

CHAPTER 3

STOCK THEFT AS A THREAT TO HUMAN SECURITY IN LESOTHO

Stock theft nationally and regionally

The incidence of stock theft is serious in Lesotho and the rest of the SADC sub-region. In 1999 this led the Council of Ministers to agree that all member states should embark on sound livestock identification, trace-back and information systems. Subsequently Lesotho conducted a feasibility study on the National Livestock Registration, Marking and Information systems. Lesotho is at a disadvantage compared with South Africa, Botswana, Namibia and Zimbabwe, which have already developed and implemented systems for combating stock theft.

Lesotho is currently implementing a livestock registration, marking and information system with a view to curbing and managing stock theft within and across its borders. The Ministry of Agriculture is currently procuring equipment and supplies as a follow-up to the Stock Theft Act of 2000. The provisions of the Act are being implemented as the registration comes into effect. It is hoped that there will be a significant reduction in theft, increased recoveries, arrests, and sentencing of offenders.

Stock theft has become a national crisis in Lesotho. The Bureau of Statistics²¹ estimated that there were 580,000 cattle, 1,132,000 sheep, 749,000 goats, 98,000 horses and 163,000 donkeys in Lesotho in 1998/99. Cattle numbers have remained stable, while sheep have declined significantly in Lesotho and South Africa in the same period. The primary reason for the decline of livestock was given as stock theft. This has also adversely affected the wool yields from 2.9 kg to 2.4 kg per sheep as stockowners disinvest in the livestock sector.²²

According to the National Livestock Development Study Phase 1 report of March 1999, stock theft has reached epidemic proportions throughout Lesotho. However, there has been a decline in stock theft since 2000. Table 2 represents the incidence of stock theft and recoveries between 2000 and 2004. The average recovery of livestock is 38%. This table clearly depicts the problematic nature of stock theft. However, there has been a decline in stock theft and increasing recovery up to 50%.

Table 2 Summary of livestock theft and recovery for 2000–2004²²

	Number of animals stolen	Number of animals recovered	% Recovery
2000/01	33,950	11,150	33
2001/02	30,105	11,074	36
2002/03	26,678	13,369	50
2003/04	18,442	7,847	43
TOTAL	109,268	41,862	38

According to the study conducted by Kynoch et al²⁴ the fundamental cause of stock theft is poverty. The distribution of income is biased against most of the population in rural areas. This situation has been aggravated by the reduction in agricultural productivity and high unemployment. The rate of unemployment has been increased by the retrenchment of Basotho mineworkers in RSA. While the Lesotho government hoped that the Lesotho Highlands Water Project (LHWP) would offset the retrenchment of mineworkers, Phase II of the project – which employed a lot of manual labour from the ranks of the retrenched mineworkers – has been scrapped. This in essence means that agriculture remains the primary means of livelihood for rural communities in Lesotho.

It is for these reasons, among others, that the escalating stock theft presents such a challenge to the consolidation of the fragile democracy in the kingdom. Stock theft impoverishes people and causes conflicts within and between villages, which in turn threatens stability and efforts to achieve the long-term National Vision 2020.²⁵

Magnitude of the problem of stock theft

In a study of 147 respondents in ten villages in southern Lesotho, Kynoch et al²⁶ found that the following features characterise stock theft:

- Stock theft is not new in that border zone. It became more widespread, organised and violent in the 1990s. Some 71% of the Basotho stockowners have reported having had stock stolen since 1990, many more than once. Over 40% of non-stockowners say they do not have animals because of stock theft.
- Since 1990, 85% of stockowners in the border villages have lost animals to thieves compared with 49% from non-border villages. Shepherds

from border villages reported a higher rate of victimisation (83%) than those further removed from the border (50%).

- Most cattle and sheep are stolen from cattle posts where only shepherds guard them. Stock is also taken from kraals, and on occasion whole villages have been attacked and all livestock driven away.
- Cattle are stolen more frequently than other animals, but this is because more people own them. Sheep are stolen in greater numbers, probably a result of the larger numbers of sheep owned. In 40% of thefts cattle were stolen. Theft of sheep occurred in 30% of thefts, goats in 13%, horses in 13%, and donkeys in 4%.
- The study identified seasonal variations in stock theft. It was found, for example, that this situation obtained for two villages where cross-border accessibility was largely determined by the level of the Senqu River. These villages reported that theft was much worse in winter, when the river was low.

Consumption patterns of stock

It is estimated that household slaughtering accounts for 2%, 5%, and 4% for cattle, sheep and goats respectively, which explains the varying decline in the levels of cattle, sheep and goats.²⁷ Current slaughter trends are likely to vary, but do indicate higher percentages owing to increasing deaths from the HIV/AIDS pandemic. This is because of the traditional practice of slaughtering animals in the event of deaths or funeral ceremonies. The increase in HIV/AIDS-related deaths also puts pressure on poor families who cannot afford to buy animals for slaughtering and end up stealing from more affluent families. Furthermore, cattle are used for lobola (payment for a bride), payment of school fees, and festive celebrations. Stockowners sell their stock to meet these obligations. For an ordinary Mosotho, stock is his or her finance bank.

Livestock production contributes to the economic development in Lesotho in many ways. Animals are:

- a source of barter for other commodities;
- a source of food;
- a source of household fuel, particularly in the rural areas;

- a source of draught power and transport; and
- a readily marketable asset for meeting household financial needs.

The formal marketing channels, which were supported extensively, are in the process of being privatised. Livestock owners sell directly to traders, butchers and individual buyers. Currently 15 auction sites are organised by Livestock Produce and Marketing Services (LPMS). These auctions are experiencing less and less support from buyers and sellers in favour of informal channels.²⁸ Most stockowners are not commercial operators. Animals on the hoof are regarded as live wealth with which owners are loath to part. Stockowners do not plan their sales and only sell when there is an urgent need for cash, such as paying school fees. Recently, informal channels have seemed to attract stock thieves, as owners are willing to part with stock urgently and readily accept the buyers' price.

Socio-economic aspects

Livestock production is one of the economically viable and sustainable sectors in the agricultural industry. This is primarily because of the favourable topography and climate, which renders Lesotho free of major diseases. According to livestock census figures published in 2002 there were 3,050,522 animals in Lesotho in 2000/01.

In cases of theft the livestock owner loses all these economic values of livestock and is left destitute. This affects the entire household, the community, and the country. In Lesotho syndicates from both sides of the border often steal the animals at gunpoint, thus the risk of keeping livestock has become unacceptably high. In addition, there is an increasing attraction in exchanging stolen livestock for guns, vehicles and drugs.³⁰ This form of barter system has detrimental effects on the socio-economic development of the nation. There is increasing suspicion and mistrust among stockowners. Also, violence has escalated within villages because community members do not know who the thieves are, who harbours thieves, and who are informants for thieves.³¹ Bribery and corruption impede justice and the recovery of stolen animals.

Cross-border relations

Cross-border stock theft has resulted in high levels of violence, causing injuries and death. The Kroon Report³² equates the situation with a regional disaster. Shepherds experience high levels of victimisation, particularly

Table 3 Livestock census 2000/01 ²⁸

District	Cattle	Sheep	Goats	Pigs	Horses		TOTAL
Butha-Buthe	39,065	59,945	41,645	5,140	4,325	11,510	161,630
Leribe	129,875	108,450	119,500	21,625	16,625	30,750	426,825
Berea	86,625	60,250	37,875	29,250	5,625	26,250	245,875
Maseru	128,125	153,700	88,875	35,000	16,875	28,250	450,825
Mafeteng	79,894	138,564	55,938	14,750	6,313	22,688	318,147
Mohale's Hoek	55,750	86,645	150,750	14,125	10,125	17,375	334,770
Quthing	43,500	99,375	96,125	8,250	6,750	7,625	261,625
Qacha's Neck	22,675	52,200	14,800	2,800	3,975	4,500	100,950
Mokhotlong	43,875	165,125	72,250	0	8,875	11,000	301,125
Thaba-Tseka	80,500	192,375	152,500	4,125	17,250	2,000	448,750
TOTAL	709,884	1,116,629	830,258	135,065	96,738	161,948	3,050,522

in cattle posts. Thieves often cannot distinguish stockowners from non-stockowners and terrorise the whole village. They steal animals, rape women, loot homes, and kill villagers indiscriminately. This has resulted in a number of villages being abandoned.³³

Inter-village relations

There is also suspicion and mistrust among villagers. One village suspects that the other village helps thieves to steal animals. People are no longer free to visit other villages. Any unknown person is regarded with suspicion.³⁴

Donkeys and horses are no longer readily lent for transportation to those who do not have animals. Furthermore, some farmers who do not have animals are unable to plough their fields. Women generally prefer to sell stock to secure scarce resources and meet their basic needs rather than keep the animals for thieves and invite possible injuries or death. Spouses engage in serious conflicts over the sale and retention of stock.

Cow dung is used for fuel in the rural areas and stock theft has resulted in households resorting to wood for fire. It is not uncommon for women to spend up to six hours a day collecting firewood, in addition to other duties. Deforestation has caused major soil erosion problems.

Most of the above studies indicate that the economic status of about 90% of households in rural areas has been negatively affected by stock theft. There are reports of the entire wealth and livelihood of a household being wiped out in one stock theft operation. This has resulted in loss of income from the sale of milk, animals, wool, mohair and hides.

Grazing patterns have been affected by stock theft. Animals have been removed from grazing areas around the borders to the hinterland, where high stock densities have resulted in the poor condition of animals and severe land degradation.

Intra-village relations

Stock theft has affected relations within villages on a number of different levels. The level of mistrust among villagers has reportedly increased. This mistrust is not targeted at any neighbour in particular, but manifests itself in underlying tensions among villagers.³⁵ People are afraid to quarrel with neighbours because of the fear that if quarrels break out, animals may be lost. Neighbours are discouraged from having visits from strangers, as they are viewed with suspicion.

Economic and social impacts of stock theft

Stock theft, which the communities perceive as a significant cause of poverty, is limiting the growth of herds. Although this allows some recovery of range lands in certain places, this is little consolation to those households that have lost their livelihoods overnight. Some members of communities demonstrate how they have been thrown into poverty and hunger through stock theft. Descriptions of the thefts suggest high levels of organisation, implying that the thieves are fully resourced with sound financial and asset backing (in some cases trucks were involved in moving the animals). Moreover, there is a strong perception that some police, chiefs, officials and businessmen are involved in these criminal networks. In border areas there are clear indications of international dimensions to stock theft that will need to be addressed if any progress is to be made.³⁶

- Stock raiding has major negative impacts on households, communities and cross-border interaction. These impacts extend to the national economy. In the Qacha's Neck and Quthing districts, production of wool and mohair has fallen significantly in the last five years. Livestock

holdings have dropped and the number of stockless households has increased. The negative impact of stock theft on the income of households and the government has reduced stockowners to a poverty level that places strain on the economy.

- Farmers are reluctant to invest in breeding cattle and households debate the merits of getting rid of their cattle.
- Escalating stock theft and related violence have profound social consequences, bringing fear and insecurity to ordinary people. People are abandoning their villages and migrating to towns and to South Africa to look for work.
- Community relations have become fraught with tension and suspicion. Nearly half of the stockowners interviewed suspected that certain individuals in their villages were involved in the theft of animals – acting either as informants or as thieves. It is the poor who are fingered and stigmatised. Lending for ploughing and Mafisa³⁷ is in steep decline, as are cultural activities and celebrations that involve the slaughter of animals.
- Cross-border cooperation, activities and initiatives have collapsed and there is considerable animosity and hatred between the communities on either side of the border. Even casual visiting and shopping have all but ceased.

Current trends in stock theft

Stock theft has become more violent and organised. Studies conducted by Kynoch et al indicate that stock theft syndicates transport animals from one village to another and eventually to local butcheries and market outlets in South Africa.³⁸ Stolen animals can be transported easily within Lesotho's rugged terrain and readily exchanged for cash, dagga and guns. This renders stock theft a lucrative venture.

The inability of the police, prosecutors and magistrates to apprehend and convict thieves aggravates the problem of stock theft. Some sources even indicate that police and justice officials are partially responsible for the raids and counter-raids across the border between Lesotho and South Africa. Some community members have expressed concern over the granting of bail to stock thieves by courts of law, as thieves subsequently continue to steal animals.

There is a perception of preferential treatment by chiefs for rich owners rather than the poor. The chief sends his representative to accompany men in search of stolen animals only for wealthy stockowners. Poor villagers search for their animals on their own.

Some Basotho graze their stock in South Africa. This has resulted in South Africans capturing Basotho stock along the border. A series of raids and counter-raids of stock theft and murder have been reported. The escalating cross-border conflicts have become a regional concern that calls for joint initiatives between the South African and Lesotho governments.

Border villages are more prone to stock theft than villages in interior parts of the country. Studies have shown that 85% of stockowners in border villages had their animals stolen, compared with 49% of stockowners in non-border villages.³⁹ Cattle are stolen more frequently than other animals, because more people own cattle. Sheep are stolen in larger numbers because they are owned in larger numbers than any other stock.⁴⁰ Most animals are stolen from cattle posts where only shepherds guard them.

However, some stock are also stolen from village kraals. Most stock thieves are armed with guns; therefore in most cases attempts by stockowners to trace and recover animals on their own have been risky and futile.

Corruption

There are perceptions that police and the army orchestrate stock theft operations and that they are involved in registering, transporting and marketing stolen animals. Some farmers across the border hire thieves and buy stolen animals. Unemployed youth and retrenched miners are often used for this purpose. Some chiefs contribute to the problem in various ways, from turning a blind eye to stolen animals in their villages to protecting and harbouring thieves and providing false documentation for stolen stock.

Slow prosecution

Closely related to the issue of corruption is the tedious and slow prosecution process. The police are experiencing serious problems and cannot respond promptly to crimes. They take too long to investigate thoroughly and consequently there is a delay in handing dockets over for prosecution. There

are huge backlogs and suspects either have to remain in custody for a long time before they start serving their prison term or are acquitted. This worsens the problem of prison overcrowding. Many suspects lose their means of livelihood and are more likely to turn to serious crime. Thus families are negatively affected psychologically, economically and socially.

Inefficiency of the courts in attending to stock theft cases

Most cases of stock theft require great expertise. This pool of expertise can be harnessed from High Court judges, but the fundamental problem with the distribution of judicial services in Lesotho is that the High Court is centralised and that there are not enough judges to attend to cases timeously. Most of their time is spent reviewing cases that have already been heard in the lower courts. On the other hand, the lower courts are subject to hierarchy, are understaffed, or lack expertise. In addition, offices and courts are inadequate, so that there is no time to address judicial matters properly. More often than not, the courts lack facilities for the safe storage of exhibits, and valuable evidence is lost or misplaced. There is no modern case record management mechanism in place and cases often drag on for years. Quite often witnesses, victims, perpetrators and their relatives have to attend court for lengthy periods of time, which affects their productivity. People want speedy delivery of justice: if they have to wait too long for this to happen, they lose confidence in the judicial system. Often they take the law into their own hands. This has led to feuds, killings and destruction of property, leaving countless families destitute.

Current interventions on stock theft

A number of strategies and systems have been developed in Lesotho to combat stock theft, but with very little success. The most important of these strategies fall under the “Local partnership: A practical guide to crime prevention”, which was developed and spearheaded by police authorities. It is a guide that incorporated approaches for dealing with crime in communities.

The interventions are set against the background that it is not the sole responsibility of the police to tackle crime, because crime affects all, at individual and community level. ‘Current interventions on stock theft’ identifies the need for the public to help authorities to combat crime, and indeed, a working partnership can reduce fear of crime and improve community safety, thereby producing excellent results.

These initiatives date as far back as 1993 with the establishment of crime prevention committees. The general interventions document describes what works in crime prevention and how to make it work by operating in partnership. This is followed by approaches to crime prevention in general and is specifically targeted to orient those who are to promote a partnership approach to crime prevention in the community.

Current partnership approaches and interventions include:

- review of the legislation and introduction of the Stock Theft Act 2000, as amended;
- community-police cooperation through establishment of crime prevention committees; and
- patrols by the army or the police and joint patrols

The vigorous role set for communities in the intervention strategies discussed below demonstrates that the role of state has been widened to include all of society, not only the policymakers. A secure environment is not created by the state through security officers, but the duty is also vested in the members of the community to assist authorities. Current intervening units have a tripartite nature involving the state (policies), community members and the state authorities (the courts of law, army officials or police officers).

In the context of stock theft and related crimes, partnerships are forged and a crime profile drawn up to devise an operational plan for addressing the areas of greatest need. The validity of the programme spells out how actions are implemented and evaluated for success and failure. This recognises that the partnership approach is a consulting agency that reviews policies and practices and evaluates the situation in the identified areas. The steps are:

- considering the operational plan;
- prioritising the problem of stock theft;
- developing options for dealing with the matter;
- appraising options to choose the most suitable;
- preparing an operational plan based on the selected option; and

- having the task force implement the plan.

At the end of every year since the implementation, an evaluation committee has reviewed the programme and pinpointed strengths and weaknesses, if any, as well as the need for work plan adjustments. This initiative recognises that stock theft is not limited to theft of property. Its philosophy is that theft is not restricted to crime involving moveable property, but includes crime that threatens the security of individuals, including threats to their social and economic wellbeing, their health and safety, and their fundamental freedoms and self-determination. Government and security officials should therefore pay great attention to the implementation of these interventions. The issue of interventions in stock theft sets the pace in addressing the administration of justice to promoting peace and security of individuals in communities.

Community policing

Some members of the community hold regular meetings to develop strategies for combating crime. They patrol their villages at night. The idea of community policing stems from the concept of social crime prevention. It is a strategy that focuses on combating and preventing crime through the Criminal Justice System as well as community agencies. Community policing is a response to a social need for the protection of lives while reducing the incidence of crime. Ascription and membership are built by community chiefs who nominate teams of trustees to join these programmes. Professionalism is guaranteed through training provided by police officers. Activities in community policing aim at reducing, deterring or preventing the occurrence of specific crimes. The LMPS influences this line of thinking by prioritising crime prevention through targeted visible policing, enhancing cooperation with external roleplayers such as local authorities and crime prevention committees, and building partnerships that will address the root causes of stock theft.

The government has a major stake in this endeavour and is focusing on:

- researching and developing accessible sources of information;
- developing policies and programmes for social crime prevention;
- coordinating the delivery of social crime prevention programmes;
- developing programmes based on research that tries to deal with the economic causes of stock theft as a crime; and

- monitoring the effectiveness of social crime prevention programmes.

This initiative is approached in a manner permissible enough to set joint crime prevention priorities while agreeing on strategies to ensure their implementation. It identifies flashpoints, crime patterns and community anti-crime priorities and communicates these to the police with the due participation of the local authorities in problem-solving activities. Local government structures effect government policies that are already in place through the mobilisation of resources and organisation of community campaigns to make sure that approaches to stock theft prevention are understood. Conventionally, the most effective way of dealing with crime is through the Criminal Justice System, which focuses on punishing and rehabilitating the offender. Using many different ways ultimately requires the involvement of the community and multiple stakeholders in order to think and work creatively. In community policing the role of the police officer is that of a peace officer rather than a law enforcement officer on crime patrol. In community policing the police not only enforce the law, but also prevent crime, promote public order, resolve conflict, enhance police community relations and render general assistance to the public. This improves communication and helps to combat crime in partnership with those who are greatly affected.

Stock theft associations / crime prevention committees

The primary tasks of these associations are to search for stolen animals and to investigate issues related to stock theft, and hand over thieves to the police. They also hold regular meetings to discuss strategies for reducing stock theft and patrol villages at night to guard against theft. Membership fees are used to defray expenses incurred in their operations. This study shows that collaboration of stock theft associations from neighbouring villages increases the recovery of stolen animals. However, they are sometimes rendered ineffective by thieves who join these associations. In some instances stock theft associations cease to operate because of clashes with police and murder of members by armed thieves.

However, the main intention of this sort of association is to promote community policing in general. Community policing is an initiative recommended by the police services and involves guarding the community against attack or theft or crime, thereby promoting public order and protecting the community against any threat. This kind of policing is carried out by community members and coordinated by a chief, who consults with

police officers. It is based on a few strategies, the principal one being crime prevention. These strategies include:

- monitoring crime and crime patterns;
- disseminating information to authorities on criminal behaviour and crime;
- promoting public awareness through organised public gatherings;
- promoting active participation by the public in crime prevention strategies;
- combating crime and criminal behaviour through referrals to the relevant authorities;
- restoring social security and the safety of the community; and
- enforcing law and order.

Lately, the status of stock theft associations has been reduced to that of crime prevention committees, since they have been infiltrated by perpetrators. Members of these forums are trained in protecting, policing and combating crime syndicates.

The police authorities initiated this project to encourage communities to establish community kraals closer to grazing posts. This is intended to group members of the community together so that an army officer or police official can be deployed at each grazing post or community kraal to protect them. The process of implementing these approaches to crime prevention is under way. The primary role of these committees is to report to the authorities where they suspect offences are imminent. As per Section 26 of the Criminal Procedure and Evidence Act of 1981, like all other citizens, members of these committees are empowered to arrest and apprehend suspects, with immediate follow-up action to be taken by the police authorities.

Police patrols

Police patrols are based on the Police Act, which prescribes the primary role of the police authorities as protecting the property and lives of all citizens.

Stock theft is property theft and citizens must be protected. The Stock Theft Unit of the LMPS is responsible for managing and reducing stock theft. However, patrols are not carried out regularly, possibly because of a lack of human and material resources.

The police often reach the crime scene long after the thieves have gone. Stock theft from cattle posts are reported to the villages and subsequently to the police. Distances and poor communication prohibit timely response. The credibility of the Lesotho police is weakened by their inability to deal effectively with South African raiders. The police are sometimes out-gunned by thieves from South Africa. Patrols attempt to reduce crime related to stock theft, including robbery, murder, and rape. They are visible at all points of the beat area, especially in giving directions to passers-by. Primarily they demonstrate the importance the authorities have attached to community policing and forge good relations with the community.

Police patrols work in consultation with community policing structures in the beat areas. This usually necessitates arrest and apprehension of suspects and offenders.

The intervention of police patrols has a substantial impact on the trends of stock theft and related crimes, negative and positive.

- At one end of the spectrum, transport shortages hit these initiatives negatively. This is witnessed on rainy days or when patrols need to be carried out in areas inaccessible by road. But the services need to go on as offenders usually take advantage of the situation.
- Lack of communication aids such as portable radios means that helpful information is received late or patrols are late in reaching the scene of the crime. The patrols therefore seem to be unprofessional.
- Lack of arms and ammunition has a serious impact on patrols, especially where serious crimes have been committed. Police personnel are unable to apply self-defence and safety precautions.

Despite these difficulties, patrols on beat areas are usually carried out for 24 hours with armed men in uniform deployed at each strategic area. Each point is given a portable radio to facilitate communication. All things being equal, the beat crew are supposed to be regularly checked by a sergeant on patrol, but in some cases this is impossible owing to the above constraints.

Army patrols

The purpose and importance in police patrols also applies to army patrols. Army patrols are responsible for controlling illegal cross-border movements. In most cases they play a key role in protecting communities from cross-border attacks. Villagers have applauded their presence because they are a deterrent to raiders. The distinguishing factor in the two patrols above is that the army has always had an image that brought fear to the perpetrators; hence army patrols sometimes appear to be more successful than the police. When they do not achieve their objective, it is primarily because members of the community who have inside information alert the offenders that patrols will be undertaken.

Courts

Courts are responsible for the administration of justice; however, their role may sometimes be challenged by the lack of human and material resources. In most districts there are only two prosecutors and one magistrate. When one considers the incidence of stock theft, it becomes clear that three administrators of justice will find it difficult to handle the resultant workload. Thus understaffing is a major concern.

Certain other factors influence the performance of the courts, including the judicial structure and the line of responsibility of the courts.

Current legislation designates subordinate courts / magistrate's courts as the courts of first instance in the handling of stock theft matters. However, owing to the way in which investigating authorities handle the cases, stock theft cases are often dismissed on the grounds of insufficient evidence. Investigating authorities often use methods of investigation that are not acceptable, and as a result the evidence is usually discarded in the formal courts of law as circumstantial. Traditional courts, on the other hand, accept circumstantial evidence, so stock theft cases may ultimately be heard in these courts. Thus traditional courts have become the preferred forum for dealing with stock theft matters, although they do not have statutory authority to hear these cases.

Stock Theft Act No 4 of 2000

The purpose of the Act is to combat the theft of stock. It provides for compulsory national registration and marking of stock to curb theft. It encourages farmers to invest in livestock, improve the quality of their herds,

and implement national livestock tracking numbers for better range-land management and animal health planning programmes.

The definitions in the Act subsume the wrongful taking, retention, and disposition of the property of another with the intention of depriving the owner of it permanently. If this is accompanied by violence or use of force, it becomes robbery. The practical interpretation of these definitions seems to be that receiving stock in the knowledge that it has been stolen constitutes theft; similarly accepting the meat of animals that the recipient knows to have been stolen constitutes wrongful conduct.

The above interpretation clearly constitutes ordinary theft.⁴¹ But punishments in Section 8 read in conjunction with Section 13 are disproportionate to the jurisdiction to try matters placed in the magistrate's courts. According to Section 16 of the Laws of Lerotoli,⁴² the actions that are related to stock theft are treated as common theft. Nowadays disposition, retention and permanent deprivation connotes intention to steal, and this applies to the related offence of stock theft, though certain elements may vary slightly. For these variations, the Stock Theft Act of 2000 places the jurisdiction to hear such matters in the magistrate's courts, but these are far from the remote areas where this crime seems to be high, and only traditional authorities exist there. A lot of petty decision work has to be administered by magistrates, although traditional courts could handle these matters. The Criminal Justice System has therefore become overloaded with stock theft cases from the hinterland.

Stock theft is defined as violations of Section 8 and Section 13, which include

- making a false statement in a bewys;
- disposal without a bewys or with a bewys that does not state the particulars of stock;
- inciting, hiring, abetting, directing, tampering with, altering, forging and making additions to a bewys;
- falsely declaring stock or produce;
- conveying without a bewys;
- conveying, delivering or accepting stock at night; and
- threatening or using violence to take stock.

Current trends in the implementation of this law show that borrowing without the intention of retaining permanently does not constitute theft (*Makalakaqa vs Ramatseku JC 54*).

It is difficult to establish the truth of the matter, however. In addition, when stock stray and attempts to restore them to the rightful owner are unsuccessful, this constitutes a strict liability case. From this perspective apparent stock theft can be defended if it can be proved, for example, that one was the agent of someone else. The court may impose a fine or imprisonment or both.

The Act itself prescribes a scale of fines and periods of imprisonment for offences under Section 13. If the prosecution cannot dispute that stock was lost and kept without the intention of restoring the animals to their rightful owner, this constitutes misappropriation, which is an offence; but if it is reported, it may be restored to the rightful owner without imprisonment or fine. The Act was intended to punish stock theft and related crimes stringently, but seems to be sabotaged by procedural inconsistencies and inapplicability in practice. The penalties prescribed in Section 13 cannot be operational as this theft occurs among ordinary people. It is also strange that we administer this legislation together with the traditional laws of punishment, thus confusing the law enforcers.

However, the stock theft legislation under which the accused is normally charged prescribes minimum penalties that exceed the magistrate's penal jurisdiction. In many cases, magistrates decide to invoke the provisions of Section 293 (1) of the Criminal Law and Evidence Act No 7 of 1981, which commit such case to the High Court for sentencing. The penalties prescribed in the Stock Theft Act indicate that magistrate's courts do not have the necessary penal jurisdiction and consequently do not have sufficient power to try stock theft cases. Stock theft matters are therefore reviewed in the High Court. In protection of humanity, magistrate courts give proportionate sentences that compensate for the lack of legal training and invest the courts with the necessary institutional legitimacy. The sentences spelt out by the Stock Theft Act are outrageous to the ordinary Mosotho and are likely to evoke public scorn and anger and bring the administration of justice into disrepute. It appears that the increased penal jurisdiction of central and local courts is not tenable. But stock theft cases must be heard and determined. As stated, the penalties prescribed under Section 13 are grossly disproportionate, with no regard for the ability to pay the fines. A period of 25 years is excessive, even for a crime of violence. Penalties laid down by Section 13 therefore conflict with the provisions of Section 8 (1) of the constitution. The Act thus is at variance with other legal instruments in stipulating what is appropriate

for enforcing the law. Human rights must be considered but the enjoyment of these rights should not prejudice other rights and freedoms. Section 13 is likely to nullify most of the trials in stock theft and proceedings will be set aside.

Acquisition of stock and produce

The Act stipulates the procedure for acquiring stock or stock produce, the conditions under which a bewys could be provided, and those under which delivery, conveyance or acceptance of stock or stock produce could be made.

Registration of stock

Stockowners should register the stock with their chief within seven days of taking possession of it. The chief, on request of the owner, will verify ownership and will register such stock concurrently in the stock register and in the master stock register.

Marking of stock

A person who owns stock shall mark his stock for identification in the presence of his chief, who shall enter the identification mark in the stock register concurrently with the master stock register. The chief should ensure that there is a difference in the brand used, and anyone who receives stock bearing an identification mark should not mark the stock. Offspring should be earmarked within three months of their birth. Earmarking in the form of stamps shall no longer be used as identification marks.

Tampering with stock or produce

A person who tampers or helps to tamper with an earmark is committing an offence.

Bewys

A bewys writer shall, upon request by the owner and having verified owners of stock, issue bewys for the stock.

Authority to convey stock

A person shall not convey stock from one area to another unless that person has bewys for the stock.

Night conveyance, delivery or acceptance of stock

No conveyance or delivery of stock is allowed between sunset and sunrise. The powers of police officers have been enhanced to enable them to make arrests and confiscate animals regardless of their rank. A person who contravenes provisions of the law or makes false statements is committing an offence.

Costs, compensation and restitution

The court may award compensation to a person who has suffered damage, but not exceeding the market value of the lost stock.

Offences and penalties

Harsher penalties for stock theft offences range from fines of M7,000 to M40,000, or from three to twenty years' imprisonment.