

FOSTER CARE AND ADOPTION POLICY FOR LESOTHO

**MINISTRY OF SOCIAL DEVELOPMENT
GOVERNMENT OF LESOTHO**

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Foreword

Lesotho has over the recent decades witnessed alarmingly high rates of deterioration in its socio-economic situation. This has caused suffering and exceptional vulnerability to hundreds of thousands of children who live in this country. The endemic poverty, food insecurity, high unemployment rates, the HIV and AIDS pandemic associated with this period have furthermore contributed to the collapse of support systems once offered by traditional extended family networks and to the breakdown of the family institution which for a long time served as the basic unit of society as well as the primary source of nurturance, emotional bonding and socialization of children. In addition, Lesotho, like many other parts of the world, is currently experiencing transformations in social, cultural, economic and political trends. These changes also tend to have their own serious and adverse consequences on family stability and child care within the family. Altogether, the above-mentioned conditions account for the steep increase in the numbers of Basotho children who are living without parental care and support as well as those who are broadly described as falling in the category of the neglected or abandoned who need protection.

Because of the circumstances described above, the Government of Lesotho has given the plight of children living in Lesotho special attention since the beginning of the 21st century. Particular consideration has been focused on orphaned and vulnerable children (OVC). In the view of the Government, for some of the children in this category, substitute or alternative family care on a short-term or permanent basis in the form of foster care or adoption can be the best options for meeting their needs. The Government is strongly convinced that actions aimed at improving the general well-being of children must continue to be prioritized not only by government, but by all sectors including development partners, community-based organizations and the public at large.

Over the years, the Government and its partners have together demonstrated commitment and made concerted efforts to offset and redress the enormous gaps that exist in child care services, child protection laws and policies. A series of critical steps and milestones already reached by the Government of Lesotho and allies to illustrate their dedication to scaling-up the country's response for the OVC. They include among others:

- In 2003, the Department of Social Welfare (DSW) was formally mandated to become the government's focal agency for orphaned and other vulnerable groups of children. In the same year, an updated situation analysis of such children was undertaken and a National Social Welfare Policy was developed.
- In 2004, a Rapid Assessment of, Analysis and Action Planning process was undertaken in consultation with multi-sectoral stakeholders from Government as well as from non-governmental organizations. The results from this process

were used to inform the development of a draft National Action Plan on children. This Plan was refined and costed in 2005.

- Then a National OVC Policy was formulated in 2005 and it was adopted by Cabinet in 2006. The most notable achievement came with the enactment of the Children's Protection and Welfare Act (CPWA) in November 2011.

The above cited piece of legislation is regarded to be the most comprehensive framework for promoting the rights and protecting the well-being of all children living in Lesotho. Though it makes provision for foster care and adoption as measures of alternative care, the Government realizes that no specific effort has been made to ensure the establishment of social protection systems that would guarantee efficient and effective delivery of these services. The Government's view is that legislation on its own cannot be a panacea. Rather, supportive policy frameworks would greatly enhance implementation of various provisions of this Act. The country has also learned throughout the years that, though useful for providing care and support to children, alternative care measures care in the form of adoption and fostering can also pose significant problems and risks of different kinds. For instance, they can lead to children being unnecessarily denied the opportunity of living with their birth parents or relatives. This may be, for example, through forceful removal from those relations. Sometimes adoption and foster care can expose the children to trauma and long-term emotional problems. There are also fears that adopted children especially, can be trafficked for different purposes including sexual exploitation and child labour. This Policy is intended to do away with all problems, risks and fears.

In this particular case, the Ministry of Social Development is proud to have championed the idea that led to the development of the first framework named "Foster Care and Adoption Policy for Lesotho". This will indeed be a crucial document for assisting the Ministry to establish a system for delivering quality foster care and adoption services in a standardized and ethical manner. This document would be even more meaningful when read in conjunction with the "Procedures and Practice Guidelines for Foster Care and Adoption for Lesotho".

As the Minister of Social Development I wish to express my sincere gratitude to all stakeholders who have contributed to the development of this Policy. Without their engagement, the Ministry would not have realized the success it has in this endeavour. I also, hope that they will from now on be guided by this framework in the delivery of these services.

Minister of Social Development

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Name: _____ **Signature:** _____
Principal Secretary, Ministry of Social Development

List of acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
BOS	Bureau of Statistics
CPWA	Children's Protection and Welfare Act
CBOs	Community Based Organizations
DHS	Demographic Health Survey
DSW	Department of Social Welfare
FBOs	Faith Based Organizations
HIV	Human Immunodeficiency Virus
ISS	International Social Service
LIAA	Lesotho Intercountry Adoptions Authority
MSD	Ministry of Social Development
NGOs	Non-Governmental Organizations
OVC	Orphaned and Vulnerable Children
UNAIDS	Joint United Nations Programme on HIV and AIDS
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
WFP	World Food Programme

Chapter One

INTRODUCTION

1.1 The Country Context and Policy Background

According to the 2006 national census Lesotho has a population of 1,880,661 with males comprising 48.6% while females represent 51.4% of the total population. Being located in Southern Africa, the epicentre of the HIV and AIDS pandemic, the HIV prevalence rate in this country is the third highest in the world. 23% of Basotho adult population (15-49 years) lives with the virus (Demographic Health Survey, 2009). Deaths from HIV and AIDS, estimated at 560 per week have left in their wake, a growing number of orphaned and vulnerable children, resulting in Lesotho having the highest proportion of orphans and vulnerable children in the world. The percentage of double orphans in Lesotho is the second highest amongst other Southern Africa countries that have taken part in these alternative care assessments over the recent years. Furthermore, it has been established that Lesotho has more paternal orphans than other countries and less maternal orphans.

Lesotho statistics estimate that there are 270,000 OVC (BOS, 2006). It is further indicated that the plight of these children is increasing annually. The recent 2011 OVC situation analysis report, even though unofficial, records just over 182, 000 OVC (just 2, 000 over the 2006 estimates). The 2006 National OVC Policy gave a figure of orphaned children as 180 000 and stated that 100, 000 of these were orphaned due to AIDS. The fluctuating figures can be explained by the lack of a comprehensive and institutionalized system for registering OVC. At the same time, it is recognized that existing OVC figures are often unreliable and tend to focus mainly on orphaned and to exclude other vulnerable groups of children.

Increasing research-based evidence indicates that OVC are at high risk of neglect and exposure to various forms of abuse and exploitation by caretakers, communities and service providers. The evidence further shows that ensuring that such children enjoy rights of accessing and using essential services without discrimination remains another major national challenge. Similarly, the rights of OVC to grow-up and develop in a protective family environment need to be safeguarded by duty bearers at community, district and national levels. It is however reckoned that, so far, Government, line ministries, development partners, OVC service providers, NGOs, and CBOs have not directed much of their efforts towards developing specific policies, action-oriented strategies, procedures and guidelines related to foster care, adoption, and formal residential care which are strategic interventions needed to promote and protect the rights of children without parental care.

1.2 Justification: Why is a policy on foster care and adoption necessary?

The phenomenon of children without parental care is not new in Lesotho. It is also a well-known fact that foster care and adoption are also not novel in this country. They have been used since times immemorial but without any legal or policy frameworks regulating them. For that reason, the National Orphaned and Vulnerable Children (OVC) Policy of 2006 has identified foster care and adoption as key interventions for mitigating the plight of OVC in Lesotho. These services are today enshrined in the provisions of the existing legal framework for children namely, the 2011 Child Protection Welfare Act (CPWA). Thus, foster care and adoption have been entrenched into Basotho traditional practices and recently into national policies and laws hence cannot be regarded as of foreign origin as frequently assumed.

The available Population Census data for Lesotho reveal an increase in the number of orphaned children (0-17) from 130,245 in 1996 to a staggering 221,400 in 2006, reflecting a 41% rise over a ten-year period. Furthermore, there is growing consensus in the country that many orphaned children are made vulnerable by HIV and AIDS long before their parents die. Although there are no precise data available on the number of other categories of vulnerable children, it is most likely that it exceeds that of those who are orphaned. The 2010 OVC Situational Analysis draft report indicates that over 40% (182, 362) of all children in Lesotho are orphaned and vulnerable largely due to HIV/AIDS. The numbers of children who have lost their parents to HIV/AIDS or have been left vulnerable in one way or the other have increased appreciably between 1996 and 2010. It is believed therefore that currently the situation has reached crisis levels.

Steps have already been undertaken through the CPWA legislation enacted in 2011 to specifically address the plight of children living without parental care by establishing a well organized system of foster care and adoption. In terms of this Act, all forms of alternative care namely, foster care, adoption and formal residential care must be among the interventions availed to children without care of their birth parents as a consequence of death as well as other circumstances. But it has come to the realization of many people especially service providers in the social sector in this country that, for the effective and smooth implementation of the alternative care provisions in the CPWA of 2011, a supportive policy must also be put in place. Having been formally mandated to be the focal government agency for orphaned and other vulnerable groups of children in late 2003, the Ministry of Social Development (formerly, the Department of Social Welfare) has decided to prioritize the development of such a policy.

In addition, the Ministry of Social Development (MSD) is deeply concerned with the mushrooming of residential care facilities which is evidenced throughout the country. The main reason behind this concern is that these facilities are unregulated and the

care and services offered in a good number of them are sub-standard. MSD has further noted that residential care is overused despite the fact that, international child rights norms and standards insist that institutionalization must be used as a measure of the last resort. The MSD continues to hold the conviction that children, including those without parental care, should not be allowed to grow-up in residential care rather; that family care must be prioritized because as implied above such facilities can tend to be more exploitative, abusive and even traumatizing. This explains why adoption and foster care have become more preferred alternative care options than residential care in recent years.

The Judicial Commission led by Lady Justice Majara in 2008 raised further challenges confronting foster care and adoption in Lesotho. These included, the lack of systems and institutions for delivering these services, lack of standardized and ethical procedures and practice guidelines; lack of appropriate policy; unregulated processes especially regarding intercountry adoption and delays in acceding to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The development of this Policy has taken on board these challenges.

This policy is premised on the CPWA and international norms and standards on foster care and adoption. In that light, the Policy addresses the concerns raised by the UN Committee on the Rights of the child in 2001 following its consideration of Lesotho's first report on the implementation of the CRC. The Committee expressed concern regarding, firstly, absence of legislation, policy and institutions for regulating intercountry adoption. Secondly, the Committee spoke of the use of slow and cumbersome adoption procedures. Thirdly, it made reference to the lack of information on how many children are in foster care placement and adoption. Fourthly, the evident lack of monitoring with respect to both domestic, including customary law adoptions, and intercountry adoptions were mentioned. Finally, that foster care and adoption arrangements in many instances failed to recognize the primacy of the best interests of the child.

In developing this Policy, special attention has also been paid to the recommendations of the 40th session of the Committee on the Rights of the Child in September 2005, on the General Discussion on Children without Parental Care, where emphasis is laid on the need for prevention of separation from parents, placement on alternative care and prevention of institutionalisation of children.

The Policy is intended to complement the implementation and enforcement of the domestic legislation cited above. Instead of reinventing the wheel, this Policy has borrowed a lot from experiences of organizations such as the ISS, and of countries which already have established and running foster care and adoption systems like Kenya, South Africa, Sweden, etc.

Lastly, effective and efficient implementation, the Policy will, in turn, be supplemented with Foster Care and Adoptions Procedures and Practice Guidelines whose intention is to improve the quality and standards in delivering and administering foster care and adoption services in the country.

1.3 Policy and legal frameworks for foster care and adoption

This Policy is meant to operate within the broad spectrum of international, regional and national policy and legal instruments which set norms and standards for foster care and adoption.

1.3.1 International policy and legal context

Discussions in this part of the Policy are relevant mainly but not exclusively to intercountry adoptions. This is because there is cognizance that certain principles relevant to intercountry adoptions apply equally to local adoptions. For instance, the principle regarding the best interests of the child must be of paramount concern in both local and intercountry adoptions. Similarly, this Policy insists that, for the benefit of the child, both of these forms of adoption should be provided in an ethical, secure and legally safeguarded manner.

Lesotho ratified and has been party to the UNCRC since 1990. This is one of the international conventions meant to oversee the rights of the child who is adopted or is under foster care. Article 20(2) of this convention is the one that accords the right to “alternative care” to children who are temporarily or permanently deprived of their family environment, or in whose best interests they cannot be allowed to remain in such environment. Article 20(3) of this convention is the one that speaks in specific terms of measures of alternative care as including foster care, adoption and placement in suitable institutions for the care of children. The country has domesticated the UNCRC through the enactment of the CPWA of 2011 and all articles of this Convention including those related to foster care and adoption have enshrined in this legislation.

The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption is intended to ensure that intercountry adoptions take place in a secure, legal and ethically acceptable manner. It gives responsibility for this to countries receiving adoptees and also to those countries from which adoptees originate. For this Convention, each of these countries ought to establish a central adoptions authority. For the receiving country, the Central Authority has to ensure the suitability and eligibility of the prospective parents to adopt. The authority on the side of the child’s country of origin is responsible for establishing whether or not the child is adoptable. Furthermore, countries of origin are charged with an additional responsibility to find a suitable family within the child’s state of origin if they cannot stay with their families of origin. An adoption outside a child country of origin can be considered only if such a

family is not found. In a similar manner, the UNCRC states that efforts to find suitable care in the child's country must be exhausted before intercountry adoption is considered.

Another important aspect in both the UNCRC and The Hague Convention is that the child has a right to know about his or her origins.

Lesotho is yet to ratify the Hague convention. But the exercise of drafting this Policy begins when the Cabinet of the Government of Lesotho has just taken a decision to accede (22 February 2012) to this important Convention as well as to the Hague Convention on the Civil Aspects of International Child Abduction. Expectations are that these Conventions will undoubtedly be ratified before the end of 2012.

Realizing the gaps in implementing the UNCRC provisions on alternative care, the International Social Service (ISS) developed the UN Guidelines for the Alternative Care of Children. These Guidelines outline the need for relevant policy and practice with respect to two basic principles: *necessity* and *appropriateness* explained in detail in the Word Power appended to this Policy document. They undoubtedly constitute a meaningful context for a Policy in Lesotho. For the ISS, it is a responsibility of the State or appropriate level structure of government to ensure the development and implementation of coordinated policies regarding formal and informal care for all children who are without parental care.

1.3.2 Regional policy and legal context

Foster care and adoption are enshrined in a number of African documents related to child well-being and protection such as the ACRWC, Common Position Paper on Africa Fit for Children, etc. Both of these documents emphasize that when placing children in foster care and adoption all efforts must be taken to keep them within their families and environments that uphold their cultural backgrounds and customs. This Policy will therefore, in line with the CPWA 2011, not prevent, discourage or displace informal and traditional regimes that are in the best interests of the child.

Regarding care and protection, the ACRWC stipulates that every child is entitled to the enjoyment of parental care and protection and that, whenever possible, a child must reside with his or her parents as a right. It further provides that no child shall be separated from his/her parents against his/her will, except when a judicial authority determines in accordance with the appropriate law that such separation is in the best interest of the child (Article 19).

This Charter in addition requires States Parties which recognize the system of adoption to ensure that the best interest of the child shall be the paramount consideration and they shall: establish competent authorities to determine matters of adoption and ensure

that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counseling. For this Charter, inter-country adoption may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin, in such circumstances, it shall be ensured that the child concerned enjoys safeguards and standards equivalent to those existing in the case of national adoption to avoid exposing the child to trafficking or improper financial gain for those adopting a child. Lastly, the ACRWC states that actions should be taken to ensure that the placement and well-being of a child adopted in another country is monitored (Article 24).

The African Common Position Paper on children urges African Governments to take measures to ensure that every child in Africa has a good start in life, and to grow and develop in child-friendly, nurturing environment of love, acceptance, peace, security and dignity. To achieve this, the following activities are suggested: provision of assistance and protection of family units and the extended family system; ensuring proper growth and development of children through provision of education and information to families, caregivers and the community on health, childcare and nutrition; supporting community initiatives to help families and communities cope with HIV/AIDS and establish mechanisms for alternative care for children orphaned by AIDS and other vulnerable children including enacting relevant legislation to protect the rights of people affected by HIV/AIDS including orphans and widows; and, developing child, youth and gender-friendly inheritance and adoption laws in the States where adoption is permitted. The paper also makes mention of the need for widespread and meaningful participation of youth and children in the planning, implementation and monitoring of these undertakings.

Lesotho has ratified the ACWRC and hence must be seen to abide with its norms, guiding principles and standards. Already, action has been taken to domesticate provisions of this Charter through the enactment of the CPWA, 2011.

1.3.3 National policy and legal context

Lesotho has never had a comprehensive policy and legal framework for adoption and foster care. For most part of the history of the Basotho, foster care and adoption were administered informally guided by customs and traditional practices upheld by different Basotho families. These customs and practices were predominantly organized along kinship lines. These traditions and customs were considered part of Sesotho law and as compelling.

During the period of rule by the British, the 1952 Adoption Proclamation became the first legislative framework intended to regulate adoption in this country. The Proclamation was focused on adoption and said nothing about foster care. It allowed Europeans to adopt Basotho children and yet denied native Basotho those rights. However, not only Europeans adopted children during that period but people of other nationalities including Basotho. Section 14 of the Adoption Proclamation provided that, "this proclamation shall not apply to Africans and nothing contained in this Proclamation shall be construed as preventing or affecting the adoption of an African child by an African or Africans in accordance with Basotho law and custom". The High Court of Lesotho declared this section as discriminatory and non-applicable in 1997. The Proclamation latter became repealed by the CPWA, 2011.

Sub-section 11.0 of the National Policy for Orphans and Vulnerable Children which is entitled "Promoting adoption and Foster Parenting" became the first attempt to make policy provisions for these two types of alternative care. But enforcing those provisions has to date remained problematic because they were not anchored in any legislation. No resources, structures, procedures and guidelines were put in place to facilitate implementation of this sub-section. This offers an explanation why the foster care and adoption clauses of this policy were never found to be compelling.

The CPWA legislation enacted in 2011 therefore, can be recognized as the first piece of legislation to make comprehensive provisions on fostering and adoption as alternative forms of care for children living without parental care. This Policy, on the other hand, is the first step taken to enhance the efficient and effective implementation of the legislation cited above.

1.4 Vision, Mission and values

1.4.1 Vision

The vision of this Policy is to have a Basotho society in which the general populace has a high level of regard as well as a deep understanding, respect and appreciation for foster care and adoption interventions as alternative family models for raising children without parental care and as well as other vulnerable groups for which these interventions may be found relevant. The long-term vision is to have a society that makes minimum use of formal residential care except where it is used as a measure of the last resort.

1.4.2 Mission

The Mission is to encourage the development of a culture which advocates for the respect, support, defense, promotion and protection of the human rights of children in

foster care and adoption as well as to ensure that those rights are prioritized in the national development agenda.

1.5 Values and Principles

The formulation of the Foster Care and Adoption Policy for Lesotho is inspired by universal values and guiding principles enshrined in global and regional human rights protocols related to the human rights of children such as the UNCRC, the ACRWC and other related international instruments such as the Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption. These values and guiding principles are of outmost importance for ensuring the effective implementation of this Policy especially because they are already enshrined in various recently developed domestic policy and legal frameworks of this country.

1.5.1 Values Underpinning Foster Care and Adoption

These are the values that should inspire all actions taken by service providers with respect to deciding on placing children on foster care or their availability for adoption.

- Respect for human rights of children without parental care ;
- Investing in children without parental care;
- Believe in primacy of family life in children's development;
- Ensuring the integration of children without parental care into society;
- Guaranteeing quality care and well-being for children without parental care; and,
- Promoting the realization of a child's full potential.

1.5.2 Guiding Principles to be observed in Providing Foster Care and Adoption and services

Actions of foster care and adoption service providers should at all times take consideration the following guiding principles:

- Best interests of the child;
- Non-discrimination;
- Survival and development;
- Child participation;
- Child evolving capacities; and,
- Adoptability
- Subsidiarity

- Necessity; and,
- Appropriateness.

1.6 Policy goal

This Policy is intended to be a functional document. It should become the mainstay of efficient and effective delivery of foster care and adoption services in Lesotho. It is also meant to provide long-term directions and define short-term details regarding the meaning and uses of the foster care and adoption for the benefit of service providers, children who need these interventions, foster care and adoptive parents and the public in general.

1.7 Policy objectives

The Policy brings together existing knowledge, experience and information and its objectives are to:

- Ensure that an appropriate policy framework aimed at establishing systems, structures, institutions and processes for formalizing delivery of foster care and adoption services is in place;
- Establish/strengthen the coordination of structures and service providers at all levels of society to enhance the efficient and effective implementation of the foster care and adoption provisions contained in the CPWA, 2011;
- Advocate for the increased use of formal foster care and local adoption;
- Support strategic direction and resource mobilization efforts to ensure provision of adequate resources to established structures and to build the capacity of different role players involved in foster care and adoption service delivery;
- Promote and strengthen systems for the registration and monitoring as well as maintain databases of adopted and fostered children;
- Formulate a comprehensive lobbying and advocacy strategy for educating and disseminating different aspects of the policy to the public including, development and dissemination of adequate information, education and communication materials around key issues related to foster care and adoption, for example, what government and non-government services are available in these areas and how such services can accessed;
- Publicize the Procedures and Practice Guidelines related to foster care and adoption;
- Ensure that content on foster care and adoption is well integrated into pre-service training and teaching curricula in law, social work and related social service professions;

- Create widespread awareness, better societal conceptualization and a broad public understanding of foster care and adoption interventions;
- Indicate to service providers the necessity and importance of compliance with international and government standards in rendering foster care and adoption services;
- Support and assist service providers to acquire a renewed understanding and mindset regarding foster care and adoption to enable them to embark on finding effective ways and practices required for implementing the CPWA provisions in a manner that is compliant with relevant international norms and standards;
- Prevent the need for residential care by addressing the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, among others, the right to birth registration, access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse, and substance abuse, etc.;
- Promote parental care by ensuring that families are sufficiently empowered to meet their responsibilities towards the child;
- Promote the rights of the child to have a relationship with both parents; and,
- Promote research and development as well as sound monitoring and evaluation systems are institutionalized so that alternative care policies should in future be based on sound information and statistical data.

1.8 Priority areas for this policy

This Policy is focused on two of the three areas of alternative care namely foster care and adoption. The first priority area makes provisions for the placement of children in foster care which are contained in Chapter Two. The second priority area is in respect of adoption as presented in Chapter Three.

Chapter Two

POLICY PRIORITY AREAS WITH SPECIAL REFERENCE TO FOSTER CARE

2.0 Introduction

With the coming into effect of this new Policy on Foster Care and Adoption, provisions of Sub-section 11.0 of the National OVC Policy which is entitled "Promoting adoption and Foster Parenting" shall cease to apply.

Definitions of foster care applicable in Lesotho shall only be as provided in this new policy as guided by provisions of newly enacted CPWA, 2011 as well as the relevant international conventions in particular, the Hague convention and the ACRWC.

This Policy is aligned with the provisions of the domestic legislation relating to adoptions which are contained in PART VIII of the CPWA.

The Word Power included at the end of this Policy includes definitions of important concepts used in the document.

2.1 Types of foster care

There are numerous foster care arrangements possible under the CPWA, 2011 and also for this Policy. These are as follows:

Family Foster Care - refers to when a child is fostered by a family regardless of whether it is a family related to a child or not.

Kinship care – is the placement of the child with extended family, older siblings or in some cases with family friends. This arrangement can be formal or informal in nature.

Institutional foster care - refers to when a child in need of care and protection is provided foster care in an institution or place of safety until such time that the family/community environment or other alternative placement is deemed safe and conducive for re-unification and re-integration.

Under this Policy, institutional foster care shall be used as the last resort measure.

Cluster foster care - refers to the placement of a child in a form of communal or group network of foster care families typically located in close proximity of each other to enable easy organization and provision of services.

Emergency foster care – is where a child has comes into care very quickly and is placed with a place of safety or “emergency carers”. It can happen also when an existing placement breaks down and a child needs to be moves quickly.

Respite foster care – is provided by some foster parents to provide a break for a child’s family or another foster family. This is used where a child appears to be under stress or is displaying very difficult behaviour. The service can be provided during the week, at weekends or at other times depending on the child’s needs.

Pre-adoption foster care – this is used to provide a child and family with whom he/she is placed a period that allows assimilation to the placement and vet the suitability of the relationship.

Formal and informal foster care - the Policy recognises that foster care arrangements can be formal or informal. Formal arrangements are those which are supervised and controlled by a nominated state authority. Informal foster care arrangements are made from carer to carer without the intervention of social services. The spirit of the CPWA 2011 and of this Policy is that foster care arrangements should be formalized as this is regarded as being in the best interest of the child.

It must be noted though that foster care shall be considered only if a child is in need of alternative care for a temporary period. If it becomes necessary for it be provided until adulthood, periodic review of the placement shall be undertaken if no long term solution is available.

2.2 Persons who qualify to foster as per CPWA, 2011

Such persons should have the following characteristics:

- (a) Be above the age of 25 years
- (b) Be of good behavior
- (c) Have proven integrity
- (d) Possess sufficient means of livelihood, and
- (e) Have no criminal record
- (f) Relatives who meet the above conditions and are at least 19 years of age.

2.3 Which children can be placed in foster care?

Children that can be placed in foster care can come from different categories of children regarded as vulnerable and/or have had some traumatic experience. These include children who are orphaned and without care of one or both of their birth parents; and, those found to be living in circumstances that render/expose them to neglect, desertion, abandonment, exploitation, abuse, child labour, regular dropping out of school, teenage pregnancy, child marriage, criminality, etc. as well as those in the care of families which are unable to cope and raise children properly.

2.4 Duty bearers and parties responsible for provision of foster care services

The Ministry of Social Development shall establish a system and put in place structures which will be responsible for the delivery of foster care services in the country. The duty bearers and parties in this system shall include chiefs, foster care agencies, foster care institutions, district support teams, etc.

The Government shall establish a Division of Alternative Care and also a Unit of Foster Care and Adoptions to be its key role players in the delivery of adoption services.

Foster Care and Adoption Offices shall also be established in all the ten districts. These offices shall work in collaboration with District Support Team.

The Government shall ensure that this Division, the Unit and district offices are well capacitated and strengthened in terms of human, skills, financial resources and otherwise.

Formal procedures and practice guidelines shall be developed for this purpose.

2.5 Reunification and Reintegration programmes

It shall be the main aim of this Policy to uphold the right of children to be reunified with their biological parent(s) as well as the right to be returned from placement and reintegrated into the family and/or community if and when the family conditions return to normalcy; and, if the placement was made at their own request. Alternatively, a child may be reintegrated into the neighbourhood or community the child is familiar with where placement within the family is not possible.

2.6 Foster Care and Adoption Procedures and Practice Guidelines

A separate Foster Care and Adoption Procedures and Practice Guidelines document specifying detailed roles and responsibilities and practices to be followed by each of the duty bearers involved in the delivery of services in this area.

2.7 Information systems and databases

The Ministry of Social Development shall ensure availability and accessibility of information and any other records pertaining to cases of foster care placement involving Basotho children or other children fostered in Lesotho. With respect to children in foster care such access shall be regulated according to their evolving capacity.

For this purpose, a system of updated information on foster care shall be set-up by keeping registers of all children in foster care.

Availability of updated information on foster care placement in the country is very crucial and pertinent for keeping track of trends and for monitoring the foster care system and processes related to it. This information would also be useful for purposes of policy and legislative review and reform as well as programming.

The relevant Office in the Ministry of Social Development responsible for foster care and adoption shall be responsible for maintaining the appropriate registers and updating them regularly.

2.8 Approval, Preparation and Empowerment of foster parents and foster children under their care

The Government, through the Ministry of Social Development and its departments or through accredited foster care agencies authorized to deliver foster care services shall, in screening and preparing lists of prospective parents/eligible foster families, ensure that they are committed and caring and will be able to offer an element of permanency and security to the lives of children they foster. Parents/families placed on the Foster Families' lists must meet the requirements as stipulated in the Foster Care and Adoptions Procedures and Practice Guidelines for Lesotho.

All prospective parent(s)/families shall be provided with psycho-social screening and preparation services (for example, information, documentation, support in making an adoption plan, advice on required documentation, arranging contact with children they are to foster and/or their relatives, arrangements for post foster care placement, etc.)

by an authorized competent authority or accredited body in accordance with provisions set-out in the Lesotho Foster Care and Adoptions Procedures and Practice Guidelines.

2.9 Participation of children in foster care processes

The Government, through the Ministry of Social Development or authorized competent and accredited foster care agencies for delivering foster care services will ensure that participation of children in such processes is guaranteed. Before any adoption placement is finalized, the child concerned shall be consulted in a manner appropriate to his/her age and in accordance with the evolving capacity of each child.

When children, particularly older children, are placed on foster care, they shall be appropriately prepared and this shall be done according to procedures that are stipulated in the Lesotho Adoptions and Foster Care Procedures and Practice Guidelines.

2.10 Lobbying and Advocacy for promoting formal foster care

The Government shall make all efforts and put in place proper mechanisms and a strategy to assist in advocating for formal foster care and promoting awareness about it as well as about its usefulness as an alternative care model. This will ensure that adoption in all its forms is better understood/conceptualized/communicated such that finally, an increased number of local people become prepared to take in children for foster care placement.

A well designed and comprehensive lobbying and advocacy strategy will be designed for this purpose. This strategy will call for;

- Greater investment in foster care for children living without parental care as well as other children under circumstances spelled out in Paragraph 2.3 above by Government, development partners, the business community, NGOs and FBOs;
- Promotion of parental care and prevention of the need for residential placement of children;
- Compliance of foster care services with international norms and standards
- Speedy ratification of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption;
- Immediate establishment of DSW foster care committees;
- Effective regulation of formal foster care services in all its types;
- Service providers and prospective foster care parents should help to ensure that fostering is done in the child's best interests; and,
- Foster care should be pursued through official channels only, using reputable non-profit making agencies that follow internationally-agreed procedures.

2.11 Culture, customs and foster care

The extended family remains the most significant traditional child care institution among Basotho. This Policy recognizes kinship foster care as still the most viable model for providing foster care to children. The Government shall therefore remain committed to strengthening and modernizing this family structure so that it remains capable of providing care and support to children.

Formal procedures and practice guidelines shall be developed for this purpose.

The chieftainship at village and community levels have also kept strong in running administrative processes related to foster care and adoption. Chieftainship has also commanded a lot of respect from their subjects. The role played by traditional leadership shall therefore be strengthened and modernized through provision of regulations, procedures and practice guidelines as well as relevant training for purposes of, for example, developing data collection systems and mechanisms.

2.12 Monitoring and evaluation, research and development

Through the Ministry of Social Development and the Monitoring and Evaluation Unit established therein, the Government undertakes to monitor and evaluate the implementation of this Policy as well as trends and practices of adoption and foster care service delivery. Action will be taken to;

- Develop appropriate monitoring indicators in conjunction with relevant service providers, adoptive parents and adoptees;
- Sensitize relevant personnel in the Ministry of Social Development and social services sector at large regarding the importance of monitoring the effectiveness and impact of the Policy;
- Develop reporting systems which link smoothly with other already existing mechanisms for monitoring and evaluating the child rights situation;
- Undertake research, periodic assessments and regular surveys on issues emerging at the national and international levels to generate information that can be used to inform policy and legislative review and reform as well as programming.

2.13 Implementation strategies and plan

The Ministry of Social Development will develop a strategic plan that is in line with the action areas outlined in this Policy to facilitate implementation.

Chapter Three

POLICY PRIORITY AREAS WITH SPECIAL REFERENCE TO ADOPTION

3.0 Introduction

With the coming into effect of this new Policy on Foster Care and Adoption, provisions of Sub-section 11.0 of the National OVC Policy which is entitled "Promoting adoption and Foster Parenting" shall cease to apply.

Definitions of adoption applicable in Lesotho shall only be as provided in this new policy as guided by provisions of the newly enacted CPWA, 2011 as well as the relevant international conventions in particular, The Hague Convention and the ACRWC.

This chapter of the Policy is aligned with the provisions of the domestic legislation relating to adoptions which are contained in PART VIII of the CPWA, 2011.

The Word Power included at the end of this Policy includes definitions of important concepts used in this chapter of the document.

3.1 Types of adoption permitted by the CPWA, 2011

In line with the CPWA 2011, this Policy allows for the provision of services in relation to both local and intercountry adoption.

Local Adoption

In accordance with this Policy and the CPWA and in line with the principle of subsidiarity, local adoptions, being adoptions by citizens of Lesotho shall be prioritized.

Intercountry Adoption

The Policy also allows for intercountry adoptions by non-citizens whether residing inside or outside Lesotho.

In terms of this Policy, intercountry adoption shall be limited only to citizens of countries which have ratified the Hague Convention and with which Lesotho has entered into a special agreement by signing a Memorandum of Understanding with an

accredited adoption agency in that country. These adoptions shall involve authorized state bodies.

The list of countries nominated to adopt children from Lesotho shall be reviewed from time to time and as and when necessary.

Open versus Closed Adoption

As a matter of Policy, Lesotho shall encourage the practice of open adoption which provides the possibility of future communication with the child at the parent(s) or the child's initiative.

3.2 Which children can be availed for adoption?

Children that can be adopted are those without parental care and those who are regarded as vulnerable who have had some traumatic experiences. These include children who are orphaned and without care of one or both of their birth parents; those at risk of losing parental care; and, those found to be living in circumstances that render/expose them to neglect, desertion, abandonment, exploitation, abuse, child labour, regular dropping out of school, teenage pregnancy, child marriage, criminality, etc.; those with no relative willing to take care of them; as well as those in the care of families which are unable to cope and raise children properly.

Children with special needs such as those five years old and above, those with disabilities whether physical or otherwise and those who are HIV infected shall also be made available for adoption.

3.3 Persons who qualify to adopt as per CPWA, 2011

Such persons should have the following characteristics:

- (a) Be above the age of 25 years
- (b) Be of good behavior
- (c) Have proven integrity
- (d) Possess sufficient means of livelihood, and
- (e) Have no criminal record

Relatives who meet the above criteria shall also be given priority to adopt within the family.

3.4 Duty bearers and parties responsible for provision of adoption services

Adoption services shall be delivered by agencies and actors coming from a multiplicity of government and non-government sectors following the routing shown in Appendix II.

The Ministry of Social Development

The Ministry of Social Development shall become the lead Ministry in foster care and adoption matters.

The Government shall establish a Division of Alternative Care within the Department of Child Protection and also a Unit of Foster Care and Adoptions to be its key role players in the delivery of adoption services.

Foster Care and Adoption Offices shall also be established in all the ten districts. These offices shall work in collaboration with District Support Team.

The Government shall ensure that this Division and the Unit are well capacitated and strengthened in terms of human and financial resources and otherwise.

The Lesotho Intercountry Adoptions Authority

Government shall also establish a central authority responsible for adoption, the Lesotho Intercountry Adoptions Authority (LIAA) and mandate it to play a leading role in intercountry adoption matters.

The LIAA shall work with the Ministry of Social Development, representatives of accredited adoption agencies for countries permitted to adopt from Lesotho and/or accredited adoption agencies in dealing with intercountry adoption matters.

Accredited adoptions agencies

All accredited adoption agencies shall be registered and authorized to operate as such by the LIAA in accordance with the CPWA regulations and failure to comply with those regulations will be deemed as constituting an offence punishable by law.

Accreditation of this kind of adoption agencies shall be granted and regularly reviewed by the LIAA on the basis of standard criteria covering, at a minimum, the agency's objectives, functioning, staff recruitment and qualifications and financial resources and management.

All agencies accredited as per above stipulations shall in turn have their own written policies and practice statements consistent with Procedures and Practice Guidelines which complement this Policy, setting out clearly their aims, policies, methods and the standards applied for the recruitment, monitoring, supervision and evaluation of qualified and suitable carers to ensure that those aims are met.

All adoption agencies shall develop a staff code of conduct, consistent with the present Guidelines, that defines the role of each professional and of the carers in particular and includes clear reporting procedures on allegations of misconduct by any team member.

3.5. Foster Care and Adoption Procedures and Practice Guidelines

A separate Foster Care and Adoption Procedures and Practice Guidelines document specifying detailed roles and responsibilities and practices to be followed by each of the duty bearers involved in the delivery of services in this area shall be developed.

3.6 Information systems and databases

The Government shall ensure that adoptive parents and adoptees have access to the information and any other records pertaining to all cases of adoption involving Basotho children or other children adopted into Lesotho. With respect to adoptees such access shall be regulated according to their evolving capacity.

For this purpose, a system of updated information on adoption shall be set-up by keeping registers for all adoptees.

- One register will be for children adopted inside Lesotho (local adoptions) and also for those adopted into Lesotho from other countries.
- The second register will be for children adopted from Lesotho to other countries that have signed Memoranda of Understanding with respect to adoption.

Availability of updated information on adoptions in the country is very crucial and pertinent for keeping track of trends and for monitoring the adoption system and processes.

The Division/Office responsible for adoption and foster care in the Ministry of Social Development or at district level shall be responsible for maintaining the registers and updating them regularly.

3.7 Approval, Preparation and Empowerment of adoptive parents and adoptees

The Government, through the Ministry of Social Development or LIAA and accredited adoption agencies for delivering adoption services shall, in screening and preparing prospective parents/families ensure that they are committed and caring and will be able to offer an element of permanency and security to the lives of children they adopt.

In the case of intercountry adoption, in addition to a general capacity for adoptive parenthood, adoptive parent(s) shall have the capacity to handle the transracial, transcultural and transnational aspects of adoption. They must also satisfy all the requirements of the competent authorities of both States concerned as stipulated in the Foster Care and Adoptions Procedures and Practice Guidelines for Lesotho.

All prospective parent(s) shall be provided with psycho-social screening and preparation services (information, documentation, support in making an adoption plan, advice on required documentation, arranging contact with adoptees and/or their relatives, arrangements for post adoption placement, etc) services by authorized the competent authority or accredited body in accordance with provisions set-out in the Lesotho Foster Care and Adoption Procedures and Guidelines.

3.8 Participation of children in adoption processes

The Government, through the Ministry of Social Development or LIAA and accredited adoption agencies for delivering adoption services will ensure that participation of children in adoption processes is guaranteed. Before any adoption placement is finalized, the child concerned shall be consulted in a manner appropriate to his/her age and in accordance with the evolving capacity of each child.

When children, particularly older children, are matched for adoption, they shall be appropriately prepared for the actual adoption placement in ways that are stipulated in the country's Foster Care and Adoptions Procedures and Guidelines.

3.9 Lobbying and Advocacy for promoting local adoptions

The Government shall make all efforts and put in place proper mechanisms and a strategy to assist in advocating for local adoptions and promoting awareness about it as well as about its usefulness as an alternative care model. This will ensure that adoption in all its forms is better understood/conceptualized/communicated such that finally, an increased number of local people become at ease with adoption.

A well designed and comprehensive lobbying and advocacy strategy will be designed for this purpose. This strategy will call for;

- Greater investment in local family-based care and support services for children living without parental care by Government, development partners, the business community, NGOs and FBOs;
- Compliance of adoption services with international norms and standards
- Speedy ratification of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption;
- Immediate establishment of the Intercountry Adoptions Authority;
- Effective regulation of local and international adoptions;
- Service providers and prospective adoptive parents should help to ensure that local and international adoptions are in the child's best interests; and,
- Adoptions should be pursued through official channels only, using reputable non-profit making agencies that follow internationally-agreed procedures and practice guidelines.

3.10 Culture, customs and adoption

The extended family remains the most significant traditional child care institution among Basotho. This Policy recognizes it as still the most viable model for adoption and foster care to children. The Government shall therefore remain committed to strengthening and modernizing this family structure so that it remains capable of providing care and support to children.

Formal procedures and practice guidelines shall be developed for this purpose.

The chieftainship at village levels have also kept strong in running administrative processes related to adoption and foster care. Chieftainship has also commanded a lot of respect from their subjects. The role played by traditional leadership shall therefore be strengthened through provision of relevant regulations and procedures and practice guidelines.

3.11 Monitoring and evaluation, research and development

Through the Ministry of Social Development and the Monitoring and Evaluation Unit established therein, the Government undertakes to monitor and evaluate the implementation of this Policy as well as trends and practices of adoption and foster care service delivery. Action will be taken to;

- Develop monitoring indicators in conjunction with relevant service providers, adoptive parents and adoptees;

- Sensitize the internal mechanism responsible for Monitoring and evaluation in the Ministry of Social Development regarding the importance of monitoring the effectiveness and impact of the Policy;
- Develop reporting systems which link smoothly with other already existing mechanisms for monitoring and evaluating the child rights situation;
- Undertake research and regular surveys on issues emerging at the national and international levels generate information that can be used to inform policy review.

3.12 Implementation strategies and plan

The Ministry of Social Development will develop a strategic plan that is in line with the action areas outlined in this Policy to facilitate implementation.

Appendices

Appendix I

Word Power

Abandonment – desertion or neglect of a child with the intention to cause harm to the child

Abuse - any form of harm or ill-treatment deliberately inflicted on a child

Adoption - an official process that provides for legal obligations through courts of law, terminates rights of a child towards the biological parents and assumes new rights and obligations between the child and the adoptive parents

Adoptee – a child identified for or given out on adoption

Adoptability – the decision made by the Ministry of Social Development regarding whether or not a child is available for adoption.

Adoption agency – an institution that facilitates adoption processes on behalf of the government ministry

Adoption service – process and procedure to carry out the delivery of adoption

Adoptive parent – any person who by law is identified as fit to adopt a child

After care – This refers to the care, support, management and monitoring of the placement of the child according to procedure and standards.

Alternative care – any form of suitable placement either temporary or permanent for children who are without parental care and are deprived of their family environment.

Appropriateness –determination that once found necessary and in line with his/her needs and best interests, the choice of an alternative care measure a child is being placed on is suitable also in terms of the care setting and period spent.

Best interests of the child – a principle upheld by the UNCRC, the regional and national frameworks consequently, where the main issue is to put the child and what is in their interest first in any decision making and or taking action.

Care – support, management and custody provided to children who are in need of protection

Child – Any person below 18 years of age

Child labour – refers to involvement of a child in work that is not appropriate to the age and development of such child and may be connoted to some form of benefits.

Closed adoption – represents the direct opposite of open adoption and it prevents the possibility of future communication with the child at the parent(s) or the child's initiative.

Cluster foster care – a form of temporary placement of a child in a communal or group care, that is, where one individual or family provides care, support and protection to a group of households of children without parental care.

Exploitation – this is misuse or manipulation of a situation of a deprived child, where due to lack of parental care, people tend to take advantage of the status for their own beneficial gain or reward and in most cases to the detriment of the child.

Foster care – placement of a child without family environment into care and guardianship of some individual who assumes the responsibilities of parenthood to the child while the child remains in his/her care.

Foster parent - a person, not being a parent of a child who undertakes the responsibility of providing for the care, accommodation and upbringing of the child, with or without financial reward,

Intercountry adoption -where a person who is not a citizen of Lesotho may adopt a Mosotho child through conditions prescribed in the statutory law.

Local (domestic) adoption – adoptions carried out in and within the country amongst citizens of Lesotho.

Necessity – where the adoption is executed under well assessed, analyzed and agreed and suitable conditions, to ensure that such is a befitting action to provide the child with suitable alternative care that ensures supportive social work services and seeks to prevent the separation of children from their families unless it becomes a last resort.

Open adoption - provides for the possibility of future communication with the child at the parent(s) or the child's initiative.

Subsidiarity – where in an adoption process all options and avenues to place a child within suitable conditions are assessed and proven within reasonable doubt prior to placement of such child. It shall be ensured that there is opportunity to place the child within family and relatives first, local community as second option and internationally as the last resort.

This Policy – refers to the Foster Care and Adoption Policy for Lesotho

Appendix II

Routing of Applications in Intercountry Cases with Duties of Different Role Players



