

The NSPCA: with dogs



Information and photos provided by NSPCA
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this activity. These actions lead to increasing tension and are threatening to further destabilise the relationships between farmers, conservation authorities and adjacent communities.

The NSPCA is of the opinion that farm attacks, coupled with stock theft, have led to heightened antagonism between farm owners and hunters. This antagonism has created feelings of insecurity for farmers, resulting in farmers being "up in arms" to prevent any hunting or trespassing on their land. When land owners see people on their land hunting with dogs, they usually cannot determine whether these people are game hunters or stock thieves. As a result, land owners resort to shooting the hunters' dogs on sight. Farmers' insecurity is also heightened by the fact that some hunters, especially the more organised "taxi" hunters, carry guns which they, in turn, claim to be using for their own protection against farmers' attacks.

The issues of farm and farmer security, disregard for private property, the effects on game and domestic stock, and the shooting of very expensive dogs, are all thus causing increased tension between the hunters and the landowners on whose farms they are hunting. These attitudes and tension cannot be disregarded and need to be taken into account when dealing with these issues.

There is a degree of uncertainty that exists regarding the unlawful use of dogs for hunting purposes and the regulation thereof. Hunting with dogs is a practice that has clear roots in various cultures and traditions. In recent times, however, it has become evident that although traditional hunting does occur in some areas, this has been overtaken in many regions by a more modernised form known as "taxi" hunts. This modernised form of hunting is carried out primarily by urban residents with packs of expensive dogs and little respect for private property.

These groups of hunters have a significant impact on game populations, and have also impacted on domestic livestock. This has led to strong reactions among both farmers and conservation authorities who are actively trying to control this problem. Unfortunately, legislation has failed to deal with this growing problem adequately with the result that farmers, in particular, are resorting to any methods available in an attempt to control

The totally unselective nature of this kind of hunting is a primary concern to farmers, particularly those with rare or valuable species on their land. Once dogs are released and start to chase an animal, the chances of stopping them are very slim. Hunting with large groups of free-running dogs is a clearly uncontrolled practice. Hunters are trespassing on game reserves and farmers' lands, killing animals without the necessary permits or the permission of the land owner. The NSPCA has made it clear that hunting with dogs is not recognised as a legitimate form of hunting.

The promotion of dog racing as an alternative, in order to reduce hunting and poaching with dogs, recently came to the fore again, along with the call to legalise dog racing. However, the promotion of dog racing as an alternative to hunting will, in fact, lead to an increase in illegal hunting - this is because legalisation will result in an increase in the number of dogs bred. Only a small percentage of dogs bred for racing make the cut as racers, and then they are only used for racing up to the age of five years. They are then "retired", and hunting is an ideal outlet for these dogs. There is also absolutely no evidence or proof that suggests that "traditional" or "taxi" hunters will not use their dogs for both purposes - racing and illegal hunting. Fortunately, the Department of Trade and Industry has yet again given a resounding and emphatic "NO" to the proposals to legalise dog racing. There is no intention to change the position regarding dog racing in our country. Dog racing remains illegal (see related article about dog racing in [SERVAMUS](#): January 2015).

Legal perspective of hunting with dogs

The relevant legislation or other prescripts applicable to this issue are the following:

- Trespass Act 6 of 1959
- Stock Theft Act 57 of 1959
- Game Theft Act 105 of 1991
- Provincial Nature Conservation Ordinances
- National Environmental Management Biodiversity Act 10 of 2004 - Threatened or Protected Species Regulations
- Animals Protection Act 71 of 1962
- Criminal Procedure Act 51 of 1977

Laws relating to “hunting”

For the purposes of this article, "hunting" is defined as including all actions of persons unlawfully entering private property, presumably with the intention to steal, capture or kill stock or game, with the help of a dog or dogs.

Trespass Act 6 of 1959

Section 1, which deals with the prohibition of entry or presence upon land and entry of or presence in buildings in certain circumstances, provides as follows:

- “(1) Any person who without the permission -
- (a) of the lawful occupier of any land or any building or part of a building; or
 - (b) of the owner or person in charge of any land or any building or part of a building that is not lawfully occupied by any person, enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless s/he has lawful reason to enter or be upon such land or enter or be in such building or part of a building.
- (1A) A person who is entitled to be on land in terms of the Extension of Security of Tenure Act, 1997, shall be deemed to have lawful reason to enter and be upon such land.



- (2) For the purpose of subsection (1) the expression 'lawful occupier' in relation to a building or part of a building does not include a servant of the lawful occupier of the land on which that building is situated.”

■ Malicious injury to property

The Trespass Act further states that:

Any person using dogs (or any unauthorised means) to hunt the stock or game of another person, also commits the common law crime of malicious injury to property. An intentional wrongful injury to the property of another constitutes the crime of malicious injury to property.

This crime is, however, a two-sided one as the lawful land owner who shoots the dogs of the trespasser may him-/herself be guilty of malicious injury to property. There have been incidents where the shooting of a dog has been found to be a use of force that is totally disproportionate to the requirements of the occasion, even though the argument was made that the act was done in defence of property.

In these cases, the courts have found that other available avenues should have been followed before the dogs were shot.

■ Defence of “necessity” for shooting a dog

Necessity is an accepted justification for an act that would otherwise be unlawful. The requirements of necessity are that:

- (1) a legal interest must be threatened, ie the property or life of the accused person, or that of another person;
- (2) the emergency situation must have begun or be imminent but not terminated;
- (3) the threatening conduct must not be lawful conduct, authorised conduct by police;
- (4) the act must be necessary to avert the threat; and
- (5) the harm caused by the act must not be out of proportion to the threatened interest.

The decision to shoot a dog has to be made based on the threat that the dog poses to the animals or stock it is pursuing or hunting, and whether it would be reasonable in the circumstances to shoot the dog. Each incident would have to be evaluated on its own merits. The landowner could kill the dog and possibly face civil litigation by the owner of the dog, or s/he could leave the dog alone and later institute a civil action against the owner of the dog for damages, as well as request that the relevant conservation authority prosecute the dog owner for hunting animals without a permit.

Another example is a case where a dog is seen chasing after livestock or game, runs off and is later found at the owner's house, under the owner's control. In this case, the requirements of necessity must be considered, as the dog is no longer posing a danger to the game or livestock. If the dog is under control then it cannot be disposed of; if the dog is near or next to its owner in the field it cannot be disposed of either, as this might result in charges of attempted murder or the negligent discharge of a firearm. The correct procedure would be either to institute a civil action against the owner of the dog or to have the owner charged and the dog seized, and have the court make an order regarding the future of the dog.

■ Destruction of dogs found hunting by nature conservation officials, police members and landowners

In terms of the Provincial Nature Conservation Ordinances and Acts of Mpumalanga, the Northern Cape, Limpopo, the Free State, Gauteng, the North West and KwaZulu-Natal, nature conservation officials and police members have the right to destroy a dog

The NSPCA:



that is not used in lawful hunting and which is pursuing or searching for a wild animal. This right is extended to the landowner in the North West, Gauteng, KwaZulu-Natal and Free State provinces. In the Eastern and Western Cape, it is presumed that any person found trespassing with a dog is hunting with the dog.

The officials and land owner need to have information that indicates that the hunt is unlawful (ie it is being done without the written permission of the land owner and without a permit) and that the dogs are not being used to hunt birds or to search for a wounded animal. They may also only dispose of a dog if it is in the process of pursuing or searching for a wild animal. This, once again, echoes one of the requirements of the defence of necessity: that the emergency must have begun or be imminent but is not terminated.

The correct procedure, therefore, would be to arrest the owner of the dog for illegal hunting

and seize the dog. The dog would then have to be housed until the court makes a ruling regarding its future.

The Stock Theft Act 57 of 1959

This Act provides for certain offences related to illegal hunting.

Section 4 reads as follows:

- "4. Entering enclosed land or kraal, shed, stable or other walled place with intent to steal stock or produce -
- (1) Any person who in any manner enters any land enclosed on all sides with a sufficient fence or any kraal, shed, stable or other walled place with intent to steal any stock or produce on such land or in such kraal, shed, stable or other walled place, shall be guilty of an offence.
 - (2) When any person is charged with a contravention of subsection (1) the onus shall be upon him to prove that he had no intention to steal any such stock or produce unless he was found proceeding along any road or thoroughfare traversing such land."

Under section 9(1) of the Stock Theft Act 57 of 1959, any person may, without warrant, arrest any other person upon reasonable suspicion that such person has committed an offence in terms of section 4. Section 10, however, provides that a wrongful and malicious arrest in the absence of probable (reasonable) cause is in itself an offence.

The Game Theft Act 105 of 1991

Section 3 reads as follows:

"(3) Entering land or dispersing or luring away game with intent to steal game

- (1) Any person who -
 - (a) enters another person's land with intent to steal game thereon or to disperse game from that land; or
 - (b) without entering another person's land, intentionally disperses or lures away game from another person's land, shall be guilty of an offence.
- (2) If in a prosecution for a contravention of subsection (1) it is proved that the accused wrongfully and unlawfully entered another person's land upon which there is game or that he wrongfully and unlawfully disperses or lured away game from another person's land, it shall be presumed that he had the intent to steal game or to disperse or lure away game from the land, as the case may be, unless the contrary is proved."

Section 4 of this Act states:

"(1) Any peace officer as defined in section 1 of the Criminal Procedure Act 51 of 1977, or the owner or lawful occupier of land upon which there is game may without warrant, arrest any person upon reasonable suspicion that such person has stolen game, or as wrongfully and unlawfully hunted, caught or taken into possession game, or that he has contravened section 3."

Section 5 provides, similarly to the Stock Theft Act 57 of 1959, that the power to arrest is also tempered by the possibility of committing the offence of wrongful and malicious arrest.

Provincial and National Nature Conservation Ordinances and Acts

In terms of the Provincial Nature Conservation Ordinances and Acts, the use of a dog is classified as a manner or method of hunting that requires a permit; dogs can only legally be used without a permit for the purpose of retrieving birds during hunting and for the purpose of following or searching for an animal which has been wounded in a legal hunt. Different provincial legislative provisions are in force for each province.

National Environmental Management Biodiversity Act 10 of 2004 - Threatened or Protected Species Regulations

The focus of this legislation falls on the hunting, catching, capturing or killing of any specimens of a listed threatened or protected species by any means, method or device whatsoever, including searching, pursuing, driving, lying in wait, luring, alluring or injuring with intent to hunt, catch, capture or kill any such specimen. These are "restricted activities" and can only be done upon issue of a permit. Again, dogs can only be used for pursuing or searching for an animal that was wounded in a legal hunt, ie with a permit.

Animals Protection Act 71 of 1962

Section 2 of the Act states:

"2(1)(g) Any person who baits or provokes any animal or incites any animal to attack another animal shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to such imprisonment without the option of a fine."

Criminal Procedure Act 51 of 1977

Section 20 of the Act provides that the State may seize certain objects/articles, in particular:

- Those believed to be concerned in the commission of an offence;
- those which may afford evidence of an offence; and
- those which are believed to be intended to be used in the commission of an offence.

The Criminal Procedure Act does not distinguish between various types of exhibits/articles, with the result that a dog which may have been involved in the commission of an offence may, in certain circumstances, be regarded as an exhibit within the

meaning of this section. A dog may therefore be seized by the SA Police Service, in the same way that livestock may be seized. Section 30(c) of the Criminal Procedure Act provides that a police member who seizes an article referred to in section 20 of the Act shall, if the article is not disposed of or delivered under the provisions of paragraph (a) or (b), retain it in police custody or make such other arrangements with regards to the custody thereof as the circumstances may require. The provisions of section 30(a) and (b), which refer to perishable articles or stolen property, thus do not apply.

Section 33 of the Act provides that if criminal proceedings are instituted in connection with any article referred to in section 30(c) and such article is required at trial for the purposes of evidence, the article shall be delivered to the clerk of the court unless, by reason of the nature, bulk or value of the article in question, the article should be dealt with by making such other arrangements as the circumstances may require.

According to section 41, the identity of the person in control of each dog must be determined, as well as the identity of the owner of the dog. If the dogs and suspects are found by a peace officer, such peace officer may call upon these person(s) to furnish their full names and addresses and if such person fails to provide these details, the peace officer may forthwith and without warrant, arrest and detain the suspect(s) for a period not exceeding 12 hours, until such name or address has been verified.

Summary

The SAPS therefore has two options when dogs are found hunting unlawfully or are found accompanying a person who has been found hunting unlawfully. These are as follows:

- The dogs may be destroyed if they are clearly "caught in the act" during the pursuit of game and if the circumstances call for the necessity of destroying the dogs.
- In the event that there is doubt about the circumstances of the dogs' activities, or any doubt regarding the identity of the dogs and their owners, then those dogs must be regarded as an article in the same way as any other inanimate article that can be seized by the police and should be dealt with as such.

For evidential purposes, photographs of each dog, as well as the person allegedly in control of the dog, must be taken, showing specifically any identifying features of the dog. All articles, including the dogs, which were in the possession of the suspects, must be seized as an exhibit in terms of section 20 of the Criminal Procedure Act and details thereof entered into the SAPS13. The dogs may be released to a responsible person on a SAPS 299, and the person to whom the dogs are handed must be warned that the dogs must be made available for court proceedings upon demand.

As with any exhibit, the costs of the retention of any exhibit/article in police custody are for the account of the SAPS.

Unlawful hunting with dogs must be regarded as a serious offence. The main purpose of this article is to ensure that the correct procedures are followed, that evidence is preserved for the purpose of proceeding with a criminal trial against the suspect, and that the dogs are dealt with humanely and in the correct manner, as called for by the circumstances.

