

## CONFISCATING THE PROCEEDS OF CRIME: RESTITUTION OF STOLEN PROPERTY

Memorandum By The Government Of Lesotho

If a person is convicted of theft or receiving stolen property knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the court.

The difficulty often arises where the stolen property has been sold by the thief and cannot be traced, but the thief is found in possession of the proceeds of the sale. The Courts have held that the law of restitution refers to the stolen property and not the proceeds of their sale and have refused to give such proceeds to the victim.

In some cases involving theft of money the courts have held that the goods bought with the stolen money cannot be given to the victim. On the other hand it is contended that the thief is not legally entitled to the goods he bought with stolen money. It is suggested that the best thing to do would be to confiscate the goods and sell them if they prove to be of no value to the victim. The proceeds of such sale can be given to the victim. It is most absurd to give the goods bought with stolen money back to the accused and then leave the victim to institute civil proceedings. A civil judgment is entirely useless when it has to be executed against a man of straw.

Where a person has been convicted of causing personal injury to some other person, or damage to

or loss of property belonging to some other person the court convicting him may forthwith award him compensation provided such compensation shall not exceed four hundred maluti. This order of compensation can be made only on the application by the victim and it requires that the value of the property or damages claimed should have been well canvassed in the proceedings and the court is entitled to hear further evidence in order to determine the amount of compensation applied for.

There is a provision in our law that an award of compensation made in the criminal trial of the accused person shall have the effect of a civil judgment of that court. After the victim has obtained a civil judgment without actually instituting civil proceedings which are often very costly and time consuming the proceeds of the crime can be executed wherever they may be and in whatever form they may be including savings in bank accounts.

The suggestion that the state should pay compensation for personal injury caused by the criminal acts of other people is a good one because in most cases people who cause such personal injuries are not at all men of means. In those countries where the crime of bodily injury is rampant the taxpayer may have to pay large amount of money and yet there is civil remedy open to any person who has been aggrieved.