

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

Sixty-sixth meeting of the Standing Committee
Geneva (Switzerland), 11-15 January 2016

Interpretation and implementation of the Convention

Species trade and conservation

Elephants (Elephantidae spp.)

Decision-making mechanism for authorizing ivory trade

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1. This document has been submitted by Benin, Burkina Faso, Ethiopia¹ and Kenya.²
2. Summary: Elephants face a severe crisis in Africa as a result of the illegal ivory trade. It is vital that CITES through its Standing Committee takes action to address the issue, and to send the clearest possible signal to poachers, traders and consumers that the Convention is devoting its efforts to halting illegal trade, closing loopholes that facilitate continued trade, addressing demand for ivory and protecting elephants, not debating their further exploitation for legal trade in ivory. This document recommends that the Committee use its authority to suspend the Working Group on the Decision Making Mechanism for a Process of Trade in Ivory (DMM), and recommend that the Conference of Parties at its 17th meeting (24 September to 5 October 2016) does not extend the mandate provided under Decision 16.55, and formerly Decision 14.77.

Background

3. In 2007, the CoP adopted Decision 14.77, directing the CITES Standing Committee (SC) to propose a “**decision-making mechanism**” for a process of trade in ivory under the auspices of the Conference of the Parties” (hereinafter referred to as “the DMM”). Since then, negotiations on the DMM have been on-going under the CITES SC and Conference of the Parties (CoP). Ultimately, the DMM would provide rules which could permit further internationally-sanctioned trade in ivory. The process should originally have been completed at CoP16 in 2013 but was extended to CoP17 in 2016,³ and a Decision Making Mechanism Working Group established at the 64th meeting of the Standing Committee (SC64), immediately following

¹ Note from the Secretariat: no official submission of the present document has been received from this country.

² 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.

³ Under Decision 16.55 Parties decided that: “The Standing Committee shall: a) with the assistance of the Secretariat, propose for approval at the latest at the 17th meeting of the Conference of the Parties (CoP17) a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties; b) at its 64th meeting, establish a working group, composed of the Chair of the Standing Committee, specified key Party stakeholders and the Secretariat, to implement the instruction in paragraph a) of the present Decision. The working group shall work intersessionally and take into consideration relevant documents submitted at previous meetings of the Standing Committee and the findings and comments in document CoP16 Doc. 36 (Rev. 1), and consult additional experts or stakeholders, if considered necessary. The Standing Committee shall consider the findings and recommendations of the working group at its 65th meeting, decide on further actions as required, and agree on a final proposal at its 66th meeting for submission at CoP17; and c) conduct its work on the development of a decision making mechanism in consultation with all African and Asian elephant range States and, to the extent possible, in both English and French.”

CoP16. However, despite more than seven years of discussions and a study by consultants undertaken in 2011-2012, financially supported by Botswana and the European Commission and entitled 'Decision-making mechanisms and necessary conditions for a future trade in African elephant ivory', no DMM has been agreed, either by the DMM Working Group, the Standing Committee or the Conference of the Parties. The timetable agreed by the CoP in 2013 has continuously slipped. At SC65 in July 2014, the DMM Working Group did not meet, but nevertheless, the Committee agreed that a further study would be undertaken by UNEP and the Secretariat and presented to the DMM Working Group by January 2015. The Standing Committee's conclusions were as follows:

Participants noted the lack of progress in implementing Decision 16.55, and recognized the difficulty of debating possible future trade in ivory at a time when levels of elephant poaching in Africa and illegal trade in ivory were very high and of global concern. As no new information was available for the working group to consider, it did not convene during the present meeting. The United States and South Africa, as members of the working group on the decision-making mechanism, believed that Norway should chair the group. The Committee agreed that the working group on the decision-making mechanism should continue to work intersessionally. It also requested the Secretariat, in collaboration with the Secretariat of UNEP, to prepare a background document, as mentioned in paragraph 8 of document SC65 Doc. 42.3, and make it available to the working group by January 2015 at the latest.⁴ The working group was invited to report on progress in the implementation of Decision 16.55 at SC66. The Committee noted the oral report of the Secretariat on how it would develop the background document for the working group on the decision-making mechanism for authorizing ivory trade.⁵

4. Since the concept was put forward at CoP14 in 2007, the DMM has been highly controversial amongst CITES Parties and Observers, as well as many scientists. One of the main problems is reaching a realistic estimate of legitimate, sustainable demand from Asian markets for ivory, and the considerable risk that increasing demand could easily outstrip legally-sourced supply. As poaching rates of African elephants increased this issue started to predominate in both economic and conservation circles. In her letter to the CITES Secretariat in May 2012 commenting on the Consultants' report on the DMM, the Chair of the IUCN African Elephant Specialist Group summed up the dilemma:

"Prior to adopting the system described or any modification of the mechanism recommended, it would seem very important that the demand which needs to be fed is estimated in some meaningful way. In China alone, it is possible that if only a nominal fraction of those entering the middle class each year become ivory consumers, the scale of demand would potentially be so large as to outstrip any legally-sourced supply. I raise this because, even with the greatest will in the world, a dramatically increasing demand could rapidly exceed the legal supply and law enforcement efforts on the ground in Africa would very likely be overwhelmed in the face of a challenge of this nature. It could indeed be considered a shortcoming that a document of this magnitude does not really address this possibility. In fact, the assumptions (though perhaps not as clearly articulated as they might have been) of a tightly controlled legal supply and a demand that is comfortably accommodated within those amounts could well be challenged on the basis of current demand, alone."⁶

5. Since the Decision Making Mechanism process was initiated, elephant losses have accelerated in many sub-Saharan African range States as a consequence of increased demand for ivory from Asian consumer states, which funds global poaching and smuggling networks.⁷ The CITES programme for Monitoring Illegal Killing of Elephants (MIKE) and the Elephant Trade Information System (ETIS) have reported unprecedented levels of illegal killing of elephants and illegal trade in ivory.⁸ It is undisputed that current elephant poaching levels are unsustainable.⁹ We consider that a vital part of CITES measures to address

⁴ The January 2015 deadline was later revised to March 2015 (Notification No. 2015/004, Changes to deadlines established by the 65th meeting of the Standing Committee, 16 January 2015).

⁵ Summary Record of 65th Standing Committee, July 2014.

⁶ Extract from letter of Dr Holly Dublin to Tom de Meulenaer, 11 May 2012 available at https://cmsdata.iucn.org/downloads/afesg_comments_draftreport_11may2012.pdf

⁷ e.g. George Wittemyer, Joseph Northrup, Julian Blanc, Iain Douglas-Hamilton, Patrick Omondi and Kenneth Burnham (2014), "Illegal killing for ivory drives global decline in African elephants", PNAS, vol. 111 no. 36. (access at <http://www.pnas.org/content/111/36/13117.abstract>).

⁸ SC65 Doc. 42.1 Elephant Conservation, Illegal Killing and Ivory Trade. Annex 1 https://www.cites.org/sites/default/files/eng/com/sc/65/E-SC65-42-01_2.pdf

⁹ CITES Press Release : Elephant poaching and ivory smuggling figures released today https://cites.org/eng/elephant_poaching_and_ivory_smuggling_figures_for_2013_released https://cites.org/eng/elephant_poaching_and_ivory_smuggling_figures_for_2013_released

this crisis effectively is to send a clear and unambiguous signal that legal trade in ivory through a DMM will no longer be debated. Without such a signal, we believe the risk of extinction of elephant populations in parts of Africa is enhanced.

Analysis and Argument

6. The continued existence of a DMM process - however gradual and delayed it may be - provides an incentive for excessive and potentially unlawful consumer demand for ivory from any source. It legitimises an unrealistic and increasingly risky premise: that a legal and sustainable global trade in ivory can be established under CITES without driving poaching and illegal trade. As long as there is a market-driven trade system with a demand level that is higher than the intrinsic growth rates of elephant populations, eliminating illegal harvesting to meet this high demand would be difficult, if not impossible.
7. For many elephant range States under unprecedented pressure from globally organised poaching for ivory, which is being used to fund terrorist movements as well as feed unsustainable demand from consumers, the very concept of a DMM now seems anachronistic and irrelevant, especially ideas which the Consultants proposed in 2012 for a “Central Ivory Selling Organisation (CISO).”¹⁰ The Consultants’ report was met with extensive criticism from Parties and Observers, including some of the range and consumer States that engaged in the stockpile sales in 1999 and 2008.¹¹
8. Continuing to utilise scarce CITES resources to devise an ivory trading mechanism would send an unacceptable global signal. Such a step would ignore widening opposition to all trade in ivory at the national, regional and international level, including by governments as well as civil society. Several high-level initiatives (including by countries formerly supporting and benefiting from ivory sales) have acknowledged the need for a moratorium on ivory trade and to eliminate demand for ivory. Fifteen countries have publicly destroyed ivory stockpiles since 2011, and several others have announced they will do so. In many States, including China, the US, EU and in Africa,¹² ivory disposals have been accompanied by political commitments at high Ministerial level to end the ivory trade altogether. CITES needs to respond to this commitment in a timely and sensitive way.
9. CITES has reached the end of a long and winding road in trying to achieve the impossible - to conserve and ‘kill’ elephants simultaneously. Prior to the DMM decision there was a clear sequence of well-meaning but unsuccessful experiments under CITES to establish sustainable ivory trade, including the voluntary quota and ivory marking schemes of the 1980s and the mandatory closed sales to Asian countries in 1999 and 2008. After more than 30 years of experiments in controlled trade, elephant populations remain close to their lowest-ever recorded level, and are declining on average by 2-3% annually.¹³ The only recent period of significant stabilisation and recovery in elephant populations took place as a consequence of the full CITES listing of elephants on Appendix I which was in force during the period 1990-1997

Conclusion and Recommendation

10. It is understood that the Standing Committee is under a remit from the Conference of the Parties in relation to the DMM process. However **the situation now facing elephants** as a result of escalating ivory poaching could not have been fully foreseen even at the most recent CoP in 2013, and **needs to be treated as an emergency**. The Standing Committee has broad Terms of Reference (ToRs) under Annex 1 of Resolution Conf. 11.1 (Rev. CoP 16). ToRs (a), (d), (e) and (f) provide a solid basis for the Standing Committee to take proactive action to meet this emergency. In particular, ToR (d) directs the Standing Committee to “provide coordination and advice as required to other committees and provide direction and coordination of working groups established by either itself or the Conference of the Parties” (emphasis

¹⁰ R.B. Martin, D.H.M. Cumming, G.C. Craig, D. St.C. Gibson and D.A. Peake, *Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory, Consultancy for the CITES Secretariat, 24 May 2012, SC62 Doc. 46.4, Annex available at <https://cites.org/sites/default/files/eng/com/sc/62/E62-46-04-A.pdf>*

¹¹ *Comments from Specified Stakeholders on ‘Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory’, CITES Secretariat, March 2013, CoP16 Inf. 5 available at <https://cites.org/sites/default/files/common/cop/16/inf/E-CoP16i-05.pdf>*

¹² *Including Chad, Ethiopia, Gabon, Kenya and the Republic of Congo.*

¹³ *See Wittmeyer et al (op. cit.) which showed in 2014 that CITES MIKE data was likely to underestimate poaching levels. Published estimates for the total population of African elephants are increasingly based on out-dated data. A series of recent studies by African and international scientists show major and in some cases catastrophic further declines in local elephant populations in both Central and Eastern Africa. Whilst AfESG and IUCN cite a figure of around 500,000 African elephants left in the wild, some experts believe the true figure may be closer to 250,000 - see Jones, T., and K. Nowak. ‘Elephant Declines Vastly Underestimated,’ National Geographic, December 2013. Available at: <http://newswatch.nationalgeographic.com/2013/12/16/elephant-declines-a-view-from-the-field/>.*

added). There are examples in the past where the Standing Committee has taken firm action intersessionally, for example by recommending trade suspensions with non-compliant countries.

11. It is therefore recommended, in the light of the crisis facing elephant populations in the majority of range States that the Standing Committee DECIDES to:
 - a) suspend further discussion by the Working Group under Decision 16.55 of a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties (DMM); and
 - b) recommend to the Conference of the Parties at its 17th meeting that the mandate under Decision 16.55 (and formerly Decision 14.77) should not be extended, and that the Parties should focus on legislative, enforcement, educational and fund-raising measures to significantly reduce poaching rates, demand for ivory and illegal trade in order to achieve long-term security of elephant populations.