

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

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Thirteenth meeting of the Conference of the Parties  
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Species trade and conservation issues

Elephants

IVORY STOCKS IN BURUNDI

1. This document has been submitted by the Secretariat.

Background

2. At the 50th meeting of the Standing Committee (SC50, Geneva, March 2004), Burundi introduced document SC50 Doc. 21.4 concerning an important ivory stockpile which has been on its territory for many years and for which it wishes to find a solution. Although it was noted that there was no role for the Standing Committee in determining how this issue should be dealt with, the Committee requested the Secretariat to prepare a discussion paper on this subject for consideration at the 13th meeting of the Conference of the Parties (CoP13).
3. The situation in Burundi is fundamentally not much different from the one faced by many other Parties outside the range of the African elephant (*Loxodonta africana*) where smaller or larger quantities of raw ivory have been kept in store by Governments or private owners since the African elephant was included in Appendix I in 1990 and commercial international trade in such ivory became impossible. Many of these stocks include raw ivory legally imported prior to the Appendix-I listing or confiscated ivory. Burundi is the only Party that is requesting the Conference of the Parties and the Standing Committee for assistance in this regard.
4. The ivory stockpiles in Burundi were already discussed in detail at the 17th and 18th meetings of the Standing Committee (SC17, San José, January 1988; SC18, Lausanne, March 1989), and at the seventh meeting of the Conference of the Parties (CoP7, Lausanne, 1989) (see documents Doc. 7.25 and Doc. 7.25.1).
5. Burundi is not a range State for the African elephant. In the 1980s, Burundi was recognized to be one of the main conduits for illegal trade in elephant ivory and rhinoceros horn. Through several Resolutions and other decisions, the CITES community exerted pressure on the country to eliminate such illegal trade. Burundi banned trade in elephant ivory from 5 November 1987 onwards. The country acceded to the Convention on 8 August 1988 and it entered into force on 6 November 1988.
6. Following its ban on trade in ivory on its territory, Burundi inventoried raw ivory that had been imported before the ban and that was in the hands of three private traders, and raw ivory that had been confiscated subsequently. These stocks were put under governmental surveillance.
7. During a mission to Burundi in March 1988, the Government informed the Secretariat that the inventory by Burundi Customs and the INCN (*Institut National pour la Conservation de la Nature*) of all existing ivory stocks on Burundi territory indicated that 16,437 tusks (87,562.5 kg), owned by Gaspard Ndikumasobo, Jamal Nasser and Tariq Bashir, had been imported into the country before 5 November 1987, and that a further 4,000 tusks (21,698 kg), imported by Mr Ndikumasobo after this

date, had been confiscated. These figures were revised after a further visit of the Secretariat to Burundi in August 1988.

8. At its 18th meeting, the Standing Committee agreed that the confiscated ivory (believed to total 27,823.15 kg) could be sold under certain conditions, including that the sale be conducted under the supervision of the Secretariat and that all proceeds be spent on conservation projects. It further advised that the 'privately owned' part of the stock (believed to be 56,031 kg) should be confiscated by the Government of Burundi and sold under exactly the same conditions as the other part.
9. The Secretariat reported at CoP7 that it appeared that 27,809.9 kg (5,066 tusks) of confiscated ivory and 56,031 kg of 'privately owned' ivory remained under the control of the Burundi Government, awaiting a decision. It explained that it had been impossible to find buyers for the stock of confiscated ivory. With regard to the 'privately owned' ivory kept under the surveillance of the Burundi Government, the Secretariat stated that "although the illegal origin of this ivory is not in doubt, the import into Burundi was legal under the existing Burundi legislation. All traders involved were in possession of appropriate licences provided by the former Government of Burundi. This explains why the current Government of Burundi cannot confiscate this ivory". As an alternative, the Secretariat suggested that this ivory "be bought by the Burundi Government from the traders at the lowest possible price (not more than the price they paid themselves), in order to ensure that they do not actually benefit from their business, and then the Burundi Government be authorized to export the ivory under similar conditions to those agreed for the confiscated ivory". At CoP7, *Loxodonta africana* was transferred to Appendix I, entering into effect 90 days later on 18 January 1990, and the import for commercial purposes of the stocks of ivory became impossible.
10. The Conference of the Parties did not manage to resolve Burundi's problem at CoP7. It was however noted at this meeting that under the terms of Article VII, paragraph 2, of the Convention, the confiscated and 'private' stocks of ivory were pre-Convention in Burundi. In accordance with Resolution Conf. 5.11, pre-Convention certificates may only be issued by a re-exporting country when it is satisfied that on the date on which a specimen was acquired, the country of origin was not a Party to the Convention, the species was not included in the Appendices, or the Party had taken a reservation. Burundi could however choose to ignore this Resolution and allow the re-export of its stocks without committing an infraction (it could do so after 18 January 1990 as well).
11. The Secretariat was informed in July 1991 that the Burundi Government had confiscated all ivory under its surveillance, totaling 84,250 kg, and was planning to issue a pre-Convention certificate allowing its re-export. All proceeds of the sale would go to Burundi's Ministry of Environment. The Secretariat responded that it could not approve the re-export of ivory stocks from Burundi in view of the provisions of Resolution Conf. 5.11, of which it recommended strict implementation. In February 1992, the Secretariat was informed that the announced sale had been canceled, and that the stock remained under surveillance in Bujumbura.
12. In August 2002, the Burundi Government contacted the Secretariat again about its ivory stockpile, explaining that it was still detained in Bujumbura. The Secretariat provided background information, drawing attention to previous advice regarding the disposal of this stockpile. It advised that Burundi should have its stockpile inventoried, and bring the matter again to the attention of the Standing Committee and the Conference of the Parties. However, this was not feasible prior to the 12th meeting of the Conference of the Parties (CoP12, Santiago, 2002). Burundi therefore followed the Secretariat's recommendations in the course of 2003 and 2004 with the aim of having the matter addressed at the sixth Dialogue meeting of African elephant range States, scheduled for 28-30 September 2004 in Bangkok, Thailand, and at CoP13.

#### Disposal of Burundi's ivory stocks

13. At SC50, the Secretariat explained that part of the Burundi ivory stocks had recently been inspected by MIKE and TRAFFIC staff on its behalf. The remainder of the stock was scheduled to be inventoried in August 2004, and the resulting reports to be made available as an information document at CoP13. The participants in the meeting raised questions regarding whether the stock was of legal origin and whether it could be regarded as pre-Convention. Two solutions were identified concerning the disposal of the ivory stockpiles, the first being that Burundi could authorize

trade in the ivory as being pre-Convention (although it was felt unlikely that any country would wish to authorize the import and it was also noted that the ivory may originally have entered Burundi from CITES Parties) and the second that the ivory be 'bought out' by a donor and then destroyed.

14. The Secretariat observes that over the years, Burundi has consistently received similar advice from the Conference the Parties, the Standing Committee and the Secretariat regarding the stocks of ivory accumulated on its territory. The CITES community clearly distinguished between the confiscated ivory in the possession of the Burundi Government, and the 'privately owned' part of the ivory stock which Burundi has been advised should be confiscated and taken from the traders. Basic conditions that have been suggested for the stock's sale or disposal are that revenues would have to be reinvested in conservation activities in a controllable manner; that traders should not benefit from any sales; and that the Secretariat should be requested to oversee the process. Unless the Conference of the Parties decides otherwise at this meeting, the circumstances under which Burundi's ivory stock can be sold or disposed of have not changed.
15. In its report for SC50, Burundi no longer confirmed that the entire stock had been confiscated and had become the possession of the Government, as was suggested in July 1991. It would therefore appear that the situation described in paragraph 8 above still prevails whereby part of the stock was confiscated by the Government and another part 'privately owned' ivory kept under surveillance by the Government. Burundi reported that the private traders had taken the State of Burundi to court "for the confiscation of their ivory which was carried out illegally in 1987", and had summoned it to repair the damage that they suffered as the confiscation prevented them from exploiting their merchandise. Burundi furthermore claimed that at a national level, the private traders were likely to be within their rights to recover the value of their ivory from the Burundi Government, and that the amount that the Government would be asked to pay was very large. The Conference of the Parties should decide whether it maintains its advice outlined in paragraph 14 above concerning the confiscated part of the stockpile and the 'privately owned' part.

#### Re-export as pre-Convention specimens

16. As indicated above, the tusks entered the territory of Burundi before November 1988. The Management Authority of Burundi can therefore decide that the specimens were acquired in that State before the provisions of the Convention applied there and issue a pre-Convention certificate in compliance with Article VII, paragraph 2. However, this would be contrary to the provisions of Resolution Conf. 5.11. This recommends that the certificate referred to in Article VII, paragraph 2 be issued by a Management Authority of a re-exporting country only where it is satisfied that:
  - at the date on which a specimen was acquired the species involved was not listed in one of the Convention Appendices; or
  - the country of origin was not a Party to the Convention; or
  - the specimen concerned was subject to a reservation entered by the country of origin with regard to the species involved; andin addition to the second and third considerations, its own country was not a Party to the Convention.
17. Burundi was not a Party at the date that the specimens involved were acquired in the country. However, the first consideration above does not apply in this case because *Loxodonta africana* was included in the CITES Appendices on 26 February 1976. Concerning the second consideration, Burundi has not established the origin of the ivory and has not been able to produce copies of valid CITES export permits or re-export certificates (UNEP-WCMC trade data indicate that since 1975, no commercial quantities of elephant specimens were exported to or imported into Burundi). The most likely source countries of the tusks, the Democratic Republic of the Congo and/or the United Republic of Tanzania, have been Parties since 1976 and 1980 respectively. The third consideration does not apply because there were no reservations concerning the inclusion of *Loxodonta africana* in the CITES Appendices entered by range States before CoP7.

18. In the event that Burundi ignores Resolution Conf. 5.11 and issues pre-Convention certificates for its ivory stock, it can seek to re-export it. It is however likely that no Party will be willing to accept Burundi's pre-Convention certificates because this would require that they also ignore this Resolution and concerns about the origin of the ivory. Re-export of these specimens from the importing country would create further complications.

#### Buy-out of the stock

19. A second option for Burundi would be to find donor countries or organizations willing to purchase all or part of the stockpile for destruction or further storage. In this case, it would seem logical that Burundi should comply with provisions that are similar to those outlined in Decision 10.2 (Rev. CoP11) on Elephants – conditions for the disposal of ivory stocks and generating resources for conservation in African elephant range States. This Decision is currently addressed to African elephant range States only, but could be amended to apply also to Burundi. The Secretariat has suggested this on several occasions, but the document that Burundi submitted at SC50 does not envisage this possibility.
20. As far as the Secretariat knows, no ivory stocks in African elephant range States have ever been disposed of in compliance with Decision 10.2 (Rev. CoP11), and the donor community seems generally unprepared to engage in this kind of arrangement. This may be even more difficult for Burundi because of the large size of the stock, the illegal origin of the ivory and the involvement of traders requiring financial compensation, while neighboring countries are likely to question any financial compensation received by Burundi for ivory that was illegally exported from their territories. Although a buy-out of the Burundi stockpile is in theory possible, it would in reality be extremely difficult to accomplish.

#### Other options

21. The 'privately owned' part of the stock seems to be particularly problematic. If it can not be confiscated under Burundi's national regulations, Burundi could explore the possibility of returning it to the traders and institute a stock monitoring system to ensure that the ivory does not leave the country in violation of the Convention or decisions of the Conference of the Parties. Burundi could also decide to destroy part or all of the stockpile without seeking financial compensation for doing so, or reimbursing traders. In these scenarios, the Burundi Government is likely to be sued in court by the private traders, with unpredictable consequences at national level. This is however a matter for Burundi's national legislation and jurisdiction that is outside the field of competence of CITES.
22. Burundi informed the Standing Committee at SC50 that "such a stock of ivory, worth so much, causes feelings of covetousness in a country where security remains a factor which is not yet back under control, even after the war". In order to address this concern, the Conference of the Parties could suggest that the stock be removed from the country's territory and placed in secure holding facilities. This could be envisaged for the confiscated part only or for the entire stock.
23. The African elephant populations of Botswana, Namibia, South Africa and Zimbabwe are now included in Appendix II and the Conference of the Parties has in principle agreed that stockpiles of raw ivory of the former three Parties can be traded if a number of conditions are met. Ivory stockpiles exist in many more range States of the species, and must be growing. As recognized by African elephant range States in Decision 10.2 (Rev. CoP11), these stocks pose a threat to current or future sustainable legal trade in ivory, but are also seen as a vital economic resource that could be used to improve elephant conservation and community-based conservation and development programmes. The Conference of the Parties may be requested to address this issue in a generic manner in the coming years. Burundi could decide to wait for the outcome of such a review, and in the meantime seek to obtain agreement that its stockpiles should be treated in the same manner as those in African elephant range States and/or follow the suggestion in paragraph 22 above.
24. The Secretariat has no position on any of the options and scenarios outlined above other than that it cannot support trade in violation of the provisions of the Convention or trade that takes place contrary to the recommendations of the Conference of the Parties contained in valid Resolutions and Decisions. The Conference of the Parties has recognized that the nature of the trade in African elephant products necessitates a wide dialogue amongst range States of the species. The Secretariat

has recommended that the ivory stocks in Burundi be discussed at the sixth Dialogue meeting of African elephant range States to be held just before CoP13. The Secretariat is of the opinion that in formulating recommendations to Burundi, the Conference of the Parties should take into consideration the views expressed at this meeting and any conclusions that it draws.