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The Director General: Department of Forestry, Fisheries and the Environment
Attention: Dr. Tsepang Makholela
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RE: ENVIRONMENTAL INVESTIGATION AGENCY COMMENTS ON THE DRAFT POLICY POSITION ON THE CONSERVATION AND SUSTAINABLE USE OF ELEPHANT, LION, LEOPARD AND RHINOCEROS

The invitation to submit written comments on the Draft Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros in terms of Government Notice 3887 of 19 September 2023 (Government Gazette 49319) has reference.

The Environmental Investigation Agency (EIA) is an international organisation that investigates and campaigns against environmental crime and abuse. Our undercover investigations expose transnational wildlife crime, with a focus on elephants, rhinos, pangolins and Asian Big Cats. EIA has worked to protect rhinos and elephants from poaching and illegal trade for four decades.

EIA welcomes the opportunity to submit comments and recommendations on the Draft Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros (hereinafter referred to as 'the Draft Policy Position'). In particular, we welcome and appreciate the significant efforts of the Department of Forestry, Fisheries and the Environment (DFFE) to delineate and clarify its policy position on both the conservation of, and sustainable use of, elephant, lion, leopard and rhinoceros.

EIA has organised its comments in accordance with the structure and outline of the Draft Policy Position. In addition, EIA has annexed herewith our comments submitted on 28 July 2021 regarding the Draft Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros (Government Gazette No. 44776, Notice No. 566, dated 28 June 2021). Our main comments and recommendations below should be considered alongside EIA's 2021 comments and recommendations, which EIA continues to stand by.

Executive Summary

The three international commercial trade-related policy objectives are acknowledged. Subject to our more detailed comments, EIA **supports** in general Policy Objective 4, the promotion of live export of the 5 species, particularly rhino and elephant, only to range states or any other appropriate and acceptable destinations on the African continent.

In relation to the two other international commercial trade-related policy objectives, EIA **strongly condemns** Policy Objectives 5 and 6 as currently framed. While we support (in part) the formalised positions that South Africa will not submit a proposal to CITES for an amendment to the appendices to enable commercial international trade in South African rhino specimens and elephant ivory trade under present conditions, we wish to reiterate our concerns regarding DFFE's approach and policy position to international and commercial trade in general. Legal trade in rhino horn and ivory does not alleviate poaching pressure on rhinos and elephants, but instead increases poaching pressure and illegal trade by stimulating demand for these wildlife products, complicating enforcement and providing opportunities to launder poached ivory and rhino horns

onto legal markets. As a result, such an approach does not meet the goal of Sustainable Use, particularly, the Duty of Care obligation, as set out in the White Paper.

EIA recommends that the policy objectives be amended to instead pursue global consensus to permanently prohibit international trade in rhino horn and elephant ivory. EIA recommends that South Africa seize the opportunity to lead by example and encourage other countries in the region to move away from legal trade in ivory and rhino horn. The development of alternative benefit streams to international trade in ivory and rhino horn should be urgently pursued, though we urge DFFE to dismiss domestic trade as a potential alternative.

EIA notes that, unlike the 2021 Draft Policy Position, the current Draft Policy Position currently does not provide clarity regarding stockpile management and disposal. Notwithstanding, and in addition to, EIA's comments on this matter in relation to the 2021 Draft Policy Position, EIA **recommends** that the Draft Policy Position include the development and implementation of a consistent stockpile management and disposal policy for both government-held and privately owned rhino horn and ivory stockpiles as an Implementation Action under Policy Objective 5 and Policy Objective 6. EIA also **recommends** that the policy, together with the recommended development of associated regulations or norms and standards, be promulgated under the National Environmental Management: Biodiversity Act, Act 10 of 2004.

We further **recommend** that the stockpile management policy calls for destruction as the preferred management strategy, unless kept for legitimate enforcement and scientific purposes. Destruction is the most efficient management practice that addresses the high costs of securing stockpiles against theft; it also supports the CITES bans on trade in ivory and rhino horn by sending a powerful message that these wildlife products are not commodities to be bought and sold. As an alternative, the proposed species-specific Biodiversity Management Plans envisaged in terms of Section 7 of the Draft Policy Position should include species-specific stockpile management and disposal policies, although EIA's preference would be for a stand-alone policy and associated promulgated regulations, or norms and standards.

EIA further notes that the Draft Policy Position does not provide clarity regarding the domestic legal trade in elephant ivory and rhino horn, or, in particular, efforts to strengthen the regulation of these markets to ensure that they do not contribute to the illegal trade of rhino horn and ivory. EIA **recommends** that the Draft Policy Position include, either as a new Policy Objective or an Action under Policy Objective 5 and Policy Objective 6, the review and assessment of the efficacy of the existing controls to ensure legally traded ivory and rhino horn does not contribute to the illegal trade, and to ensure improved compliance with CITES Resolution Conf. 10.10 (RevCoP19) in regards to domestic ivory market. Secondly, EIA **strongly recommends** that South Africa develop a process to phase out and close its legal domestic trade in ivory and rhino horn as a priority, for the numerous reasons expanded upon throughout this document including: the nexus between legal trade; the laundering of illegally acquired ivory and rhino horn; and the associated increased poaching pressures on rhinos and elephants respectively.

Finally, EIA notes with significant concern that there is no strategic link between the Draft Policy Position and South Africa's extensive efforts to address illegal wildlife trade, including the South African National Strategy to Combat Wildlife Trafficking, 2023. The Draft Policy Position does not sufficiently acknowledge or address the very real threat of illegal wildlife trade posed to these 5 species. Of significant concern is the lack of recognition that South Africa's pro-commercial consumptive utilisation stance can result in an increase in wildlife trafficking. The Draft Policy Position does not provide any certainty or clarity as to how DFFE's approach to promote commercial consumptive use of these 5 species will avoid, mitigate and prevent an increase in organised wildlife crime.

General Statement

EIA notes the statement that the Draft Policy Position, including definitions, has been guided by the White Paper on the Conservation and Sustainable Use of South Africa's Biodiversity (Government Notice 3587 of 14 June 2023) ('the White Paper'). EIA is disappointed that the excellent and wide-ranging guiding principles underpinning the Draft White Paper have been significantly reduced and their ambit curtailed in the published White Paper. In particular, we are concerned that the draft guiding principles of 'intrinsic value', 'existence

value', 'responsible trade', and various aspects of the 'sustainable development' principles have not been included in the White Paper, and thus do not underpin the Draft Policy Position.

This has resulted in a clear deviation from the more nuanced and moderate approach posited in the draft White Paper that recognised and supported a wide range of values associated with South Africa's biodiversity beyond the commercial, consumptive and non-consumptive utilization. The current positions adopted in the draft Policy Position are largely supportive only of commercial, consumptive utilisation, particularly in the case of leopard, rhino horn, and elephant ivory.

EIA submits that this approach is problematic and should be avoided for the following reasons:

1. Whilst recognising that funding is crucial for conservation, the sale of stockpiled ivory or rhino horn to generate consistent and sustainable funds for conservation and communities is a simplistic, one-dimensional, and unsustainable intervention to multi-faceted issues including, but not limited to, stimulating and maintaining rural economies and addressing socio-economic issues such as poor governance and corruption.

2. South Africa should be applauded for its significant, long-term efforts to ensure the recovery and protection of its wildlife, including elephant and rhino populations. However, conservation success should not be compromised by resuming the international commercial trade in ivory and rhino horn. Rhinos and elephants continue to face numerous threats, including climate change, habitat loss, and poaching. Legalising international trade would undermine these conservation gains by potentially stimulating demand for ivory and rhino horn, and there is little support internationally to resume international commercial rhino horn and ivory trade.

3. Similarly, the impression generated by the Draft Policy Position of a supportive environment for international commercial trade in ivory and rhino horn can potentially stimulate and fuel speculative demand, and thus potentially further exacerbate rhino poaching and thefts from government-managed rhino horn and ivory stockpiles.

4. Given the potential for stimulating demand for rhino and ivory horn, and thus the potential for an increase in the illegal killing of rhino and elephants, EIA submits that the promotion of international commercial trade as envisaged by the Draft Policy Position does not meet the definition of sustainable use as set out in the White Paper, or as envisaged by section 1(1) of the National Environmental Management: Biodiversity Act, Act 10 of 2004. EIA further submits that this Policy approach does not meet the Duty of Care imposed by the White Paper regarding sustainable use.

5. The natural capital stock of elephants and rhinos is relatively poorly understood and their biodiversity values beyond the economic paradigm should be recognised more strongly by the Draft Policy Position. Currently, there is an overwhelming emphasis on the consumptive commercial value of elephants and rhinos. A more holistic approach would better serve the policy context outlined in Section 7 of the Draft Policy Position.

6. As a general statement, the over-reliance on, and the over-commodification of, South Africa's wildlife economy, including trade in endangered species, to address systemic human development challenges in rural communities needs to be acknowledged and addressed.

7. Whilst it is recognised that in many parts of South Africa there are relatively few economic opportunities beyond the wildlife economy, it is not necessarily congruent that the wildlife economy should be solely responsible for ensuring that sustainable, future-proofed livelihoods are secured. Creating an enabling environment for economic development and associated human development is the holistic responsibility of government.

8. The South African government should thus strive for greater investment into the diversification of its economy to address human development as holistically as possible beyond the wildlife and biodiversity economies to ensure greater resilience to external shocks. As evidenced by the significant and ongoing negative impacts of the COVID-19 Pandemic on the South African tourism industry (driven largely by

wildlife tourism), the South African economy remains largely vulnerable to such global events and lacks resilience.

Comments on Proposed Policy Objectives

Policy Objective 2: To phase out the domestication and intensification of management of rhinoceros

Implementation Actions 1-6

EIA supports, in principle, all Implementation Actions under Policy Objective. With respect to Implementation Action 4, by codifying and implementing a clear policy prohibiting the international commercial trade in rhino horn sourced from captive-bred rhinos, DFFE will avert a dangerous situation by which rhino horn is traded without oversight, South Africa and other countries are faced with major enforcement challenges such as the laundering of illegally acquired rhino horn, and a significant risk of increased demand for rhino horn followed by a new wave of poaching and illegal trade.

However, EIA is concerned that Implementation Action 4 would allow for future trade in rhino horn sourced from captive-bred rhinos. This in turn will fuel speculative stockpiling of rhino horn, exacerbating the ongoing challenges and threats posed by the continued accumulation of rhino horn stockpiles in South Africa including risk of theft, high management and security costs, and the undermining of policies designed to curb demand and illegal trade such as the CITES prohibition on international commercial trade in rhino horn. See EIA comments on Policy Objective 5, Implementation Action 5 for more detailed comments on issues relating to rhino horn stockpiles.

EIA encourages South Africa to adopt a position supporting the permanent prohibition of international rhino horn trade regardless of whether the horn was derived from captive-bred or wild rhinos.

All rhino populations remain at risk from poaching and illegal trade, and international trade in rhino horn, including from rhinos bred in captivity, would exacerbate these threats by increasing demand for rhino horn and undermining domestic and international bans on commercial trade in rhino horn. Trade in rhino horn from captive-bred rhinos could also promote captive rhino breeding at the expense of wild rhino conservation efforts. Legalizing international trade in rhino horn may incentivize private rhino owners to convert their rhino management schemes to intensive breeding operations to maximize horn production, which could lead to wild rhino populations becoming more uncommon with negative consequences for wild rhino conservation and prevent the successful implementation of the other Actions identified under Policy Objective 2.

EIA further recommends that all engagement, consultation, and planning associated with the Policy Objective 2 Implementation Actions are conducted in an inclusive and transparent manner involving local communities and other civil society stakeholders. Draft plans should be made available for public comment, and final versions of the species recovery and transition plans should be made publicly available on the DFFE website. Moreover, EIA strongly recommends that trade in rhino horn, whether domestic or international, not be considered as potential components to the species recovery and transition plans. See comments on Policy Objective 5 for more detailed comments on issues relating to rhino horn trade.

Policy Objective 4: To promote live export of the five species to range states or any other appropriate and acceptable destinations with suitable habitats on the African continent

Implementation Action 1

EIA supports Policy Objective 4 and the proposed Action for implementation. EIA strongly supports the promulgation of legislation aimed at preventing the export of specimens of the five species, with the proposed exception of export to range states and any other appropriate and acceptable destinations with suitable habitat on the African continent, for the purposes of reintroduction into the wild.

South Africa has played a fundamental role in growing, and in some cases reestablishing, rhino populations in African rhino range states, and we are encouraged to see DFFE pursuing a policy that will limit exports of live rhinos, as well as the other priority species, to instances that will further support the recovery and *in situ* conservation of wild populations in other range states.

South Africa has exported thousands of live rhinos, elephants, lions, and leopards over the past two decades. White rhinos have comprised the vast majority of live exports of the priority species, with over 1,300 rhinos exported from South Africa to more than 50 countries all around the world. Many of these animals were sent to zoos, safari parks, pharmaceutical research facilities, and other private entities. Concerns have long been raised about the lack of conservation benefits of such exports, the poor conditions of these facilities and their impacts on the animals' welfare, and risks that the exports will contribute to the rhino horn trade.

Policy Objective 5: South Africa will work with range states to support a proposal for international commercial trade in rhinoceros horn from protected wild rhinoceros, for conservation purposes, when conditions become favourable

Implementation Actions 1 and 6

EIA strongly opposes Policy Objective 5 and is deeply disappointed by the changes to DFFE's proposed approach to the question of international rhino horn trade. It is unclear why the proposed output in the first draft policy position to "implement a process of engagement…with range states to develop a consensus on…**whether and under what conditions** international commercial trade in rhino horn would be acceptable…" (emphasis added) was replaced with the objective to unequivocally pursue trade, albeit after COI Option 3 requirements are met.

It appears that the pursuit of consensus with rhino range states on the question of **whether** international commercial rhino horn trade would be acceptable has been relegated to an Action for Implementation, though it is unclear how this action could be implemented when the superseding objective precludes any possibility of reaching a consensus determination that international commercial trade in rhino horn is not acceptable because of detrimental impacts to rhino populations.

Policy Objective 5 also fails to align with COI Option 3, which calls for legal international trade to be **reconsidered** after requirements are met and does not assume that meeting the requirements will automatically result in conditions that are favourable for trade.

Domestic and international rhino horn trade pose serious risks not only for South Africa's rhino populations but also for all other populations of African and Asian rhino species. Rhino horn trade is prohibited in consumer countries, and countries with significant illegal consumer markets for rhino horn have implemented demand reduction and behaviour change programs as well as stepped up their law enforcement response to eliminate the illegal rhino horn trade.

While EIA welcomes the proposed formal position that South Africa will not submit a proposal to CITES for an amendment to the appendices to enable commercial international trade in South African rhino specimens, as long as there is insufficient progress on the implementation of key requirements of the COI Option 3, as articulated in Implementation Action 1, we are concerned by the removal of language included in the first draft Policy Position indicating that South Africa would also not support similar amendments offered by other CITES Parties.

EIA recommends DFFE adopt a strengthened position against submitting **or supporting** a proposal to amend the CITES appendices to enable commercial international trade in rhino horn **from any rhino range state**, notwithstanding the complete implementation of COI Option 3 requirements.

With a clear, formalized policy position on the question of international rhino horn trade, governments and civil society can formulate and implement appropriate management decisions and policies with the knowledge that there will be no unexpected change to existing international rhino horn trade dynamics.

The international rhino horn trade ban, reaffirmed most recently at the 19th meeting of the Conference of the Parties to CITES (CITES CoP19) by the vast majority of Parties, including African and Asian rhino range states, has succeeded when Parties affected by rhino poaching and illegal rhino horn trade have instituted and enforced their own supporting domestic trade bans. This was the case in the 1990s and early 2000s after key rhino horn markets in China, Taiwan, Yemen, and South Korea were closed, which caused rhino poaching rates to drop off sharply and allowed rhino populations to begin to recover.[1]

Advocating for and instituting policies that promote trade in rhino parts and derivatives undermines the effectiveness of the CITES international trade ban, the effectiveness of domestic bans instituted in consumer countries like China and Vietnam, and the efforts by the majority of CITES Parties to reduce demand for rhino horn.

As has been demonstrated in the past for rhino horn and for other high-value wildlife products from threatened species including elephant ivory, pangolin scales, and tiger parts, parallel legal markets stimulate demand, complicate enforcement, and provide laundering opportunities.[2]

Africa's white and black rhinos have been weathering an incessant poaching crisis for more than 15 years that is fuelled by demand for their horn in Asian markets. From 2006 through 2021, an estimated 11,089 rhinos were poached across Africa according to the IUCN SSC African Rhino Specialist Group. South Africa accounted for 85 percent (9,387 rhinos) of Africa's rhino losses over this time period.[3]

South Africa's annual rhino poaching figures declined from 2017-2020, before increasing again in 2021 and holding steady in 2022 with 451 and 448 rhinos poached, respectively.[4] Anti-poaching and law enforcement interventions have likely contributed to the decline in poaching, however after years of unrelenting poaching pressure there are simply less rhinos available to poach in South Africa. The COVID-19 pandemic and lockdown measures implemented as part of the government's emergency response to the pandemic also likely contributed to a drop in the number of poaching incursions and rhinos killed in 2020.

Importantly, poaching levels are still unacceptably high and the latest poaching figures must not be taken as an indication that South Africa's rhino poaching crisis has abated. The reduction in rhino poaching has also not occurred uniformly across South Africa's rhino populations. Most of the poaching continues to take place in government-run protected areas, especially Kruger National Park and Hluhluwe-iMfolozi Park. Kruger's white rhino population crashed by 67 percent from 10,621 rhinos in 2011 to only 3,529 remaining as of 2019.[5] Between 2015 and 2017 alone, Kruger National Park suffered a net loss of 3,400 rhinos, more than half of its total rhino population.[6] The decimation of the Park's white rhino population was the primary contributor to a 15 percent decline in the continental white rhino population from 2012 through 2017.[7] Kruger National Park's black rhinos have also experienced staggering declines in recent years, dropping from 415 rhinos in 2013 to just 268 remaining as of 2019.[8]

The epicentre of rhino poaching in South Africa since shifted to Hluhluwe-iMfolozi Park, which experienced its worst year of rhino poaching in recent history in 2022 with the loss of 244 rhinos accounting for nearly 55 per cent of all rhinos killed in South Africa that year. At time of writing, 102 rhinos have been poached in KwaZulu-Natal this year.[9]

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[1] Reeve, R. 2014. Policing international trade in endangered species: the CITES treaty and compliance. Routledge.
[2] EIA. 2012. Blood Ivory. London, United Kingdom; Xu, L. et al. 2016. An Overview of Pangolin Trade in China. TRAFFIC, Cambridge, United Kingdom; EIA. 2013. Hidden in Plain Sight. London, United Kingdom.
[3] CITES 19th Conference of the Parties. 2022. CoP19 Doc. 75 (Rev. 1) Annex 4 African and Asian Rhinoceroses – Status, Conservation and Trade. Available at: https://cites.org/sites/default/files/documents/E-CoP19-75-R1.pdf
[4] Poaching data sourced from the Department of Forestry, Fisheries and the Environment
[5] Africa Geographic (2021). Kruger rhino populations plummet – latest official stats. *Africa Geographic*. Available at: https://africageographic.com/stories/kruger-rhino-populations-plummet-latest-official-stats/
[6] CITES 18th Conference of the Parties. 2019. CoP18 Doc. 83.1 Annex 2 African and Asian Rhinoceroses – Status, Conservation and Trade. Available at: https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-083-02.pdf
[7] Id.
[8] Africa Geographic (2021). Kruger rhino populations plummet – latest official stats. *Africa Geographic*. Available at: https://africageographic.com/stories/kruger-rhino-populations-plummet-latest-official-stats/
[9] Poaching data sourced from Ezemvelo-KZN Wildlife

Implementation Action 2

EIA supports developing and implementing alternative benefit streams to international rhino horn trade for state agencies, provincial agencies, and private citizens that own and manage rhinos in South Africa. We recognize the significant costs associated with managing rhinos, particularly those costs associated with anti-poaching efforts, and support the non-consumptive sustainable use of rhinos.

When examining possible alternative benefit streams, we strongly urge DFFE not to consider domestic trade in rhino horn as a viable alternative to international trade in rhino horn. Domestic trade in rhino horn poses many of the same risks for rhino poaching, illegal trade, and demand stimulation as international trade and any government-supported domestic rhino horn trade industry would seriously undermine the rhino-related policy interventions and associated outputs included in the draft Policy Position.

Implementation Action 3

As stated previously, EIA opposes international commercial trade in rhino horn and urges DFFE against submitting or supporting a proposal to amend the CITES appendices to enable commercial international trade in rhino horn from any rhino range states irrespective of whether the COI Option 3 requirements have been met.

Nevertheless, EIA encourages South Africa to adopt and implement the COI Option 3 requirements related to security (law enforcement), community empowerment, biological management, responsive legislative provisions and effective implementation, and demand management (i.e., demand reduction) in order to contribute to the protection and conservation of its white and black rhino populations.

Implementation Action 4

EIA supports Implementation Action 4. Consistent, frequent, and comprehensive population estimates are essential to inform rhino conservation management and trade decisions, and we recommend that this output be amended to specify that rhino population estimates be conducted on an annual basis and that census results be made public on the DFFE website. The census results should identify how many white and black rhinos are privately owned and how many are located in government-run protected areas.

Implementation Action 5

EIA is deeply disappointed that the DFFE has decided to eliminate entirely the Policy Objective on coherent ivory and rhino horn stockpile management and disposal, as well its corresponding outputs, from the current draft Policy Position. EIA strongly recommends this Policy Objective be reinserted into the final Policy Position.

All ivory and rhino horn stockpiles are at risk of theft, and high security costs create an added burden for the private citizens and government agencies responsible for safeguarding ivory and rhino horn stockpiles. Indeed, in July 2023 South Africa experienced its worst rhino horn stockpile theft in years when thieves broke into North West Parks Board rhino horn storeroom and stole 51 rhino horns.[10] While the police eventually arrested three individuals allegedly involved in the theft, it is unclear whether others were involved and remain at large. The missing rhino horns have not been recovered.

[10] Engel, K. 2023. Parliament hears how 'sophisticated syndicate' stole 51 rhino horns from a state facility. *Daily Maverick*. Available at: https://www.dailymaverick.co.za/article/2023-08-02-parliament-hears-how-sophisticated-syndicate-stole-51-rhino-horns-from-a-state-facility/

Stockpiling ivory and rhino horn also undermines the CITES ivory and rhino horn trade bans by sending a message that suggests a reversal of the bans is inevitable. This signalling perpetuates the demand for ivory and rhino horn that fuels elephant and rhino poaching across Africa and Asia.

Destruction is the most efficient management practice to address the high costs of securing ivory and rhino horn stockpiles against theft. Ivory and rhino horn stockpile destruction would support the CITES international trade bans for these wildlife parts by sending a powerful message that ivory and rhino horn are not commodities to be bought and sold.

There is a significant amount of ivory and rhino horn held in private hands in South Africa owing to an expectation from stockpile holders that international and/or domestic trade in these products will become an economically and legally viable option in the future, and for rhino horn, due to the widespread adoption of dehorning as an anti-poaching tactic by government and private rhino managers. According to DFFE, there were 8.9 tonnes of ivory and nearly 22.5 tonnes of rhino horn held in private hands in South Africa as of July 2019.[11] These estimates are likely a fraction of the current amount of rhino horn stockpiled in South Africa.

Implementing an ivory and rhino horn stockpile management and disposal policy that endorses destruction of privately held stockpiles (with limited exceptions for enforcement and scientific purposes) will be challenging, especially so long as South Africa maintains its legal domestic rhino horn market and continues to support calls for legalizing international ivory and rhino horn trade in the future. However, a consistent stockpile management and disposal policy that streamlines protocols across the provinces for both the government and private sector will ease the regulatory burden for government agencies and private citizens and reduce the risk that rhino horn from stockpiles finds its way onto the illegal rhino horn market.

EIA supports the development and implementation of a consistent stockpile management and disposal policy for both government-held and privately owned rhino horn and ivory stockpiles and recommends that the stockpile management policy call for the destruction of elephant ivory and rhino horn stockpiles, unless kept for legitimate enforcement and scientific purposes.

Policy Objective 6: Consider international commercial elephant ivory trade only when conditions become favourable

Implementation Action 1 to 6

EIA strongly opposes this Policy Objective as currently stated, as it clearly states a preference towards the resumption of international commercial trade in ivory which has been banned under CITES since 1989. As outlined elsewhere in this document, EIA considers the promotion of resuming international commercial ivory trade as not meeting the goal and definition of Sustainable Use, and particularly the Duty of Care obligation, as provided for by the White Paper. Legal trade stimulates demand and thus potentially places increasing poaching pressure on elephants as well as increasing incentives to steal stockpiled ivory.

Further, there is a very real reputational risk associated with the Policy Objective as currently stated. From a perusal and consideration of the White Paper and Draft Policy Position, it is understood that DFFE, and by extension, South Africa, wishes to avoid practices that bring the country into disrepute. The majority of CITES Parties, particularly the majority of African elephant range States, are in support of maintaining the ban against international commercial trade in ivory, recognizing the very real risk the trade poses to the already Endangered African savanna elephant and Critically Endangered African forest elephant.[12] The current Policy Objective does not align with this global or continental position. South Africa is well-recognised as a global leader in biodiversity conservation, but the promotion of international commercial trade in ivory does not reflect well at all on South Africa's reputation. The divisive nature of this position does little to build consensus

[11] DFFE Response to Promotion of Information Act Request. (2019). Available at: https://emsfoundation.org.za/wp-content/uploads/Ivory-Rhino-Stockpiles-Lion-bones_DEA-Response-with-Affidavit_Jul-2019.pdf

[12] CITES 2022. *Cop19 Prop 5: Transfer populations of Botswana, Namibia, South Africa and Zimbabwe from Appendix II to Appendix I* [online]. Cites.org. Available at: https://cites.org/sites/default/files/documents/E-CoP19-Prop-05_0.pdf

with other African elephant range States regarding the conservation and management of this migratory species.

It is also unclear as to how the Policy Objective as currently framed will lead to the 'enhanced' conservation and sustainable use of elephants. The motivation provided in the Draft Policy Position states that 'international commercial trade in elephant ivory of legal origin could provide substantial income and benefit flows to support conservation and security costs. This is based on an assumption that there is international appetite for ivory and that ivory as a commodity will continue to bear significant monetary value which can be exploited. This approach is both counter-intuitive to, and counter-productive for, demand-reduction efforts. It is not appropriate to assume that legal international ivory trade is the best policy decision to benefit the long-term survival of elephant populations in South Africa and throughout the rest of their range in Africa and Asia. In fact, the Monitoring Illegal Killing of Elephants (MIKE) Report to CoP19[13] found a strong association between the illegal killing of elephants and the global annual trend in the price of ivory. This supports the hypothesis that increased demand for ivory results in a price increase that may incentivise poaching.

EIA strongly recommends that the Policy Objective be reframed as 'Work towards a long-term, global consensus to permanently prohibit international trade in ivory'.

Implementation Action 1

EIA partially supports this Action. EIA recommends that the Action be revised to 'A formalised position that South Africa will not submit an elephant ivory trade proposal to CITES'.

EIA further recommends that South Africa should also not support any ivory trade proposal submitted by any CITES Party. EIA recommends that South Africa play a leadership role by encouraging other countries in the region to move away from legal trade in ivory. Legal ivory trade does not alleviate elephant poaching nor does it reduce levels of illegal trade. Quite the opposite, legal ivory trade drives elephant poaching by perpetuating demand for ivory, complicates law enforcement, and allows transnational ivory trafficking syndicates to thrive.[14]

EIA disputes the statement in the prevailing circumstances preventing trade from the HLP Report that the reasons for the surge in elephant poaching following the two-CITES approved "one-off" ivory sales are contested.

After the international commercial trade in elephant ivory was banned by CITES in 1989, elephant poaching rates and ivory prices experienced a sharp decline, allowing decimated elephant populations to begin their slow recovery. Unfortunately, two CITES-approved "one-off" ivory sales and the continued presence of legal domestic ivory markets in consumer countries seriously undermined the ban and set the stage for the rampant poaching of elephants in the 2000s and 2010s.

In 1999, CITES conducted its first post-ban ivory sale that saw Botswana, Namibia, and Zimbabwe trade a combined 50 tonnes of ivory to Japan. In 2008 CITES conducted a second "one-off' sale of ivory to Japan and China. South Africa joined Botswana, Namibia, and Zimbabwe as an authorized ivory seller and contributed 51.1 tonnes of ivory to the total 108 tonnes sold.[15]

The CITES ivory sales generated renewed demand for ivory and instigated widespread elephant poaching that continues today. The MIKE Report to CoP18 concludes that while it is "perhaps impossible" to assess the effects of the CITES authorised ivory sales on elephant populations, **there is overwhelming evidence that the sales did exacerbate poaching and ivory trafficking**" (emphasis added). Indeed, the 2021 findings of the MIKE Report to CoP19 align with IUCN's conclusion that poaching continues to be a major threat to African

[13] CITES 2022. *CoP19 Doc. 66.5 Report on Monitoring the Illegal Killing of Elephants* [online]. Cites.org. Available at: https://cites.org/sites/default/files/documents/E-CoP19-66-05.pdf
[14] EIA. 2012. CITES ivory trade system is flawed and drives poaching. Available at: https://eia-international.org/news/cites-ivory trade-system-flawed-and-drives-elephant-poaching /
[15] CITES. 2008. Ivory sales get the go-ahead. Available at: https://cites.org/eng/news/pr/2008/080716_ivory.shtml

elephants, with PIKE estimates for 2021 across Africa higher than the 2020 estimate, indicating a recent increase in poaching, particularly in West and Central Africa.

After the 2008 ivory sale, African elephants experienced their worst declines in a quarter century as their continental population plummeted by 111,000 from 2006-2015. At the same time, ivory was trafficked on an industrial scale from Africa to consumer markets in Asia. According to the ETIS report to CITES CoP18, nearly 400 tonnes of ivory has been seized globally between 2008 and 2017, equivalent to the deaths of approximately 58,672 elephants.[16] The ETIS report to CoP19[17] again highlighted that ivory trafficking continues to pose a threat to elephant populations. The third-highest weight of ivory seizures for the period 2008-20 was reported to ETIS in 2019, including three record-setting large-scale seizures recorded in 2019, each totalling 7.5 tonnes or more. Although the report suggests there is an overall incremental decline in ivory trafficking since the 2014-15 peak, it urges caution in drawing conclusions about the longevity of this decrease given the uncertainty surrounding COVID-19's impacts on reporting and trafficking in 2020.

Therefore, there is consistent evidence that poaching and ivory trafficking are significant continuing threats to elephants in both Appendix I and Appendix II countries, and authorising legal trade would only aggravate the situation for all African elephant populations and all African elephant range States. The transboundary nature of both elephants and serious organised illegal wildlife trafficking syndicates means that the threats cannot be restricted to certain populations or regions of Africa. Indeed, this has been the argument from other African elephant Range States who are not in favour of resuming international commercial ivory trade, citing fears for their already severely threatened elephant populations.

Seventy-six percent of Africa's elephants are found in transboundary populations including the populations of the Appendix II countries Botswana, Namibia, Zimbabwe and South Africa.[18] In this regard, it is important to note that the elephant populations of all Appendix II countries (Botswana, Namibia, South Africa and Zimbabwe) are shared with countries whose own elephant populations are on Appendix I, including Mozambique, Angola, and Zambia.

CITES recommends that where there is uncertainty of the impact of trade on the conservation of a species, Parties must act in the best interest of the conservation of the species concerned and adopt measures that are proportionate to the anticipated risks to the species.

At CoP19, CITES Parties once again voted overwhelmingly to uphold the ban on international commercial ivory trade, indicating that there is little support for resuming international commercial ivory trade.[19] Several Parties who made interventions cited their concerns that any proposed amendment would undermine previous efforts to close international ivory markets and could incentivise poaching.

Implementation Action 2

EIA opposes this Action for the numerous reasons provided in this document. EIA recommends that this Action be deleted in its entirety.

Alternatively, EIA recommends that this Action be replaced with a new Action, namely: South Africa Adopts and Implements a Policy Prohibiting the Commercial Domestic Trade in Elephant Ivory.

[16] CITES 2019. *CoP18 Doc 69.3. Report on the Elephant Trade Information System (ETIS)* [online]. Cites.org. Available at: https://cites.org/sites/default/files/eng/cop/18/doc/E-CoP18-069-03-R1.pdf
[17] CITES 2022. *CoP19 Doc 66.6. Report on the Elephant Trade Information System (ETIS)* [online]. Cites.org. Available at: https://cites.org/sites/default/files/documents/COP/19/agenda/E-CoP19-66-06.pdf
[18] Lindsay , K., Chase , M., Landen, K., & Nowak , K. 2017. The shared nature of Africa's elephants. *Biological Conservation , 215,* 260-267.
[19] CITES 2022. *Summary Records of the ninth session for Committee I* [online]. Cites.org. Available at: https://cites.org/sites/default/files/documents/E-CoP19-Com-I-Rec-09.pdf

South Africa currently permits trade in antique ivory, but not new ivory. Concerns have been raised regarding the relatively poor regulation of this market.[20] As stated by CITES Resolution Conf. 10.10 (Rev. CoP19) on *Trade in Elephant Specimens,*[21] the legal domestic ivory markets continue to challenge the conservation of elephants by undermining the international ban on commercial ivory trade, stimulating demand and complicating enforcement efforts. At CoP19, Decisions 18.117 (Rev. CoP19), 18.118, and 18.119 (Rev. CoP19) were adopted directing those Parties with open domestic ivory markets to report on the measures taken to ensure their markets were not contributing to poaching or illegal trade.

EIA recommends that DFFE institute a process to review and strengthen South Africa's legal domestic ivory trade regulations and schemes, firstly, to ensure that South Africa is not contributing to the international illegal ivory trade and secondly, to ultimately phase out legal domestic trade in ivory in line with the majority of CITES Parties.

Implementation Action 3

EIA supports developing and implementing alternative benefit streams to international ivory trade. We recognize the significant costs associated with managing elephants, particularly those costs associated with anti-poaching efforts, and support the non-consumptive sustainable use of elephants.

However, EIA cautions against promoting the commercial, consumptive use of elephants, including promoting domestic ivory trade. EIA would like to see a commitment by South Africa to align itself with numerous CITES Parties, including the majority of African elephant Range States, who have closed, or have committed to closing, their domestic ivory markets. In addition, EIA recommends that South Africa play a leadership role in the region in this regard, and work with its SADC neighbours to close the remaining legal domestic ivory markets.

Implementation Action 4

EIA supports efforts to try to develop a consensus for global conservation and sustainable use approach to African elephants, however we submit that the outcome of any process to reach consensus should seek a shared position in support of permanently prohibiting trade in ivory support the long-term survival of the African elephant.

As stated throughout this document, legal ivory trade drives elephant poaching by perpetuating demand for ivory, complicates law enforcement, and allows transnational ivory trafficking syndicates to thrive. Most African elephant range states are opposed to allowing international trade in elephant ivory, and South Africa should fully consider aligning itself with most of its fellow African elephant range states and take a leadership role among its regional partners by adopting a permanent position opposed to international ivory trade.

New Recommended Policy Objective: South Africa Adopts and Implements a Policy Prohibiting the Commercial Domestic Trade in Rhinoceros Horn

The absence of any Policy Objectives or Implementation Actions focused on South Africa's domestic rhino horn trade policies, including their impact on illegal trade and demand reduction, is a key deficiency in the draft Policy Position. South Africa's domestic rhino horn trade is directly related to the HLP report's recommendations and the related provisions in the draft Policy Position on rhino conservation, international trade, and rhino horn stockpiles. DFFE cannot ignore and/or treat the domestic rhino horn trade as an isolated

[20] Journal of African Elephants. 2019. Selling Ivory in South Africa is a Thriving Business. Available: https://www.africanelephantjournal.com/selling-ivory-in-south-africa-is-a-thriving-business/#:~:text=In%20South%20Africa%2C%20trade%20in,ivory%20items%20must%20be%20registered.
[21] CITES 2022. *Resolution Conference 10.10 (Rev. CoP19): Trade in Elephant Specimens* [online]. Cites.org. Available at: https://cites.org/sites/default/files/documents/COP/19/resolution/E-Res-10-10-R19.pdf

issue if it hopes to successfully implement the HLP report's recommendations and protect South Africa's rhinos from poaching and illegal trade.

EIA emphatically reiterates the recommendation included in our previous comments on the first draft Policy Position that South Africa adopt and implement a policy prohibiting the commercial domestic trade in rhinoceros horn.

South Africa's domestic rhino horn trade regulations are insufficient to prevent the domestic trade from contributing to poaching or rhino horn trafficking. For instance, the domestic regulations on rhino horn trade do not specifically prohibit individuals who are not citizens or permanent residents of South Africa from purchasing rhino horn, even though they would not be allowed to legally export the horn to their home country. Moreover, even if domestic rhino horn transactions are conducted in full compliance with the regulations, the free movement of rhino horn within South Africa exacerbates the risk of illegal export and presents serious challenges to enforcement agencies in South Africa and in all countries located along the rhino horn trade chain.

It is also unclear why the prohibitions on producing powdered rhino horn (and similar derivatives) and the selling and export of rhino horn less than 5 cm in length were only applicable for three years before being reassessed by the Minister of Forestry, Fisheries and the Environment. EIA is particularly concerned that these regulations, which were renewed in 2023, were rescinded after a legal challenge brought against DFFE. The result has been a legal grey area, and it is unclear when or if these regulations will be reinstated.

The prohibition on trading small pieces of rhino horn and rhino horn powder is essential due to the impossibility of ensuring their traceability and legality. If the prohibitions on powdered rhino horn are allowed to expire, EIA is concerned that South Africa's legal domestic rhino horn market will facilitate the production and trade of rhino horn medicines and other small, untraceable products. Indeed, the Northern Cape Provincial Government expressed support for the commercialization of rhino horn medicinal products and recommended the removal of the three-year prohibition on powdered rhino horn during the review of the draft trade regulations by the National Council of Provinces.[22] Establishing a market and industry around rhino horn medicinal products would severely undermine global rhino horn demand reduction efforts and increase poaching pressure on rhinos in South Africa and those located beyond its borders.

In 2014, the Department of Environmental Affairs (DEA; now DFFE) conducted an analysis on the viability of legalizing domestic rhino horn trade, which ultimately recommended leaving the moratorium intact.[23] The DEA justified its recommendation by noting that the mechanisms for controlling a legal trade in South Africa were not in place, that the amount of rhino horn in privately owned stockpiles was unknown, and that some private rhino owners were noncompliant with permitting regulations. The DEA concluded that these factors would lead to laundering of illegal horn into stockpiles and trafficking rhino horn abroad if the domestic trade moratorium were lifted. Only after these issues were rectified, and after a "secure, national electronic permitting system and rhino database" was established and utilized by all private rhino owners to disclose the exact contents of their rhino horn stockpiles, would the DEA consider lifting the domestic trade moratorium and consider offering a legal trade proposal at CITES.

The issues identified in the 2014 viability analysis were not addressed before the moratorium was overturned in 2017 nor have they been addressed in the more than five years since domestic rhino horn trade was reinstated in South Africa. No nationwide electronic permitting system has been implemented, there is a backlog for RhODIS DNA analysis requests, and issues remain with obtaining accurate estimates of the total amount of rhino horn kept in private stockpiles, presenting a major risk that poached or otherwise illegally acquired horn can be laundered through these stockpiles.

Key consumer countries like China and Vietnam have already prohibited domestic rhino horn trade and are demonstrating their commitment to enforcing these domestic trade bans and upholding the CITES ban on international trade in rhino horn. By maintaining an open rhino horn market and entertaining the potential

[22] EIA. 2021. Lethal Remedy. Available at: https://eia-international.org/report/lethal-remedy-how-the-promotion-of-some-traditional-chinese-medicine-in-africa-poses-a-major-threat-to-endangered-wildlife/

[23] South Africa Department of Environmental Affairs. 2014. The viability of legalising trade in rhino horn in South Africa.

for South Africa to one day move to overturn the CITES ban on international trade in rhino horn, South Africa is undermining international cooperation to eliminate the trade in rhino horn and put an end to rhino poaching.

South Africa's domestic rhino horn market has been linked to illegal trade since the moratorium was lifted according to DFFE, which has expressed its "serious concern that some of the rhino horn which was sold in terms of permits issued by the department as part of the legal domestic trade bas been linked to illegal activities."[24]

One of the most high-profile cases of illegal trade facilitated by South Africa's legal domestic market involved the April 2019 seizure of 181 rhino horns that originated from the stockpile of a private rhino owner who operates the largest captive rhino breeding facility in South Africa.[25] The horns were being transported without the proper permits and were destined for "South East Asian markets" according to the official police statement.[26]

On 10 June 2020, the two suspects were convicted of illegal possession and transportation of rhino horn, and one suspect was also convicted of forgery.[27] The forgery charge related to documents authorizing the suspects to carry the horns on behalf of the buyer. The two men were ordered to pay small fines and received suspended prison sentences.

This case clearly demonstrate how South Africa's domestic rhino horn market is contributing to illegal trade and underscores how South Africa's domestic rhino horn trade regulatory framework can be exploited to facilitate international rhino horn trafficking. Moreover, microchipped horns have been seized abroad in countries like China, indicating that stockpiled horns are being trafficked internationally., It is crucial that the South African authorities and their counterparts in countries that have made these rhino horn seizures cooperate on enforcement action, including DNA analysis of seizures, to determine the source and nature of the illegally traded horns followed by joint, intelligence-led investigations.

[24] DEFF. 2019. Department of Environment, Forestry and Fisheries reports back on rhino poaching in first six months of 2019. Available at: https://www.environment.gov.za/mediarelease/barbaracreecy_rhinopoaching_sixmonthreportback_july2019

[25] Beega, S. 2019. SA's largest private rhino breeder, John Hume, says seized horns are his property [Saturday Star]. Available at: https://www.iol.co.za/saturday-star/sas-largest-private-rhino-breeder-john-hume-says-seized-rhino-horns-are-his-property-22221195

[26] South African Police Service. 2019. Available at: https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=20103

[27] DFFE. 2020. The department welcomes conviction and sentencing of two men for rhino horn smuggling. Available at: https://www.environment.gov.za/mediarelease/rhinohorn_poachersconviction