

Is Japan's domestic ivory control inadequate?

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After completing his Ph.D. degree studies at the University of Tokyo, Yoshio Kaneko joined the CITES Secretariat in Lausanne, Switzerland in 1985 where he worked as Special Projects Co-ordinator. He was also responsible for the Asia/Pacific region. Since his return to Japan in 1990 he has participated in many international meetings of multilateral agreements such as CITES, CBD, Ramsar, IUCN and FAO. CITES CoP17 to be held in Johannesburg will be his twelfth experience to attend. He has been a professor at Iwate Prefectural University since 2006.

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## **Introduction**

Japan has recently been criticized by NGOs, mainly by the Environmental Investigation Agency (EIA) and its affiliates, with respect to Japan's domestic ivory control system. They issued a series of press releases which were subsequently carried by many newspapers both in and outside Japan. Their allegations are mostly unsubstantiated and it is clear that these press releases were issued in order to mislead the media and thereby public opinion. The aim of this paper is to rebut these unsubstantiated allegations, based on a detailed analysis of Japan's regulatory system and internal trade in ivory.

## **Background**

CITES came into effect on 1 July 1975. At that time, the African elephant was not subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In 1976 Ghana listed the African elephant in Appendix III to CITES. Later in 1976, the first meeting of the Conference of the Parties was held in Berne, Switzerland, and the species was transferred from Appendix III to Appendix II. The species as a whole was then transferred to Appendix I at the seventh meeting of the Conference of the Parties (Lausanne, 1989) and the international trade of elephant ivories for commercial purposes was prohibited. It is well known that the EIA played a lead role in transferring the species from Appendix II to Appendix I (Bonner, 1993). Although the species was listed in Appendix I, there was a clear understanding at that time among Parties that some populations of the African elephant did not qualify for Appendix I listings. This is the reason behind the adoption of the so-called 'Somali amendment'. Based on this decision, southern African countries submitted proposals to the CITES Secretariat to transfer their populations back to Appendix II. A Panel of Experts was subsequently established and was sent to southern African countries for in-depth studies. The Panel's findings were in favour of southern African countries. However, the atmosphere of the eighth meeting (Kyoto, 1992) was such that southern African countries withdrew their proposals. After satisfying strict conditions, the elephant populations of Zimbabwe, Botswana and Namibia were downlisted to Appendix II in 1997 and that of South Africa in 2000. As a result, international trade in ivories for commercial purposes took place both in 1998 and 2008. However, these trades were 'experimental' and at present, international trade remains prohibited.

## **Japan's ivory control system**

The Foreign Exchange and Foreign Trade Law (FEFTL) governs CITES provisions in Japan. Since Japan's accession to CITES in 1980, several amendments have been made to improve border controls. Under the CITES national legislation project, national legislations are divided into three categories. Among the three categories, 'Category 1' represents "legislation that is believed generally to meet the requirements for implementation of CITES." Japan's national legislation, i.e. the FEFTL is classified as 'Category 1.' In addition to this national legislation, Japan enacted the Law for the Control of Transfer of Endangered Species of Wild Fauna and Flora in 1987, aimed at controlling domestic

trade in Appendix I species. This Law was then amalgamated with other laws, becoming the Law for the Conservation of Endangered Species of Wild Fauna and Flora (LCES) in 1992. In accordance with the LCES, if an individual or corporation wishes to trade ivory whole tusks domestically, each tusk must be registered with the Government through the Japan Wildlife Research Center (JWRC). With respect to cut pieces and worked ivories, all traders, manufacturers and retailers must maintain ledgers recording all stock and use of ivory. These regulations were verified by the CITES Secretariat and accordingly, the Standing Committee concluded at its 41st meeting (Geneva, 1999) that Japan's system was adequate.

### **NGOs' unsubstantiated allegations**

On 19 March 2015, the EIA issued a press release condemning Japan's ivory control system. According to the press release, "Japan is the only country in the world with a continuing strong demand for the 'hard ivory' produced by forest elephant tusks, where it is used to make signature name seals, musical instrument parts, carving, and chopsticks. Thousands of ivory trading companies operate in Japan and the government enables poached ivory to be laundered into the country's domestic market under a severely flawed 'registration system' that allows undocumented ivory to become legal." It is true that there is a demand for 'hard ivory', mainly for traditional musical instruments, as Nishihara (2012) pointed out in his article. The EIA cited Nishihara (2012) as evidence that poached forest elephant ivories are being legalized under Japan's control system. However, Nishihara (2012) clearly mentioned that "there is no hard evidence that ivory originating from forest elephants in Central Africa is smuggled into Japan." Since there is no hard evidence, Nishihara's conclusion is merely speculative.

On 27 April 2015, the EIA and 23 NGOs jointly sent a letter to Prime Minister Shinzo Abe entitled "Statement of Concern to Prime Minister Abe of Japan Regarding Japan's Ivory Trade and the Decimation of Africa's Forest and Savanna Elephants" asking Japan to ban domestic ivory trade immediately. In the letter they stated that "the registration of ivory tusks is a massive loophole that can be used to launder illegal ivory onto the Japanese market. Japan's enforcement system is weak and penalties inadequate" but failed to recognize, intentionally or unintentionally, that penalties had been strengthened in 2013, two years previously. Penalties increased from less than one year's imprisonment or less than 1 million yen to less than five years' imprisonment or less than 5 million yen. If illegal activities are conducted by corporations, the penalty is one hundred million yen. As such, Japan's penalties are adequate.

In December 2015, Allan Thornton, President of the EIA visited Tokyo. He held a press conference at the Foreign Correspondents' Club of Japan on 10 December and presented a report entitled "Japan's illegal ivory trade and fraudulent registration of ivory tusks." The front cover of the report is designed to give the impression that African elephants have been poached in Africa, their tusks smuggled undetected into Japan and illegal tusks legalized under Japan's ivory registration system. The report itself is written along these lines. As an example, the EIA says that Japan's careless implementation of the LCES has enabled illegal or undocumented tusks to be registered through widespread use of fraudulent documents and declarations, and as a result, over 1,000 tusks of dubious origin have been legalized each year since 2011.

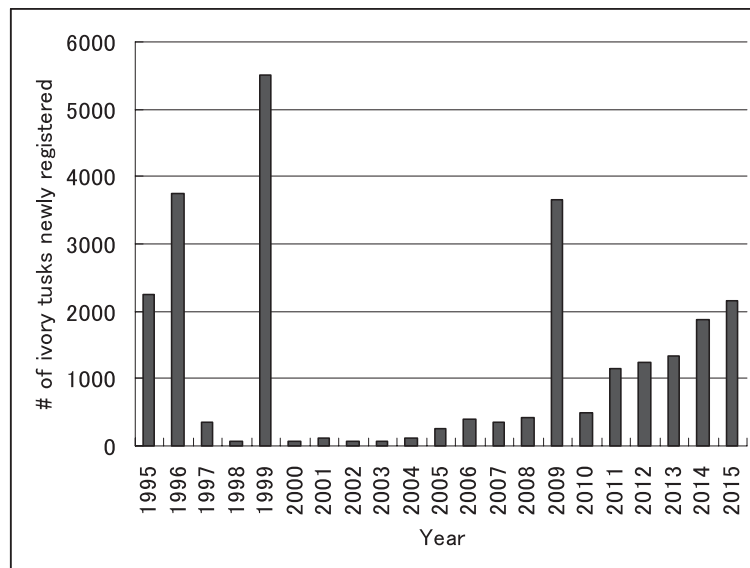


Fig. 1. The number of registered ivory tusks by year.

Fig. 1 shows the registered volume of ivory tusks since 1995, when the registration system was introduced. The first and second experimental ivory trade (import) took place in 1999 and 2009 respectively. After the 2009 import, the registered number increased, e.g. from 1,137 tusks in 2011 to 2,157 tusks in 2015. This increase does not necessarily mean that demand for ivory and smuggled ivory increased in Japan. An examination of the details of ivory registration in 2015 reveals that it is unlikely that a large volume of ivories are being smuggled into Japan undetected. Fig. 2 shows the registered ivory by type. If smugglers or unscrupulous dealers intend to register ivories, they would prefer to register raw ivories without processing to polished or carved ivories. In 2015, 265 raw ivories were registered, of which 102 tusks were registered by one company. In the event of an irregularity, such as this case, the Japanese Government and JWRC make it a rule to fully inspect whether ivory tusks have been legally acquired or not. In the case of the 102 tusks, this procedure was followed and it was found that the company in question kept official documents for Customs clearance. As seen from Fig. 2, most of the registered whole tusks are polished ivories or carved ivories. These two types account for 87 % of the registered whole tusks. If the 102 tusks are excluded, raw ivories represent only 8 % of the total. It is safe to say most of the registered ivories have been kept by individuals as decoration at home. Some may be kept for speculation purposes. If these ivories were illegally acquired as the EIA suggested, they would have been processed in producing countries, intermediary countries or even after being smuggled into Japan. It is unlikely that this is the case.

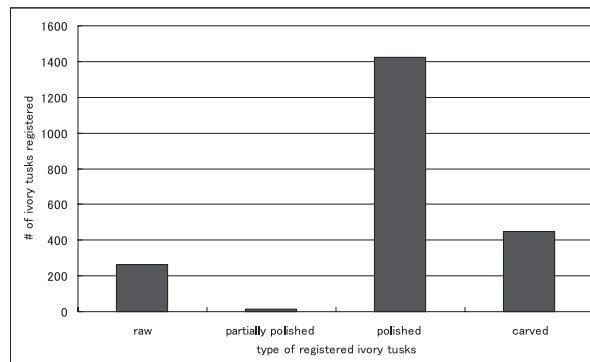


Fig. 2. The number of ivory tusks registered in 2015 by type.

On 11 January 2016, the EIA held a press conference in Geneva on the first day of the 66th meeting of the CITES Standing Committee and issued a press release entitled “Japanese Wildlife Official Promoted Illegal Ivory Trade.” According to the press release, “an official of JWRC coached the investigator eight times to declare that the investigator’s tusk was acquired in the Showa Era thereby qualifying it for the pre-ban exemption and registration, though the investigator clearly stated the tusk was acquired in the year 2000.” On the contrary, the official did not coach the investigator to declare that her tusk was acquired in the Showa Era. What the official said was that if the tusk was acquired in the Showa Era, it could be registered. Furthermore, it should be pointed out that the investigator did actually say that she and her sister saw it in the Showa Era (Fig. 3). It is a preposterously unjust charge, thus misleading the media and general public. Predictably, a number of the media such as the Tokyo Shimbun newspaper, and The Independent reported in line with the EIA’s unsubstantiated allegations.

S : OK, well, that would be a Customs paperwork and anything like that, but because you’re talking about so many years back, it’s easy to understand that you may not have the records of these documents anymore. But, of course we can accept something as alternative (for the official document). We would need you to have just one person, possibly a third party, who can write a statement that the ivory was in your father’s ownership from the Showa era and he can say it was at your father’s place during that time and he saw it there.

I : Yes, my sister and I saw it..

Fig. 3. An excerpt from the conversation between the EIA’s investigator and JWRC’s official.

The EIA’s press release also referred to the JWRC official’s advice as to how to resist a potential police investigation should she decide to sell the tusk illegally without registering it. This is related to a carved tusk. This may have happened due to the ambiguous definition of ‘whole tusk’ under the LCES. According to CITES Resolution Conf. 10.10 (Rev. CoP16), the term ‘worked ivory’ shall be interpreted to mean ivory that has been carved, shaped or processed, either fully or partially, but shall not include whole tusks in any form, except where the whole surface has been carved. In this instance, the official may have interpreted this Resolution incorrectly. Tokyo Shimbun’s article dated 13 January implicitly mentioned that JWRC’s conduct in the case was caused by its financial dependence on ivory registration. If this were the case, I wonder why JWRC’s official advised that way. He should have asked her to register her ivory. The Ministry of the Environment is now in the

process of defining the word ‘whole tusk’ more rigorously.

On 9 June 2016, the EIA issued another press release entitled “Japanese traders offer ivory tusks to Chinese buyers for illegal export.” The EIA’s undercover investigator contacted several Japanese traders. The investigator posed as a Chinese buyer and asked the traders to sell ivories for the purpose of illegal export. These are well-known, cunning tactics used by some NGOs. For example, Sellar (2014) described his experience in his book when he visited a small town in Japan as a member of an expert team dispatched by the CITES Secretariat. According to him, “a shop owner was approached by an Indian NGO activist and asked whether the owner was interested in purchasing raw ivory. The NGO activist regularly attended CITES meetings.” As mentioned earlier, the EIA’s investigator made a phone call to JWRC’s official posing as a Japanese ivory owner. This time, it was a Chinese buyer. As is the case with any other sectors, there may be unscrupulous traders but most of them are bona-fide traders. The EIA is guilty of inciting these bona-fide traders to commit a crime.

## **Conclusions**

It is unlikely that a large volume of ivories are being smuggled into Japan undetected. According to the ETIS report (Milliken et al. 2016), the ETIS data do not provide any recent evidence that Japan is a destination for the significant illegal ivory flows presently leaving Africa (CoP17 Doc. 57.6). UNEP et al. (2013) compared in their report (page 67) the scale, trend and degree of illegality of the top ten domestic ivory markets. The table indicates that in Japan, the degree of illegality is ‘low’ and its trend is ‘down.’ A recent increase of registered ivories does not mean an increase of smuggled ivories. Rather, it should be interpreted that the registration system is widely made known and is working. Furthermore, it is not the case that domestic demand for ivories is increasing. Kitade and Toko (2016) elaborated on the historical decline of ivory markets in Japan. As far as Japan is concerned, it is apparent that the two one-off sales did not stimulate domestic demand and illicit activities. This is bolstered by the fact that there have been no recent significant cases involving the interception of illicit ivories at the Japanese Customs or in intermediary countries destined for Japan.

Although Japan has recently been criticized by some NGOs, their allegations are mostly unsubstantiated. I recall that IUCN issued a statement at the eighth meeting of the Conference of the Parties (Kyoto, 1991). In that statement IUCN emphasized that NGOs should not restrict their CITES-related activities to participation in the Conference of the Parties and to Appendix amendment proposals. IUCN further stressed that NGOs would need to devote more resources to promoting and supporting the routine implementation of the Convention, working with individual Parties. In this connection, it is regrettable that neither the Management Authority nor the Scientific Authority of Japan received detailed information from NGOs.

Japan’s ivory control system is working as a deterrent to illegal activities. However, there may still be room for Japan to improve the implementation of CITES. For instance, concerns have been raised by Matsumoto (2015) and Milliken et al. (2016) about internet trading in ivory products. This concern has been addressed by the government, e-commerce companies and NGOs with a view to remedying the situation. Japan needs to strengthen its effort to monitor ivory products on the internet. Further, while it is unlikely that illicit ivories are being smuggled into Japan, some cases have been exposed

where ivory is illegally exported from Japan to China (Milliken et al., 2016). Japan has been recognized by CITES communities as an importing country of wildlife but is also acting as an exporting country. As such, Japan's Customs need to watch wildlife products being exported from Japan with vigilance.

### **Recommendations**

1. Japan should expedite its process to more rigorously define 'whole tusk.'
2. Japan should investigate the legality of some NGOs' undercover activities and where appropriate, take the necessary actions.
3. Japan should strengthen its border control especially at the exit ports.
4. E-commerce companies should work closely with the government to eliminate any dubious ivory items.
5. NGOs should co-operate with the Management and Scientific Authorities by providing them with CITES-related information.

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