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John Scanlon
Secretary General
CITES Secretariat
International Environment House
15 -Chemin des Anemones
Geneva
SWITZERLAND

KENYA'S RESPONSE (COMMENTS) TO COP17 PROPOSALS

Reference is made to the Notification to the Parties No. 2016/043 of 26 May 2016.

Attached herewith, please find Kenya's response to a number of proposals submitted by Parties for the consideration of the 17th Meeting of the Conference of the Parties to CITES. Further elaboration of the responses on these and the other proposals not covered will be presented at CoP17.

Thank you

A handwritten signature in blue ink, appearing to read 'Solomon Kyalo', with a long horizontal line extending to the right.

SOLOMON KYALO
HEAD, CITES IMPLEMENTATION

RESPONSE BY KENYA TO PROPOSALS BY OTHER COUNTRIES

1. Proposals by Zimbabwe and Namibia to Delete the Annotation to the CITES Appendix II listing for African Elephants;

<https://cites.org/sites/default/files/eng/cop/17/E-CoP17-Prop-14.pdf>

<https://cites.org/sites/default/files/eng/cop/17/prop/060216/E-CoP17-Prop-15.pdf>

Namibia proposes to delete the annotation to the CITES Appendix II listing with respect to its elephant population. In a separate proposal, Namibia and Zimbabwe propose to amend the Appendix II listing of the Zimbabwe population by removing the annotation, so the listing would be an “unqualified” trade in ivory on the grounds that “a controlled marketing system would allow the government to raise money to combat illicit poaching and for conservation programs.”

The latter proposal is unclear; while it refers to Zimbabwe’s population, its implication is that the entire annotation should be removed, allowing unrestricted trade in ivory – subject to an export permit – from all four Appendix II countries – Botswana, Namibia South Africa and Zimbabwe.

History has shown that the international ivory trade cannot be controlled. Before African elephants were listed in Appendix I in 1989, a legal trade operated under the CITES Appendix II permit system. This legal trade under the auspices of CITES led to a parallel, uncontrolled illegal trade and catastrophic losses of elephants across Africa (about half the continental population was lost in the decade before the Appendix I listing).

Although it is claimed in the most recent report from CITES MIKE (Monitoring Illegal Killing of Elephants) that there is no evidence of a direct link between stockpile sales and poaching rates¹, an independent analysis has found a correlation between the timing of the 2008 sale and the spike in elephant killing². Indeed, it cannot be disputed that over the last decade, particularly in anticipation of and after the most recent 2008 ivory auction from southern Africa, demand spiraled and illegal killing rose to excessive levels and remains high. Levels of illegal killing of elephants have increased in Southern Africa, alongside trends in the rest of Africa. It is also clear that legal trade acts as a cover for illegal trade. In both China and Japan, which were approved by CITES as ivory importing countries, evidence has been reported of illegal ivory being laundered into the legal trade.

Namibia: The rates of poaching are not seen as a problem in the Namibia proposal, which states their populations are secure. The proposal itself, however, reports 252 elephants killed illegally over 4 years between 2012 and 2015, compared with 14 in the previous decade (Annex 2), indicating an escalation in the threat from poaching. The proposal states further that, the elephant population more than doubled between 2000 and 2015. However, a large proportion of elephants counted as part of Namibia’s population (nearly 60% according to their proposal) are found in the north-east of the country, which is a trans-boundary region in which elephants move freely between Namibia, Botswana, Angola and Zambia. An elephant could conceivably be counted as part of four national populations depending on when surveys are undertaken; indeed, in its proposal, Namibia acknowledges that “elephants are highly mobile in Namibia, and that movement in and out of areas can therefore cause major periodic fluctuations in numbers over time”. Poaching rates are high in the neighboring area of Zambia and the situation in Angola is unclear but arguably not secure, which would inevitably have some impact on Namibia’s estimated 2015 population of 13,136 in the north-east (the total estimate being 22,711).

1 CoP17 Doc 57.5 *Report on Monitoring the Illegal Killing of Elephants (MIKE)*, available at: <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-05.pdf>

2 Hsiang, S. & Sekar, N. (2016) Does legalization reduce black market activity? Evidence from a global ivory experiment and elephant poaching data. *NBER Working Paper no. 22314*. National Bureau of Economic Research, Cambridge, USA.

While sales of ivory from Namibia might produce some (unquantified) revenue that could be added to the already substantial existing income sources for local community development and elephant protection, the elephant numbers are relatively low in conservancies in comparison to protected areas. Any postulated additional local benefits from the ivory trade would be far outweighed by the substantial risks that legal trade poses to elephants as a whole. Ivory sales from Namibia would promote greater demand in consumer countries, and criminal networks would be stimulated, risking not only elephants in Namibia but populations across the continent.

Zimbabwe: Of the four Appendix II countries, Zimbabwe has the highest levels of illegal killing and loss of elephants, with declines of 40% and 75% respectively between 2001 and 2014 in its key Zambezi and Sebungwe populations in the north. There is a very real threat from poaching in Zimbabwe. In 2014, the US Fish and Wildlife Service suspended imports of elephant trophies from Zimbabwe, citing catastrophic population declines in justification.

The proposal by Namibia and Zimbabwe is heavily critical of CITES and considers the annotation to the Appendix II listing of African elephants to be *ultra vires* (beyond the powers of CITES). This annotation, however, was agreed by consensus in 2007, a consensus that included the co-proponents.

Widespread support has been voiced for the view that, given the high poaching levels affecting African elephants, an unrestricted trade in ivory would present an unacceptably high risk to populations across Africa.

2. Proposal by Swaziland to amend Swaziland's annotation to the Appendix II rating of it Southern white Rhinos ; <https://cites.org/sites/default/files/eng/cop/17/prop/060216/E-CoP17-Prop-07.pdf>

As a range state of the southern white rhino and the black rhino, Kenya is concerned that if Swaziland's proposal is accepted, it would have serious unintended negative consequences on Kenya's rhino population and other look-alike rhino species. Kenya urges Swaziland to focus on the CITES CoP 16 CITES decisions that upheld the ban on trade in rhino horn when by enacting even tighter controls. Kenya proposes education, awareness, and diplomacy in squashing horn demands in the far east that continue to destabilize rhino conservation globally and undermine national security in source countries.

A notable number of proposals outside CITES have proposed sale of rhino horns for reasons that are identical to Swaziland's. South Africa extensively debated sale of rhino horn since last CoP 16 and involved its citizens for opinions but in its wisdom, the South African Government shelved the idea. The main arguments for the sales of rhino horn have been to reduce incentive to poach by lowering prices through flooding of the market with horns; and that the revenue from the sales is ploughed back into conservation. Kenya is convinced that these two objectives are not achievable through the sale of rhino horn. The bases of these arguments are supported by the law of supply and demand and tight controls at a central selling organization. The first basis is flawed and highly debated amongst the economists, while the second basis is simply not achievable for rhino horn whose elasticity as product is unknown.

By quoting prices and estimating the number of intended consumers, Swaziland assumes that the law of supply and demand would apply to rhino horn as a commodity. However, for this law to hold, supply has to be independent of demand. Since the market does not differentiate between white rhino horn

from horns of the other extant rhinos, the supply would end up exceeding the quantity of white rhino horn from Swaziland alone. Laundering illegal horn from the other extant look-alike black, Indian, Javan, northern white, and Sumatran rhino species is therefore very likely and would increase poaching risks for these species.

Swaziland's proposal encourages use of rhino horn in the Chinese TCM by targeting TCM hospitals as a potential market. The proposal is however not clear on what ailments Swaziland promoting the use of rhino horn. Since there is no scientific evidence of rhino horn having medicinal properties, drug producers can dilute it at will. The proposal ignores other documented uses of rhino horn and restricts it only to medicinal purpose. Supplying the horn for purported medicine is therefore does not address demand for other uses. The proposal increases the risks of re-awakening demand in older markets, such as Taiwan, Japan, Singapore, and Yemen, where demand for rhino horn was prevalent in the 1970s and 1980s. All these factors would make the price formation normally dictated by the law of supply and demand unpredictable. Swaziland therefore would neither reduce poaching nor achieve their imaginary target revenue. Instead, if the proposal is accepted by Parties it is more likely to increase indiscriminate poaching of all rhino species.

The costs of securing horns and DNA testing does not sound achievable. It will be very costly to secure and monitor. Rhino horn is consumed unprocessed in the far east, known for their weak control of their drugs industries. There is no guarantee that markets in the far east will improve on their drug controls for the sake of the rhino. Since rhino horn can be used in powdered form, it will be extremely difficult for customs to subject every powdered item to DNA tests at ports of entry. Ultimately the control/regulation proposed by Swaziland will only end up making poaching even more lucrative.

3. Proposal by Secretariat on Rhinoceroses ;

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-68.pdf>

Kenya notes CoP 17 doc 68, and suggests the following revisions to the draft decision in Annex 1, supports the proposed amendments to Resolution Conf. 9.14 (Rev. CoP15) in Annex 2 and adopts the proposed form for collection and sharing of data on rhinoceros horn seizures and on samples for forensic analysis in Annex 3 of the document:

Annex 2:

1. The secretariat to consider citing reference of the document that contains the strategies and actions in the sentence below.

WELCOMING the strategies and proposed actions developed by the CITES Rhinoceros Enforcement Task Force at its meeting in Nairobi, in 2013.

2. Retain the words "parts and derivatives". These words are consistently used in the entire resolution and are still valid for the modified sentence below. And add those words after the words "horn stocks". The following sentence should therefore read as the one below: old text is highlighted

CONCERNED that threats to rhinoceros populations and demand for rhinoceros horn parts and derivatives still exist, and that the cost of ensuring adequate security for rhinoceroses and rhinoceros horn stocks ~~them~~ is increasing and cannot easily be met by many range States.

CONCERNED that threats to rhinoceros populations and demand for rhinoceros horn, parts and derivatives still exist, and that the cost of ensuring adequate security for rhinoceroses and rhinoceros horn stocks, parts and derivatives ~~them~~ is increasing and cannot easily be met by many range States.

3. On Pg 16, sub-paragraph e under title URGES, replace the word destination with “implicated”. This is the word that is consistently used in the document and has scope that captures trafficking States which the word “destination” does not. That sub-paragraph should read as follows: (~~underline strike~~ new text proposed for deletion by Kenya; **underlined bold** proposed new text by Kenya)

ef) the Parties that are affected States, as by illegal killing of rhinoceroses and the trafficking of rhinoceros horns, either as range or destination implicated States, to:

Annex 3; Part C1

The horn measuring illustration is on the front horn. It may look obvious but not always to all that the back horn should also be measured as illustrated using the front horn. For this reason, foot note 39 should make it obvious as follows:

³⁹ **Please refer to the image for guidance** for **measurement of** outer length, inner length and circumference **of front or back horn**, ~~please refer to the image for guidance~~

4. **Proposal by Namibia, South Africa and Zimbabwe to establish a Decision-Making Mechanism (DMM) for a process of international trade in ivory;**
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-84-03.pdf>

The proposal would allow the CITES Standing Committee to permit commercial exports of ivory from Appendix II range States to any importing “partner” States. It would see a reversion to an unlimited, regular global trade in ivory with minimal supervision and no safeguards in relation to the effects on populations of elephants in the rest of Africa or Asia.

Trade in ivory by the three southern African countries carries a high risk of stimulating the illegal trade and endangering all elephants.

5. **Proposal by United States of America on Actions to Combat Wildlife Trafficking**
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-27.pdf>

Among a range of recommendations to combat wildlife trafficking, this proposal by the US urges Parties to CITES to take measures to close domestic ivory markets. This indicates a welcome convergence of views with the proposal on closure of domestic ivory markets, by Kenya among other African countries.(CoP17 Doc.57.2) However, it also retains text on regulating domestic ivory markets for countries that have “not yet” closed them, which allows the prospect for some countries to delay moves towards closure and risks signaling that regulated markets could be retained as an alternative. The proposal by Kenya and others would allow for more urgent and decisive action to achieve the same objective as the US proposal - closure of domestic ivory markets worldwide

6. **Illegal International Trade in Wildlife (Interpretation and implementation matters / General compliance and enforcement) by South Africa**
<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-26.pdf>

The proposed resolution would contribute constructively to combatting illegal international wildlife trade by enhancing cooperation from international to local level, and initiating a reporting system that would increase available information and support enforcement measures.

Kenya fully supports this proposal.

Supporting this proposal by South Africa would enable cooperation, offset tension over the elephant proposals and provide South Africa with a positive outcome from CoP17.

7. Actions to combat wildlife trafficking (Interpretation and implementation matters / General compliance and enforcement) by United States of America

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-27.pdf>

The proposal acknowledges that illegal killing of elephants *and* ivory trade are a major problem across “*much*” of Africa for the survival of “*many*” populations of elephants, “*including those which have previously been thought secure*”, and that “*legal sales of ivory, including within domestic markets*” are “*likely*” to increase the risk to elephant populations.

The suggested revision of Resolution Conf. 10.10 (Rev. CoP16) is a welcome convergence of views with the proposal by Kenya et al on closure of domestic ivory markets however the provision in proposals which “*RECOMMENDS that all Parties and non-Parties, particularly those in whose jurisdiction there is a legal domestic market for ivory, or any domestic commerce in ivory, adopt all necessary legislative, regulatory and enforcement measures as a matter of urgency to close their domestic markets for commercial trade in raw or worked ivory*” is more preferred and US will be requested to consider .

8. Hunting trophies of species listed in Appendix I or II (Interpretation and implementation matters/Trade control and traceability) by EU and South Africa

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-39-01.pdf>

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-39-02.pdf>

Proposal by the European Union (39.1)

The proposal acknowledges that there have been concerns regarding the sustainable or legal origin of trophies of Appendix II populations of the African elephant and therefore EU recommends stricter trade controls of hunting trophies, through subjecting hunting trophies traded as Personal or household effects to CITES Permitting requirements and enable better management of the industry.

Kenya is in general support of this Document, except for the amended paragraph b) part ii) which effectively includes rhino horn or ivory as personal household effects. This could lead to legal horns entering the illegal market as personal household effects. At CoP 16, this text was extensively debated with the aim of safeguarding rhino horn or ivory from entering illegal markets. To seal the potential loopholes that deletion of the words “rhino horn and ivory contained in” could create, Kenya proposes the following alternative amendments.

ii) for the export and re-export of rhino horn or elephant ivory ~~contained in~~ or hunting trophies; or

Consequently, Kenya further proposes that the proposed amendments by European Union of part 16 of the Guidelines for interpretation of personal household effects, interpretation of article VII, paragraph 3, of the Convention should thus read as follows:

16. Hunting trophies are specimens that meet the definition of 'hunting trophy' in Resolution 12.3 (Rev. CoP16). ~~They will be exempted as personal effects if both the countries of import and export implement the personal and household effects exemption for the species and the specimen at the time of import, export or re-export was worn, carried or included in personal baggage.~~ Note that the export or re-export of rhino horn and or elephant ivory ~~contained in hunting trophies~~ does not qualify for the personal and household effects exemption.

Proposal by South Africa (39.2)

The proposed Resolution (Annex 1) weakens provisions of Article IV of CITES by giving more discretionary power to the exporting country, in particular to its Scientific Authority and in regards with the "sustainability" of hunting.

9. International trade in live Appendix II animals to appropriate and acceptable destinations (Implementation and implementation matters / Trade control and traceability) by USA;

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-40.pdf>

The proposed revision of Resolution Conf. 11.20 redefines the term "*appropriate and acceptable destinations*" as destinations where:

- a. The Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and (new text)
- b. The Scientific Authorities of the State of import and the State of export are satisfied that the trade would support *in situ* conservation, such as through cooperative measures between the State of import and the State of export.

This recommendation goes in the same direction as the proposal by Kenya among other African countries and acknowledges the poaching crisis that the elephants and rhinos currently face and the fact that exports of live elephants are questionable in view of this crisis.

Kenya would be keen to discuss with USA towards a common text on the definition of the *appropriate and acceptable destinations*

10. Establishment of the Rural Communities Committee of the Conference of Parties (Strategic matters) by Namibia, Tanzania, Zambia and Zimbabwe

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-13.pdf>

The proposal would have a profound impact on CITES and the CITES structure. If such a committee is established in the lines of the Scientific Committees; the Plants, Animals and Nomenclature, it would give rural communities *direct access* to the CoP through the submission of draft resolutions and decisions, as well as provision of "guidance and advice" and this guidance and advice to the CoP and Secretariat could in effect lead to a "social veto" on species listings.

11. Livelihoods and Food Security (Strategic matters) by Antigua and Barbuda, Cote D'Ivoire and Namibia; <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-17.pdf>

This proposal could have a profound impact on CITES by introducing food security, preservation of cultural identity and livelihood security as issues to take into account when proposing amendments to the Appendices. If there is a perception that rural communities are negatively impacted by trade bans, this may support the arguments for “sustainable trade” vis-à-vis a ban on trade in endangered species.

12. Prohibiting, preventing and countering corruption facilitating activities conducted in violation of the convention (Interpretation and implementation matters / General compliance and enforcement) by the European Union and Senegal

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-28.pdf>

This proposal is unprecedented and an important one. Not only does it acknowledge the role of corruption in illegal wildlife trade and the involvement of organized criminal groups in CITES violations, but it also provides a means to report on counter-corruption activities and to act on cases of corruption. Kenya welcomes the proposal.