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# "OPEN DOOR" TO TRAFFICKERS

An EIA/AVG briefing about Malagasy rosewoods, ebonies and palisanders for CITES SC69

*"We bring in an offender,  
then on the same day he's  
out. [...] The people see  
that there is no justice."*

Jean André Mboly, Direc-  
tor of Marojejy National  
Park.

## SUMMARY

EIA/AVG concur with Madagascar that "much remains to be done" in the implementation of the CITES action plan on Malagasy ebonies (*Diospyros* spp.), palisanders and rosewoods (*Dalbergia* spp.).<sup>1,2</sup> Enforcement and control measures remain sporadic and ineffective. The target of auditing and securing at least 33% of the stockpiles is still distant, after four years Malagasy authorities have reportedly audited less than 6% of the declared and seized stocks. The proposed business plan, based on an "open door" operation through which alleged owners of illegal logs would be paid over US\$7 million, is an unsuitable mechanism with perverse effects.<sup>3</sup>

## EIA/AVG RECOMMEND THAT THE CITES SECRETARIAT AND THE STANDING COMMITTEE AT ITS 69TH SESSION (SC69):

- 1. Adopt an embargo** on Malagasy rosewoods, ebonies, and palisanders until CoP18, which would give sufficient time to Madagascar to achieve substantive goals and avoid additional sociopolitical pressure related to the upcoming presidential elections;
- 2. Reject the proposed business plan** and request to fundamentally reconsider the stockpile disposal approach in consultation with Malagasy civil society representatives and independent international experts;
- 3. Clarify the term "stockpile"** in Decision 204 paragraph f) as referring to seized and declared stockpiles, while requesting the government of Madagascar to carry out a national effort to recover hidden stockpiles, with the help of the international community and independent observers;
- 4. Prevent any sales of illegal logs** seized outside of Madagascar, until a disposal plan that ensures public transparency and full traceability is developed, with the participation of the CITES Secretariat and independent observers.

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## INSUFFICIENT PROGRESS: OVERVIEW

At its 16th meeting in Bangkok in 2013, the Conference of the Parties (CoP16) agreed to include the Malagasy populations of *Dalbergia* spp. and *Diospyros* spp. into Appendix II of the Convention. In order to facilitate implementation of the listing, the CoP adopted an action plan, which included an embargo on exports of *Dalbergia* spp. and *Diospyros* spp.<sup>4</sup> Despite the absence of meaningful progress in the implementation, this action plan was replaced with a new set of requirements at CoP17 in 2016.<sup>5</sup> The results achieved so far by Madagascar against the established criteria remain partial and insufficient (Figure 1).

## FROM ONE ACTION PLAN TO ANOTHER: NEED FOR CLARIFICATION

The vast majority of requirements established at CoP16 in the 2013 action plan were still not implemented three years later, and have thus been repeated in Decisions adopted at CoP17 in 2016, including the evaluation and identification of populations in the wild and the much-needed science-based non-detriment finding (NDF).

Unlike the original action plan, the Decisions adopted at CoP17 do not formally include an export “embargo” until the SC has approved the results of the stockpile audit and the determination of the legally accumulated stocks. Neither does it mention the potential suspension of all trade in CITES-listed species from Madagascar with the exception of the Nile crocodile, which formed part of the SC67 recommendations.<sup>6</sup> However, following a postal procedure, the Secretariat recommended that the SC agree to maintain the current suspension of commercial trade of rosewoods, ebonies and palisanders.<sup>7</sup> The present status of the embargo is unclear and needs to be unambiguously established.

Notably, the new version of the action plan stresses the importance of strengthened enforcement and control actions against illegal logging and related trade, “including seizures, investigations, arrests, prosecutions and sanctions.”<sup>8</sup>

A major change in the new action plan is the requirement that “at least a third of the stockpiles” should be inventoried and audited before Madagascar could possibly be considered to re-open trade in rosewood, palisanders and ebonies. It is essential for the SC to clarify the term “stock-

piles” to avoid laundering of illegal stocks (Box 1). Reference to the “securization” of seized stockpiles is missing, despite its importance to preventing further laundering of illegal stocks.

## STOCKPILE MANAGEMENT: US\$7 MILLION TO PAY BACK TRAFFICKERS

Over the past 25 years, timber traffickers have repeatedly been using Malagasy *Dalbergia* spp. and *Diospyros* spp. stockpiles in order to massively launder and sell illegally felled logs in Madagascar.<sup>11</sup> The “business plan” proposed by Madagascar (SC69 Doc. 49.1 Annex 4) would broaden and institutionalize this destructive practice.

The document “Mechanism for verification of stocks and business plan” submitted by Madagascar is fundamentally flawed and poses new uncontrollable risks of stimulating illegal logging and trade.<sup>12</sup> An inherently questionable element is the proposition of an “open door” mechanism through which the alleged owners of declared illegal stockpiles would be “compensated” to turn in the illegal wood, before these are auctioned on the national or international market. Applied to over 270,000 logs, such a mechanism would effectively result in one of the largest institutional laundering operations of illegal timber in recent history, directly rewarding illegal timber barons with over 7 million US dollars, according to the document.<sup>13</sup> It would send the signal to traffickers that alleged owners of illegal logs will be paid for the wood they stole, setting a dangerous precedent that could then be extended to the hundreds of thousands of hidden – and illegal – timber stockpiles yet to be recovered.

Rosewood stockpiles and their proceeds have notoriously been used to finance electoral campaigns in Madagascar.<sup>14</sup> In the months leading up to the 2018 presidential elections, especially given the fragile governance in the country including rampant corruption and opaque financial systems, the partial sale of stockpiles would prove highly problematic.<sup>15, 16</sup>

The lack of transparency and missing involvement of Malagasy civil society in the development and proposed implementation of the business plan further increases the risk of mismanagement, notwithstanding the announcement that one representative of the civil society would participate in the Stockpile Management Committee (“Commission de

| According to CoP17 Decision 17.204, Madagascar shall  | Evaluation*   |
|---|---|
| a) continue to develop an inclusive process to identify the main commercially valuable species in these genera from Madagascar, in cooperation with transit and destination Parties, the CITES Secretariat and relevant partners [...]  | Species identification is in initial stages.  |
| b) for those species identified under paragraph a) establish, in collaboration with the CITES Secretariat, a precautionary export quota based upon a scientifically robust non-detriment finding;   | No export quota established.  |
| c) subject to the availability of funds, organize workshops in support of the implementation of paragraphs a) and b) of this Decision, and to strengthen the national capacity to formulate non-detriment findings, and identify and agree on monitoring mechanisms that include appropriate technology (e.g. timber tracking); | Non-detriment findings (NDF) not formulated.  |
| d) continue the production of identification materials for identifying timber and timber products of species of the genera <i>Dalbergia</i> and <i>Diospyros</i> from Madagascar;   | Method of differentiation between palisanders and rosewoods tested.   |
| e) for those species identified under paragraph a), significantly strengthen control and enforcement measures against illegal logging and export at the national level including seizures, investigations, arrests, prosecutions, and sanctions;  | Enforcement measures in early stages, limited to low level perpetrators.  |
| f) submit regular updates on audited inventories of at least a third of the stockpiles of species of <i>Dalbergia</i> and <i>Diospyros</i> from Madagascar, and a use plan for consideration, approval and further guidance from the Standing Committee;  | Less than 6% of the controlled and declared stockpiles allegedly inventoried. No measures taken to seize non-declared stockpiles. |
| g) provide written reports on progress [...]  | Progress report prepared for SC67 postal procedure, PC23 and SC69.  |

Source: EIA, 2017; \*The color code for the evaluation is red: criteria not met; yellow: criteria partially met; green: criteria fully met.



### Box 1. Two Million Hidden Illegal Logs Left Out of the Equation

According to competent authorities no less than 2 million logs are presumably hidden (undeclared).<sup>9</sup> The inventory, labelling and securing of rosewood stockpiles by Malagasy authorities has so far been limited to the seized stocks, ignoring the unseized stocks composed of the self-declared and hidden stocks, which together represent at least an estimated 90% of the existing stocks on the island.<sup>10</sup> This appears to be a mis-interpretation of CoP17 Decision 204 paragraph f), which refers to the term “stockpiles”, without limiting it to seized stockpiles.

Given the fluid connection between seized and unseized stockpiles, and the illegal nature of the unseized stocks, it is essential that all stocks are ultimately seized, controlled, secured and inventoried in Madagascar. CoP17 Decision 204 paragraph f) must be interpreted as: (1) at least one third of the seized and declared stockpiles have been inventoried and secured; (2) the government of Madagascar, with the help of the international community and independent observers carry out a comprehensive national effort to recover non-declared stockpiles, in order to seize, control and secure them. In light of the results of both the inventory of the seized stocks and the seizure of the undeclared ones, and taking into account progress on implementation of Decision 204 paragraphs e) and f), a decision could be made regarding potential sales of the controlled and inventoried stockpiles at CoP18.

gestion de stock”).<sup>17</sup> Claims that civil society, and in particular EIA, have been formally consulted for the elaboration of the plan are misleading.<sup>18</sup>

Even the securization of seized stockpiles, a critical first step towards legitimate trade, appears still inefficient. A few months ago, more than 200 logs were reportedly stolen after being seized at Antalaha, and most likely went back to the illegal owners.<sup>19</sup> According to well-informed sources, the seals and tags used during the previously attempted inventory by the company SGS (Société Générale de Surveillance) are particularly prone to removal, raising questions about the accuracy of the statement by Madagascar that 62% of the seized stockpile would have been inventoried.<sup>20</sup>

### ENFORCEMENT: ARRESTED IN THE MORNING, RELEASED IN THE AFTERNOON

Law enforcement against illegal logging and trade still appears sporadic and ineffective in Madagascar, according to local officials and conservationists. Mr. Jean André Mboly, Director of the Marojeiy National Park, noted the problems for park authorities to get justice against poaching and illegal logging in a recent interview: “We caught 10 criminals, and we took them to the courts, but they all got released.”<sup>21</sup> He added: “We bring in an offender, then on the same day he’s out. [...] The people see that there is no justice.”<sup>22</sup>

Regarding the seizure of a boat loaded with illegal timber in February 2017, presented by Madagascar in its report for the SC69<sup>23</sup>, a well-informed source noted that “Political and administrative officials have tried to cover the tracks. We had to decide to take unconventional ways to complete the investigations and make the first arrests”.<sup>24</sup> Several local authorities complained publicly for being pressured to drop the case. High level officials allegedly intervened in order to stop the investigation. Days after the seizure, two of the local officials who were responsible for stopping the export were reportedly transferred to a different part of the country, ostensibly for being involved in the trafficking. However, two local government sources reportedly explained the opposite: the officers’ effort to halt the export had cost them their jobs.<sup>25</sup>

Over the past months, incidents of corruption, intimidation, and even “death threats” against the few determined officials have reportedly increased, in order for the illegal shipment to leave Madagascar.<sup>26</sup> The Director of Forestry

in the Sava region, Mr. Arsonina Bera stated in an interview that his family has repeatedly received messages threatening to “liquidate” him if he continues to do his job. This adds to the pressure he describes to remove him from his position due to his actions against illegal loggers and poachers.<sup>27</sup>

Four patrol speedboats donated by the World Bank (WB) have reportedly rarely, if ever, left the port and have never been used to approach suspected illegal vessels.<sup>28</sup> The reception of the speedboats was attended by the President Hery Rajaonarimampianina and cited repeatedly by Madagascar as significant progress in the fight against trafficking.<sup>29, 30</sup> Similarly, the use of the satellite surveillance system funded by the WB, also repeatedly highlighted by Madagascar in its report to the SC, has reportedly not led to any prosecutions.<sup>31, 32</sup>

To EIA’s knowledge, the request adopted during SC65 to request Madagascar to consider “as a matter of urgency” the offer from the International Consortium on Combating Wildlife Crime and to deploy a Wildlife Incident Support Team (WIST) has not been answered.<sup>33, 34</sup> Deployment of the WIST team would be important in the coming months leading up to national elections.

### TIMBER BARONS IN THE PRESIDENTIAL POLITICAL PARTY

While prosecution of people involved in timber trafficking seems to show some progress, it appears that those sentenced to date are at the very bottom of the criminal pyramid, as in the case of sailors who were arrested at the interception of illegal shipments leaving Madagascar in February 2017.<sup>35</sup> Evidence indicates that the timber barons behind the organized crime are not being touched.<sup>36</sup>

The “Special Court (“chaîne spéciale”) to fight against trafficking of rosewood and ebony” created by the Malagasy President and adopted by the Parliament two years ago is still not functioning and has yet to process a case.

The timber barons publicly identified by former Prime Minister Jean-Omer Beriziky have never been formally investigated.<sup>37, 38</sup> The alleged owner of over 9,000 illegal logs, Roger Thu Nam, was reportedly sent home on bail in September 2017 after four years of preparation of the case by the Independent Anti-Corruption Office (BIANCO).<sup>39</sup> The ongoing inquiries in Madagascar related to the illegal export of rosewood to Singapore, with complaints

“against persons unknown”, will be a true test of political will in the country to go after the main culprits.<sup>40</sup> It is noteworthy that former minister Anthelme Ramparany, who traveled to Singapore in December 2014 to attest to the validity of what proved to be fraudulent documents, is now a member of parliament.<sup>41, 42</sup>

Mr. Johnfrince Bekasy, frequently described as a timber baron by Malagasy civil society and well-placed sources, whose case was prepared by the BIANCO and confirmed by the Malagasy government to international observers, was released soon after his arrest without trial and without explanation.<sup>43, 44</sup> The extra-judiciary release of Mr. Bekasy – only possible due to the involvement from high level officials who have not been identified so far – had raised criticism from Mr. Robert Yamate, U.S. ambassador to Madagascar: “We have no news about Bekasy. We are as confused as you are about what happened. We hope that, in the future, the responsibilities of each decision maker, of everybody within the Department of Justice will be clearly defined to prevent such a situation from happening again.”<sup>45</sup> As of today, Mr. Bekasy has not been sentenced. One of his prominent reported accomplices, Mr. Martin Bemahatana, who has been under investigation since 2011 joined the presidential party (“Hery Vaovao ho an’i Madagasikara” – New Forces of Madagascar, HVM) and has recently been elected Senator for the Antsiranana Province.<sup>46, 47</sup>

The entanglement between political elites and the presidential party HVM presents a major obstacle for the effective

prosecution of white-collar criminals in the rosewood traffic. Several regional timber barons allegedly involved in the rosewood traffic have recently joined the HVM and been elected into office, such as Jean-Pierre Laisoa who represents Antalaha in parliament.<sup>48, 49</sup> Upon joining the presidential party they receive protection from prosecution. In exchange they are expected to provide financial and political support to the current president who is planning to run again for office in next year’s highly disputed election.<sup>50</sup>

The failure of the Malagasy justice to prosecute and sentence high-level traffickers stands in stark contrast to the persecution and intimidation against environmental activists (Box 2).



Photo Credit: Dan Ashby and Lucy Taylor for Mongabay

## Box 2. Silencing Malagasy Environmental Defenders: Who is Next?

Malagasy activists who denounce the illegal rosewood trade continue to be subject to intimidation and harassment by the authorities in an attempt to silence them.<sup>51</sup> As a result, Madagascar human rights record is in sharp decline, according to Mrs. Muchena Deprose, Amnesty International’s Director for Southern Africa.<sup>52</sup> Three emblematic cases:

**Clovis Razafimalala** was detained for more than 10 months on politically motivated charges of rebellion and destruction of public documents and goods. In July 2017, he was handed a 5-year suspended sentence and released on parole under rules that threaten to incarcerate him again should he continue his work of exposing the illegal timber trade.<sup>53</sup>

**Armand Marozafy**, another member of the same environmental group and public advocate against illegal rosewood logging, served 5 months in jail after an expeditious judgement found him guilty of defamation – he had sent a private email identifying alleged rosewood traffickers.

**Augustin Sarovy**, a renowned nature guide from the Masoala region had to leave Madagascar after receiving death threats in 2013, as he supported an EIA investigation into the illegal rosewood trade.

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<sup>23</sup> Madagascar, 2017. SC69 Doc. 49.1. *Op. cit.*

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<sup>28</sup> Personal communication.

<sup>29</sup> Madagascar, 2016. SC67.

<sup>30</sup> Madagascar, 2017. SC69. *Op. cit.*

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