



ATTORNEY-GENERAL

MINISTERIAL STATEMENT

ON

BANNING DANGEROUS DOGS IN NAMIBIA

9 JULY 2015

- 1.1 Following the tragic death of 13 year old Fred Savage on the 27th of June 2015, many messages were conveyed to me requesting the Attorney-General to approach the Supreme Court on an *ex parte* basis to have the Supreme Court declare the keeping of Pit Bulls illegal in the Republic of Namibia. Those that felt strongly about the banning of the said breed of dogs, approached the Prime Minister amongst others, to request me to bring the *ex parte* application.
- 1.2 This only reflects the deep concern with which members of the public reacted to the gruesome death of young Fred Savage. Everyone I interacted with shared the sense of loss for the family and friends of Late Fred Savage, and during this time of great sorrow, please be comforted by solace in our Lord's grace. Such an unnecessary loss of life should never occur again.
- 1.3 Given the continuing requests, and so that we may educate one another and avoid such loss of life, I find it apt that I inform the Namibian nation of the laws and regulations that govern the ownership of dogs.
- 1.2 In several countries across the world such as Germany, Britain and Australia specific dog breeds are considered to be dangerous. These breeds are either banned or their ownership is strictly regulated. These prohibitions are enforced through special laws

in addition to the general regulations which most countries, including Namibia, have concerning the ownership of any dog.

1.3 The dog breeds that are generally accepted to be dangerous are the following¹:

American Pitbull Terrier
American Staffordshire Terrier
English Staffordshire Terrier
Staffordshire Bull Terrier
English Bull Terrier
American Bulldog
Rottweiler
Bullmastiff
Boerboel

1.4 Citizens who own the dangerous dogs I listed often argue that these dogs are not inherently dangerous, but are raised to be aggressive by uninformed owners.² It could therefore be difficult to gainsay, that an outright ban on the ownership of such dogs will not solve the problem of aggressive dogs in the city.

1.5 Therefore a better solution is to strictly regulate the ownership of dangerous dogs. One can consider what other countries have done to regulate the ownership and create local regulations on par with international standards.

1.6 American owners must be at least 21 years of age; take out liability insurance to the sum of \$100 000 ; and private homes must display a warning sign.

¹ Dr J Schaffner *A Lawyer's Guide to Dangerous Dog Issues 2009* ABA Publishing (America).

² L May MA MAT *Aggressive Dogs are Made, Not Born* available at <http://www.mishamayfoundation.org/aggressivedogs.pdf> last accessed 6 July 2015.

J Pierce Ph.D *Understanding Aggression in Dogs Mean dogs are not just born that way* available at <https://www.psychologytoday.com/blog/all-dogs-go-heaven/201206/understanding-aggression-in-dogs> last accessed 6 July 2015.

- 1.7 In Russia dangerous dogs are subject to mandatory registration. The housing and walking of dangerous breeds is prohibited for disabled people; un-matriculated persons; and minors.
- 1.8 The British are required to muzzle and leash dogs in public places. Further requirements are that the dogs must be registered, be covered by an insurance policy, be spayed, stamped and have a tracking chip.
- 1.9 In Namibia the Local Authorities Act, 1992 authorises local authority councils to regulate the ownership and keeping of dogs in their areas. Municipalities such as Swakopmund, Walvisbay, Arandis, Rehoboth and Katima Mulilo have done so from the Regulations for the control of dogs in Municipal Areas, 1968.³ This regulation reads as follows:

10. Vicious or dangerous dogs.

(a) No person keeping a vicious or dangerous dog shall allow it to be in any street, on any road or in any public place unless it is on an effective lead or is muzzled. If any such dog, whether licensed or not, attacks persons, animals or other dogs, an authorized officer may seize it and deal therewith in accordance with the instructions of the council.

(b) Any person keeping a dog that can be vicious or dangerous, shall take the necessary precautions to prevent such dog attacking any person visiting the premises for the execution of his duties at all reasonable times;

³ Regulations for the control of dogs in Municipal Areas, 1968 (Government Notice 131 of 1968).

(c) notwithstanding the provisions of subregulation (b), any person keeping a dog that can be vicious or dangerous shall erect at every entrance to the premises a notice board with the words "Pasop vir die hond/Beware of the dog" in legible writing. Such notice board shall at all times be kept in a legible condition.

12. Incitement of dogs

No person shall incite or encourage any dog to attack, hinder or frighten any other person or any other animal.

17. Penalty.

Any person who contravenes the provisions of these regulations shall be guilty of an offence and shall on conviction be subject to a fine not exceeding two hundred [Namibian Dollar] or to imprisonment not exceeding one month.

- 1.10 More specifically the Animal Protection Act, 1962, under section 10 (1) (b) dog fighting is prohibited. Dogs that have been trained to fight are a danger to the public. The dogs which are raised as household pets do not pose a threat to the public when the owners take proper precautions in terms of the existing regulations. Rooting out illegal dog fights will go a long way to ensuring that the public is safe from the negative behaviour of these dangerous breeds.
- 1.11 Therefore considering the legislation which is already in place the solution to a safer relationship between dangerous dogs and the public lies in the enforcement of the existing legislation instead of creating new legislation for an isolated incident.

- 1.12 Rather than creating new legislation the best option currently would be to amend the penalty under the Regulations for the control of dogs in Municipal Areas, 1968. If the consequences of improper dog ownership were higher, citizens would rethink flagrantly disobeying the law.
- 1.12 In the event that further regulation of dangerous dog breeds becomes necessary it would be advisable for specific legislation to be promulgated to which the entire country must prescribe. Municipalities will then not be left to regulate the ownership of dogs as they see fit any longer.
- 1.13 In summary the current solution to ensuring that such a heartrending incident is not repeated lies in abiding by and enforcing the existing legislation and regulations.

Thank you.

End.

RESEARCH ON BANNING DANGEROUS DOGS

1. INTRODUCTION

- 1.1 In several countries across the world specific dog breeds are considered to be dangerous. These breeds are either banned or their ownership is strictly regulated. These prohibitions are regulated by special laws in addition to the general regulations which most countries have concerning the ownership of any dog. The main purpose of these laws is to prevent injuries and deaths from dogs' bites.

2. BANNED BREEDS BY COUNTRY

- 2.1 The following breeds have been declared dangerous by the countries that have banned them:

- 2.1.1 American Pitbull Terrier
- 2.1.2 American Staffordshire Terrier
- 2.1.3 English Staffordshire Terrier
- 2.1.4 Staffordshire Bull Terrier
- 2.1.5 English Bull Terrier
- 2.1.6 American Bulldog
- 2.1.7 Rottweiler
- 2.1.8 Bullmastiff
- 2.1.9 Boerboel

- 2.1.10 The following countries have banned the abovementioned dogs:

- 2.1.11 Germany
- 2.1.12 Denmark
- 2.1.13 Spain
- 2.1.14 Great Britain

2.1.15	Romania
2.1.16	Norway
2.1.17	Switzerland
2.1.18	Israel
2.1.19	Turkey
2.1.20	Bermuda Islands
2.1.21	Portugal
2.1.22	Venezuela
2.1.23	Puerto Rico
2.1.24	Singapore
2.1.25	Ecuador
2.1.26	Australia

3. REGULATED BREEDS BY COUNTRY

3.1 USA

In America there is no Federal law that imposed a ban and restrictions on dangerous breeds of dogs across the country.

There is a law that prohibits the conduct of dog fighting, as well as training these dogs for fighting and their movement within the country.

There is a prohibition on the housing of large dogs in the cantonments of the U.S.A. army.

Limitations of ownership in some States include: the age of the owner must be at least 21 years of age; the owner must take out liability insurance to the sum of \$100 000 ; the sale of dangerous dogs is prohibited; the dog can only be given to relatives; and private homes must display a warning sign.

3.2 New Zealand

The American Pitbull Terrier is, since 2003, subject to mandatory chipping and sterilisation. When walking the dogs they must be on a short leash with a muzzle. Importing of the dogs is strictly prohibited.

3.3 Russia

Dangerous dogs are subject to mandatory registration.

The housing and walking of dangerous breeds is prohibited for disabled people; un-matriculated persons; and minors.

3.4 Ukraine

Civil liability insurance, microchipping and walking the dog on a short leash and muzzle are obligatory.

3.5 Belarus

The main requirement is to keep such dogs in a securely fenced area with a warning sign.

The walking of potentially dangerous breeds is prohibited for minors.

Majors are required to carry proof of their certificate of training in courses on maintenance, breeding and caring for dogs.

3.6 Spain

In order to obtain a license for the housing of these breeds its owner must be of a legal age, have no criminal records, be mentally and physically healthy, as well as get liability insurance for a total of 120 000 euros.

3.7 Britain

The above-mentioned breeds must be muzzled and kept on a leash in public places, be registered, have insurance, be spayed, stamped and have a chip.

3.8 Ireland

Dangerous dogs must be kept under strict control by people 16 years or older, be licensed, walked on a short leash (no more than 2 metres) and muzzled in public places.

4. LEGISLATION IN NAMIBIA

4.1 Municipal Dog Tax Ordinance, 1967¹

15. (1) The Administrator may make regulations not inconsistent with the provisions of this Ordinance –

- (a) regulating, controlling and restricting the keeping of dogs;
- (b) regulating, controlling, restricting, and prohibiting the keeping with power to provide for the seizure and destruction, of vicious or dangerous dogs.

4.2 Local Authorities Act, 1992²

94. Regulations by local authority councils

(1) A local authority council may, after consultation with the Minister, make regulations by notice in the Gazette in relation to -

(af) subject to the provisions of the Municipal Dog Tax Ordinance, 1967 [...] the prohibition, restriction, regulation and control of the keeping of animals, including wild animals, bees or birds, and [their] preservation and protection.

¹ Municipal Dog Tax Ordinance, 1967 (Ordinance No. 13 of 1967).

² Local Authorities Act, 1992 (Act No. 23 of 1992).

4.3 Animal Protection Act, 1962³

"animal" means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person;

10. Regulations

(1) The Minister may make regulations relating to-

- (a) the method and form of confinement and accommodation of any animal or class, species or variety of animals, whether travelling or stationary;
- (b) any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal;
- (c) the seizure, impounding, custody or confining of any animal due to any condition of such animal, the disposal or destruction of such animal and the recovery of any expenses incurred in connection therewith from the owner of such animal;

4.4 Municipal By-Laws and Regulations

4.4.1 Regulations for the control of dogs in Municipal Areas, 1968⁴

4.4.2 Swakopmund Municipality By-Law Relating to the control and keeping of dogs;⁵

4.4.3 Town of Arandis: Regulations relating to keeping of animals;⁶

4.4.4 Rehoboth Town Council: Amendment of the amount of dog tax and regulations for the control of dogs;⁷and

³ Animal Protection Act, 1962 (Act No. 71 of 1962).

⁴ Regulations for the control of dogs in Municipal Areas, 1968 (Government Notice 131 of 1968).

⁵Swakopmund Municipality By-Law Relating to the control and keeping of dogs (No. 168 of 2003).

⁶ Town of Arandis: Regulations relating to keeping of animals (Reg. No 7 of 2007).

4.4.5 Katima Mulilo Town: Regulations relating to prohibition, restriction, control and keeping of dogs.⁸

5. COMMON LAW

- 5.1 In terms of common law it is trite law that the owner of a dangerous animal is responsible for the damage caused by the animal.
- 5.2 The law recognises two classes of animals, namely wild animals⁹ and tame animals.¹⁰ Any animal of the latter class when known to its owner to be dangerous falls within the former class, and anyone who keeps an animal of that nature does a wrongful act and is liable for the consequences under whatever circumstances arising.
- 5.3 It is absolutely immaterial if the keeper of a dangerous animal keeps it at his own peril. The liability remains that of the owner whether the injury arises from the actual negligence of the owner or from the act of a third person. The wrong is in keeping the fierce beast.¹¹

6. CONCLUSION

⁷ Rehoboth Town Council: Amendment of the amount of dog tax and regulations for the control of dogs (Reg. No 246 of 2006).

⁸ Katima Mulilo Town: Regulations relating to prohibition, restriction, control and keeping of dogs (Reg. No 402 of 2013).

⁹ Animals *ferae naturae*.

¹⁰ Animals *mansuetae naturae*.

¹¹ T'Beven *The Responsibility at Common Law for the Keeping of Animals. Baker v. Snell* Harvard Law Review 1909 Vol. 22 No. 7 at p. 465-491.

- 6.1 The law has developed beyond that as set out in the common law. Owners are now allowed to keep dangerous domestic animals despite the fact that they should be classified as wild animals under common law.
- 6.2 Having regard to the list of dangerous dogs and the overwhelming number of countries that have either banned or restricted the dogs it is imperative that Namibian laws, which have moved away from common law, are adapted to display the same cognisance towards safety of both the owner and the public.
- 6.3 As indicated under point 4.4 Local Authorities have already implemented regulations to manage the ownership of dogs in municipal areas, but these regulations are not expansive enough to control the ownership of specific dangerous dogs.
- 6.4 However the mechanisms are in place for each municipality to further regulate the ownership of dangerous and vicious dog breeds.

7. RECOMMENDATION

- 6.1 Considering the antiquated nature of the Municipal Dog Tax Ordinance, 1967 it may be best to create an Act which can regulate dangerous dogs across the country.
- 6.2 Great Britain has a piece of legislation referred to as the Dangerous Dogs Act, 1991 which could serve as guidance for Namibian Legislative Drafters.
- 6.3 An outright ban on dangerous breeds will create a market for illegally bred dogs which are found on the list on dangerous dogs. Breeders may try to create hybrid breeds which do not classify as one of the breeds on the banned list, but such hybrids may be even more unpredictable than a full bred animal.

- 6.4 Dog owners can staff the argument that these so-called dangerous dogs are only dangerous due to the way they have been raised.¹² Placing an outright ban on the ownership of such dogs will not solve the problem of aggressive dogs in the city.
- 6.5 The actual issue lies with the people who run dog fights for entertainment and betting purposes. They are skilled at making any dog aggressive. If dangerous dogs are banned they will revert to using the next most aggressive household pet for conducting their gruesome fights.
- 6.6 Therefore the first step to ensuring the safety of both people and dogs in Namibia is to strictly enforce the legislation, namely Section 10 (1) (b) of the Animal Protection Act, 1962 and municipal regulations¹³ that prohibit dog fights.

¹² L May MA MAT *Aggressive Dogs are Made, Not Born* available at <<http://www.mishamayfoundation.org/aggressivedogs.pdf>> last accessed 6 July 2015.

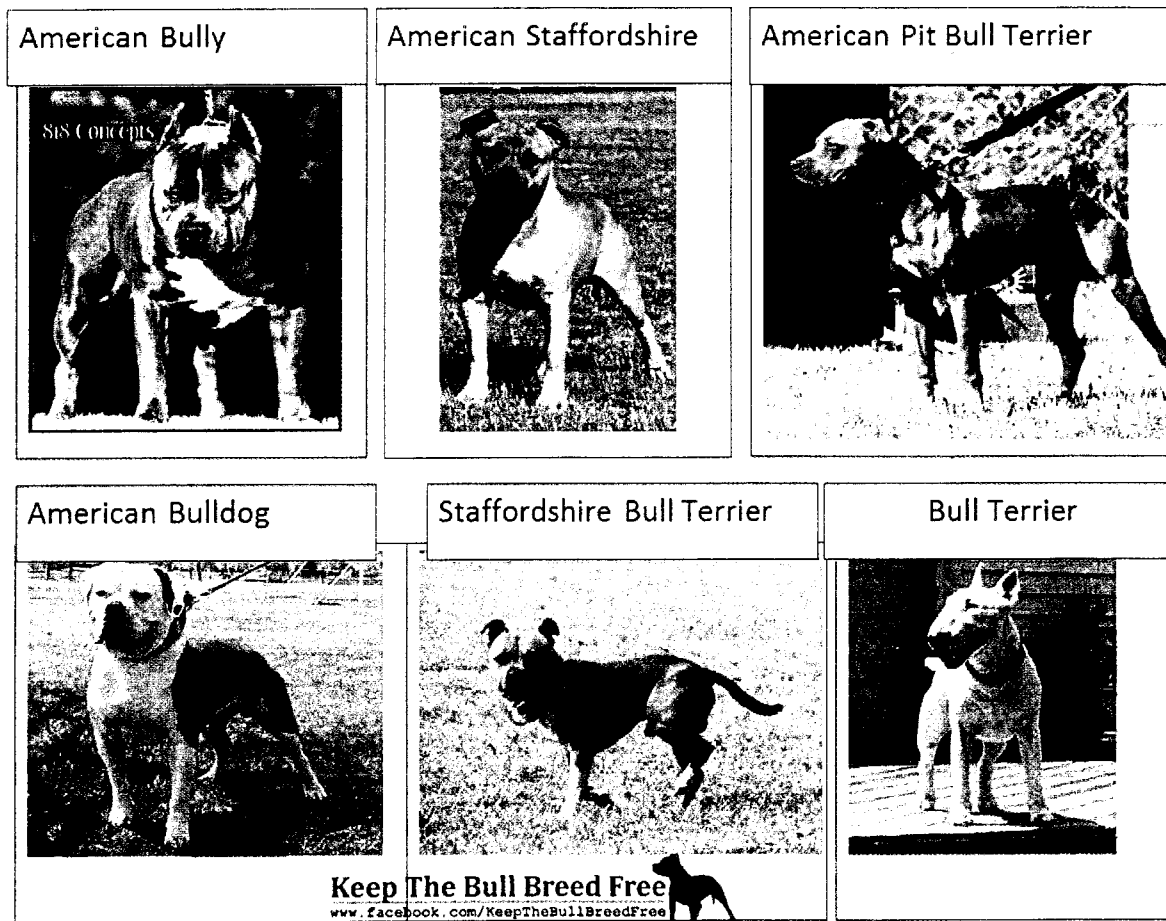
J Pierce Ph.D *Understanding Aggression in Dogs Mean dogs are not just born that way* available at <<https://www.psychologytoday.com/blog/all-dogs-go-heaven/201206/understanding-aggression-in-dogs>> last accessed 6 July 2015.

¹³ Swakopmund Municipality By-Law Relating to the control and keeping of dogs (No. 168 of 2003)

6. Dogs not to be urged to attack

No person shall: (a) set any dog on any person or animal, or (b) permit or urge any dog owned or kept by him to attack, worry or terrify any person or animal except where necessary for the defence of such first mentioned person or his property or that of any other person.

ANNEXURE A



End.

