

The constancy of the influence of farming on the daily lives of 70 % of Namibians shows us that farming is the choice form of livelihood and commercial transacting method adopted by the majority of Namibians. Historically subsistence farming was the farming method of and for the black majority of our farmers. Today our farming values have evolved from a hybrid of commercial (by the advantaged) and subsistence activity, to all of us farming with an aim to maximise monetary / commercial gain. All Namibians now farm to derive maximum profits from their produce, be that stock or crop. Stock theft thus strikes at the very centre of Namibians individual efforts to trade or transact with each other; farming is therefore, a commercial activity deserving of the highest level of protection and regulation reflecting the commercial value of Namibian farming. This motion therefore seeks for the National Assembly as a source of primary law to assess the extent to which this crime shakes and destabilizes the foundation of the existence of Namibians. The motion deems that fact to be a foregone conclusion. It seeks, however, to examine the view that the domination of the prescriptive regulations in the form of the strings of Sock Theft primary legislation since 1990 that are universally applied have not sufficiently mitigated the crime, and that measure self-regulation and meta regulation is what is essential to tackle stock theft. This submission, is a brief outline evolution of farming as a Namibian value; and it discuss the prescriptive nature of the current regulatory framework against the objective to protect stock. I will proffer practical examples of how self-Regulation and Meta regulations must be used to compliment the current and responsive legal framework.

Article 16, the right to property, is not limited to land and the protection of real ownership. We have therefore since independence sought to condense the scourge of stock theft in one legislation: After independence Stock Theft Act 12

of 1990 (GG 63) which came into effect on 28 August 1990 was enacted. It was subsequently amended by Stock Theft Amendment Act 4 of 1991 and Act 19 of 1993. Finally the Act was overhauled by the Stock Theft Amendment Act 19 of 2004. These are a string of enactments that are not just responsive regulations in nature but also prescriptive forms of regulations.

It should be noted that prescriptive regulations are: those that involve the state promulgation of legal rules prohibiting specific conduct, underpinned by coercive sanctions (either civil or criminal in nature) if the prohibition is violated. In this form the law operates in its classical form through rule-based coercion.

Section 14 of the 2004 amendment Act provided for some heavy penalties for those who offend the law.

Reading that:

14 Any person who is convicted of an offence referred to in section 11(1)(a), (b), (c) or (d) that relates to stock other than poultry - (a) of which the value -

(i) is less than N\$500, shall be liable in the case of a first conviction, to imprisonment for a period not less than two years without the option of a fine;

(ii) (ii) is N\$500 or more, shall be liable in the case of a first conviction, to imprisonment ~~for a period not less than twenty years~~ without the option of a fine;

(b) Shall be liable in the case of a second or subsequent conviction, to imprisonment ~~for a period not less than thirty years~~ without the option of a fine.

The court in terms of 14 (2) can give lesser sentences provided in case of substantial and compelling circumstances to grant lesser sentences. Although the High Court defended its ability to exercise its discretion on sentencing in

Daniel v Attorney-General & Others; and in Peter v Attorney-General & Others 2011 (1) NR 336 (HC), which was confirmed by the supreme court on appeal, that this type of actions by the state demonstrated not only the need to responsive and prescriptive on stock theft

Indeed other equally prescriptive regulations in relation to how farmers must deal with various activities such as animal tagging, animal movements and the sale of animals. These measures fall squarely within the definition of the The UK Better Regulation Task Force which escribes regulations as:

“any government measure of intervention that seeks to change the behaviour of individuals of groups.”

It is common knowledge that most stolen stock are not for keeping but are made to disappear either through slaughter or export (not to suggest that abattoirs and exports are not regulated) still the practice continues.

It is the contention of this motion that Namibian farmers need stock theft to be regulated in a much broader fashion, for human behaviour has not changed. The rational for this thinking is that the farming of yesterday is not the same as today. The losses that occur on farmers require a multidimensional fight against stock theft.

The historical conception of farming implicit to the majority of our communities was predominantly defined by the way we farmed, lived with one another, in relation to our agricultural produce. Thus to say the value we accord to farming was simply a way of life, feeding the family and pride, without much emphasis on profiteering. As such the majority of our communities have dealt with stock theft with components of reparations, and mercy and humanity towards the stock thief. We left the incarceration and prosecution to the state and the prosecutorial authorises.

Our recent history has it that that Namibia has emerged from a dark history of an authoritarian South African regime, where the majority of our people had minimal fundamental human rights, or recourse when rights are violated. The depressed criminal activity among commercial lands is rooted in the value of obedience and fear of dire consequences if one is found in foul of theft laws and trespassing on commercial land of the 'Bass'.

The advent of a constitutional state gave birth to a new era awareness of fundamental rights and the limits within which the farmer can, and would act have become all too apparent and predictable to livestock thieves. For example, the issue of granting bail under section 61 of the CPA has become a thorn in the flesh for farmers, yet bail is an essential for the protection of our personal liberty. Continued trespassing and free roaming of individuals on private property is a critical enabler of stock theft against which the farmer is helpless, and continue to be offended without repercussion for the trespasser.

Our farming is now far from where we started. Livestock quality has increased with prices. Bull rams are fetching record prices. Farmers are buying livestock across national borders. The cost of farming, climatic difficulties and the cost of farming land can simply not allow the farmer to continue losing stock without helpful regulation.

Regulation is generally best viewed as a tool to influence human behaviour to achieve a certain objective. In this context we must have regulation that eliminates thieves from communal and commercial farming alike because both sets of farmers are farming for a profit these days.

It is the contention of this motion that regulation is more than the legal rule or law prescribing what should and should not be done. The stock theft case for a broad approach consistent with what Friedberg argues that regulation as a whole is: "an internal measure or intervention that seeks to change the behaviour of individual or groups."

“Baldwin argues that regulation is effective when it comprises all mechanisms for social control, influence and affecting behaviour, from whatever source whether interior or not”

Baldwin and Friedberg fundamentally recognise that regulation need not be exclusively confined to a vertical relationship between the state and the governed, with the governed induced purely by legal regulation to change behaviour. This motion submits that the two argue that regulation is complete when it is about the optimal use of communications, procedures, institutions and established architecture to reach to change human behaviour for a specific end; in this case to eradicate stock theft.

The above highlighted laws indeed provides clarity and are robust in the punitive measures. However, the motion argues that any instrument by which government, their subsidiary bodies, and supranational bodies must consider and inscapes a wide range of instruments and factors to reach change human behaviour.

Factors that this motion considers necessary is to look at the diverse way we farm and realise that the universal approach of the current legal framework, is one of the mayor reasons why we fail to change human behaviour, allowing stock theft continue to flourishing. Further thieves are not any longer stealing for small consumption purposes; they are now ransacking farmers as part of cartels that have access to resources including vehicles and lethal weapons. The increasing use of undocumented immigrants especially by part-time farmers present a grave danger to our livelihoods.

It is therefore, argued that we need to introduce measures of Meta regulation and self-regulation to our current prescriptive and responsive regulations. Whether the self-regulation is by mandate, sanction, of completely voluntary basis. It will elevate the farmer's role from a mere spectator of court processes to one of ownership the collective security of farmers' property.

“Meta Regulation Is a risk management system process often required to be documented (to demonstrate compliance), with risk management plans submitted to government or made available for inspection by the regulator.”

Through this system farmers’ groups can submit various regulatory measure that would work for them to curb eradicate theft.

As I conclude the submission in this regard. It is recognised that robust primary legislation has provided some sort of relief to the farmer, albeit reducing the farmer to a witness in court processes. The prescriptive Stock Theft Act merely catches the thief and forces compliance and obedience because of the punitive measures. Farmers need a holistic regulation that takes advantage of the current regulatory framework, Self and Meta Regulation to be at guard of their livestock which are essentially the commercial property/ the currency we trade in.