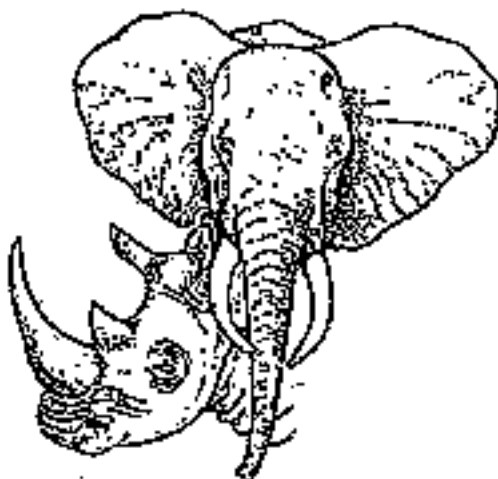


COMMISSION OF INQUIRY  
INTO  
THE ALLEGED SMUGGLING OF AND ILLEGAL TRADE IN  
IVORY AND REINOCEROS HORN IN SOUTH AFRICA



R E P O R T

*of the Chairman*  
*Mr Justice M E Kumleben*  
*Judge of Appeal*

*January 1996*

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IN  
IVORY AND RHINOCEROS HORN IN SOUTH AFRICA

The State President  
Republic of South Africa

I have the honour to submit to you the report of the Commission  
of Inquiry into the alleged smuggling of and illegal trade in  
ivory and rhinoceros horn in South Africa.

Signed at DURBAN during January 1996.

MR JUSTICE M E KUMLEBEN  
Chairman and Sole Member

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## ACRONYMS & ABBREVIATIONS

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSADF	Chief of the SADF
CSI	Chief of Staff Intelligence
DIA	Defence Intelligence Agency
DMI	Directorate Military Intelligence
EIA	Environmental Investigation Agency
Elegant Food	Elegant Food Distributors (Pty) Ltd
ESPU	Endangered Species Police Unit
Frama	Frama Inter-trading (Pty) Ltd
Frelimo	Frente de Libertação de Moçambique
IEA	Institute of Economic Affairs
IUCN	International Union for Conservation of Natural Resources
KAS	Kas Enterprises
KNP	Kruger National Park
MID	Military Intelligence Division
MPLA	Popular Movement for the Liberation of Angola
NFB	Natal Parks Board
Renamo	Resistência Nacional Moçambicana
RSA	Republic of South Africa
SA	South Africa
SAA	South African Airways
SADF	South African Defence Force
SANDEF	South African National Defence Force
SANF	South African Nature Foundation
SAP	South African Police
SAPS	South African Police Services
SAS	Special Air Services
SWA	South West Africa
SWAPO	South West African People's Organisation
SWATF	South West African Territorial Force
UNITA	União Nacional para a Independência Total de Angola (National Union for Total Independence of Angola)
WWF	World Wildlife Fund for Nature

## **1 INTRODUCTION**

On 7 October 1994 I was appointed Chairman and sole member of this Commission. Its terms of reference, as amended, were to investigate and report on: the alleged smuggling of ivory and rhino horn, particularly of Angolan and Mozambican origin, to and through South Africa; the alleged involvement of South African citizens in such smuggling activities; and the alleged illegal trade in ivory and rhino horn of South African origin. The Commission was also enjoined to recommend steps to be taken to eliminate such irregularities. The terms of reference initially limited the enquiry to a period of 10 years prior to the appointment of the Commission. However, it was found that past conduct could not be placed in proper perspective with such a time limitation. Hence the amendment. By Proclamation No R 148, 1994 the provisions of the Commissions Act, No 8 of 1947, and the relevant regulations were made applicable to the Commission.

From the inception I was assisted by a legal officer, Mr Ray Sansom, a senior public prosecutor of the Department of Justice. On 20 February 1995 there was a further secondment. Mr Alex Crockart, a regional court prosecutor in Durban, joined the staff as an additional legal officer.

After the official announcement by the Ministry of Environmental Affairs and Tourism of the appointment of the Commission, it forthwith by public notification invited written submissions on or before 10 December 1994. In addition letters were addressed to particular organisations and individuals whom it was believed could assist with information or evidence. The letter stated that allegations of South African involvement in the smuggling and illegal sale of ivory and rhino horn have persisted for a considerable period and that one of the tasks of the Commission was to determine whether these allegations could be substantiated. The letter also pointed out that the Commission was required to put forward proposals for the prevention of the irregularities referred to in the terms of reference. A copy of the published notification of the Commission of Inquiry was enclosed in each letter. I requested that written responses be submitted on or before 10 December 1994. This letter was initially sent to 46 environmental agencies, State departments, individuals and other interested parties within the Republic of South Africa ("RSA") and abroad. There was an encouraging response before the stipulated date but it was realised from the outset that certain addressees would be unable to meet the deadline. Further notifications were sent out to say that a contribution at any time would be in order. Two of the most important respondents were unable to submit their full reports timeously. The written report on behalf of the South African National Defence Force ("SANDF")

was received only on 22 February 1995 and that of the Endangered Species Police Unit ("ESPU") of the South African Police Services ("SAPS") on 16 March 1995. During the course of its work the Commission notified, interviewed or corresponded with about 140 individuals or organisations in the RSA, Namibia, Botswana, Angola, Zimbabwe, Mozambique, Swaziland, Malawi, Kenya, the United Kingdom, the Netherlands, Switzerland, Germany and the United States of America. (See in this regard annexure A hereto.)

On receipt of written replies it was in many instances necessary to conduct further inquiries and submit further written questionnaires.

It was in due course decided that witnesses should give evidence on important issues of particular public interest and on those that were controversial. A supplementary reason was the expectation that such hearings might prompt others to come forward with evidence or information of value. This in fact happened. The public hearings began in Durban on 28 August 1995 and continued until 22 September 1995. Twenty three witnesses gave evidence, all voluntarily thus rendering it unnecessary to serve any formal subpoenas. The Commission is indebted to the SANDF for tracing certain witnesses.

## 2 THE POWERS AND LIMITATIONS OF THE COMMISSION

The powers and limitations of a commission need to be briefly stated. It is an advisory body not a quasi-judicial tribunal or a court of law. It must act strictly within its terms of reference. It is empowered to summons any person to appear before it and require him or her to give evidence and answer questions. A witness is, however, entitled to rely on the privilege against self-incrimination and any others recognised in law, e.g. the professional privilege between attorney and client. In the absence of any such immunity a witness is obliged to answer all questions. However, should one fail to do so, the remedy in s 6(1) of the Commissions Act is an indirect and rather cumbersome one. Section 189 of the Criminal Procedure Act, No 51 of 1977, empowers a judicial officer in a court of law to deal summarily with a recalcitrant witness and, if necessary, impose a prison sentence. No counterpart of this section is to be found in the Commissions Act. A commissioner in such a case must refer the matter to the Attorney-General with a view to a prosecution for a contravention of s 6(1) of the Commissions Act. Such course entails a disruption of the proceedings and delay, particularly if a conviction is followed by an appeal. The practical result is that it may not be in the interests of a commission to call a witness in the knowledge that questions will not be voluntarily answered. In terms of s 204 of the Criminal Procedure Act a witness for the prosecution at a criminal trial is obliged to answer incriminating questions but subject to conditional immunity from prosecution. Similarly in this respect no such provision features in the Commissions Act. In the case of both a recalcitrant witness and an "accomplice" giving evidence before a commission, its effectiveness would be greatly enhanced if, when a judge of the Supreme Court presides, he were to have the same powers as those provided for in the Criminal Procedure Act.



### 3 THE APPRAISAL OF "EVIDENCE"

In common with past commissions, this one has had to decide on the value, if any, to be placed upon persistent rumour and hearsay, particularly when such information is furnished from a number of independent sources indicating that such allegations might well be true. I consider that such information may be taken into account provided it does not impute illegal or improper conduct to any person. In that event I do not subscribe to the view that a commission is entitled to make a finding, or even to express a *prima facie* view, based on hearsay. Such a course would no doubt satisfy those who expect a commission to put its imprimatur on rumour which public opinion genuinely believes to be fact. However, to do so would not accord with fundamental precepts of justice. As Lord Denning said in his report on "The Circumstances Leading to the Resignation of the Former Secretary of State for War, Mr J D Profumo" (the "Profumo Report"):

"When the facts are clear beyond controversy, I will state them as objectively as I can, irrespective of the consequences to individuals; and I will draw any inference that is manifest from those facts. But when the facts are in issue, I must always remember the cardinal principle of justice - that no man is to be condemned on suspicion. There must be evidence which proves his guilt before he is pronounced to be so. I will therefore take the facts in his favour rather than do an injustice which is without remedy. For from my findings there is no appeal."

"To those who in consequence will reproach me for 'white-washing', I would make this answer: While the public interest demands that the facts should be ascertained as completely as possible, there is a yet higher public interest to be considered, namely, the interest of justice to the individual which overrides all other. At any rate, speaking as a Judge, I put justice first." [Introduction paragraphs 8 and 9]

The Profumo Report led to what amounted to a "Commission on Commissions" chaired by Lord Salmon ("The Royal Commission on Tribunals of Inquiry 1966"). It laid down six cardinal principles for the conduct of a Commission:

- "1 Before any person becomes involved in an inquiry, the tribunal must be satisfied that there are circumstances which affect him and which the tribunal proposes to investigate.

- 2 Before any person who is involved in an inquiry is called as a witness, he should be informed of any allegations which are made against him and the substance of the evidence in support of them.
- 3 (a) He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.  
(b) His legal expenses should normally be met out of public funds.
- 4 He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
- 5 Any material witnesses he wishes to call at the inquiry should, if reasonably practicable, be heard.
- 6 He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him."

I subscribe to these principles and have tried to apply them.

Finally, it is hardly necessary to stress that it was beyond the scope of this Commission to attempt to investigate and bring to book particular individuals who were suspected of smuggling on isolated occasions - even though the terms of reference are wide enough to be thus construed. This would entail specialised detection work which is the task of the ESPU and other investigating bodies employed by conservation authorities. Any information in this regard was passed on to the appropriate investigator. As regards misconduct, past or present, the main purpose of this Commission is to establish whether State authorities, public officials, publicly funded environmental agencies or illegal syndicates were or are involved in such activities.

#### 4 THE ALLEGATIONS

It emerged from the written responses, documents submitted and interviews that, broadly speaking, the following were the allegations and topics falling within the Commission's terms of reference:

- (i) The RSA, with the involvement of conservation officials, has been for a considerable period the "clearing house" for the covert, illicit and large-scale handling and disposal of ivory and rhino horn originating from other African countries and sent overseas, principally to the Far East.
- (ii) Syndicates of foreigners, some with South African involvement, have been and are mainly responsible for such activity. Certain of these syndicates are "general dealers". Their operations are not confined to ivory and rhino horn but include dealing in drugs, other species of wildlife and firearms. Specific names were mentioned together with the companies through which they were alleged to have operated.
- (iii) The South African Defence Force ("SADF") was covertly involved in the receipt, transportation, sale and export of *inter alia* ivory and rhino horn. By doing so, it aided and abetted the slaughter and destruction of elephant herds and rhino in neighbouring countries, particularly Angola and Mozambique. Such operations were conducted with the knowledge of, and sanctioned by, highly placed personnel of the SADF, State officials and Ministers of State.
- (iv) A covert venture under the code name Operation Lock ("Lock"), which was formed to combat the poaching of rhino horn, was ill-conceived and unsuccessful. In fact, so it was alleged, it misappropriated the rhino horn entrusted to it and was itself involved in illicit smuggling activities.
- (v) The ESPU, whilst it was commended by certain respondents for its accomplishments in difficult circumstances, has failed to bring to book the large-scale operators. It was in some instances insinuated that the small fry were caught whereas the sharks were given free range.
- (vi) There is a need for greater collaboration amongst African countries in order to prevent the smuggling of fauna and flora. It was suggested that this could

best be achieved through a unified investigatory agency pooling information and conducting cross-border investigations.

- (vii) The Customs controls and procedures for the importation and exportation of goods into and from the RSA are such that contraband can easily enter and leave without any real danger of detection. In this regard there was reference to the absence of proper control at airports and harbours, the immunity of diplomatic bags and the Customs Union agreement.
- (viii) The illegal trade could be further curtailed by certain measures not related to the detection, prosecution and punishment of offenders.

These allegations emerged from publications and other material of reporters, journalists and non-governmental conservation agencies. None of the documents submitted contained first-hand evidence in support of these allegations. They were hearsay based on information from disclosed and undisclosed sources. In some cases their informants were given code names or code initials. This information proved useful at least at the level of indicating avenues of inquiry and the course to pursue with a view to obtaining reliable evidence. But this proved to be no easy task. It involved the legal officers in the time-consuming and difficult pursuit of hearsay, often multiple hearsay, to its source - or in painstaking attempts to do so. At times this exercise made the tribulation of Sisyphus seem enviable! In the case of certain possible informants it was necessary first to secure their confidence. This often entailed a number of interviews on the part of a legal officer and, when appropriate, the Chairman. In a number of cases the enquiry led from one source to another without having a reliable outcome. This was, however, necessary to ensure that the investigation was a thorough one. In many instances the persons interviewed for various reasons refused to divulge information or to disclose their source. In such cases they were only prepared to co-operate after an undertaking from the Commission that anything said by them would be treated in the strictest confidence. The Commission had to exercise a discretion in deciding whether to obtain information on this basis to serve as a lead for further investigation or at a later stage subpoena the person concerned and deal with a refusal to answer questions.

## 5 THE ADVERSE PUBLICITY

On 14 July 1988 Mr Craig Van Note presented a written statement to the Subcommittee on Oversight and Investigations of the House Merchant Marine and Fisheries Committee of the US Congress. He did so on behalf of Monitor, a consortium based in Washington DC, consisting of a large number of conservation, environmental and animal welfare agencies. The theme of his presentation was that the control and curtailment of international trade in endangered and threatened species was not receiving proper attention internationally. Under the heading "The South African Connection", it was said *inter alia*:

"According to reliable sources in Africa, a massive smuggling ring has been operating for years, with the complicity of South African officials at the highest levels of the government and military, to funnel ivory and other contraband out of Africa.

.....  
Airplanes, trucks, ships and even railroads bring the booty south to depots where huge stockpiles of ivory are maintained in South Africa. That CITES member nation, which projects the image of a conservation-minded model for Africa, is in reality one of the largest wildlife outlaws in the world.

The South African military has cynically aided the virtual annihilation of the once-great elephant herds of Angola.

.....  
The South Africans' staging post at Runtu in the Caprivi Strip warehouses [sic] the contraband. Tractor-trailers then transport the ivory across Namibia to South Africa.

.....  
A third major flow of poached ivory aided by South Africa is from Mozambique, a nation devastated by a guerilla army financed and directed by the South African military."

On 5 September 1988 The Star newspaper reported Dr Jonas Savimbi as having told a journalist that Pretoria had decided to aid UNITA

"... but not at any price. We pay for aid with our diamonds, timber and ivory. But it is not enough to pay all our bills so the South Africans give us credit."

The allegations from these two sources received wide publicity. The matter was taken up by Mr R J Lorimer MP and in due course an internal military inquiry (the "Roos Inquiry"), with Brigadier Ben de Wet Roos as its president, was ordered. This inquiry involved the military investigating its own activities. The proceedings were not open to the public and the contents of the subsequent report were never made known. In the circumstances the SADF press release following upon the inquiry did little or nothing to dispel the impression that the SADF was involved as alleged. This view has persisted. For instance, in *The Atlantic Monthly*, which is one of the oldest and most respected American publications, South Africa was recently chastised. In an article in November 1994, headed "Devouring the Earth" the author dealt with the "voracious appetite" of the Taiwanese for the products and derivatives of endangered species and for trading in them. He remarked that:

"Taiwan's trade in endangered wildlife extends far beyond China's borders, creating an odd international brotherhood. The illicit trade in wildlife unites Laotians hunting tigers in the jungle and good old boys poaching bears in the North American woods, black Zimbabwean rhinoceros poachers and blond members of South Africa's defense force, who reportedly have for years been funding their operations with profits from illegal diamonds, elephant ivory, and rhinoceros horn."

The criticism of the SADF was not confined to the Namibian-Angolan border. Mr Eddie Koch was the author of an article appearing in *The Weekly Mail* of 12 March 1992 under the caption "The Ivory War". He wrote:

"Millionaire mercenaries and impoverished rural people, two species on opposite ends of southern Africa's political landscape, will each be affected by the outcome of the most heated environmental debate this decade: to ban or not to ban the sale of ivory."

If the ban on elephant products is upheld, rural people will lose the right to make a living from one of their most valuable natural assets. But if the ban is relaxed, corrupt military men who make their fortunes from dealing in the tusks of dead elephants will be rubbing their hands in glee."

The author concluded by saying:

"The Defence Intelligence Agency, an undercover unit attached to the United States Defence Department, last month leaked a report which claimed that support for Renamo rebels in Mozambique was still being supplied by elements in the SADF as late as February 1991. The DIA's agent says that his informant, a defector from the rebel movement, provided evidence of 'another Renamo connection to South Africa - ivory poaching'.

The report cites the informant as saying: 'When he was a member of a section he was often tasked to go into a huge area with lots of elephants to kill the elephants for their tusks. He said this group brought the tusks to a camp near the border, where the tusks were given to a group of whites, including a white woman.'

Documents captured by the Mozambican army when it overran a Renamo base at Gorongosa in central Mozambique last year record instructions from rebel leader Alfonso Dhlakama to his chief of staff, one General Anselmo, that a consignment of ivory be airlifted to South Africa.

Another document, this time from a Renamo field commander to Dhlakama, says:

'We need anti-aircraft weapons. We can provide ivory on a landing strip. When we have the anti-aircraft (weapons), the ivory must be ready to be taken out.'

This adverse publicity was one of the reasons influencing persons and bodies concerned with nature conservation in this country - and elsewhere - to press for the appointment of an independent judicial commission. The conservationists in the RSA have the experience and skills to make an immense contribution to the cause of protecting endangered species in Africa, particularly elephant and rhino. However, those opposed to their suggested programmes, policies and procedures, have protested in international forums and elsewhere that South African officials, particularly the military, are - in the words of Van Note - "wildlife outlaws". This stigma has prevented the views of our conservationists on various important issues being debated and considered on their merits. It was primarily for this reason that an inquiry into allegations of past smuggling was one of the terms of reference. It is in the public interest that the allegations

of official involvement in smuggling, if true, be openly admitted and steps taken to prevent any recurrence. If they amount to no more than rumour, then the sooner that this is established the better for all concerned.



## 6 THE DEVASTATION OF WILDLIFE AND THE ALLEGED COMPLICITY OF RSA OFFICIALS

The allegations of the devastation of wildlife from about the mid-1970's were given widespread publicity. In the process it was said that the RSA was the "clearing house" of most, if not all, of the raw ivory and rhino horn originating from countries to the north of the RSA and that RSA conservation officials saw to it that such ivory was "laundered" before being exported from the RSA.

In Van Note's report to the US Congress he said that

"Jonas Savimbi and his UNITA rebel forces in Angola, largely supplied by South Africa, have ruthlessly liquidated perhaps 100,000 elephants to help finance the 12-year-old conflict. Most of the tusks have been carried out on South African air transports or trucks, although some moves through Zaire and Burundi."

Two experienced and respected conservationists gave evidence at the Roos Inquiry in answer to this statement of Van Note. Both, Mr Clive Walker and Dr John Ledger, expressed the view that this figure was probably an exaggeration and pointed out that an accurate assessment was in the nature of things impossible. The latter added a further qualification by saying that

"ostensibly the figure 100 000 elephants from Angola seems excessive but if elephants were also poached in Zambia and Zaire and channelled through Angola, the figures could quite conceivably be true."

Probably the person best qualified to comment on the extent of the destruction of wildlife in Namibia/Angola is Colonel Jan Breytenbach. He gave evidence before the Commission and assisted it by being in attendance throughout the hearing. He was the founder of 1 Reconnaissance Commando, a unit of the Special Forces of the SADF. As such he was stationed in the western Caprivi from 1970 to 1975 and was involved in forays deep into Angola. He too could give no accurate figure on the destruction of wildlife which he subsequently observed but graphically described its profusion up until the time that he departed from the border in 1975. He said:

"The situation in the Cuando Cubango, and in the western Caprivi to a lesser extent, but particularly Cuando Cubango, ... it was breathtaking. ... I've never seen anything like

it in my life before. ... the number of animals and diversity of wildlife species was such that it put the Kruger National Park completely in the shade. When we're talking about elephants, we're talking about tens of thousands of elephants roaming round all over the place, hundreds of rhino, huge herds of buffalo, especially along the Luiana River, sables, roan antelope, tsessebe, blue wildebeest, zebras. There were just vast numbers of game. I think the reason for that is that ... there's a lot of tsetse fly there so people didn't go there much. There was a hunting concession but they didn't go there very much. I don't think people liked it very much because the tsetse fly were a real nuisance. So there were not also - there were also not that many people living there at the time, just a few Bushmen and a few black people round a little place called Luiana." [Volume VIII pages 625 - 626]

(The Cuando Cubango is an area of about 300 000 km<sup>2</sup> situated in the south east of Angola.)

Breytenbach also said that he established a base in the western Caprivi during this period. It was named "Rhino Base" on account of their numbers. About 20 black rhino were in the immediate vicinity and probably several hundred rhino in the western Caprivi as a whole. By contrast he said that when he returned to those parts in 1983:

"I found, when I got back to ... the Caprivi, that in the ... St Michel area the game had become somewhat depleted. There was, for instance, a buffalo herd that I knew of before in my wanderings in Angola through the previous years, which used to migrate ... between Angola and the Caprivi regularly and that was over a thousand strong, so when I got there in 1983 I counted them as they were crossing the road and there were only 273, so obviously they've been under tremendous pressure. ... we did some game counts from 1983 onwards until 1987 when I left. The elephants were ... over a thousand strong, and they diminished - decreased gradually as we were going along until 1987 when I only could count about 180 elephants. The twenty or so rhino which were in the area of what used to be known as Rhino base and became Delta base, a UNITA base, decreased from in the region of twenty to about five when I left 1987. .... So for them it's particularly serious because I

discovered later that they were the only Chobiense sub-species left in the world. All the others have been shot out and culled." [Volume VIII pages 632 - 633]

This evidence establishes, as is generally well known, that there was vast destruction of wildlife, elephant and rhinoceros included, during this period from 1975 to 1987.

More pertinent to this Commission are the allegations of the complicity of RSA officials in the disposal of ivory and rhino horn. These are reflected in the following statement of Van Note:

"According to reliable sources in Africa, a massive smuggling ring has been operating for years, with the complicity of South African officials at the highest levels of the government and military, to funnel ivory and other contraband out of Africa. None of this ivory shows up on any customs books in Africa - and very little at destinations in the Middle East, India and the Far East."

In sum the accusations are twofold: first, that most of this ivory found its way to the RSA and was thereafter exported; and second, that such exportation took place largely as a result of the issue of forged documents by the relevant authorities in the RSA, notably the Transvaal Department of Nature Conservation. As to the first accusation, one may safely infer that the RSA was the main, though not the only, conduit for the disposal of ivory and rhino horn. Naturally the quantity smuggled out of the country without any documentation can never be determined. For a consideration of the second allegation, it is necessary to compare certain statistics relating to the importation, local production and exportation of raw ivory.

Mr Ian Parker, a Kenyan resident and recognised authority on the ivory trade, furnished information on the quantity in mass of raw ivory annually imported by thirteen countries, which were the principal recipients, during the period 1979 to 1987 from RSA/SWA. (I shall henceforth refer to South West Africa ("SWA") as Namibia except where the context calls for reference to SWA.) It is probable that exports to those countries directly from SWA were regarded as exports from the RSA. For the purposes of this comparison this may be presumed to have been the case. A schedule prepared from this data is attached marked annexure B. These statistics, Parker explained, can be accepted as reliable since there was no reason for their being inflated. In fact, since custom duty is ordinarily payable on imports they would, if anything, be conservative. These

figures (all reckoned for convenience to the nearest ton) show that over this period of 9 years 328 tonnes of raw ivory were exported, the average being 36 tonnes. The highest annual figure was 50 tonnes in 1985 and the lowest 21 tonnes in 1987. Virtually all - at least 90% - of the ivory originating in the RSA is derived from cullings, "pick ups" and seizures in the Kruger National Park ("KNP"). Figures furnished by the KNP for the period 1979 to 1987 reflect an annual average of 6 tonnes from these sources: highest 11 tonnes, lowest 4 tonnes. See annexure C. To these quantities must be added the annual amount of raw ivory imported into the RSA during the said period according to our customs statistics. See annexure D. As regards SWA, reliable evidence indicates that over this period at most 4 tonnes of ivory could have originated annually from SWA. Thus the aggregate of raw ivory entering the RSA as recorded imports and originating in RSA/SWA falls far short of the quantity recorded as exported from RSA/SWA over the relevant period. The total shortfall is 192 tonnes; the highest and lowest annual shortfalls being 32 tonnes and 13 tonnes in 1982 and 1987 respectively. See annexure E.

One must assume that the importing countries, or most of them, only permitted imports to take place by virtue of proper documentation from the RSA authorities authorising the export. Thus according to annexure B a large quantity of raw ivory neither legally imported nor originating in the RSA/SWA was exported with authorisation. This has led to the suggestion or accusation that RSA conservation authorities fraudulently issued permits.

Mr Eugene Potgieter, an administration officer in the permit office, and other officials of the Gauteng Department of Nature Conservation explained the position as regards the issue of export permits over the relevant period. An applicant for such a permit would have been required to prove that his possession of the tusks to be exported was legal. This he could do by producing an import permit which on the face of it was valid, a receipt as proof of a legitimate purchase, a hunting licence or by establishing that the acquisition was by inheritance. In the absence of any such documentary evidence he would have been required to furnish an affidavit setting out how he otherwise came to be in possession. In these circumstances it goes without saying that "proof" could have been produced by a dishonest applicant for an export permit which could not be satisfactorily checked by the conservation department concerned before granting such a permit. There was, moreover, evidence indicating that there was no proper identification of tusks for which a particular permit was issued with the result that a permit could be used repeatedly as evidence of authorised possession for exporting purposes.

With all these means at the disposal of a person wishing to export ivory illicitly, the discrepancy disclosed with reference to the import statistics of other countries cannot with any degree of certainty point to misconduct on the part of officials within the RSA. However, what may be said as a post-script is that should the sale and exportation of raw ivory or rhino horn on a controlled basis be authorised at some future date, it would be essential first to ensure that such malpractices cannot recur.

## 7 THE ALLEGED SOUTH AFRICAN SYNDICATES

As has been mentioned, over a number of years - until at least 1994 - in numerous newspaper reports and other publications, the RSA has been described as the centre of large-scale smuggling activity involving *inter alia* ivory and rhino horn. In so far as this accusation was levelled at the SADF, the extent to which it was or is justified is still to be discussed in this report. These media allegations, however, go further and cite certain persons as being the "smuggling Mafia" operating in and through the RSA. Some allegations bore the clear innuendo that this illegal activity was being carried on with the assistance, or at least the acquiescence, of the police, politicians and other South African officials. This manifestly damages the reputation of the RSA and casts a doubt on the integrity and competence of the ESPV and other law enforcement agencies.

The Commission made every possible effort to determine whether these allegations could be substantiated by inviting journalists, organisations and individuals to produce supporting evidence. Some were helpful in indicating further sources of enquiry. However, for various reasons they could not produce any first-hand evidence. They appreciated - at times with some reluctance - the distinction between what they accepted as fact or saw as emanating from "a reliable source", and what was required by the Commission before an allegation could be accepted as proved.

The nature and extent of the adverse publicity can best be illustrated by reference to two reports of the Environmental Investigation Agency (EIA) on certain named South African resident traders: the Pong family of Pretoria and Mr Antonio Giannini of Johannesburg.

The EIA is a non-governmental, influential environmental agency based in London with an affiliate office in Washington. Its chairman is Mr Alan Thornton. It has been South Africa's most outspoken critic on environmental matters. It produced two detailed reports on the status of the elephant, and the poaching and smuggling of ivory, in various countries in Africa, including the RSA. Each report is the work of a team of EIA employees. Its first report was published in 1989, the title of which was "A System of Extinction: The African Elephant Disaster". The second report is dated 31 January 1992 and bears the caption "Under Fire: Elephants in the Front Line." This further report was written with particular reference to, and in opposition to, the move on the part of certain southern African countries, including the RSA, to have the international ban on the sale of African elephant products lifted - see Chapter 13.3 *infra*.

I turn to consider the allegations in these reports in the light of the evidence placed before the Commission and other facts.

In the first report in 1989, under the sub-title "Southern Africa: The Pong Connection" there is the following account of what I shall refer to as the "Botswana seizure":

"In mid October last year, a major shipment of ivory and rhino horn was en route for South Africa's biggest dealer, Chong Pong. The vehicle, owned by Tony Viera from Johannesburg was registered in the 'independent homeland' of Bophuthatswana and was driven by Patrick Mufumbi, a Zimbabwean. Viera received a message from Botswana that his truck had broken down and he borrowed Pong's BMW to meet the truck there.

The Botswana customs officials had intercepted Viera's vehicle at the Kazungula border with Zambia and had tricked him into coming there. Inside the truck, they found 382 raw ivory tusks, 34 carved tusks, 94 black rhino horns, 50 ivory bangles, 73 ivory necklaces, 19 pairs of earrings, 20 elephant sculptures, 10 stems of malachite and a load of copper ingots. The shipment was worth at least \$1 million and had been transported from Pong's warehouse in Zaire and driven on a route through Zambia to Botswana - the same one the truck has used on the previous ten trips in the five months before the seizure.

Mr Pong had a cunning strategy that outwitted the Botswana customs and courts and allayed suspicions in South Africa. The ivory and rhino horn, he said, were not his - only the copper ingots. 'I am an importer and exporter in the retail clothing business. If I were a smuggler, would I be so foolish as to put my real name on the consignment note?'

This brilliant ruse worked, for Mr Pong is moving about freely in South Africa, where he and his father A.H. Pong, who reportedly holds two seats on the Hong Kong stock exchange, continue their massive trade in illicit ivory and rhino horn."

The article proceeds to state, quite correctly, that Viera was convicted, a fine imposed and his vehicle declared forfeit. The article, apparently on the strength of the Botswana

seizure, proceeds to relate that:

"Pong's family came to Johannesburg from Hong Kong in 1956 and has thrived ever since by exploiting his business links in Hong Kong and nearby countries with trade contacts in South Africa. Pong is by far the biggest dealer in rhino horn and ivory, although the illicit South African market for the products of these two endangered species is enormous.

Ivory and rhino horn smuggling are just some of the commodities Pong deals. Others include marijuana, whiskey, mandrax, malachite, tourmaline, aquamarine, amethyst, cobalt and of course copper. In the sanctions plagued environment of South Africa, smuggling and black market activity is a way of life, and Pong is one of the professionals.

He uses trucks with concealed compartments, produces forged documents or gets legal documents signed illegally, and pays lots of bribes to facilitate his illegal activity. In South African smuggling circles, his activities are well known and it is an open secret that Pong transports his ivory and rhino horn to Hong Kong by ship and by plane, marked as other goods like machinery, general cargo and so on. Chong Pong's father, A.H. Pong has substantial influence in Hong Kong through his position on the Hong Kong stock exchange. Although the Hong Kong authorities show little interest in the Pong's regular imports of ivory and rhino horn - as is the case with the entire infrastructure of the illegal ivory and rhino horn trade in the colony - it is always useful to have high level contacts if something should go wrong."

After some further reference to alleged misconduct on the part of the Pongs, the article continues:

"After the Botswana seizure last year, Pong's premises at Marabastad were raided by a Transvaal Nature Conservation official. No details have been given of what they found and the case is said to be sub-judice at present.

It comes as no surprise that the Pong family has high level political protection from the South African authorities because he is involved in sanctions busting imports. Pong is said to



import much needed computers from Japan and the People's Republic of China and is protected from investigation or prosecution by South Africa's wildlife enforcement authorities."

There are no source references in support of these far-reaching allegations.

In the second report in 1992, under the sub-title "The Johannesburg and Pretoria Mafia" the following is said:

"When the question 'who controls ivory smuggling?' is put to well-informed sources in South Africa, the same names invariably come up. At the top of the list is the notorious Pong family. Then there are the 'Greek mafia', 'the Portuguese' (see Arlindo Maia) and 'the Italians', all operating from Johannesburg and Pretoria.

#### THE PONG FAMILY

A confidential report to CITES describes the Pong family as 'the single largest CITES problem in southern Africa'.

A.H. Pong and his three sons, Lau Kwong-Cheong, Lau Kwong-Gee and Lau Kwong-Tune, have been major players in the ivory and rhino horn trade for many years. *One or other has been caught smuggling on more than one occasion, but either the charges were dropped or the fine was insignificant.* When the decision was made to ban the international ivory trade, the Hong Kong premises of the family's Rand Company was believed to house a stockpile of around 40 tonnes of ivory.

*The Pongs' South African companies, Statex and A.H. Pong and Sons, are run from a heavily fortified building in Pretoria. There the business, ostensibly trade in retail clothing and copper scrap, appears to be run by Cheong and Gee.*

#### LYING LOW

The Pongs have been lying low since Tony Vieira was caught at the Kazungula border post between Zambia and Botswana in October 1988. He was smuggling ivory, horn, skins and cobalt in a false compartment hidden in his truck from Zaire

to South Africa (41). The consignee of the shipment, pertaining to be 'copper scrap', was A.H. Pong and Sons (42). Vieira was fined but Cheong Pong disclaimed all knowledge of the smuggled goods and escaped prosecution.

Pong was desperate to recover Vieira's truck from Botswana customs. He even offered money for its return through his lawyers. An undiscovered hidden compartment containing gems was thought to be his motive (43).

#### TRUCKS ON THE MOVE AGAIN

Vieira's truck was one of a number of 'Pong's trucks', mostly owned by Portuguese, which plied the Kazungula route between April 1988 and April 1989 (40). Then, probably because of close surveillance after the Vieira incident, they changed route. Last year, the trucks started using the Kazungula crossing again on their way from Chingola near the Zambia/Zaire border to a bonded warehouse, c/o A.H. Pong and Sons, in Pretoria. According to documentation, the containers were carrying copper scrap and were in transit to Africa Trading in Hong Kong - to the same address as that of the Rand Company (44,45).

*In November 1991, a source with close links in the Johannesburg underworld told EIA that the Pongs were still moving ivory through Zambia and Botswana. He said, 'It's the same routes, the same people'.*

#### A CARVING FACTORY IN LUBUMBASHI

*After the Vieira incident, Pong allegedly bought two trucks and had them specially fitted with concealed compartments for Yoko Mulaba from LUBUMBASHI in Zaire (43). Lubumbashi, near the border with Zambia, is the home of the Pongs' carving factory (40)."* [I italicise.]

The numbers appearing in parenthesis are a reference to the "source" of such information in an appendix to the report. They are as follows: (40), "Confidential police report on Pong family, 1989"; (41), "Environmental Investigation Agency, 'A System of Extinction', EIA, 1989"; (42), "Bill of Entry for the Removal of Goods in Transit through Zambia, no.220 4.10.88"; (43), "Confidential source pers com to R. Reeve, Johannesburg 12.12.89"; (44), "Confidential source pers com to R. Reeve and S. Galster, Pretoria 3.12.91".

The two members of the Pong family, Mr Gee Pong (Lau Kwong-Gee Pong) and Mr Cheong Pong (Lau Kwong-Cheong Pong) are still residing and trading in the RSA. They were invited to give evidence before the Commission. They did so readily, at short notice, with their counsel, Mr Witz, in attendance. Gee Pong was at all times the manager and main functionary in their business. He was thus in a position to deal with most of the allegations. When giving evidence, he in the first place sketched his family background.

Gee Pong, his father and two brothers initially founded and conducted a general dealers business in Pretoria. In about 1970 his father and one of his brothers returned to Hong Kong. They are both stockbrokers there. The business in the RSA was thereafter run by Gee Pong assisted by his brother Cheong Pong. It expanded and in due course included an import and export business between the RSA and Hong Kong. Malachite and scrap metal were the main commodities they handled. In about 1978 they received inquiries from Hong Kong for the supply of ivory. From that time they bought ivory from local traders and others, advertised to obtain supplies and attended public auctions of tusks in Botswana, Zimbabwe and Zambia. In about 1986 they started to wind down the ivory trading for a number of reasons. Gee Pong insisted that all his dealings in ivory were above board and all their transactions were accompanied by the necessary permits.

According to a witness Mr Gordon Gray Branfield, well-known traders, namely Mr Hans Beck and Mr Rob Harbour, having in their possession permits forged or illicitly obtained, sold tusks to the Pongs producing such permits. Gee Pong said that he had bought ivory legitimately from both these men and retained documentation to prove this. Neither Beck nor Harbour could be traced with a view to their giving evidence.

When asked why his family should have been singled out for such frequent allegations of misconduct, Gee Pong tentatively - and without visible rancour - suggested a number of possible reasons. The Pongs were, as he put it, new boys on the block and not members of "the [Occidental] club" of ivory traders. They were able to offer to purchase ivory at prices higher than their competitors. This too, he said, may have led to resentment and the spread of rumours. Gee Pong explained that throughout the period that they traded in ivory and thereafter, he was on numberless occasions approached by sellers of illegally possessed ivory and rhino horn. He refused to transact with them. Lieutenant-Colonel Pieter Lategan, head of the ESPU, in his evidence confirmed that repeated, well laid plans to entrap the Pongs had all proved unsuccessful. On one occasion Miss Susie Watts of the EIA was used for this purpose. The response to her approach offering one of the Pongs rhino horn was, according to Lategan, "If you don't have a permit,

I'm not even interested in talking to you." Gee Pong's house and business premises were the subject of frequent searches or "raids" on the part of the Transvaal nature conservation authorities without their finding any irregularities. According to minutes of Lock, this team kept the Pongs under surveillance for a considerable period of time without coming up with anything. All this is to be borne in mind in attempting to assess whether the various allegations against them have substance.

To revert to the allegations, copies of a certain document were furnished to the Commission by a number of respondents. One of them was handed in at the hearing as exhibit HH. Those providing this document either could not or would not say who put it together. Lategan subsequently told the Commission that Dr Ros Reeve and Susie Watts, employees of the EIA, compiled it. Some of the information in it purports to come from persons referred to by code letters - usually their initials reversed. Since the allegations in this document were all hearsay with no evidence to support them, the Commission thought it proper to leave it to the Pongs to elect whether they wished to deal with them. Without hesitation they welcomed the opportunity to do so.

This document HH appears to have been the *fons et origo* of most of the criticism of the Pong family and others. I shall in the first place canvass the evidence of Gee Pong in reply to what was said in this document. It is a lengthy one and bristles with prefatory statements such as "It is alleged", "It would appear" and "It seems". I shall confine myself to the more significant accusations against the Pongs. A convenient way of doing so is to refer to the allegation and briefly state Gee Pong's reply. Although, as I have said, these allegations are not backed by any evidence, the exercise is called for to deal with what is at best hearsay.

- (i) "The premises (the Pongs' place of business) were heavily 'fortified' with a surveillance camera at the back (but that's not so unusual in South Africa, especially Johannesburg and Pretoria - violent places)."

Since the Pongs were classified as "non-whites" under the Group Areas Act, they were not permitted to trade in a "white" business area. Their premises were in the Old Cape Location in Pretoria, now known as Marabastad. Crime being rife there, the security measures taken were in no way excessive. The innuendo that the premises were "heavily 'fortified'", though diluted by the qualification in parenthesis, is simply not warranted.

- (ii) It is alleged that the Pongs have previous convictions

and have paid admissions of guilt. Gee Pong denies this. Lategan has checked the police records and confirms that the Pongs have no previous convictions of any description.

- (iii) "In 1983 the South African police confiscated about 100 rhino horns which had been illegally obtained by Gee Pong. He 'wriggled out of the case by producing ancient Natal permits and claiming that the horns were old stock.'"

His shop was searched by the South African Police ("SAP") and the rhino horn found there. This arose from an arrested person alleging that he had sold rhino horn to Gee Pong. The rhino horn found there had the necessary permits. He pleaded not guilty at his trial and was acquitted without any evidence being led.

- (iv) "During the first three months of 1986, A.H. Pong & Sons shipped about 230 kg of rhino 'skin' (possibly horn?) from South Africa to Macau in four shipments, misdeclared [sic] as 'cow hide' or 'ox horns'..."

Gee Pong explained that one shipment of rhino hide was thus shipped to Macau. An error on the part of his staff - the rhino hide should not have been packed and despatched - gave rise to this incident. For this A H Pong and Sons paid a penalty of R600, as opposed to a fine after conviction.

- (v) "The Pongs have been involved in other illegalities such as replacing small tusks with large tusks (see EIA's 'A System of Extinction'), document fraud and bribery of government permit-issuing officers in South Africa and Zambia."

This is denied by Gee Pong. Intensive investigation on the part of the Commission produced no evidence of any such unlawful conduct.

- (vi) "... in June 1988 Pong was taken to court over handling stolen copper. Two Zairians, Mukalay of Jeca Mines and another man, flew over to testify that the copper belonged to someone in Zaire. As a result the case was thrown out of court. No more details could be obtained."

This cryptic statement under the heading "Previous smuggling offences" grossly misrepresents the true facts. Gee Pong in the course of his normal business did buy scrap copper from a person in Zaire. It was consigned to him. In the RSA another person, Van Zyl,

claimed that he had a lien on the goods and after an ex parte application to court seized them from Gee Pong's possession. When this came to Gee Pong's knowledge he launched an urgent spoliation application to the Supreme Court to have the copper returned to him. The person who flew from Zaire was the owner and consignor of the copper. He testified on Gee Pong's behalf explaining that the copper had been legitimately sold by him to Gee Pong. The application succeeded. The court ordered that the goods be restored to Gee Pong with costs. Mr Wiltz appeared on Gee Pong's behalf in that application to court. At the Commission's hearing he confirmed these facts.

- (vii) The document HM also alleges that a trader, Nicholas Spanoyannis, had made a statement saying that he at one time operated as a smuggler for Gee Pong. He was a trader in the commodities handled by Gee Pong. The latter had bought goods from him. Spanoyannis was convicted of smuggling mandrax tablets and sentenced to 14 years imprisonment and deported. He made the statement implicating Gee Pong after his arrest. Gee Pong acknowledged that he had bought goods from Spanoyannis but denied ever having bought ivory from him or having in any way acted illegally. When Spanoyannis was arrested Gee Pong owed him money for goods purchased. He paid this money to Spanoyannis's wife. This was necessary to support her and her children. Spanoyannis resented this since he was estranged from her and considered that his girl-friend should have been the recipient of the money. According to Gee Pong, this may be the explanation for his having been falsely implicated at a time when he wished to ingratiate himself with the people arresting or deporting him.

- (viii) EIA's report "A System of Extinction" alleges:

"... the Pong family has high level political protection from the South African authorities because he [sic] is involved in sanctions busting imports. Pong is said to import much needed computers from Japan and the People's Republic of China and is protected from investigation or prosecution by South Africa's wildlife enforcement authorities."

The report further states that the political protection is said to have been provided by people close to Craig Williamson, a former spy.

All these allegations are denied by Gee Pong. In twenty years he has never imported a computer or been involved in sanctions busting. He has never met and knows

nothing about Craig Williamson.

- (ix) Gee Pong in his evidence on oath dealt in detail with the Botswana seizure at the Kazungula border post. The truck driven by Viera did carry scrap metal consigned to the Pongs. Viera was entitled to convey other goods as well. The fact that the scrap metal was consigned to the Pongs was no ground for concluding that the ivory was being smuggled on behalf of Gee Pong, and the court so found.
- (x) Gee Pong explained that he or his company has never owned any transport trucks for the conveyance of goods in southern Africa let alone ones with secret compartments - all as alleged in exhibit HH. The only vehicles ever owned by him or his business are the light delivery vehicles based in Pretoria for use locally. He knows nothing about a Mr Yoko Mulaba from Lubumbashi in Zaïre for whom he is alleged to have bought two trucks with concealed compartments.

The evidence given by Pong in reference to document HH at the same time refutes or explains the corresponding unsubstantiated allegations in the two EIA reports.

His brother Cheong Pong also gave confirmatory evidence. From their demeanour - admittedly somewhat inscrutable - there was no reason to think that on these issues they were not telling the truth. As I have said, they came willingly and at their own expense to testify before the Commission. If their reputation of being "at the top of the [Mafia] list" as said in the second EIA report is based on these allegations, a member of the Pong family may perhaps be pardoned for sharing, with reference to certain of them, some of the sentiments of Mark Twain when he wrote:

"He spoke of me all the time in the blindest way, as 'this prodigious giant', and 'this horrible sky-towering monster', and 'this tusked and taloned man-devouring ogre'; and everybody took in all this bosh in the naivest way and never smiled nor seemed to notice that there was any discrepancy between these watered statistics and me." From A Connecticut Yankee in King Arthur's Court.

So much for the unsubstantiated allegations. What evidence there was concerned Cheong Pong who, as I have said, testified at the hearing. Mr Keith Rowse told the Commission that he had on three or four occasions sold ivory without a permit to Cheong Pong at the Pongs' place of business and once at his house. This was denied by Cheong Pong. He said that Rowse did

approach him with a view to selling ivory that Rowse said he could obtain in Botswana. Cheong Pong told him that he would transact with him provided Rowse could produce the necessary permits. This he apparently could not do because that was the last Cheong Pong saw of him.

Rowse was a smuggler. At the time he testified he had been convicted of dealing in mandrax for which a fine of R250 000 was imposed. This he was still paying in instalments. He was not an impressive witness. In the circumstances there are insufficient grounds for accepting his evidence in preference to that of Cheong Pong.

The other piece of evidence involving Cheong Pong presents a more perplexing picture. Mr Ian Parker, to whom I have already referred, assisted the Commission in a number of respects. In the course of an investigation in August 1979 he interviewed Cheong Pong at the office of Mr John Ilsley, another ivory trader in Johannesburg. Parker and Cheong Pong had not met before. Cheong Pong was aware of the fact that Parker was carrying out an investigation relating to the ivory trade and that this was the reason for the interview. They spoke at length. When they parted Parker made the following notes in his diary:

- "1 Handles Rhodesian ivory.
- 2 Buys Mozambique thro' Swaziland.
- 3 Zambia through Botswana as Machinery parts.
- 4 Angola? - Minister.
- 5 Agrees some goes completely hidden - sea freight.
- 6 Obvious that considerable quantity goes by sea from SWA
- 7 Supplies to Red. C. through Macao rhino-horn
- 8 Concedes getting supplies from Zaire/thro' Zambia"

A copy of this extract from his diary was handed in as exhibit S.

After a lapse of some 16 years Parker was understandably not able from memory to amplify these notes to any significant extent. Note 3 is *prima facie* the incriminating one. In reference to it Parker said that his understanding was that Cheong Pong told him that he, Cheong Pong, had shipped the ivory as machine parts. When asked why Cheong Pong would have said this Parker frankly replied:

"I have been questioned on this. Is it likely that a man would tell me, an investigator, that he had actually hidden stuff? All I can say is I



wrote this down. .... I had no intention of fooling myself, so I'm fairly certain that he said that he shipped ivory from Zambia through Botswana as machine parts." [I italicise.]

This Cheong Pong predictably denied. He too had no detailed recollection of the conversation which he said was a general discussion on various aspects of the ivory trade. But he was emphatic that he did not transport ivory as machine parts. He was as emphatic that, had he done so, he would not have made such an admission to Parker, a stranger and an investigator. He explained that in any event all the ivory brought by them from Zambia was conveyed directly by air to Hong Kong and not via Botswana. There were no indications that either Parker or Cheong Pong was being untruthful. There can be no doubt that Parker's note was genuine and made more or less contemporaneously. It, however, does not explicitly connote that Cheong Pong was referring to his own conduct or that of the Pong family. That he would have made such an admission is inherently improbable for the reason given by Cheong Pong. In the circumstances it cannot be said that Parker's evidence in this regard proves that Cheong Pong or the Pongs' business operation was involved in the illicit transportation of ivory.

In the result the Commission must conclude that the widespread allegations against the Pong family have not been substantiated. In fact many have been satisfactorily refuted by the evidence placed before the Commission. If what has been disclosed to the Commission justifies a measure of suspicion as to the past practices of the Pong family, so be it. But in the absence of proof of misconduct they ought not to be branded as smugglers and criminals.

Antonio Giannini came to the RSA from Italy at the age of 16. In about 1972 he started trading in zebra hides. As his business grew he began to deal in ivory and other African products. At present he is the owner of a large business, known as Ruacanã Safari and Game Industry, in Johannesburg. He initially bought tusks from refugees from Angola who were staying in a refugee camp at Cullinan near Pretoria and from those still in Namibia. At that stage refugees with saleable possessions, such as ivory or semiprecious stones, were required to obtain an official SAF certificate or receipt stating that these items had been brought from Angola by them. They could then sell such possessions without any further formality or permit. Later he bought tusks from traders and at public auctions. During the period from 1975 to 1976 Giannini collected about 3 to 4 tonnes of ivory. Some of this he manufactured into curios, some was exported. In 1989 he bought 1 066 kg of ivory at a KNP auction for about R800 000. The CITES ban on ivory trade (see Chapter 13.3 *infra*) at the end of that year prevented him from disposing of this purchase.

During the period he was dealing in ivory his home and his business premises were frequently inspected - raided, as he put it - by the Transvaal nature conservation authorities and by the SAP. On each occasion he was able to give a good account of how he came by his stock and produce the necessary documentation. Lategan was the police officer involved in the SAP steps taken and he confirmed this. These raids arose from anonymous telephone calls to the authorities. In one instance Giannini set a trap for such an informer and was able to identify him. He gave the Commission a graphic account of how this was done. On the question whether he was a smuggler he said:

"I want to make one point clear to this Commission, is that I am not and never was an ivory smuggler for this main reasons. First, it's not to my belief. Secondly, would put at risk many years of hard work to my business."

and at a later stage:

"I retain and I remain [sic] that being in the curio trade, it's a trade like any other trade. That doesn't mean because I'm in the curio trade I'm a smuggler. That is the part I cannot tolerate from various different authorities. It looks - it's obvious or believed that if you are in the curio trade, you're a crook. If I was a crook, after continuation - if I was a smuggler, after continuation over and over again, by different department over 25 years, I've been visited over and over again. They checked my book, my records, my stock. They laid traps. I was never found guilty. I was never incriminated. I was never - I never paid any - what you call? - fine of - court fines, criminal offence. Right. In other words, is every diamond dealer smuggler of diamonds? Is that necessary to be a good business person? That does not mean that I'd accept from various newspaper, in magazines painting me as a smuggler. Now, if the real smuggler do need a scapegoat, it's a very simple. I'm exposed because I have an open showroom to the public, to the curio trade, so it's very easy to point a finger to me because crooks always need scapegoats." [Volume XII pages 864 & 868 - 869]

As far as one could gauge from his demeanour he had a very real sense of grievance. Lategan confirmed that he had a clean record despite the regular attention he had received from law enforcement officials.

Giannini features in the second EIA report. Under a photograph of him holding an ivory tusk in his shop, the following appears:

**"TONI GIANNINI AND RUACANA SAFARIS**

Antonio (Toni) Giannini is a major ivory dealer whose company, Ruacana Safari and Game Industry, operates out of Johannesburg. Despite Giannini's 'name as an honest businessman', Ruacana is reported to have been under investigation for smuggling ivory from northern Namibia. Giannini is alleged to have a carving factory in Namibia (46).

**COLLUSION WITH TRANSVAAL NATURE CONSERVATION ON IVORY SALE TO JAPAN**

Toni Giannini tried to sell over a tonne of ivory to Japan after the Japanese ban on trade went into effect on the 19th September 1989. On the 10th November, Transvaal Nature Conservation wrote to Mr Takimoto in the Japanese Ministry of International Trade and Industry, on behalf of Ruacana, urging him 'on humanitarian grounds to make an exception in this case and allow a special import of at least the 1066.1 kg raw ivory by Takaichi Ivory Trading Co. or as an alternative, to allow the import of the ivory by the original client, Joyo Tsusho Co.' They tried to claim the shipment was legal since negotiations were started before the ban went into effect."

The first paragraph of the quotation fails to mention that the investigations did not uncover any irregular conduct on his part. The reference (46) is to an undisclosed, confidential source. The charge of "COLLUSION" in the second paragraph is either based on an irresponsible failure to ascertain the true facts or a deliberate disregard of them. It refers to the ivory bought quite legitimately by Giannini at a KNP auction just before the international ban on the sale of ivory came into force in February 1990. This letter of 10 November 1989 was handed in as an exhibit at the hearing and reads as follows:

**"ATTENTION: MR. TAKIMOTO**

Dear Sir

**EXPORT OF RAW ELEPHANT TUSKS TO JAPAN**

I am enclosing a copy of my letter which was transmitted to you by telefax on 30 October 1989, as well as copies of the relevant documents mentioned in my letter.

Having had no reply to my telefaxes in this regard, you must please excuse me for taking the liberty of approaching you once again. This Management Authority finds itself in an awkward position of having to act on behalf of a private dealer who, as mentioned in my letter, faces certain financial ruin.

With reference to the fact that the negotiations regarding the consignment of legal raw ivory of 1066,1 kg were initiated before your country imposed a ban on 19 September 1989, I would like to once again bring the following factors to your attention.

- (a) Ruacana Safari and Game Industry's invoice No. 1298 is dated 23 August 1989.
- (b) This Management Authority's CITES export permit No. 06342 is dated 29 August 1989.
- (c) The date of the letter of credit is 8 September 1989.

The abovementioned dates all indicate that the negotiations had reached an advanced stage before your ban took effect on 19 September 1989.

I urge you on humanitarian grounds to make an exception in this case and allow a special import of at least the 1066,1 kg raw ivory by Takaichi Ivory Trading Co. or as an alternative, to allow the import of the ivory by the original client, Joyo Tsusho Co.

As time is of the essence, I would be extremely grateful if you could advise me of your decision as soon as possible and also indicate if you should consider the matter favourably, your conditions for allowing the import."

As appears from this letter, the reason for writing it was a perfectly innocent one. It was written by Mr Postma, the official in charge of the issue of permits. It cannot possibly be described as an act of collusion. Giannini in evidence gave more details of the background facts which led to this *crime*

ceour on his behalf:

"In fact, as I mentioned, I acquired the ivory [the 1 066 kg costing about R800 000] at such a price because I negotiated the selling price prior to the tender with Takaichi in Japan and when I did win the tender, right away I applied for an export permit, but the law was the importer from Japan, against my export permit he had to get an import permit from Fishery and Wildlife from Japan. That took a while. The fail there was that the Japanese Government, two months before the world banning came into force, they decided to stop importation of ivory trade. In fact, my ivory was at Jan Smuts Airport in crates, ready to leave, with all the necessary documentation. When the client called me from Japan and warned me that if the ivory didn't reach there at certain hour of certain date, the Japanese Government would impounded the shipment, so for that reason I went to Jan Smuts and collected crates back. I couldn't afford to lose that money and in turn I went to Nature Conservation to the officer in charge there, Mr Postma, and I begged of him to try to persuade the Japanese authority in view to the fact that the permit was issued before the announcement of the Japanese Government putting a ban on the ivory importation, if they could be granting the importation of that shipment, which in turn they declined, and I've been sitting with the baby up to date which drained my finance." [Volume XII pages 842 - 843]

Turning to the evidence placed on record at the hearing, Mr Leon van Rooyen, a Namibian nature conservation official, gave evidence implicating Giannini in two respects.

The first can be briefly stated. I shall in due course refer to an occasion when one Roderiques was arrested for possession of tusks at Okahandja and it was arranged that he should not stand trial in open court. Giannini knew Roderiques and traded with him in zebra skins. According to Van Rooyen, Giannini was staying with Roderiques when this ivory was seized. Giannini agrees that he was with Roderiques on an occasion when Van Rooyen and some policemen arrived at night and found, not tusks, but skins and hides. The skins and hides were seized and returned after a few days. In fact they were then purchased by Giannini with the necessary permits. This discrepancy in their evidence relating to what was seized is perhaps due to a confusion of occasions on Van Rooyen's part. But the contradiction, and any explanation for it, is for

present purposes unimportant. On any account it is not suggested that Giannini at the time of their seizure was involved in the possession of the goods - whether hides or tusks - or that they belonged to him or that he was in any way connected with them.

A further contradiction in the evidence of Van Rooyen and Giannini is more serious and less explicable. It relates to bribery. Van Rooyen described the following incident at the hearing:

"Hy [Giannini] het soos gewoonlik weer ingekom en papiere gekry of permitte gekry, toe sê hy, hy het vir my vrou 'n presentjie saangebring, toe gee hy so van hierdie geslypte klippies, 'n nekhangertjie en toe staan hy op om te loop, toe sê hy, 'Ja, maar hier is iets vir jou ook' en toe sit hy so 'n bondel note voor my nêr en toe sê ek net, ek het nou Engels met hom gepraat. Ek het net vir hom gesê, 'You're crazy', u weet, toe gooi ek die note vir hom so terug. Toe vat hy die goed en hy het geloop." [Volume VII page 591]

He added that Giannini produced "'n geweldige bondel note. .... Ek het gedink dis duisende." This he did, according to Van Rooyen, in the presence of a colleague, Mr Cedric de Beer, who has since died. Van Rooyen said that, had De Beer been alive, he would have confirmed that this incident took place. Giannini admitted that he did give Van Rooyen a necklace simply as a gift for his wife and that he did have a large amount of money in his briefcase. This was to make cash purchases in the course of his business. He said that Van Rooyen may well have seen the bank notes when he opened his briefcase to take out the necklace and give it to him. He, however, emphatically denied that he had offered any money to Van Rooyen. According to Giannini, he and Van Rooyen had a heated altercation at the time of the seizure at Roderique's house and this may have prompted Van Rooyen to fabricate this charge against him. This is not at all likely. But, on the other hand, Van Rooyen's account is improbable in more than one respect. There is no suggestion that Van Rooyen had previously acted irregularly on behalf of Giannini and that the money could have been offered for services rendered. There had not been any problems as regards the issue of permits in the past. Moreover none were anticipated. Thus there was no apparent reason for Giannini to have wanted to bribe Van Rooyen by offering him this large amount of money with no more than the cryptic statement: "hier is iets vir jou ook." Van Rooyen did not react by asking what the gift was all about, nor did he return the necklace. Moreover, one would not have expected Giannini to offer Van Rooyen money as a bribe with another conservation official

sitting across the table witnessing the scene. He would surely not have expected Van Rooyen to accept the bribe in the presence of one of his subordinates. In all the circumstances I am unable to hold that any attempt at bribery has been satisfactorily proved. The presumption of innocence must prevail.

The same must be said of another disputed topic. Rowse told the Commission that he knew Giannini. On the advice of another trader Rob Barbour, he approached Giannini in order to legalize 300 kg of ivory in his, Rowse's, possession. He had a blank Zairian permit and Giannini assisted him in weighing each of the tusks and filling in the permit. Giannini said he would charge Rowse R20 per kilogram to pay an official in the conservation department in Pretoria to illicitly issue export permits for the ivory. In due course Rowse obtained the permits and the ivory was exported. Giannini said that Rowse did come to his business and asked him details about how ivory could be exported and the formalities involved in obtaining the necessary permits. But there was no question of payment to him with a view to his paying any conservation official or at all. He simply explained the procedure to be followed. Rowse's account is backed by considerable detail but, as already stated, he was a self-confessed smuggler and, once again, in assessing the reliability of his evidence he is to be regarded as an accomplice. In the circumstances his uncorroborated evidence cannot be accepted in preference to that of Giannini.

A number of other names featured in the documents placed before the Commission. It was said that such persons were heavily engaged in illicit smuggling of ivory and rhino horn. The Commission was precluded from attempting to investigate the activities of some of them. To do so would have fallen outside the terms of reference of the Commission inasmuch as they were not South African citizens and operated beyond the boundaries of the RSA. As regards certain others, the accusations against them were hearsay and they in any event could not be traced or subpoenaed to give evidence at the hearing.

What are the fair and correct conclusions to be drawn from the allegations and evidence relating to smuggling syndicates? They appear to be the following:

- (i) The assertions of the EIA in their reports were a major source of discrediting certain traders, the police and State officials in the RSA.
- (ii) The EIA, and its employees contributing to these reports, were unable to provide the Commission with evidence to substantiate those damaging allegations, despite invitations to do so.

- (iii) Many assertions put forward as fact were shown to have been incorrect and in some cases irresponsibly made.
- (iv) All this is not to say that smuggling syndicates were not or are not operating in RSA or that ivory and rhino horn are not part of their wares. But in the absence of proof, extravagant comments implying that South Africa is presently "one of the largest wildlife outlaws in the world" are not justified.



## 8 THE MILITARY INVOLVEMENT

### 8.1 Introduction

Soon after the appointment of the Commission, Advocate P J J de Jager of Pretoria, who throughout acted as counsel for the SANDF, and the State Attorney, Mr A Trumpie, requested an interview with the Commission. They undertook to co-operate and do all they could to assist the Commission. They have been most helpful.

The representatives of the SANDF supplied a copy of the proceedings and findings of the Roos Inquiry to the Commission. It was marked "SECRET" and at no stage prior to this Commission was its contents made public. It was thought that the original had been destroyed. The search for it continued and was successful. On 17 November 1995 it was received by the Commission from the SANDF. The copy has been checked with the original on all aspects of the Roos Inquiry canvassed at the hearing. Although the Roos Inquiry had been secret and confidential, it was agreed from the outset the Commission was free to use the Roos report as it deemed fit and disclose its contents. The undertaking on behalf of the SANDF to co-operate was confirmed in a letter from General Meixing, the Chief of the SANDF, to the Chairman of the Commission in which he said:

"Dit is my amptelike standpunt dat die SA Weermag en ook nou die Nasionale Weermag nie by smokkel van en onwettige handel in ivoor en renosterhoring betrokke is of was nie.

Die Nasionale Weermag het derhalwe niks om weg te steek nie en onderneem sy volle samewerking aan die Kommissie en sal alle relevante inligting aan die Kommissie beskikbaar stel."

What came to be known as the "Border War" along the northern boundary of Namibia lasted for some 23 years from 1965 until 1989. It is necessary briefly to sketch the course of this conflict for the purposes of this report and for a proper understanding of the evidence.

The regions along the northern boundary of Namibia are from west to east: Kaokoland, Ovambo, Kavango and Caprivi. The Zipfel, which is part of the Caprivi, is the attenuated strip of land on the north-eastern boundary of Namibia. In addition to bordering on Angola, it is contiguous to Zambia, Zimbabwe and Botswana. The town of Rundu, which features prominently in the evidence, served as a military base. It is situated in the Kavango close to the border between Namibia and Angola.

The main arterial road, known as the "Golden Highway", ran in a south-westerly direction to Grootfontein where a larger military base was established. Thereafter the main road proceeded south to Windhoek, Keetmanshoop and on to the RSA.

The conflict in Angola/Namibia - stated in its broadest terms - involved, on the one hand, the SWAPO and the RSA/SWA security forces and, on the other hand, the power struggle within Angola between the National Union for Total Independence of Angola ("UNITA") and the Popular Movement for the Liberation of Angola ("MPLA"). The leaders of the latter two organisations were respectively Dr Savimbi and Mr Neto. By 1975 the MPLA with Cuban assistance had gained control, if somewhat precariously, in central Angola. In mid-1975, after General Constand Viljoen and General Hendrik van den Bergh had visited Dr Savimbi, the RSA decided to support UNITA with provisions and military equipment. Commandant Van der Waals was the liaison officer sent to advise Savimbi. Other military personnel followed to assist and train UNITA forces. Thus the RSA and the SADF became more involved in supporting UNITA and its military operations in Angola. This involvement in Angola ebbed and flowed in the ensuing years, the tide being largely dictated by the need to take invasive action to thwart SWAPO's insurgency operations.

For a proper understanding of the issues relating to the SADF the structure of a particular limb of the RSA military presence in Namibia must also be alluded to by way of preface. I refer to the Military Intelligence Division ("MID") under the command of the Chief of Staff Intelligence ("CSI"). It was a separate branch of the SADF accountable directly to the Chief of the SADF ("CSADF"). The MID had a number of components dealing with intelligence and counter-intelligence, namely, the Directorate Counter Intelligence, the Directorate Military Intelligence and the Directorate Special Tasks. Logistical support for Savimbi was one of the special tasks of the last mentioned directorate. Thus any SADF involvement in ivory or rhino horn would have been on the initiative and the responsibility of the Directorate Special Tasks of the MID. The Commission was told that any disclosure of the operations of this Directorate was only on a "need to know basis". Perhaps more accurately stated, information was withheld on a "need not to know" footing. One must therefore not assume that its activities would have been known to personnel of other sections of the SADF.

A brief reference to the situation in Mozambique over the relevant period can conveniently begin with the grant of its independence from Portugal in June 1975. The nationalist movement, the *Frente de Libertação de Moçambique* ("Frelimo"), with Samora Moisés Machel as its president, became the governing political authority in the territory. The

*Resistencia Nacional Mocambicana* ("Renamo") was one of the numerous internal opposition groups. From about 1978 the RSA assisted Renamo. This involved the supply of military equipment and other goods. This assistance carried on to an undisclosed extent until the signing of the N'Komati Accord on Non-Aggression and Good Neighbourliness on 16 March 1984. In terms of the accord South Africa undertook to refrain from supporting Renamo. There were, however, allegations - and some evidence - that this undertaking was not honoured. In any event, by 1989 President De Klerk categorically denied any South African aid to the Mozambican rebels. SADF involvement, if any, in the smuggling of ivory or rhino horn in or from Mozambique would thus have been over the period from about 1978 to 1989.

A brief explanation of permit requirements for ivory and rhino horn in Kavango and in the rest of SWA is also necessary for a proper understanding of some of the issues still to be discussed. The Kavango province is the region adjacent to portion of the south-eastern Angolan border. Most of the ivory and rhino horn brought from or via Angola entered Namibia through the town of Rundu in the Kavango.

It must be said at the outset that determining the permit requirements in respect of ivory and rhino horn at any particular time proved difficult. The changes in the SWA government structure as a whole, with Kavango and other provinces existing for a period as so-called independent homelands, brought about changes in the permit system which were complex and in certain respects obscure. As will in due course emerge, for the purposes of this report a summary of the permit situation can be restricted to the period from 1977 to 1989. This has been done by interviewing officials involved at various times with the issuing of permits and by referring to the various enactments and regulations.

#### **The period from 1977 to August 1980**

Over this period the Kavango was one of the South African homelands in SWA and, despite a measure of autonomy, fell under the RSA Department of Bantu Administration and Development (later called a variety of other names). The situation as regards permits for ivory and rhino horn in Kavango appears to have been as follows:

**Import Permits:** These related to permits authorising the entry of ivory and rhino horn into Kavango from Angola or any other foreign country. They were issued by the Department of Veterinary Services in Pretoria before any such importation took place. However, often *ex post facto* permission sought at Rundu was granted telephonically from Pretoria. Whether in such a case a record of such import was kept is unclear.

**Veterinary Permits ("vet permits"):** These were necessary to control the spread of foot-and-mouth disease and were issued after the products had been treated and stored for a quarantine period at Rundu. Thereafter they could be further transported across the cordon, the so-called "Red Line" fence, which was erected south of Rundu. In 1974 the veterinary officer stationed at Rundu was Mr Theo van der Merwe. After he left, the post was filled by qualified veterinary surgeons doing their national service in the SADF.

**Possession Permits:** These were statutory permits issued by Mr Neville Steyn in terms of the relevant legislation of the Kavango Government. He was the nature conservation official appointed by the Kavango government and stationed at Rundu from 1974 to 1980. He alone issued them. He did so as a matter of course provided the import and vet permits for the ivory or rhino horn could be produced.

In order to export tusks and rhino horn from a homeland to the "non-homeland" part of SWA, an import permit was required. This was issued by the SWA Department of Nature Conservation. If such a product was to proceed into the RSA via the Transvaal, an export permit from the SWA authorities and an import permit from the corresponding Transvaal authority were necessary.

#### ***The period from August 1980 to 1989***

August 1980 saw the demise of the homelands and the SWA government assumed jurisdiction over the entire territory. From that time the following was the prevailing permit situation:

**Import Permits:** As stated, these were issued by the SWA Department of Nature Conservation. These permits had to be obtained before ivory and rhino horn were imported into SWA.  
**Veterinary Permits:** These continued to be required as above, save that they were now issued by the SWA veterinary authorities.

**Possession Permits:** By proclamation a possession permit was mandatory in SWA. Such permits were issued by the SWA Department of Nature Conservation.

**Export Permits:** Any export of ivory or rhino horn from SWA required such a permit from the SWA Department of Nature Conservation.

**Foreign Import Permits:** Such a permit was required by the receiving country - in the case of the RSA, one from the relevant provincial authority.

## 8.2 Questions relating to military involvement

In the result the questions calling for investigation by this Commission with reference to Namibia/Angola are the following: (i) When did such involvement commence? (ii) What was the extent of such involvement? (iii) When did it cease? (iv) Was it lawful?

The same questions are to be considered with reference to Mozambique and SADF assistance to Renamo.

## 8.3 The Roos Inquiry

The adverse publicity, as I have said, led to the Roos Inquiry. Its president, Brigadier De Wet Roos, has since died. The other members were three high-ranking military officers. The Inquiry started on 31 August 1988. After some interim reports a final report was submitted in November 1988.

The Inquiry was restricted to allegations of illegal trading in ivory. Its terms of reference were

"... om ondersoek in te stel ... in verband met 'n beweerde smokkelhandel in ivoor (LW: Slegs vir sover dit die SA Weermag raak)."

Some 43 persons were interviewed by the Board. During the interviews one of its members produced a handwritten statement based on what was said. It was signed by the person interviewed. There was no sworn attestation of the statement by a commissioner of oaths. Each statement opens, however, with a note that it was made under oath. Apart from the statements of conservationists dealing with Van Note's comments on the elephant populations and the extent of their decrease, the deponents were mainly members of the SANDF and retired members of the SADF.

The conclusions of the Roos Inquiry took the form of a quotation from the report of Van Note followed by findings of the Inquiry. The relevant ones for present purposes were as follows:

VAN NOTE:

"According to reliable sources in Africa, a massive smuggling ring has been operating for years, with the complicity of South African officials at the highest levels of the government and military, to funnel ivory and other contraband out of Africa."

INQUIRY COMMENT: It concurred in the statement that "a massive smuggling ring has been operating for years" and

admitted that the SADF was involved:

"... in die mate dat die SAW tot einde 1979 vroeg 1980 met die amptelike gesanksioneerde vervoer en verkoop van 'n beperkte hoeveelheid (500 tande/1700 kg) Unita ivoor behulpsaam was. Die SAW is egter geensins betrokke by die onwettige handel in ivoor nie."

VAN NOTE:

"The sturdy South African 4-wheel drive trucks that carry war material and other supplies across the Caprivi strip to Savimbi's forces in southern Angola return laden with ivory and valuable tropical hardwood. The South Africans' staging post at Rundu in the Caprivi strip warehouses [sic] the contraband. Tractor-trailers then transport the ivory across Namibia to South Africa. The Angolan ivory trafficking is managed by two former Portuguese colonists from Angola who have close ties to the South African military."

INQUIRY COMMENT:

"Mnr van Note se bewering is gedeeltelik korrek in die sin dat ivoor wel te Rundu (wat nie in die 'Caprivi strip' is nie) gehuisves was in die Administrasie se store voor die verkoop daarvan. Die store was slegs vir 'n beperkte tyd gebruik. Sy bewering wil die indruk skep dat dit standaard praktyk was. Dit is egter nie so nie aangesien slegs twee besendings se ivoor daar geberg is en die praktyk reeds in 1979/80 stopgesit is. Hy is verder ook korrek tov die twee voormalige Portugese wat destyds die SAW hiermee gehelp het."

In sum the Inquiry held that:

- (i) The military personnel of UNITA, and their supporters, were short of provisions necessary for subsistence. For this reason both the SWA and the RSA authorities (not further identified by the Inquiry) consented to UNITA making use of its natural resources, including ivory, by selling their products to SWA and RSA instances (without identifying them). [Roos Inquiry Part 2 page XLVI]
- (ii) Towards the end of 1979 or beginning of 1980 UNITA obtained money from other sources, and

"... as gevolg van 'n lekkasie het die prominensie van hierdie 'handel' begin aandag trek ... in oorleg met Unita is 'n stop aan hierdie bedryf gesit."

It is not clear from the Inquiry whether the SA military involvement in the transportation and sale of the ivory was, apart from being covert, also illegal, that is to say, whether it was handled, conveyed and sold with the necessary authorisation required by law.

The evidence before the Commission manifestly proved that the Roos Inquiry was not an honest attempt to fulfil its terms of reference and seek the truth. Various witnesses confirmed this. Military personnel, amongst others, when giving evidence before the Commission accurately described it as "slap-dash" and superficial. There is ample proof that the Inquiry was not a thorough one. Material documents referred to in statements were not incorporated in the record of the Inquiry. Contradictory and other important facts called for further investigation or elucidation. This did not take place. The exercise was a charade to give apparent authenticity to the press release that followed.

#### 8.4 The Press Release

On 7 December 1988, a matter of days after completion of the Roos Inquiry, there was a press release by the Director Public Relations on behalf of the SADF. In it he stated *inter alia* that:

"The Board of Inquiry convened a few weeks ago to investigate allegations that the SA Defence Force is involved in large-scale ivory smuggling from Northern South West Africa/Namibia and Angola has completed its investigation and handed its report to the Chief of the SA Defence Force for forwarding to the Minister of Defence.

.....  
The Board found that there was no evidence to prove that the Defence Force was responsible for or involved in the killing of elephants. However, small quantities of ivory, captured by UNITA from poachers and others in Angola, were transported by the Defence Force on behalf of UNITA over an 18-month period from mid-1978 to the end of 1979. The Board also found that the amount of ivory transported over this 18-month period was less than 0,25 per cent of the amount which Mr Van Note claimed. This practice was stopped by the Defence Force and UNITA at the end of 1979." [i italicise.]

The portion of the statement which I have emphasized was disingenuous, and less than honest. Even the Roos Inquiry did not restrict the SADF involvement to ivory "captured by UNITA from poachers and others". Not surprisingly, when this Commission questioned the SANDF on this assertion in the press release, it was repudiated. The SANDF also said, in response to another question put by the Commission, that "small quantities of ivory" referred to in the press release ought to have read "limited quantities of ivory".

#### 8.5 Frama Inter-trading (Pty) Ltd ("Frama")

At some stage during the first half of 1980 the SADF decided to establish a commercial company for purchasing supplies for UNITA in the RSA and for conveying such goods to UNITA. Thus Frama came to be incorporated on 21 July 1980. Its sole shareholders from its inception and throughout its existence were Jose Lopes Francisco ("Lopes") and Mr Arlindo Manuel Maia. They were likewise its sole directors. Maia was the executive member based in Johannesburg. He was responsible for the books of account and the purchase of goods to be sent to UNITA. Lopes was the man in the field. He organised the actual transportation of goods to UNITA and, as it turned out, other goods back to the RSA. Lopes was a member of the SADF until 1985 having the rank of sergeant-major. Maia and Lopes each held a R1 share of the nominal share capital of R4 000. No other shares were ever issued. The main object of this company, as reflected in the company's Memorandum of Association, was "to act as retailers, wholesalers, importers and exporters in all fields".

The prime mover in the formation of this company was General Gerhardus Philippus Ortlepp du Preez. He arranged for the opening of the company's bank account at a commercial bank. The one chosen was conveniently situated near the military headquarters which were at that time situated in Poynton Building, central Pretoria. Du Preez arranged that he, and other members of the SADF, would have signing powers on the bank account in addition to the two directors. On the recommendation of the bank, Du Preez selected the company's auditor, Mr Anton van Tonder, of the firm of auditors Messrs Meintjes, Vermooten & Partners. The SADF supplied the capital for Frama to purchase vehicles and start operating. In addition the SADF provided the money necessary for Frama to purchase supplies. The procedure was that the SADF would check the tender prices of goods to be bought and decide which tender was to be accepted. After each delivery by Frama to UNITA, the SADF in collaboration with UNITA would make certain that the goods bought had in fact been delivered. The next payment would then be made to Lopes, or probably Maia, for the following order to be executed. The money paid to Frama for this purpose did not amount to a loan either to Frama or UNITA.



The *quid pro quo* was the benefit, both political and military, to be gained for supporting UNITA. The basis on which Lopes and Maia were remunerated remains somewhat obscure. Lopes was doing rather more than the average sergeant-major in the SADF. They were paid at an accepted rate for the transportation of goods and presumably received some commission from the sellers of the goods for closing contracts with them.

In January 1990 a journalist at that time attached to the *Sunday Times*, Mr De Wet Potgieter, directed a questionnaire to the SADF to which the Director Public Relations, SADF replied. The following was part of the exchange of question and answer:

"When, how and why was CSI's front organisation, Frama, disbanded? [Was it officially liquidated?]"

"Frama started off as a CSI front organization during 1980 for the clandestine supply of rations to UNITA. Towards the end of 1984 it was decided to dispose of Frama as a front organization and it was sold to the directors of the company."

None of the military witnesses was able to explain how the "front company" came to be sold to its existing shareholders and it is difficult to imagine the form this contract of sale would have had to take. Since no witness for the SADF was able to explain the nature of this sale, or how it came about, there is every reason to doubt the correctness of this answer. One thing is certain: if there was ever such an agreement, it certainly did not put an end to the SADF's involvement in Frama. To the extent that it was a front company it continued to be one.

By about 1986 the SADF became aware that Lopes and Maia, or one of them, had been misappropriating funds by making short deliveries and perhaps in other ways. As a result Frama had become indebted to the SADF in the sum of approximately 3.2 million rand. The SADF set about recovering this sum from Lopes, Maia or Frama. It was at this stage that Dr Briers, then Director Financial Administration of the SADF, was called in to assist. The problem had already been referred to Mr Hartman, an attorney and partner of the firm Messrs Hartman and Partners of Pretoria. On the advice of Hartman it was decided that the SADF should take control of Frama, set about recouping the amount due and at the same time wind down Frama. To this end a number of complicated and interlocking contracts were drafted by Hartman and signed by the parties. They involved the pledging of Frama's assets and those of its directors; the granting of powers of attorney in favour of Hartman, Anton van Tonder and perhaps others; and the cession of certain contracts which Frama was in the process of executing. After these

contracts had been drawn up and signed, Maia and Lopes found themselves divested of whatever effective control of the company they had previously exercised. As Briers put it, Frama was under "judicial management", with the SADF in complete control of its affairs. As a result of judicious management the winding down was completed. The money owing to the SADF was recovered and the contracts to provide food and other provisions to UNITA were placed in other hands.

On 4 February 1988, a court application was made for the change of the company's name from Frama Inter-Trading (Pty) Ltd to Elegant Food Distributors (Pty) Ltd ("Elegant Food") with effect from 8 February 1988. Notice of this special resolution for the change of name was signed by Van Tonder as "director/secretary/manager" of Frama. According to Van Tonder and Briers, this step was taken a matter of days before the application to court for the liquidation of Frama. The change of name took place in order that Frama would not feature as the respondent in such proceedings. This was done at the instance of the SADF.

On 16 February 1988 Mr Schoombee, at that time a member of Hartman's firm, signed the petition for the liquidation of Elegant Food. The decision to liquidate was also taken by the SADF. Schoombee relied upon a ceded claim from his firm to him. It was for professional services rendered totalling R750. In the petition it was alleged that Elegant Food had assets in the form of a credit balance of R550 and an electric generator valued at R10 000. As against this, in addition to the amount due for professional services, it was alleged that Elegant Food owed the Receiver of Revenue an amount in excess of R100 000.

On 1 March 1988 Elegant Food was placed under provisional liquidation and on 22 March 1988 this order was made final. In due course Mr von Ginkel, of Sentrale Trustees Edms Bpk, was appointed liquidator. On 9 May 1988 at the first meeting of creditors Schoombee's claim was admitted. It was the only one proved. On 11 July 1988 the audited balance sheet of Elegant Food was received for the year ending 15 February 1988. The Receiver of Revenue did not feature as a creditor. The liquidator's report pointed out that the information in the petition was incorrect. Apparently before liquidation of the company the amount said in the petition to be due to the Receiver of Revenue had been paid by the company or on its behalf. On liquidation Elegant Food's only asset was cash in a trust account in an amount of R2 599. The only proved debt, as I have said, was the petitioner's claim for R750. Thus in actual fact the company was solvent at the time of the application to court, or at least at the time the order was granted, and the claim for professional services could have been paid. On 14 August 1991 the final liquidation and distribution account was accepted by the Master. The R750 owed

to Schoombee was paid to him and a surplus of R465.13 was available to be distributed to the two shareholders jointly. For some reason neither came forward to lay claim to his share of this amount. The Master accordingly placed these amounts in the Guardian's fund where presumably they remain to this day.

Shortly before liquidation Flexitrade CC instituted action against Frama in the Transvaal Provincial Division of the Supreme Court in Pretoria. In this action one Baretto, on behalf of Flexitrade, claimed commission on goods supplied to Frama. By the time the plea was lodged liquidation had supervened and Von Ginkel N O was substituted for Frama as the nominal defendant. This matter proceeded to trial but was settled before it had run its course. This litigation does not feature in the liquidator's final liquidation and redistribution account. The reason for this was furnished by Van Tonder, Briers and Hartman. Each confirmed that the liquidator was given the assurance that this was a matter between the SADF and the plaintiff. The former agreed to give the liquidator an indemnity against any cost that might be incurred or any claim proved against Frama. The litigation was therefore left in the hands of the SADF. It paid all the costs incurred in this action up to the time it was settled by the plaintiff withdrawing its action.

It has been necessary to give this account of the history of Frama to demonstrate that from the womb to the tomb the SADF was involved in its life story.

#### 8.6 Evidence of SADF involvement with ivory and rhino horn in Angola/Namibia

On this question General Philippus Ortlepp du Preez was the key witness. He is a serving officer of the SANDF. He was at all relevant times a commandant and thereafter a colonel in the SADF. In May 1975 he was posted to Rundu as Senior Liaison Officer (SWA) for MID to establish an intelligence network in that area. In due course he was relieved of this work and was exclusively involved in arranging logistical support for UNITA as senior liaison officer of MID. He was in charge of this operation along the entire Namibian/Angolan border from shortly after his arrival at Rundu in May 1975 until mid-1983. For an intervening period from November 1978 to July 1980 he remained in charge but was based in Pretoria. Commandant Fred Oëlschig, after secondment to MID, was at Rundu for that interval as Du Preez's second-in-command. Du Preez was thus a key witness on the question of the SADF involvement with ivory. He testified before the Commission.

He explained that initially the logistical support was restricted to the supply of military equipment to UNITA. This was done free of charge. Lopes was his right-hand man. At an early stage, however, it became necessary also to assist the civilian refugees of UNITA with supplies for which payment was envisaged. This led to the decision at about the start of 1978 that the SADF would on behalf of UNITA become involved in the disposal of ivory brought to Rundu. Du Preez arranged for the ivory to be stored and treated for a quarantine period in the veterinary store-room at Rundu. The arrangement was that Lopes would thereafter deal with the sale of these products. Should the selling point be not at Rundu but elsewhere, the SADF would provide the necessary transport. The decision that the SADF should be thus involved was sanctioned by General Magnus Malan, at that time the Commander-in-Chief of the SADF. This operation continued for about 18 months, that is, from about mid-1978 until about the end of 1979 or the start of 1980. Fred Oelschig and Du Preez then decided it should stop. They gave a variety of reasons for this decision: dealing in ivory was environmentally a sensitive issue; the effort involved in collecting the ivory made the exercise hardly worthwhile; UNITA acquired more lucrative sources to pay for its provisions, notably teak from Angola; and finally, it was said that the SADF's involvement terminated because Frama was established. Some or all of these considerations may have influenced this decision, but the last mentioned was probably the decisive one. As will later emerge, the direct involvement of the SADF did cease from the time Frama became operative. According to Du Preez's evidence, the decision to stop this operation was conveyed to UNITA but - in contrast to its commencement - this decision was not taken on the instruction of higher command and the latter was not informed of it.

Du Preez's evidence was that only a small quantity of ivory was handled over this 18 month period and that in fact for the first 9 months very little ivory was brought to the quarantine store. At the Roos Inquiry he said that in total that no more than 500 tusks were handled during this exercise. When testifying before the Commission he was questioned in this regard. He said that the chairman at the Roos Inquiry pressed him to give this estimate and that "Ek het naderhand uit redeloosheid gesê, - of radeloosheid gesê, dit kon 500 gewees het. Maar ek het nie 'n basis waarop ek dit gesê het nie." [Volume I page 84] Plainly one cannot set any store on what amounted to no more than coerced guesswork.

Du Preez thus confirmed what has been the standpoint of the SADF throughout, viz: that its limited involvement in ivory was confined to this 18 month period from mid-1978 to more or less the end of 1979; that implicitly it did not authorise or condone any conveyance of ivory in Frama vehicles; and as implicitly that at no stage did the SADF arrange with any

authorities that Frama vehicles would not be subjected to search in Namibia on their way south to the RSA.

The question is whether the evidence placed before the Commission bears out these assertions.

The following paragraph appears in Du Preez's statement in the Roos Inquiry:

"UNITA het my gevra om 'n handelskanaal vir ivoor te stig, wat ek toe gedoen het deur eerstens met AMI [Afdeling Militêre Inligting] te skakel, te wete wyle kolonel Knoetze, wat my hanteerder in Rundu was, asook met die AG [Administrateur-Generaal] van SWA, te wete mnr Hough, en die PG [Prokureur-Generaal], advokaat Brunette, die destydse hoof veearts en die Polisie. Hierdie versoek om ivoor vanaf Angola uit te voer was deur al die partye ondersteun."

Du Preez confirmed this statement at the hearing. He was positive that Mr Hough was the Administrator-General to whom he had spoken in this regard. Initially he said that this request was communicated to the authorities mentioned before the decision was taken to give military support in the handling of ivory as from mid-1978 and the approval ("ondersteuning") given referred to such activity. It was, however, pointed out to him that Hough only took office as Administrator-General on 7 October 1980. He remained certain that Hough was the person to whom he had spoken and was therefore as certain - and correctly so - that the initial military involvement was not the "handelskanaal" envisaged. It soon emerged beyond any doubt - though he did not admit this - that Frama was the "handelskanaal" to which he was referring. I say this for the following reasons. (i) It was in fact the only relevant "handelskanaal" established after the time when the interview with Hough took place. (ii) The establishment of Frama can more aptly be termed a "handelskanaal" than the limited assistance the military had hitherto given UNITA. (iii) The visit by Du Preez to these authorities corresponds to the chronology of events. The direct military involvement with ivory, according to Du Preez, came to an end at about the beginning of 1980. Frama was formed in July 1980 and thereafter the approach to the authorities at a time when Hough had assumed office could only have been in connection with the activities of Frama. (iv) Finally, Du Preez in evidence could give no satisfactory reason for wishing to inform all those authorities and seek their "ondersteuning" if military vehicles, as opposed to Frama trucks, were involved in the conveyance of ivory. There can be no doubt that the support sought was in connection with Frama. This counsel for the SANDF conceded - quite correctly in my view - when submitting

oral argument to the Commission on 23 October 1995.

The next question to be considered is why Du Preez went to see these named authorities. Du Preez was at a loss to give any explanation. In fact his evidence was wholly unsatisfactory and evasive in this regard, as appears from the following extract:

"Ek het met hulle gaan praat met die doel om daardie jagsafari's wat ek vroeër vandag oor in taamlike uitbreiding - met taamlike koeë trekke oor gepraat het, om die buitelanders in Angola in te kry, te reël. Ek het vandag daarvoor gepraat.

Is u seker daarvan? Is u seker daarvan? --- Ek is - ek moet vir u werklik bieg, mnr die Voorsitter, om tye te koppel - wat ek wel weet, ek is seker daarvan dat ek met die mense gaan praat het - met hierdie lede gaan praat het vir 'n saak.

Maar kom ons lees dit. U sê u het met hierdie mense gaan praat. 'Hierdie versoek om ivoor vanaf Angola uit te voer, was deur al die partye ondersteun.' Nou, u was - die - wat ookal die - wanneer ookal dit plaasgevind het, dit was iets wat u by hierdie mense wou gaan ondersteuning ontvang, nie waar nie? --- Ja.

Is dit reg? --- Ek het ondersteuning gekry vir die plan wat ek aan hulle voorgelê het.

Was u bedoeling om al die mense te gaan spreek oor die vooruitsigte van 'n jagonderneming? --- Voorsitter, ja, dit - ek koppel dit nou daaraan, want ek weet ek het 'n fout gemaak om dit aan die begin te koppel ... (tussenkoms)

Wel, ek wil nie hê dat u 'n tweede fout moet maak nie. --- Ek is bang daarvoor self, mnr die Voorsitter.

Ek ook. Dis hoekom ek u vra, want ... (tussenkoms). --- Ek is dus nie seker daarvan nie, mnr die Voorsitter.

Wel, dan - dit is nie iets wat - ek wil dit aan u stel, al was dit vyftien jaar terug, is dit baie moeilik om te aanvaar dat waar u hooggeplaaste mense gaan sien, in die eerste plek kolonel Knoetze, u hanteerder, dan gaan u na die hoof van Suidwes, wie ookal hy was, om sy bekragtiging of ondersteuning vir iets te ontvang. Dan gaan u verder na die hoof veearts toe. Dan gaan u na die Prokureur-Generaal toe en dan gaan u ook na die polisie toe. --- Ja.

Hulle was - moes gewees het afsonderlike besoeke. --- Nee.

Het u hulle almal bymekaar gekry? --- Ek het mnr Hough een maal gaan sien. Toe het ek aan hom die saak geskets en ek weet dit was mnr Hough en toe het mnr Hough vir my gesê hy gaan 'n veiligheidsraad, die teen - die soortgelyke saak as wat ons hier in Suid-Afrika as die Staatveiligheidsraad gehad het. Ek dink hulle het dit die Gesamentlike Veiligheidsraad daar genoem, het hy werklik bymekaar geroep, mnr die Voorsitter. Ek het hulle toegesprek oor hierdie aangeleentheid, maar nie - vir seker nie vir die aangeleentheid wat in 1977 in aanvang geneem het nie en --- (tussenkoms).....

Ons het dit nou uitgeskakel, maar nou wil ons ... (tussenkoms). --- Ja, maar ek het oor dié onderwerp met hom gepraat, Voorsitter.

Nou, as u dit kan onthou, sê net presies wat gebeur het. U het na mnr Hough toe gegaan en wat vir hom gesê? --- Voorsitter, ek vind dit nou ongemaklik om te koppel aan die jagsafari, want ek kan daik weer 'n fout maak, maar daar was net twee insidente wat oor die ding gegaan het, die een in 1977 ... (tussenkoms)

Waarom sou dit nodig gewees het vir 'n jagsafari om hierdie mense almal hulle ondersteuning te verkry? Dit is vir my - ek moet vir u sê ek kan dit nie aanvaar nie. U is ook nie seker daarvan nie, maar dis ... (tussenkoms). --- Mag ek - Voorsitter, wel, ek is seker dat ek met hulle gepraat het.

Waaroor? --- Oor - oor invoere van en oor die hele - oor winkels in Angola, oor die kwessie van moontlikheid om ivoor en goeters na Suid-Afrika toe te bring. Ek was - daarvan weet ek het ek met hulle gepraat, mnr die Voorsitter, maar ek kan dit nie koppel nou weer aan die geleentheid nie.

Dit word nou al vaer en vaer. Het dit nie net te doen met jagsafari's nie? --- Voorsitter, ek het 'n hele skema gehad. Die dokument wat kommandant Fred Oëlshig na verwys het, het my gedagte - toe ek dit sien, toe besef ek ek het 'n fout gemaak hier, Meneer. Dit het aanleiding gegee tot - volgens my indruk in die stadium - ek is bang ek maak weer 'n fout - na aanleiding - aanleiding gegee tot hierdie onderhoude wat ek gaan voer het. Ek het vanoggend ... (tussenkoms)

Is dit onderhoude wat u gaan voer het, nê? --- Ek het met mnr Hough gaan praat en 'n voorligting gaan gee aan die Gesamentlike Veiligheidsraad.

Maar hoekom noem u dit 'n Gesamentlike Veiligheidsraad? Wat het die hoof veearts te

doen met 'n Veiligheidsraad? --- Ek dink mnr Hough het hom ingeroep om dit te doen.

Nee, maar dis - u antwoord my nou - ek kan selfs sien uit die bloute uit en dis nie wat ons wil hê nie, Generaal. --- Voorsitter, ek - ek moet dan antwoord ek weet nie.

U - wel, ek dink - ja, miskien is dit so. U - wat hier staan is verkeerd. --- Dit is verkeerd. Ek het dit gister gesê.

En u het nooit een van hierdie mense gaan sien in verband ivoor nie. --- Nee, Voorsitter, ek het die mense gaan sien in verband met ivoor.

Ekskuus? --- Ek het van die mense gaan sien in verband met ivoor.

Vir hulle ondersteuning, soos u dit sê. --- Ek weet ek het hulle gaan sien in verband met ivoor. Nie vir die geval nie en ek het nie onthou wat die geval was nie.

Nou ja, kom ons staan vir 'n oomblik daarso stil. U het hierdie mense gaan sien in verband met ivoor. Is dit nou weereens iets wat u net aan dink of kan ons dit as positief aanvaar? --- Voorsitter, so goed as wat my vermoë is en my geheue my nie in die steek laat nie, ja.

Sien, hoekom ek u in 'n mate hieroor druk, ek kan my nie voorstel dat u die No 1 persoon van Namibië sou gaan sien het ... (tussenkoms). --- Ek het hom gaan sien.

Plus 'n PG, plus 'n vecarts, plus die polisie, en dat u op hierdie stadium nie eintlik enige benul het oor waaroor dit werklik gegaan het. --- Maar ek kan dit nie nou met sekerheid koppel waaroor nie, maar ek weet ek het met hulle gaan praat. Dit is - en ek dink - ek wonder of die Veiligheidsraad dokumente ook vernietig is soos Afdeling Militêre Inligting se dokumente vernietig is. Ek weet nie.

Ja, maar hulle - u geheue is nie vernietig nie en dis waaroor dit gaan, nè? Nou, sê my, u sê positief u het met hierdie mense oor ivoor gesels. --- Ja, mnr die Voorsitter. Dit staan sterk in my geheue.

Goed so. Nou, waaroor sou u met die - met advokaat Brunette oor ivoor gesels het? Waarom of waaroor? --- Ek kan nie die onderwerp onthou nie. Ek weet ek het met hom gepraat. Ek sou nie kan sê hoekom ek met hom gepraat het nie.

Kan u sê hoekom u met die hoof veearts daaroor sou gepraat het? --- Ek moet dieselfde antwoord vir u daaroor gee.

En die polisie? --- Ook dieselfde antwoord." [Volume II pages 233 - 237]



Although the interviews with these authorities took place some fifteen years ago, I cannot accept that the reason for Du Preez having seen them - particularly the Administrator-General who was the top authority in the territory - could have faded from his memory, especially since his reference to the incident at the Roos Inquiry would have refreshed his recollection.

The only reasonable inference to be drawn is that he saw these persons to explain that Frama would be transporting *inter alia* ivory on behalf of UNITA and to ensure that Frama trucks would not be subjected to road blocks and searches. And, I might add, it is unlikely that he would have approached these authorities to make this arrangement, without an instruction from, or the approval of, higher SADF authority. I say that this was his purpose in approaching those officials for the following reasons: (i) The authorities he mentions are precisely those he would have had to see in this regard. (ii) That there was such an arrangement that Frama trucks would not be searched was confirmed by the evidence of Mr Polla Swart. He took over from his predecessor as head of nature conservation in Namibia at the beginning of 1981. He was aware of the agreement between the SADF and his department "dat ons nie die groot FRAMA voertuie mag stop nie." (Volume VII page 557) His unchallenged evidence at the hearing was that soon after he took office Du Preez made an appointment to see him. This was in May 1981 at his office in Windhoek. As it turned out the purpose of the meeting was to confirm with Polla Swart as the new head of the department a pre-existing agreement. Du Preez told him that he had been instructed by the highest authority in the RSA to inform him that Frama trucks conveying wood and elephant products were not to be stopped. Ivory was specifically mentioned. Since this instruction conflicted with Polla Swart's duties as a conservator, he made certain that it had the approval of Hough as Administrator-General before ordering his staff to comply. He explained to the Commission that although he in no way approved of the instruction, he was first and foremost a civil servant and felt obliged to carry out an instruction endorsed by his "boss", the Administrator-General, particularly one emanating from the SADF at a time when it was conducting a war. He however warned the SADF authorities that they would all be cast in a bad light if this instruction ever became public knowledge. In fact in 1984 when he returned from an International Union for Conservation of Natural Resources (IUCN) meeting in Madrid where publications were circulated alleging SADF complicity in ivory smuggling, he showed this literature to officials at the office of the Administrator-General. He again warned them of the implications of official involvement in Frama smuggling but the order was not countermanded. (iii) Whilst the military was transporting ivory in their vehicles prior to Frama taking over there was no need for such an instruction - military vehicles were not stopped at road blocks or in any event were not

searched. But this instruction became necessary when Frama was to do the transporting. (iv) In 1982 a nature conservator at Keatmanshoop, Mr Robbie Hawthorne, contrary to the standing instruction, stopped a Frama truck with a view to inspecting its contents. He broke open the locks on the vehicle and saw that there were locked military-typed containers ("trommels") inside. Those in charge of the vehicle objected to his opening them and made a telephone call to Pretoria. Polla Swart, to whom the matter had been reported, in turn received an instruction from the SADF in Pretoria that the vehicle should be allowed to proceed. He conveyed this message to Hawthorne. This too is consistent with the prior arrangement made by Du Preez. (v) At about the end of 1980 or beginning of 1981 one Rodrigues was found to be in possession of 136 tusks at his home at Okahandja. He explained to the conservation official that he worked for the SADF and that he was entitled to transport the tusks. Since he did not have the necessary permits, the matter was reported to the police with a view to his prosecution. This resulted in an approach to the Attorney-General, at the time Mr Brunette, to arrange that there would not be a subsequent trial with the publicity that this would entail. At the Roos Inquiry, in explaining how Rodrigues came to be arrested, Du Preez said that "onkunde aangaande die amptelike reëlings het gelei tot die inhegterismening deur Natuurbewaring." At the hearing Du Preez was asked what this "amptelike reëling" was if it was not that Frama vehicles were not to be stopped and searched. He was quite unable to give a satisfactory answer.

It is thus clear that such an instruction was given.

There is furthermore evidence of more direct SADF (MID) involvement in the storing and transportation of ivory after the formation of Frama and the fact that this was sanctioned or condoned by the SADF (MID).

In about January 1979 Major Burman saw about 60 rifle and mortar crates in the CSI store at Rundu. They contained ivory tusks. Each crate was labelled "Dental equipment" for despatch to the Waterkloof military air base near Pretoria. Burman added that it was generally known that Lopes, a serving member of the SADF, conducted hunting trips in the Caprivi and south-eastern Angola from as early as 1975 and returned with tusks. In about March 1984 Mr Abraham Gedulla, at that time a member of the SADF Special Forces, accompanied an army truck from Omaruru army base to Grootfontein, that is, going south. He had helped to load at least 5 crates of tusks onto the vehicle at Omaruru. These he had previously seen in the weapons store there. The vehicle proceeded to the runway at Grootfontein and the crates were loaded directly onto a "Flossie", a South African Air Force Hercules aircraft. During 1987 Mr Fernando Gomes was a national serviceman at the Omega base, situated

approximately half-way between Katima Mulilo and Rundu. His troops informed him that a UNITA vehicle carrying tusks was travelling in a westerly direction on the road between these two places, that is to say, along the Golden Highway. On receiving this information Gomes instructed his troops to search vehicles travelling in that direction. In due course a vehicle was stopped and brought to his base at Omega. About 50 tusks were concealed on it. The occupants could not produce any permits but said that they had permission to transport the ivory. Gomes reported the matter to his superior, Commandant Van der Merwe, who said he would make enquiries. He later informed Gomes that the vehicle was to be allowed to proceed. The Commission called Van der Merwe as a witness. He confirmed the essential fact that he received the instruction not to detain the vehicle. Sergeant-Major Abraham Willem Adriaan Maritz, who is still in the service of the SANDF, was stationed at Fort Doppies in the Caprivi whilst serving with Special Forces. Towards the end of 1986 he came upon 10 elephants that had been shot by poachers close to the Golden Highway. The poachers were caught and handed over to a Namibian conservator together with the tusks. The offenders were placed in police custody. Nothing came of the case. They and the tusks simply disappeared. The following year, 1987, he saw a SADF Kwêvoël vehicle that had broken down on the road between Katima Mulilo and Rundu. About 20 tusks were loaded on it. Maritz intended reporting the incident to Colonel Jan Breytenbach. Before he could do so a major from "Inligting" arrived. He said nothing was to be done about the occurrence adding, rather incongruously, he was conducting a large-scale investigation into the smuggling of ivory.

A further question arising is at what stage did the assistance given to Frama cease: when - if at all - was the instruction not to search their vehicles rescinded? Polla Swart was emphatic that this order stood for as long as Frama was involved in the execution of the transport contracts. He was never told that the instruction had been withdrawn. He would certainly have remembered any such rescission since he remained anxious to resume this part of his functions as a conservator. In the light of the denial on the part of the SADF that any instruction not to search was ever given, evidence of its withdrawal - if available - was understandably not forthcoming from any SADF witness.

After the hearings were concluded General Mairing and General Johannes Nel submitted affidavits on this question of Frama vehicles not being searched.

According to Nel's affidavit, in 1983 he was appointed second-in-command of the South West African Territorial Force ("SWATF"). He was a keen environmentalist and held an appointment as an honorary conservator. He confirms that

between 1978 and 1980 when he was in command of Sector 20 in the Kavango area, he was aware that MID personnel were assisting UNITA in the disposal of ivory. He objected but was told that it was authorised. At a later stage he was informed that the SADF's direct involvement had come to an end and that Frama had taken over the transportation of ivory. Towards the end of 1983 Polla Swart, whom he knew well, told him that Frama was transporting ivory through Namibia and that the SADF had instructed him not to stop and search its trucks. Nel took the matter up with General Meiring, who said that this was not to be countenanced. In his affidavit Nel goes on to say:

"Ek het óf vir mnr Polla Swart óf mnr Stoffel Rocher [a senior Namibian Nature Conservation official] óf albei hierdie here ingelig van generaal Meiring se standpunt. Ek doen dus aan die hand dat sedert ongeveer 1984 daar nie by wetstoepers twyfel kon bestaan oor die amptelike standpunt van die Bevelvoerende Generaal van die gebied nie."

Apart from the vagueness as to the identity of the person to whom he spoke and when he did so, I have difficulty with the accuracy of this statement. Polla Swart was certain that the order was never countermanded. This he would assuredly have remembered since he was anxious to resume his searching of vehicles and, as indicated, in 1984 after his return from Madrid he was still complaining about this restriction. If it was Rocher to whom the "standpunt" of General Meiring was told by Nel, one wonders why he, Rocher, did not convey this news to his superior, or why Nel, a keen conservationist, did not tell his friend Polla Swart directly or confirm with him that the standpoint of General Meiring had been passed on to him by Rocher. There must in the circumstances be doubt about Nel's recollection in this regard. But this is largely by the way. Even if Polla Swart had been told by Rocher or anyone else of General Meiring's stance as representing SWATF on this issue, this could hardly be regarded as a rescission of an order Polla Swart had received from Du Preez coming from top SADF authority in Pretoria and sanctioned by the top executive authority in Namibia, the Administrator-General.

General Meiring in his affidavit said that at about the beginning of 1984 he was appointed head of the SWATF. Soon afterwards he was approached by a policeman who reported to him that it was suspected that Frama and Lopes were smuggling ivory from Angola through Namibia. General Meiring was unaware that this was in any way authorised by the SADF (MID). Since Lopes was merely suspected, he called him in and warned him that he would be arrested and prosecuted if by smuggling ivory he abused the military supply system to UNITA with which he, Lopes, was involved. He also told the policeman that he should

do what he could to prevent the smuggling and if necessary search Frama trucks. Since he was unaware of any instruction to the contrary, he did not issue any general order that searching was to take place nor did he contact the Namibian nature conservation department in this regard. His evidence is readily accepted as far as it goes. It establishes that he had no part in any arrangement not to search Frama trucks and that such would not have carried his approval. But it does not contradict the evidence of Pella Swart that he was never told that searching could resume. Nor did it amount to a countermand of the MID instruction that Frama trucks were not to be searched.

On the evidence before the Commission one must therefore conclude that SADF (MID) complicity in Frama's smuggling of ivory, and probably other contraband, continued for as long as Lopes and Maia were involved in the actual transportation of goods on behalf of its front company, Frama. This would have been at the latest until Frama (Elegant Food) was liquidated in 1988. But it may have ceased from an earlier date, that is, more or less from the time the SADF took control of the running of Frama in 1986.

The SADF also failed to make a proper disclosure of the quantity of ivory and rhino horn dealt with over the period that it was involved either directly or afterwards through Frama. At the Roos Inquiry there was no attempt to do so. As already pointed out, the Chairman was content with Du Preez's wholly unsubstantiated estimate of the quantity of ivory during the period the SADF was directly involved. If in fact during that 18 month period it was only a small or limited quantity, one would have expected information in this regard to have been placed before the Roos Inquiry or, at the very least, that some serious attempt would have been made to do so. As regards the subsequent period when its front company Frama transported and sold the ivory, no information as to quantities was forthcoming from the SADF or available from any Frama source. There is, however, a measure of positive evidence from which some idea of the quantity of ivory, and to a lesser extent rhino horn, of Angolan/Namibian origin can be formed.

In November 1978 Mr John Ilsley, a recognised trader in wildlife products including ivory, was asked to attend a meeting at the Burgers Park Hotel in Pretoria. In a room at the hotel he met the late Mr Jan Haak, at that time the Minister of Economic Affairs, in the company of two or three other men. Haak asked whether Ilsley's company was interested in buying a large quantity of ivory, amounts of 30 and 40 tonnes were mentioned. Ilsley understood from him that the ivory was or would be of Zairian or Angolan origin. Haak asked about the ivory trade in general, how it was handled, what documentation was required, the prices for ivory in the trade,

how it was graded and other details. When they parted Haak undertook to get in touch with Ilsley but he did not hear from him. (The Star newspaper of 25 January 1980 reported this incident and added that Haak denied ever having met Ilsley. Later in *Die Beeld* on 29 January 1980 it was reported that Haak acknowledged that he had seen Ilsley in connection with the possible export of ivory.) Unless Haak was making this enquiry with a view to a private venture, which seems rather unlikely, this is perhaps an indication of the amount of ivory entering Namibia from Angola which was to be disposed of with SADF assistance in about 1978. In 1979 Mr Ian Parker went to Rundu during the course of an investigation he was conducting on the international ivory trade. He gave evidence at the hearing. He handed in a contemporaneous note made by him when in Rundu. Mr Neville Steyn, the local conservator previously referred to, showed him the veterinary permit register, which he studied and from which he made his note. He recorded that for the first three months of 1979 vet permits had been issued for 3 911 tusks and 700 rhino horn. The majority had been issued to SADF personnel. What was even more significant is that, with the exception of one permit, all had been issued for tusks and rhino horn in multiples of 5: for example, 2 permits each for 80 tusks, 9 permits each for 50 tusks, 10 permits each for 10 rhino horn and 3 permits each for 200 rhino horn. This irrefutably indicates that those permits were not issued to individual servicemen or refugees for tusks or rhino horn they may have acquired in their private capacity in some or other manner.

Neville Steyn recalls that he issued some permits to traders but that the majority were issued to members of the SADF. One such recipient was Lopes, whom he knew to be a serviceman. Steyn remembers vividly that for the period from 1978 to 1980 there was a significant increase in the amount of import permits for ivory granted to members of the SADF. Parker also noticed that permits for tusks originating within the Kavango district, in which Rundu is situated, were separately registered. He concluded that the internal Namibian production was not included in the amounts of 3 911 tusks and 700 rhino horn and that these had been brought across the Okavango river from Angola to Rundu. These substantial quantities for the first three months of 1979 were recorded during the period when, according to SADF, very little ivory was being transported.

As regards the legality of the SADF involvement, none of the military witnesses that gave evidence before the Commission alleged or could prove that all the necessary permits were obtained for the possession or transportation of ivory or rhino horn by the SADF or Frama. They merely stated that since the operation was authorised by the SADF they regarded it as legal! At the time of the Roos Inquiry no attempt was made to

establish whether the necessary permits were obtained. The relevant issuing authorities were apparently never consulted by the members of the Roos Inquiry in this regard. Since it was a covert operation to assist UNITA, it is highly unlikely that the various permits already enumerated in this report would have been obtained. And last but not least, the uncontradicted evidence of Polla Swart was that no possession permits were ever issued by his department from 1980 onwards to the SANDF, Lopes, Maia or Frama, nor were any export permits issued to them.

To recapitulate in answer to the questions initially posed with reference to Angola/Namibia:

- (i) The SANDF was directly involved in dealing in ivory and probably in rhino horn from mid-1978 to about the beginning of 1980.
- (ii) Frama, a company incorporated in July 1980, was a "front company" of the SANDF engaged in smuggling ivory, and no doubt rhino horn, from Angola to the RSA from its formation until about 1986. The evidence of SANDF involvement with Frama was kept secret. What has been established is that the SANDF aided and abetted such smuggling by its instruction that Frama vehicles were not to be searched during their journey through Namibia to the RSA and that the SANDF continued to an unknown extent to transport ivory by air to the RSA.
- (iii) Responsibility or liability for this conduct must be primarily attributed to the Military Intelligence Division (MID) of the SANDF. There was evidence that high-ranking officers and other servicemen not connected with MID were conscientious conservationists. They took no part in this exercise. Had they known of it, they would never have condoned it. Doubtless there were also members of the MID who did not approve of any measure aimed at causing the large-scale slaughter of elephants and rhinoceros but were under orders they felt they were obliged to obey.
- (iv) Only the SANDF or Frama, if anyone, was in a position to furnish details of the extent of their handling, transporting and smuggling of ivory and rhino horn over the period from mid-1978 for about 8 years, and of the quantities involved. But this was not forthcoming. However, the indications are that the quantities were substantial.
- (v) The SANDF must take vicarious responsibility for other acts of smuggling which would appear to have been rife during the time of its military presence in Namibia.

The poor example set by the SADF directly, and later by Frama as sanctioned by the SADF, must inevitably have served as an invitation to others, both servicemen and civilians, to climb on this lucrative "bandwagon".

- (vi) The evidence establishes that the SADF involvement in the handling and transport of ivory and probably rhino horn, directly and in conjunction with Frama, was illegal in that at least from 1980 the necessary permits were not obtained.
- (vii) In conclusion it must be emphasized that no evidence was placed before the Commission proving that since 1987, when the SADF and the RSA presence in Namibia came to an end, the SADF or the SANDF have been in any way involved in illicit handling of these products. Material placed before the Commission by the SANDF shows that it is now conscious of the need to preserve the environment and that the necessary information and training programmes are in place to promote the cause of conservation within its ranks.

#### 8.7 The alleged involvement in Mozambique

When discussing the adverse publicity, the following allegation by Van Note was quoted:

"A third major flow of poached ivory aided by South Africa is from Mozambique, a nation devastated by a guerilla army financed and directed by the South African military." [I have referred to the hearsay sources on which this accusation is said to be based.]

Most of this statement is beyond doubt correct. In common with most wars, and certainly guerilla wars, the combatants lived off the land. There was large-scale destruction of wildlife, including elephants, to finance the civil war in Mozambique and for subsistence. As already mentioned, the RSA backed Renamo and assisted it with supplies of military equipment and other necessities. It was also actively involved in training Renamo rebels. However, the question whether there was in addition secret official involvement in dealing in, or assisting in the illegal trading of, ivory and rhino horn is the pertinent one. This was certainly rumoured, no doubt on the basis that what was happening on the Angolan/Namibian front was in all likelihood being repeated for the same reasons to assist Renamo.

The legal officers of the Commission made extensive enquiries and carried out a thorough investigation to find out whether the SADF was thus implicated in Mozambique. No evidence was



forthcoming. Two military witnesses testified before the Commission refuting any such allegations. Brigadier Cornelius van Niekerk (MID) was from 1980 to 1987 the liaison officer responsible for furnishing supplies to Renamo. He frequently visited its headquarters at Gerongosa. There he on one occasion saw a huge quantity of tusks being stored. He would have been aware of any SADF sanctioned involvement in transporting or selling such stocks. He denies that this was ever the case. He explained that the situation was not comparable with that on the Angolan/Namibian border. The provisions and equipment to Renamo from the RSA were principally supplied by air with the use of parachutes and thus there was no scope for goods to be loaded for return trips. There can be no doubt that Renamo did dispose of its ivory stock. Van Niekerk said that this could have been far more easily done via other neighbouring countries, namely, Zimbabwe and Malawi. He was in frequent contact with Renamo and at no stage was he ever approached with a request that the SADF assist in this regard. His evidence stands uncontradicted and must therefore be accepted. Information, as opposed to evidence, furnished to this Commission indicated that certain foreign traders or agents, who were not South African citizens or resident in the RSA, dealt with ivory originating in Mozambique. It was said that they exported the ivory and rhino horn from Beira and other places outside the RSA. An investigation into their alleged malpractices falls outside the Commission's terms of reference.

Colonel Gerhardus Petrus Otto was from 1985 a senior staff officer stationed in the Eastern Transvaal. His responsibility was to secure the border between Mozambique and the RSA, half of which was common to the KNP. He appears to be a dedicated conservationist. From his work there he acquired an intimate knowledge of the activities along the border and surrounding areas. He said that any significant organised SADF smuggling operation would have come to his notice. He too testified that this was not the case.

In the result, although the RSA's relationship with Renamo in many respects justifiably gave rise to disapproval, suspicion and rumour, evidence placed before the Commission did not prove SADF complicity in ivory or rhino horn smuggling on the eastern side of our subcontinent.

## 9 OPERATION LOCK

A number of respondents drew the Commission's attention to a covert venture known as Operation Lock ("Lock"). It was also referred to in certain newspaper articles and publications submitted to the Commission. These sources were critical of the operation. Some of the criticism falls within the terms of reference of this Commission. For this reason Lock was the subject of investigation.

It has been frequently and publicly alleged that Lock was initiated, funded and supervised by the World Wildlife Fund for Nature ("WWF"). It is therefore necessary to determine in the first place whether this assertion is correct so that commendation or censure, if either is warranted, can be attributed to the correct source.

WWF is the world's largest private nature conservation agency. It has in excess of 5.2 million members in some 28 countries throughout the world. It was founded in 1968. Prince Bernhard of the Netherlands was its first president. The South African branch of WWF was formerly known as the South African Nature Foundation ("SANF") and is now known as "WWF South Africa". The headquarters of WWF are situated in Switzerland. Dr John Hanks, who gave evidence before the Commission, was the projects manager for WWF for the period from 1985 to 1990 and was stationed at its headquarters. In June 1990 he came to the RSA to become the chief executive of SANF at its office in Stellenbosch. Prince Bernhard was not an office-bearer of WWF at any stage when Lock was in existence.

Hanks explained how Lock came about. Early in 1987 he and Prince Bernhard made a field trip to parts of Africa. They were struck by the plight of rhino on this continent. Hanks pointed out to him that not enough was being done to gather information on the middlemen involved in the illicit trade of rhino horn. Prince Bernhard asked him whether he knew of an organisation that could undertake the task of tracking down these smugglers and exposing them. As Hanks expressed himself at the hearing,

"... he [Prince Bernhard] stressed that he wanted to do this in his personal capacity, using his own money, because he realised that it was a sensitive topic and one that he felt should not be registered by WWF as a project and the funds should not go through WWF books and this was very clearly stated at the start. Now in July of 1987, I heard of the work of an organisation called KAS, KAS Enterprises." [Volume X page 697]

Hanks had previously received a letter from KAS Enterprises

("KAS") addressed to WWF in Switzerland offering their services as undercover investigators. KAS was an organisation formed by Sir David Stirling, the founder of the Special Air Services ("SAS") in Britain. Hanks had some knowledge of the covert work and achievements of SAS. He thought that KAS would be able to do the work he and Prince Bernhard envisaged. KAS produced a feasibility study. Both Hanks and Prince Bernhard found it acceptable and KAS was appointed to undertake this task. Colonel Ian Crooke was to be the leader of the operation. He too was a former SAS man with a distinguished military record. Hanks and Prince Bernhard were satisfied with the reputation and credentials of these two men and felt sure that they could be trusted to carry out their commission. Hanks, and presumably Prince Bernhard, had no knowledge of the character or background of those recruited by Crooke, and perhaps Stirling, to complete the team. Crooke was given a free hand in carrying out the operation and, as Hanks put it, "the less that was available in documentation floating around with names of people and contact addresses, the better." Documents made available to the Commission establish that Prince Bernhard made an initial contribution of a considerable sum of money to Lock and that there were at the outset and later some other private donors. The operation was aimed at all parts of southern and central Africa where the survival of rhino was threatened by poaching and smuggling. As the RSA was said to be the main entrepot for rhino horn, it was chosen as the headquarters for Lock. An ancillary reason was that a group of foreigners from Europe settling in and operating from Pretoria or Johannesburg would be less conspicuous than their arrival, say, in Francistown or Lusaka. Thus it came about that the team established itself in a "safe-house" in Pretoria and later in Johannesburg. They commenced their work in about February 1989.

To return to the question posed: Who was behind Operation Lock? Hanks was adamant that it was not a WWF venture. It was, he said, the brain-child of Prince Bernhard and himself and was not funded by WWF. He was questioned about a WWF document placed before the Commission of which he was the author. Its title is "Discussion Paper prepared by John Hanks (Projects Manager, WWF International) on the need for a Continental Strategy for the Conservation of Rhino in Africa". At the foot of the title page it is stated to be the "Revised edition for consideration by WWF's Conservation Committee". This document, consisting of some 26 pages, in Chapter 8 deals with "The Proposed Action Plan and Financial Requirements". Thus, for instance, on a separate page of this chapter an action plan is headed "Funding of programmes to capture and translocate rhinos from threatened areas to rhino sanctuaries or other reserves." After setting out the proposal, at the foot of the page there is a note: "1988 Budget: SFR100,000 [Swiss Francs 100 000]".

On page 19 of this Chapter on the same lines the following project is explained:

"A major effort to halt the illegal trade by supporting intelligence gathering and the resulting follow-up operations, combined with organizing and applying diplomatic and economic pressures on the responsible countries

This vitally important component of a Continental Rhino Strategy has so far been virtually neglected, although the urgency of the issue was recognized by AERSG in its latest Strategy and Action Plan. Anecdotal and unsubstantiated reports of involvement of government officials and foreign diplomats are no substitute for well-documented specific information incriminating the individuals concerned. Although the total value of the rhino horn trade is relatively small (US\$3 to 6 million per year) and probably declining, it is in places linked with the illegal trade in ivory, which is a much bigger business. Intelligence gathering for the type of information required to disrupt these illegal activities is not the domain of committed amateurs but that of the professional investigators who should be commissioned accordingly to undertake this work. Immediate action is required to disrupt the Lusaka-based rhino poaching operation by providing short-term intelligence information to anti-poaching units in Zimbabwe on the expected crossings of poachers from Zambia into Zimbabwe, and on the sources of intelligence information received in Lusaka on Zimbabwe's anti-poaching activities (availability of the helicopter, etc.).

In the long-term (i.e. within the next 6 to 9 months), comprehensive dossiers should be assembled on the whole illegal trade network to enable international organizations to confront Heads of State within the countries responsible with irrefutable evidence on the culpability of the traders and middlemen concerned. The countries responsible should be informed that in the absence of action to prosecute the offenders, the names of the offenders would be made known internationally, to be followed by diplomatic and possibly even economic pressures to close the illegal trade.

*Professional investigations as described, funded by external sources, were initiated in November 1987. The investigating team has been provided with the information and contacts presently available to WWF. The first report from the team will be made available to WWF by 1 March 1988. This is a major and significant new development which should have far-reaching consequences for conservation activities in Africa.*

*1988 Budget: No WWF funds required*

[I italicise.]

This discussion paper is dated December 1987, that is, after Lock had been decided upon but before its operations had actually begun. "The investigating team" as Hanks readily admitted, is a reference to Lock. At the hearing he was questioned on the contents of this report to WWF, particularly the portion I have emphasized. His evidence in this regard reads as follows:

"The last paragraph says, 'Professional investigations as described, funded by external sources, were initiated in November 1987.' That would be a reference to Operation Lock? --- Yes, it would.

'The investigating team has been provided with the information and contacts presently available to WWF,' right? --- Yes.

'The first report from the team will be made available to WWF by 1 March 1988. This is a major and significant new development which should have far-reaching consequences for conservation activities in South Africa.' This was your report to the - to the Conservation Committee of WWF. --- Correct.

.....  
.... Yes, it is a reference to WWF - to Operation Lock, but it [this last paragraph] does not say, and deliberately so, it does not say who was doing the investigations, how it was conducted or where it was being conducted, and that was deliberately kept out of this documentation.

Your statement in that last paragraph, 'The first report of the team will be made available to WWF by 1 March 1988.' --- Yes.

Which team did that refer to? --- The team referred to was the team doing the investigation.

It was Operation Lock? --- It was Operation Lock, yes, Mr Chairman.

Weren't you telling the sub-committee that the first report from Operation Lock will be made available to WWF by 1 March 1988? --- Yes, Mr

Chairman, I was indeed, and I thought at the time of the report - it was probably naively optimistic - that significant progress would have been made by that period to make a report back to the sub-committee ... (intervention)

Yes, but that's not quite the point I'm on to. When you then said to the sub-committee that the first report of the team - that is Operation Lock, as we know - will be made available to WWF by 1 March 1988, was it your intention to make the first report of Operation Lock available to the WWF? --- Yes, it was, Mr Chairman, because we thought that that report would come up with the type of information that we were looking for here to enable WWF to publicize it and possibly take some action on it. As we subsequently discovered, the issue was far more complex than we realised and as I mentioned earlier, what does one do with this information when you have it? And in discussions that I had in my personal capacity with Operation Lock, it was decided that there would be no purpose and nothing gained by WWF being involved in the project and having access to the first report, so it was not made available.

But when you then included this sentence in the last paragraph, did you perhaps think that there would be a risk that one of the members of the committee reading it would say, 'Who is this team and what are they doing?' --- It - the question was never raised and I think it's ... (intervention)

No, no, that wasn't my question. Didn't - did you appreciate that there was a risk that somebody might ask that? --- Yes. And I would have answered it by saying that, 'I'm sorry. I'm not prepared to disclose who the team is.'

I must say that I do not find this explanation convincing. The discussion paper and particularly the last paragraph of the quoted passage irrefutably tells one that, although Lock was to be privately funded, WWF was to collaborate with Lock to the extent of placing information and contacts at the latter's disposal whilst Lock would give an account of its activities to WWF by way of a first report before 1 March 1988 - and presumably in reports to follow. The note "1988 Budget: No WWF funds required" is also of significance. If Lock was entirely divorced from WWF when this discussion paper was drafted, this observation would seem to have been unnecessary. In fact there would appear to have been no need to refer to it formally in a discussion paper prepared by the WWF's projects manager. The position, as it appears to me, is that Lock was not initiated

as a WWF project - not a "registered" one as Hanks put it - inasmuch as the idea did not originate with WWF and it was not to be funded by it. But that WWF had knowledge of, and an association with, Lock for an undetermined period of time can hardly be gainsaid. It may well be that after this discussion paper was tabled WWF distanced itself from Lock for one or other reason. But as at December 1987, the date of this discussion paper, the extent of WWF's involvement with Lock must be taken to be as reflected in this document. It was never the intention that Lock should become known to the general public and attempts were made to stop its exposure by the media. Once this happened despite such efforts, it was understandable that WWF would distance itself as far as possible from a covert operation of this nature. In many quarters the idea of an SAS team carrying out undercover operations in the cause of conservation would have been frowned upon.

Whatever the precise relationship between WWF and Lock and whatever the period during which such a relationship subsisted, an outsider had every reason to suppose that it was in fact a WWF venture. Hanks attended a meeting of Lock in London at which memoranda for his attention were to be discussed. This became known to certain persons when telefax minutes of this meeting, dated 2 April 1989, in some manner fell into the hands of persons outside Lock. The SANF, an affiliate and in a sense a branch of WWF, assisted Lock administratively *inter alia* by paying for certain Lock transactions out of the SANF bank account. Hanks explained that during his involvement with Lock he was wearing two hats: one in a private capacity and an official one as an executive member of WWF. This may be so, but anyone with the kind of information to which I have referred would have had difficulty in distinguishing his headgear.

In sum, on the evidence available to this Commission, one must conclude that Lock was not a WWF venture but that the latter cannot contend that it had no knowledge of Lock or was totally divorced from it.

The question raised in many quarters - and one pertinent to this inquiry - is whether the members of Lock themselves were engaged in smuggling rather than, or in addition to, trying to root it out. Two reports drawn up by Lock - one for the period June to December 1989 and another dated 1 March 1990 - were handed in at the hearing. They represent an overview of what Lock claimed to have been doing in various African states. These reports were presumably intended for existing and prospective sponsors. They do not make particularly impressive reading. This is doubtless because it is in the nature of undercover operations not to give details of achievements - particularly if they are obtained by unconventional methods.

The reports refer, for instance, to Lock members lobbying in various countries, including Namibia, as a result of which enactments were amended to impose stiffer penalties for poaching and smuggling. The Commission knows that the impetus for such amendments in Namibia came from another source. In any event it is difficult to visualise how, acting incognito, they could have helped in this regard. Both reports appear "padded" and disclose little of substance about Lock's activity.

Lieutenant-Colonel Pieter Lategan was at all relevant times the head of the ESPU, to which I have referred. In his evidence before the Commission he gave more details of Lock's activities. He was contacted by them at the start of 1989 which was soon after the team settled in this country. He liaised with them and arranged for them to obtain rhino horn (more of this later). In fact Lategan had one of his own men staying in the safe-house with them to co-ordinate the work they were to do in conjunction with his investigatory unit. Lategan commended them for their surveillance work and "intelligence gathering", particularly when the operation first started. He said that "they helped us to gather a lot of information which we're still using today". He later became disenchanted with them when they decided to take a more active part in bringing offenders to book. His complaints were that

"... the military can't do a police investigation and they were soldiers and that's what they did.

-----  
 --- Mr Chairman, they had all sorts of weird ideas of how to deal with people. They just thought that a 'shoot to kill' policy would also work and they came with various ideas which simply didn't work out and which I had to veto and say, 'We won't take part in that operation. It can't work like that,' because as ex-soldiers they wanted to go with the maximum force policy and we differed on that one." [Volume 14 pages 992 - 993]

Moreover, he was not told about the rhino horn Lock had obtained from Namibia and could not check on what was happening to the rhino horn he had arranged for them to use. On occasions when he was meant to be present at a rhino horn entrapment, it would take place unsuccessfully in his absence and the rhino horn involved was not accounted for. He concluded by saying

"... as far as I was concerned, the money that they obtained was never declared to me but my concern was mostly what was happening to the rhino horn and that there was no positive follow



up after illegal - or after undercover operations. It simply disappeared somewhere."  
[Volume XIV page 996]

In the result Lategan seized the remaining 16 rhino horn he found in a house occupied by Lock. This was in mid-1990. As far as he is aware it was at about this time that Lock came to an end.

The story behind the rhino horn supplied to Lock is as follows. The horn was said to be needed to infiltrate and entrap smugglers. Fifty were obtained from the stockpile of the Natal Parks Board ("NPB"). Before delivery Dr George Hughes, its Director, obtained authority to deliver the rhino horn from inter alios General Conradie, the head of the Criminal Investigation Department of the SAP, and Mr Adriaan Vlok, the Minister of Law and Order. Hughes was not prepared to part with the rhino horn for nothing. It was decided that R250 000 would be their price and that payment would take the form of a donation to the Natal Parks Board Trust. This amount was paid by the SANF per cheque drawn on its bank account. It was thus ostensibly an out and out donation from this conservation agency to the Trust Fund. Further rhino horn was obtained from the Namibian department of nature conservation and was also paid for by the SANF. The agreement was that 100 rhino horn would be purchased for R250 000. Sixty were certainly received by Lock, for which R150 000 was paid, but there is some doubt whether the full number was ever delivered. In a document compiled by Crooke dated June 1989 with the title "Situation Report during period 18 January to 31 May 1989" (yet another SECRET document that did not remain secret) it is recorded that "the horn has been acquired - a total of 178 of which 78 are immediately available to KAS and are being held in a secure place within RSA." More information on the actual amount delivered to Lock cannot be obtained from either Stirling or Crooke. The former is deceased. The latter has been disabled as a result of a parachute accident and could not be consulted. Hanks could not state how many rhino horns were received by Lock, give an account of how they were used or state what became of the proceeds of any entrapment or any other sale by Lock. In the light of these facts - or rather the paucity thereof - one may well question whether the rhino horn received was used for the intended purpose.

The evening before Hanks gave evidence he was interviewed by one of our legal officers in my presence. Hanks was shown a document that was handed in as Exn Q at the hearing. He had never seen it before and was visibly astonished when portions of it were read to him. He was shocked at the suggestion, and possible inference in this document, that its author might have been a member of the Lock team. These were the paragraphs in document Q that caused him such concern:

# "POSSIBLE PROBLEM AREAS

- a. There is a possible problem and there always has been, with the possibility of running into S.A.D.F. operations. It is a known fact that various SADF operations make use of smugglers and smugglers routes to channel information from neighbouring states back to the RSA. This point is recognised by the investigation team and at the beginning of the operation in February 1989 a decision was taken to avoid any possible contact with SADF personnel involved in such activities.
- b. A second problem exists whereby information may be received of dealers within the rhino horn and ivory trade and upon investigation it is found that these dealers are actually permanent force SADF members. The policy upon the discovery of such information, is to deal with it internally and pass it on to the actual command structure of the SADF personnel concerned and to take great care that such information does not fall into the hands of the media or other departments.
- c. Another problem which was recognised at the beginning was the activities of South African backed Renamo and Unita which have large-scale rhino horn, ivory and other endangered species smuggling routes in operation. Once again, a decision was taken to avoid possible confrontation in this area as far as possible.
- d. The last and most spoken about problem, was the possibility of giving South Africa bad international publicity if the media were to take the information and put it across to the world that the South African government is tolerating the smuggling of endangered specie and wild-life products as part of the destabilisation process of its neighbouring states.  
This point has received much attention at the liaison and command level and an early decision was taken to closely co-ordinate all investigation actions with the South African authorities to, as far as possible, avoid such a repercussion which would have a serious detrimental effect, not only on the host country, being South Africa, but also on the

British subjects involved in this investigation.

#### ADVANTAGES OF THE OPERATION

- a. One of the main advantages of such an operation is that the network needed for the collection and collation of information concerning endangered species and wild-life products, takes on the same format as an infrastructure which is needed for the collection and collation of intelligence directly related to the activities of anti-South African countries, forces and people.

It can thus be stated that *Ian Crooke's personnel* are in a very advantageous position with their foreign backgrounds, passports and so to speak, legitimate activities, which gives them credibility in the African countries in which they operate.

If tasked correctly, *these aforementioned people* could bring back valuable information which could be put to good use by the necessary South African information collecting departments.

- b. The next advantage is the possible *co-operation which has been offered by Ian Crooke* concerning the monitoring of anti-South African bodies which are situated overseas. To what extent and to what value this would be achieved, is not known. Taking into account the sensitivity of such an offer, it would take a considerable amount of careful planning to put such an endeavour into practice." [I italicise.]

Hanks studied document Q overnight. The following morning he pointed out a number of features of the document itself - *of italics* - that showed its author was not one of the Lock team but someone with an intimate knowledge of its activities. He emphatically denied that what was said in the quoted passages in any way reflected his instructions or views, or those of Prince Bernhard.

The evidence of Lategan solves this riddle. At some stage at least one agent of the SA security forces infiltrated Lock. He was a Mr Mike Richards, who operated under the name of Harry Stevens. When document Q was leaked by someone to the press, Richards got in touch with Lategan and accused him of being responsible. Richards had close links, so he said, with Mr Craig Williamson, who was in some way involved with Lock soon after it began. The operation needed specialised military

equipment, for instance, night sight equipment and radios of a particular kind. This may explain how Lock came into contact with, and perhaps became beholden to, elements of the RSA security forces who saw the opportunity of using Lock for their own ends.

Whether all or some of the Lock team knowingly assisted Richards, and perhaps other "security infiltrators", in their undercover objectives is a matter on which one can only speculate. A document obtained by the Commission marked 'PRIVATE AND CONFIDENTIAL' purports to be a statement taken from Richards but is unsigned. It has details of his chequered and umbrageous career in the underworld of intelligence and security operations. In the nature of things information coming from him cannot be regarded as reliable. But, for what it may be worth, it confirms that at the time he was involved with Lock he was connected with MID.

Be all this as it may, what one must readily accept is that those responsible for putting Lock in place did not have the ulterior motive of Lock functioning as some sort of espionage or intelligence-collecting agency for the RSA. It was intended by them to be an anti-poaching or anti-smuggling operation and nothing more. It may have been later contaminated by the other objectives and considerations referred to in document Q. There is, however, no evidence to justify the view, fairly widely held and expressed, that the primary reason for the genesis of Lock was a political one aimed at assisting the government of the RSA.

Although Lock was initiated with a worthy aim, its fatal flaw was that it was a covert operation involving persons with a reputation for carrying out unorthodox exploits to achieve their goals. They were accountable to no one. Thus suspicion regarding them was inevitable particularly since there has been no disclosure of the fate of rhino horn delivered and not recovered. With the benefit of hindsight, Hanks candidly conceded that this operation was not a propitious one.

Post script: I realise that the inclusion of a discussion on document Q goes, strictly speaking, beyond the scope of the terms of reference. But Hanks asked that the Commission should deal with this document to afford him an opportunity to place certain facts on record on oath. It seemed proper to accede to this request.

## 10 THE ENDANGERED SPECIES PROTECTION UNIT

### 10.1 Introduction

Reports by game rangers and others of increased poaching led to the formation in 1988 of the ESPU as a specialist branch of the SAPS. It was established with the specific task of investigating the smuggling of ivory and rhino horn and the arresting of offenders. Widespread allegations of smuggling in the media prompted this step. As already mentioned, Lieutenant-Colonel Lategan has been in charge of this unit since its inception.

At present the ESPU consists of some 30 specially trained members of the SAPS. Its work has been extended to cover all forms of illicit dealing in fauna and flora. Those species calling for protection range from the little known Colophon beetle, which due to its scarcity has become a collector's item and is threatened with extinction, to cycads and abalone, which have featured in the news recently. The work of the ESPU in fact extends beyond endangered species. The illegal handling and disposal of toxic waste and radio-active substances now also fall within the scope of its responsibilities. It follows that the unit cannot devote all its time to ivory and rhino horn poachers and smugglers.

### 10.2 The achievements of the ESPU

As already mentioned, certain respondents questioned the conduct and effectiveness of the ESPU. They intimated that it had succeeded in arresting individual poachers and smugglers but that smuggling syndicates, which are said to exist, continue to flourish. No one came forward with facts to support this, despite the invitation on the part of the Commission for those critical of the ESPU to do so. Lategan's uncontradicted evidence was that every "inquiry", that is, any report of suspected smuggling brought to his notice, was investigated by his unit. In fact from January 1991, when the ESPU became fully operative, until June 1995 there were 792 reports relating to ivory and rhino horn and each received attention. This resulted in 529 prosecutions of which 478 were successful - a 93% success rate. Over this period of 4½ years the ESPU recovered 403 rhino horn, 34 095 ivory cubes and 1 045 raw tusks. The cubes, it is estimated, would have had to have been manufactured from about 3 410 tusks. Thus, the total number of tusks involved would have been of the order of 4 455. Their value, taken with the rhino horn, amounts to about R30 million.

Other efforts on the part of the ESPU have proved effective. This appears from a report of the ESPU handed in as an exhibit at the hearing. It includes the following details of

successful investigations, which - depending on how one defines "syndicates" - would include them:

"The arrest and detention of a Taiwanese citizen for the possession of a total of 115 rhino horns during September 1990.

The arrest of two Taiwanese citizens for the illegal trade in 55 rhino horns during 1991. They were imprisoned without the option of a fine upon conviction.

The arrest of an international smuggling syndicate which operated from Malawi. During the covert operation a member of the Malawian Defence Force was arrested in Muzuzu, Malawi, for the illegal possession of and trade in 113 elephant tusks.

The arrest of an American businessman in Cape Town in June 1992 for the illegal export of 29 elephants tusks, which were discovered in Kobe, Japan, during March 1992.

During October 1993, a total of 9 907 painted (disguised) ivory cubes were confiscated in the Durban harbour. The ivory cubes represent approximately 1 000 elephants tusks and is the largest international consignment of ivory confiscated to date. The ivory cubes in question were destined for Taiwan. Two Taiwanese citizens were arrested in connection with the incident.

On 15 November 1993, the Unit, in co-operation with the Zambian Anti-Corruption Commission, arrested three Zambian citizens at Kaoma, Zambia, in connection with the illegal trade in 82 elephants tusks and 398 kilograms of cannabis. At that stage, the arrest represented the most comprehensive arrest in the criminal history of Zambia.

During February 1994, seven Zambian citizens were arrested in connection with the illegal possession of 1 023 ivory cubes and 16 semi-processed elephant tusks that had a combined weight of 127,2 kilograms. The consignment of ivory was destined for an Oriental syndicate in Johannesburg. All seven accused were found guilty and received jail sentences of five to six years respectively.

During June 1994, two Greek businessmen and two Zambian citizens were arrested in Johannesburg in connection with the illegal trade in 561 ivory cubes, equal to approximately 56 elephant tusks. The value of the ivory is estimated to be in the region of R55 000,00.

During a follow-up investigation after the confiscation of 30 kilograms of ivory in Midrand during May 1995, the largest consignment of abalone to date was confiscated and a factory with several abalone drying kilns were discovered. In a vegetable garden on the property, 800 kilograms of ivory were unearthed. Several arrests followed and convictions with accompanying fines of as much as R200 000,00 were imposed.

At the end of May 1995, the Unit's anti-poaching investigation team was responsible for a major breakthrough with regard to the poaching of rhino in Northern Natal. Since May 1995, thirteen arrests were made and a variety of weapons were confiscated."

Criticism was levelled at the ESPU for creating "front shops". This term refers to an operation initiated by Lategan. It involved the use of existing businesses trading in African curios and second-hand shops. Lategan selected those which had been approached in the past by illicit sellers of ivory and rhino horn. He arranged with the managers of such shops that they would buy ivory and rhino horn as part of a police entrapment exercise. The operation continued for about four years from 1989 to 1993 and was remarkably successful. It led to the exposure of smuggling syndicates and in all approximately 300 people were arrested and about 500 tusks were recovered together with a large quantity of rhino horn. The operation was denounced on the ground that it created a market for these commodities and thus encouraged poaching. This however was offset by the extent of the successful entrapments. These had the merit of enabling the ESPU to conduct an immediate follow-up exercise to trace the chain of participants to the source of the offence. It was an exercise of limited duration and, as indicated, "front shops" are no longer used. Although not canvassed with any witness, it seems a fair inference that these "front shops" may well have contributed to the perception that trading in tusks and rhino horn was a flourishing business in the RSA which was not receiving sufficient police attention.

In short, the Commission has no reason to think that the ESPU is not doing its work proficiently with the means at its

disposal. More staff would naturally enhance its effectiveness as would certain other measures still to be discussed in this chapter of the report.

### 10.3 Collaboration with other investigating units

At the time of the establishment of the ESPU the various provincial and other nature conservation authorities were involved in the prevention of poaching within their respective game parks and reserves. (I shall refer to both as "protected areas".) Most had specialised anti-poaching units consisting of their own staff operating within such areas. They are presently thus engaged. In some instances these units carry out investigatory and detective tasks beyond the boundaries of a particular protected area. This has sometimes led to discord and a duplication of work between such a unit and the ESPU resulting in a measure of mistrust and some reciprocal criticism. For instance, the ESPU has been accused of being high-handed and unwilling to act on information furnished to it whereas it regards certain investigatory teams as unqualified to do what amounts to specialised police work. This is not to say that there has not been a considerable amount of successful co-operation. But this could be improved upon if the line functions of each could be more clearly defined and agreed upon.

Lategan's evidence before the Commission in this regard was sent to all the official nature conservation authorities and to other non-governmental agencies for their comments. The Commission is indebted to them for their replies.

Lategan's basic approach is that the essential duty of a conservator or game warden is to, as he put it, keep the animals alive, that is, to stop poaching taking place. This involves *inter alia* patrolling the protected area in question and establishing an intelligence network in the locality by means of informants. However, once an animal has been killed and poached, Lategan contends that the ESPU should take over. His unit should be promptly called in and the further investigation conducted under its supervision. Naturally, the local unit would pursue the matter in the interim and thereafter assist the ESPU in the detection and arrest of the offenders. Lategan pointed out that, with the co-operation of the SAAF, the ESPU can reach the scene of a killing within hours of its discovery. His unit has the forensic, ballistic and other skills to conduct a proper investigation. He conceded that for his proposals to be effective the ESPU would have to establish a permanent presence at least in KwaZulu/Natal, in the Eastern and Western Cape and in due course have further branches elsewhere. He acknowledged that these other units had a valuable role to play in intelligence work, that is, in the gathering of information of poaching and



smuggling activity and that this function ought not be restricted to a protected area or its immediate locality. But he urged that the ESPU should be the nerve-centre to which all this information should be sent. Without such an arrangement there could be duplication of effort or worse. He cited the example of an agent provocateur of a police unit setting up a potential buyer only to find that his counterpart of another unit regarded him as a potential illicit seller! Until the moment of revelation, both had been wasting time.

It may be necessary for the parties concerned to work out a more detailed demarcation of functions. But in principle the suggestions of Lategan appear to be sound and practical. Generally they have the support of the respondents of the conservation bodies concerned. They all affirm the need for the ESPU to be enlarged and decentralised. They stress that the furnishing of information should be reciprocal. Information acquired by the ESPU which may be of value to a particular anti-poaching unit should be passed on to it. It was also pointed out that anti-poaching units need training in certain aspects of police work, for example, preserving evidence at the scene of a killing. Lategan said that such training could and should be provided by the ESPU. If nature conservation matters are to remain to a greater or lesser extent under the control of the nine provinces of the RSA, the need for the ESPU to be the information bank and co-ordinating body is plainly increased.

## 11 THE LUSAKA AGREEMENT

The "Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora" (the "Agreement") was finally agreed upon and adopted on 8 September 1994. It is still to be implemented. Its signatories to date are Kenya, Tanzania, Ethiopia, Uganda, Swaziland, Zambia, Lesotho and the RSA. For an adequate representation of African states it is hoped that Mozambique, Namibia, Botswana and Zimbabwe will become parties. In the preamble to the Agreement it is noted that

"illegal trade in wild fauna and flora has been made more sophisticated through the use of superior technology in transboundary transactions and should be addressed through commensurate national, regional and international measures."

Interpol estimates that the value of illicit international trade in wildlife and wildlife products is in the region of 5 billion US dollars annually. Hence the need for co-operation internationally, and regionally in Africa, in law enforcement to combat this abusive and destructive process.

The Agreement makes provision for a Governing Council, essentially the executive body, having a representative from each member country. A "Task Force" is to be the entity directly responsible for achieving the purposes of the Agreement. It is to be composed of a Director, a Field Officer seconded by each member country, an Intelligence Officer and such other staff members as the Governing Council deems necessary.

The members of the Task Force are to have all such privileges and access to amenities within member states as are necessary to enable them to operate freely and effectively. They are to function, as it were, as a regional Interpol within the territorial boundaries of the member countries. It is envisaged that they will provide the Task Force on a regular basis with information and scientific data relating to illegal trade and furnish the technical assistance needed for its operations. According to Lategan, the budget for the inaugural year will be about 1 million US dollars. This sum is to be made up of contributions from the member countries, although donations from non-governmental environmental agencies are a distinct possibility.

The seat of the Task Force is a question still outstanding. To date the RSA, Kenya and Zambia have offered to provide this facility. Though not geographically best suited, in other respects the RSA can make out a strong case for its selection.

Its bid should therefore receive official support and would be strengthened if a donor in this country could be found for the necessary accommodation and office equipment.

I have no more than sketched the objectives of the Agreement and how they are to be attained. Its full text has been placed before the Commission and examined. It is of unquestionable merit and in the view of the Commission deserves the full support of our Department of Environment and other conservation agencies in this country and internationally. The formation of such a regional force was first conceived and put forward by Lategan. This is perhaps an added reason for backing it, financially and in all other respects.

## 12 CUSTOMS CONTROL

The attention of the Commission was drawn to the ease with which smugglers could operate through the points of exit from and entry into the RSA. At the hearing two witnesses, Mr Wayne Tonkin and Lategan, dealt with this topic. Their evidence on customs control covered all forms of contraband, not only ivory and rhino horn. The question was broadly discussed although the Commission is primarily concerned with the illegal export of these two products. For as long as this can take place with little or no risk of detection, the RSA, by virtue of its superior communication and transport facilities, will continue to feature prominently as an exporter of illegal goods from other parts of Africa to the Far East and elsewhere.

Tonkin is an assistant director of the Department of Finance: Customs and Excise stationed in Durban. He explained that the function of his department was principally a fiscal one. Certain goods manufactured or produced in the RSA are subject to excise duty if sold within the RSA but exempt if exported. It is the duty of his department to ensure that such goods are in fact exported. It also assists the Reserve Bank in preventing contraventions of the exchange control regulations which arise when money paid for goods exported from the RSA is not repatriated. As far as imports are concerned, virtually all are subject to varying amounts of customs duty according to prescribed tariffs. His department attempts to see to it that the correct duty is paid. These functions are outlined to stress that the detection of contraband is incidental to the Department's main task, though it is none the less an important role its personnel are required to fulfil.

There are certain restrictions and measures applicable to export goods which, if sold locally, would attract excise duty and to certain goods in respect of which the exporter is entitled to a rebate. There is little scope for smuggling contraband in containers loaded with such goods. However, in the case of other goods not subject to excise or rebate - "free goods" as Tonkin described them - there is every opportunity for illicit exportation. He explained that, in addition to the six container terminals at Cape Town, Port Elizabeth, East London, Durban and City Deep in Gauteng, there are various customs offices at other centres, for instance, Germiston and Uppington. At any of these places the necessary authority to export goods can be obtained. A person proposing to export free goods obtains an export bill of entry (form DA 550) at a customs office. The description of the contents or proposed contents of the container to be shipped is entered on this form. Once passed and stamped by the customs official, it authorises the exportation of the container with the specified contents. A completed form would include details of the

exporter's name, the country of destination, the vessel on which the container is to be loaded and a description of the goods. If a DA 550 form does not reflect a commodity for which special authorisation is needed before it may be exported or a prohibited item, the form is stamped as a matter of course. This form can be obtained, completed and officially stamped either before or after the container is packed. Whenever the authorisation is granted, there can be no assurance that the container has been or will be loaded in accordance with the permit. Containers of free goods are not sealed. There are no routine or spot checks by customs officials at customs offices to determine whether the contents and details of the DA 550 form correspond before the container leaves the premises of the consignor. It is only in the case of a tip-off that such an inspection would take place. If the container is to proceed to a terminal by rail, it is thereafter in the charge of Spoornet and Portnet. If Durban is its destination, Tonkin said that it would go directly into the stacking area at the harbour and there await shipment. At present Durban harbour handles approximately 60 000 containers per month in conditions of acute congestion. Containers are stacked in huge piles sometimes five or six containers high. Theoretically the customs officials at a terminal have the right to demand that a container be opened and checked at no cost to Customs. In fact, as in the case of a customs office, no routine or random checks are carried out at a terminal. This is due to practical difficulties. In order to do so, a container would have to be extricated from the heap and removed from the stacking area to a suitable place for such an inspection to take place. Should the container's contents on inspection turn out to be in order, particularly if there were no grounds for suspecting otherwise, and should the loading of the container on that account be delayed by Customs, according to Tonkin his Department could well be held liable for any consequential damages arising from the delay. Apart from any such risk, the fact of the matter is that Customs do not have the staff to carry out such an exercise on any regular basis, particularly in the light of the practical difficulties to which I have referred. Moreover, a person wishing to export prohibited goods could make certain that the container reaches the stacking area only shortly before the departure time of the carrier vessel. Tonkin restricted his evidence to Durban harbour which is by far the busiest port in the RSA. Doubtless to a lesser degree these difficulties prevail at other terminals as well. According to a report in *Die Burger* dated 29 September 1995, the Commissioner for Customs and Excise acknowledged that more customs officials were needed, that the existing staff required more training and sophisticated equipment, and that there was evidence of corruption and bribery on the part of certain officials. He cited an incident of a convicted official who received a bribe of R11 000 for granting the illegal clearance

of goods which otherwise would have earned the State R1.7 million in customs revenue.

Since Tonkin's evidence related only to Durban, a transcript of his testimony was sent to the Commissioner for Customs and Excise for comment. In reply, he endorsed the views and difficulties expressed by Tonkin. In particular he stressed the fact that more staff is required together with other resources, such as X-ray scanning and surveillance equipment necessary to control and detect smuggling. He added that the smuggling of containerised goods is a worldwide problem for which no entirely satisfactory solution has been found.

One cannot but conclude that whatever the cost of measures to remedy these defects and to ensure a closer scrutiny of goods entering and leaving the RSA, the expense would be more than justified by the increased revenue such steps would generate. And - what is of particular importance to this Commission - the less attractive the RSA would become as a "clearing house" for the movement of ivory and rhino horn.

The problem is not confined to goods departing or arriving by sea. The checking of baggage at international airports is inadequate. Lategan gave an illustration of an experiment he carried out. A rhino horn carried in his hand luggage was detected by X-ray at an airport by its personnel. This did not result in any proper investigation. It merely led to an airport official asking him whether it was a dangerous weapon! There is likewise insufficient checking of goods brought in at international airports. Lategan said that he enlisted the services of about 20 reservists, members of the public, and employed them after their working hours and at weekends to check baggage at the Johannesburg International Airport. This produced spectacular results. Over a period of three months they recovered illegal drugs, fake dollar notes, ivory, abalone and other illegal goods. This too tells one that more trained staff carrying out checks and searches at airports of both outgoing and incoming baggage would be all to the good.

Still with international airports, South African Airways ("SAA") have some "direct" flights from London to Durban though they stop at Johannesburg for passengers to disembark. Local Travellers from Johannesburg to Durban are sometimes booked in the seats vacated. For them to avoid the inconvenience of going through customs on arrival at Durban, a sticker is attached to their boarding passes as they pass through the exit gate at the Johannesburg airport. Tonkin pointed out that there is nothing to stop such a passenger from swapping by prior arrangement hold or hand luggage with a passenger who boarded in London. In that event luggage entering the RSA would not pass through customs. This procedure is followed in order to sell more air tickets and for the convenience of

passengers. Despite objections raised by Customs it has continued. The answer would appear to be to require all passengers on such a flight to go through customs. Local ones should be told of this inconvenience when considering a reservation on such a flight.

The situation at other airports used by privately owned aircraft lends itself even more readily to the smuggling of contraband. At an airport such as Lanseria near Johannesburg or Virginia in Durban, there is no resident customs official. Nothing prevents an aircraft from landing and discharging its cargo unchecked. According to Tonkin, in the case of a flight from a foreign country to such an airport it is a duty of the pilot to contact the customs office - something he would hardly do if he did not wish his cargo to be subject to inspection. As regards goods departing from such airports there is likewise no baggage checking procedures. It needs to be pointed out that relatively large planes can make use of these airports and the scope for their being used for smuggling goods is therefore not insignificant.

The problems at all sea- and airports in the RSA relating to containers, staff shortages and the lack of suitable equipment apply similarly to the inspection and control of vehicular traffic entering and leaving through the various customs control points on the borders of the RSA. There is reason to believe that such transportation by road accounts for the bulk of prohibited goods entering the RSA from other parts of the sub-continent.

Finally, with reference to all customs officials at control points, Tonkin explained that they are not trained to detect prohibited items when disguised: for instance, ivory cubes stained or painted to represent something else. Lategan agreed that this was a shortcoming and offered to put in place the necessary training programme.

There is a further problem relating to customs control and the detection of illegal exports. In terms of the Customs Union agreement once goods have been cleared by the customs authorities of a member country no further formalities are required for their passage through the RSA to their foreign destination. The parties to the agreement are the RSA, Lesotho, Botswana and Swaziland. Such goods entering and leaving the RSA would thus not attract the attention of the authorities here - unless it suspected that their conveyance and presence in the RSA constituted a criminal offence. Any smuggling by individuals or syndicates in such member countries is therefore largely beyond the control of the officials in this country.

There have currently been complaints, one may almost say an

outcry, from various quarters that customs control in the RSA calls for urgent attention and overhaul. Such a step, in the light of all that has been discussed above, is fully endorsed by this Commission.



### 13      **INDIRECT      METHODS      AIMED      AT      THE** **PREVENTION      OF      POACHING      AND      SMUGGLING**

The merits of certain indirect measures aimed at the preservation of elephant and rhino and the prevention of poaching, and hence smuggling, were raised by certain respondents.

#### 13.1    Dehorning

The dehorning of rhino was put forward as an operation to be undertaken in certain protected areas to reduce the poaching of particularly the black rhino. The majority of conservationists do not favour this procedure. In their view it is unlikely to prove beneficial save in exceptional circumstances. The reasons for this conclusion are the following. It is an expensive exercise, the extent of the cost involved being dependent upon the method of darting the rhinos, whether by helicopter or ground-tracking; how easily they can be located; and the density of the rhino population in the particular protected area. All these factors, and some other minor ones, determine the cost per animal dehorned. Such cost has been calculated at between 350 and 1 800 US dollars. Since there is regrowth of the horn, the exercise has to be repeated every two or three years. The overall expense has therefore to be weighed against the cost of other measures to prevent poaching. Moreover, the fact that a rhino has been dehorned is no guarantee that it will not be killed by poachers. Immediately after dehorning the base of the horn remains available to be cut from a carcass and there are other parts which are of some commercial value - skin, toe nails and penis. The poacher may in any event decide to kill from vexation at having his tracking efforts frustrated or to prevent his following the same animal on a subsequent poaching excursion. In areas frequented by tourists, dehorning of rhino - one need hardly stress - is an aesthetic disaster. Whether the dehorning adversely affects social structure of the rhino and places them at greater risk from their predators, lion and hyena, is at this stage an open question. On what has been written on the subject there is no evidence that dehorning gives rise to these adverse consequences although perhaps a longer period of time is necessary before a definite conclusion on this question can be reached.

In 1989 the first dehorning experiment was conducted in Namibia. Dr Lindeque, a deputy director of the Namibian conservation department, has told the Commission that it has proved successful. But she readily concedes that this was due to particular circumstances prevailing in the location chosen. The small population concerned was not at risk from hyena or lion predation and their monitoring and protection from

poachers during the rainy season presented problems. No deleterious effects have been observed though these populations have been repeatedly dehorned. In Zimbabwe a decision was taken to carry out an experimental dehorning of white rhino in the Hwange National Park in 1991. Continued poaching in Zimbabwe resulted in a further decision to dehorn all rhinos throughout that territory. Here too success is claimed though it is perhaps premature to make a final assessment of this strategy.

All are agreed that dehorning is an expedient of last resort and such a programme is only to be considered in certain locations where circumstances justify the costs involved.

### 13.2 Local community participation

Many protected areas, certainly those in the RSA, have growing populations of poor people on their borders and in their vicinity. In some cases these protected areas were formerly the traditional tribal hunting grounds of such communities. In the circumstances it is not surprising that negative attitudes towards conservation and its officials exist in the minds of these neighbours. To change them to a relationship of mutual trust and co-operation is thus of vital importance. If this is achieved the political and socio-economic benefits are self-evident. But such a relationship is also of great benefit in the combating of poaching and smuggling activity in the protected areas concerned. It ensures an effective informer network, reduces the incidence of poaching by members of such a community and facilitates the detection of offenders after poaching has taken place.

Conservation authorities in the RSA and elsewhere have become conscious of this need for community participation and the need to assume some responsibility for the welfare of local communities. That they are taking steps to attain this goal appears from written responses to the Commission. The NPB has furnished details of what it has done in this regard. I quote them in full since they no doubt reflect to a greater or lesser extent what other conservation bodies have also undertaken. They might in any event serve as a guide to the scope that exists for local community participation and upliftment:

"The Natal Parks Board, entrusted with the custody and management of protected areas in Natal, REALISING that:

1. all people have the right to the benefits from protected areas;
2. the benefits of protected areas such as employment, markets, natural resources,

education, recreation, stimuli for tourism etc., are not fully developed nor understood and appreciated by all communities;

3. through research and consultation the Board strives to define the most appropriate manner and degree to which people may have access to these benefits;

and ACCEPTING that neighbours may validly lay claim to more attention than the public at large, is CONCERNED that:

1. despite the very positive contribution of nature conservation by recreating South Africa's wildlife heritage, adverse attitudes towards protected areas are still prevalent amongst some neighbouring communities; and
2. population pressure and social change are exacerbating this problem;

the Board BELIEVES that accelerated attention should be given to these issues; and UNDERTAKES to do so by concurrently:

1. creating trust through:
  - a. improved communications;
  - b. negotiating solutions to common problems;
  - c. encouraging participation on conservation activities;
2. developing environmental awareness, through education and interpretation programmes;
3. facilitating access to the material and spiritual benefits of protected areas through understanding neighbours' resource needs and encourage access;
4. fostering the economic and social development of neighbouring communities and thus contributing to an improved quality of life or the continued existence of an acceptable and/or desired lifestyle;
5. training staff in order that they may participate effectively in neighbour-related activities.

The Natal Parks Board has launched an extensive series of programmes to make conservation in general and protected areas in particular more relevant to poor communities. These are:

1. To encourage participation in protected area management and planning by creating Neighbour's Forums to:
  - (a) create trust
  - (b) discuss boundary and land issues
  - (c) create wildlife resource harvesting programmes
  - (d) provide controlled free access
  - (e) formalise and honour commitments
2. To foster economic and social development thus contributing to an improved quality of life by:
  - (a) addressing basic social needs of neighbouring communities
  - (b) encouraging preferential employment
  - (c) involving local entrepreneurs
  - (d) developing wildlife resource areas on periphery of protected areas
  - (e) undertaking appropriate training of staff
3. To enhance environmental awareness by:
  - (a) developing environmental education and interpretation programmes
  - (b) creating an appropriate problem animal policy
  - (c) undertaking training of staff
  - (d) creating a Neighbourhood Trust to fund such actions"

The Commission commends all these measures and considers that they ought to be adopted and supported to the full.

The Ministry of Environment and Tourism in Namibia, in a response to questions on community involvement has raised

"... the prospect of sharing revenues from protected areas (including all forms of game utilization and tourism in such areas) with surrounding communities"

and added that

"Legislation is currently being prepared that would allow us to channel revenue from e.g. live

animal sales or eventually horns and sport hunting back to such communities".

The Ministry offered to furnish the Commission with more details in this regard but these were not deemed necessary in the light of the Commission's terms of reference. In principle, however, the Commission has reservations about any such hand-outs. In the first place, such a programme ought obviously only to be considered when the annual nett profits of a protected area exceed current expenditure and reserves to be set aside for future development and other requirements. There can be no point in passing on "profits" whilst there have to be subsidies from central government or some outside source. As far as the Commission is aware few, if any, protected areas in the RSA are in a position to guarantee a share of annual nett income to others. In any event, one imagines that practical difficulties could arise in deciding who the local beneficiaries ought to be; where the line is to be drawn, both financially and geographically; and how any monetary benefit is to be effectively distributed. The gratitude of some for the largesse would perhaps be offset by the resentment of others who are left out.

### 13.3 The "de-listing" of elephant and rhinoceros products

The Convention on International Trade in Endangered Species of Fauna and Flora ("CITES") was established on 1 July 1975. Its objectives are to create and maintain an international framework for the prevention of trade in endangered species and for the effective regulation of trade in others; the monitoring of international trade in endangered species; and the classification of fauna and flora into certain categories known as Appendices. Appendix I includes all species threatened with extinction which are, or may be, affected by trade. Appendix II includes species that are not necessarily thus threatened but need to be subject to strict regulation and effective control. Appendix III includes any species which a member country of CITES ("a party") identifies as requiring the co-operation of other Convention parties in the control and trading in such species. The placing of a species in Appendix I amounts virtually to a complete ban on trading in such species - only in exceptional circumstances would the necessary permission for such dealing be granted.

The permit system as introduced by CITES enabled records to be kept by the respective management authorities on the extent of trading in appendix items. The accuracy of CITES statistics and the control of endangered species is thus dependent upon parties through their designated "Management Authorities" complying with the requirements relating to permits and certificates and submitting accurately and regularly their returns to the secretariat.

At the time of the most recent biennial conference of CITES at Fort Lauderdale USA in November 1994 there were some 123 member countries. The RSA has been a party since 1975. The conservation departments of the four provinces were appointed Management Authorities for the RSA. At the conference of CITES at Lausanne, Switzerland in November 1989 it was resolved that the African elephant be transferred from Appendix II to Appendix I. The RSA, Zimbabwe and Botswana were opposed to this move and recorded a reservation. They nevertheless agreed voluntarily to comply with this decision. Thus, in effect, as from the beginning of 1990, the ban on the sale and export of ivory was absolute and applied in this country. All species of rhinoceros were listed in Appendix I in 1977. At a later stage the South African white rhino population was transferred to Appendix II. This enabled the NPB to sell to private protected areas and to export white rhino to overseas buyers and donees.

Whether the prohibitions ought to be totally or partially relaxed is a controversial and emotional issue. It impinges on certain of the topics discussed in this report and is thus on the periphery of the terms of reference. For instance, should these bans be lifted, the cost-effectiveness of dehorning would be increased since the sale of these products would generate income. Because it was seen to be relevant, this issue as to whether the ban should continue was canvassed by a number of respondents. I however refrain from expressing a definite opinion on this question for a number of reasons. First, as mentioned, it can only very indirectly fall within the terms of reference: in fact, as previously mentioned, a reason for the appointment of the Commission was to clear the air for this debate to be dispassionately conducted. Second, the information and arguments placed before the Commission have been almost exclusively those of persons who wish to see the ban lifted subject to certain qualifications and restrictions: the contrary viewpoint has not been adequately canvassed. Third, the issue is one to be resolved by conservationists: if by the appointment of a commission, whether national or international, conservationists should obviously constitute the majority of its members.

#### 14 AUTHORITY IN PROTECTED AREAS

During the border wars and the armed political strife in the RSA, a military presence in certain protected areas was inevitable. After their cessation, police or military personnel or both have continued to operate in the KNP and other protected areas, particularly those having an international boundary as part of their perimeter. This is said to be necessary for security and other reasons, for instance, to prevent the influx of illegal immigrants. The conservationists are all agreed that this multiplicity and overlapping of authority in a protected area is undesirable. This was confirmed by Brigadier Otto. It was felt all round that the conservation body concerned should be the exclusive authority in a protected area. Were this to take place, their staff would have to be empowered, and receive the necessary training, to carry out the additional security and police functions. For instance, in the case of the KNP, rangers would be responsible for the arrest and custody of illegal immigrants. Mr Dick Parris, the Director of Operations of the National Parks Board, confirms that such work could be competently undertaken by their own staff provided - and this is an important proviso - that in that event the savings in the SANDF and SAPS budgets would result in a corresponding allocation of funds to the National Parks Board to enable it to carry out this additional work.

The Commission supports this suggestion, its practicability and details for its implementation being matters to be worked out by the parties concerned.

## 15 CONCLUSIONS AND RECOMMENDATIONS

- 1 The effectiveness of a judicial commission would be enhanced were the powers conferred on a judicial officer in a criminal trial, in terms of sections 189 and 204 of the Criminal Procedure Act, No 51 of 1977, to be made available *mutatis mutandis* to a Supreme Court judge acting as chairman of a judicial commission. (See Chapter 2.)
- 2
  - (i) During the period from 1975 to 1987 there was large-scale destruction of wildlife, including elephant and rhinoceros, in Angola and north-eastern Namibia as a result of civil strife and "Border War" in those two countries.
  - (ii) There are clear indications that most of the rhino horn and tusks thus obtained were exported via the RSA either as undisclosed contraband or with false or dishonestly obtained documentation.
  - (iii) Over this period the quantity of ivory imported by foreign countries from the RSA as recorded by them, vastly exceeded the amount of tusks originating in the RSA and Namibia taken with the official record of tusks imported into the RSA and Namibia. From this discrepancy one must conclude that the necessary permits for exportation issued in the RSA were either forged or granted on false information provided by the prospective exporters.
  - (iv) That officials of the Transvaal conservation department or other conservation personnel in the RSA were involved in such misconduct is not the only reasonable inference to be drawn from the evidence placed before the Commission or from its investigations into this question. (See Chapter 6.)
- 3 Though smuggling of ivory and rhino horn through and from the RSA took place, and is no doubt continuing - as evidenced by the arrests and convictions for such activity - the sweeping allegations in certain media reports and publications of large-scale syndicates operating unabated remain unsubstantiated and in certain instances have been refuted. (See Chapter 7 pages 72 and 73.)



- 4
  - (i) During the period from mid-1978 to about 1986 the South African Defence Force (Military Intelligence Division) officially, though covertly, participated in the illicit possession and transportation of ivory and rhino horn from Angola and Namibia to the RSA. Initially the SADF was directly involved and at a later stage collaborated with its "front company", Frama Inter-trading (Pty) Ltd, in continuing such illicit handling of ivory and rhino horn.
  - (ii) The allegations of similar activity on the part of the SADF to assist Renamo in Mozambique were not supported by any evidence placed before the Commission.
  - (iii) There are no grounds for believing that after 1986 the SADF, or its successor the SANDF, has been engaged in smuggling ivory or rhino horn. (See Chapter 8 pages 128 - 131 and 135.)
- 5
 

"Operation Lock" was a covert operation intended to combat the poaching of rhino in central and southern Africa. Former members of the Special Air Services were engaged to carry out this task. Their methods were unorthodox and they were accountable to no one. No official record of Lock's activities or achievements has ever been produced. The rhino horn provided to Lock for the entrapment of offenders was never accounted for. In the circumstances criticism of this venture, and of the limited involvement of the WWF in it, is justified. (See Chapter 9.)
- 6
  - (i) There are no grounds for concluding, as was suggested, that the Endangered Species Protection Unit, under the command of Lieutenant-Colonel Pieter Lategan, is not operating effectively and conscientiously with the limited resources at its disposal.
  - (ii) The ESPU is understaffed and ought to be extended by having a permanent presence of ESPU staff in other parts of the RSA in addition to Pretoria.
  - (iii) This unit plays a major role in the prevention and detection of criminal activity related to wildlife. But there is a need for greater collaboration between the ESPU and other investigatory units attached to protected areas

with a clearer demarcation and understanding of their respective functions. (See Chapter 10.)

- 7 The implementation of the "Lusaka Agreement", which aims at establishing greater co-operation amongst law enforcement officials in countries in southern and central Africa in combating illicit trading in fauna and flora, should receive the full support of the authorities and non-governmental conservation agencies in South Africa. (See Chapter 11.)
- 8 The customs control in the RSA as conducted at present is seriously flawed in many respects with the result that contraband, including ivory and rhino horn, can enter and leave this country with very little risk of detection. The whole question of customs control calls for urgent attention and overhaul. (See Chapter 12.)
- 9 The dehorning of rhino, proposed by some respondents as a measure to curtail poaching and thus smuggling, does not have general approval amongst conservationists. It may in special circumstances be a justified procedure. (See Chapter 13 pages 188 - 191.)
- 10 The removal of the CITES ban relating to elephants and rhino products, raised by certain respondents, is an controversial and emotional issue falling outside the terms of reference of the Commission. (See Chapter 13 pages 197 - 201.)
- 11 It is recommended that, if practicable, the sole authority within a protected area should be the conservation body concerned. Were this to take place their staff would have to be empowered and receive the necessary training to carry out the additional security and police functions. (See Chapter 14.)
- 12 The need for communities adjacent to protected areas to benefit from them and participate in the protection of wildlife in such areas is now generally recognised. (See Chapter 13 pages 191 - 197.)

## 16      *COMMENDATIONS*

Although individual letters of thanks have been written to all respondents and others who have assisted the Commission, I wish to record my thanks to them in this report.

The staff of the Commission deserves special mention. Mr Sansom was of inestimable value to me throughout the inquiry. He dealt with all the administration work and problems with quiet efficiency, showed sound judgment at all times, led the evidence at the hearing fairly and effectively and played a most helpful role in drafting the report itself. He has a particular talent for administrative organisation and dealing with people. Mr Crockart too, conscientiously and competently carried out the work entrusted to him. Both are a credit to the Department of Justice. My thanks are also due to the Secretary of the Commission, Mrs W L Bester, for the capable way in which she ran the secretariat and typed the many drafts and final copy of this report.

Finally, I would like to commend Advocate P J J de Jager for the manner in which he represented the SANDF from the start of this inquiry and particularly during the hearing. Though at all times serving the interests of his client, his helpfulness in providing information and his approach to the inquiry played an important part in ensuring that all issues relating to the SADF were properly canvassed.

## ANNEXURE A

**NAMES OF INDIVIDUALS OR ORGANISATIONS  
WITH WHICH THE COMMISSION COMMUNICATED**

AFRICAN ELEPHANT SPECIALIST GROUP (WWF East Africa), Kenya  
 AFRIKA-STUDIECENTRUM, Netherlands  
 ASSOCIATION OF WILDLIFE INVESTIGATORS, South Africa  
 Blom, Hannes, DEPT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS:  
     FREE STATE, South Africa  
 Branfield, Gray, South Africa  
 Breytenbach, Col Jan, South Africa  
 Bridgeland, Fred, South Africa  
 Botha, Dr Louis, DEPT OF SEA FISHERIES, South Africa  
 Brunette, Adv Don, South Africa  
 Brynhardt, Dolf, South Africa  
 Burns, Ken, South Africa  
 Cameron, Dr C M, DEPT OF ENVIRONMENTAL AFFAIRS & TOURISM,  
     South Africa  
 Chisano, His Excellency, Mr J, President, Mozambique  
 CITES, Switzerland  
 Colesky, Daan, CUSTOMS AND EXCISE, South Africa  
 Crerar, Mandy, FALCON, South Africa  
 CUSTOMS AND EXCISE, South Africa  
 Davies, Brian, South Africa  
 DEPT OF AGRICULTURE AND ENVIRONMENTAL AFFAIRS: FREE STATE,  
     South Africa  
 DEPT OF CONSERVATION AND AGRICULTURE: GAUTENG, South Africa  
 DEPT OF ENVIRONMENTAL AFFAIRS AND TOURISM, South Africa  
 DEPT OF ENVIRONMENTAL AND CULTURAL AFFAIRS: WESTERN CAPE,  
     South Africa  
 DEPT OF FOREIGN AFFAIRS, South Africa  
 DEPT OF NATURE, PARKS AND WILDLIFE, Zimbabwe  
 DEPT OF SEA FISHERIES, South Africa

DEPT OF WILDLIFE CONSERVATION, Swaziland  
 dos Santos, His Excellency, Mr J E, President, Angola  
 Ellis, Steve, AFRIKA-STUDIECENTRUM, Netherlands  
 ENDANGERED SPECIES PROTECTION UNIT, SAPS, South Africa  
 ENDANGERED WILDLIFE TRUST, South Africa  
 ENVIRONMENTAL CONSERVATION: PARKS BOARD, Bophuthatswana  
 ENVIRONMENTAL INVESTIGATION AGENCY, UK  
 ENVIRONMENTAL INVESTIGATION AGENCY, USA  
 Evans, L H, DEPT OF FOREIGN AFFAIRS, South Africa  
 FALCON, South Africa  
 Gedula, Abraham "Boetie", Namibia  
 Geldenhuys, Nic, NATIONAL PARKS BOARD, South Africa  
 Giannini, Tony, South Africa  
 Gomes, Fernando, South Africa  
 Gouws, Dr Dries, Namibia  
 GREENFENCE, Germany  
 GROUP FOR ENVIRONMENTAL MONITORING, South Africa  
 Grové, Maj-Gen W, SOUTH AFRICAN POLICE SERVICES, South Africa  
 Hall-Martin, Dr A, NATIONAL PARKS BOARD, South Africa  
 Hartman, A, South Africa  
 Hanks, Dr John, WORLDWIDE FUND FOR NATURE, South Africa  
 Hawthorne, Robbie, Namibia  
 Hough, Danie, South Africa  
 Hughes, Dr George, NATAL PARKS BOARD, South Africa  
 HUMANE SOCIETY OF THE UNITED STATES, USA  
 Hunter, Nigel, WILDLIFE AND NATIONAL PARKS, Botswana  
 Ilsley, John, South Africa  
 KRUGER NATIONAL PARK, South Africa  
 Kundaali, John, CITES, Switzerland  
 KWAZULU DEPT OF NATURE CONSERVATION, South Africa  
 Labitzke, Helmut, Namibia  
 Lategan, Lt-Col Pieter, ENDANGERED SPECIES PROTECTION UNIT,  
 SAPS, South Africa  
 Ledger, Dr John, ENDANGERED WILDLIFE TRUST, South Africa  
 Lindeque, Dr M, MINISTRY OF ENVIRONMENT AND TOURISM, Namibia

Lindley, David, WILDLIFE SOCIETY OF SA, South Africa  
 Lindsay, Don, WILDLIFE UTILIZATION FORUM OF SA, South Africa  
 Maartens, B, PROFESSIONAL HUNTERS ASSOCIATION OF SOUTHERN  
 AFRICA, South Africa  
 Maggs, Ken, KRUGER NATIONAL PARK, South Africa  
 MacDonald, Dr I, SOUTHERN AFRICA NATURE FOUNDATION,  
 South Africa  
 Maritz, Sgt-Maj "Dap", South Africa  
 Martin, Dr Claude, WORLD WILDLIFE FUND, Switzerland  
 McKenna, Grant, South Africa  
 Meiring, Gen G L, SOUTH AFRICAN NATIONAL DEFENCE FORCE,  
 South Africa  
 Milligan, Tom, TRAFFIC EAST/SOUTHERN AFRICA, Malawi  
 MINISTRY OF ENVIRONMENT AND TOURISM, Namibia  
 Moore, Helen, ENVIRONMENTAL INVESTIGATION AGENCY, UK  
 Muller, Koos, Namibia  
 NATAL PARKS BOARD, South Africa  
 NATIONAL PARKS BOARD, South Africa  
 Nduku, Dr W, DEPT OF NATURE, PARKS AND WILDLIFE, Zimbabwe  
 Neethling, Dr J H, DEPT OF ENVIRONMENTAL AND CULTURAL AFFAIRS:  
 WESTERN CAPE, South Africa  
 Newton, David, TRAFFIC SA, South Africa  
 Ngobese, Peter, GROUP FOR ENVIRONMENTAL MONITORING,  
 South Africa  
 NATAL PARKS BOARD, South Africa  
 Palm, Nico, STRATEGIC RESOURCES CORPORATION (PTY) LTD,  
 South Africa  
 Pangeti, Mr, DEPT NATURE PARKS & WILDLIFE, Zimbabwe  
 Parker, Ian, South Africa  
 Parris, Dick, KRUGER NATIONAL PARK, South Africa  
 Pieterse, Di, WILDLIFE UTILIZATION FORUM OF SA, South Africa  
 Pillinger, Simon, NATAL PARKS BOARD, South Africa  
 Player, Dr Ian, WILDERNESS FOUNDATION, South Africa  
 Pong, Gee, South Africa  
 Pong, Cheong, South Africa

Potgieter, De Wet, South Africa

The President, Angola

The President, Mozambique

The President, UNITA

PROFESSIONAL HUNTERS ASSOCIATION OF SOUTHERN AFRICA,

South Africa

PROTECTED RESOURCES UNIT, NAMPOL, Namibia

Paschel, Pieter, GREENPEACE, Germany

Putterill, Gordon, Zimbabwe

REGISTRAR OF COMPANIES, South Africa

Reilly, Ted, DEPT OF WILDLIFE CONSERVATION, Swaziland

RHINO AND ELEPHANT FOUNDATION, South Africa

RHINO MANAGEMENT COMMITTEE, South Africa

Robinson, Dr G, NATIONAL PARKS BOARD, South Africa

Rowse, Keith, South Africa

Savimbi, Dr Jonas, President, UNITA, Angola

Schoeman, Kobus, DEPT OF CONSERVATION AND AGRICULTURE: GAUTENG,

South Africa

Schoonbee, P, South Africa

Searle, Andy, Zimbabwe

Smit, Steve, FALCON, South Africa

Smith, Hannes, WINDHOEK OBSERVER, Namibia

Smith, Chief Inspector Nico, PROTECTED RESOURCES UNIT, NAMPOL,

Namibia

Snyman, Nico, ASSOCIATION OF WILDLIFE INVESTIGATORS

and NATAL PARKS BOARD, South Africa

SOUTH AFRICAN POLICE SERVICES, South Africa

SOUTH AFRICAN NATIONAL DEFENCE FORCE, South Africa

SOUTHERN AFRICA NATURE FOUNDATION, South Africa

Stansell, Ken, US FISH AND WILDLIFE SOCIETY, USA

Steele, Nic, KWAZULU DEPT OF NATURE CONSERVATION

and RHINO MANAGEMENT COMMITTEE, South Africa

Steyn, Neville, South Africa

Stoltz, Dr L P, DEPT OF AGRICULTURE & ENVIRONMENTAL AFFAIRS:

FREE STATE, South Africa

STRATEGIC RESOURCES CORPORATION (PTY) LTD, South Africa  
 Stuart, Simon, WORLD CONSERVATION UNION, South Africa  
 Swart, P, MINISTRY OF ENVIRONMENT AND TOURISM, Namibia  
 Telecky, Theresa, HUMANE SOCIETY OF THE UNITED STATES, USA  
 Thornton, Alan, ENVIRONMENTAL INVESTIGATION AGENCY, USA  
 Tonkin, Wayne, CUSTOMS AND EXCISE, South Africa  
 TRAFFIC SA, South Africa  
 TRAFFIC EAST/SOUTHERN AFRICA, Malawi  
 US FISH AND WILDLIFE SOCIETY, USA  
 Van Rooyen, Leon, MINISTRY OF ENVIRONMENT AND TOURISM, Namibia  
 Visser, Anita, CARTE BLANCHE, South Africa  
 Von Ginkel, A, South Africa  
 Von Martelok, Gunter, MINISTRY OF ENVIRONMENT & TOURISM,  
     Namibia  
 Vorster, Inspector Stoffel, PROTECTED RESOURCES UNIT, NAMPOL,  
     Namibia  
 Walker, Clive, RHINO AND ELEPHANT FOUNDATION, South Africa  
 Watts, Suzie, ENVIRONMENTAL INVESTIGATION AGENCY, UK  
 Wild, Adv Jennifer, South Africa  
 WILDERNESS FOUNDATION, South Africa  
 WILDLIFE AND NATIONAL PARKS, Botswana  
 WILDLIFE SOCIETY OF SA, South Africa  
 WILDLIFE UTILIZATION FORUM OF SA, South Africa  
 WINDHOEK OBSERVER, Namibia  
 WORLDWIDE FUND FOR NATURE, South Africa  
 WORLD CONSERVATION UNION, South Africa  
 WORLD WILDLIFE FUND, Switzerland  
 Zway, Paul, USA.



## ANNEXURE B

## IVORY IMPORTS FROM THE RSA

[see last page for the table]

## ANNEXURE C

## IVORY PRODUCTION: KRUGER NATIONAL PARK

IVORY PRODUCED PER YEAR: 1 April - 30 March

These figures reflect the production of ivory and include ivory obtained from culling, "pick ups" and seizures. Ivory picked up and confiscated account for less than 1% of the amounts/weight given.

<u>12 months prior to:</u>	No of Tusks	Weight of Ivory	Average weight per Tusk
31/3/80	558	4 285,1 kg	7,7 kg
31/3/81	722	3 708,8 kg	5,1 kg
31/3/82	432	3 802,4 kg	8,8 kg
31/3/83	299	4 807,8 kg	16 kg
31/3/84	1 435	10 212 kg	7,1 kg
31/3/85	2 359	10 726,7 kg	4,5 kg
31/3/86	1 692	10 652,8 kg	6,3 kg
31/3/87	533	4 346,5 kg	7,5 kg
31/3/88	417	3 781,6 kg	9,1 kg

## ANNEXURE D

## SOUTH AFRICAN IVORY IMPORT STATISTICS

As extracted from Foreign Trade Statistics or supplied by  
Commissioner for Customs & Excise - Dept of Finance

YEAR	QUANTITY Kg	PRICE R
1979	9 800	256 571
1980	1 100	56 133
1981	1 600	84 283
1982	7 900	301 761
1983	7 800	323 035
1984	6 000	359 931
1985	2 500	271 142
1986	1 030	131 278
1987	500	136 797

## ANNEXURE E

## SOUTH AFRICA'S IVORY IMPORTS AND EXPORTS

Comparison between

- (1) The total volume of ivory reflected by various countries custom records as annually imported from South Africa;

AND

- (2) The sum of the annual imports and maximum production of ivory by South Africa, together with the estimated 4 tonnes of ivory which originated from SWA.

YEAR	(1)	(2)	DISCREPANCY
1979	39 135 kg	18 561 kg	20 574 kg
1980	31 443 kg	9 221 kg	21 222 kg
1981	30 176 kg	9 825 kg	20 351 kg
1982	49 225 kg	17 242 kg	31 903 kg
1983	37 041 kg	23 147 kg	13 894 kg
1984	41 778 kg	21 919 kg	19 859 kg
1985	49 851 kg	18 336 kg	31 515 kg
1986	28 054 kg	9 829 kg	18 225 kg
1987	21 480 kg*	8 702 kg	12 778 kg

\* The 1987 total value of ivory reported as imported from South Africa by other countries is incomplete as Parker could not obtain all the countries 1987 customs records.

Importing Country	(Volume in kg)										
	1979	1980	1981	1982	1983	1984	1985	1986	1987		
SPAIN	2	22	573	11	1	606	711	598	-		
N/GERMANY	5 702	6 400	4 700	10 500	5 100	-	506	1 100	1 700		
SWITZERLAND	-	-	-	-	-	224	-	-	-		
BELGIUM/ LUXEMBOURG	-	-	-	-	-	200	49	49	100		
BRITAIN	-	-	-	-	-	-	-	-	-		
ITALY	50	-	196	-	-	-	-	-	-		
FRANCE	-	-	-	-	-	-	241	135	-		
USA	-	2 236	2 912	-	2 073	-	2 479	-	-		
JAPAN	5 178	7 059	13 146	23 796	12 050	15 541	18 196	8 938	9 020		
TAIWAN	3 596	4 357	3 825	527	1 662	3 977	559	-	22		
MACAU	-	-	95	2 047	227	-	28	-	-		
THAILAND	-	-	-	-	304	-	-	-	-		
HONG KONG	24 220	11 569	5 278	12 544	15 619	21 230	27 109	17 234	11 633		
TOTAL (kg)	39 135	31 443	30 196	49 225	37 041	41 778	49 851	28 054	21 480		