



Born Free Foundation

Committee Secretary
Parliamentary Joint Committee on Law Enforcement
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Canberra ACT 2600

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Dear Committee Secretary

Submission by Born Free Foundation to Parliamentary Joint Committee on Law Enforcement inquiry into the trade in elephant ivory and rhino horn

Born Free promotes Compassionate Conservation to enhance the survival of threatened species in the wild, protect natural habitats and safeguard the welfare of individual animals. It seeks to have a positive impact on animals in the wild and their ecosystems in perpetuity, for their own intrinsic value and for the critical roles they play within the natural world.

Born Free congratulates the Australian government for initiating this Inquiry, and for giving us the opportunity to offer our considered thoughts on this critical conservation issue.

Background

Africa's elephant numbers have plummeted from perhaps 5 million a century ago to fewer than half a million today, and upwards of 20,000 individuals continue to be killed each year across the continent, while organised criminal networks use their channels of corruption and influence to traffic ivory to its markets. Asian elephants number around 30,000, and tusked males are also targeted for their ivory.

Fewer than 29,000 rhinos remain worldwide, three species of which have been listed as Critically Endangered by the International Union for the Conservation of Nature (IUCN). Between 2008 and 2017, more than 7,000 rhino were killed by poachers in South Africa alone. Despite the fact that rhino horn consists largely of keratin, the high price and changing nature of demand in Asian markets has led to highly organised and sophisticated poaching and smuggling of horns under the guise of trophy hunting in South Africa, and theft of horns from museums, galleries, and even zoos in many western countries. It has also resulted in increased interest in 'antique' items made from or containing rhino horn, particularly among Asian buyers.

While international commercial trade in elephant ivory and rhino horn has been banned for many years through the listing of the species on CITES Appendix I, poaching and trafficking continue, stimulated by 'one off' sales, domestic trade and ongoing attempts to weaken international bans. Law enforcement along the entire trade chain struggles to counteract these forces and must be strengthened, expanded and supported. Its effective application is fundamentally critical to preventing further losses of these and other iconic species which should be protected for their intrinsic value as well as for the critical role they play in the ecosystems of which they are part.

Domestic markets undermine field protection and incentivise poaching and trafficking, creating confusion among consumers, stimulating demand and creating a complex regulatory environment which is difficult to enforce. The link between legal domestic ivory markets and ivory trafficking is well documented¹, and clearly demonstrates the difficulties that parallel legal and illegal trades pose for enforcement authorities.

The international community has recognised the need to take clear and decisive steps to end all legal trade in ivory. The Elephant Protection Initiative, which was launched in 2014 and to which 17 African range States are signatories, has the closure of domestic ivory markets as a key objective². The IUCN adopted a Resolution calling for the closure of domestic elephant ivory markets at its World Conservation Congress in August 2016³.

However, the most significant of these fora, in that it is a legally binding multilateral agreement, is the Convention on International Trade in Endangered Species (CITES). In September 2016, its 17th meeting of the Conference of the Parties revised its Resolution on 'Trade in Elephant Specimens' to recommend that:

... all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory that is contributing to poaching or illegal trade, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency⁴

Legal trade in Australia

A headline analysis of the UNEP-WCMC CITES Trade Database⁵ shows that for the years covering 2006 to 2016 and including ivory from both African and Asian elephants, Australia declared that it had only imported 12 ivory carvings and exported at least 16 tusks, 757 carvings and 57 pieces. However, other countries reported exporting over 177 ivory tusks, over 3,286 ivory carvings and over 1,118 ivory pieces to Australia.

This wide discrepancy is acutely concerning, as it suggests that any record keeping system currently in place is fundamentally flawed. The lack of accurate and consistent records of trade transactions in such a high profile product reflects a particularly poor level of oversight, and undermines confidence in the government agencies tasked with regulating trade in protected species.

According to the CITES website⁶, the last year for which Australia has submitted data on its transactions of CITES listed species was 2014, and other countries which may be importing and/or exporting ivory also appear to be overdue in their trade reporting. This means that a more complete

¹ Eg. <http://eia-international.org/bloodivory-exposing-the-myth-of-a-regulated-market> ; <https://elephantleague.org/blending-ivory-chinas-old-loopholes-new-hopes-the-report/> ; https://www.nrdc.org/sites/default/files/wil_15010601a.pdf ; <http://www.ifaw.org/sites/default/files/Making%20a%20Killing.pdf> ; http://www.savetheelephants.org/wp-content/uploads/2017/03/2017_Decline-in-legal-Ivory-trade-China.pdf

² <http://www.elephantprotectioninitiative.org/the-solution/>

³ <https://portals.iucn.org/congress/motion/007>

⁴ <https://www.cites.org/sites/default/files/document/E-Res-10-10-R17.pdf>

⁵ <https://trade.cites.org/>, accessed 4 June 2018

⁶ https://cites.org/sites/default/files/annual_reports.pdf

dataset may become available for analysis in future, and that actual trade figures may be significantly higher.

Parallel and connected supplies and markets

The UNEP-WCMC data itself suggests a healthy domestic market and a significant export market, confirmed by evidence of trade through antique outlets, auction houses and online platforms⁷. However, these figures are only a measure of the reported trade, and the level of local trade observed and inferred from anecdotal reports, as well as seizure data, present the strong possibility that the local market is sustained through the acquisition of illicitly sourced specimens.

It should be emphasized that so long as a legal supply exists, even were the traded volume to be small, it would still represent a means of laundering illegally obtained specimens into and through the domestic market. This makes the role of law enforcement agencies extremely difficult.

Within the broader discourse on wildlife crime, Australia is not commonly associated with wildlife trafficking. However, there is a growing amount of documented and anecdotal evidence of its implication in this type of organised crime⁸.

Wildlife law enforcement challenges

Although comprehensive data on seizures of ivory, rhino horn or other wildlife products are not publicly accessible at a State or federal level, the Australian Customs and Border Protection Service (ACBPS) placed seizure levels at 'around 7,000 wildlife items each year'⁹, and regular enforcement agency and media reports highlight ongoing cases of wildlife trafficking implicating Australian and foreign nationals¹⁰.

Perhaps more concerning than a lack of data transparency in the public sphere is that within government itself, relevant data does not appear to be commonly shared between agencies and departments, thus preventing its effective collation at a central level¹¹. This could reasonably be assumed to undermine Australia's capability to develop its strategic capacity with respect to addressing its role in international wildlife crime, including elephant ivory and rhino horn trafficking.

The UNEP-WCMC Trade Database also collates data on seizures of CITES listed species. Again sampling the 2006-2016 period, Australia only reports elephant ivory seizures for one year: 2009 (30 tusks, 107 carvings and 180 ivory pieces). Was targeted enforcement action deployed for only this one year, or is this again a reflection of a poor reporting regime?

⁷ Eg. <https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/IFAW%20Under%20the%20hammer.pdf>

⁸ Eg. <https://c4ads.org/routes/>

⁹ https://webcache.googleusercontent.com/search?q=cache:wd8nyi2YAWJ:https://www.homeaffairs.gov.au/Factsheets/Documents/wildlife_smuggling_factsheet_jan_2014.doc+&cd=4&hl=en&ct=clnk&gl=au

¹⁰ Eg. <https://www.dailytelegraph.com.au/news/nsw/martin-kennedy-in-court-over-wildlife-smuggling-ring/news-story/a422bdd0c720c7f5bfc0aa99df567b7b> ; <http://newsroom.border.gov.au/releases/fc75408d-0bcf-407f-82bc-8cc96c9cba03> ; <http://newsroom.border.gov.au/releases/native-lizards-saved-from-illegal-export> ; <http://www.abc.net.au/news/2017-08-25/deadly-snakes-found-in-post-as-wa-reptile-smuggling-bid-foiled/8843226> ; <http://www.abc.net.au/news/2018-05-15/black-market-demand-fuelling-native-animal-smuggling/9724140>

¹¹ <https://www.anao.gov.au/work/performance-audit/managing-compliance-environment-protection-and-biodiversity-conservation-act>

The ACBPS provides ‘rhino horn hidden in luggage’ as an example of smuggling methods⁷, and multiple anecdotal sources confirm that both elephant ivory and rhino horn are regularly trafficked into Australia. Occasionally, ivory seizures are highlighted by government agencies, eg. ivory carvings and jewellery with an estimated value of ‘up to AUS \$80,000’ confiscated from inner Sydney locations in 2014¹². It should be emphasized that wildlife seizures are only the tip of the iceberg, and represent only a small percentage of total illicit trade at any point in time.

Encouragingly, at some levels of government the importance of addressing wildlife smuggling has been to some extent recognised¹³.

Obscuring the country of origin of an illegal shipment is a commonly used practice to mislead enforcement officials. For example, an item may be sent via a country which would not normally be associated with the contraband. In this way, Australia is additionally functioning as a transit country for ivory destined for Southeast and East Asia¹⁴, for example a case of 110kg of ivory impounded in Perth in 2015, en route to Malaysia from Malawi¹⁵ (the actual weight was later found to be significantly different). The use of Australia as a transit country is a dynamic which may also be playing out in the case of rhino horn trafficking.

Financial crimes associated with wildlife trafficking such as money laundering are recognised in many foreign jurisdictions impacted by illegal wildlife trade. Money laundering is a commonly recognised example of such crime, and Australia’s regulatory vacuum in this respect adds dimension to concerns over the country’s role in the global illegal trade in wildlife¹⁶.

Anecdotal evidence suggests that sufficient investment in enforcement officials at ground level is lacking, most notably in training on legislation relevant to wildlife trafficking and identification of parts and products derived from commonly trafficked species, including elephant ivory and rhino horn.

At a decision making level, prioritisation of actions which address the magnitude and implications of a crime which is regarded as the world’s 4th most lucrative crime after trafficking in arms, drugs and people^{17,18} appears to also be absent, in spite of United Nations Resolutions that call upon Member States to treat wildlife trafficking by organised criminal gangs as a serious crime¹⁹. Known outcomes of criminal cases brought against wildlife traffickers strongly suggests that prosecutorial and judicial awareness of the seriousness of these crimes, and the degree to which they are regarded as serious at an international level, is deficient. Without deterrent penalties the disincentive to trafficking activity is extremely weak.

Within Australia there are significant differences in State legislation, which creates confusion and facilitates criminal activity. These differences include provisions relating to protection levels for

¹² <http://www.environment.gov.au/mediarelease/illegal-ivory-seizure>

¹³ Eg. <https://www.premier.vic.gov.au/fighting-back-against-illegal-wildlife-trafficking/>

¹⁴ <https://c4ads.org/routes/>

¹⁵ <http://newsroom.border.gov.au/releases/acbps-officers-seize-110-kilograms-of-ivory-in-perth>

¹⁶ <http://www.abc.net.au/news/2017-07-13/should-australias-anti-money-laundering-laws-be-extended/8703354>

¹⁷ <http://www.unodc.org/unodc/en/wildlife-and-forest-crime>

¹⁸ <https://www.unodc.org/unodc/en/frontpage/2016/May/wildlife-crime-assessed-globally-for-the-first-time-in-new-unodc-report.html>

¹⁹ <http://undocs.org/A/71/L.88>

individual species, requirements for interstate trade, enforcement powers of government officials, licensing and penalties. Such an environment presents loopholes which criminals all too readily make themselves familiar with and exploit to their best effect, further engendering the perception that wildlife trafficking is a low risk criminal activity. These issues are long standing and have been recognised previously²⁰.

Many of the challenges highlighted above render accurate assessment, or even an approximation, of how much ivory and rhino horn is entering and leaving Australia virtually impossible.

Recommendations

An increasing number of countries implicated in elephant ivory trafficking, including the USA, China, Hong Kong SAR, Taiwan and the UK have implemented or are in the process of implementing bans on the domestic trade of elephant ivory products. It should be noted that of all domestic ivory trade review and consultation processes initiated by countries and concluded in recent years, none have resulted in a more tightly regulated market – so far, the outcome has been either an outright ban or a ban with *de minimis* exemptions.

All available anecdotal and documented evidence suggests that the current regulatory and compliance regime is not sufficient to ensure that Australia's domestic elephant ivory and rhino horn markets do not contribute to illegal international trade. A domestic ban would address enforcement challenges and also be the least onerous solution for Australia to implement.

The potential for unintended loopholes, as well as the administrative burden associated with overseeing a system allowing for exempted trade, is likely to be very significant. By contrast, the financial impact of a complete ban of elephant ivory and rhino horn on auction houses and individual retailers would not be significant. By way of comparison with the UK, albeit a much larger exporter of antique ivory than Australia, a recent report found that "(o)ut of 232 auction houses surveyed in late 2016-early 2017, ivory lots formed only 0.70% of the total number of lots for sale. An update in Spring 2017 involving 301 auction houses found a similar figure of 0.76%."²¹

It is also worth noting that despite ivory's long cultural and artistic heritage in Taiwan, the government recently decided that the most prudent course of action would be an outright ban for its domestic trade²².

Born Free therefore recommends that Australia institute a comprehensive domestic elephant ivory and rhino horn trade ban 'as a matter of urgency'. We further recommend that in the case of elephant ivory, the government establish an effective system whereby Australia complies with additional CITES requirements relating to the implementation of a comprehensive and demonstrably effective stock inventory, reporting and enforcing systems for worked ivory, and the maintenance of an inventory on government-held stockpiles, and where possible, of significant privately-held stockpiles.

²⁰ <https://aic.gov.au/publications/archive/wildlife-legislation-in-australia---trafficking-provisions>

²¹ https://docs.wixstatic.com/ugd/e50900_416fd8e2f74443afbf223dc1a6d3f2ea.pdf?index=true.

²² https://gazette2.nat.gov.tw/EG_FileManager/eguploadpub/eg024062/ch07/type3/gov62/num31/Eg.htm

Recognising restrictions relating to legal proceedings, comprehensive data on ivory and rhino horn seizures should be collated at a national level and made publicly available.

If a domestic ivory trade exemption system is applied, it should be severely limited and clearly defined, in order to ensure that the exempted products cannot possibly put live elephants at risk, and that the system is as clear as possible for enforcement authorities to implement. Such exemptions might include antique items containing a very small quantity AND proportion of ivory eg. inlaid furniture or musical instruments. In this case, a *de minimis* requirement should be introduced following the strictest guidelines, such as those in the state of California (USA), where antique items must contain fewer than 200g AND consist of less than 5% of ivory, to qualify for any commercial trade exemption. Trade in all such items should require full verification of provenance by appropriate government agencies (at the expense of the owner/seller), and appropriate permits.

Australia is a signatory to the 2014 London Declaration on Illegal Wildlife Trade which includes essential actions relating to 'eradicating demand and supply'²³. As a global community tasked with handing over the world's natural heritage to the next generation, we must urgently and decisively attend to the contradiction between the widely held recognition that demand for threatened wildlife must be reduced in order to safeguard their future, and a regulatory environment which stimulates demand and undermines law enforcement.

²³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/281289/london-wildlife-conference-declaration-140213.pdf