



LEGAL ASSISTANCE CENTRE  
*Fighting for human rights in Namibia since 1988*



# Pro Bono

## INFORMATION ABOUT NAMIBIA'S LAW

### Problem Animals

In view of the recent killing of Voortrekker, the celebrated elephant bull that roamed in the Ohungu Conservancy in the Erongo Region, the Legal Assistance Centre has been asked to explain what Namibian law permits people to do when their lives or property are threatened by wild animals.

In law, the term “problem animal” means an animal declared as such by the Minister in a notice in the *Government Gazette*, pursuant to the authority in the Nature Conservation Ordinance 4 of 1975. Presently, *only four species* are declared to be “problem animals”: baboons, lynx, dassies and black-backed jackals. Consequently, the use of the official legal “problem animal” has very limited application, and does not apply to what people generally regard as “problem-causing animals” such as elephants, lions, hyenas, cheetah, hippos and crocodiles.

In fact, some wild animals which can cause conflict with humans have been legally declared to be “protected game” (including lions and crocodiles) or specially protected game (including elephants, hippos, rhino and African wild dogs).

Against this background, the Nature Conservation Ordinance does make provision for defence against wild animals in several ways.

The four species which have officially been declared to be problem animals can be hunted by anyone who owns or leases the land where the animal is found. The person who owns or leases the land can also engage another person to do this.

But the position is very different when it comes to protected and specially protected game. In general, protected game and specially protected game can be hunted only with a permit from the Ministry of Environment and Tourism (MET).

However, protected game or specially protected game can be killed without a permit by someone who owns or leases land, or occupies communal land, “in defence of a human life or to prevent a human being from being injured or to protect the life of any livestock, poultry or domestic animal”, *whilst the life of such livestock, poultry or domestic animal is actually being threatened*.

The law similarly allows the killing of game without a permit to protect cultivated lands and gardens which are enclosed by game-proof fences - but elephant, hippopotami and rhinoceros may **not** be hunted for these reasons.

In such instances, the person who kills the protected animal must report this in writing to the nearest nature conservator or at the nearest police office within 10 days. In addition, in terms of MET's *National Policy on Human Wildlife Conflict Management (2018-2027)*, a written report must also be submitted to the Director responsible for managing wildlife and national parks, including information regarding "good grounds for being reasonably confident that the animal causing the problem was the animal that was destroyed and an explanation of the reasons for this confidence".

The policy also addresses longer-term threats. The MET can approve the destruction of animals where they persistently cause problems, or where the numbers of wild animals are so high that conflict becomes an intolerable burden on the local community. Culling must be based on an assessment by the Ministry which ensure that any permitted destruction of wild animals will not compromise the long-term conservation of the species in question nationally or regionally, and (outside protected areas) after consultation with local and regional stakeholders.

So what does this mean in terms of elephants like Voortrekker? Voortrekker did not fit the legal definition of a "problem animal", because elephants are not currently amongst the species which have been declared to be officially declared to be "problem animals".

Given the danger to the elephant populations from the worldwide illegal trade in ivory, it would not make sense to declare elephants to be "problem animals" in future. Furthermore, Namibia would not be allowed to do this due to its international commitments under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which lists elephants as a protected species. (Namibian elephants are listed on Appendix II of this treaty, which covers species that are not necessarily threatened with extinction at the moment, but may be threatened unless trade is closely controlled.)

So what about the exceptions for threats to people and domestic animals? Killing an animal without a permit is legally justifiable only if the elephant is in the act of threatening a human life or domestic animals where there is a clear and immediate danger. It does not apply to a situation where someone tracks an elephant *after* it has caused damage, and then kills it.

Furthermore, the law explicitly says that elephants may *not* be killed without a permit in the defence of crops, and no protected game can be killed on the spot to protect other types of property such as physical structures or water installations.

However, the Nature Conservation Ordinance does not set clear guidelines for the issue of permits for the hunting of protected game by the MET. It appears that MET relied on its *National Policy on Human Wildlife Conflict Management* to justify its actions to issue a permit to kill Voortrekker by declaring him to be a problem causing animal.

The policy requires that certain questions must be asked to decide if a particular the animal must be destroyed or not: (1) Has the animal injured or killed a person? (2) Has the animal persistently killed livestock? (3) Has the animal remained close to a settlement, behaving aggressively such that residents feel threatened? (4) Would further problems be caused if the animal concerned is not destroyed?

If the answer is "no" to all of these questions, then a permit to kill the animal is not justified.

Opinions differ on the answers to these questions in respect of Voortrekker. Some argue that Voortrekker was not a threat to the community, while the MET gave a number of reasons

justifying the permit to kill Voortrekker, including the principle that government is responsible to its citizens and must protect their lives and livelihoods above all else.

Such conflicting views add further confusion to the decision-making chain which applies to permits for hunting protected animals such as Voortrekker.

Namibia's goal should must be to reconcile protection of the lives and interests of those who live with wildlife, protection of Namibia's endangered species, and preservation of Namibia's reputation as one of the world's foremost Community Based Natural Resource Management champions.

We recommend that future investigations into permits issued to authorise the killing of protected game should be done in a more comprehensive and transparent way. This would help to remove any doubt as to whether law and policy is strictly followed in the management of potential conflicts between wildlife and communities.