



EIA CRITIQUE OF SC62 DOC. 46.4 ANNEX

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

FINAL REPORT

The Environmental Investigation Agency (EIA) remains concerned that any more ‘legal’ sales or discussion of ‘legal’ sales of ivory will further stimulate the ivory market, supporting the perception that international trade has indefinitely resumed, and increasing demand for illegal ivory. In addition, the availability of ivory from both legal and illegal sources further challenges law enforcement agencies in their efforts to tackle the criminal networks behind the trade. In light of mass poaching of African elephants, the increase in illegal trade in ivory, and the fact that the legal sales have clearly failed to reduce illegal trade, EIA urges the Standing Committee not to proceed with any further discussion on a future international trade in ivory at this time.

Consequently, with regard to the report submitted by the CITES consultants on a Decision-Making Mechanism for a Future Trade in Ivory SC62 Doc. 46.4 (hereafter referred to as “the Report”), EIA recommends that the Standing Committee note that the Report fails to address the core issues identified in the Terms of Reference (ToR) and the fundamental reasons for the failure of the current legal ivory trade system. EIA strongly supports a complete ban on international ivory trade and urges the Standing Committee to take no further actions on the recommendations made in the Report. Instead, EIA requests that the Standing Committee conduct a review of the enforcement gaps and needs that have led to the failure of the current ivory trade control and regulation system. Parties must be able to demonstrate that national investment and commitment to professional law enforcement is adequate to combat transnational organised wildlife crime and corruption.

The Report has failed to adhere to the ToR and seeks instead to put in place a system for future trade without providing or discussing the information specified in the ToR, such as information concerning the ecological sustainability of an international ivory trade, the impact of such a trade on illegal killing, the impact of one-off legal sales, enforcement challenges, and linkages between legal and illegal trade and methods to elucidate linkages.

The parties to CITES must recognise that in the current climate of poor enforcement, lack of resources, failure of political will and corruption, there is no likelihood that any form of regulated trade is workable.

EIA therefore:

- **RECOMMENDS** that the Standing Committee **REJECT** the report submitted on a *Decision-Making Mechanism for Future Trade in Ivory* (SC62 Doc. 46.4) on the grounds that it **FAILS** to address core issues identified in the ToR and the fundamental reasons for the failure of current legal ivory trade systems and control, and;
- **URGES** that no further action or discussion on a future international trade in ivory should take place at this time, and instead **CALLS** for an independent review of the enforcement gaps that have led to the failure of the current ivory trade system.

Notwithstanding **the current concerns about illegal killing of African Elephants for their ivory**, Decision 14.77 (COP-14) directed the Standing Committee, assisted by the Secretariat, to propose for approval by COP-16, “a decision-making mechanism for a process of trade in ivory under the auspices of the Conference of the Parties.”

The Terms of Reference (ToR) for “an **independent** study” for implementing Decision 14.77 were adopted at SC57 and the study was awarded to a consortium of southern Africa-based experts. Their report - *The Final Report on Decision-Making Mechanisms and Necessary Conditions for a Future Trade in African Elephant Ivory* (hereafter referred to as “the Report”) - has been submitted for consideration by the CITES Standing Committee (SC62 Doc. 46.4) with a view to “formulating a proposal on a decision-making mechanism for a process of trade in ivory”.

A number of criticisms from a range of stakeholders and independent experts have been levelled at the Report and some of the critical problems with the Report are highlighted below.

The report is biased and fails to meet the ToR

First and foremost, the Report’s conclusions are blatantly biased in favour of trade and therefore contradict the ToR. The primary role of this “independent” study was to examine, analyse and compile relevant data and based on this analysis, make unbiased recommendations for the criteria or “conditions under which international trade in ivory could take place.” Such conditions were required to be based on several factors including **ecological sustainability** of the trade. The ToR expressly provided that this was to be a “technically focused study”, **not to determine whether there should or should not be international trade** in ivory, yet the recommendations provided have substantively determined that there should be international trade in ivory.

The Report is premised on the understanding that a perpetual trade in ivory is good and necessary for elephant conservation, although it does not explain exactly how the returns from such trade would protect the species. This is unequivocally clear from the approach, tone, analysis and conclusions in the Report, and several commentators, including members of the IUCN African Elephant Specialist Group (AfESG), have expressed their concerns that the models and calculations in the Report are either biased or based on speculation.

The Report concludes that “the present system is not working so that there are strong imperatives for seeking an alternative”. The current system is not working because existing regulation, control and legislative systems are not being implemented or effectively enforced. Further, **the Report undermines decades of efforts to protect the African elephant** and suggests that listing of the African elephant in 1989 was unnecessary and based on “alarmist” assertions, and that the ban on ivory led to an increase in both ivory prices and incentives for poaching.

While stating that there are many drivers of illegal trade and that there is no method of identifying these drivers and their relation to decline in elephant population, the Report nonetheless concludes that demand in China cannot be identified as the primary cause, despite a wealth of evidence that clearly demonstrates the Chinese market as the biggest driver of illegal ivory trade¹.

Key issues identified in the ToR have not been examined

In addition, the following key issues, also specifically identified in the ToR, have not been addressed:

Impact of legal sales on poaching: The ToR specifically required the Report to examine “the impact of trade on the illegal killing of elephants” and “the initial impact of the one-off sale.” However, the Report does not examine this issue and merely states that sound data on the impact of legal sales on poaching is not available.

Impact of legal sales on illegal trade and demand: The Report does not evaluate this issue and the potential for and reality of the laundering of illegal ivory and increasing demand for ivory. Instead, the Report

¹ COP14 Doc 53.1; COP14 Doc.53.2; SC 57 Doc 33.2; COP15 Doc 44.1; SC61 Doc. 44.1

perfunctorily concludes 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.” By focusing entirely on providing incentives to African nations and ignoring the increasing demand for ivory in SE Asia, the Report fails to address the need to reduce demand, which according to comments submitted by the AfESG (Iain Douglas-Hamilton) is key to securing a future for elephants.

Violation of conditions of legal sales in consumer countries: The ToR specifically required the Report to examine “the ivory trade mechanisms that are or have been operating under the provisions of the Convention.” However, there is no attempt to address the role of the Approved Buyers in the escalating illegal trade. Recognising the failure of China to exercise proper control on its domestic ivory markets is a prerequisite to complying with the Convention’s provisions concerning the legal sales as required under the ToR.

Possibility that any trade would be a threat to elephants: The ToR required the Report to examine the ecological sustainability of ivory trade. However, far from addressing this critical issue meaningfully, the Report makes no attempt to consider the view that any trade is a threat to elephants and summarily rejects views that the legal sales increased poaching on the ground that considering such views “diverts attention from the far more serious problems relating to the inability of African countries to invest in protecting their elephants.” Further, the Report places all responsibility for addressing the burgeoning illegal trade at the door of African countries and makes no mention of the responsibility of consuming countries in Asia.

Involvement of organised crime: Although the ToR specifically required the Report to examine enforcement challenges in the ivory trade, the Report does not address the role of transnational organised criminal networks involved in the ivory trade and whether the enforcement response to combat poaching, trafficking and illegal sale has been adequate. The Report has also failed to examine the role of corrupt officials at all levels of the trade chain.

The Report’s conclusions and recommendations are fundamentally flawed

The principle recommendation of the Report is to set up an international Central Ivory Selling Organization (CISO), along the lines of the De Beers cartel, under which ivory from government stores in Africa would be deposited with the CISO which would then sell the ivory directly to retailers and traders, including governments, who own ivory processing factories.

The Report makes no attempt to address and understand the reasons for failure of the current system and legal sales and proposes yet another trading scheme, which in reality would **continue to be plagued by existing problems:** corruption in range and consumer states, laundering of illegal ivory, and lack of enforcement of domestic and international law.

The CISO will be “owned by the stakeholders,” i.e. the ivory producers and processing states. Not surprisingly therefore, the stated objective of the CISO is to “maintain the value of ivory” and achieve the **“best returns” for landholders (states, communities or individuals)**. Although the Report states that any future trade in ivory should contribute positively to the conservation of elephants, at the same time it supports achieving the “best returns for the producers” so that “they can realise their investment in elephants and habitats, and improve their livelihoods.” **The Report provides no concrete explanation as to how these two objectives can be harmonised and how these returns will be used to actually benefit elephant populations.** The Report talks about “reinvesting” the returns from the areas where the ivory originated but offers no model for the nature of such reinvestment.

The Report discusses “auctions” and “wish-lists” of ivory buyers but does not consider the need to **reduce** demand for ivory. On the contrary, by proposing a **perpetual** trading mechanism for ivory, the Report envisages **maintaining and encouraging demand** for ivory and in doing so poses a serious threat to the future of elephants. Given the fast-expanding domestic markets in China, **demand would almost certainly exceed any legal supply.**

While the CISO would set the price for sale of raw ivory, the organisation would have no control over the prices set by retailers/traders/processor governments on worked ivory and consequently the **prices of illegal ivory could still undercut the prices set by CISO.** Further, the CISO does not eliminate a market for poached ivory as evidenced by numerous reports and investigations conducted by EIA and presented to the CITES community which show that legal sales do not reduce illegal trade or demand for ivory.

Finally, the ivory that will be traded through CISO includes not only the ivory obtained from natural mortality but also **ivory obtained from the management of elephants** through culling for ecological reasons, control of problem animals and trophy hunting. Specifically, the Report (at pg. 28 footnote 20) also lists seizures of **ivory from illegal hunters as a source of ivory that would be shipped to the CISO**, which would effectively be laundering illegal ivory into a legal system.

In conclusion, the Report is based on certain flawed assumptions and principles that demonstrate a clear **bias** in favour of trade.

- The Report presumes that a perpetual legal trade in wildlife products is desirable and sustainable and makes no attempt to consider the view that any trade may pose a threat to elephant populations.
- The Report is built on the understanding that without appropriate financial “returns” or “incentives”, African governments and communities will not protect their elephant populations; however, it does not explain how local communities have actually benefited from the two legal sales, nor is there any mention of non-lethal financial incentives.
- By assuming that trade would be absent of corruption and laundering and that there would be effective monitoring, the Report blatantly ignores widely available evidence demonstrating the availability of illegal ivory laundered through legal markets due to poor governance and corruption and the failure of existing CITES mechanisms for the monitoring and control of ivory. Thus, the consultants’ naive belief that a legal ivory trade would replace the illegal ivory trade is baseless.
- The Report assumes that legal supply through the CISO can meet the demand for ivory. However, as pointed out by the AfESG in its comments on the Report, on the basis of current demand alone we can challenge the assumption that even a tightly controlled legal supply would be able to satisfy demand for ivory.

The report is not an “independent” study

Finally, as previously highlighted, there are significant concerns about the independence of the Report and this has been articulated by a range of stakeholders. The lead author, Mr Rowan Martin, has made no secret of his uncompromising views in support of ivory trade and his comments are well documented.² Members of the AfESG have pointed out that the Report focuses almost exclusively on southern Africa; that it is highly skewed towards the philosophical stance on utilisation of wildlife and aspiration to trade ivory of southern African countries. It does not describe the past and present situations in other African countries, many of which totally oppose any trade in ivory, and while it acknowledges that elephant populations are drastically declining in some parts of Africa, the Report does not examine how trade in those few states would impact the continuing decimation of elephant populations in other states.

It is also worth noting that many of the recommendations put forward in the Report revisit the recommendations made in the 1985 report *African Elephants, CITES and the Ivory Trade*³, authored by R.B. Martin, J.R. Caldwell and J.G. Barzdo, which also sought to set up an Ivory Export Cartel, mentioning diamonds as a model.

Given that the Report has been the subject of such severe criticism, it is therefore a matter of some concern that there is still an expectation, as stated by the Secretariat in SC62 Doc. 46.4, that the **Standing Committee will formulate a proposal on a decision-making mechanism** for a process of trade in ivory for submission at COP-16 and in doing so may **consider recommendations in the Report**.

In light of the serious shortcomings of the Report, some of which are identified in this document, the Standing Committee must reject the Report and step back from any further discussion on a future international trade in ivory until an independent study of the failure of the existing ivory trade system and enforcement gaps has been completed and the impacts of the 2008 ivory sale are fully understood.

² See, for example, Pittsburgh Post-Gazette, *Ivory Trade Ban is Zimbabwe Setback* (Nov. 23, 1989) (quoting Mr. Rowan Martin on the ivory trade ban – “the ivory trade ban and hunting legislation is a disaster.”

<http://news.google.com/newspapers?id=xZYxAAAAIBAJ&sjid=pm4DAAAAIBAJ&pg=6746.3908572&dq=rowan+martin+ivory+trade&hl=en>

³ http://www.archive.org/stream/africanelephants86mart/africanelephants86mart_djvu.txt