



Committee Secretary Parliamentary Joint
Committee on Law Enforcement
PO Box 6100 Parliament House
Canberra ACT 2600

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Submission to the Parliamentary Inquiry into trade in elephant ivory and rhinoceros horn

The *Centre for Environmental Law* makes this submission to the Parliamentary Joint Committee on Law Enforcement with respect to the Inquiry into the trade in elephant ivory and rhinoceros horn.

The submission is structured as follows:

- Part 1 introduces the Centre for Environmental Law and the scope of its work;
- Part 2 offers a brief background to the legal framework relevant to the Inquiry;
- Part 3 invites the Committee to note some important aspects in framing its approach; and
- Part 4 provides the Centre's responses to the Terms of Reference.

1. INTRODUCTION TO THE CENTRE OF ENVIRONMENTAL LAW

- 1.1 Macquarie University has a strong history of involvement in environmental law. The Centre for Environmental Law (CEL) builds on the research strengths and expertise of its academic staff in specific areas including: international and comparative law, trade and environment, law of the sea and marine environmental law, water law and governance, sustainable corporate governance and financing, pollution and environmental regulation, Indigenous peoples, customary law and natural resource management, climate change, planning and local government law, natural and cultural heritage.
- 1.2 CEL is committed to fostering dynamic relationships with industry, government, NGOs and other Universities. Our ambition is to encourage, promote and supportive creative and enquiring scholarship in all areas of environmental law and policy reform. Due to the interdisciplinary approach adopted by the Centre, researchers are drawn from various disciplines such as law, economics, geography and environmental science.
- 1.3 As one of the oldest continuously functioning environmental law centres in the southern hemisphere, CEL has recognised the pivotal role of local governments and institutions as an integral part of effective implementation of environmental law and policy. Moreover, the Centre is internationally renowned for its approach to international trade and sustainable economic policy development.
- 1.4 CEL Associate Member, Ms Zara Bending, is currently completing her doctoral dissertation on the illegal trade in wildlife, using rhinoceros horn as her case study, under the supervision of Centre Director, Professor Shawkat Alam, and Deputy Director, Dr Shireen Daft (both from the Macquarie Law School). This project adopts an interdisciplinary approach integrating



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conservation, criminological, historical, and security lenses. Most recently, Dr Daft and Ms Bending presented their collaboration on the topic of 'wildlife as conflict resources' at the 4th *Annual Australian and New Zealand Society of International Law (ANZSIL) International Peace and Security Interest Group (IPSIG) Workshop* hosted by the TC Bierne School of Law, University of Queensland, at the Supreme Court of Queensland Library (27 April 2018). Ms Bending's research is included in the archived references of the *Rhino Resource Center* (<http://www.rhinoresourcecenter.com/>) edited by Dr Kees Rookmaaker.

2. BACKGROUND

- 2.1 The international trade in elephant ivory and rhinoceros horn is regulated by the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975). The international trade in elephant ivory was banned in 1989 and the international trade in rhinoceros horn has been subject to prohibition since 1977.
- 2.2 Australia ratified CITES in July 1976 and Australian CITES provisions now form part of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). The express purposes of the Act include the promotion of ecologically sustainable development, conservation of biodiversity, as well as to assist in the co-operative implementation of Australia's international environmental responsibilities.
- 2.3 Part 13A of the EPBC Act concerns International movement of Wildlife Specimens and among its express objects aims to 'ensure that Australia complies with its obligations under CITES and the Biodiversity Convention',¹ 'protect wildlife that may be adversely affected by trade',² 'promote the conservation of biodiversity in Australian and other countries',³ 'promote the humane treatment of wildlife',⁴ and 'ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife'.⁵
- 2.4 With respect to the precautionary principle, Section 3A of the EPBC Act includes reference to the precautionary principle in outlining the principles of ecologically sustainable development, whereby '(b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation'.⁶ This section also states that: decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations,⁷ the principle of inter-generational equity be maintained or enhanced for the benefit of future generations,⁸ conservation of biological diversity and ecological integrity

¹ EPBC Act s 303BA(a).

² Ibid s 303BA(b).

³ Ibid s 303BA(c).

⁴ Ibid s 303BA(e).

⁵ Ibid s 303BA(h).

⁶ Ibid s 3A(b).

⁷ Ibid s 3A(a).

⁸ Ibid s 3A(c).



should be a fundamental consideration in decision-making,⁹ and improved valuation, pricing and incentive mechanisms should be promoted.¹⁰

- 2.5 In brief, Part 13A regulates (i) the import and export of specimens of species protected under CITES; (ii) exports of specimens of species native to Australia; and (iii) imports of live specimens. The CITES Appendices have been translated into the list of CITES species for the purposes of the EPBC Act. As with all member states party to CITES, Australia is required to report of the issuance of CITES import and export permits. Legal import and export of elephant ivory and rhinoceros horn requires the Australian CITES Management Authority, houses in the Commonwealth Department of the Environment and Energy) to issue CITES permits.
- 2.6 While CITES regulates the international trade in elephant ivory and rhinoceros horn, member states are responsible for the regulation of their respective domestic markets. At the time of writing, Australia has not passed legislation with respect to either commodity.

3. FRAMING THE ISSUES

3.1 *Species Vulnerability and Consequences of Extinction*

3.1.1 Information regarding the conservation status of species and subspecies of elephant and rhinoceros can be found on the *IUCN Red List of Threatened Species* (<http://www.iucnredlist.org/>) however CEL wishes to direct the Committee's attention towards the work of Dr William Ripple and colleagues to explain why these iconic mammals require protection under legal frameworks.

3.1.2 Against the backdrop of Earth's sixth age of mass extinction,¹¹ large-bodied mammals, including elephants and rhinoceros, experience higher risks of extinction in comparison to smaller species.¹² Mammalian megafauna continue to be vulnerable to ongoing threats to their habitat (destruction, degradation and fragmentation) due to their large area requirements. Additionally, overhunting and persecution ('shooting, snaring, and poisoning by humans', including by individuals, organised crime syndicates, armed groups and governments) also feature as causes for the current rate of depletion.¹³

3.1.3 The collapse of species of large herbivores, including elephants, rhinoceros, and hippopotamus, in range states has far-reaching consequences on ecosystems and the communities who rely on them for livelihood and survival.¹⁴ These species function as keystone species and engineers of their environments by trampling and consuming certain plants, impacting the food supply for other species. They also act as large seed dispersers and can influence the frequency, intensity, and spatial distribution of fires across landscapes. Finally, in addition to providing food for predators and scavengers, these examples of charismatic

⁹ Ibid s 3A(d).

¹⁰ Ibid s 3A(e).

¹¹ Gerardo Ceballos et al, 'Accelerated modern human-induced species losses: Entering the sixth mass extinction', (2015) 1(5) *Science Advances* e1400253.

¹² William J Ripple et al, 'Saving the World's Terrestrial Megafauna' (2016) 66(10) *BioScience* 807.

¹³ CT Darimont et al, 'The unique ecology of human predators' (2015) 349 *Science* 858.

¹⁴ William J Ripple et al, 'Collapse of the world's largest herbivores' (2015) 1(4) *Science Advances* e1400103.



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megafauna also attract the ecotourism dollar to developing countries where biodiversity hotspots are overwhelmingly represented.

3.2 Crime and Conflict

3.2.1 Markets for wildlife products drive species extinction and benefit organised crime syndicates. Organisations including TRAFFIC, INTERPOL, the World Bank Group, and the UNODC have highlighted the negative effects of ‘illicit wildlife trafficking’, which involves: ‘any environment-related crime that involves the illegal trade, smuggling, poaching, capture or collection of endangered species, protected wildlife (including animals and plants that are subject to harvest quotas and regulated by permits), derivatives or products thereof.’¹⁵ Investigative journalists including Julian Rademeyer and the late Esmond Bradley Martin have also provided invaluable insights on market trends and trafficking techniques for rhinoceros and elephant products. CEL understands that markets in Asia (notably the People’s Republic of China and Viet Nam) are driving the latest period of demand for these products and contends that Australia’s domestic market has the capacity to act as a node in the supply chain given our regional proximity.

3.2.2 It is important to note that trade in wildlife products, including ivory and rhino horn, is ever changing and subject to variation in application and interest from end-users. For an overview of historical and contemporary uses and markets for rhinoceros horn, CEL refers the Committee to Part III of Ms Bending’s latest published work.¹⁶

3.2.3 The intersection between wildlife and conflict is a current area of inquiry for Dr Daft and Ms Bending, and together they encourage the Committee to be cognisant of this aspect of the commodities subject to the Inquiry. As stated by Wennmann:

‘In central Africa, wildlife trade has become an important means of financing armed conflicts. Armed groups on both sides of conflicts, with the means and access to valuable wildlife, frequently take advantage of their situations to reap financial benefits.’¹⁷

In recent years, the United Nations Security Council and some commentators have begun to recognise that poaching and trafficking of wildlife and wildlife products by armed groups are perpetuating ongoing conflict in central Africa. ‘Blood ivory’ (also referred to as ‘conflict ivory’) not only emerged in popular rhetoric and academic discourse, but also became the subject of Security Council resolutions on the Democratic Republic of Congo (DRC) and the Central African Republic (CAR) in relation to armed groups including: the Lord’s Resistance Army (LRA), Janjaweed, Mai Mai Morgan, Mai Mai Luc, and Séléka. Areas affected include: Virunga National Park, Maiko National Park, Garamba National Park and the Okapi Wildlife Reserve in the DRC; and Chinko, Dzanga-Ndoki, Bamingui-Bangoran and Manovo-Gounda St Floris

¹⁵ Nigel South and Tanya Wyatt, ‘Comparing illicit trades in wildlife and drugs: an exploratory study’ (2011) 32(6) *Deviant Behavior* 538-61. This definition is also used in World Wildlife Fund and Dalberg, *Fighting illicit wildlife trafficking: A consultation with governments* (2012) 9. See also: Zara Bending, ‘An Introduction to the Illegal Trade in Wildlife: A Snapshot of the Illicit Trade in Rhinoceros Horn’ (2015) 2 *Australian Journal of Environmental Law* 124.

¹⁶ Zara J Bending, ‘Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn’ (2018) 24(2) *Environment & History* 149.

¹⁷ Achim Wennmann, ‘What is the Political Economy of Conflict? Delimiting a Debate on Contemporary Armed Conflict’ in Natasha White, ‘The Political Economy of Ivory as a ‘Conflict Resource’’ (2014) 21(2) *Peace and Conflict Studies* 172, 175.



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national parks in the CAR. Indeed, wildlife and wildlife products exploited by these groups share characteristics that typify conflict resources.

With respect to rhinoceros horn, in the 1970s and 1980s it was found that groups including UNITA and Mozambican National Resistance (RENAMO) were involved in ivory and horn poaching, passing their spoils through South African military intelligence.¹⁸ The International Rhino Foundation Executive Director, Susie Ellis, has stressed a positive correlation between conflict and poaching in areas where rhinos are now possibly or regionally extinct.¹⁹ The death of Sudan, Earth's last male Northern White Rhinoceros (*Ceratotherium simum cottoni*) in March 2018 offers a sobering example as the last of his kind in Garamba National Park was sighted in 2006, a drastic drop from over 2000 in the 1960s.

3.3 The need to avoid generalisations

3.3.1 CEL implores the Committee to take care in avoiding generalisations and misconceptions in its consideration and communication of its findings as this has the potential to perpetuate infelicities and even derail existing progress being made towards behaviour change. For example, the traditional medicine market for rhinoceros horn in China, while a driver, has been over emphasised, and in doing so underplayed the investment, collectible and artistic segments of consumption.²⁰

3.3.2 Additionally, as outlined by Bending,²¹ authors including Martin,²² Ellis²³ and Dinerstein²⁴ concur that the widespread belief that the use of rhino horn as an aphrodisiac originating from Traditional Chinese Medicine was actually the result of a myth purported by Western writers.²⁵ Up until recently, rhinoceros horn was used as an aphrodisiac only by the Gujarati community in India,²⁶ with contemporary evidence now suggesting that some is now being used for this purpose in Viet Nam, consumed as *tuu giac* ('rhino wine') as a sexual enhancer for men.²⁷

3.3.3 Finally, and most palpably, attempts to provide a total global valuation of the 'illegal wildlife trade' as well as rank illicit wildlife trade against other transnational crime commodities

¹⁸ R T Naylor, 'The underworld of ivory' (2004) 42 *Crime, Law and Social Change* 261.

¹⁹ For example, at the time of writing, the IUCN Red List provides the following relevant range categories: Black rhinoceros (*Diceros bicornis*) regionally extinct in Chad, Rwanda, DRC, Rwanda. White rhinoceros (*Ceratotherium simum*) possibly extinct in the DRC, South Sudan, Sudan, and regionally extinct in Central African Republic and Chad.

²⁰ Yufang Gao et al. 'Rhino horn trade in China: An analysis of the art and antiques market' (2016) 201 *Biological Conservation* 343. See also Ciara Aucoin and Sumien Deetlefs, 'Tackling supply and demand in the rhino horn trade' (2018) *ENACT Policy Brief Issue 2*.

²¹ Zara J Bending, 'Improving Conservation Outcomes: Understanding Scientific, Historical and Cultural Dimensions of the Illicit Trade in Rhinoceros Horn' (2018) 24(2) *Environment & History* 149, 182-3.

²² E B Martin, 'Deadly love potions' (1987) 90(1) *Animal Kingdom* 16.

²³ Richard Ellis, *Tiger Bone & Rhino Horn: The Destruction of Wildlife for Traditional Chinese Medicine* (Washington, DC, Island Press, 2005) 121.

²⁴ Eric Dinerstein, *The Return of unicorns: The Natural History and Conservation of the Greater One-Horned Rhinoceros* (New York, Columbia University Press, 2003).

²⁵ Richard Ellis, *Tiger Bone & Rhino Horn: The Destruction of Wildlife for Traditional Chinese Medicine* (Washington, DC, Island Press, 2005) 121.

²⁶ Nigel Leader-Williams, TRAFFIC, *The World Trade in Rhino Horn: A Review*, 4.

²⁷ Tom Milliken and Jo Shaw, TRAFFIC, *The South Africa-Viet Nam Rhino Horn Trade Nexus: A deadly combination of institutional lapses, corrupt wildlife industry professionals and Asian crime syndicates* (2012, TRAFFIC) 122.



by relative value²⁸ are subject to variation based on interpretation of datasets, inclusion of other environmental crimes (e.g. forestry),²⁹ inaccuracies in conversion between currencies,³⁰ and at times circular reporting.³¹

3.3.4 The 2016 UNODC report has in many ways set the parameters by which our understanding of the illegal wildlife trade will progress. Echoing the above sentiments, it finds that ‘many estimates have been touted for the annual value of illicit wildlife trade, but few with any transparency’.³² Further, following a monumental quantitative analysis of seven thousand distinct species across 164,000 seizures from the World Wildlife Seizure database, it declined to provide a total valuation and questions the feasibility of calculating a consistent global estimate of the revenues generated for a number of reasons, including the apparent volatility of wildlife markets.³³ This volatility occurs, in part, due to apparent speculation in higher value wildlife commodities (where price becomes detached from retail demand) because prices and import volumes can vary significantly year to year. UNODC explains that the market can be ‘influenced by the prospect of greater controls, resulting in panic buying or sell offs’, evidencing the measured increased trade in pangolin products before zero export quotas were introduced.³⁴ The report stresses that wildlife crime is not limited to particular countries or regions, but is a realised global phenomenon involving many distinct markets bearing their respective drivers and dynamics. Further, it offers that ‘it may be best to think of the international illegal wildlife trade as a series of related but distinct illicit markets, each of which must be independently assessed for its unique characteristics.’³⁵

²⁸ Some of the most common ranking being: ‘the fourth largest global illegal trade after narcotics, humans and counterfeit products’, ‘fourth most lucrative type of transnational crime after illegal narcotics, humans and armaments’, ‘the third most valuable illicit commerce behind drugs and arms’, and ‘the second largest form of black market commerce, behind drug smuggling and just ahead of illegal arms trade’.

²⁹ Nellemann, C. (Editor in Chief); Henriksen, R., Kreilhuber, A., Stewart, D., Kotsova, M., Raxter, P., Mrema, E., and Barrat, S. (Eds). 2016. The Rise of Environmental Crime – A Growing Threat To Natural Resources Peace, Development And Security. A UNEP/INTERPOL Rapid Response Assessment. United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses.

³⁰ E.g. Sarah Morrison, ‘Time to Hunt down the ‘Kinpins’ of Wildlife Crime,’ The Independent, February 6, 2014, <http://www.independent.co.uk/voices/comment/time-to-hunt-down-the-kingpins-of-wildlife-crime-9113150.html> misquoted in GFI as USD12 whereas the original source refers to ‘£12bn’.

³¹ This can be evidenced by comparing the 2017 and 2011 global valuations issued by Global Financial Integrity, wherein a significant proportion of the 22 sources upon which the 2017 report bases its estimate (USD5 billion to USD23 billion) trace their valuation back to the 2011 report.

³² United Nations Office on Drugs and Crime (2016) ‘*World Wildlife Crime Report – Trafficking in protected species*’ <[https://www.unodc.org/documents/data-and-analysis/wildlife/World Wildlife Crime Report 2016 final.pdf](https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf)> 20.

³³ Ibid 21.

³⁴ Ibid 21.

³⁵ Ibid 16.



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4. RESPONSES TO THE TERMS OF REFERENCE

a. *The incidence of importation to, and exportation from, Australia of elephant ivory and rhinoceros horn products*

Australia is a Party to the *Convention on the International Trade of Endangered Species of Wild Flora and Fauna* (CITES), which requires member States to report on the issuance of CITES import and export permits.³⁶ As aforementioned, legal import and export of elephant ivory and rhinoceros horn requires the Australian CITES Management Authority, which sits in the Commonwealth Department of the Environment and Energy), to issue CITES permits. The CITES Trade Database³⁷ aggregates details related to permits issued by CITES Management Authorities in each country, including: the country of import and export, year, and the declared purpose e.g. whether for education, science, zoos, personal effects, commercial trade etc. However, there are inconsistencies in how Australian entries are reported. For example, some entries specify number of items (e.g. number of carvings) whereas other denote total weight. This information does not appear on the Department of the Environment and Energy's website.

A brief analysis of trade data available for the period 2007 - 2017 shows there were 499 legal imports of elephant products (including carvings, ivory pieces, tusks, trophies, tails, feet, leather and skin, as well as entries for specimens, teeth, bone, derivatives and bodies) into Australia and 355 exports of elephant products. The majority of these items were ivory products. In the same period, there were 25 incidences of importation of rhino horn products (described as carvings, specimens powder, trophies and horns) and 30 incidences of export. It is important to note that the trade data for these products does not identify the quantity of product (weight, number of items).

Analysis of publicly available information accessed by the International Fund for Animal Welfare on the 2nd May 2018, indicates that over the last decade there have been 335 imported and 131 exported ivory items that have been confiscated by Australian authorities, indicated as a 'seizure' with the code 'I' on the database. According to the data, the source countries for the imported seized ivory items were: United Arab Emirates, China, United Kingdom, Greece, Cambodia, Saudi Arabia, New Zealand, United States of America, Ireland, South Africa, India, Germany and Japan. All but one of the seized export items were destined for the United States of America. For rhinoceros, in the same period, there have been 23 imported items (all of which were classified as trophies) and 102 exported items (classified as powder and derivatives). The source countries for the imported seizures were China and South Africa, with the destination countries for the exported seizures being New Zealand and the United States of America.³⁸

Australia's proximity to the markets of Asia means that there is capacity for Australia to be used for illegal shipments of wildlife products such as ivory and rhinoceros horn. This was

³⁶ *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, opened for signature 3 March 1973, 993 UNTS 243 (entered into force 1 July 1975).

³⁷ <https://trade.cites.org/en/cites_trade/>.

³⁸ International Fund for Animal Welfare, *Under the Hammer: Are Auction Houses in Australia and New Zealand Contributing to the Demise of Elephants and Rhinos?* (September 2016) <<https://www.ifaw.org/australia/resource-centre/under-the-hammer>>.



evidenced in 2015, when a shipment of 110kg of raw ivory was confiscated by authorities at Perth airport, *en route* to Malaysia from Malawi.³⁹

b. *The adequacy of existing arrangement and resources for the screening of imports and export for elephant ivory and rhinoceros horn products*

Based on seizure data utilised in the United Nations Office on Drugs and Crime's 2016 '*World Wildlife Crime Report – Trafficking in protected species*', 'customs agents form the front line of enforcement in many parts of the world' as the majority of enforcement activities take place at ports of entry as opposed to domestic markets. Therefore, it is vital that significant resources are allocated to specially trained border officials.⁴⁰

Screening of imports and exports by border officials is primarily focused on other illegal commodities, such as firearms and illicit drugs. It is our understanding that not every package that is imported or exported from Australia undergoes screening. It is stated on the Australian Border Force's website that 'imported mail *may* be subject to inspection using techniques such as x-ray or detector dogs.'⁴¹ The ability for prohibited items to breach Australia's border was highlighted in the relative ease of Australians acquiring illicit drugs via post using online direct-to-consumer marketplaces, including Silk Road.⁴²

There is no specific information on the Australian Federal Police (AFP) website, Border Force's website or Australia Post's website about programmes or protocols for screening of imports and exports for elephant ivory and rhinoceros horn products or for wildlife generally. The AFP website states that 'in general the AFP implements a joint agency approach to investigations into environmental crime, enabling the specialist capabilities and resources of other agencies to be used.'⁴³

In 2018, the World Bank Group produced its 38-page *Tools and Resources to Combat Illegal Wildlife Trade* report in which it provides an overview of existing and emerging tools and resources to combat the illegal wildlife trade.⁴⁴ The report stresses the importance of intelligence-led approaches to policing, including access to advanced detection tools such as cargo scanners and detection dogs. We recommend that the Committee consider the fourteen key findings/recommendations from the report in analysing the effectiveness of Australia's approach.

Further, we recommend that the Committee consult with the Australian Museum's Australian Centre for Wildlife Genomics. This Centre is one of the only wildlife forensics facilities in

³⁹ 'Large shipment of ivory seized from air cargo at Perth', *ABC News* (online), 9 April 2015 <<http://www.abc.net.au/news/2015-04-09/customs-seize-ivory-in-air-cargo-at-perth/6381712>>.

⁴⁰ United Nations Office on Drugs and Crime (2016) '*World Wildlife Crime Report – Trafficking in protected species*' <https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf>.

⁴¹ <<https://www.homeaffairs.gov.au/australian-border-force-abf/protecting>>.

⁴² See James Martin, *Drugs on the Dark Net: How Cryptomarkets Are Transforming the Global Trade in Illicit Drugs* (Palgrave Macmillan, 2014); Jack Cunliffe, James Martin, David Décary-Héty, and Judith Aldridge, 'An island apart? Risks and prices in the Australian cryptomarket drug trade' (2017) 50 *International Journal of Drug Policy* 64.

⁴³ <<https://www.afp.gov.au/what-we-do/crime-types/environmental-crime>>.

⁴⁴ The World Bank Group, *Tools and Resources to Combat Illegal Wildlife Trade* (2018) <<http://pubdocs.worldbank.org/en/389851519769693304/24691-Wildlife-Law-Enforcement-002.pdf>>.



Australian to be accredited by the National Association of Testing Authorities and has requisite expertise in the traditional medicines and ivory spaces. The lab has also collaborated with colleagues in Europe and Asia to develop a validated and standardised forensic species identification test for seized rhinoceros horn.⁴⁵

- c. *The involvement of serious and organised crime groups, including international crime groups, in the importation, exportation and/or sale of elephant ivory and rhinoceros horn products in Australia*

A common concern for interested parties is the propensity for legal trade to act as a conduit for illicit activity.

Point 6 of CITES Conference of Parties 17 Document 57.2 'Closure of Domestic markets for Elephant Ivory' states the following:

*Any sales of ivory, including within legal domestic markets, is inherently likely to increase the risk to elephant populations and local communities, since domestic ivory markets, whether in range, transit, or consumer countries, create a significant opportunity for the laundering of illegal ivory under the guise of legality.*⁴⁶

The clandestine nature of wildlife trafficking means that the full extent of criminal behaviour is unlikely to be uncovered, compounded by the pervasiveness of corruption and bribery. This uncertainty does not, however, provide a bar to adopting proactive measures to mitigate risk.

Wildlife and forest crimes constitute serious and increasing problems worldwide with strong evidence of increased involvement of organised crime groups, and in some areas rebel militia operating through well-developed networks. Criminologists including Ayling have conducted extensive research into the extended criminal networks profiting from wildlife crime, noting their resilience.⁴⁷ While a range of valuations circulate as to the total value of the illegal wildlife trade (as well as comparative rankings against other forms of transnational crime) what is certain is that the trade offers a potential income stream for syndicates, particularly given the prevailing paradigm of 'high profits and low risks'.⁴⁸ In fact, it appears that syndicates and consumers alike may be effectively 'investing in extinction' by purchasing elephant ivory and rhino horn products and banking on the increasing rarity of species driving profit margins.⁴⁹ The relationship between rarity and price was best articulated by then Secretariat General of CITES, John Scanlon,

⁴⁵ Kyle M Ewart et al, 'An internationally standardized species identification test for use on suspected seized rhinoceros horn in the illegal wildlife trade' (2018) 32 *Forensic Science International: Genomics* 33.

⁴⁶ CITES Conference of the Parties 'Closure of domestic markets for elephant ivory' (CoP 17 Doc 57.2).

⁴⁷ Julie Ayling, 'What Sustains Wildlife Crime? Rhino Horn Trading and the Resilience of Criminal Networks' (2013) 16(1) *Journal of International Wildlife Law & Policy* 57.

⁴⁸ Zara Bending, 'Public pressure must end the ivory trade in Australia', *The Lighthouse* (8 May 2018) <<https://lighthouse.mq.edu.au/article/when-will-we-stop-the-ivory-trade-in-australia>>.

⁴⁹ Ibid.



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whereby: '[i]f something is rare it becomes more attractive...[a]nd the rarer something is, the more valuable it becomes.'⁵⁰

The incidence of ivory and rhinoceros horn seizures at any border, particularly seizure of raw, unworked ivory and horn, suggest that transnational criminal syndicates do utilise that particular country as a transit or destination route. The United Nations Office on Drugs and Crime 2016 *World Wildlife Crime Report – Trafficking in protected species* has identified Australia as a destination and transit country for ivory.⁵¹ Given the proximity of Australia to wildlife trafficking destination hotspots of Viet Nam and Thailand and the closure of domestic markets in China and Hong Kong SAR, it is a reasonable assumption to make that Australia could be used more as a transit and destination country, particularly with its high rate of relevant diaspora and close business ties to the region.

- d. *What arrangements exist with auction houses, electronic market places and other brokers to prevent illegally imported elephant ivory and rhinoceros horn being sold in Australia*

Due to the current lack of uniform regulation and guidance provided by governments the mechanisms that exist to prevent the sale of illegally imported elephant ivory and rhinoceros horn is largely down to industry self-regulation. The knowledge and expertise of auctioneers and antiques dealers in Australia during the valuation and consignment process, and the internal policies of auction houses, antiques dealers and online trading platforms to prevent illegal items being sold on the market is the main mechanism to prevent illegal items being traded domestically.

Auction houses, antiques dealers and other stores

Currently there are no prescriptive reporting requirements, or legally mandated Provenance documentation requirements, for the domestic trade of elephant ivory and rhinoceros horn in Australia. Proof of Provenance including age, history, legality is only required for CITES import and export permit purposes, and only required by the person applying for the permit. Different auction houses and retailers have their own requirements for accepting an item on consignment, and with regard to the information provided in the listing of that item for sale.

The lack of provenance documentation and reporting requirements for domestic trade provides a regulatory gap that illegal traders can exploit, particularly with the increasing trend of ivory being processed into finished products in Africa before being exported. Similarly, in its 2017 *Pendants, Powder and Pathways Rapid Assessment Report*, TRAFFIC found that Asian trafficking syndicates have begun to fashion beads and 'disks' from rhinoceros horn to avoid detection in transit.⁵² The increasing use of pre-export modification means that it is considerably

⁵⁰ Duncan Graham-Rowe, 'Endangered and in demand' (2011) 480 *Nature* 101, 103; cited in Zara Bending, 'An Introduction to the Illegal Trade in Wildlife: A Snapshot of the Illicit Trade in Rhinoceros Horn' (2015) 2 *Australian Journal of Environmental Law* 124.

⁵¹ United Nations Office on Drugs and Crime (2016) '*World Wildlife Crime Report – Trafficking in protected species*' <https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf>.

⁵² Sade Moneron, Nicola Okes and Julian Rademeyer, *Pendants, Powder and Pathways: A Rapid Assessment of Smuggling Routes and Techniques Used in the Illicit Trade in African Rhino Horn* (TRAFFIC, 2017) <<http://www.traffic.org/publications/pendants-powder-and-pathways-a-rapid-assessment-of-smuggling.html>>.



more difficult to detect illegal shipments in comparison to trafficking in more readily identifiable raw tusks and horns.

IFAW's 2016 *Under the Hammer* report identified that out of the 21 auction houses surveyed, only seven had written policies relating to trade publicly available on their websites.⁵³ Of the seven, two of these auction houses made mention of trade in wildlife products. As a direct result of this report, in December 2016, Leonard Joel became the first Australian auction house to publicly implement a self-imposed ban on the trade of all rhinoceros and most ivory items, while others have also started to announce policy changes and development in response to public concerns.

The trade of such items is not restricted to antiques stores and auction houses, ivory has also been found in pawn shops, markets, emporiums and second-hand stores.

Online trading platforms

Advances in technology and connectivity across the world, combined with rising buying power and demand for illicit wildlife products, have increased the ease of exchange from poacher to consumer. As a result, an unregulated online market allows criminals to sell illegally obtained wildlife products across the globe. It is also worth noting that auction houses too have taken much of their business online through platforms such as www.invaluable.com where quick searches readily generate results for ivory and rhino horn product listings within Australia.

As with physical trade, online trade of such items does not require any reporting or provenance documentation. IFAW's 2013 report '*Click to Delete*'⁵⁴ identified that between 2008 - 2013 there had been a 266 percent increase in the number of endangered animals and their products offered for sale on Australian websites. One of the main drivers of this increase was an increase in the number of ivory sales. Ivory was identified as the number one item traded online in 2013. The proliferation of social media, private online forums, and shopping apps has seen a substantial increase in buying activity internationally through platforms including: eBay, Facebook, Instagram, Craigslist, Baidu Bar, WeChat, QQ Group, and TaoBao (the latter launched an Australian website in 2017).

March 2018 saw the launch of the Global Coalition to End Wildlife Trafficking Online, bringing together some of the largest online marketplaces, including those with branches in Australia such as Facebook, eBay, Etsy and Ali Baba. Together with IFAW, WWF and TRAFFIC, the Coalition is committed to work to reduce online trade in wildlife products across their platforms by 80 percent by 2020. Still, such efforts have been the subject of criticism due to alleged inaction. For example, in the aftermath of the *Cambridge Analytica* scandal, Facebook was accused of running ads on webpages run by 'overseas wildlife traffickers illegally selling the body parts of threatened animals.'

⁵³ International Fund for Animal Welfare, *Under the Hammer: Are Auction Houses in Australia and New Zealand Contributing to the Demise of Elephants and Rhinos?* (September 2016) <<https://www.ifaw.org/australia/resource-centre/under-the-hammer>>.

⁵⁴ IFAW (2013) '*Click to Delete – Australian Website Selling Endangered Wildlife*' <<https://www.ifaw.org/united-states/resource-centre/click-delete-australian-websites-selling-endangered-wildlife>>.



As with the auction houses and antiques dealers, the commercial sector is working with civil society to identify gaps allowing illegal items to find their way onto domestic markets, and subsequently implementing their own policies to address the global wildlife trade epidemic. These efforts would be more effective if their policies were supported by corresponding legislation and regulation that provided certainty and a minimum standard by which all industry could operate.

- e. *The effectiveness of existing domestic legislation and compliance frameworks to restrict trade in elephant ivory and rhinoceros horn products, with particular regard to the role of the Australian Federal Police and the Australian Border Force*

Australia implements its obligations as a Party to CITES including the import and export of CITES listed specimens such as elephant ivory and rhinoceros horn under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act) which is administered by the Department of the Environment and Energy. While Australia has implemented stronger international trade regulation than what is required under CITES for elephant ivory and rhinoceros horn by applying Stricter Domestic Measures, effectively treating all elephants as Appendix I and requiring radio carbon dating of rhinoceros horn, these measures only apply to the import and export of specimens. There are offence provisions⁵⁵ in the EPBC Act in relation to the possession of illegally imported CITES specimens but proving illegal import is difficult due to the lack of legally prescribed provenance documentation. There is no publicly available information detailing if and how the Department monitors and restricts the domestic trade of elephant ivory and rhinoceros horn.

Presently, under the EPBC Act there is no approval or authorisation required to domestically trade in a CITES listed species. Ensuring compliance and investigating non-compliance with the provisions under the EPBC Act is largely the responsibility of the Department of the Environment and Energy, who do not have personnel at every port of entry in Australia. The AFP takes a lead role in the investigation of environmental crime where the 'complexity, sensitivity or degree of harm' caused to the environment necessitates the AFP's involvement as the lead investigating authority.

The AFP works with the Department and Australian Border Force in the investigation of serious environmental crime but generally the Department of the Environment and Energy undertakes the majority of investigations into breaches of Commonwealth environmental law and often rely on information provided by civil society to alert them to such instances. In 2014, intelligence provided to the Department by the International Fund for Animal Welfare led to the arrest and charge of two men in New South Wales charged with trading in illegal wildlife. Illegal ivory carvings and jewellery, worth approximately AUD\$80 000, were found during a search of the premises.

- f. *The effectiveness of current monitoring and regulation, including the extent of and use of legally mandated Provenance documentation attached to elephant ivory and rhinoceros horn*

Presently, there is no legally prescribed provenance documentation that is required to be attached to elephant ivory and rhinoceros horn for trade within Australia, despite repeated calls

⁵⁵ EPBC Act s 303GN.



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internationally for strengthened commercial traceability mechanism for domestic trade of endangered wildlife.⁵⁶ For such items to be imported and exported, a radio carbon dating certificate is required for rhinoceros horn and associated CITES permits for elephant ivory. The discrepancy in requirements for domestic and international trade creates confusion and a regulatory gap that may be exploited.

As mentioned above, there is no requirement under the EPBC Act for approval to obtain from the Department prior to domestically trading items such as elephant ivory and rhinoceros horn, and the ability of law enforcement to track domestic ivory and rhinoceros horn trade is limited. Illegal trade may only be uncovered if a government official requests proof of legal import from a trader, and that proof can be anything from CITES permits to the assertion by the trader for example via a Statutory Declaration, that their items are legally imported. Monitoring of domestic trade appears to be largely carried out by concerned citizens and non-government organisations that provide information about suspicious trade to the Department for their further investigation.

g. *The authenticity of provenance documentation and effectiveness of measures to detect forged or fraudulent documentation*

As there is no legally prescribed provenance documentation for domestic trade, provenance of elephant ivory and rhinoceros horn is often determined through the opinion of the trader, or in some cases on the 'expertise' of industry valuers. Without legally prescribed provenance documentation and monitoring by regulators of domestic trade, there is reliance on industry self-regulation and, in some instances, sole determination as to whether any documentation e.g. photographs, letters, certificates of appraisal etc. are genuine. As the UNODC notes, permits for approximately 900,000 legal shipments of protected wildlife are issued annually, and case studies demonstrate that permits 'acquired through forgery, fraud or corruption have been used to traffic wildlife.'⁵⁷

Ensuring that no illegal ivory or rhinoceros horn items are being sold on the domestic market currently relies on the valuation and assessment of auction house staff and antiques dealers for consignments, while online trading platforms rarely require any proof of age or authenticity to list an item for sale. A substantial gap exists for illegal trade in an open domestic market in the absence of legal requirements for such documents. IFAW's 2016 *Under the Hammer* report surveyed auction houses in Australia and New Zealand over a nine-month period. During this time 2, 772 ivory items were available for purchase, with only eight percent of these items accompanied by appropriate provenance documentation to sufficiently prove age, authenticity and legality of the item.

The import and export of ivory or rhino items requires CITES permits to be obtained from the relevant CITES Management Authority, a process that requires the applicant to provide appropriate levels of documentation to prove the specimen meets the CITES criteria to issue the import or export permit e.g. in the case of rhinoceros horn, radiocarbon dating of the item to

⁵⁶ United Nations Office on Drugs and Crime (2016) 'World Wildlife Crime Report – Trafficking in protected species' < https://www.unodc.org/documents/data-and-analysis/wildlife/World_Wildlife_Crime_Report_2016_final.pdf>.

⁵⁷ Ibid.



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guarantee it is older than 1950 is required. However, the same level of proof is not legally required for ivory or rhinoceros horn items being traded commercially on the domestic market.

- h. The potential to strengthen existing legislation and administrative arrangements, including through agreements with the states and territories to reduce the domestic trade in elephant ivory and rhinoceros horn products*

The UNODC underscores that ‘[a] thorough understanding of the main issues relating to wildlife and forest crime and effectiveness of preventative and criminal justice responses at the national level is essential’ and points to tools including the International Consortium on Combatting Wildlife Crime *Wildlife and Forest Crime Analytic Toolkit* and the International Consortium on Combatting Wildlife Crime *Indicator Framework for Wildlife and Forest Crime* as being formative.⁵⁸ The concern is that legal markets have the demonstrated capacity to act as conduit for illicit trade, thus providing proceeds of crime to syndicates and/or armed groups in addition to further fuelling the current poaching crises in biodiversity hotspots (which disproportionately exist in the developing world).

Potential reform options requiring further investigation include:

- Implementing a nation-wide legislative ban on the domestic trade of elephant ivory and rhinoceros horns, with some express limited exceptions for museums and/or antique shops (e.g. with reference to the proposed UK ivory regime);
- Incentivising industry best practice policies such as those by Leonard Joel;
- Enacting bans on all rhinoceros horn products regardless of age or authenticity; irrespective of the form (e.g. a whole piece, worked carving, powder, etc);
- At a minimum, requiring provenance documentation including mandatory radio carbon dating for any ivory item or item containing even small amounts of ivory;
- The passing of uniform legislation to harmonise standards across Australia. The Federal Government could set a national policy and prescribe standards on the domestic trade in elephant ivory and rhinoceros horn, in consultation with each State and Territory government. This policy could, aside from implementing a domestic ban on the trade of ivory and rhinoceros horn with limited exceptions, strengthen state legislation and offence provisions for illegal trade in wildlife species (including non-native species);
- Should legislative action be taken, providing an express position concerning exemption or non-exemption of online sales;
- Should legislative action be taken, establishing and promoting transition arrangements; and
- Facilitating greater outreach and public dissemination of information by the Department of the Environment and Energy to ensure that traders in elephant ivory, rhinoceros horn, or any other CITES specimens are well apprised of the EPBC Act offence provisions as a deterrent measure.

- i. Supporting efforts to close domestic markets for elephant ivory and rhinoceros horn products*

Generally, on the issue of illicit wildlife trafficking, Australia is a member state of the United Nations General Assembly and is party to the ‘Tackling the illicit trafficking in wildlife’ series

⁵⁸ Ibid.



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of resolutions (69/314 of 30 July 2015, 70/301 of 9 September 2016, and 71/326 of 11 September 2017).

Australia is party to the 2016 Resolution adopted by the IUCN World Conservation Congress 'Closure of domestic markets for elephant ivory' (WCC-2016-Res-011).

As a party to CITES, Australia has been involved in recent international dialogue towards closing domestic markets in ivory, as noted in the following documents:

- CITES Conference of Parties 'Closure of domestic markets for elephant ivory' (CoP17 Doc 57.2)
- CITES 69th meeting of the Standing Committee 'Implementing aspects of Resolution Conf. 10.10 (Rev. CoP17) on the closure of domestic ivory markets' (SC69 Doc. 51.2)
- CITES Notification to the Parties 'Closure of domestic ivory markets that are contributing to poaching or illegal trade' (No. 2017/077)

j. Engagement by Australian law enforcement agencies with regional and international counterparts to address the illegal trade in elephant ivory and rhinoceros horn

Australia has been a party to CITES since 1976, has a strong compliance record with the provisions of CITES, and has implemented Stricter Domestic Measures for some CITES listed specimens. At the CITES 69th Standing Committee, Australia agreed to be a member of a working group dedicated combat wildlife cybercrime, demonstrating Australia's strong engagement with international counterparts to address the illegal trade in wildlife. Australia is also member of INTERPOL, and participates in the INTERPOL Wildlife Crime Working Group.

k. The nature and effectiveness of measures, models and legislation adopted in other jurisdictions to address the trade in elephant ivory and rhinoceros horn

Several jurisdictions have announced bans on the domestic trade in ivory.

- United Kingdom: In April 2018, the Government of the United Kingdom announced their intention to implement a domestic ban on the trade in ivory products. By way of background, the UK ivory trade inquiry received more than 70,000 public submissions, with more than 88 percent favouring a ban. The United Kingdom ban will have some of the strictest controls on the trade of ivory to date. The ban will apply to all ivory except items produced before 1947, with less than 10 percent ivory by volume; musical instruments made before 1975 with less than 20 percent ivory; rare and significant antiques more than 100 years old (subject to determination by a specialist); and certain items traded between accredited museums.
- China: On 30th December 2016, the Chinese Government announced it would ban all domestic trade in ivory and close legal ivory carving factories by the end of 2017. On 31st March 2017 the State Forestry Administration in China announced that it had closed 12 licensed ivory factories (out of 34) and 55 retail ivory shops (out of 143) which was the first step in implementing the ban. China implemented the final stage of the domestic ban on ivory, on the 31st December 2017, shutting the remaining ivory and retail shops and



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factories. As the world's largest market for ivory, accounting for up to 70 percent of global demand, the importance of this action cannot be underestimated. However, there are concerns that the manufacturing of carved products has shifted to other states in the region to supply the Chinese market. This serves to emphasise the need for unified international action against the trade to decrease the mobility and resilience of actor-networks.

- Hong Kong SAR: On 31st January 2018, Hong Kong SAR's legislature voted to ban all ivory sales by 2021, closing a legal loophole which allowed the sale of ivory acquired before the 1970. This ban will come into force by 2021.
- USA: On 2nd June 2016, the United States of America adopted new regulations on domestic trade in ivory under which commercial exports and sales of ivory between US states are only allowed for antiques proven to be more than 100 years old. New York State, New Jersey, California and Hawaii and a growing list of other states have all introduced bans on the sale of ivory items.
- France: The French Environment Minister signed a decree 'banning the trade in ivory and rhinoceros horn in France and all overseas French territories' in May 2016. The full text of the measures permits the sale of items worked as late as 1st July, 1975 where CITES documentation is provided for support.
- In 2016, the European Parliament voted to support a global ban on ivory trade, with consultation on proposed a proposed legislative action concluding in December 2017.

The Centre for Environmental Law thanks the Committee for receiving its submission.

1 7/6/18

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