

LEGALIZE OR PENALIZE?

COUNTER ARGUMENTS TO THE INTERNATIONAL ANIMAL RESCUE FOUNDATION'S "RHINO ULTIMATUM"

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ABSTRACT

The Rhino Ultimatum is a petition comprising of a series of nine demands pitched at the South African Government in order to take action to stop rhino poaching. This paper examines the merits of these demands which we believe are largely shortsighted and impractical. Alternative suggestions to the Rhino Ultimatum which are based on sustainable utilization and sound conservation principles are suggested. As the effectiveness of legislation fails to adequately protect rhinos, innovative solutions and interventions that influence and impact on the economic drivers of the rhino horn market are urgently needed in order to conserve rhinos. Government should be encouraged to prepare a strong case for a controlled legal trade in rhino horn pending CITES 2013. Decision-makers should not be threatened or distracted by unrealistic petitions such as those put forward by the Rhino Ultimatum or similar ‘animal rights’ organizations.

INTRODUCTION

The International Animal Rescue Foundation (IARF) has put together ‘A Rhino Ultimatum’ that aims to garner 250 000 signatories by 22nd February 2012 to present to the “South African government, United Nations, the African Union, CITES, IUCN and other conservation authorities” The campaign impassionedly paints the picture of the ‘brutal butchering of rhinos at the hands of vicious criminals’. The statement of the Ultimatum reads: “*We demand and expect that South African government act immediately and decisively to end rhino killing and avert imminent rhino extinction.*”

See: www.change.org/petitions/act-now-sa-government-end-rhino-killings-imminent-rhino-extinction.

While clearly drafted with the best of intentions, if implemented, this petition spells *disaster* for African rhinos.

The IARF petition is correct that the demand for Traditional Chinese Medicine in China and Vietnam is the ultimate cause for the rampant increase in poaching that we have been witnessing for the past 3 years (www.rhinos-irf.org). It is correct that the market value is close to that of gold (Brown & Layton 2001; Eustace 2012). It is also correct that at this current rate of poaching, the entire population of rhinos could achieve negative population growth within the next five years, (with the possible risk of extinction thereafter). We all agree that rhinos are cornerstone species and indeed one of the Big 5 and most of us would like to think of them as ‘world heritage’ and us as their custodians (Loon 2004).

However, unfortunately, the ‘Rhino Ultimatum demands’ made to government are largely shortsighted, misinformed and impractical, for the following reasons:

1. IARF: “*We EXPECT the South African government place an IMMEDIATE MORATORIUM ON THE ISSUING OF RHINO TROPHY-HUNTING PERMITS*”

- (a) IARF calls for an immediate moratorium on the issuing of rhino trophy hunting permits since they argue that over two-thirds of rhino trophy hunting is a front for illegal trafficking and trade. The Ministry of Environmental Affairs has recently drafted an update on Rhino Hunting Norms and Standards to try close the loopholes regarding ‘pseudo hunts’ by calling for better DNA analysis and record keeping (Government Gazette No.34650: Sec 2.1.)

The IARF argue that hunting contributes to the poaching problem. There is no evidence for the latter claim and if a hunting moratorium was imposed the negative effect would be threefold (M. ‘t Sas-Rolfes *pers comm*):

- private landowners would have a reduced incentive to invest in and protect live rhinos;

- live rhino sale prices would drop, depriving government agencies of a source of much-needed revenue;
- reduced supply of horn from pseudo hunts would probably drive up the black market price of rhino horn up even further, adding to incentives for poaching and illegal trade.

We therefore submit that it despite the loopholes in the legislation, that it is still better that the revenues from hunting to go to legitimate rhino game farmers rather than to the criminal syndicates (Anon 2012; Eustace 2012; Thomson 1992), which would be the likely effect of a Hunting Moratorium.

- (b) IARF state that ‘reputable wildlife conservationists’ estimate the population size as 9500 – 11 000 animals and not 22 000 as is reported, and therefore we should be ‘extra-cautious’. While conservation organizations are reluctant to disclose rhino figures in risk for security reasons, we can safely say that the population of Black and White Rhino in South Africa is currently over 20 000 (as per IUCN Afrsg see Emslie & Brooks 1999; Emslie 2008). This would concur with figures by WWF-SA, SANParks, Wilderness Foundation, Wessa and others.
- (c) Permits need to be fully transparent. This is correct and the ‘TOPS’ (Threatened and Protected Species regulations of the Biodiversity Act) do and must ensure that. At the same time that the current regulations are placing a huge statutory burden on the private rhino farmer (see #6 below).
- (d) So that the South African government can make informed decisions about the ‘protection and preservation of rhino species’. This statement by IARF clearly stems from a preservationist paradigm (Bonner 1993; Thomson 1992. See figure 1). Unfortunately rhinos can’t afford this luxury. Wildlife conservation in South Africa (and Africa as a whole) is primarily about sustainable utilization (Barnes 2002; Cook 2012; Loon 2004; Thompson 1992; ‘t Sas-Rolfes 1997, 1995) This normally translates to either direct revenue via hunting and/or indirect revenue via ecotourism (see e.g. Bushell & Eagles 2007). This would also apply to rhinos (see figure 2). For example, according to the DEA, legal hunting of rhino between 2008 -2010 generated revenues of over R162 million. Such revenues could potentially expand the rhino game farm industry to cover among other items, escalating field protection costs and could potentially fund pro-active projects in the consolidation of key and important rhino populations (Emslie & Brooks 1999). A moratorium would prevent such opportunities.

If Animal Welfare organizations wish to include non-use (existence) values in this equation, then they must come up with a much better argument than simply saying ‘we don’t know how many rhinos there are’. I believe there is a place for existence values, but these should be channelled correctly into worthwhile projects (such as WWF-SA’s Black Rhino Range Expansion Project).

Based on the above, we suggest this statement to be amended to:

“We expect the South African government to exert greater control with regards to the issuing of rhino trophy-hunting permits while recognizing the economic value that legal hunting can contribute towards rhino conservation”

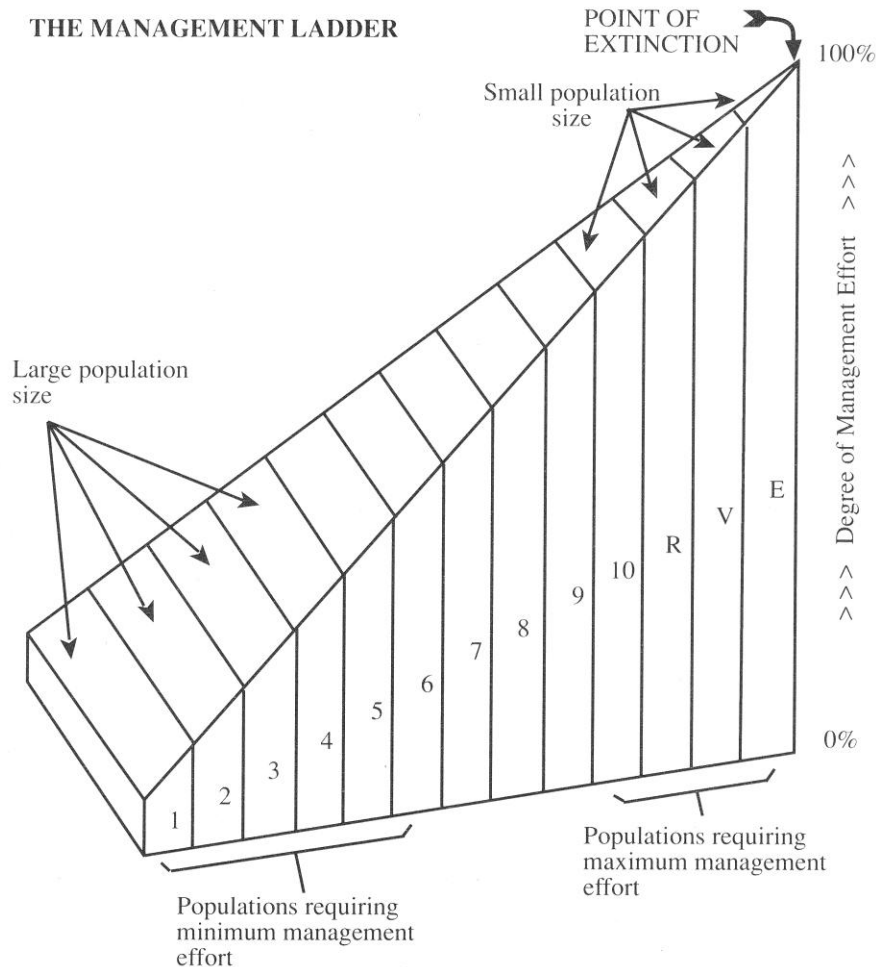


Fig 1: Conservation as opposed to pure preservation requires the active management of wildlife populations. Each of the columns identified by the numbers 1 to 10 and the letters R (Rare), V (Vulnerable) and E (Endangered) represents an individual wild animal population. The relative size of the area on the top of each column symbolizes the size of that population relative to other populations. The vertical height of each column reflects the degree of management effort required. This diagram shows that the bigger the population, the less management effort is required and vice versa (adapted from Thompson 1992)

CONSERVATION MANAGEMENT

Objective

To USE animal
populations
WISELY for the
benefit of man.

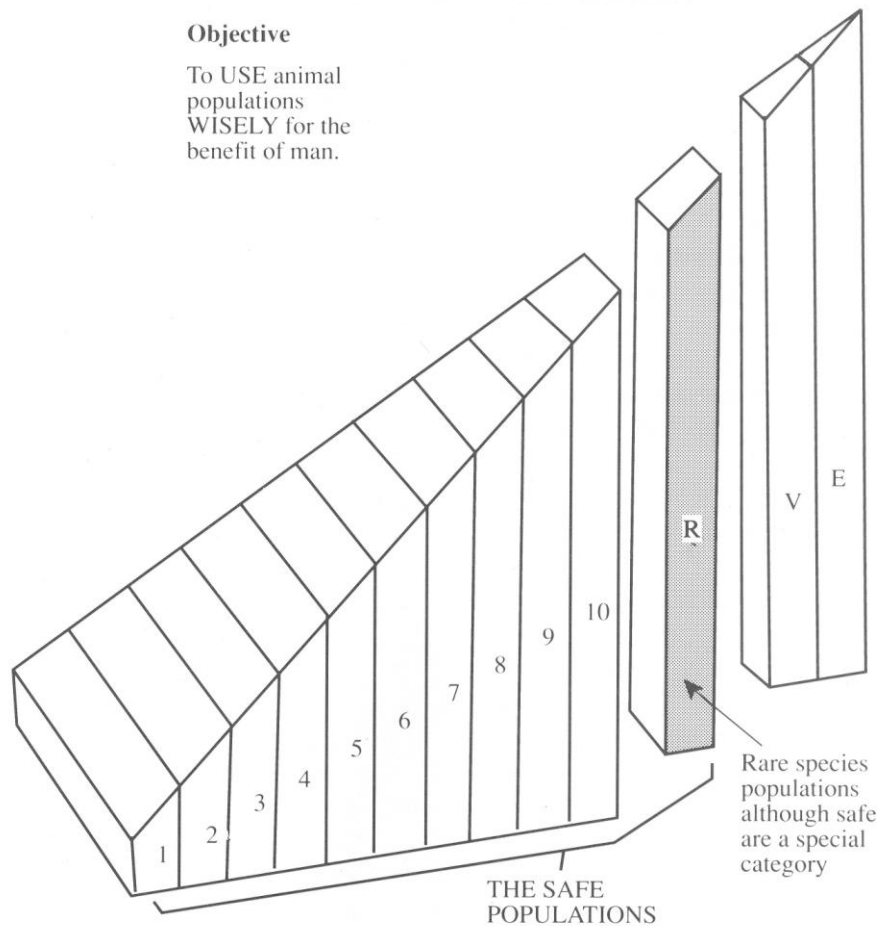


Fig 2: White Rhinos would fall into a special 'safe' category and should be very carefully 'used' according to the principles of conservation management. There is no reason why rare species such as rhinos should not provide man with tangible benefits under very strictly controlled conditions. A small judicious harvest of a rare species would be sustainable. It would not lead to over-exploitation and also not harm the population being harvested. Sustainable utilization can grow numbers and cause them to become 'safer' populations. On the contrary if poaching continues at the current rate, populations could become endangered to the point of extinction (adapted from Thompson 1992)

2. IARF: *“We EXPECT the South African government place an IMMEDIATE MORATORIUM ON THE SALE OF STATE OWNED RHINO until a complete census of Rhino population numbers has been commissioned and completed.”*

IARF calls for an immediate moratorium on the sale of state owned rhino. Why? Why undermine the value of rhinos when the criminal syndicates are raising the values on their heads. This doesn't make sense. Surely we want to increase the value of live rhinos so that they are worth more alive than dead? The White Rhino is responsible for the huge expansion of private game ranch holding in southern Africa over the past two decades due to its economic value (Cook 2012; Thompson 1992). If the economic value of a live rhino increases this there is a bigger incentive to protect it. If its value decreases, then it would likely increase the risk of poaching (since there is less of an incentive to protect it), while the black market value of acquiring its horn remains the same. Rhinos (especially Black Rhino) can serve as an excellent 'flagship' to motivate for its expansion into new areas. The private sector can help to achieve this. However this requires recognition of and support from government as to the possibilities in this regard.

With regards to a census of rhino population numbers, the IUCN SSC African Rhino Specialist Group has a network of rhino biologists who keep close tabs and have the updated figures on rhino numbers (see e.g. Emslie & Brooks 1999; Emslie 2008).

Based on the above, we suggest this statement be amended to:

“We encourage the South African government to recognize the potential source of revenue that can be generated through live rhino sale to help cover the escalating field protection costs to combat poaching; and also the opportunities it represents in terms of growing and expanding rhino numbers. A moratorium on sales would clearly be counterproductive”

3. IARF: *“We EXPECT the South African government to commission an IMMEDIATE AND COMPLETE CENSUS of the Rhino population in South Africa, using best possible methodology to ascertain with ACCURACY the number of living black and white Rhino”*

The IARF demands the South African government to 'commission an immediate and complete census of the rhino population'. This is a delay tactic. South Africa is fortunate to have a number of excellent conservation organizations who in turn employ a number of professional and well-informed conservation scientists. For example IUCN's SSC African Rhino Specialist Group which have such baseline data already (Emslie & Brooks 1999). Also the 'Rhino Resource Center (www.rhinoreourcecenter.com) is a knowledge centre for rhinos aiming at

collecting and cataloguing all knowledge on rhinos, and provides access to an extensive database of indexed and tagged references, abstracts and full texts covering every possible aspect of the knowledge of the rhinoceros. This is not to say further research would not be useful. Indeed it would, and it has been suggested that relevant research topics should be identified and supported via a central data-base administered by the IUCN SSC African Rhino Specialist Group (and the Private Rhino Owners Association for aspects pertaining to the private sector).

“We suggest that government consult with the IUCN SSC African Rhino Specialist Group and the Rhino Resource Centre for an updated census of Rhino population numbers in South Africa.”

4. “We EXPECT the South African government to immediately lift the unconstitutional media-gag order currently in place”

IARF demands the South African government to immediately lift the unconstitutional media-gag order as it with holds rhino death statistics and could lead to corruption. We agree with this statement. South Africa needs to have a transparent reporting system and the media can and should serve as an environmental watchdog, if their facts are solid and substantiated.

One also needs to recognize the power of the internet and social media in influencing the public sentiment with regards to rhino conservation in general. If used effectively such social media can help convey the most responsible and correct responses with regards to rhino poaching. (For example this counter-petition to IARF’s ‘Rhino Ultimatum’ petition could be posted on www.change.org, in order to present to their signatories a fair counter-response pending Feb 22nd.)

From a longer-term perspective, it could be constructive to set up transparent communication channels between South African students and their Asian counterparts in order to facilitate awareness on rhino conservation in a non-confrontational manner. This could, in the long-term, help reduce demand for rhino horn products (note that this need not contradict the legal trade argument – see section 7 below).

5. IARF: *“We EXPECT the South African government to IMMEDIATELY APPOINT A PANEL OF DIVERSE EXPERTS TO EVALUATE THE RHINO HORN TREATMENT INITIATIVE endorsed by South African and international wildlife conservationists as an immediate, effective, holistic and sustainable solution to the Rhino carnage.”*

IARF demands South African government to immediately appoint a panel of diverse experts to evaluate the rhino horn treatment initiative. According to Eustace (2012) and others, if a legal trade in rhino horn was to be legalized, filtering poisoned horn on to the illegal market would have a dramatic effect on demand if the Traditional Chinese Medicine market began to fear that there was a chance of horn doing more harm than good. Some farmers have been reported to be resorting to such measures and in the absence of trade and increased poaching, it may well happen. Treating horn, or even the report thereof, may help reduce demand by purporting to do more harm than good to the end-user/ consumer. However poisoning horn does carry an ethical dilemma in that the consumer may not be aware of the consequences of his/her action and may inadvertently suffer dire consequences as a result. Also, such a response fails to recognize other potential avenues to pursue in the interest of rhino conservation (see Table 1).

We therefore suggest the following amendment:

“We do not recommend poisoning horn as a solution to rhino poaching. If there was a controlled legal trade, farmers could legally trade and earn revenue for their stocks rather than having to resort to desperate measures.”

Table 1: Summary of the tools available to combat poaching and their likely effectiveness/ ineffectiveness over time - as can be seen there are other tools to consider besides legislation, although their effectiveness may only improve over time.

	Tool	Short-term effectiveness	Long-term effectiveness
1	Legislation	Low	Low
2	Legal trade	Low	High
3	Substitute options	Low	High
4	Boosting natural growth in populations	Low	High
5	Diplomacy	Low	High
6	Media	Constant	Constant

6. IARF: *“We EXPECT the South African government to IMMEDIATELY CLARIFY ITS INTENTION with regard to the trade in Rhino horn”*

IARF demands that the South African government immediately clarifies its intention with regards to trade. Four issues are of relevance here: the question of leakage, hunting, costing of controls and international support. There are both pros and cons to these issues but a fair assessment of these points suggest that the legalize option makes much more sense (Brown & Layton 2001; Eustace 2012; Loon & Polakow 1997; ‘t Sas-Rolfes 1995). These are summarized in Table 2.

Trade in rhino horn is currently prohibited both by CITES and the Threatened and Protected Species regulations of the Biodiversity Act 10 of 2004 (see e.g. Government Gazette 31899 Notice No.148). It must be stated that the current regulations are placing a huge statutory burden on the private rhino farmer. The stringent requirements of these regulations are raising the costs of keeping rhinos and creating a major disincentive to such rhino owners. This situation is exacerbated by the fragmentation and lack of co-ordination between the National and Provincial authorities, potential for a corruption as





wells as number of loopholes in the system. The cumbersome provincial by-laws stipulate a number of unrealistic provisions when rhinos need to be captured, darted, moved, trans-located etc, with permits demanded for all such activities, veterinary attention etc. Often the nature conservation authorities are understaffed and unequipped to carry out these by-laws creating further obstacles in the keeping and raising of rhinos by responsible game farmers.

Therefore parties such as Wildlife Ranching South Africa, the Private Rhino Owners Association, many private reserves and game farms and others are urgently calling on DEA to at the very least motivate for a controlled legal trade in the private sector using horn from natural mortalities and properly marked and registered legal stock. A legal trade would put the market in the open which can be much better monitored and managed, and could fund protection costs. Clearly this is not ‘rabid natural capital exploitation’ or ‘a case of an industry wanting to financially profit from the final death tremor of a species’ as some animal rights activists would have us believe. Such banter is clearly counterproductive. Rhino breeders want growth in rhino numbers more than the Animal rights activists since their livelihoods depend on it.

Based on the above points we would recommend that this expectation be changed to:

“We recommend that the South African government urgently compile a case for the controlled legal trade in rhino horn pending the CITES meeting in March 2013 (i.e. by July 2012). It is recommended that South Africa split its proposal to involve the interests of (1) the private sector (e.g. PROA, WRSA, SSW, APNR, SADC RMG etc) and (2) government (DEA, SANParks, Eastern Cape and Ezemvelo KZN Wildlife) respectively”

Table 2: The pros and cons of a legal trade according to four key issues

	ISSUE	Penalize	Legalize
1	 <p>Leakage of horn</p>	<p>There is currently significant leakage of rhino horn onto the illegal market from South Africa. Trading will ‘fuel the demand’, which seems insatiable.</p> <p>There is a current lack of detailed knowledge of rhino numbers, performance and stockpiles on all private land populations.</p> <p>CITES parties insist on having this information before approving legal trade.</p>	<p>TOPS regulations require necessary permits, proper marking and DNA fingerprinting. An electronic database system is needed to hold relevant information to control movement, numbers of stock and hunts. Improving the DNA database and the ‘rhino passport’ proposal could help. A legal trade can control the supply and regulate the demand.</p> <p>If there was a legal trade, and the selling agent only dealt in horn from a legal source, the farmers would be more likely to disclose numbers, especially if there was a quota that limited sales, which, probably, would be necessary. WRSA and SADC RMG could co-ordinate record keeping.</p> <p>Collection of data can be a manoeuvre to endlessly delay decision making. We have what we need to know - there is urgency (i.e. case closed July 2012).</p>
2	 <p>Hunting industry</p>	<p>Moratorium on pseudo trophy hunting called for due to abuse of system. Loopholes in legislation are allowing Asian Nationals to take advantage of hunting laws only to acquire horn.</p>	<p>Trophy hunting still brings in profit which many farmers want to continue with as it helps to justify land being kept under wildlife. If one closes it down, then the horns currently being taken in pseudo trophy hunts will be taken by poachers instead, and the profit go to criminals. New norms and standards are being drafted to close loopholes. New DNA identification technology is available and can help with record keeping.</p>
3	 <p>Costing of controls</p>	<p>No one so far has come up with a proposed plan with costings to show how a legal horn trade would work and especially how one would stop illegal horn from other countries getting laundered and mixed up with legal horn including the costing of necessary controls.</p>	<p>If we can reduce poaching rhino numbers could grow rapidly. The stock in private hands is currently estimated at more than 3,600 Kg. At the current wholesale price of \$20,000 per Kg, this stock could potentially generate \$72 million. If we could sustainably farm some of the rhino population in private hands, it could produce high volumes of horn every year, without killing any rhinos whatsoever. This stock would need to properly marked and registered according to TOPS. But if it was possible to trade, it could expand the industry, parks could manage themselves, and thrive, with rhinos being the flagship and catalyst.</p>
4	 <p>International support</p>	<p>Syndicates dealing in rhino horn are illegal under CITES. Poaching is a serious wildlife crime and legislation needs to be strengthened to deal with it. Many parties to CITES still need to be persuaded of the advantages of a controlled legal trade.</p>	<p>If consumer countries like China and Vietnam have no incentive to lobby for legal trade, this may pose a serious problem. If they retain their trade bans they appear good in the eyes of the world, while selectively enforcing the law and allowing some trade and consumption to take place (among their well-connected elite). However the ban has been a total failure. It seemed right at the time but to continue with a failed strategy 35 years later, is senseless.</p>

5. IARF: *“We EXPECT the South African government to IMMEDIATELY DESTROY ALL STOCK-PILED RHINO HORN”*

IARF demands and expects the South African government to immediately destroy all stock-piled rhino horn, as they argue that it ‘fuels the myth that rhino horn has medicinal value’. This is extremely short-sighted and would certainly be a big mistake if this was carried out. Whether we like it or not rhino horn has a considerable medical and monetary value. Basic economic reasoning suggests that if the supply increases then the demand increases (Tacconi 2000). Eradicating the supply will not make the problem go away and would likely drive up prices even higher than they are now (‘t Sas-Rolfes 1995). This would spell disaster for rhinos and force the market even further underground. For rhinos to survive, South Africa needs to be in control of the supply of the stockpiles of rhino horn. By destroying the stock they will lose all control. The market value of current stock of horn in stockpile is substantial.

Such revenue could be used to support anti-poaching efforts and fund proactive rhino conservation research and action (Brown & Layton 2001; Loon & Polakow 1997). For example it could potentially support the IUCN and WWF’s efforts to consolidate key and important rhino conservation areas and to expand Black Rhino populations throughout Southern Africa. Destroying the stock would destroy that opportunity.

Based on the above, we’d recommend this point be rephrased as the following:

“We strongly advise the South African government against destroying stock-piled rhino horn as it will destroy any prospects of earning much needed revenues for rhino conservation and anti-poaching projects if there ever was to be a legal trade. This move will not eradicate the demand for rhino horn and will likely hand over the power to the illegal syndicates and worsen the current situation.”

6. IARF: *“We EXPECT the South African government to INSTITUTE THE 1993 CITES RECOMMENDATIONS AND REQUIREMENTS in its entirety, and that it, furthermore, demonstrates how this will be ENFORCED AND MONITORED.”*

IARF demands that the South African government institutes the 1993 CITES recommendations and requirements in its entirety, and that it, furthermore, demonstrates how this will be enforced and monitored. While we agree that stricter penalties and sentences to perpetrators are needed, this is the wrong approach. Despite the intensive deployment by the DEA’s Wildlife Crime Unit and calls for a centrally regulated rhino protection unit, rhino horn continues to be smuggled out the country. The presence of South African Police, Customs officials at designated ports of exit, the National Protection Agency and the South African Defense Force are not adequately closing the loopholes. The National investigating team is supposedly still severely under-capacitated having a shortage of personnel, vehicles and other resources (Anon 2012). Rhinos continue to be poached.

History informs us that the prohibitive ‘stick’ approach represented by CITES has clearly not worked in conserving rhinos. The economic incentive ‘carrot’ approach appears to be a much better strategy (see e.g. Loon 2006). One would like to think that a trade ban on rhino horn can be enforced, that rhinos or their products should never be ‘for sale’. However the current poaching stats clearly show that the South African conservation community is fighting a losing battle and rhinos are ‘paying the price’.

Since 1992, Southern African countries have expressed dissatisfaction with the CITES ban (Leader-Williams 2003). A ban may sound like a better option however the evident “price-inelastic” nature of the current demand dictates that the trade ban is not very effective, and simply pushes the trade underground (‘t Sas-Rolfes 1995: see figure 3). This may be counter-intuitive, as logic suggests that an international ban must work. However it is a failed strategy. The ban has failed to stop either trade or poaching. Signatories to the ‘Rhino Ultimatum’ should rather sign a petition to lift the CITES ban. Time is running out and rhinos cannot afford to miss this opportunity. Government, and indeed two thirds of the CITES delegation, needs to be convinced of the logic of a controlled legal trade in rhino horn and should not be pressurized or distracted by impractical and emotive-driven solutions.

Based on the above, it is suggested that this proposal be amended to:

“Recognizing the apparent ‘price-inelastic’ nature of the demand for rhino horn and the current rhino poaching figures, it is recommended that the South African government urgently compiles a case to down-list (White) Rhino from CITES Appendices to allow for a controlled legalized trade in rhino horn. This

applies particularly for stock from natural mortalities held by the private sector”

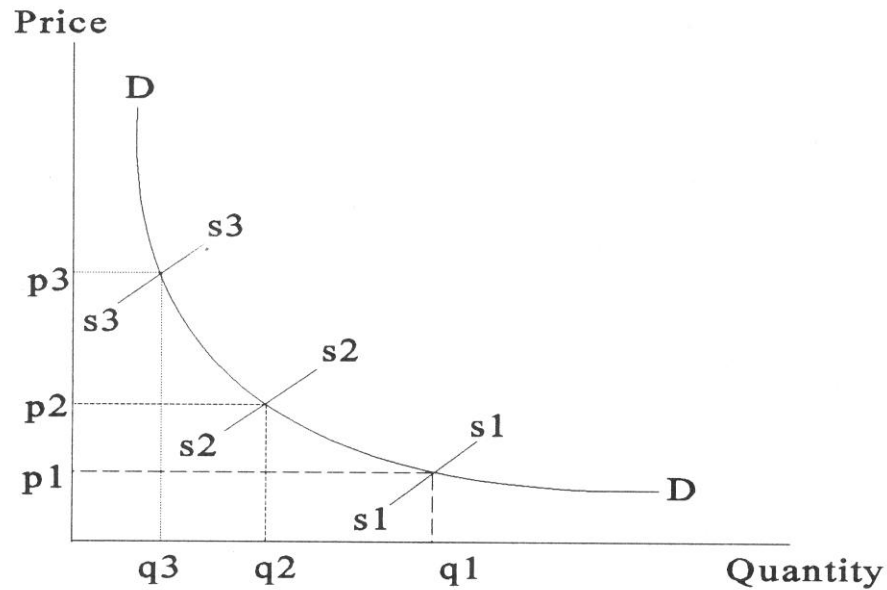


Fig 3. The price-inelastic nature of demand for rhino horn implies that high prices, a ban will push up prices, but will not deter consumers of the product. Under these conditions a trade ban is ineffective and causes the market to go underground (see 't Sas-Rolfes 1995). The users of rhino horn products appear to be affluent consumers reliant on Traditional Chinese Medicine who are reluctant to accept substitutes (but not completely unwilling? See #7)

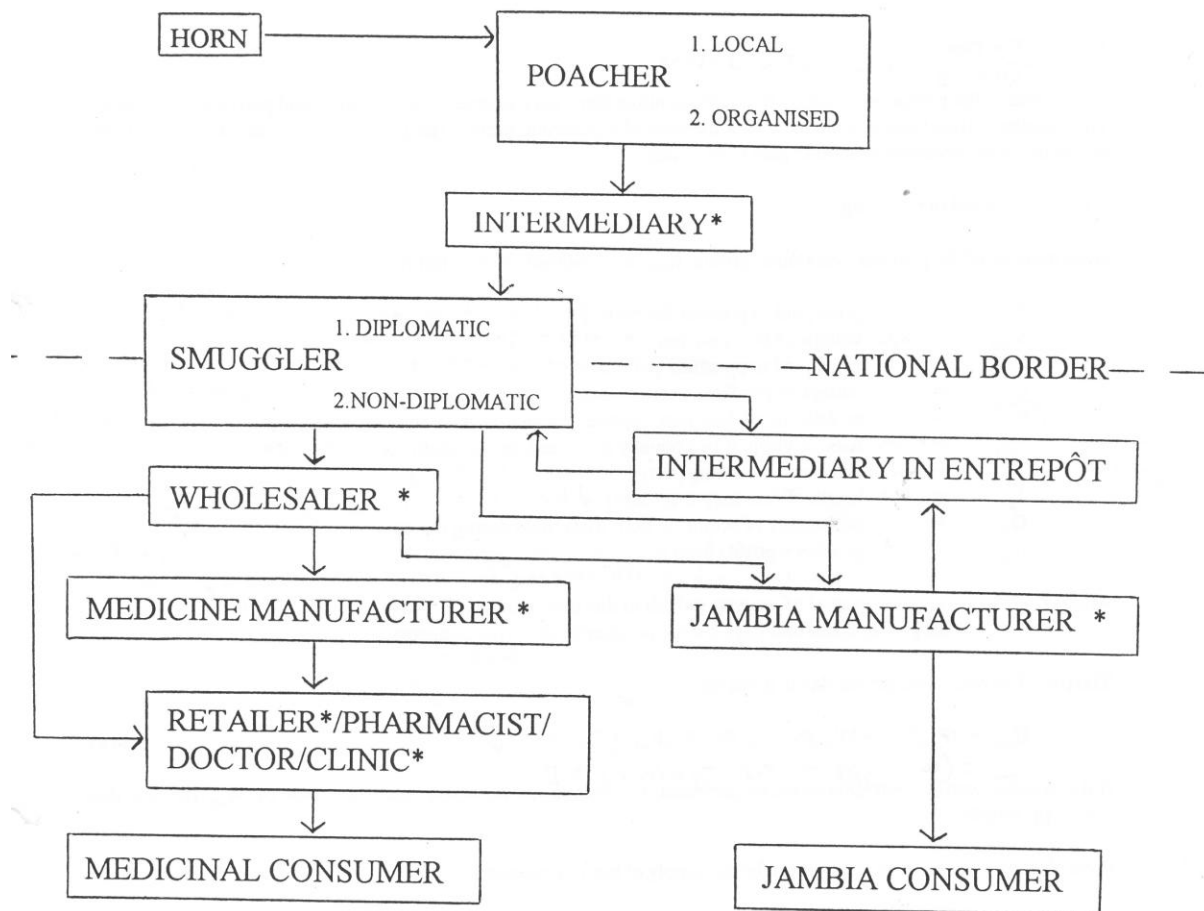


Fig 4. The illegal rhino horn market is an extremely complex problem to as it involves a chain of conduits from the poacher to the consumer. A different solution is required at each of these levels to detect, capture and convict the respective perpetrators. This makes enforcing the CITES trade ban extremely difficult and cumbersome. Legalizing the trade can help make the trade transparent, potentially benefit wild rhino populations rather than the illegal criminal syndicates as is the case at present. South Africa appears to be primarily targeted to source the medicinal market in Vietnam and China

7. IARF: *“We EXPECT the South African government to IMMEDIATELY ENGAGE THE PEOPLES' REPUBLIC OF CHINA, a co-signatory to the 1993 CITES agreement, for the purpose of trans-national co-operation to end the trade in animal body-parts and by-products, including all diplomatic measures at the SA government's disposal, invoking multi-national alliances and economic sanctions.”*

IARF demand the South African government to immediately engage the People's Republic of China to end trade. Interestingly there is in fact there is relatively little evidence of horn going to China, with most of poached horn from South Africa going to Vietnam ('t Sas-Rolfes pers comm.) However China does remain one of the biggest consumer countries for rhino horn.

It should be recognized that the tourism market value of rhinos, which would include Chinese and other Asian visitors, is substantial and ecotourism operations which support wild populations of rhinos plays an important role in rhino conservation by educating conservation-minded Chinese tourists about the realities of rhino poaching (Bushell & Eagles 2007; Hatcher 2012; Loon 2004). This approach is far more constructive than calling for misguided tourism boycotts to visit South Africa, made largely by people who have never even been to South Africa. If sustainable harvesting rhino farms were sanctioned by CITES, these would take place away from the 'public eye', while such ecotourism operations continue to conserve healthy wild rhino populations. (Suffice to mention that sustainable horn harvesting operations in the private sector teaming with live rhinos is a far better scenario than watching the increasing number of dehorned rhino carcasses accumulate in our National Parks which is the current status quo).

While campaigns to try reduce demand in China itself have been undertaken with mixed results, due to the price inelasticity of demand, or due to the fact that they have targeted the wrong audience ('t Sas-Rolfes pers comm), such a strategy does still appear a logical one to pursue. A precise awareness campaign in consumer countries regarding the implications of using rhino horn can potentially assist this cause.

Unfortunately Traditional Chinese Medicine (TCM) is complex and this practice is entrenched in Chinese Culture for millennia. TCM is part of a pluralistic medical system and is therefore not a direct alternative to Western pharmaceutical-based health care. However understanding its basic principles, clinical patterns and therapeutic methods does provide some insight into the reasons for which it is being used (Patton 2011). Ironically Chinese medicine in general is used for “restoring harmony or balance between mankind and the environment”. Once a diagnosis is made on a patient, the traditional practitioner creates a specific ‘formula’ and therapeutic strategy. Rhino horn, which is one of the many animal products used, is said be ‘cold, salty and sour and is associated with liver and kidney organs’ (also ironically ‘the path through which life energy is believed to flow’). It is also said to have cooling properties which remove heat from the blood (Patton 2011).

While it has been shown that consumers are reluctant to accept substitutes for several good reasons (M. 't Sas-Rolfes *pers comm*), the substitute angle should not be discounted entirely. For example, one could examine the chemical compounds contained in rhino horn (the amino acids: cysteine, histidine, tyrosine, lysine, arginine and the salts calcium carbonate and calcium phosphate) this with the aim of correctly synthesizing a precise 'generic substitute' for rhino horn.

One might say why then not just use aspirin, as it's cheaper and as effective? However the key to solving the rhino poaching crisis may ironically be in recognizing the medicinal value rather than denying it. If the TCM market officially lists 'aspirin' as a pharmaceutical product (Patton 2011), then surely the strategy should be to replace rhino horn products with a range of substitutes in addition to aspirin! These could include a suite of replacement drugs which can solve the ailments which rhino horn is purportedly used for. For example effective medication for cardiac stimulation, antipyretics, medication for vasodilation, hypo-hypertension, for increasing platelets, shortening of prothrombin time, antiepileptics, anticonvulsants and even cancer therapies (Patton 2011) could all be promoted under one 'solution'. (Note that this is regardless of whether Western medicine believes in the efficacy of the rhino horn products. The point is under these conditions if the Western medication can do the job, ailing patients/ consumers desperate for a cure will adopt any solution that works – even a western medicine remedy!)

While such a strategy is unlikely to influence all of the consumers using TCM, it may appeal to the more progressive associations such as the Hong Kong Chinese Herbalist Association, the National Association of Chinese Medicine and the Practicing Pharmacists Association of Hong Kong (Animals Asia Foundation 2009). Offering a suite of rhino-horn free generic medication to the TCM market, under one marketed and branded 'solution', may have the potential of reducing the demand for rhino horn. Market research into this possibility would be recommended.

Another option that has been suggested is to grow rhino horn *in vitro* from stem cells which could also be investigated further (J.Anderson *pers comm*). Rhinos are already being farmed in small numbers in China for propagation. Another irony of the situation is that the Chinese medicinal market would support efforts that will enhance the continued survival of rhinos as in a sense, their survival is linked to the survival of their profession.

The following suggested amendment would accordingly refer:

***“We recommend that the South African government investigates the potential of an education campaign to inform consumers as to the consequences of using rhino horn products on wild rhino populations. We urge the South African government to root out the corruption in the wildlife industry but to recognize the monetary values that rhinos can represent for the South African economy. It could also acknowledge the value of responsible Chinese tourists to game reserves in South Africa in terms of educating their country-folk back home about the reality of rhino poaching.*”**

Furthermore it is recommended that avenues to introduce a suite of rhino-horn free substitute medicines into the Traditional Chinese Medicinal market continue to be explored, under one generic 'solution'. This approach should recognize that the pluralistic TCM system is not a direct alternative to Western pharmaceuticals-based healthcare, but its strategic introduction can potentially complement the legal trade option which would concurrently attempt to control the supply and reduce the demand for real rhino horn on each respective level of the supply chain.

CONSTITUTIONAL ISSUES

Animal right organizations seem to view trading in animals and hunting as incompatible with their ethics and notions of what ecological sustainability means. It is intuitively complex to equate ethics with ecology on the one hand and economics on the other, and is the primary reason why such debates cause antagonism between the different parties involved (Loon 2006). However whether animal rights ideologies are compatible with science-based wildlife management or not, it is still necessary to argue the case in the context of constitutional rights

In the 'Rhino Ultimatum' petition, the IARF cites the South African Bill of Rights, specifically Section 24, where accordingly *everyone has the right to:*

-to an environment that is not harmful to their health or well-being; and
-to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
a)prevent pollution and ecological degradation;
b)promote conservation; and
c)secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

We agree with these rights but differ in our suggestions about how to attain these in the context of rhino conservation and preventing rhino poaching. Firstly, we need to define whether we are talking about the rights of rhino owners, rhinos' national custodians, rhinos themselves or those of foreign animal rights activists.

Rhino owners with fenced properties have property rights over their stock. In unfenced areas or adjacent farms within a single conservancy or reserve, the situation can become complicated by the issue of 'res nullius' or having animals move between adjacent properties with different constitutions. Usually this would be clarified between the parties within the specific association in question. Normally, the stronger the property rights and the higher the market value, the bigger the incentive is to protect the specific population in question. Privatization of the rhino industry should act to strengthen such property rights. Utilization, if sanctioned, would be compatible with these practices (Loon & Polakow 1997; Styles 1999).

National custodians also have rights over rhinos. The two biggest National custodians of rhino in South Africa are SANParks and the Department of Environmental Affairs

(DEA). SANParks conserves the largest populations of rhino in the country across its reserves. Their rights are entrenched by the National Parks Act and the constitution respectively. These institutions also have the rights over the National stockpiles of rhino horn. The DEA has the biggest influence over policy pertaining to rhino management. It is therefore vital that they are correctly informed regarding recommendations by the conservation sector.

It is however questionable whether rhinos themselves can be said to have 'rights' in the context of the International Rhino Rescue Foundation's 'Rhino Ultimatum'. The IARF cites section 38 'Enforcement of Rights' as part of their argument to petition government. Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

Anyone acting in their own interest;
anyone acting on behalf of another person who cannot act in their own name;
anyone acting as a member of, or in the interest of, a group or class of persons;
anyone acting in the public interest; and
an association acting in the interest of its members.

Arguing for legal rights of animals is a difficult task in South African environmental legislation due to the issue of 'locus standi'. Although the constitutional recognition of this right can, on the one hand be welcomed, its formulation poses serious problems for the determination of its contents and therefore its holders or interested parties as well as judicial and extra-judicial implementation and enforcement (van Reenen 1995). For example, even if it were formulated as a people's or group right, it would not have remedied the situation since these rights are besieged by problems of conceptualization, formulation and implementation.

In private law actions, a plaintiff will not have *locus standi* unless he can prove that one of his recognized legal rights has been infringed or is being threatened. It is acknowledged that actions or applications brought in the public interest, on the other hand, by an applicant seeking relief to benefit the public at large or a segment of the public are considered in a different light. In such cases, the applicant seeks to enforce a right to which all members of the public are entitled. The primary intention here is claim the relief in his/her own interest, but the results of the action necessarily affects the rights of others by virtue of judicial precedent (van Reenen 1995).

In South African law, in order to have standing, an applicant must demonstrate a direct personal interest in the relief damaged. This would involve a situation where some right which he was personally entitled to exercise was interfered with, or that he was personally injured by the act complained of. The principle of '*actio popularis*' implies that a person could only sue on his own behalf and not on behalf of the general public (van Reenen 1995). In the case of the IARF one could therefore argue that they have no justifiable *direct* interest in rhinos and furthermore cannot justifiably represent the interests of all its signatories. There is legal precedent (as per J. Glazewski) here which necessitates the demonstration of the harm as threatening to the health or well-being of

the applicant or group. In this case it is questionable whether the well-being of IARF has been threatened.

Also, whether a public right of civil action exists is a question of the interpretation of legislative intent (van Reenen 1995). In this case the intent of the South African government would be for the sensible conservation and management of rhinos, under the counsel and advice of credible conservation institutions (such as the Endangered Wildlife Trust, the Wilderness Foundation and the IUCN SSC African Rhino Specialist Group). Such parties with a far more legitimate interest in rhinos, should unite under one umbrella in order to represent and advocate for the ‘rights’ of rhinos in the most logical, practical and feasible manner.

We therefore urge the South African government to regard ‘promoting conservation’ in section 24 of the Bill of Rights as the *‘sustainable and wise utilization of natural resources.’ Sustainable utilization of rhino horn through legal stockpiles, natural mortalities and the sustainable harvesting of rhino horn from farming are totally in keeping with these principles.* Furthermore with regards to ‘promoting justifiable economic and social development’, again *sustainable use is completely compatible with economic arguments.* In general a business approach to managing protected areas is in keeping with conservation objectives and innovative strategies are needed to help finance conservation efforts (Phillips 1998; Phillips 2000). *In the case of rhinos, the economic values are substantial and that recognizing these values are the key to conserving rhinos in the future. Rhinos increasing need to justify themselves economically in order to survive. By realizing the full economic potential of rhinos South Africa can encourage co-operation of the private sector and local communities in conserving rhinos.* Such stewardship programmes can create employment and boost rhino numbers (Leader-Williams 2003). This is not greed but common sense.

39. Interpretation of Bill of Rights

1. When interpreting the Bill of Rights, a court, tribunal or forum

- a. must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;*
- b. must consider international law; and*

The facilitation of the development of public-interest actions on behalf of environmental protection by South Africa courts, depend on their interpretation of the values to be protected in an open and democratic society based on freedom and equality. It is our contention that when assessing the issue of ‘values’ in the context of rhino conservation, that it is important to adopt a broad approach based on the concept of ‘Total Economic Value’ theory (Loon 2004). This approach would take into account direct (consumptive use), indirect (non-consumptive use) as well as existence/ethical values and would be a fairer approach to the current situation. This approach could also help balance the economic, ecological and ethical values inherent in the rhino management debate.

In terms of international law, South Africa has until July/August 2012 to finalize its case to CITES for a controlled legal trade in rhino horn. This can be formulated in a manner that need not in any way compromise the dignity, equality and freedom of those involved.

In conclusion;

We submit that a controlled legal trade in rhino horn will better serve the ‘values of an open and democratic society’ than the current status quo. Recognizing the inherent difficulty in eliminating the use of rhino horn in Traditional Chinese Medicine since CITES was instituted 35 years ago, demands a more sophisticated solution than a blanket ban on rhino horn. A solution that takes into account the nuances of the rhino horn market and that recognizes the economic drivers leading to rhino poaching is urgently needed. In so doing South Africa can turn what is currently a threat and a liability into a growing opportunity and asset.’

SUMMARY

An ‘emergency rescue package’ for rhinos is clearly needed. The primary focus in rhino conservation at present should be on minimizing poaching risk by increasing anti-poaching resources and growing rhino numbers. This requires much-needed revenues for both these objectives. While the intentions of the IARF are made with the best of intentions for the well-being of rhinos, if their demands are implemented, it is most likely to worsen the situation for rhinos on the ground. Whether we like it or not, economic factors are the primary driving forces in the illegal trade in rhino horn. If we do not recognize that, no amount of prescriptive measures or emotional objections will solve the poaching problem. A fresh and realistic approach is needed. With all due respect to the organizers of their campaign, it will be far more preferable for the conservation sector if the demands of the IARF are not met on the 22nd Feb, but rather substituted with strong economic arguments supporting the controlled trade in rhino horn. If these in turn are based on sound scientific principles, it is respectfully submitted that this could help ensure the long-term conservation of rhinos in South Africa.

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The right to remember?



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