



The University of Hong Kong

Faculty of Law

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Hon. Tanya Chan
Chairperson, Panel on Environmental Affairs
Legislative Council, Hong Kong

25 August 2017

Dear Ms. Chan,

Thank you for the opportunity to provide a second representation to you on the administration's proposal to phase out the local trade in ivory and amend the penalties for wildlife crime offences. This is a critical amendment to Cap 586, which has my full support.

Firstly, I adopt my previous submission dated 23 May 2017:

The decision to end the local trade in ivory is a welcome step towards recognition of the role Hong Kong has played in bringing the African elephant population to the lowest numbers in history. China takes as much as 70% of the global illegal trade in ivory and Hong Kong has played a significant and shameful role in facilitating imports to China. Not only have illegal shipments to Hong Kong been increasing over the past 5 years (especially by sea) but the law has turned a blind eye to the unethical and unsustainable local trade in so called "legal" ivory. Allowing any legal trade in ivory encourages poaching and smuggling, and permits traders to argue their stock is ethically sourced. Only when the trade is banned completely can Hong Kong claim to have played a part in ensuring a sustainable future for Africa's elephants. It is therefore critical for the ban on the local trade to be implemented as soon as possible.

Legally, Hong Kong has an obligation to observe CITES (to which China is a signatory) and the UN Convention on Biological Diversity (CBD), extended to Hong Kong in 2011. Over the past 5 years, the two departments responsible for trade in endangered species (CED and AFCD) have stepped up their inspections for illegal trade in endangered species, resulting in higher numbers of charges being laid and an increasing value in items seized. The average value of seizures in endangered species is now second only to seizures under the Dangerous Drugs Ordinance.

Unfortunately, once endangered species crimes are presented at court, the deterrent sentences which may be imposed are paltry. Dangerous drug offences are routinely prosecuted in the District Court and the Court of First Instance, where convictions invariably result in lengthy terms of imprisonment. Offences against Cap 586 may only be tried as summary offences and attract penalties of a few weeks' imprisonment or, more commonly, a low level fine.

The intention to raise the maximum penalty for trade in endangered species presents an opportunity to bring Hong Kong's sanctions in line with overseas jurisdictions. However, overseas jurisdictions have also understood that simply raising the penalty for a crime, while an important first step, is insufficient to deter a criminal enterprise where the profits to be made are high and the chances of detection low. Globally, wildlife crime is the fourth most lucrative black market, after drugs, people and arms smuggling. To meet the challenges of effective enforcement in Hong Kong, offences against Cap 586 should not only be subject to higher penalties but should be included in Schedule 1 to the Import and Export Ordinance, Cap 60, which would permit front line officers



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investigating wildlife crimes to access the full range of investigative powers currently provided under the Organised and Serious Crimes Ordinance, Cap 455. These include the use of coercive investigative powers to gather intelligence, the right to confiscate the proceeds of crime in the District Court and the Court of First Instance and the power to seek enhanced sentences in cases involving criminal gangs.

Along with raising maximum penalties, classifying illegal trade in endangered species as a form of organized and serious crime would ensure that judges could continue to impose significantly higher penalties for cases where animal derivatives have been imported for commercial purposes. Importantly it would also allow the Hong Kong government to identify, freeze and forfeit the significant assets of criminal enterprises involved in the illegal wildlife trade (as is the case with drug trafficking).

In addition: The administration's proposal to phase out the local trade in ivory is not only necessary to enforce Hong Kong's obligations under CITES and the Convention on Biological Diversity. It is also legally defensible as a rational and reasonable response by the Hong Kong government to the serious ecological and criminal effects of the ivory trade, locally and internationally. The Hong Kong Court of Final Appeal has stated that the right to property is not absolute, but subject to the proportionality test. This test requires that any restriction on property rights has a legitimate societal purpose. The purpose, in this case, is to restrict the use and ownership of a commodity that cannot be ethically or sustainably sourced, by ending a trade that is dangerously threatening to the African elephant population and is criminal in its connections. The purpose of the ban is legitimate and legally defensible and should be implemented without further delay. Adequate notice of the closing of the market has been given traders and no compensation is necessary.

Yours sincerely

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