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Per Email

Ms Ivonne Higuero, CITES Secretary General, ivonne.higuero@cites.org
cc. Ms Carolina Caceres, Chair, CITES Standing Committee, carolina.caceres@canada.ca
cc. US Fish and Wildlife Service, rosemarie_gnam@fws.gov, pamela_scruggs@fws.gov

September 15, 2021

Concerning the Statement issued by the CITES Secretariat, September 8th, 2021 – Exports of live wild-caught African elephants from Namibia

Dear Mrs. Secretary General,

On September 8th, 2021, the CITES Secretariat issued a statement on the “Trade in live African elephants under articles III and IV”. The statement was intended to provide ‘background’ on Namibia’s intention to capture 57 wild (adult and juvenile) African elephants, some of which are reportedly destined for export to undisclosed locations. Specifically, it addressed the likelihood that live specimens would be exported to *ex situ* destinations (outside their natural range), despite the wording of the annotation to Namibia’s elephant listing restricting trade in live animals to *in situ* conservation programmes only. Namibia has claimed that it can export these animals under Appendix I rules, in order to circumvent this provision¹. The Secretariat, in its statement, claims without explanation that doing so is permitted under the terms of both the annotation and Resolution Conf. 11.21 (Rev. CoP18). It is the view of the undersigned that this claim is based on a faulty interpretation of both documents, and that it should be retracted.

The Secretariat has based its opinion on a highly questionable reading of both the annotation and of Resolution Conf. 11.21 (Rev. CoP18). The annotation states that “all other specimens” not included in the annotation are to be treated as specimens of Appendix I species. Paragraph 9 of the Resolution states that “specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly”.

The Secretariat has interpreted this language, without providing a legal justification, to claim that live specimens not exported under the terms of the annotation can be considered to fall under the category of “all other specimens”. However, the annotation specifically states that it applies, without qualification, to “live animals”. There is nothing in the annotation to suggest that this could be read to mean “some live animals” or “live animals that the exporting country does not want to export under the annotation’s terms”. The wording in the resolution, referring to specimens “not specifically included in the annotation”, also does not support the Secretariat’s interpretation.

The interpretation of the annotation only makes sense, especially when read in conjunction with the definition of “specimen” in Article I of the Convention, if the word “specimens” is read to refer to the type of specimen (eg live animal, whole carcass, part or derivative) rather than to the

¹ https://cites.org/eng/Statement_trade_elephants_CITES_articles3_4_08092021



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purpose of export. It should therefore not be possible to use the phrase “all other specimens” to divide one type of specimen, namely live animals, into specimens that can only be traded under the annotation’s terms and others, based only on the intentions of the exporting Party, that can avoid these terms by being traded as though they were on Appendix I.

This interpretation is also supported by the repeated use of the phrase “types of specimen” in the text of the Resolution. Any other interpretation would basically render all substantive annotations of this sort voluntary, and would therefore be contrary to the binding nature of the Convention text including the Appendices. It would certainly render the annotation for Namibia meaningless, as Namibia would have no incentive to export any live elephants under its terms if the Appendix I alternative were legally available.

You will be aware that the Animals Committee at its recent meeting, referred this specific matter to the Standing Committee for its advice following concerns expressed by Parties in relation to previous controversial *ex situ* exports by Namibia using Appendix I rules, and asked for its recommendations to be presented at its next meeting.² The Standing Committee has yet to consider this matter. We are therefore surprised and concerned that the Secretariat has chosen to pre-empt the Standing Committee by issuing a public statement voicing its own interpretation of these rules in a way that all but validates potential *ex situ* exports of the Namibian elephants.

In our view the Secretariat’s statement, by purporting to authorize trade that the Standing Committee has been directly asked to rule on and thereby potentially undermining the Committee’s deliberations, is not only inappropriate, but also prejudicial. By issuing a public statement rather than providing its views for consideration by the Standing Committee, it has far exceeded the mandate and functions entrusted to it under Article XII of the Convention. It is not the Secretariat’s prerogative to pre-empt the Standing Committee’s discussions, as opposed to offering advice, by declaring its own interpretation of the Convention, when there is an on-going process within the CITES framework to deal with this specific question. It is for the Standing Committee and the Parties to determine whether the Namibian exports of live wild-caught African elephants to *ex situ* facilities under Appendix I rules should or should not be considered legitimate.

The provision in the annotation to the Appendix II listing of Namibia’s elephant populations, which specifically limits export of live elephants to “*in situ* conservation programmes” dates back to CoP12 in 2002, and was re-confirmed at CoP14 in 2007 as part of the compromise allowing another one-off ivory sale. It restricts exports to such programmes within the species’ natural range. Nevertheless, Namibia has previously exported live wild-caught African elephants to *ex situ* countries in 2012 and 2013. It has justified these exports by using the last paragraph of the annotation to argue that they may be exported as specimens of species included in Appendix I.³ For the reasons stated above, we believe that these exports should not have been permitted. The Secretariat’s seemingly unsolicited Statement makes no attempt to provide a legal justification for its apparently contrary view, but simply agrees with Namibia’s questionable interpretation.

It is because this interpretation of the Convention is highly questionable that the Standing Committee was asked to consider the situation and offer its recommendations. Namibia’s attempts to circumvent the restrictions specified in the Appendix II annotation are not based on an analysis of the current wording but rely on a provision whose purpose and intent was entirely different. The original last paragraph of the annotation was first included at CoP12 (Santiago, 2002), and was specifically intended as a safeguard against ivory sales other than the one-off sale of stockpiles

² <https://cites.org/sites/default/files/eng/com/ac/31/sum/E-AC31-ExSum-03.pdf>
<https://cites.org/sites/default/files/eng/com/ac/31/com/E-AC31-Com-02.pdf>

³ This paragraph states that “all other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly”.



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agreed to at that CoP. It was not intended to be used as a loophole that would allow Namibia to trade in live elephants outside the range of the species.

In addition to legal and procedural issues, recent information about the situation in Namibia gives grounds for additional concerns about these potential exports. The elephants are currently being captured in the Omatjete and Kamanjab area, home to Namibia's already threatened and fragile population of desert-adapted elephants. This population is small and relatively isolated, and has specifically and uniquely adapted over multiple generations to a very dry climate. Its viability may be affected by low numbers of mature, breeding bulls and high infant mortality rates.⁴ Any offtake of entire elephant groups is likely to further threaten the survival of this already tenuous population, and potentially contravenes the requirements of both Articles III and IV that exports must not be detrimental to the survival of the species, and that the species must be maintained throughout its range at a level consistent with its role in the ecosystem.

In our view, and given the importance of a precautionary approach for this threatened population, no *ex situ* export of live wild-caught African elephants under the terms of Article III of the Convention from Namibia's Appendix II listed population should be proposed or permitted before the Standing Committee has had an opportunity to consider the issue and make recommendations. These recommendations should then be referred for consideration at the next Meeting of the Conference of the Parties, currently scheduled for November 2022. At that time the Parties will be able to further clarify matters relating to the trade in live African elephants under Articles III and IV.

In view of all these considerations and given the mandate that has been entrusted to the Standing Committee on this issue, we ask the Secretariat to retract its statement and to clarify that it was not intended either to influence the deliberations of the Standing Committee or to be used as justification by Namibia or any other Party for future exports.

Given the urgency of the situation, with elephants already reportedly being captured for export in Namibia, your prompt attention to this matter would be much appreciated.

Yours sincerely,

Vera Weber, President, Fondation Franz Weber

Georgina Lamb, CEO, David Shepherd Wildlife Foundation

Daniela Freyer, Co-Founder, Pro Wildlife

Dr. Mark Jones, Head of Policy, Born Free Foundation

Dr. Liz Tyson, Programs Director, Born Free USA

Iris Ho, Director, Wildlife Policy, Humane Society International

Will Travers, President, Species Survival Network

Heike Henderson, Member of the Board, Future for Elephants

⁴ Cruise AJ. 2021. Investigation into Namibia's Sale of Live Free-Roaming Elephants (*Loxodonta africana*). *Journal of African Elephants*, 2nd September 2021. <https://africanelephantjournal.com/investigation-of-live-elephants/>