

APPENDIX 2:

THE RHINOCEROS FARMER'S STATUTORY BURDEN – I. du Toit

South Africa is experiencing the highest incidence of rhinoceros poaching in history and it is fair to state that the survival of the species is at risk if this trend continues. The custodians of rhinoceroses in this country are divided into two distinct groups: the national and provincial governmental nature conservation authorities and the private game farm owners. This short essay is dedicated to the challenges faced by private game farm owners and potential private rhinoceros owners in their effort to keep, breed and protect rhinoceroses in South Africa. It also serves to highlight the challenges faced by South Africa's emergent black farmers and communities who may wish to enter the rhinoceros-farming industry.

At the outset it must be noted that black and white rhinoceroses in South Africa are listed, classified and governed by the Threatened or Protected Species Regulations (in short referred to as TOPS regulations) which regulations are promulgated under the National Environmental Management: Biodiversity Act 10 of 2004 (in short referred to as NEMBA). If any private individual or community has access to a suitable piece of farm land (either as owner, tenant, manager or beneficiary) and wishes to purchase and keep rhinoceroses on such land, such individual or community has to comply with the prescriptions of NEMBA, TOPS and several other statutory requirements. The procedural and logistical burden that these statutory requirements place on the private rhinoceros owner, coupled with the security risk posed by poaching, are so burdensome that more often than not, the incumbent rather elects to pursue other game species and avoid rhinoceros ownership altogether. This spells danger of extinction in capital letters to the rhinoceros because if no one is interested in buying and keeping rhinoceroses, then no one is protecting rhinoceroses.

The legal requirements applicable to any person who wants to keep and breed rhinoceroses on a suitable piece of land can be summarised as follows:

- 1) This essay will not comprehensively deal with the entire process of buying the land, fencing the land, obtaining a certificate of adequate enclosure, applying for and registration of a game farm, game trader, captive breeding operation, conducting habitat assessments for suitability and/or commissioning a biodiversity management plan. The rather cavalier assumption is made in this essay that the potential rhinoceros owner is already adequately set up in all of these respects and is now ready to start buying rhinoceros.
- 2) NEMBA contains a long list of restricted activities in relation to TOPS animals. A short excerpt taken from this list reads as follows: *“hunting, catching, capturing, searching, pursuing, driving, lying in wait, gathering, collecting, plucking, picking parts of, cutting off, chopping, importing, exporting (both internationally and/or inter-provincially), having in possession, exercising physical control over, growing, breeding, in any way propagating, causing it to multiply, conveying, moving, otherwise translocating, selling, trading in, buying, receiving, giving, donating, accepting as a gift, in any way acquiring or disposing of*

a specimen of a listed TOPS animal". All these things are restricted activities and the list of such activities ends off by saying, in addition to all of the above: "any other activity involving a TOPS animal".

- 3) NEMBA then states that no person may conduct any one of the above-mentioned restricted activities without first obtaining a permit from the relevant issuing authority, which in the case of rhinoceros is the local provincial nature conservation authority.
- 4) Our potential rhinoceros farmer who wishes to purchase, keep, manage and hopefully successfully breed rhinoceroses should therefore take cognisance of the above-mentioned list of restricted activities and, being a law-abiding citizen, should comply with all of it.
- 5) Now, in order to get rhinoceros onto his farm, our farmer must purchase rhinoceroses. This involves the following restricted activities (underlined phrases):
 - 5.1 searching for the animal on the seller's farm (this may involve the effort and cost associated with a helicopter);
 - 5.2 when the rhinoceros is found, it must be pursued and darted (this involves the effort and cost associated with a registered veterinarian);
 - 5.3 when the rhinoceros is darted it must be captured and loaded onto a suitable vehicle (this involves the effort and cost associated with an approved wildlife capturing team).
 - 5.4 when the rhinoceros is loaded it is then moved by road to the destination farm where it is released (this involves the effort and cost associated with a transport vehicle suitable for Big Five game movements).
- 6) The statutory requirements for the process described above are burdensome. An export permit is required for the originating farm; an import permit is required for the destination farm. If the move is taking place within the same province then an internal movement permit is required. The veterinarian must have a standing permit to dart rhinoceroses (the same veterinarian will require a different standing permit for each one of the nine provinces).
- 7) NEMBA and TOPS furthermore state that the local authorities may impose their own additional conditions to the permits issued in respect of above-mentioned restricted activities. In recent times such conditions prescribe that an official of the issuing authority must be personally present during certain of the activities. This means the potential rhinoceros farmer is dependent on the availability of overworked and underpaid government officials. These officials are often unable to attend the farm because game farms are by their nature usually situated in remote locations around the country, and officials have limited resources (vehicles, fuel allowances, cellular phone allowances, etc.). These officials are also only available during office hours. This burden is illustrated by the following examples:
 - 7.1 The rhinoceros finds itself *en route* in a transport vehicle and arrives at the destination farm at 21h00 in the evening (the process of searching, finding, darting, capturing, loading and travelling often takes up an entire day). The destination farm owner now finds that no nature conservation official is available to unload the animal (notwithstanding the fact that the farmer made every effort to arrange this in advance). The farmer must

now either break the law and unload the animal himself or he must risk the life of the rhinoceros by leaving it in the transport crate overnight and unload it after 08h00 the next morning when the nature conservation official is available.

7.2 The rhinoceros farmer plans to capture and move a rhinoceros to his farm. He arranges and pays for a veterinarian, a wildlife capture team, a helicopter, a suitable transport vehicle and of course he arranges well in advance with the local nature conservation official to attend. On the morning of the planned capture the whole teams arrives on schedule, except for the nature conservation official. Upon enquiry the rhinoceros farmer learns that the said official has been called at the last minute to another commitment. Now the farmers has two choices, either break the law and proceed with the capture or send the veterinarian home, send the capture team home, send the helicopter away, send the transport truck away and re-schedule the entire operation to a new date when the nature conservation official is able to attend.

- 8) If the game farmer manages, in spite of the above-mentioned challenges, to obtain the necessary permits and get some rhinoceroses onto his farm he then immediately faces a grave security risk to himself, to his staff and most importantly to his live rhinoceroses that are carrying sought-after horn on their noses.
- 9) Once again, presuming that the rhinoceros farmer already has a military-like security force in place on his farm (which involves a great deal of effort and cost), he may nonetheless choose to de-horn his rhinoceros in order to protect it against the threat of poachers. This exercise involves another long list of restricted activities. Darting the rhinoceros is a restricted activity, cutting off a rhinoceros horn is a restricted activity and possessing a rhinoceros horn is a restricted activity, moving a rhinoceros horn is a restricted activity. Once again, the law requires that a registered veterinarian (who must be in possession of a valid standing permit for the specific province where the rhinoceros is located) must be present during the de-horning process, in addition to the nature conservation official who must yet again be personally present, otherwise the farmer risks prosecution for non-compliance with permit conditions. Certain provincial authorities insist that the veterinarian must personally conduct the dehorning. The farmer is conducting no less than four restricted activities when dehorning a single rhinoceros.
- 10) In addition hereto the nature conservation authorities recently imposed a further permit requirement that the farmer must also complete a DNA test kit when he dehorn a rhinoceros. This is a commendable scientific effort but the implementation thereof is creating practical and logistical difficulties for the rhinoceros farmer. The DNA kits are only available from one University situated in Pretoria, Gauteng, and the farms are scattered over nine provinces of South Africa. The local provincial authorities more often than not do not have any DNA kits available so the farmer (wanting to comply with his permit requirements) must obtain the said kits at his own cost and on his own effort from the University of Pretoria. The DNA kit involves drawing blood from the rhinoceros, cutting an ear-notch from the rhinoceros and taking a hair sample from the rhinoceros, all three of which are, very technically speaking, restricted activities in terms of TOPS.

- 11) Darting and immobilizing a rhinoceros presents an inherent risk to the life of the animal (very similar to the risk of placing a human being under general anaesthetic) so the cautious farmer would prefer to de-horn the rhinoceros simultaneous with the capturing and moving process because the rhinoceros is darted and immobilized for this exercise anyway). Now the logistics of complying with the permit requirements gets really confusing.
 - 11.1 Firstly, the farmer cannot apply for a possession permit for the horn before he has actually cut the horn off the rhinoceros (a horn still attached to a live rhinoceros does not constitute a separate specimen from the rhinoceros itself).
 - 11.2 Secondly, the farmer cannot apply for a possession permit for the horn unless he is able to provide a micro-chip number, length and weight measurements for the horn. All of these are only done after the horn is cut off and it may only be done if and when a nature conservation official is available to personally supervise the exercise.
 - 11.3 Thirdly, the farmer cannot apply for a permit to move the horn to a place of safety unless he already holds a possession permit. The farmer wants to move the horn because the risk of keeping the horn on the farm is simply too high. Wildlife capturers and veterinarians have been robbed at gunpoint by poachers looking for rhinoceros horn.
 - 11.4 So once again the farmer must either risk the life of the rhinoceros by leaving the horn on the rhinoceros or the farmer must risk his own life and break the law by cutting off the horn but then keeping it in his possession illegally, or moving it to a place of safety illegally until he can apply for the necessary permits and comply with the legal requirements.
 - 11.5 A place of safety is typically a safety deposit box in a bank in the city or town closest to the farm, much like people who keep other valuables such as diamonds, firearms and expensive jewellery in bank safes.
 - 11.6 Applying for the horn-possession permit requires a microchip, a DNA sample kit sealed by a registered veterinarian, a visit by the local nature conservation official to measure, weigh and register the horn (if and when such official is available subject to his budget and time constraints). Microchips and DNA sample kits are not necessarily always available from the authorities and the farmer often has to wait several days or even weeks to obtain these items.
- 12) All of the above restricted activities which require permits must be read and considered in light of the fact that different provinces have different rules relating to permit applications. One province takes four to six weeks to consider and issue a single permit application, other provinces can ONLY consider and issue permit applications on Tuesdays and fortunately another province will consider and issue permit applications within two or three days.
- 13) If, against all the above-mentioned odds, our rhinoceros farmer manages to keep and breed rhinoceros successfully on his farm, we can proudly count him in as custodian and conservationist of an endangered species. The farmer has no viable means to profitably keep and breed such rhinoceroses, however, because the cost of the land, the cost of the farming operation, the cost of security, the cost of feed in winter months, the veterinary costs in caring for the rhinoceroses and many other hidden costs are stacking up against the farmer and he can generate a very limited amount of income from the live rhinoceros alone.

- 14) The fact that South Africa is experiencing the highest incidence of rhinoceros poaching in history has sparked a legislative clamp down on the rhinoceros industry. On the one hand this is arguably a natural reaction by authorities against criminal activities but on the other hand it also means by necessary implication that the law-abiding rhinoceros farmer is pestered by legal red tape and every move he makes is scrutinized with hawk's eyes. Another example is the following:
- 14.1 A rhinoceros farmer concludes an agreement in terms whereof he is purchasing four rhinoceroses and he makes his arrangements to capture and move the rhinoceroses to his farm. This includes applying for the necessary permits. The permits are issued and the team as described above arrives on the seller's farm and commences with the capture operation. The veterinarian finds, however, that one of the rhinoceroses is not fit to be darted and moved (this can happen for a number of reasons and the best interest of the rhinoceros will always be served first). The farmer therefore moves only three animals instead of four. Six months later the farmer is confronted by the nature conservation authorities and/or the police (both of which are, as a result of the high poaching figures, vigorously investigating and scrutinizing every single permit ever issued). The rhinoceros farmer suddenly finds himself a suspect in a criminal investigation because his permit (with a total of four rhinoceroses) and the actual number of rhinoceroses (three) on his farm do not add up. If this same rhinoceros farmer happens to own more than one farm in different provinces and has many rhinoceroses on such farms, then this example may repeat itself several times in a specific capture season and the investigations against the farmer intensify because he now faces several incidents of non-compliance or so-called irregularities regarding his permits.
- 14.2 Just imagine for one moment any other commercial farmer, like a sheep farmer or a cattle farmer, and place upon such farmers the above-mentioned burden of permits and legislation. Every single sheep or cow purchased, sold, moved, captured or even killed requires various permits and personal visits by local law-enforcement officials. Or imagine what would happen to the sheep-farming industry if every sheep farmer were legally required to have a permit, a microchip and a DNA sample for each and every piece of wool shorn from his sheep. It is safe to assume that most farmers will get out of the farming business altogether under such circumstances. This is unfortunately exactly what is happening to rhinoceros farmers in South Africa.
- 14.3 It deserves to be mentioned that the above-mentioned risks of prosecution exist in the letter of the law. Reputable game farmers usually have good business and working relationships with their local conservation authorities and in an ideal world apparent irregularities should be resolved amicably. This does not detract from the fact that legal mechanisms exist to persecute the otherwise law-abiding game farmer whose main purpose is the proliferation of the rhinoceros population on his farm. Such mechanisms are burdensome to the farmers.
- 15) In strict contrast to the above, the rhinoceros farmer then discovers that his rhinoceroses in fact have the ability to generate a very lucrative income from their horn without having to carry the legal burdens described above. There is an enormous demand for rhinoceros horn and literally thousands of people are willing to pay top dollar for rhinoceros horn. If our rhinoceros farmer wishes to utilize this lucrative market and still remain a law-abiding citizen, then he can easily do so by obtaining a single permit.

- 16) This permit is a hunting permit. It involves, by necessary statutorily enforced implication, the death of the rhinoceros. The farmer can legally hunt the rhinoceros and sell the rhinoceros horn as a hunting trophy and he needs one hunting permit only.
- 17) It is an unfortunate statistical fact that many rhinoceros farmers have chosen the easy way out of conservation and have resorted to killing their own rhinoceroses. Some farmers go so far as buying rhinoceroses for the sole purpose of hunting them immediately afterwards. That is after all the only legal way they can generate any form of profitable income from this magnificent and endangered African animal. Farmers need not bother with the statutory burden of keeping and breeding rhinoceroses and in the process try to save the species. Legally it is much easier and much more profitable to simply kill them all.
- 18) When we consider this tragic situation, it becomes clear that the private owner custodians of black and white rhinoceroses in South Africa, who have been credited in the past with making a dramatic saving contribution to the species, are being forced by the statutory burden placed on them, to become the killers of very same species. The legal requirements involved in rhinoceros farming simply make a rhinoceros worth more dead than alive.