,4 Annex, I would like to share with you the concerns of Côte d'Ivoire, which does not approve of the approach used by the consultant to implement Decision 14.77. The proposals put forward are not appropriate since the consultant did not follow the Terms of Reference.

First of all, Côte d'Ivoire is surprised to note that the study submitted by the consultant attempts to discontinue the role of the CoP in the decision-making on and supervision of the process of trade in ivory, beyond the delegation of decisions to an independent cartel. However, Decision 14.77 calls for the creation of a decision-making mechanism “under the auspices of the Conference of the Parties”. We consider that the proposal that all further decisions be made by the Central Ivory Selling Organisation (CISO) without the supervision or direct involvement of the CoP is unacceptable and directly violates Decision 14.77.

I am also surprised to note that the proposed process does not include a role for non-trading range States and does not provide any information on the impact of the proposed system on States that are against ivory trade, such as Côte d'Ivoire. We expected the study conducted under Decision 14.77 to propose a transparent decision-making mechanism with a shared role for all elephant range States, based on control by the Conference of the Parties to CITES, which, in addition, is the role of CITES.

In their proposals, the consultants seem to assume that income from ivory sales alone will be enough to manage elephants and solve the problem of illegal trade. This assumption is only valid for countries that wish to sell their ivory and have large elephant populations. For range States that are against resuming ivory trade and only have small elephant populations, in particular West African States, implementing the proposed measures will only intensify the problem of illegal trade. The proposed study completely ignores this aspect. It is unfortunate that the consultant chose to simplify the difficult situation currently faced by our States regarding the elephant poaching crisis and the explosion of illegal trade. For example, the consultant states “that the failure to protect and conserve elephants in many countries in Africa is not primarily because other countries have traded in ivory but because they have not invested sufficiently in protecting their elephants and have not provided incentives for their conservation” (page 3). This statement clearly indicates that the consultant is not aware of our situations and that he misunderstood the task he was given to implement Decision 14.77. The study was supposed to lead to proposals on the definition of parameters based on the precautionary principle that could be used to determine under which conditions trade could possibly resume. The consultant seems to have understood that he had to take a stand in favour of the resumption of trade and formulate proposals on the control of such trade. The product that results from this approach appears to ignore the Terms of Reference.

Finally, the proposed system contains several serious flaws that could lead to many abuses. Section 6.1.4 on raw ivory buyers particularly illustrates this point. If, as proposed, only points c to g justify removal of buyer status, the fact of not owning “*a carving (or ivory processing) industry*” (point b) would not be a reason to remove buyer status. In other words, this would amount to accepting the possibility that a buyer could cease his/her ivory carving activities and start to import ivory in order to accumulate ivory stocks, for example, without losing buyer status.

My country has many other concerns regarding the formulated recommendations and, given that we were not able to provide our comments to the consultant earlier due to translation problems, we shall limit ourselves here to recommending that the document be totally rejected, as it does not implement Decision 14.77. We will participate in the discussions on this issue at CoP16 in order to ensure that this Decision is clarified to refocus the development of the decision-making mechanism on the aspects that justified its adoption during the negotiations held on elephants at CoP14. The idea is not to develop a system to control trade, which seems to have been the guiding principle of the present study. It is necessary to focus on the impact of the potential resumption of trade on elephant populations – a key aspect of defining the criteria of the decision-making mechanism.

We must strive to protect elephants from the risk of very rapid extinction. The purpose of the development of a decision-making mechanism is not to serve the interests of ivory trade or to promote the resumption of such trade, as was explicitly stated in the Terms of Reference.

Côte d'Ivoire kindly asks you to make these remarks public and will be looking forward to participating in the debates on the revision of Decision 14.77 at CoP16.

Sincerely,

Elvire Joëlle ZOUZOU MAILLY

JAPAN

1. Japan has an objection to adopt the draft final report on the decision-making mechanism for authorizing ivory trade for the basis of discussion and to submit at the 16th meeting of the Conference of the Parties for the following reasons;
 - The Study does not meet the requirements of necessary basic studies for our consideration on sustainable ivory trade. Specifically, the study on an estimate of the volume of ivory stockpiles in Africa; a forecast of the numbers of the habitation of African elephant; the demand forecast on ivory in consumer countries and the influence of ivory trade upon elephant conversation; and community conservation and development program are insufficient or have not yet carried out in this study.
 - According to the draft final report on page 19 of English, it is described that “Examination of the returns from the one-off sales of ivory in 1999 and 2008 lead to the conclusion that the range states lost between 66-75% of the value that might have been expected under normal trading conditions.” However this is contrary to Japan’s experiences of participating in all one-off sales of ivory. Japan recognize that the price of one-off sales of ivory was nearly equal in 1999 and 50% increased in 2008.
 - Upon considering the development of the Decision-Making Mechanism for authorizing ivory trade, Japan considers that a comprehensive study of ivory trade should have to be carried out. Therefore the study on Appendix II as well as study on down-listing elephant populations from Appendix I to Appendix II should need to be done.
 - Japan believes that the draft final report depends heavily on the trade of high-value commodities among required issues from the TOR and then applied a trading mechanism of diamond business to ivory trade without having sought a satisfactory explanation of its reasons. This assumption for the study would not be appropriate.
 2. Japan would like to add following comments to the presentation and Q&A session held during the SC62;
 - The Consultancy Group of this study did not provide any specific answers notwithstanding various comments made by Parties that the draft study did not meet the terms of reference under Decision 14.77.
 - The Consultancy Group of this study did not provide any comments to Japan’s question regarding the one-off sales of ivory mentioned above.
 - There was no reasonable explanation of the linkage between the goal of sustainable ivory trade and the establishment of the CISO as a necessary organization to achieve that goal.
- For these reasons, Japan affirms that data and evidence provided by this draft final report lacks credibility.
3. Finally, Japan would like to suggest that members of the Standing Committee reconsider the Decision 14.77 which seek approval of a decision-making mechanism for a process of trade in ivory at the CoP16 and postpone the deadline to reach conclusions on this from CoP16 onward. With regard to the future discussion and process of a Decision-Making Mechanism, Japan believes that the members of Standing Committee should initially discuss about this through establishing the working group before leaving whole deliberation to the consultant, based on the lessons and reflections from this case.

KENYA

Response from Kenya concerning the study on Decision-Making Mechanism process for future trade in African elephant ivory

1. Kenya believes that SC62 Doc 46.4 Annex does not meet the objects envisaged in Decision 14.77. The document does not provide the Parties with ‘a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties’. It instead provides details of a ivory trading mechanism and to some extent, a marketing mechanism under control of a form of a cartel; the so called Central Ivory Selling Organisation (CISO), outside the direct management of the Conference of the Parties contrary to what Decision 14.77 envisages. “Under the auspices of” clearly implies that there is direct regulatory control by the CoP over any approved trade. It appears that the consultants did not understand this terminology, and have instead recommended the exact opposite; a mechanism under which the CoP would devolve decision-making to the marketing cartel; the Central Ivory Selling Organisation (CISO).

Unfortunately this has rendered the vast majority of this document meaningless and not fit for purpose. Kenya believes that the Decision-Making Mechanism process is about conditions under which ivory trade could occur or at least would not threaten elephants.

Kenya therefore strongly recommends that the entire document be rejected and that Decision 14.77 be amended to include an extended deadline for the Standing Committee beyond CoP17, in order that the Standing Committee can have adequate time to consider and approve a more appropriate way to move this process forward, and prepare a draft document that is compliant with the requirements of Decision 14.77.

2. It should be appreciated that, Elephant conservation efforts connected with CITES have moved towards consensus, cooperation and mutual respect among the range States. They have also moved towards the understanding that, within Africa, only a continent-wide solution can be acceptable. The development of the African Elephant Action Plan (AEAP) is a testament to this approach. However, SC62 Doc 46.4 Annex is divisive as it does not include a role for non-trading range States, nor does it respect the possible impact of trade on elephant populations in non-trading range States.

For example, on p. 3 of SC62 Doc 46.4 Annex, the authors state that one of the “main subsidiary assumptions and principles” that they have applied to the study is that: “*the failure to protect and conserve elephants in many countries in Africa is not primarily because other countries have traded in ivory but because they have not invested sufficiently in protecting their elephants and have not provided incentives for their conservation.*” Not only is this a highly questionable statement, it is an offensive one to many range States, as it judges that they have not invested in elephant protection (without any consideration of their ability to make such an investment within the context of their national economic situation) and that this has contributed to the current poaching crisis.

This is compounded by the authors’ statement on p. v, that: “*Most countries in Africa appear to be unable (or unwilling) to meet the high costs required to fully protect their elephants*”. It is absolutely unacceptable for the authors to presume that any range State has been ‘unwilling’ to protect their elephants, when clearly, as evidenced by the development of the African Elephant Action Plan, this is not the case. It is also an insult to the many dedicated rangers throughout Africa who have given their lives to protect elephants.

Similarly, on p. 22 the authors state that “*When member states attempt seriously to implement CITES decisions, as China did in banning domestic trade in tiger parts, they can contribute positively to the conservation of endangered species within and beyond their borders.*” Kenya believes the implication here, again, is that range States outside those that have had one –off ivory sales have not made a serious attempt to implement CITES and protect their elephants. The authors, however, fail to recognize the success of CITES implementation lies in cooperation of the member States and no single country can succeed in this endeavour without this cooperation even after committing whatever resources necessary to do so. It also does not recognise the development of the African Elephant Action Plan, which clearly indicates that ALL range States are committed to elephant conservation. This is, therefore, further evidence of the biased attitudes of the authors of the study.

All of the above provide clear evidence as to why this study cannot provide a basis for further discussion of this issue.

3. The impracticality of implementing what the authors are proposing indicates again why this study document cannot be considered. The authors seem to assume that most, or all, necessary actions to protect elephants on the ground can and will be taken by local landholders. This fails to recognise that while in some countries, especially in Southern Africa region, private ownership of wildlife is permitted, this is not the case in many other countries. The proposed system in this study document would require that profits received from the trade (excluding, presumably, profits to middlemen and administrative costs of operating the cartel) go directly to such landholders in order to, in their view, incentivise sustainable management, with none going to range State wildlife or law enforcement authorities for anti-poaching and other activities.

Apart from a failure to understand wildlife ownership issues across much of Africa, such an assumption entirely fails to recognize that many of the problems facing African elephants in many parts of their range cannot be dealt with at this level, because the scale of poaching operations in these areas and the quantity and sophistication of armaments that poachers have at their disposal would overwhelm any local attempts to keep them in check. Nationally coordinated and resourced operations are required; in many countries the costs involved, including second-order administrative costs, increased customs surveillance, training, equipment costs, legal costs of prosecutions, etc. may greatly exceed any possible return from a legal trade based on “found” or recovered ivory.

Furthermore, setting local landholders against organized criminal elements is not a realistic option. Assuming that local landholders, without help from central governments, could have dealt with problems on the scale the army of poachers that invaded Cameroon in February 2012, or the poacher gangs that murdered workers in the Okapi Reserve in the Democratic Republic of Congo a few months later, is entirely unrealistic. The proposed trade mechanism offers little or nothing that will deal with problems of this kind.

4. The authors of the study assume that once the CISO mechanism is established, all range States will either want to downlist their elephant populations to Appendix II, join the CISO, and begin trading in ivory (as range States not wishing to trade in ivory are excluded from cartel membership), or that they can be pressured into doing so. In fact the authors admit that it will be necessary for most range States to join the cartel if it is to have any effect on illegal trade. On p. 33 they state:

“One of the concerns raised is that a legal trade through the CISO for countries listed on Appendix II will have no beneficial effect for the remaining countries listed on Appendix I and the present illegal trade will continue as before. We observe that the present Appendix II countries have more than 50% of the Africa’s elephants so that, if the legal trade achieves its objectives, at a minimum it will benefit half of the elephants in Africa. If Tanzania... Zambia... Malawi... and Mozambique... were able to achieve the criteria for selling ivory through the CISO, more than 75% of Africa’s elephants would be included in the new system. This could approach the tipping point where the legal trade might gain control of the illegal market and would place peer pressure on those countries holding the remaining 25 % of Africa’s elephants. There may also be greater resources available from their peers to assist them to do so.”

It appears clear that the intent of the authors is, therefore, to strengthen the case for transfers to Appendix II and to force other range States to seek similar transfers. The mechanism they propose will not, by their own admission, work to control illegal trade otherwise. However, there is no benefit for many range States with small populations to take such actions, and many of these States are convinced that further transfers to Appendix II would be deleterious to the conservation of their own elephants. Again, the authors fail to recognise this and the end result of their proposal would most likely be the extinction of elephants in numerous range States with small elephant populations.

5. The authors make a number of assumptions which are not backed up by evidence. However, without evidence to support these assumptions, SC62 Doc 46.4 Annex simply cannot be considered by the Conference of the Parties. For example, the assumption: *“That effective monitoring and management of elephant populations and ivory can be maintained in countries trading in ivory”*.

Given alarming levels of poaching reported in SC62 Doc 46.1, and PIKE levels now above 0.5 in all four African sub-regions, alongside reports of possibly ivory being stolen from Government strong-rooms in some range States, it seems clear that potential trading States have not demonstrated that they have sufficient controls in place and sufficient resources to manage and monitor their elephants and ivory stockpiles.

6. In conclusion, as we have stated, the study does not address criteria required by Decision 14.77. The authors have populated their submission with unsubstantiated evidence, unrealistic assumptions and an

unacceptable level of subjectivity. Kenya therefore strongly reaffirms its recommendation that the entire document be rejected and that Decision 14.77 be amended to include an extended deadline for the Standing Committee beyond CoP17. The Standing Committee can then have adequate time to consider and approve a more appropriate way to move this process forward including, should further work be commissioned, a revised tendering process, and preparation of a draft document that is compliant with the requirements of Decision 14.77, for the Parties to consider.

LIBERIA



REPUBLIC OF LIBERIA
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Department of Conservation

August 27, 2012

Dear CITES Secretariat:

Thank you for your email and for the opportunity provided by the CITES Standing Committee to submit further comments regarding the draft study on the decision marking mechanism.

We understand that numerous concern about this report were raised at the recent CITES Standing Committee Meeting, including concerns about the document not meeting the Term of Reference of the, and the fact that the study presents a marking regime rather than a decision making mechanism Liberia shares these concerns.

Liberia is also very concerned that the proposed mechanism excludes a role for non-trading elephant range States. As it stands the decision-making process would be devolved away from the CoP and the non-trading elephant range States, and would instead be managed by a CISO, dominated by trading States.

Liberia recommends that Dr. Martin's report not to be further considered by the parties as they move forward with implementation of decision 14.77 we believe that this process is so important that it is vital for the parties to have information provided to them that is suitable, and that is compliant with the items of the decision.

Liberia therefore recommends that further time is required for the standing Committee to develop a more appropriate decision-making mechanism which can then be submitted to the conference of parties. We believe that the decision 14.77 should be amended accordingly, in order to extend the deadline to CoP 17 or beyond.

Kind regards.

MALI

From: Bourama niagate <niagate@yahoo.fr>
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Date: 30.08.2012 01:05

Subject: COMMENTS FROM MALI ON THE DOCUMENT ENTITLED "DECISION-MAKING MECHANISMS AND NECESSARY CONDITIONS FOR A FUTURE TRADE IN AFRICAN ELEPHANT IVORY"

Hello my dear friend Tom,

After reading and analyzing the document, there are several points that I would like to raise on behalf of my country, a Party to CITES.

Firstly, Mali wishes to sincerely thank the Standing Committee for granting us this opportunity to provide comments on the document produced by Dr Rowan Martin entitled "***Decision-making mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory***".

My country welcomes the fact that this document is finally available in French and requests the Secretariat to confirm that any future developments on this issue will be submitted in both French and English so that all participants can fully contribute to the discussions. This will greatly facilitate our deliberations, which often remain sterile for language reasons.

Regarding the document itself, Mali wishes to make the following relevant remarks:

- 1) The study does not take into account the current poaching crisis and could give the wrong impression to the international community. As a range State of one of the northernmost elephant populations, Mali is concerned that the international community (and particularly the criminals involved in illegal wildlife trade) may interpret the deliberations on the decision-making mechanism as an indication that the resumption of ivory trade is being discussed or has already been approved. This could lead to an increase in poaching and illegal trade. Although it is true that a decision on the decision-making mechanism does not mean in itself that trade is approved, Mali would like to know which measures will be taken by the Standing Committee before the decision-making mechanism is discussed at the CoP to prevent an intensification of poaching. Mali notes that the authors of the document themselves do not include any reference to this highly important concern in their document.
- 2) The study presented does not seem to propose a decision-making mechanism on trade in ivory but rather a mechanism for the functioning of trade once it has resumed. In the current state of affairs, this is not satisfactory because it is totally uncertain whether trade will resume or not.

Having said this, it is not for the consultant to take a stand as he has in favour or resuming trade and formulate proposals on the functioning of trade. The consultant seems to have misunderstood his task. Therefore, the resulting document cannot be used to implement Decision 14.77.

- 3) In view of the situation, we feel that the proposals made by the consultant in the study are totally unsatisfactory given that they completely ignore the importance of the role of the CoP (even though it was decided at CoP14 that any mechanism should operate under the auspices of the CoP), the importance of the control of illegal trade in all elephant range States (and not only in States that wish to trade in ivory), the importance of controlling demand for ivory in consumer States, the importance of the experience and the role of all range States (and not only of those wishing to trade in ivory). We consider that, by ignoring these aspects, the consultant did not meet the Terms of Reference.
- 4) We also consider that the proposed mechanism weakens the African Elephant Action Plan. For example, the proposed mechanism does nothing to ensure that **poaching and illegal trade in ivory** will not continue to increase when the proposals submitted are implemented, despite the fact that the most **important and desired** objective in the Action Plan – the priority objective for all range States – is precisely to "**Reduce illegal killing of elephants and illegal trade in elephant products**" (Objective 1 of the Action Plan).

Moreover, the fact of excluding States that do not wish to trade in ivory from the proposed mechanism ignores Guiding Principle No. 8 of the African Elephant Action Plan, which underlines the importance of

presenting the international donor community with a mechanism for channelling available funds into elephant conservation through a process “which has been developed, owned, approved and managed by all the African elephant range States”.

To conclude, we consider that the consultant has misunderstood his role, chosen the wrong approach and produced a study that does not implement Decision 14.77. It will therefore be necessary to take this situation into account during CoP16 to reactivate the process of developing the decision-making mechanism.

The proposed study has missed the point of what the range States wished to obtain by deciding to develop a decision-making mechanism.

Dear friend and colleague, I am open to any response from you and thank you for your courage. Please take these comments from Mali into account.

Bourama NIAGATE
Coordinator of the Gourma MIKE Site/Mali

NAMIBIA

Comments on the ivory trade mechanism - Namibia

Namibia envisages an ivory trading mechanism which is not cumbersome but efficient and effective to provide quick feedback in support of law enforcement. Generally, we support the arguments and most of the principles contained in the report. The report however should be checked for inaccurate references, such as 2008 ivory sale, Malawi being one of the countries which sold ivory, amongst others.

We fully agree that revenue accrued from ivory sales should be used exclusively for elephant conservation and community development. To avoid collusion by buyers, we also agree that auctions of ivory should be avoided, when and where possible, and have fixed prices instead. These prices should be determined by the selling countries.

Namibia also concurs that raw ivory in processing countries should be sold from single central points to carvers and carvers should not sell raw ivory, as we believe this will facilitate law enforcement.

Namibia has the following observations to make regarding the CISO:

- It will compromise on the sovereignty of producer countries
- Funds needed to sustain the CISO will divert much needed funds from elephant conservation and community development programmes
- Composition of the board will be a challenge, as well as the location of the CISO head quarters
- It is not very clear in the report who will own this semi-autonomous body

In addition to the comments above, Namibia strongly feels that the mechanism should have various trade options and not just one. It is our view that the trade mechanism should focus on the prerequisites for a country to qualify to sell ivory without necessarily having to seeking for permission from the CoP. Most, if not all of those prerequisites are contained in the report, such as management plans, viable population, paper trails for all ivory items, to name but a few. However, we would like to see these prerequisites as the core of the trade mechanism.

NIGERIA

Draft Comments Concerning SC62 Doc 46.4 Annex (*Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory*).

Comment 1: Regarding the Introduction (p 1 – 3)

The authors describe several different assumptions they have made in support of the decision-making mechanism laid out in the document. Whilst, of course, it is essential to be clear about the nature of any assumptions that are made in a report of this kind, the assumptions made by the authors are too broad and their implications too important and far-reaching to be made without significant evidence with which to back them up. Indeed, several of the assumptions raise questions which need answering before any kind of decision-making mechanism can be approved.

For example, the authors make the assumption: *“That it is possible to establish a trade in ivory that minimises corrupt practices and the laundering of illegal ivory. By creating conditions that are advantageous for a legal trade, ultimately the illegal killing of elephants will be reduced.”*

Such a statement is hypothetical and must be properly analysed in detail, recalling that prior to the 1989 international ivory ban there was a legal trade in ivory, supposedly regulated by a quota system, which neither minimised the laundering of illegal ivory nor the illegal killing of elephants.

It must surely be impossible for any ivory cartel (as is being proposed in this study) to be in full control of all supply and demand of ivory. Therefore, it is highly likely that legalised trade may enable laundering and thereby in fact enhance illegal ivory trade. The best way to reduce illegal killing is to reduce demand for the product. And yet, the decision-making mechanism being proposed pays no attention whatsoever to the demand side of the equation and may, in fact, increase demand, having the opposite effect to the assumption being made by the authors. It seems strange therefore, that the authors have apparently failed to analyse Chinese demand (and demand in other consumer states), and specifically how the Central Ivory Selling Organisation (CISO), the marketing cartel being proposed by the authors, would have an impact on overall demand, and thereby what impact it would have on illegal trade and killing of elephants. For this reason alone, the study presented in SC62 Doc 46.4 (Annex) should be rejected in its entirety.

Comment 2: Regarding Chapter 3, pages 9 – 15 (Evaluation of Trade Regimes in High Value Products)

The cartel (modelled on the controversial De Beers diamond cartel) being presented by the authors is not an appropriate model for trade in ivory. The authors have failed to recognise that the De Beers system has not successfully controlled the supply of diamonds and prevented illegal trade. As V.S. Barmecha points out in a study repeatedly cited by the authors: p. 3: *“The interest and welfare of African countries has hardly been addressed by De Beers.”*

The result has been the collapse of the system, as Barmecha points out on pp. 24-25: *“With new discoveries of diamond mines across the world, political anti-trust regulators lobbying against De Beers’ and gradual termination of mining contracts by government backed regulations, resulted in a cataclysmic effect on the De Beers’ Cartel arrangement. As a result, in recent times the numbers of independent sources of rough diamonds have tripled and the business has progressed to a demand-driven one.”*

It is highly likely that the same thing would happen, even more drastically, if this system were applied to ivory, where the control of supply is far more difficult. The proposed Central Ivory Selling Organisation being proposed by the authors is therefore using a highly inappropriate model and should be rejected.

Comment 3: Regarding Chapter 5, pages 18 – 26 (Principles and a Decision-Making Mechanism for a Future Trade in Ivory)

Clause c) of the Terms of Reference for this study, directed the authors to fully take into account how a decision-making mechanism could operate taking into consideration the provisions of the African Elephant Action Plan.

Given the above direction to the authors, and as a country that participated fully in the development of the African Elephant Action Plan, and which sits on the African Elephant Fund Steering Committee, it is both surprising and disappointing to see that the authors have failed to properly and fully incorporate the provisions of the AEAP into their study. The African Elephant Action Plan (AEAP) has been agreed by consensus among

all African elephant range States, and for a Decision-Making Mechanism to be acceptable to the Parties, it must be consistent with its goals and capable of contributing to its implementation and success.

Given that the authors state (p. 18) that: *“Our analysis of CITES decisions suggests that the existing mechanism does not work very well largely because it relies on member states and their people to implement decisions in which they may not have been directly involved or may not have bought into, or both”*, it is strange that the AEAP, which is a consensus document, is not the main basis for the authors’ development of a proposed decision-making mechanism, rather than what has actually been presented in SC62 Doc. 46.4 Annex, where the AEAP is something ancillary to the main process.

Central to the AEAP is the need for capacity-building in the range States. Any plan to generate revenue from sales of ivory should include provisions for contributing to the African Elephant Fund or otherwise aiding in the successful implementation of the Plan. However, the authors make no direct provision for this. Indeed, admission to the cartel requires that the AEAP is already being implemented in those range States proposing to trade, and there are no provisions for the supply of revenue to assist non-trading range States in the implementation of the AEAP.

Furthermore, the closed structure and restricted membership of the proposed CISO is contrary to Guiding Principle 8 of the AEAP, which is to provide *“a mechanism for channelling available funds into elephant conservation through a process which has been developed, owned, approved and managed by all the African elephant range States”*.

The authors state (p.7) that *“the feedback loops between what is happening in the field and the Convention’s decision-making and subsequent action on the part of member states are lengthy and delayed”*, but fail to realize that overcoming this problem is one of the central goals of the AEAP, and a principal reason why the Plan must be central to any decision-making mechanism. Their failure to recognize this is another reason why the study and report are not suitable as a basis for further discussions of the decision-making mechanism.

Comment 4: Concluding Comment

For the reasons highlighted above, in addition to the fact that SC62 Doc 46.4 (Annex) clearly does not meet the terms of Decision 14.77, nor the Terms of Reference of the Study approved by the Standing Committee, this document should be rejected. Instead, the deadline of Decision 14.77 must be extended to CoP17 or beyond, in order to enable the Standing Committee to develop a more suitable decision-making mechanism for consideration by the Conference of the Parties.

SIERRA LEONE

Dear Elena,

Sierra Leone appreciates being given the opportunity to comment on the important issue of the Decision-Making Mechanism. Although our comments have been submitted slightly late we trust that they will be taken into consideration by the Secretariat as they move forward with the process approved at SC62.

Sierra Leone is particularly concerned that the Standing Committee will not be able to approve the Decision-Making Mechanism document in advance of it being submitted to CoP16, even though it will receive the approval of the Chair of SC. We note that this process is in violation of Decision 14.77 (which states that the Standing Committee will submit the DMM to the CoP). We believe that, for such a vital issue which has taken 5 years so far to get to this point, this is not an appropriate process. For this reason alone, we believe that Decision 14.77 must be amended at CoP16 to extend the deadline available to the Standing Committee for submission of the document to CoP17 or CoP18.

With regard to the substance of the document presented in SC62 Doc 46.4 (Annex), we would like to make the following comments:

- There is not enough focus on the need for implementation of the African Elephant Action Plan. We believe that the implementation of the Action Plan is essential before any trade can be allowed;
- We are concerned that there is almost no focus on the impact of any approved trade on the non-trading range States, nor is there a clear role being proposed for the non-trading range States in the decision-making process;
- There is no mention at all of the impact of the DMM on Asian elephant populations, despite the Asian elephant being more endangered than its African cousin;
- The document seems to assume that certain range States are not willing to implement elephant conservation strategies in their countries, and that somehow this has led to the poaching situation we see today. This assumption is entirely inaccurate and the authors provide no evidence for its justification. It must be removed from the document.
- We are very unclear about how the CISO would control demand. This requires elucidation. If it cannot control demand (which surely it cannot) then how would the CISO prevent illegal trade?
- We feel that the document as it currently stands appears to be a marketing mechanism rather than a decision-making mechanism. Sierra Leone feels the entire process being recommended requires re-thinking.

We look forward to continuing work on this issue at CoP16 and beyond.

Regards,

Kate.

Kate M. B. Garnett (Mrs.)

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environmental affairs

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REPUBLIC OF SOUTH AFRICA

ADDITIONAL COMMENTS

DECISION MAKING MECHANISM FOR TRADE IN AFRICAN ELEPHANT IVORY

Comments on the Report entitled: Decision-making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory (SC62 Doc 46.4 Annex)

General comments:

- The statements relating to the costs involved in the protection of the high valued species; the need to create incentives to landholders to expand the habitat available to species; the involvement of a full range of stakeholders in the management of resources and trade; and the importance of strong domestic legislation and enforcement, recognizes some of the key aspects involved in the sustainable management of biodiversity and especially species of high conservation value.
- The basic principles and factors that could guide future trade as outlined in Sections 5.2.1 and 5.2.2 (Sustainable Use Principles and the African Elephant Action Plan) are supported.
- The document presents one option in terms of a trade mechanism (i.e. CISO), while it was anticipated that the document will propose a mechanism that will facilitate decision making relating to trade in ivory with a number of option / mechanisms on how trade can be facilitated. The mechanism should not necessarily prescribe how the trade must take place or restrict countries in terms of the actual trade mechanism.

Specific comments:

SECTION 5 – PRINCIPLES AND A DECISION-MAKING MECHANISM FOR A FUTURE TRADE IN IVORY

1. Some of the information contained in Section 5 should be included in Section 6. For example, the information in Section 5.3 relating to the areas of compliance that are needed for an Appendix II listed country to export ivory. The process of verifying the information and compliance with the requirements should be simplified.
2. The process outlined in Section 5.4.2 seems to be a complex process that will require significant legislative amendments, regional coordination and negotiations, etc. The process should be simplified and facilitate decision making.

SECTION 6 – CONDITIONS UNDER WHICH A TRADE IN IVORY COULD TAKE PLACE

1. This Section is regarded as the most important section of the report, and should be improved to respond to the TOR. The most important requirement is that the mechanism for trade should be efficient and effective – it should not be cumbersome, it should be clear in terms of what the requirements / conditions are and should be simplistic to facilitate compliance monitoring and enforcement. The following are aspects that should be addressed in the report:
 - a. Criteria for range States to “qualify” to trade based on sustainable population management strategies
 - b. Criteria for consumer States to “qualify” to trade
 - c. Determining sustainability – How will this be done? Will it involve monitoring of the markets?
 - d. Regional imperatives – Regional conservation and management plans should be aligned with the African Elephant Action Plan and should not necessarily be a pre-requisite for trade. National management plans should however be in place.

2. The report only presents one proposed model (CISO) that may present challenges to some range States. There are some concerns about the proposed system, including the following:
- 2.1 **Legality (entity)** – Reference is made to Vicuna process and a similar process is proposed for the trade in ivory. The concern is that it will delay the trade in ivory even further because legal provisions will have to be put in place in all range States to recognize this entity and to provide for the establishment of such a system. The range States with populations in Appendix II agreed to a nine year moratorium and that moratorium will come to an end in 2017. It is expected that trade should be able to take place soon after this, through the mechanism adopted by the COP. The mechanism should therefore not require the establishment of more cumbersome institutions and legal entities that will take years to establish. IT may also be “exclusive” and create difficulties for other countries to join, e.g. if another range State is successful in terms of a down-listing proposal – how do they become part of the system? Must all the regional plans and agreements be amended to include them?
- 2.2 **Transparency and sovereignty** – range States should be empowered to trade in their own resources, based on the policies and legislative provisions governing trade from the respective countries. Trade has already taken place, based on existing legal provisions, and approved by the COP. The requirements should therefore not increase, but rather address potential gaps identified through the previous sales.
- 2.3 **Costs** – The costs associated with the establishment of the CISO may result in a reduction of revenue generated through the sales by the range States that would be available for elephant conservation and management.
- 2.4 **Accountability** – There are concerns about the establishment of the Board and the accountability of the CISO? Who will oversee it and ensure that it operates within its legal framework? How will non-compliance by the CISO be addressed? The establishment of the CISO will add to the monitoring requirements, since it introduces another role player that must be monitored to ensure systems are in place to prevent leakages, etc.
3. The following could be considered to address conditions for trade and relates to systems to be in place in both range States and consumer States:
- a. Criteria for range States to qualify to trade, to include:
- Populations should be listed in Appendix II of CITES.
 - Elephant management plans approved by the relevant authority in terms of national legislative provisions.
 - Implementation of the African Elephant Action Plan in the range State.
 - National legislation, regulating the sale of ivory and providing for registration of ivory stocks.
 - Monitoring systems to monitor and track the trade in ivory and ivory stocks.
 - Ivory to be marked in accordance with Resolution Conf 10.10 and secured in safekeeping facilities.
 - Compliance monitoring and enforcement strategies.
 - Cooperation with importing countries.
 - Implement MIKE in at least one site.
 - Participate in the ETIS programme (submit information).
 - Contribute to research relating to the traceability of ivory.
 - Annual quota of ivory to be submitted to CITES Secretariat.
 - Reporting in terms of ivory stocks and trade (ivory sold per annum).
 - Reporting in terms of the utilization of revenue.
- b. Criteria for consumer States to qualify to trade, to include:
- Legislative provisions that enable the country to:
 - Secure raw ivory imported
 - Strictly regulate the sale of raw ivory in the country
 - Monitor the movement of raw ivory
 - Restrict sales of raw ivory to registered carvers only
 - Inspect and monitor these registered carvers
 - Prosecute offenders (illegal activities should be specified as offences in terms of legislation)
 - Compliance and enforcement strategies
 - Cooperation with exporting countries (range States) – this is important in terms of enforcement activities.

- iv. Reporting in terms of ivory imported; registered carvers.
- v. Participate in the ETIS programme (submit information).

4. Determination of sustainability (economic and ecological sustainability)

It is not clear how the economic and ecological sustainability will be determined.

With regards to the ecological sustainability; none of the range States indicated that their populations will be actively harvested to supply ivory specifically for trade, therefore the ecological sustainability will be addressed through the elephant management plans that should be in place in the relevant range States. The continued implementation of MIKE in other range States as well as the implementation of the African Elephant Action Plan will provide mechanism to monitor the status of elephant populations. In this regard, the site-level, country-level and global level factors associated with the illegal killing of elephants should also be taken into consideration, because factors, other than trade, plays an important role in terms of illegal killing of elephants.

The economic sustainability of the trade can only be determined once trade is taking place and it is therefore proposed that a trade monitoring system could be introduced that assess the market, responses in markets, the changes in prices, the changes in demand and supply, etc.

August 28th 2012

EU THOUGHTS ON A FUTURE IVORY TRADE DECISION-MAKING MECHANISM

The EU and its member States are committed to the implementation of CITES Decision 14.77, bearing in mind that this does not prejudge on its position on whether there should be or not trade in ivory in the future.

Further to the decision agreed at SC62 on a future ivory trade decision-making mechanism, this document presents the thoughts of the EU and its Member States on this issue. Rather than proposing detailed provisions on the content of this mechanism, the EU and its Member States have identified a number of important elements that should assist the CITES Secretariat in the elaboration of a document for discussion at CoP16.

As a preliminary remark, the EU and its Member States wish to reiterate the comments made at SC62 on the report contained in Annex to SC62 Doc. 46.4. While recognising that the report contains some useful elements on factors that should guide a decision-making mechanism for authorizing ivory trade, it lacks precision in providing the necessary criteria and preconditions for the establishment of the decision-making mechanism for authorising ivory trade. This report contains a lot of information which is not directly relevant to the establishment of this decision-making mechanism, and lacks data and analysis on issues which are central to this question (notably a more thorough assessment of the previous one-off sales). It proposes a single solution without giving sufficient grounds for it, rather than different options for consideration by the SC. For those reasons, the EU and its Member States do not consider that the report provides an adequate basis of work for the Standing Committee in delivering its task pursuant to Decision 14.77.

Rather, the EU and its Member States consider that it would be beneficial for the Standing Committee and the CoP if, in view of CoP16, several options for decision making mechanisms were presented by the Secretariat, with their advantages and disadvantages, and only include CITES relevant considerations to support these.

1. Purpose of the Decision-making mechanism

CITES Decision 14.77 states that "*the Standing Committee, assisted by the Secretariat, shall propose for approval at the latest at the 16th meeting of the Conference of the Parties a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties*"

The discussion at SC62 showed that there seems to be some confusion as to the exact purpose of this decision-making mechanism (DMM).

In the view of the EU and its Member States, the purpose of the DMM should be to establish conditions and criteria which would govern possible future ivory sales in the cases where CITES Parties have decided to include elephant populations in CITES Appendix II. If such a mechanism is put in place, trade in ivory could only proceed under the conditions and according to the criteria set out pursuant to this mechanism.

The DMM should therefore:

- lay out those conditions and criteria,
- clarify how future possible trade could be organised, and
- indicate which CITES bodies, committees and/or mechanisms should be responsible for (i) assessing whether the conditions/criteria are fulfilled for each case or each single transaction, (ii) organising the sales and (iii) ensuring that the provisions on the DMM are properly implemented and enforced.

2. Fields to be covered by possible conditions and criteria under the DMM

The EU and its Member States suggest that the discussion focuses first on the fields that should be covered by conditions and criteria which would govern possible future ivory sales for elephant populations in CITES Appendix II.

In our view, the Parties should look whether conditions and criteria should be developed as part of the future

DMM in the following fields:

2.1. Ecological sustainability of ivory trade

Trade in Appendix II species/populations is permitted under CITES provided that the export is not detrimental to the survival of the species and the specimens have been acquired legally. A non-detriment finding needs to be performed by the exporting State.

In that respect, the question is whether the DMM should include specific requirements (due to the specific features of the species/populations concerned) that the exporting State would need to take into consideration when realising the NDF. Such requirements could relate for example to the establishment of transnational management plans for shared populations of elephants. The relevance of setting quotas and the levels of such quotas might also need to be considered in this context. In this regard CITES Resolutions Conf. 12.8 (Rev. CoP 13) and Conf. 14.7 (Rev. CoP 15) provide certain important aspects or elements which should be taken into consideration during the discussion process.

2.2. Control and enforcement regimes to ensure the legality of ivory trade along the supply chain

The high levels of elephant poaching and ivory illegal trade make it imperative that comprehensive guarantees are provided on the legality of ivory that would be traded under the DMM.

In order to avoid that legal ivory is mixed with illegal ivory, the establishment of a *traceability system* along the whole supply chain should be considered. It could build upon the existing provisions on marking in Resolution Conf. 10.10 (Rev. CoP15) and/or incorporate additional requirements (cf. notably forensic technologies relying i. a. on DNA or isotope identification).

The DMM should contain conditions applying to the *exporting States*, notably allowing to verify the legal origin of the ivory and relating to its compliance and enforcement regime. In that respect, the following elements would need to be considered: level of elephant poaching in the country concerned; level of illegal trade affecting the country (either as departure or transit point); efficient control of ivory stockpiles held both in government and private hands; robustness of the marking/traceability system...

Conditions should also be set up in relation to the control and enforcement regimes in the *States of final destination*. This should include registration of buyers, carvers and other actors involved in the ivory processing and trade. Guarantees should be provided on the efficiency of the control of the domestic trade in ivory. An independent assessment of the system in place in the States of final destination should be foreseen at regular intervals.

If *transit States* are entitled to take part in trade in ivory, they should also be subject to specific conditions on control and enforcement.

For all countries involved in trade in ivory under the DMM, the level and efficiency of their control and enforcement regime should also be evaluated in light of their compliance with the relevant existing CITES Resolutions and Decisions. Parties not included in category 1 under the CITES national legislation project would not be regarded as meeting this requirement.

2.3. Assessing the impact of legal ivory trade on illegal trade

Even in the case where appropriate control and enforcement measures are in place to ensure that only legal ivory enter international trade, the question of whether legal trade encourages illegal trade might be explored as part of the DMM. Such assessment should rely on an objective analysis, such as the one developed under the MIKE programme.

2.4. Economic sustainability of ivory trade

Under that field, the DMM might contain conditions relating to the involvement of local communities in decisions leading to ivory trade and guarantees that the benefits from this trade will be directed to elephant conservation and the economic development of local communities.

3. **Organisation of ivory trade**

Once general conditions are agreed pursuant to paragraph 2 above, the way according to which possible trade

in ivory would take place should be explored.

This could encompass the following elements:

- which specimens could be traded (in the annotation agreed at CoP14, trade is only possible limited for a given quantity of raw ivory from registered-government stocks);
- which form would trade take (one-off sales, regular sales, export quotas...);
- which actors would be entitled to take part in the trade (should it be limited to exporting countries and countries of final destination? Should it concern only governments as foreseen in the annotation agreed at CoP14, or private actors as well?) and under which conditions?

4. Institutional framework for the DMM

The DMM should also explore which bodies/mechanisms should be responsible for:

- assessing, in each case where a country with elephant population in Appendix II wishes to be authorised to trade ivory, if the conditions/criteria included in the DMM for such authorisation are met;
- organising the sales in the case where specific provisions are adopted to this end;
- ensuring the follow-up to those sales, notably by verifying that the conditions for such sales remain fulfilled after the sales, and adopting measures in cases of non-compliance,
- monitoring in a timely manner each single sale.

In order to follow up each single transaction of ivory in a timely manner the DMM should consider i. a. the establishment of a special independent ivory trade monitoring unit which could be based on actual CITES permits issued. Such a unit could be established by and positioned at the Secretariat or commissioned externally.

Decision 14.77 states that the DMM should be placed under the auspices of the CITES Conference of the Parties, which implies that the CoP should retain the central role in the definition of the conditions contained in the DMM as well as its general design. What remains to be seen is if the assessment of whether the conditions are fulfilled, the organisation of the sales and the verification that the provisions in the DMM are properly implemented might be delegated to the Standing Committee or the Secretariat. Additionally, the DMM should specify the rights and duties of the exporting and importing countries.

5. Background elements for consideration in future discussions on the DMM

The EU and its Member States believe that, for the discussion on the points identified above, the CITES Secretariat and the Parties should pay particular attention to the following elements:

- The current state and trend of elephant populations and of ivory poaching and illegal trade;
- The provisions applying to and the impact of the one-off sale of ivory approved at CoP14;
- Resolutions Conf. 10.9, 10.10 (Rev. CoP15), 12.8 (Rev. CoP 13) and 14.7 (Rev. CoP 15);
- The content and implementation of the African Elephant Action Plan;
- MIKE and ETIS findings and recommendations;
- Experiences in Asia;
- Prior history of conservation and enforcement measures;
- The terms of reference of the study on the DMM agreed at SC57 and
- Elements of the consultancy report compiled by R.B. Martin et al for the 62nd Standing Committee (SC62 Doc. 46.4 Annex), as are deemed relevant.

UNITED REPUBLIC OF TANZANIA

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October, 2012

COMMENTS ON DECISION-MAKING MECHANISM FOR PROCESS OF TRADE IN IVORY

Background

At its 14th meeting (CoP14, The Hague, 2007), the Conference of the Parties adopted Decision 14.77 on a decision-making mechanism for authorizing ivory trade, as follows:

Directed to the Standing Committee

The Standing Committee, assisted by the Secretariat, shall propose for approval at the latest at the 16th meeting of the Conference of the Parties a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties.

URT believes that aim of Decision 14.77 is to establish a foundation on the future trade in ivory (how the decision under CITES will be made, how trade will be conducted and the institutional arrangements)

General comments

The study proposed the establishment of a Central Ivory Selling Organisation (CISO) which will be autonomous body and ivory clearing house for trading range States.

In principle, the United Republic of Tanzania agrees with the change of present mechanism of selling ivory whereby a country wishing to sell its ivory needed to submit a proposal to the Conference of Parties for consideration. However, we have a concern on the modus operandi of the CISO. Further to establishment of CISO-URT suggest that ivory stockpiles should remain in respective countries warehouses instead of having centralised storage

Currently, the population of African elephant in URT is not affected by 9 years moratorium. However, since the study on decision making mechanism for future ivory trade is not finalised, URT shall not support any proposal to extend the ivory trade moratorium ending in 2017. URT therefore urge CITES Secretariat to speed up the study on decision making mechanism.

Specific comments

URT support trade in elephant ivory which shall be.

- Conducted in full compliance with CITES.
- Coordinated by a new body of which its modus operandi and terms of reference agreed by the trading range States
- Conducted in such a way that the roles of the Conference of the Parties, the Standing Committee and the Secretariat are lucid.

Extension of validity of Decision 14.77 19.

URT support the proposed to extension the validity of Decision 14.77 until the 17th meeting of the Conference of the Parties (CoP17) in order to provide enough time for completion of the process of decision making mechanism.

Conditions applying to exporting States:

Due to long and bureaucratic procedures in categorization of legislation, URT do not support that the Party applying to sell ivory should have legislation which is be placed in Category-1

Comments provide in August

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| <p>Decision 14.77 directs the SC, assisted by the Secretariat, to propose for approval by CoP16 “a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties.”</p> | <p><i>Fundamentally the report provides guidance on how future trade in ivory should be. This was clearly indicated in the ToR for the Study:-</i></p> <p><i>“the purpose of the consultancy was not to determine whether there should or should not be international trade in ivory. The purpose was to provide a technically-focused study on a “decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties” that could be used by the Parties, should they decide in the future to authorize commercial international trade in ivory under the Convention.”</i></p> <p><i>The proposed “decision-making mechanism for a process of trade in ivory should not excludes non-trading range States for control and law enforcement purposes.</i></p> <p><i>The Standing Committee and Conference of the Parties” involvement “decision-making mechanism for a process of trade in ivory should be clearly indicated in the study.</i></p> <p><i>The study should not compare ivory trade with other species or products which have no trade relationships.</i></p> <p><i>The study should provide adequate information in some of the assumptions to provide the Parties with adequate information to make informed decision.</i></p> <p><i>Most countries in Africa appear to be unable and not unwilling to meet the high costs required to fully protect their elephants as the study concluded. Poor people in Africa simply wish to use their own nations’ resources in a responsible and carefully managed way and in so doing creating incentives for conservations.</i></p> <p><i>The study should provide more information on how CISO, should work (modus operandi) and the involvement of the Standing Committee and Conference of the Parties” in CISO.</i></p> <p><i>The study should provide more option apart fro CISO.</i></p> |
|--|--|

Comments provide in mid May 2012

Text of document requesting information from African Range States and other countries specified in the Terms of Reference. French translation required for the following --

The terms of reference for the study are attached.

As stated in the terms of reference, this consultancy is not to determine whether or not there should be an international trade in ivory: rather it is seeking an improved system were there to be a resumption of trade.

1. Review of past decision-making mechanisms and processes relating to ivory trade

We have more or less completed the review of past CITES decisions affecting the trade in ivory back to the inception of the Treaty in 1973. We have also noted the occasions on which individual states (e.g. the European Union, the UK and the USA) have invoked ‘stricter domestic measures’ to limit ivory imports. It seems there are few incentives in the present system for local people to conserve elephants: the current emphasis is on compliance and enforcement.

There is a growing demand for villagers to establish Wildlife Management Areas (Community Based Conservation) in the United Republic of Tanzania (URT). Currently there are 33 Wildlife Management Areas adjacent to Protected Areas.

In the community conservation programme, the villagers who bear the cost of living with the elephants derive a share of the benefit from their sustainable conservation.

In line with that the African Elephant Fund should be extended to fund projects aiming at reducing human-elephant conflicts to create incentives for local community to co-exist with the elephants in African elephant Range States with high population of elephants.

2. Influence of legal and illegal trade on African elephant populations

We have examined the history of levels of ivory trade and carried out some preliminary modelling on the relationship between levels of exploitation of elephants and biological sustainability. There are still numerous questions to be addressed on the linkages between legal and illegal trade, and methods to elucidate these linkages.

This study should focus on elucidating the linkage between legal and illegal trade since one-off sale of ivory that was agreed at the 14th meeting of the Conference of the Parties (The Hague, 2007)

3. Examination of international trade regimes

In examining trade regimes for other valuable commodities we have not found examples of trade bans that have been completely effective. If you are aware of any trade bans that have been effective we would welcome information about them.

We have found examples where controlled trade has successfully reduced levels of illegal trade (e.g Crocodilians) and we are working to develop applications from the lessons learned.

Controlled trade is recommended because in most cases trade ban creates demand and increase of illicit trade.

4. Basic Principles which should underpin any future system for trade in ivory

If there is to be trade in ivory we feel that it is essential that the range states assume a major role in controlling the ivory trade at source and that this should be accompanied by strong incentives for local people who live with elephants to benefit from any trade in ivory. Cooperation with ivory-importing countries in designing the trade system is essential.

We would welcome inputs on the basic principles that might be applied to a future trade.

Trading States (exporting and importing states) need to have:-

- *Proper legislation*
- *Capacity in enforcing the legislation*
- *Effective trade control system*
- *Good record keeping*

5. A workable process for trade in ivory

We are trying to develop a workable process for trade in ivory at the moment and would welcome any suggestions as to how you think this might function. We believe that the decision-making mechanisms for trade should follow logically from a well-designed system for trade. Some of the issues that need to be explored are –

(1) The marketing and selling system

Options for sales out of Africa might be the establishment of an Ivory Producers Export Cartel (Martin 1985), an International Clearing House as proposed by Parker (1989) or an Ivory Exchange on the lines proposed by Barbier (*et al* 1990)*. Questions which arise from these approaches are –

- Should such a system run on quotas and, if so, should such quotas be set externally?

The system can run on quota system but the quota should be set internally in consultation with the Secretariat.

- What information, if any, should a range state be required to provide in order to qualify for a quota? (e.g. up-to-date population information collected to a required standard; investment in law enforcement; appropriate legislation; involvement of local communities, etc.)

Biological information (Animal census)

Legislation

Management plan

Trade control mechanism

Trade records

However, gathering of up to date information has a financial implication

- Where should the power reside to remove a quota when information shows it is being abused?

Adopt the procedures for trade suspension by CITES

(2) Trade Controls Required

Noting the enforcement challenges and capacities affecting some range states and importing states –

- What methods are needed to track the chain of custody of raw ivory?

Custody for raw ivory can be tracked through reports and updates from the Range States.

- What controls are feasible and should be applied to worked ivory?

Trading countries should adopt effective permitting system

- How much are controls going to cost? Who will pay? Does some form of taxation or duty on sales have to be imposed to raise the money?

Anticipated cost for control is not known but Secretariat in consultation with the Range States may decide on the modality for fund raising.

(3) Required Monitoring Systems

- what records – and accessibility to those records – should CITES and range states maintain in order to monitor trade? Who should collect the information?

Export and import records should be maintained and trading countries should collect the information on behalf of the Secretariat

- How could the monitoring and control system be used to measure the sustainability of offtakes? Could it be set up in such a way that the volume of legal trade vs seizure information could give a measure of the size of the illegal trade?

Monitoring and control system if used in comparison with biological data can indicate sustainability of offtakes.

- What participation in in-country monitoring and registration should CITES have? (e.g. staff on the ground; independent auditors sent in; etc)

Panel of experts may regularly visit trading countries

6. Decision-making mechanisms to facilitate the process

The final stage will be an assessment of the implications of all the above for design of any future trade in ivory. What reporting and decision-making framework will need to be in place to ensure that objectives are being met?

A special reporting procedure should be designed by the Range States in consultation with the Secretariat for African elephant trade which will enable effective control of trade. The decision making mechanism for trade in ivory should consider the increasing cost of conservation for the species incurred by the Range States and that the fund accrued from the ivory trade are used to support conservation and rural livelihood.

* References

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UNITED STATES OF AMERICA



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



IN REPLY REFER TO:
FWS/DMA/TRE 1-03 u.1

SEP 5 2012

Mr. John Scanlon
Secretary-General
CITES Secretariat
International Environment House
11 Chemin des Anémones
CH-1219 Châtelaine-Geneve
Switzerland

VIA EMAIL: info@cites.org

Dear Mr. Scanlon:

We appreciate this opportunity to provide comments on the Decision-making Mechanism and Necessary Conditions for a Future Trade in African Elephant Ivory Final Report. This is the third time that the United States has provided written comments during this process. Previously, we provided responses to the consultants' preliminary questions on March 15, 2012, and comments on the preliminary draft on May 12, 2012. In addition, we provided oral comments during the 62nd Meeting of the Standing Committee.

We are pleased to report that many of the comments and concerns we raised previously have been addressed in the final report. In particular, when we reviewed the initial draft report, we were struck by the consultants' extensive review of the history of elephant ivory trade and related CITES decisions. The authors appeared more interested in revisiting and criticizing this history than in addressing the terms of reference given them under the contract. We are grateful that these distractions have largely been excised from the final report, which focuses more appropriately on the terms of reference and the mandate in Decision 14.77. We regret, however, that many of our comments are reiterated here, particularly those associated with further evaluating resource economics, compliance and enforcement, and examining factors that influenced the success or failure of similar trades. Unfortunately, despite substantial progress since the draft report, this final report falls far short of having a decision-making mechanism that the Standing Committee can propose to the 16th Meeting of the Conference of the Parties (CoP16).

As we reviewed the final report and revisited our earlier comments, we noted that a number of important elements that we raised previously remain unexplored or deserve more in-depth treatment. Among these are:



1. Exploration of resource economics. We urged the consultants to engage resource economics expertise and to explore issues like willingness to pay and the effects of legal versus illegal trade, but an economic analysis of a regulated ivory trade system is largely absent in this report;

2. A focus on examining linkages between legal and illegal trade, rather than harvesting models. We expressed the view that modeling biological productivity and exploring harvesting models was not necessary given already available information and that focusing on identifying and addressing legal/illegal trade linkages, given their complexities, would be a more appropriate use of resources. This concern remains given the content of the final report;

3. Trade bans that have been, at least to some extent, effective. We offered examples of trade bans that have been effective conservation tools because we believed that it would be useful to examine factors associated with these trade bans or restrictions against those that have not been effective;

4. Ivory sampling. We encouraged more in-depth analysis of the suggested methods and projected costs associated with ivory sampling that would give reasonable confidence about the legality of ivory entering trade;

5. Compliance and enforcement provisions. We expected a more thorough exploration of and recommendations regarding the compliance and enforcement provisions needed in elephant range States and consumer countries.

In addition, we have several specific comments and concerns regarding the specific content of the final report, as follows:

Section 2. In the last paragraph of Section 2.3, the authors mischaracterize CITES resolutions as “legally binding.” Also, though we agree that a high proportion of African elephant range States lack the resources to protect elephant populations, the authors failed to make a clear connection between this problem and a likelihood of significant improvement based on a change in CITES decision-making, particularly given the nexus to high levels of elephant mortality and illegal trade to “civil disorder, corruption and conflict associated with armed conflict and militias.”

In the concluding comments in Section 2.6, the authors refer to “the tendency to ascribe” the increase in poaching to the sale of stockpiled ivory in 2008, and that this diverts attention from the problem of range States being unable to invest in protecting their elephants. The authors believe this “begs the question of what incentives are there for them to do so?” However, we would note that the authors devote almost no attention to exploring why, when as many as 1,000 metric tons of ivory were leaving Africa each year legally, this also did not create sufficient incentives to protect elephants throughout much of Africa. We believe that a focus on blaming the current regime on poaching levels is outside the scope of the terms of reference, is largely unsubstantiated by the authors, and ignores much of the history that led us to this point.

Section 3. We believe more exploration of other species or natural resource trades that may have similarities to elephants and ivory would be beneficial. We believe that some of the wildlife examples may be more useful than the focus on diamonds. This includes analysis of examples of regulated trade regimes that were decidedly not effective in controlling poaching and unsustainable trade, such as those for beluga sturgeon, which the authors note is comparable as a high-value and medium-to-low volume commodity. We also previously provided examples

of trade prohibitions that have been largely successful, but the authors chose not to evaluate them. Noting that elephant (and rhino) populations have grown at least for some period of time under a trade ban regime, we believe a more holistic look at what has and has not worked across the spectrum of regulatory regimes would assist in developing a decision-making mechanism for ivory trade.

In Section 3.3, the authors argue that domestic controls in ivory-consuming States have been ineffective. We agree that this has been demonstrated in some cases, but certainly not in all cases. Some examination of why this is the case would be useful.

In Section 3.4, we agree entirely with point 6 regarding an understanding of the market in which commodities are to be traded. Unfortunately, this issue received almost no attention. We strongly support additional exploration of this issue before a decision-making mechanism is put forward for consideration by the Parties.

Section 4. This section focuses on biological production models for ivory harvest, without much exploration of the economic scenarios affecting legal and illegal ivory trade. Many assumptions are made here and it is difficult to determine the practical use of the model output.

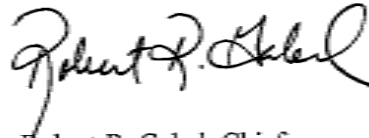
Section 5. We would be very interested in further exploration and presentation of options for number 3 (in Section 5.2.4): Regulatory mechanisms. The authors suggest that “there is a need to re-examine the demand side of the equation and the processes that could minimize the leakage of illegally obtained ivory into the processing and marketing of carved products.” We had hoped the consultancy would explore this issue further and present a range of options for consideration. We also note there is little discussion of unregulated internal markets here.

Section 6. This section was to contain an exploration of the conditions under which international trade in elephant ivory could take place. The discussion of the DeBeers system is interesting and may contain elements that could be useful in the context of ivory trade, but it would be helpful to know why the DeBeers system is no longer in use. The section presents a single proposal for a central body, the Central Ivory Selling Organisation (CISO), without adequate explanation of why this model is optimal. Detailed conditions are laid out for the governance of the CISO, many of which are potentially controversial. We are also concerned about the degree of autonomy that appears to be given to the CISO. The authors lay out a funding concept for the CISO, to be provided by a levy on ivory sales, but it is unclear why buyers would be willing to pay this when they have thus far not been willing to pay for field conservation costs or regulatory costs involved with legal trade.

Regrettably, given that substantial additional work is needed, we believe that the mandate in Decision 14.77 needs to be extended to CoP17. We recommend that the Secretariat propose a draft Decision to CoP16, directed to the Standing Committee, to consider this final report and the comments received by the Secretariat, to consult additional experts as appropriate, and to propose for approval at the 17th meeting of the Conference of the Parties a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties.

Thank you for the opportunity to provide additional feedback on this work. Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Gabel". The signature is fluid and cursive, with the first name "Robert" and last name "Gabel" being clearly legible.

Robert R. Gabel, Chief
Division of Management Authority

ZIMBABWE

ZIMBABWE'S COMMENTS ON THE DECISION MAKING MECHANISMS AND NECESSARY CONDITIONS FOR FUTURE TRADE IN AFRICAN ELEPHANT IVORY

1. The document clearly evaluates the various processes and decision making mechanisms that are currently operating under the provisions of the CITES Convention and explores decision making mechanisms under which future international trade could take place as set out in the Terms of Reference of the Consultancy.
2. Zimbabwe supports the basic principles and factors that could guide future trade as outlined in Sections 5.2.1 and 5.2.2 (Sustainable Use Principles and the African Elephant Action Plan).
3. Zimbabwe supports the principle of the establishment of a Central Ivory Selling Organization (CISO).
4. Regarding location of CISO, Zimbabwe proposes the development of CISO regional centres to facilitate transportation of ivory to the regional centres.
5. Zimbabwe supports the proposed multi-level devolved decision making mechanism and process such as getting the best possible returns from ivory and gaining control of the market.
6. Supports the principle of frequent ivory sales from accumulated stocks mostly from natural mortalities and other management activities.
7. Supports that ivory sales need to be conducted through set prices and not the auction system.
8. The concept of reducing the pathway between the producer and consumer so as to prevent illegal ivory entering the market chain is also fully supported.
9. Zimbabwe proposes that Operational Guidelines including governance issues regarding CISO be developed further and approved by the Standing Committee.
10. Zimbabwe fully supports the principle of re-investment of revenue from ivory trade into elephant conservation and local community development programmes in the areas where the ivory originated.



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30 August 2012

David Morgan
Chief, Scientific Services Team
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Dear David,

As requested by the CITES Secretariat, the AfESG Secretariat solicited comments from the AfESG members on the final report by Martin et al. entitled "Decision-making mechanisms and necessary conditions for a future trade in African elephant ivory." Responses were received from four of our members; namely Drs Iain Douglas-Hamilton, Fiona Maisels, Dan Stiles, and George Wittemyer, and are attached to this letter.

I would also like to draw your attention to the comments submitted by the AfESG on the draft consultancy report, which were submitted to the CITES Secretariat in early May 2012. Many of these comments still apply to the final report, and provide useful thoughts when considering a decision-making mechanism.

All four AfESG members raise the issue of demand, and I think this is still an area where much greater thought and analysis is essential. Detailed economic modelling is required to quantify current demand, as well as potential levels of demand under the various scenarios proposed by any decision-making mechanism. A deeper understanding of demand will assist in determining whether it is practically possible to control supply across the entire range of the African elephant.

We appreciate the opportunity to comment on the final report, and look forward to reviewing the Secretariat document on the decision-making mechanism.

Very best,

Dr. Holly T. Dublin
Chair



**DECISION-MAKING MECHANISMS AND NECESSARY CONDITIONS
FOR A FUTURE TRADE IN AFRICAN ELEPHANT IVORY**

Dear Elena and Tom,

With regard to the email from David Morgan of August 6th, 2012 requesting comments on the report by Rowan Martin et al. (hereafter referred to as "the Consultants") entitled "Decision-making mechanisms and necessary conditions for a future trade in African elephant ivory" (SC62 Doc. 46.4 Annex; hereafter referred to as "the Report"), the Wildlife Conservation Society (WCS) has a number of concerns, which we present below. In summary, WCS believes that the Consultants' fail to address many of the core issues identified in their Terms of Reference (ToR), and that these shortcomings call into question the system they propose for a possible future legal trade in ivory. Specifically, WCS is concerned that the consultants:

- **Do not address the fundamental question of whether a legal supply of ivory could meet current or realistic predictions of future demand.** The Consultants implicitly base their recommendations on the assumption that the supply (ecologically sustainable legal production) of ivory can meet the demand for ivory, now and in the future. However, this assumption could well be challenged on the basis of current demand alone, as noted by the IUCN/SSC African Elephant Specialist Group (AfESG), Asian Elephant Specialist Group (AsESG), and others; also see Gillson & Lindsay (2003), Bulte et al. (2004), Hambler et al. (2005), and Gillson et al. (2005). Moreover, the demand for ivory from China is increasing (Martin & Vigne 2011; Vigne & Martin 2011) and so demand in the future would almost certainly continue to exceed any sustainable supply. Indeed, trends in household consumption expenditure in China are strongly related to rates of illegal killing of elephants (the MIKE program's PIKE² measure; CITES 2011, 2012).
- **Are overly focused on how African elephant range States with Appendix II elephant populations (Botswana, Namibia, South Africa, and Zimbabwe) can benefit from a future legal trade in ivory at the expense of discussing the critical concern of how any legal ivory trade could be conducted without facilitating a parallel illegal trade.** Overall, the Consultants do not address the long- and widely-held concern that a legal trade in ivory (even a restricted legal trade) provides camouflage for illegal trade thus providing a market for illegally-obtained ivory (Khanna & Harford 1996; Bulte & van Kooten 1997, 1999; Bulte et al. 2004; de Alessi 2004). Indeed, the Consultants actually list seizures of ivory from illegal hunters as a source of ivory that would be traded under the system they propose, which amounts to the 'laundering' of illegal ivory into a legal system and clearly creates a perverse incentive promoting corruption and undermining effective law enforcement. It was partly for these reasons that ivory seized from illegal hunters was explicitly precluded in the conditions for the one-off sales in 1999 and 2008. More specifically, the Report is overly focused on southern African elephant range States at the expense of discussing the impact of the ivory trade on elephants in the other three regions of Africa – and in Asia – despite the fact that many ivory carvers and thus traders prefer forest elephant ivory, which comes primarily from Central African elephants and from Asian elephants (e.g. Nishihara 2003); that population models based on southern African savannah elephants do not apply particularly well to forest elephant populations; and that poor governance is endemic in many elephant range States outside of southern Africa and in ivory-consuming States in Asia (Smith et al. 2003; Transparency International 2011) and is known to be an important driver of the illegal killing of elephants at the country level (Burn et al. 2011).
- **Underestimate very significantly the lack of enforcement capacity and capability in elephant range States and ivory-consuming States.** This is a particularly serious concern because the lack of effective enforcement has contributed very significantly to the current situation in which the illegal killing of elephants for their ivory has again become a serious threat to African elephant populations in many

² *PIKE is the proportion of illegally killed elephants, which is calculated as the number of illegally killed elephants found divided by the total number of elephant carcasses encountered by patrols or other means, aggregated by year for each site.*

range States, and is leading to dramatic declines in some populations, particularly in Central Africa. Data from the CITES MIKE program indicate a continuing increase in levels of illegal killing of African elephants since 2006, with 2011 displaying the highest levels since MIKE records began. Similarly, data from ETIS show a steadily increasing trend in levels of illicit ivory trade from 2004 onwards, with a major upsurge in 2009, and 2011 emerging as the worst year ever for large ivory seizures (CITES 2011, 2012). Moreover, the results of the MIKE program's most recent analysis show that sites with poor law enforcement capacity tend to experience higher levels of elephant poaching (CITES 2012).

- **Appear to assume that the approval of Japan and China as trading partners can continue to be accepted without question.** This assumption is unwarranted since trading partner status for any future sales would have to be approved by the Standing Committee and is particularly unfortunate with regard to China given that regulation of the ivory trade in China deteriorated significantly after the last one-off sale (2008) and ivory is being sold widely without the necessary certificates, providing opportunities for illegal ivory to enter the trade chain (Martin & Vigne 2011). While China has now created an inter-ministerial body to tackle the trade in illegal ivory, there is a pressing need for sustained, comprehensive, and widespread enforcement of the appropriate regulations covering the sale of ivory, including over the internet. .. Do not address the very significant role played by Thailand as a major consumer market and thus a major source of demand for illegal ivory. China and Thailand are the two principal destinations for large-scale ivory consignments from Africa, with all other Asia countries identified in the ETIS data generally playing the role of transit countries for onward shipment to one of these two destinations (CITES 2011, 2012). Large-scale movements of ivory to the significant and unregulated domestic ivory market in Thailand, which fails to meet the requirements adopted in Resolution Conf. 10.10 (Rev. CoP15) for internal trade in ivory, have continued since CITES CoP15 and there is little evidence of law enforcement pressure on the hundreds of retail ivory vendors in the country's marketplaces (CITES 2012).
- **Fail to address properly the very significant role now played by large-scale organized crime.** The ETIS report to the CITES Standing Committee Meeting in July 2011 (SC61) drew attention to the increasingly significant role that large movements of ivory play as a driver of illegal trade in ivory, and discussed the value of using large-scale ivory seizures (defined as 800kg or above) as a proxy measure for assessing the involvement of organized crime in the trade (CITES 2011). The report to SC61 also warned that the engagement of organized criminal syndicates in the illicit trade in ivory between Africa and Asia was becoming increasingly more entrenched. Since that report, the evidence has only served to confirm that assertion, especially as 2011 ended with more large-scale ivory seizures than any previous year in the ETIS data (CITES 2012). Although the Consultants' ToR specifically required them to examine enforcement challenges in the ivory trade, their report does not address the role of organized criminal syndicates in the ivory trade and whether the enforcement response to combat poaching, smuggling, and illegal sale has been adequate, which it clearly has not given the number of large-scale ivory seizures in recent years and the fact that the level of illegal killing of elephants for the trade in ivory is currently a very serious threat to African elephant populations (CITES 2011, 2012).

To conclude, the principle recommendation in the Report is the creation of an international Central Ivory Selling Organization (CISO), along the lines of the De Beers cartel for the sale of diamonds. Under the proposed system, ivory from government sources in Africa would be deposited with the CISO, which would then sell the ivory directly to retailers and traders, including governments. However, the Consultants do not explain how the CISO system would avoid the serious problems that have created the current ivory poaching crisis: lack of enforcement of domestic and international law in elephant range States and ivory-consumer States alike, poor governance in range and consumer States, the challenges posed by the large and increasing role in the illegal trade in ivory now played by large-scale organized crime, and a lack of resources commensurate with the scale of the problem.

Finally, given the limitations of the Report highlighted above and the current parlous status of Africa's elephants, WCS recommends that the Secretariat commission a review of the enforcement gaps and needs – at all points in the trade chain from the field to the marketplace – that have led to the failure of the current ivory trade regulation system and calls a halt on discussing mechanisms for trading in ivory until such a review has been completed. Sincerely,

Sincerely,

Simon Hedges

Simon Hedges

Asian Elephant Coordinator, Wildlife Conservation Society (WCS) and Member, MIKE/ETIS
Technical Advisory Group

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**HUGO JACHMANN
MIKE/ETIS TAG MEMBER**

This is an excellent proposal, and for what it is worth, I fully endorse it. However, it forms the beginning of a long series of negotiations that may take years to conclude and will encounter fierce political opposition at various levels for obvious reasons. The part of law enforcement and costs thereof appears to be a bit of a Zim show.

Well done, good luck,

Hugo Jackmann

**DECISION-MAKING MECHANISMS AND NECESSARY CONDITIONS
FOR A
FUTURE TRADE IN AFRICAN ELEPHANT IVORY**

FINAL REPORT

*The Background Study on which this report is based
has been submitted to the CITES Secretariat*

Consultancy for the CITES Secretariat
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[...]

1. INTRODUCTION

[...]

The value systems that influence the conservation and management of elephant, and the sale and marketing of elephant products differ greatly across the world. As a result, the trade in ivory is characterised by highly polarised positions grounded in differing worldviews, mental models, and asymmetrical power relations that will need to be reflected upon and considered in any decision-making process related to a future trade in ivory. Some of the more pertinent positions and their philosophical underpinnings that form the basis of these polarised views and intense debate are:

1. Recognition of the intrinsic value of elephants and their ranking as sentient beings underpins the belief that the killing of elephants for any reason, and trade in their products, is unethical
2. Recognition of the extrinsic or utilitarian value of elephants and their products as a resource that can be used for the benefit of people and contribute to securing wild land for conservation. Utilitarian value is extended to both live elephants and to their products (ivory, hide and meat).
3. Recognition of the primacy of human interests. Direct conflicts between land use systems and between farmers and elephants result in elephants being killed and/or their available habitat being taken over for other uses with the result that the habitat available to elephants is reduced.
4. Recognition of the existence and ecological values of other (often rare) plant and animal species that may be threatened in areas where high densities of elephants occur. Elephants act as ecosystem engineers in protected areas and opinions (and values) differ on the levels at which their impacts on habitats and other species are acceptable.

Why insert a largely incomplete set of value judgments in a report that is merely supposed to discuss the options for a mechanism of legal trade, while excluding discussion of the question whether there should be any trade at all? This part is superfluous, may confuse the reader, while the two introductory sentences above will suffice.

[...]

- a. That any legal trade will be sustainable and contribute positively to the conservation of elephants as envisaged in the African elephant range states= African Elephant Management Plan. If a legal trade does not meet this objective, it should be stopped (Too much content in too few words, i.e. easier said than done. It encompasses the whole array of value judgments.).

[...]

- d. That it is possible to establish a trade in ivory that minimises corrupt practices and the laundering of illegal ivory. By creating conditions that are advantageous for a legal trade, ultimately the illegal killing of elephants ~~will~~ may be reduced.

[...]

- g. That ivory will be derived from natural mortality, sport hunting (presently legally permitted under CITES quotas), animals killed to control human-wildlife conflict, and, in some cases, culling to control overpopulation of elephants (Value judgments and Pandora's box?). Elephants will not be harvested to produce ivory, i.e. ivory, hides and meat will be a by-product of other management activities.

[...]

- (4) That this report will not be interpreted as an intended blue-print but as a basis for negotiation towards a workable solution to a trade in ivory that will involve a the full range of stakeholders. More specifically, in order for the CoP to agree to a trade in ivory from Appendix II countries agreement in principle, if not in detail, between the countries and prospective importers would need to be established regarding four main aspects. These aspects are B

2. CITES DECISION-MAKING IN RELATION TO IVORY

[...]

2.5 Efficacy and costs of existing compliance and enforcement measures

[...]

This relationship provided a good fit with the state protected areas in South Africa, Namibia and Mozambique. An earlier rule of thumb derived from park running costs in the early 1980s was a figure of at least US\$ 200 per km² for operating costs. Cumming (2008) provided examples of operating budgets and their deficits for five major parks in the Kavango-Zambezi Transfrontier Conservation Area and all were operating on budget deficits of between 62% (Chobe National Park) and 92% (Hwange National Park) based on the above formula. For protected areas in tropical forests the constant **A** could well be eight or greater. Too simplistic! May only provide a good fit for state protected areas in some countries down south. Should at least state that it provides a rough estimate in stable countries, etc. etc. May suffice to merely state that law enforcement is very expensive.

Taking an average park area of 10,000 km² for central, east and southern Africa, a severe illegal hunting challenge of 4, a ranger or scout annual salary of \$4,000 per annum and a constant of 6 (mean of 4 and 8) for A, with a total of (say) 40 parks that include elephants, the likely minimum budget required to adequately protect these elephant populations would be in the region of US\$384 million per annum. For your average reader this is not a very useful statistic! Stick to costs per km² or use a particular country as an example.

2.6 Concluding comment

The measures taken by CITES and member states almost certainly contributed to reducing levels of illegal trade for the period 1990 to about 2006. Other factors such as improved law enforcement in some countries following the ban may have also contributed (Difficult one, but may need some rewording to remain objective and scientifically sound). However, given the present rise in illegal killing of elephants in West, Central and East Africa it is clear that current measures are not containing the present upsurge in the illegal trade in ivory. The tendency to ascribe this increase to the sale of stockpiled ivory in 2008 diverts attention away from the far more serious problems relating to the inability of African countries to invest in protecting their elephants B an observation that begs the question of what incentives are there for them to do so? One needs to read between the lines to grasp what you mean. Your audience may think that if a significant percentage of GDP comes from tourism, conserving pachyderms on state-controlled lands should have sufficient incentive. Try to be less obscure by explaining in slightly more detail. The focus on regulation without incentives is a central issue that needs to be addressed, a point made strongly by Barbier (*et al* 1990) in their contribution to the ITRG report and in their book and later by Swanson (2000). Or, as Murphree (1996) put it B

[...]

3. EVALUATION OF TRADE REGIMES IN HIGH-VALUED PRODUCTS

[...]

3.2.5 The International Timber Trade and Certification. [...]

In response to ongoing depletion of forests and the general failure of trade agreements, civil society organisations sought to build stronger links between the producers and consumers of timber and timber products by the certification of products throughout the full chain of custody. Perhaps the most prominent of these certification schemes has been that driven by the Forest Stewardship Council (FSC) founded in 1993. The ten FSC principles and criteria for certification (<http://www.fsc.org/>) are relevant to a trade in ivory because the developments in certification and green labelling may provide guidance in achieving public involvement in market choices in relation to ivory artefacts (*Background Study*, Chapter 3

[...]

3.4 Concluding comments

The above brief review of aspects relating to the international trade in several species with high valued products and of the earlier trade in diamonds, suggests that the following features may be important in designing a process for the trade in ivory B

1. The costs of protecting species with high valued products may be very high and beyond the means of

many developing countries ~~to meet~~.

[...]

4. The development of regional and local institutions, such as joint commissions,³ for the management of species and trade in their commodities is likely to be beneficial, as is the involvement of a the full range of stakeholders in the management of the resource and its trade.

[...]

A bit of a rag-tag series of comments, first stating that species protection is too costly for most developing countries and later on that it is a prerogative to success. No flow, no logical order.

4. IMPACT OF HARVESTING AND TRADE ON ELEPHANT POPULATIONS

[...]

Without Annex 3, this 'summary' may be hard to follow for most readers. As it stands, it briefly discusses various scenarios, using statistics that cannot be easily compared. First scenario results in a statistic of 500 kg of ivory from every 1,000 living elephants, while the second scenario under an elephant management regime results in 40 tonnes production from a population of 50,000. Flow and logic may be present in the Annex, but not in this section.

4.4 One-off ivory sales

- (1) We discuss the observed effects of the one-off sales of ivory⁴ on levels of illegal hunting and conclude that evidence has yet to be presented that demonstrates a clear link between the one-off sales of ivory and ~~(increasing)~~ levels of illegal trade. Stiles (2012 in litt.) observes ~~A~~The two 'one-off' sales have unfortunately led to a lot of unnecessary and irrelevant controversy. As long as a ban is in place, illegal trade is going to carry on regardless of whether there is legal ivory circulating in the system or not. There is no need to launder it ~~B~~ the illegal trade carries on as usual.

[...]

5. PRINCIPLES AND A DECISION-MAKING MECHANISM FOR A FUTURE TRADE IN IVORY

[...]

4. Ensuring that *returns to stakeholders* (i.e. state, private and communal sector landholders) provide incentives to conserve and manage elephants sustainably on their land. Key are 'ownership' and a direct short link between having these things on your land and tangible benefits derived from this situation.

[...]

5.5 Concluding Comment

A devolved decision making-process is proposed that would include a full range of stakeholders, and involve both top-down and bottom-up decision-making mechanisms in a multi-level governance (Ostrom & Janssen 2002) framework from the CITES CoP to the local level and back. [...]

6. CONDITIONS UNDER WHICH A TRADE IN IVORY COULD TAKE PLACE

[...]

6.1.5 Ivory Sales

The process by which ivory would be sold is outlined below ~~B~~

³ See Weber (2008) for an analysis of the potential benefits of links between regional management organisations and CITES.

⁴ Two one-off sales of raw ivory have taken place since the elephant was listed on Appendix I in 1989. The first was in 1999 when Botswana, Namibia and Zimbabwe sold ivory to a single buyer (Japan) and the second was in 2008 when Botswana, South Africa, Namibia and Zimbabwe sold to China and Japan.

a) Ivory sales would be conducted on the CISO premises;

[...]

Consolidated References: Sections 1-6

[...]

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