

Remove the following paragraph from the annotation regarding the populations of *Loxodonta africana* of Botswana, Namibia, South Africa and Zimbabwe:

- 5 h) *no further proposals to allow trade in elephant ivory from populations already in Appendix II shall be submitted to the Conference of the Parties for the period from CoP14 and ending nine years from the date of the single sale of ivory that is to take place in accordance with provisions in paragraphs g) i), g) ii), g) iii), g) vi) and g) vii). In addition such further proposals shall be dealt with in accordance with Decisions 14.77 and 14.78.*

Include an annotation regarding all populations of *Loxodonta africana*, as follows:

**"No further proposals concerning trade in African elephant ivory, including proposals to downlist elephant populations from Appendix I to Appendix II, shall be submitted to the Conference of the Parties for the period from CoP14 and ending twenty years from the date of the single sale of ivory that took place in November 2008. Following this twenty year resting period, any elephant proposals shall be dealt with in accordance with Decisions 14.77 and 14.78."**

Remove paragraph (f) in the annotation to the CITES Appendices governing the elephant populations of Namibia and Zimbabwe:

*trade in individually marked and certified ekipas incorporated in finished jewellery for non-commercial purposes for Namibia and ivory carvings for non-commercial purposes for Zimbabwe.*

**Proponents: Congo, Ghana, Kenya, Liberia, Mali, Rwanda and Sierra Leone**

**Background:** The African Elephant *Loxodonta africana* was included in Appendix II in 1977 and transferred to Appendix I in 1989. The populations of Botswana, Namibia and Zimbabwe were transferred to Appendix II in 1997, and the population of South Africa in 2000. These transfers were subject to detailed annotations that were further modified during subsequent meetings of the Conference of the Parties. The current annotation was agreed at CoP14. With regard to trade in raw ivory, it allowed those African Elephant range States whose populations are already included in Appendix II to dispose of agreed quantities of stockpiled ivory in a one-off sale, under a series of restrictions. One of these was that those range States (Botswana, Namibia, South Africa and Zimbabwe) should not submit further proposals to allow trade in elephant ivory for a period of nine years after the single sale of their ivory stockpiles. This restriction does not apply to other African Elephant range States, which all have their elephant populations in Appendix I and can therefore submit proposals concerning trade in African Elephant ivory.

Further background to the African Elephant under CITES prior to CoP14 is provided in the following link:  
[http://intranet.iucn.org/webfiles/doc/SSC/CoP14/AnalysesEN/intro\\_elephant\\_analyses.pdf](http://intranet.iucn.org/webfiles/doc/SSC/CoP14/AnalysesEN/intro_elephant_analyses.pdf)

**Discussion:** The two parts of the proposal will be dealt with separately under 1. and 2. below.

**1. Replacement of the existing paragraph h) of annotation 5, regarding the one-off sale of ivory with a general statement regarding the future submission of African Elephant proposals**

There are two major issues with this part of the proposal. The first concerns whether it is appropriately dealt with as a proposed amendment to the Appendices; the second is whether it would be practical in whatever form it were considered.

**Appropriateness as an annotation under *Resolution Conf. 11.21 (Rev. CoP14)***

The Appendices comprise lists of species the trade in specimens of which is regulated under the Convention. Many of the entries in the Appendices are annotated to specify or clarify the type of specimen actually regulated, this being allowed in some cases under the Convention. At CoP11 and again at CoP14, the Parties considered the use of annotations in the Appendices, producing *Resolution Conf 11.21 (Rev. CoP14)*. They recognized two kinds of annotations: reference annotations and substantive annotations.

Reference annotations are for information purposes only and include those relating to nomenclature and whether a species is possibly extinct or not.

Substantive annotations are considered to be integral parts of the species listing. There are two kinds. One specifies the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas. The other specifies the types of specimen or export quota. No other kind of annotation is recognized, nor is it easy to see how any other kind of substantive annotation could be regarded as consistent with the provisions of the Convention as they currently stand.

The proposed paragraph in proposal Prop 6 is a statement about the future submission of proposals to amend the Appendices. It does not specify the inclusion or exclusion of any species or population, nor does it specify types of specimen or export quota. It would appear that, following *Resolution Conf. 11.21 (Rev. CoP14)*, the proposed paragraph cannot constitute an annotation to the Appendices and cannot meaningfully be assessed as such.

The wording proposed is similar in form to the already existing wording of paragraph h) of annotation 5, agreed at CoP14. This paragraph would also appear not to be in conformity with *Resolution Conf 11.21 (Rev. CoP14)*.

**Practicality of implementation**

The Parties could, in theory, agree to the substance of this proposal in a Resolution or Decision, rather than as an annotation to the Appendices. Even if they were to do so, it is difficult to see how this would prevent a Party submitting a relevant proposal under the terms of Articles XV and XVI of the Convention text at any time, should it decide to do so. Unless the text of the Convention were amended (as is allowed by Article XVII), it would appear that the Secretariat and the Parties would then be obliged to follow the procedures set out in the appropriate Articles to consider, and if necessary vote, on the proposal.

Moreover, were the substance of this proposal to be accepted as a Decision, a Resolution or an annotation to the Appendices, any Party could submit a revised version for consideration at any meeting of the CoP (or, if an annotation, at any time), creating a challenge to its sustained implementation. This proposal is itself intended to replace an annotation that was agreed at CoP14 to stand for nine years from the time of sale of the ivory referred to in paragraph g) of annotation 5 (i.e. until Nov 2017, as the sale took place in Nov 2008), demonstrating the difficulty of sustaining an agreement of this kind.

**2. Remove paragraph (f) in the annotation to the CITES Appendices governing the elephant populations of Namibia and Zimbabwe: trade in individually marked and certified ekipas incorporated in finished jewellery for non-commercial purposes for Namibia and ivory carvings for non-commercial purposes for Zimbabwe.**

Paragraph (f) of existing annotation 5 governing the African Elephant populations of Botswana, Namibia, South Africa and Zimbabwe in Appendix II allows non-commercial trade in some kinds of worked ivory from Namibia and Zimbabwe. Under the proposal, these kinds of worked ivory would become treated as if they were specimens of species included in Appendix I.

The penultimate paragraph of existing annotation 5 states:

*“On a proposal from the Secretariat, the Standing Committee can decide to cause this trade to cease partially or completely in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations”.*

### **Namibia**

Information in the supporting statement indicates that Namibia suspended all trade in *ekipas* (more correctly *omakipa*) as of 1 September 2008, *“until a new law was passed, regulating domestic trade in ivory, including registration of ivory importers, traders and carvers, and certification of ekipas”.*

The supporting statement does not provide any documentation concerning illegal trade in *ekipas*, nor has the CITES Secretariat raised any issues with respect to ivory trade in Namibia in its documentation on ivory trade to the Standing Committee since CoP14.

### **Zimbabwe**

The Secretariat has yet to make a formal proposal to the Standing Committee concerning non-compliance with provisions of the annotation, but it has raised serious concerns at the 58<sup>th</sup> meeting of the Standing Committee in June 2009, in document SC58 Doc. 36.2 about the trade in worked ivory in Zimbabwe. In that document, the Secretariat reported that it:

*“had reason to question whether the controls are being implemented adequately, as it is aware of at least two incidents where raw ivory has been exported, accompanied by the export permits that traders are authorized to issue for trade in ivory carvings. This demonstrates not only fraud on the part of traders but also that export permits and ivory are not being examined by Customs officers at the time of export, which is a mandatory requirement in Zimbabwe’s control system. The primary concern of the Secretariat is, however, that there seems little or no evidence that the prosecution or judicial authorities in Zimbabwe are responding in a meaningful manner to such cases. The Secretariat is aware of a major case that has apparently never reached conclusion in court and several others where those responsible for illegal trade have been identified, yet no one appears to have been penalized. The Secretariat suspects that the current lack of penalization of illegal activities offers no deterrent whatsoever to unscrupulous persons”.*

The CITES Secretariat is continuing to engage with Zimbabwe on this matter and has indicated that another report will be directed to the Standing Committee (Milliken, 2010).

In document CoP15 Doc. 44.1 Monitoring of Illegal Trade in Ivory and Other Elephant Specimens, the Secretariat further reports that it *“has also engaged on a regular basis with Zimbabwe, which seems to have been plagued by some licensed domestic traders who fraudulently exploited the legal domestic market”.*

Zimbabwe has suspended ivory auctions with all licensed traders, cutting off the only sanctioned supply of ivory to local manufacturers, and is engaged in a process to review its regulatory framework for trade in worked ivory in the country. It is believed that domestic trade in ivory will remain suspended until the CITES Secretariat is satisfied that the situation is under control (Milliken, 2010).

### **Reviewers:**

H. Dublin, TRAFFIC East/Southern Africa.

### **References:**

Milliken, T. (2010). *In litt.* to the IUCN/TRAFFIC Analyses Team, Cambridge, UK.