

Poisoning rhino horn - ethically defensible, but legally questionable?

 By [Helen Dagut](#)

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The decimation of South Africa's rhino population is undoubtedly one of the most emotive issues of current times. Few are unmoved by images of stricken animals with gaping, bleeding holes in their heads, as the 'death toll' rises steadily to feed the increasing demand for rhino horn predominantly by markets in the East.



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It is unsurprising, then, that extreme measures are being suggested and implemented in an attempt to bring the rampant poaching to an end. One of these is the poisoning of the horns of live rhinos. In a pilot study initiated by Ezemvelo KwaZulu-Natal Wildlife in September 2013, a chemical cocktail is being injected into the horns of several rhino which live in the high-risk Tembe Elephant Park and Ndumo Game Reserve on the border with Mozambique, with the purpose of contaminating the horn. The poison is described as "extremely toxic" to humans and known to cause symptoms including vomiting, diarrhoea and neurological disorders, but is not apparently intended to kill people who ingest it.

Effectiveness still to be assessed

A bright red dye injected with the poison can be picked up on airport scanners and marks the horn as illegally obtained and toxic. It is hoped that potential consumers will be deterred by the threat of serious illness. The effectiveness of the measure as a deterrent is still to be assessed, but conservationists have hope that the poisoning, coupled with awareness campaigns aimed at poachers and consumers, will go some way to reducing demand. Although extreme, poisoning of horns is viewed by many as ethically justifiable in the context of the rhino "massacre". Questions have been raised, however, around its legality.

Administering poison is a common law crime in South African law. 'Administration' of the poison may be direct or indirect, with indirect poisoning including placing it where a person may ingest it. To be liable for conviction of the crime, a person must have been aware of that fact that the substance he or she was administering was poisonous or contained poison and must have known or foreseen the possibility that someone might consume it. Significantly, the poison need not necessarily have been administered with the intent to kill or harm anyone and need not have resulted in death or harm, for the crime to have been committed. In knowingly infusing rhino horns with poison, with the purpose of harm to consumers, therefore, the parties undertaking it are committing a crime.

Where harm to or death of a poacher or consumer occurred in South Africa as a result of a poisoned horn, the party which administered the poison could be prosecuted for attempted murder, culpable homicide or murder in the South African courts.

Injury or death outside of SA

However injury or death attributable to poisoning that occurred outside of South Africa, could not be prosecuted in South

African courts, so separating the people administering poison in South Africa from the consequences of such poisoning outside of South Africa. Prosecution of South Africans abroad for crimes committed there would be subject to extradition requirements.

When asked about the questionable legality of horn poisoning, the KwaZulu-Natal MEC for Environmental Affairs has been quoted as saying that the "real criminals" are not the poisoners, and "let us arrest and deal with the poachers instead".

Given government and society's recognition of the value of rhinos and efforts to curb what is viewed as a poaching epidemic, it seems unlikely that prosecutions for the crime of poisoning of rhino horn will be a priority of the State.

This year, Cliffe Dekker Hofmeyr made a sizeable contribution to the Rhino Action Group Effort (RAGE) to help them in the fight against illegal rhino poaching.

ABOUT HELEN DAGUT

Helen Dagut is a consultant in the Environmental Practice at Cliffe Dekker Hofmeyr.
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