

Autumn/Winter 2011

Journal

of Animal Welfare Law

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A brief examination of the plight of the Rhinoceros

Government and Church inaction allows Animal Cruelty to thrive claims Oxford Theologian

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The Association of Lawyers for Animal Welfare (ALAW) would like to thank Compassion in World Farming Trust for its generous support of this Journal.

The views expressed in this Journal are those of the authors and do not necessarily represent those of ALAW.

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A note from ALAW

Welcome to the autumn/winter issue of the Journal of Animal Welfare Law. Animal Welfare Law does not exist in a vacuum and one of ALAW's core values is to promote the importance of Inter-disciplinary working, which is reflected in this edition of the Journal.

David Williams, from the Department of Veterinary Medicine University of Cambridge gives us his impressions of the first International Conference on Veterinary and Animal Ethics held in September 2011.

Kim Stallwood sets out why, as a non-lawyer, he considers the law as critically important in progressing animal welfare. Kim is the European Director of the Animals and Society Institute which seeks to advance the status of animals in public policy.

As regular readers will know the Journal has kept a watching brief over the course of the year on the use of wild animals in circuses with Chris Draper from the Born Free Foundation providing the Journal with updates of events.

Alan Bates looks at some of the legal issues surrounding covertly obtained material used as evidence in prosecution cases. Bridget Martin discusses the illegal trade in rhino horn while Sally Case discusses the issue of juvenile offenders in relation to prosecutions for animal cruelty.

Finally, good wishes for the forthcoming holiday season and New Year to the Journal's readers and supporters.

Jill Williams
Editor

Simba and the Vienna Bronze Sculpture – a brief examination of the plight of the rhinoceros

**Bridget Martin, Senior Lecturer in Law
University of Lancaster**

On 30th June 2009, as Donald Allison was about to board a flight to China via Amsterdam, he was stopped by officers of the UK Border Agency. His luggage was searched and found to contain a Vienna bronze sculpture of a bird on a log. But this was no ordinary bronze sculpture. It had been specially constructed out of resin in order to hide two rhinoceros horns, horns that had been cut from the body of Simba, an elderly white rhinoceros, who had died aged 41 years, that April.¹ Allison pleaded

guilty to offences under the Customs and Excise Management Act 1979 and was sentenced at Manchester Crown Court to 12 months in prison. These particular horns, which were confiscated, had been prevented from adding even more fuel to an illegal though highly lucrative trade which is believed to have a severe effect on wild rhinoceros populations.

There are five species of rhinoceros in the world today and although they once ranged widely, they are now confined to parts of Africa, India and Asia, and they are in trouble. All of them are included on the IUCN's Red List of Threatened Species. Of the two species that are found in Africa, the White Rhinoceros (*Ceratotherium simum*) is the most numerous, its status is merely "near threatened" and its population is gradually increasing,² whereas the Black Rhinoceros³ (*Diceros bicornis*) is "critically endangered",⁴ its population having declined by over 90% in the last 60 years, although its numbers too are slowly increasing.⁵

The remaining species are found in Asia. They are the Indian Rhinoceros⁶ (*Rhinoceros unicornis*), listed as "vulnerable",⁷ the Sumatran Rhinoceros (*Dicerorhinus sumatrensis*)⁸ and the Javan Rhinoceros (*Rhinoceros sondaicus*),⁹ both of which are critically endangered, both with populations fewer than 250 mature individuals and both with populations continuing to decline.

All species of rhinoceros are therefore to a greater or lesser extent in a parlous position and although the reasons for this vary, their main threats come from people. As populations have grown, so have people needed more land for habitation and for agriculture. Kaziranga National Park, a World Heritage Site that contains the world's largest population of Indian rhinoceroses, provides a good example of some of the pressures that can be experienced. They include: illegal fishing, livestock grazing and heavy traffic on a

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¹ See "Rhino horn smuggler jailed", Legal Eagle, February 2011, NO. 63, P. 3.

² IUCN SSC African Rhino Specialist Group 2008. *Ceratotherium sinum*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 08/02/2011

³ Also known as the Hook-lipped Rhinoceros

⁴ It was first listed as such in 1996

⁵ From 2,400 in 1995 to 4,180 by December 2007, see Emslie 2006; Emslie et al. 2007; African Rhino Support Group data 2008 –IUCN SSC African Rhino Specialist

Group 2008. *Diceros bicornis*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 09/02/2011

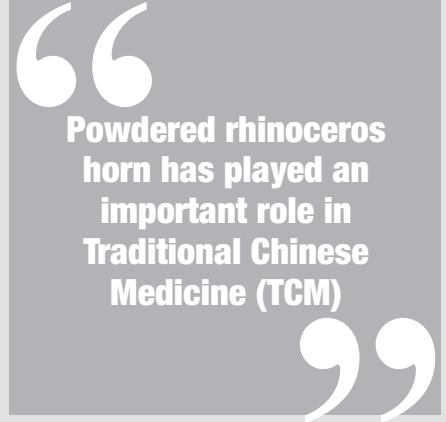
⁶ Also known as the Greater One-horned Rhinoceros and the Great Indian Rhinoceros

⁷ Talukdar, B.K., Emslie, R., S.S., Choudury, A., Ellis, S., Bonal, B.S., Malakar, M.C., Talukdar, B.N. & Barua, M. 2008. *Rhinoceros unicornis*. In: IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 09/02/2011

⁸ Van Strien, N.J., Manullang, B., Sectionov, Isnan, W., Khan, M.K.M., Sumardja, E., Ellis, S., Han, K.H.,

Boeadi, Payne, J. & Bradley Martin, E. 2008. *Dicerorhinus sumatrensis*. In: IUCN 2010. IUCN Red list of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 08/02/2011

⁹ Van Strien, N.J., Steinmetz, R., Manullang, B., Sectionov, Han, K.H., Isnan, W., Rookmaaker, K., Sumardja, E., Khan, M.K.M. & Ellis, S. 2008. *Rhinoceros sondaicus*. In: IUCN 2010. IUCN Red List of Threatened Species. Version 2010.4 <www.iucnredlist.org>. Downloaded on 02/03/2011



National Highway.¹⁰ Illegal logging can also cause problems. A quick glance at some of their former range states is also illuminating. The Sumatran Rhinoceros, which once ranged from “Bhutan and north-eastern India through Yunnan, Myanmar, Thailand, Cambodia, Lao PDR, Viet Nam and the Malay Peninsula and onto the islands of Sumatra and Borneo in Indonesia”¹¹ is now confined to small pockets.¹² Many of these former range countries have been subject to a great deal of political turmoil. Similarly with the Black rhinoceros, whose territories stretched across many war zones. However, the greatest threat to the rhinoceros comes from poaching.

Depending on its species, the animals possess one or two horns¹³ and it is this that is largely contributing to their downfall. Powdered rhinoceros horn has played an important role in Traditional Chinese Medicine (TCM) for hundreds of years, its supposedly medicinal properties used to heal a variety of ailments, although now it is almost exclusively used to treat fevers.¹⁴ Other horn is used to make ornately carved handles for ceremonial daggers or carved into libation cups, articles that are highly prized in the Middle East and China. In other words, these items are traded and, because the animals are rare, all transactions fall within the provisions of CITES.

CITES, or the Convention on International Trade in Endangered

Species of Wild Fauna and Flora,¹⁵ does precisely what it says, it regulates trade in endangered species, that is, species that are threatened with extinction or which may become so, and it does it by means of a permit system. All the species to which it applies are listed in the appropriate Appendix. Appendix I “shall include all species threatened with extinction which are or may be affected by trade”,¹⁶ while Appendix II lists those species that are not currently threatened with extinction, but that “may become so unless trade in specimens of such species is subject to strict regulation”.¹⁷



Under the Convention, “species” are defined to include “any species, subspecies or geographically separate population thereof”.¹⁸ In other words, different populations of the same species can be considered independently for listing purposes. This distinction is important when maximizing the protection of rhinoceroses. Furthermore, “species” also applies to “specimens of

species” and “specimens” may be living or dead and include “any readily recognisable part or derivative thereof”.¹⁹ In other words, it applies to rhinoceros horn, whether powdered as medication or in the form of decorative goods, as well as to the living animal.

Under CITES, trade can only be carried out by means of a system of permits. The strictest regulation applies to Appendix I species, where international trade will only be authorised “in exceptional circumstances”.²⁰ Both export and import permits are required from the Management Authority of these States,²¹ and they will only be granted if the Scientific Authority of the importing State advises that the import is “for purposes which are not detrimental to the survival of the species involved”²² and that, if the specimen is alive, the proposed recipient “is suitably equipped to house and care for it”.²³ Trading of Appendix II specimens is slightly more flexible. Thus CITES outlaws most trade in rhinoceroses. The only trade that is legal, is where a specific population is downlisted to Appendix II for a particular purpose that contributes towards the animals’ conservation. This happened in 1994 to the South African population of

¹⁰ <http://www.worldheritagekaziranga.com/Conservation-Ecological-Threats.html>

¹¹ See note 8, Foose et al. 1997, Grubb 2005

¹² Ibid. For example, the only population of *Dicerorhinus sumatrensis harrisoni*, 1 of its 3 subspecies, consists of 50 rhinoceroses found in Sabah and Kalimantan (Meygaard 1986 7 Van Strien 2005)

¹³ For example: the Indian rhinoceros has 1 horn, the white rhinoceros has 2

¹⁴ CoP 15 Doc. 45.1 (Rev. 1) Annex 1. A Report from the IUCN Species Survival Commission, African and Asian Rhino Specialist Groups and TRAFFIC to the

CITES Secretariat pursuant to Resolution Conf. 9.14 (Rev. CoP 14) and Decision 14.89, Tom Milliken, Richard H. Emslie and Bibhab Talukdar (compilers). Between 2006-2009 probably more than 3,100 kg. rhinoceros horn reached illegal Asian markets

¹⁵ It was concluded in March 1973 but only entered into force on 1 July 1975

¹⁶ Article II (1)

¹⁷ Article II (2). There is also Appendix III, but is not relevant to this article.

¹⁸ Article I (a)

¹⁹ Article I (b)

²⁰ See note 16

²¹ In the UK, this is the Wildlife Licensing and Registration Service (WLRS) which is part of the Animal Health and Veterinary Laboratories Agency, an executive agency of Defra

²² Article III 3(a)

²³ Article III(b)

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the Southern White rhinoceros, when a limited number of live animals were sold to go to “approved and acceptable destinations”.²⁴ In effect, this permits small numbers to be moved to a different area where perhaps they will be able to establish a new population thus slightly increasing the species’ chances of survival. However, what it fails to do is to stop all the illegal trading, which, because these products are still so highly sought after, becomes ever more lucrative as the animals become progressively rare. Hence the illegal killing continues.

In the early 1990s, the Environmental Investigation Agency (EIA) decided to look into what appeared to be a frenzy of poaching rumoured to be fuelled by a syndicate in a remote part of China which, allegedly, was stockpiling rhinoceros horn. Their progress was filmed, much of it with hidden cameras and the results were disturbing. The investigation, part of which was made into a programme and shown on television,²⁵ clearly demonstrated the links of the chain, from the poverty stricken African poachers willing to risk their lives for very little money, up to what indeed did prove to be a syndicate of Chinese officials who were stockpiling rhinoceros horn instead of gold because the horn was more valuable. A very different form of Futures Market! Of the original 6 tonnes only a small fraction remained when the team arrived, ostensibly to buy up the remaining stock. After checking that the horn was indeed from rhinoceroses, for it

can be other material masquerading as such, they agreed to the sale. It was then that these same officials volunteered the local police to help transport the cargo over the border! One of the results of this investigation was that the Chinese Government set up a wildlife protection unit and burned some of the horn. Furthermore, the USA put pressure on Taiwan to tighten up procedures at its ports of entry and exit, to ensure that this leaky border was sealed and no more horn got through to China. For a time, the poaching, if not entirely stopped, was greatly reduced and numbers of the Black rhinoceros, which had suffered a catastrophic decline of 96% between 1970 and 1997 began to steadily increase.²⁶

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Poaching is a cruel business. Unfortunately, with all the political unrest and war being waged, particularly on the African continent, there is no shortage of weaponry to use to kill these animals. The EIA programme²⁷ showed some harrowing footage. In one instance, two rhinoceroses had been gunned

down by Kalashnikov rifles and left to die in agony after their horns had been cut off. This had probably taken as long as two days. What made the whole incident even more disturbing and tragic was that both animals were heavily pregnant, soon to give birth. Deeply shocking. In the twenty first century however, poaching has also gone “high tech”. The poachers are using helicopters to hunt down their victims, which they either shoot with guns or dart with tranquillisers. They land when the animal is unconscious, cut off their horns with chainsaws and remove them by air. “The whole operation can take as little as 10 minutes” and the animals are left to bleed to death, if they are not dead already.²⁸ This time, much of the demand comes from Viet Nam, “where a cabinet minister recently claimed his cancer had been cured by a potion containing ground rhino horn”,²⁹ an infinitely more dangerous claim than merely that it heals fevers.

Although poaching has increased, so has international capacity to fight back. There are now 175 signatory parties to CITES and the preamble to the Convention states that “international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade”. This is now happening and there are an increasing

²⁴See note 2

²⁵It was an episode in the series “Animal Detectives”, “Animal Detectives – Rhinos”, first broadcast on television in the 1990s

²⁶<http://www.savetherhino.org/etargetsrinm/site/1209/default.aspx> Accessed 22/02/2011

²⁷ See note 25

²⁸ Richard Thomas “Surge in Rhinoceros Poaching in South Africa”, *TRAFFIC Bulletin* Vol. 23 No. 1 (2010), p. 3

²⁹ “Rhino poaching soars in South Africa”, *Legal Eagle*, February 2011, No. 63, p. 14

number of successful prosecutions in the “producer” and “consumer” countries, as the following examples from 2010 will serve to demonstrate. In Kenya, 5 rhinoceros horns were seized and confiscated at Jomo Kenyatta International Airport, part of a cargo falsely declared to be avocado pears.³⁰ In South Africa, a Vietnamese national, arrested at O.R. Tambo International Airport, was found guilty on seven counts of illegal possession of rhinoceros horn, 7 horns taken from 4 poached animals. The presiding Magistrate dealt harshly with the defendant, refusing to fine him and instead, sentencing him to 10 years in prison, not only because “he wanted to send a strong message to Viet Nam with this sentence, as fines did not seem to be a deterrent” but also because the defendant “had travelled to South

border with Myanmar and found to be in possession, inter alia, of 10 slices of horn from the critically endangered Javan rhinoceros. They were expected to be sentenced to a term in custody of more than 15 years.³²

Another South African case again highlights the role of Viet Nam in the current resurgence of killing. Rather more disturbing however, is the fact that on this occasion veterinarians appeared to be involved. The two, together with nine other persons, were allegedly part of a rhinoceros poaching syndicate operating in the Limpopo province. This case is due to be heard in April.³³ Europe too has had its successes, but it has not always been easy to secure a satisfactory result.

It was as far back as 1982 that the European Union passed its first Regulations³⁴ implementing CITES, with a number of others passed since then, all of them stronger than CITES itself.³⁵ Within the UK, it is the Customs and Excise Management Act 1979 and the Control of Trade in Endangered Species (Enforcement) Regulations, the COTES Regulations, a number of which have been passed from 1985 onwards, that are applied to enforce CITES and the EU Regulations. However, it was not until the 1990s that many prosecutions were brought. One of the earliest cases of selling Traditional Chinese Medicines (TCMs) containing parts of endangered species, including powdered rhinoceros horn, was

R v Yeung and Lee 1995.³⁶ Indeed, it was thought to be the first such prosecution in the world. Thousands of bottles of medicine were seized at their premises. The two defendants, Chinese herbalists, were charged with offering items for sale, namely, remedies containing parts of endangered species. They admitted the offences and were fined £3,000 and £2,000 respectively. Lee also admitted 1 charge of keeping an item for sale. Now, however, it is very unusual to get rhinoceros horn in TCMs in the UK.³⁷

One of the strengths of CITES is that its enforcement procedures include the confiscation of illegally traded specimens.³⁸ Although this allows rhinoceros horn to be confiscated, as it was in Yeung and Lee, this is not necessarily a straightforward procedure. Indeed, the extraordinary case of R. v Bull, Eley, Scotchford – Hughes and Arcott 1998 well illustrates this. The owner of the horn, Bull, was already in prison serving a life sentence for the murder of his wife. He had a stock of rhinoceros horn that he wanted to sell, to provide him with funds when he had completed his sentence. Therefore he, together with Eley, who being outside prison was acting as Bull’s main agent and salesman, plotted with others as to how the sale should be accomplished. Unfortunately for them, their fellow conspirators were actually members of the RSPCA’s Special Operations Unit and the South East Regional Crime Squad. It was a long and complex undercover operation.

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Africa specifically to commit a crime with self-enrichment as motivation, without taking the effect of the damage into consideration”.³¹ A similarly strong line was taken in China, where the two accused were stopped at a checkpoint on the

³⁰ See TRAFFIC Bulletin Vol. 23 No. 1 (2010), “Seizures and Prosecutions”, Africa, Kenya, pp. 30-31

³¹ See note 30, South Africa, p. 31

³² See note 30, China, p. 32

³³ See note 31

³⁴ Council Regulation 3626/82 and Council Regulation 3418/83

³⁵ It is Council Regulation 338/97 and Commission Regulation 865/2006 that currently enforce CITES within the European Union

³⁶ “£5,000 fines for animal potions”, The Times, 7 September 1995

³⁷ Information given to the author by the WRLS

³⁸ Article VIII 1(b)

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As poaching has soared to unprecedented levels, so have prices achieved for ‘worked’ horns
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The four defendants were charged under the Control of International Trade in Endangered Species (Enforcement) Regulations 1985, with conspiring to sell 240 kilos of rhinoceros horn. At the time of their arrest, this amounted to 1% of the world’s total wild white rhinoceros population. All four were found guilty though their sentences varied. Bull had 15 months added on to his remaining custodial term. He also had to pay £700 costs. Eley was given a prison service of 9 months and the other two, their girlfriends, were ordered to do up to 120 hours community service.³⁹

The horn was confiscated, but not for long. Unfortunately, because it was old and fell within the category of pre-CITES specimens, it had to be returned, Bull could keep it. However, he could not sell it as it was “unworked”. Rhinoceros horn falls within one of two categories, “unworked” (ie. raw) or “worked” and while raw horn cannot be sold, some pieces of “worked” horn may

be sold, imported or even re-exported. This loophole originates from European Commission Regulation 865/2006 which sets out an antiques derogation,⁴⁰ under which “worked” horn (acquired in its finished state before 1 June 1947) could be sold because, allegedly, it is more valuable than the raw material.⁴¹ Until about two years ago, rhinoceros horn trophies fell within the “unworked” category, when the European Commission ruled that such trophies should be considered to be works of art.

Whilst it is obvious that objects such as ornamental daggers and Ming and Qing dynasty libation cups are indeed objects d’art, a rhino horn mounted on a plaque for wall hanging is surely more sensibly categorised as “unworked” or raw material. However, once the Commission had ruled that trophies were “worked”, the antiques trade in these items rapidly increased, with sellers responding “positively to a raft of conspicuously high prices paid by Far Eastern bidders...”.⁴² Indeed, some recent research carried out by the UK’s Wildlife Licensing and Registration Service (WLRS) shows a clear correlation between increased levels of poaching of wild rhinoceros and application to WLRS for permits to re-export “worked” specimens of horn. As poaching has soared to unprecedented levels, so have prices achieved for “worked” horns and subsequent applications for re-export permits.⁴³ WRLS is convinced these

additional horns are helping to fuel the trade, and that people are buying by weight rather than artistic merit.⁴⁴

The rules on import, re-export and sale of “worked” or “unworked” rhinoceros horn are complex and have recently been made even stricter.⁴⁵ In September 2010, WLRS, acting unilaterally, issued new, stricter guidelines which required, inter alia, that they, WLRS, must give pre-sale approval for all potential UK sales of rhinoceros horn under the antiques derogation. They would also, with very few exceptions, refuse all applications for permits for the re-export of items made of rhinoceros horn.⁴⁶

However, even this was not enough. In November 2010, one specimen of rhinoceros horn sold for the record sum of £155,000. John Hounslow, Head of WLRS, has said that “There is evidence that comparatively poor examples of taxidermy containing rhino horn have been selling for £40,000 - £50,000 far exceeding their value as art objects” and because they, (WLRS), intend to protect wild rhinoceroses “it is important that future applications for the export of rhinoceros horn, with a small number of notable exceptions, are refused”. Furthermore, he states that

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 ”

³⁹ TRAFFIC Bulletin Seizures and Prosecutions: Vol. 16 No. 3 (March 1997) to Vol. 23 No. 1 (December 2010), see Vol. 17 No. 2 (June 1998), Europe, UK

⁴⁰ Article 62(3)

⁴¹ Simon Barnes, “Psst! Want to make a mint out of rhino horn?”, *The Times*, 20 November 2010

⁴² Roland Arkell, “EU set to outlaw mounted rhino horn sales”, *Antiques Trade Gazette*, 9 February 2011. See

<http://www.antiquestradegazette.com/news/7809.aspx> Accessed 09/02/2011

⁴³ In fact they doubled from 8 in 2009 to 16 in 2010, as did poaching incidents, up from about 150 to over 300

⁴⁴ Information provided for the author by the Wildlife Licensing and Registration Service

⁴⁵ GN 1: General guidance notes for Importers and Exporters, issued January 2011; GN 2: General Notes

on commercial use, issued February 2011; and GN 7 (February 2011): Additional guidance notes for traders in worked specimens. GN 1 and GN 2 detail the exact procedures and requirements for licence applications

⁴⁶ “Animal Health to Prevent Export of Rhino Horn from UK”, Animal Health Press Release, 22 December 2010. See http://www.defra.gov.uk/animalhealth/cites/news/archived_news/200910-Prevent-Exp... Accessed 28/02/2011

“This decision is based on evidence that such applications, if approved, could potentially fuel demand for rhino horn, which may lead directly to an increase in poaching”.⁴⁷

In February 2011, the European Commission acted to clarify the definition of “worked” rhinoceros horn.⁴⁸ Under the new guidance, “worked” rhinoceros horn includes, for example, “taxidermied rhino head including horn(s), mounted or un-mounted; and rhino horn carved or fashioned into a complete and identifiable artistic or utility object.

“This decision is based on evidence that such applications, if approved could potentially fuel demand for rhino horn”

However, “rhino horn mounted on a plaque, shield or other type of base for wall hanging; rhino horn removed from a plaque, shield or other type of base; or rhino horn with minimal or rudimentary carving” all fall within the category of “unworked” horn. This new advice was included in the most recent UK Guidance, GN7, issued by WLRS in February 2011. Under it, “details of all worked specimens of rhino horn to be offered

for sale in the UK under the antiques derogation (Article 62(3) of EC Regulation 865/2006 must be submitted to Animal Health (SSC-WLRS) for pre-sale approval”⁴⁹ and only when this has been received and WLRS is satisfied that the item does indeed fall within the new, clarified definition of “worked”, will it be possible to sell it.⁵⁰

Herds of rhinoceroses have roamed the earth for millions of years. Our ancestors lovingly painted them in the heart of caves, part of some mysterious religious ritual.⁵¹ Today however, they are in trouble and there are not many of them left, their problems caused mainly by people. Despite the fact that active measures to conserve all five species have been ongoing for a number of years and that there is no shortage of volunteers prepared to work in the dangerous field of rhinoceros protection, numbers continue to fall. It would seem that the rewards for poaching are still too great. Those involved in illegal trading in rhinoceros horn remain undeterred by a substantial body of legislation which has resulted in successful prosecutions in many countries. The penalties can be severe. Yet while the price of the horn continues to be higher than that of gold and some people foolishly believe in its medicinal properties, even to the extent that it can cure cancer, what hope is there? Even in the UK, Simba’s dead body was mutilated. The future for the rhinoceros looks rather bleak.

⁴⁷ Ibid

⁴⁸ As contained in EC Regulation 338/1997, Art. 2(w)

⁴⁹ GN 7 (February 2011): Additional guidance notes for traders in worked specimens, para. 2 Rhino Horn. See also “New rules make it illegal to trade mounted rhino horns in the UK”, Animal Health Press Release, 18 February 2011 - <http://www.defra.gov.uk/animalhealth>

[/news/180211-new-rules-rhino-horns-in-the-UK...](#)
Accessed 28/02/2011

⁵⁰ Ibid

⁵¹ The author saw a prehistoric painting of a woolly rhinoceros when she visited the French cave of Lascaux