

25 August 2017
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Chairman and Honourable members of the Bills Committee on Protection of Endangered Species of Animals and Plants (Amendment) Bill 2017,

TRAFFIC writes to express its support for the Protection of Endangered Species of Animals and Plants Ordinance (Amendment) Bill 2017. The proposed three-step plan to phase out Hong Kong's ivory trade details pivotal actions toward counteracting illegal ivory trade and reducing elephant poaching in Africa. However, this should be fast-tracked in light of alarming poaching trends in Africa and developments on ivory trade bans in other major markets globally. In addition, TRAFFIC considers the proposal to increase maximum penalties to be reasonable and should act as an important deterrent to commit wildlife crimes.

The Case for Banning Hong Kong's Ivory Trade

The current regime in Hong Kong for managing local ivory trade, even in accordance to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) standards, have been ineffective in deterring illegal ivory trade and the laundering of illegally sourced ivory into Hong Kong's regulated ivory market. There has been growing evidence of this:

- Hong Kong recorded the largest ever recorded seizure of ivory in the world in July 2017, with about 7.2 tonnes of raw ivory intercepted, which the Customs and Excise Department believes is linked to smuggling syndicates.¹ A Hong Kong trading business based in Tuen Mun was allegedly implicated in the trade, with three proprietors of the business arrested. Far from an isolated incident, Hong Kong had been indicting large-scale ivory seizures for a number of years, especially seizures over 500 kg in size, a weight indicative of organised criminal involvement. Almost 24 tonnes of ivory were seized between the years 2010 to 2016, estimated to be worth over HKD 200 million. This points to the continuing trend in using **Hong Kong as a key staging point in the transnational trade route for illegal ivory**.
- Two local traders were recently convicted of selling post-1990 poached ivory in a licensed ivory outlet, in a case where forensic tests, commissioned by the Agriculture, Fisheries and Conservation Department, were used to determine the illegality of the ivory pieces in question. The trade of ivory acquired after 1990 is prohibited under the

¹ TRAFFIC (2017). "About" 7.2 tonnes of ivory seized in Hong Kong. 6 July.
<http://www.traffic.org/home/2017/7/6/about-72-tonnes-of-ivory-seized-in-hong-kong.html> (accessed 19 August 2017).

Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586).² The **laundering of ivory into Hong Kong's licensed ivory outlets** is further backed up by previous NGO investigations that indicated, through covert video recordings, that licensed dealers have on-demand access to newly- poached ivory from Africa.³

- TRAFFIC's recent assessment of Hong Kong ivory market found some 36 per cent of licensed ivory dealers that were encouraging overseas buyers to smuggle ivory out of Hong Kong, in order to make a sale, which is an evasion of the law.⁴ Hong Kong regulations prohibit ivory to be taken out of the SAR without a government issued permit, in line with CITES provisions. A further 59 per cent of outlets offering ivory for sale did not have displayed (or claim to possess) the relevant licenses. This not only **violates the terms of their License to Possess**, but makes it impossible for consumers to distinguish legally trading premises from black market operations.

The 17th Conference of the Parties to CITES last year called upon countries and territories with ivory markets that are contributing to poaching or illegal trade to “take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency” (CITES Conf. Res. 10.10 (Rev. CoP17)). Evidence of illegal ivory laundering into Hong Kong's regulated ivory market, and a poor record of patchy compliance by licensed traders show that current regulatory and enforcement mechanisms has not been adequate, and that a better means of controlling and restricting ivory trade in Hong Kong is necessary. The proposal to institute a ban on Hong Kong's local ivory trade through the proposed Amendment Bill could go a long way to rectifying the current state of regulatory inefficiencies.

There is also a strong case for the ivory trade ban to be implemented sooner. The proposed timeframe for the complete ivory trade phase out is currently 31 December 2021, which leaves a number of years in which Hong Kong may be exposed to further illegal ivory laundering attempts. Such attempts could be heightened with the ivory trade ban in mainland China coming into full effect from 2018, and could promote illegal movements of unsold ivory from the mainland to other active ivory markets in the region, including Hong Kong. Expediting plans to end ivory trade in the city, bringing the ban closer to mainland China's timeframe for closure of the country's ivory manufacturers and outlets, is crucial if the full impact of curbing ivory trafficking is to be realised.

There are several key benefits for Hong Kong legislators to vote in favour of the Amendment Bill:

- A phase out of local ivory trade will make clear to the **public and visitors** to Hong Kong that the future commercial trade of ivory is unequivocally illegal.
- The legal basis of the Amendment Bill would not contravene Hong Kong's Basic Law on **property rights** (Article 105). The proposed plan would not involve any

² TRAFFIC (2017). *Two convicted after forensic evidence proves “new” ivory illegally on sale in Hong Kong*. 28 March. <http://www.traffic.org/home/2017/3/28/two-convicted-after-forensic-evidence-proves-new-ivory-illeg.html> (accessed 19 August 2017).

³ Lo, C., Edwards, G. (2015). *The Hard Truth: how Hong Kong's ivory trade is fueling Africa's elephant poaching crisis*. WWF Hong Kong.

⁴ Lau, W. Xu, L., Guan, J., and Xiao, Y. (2017). *Closing Strategy: ending ivory trade in Hong Kong*. TRAFFIC, Hong Kong.

confiscation of the ivory pieces itself, as ivory will continue to be possessed for "non-commercial purposes" or as "personal effects" by the current owners of the ivory (Global Rights Compliance, 2016).⁵

- Clarity about legality of ivory products in the market, namely that it would be almost completely illegal to trade in Hong Kong from the year 2022, supports more **effective law enforcement**. The challenge in combating illegal ivory trade was previously compounded by the inherent difficulties in distinguishing between legal and illegal ivory. The current law in Hong Kong, in accordance with CITES, dictates that only pre-1976 ivory can be imported and re-export in Hong Kong, while domestic trade restricts trade in pre-1990 ivory. Yet, determining the exact age, and legality, of a piece of ivory requires expensive forensics lab testing, which is obviously well beyond the reach of ordinary consumers. A paper trail of import and export permits are currently used as proof of legality, but the vulnerability of such paperwork to forgery, and willingness of some licensed traders to disregard permit requirements, compromises any semblance of traceability provided through these documents.
- The effect of a local ivory trade ban on those with **livelihood vulnerabilities** are minimal. A 2016 survey by AFCD of licensed ivory traders suggested that while there are around 200 licensed ivory traders conducting commercial ivory trade, the great majority of them are not solely dependent on ivory to generate business revenue. Only two licensed ivory traders were found to operate businesses that solely trade in ivory, and while one of these is not actively trading (do not have a shopfront), the other is expected to completely sell off its ivory products within three years, judging from previous years' sales rates. Recent concerns expressed by the ivory industry about the proposed ivory trade ban may have on ivory carvers, many of whom have few other skills and livelihood securities, could be addressed through retraining programmes and other livelihood-based assistance, as opposed to direct financial payments on the value of ivory stockpiles they may possess. The latter, which will involve applying a financial value to ivory stocks, could have an unintended effect in emboldening poachers and traffickers to attempt to profit from the financial pay-outs through laundering illegal ivory into Hong Kong, thereby further driving elephant poaching. Such a perverse incentive would undermine the concerted international efforts to deter and prevent poaching and illegal trade of ivory. The Hong Kong Government is urged to ensure that skills retraining programmes and other livelihood measures for affected individuals are in place as the local ivory trade ban is carried out.

The Case for Increasing Maximum Penalties for Wildlife Crimes

TRAFFIC considers the proposal to raise maximum penalties as part of the Amendment Bill is critically important as it increases the stakes and deterrence for would-be wildlife criminals. The proposed increase of maximum penalties to 10 years imprisonment for indictable offences involving the trade in species listed in the CITES Appendices is in line with best practice in other jurisdictions in the Asia-Pacific region, i.e. life imprisonment in mainland China, 10 years imprisonment in Australia.

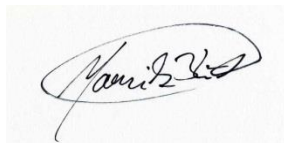
⁵ Global Rights Compliance (2016). *Feasibility Study on the Ban of Hong Kong's Ivory Trade*. Commissioned by World Wide Fund for Nature Hong Kong.

Raising maximum penalties is an important first step, but this needs to be matched with higher sentencing in court to raise the risk and deter criminal enterprises. Offences under Cap. 586 are generally prosecuted in the Magistrates Court and tried as summary offences, where penalties are typically low level imprisonment and/or fines. This is despite the fact that the high value of endangered species seizures, after seizures of drugs and electronics.⁶ Drug smuggling by comparison tend to attract much lengthier imprisonments and are prosecuted in higher courts. To increase deterrence for wildlife crimes, illegal trade in endangered species should be classified as an organised and serious crime, which would enable prosecutors with greater access to investigative resources, ability of the court to restrain or freeze assets and seek higher sentencing under the Organised and Serious Crime Ordinance (Cap. 455).

There is no question that Hong Kong is in the spotlight on global ivory trade, as both a transit point for other ivory markets, and as an end-use market. The Amendment Bill, if passed, would be a decisive step towards halting Hong Kong's contribution to the elephant crisis. TRAFFIC urges all legislators to support the Amendment Bill, and seek commensurate investments in monitoring and law enforcement for effective implementation of the amended law, and to ensure that the intended impact of the ivory trade ban and maximum penalty increases for combatting ivory trafficking is achieved.

TRAFFIC stands ready to support the Legislative Council in its work by providing any additional research, analysis, policy guidance or any other support it requires in its deliberations on this issue.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Yannick Kuehl', enclosed within a light blue rectangular border.

Dr. Yannick Kuehl
TRAFFIC Regional Director, East Asia

⁶ Customs and Excise Department (2016). *Departmental Review 2015*.
http://www.customs.gov.hk/filemanager/common/pdf/pdf_publications/Departmental_Review_2015_e.pdf
(accessed 19 August 2017).