

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



Seventy-seventh meeting of the Standing Committee
Geneva (Switzerland), 6 – 10 November 2023

IMPLEMENTATION OF DECISIONS 19.99, 19.100, AND 19.101 ON
IVORY SEIZURES AND DOMESTIC IVORY MARKETS

1. This document has been submitted by Burkina Faso regarding Document 63.1 REPORT OF THE SECRETARIAT ON THE IMPLEMENTATION OF RESOLUTION CONF. 10.10 (REV. COP19).¹

Summary

2. This document has been submitted to support the implementation of Decisions 19.99-101 on ivory seizures and domestic ivory markets by providing clarification on how to identify countries with legal domestic ivory markets for the analysis of seizures connected to each relevant Party (referred to in Decision 19.99), and by providing more information on the rationale for the analysis and some suggested guidance on research questions.

Background

3. Since the 17th meeting of the Conference of the Parties (CoP17) in 2016, which recommended the closure of domestic ivory markets that are contributing to poaching or illegal trade “as a matter of urgency” (Resolution Conf.10.10 (Rev.CoP19), paragraph 3),² there has been a series of domestic market closures around the world. The main goal of the global closure of domestic ivory markets that began in 2016, led by the United States, was initially to prevent legal markets from creating “a significant opportunity for laundering of illegal ivory under the guise of legality”,³ and to support efforts of African elephant range States that were suffering from devastating poaching and illegal ivory trade. African elephants in particular were facing an “ongoing acute level of threat” as population levels in all regions of Africa continued to decline due to illegal killing.⁴ Many elephant range States had called upon *transit and consumer countries* to protect elephant populations by closing their domestic ivory markets.⁵ Notably, representatives from 25 African elephant range States adopted the Cotonou Declaration in November 2015 which stated the African elephant Action Plan can only be implemented effectively in the absence of trade in ivory and agreed to “*support all proposals and actions at international and national levels to close domestic ivory markets worldwide.*”⁶ Since then, the importance of the closure of domestic ivory markets for eradicating elephant poaching and the threat from ivory trade has come to be

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 its author.

² <https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-10-10-R19.pdf>

³ CoP17 Doc. 27 “ACTIONS TO COMBAT WILDLIFE TRAFFICKING”
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-27.pdf>

⁴ CoP17 Doc. 57.2 <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-02.pdf> See also the latest MIKE analysis referring to the trend in illegal killing for African elephants in contrast with Asian elephants (SC77 Doc.63.1 Annex. 2)

⁵ CoP17 Doc. 27 “ACTIONS TO COMBAT WILDLIFE TRAFFICKING”
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-27.pdf>

⁶ <https://www.elephantvoices.org/phocadownload/Cotonou-Declaration-4Nov2015.pdf>

understood more fully.

4. In recent years many other CITES Parties and regions, including China, the United Kingdom, Israel, Singapore and the European Union, have joined the United States in actively taking steps to close their domestic markets. Some Parties, such as Australia and New Zealand, have not yet enacted comprehensive legislation prohibiting the domestic commercial trade in ivory, but have either announced policies to close the market or are considering doing so. While the EU determined that its ivory market is not a destination for illegal ivory items sourced from recently poached elephants after an evaluation of seizure and investigation data, it still decided to close its market with narrow exemptions in January 2022⁷ because the EU wanted to “reduce the risk that ivory items acquired in the EU and then exported to third countries could fuel the demand for illegal ivory items, and thus undermine enforcement and demand reduction activities.”⁸ These actions indicate that the international community has gained a deeper and more holistic understanding of the global impact that the closure of domestic ivory markets, especially in major ivory consuming countries, has on safeguarding African elephants from threats posed by the ivory trade. Most of these consumer countries are not range states for African elephants.
5. The understanding of the impact of market closures will naturally affect the interpretation of the qualifying wording in the recommendation to close markets: “contributing to poaching or illegal trade”.⁹ “Trade” includes imports and exports, and there is no basis for construing it to be limited to either. The same applies to restrictive interpretations of the origin of ivory that is “traded.” Taking into account the deepened understanding of the significance of market closure for preventing laundering of illegal ivory under the guise of legality and assisting demand reduction and enforcement efforts in other countries, all markets that are linked to the import, export, or transit in ivory that has been illegally sourced or traded in violation of existing legislative frameworks must be considered to be “contributing to [...] illegal trade”, regardless of the ivory’s origin.
6. Following the decision to urge the closure of domestic ivory markets at CoP17, CoP18 directed Parties that have not closed their domestic ivory markets to submit reports for consideration by the Standing Committee.¹⁰ This action provided an opportunity for the Standing Committee to evaluate implementation of the language urging market closure. In response to Decision 18.117 (Rev. CoP19), certain Parties and regions with legal domestic ivory markets have submitted reports on how their markets are not contributing to poaching or illegal trade. However, no process for evaluation has been agreed that would allow the Standing Committee and Conference of the Parties to evaluate these reports to determine whether the reported measures have indeed been effective in ensuring that legal domestic ivory markets do not contribute to poaching or illegal trade. Furthermore, Parties that have failed to submit reports on the status of their domestic ivory markets have been able to avoid any oversight by the Standing Committee.¹¹
7. In SC74 Inf.18,¹² Liberia and Senegal suggested an analysis of seizure data related to legal domestic ivory markets in order to “assist the Standing Committee with examining more closely whether a Party is taking effective measures to ensure that their domestic ivory market is not contributing to poaching or illegal trade.” Subsequently the EU proposed an analysis of ivory seizures connected to each Party with a legal domestic ivory market for inclusion of the results in the ETIS report.¹³

⁷ CITES SC74 Inf.10 <https://cites.org/sites/default/files/eng/com/sc/74/Inf/E-SC74-Inf-10.pdf>

⁸ CITES SC74 Doc.39 Annex 2 <https://cites.org/sites/default/files/eng/com/sc/74/E-SC74-39.pdf>

⁹ Paragraph 3 of Resolution Conf.10.10 (Rev.CoP19)

<https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-10-10-R19.pdf>

¹⁰ Decision 18.117 –18.119: CoP18 Com II. Rec. 9 (Rev. 1) https://cites.org/sites/default/files/eng/cop/18/Com_II/SR/E-CoP18-Com-II-Rec-09-R1.pdf

¹¹ The Secretariat notes the limited number of responses that were submitted in response to the latest Notification to the Parties issued relating to the closure of domestic ivory markets. And it also noted that the limited available information presents difficulties in informing decision-making related to the closure of domestic ivory markets (SC77 Doc.63.1 paragraph 74).

¹² SC74 Inf.18

<https://cites.org/sites/default/files/eng/com/sc/74/Inf/E-SC74-Inf-18.pdf>

¹³ SC74 Sum. 8 (Rev. 1) <https://cites.org/sites/default/files/eng/com/sc/74/exsum/E-SC74-Sum-08-R1.pdf>

8. At CoP19, Benin, Burkina Faso, Equatorial Guinea, Ethiopia, Gabon, Liberia, Niger, Senegal, and Togo proposed a series of draft decisions to incorporate a process into ETIS for evaluating how legal domestic ivory markets are contributing to illegal trade.¹⁴ The purpose of this proposed analysis is to provide information and technical advice to the Parties, especially ivory consuming countries (non-African elephant-range states), with legal domestic ivory markets to support their decision-making on closing their markets or strengthening the measures already taken to close domestic markets. This information will also support the Standing Committee and the CoP as these bodies consider implementation of Resolution Conf. 10.10 (Rev. CoP19) paragraph 5.

Decisions adopted at CoP19

9. CoP19 adopted a series of Decisions proposed in CoP19 Doc. 63.3 with amendments to Decision 19.99 and 19.101, as well as Decision 19.100 as proposed by Burkina Faso in Plenary¹⁵:

Directed to the Secretariat

19.99 *Subject to external funding, the Secretariat shall engage the MIKE and ETIS Technical Advisory Group and TRAFFIC to advise whether an analysis of ivory seizures connected to each Party with a legal domestic market for commercial trade in ivory could be undertaken and, if feasible, carry out the analysis and include the results in the ETIS report to the Standing Committee at its 78th meeting, and to the 20th meeting of the Conference of the Parties.*

19.100 *The Secretariat shall report on progress made with respect to the analysis in Decision 19.99 to the 77th meeting of the Standing Committee.*

Directed to the Standing Committee

19.101 *The Standing Committee shall consider the Secretariat's report under Decision 19.100 and request the Secretariat to take appropriate measures, if any.*

Report of the Secretariat/TRAFFIC in SC77 Doc. 63.1

10. The Secretariat reported on the "Implementation of Decisions 19.99 and 19.100 on Ivory seizures and domestic ivory markets", summarizing the assessment conducted by TRAFFIC on the feasibility of the use of ETIS data in an analysis of legal domestic ivory markets included in Annex 2 of Doc. 63.1, which includes the feedback from the MIKE-ETIS TAG.¹⁶
11. After consultation with the MIKE-ETIS TAG, TRAFFIC was asked to explore the feasibility of such an analysis by proposing: 1) criteria to identify which legal domestic ivory markets to include in analyses; and, 2) a concept analysis of how ETIS data can be used to inform the Parties on Decision 19.99 including stating assumptions and limitations of the data.
12. With regard to identification of legal domestic ivory markets to include in an analysis, TRAFFIC found 50 Parties, regions and territories that appeared in 21 CITES documents published between 2016 and 2022; 12 Parties¹⁷ reported a legal domestic ivory market; of the other 38 Parties, regions or territories that responded to the Secretariat's surveys, 33 reported not to have a legal domestic ivory market¹⁸, while another five Parties¹⁹ did not respond to the Secretariat's survey but through

¹⁴ CoP19 Doc. 66.3

<https://cites.org/sites/default/files/documents/E-CoP19-66-03.pdf>

¹⁵ CoP19 Plen. Rec. 3 (Rev. 1)

<https://cites.org/sites/default/files/documents/E-CoP19-Plen-Rec-03-R1.pdf>

¹⁶ <https://cites.org/sites/default/files/documents/E-SC77-63-01.pdf>

¹⁷ Australia, Cameroon, Comoros, Equatorial Guinea, Greece, New Zealand, Senegal, Singapore, Somalia, South Africa, Togo and Zimbabwe

¹⁸ Angola, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Democratic Republic of the Congo, Eritrea, Ethiopia, European Union, Gabon, Ghana, Guinea, Hong Kong SAR, Israel, Ivory Coast, Japan, Kenya, Liberia, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Republic of the Congo, Rwanda, Sierra Leone, South Sudan, Thailand, Uganda, United Kingdom and United States of America

¹⁹ China, Lao People's Democratic Republic, Malaysia, Philippines and Viet Nam

a study commissioned by the Secretariat were found not to have legal domestic markets; these Parties may have had a prohibition on trade in ivory in place. Of these 38 Parties, regions or territories “with no legal domestic markets”, 17²⁰ included exemptions from the bans or prohibitions that varied greatly, allowing some forms of trade. Some exemptions were more restrictive on the details of the specimens to be traded, providing permissions to “auction ivory cultural relics under strict supervision”, whereas other exemptions provided less strict permission to legally sell “whole tusks, cut pieces and ivory products that pre-existed before the CITES trade ban”. Based on these results, TRAFFIC was unable to discern criteria for what constitutes a legal domestic ivory market.

13. In response to the report from TRAFFIC, the TAG suggested obtaining further clarification from the Parties before pursuing an analysis. TRAFFIC therefore is seeking further guidance from the Parties on the definitions of legal domestic ivory market, and the proposed analyses for implementation of Decision 19.99.
14. The Secretariat invited the Standing Committee to provide guidance on the criteria to be used to identify countries with legal domestic ivory markets, and the research questions to be addressed with ETIS data, to further inform the consideration by the MIKE-ETIS TAG of the feasibility of such an analysis (paragraph 75 e)). The Secretariat also suggested “the Standing Committee may wish to refer MIKE and ETIS matters to the Subgroup for consideration, such as the proposed guidance for Parties on addressing the definition of domestic ivory markets and the research questions to be addressed using ETIS data (paragraph 65).”

Response to the Report of the Secretariat/TRAFFIC

15. TRAFFIC, with advice from the MIKE-ETIS TAG, assessed the feasibility of the analysis as directed by Decision 19.99 and drew attention to the complexity of identifying countries with “legal domestic ivory markets” to be included in the analysis. The Standing Committee needs to identify a meaningful and practical solution to enable the analysis to proceed. Specifically, in response to the request from the Secretariat, the Standing Committee needs to provide guidance to enable the analysis to commence after SC77.
16. The feasibility study by TRAFFIC implied 29 Parties, regions and territories for possible consideration, 12 of which reported having a legal domestic ivory market,²¹ and 17 as having prohibitions on trade in ivory with varying exemptions.²² Of those which reported having a legal domestic ivory market, five are non-African elephant range States,²³ while 13 Parties, regions and territories which have prohibitions on trade in ivory with exemptions are non-African elephant range States.²⁴ In accordance with Resolution Conf. 10.10 (Rev. CoP19) paragraph 4, any exemptions should be “narrow” and should not contribute to poaching or illegal trade. The purpose of the analysis is to provide information and technical advice to Parties, especially ivory consuming countries (non-African elephant range States), as well as the Standing Committee and CoP to support their decision-making for implementing Resolution Conf. 10.10 (Rev. CoP19) paragraph 5. Thus there is a need to identify which markets should be the focus of the analysis. It is proposed, therefore, that TRAFFIC carries out preliminary research to collate information from the ETIS data related to each of the five non-African elephant-range States that reported having a legal domestic ivory market and the 13 non-African elephant-range States that have prohibitions on trade in ivory with varying exemptions, as well as certain information on their domestic ivory markets. This information can be provided to the Parties and SC78 for their consideration, so that SC78 can discuss the criteria to identify “countries with legal domestic ivory markets” to be the focus of a full-fledged analysis as well as research questions for the analysis, to be reported to CoP20.

²⁰ Burundi, China, Eritrea, European Union, Ghana, Hong Kong SAR, Israel, Japan, Lao People’s Democratic Republic, Malaysia, Mozambique, Philippines, Sierra Leone, Thailand, United Kingdom, United States of America and Viet Nam.

²¹ Footnote “16” in SC77 Doc.63.1 Annex 2 specifies 12 Parties that had reported a legal domestic ivory market. <https://cites.org/sites/default/files/documents/E-SC77-63-01.pdf>

²² Footnote “19” in SC77 Doc.63.1 Annex 2 specifies 17 Parties, regions and territories amongst 38 Parties, regions or territories that have had a ban or prohibition on trade in ivory, which included exemptions on the bans or prohibitions that varied greatly allowing some forms of trade, for example, in “pre-Convention ivory or antique specimens”, or “commercially under a registration system”.

²³ Australia, Comoros, Greece, New Zealand and Singapore. See footnote 16 in SC77 Doc.63.1 Annex 2.

²⁴ Burundi, China, European Union, Hong Kong SAR, Israel, Japan, Lao People’s Democratic Republic, Malaysia, Philippines, Thailand, the United Kingdom, the United States and Viet Nam. See footnote 19 in SC77 Doc.63.1 Annex 2

17. Information on ivory seizures and legal domestic ivory markets for the preliminary research should include: 1) all ETIS data on documented seizures (number, weight, etc.) linked to each Party, which were made domestically as well as at import/export sites; 2) general trends on trade routes in each Party and the Party's role (e.g. country of export, transit, import or re-export) in the illegal trades, which are identified in the ETIS data; and 3) the Law Enforcement (LE) ratio of each Party.
18. In addition to the ETIS data, information on those Parties' domestic ivory markets: stockpiles of ivory in each Party's jurisdiction (on each legally-sourced and illegally-sourced ivory tusk/product, if data are available) and information regarding the extent that ivory is authorized to be traded domestically for commercial purposes, can be summarized and referred to in the discussion on the ETIS data above. It would be helpful, if feasible, to categorize the extent to which ivory is authorized for commercial trade in each Party and show the category applicable to each Party. (For example, "all ivory", "all pre-Convention ivory (under some procedural conditions*)", "all of or a part of *bona fide* antiques of a certain age, parts of musical instruments and de minimis made of pre-Convention ivory", etc. "Procedural conditions" may include permission to trade, registration of ivory, registration/licensing of ivory traders, etc.) Incomplete data and any failure to respond to surveys as requested by the CITES Secretariat should be noted in the report to SC78.

Conclusion and Recommendation

19. Pursuant to Decision 19.101 that directs SC77 to consider the Secretariat's report and request the Secretariat to take appropriate measures, and to enable TRAFFIC and the MIKE-ETIS TAG to commence the analysis directed to the Secretariat in Decision 19.99, the Standing Committee is requested to consider the approach proposed in paragraphs 16, 17, and 18 of this document and, taking it into account, provide guidance on the preliminary research suggested, so that the Secretariat can include the results of the research with regard to the 18 Parties, regions and territories referred to in paragraph 16 of this document in the ETIS report to be submitted to SC78.
20. The Parties submitting this document urge the Standing Committee to consider and adopt the draft recommendations to the Secretariat that are included in the Annex of this document.

Annex

Draft recommendations from the 77th meeting of the Standing Committee to the Secretariat

The Standing Committee directs the Secretariat to:

- a) Provide the MIKE and ETIS Technical Advisory Group and TRAFFIC with the following guidance on preliminary research toward the analysis directed by Decision 19.99:

Guidance on preliminary research toward the analysis directed by Decision 19.99 to be included in the ETIS report to SC78

- i) Preliminary research, collating the ETIS data and information on the domestic ivory markets, with regard to the 18 Parties regions and territories that are identified as non-African elephant range states included in the list of the Parties, regions and territories in footnotes 16 and 19 in SC77 Doc.63.1 Annex 2,²⁵ should be carried out, and the results should be included into the ETIS report to SC78.
 - ii) The ETIS data to be collated should include:
 - 1) All ETIS data on documented seizures (number, weight, etc.) linked to each Party, which were made domestically as well as at import/export sites;
 - 2) General trends on trade routes in each Party and the Party's role (e.g. country of export, transit, import or re-export) in the illegal trades, which are identified in the ETIS data; and
 - 3) Law Enforcement (LE) ratio of each Party.
 - iii) Information on the domestic ivory markets to be collated should include stockpiles of ivory in the jurisdiction of the Party (on each legally-sourced and illegally-sourced ivory tusk/product, if data are available) and the extent to which ivory is authorized to be traded domestically for commercial purposes, and should be summarized and referred to in the discussion on the ETIS data above. It would be helpful, if feasible, to categorize the extent to which ivory is authorized for commercial trade in each and show the category applicable to each Party. (For example, "all ivory", "all pre-Convention ivory (under some procedural conditions*)", "all of or a part of *bona fide* antiques of a certain age, parts of musical instruments and de minimis made of pre-Convention ivory", etc. "Procedural conditions" may include permission to trade, registration of ivory, registration/licensing of ivory traders, etc.)
 - iv) Incomplete data and any failure to respond to surveys as requested by the CITES Secretariat should be noted in the report to SC78.
- b) Engage with the MIKE and ETIS Technical Advisory Group and TRAFFIC to carry out the preliminary research based on the guidance provided and to include the results in the ETIS report to SC78.

²⁵ Australia, Burundi, China, Comoros, European Union, Greece, Hong Kong SAR, Israel, Japan, Lao People's Democratic Republic, Malaysia, New Zealand, Philippines, Singapore, Thailand, the United Kingdom, the United States and Viet Nam.