

# Assessment of Capacity to Manage Alternative Care for Children in Lesotho

**November 2009**

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## EXECUTIVE SUMMARY

The alternative care assessment examines the current social welfare systems and processes rather than on the specific quality of care in the various children's homes as standards have already been developed.<sup>1</sup> The report has been specifically prepared for the MoHSW with the support of UNICEF Lesotho. During the in country assessment, visits were made to Maseru District, Semonkong Community Council, Mafeteng, Quthing and Mohale's Hoek.

The assessment report has been written using a transformative social protection framework<sup>2</sup> adapted for studying the use of alternative care. The assessment also briefly examines the situation of children who have been subjected to violence and abuse as it is these children that are more in need of care and protection and may require alternative care provision, rather than orphans or children in poverty whose needs should be addressed by the other social protection mechanisms being developed in Lesotho.

The UN Guideline for the protection and alternative care of children without parental care will be placed before the General Assembly for adoption in 2009. These guidelines will provide an international standard for Lesotho to work towards in policy, law, structures and practice.

Poverty, food insecurity, unemployment of parents and HIV/AIDS are now key issues that affect the lives of children. After Botswana and Swaziland Lesotho has the world's third highest HIV prevalence rate. Lesotho has similar living arrangements for children as other southern Africa countries. Just 47 percent of children under 15 years in Lesotho live with both parents.<sup>3</sup> Fathers are notably absent which could be due to death from HIV and AIDS or they are not part of the household due to migration for work in South Africa; nearly a quarter of children are living in a single parent household with their mother. 4.2 percent of children are double orphans and are looked after by extended family or other caregivers. However there are also 25 percent of children who have both parents still alive but are nevertheless being cared for by other family members or non-family caregivers. Reports of rape where the victim is a child has increased in the past five years, attributed to greater awareness of the Sexual Offences Act 2003 and the formation in 2005, of the new Child and Gender Protection Units. In 2008 the CGPU reported 309 cases of child abuse.

Formerly, in terms of prevention the public assistance scheme managed by the Department of Social Welfare was the main form of social transfer to poor families. However Lesotho has now established old age pensions, conditional food transfers, agricultural support together with the piloting of a child grant scheme. These are important prevention mechanisms that support orphans and vulnerable children to remain with their parents or extended family, which is the main form of alternative care that is practised

As regards social services and child protection it appears that fostering as defined in Section 10 1. B. Child Protection Act 1980 is rarely used apart from as a preliminary to adoption that allows a child to stay with the adoptive parents prior to the court granting an adoption. There are over 20 children's homes in Lesotho managed by NGOs or FBOs but there is no accurate figure for the number of children living in the homes or the reasons for their placement. The DSW developed standards for homes in 2005 that were complemented by

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<sup>1</sup> However the assessment was to find that the standards are neither systematically applied nor monitored

<sup>2</sup> Strategies to deal with problems of social vulnerability require a transformative element, where "transformative" refers to the need to pursue policies that relate to power imbalances in society that encourage, create and sustain vulnerabilities Please see: IDS Working Paper 232 Transformative social protection Stephen Devereux and Rachel Sabates-Wheeler October 2004, IDS, Brighton, Sussex, UK; Social Protection in Eastern and Southern Africa: A Framework and Strategy for UNICEF

<sup>3</sup> LDHS 2005

guidance on early intervention and the use of alternatives to residential care. However these standards have not been operationalised and are not backed up by enforcing regulations. The CWU are aware of most placements but case management is not strong with few of the children appearing to have court orders, care plans or their cases reviewed.

There was a recent moratorium on adoptions while a committee of inquiry examined the adoptions processes and practices. The Commission found that the record keeping by DSW and courts to be unreliable and precise figures on successful or unsuccessful applications difficult to obtain. The 1952 Proclamation on Adoption (which discriminates against Basotho trying to adopt) was seen as no longer relevant and not able to safeguard the best interests of the child. In addition, there were concerns of “no transparency and accountability in the administration of these services.” In 2008 the moratorium was lifted allowing adoptions to be processed under the supervision of a small section in the Child Welfare Unit.

In the last 5 years there has been extensive policy making in Lesotho on child welfare, particularly on OVC but this has not always been supported by enabling legislation, resources or infrastructure. The legislation covering child protection and alternative care is inadequate for the current socio economic conditions in Lesotho and it does not meet international standards. There is a draft Bill in the public domain since 2004 that is still in the process of being improved but there is an urgent need for child protection to have modern legislation.

The MoHSW human resource strategic plan, plus the need to move forward on cash grants and the NPA for OVC led to the creation of the Child Welfare Department/Unit within the Department of Social Welfare. Urgently needed staff have been recruited to administer the child grants programme and improve child protection.

In the next paragraphs are a list of issues written primarily for discussion within DSW/CWU to decide which can be taken forward and for discussion with UNICEF as appropriate. It is important that the CWU begin to consider ways of by improving the information collection and collation on its own caseloads particularly as regards foster care, adoption and residential care. Improvements are also needed as to how information is collected and shared between CWU and CGPU on children who have been abused and are at risk. The use of child abuse/at risk register should be examined.

With the advent of the child grants programme and the delivery of assistance by (I)NGOs it is important that the District Child Protection Committees are able to coordinate the flow of assistance and to avoid different selection criteria, duplication or unequal distribution. More resources are needed at district level to facilitate child protection and family based care.

It appears from the different policy, strategy and planning papers that the concepts of kinship care, foster care, residential care and adoption with particular regard to the role of the state need thorough interrogation before the new legislation is passed. The proposed legislation does not introduce the concept of the state as parent but demands an active role for social workers in family decision making and overseeing a child’s welfare. It is perhaps timely with the draft UN Guidelines on Protection and Alternative Care reaching a stage where they will become final that Lesotho takes another look at the conceptual frameworks for the care and protection of children to bring them in line with standards set by the draft UN Guidelines.

As social protection and employment based or other medical insurance systems develop it will become more important to have clarity on guardianship, parental responsibilities, place of residence of children. This may result in the need to formalize some of the present informal extended family care arrangements. In particular it may be beneficial for CWU to assess family placements of children among elderly relatives who may struggle to provide adequate care for the children.

It is important that Lesotho activates the guidelines and standards for children living in residential care. For the homes, legal regulations need to be developed to cover situations where minimum standards are not met and systems need to be put in place for:

- Collection of data on all homes and the children in them
- Registration of new homes and re-registration of existing facilities
- Approval and regular inspection
- Staff codes of conduct
- Management reporting to CWU

For the children in residential care the CWU needs to play a more formal and proactive role. This should include:

- Improving assessments and assisting families to access social protection and other services that will help keep the family together.
- Improving the best interests decision making by ensuring that all new admissions into Homes are ratified by court orders.
- Ensuring that all Homes keep a standardised case record on every child
- Upgrading the case management of all children in residential care by making periodic reviews of placement, care plans and where it is the child's best interests making decisions for a child to be resettled with his/her family or a foster parent

There is a process of decentralisation of service delivery taking place at District levels. The current arrangement of some social welfare staff being located in Hospitals isolates them from other service providers and may inhibit coordination. It might improve the delivery and coordination of services under local government if CWU, CGPU and Probation were able to share office facilities "under one roof." A coming together of the different agencies would improve referrals and would also allow for organising duty officers, intake teams and emergency cover.

A major constraint under current legislation is the non-recognition of DSW or the CWU. They are not able as government officials to legally act on behalf of a child to protect that child. The role and responsibilities of the child welfare unit needs to be firmly established by statute. Policy makers may also want to consider whether the child welfare unit should continue to be a sub-structure of the DSW or whether it should become a department in its own right.

Care needs to be taken that the social work and child protection responsibilities are not overshadowed by the administrative tasks involved in cash grants scheme. Consideration may need to be given as to whether the CWU is the best site for a long term administrative task of effecting cash transfers while at the same time trying to operate a child protection social work service.

Efforts to improve child protection in Lesotho have begun but will take many years to complete. Social protection may provide the vehicle and opportunity to improve child protection services. It is recommended that the CWU, MOHSW and UNICEF plus other

stakeholders such as local government and CGPU come together and draw up a roadmap for a period of 10 years with milestones that need to be reached with regard to improving alternative care and the protection of children.

It is recommended that the CWU develops programmes with budget lines with the specific objective of improving the social support given to families to keep them together and upgrading the delivery of alternative care, adoption and the protection of children. These programmes could include:

1. Case management of children in residential care. To this end the CWU should make a plan to collect information on children living in the residential care homes, conduct case reviews and make decisions regarding resettlement of children who can be supported to return to live with their families. These children should then be reunified
2. Establishing foster care; a bank of foster parents be recruited of at least 10 families in each district who can provide temporary family care for abandoned children and children needing a place of safety. These foster parents will need to be trained and then resourced by CWU when children are placed with them.
3. Promoting local adoption; adoptions are promoted and marketed amongst Basotho families to the extent that the demand for children matches the supply of children available for adoption.
4. Children's homes are inspected by the CWU against the standards and guidelines and the reports are made public.
5. Guidelines are developed for the use of police and social workers for the social care and protection of children who are abused.
6. The CWU should consider developing criteria to give effect to the draft UN Guidelines on Alternative Care especially the section on informal care<sup>4</sup> to support kinship care, especially for the 25 per cent of children who do not live with their biological parents.

## ACKNOWLEDGEMENTS

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## ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
BOS	Bureau of Statistics
CGPU	Child and Gender Protection Unit
CWU	Child Welfare Unit
DSW	Department of Social Welfare
EMICS	Multi indicator cluster survey
GDP	Gross Domestic Product
M	Maloti – unit of Lesotho currency
MCV	Maseru Children's Village
MMR	Maternal Mortality Rate
MOHSW	Ministry of Health and Social Welfare
OVC	Orphan and vulnerable child
RSA	Republic of South Africa
UNCRC	United Nations Convention on the Rights of the Child

## GLOSSARY OF TERMS

Below are some definitions of child care and protection terms used in this document.

Alternative Care: article 20(2) of the UNCRC accords to children temporarily or permanently deprived of their family environment, or in whose own best interests cannot be allowed to remain in that environment, the right to "alternative care." States Parties are required to ensure "alternative care" for such children in accordance with their national laws. Article 20(3) of the CRC provides that alternative care could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for the care of children.<sup>5</sup> With respect to its juridical nature, alternative care may be:<sup>6</sup>

- Informal care: which is any private arrangement provided in a family environment, whereby the child is looked after on an on-going or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.
- Formal care: all care provided in a family environment which has been ordered or authorised by competent administrative body or judicial authority, and all care

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<sup>5</sup> Child Rights Glossary, UNICEF, Innocenti Research Centre

<sup>6</sup> UN Draft Guidelines for the appropriate use and conditions of alternative care for children. June 2007

provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures.

With respect to the environment where it is provided, alternative care may be:

- Kinship care:<sup>7</sup> family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature.
- Foster care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family, which is selected, qualified, approved and supervised for providing such care.
- Residential care: care provided in any non-family-based group setting as defined below.

Residential care:<sup>8</sup> residential care can be defined as "a group living arrangement for children in which, care is provided by remunerated adults who would not be regarded as traditional carers within the wider society." However it is apparent from "Home Truths<sup>9</sup>" that residential care may now be wider and encompass: "children's homes" that are run as a family type group home accommodating a number of children that are not related to the person running the home. Here the staff may be volunteers or related to the person in charge. The authorities may not know some of these homes.

Adoption: is a judicial process in conformance to statute in which the legal obligations and rights of a child toward the biological parents are terminated and new rights and obligations are created between the child and the adoptive parents. Adoption involves the creation of the parent-child relationship between individuals who are usually not naturally so related. The adopted child is given the rights, privileges, and duties of a child and heir by the adoptive family.<sup>10</sup> Under the draft UN Guidelines adoption is viewed as permanent care.

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<sup>7</sup> See generally - Kinship Care; providing positive and safe care for children living away from home. Save the Children 2007

<sup>8</sup> David Tolfree (1995) Roofs and Roots: The care of separated children in the developing world, London, Save the Children UK.

<sup>9</sup> Home Truths; The Phenomenon of Residential Care in the time of AIDS, Children's Institute University of Cape Town ,2007

<sup>10</sup> <http://legal-dictionary>

## INTRODUCTION

This assessment report on the capacity of Lesotho to manage alternative care for children has been written following a 12 day country assessment visit from 11 to 21 August 2009. The methodology of the assessment was to:

- Assess the volume and quality of alternative care provision and informal care;
- Assess and analyse a sample of residential care;
- Critically analyse policy, law, standards and practice in the provision of alternative care;
- Critically assess the capacity to implement, monitor and report by Government (and civil society) at national, provincial and district levels and;
- Develop a country model of the minimum capacity requirements and resources to manage systems of alternative care

It was the expectation from MoHSW and UNICEF that assessment would focus on the current social welfare systems and processes rather than specifically on the quality of care in the various children's homes as standards have already been developed. (However it was to transpire that the standards are neither systematically applied nor monitored) The report has been specifically prepared for the MoHSW with the support of UNICEF Lesotho. During the in country assessment, visits were made to Maseru District, Semonkong Community Council, Mafeteng, Quthing and Mohale's Hoek.

The assessment report has been written using a transformative social protection framework<sup>11</sup> adapted for studying the use of alternative care. The assessment also briefly examines the situation of children who have been subjected to violence and abuse. Over the long term with the development of a more effective child protection service it is likely that these children will be the ones requiring alternative care provision, rather than orphans or children in poverty as their needs should be addressed by other social protection mechanisms being developed in Lesotho.

### Article 19 UNCRC

"1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

## INTERNATIONAL AND REGIONAL FRAMEWORKS

Internationally important progress has been made during recent years with regard to alternative care child protection that includes the preparation of a UN Guideline for the protection and alternative care of children without parental care. This is being undertaken

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<sup>11</sup> Strategies to deal with problems of social vulnerability require a transformative element, where "transformative" refers to the need to pursue policies that relate to power imbalances in society that encourage, create and sustain vulnerabilities Please see: IDS Working Paper 232 Transformative social protection Stephen Devereux and Rachel Sabates-Wheeler October 2004, IDS, Brighton, Sussex, UK; Social Protection in Eastern and Southern Africa: A Framework and Strategy for UNICEF

on behalf of member states by the Brazilian Government and is in the final stages before submission to the General Assembly towards the end of 2009. There has also been the UN Study on Violence published in 2005. Regionally, the ACRWC has been given extra prominence by renewal of The Declaration and Plan of Action of Africa Fit for Children. The AU Call for Accelerated Action on the Implementation of the Plan Of Action Towards Africa Fit For Children (2008-2012) calls on all States to:

- Allocate adequate resources to strengthen social protection measures for children, especially the most vulnerable including children with special needs and those who are orphaned;
- Allocate sufficient resources for structures created to address children's issues.
- Develop costed plans within 3 years and engage in capacity building and experience sharing to support this work.

Child protection and social protection are increasingly becoming part of the political agenda in Africa but the gap in these areas between international declarations and practice remains considerable.

## A CONCEPTUAL FRAMEWORK FOR ALTERNATIVE CARE AND PROTECTION OF CHILDREN

Social protection<sup>12</sup> is generally understood as a set of public actions that address poverty, vulnerability and exclusion throughout the lifecycle. Social protection can increase the effectiveness of investments in health, education and water and sanitation, as part of an essential package of services for citizens. The risks of extreme poverty for children are compounded by the weakening or loss of family, given children's dependence on adults for care and protection.

Child sensitive social protection<sup>13</sup> is an emerging framework and advocates for systems to mitigate the effects of poverty on children that "can irreversibly affect children's lifetime capacities and opportunities." It also calls for early intervention and the need to make special provision to reach the most vulnerable and marginalized. Since the most at-risk children live outside family care; child sensitive social protection systems must also be responsive to this vulnerable group, as well as to children facing abuse or discrimination at home. For the purpose of this alternative care assessment the child sensitive framework has been adapted and issues are addressed under the following headings:

**Prevention, social transfers and reducing the use of alternative care** - these are actions that are put in place to support children to live in their families, to prevent separations and to keep families together. These are either designed to avert deprivation, neglect or abuse or to prevent the need for alternative care. They include mechanisms such as health and unemployment insurance, non-contributory pension schemes, grants, income support. In Lesotho there is the emergence of programmes (e.g. cash grants) that include financial and other support to keep families together and social work systems that facilitate care for children in their families in their communities (kinship care). In theory, if resources are used for cash transfers, grants, social protection and improving housing, health and education, it is arguable that the need for social services for providing alternative care and protection or child justice services for children would be much reduced.

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<sup>12</sup> Please see: IDS Working Paper 232 Transformative social protection Stephen Devereux and Rachel Sabates-Wheeler October 2004, IDS, Brighton, Sussex, UK; Social Protection in Eastern and Southern Africa: A Framework and Strategy for UNICEF; UNICEF ESARO Regional Management Team Social Protection Statement; IATT Working Group Paper on Social Protection for Vulnerable children in the context of HIV and AIDS July 2008.

<sup>13</sup> Advancing Child Sensitive Social Protection - Interagency Statement; 2009

**Protection and social services** – these include a range of social work interventions such as counselling, or day care or other community based support services. They also include programmes that offer alternative care and protection for children; this includes informal and formal care systems such as kinship care, foster care, residential placements, guardianship and adoption. This section examines: the processes, practice and use of alternative care systems as well as current standards, with regard to case management and facilities

**National structures, policies, law and regulation:** this includes systems and interventions that address social inequity and social exclusion, and includes as well legal and judicial reform, budgetary analysis and reform the legislative process, policy review and monitoring. This particularly includes changes that improve the lives of children in alternative care or at risk of needing this care.

It must be noted that many interventions or activities can fall into several if not all of these headings. (It is particularly difficult to place interventions that are community based or social work in approach that target or are designed to prevent children at risk of being abused or needing alternative care.)

## **SOCIO ECONOMIC CONTEXT**

Lesotho's population in 2006 was nearly 1.9 million,<sup>14</sup> with 76 percent living in rural areas. The child population (under 18) is estimated to be 953,000.<sup>15</sup> With an HIV prevalence rate of 23 per cent among adults aged 15–49, life expectancy has declined from 60 in 1991 to 35 in 2006. Poverty, food insecurity, unemployment of parents and HIV/AIDS are key issues that affect the lives of children. 58.2 percent of Lesotho's population lives below the poverty line. Lesotho was one of the most remittance-dependent economies in the world, variously stated as between 30 and 40 percent of GDP. A great proportion of the working age population worked in South Africa in mines, factories and domestic service. Both the availability and stability of such work has diminished since the mid- 1990s, causing many families to fall back on subsistence agriculture with its susceptibility to erratic weather and frequent harvest failures<sup>16</sup>. Furthermore the climate in winter is harsh for Africa with temperatures falling below freezing and families requiring fuel to heat often poorly insulated houses.

Only 30 per cent of food needs are covered by domestic crop production, the rest being supplemented by food aid and imports. HIV/AIDS and food and nutrition insecurity are becoming increasingly entwined in a vicious cycle.<sup>17</sup> The Lesotho Vulnerability Assessment Committee (LVAC) estimates that between 400,000-450,000 people will require some form of humanitarian assistance before the next harvest in April 2010 - compared to 352,000 in the months leading up to this year's harvest.<sup>18</sup> School feeding as a social transfer has a long history in Lesotho.<sup>19</sup>

The Maternal Mortality Rate (MMR) in Lesotho is estimated to be 419/100,000 live births and this translates to approximately 300 maternal deaths a year. The many “children who

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<sup>14</sup> National Bureau of Statistics - [http://www.bos.gov.ls/Census\\_Pre\\_Results\\_2006.htm](http://www.bos.gov.ls/Census_Pre_Results_2006.htm)

<sup>15</sup> UN Estimates - [http://www.unicef.org/infobycountry/lesotho\\_statistics.html#57](http://www.unicef.org/infobycountry/lesotho_statistics.html#57)

<sup>16</sup> RVHP 2007 [www.wahanga.net](http://www.wahanga.net)

<sup>17</sup> Department of Social Welfare, MoHSW, 2006, National Policy on Orphans and Vulnerable Children

<sup>18</sup> World food programme Country Brief, Lesotho <http://www.wfp.org/countries/lesotho> assessed 02/09/09

<sup>19</sup> School Feeding Lesotho, RVHP 2007 [www.wahanga.net](http://www.wahanga.net)

are left without a mother as a consequence of maternal deaths due to pregnancy-related causes and HIV/AIDS (40percent of all orphans are maternal or double orphans) are 3-10 times more likely to die within two years of their mothers' death compared to those whose mothers survive."<sup>20</sup>

### **Child vulnerability and child care patterns**

Lesotho has the third highest HIV prevalence rate in the World, at 23.2percent. 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. Currently, there are an estimated 180,000 orphans of which 100,000 have lost one or both parents to AIDS. And this figure was expected to rise to 210,000 by 2010. 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. As significant for social protection is that Lesotho has more paternal orphans than other countries and less maternal orphans.

#### **Number of children and percentage of orphans per country**

Country	<b>Lesotho<sup>21</sup></b>	Malawi	Namibia	RSA	Swaziland	Zambia
Number of Children	<b>960,000</b>	6.4 m	1m	18m	530,000	4.8 million aged 0-14
Paternal Orphans	<b>17.7%</b>	12.0%	13%	12%	13.5%	12.0%
Maternal Orphans	<b>3.5%</b>	6.0%	7%	3%	5%	6.0%
Double Orphans	<b>4.2%</b>	4%	2%	3.5%	4.4%	2.9%

Lesotho has similar living arrangements for children as other southern Africa countries. Just 47 percent of children under 15 years in Lesotho live with both parents.<sup>22</sup> Fathers are notably absent which could be due to death from HIV and AIDS or they are not part of the household due to migration for work in South Africa; nearly a quarter of children are living in a single parent household with their mother. 4.2 percent of children who are double orphans are looked after by extended family or other caregivers. However there are also 25 percent of children who have both parents still alive but are nevertheless being cared for by other family members or non-family caregivers. The reasons behind this fosterage or kinship care and whether it is in the child's best interests have not yet been the subject of systematic research.

#### **Children's Living Arrangements<sup>23</sup>**

Country.	<b>Lesotho<sup>24</sup></b>	Malawi	Namibia	RSA	Swaziland	Zambia
Number Children	<b>960,000</b>	6 m	1m	18+m	530,000	4.5m
Living with father only	<b>3.7%</b>	3%	4%	3%	6%	3%
Living with mother only	<b>24%</b>	20%	33%	38%	38%	23%
Living with both parents	<b>47%</b>	58%	26%	34%	22%	62%
Both parents alive but living elsewhere	<b>25%</b>	11%	24%	24%	19%	8.1%
Double Orphans	<b>4.2%</b>	3.5%	2%	3.5%	4.4%	2.9%

<sup>20</sup> Department of Social Welfare, MoHSW, 2006, National Policy on Orphans and Vulnerable Children

<sup>21</sup> LDHS 2005

<sup>22</sup> LDHS 2005

<sup>23</sup> Note – figures are from the various demographic health surveys conducted at different times during the last 5 years. They are not completely comparable as some DHS use 15 years and others 18 years for collecting data

<sup>24</sup> LDHS 2005

The 2005 OVC Situation analysis reported 1,857<sup>25</sup> child headed households and there must be concerns for this group of children particularly the girls who are at risk of sexual violence. There are no national figures on how many of these children are receiving financial or other social support. Moreover 52 per cent of pregnant women attending for the first time at antenatal care clinics are teenagers.<sup>26</sup> It is possible but as yet un-researched that these girls are more liable to abandon their babies

The EMICS 2000 estimated that altogether, the proportion of children aged 5 to 17 years that are currently working in Lesotho is 29 percent. A good number of these children look after animal herds. Semonkong Methodist Children’s Centre in a mainly pastoralist area may be witness to this as it admits twice as many girls as boys. The boys may be more useful to extended family to look after the animals.

### Violence, abuse and exploitation

Reports of rape where the victim is a child has increased in the past five years, attributed to greater community awareness of the Sexual Offences Act 2003 and by the formation, that same year, of the new Child and Gender Protection Units (CGPU). Cases include children of all ages, particularly the 13 to 18-year age group but an increasing number of cases of rape have been reported involving children as young as 12 months old. In 2005,<sup>27</sup> out of 668 cases reported to the Child and Gender Protection Unit (CGPU) 339, or 51 per cent, were sexual offences, and of these, 166 involved children under the age of 18. Between January and June 2006, 789 sexual offence cases were reported, of which 179 involved children (see table below). In 2008 CGPU reported 309 cases of child abuse (all forms.)

#### **Sexual Offences Reported 2003 to 2006, by Age and Gender<sup>28</sup>**

Age group (yrs)	2003		2004		2005		Jan – Jun 2006	
	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys
0 – 6	15	0	6	0	10	0	9	0
7 – 12	9	1	19	0	20	0	19	0
13 – 18	73	1	130	0	136	0	151	0
<b>Total</b>	<b>97</b>	<b>2</b>	<b>155</b>	<b>0</b>	<b>166</b>	<b>0</b>	<b>179</b>	<b>0</b>

“Trafficking can involve multiple forms of violence: abduction or deception by recruiters in their transactions with children, their parents or other carers, sexual violence which affects trafficking victims as they are transferred to their destination, and being held captive, frequently accompanied by violence while waiting for “job” placement. Most victims are trafficked into violent situations: prostitution, forced marriage, and domestic or agricultural work in conditions of slavery, servitude or debt bondage.”

UN Study on Violence 2005

Lesotho is a source country for women and children trafficked for the purposes of sexual exploitation and forced labour.<sup>29</sup> Victims are trafficked internally and to South Africa for domestic work, farm labour, and commercial sexual exploitation. Women and girls are also brought to South Africa for forced marriages in remote villages. Women and children

<sup>25</sup> DMA/WFP (2003), Lesotho Orphan Database, Draft Report on a Census Data Collected with the Joint Participation of the MOHSW, DMA, NGOs and WFP, Maseru.

<sup>26</sup> Lesotho Bureau of Statistics 1994

<sup>27</sup> [http://www.unicef.org/evaluation/index\\_49367.html](http://www.unicef.org/evaluation/index_49367.html)

<sup>28</sup> Source: Child and Gender Protection Unit – Lesotho Mounted Police Service (2006)

<sup>29</sup> United States Department of State, *Trafficking in Persons Report 2009 - Lesotho*, 16 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a4214aa2d.html> [accessed 27 July 2009]

attempting to support families affected by HIV/AIDS and Basotho looking for better employment prospects in South Africa are most likely to be lured by a trafficker's fraudulent offer of a legitimate job.

## PREVENTION

It has been difficult to plan for the number of OVC to target for assistance. The Bureau of Statistics (BOS) 2001<sup>30</sup> indicated the prevalence of 68,000 orphans which was followed by UNAIDS data of 2002, revealing 73,000 orphans aged between 0-14 yrs. The DMA/WFP study of 2003 reflected 92,000 orphans and UNAIDS estimation of 2004 showed 100,000-orphaned children due to AIDS while Children on the Brink estimations were 180,000 children. The decision in the National Action Plan was to target children most in need amounting to 93,000 out of the 180,000.

### Social Transfers

The public assistance programme has been the mainstay of the DSW response to poverty and vulnerability. Entry onto the scheme means a person is eligible to receive up to Maloti 100 per month, (US\$14) food packages, clothes, baby feeding formula and exemptions from health and education charges etc. In 2004<sup>31</sup> the Department of Social Welfare facilitated public assistance grants for 4,904 clients and medical exemptions for 1,354 "paupers" at public hospitals. In 2008, Public Assistance reached 5,111 destitute beneficiaries, including 2,476 children. Maseru District processed 1870 payments in May 2008 and DSW staff estimate that 100 people in Maseru enter the scheme every month. People must apply to the scheme in person; they are then assessed through a home visit. In Quthing District 328 people were receiving public assistance out of which 107 were households caring for an OVC. Several hundred applications from this district were still waiting to be assessed. For an OVC to qualify the death certificates must be produced for both parents with an accompanying letter from the chief. There is a special form that can be completed by a parent who is alive but in ill health or unable to work. In Maseru District 250 adults and 350 OVC were receiving public assistance.

### ***National Policy on Orphans and Vulnerable Children 2006 - Definition of Orphans and Vulnerable Children (OVC) in Lesotho.***

An Orphan is any person who is below the age of 18, who has lost one or both parents due to death.

A vulnerable child is any person who is below the age of 18, who has one or both parents who have deserted or neglected him/her to the extent that he/she has no means of survival and as such is exposed to dangers of abuse, exploitation and/or criminalisation and is, therefore, in need of care and protection. Vulnerable children include orphans, children living on the streets, children with challenging behaviour, children in need of legal and other forms of protection, children who have been or are physically, psychologically, emotionally, or sexually abused, neglected children, children who behave in a manner that may harm them, children involved in child labour, children with disabilities, children involved in commercial sex work, children who frequent the company of immoral persons, children infected or affected by HIV/AIDS and other chronic diseases, children whose parents are delinquent and/or children who cannot be supervised by their parents or guardians and children who by virtue of their age are vulnerable (under 5).

The original Lesotho OVC National Action Plan<sup>32</sup> budget was US\$ 2.6 million per annum but later increased to a budget of US\$ 8.6 million in the first year and the 3-year total of US\$ 37.6 million. It appears that resources have been mobilised by Lesotho to improve both social transfers and child protection over the coming years.

<sup>30</sup> Government of Lesotho costed Lesotho National Action Plan for Orphaned and Vulnerable Children. October 2006

<sup>31</sup> <http://www.health.gov.ls/info/sw.php> accessed 28 August 2008

<sup>32</sup> Government of Lesotho costed Lesotho National Action Plan for Orphaned and Vulnerable Children. October 2006

Lesotho's Budget Speech to Parliament for the 2009/2010 Fiscal Year has heralded good news for the elderly and Orphaned and Vulnerable Children (OVC) of Lesotho, with promises of increases in both the Old Age Pension and the Child Support Grant.

"Firstly, the Government recognizes the heavy burden that falls upon the elderly in caring for the sick, the disabled, orphans and vulnerable children. The Old Age Pension introduced in 2004 ----- plays a key role in enabling the elderly to support themselves and their dependents. In appreciation of this burden borne by the elderly, the Government has decided to raise the value of the Old Age Pension from M200 to M300 - at an additional cost of M95.2 million.

On top of this the Government is working with the European Commission and UNICEF to introduce a Child Support Grant worth M360 (U\$27.8) per family per quarter to support 60,000 Orphaned and Vulnerable Children."

Social transfers in Lesotho are more than the child grants and the old age pension schemes. There are also investments in agriculture to improve food security, conditional food transfers and programmes that improve the response to HIV and AIDS.

The objective of the European Commission and UNICEF supported government child grants programme is to pay Maloti 360 (U\$27.8) quarterly to poor households caring for OVC and to child headed households. At the present time the programme is in its pilot phase stage in three community councils in differing geographic areas in Lesotho. In order to assess eligibility for the child grants payments and eligibility for other services, communities will be asked to assist in identifying the poorest and most vulnerable families who will then be assessed by auxiliary social welfare officers. The child grants programme is expected to reach 60,000 OVC during the programme duration.

Other social transfers benefitting children are the payment of old age pensions with a budget of Maloti 125,028,000 per annum, this assists elderly carers. The coverage of the Lesotho Old Age Pension is all Lesotho citizens of 70 years of age or older. This is estimated to correspond to 72,000 people in 2007.<sup>33</sup> There are also conditional food transfers such as school feeding and therapeutic feeding with improvements in food security. Government and donor funded HIV prevention and treatment schemes are also improving the ability of parents to continue to provide care for their children.

## PROTECTION AND SOCIAL SERVICES

### Alternative Care

#### **Foster care**

Foster Care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family, which is selected, qualified, approved and supervised for providing such care. **UN Draft Guidelines**

If a children's court is satisfied that a child brought before it under section 9 is a child in need of care, the court may order that the child be placed in the custody of a foster parent for a period not exceeding 2 years - Section 10 1.b. Child Protection Act 1980

Apart from as a preliminary to adoption that allows a child to stay with the adoptive parents prior to the court granting an adoption it appears that fostering as defined in Section 10 1 b Child Protection Act 1980 is rarely used. Foster parenting is defined in the National Policy on OVC as bringing up a child that is not one's own by birth. The policy refers to two types of foster care for OVC, namely;

**“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.

**Temporary Place of Safety;** refers to when a child in need of care and protection is temporarily taken into a place of safety (an institution) until such time that the family/community environment or alternative placement is deemed safe and conducive for re-unification and re-integration. This shall be used as the last resort.”

In some respects the policy position confuses short term fostering in s.10. 1.b Child Protection Act 1980 with residential care under S 10.1.d that speaks of placing a child under the care of an approved society. The policy possibly anticipates the enactment of the Child Welfare and Protection Bill. Similar to other countries that have taken part in the alternative care assessments the uncertainty over what is fostering is perhaps an indication of the need to more thoroughly interrogate the concept of formal care<sup>34</sup> and informal care in Lesotho as it relates to fostering.

The conference declarations and recommendations from ANCPPAN **“First international conference in Africa on family based care for children”**<sup>1</sup> has also looked at the issue of definitions and terminology

**We note** the overlaps and contradictions in the use of alternative care concepts and terminologies, such as family, orphan, foster care, biological family, kinship, guardianship, formal and informal care, institutional and residential care, cluster and village care, adoption, kafala, permanent and temporary care and child headed household.

**We recommend** that governments and actors work towards a common understanding of the overlapping terminologies and their meaning.

It should now be possible with the creation of the CWU for a foster care programme to be introduced with foster parents trained and recruited to provide care for abandoned children and other under five years old currently in residential care.

### **Residential Care**

Until 2000, the use of residential care was manageable for the DSW with SOS Children's Villages and with DSW subventions provided for 3 Children's Homes. A report from 1999<sup>35</sup> illustrates one of the issues; “Until recently the child care problems and situation in Lesotho had been masked by the ability of SOS Children's Village to admit children for long term care. This home is now full, which has created bottlenecks and stretched capacity in homes providing short term care.”

It appears that the number of Children's Homes has rapidly expanded over the last 10 years; according to the DSW there are now over 20 Children's Homes in Lesotho. However the CWU does not hold an exact list of the number of Homes nor the number of children in the Homes in Lesotho. The growth in the number of Children's Homes is possibly in response to the orphaning of children from HIV and AIDS and greater poverty due to reduced employment opportunities in RSA.

<sup>34</sup> This point was stressed by Dr. Kimane – NUL Consulting, National University of Lesotho

<sup>35</sup> Dunn. A 1999 report for SC UK and DSW

## **Draft UN Guidelines**

### **C. Residential care –**

122. Facilities providing residential care should be small and organized around the rights and needs of the child, in a setting as close as possible to a family or small group situation. Their objective should generally be to provide temporary care and to contribute actively to the child's family reintegration or, if this is not possible, to secure his/her stable care in an alternative family setting, including through adoption or *kafala* of Islamic law, where appropriate.

124. The competent national or local authority should establish rigorous screening procedures to ensure that only appropriate admissions to such facilities are made.

125. States should ensure that there are sufficient carers in residential care settings to allow individualized attention and to give the child, where appropriate, the opportunity to bond with a specific carer. Carers should also be deployed within the care setting in such a way as to implement effectively its aims and objectives and ensure child protection

126. Laws, policies and regulations should prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals.

### **D. Inspection and monitoring**

127. Agencies, facilities and professionals involved in care provision should be accountable to a specific public authority, which should ensure, inter alia, frequent inspections comprising both scheduled and unannounced visits, involving discussion with and observation of the staff and the children.

128. To the extent possible and appropriate, inspection functions should include a component of training and capacity-building for care providers.

**but see generally the whole document on alternative care as most section are relevant to the use of residential care Draft UN GUIDELINES 15 June 2009**

If a children's court is satisfied that a child brought before it under section 9 is a child in need of care, the court may order that the child be placed under the care of an approved society -  
**Section 10 1.d Child Protection Act 1980**

In 2005 a selection of Children's Homes were assessed and a comprehensive set of standards were developed.<sup>36</sup> The consultant's observations on these site visits included

- *“Removal of children seems to be unregulated. This process often involves the police, but not a social worker.*
- *Criteria for placement and removal are unclear and often based on the organisations' ideas and judgement.*
- *Magistrates are often directly involved in removal of children but seemingly the procedures are not consistent from one area to the other or from one magistrate to the other.*
- *The new Child & Gender protection unit of police is an important resource and strength – It is reported that this unit is very interested, well-trained and very cooperative. They appear to be the main group who intervene to remove children.*
- *No or poor funding from government to the facilities leaves staff stressed; too few staff and children very vulnerable.*

<sup>36</sup> UNICEF and Department of Social Welfare GUIDELINES & STANDARDS: RESIDENTIAL CARE FOR VULNERABLE CHILDREN & YOUTH March 2006

- *Some facilities register as a society with Justice Department while a few are registered as a welfare organisation with department of welfare. This inconsistency could create difficulties for consistent monitoring.*
- *The standards and monitoring will have to take into account the rural nature of Lesotho as well as very poor resources. The best solution would be to have very minimum (basic) standards initially but phase in higher standards as resources are developed.*
- *Regulation and monitoring will not be possible without more staff at social welfare*
- *The registration criteria for facilities should be clear and located with one department.*<sup>37</sup>

The standards for homes were complemented by guidance on early intervention and the use of alternatives to residential care, placement procedures and overall environment in which the residential care system operates.

Section 3 Child Protection Act 1980 gives powers to the Minister to approve societies working for the care and protection of children, but it does not state any special type approval is necessary for establishing a children's home. Furthermore unlike in the old legislation of Uganda governing child care and children's homes<sup>38</sup> there is no power for a Lesotho Minister of Health and Social Welfare to make regulation with regard to Children's Homes. Consequently there is a very promising set of guidelines and standards to help in the development of good practice but as yet no regulatory framework to enable the MOHSW to enforce the standards, make inspections or to register care facilities as Children's Homes.

"In keeping with a *developmental* approach the minimum **standards** are meant to facilitate a process toward good practice while at the same time ensuring the protection and well-being of children. . . .

The standards provide the minimum goals to be reached and maintained by practitioners, programmes and residential care centres, with the vision that over time and after capacity building, practices should reflect a standard beyond the minimum."

GUIDELINES & STANDARDS: RESIDENTIAL CARE FOR VULNERABLE CHILDREN & YOUTH March 2006

Four Children's Homes were visited as part of this assessment<sup>39</sup>:

- Maseru Children's Village;
- Beautiful Gate;
- Semonkong Methodist Children's Centre;
- Mantsase Children's Home

These Children's Homes may or may not be typical of the 20 plus Homes in the country but they illustrate the issues of managing residential care for children. For abandoned babies Beautiful Gate is the main organisation in Lesotho from which children are adopted. The Home admits about 20 abandoned children per year and 70 children have been fostered or adopted from the Home between 2001 and 2007. Most are international adoptions. However the home presently accommodates 57 children between 0 and 5 years old so not all children find new families. There is a need for CWU to look at mechanisms by which children under 5 can be fostered and to promote national adoptions.

<sup>37</sup> Ibid

<sup>38</sup> Approved Schools Act cap 110

<sup>39</sup> The time pressure on the field visits to the homes did not allow sufficient notice to be given to the Homes prior to the visits to prepare information or to form a view on staffing levels or quality of care. This is something that needs to be tackled urgently by CWU.

It appears that children infected by HIV and AIDS are presenting issues for extended family carers. Even in a children's home such as the one in Semonkong where there are 6 HIV+ children out of 83, the information about a child's HIV status is kept from other staff members because of worries over care and discrimination in a rural area. Mantsase Home also has 6 children who are HIV+ but does not have the same issues of discrimination. More support is needed from CWU for Homes caring for these children.

Mantsase Home has 10 residents are over 18 years out of 54 children illustrating that more support is needed to help residents return to their communities. The manager estimated that 25 percent of the children could be reunified with requisite social and financial support. Children are usually referred by CGPU or DSW for initial placement and there is evidence of follow up from the District CWU in which the home is situated.

There is very little information being held at a central level by CWU on the quality of care in the homes or on the children accommodated and their reasons for admission. The Homes are not being regularly inspected by CWU and the knowledge of which children are living in the Homes and their reasons for admission appears to be ad hoc. Semonkong Methodist Children's Centre is a privately run home situated in the highlands of Lesotho and is comparatively isolated. It looked overcrowded, the Home is registered with the Community Council but not with DSW. Children are admitted by way of letter from the Chief rather than referral by DSW. The manager admits that the Home is not currently capable of attaining the standards. In preparation for the development of standards in 2004 concern was expressed regarding the standards of care and management in several of the homes.<sup>40</sup> The closure of one home was recommended and later effected by DSW. However it is unclear from the documentation prior to the development of the standards how many homes were visited and assessed

Maseru Children's Village is one of the few Children's Homes with the capacity to care for children who have been abused on a short term basis. This home is managed by Lesotho Save the Children as a temporary place of safety for children who have been abandoned, neglected or abused. It currently accommodates 20 to 25 children. 16 children have been admitted in 2009 and so far 9 have been discharged. Referrals are by CWU or through the child hotline. The MCV seems to have an active policy of resettlement and relationships with CWU staff but it appeared that it was MCV doing the social work that led to children returning home.

There are some major issues with regard to the use of residential care:

- It is the main type of formal alternative care being used in Lesotho and it does not appear to be used as a last resort.
- The present approval system for child care agencies under Section 3. Child Protection Act does not currently provide adequate safeguards for the rights of children in residential care. It does not provide for guidance, registration or inspection by the DSW nor is there any power to make regulation
- There are very few court orders being obtained under Section 10 Child Protection Act. The CWU is aware of the placement of most children in the Homes because they have made the referral or are aware of the placement.
- From discussions with the Homes and CWU staff it would appear that there are few

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<sup>40</sup> SPECIAL REPORT TO THE DEPARTMENT OF SOCIAL WELFARE AND UNICEF LESOTHO Concern with regard to specific Residential Facilities. Ms Lesley du Toit Consultant on Residential Care 2006

resources available for them to prevent a child from being placed in a children’s home or to support a child’s family

- Generally there appeared to be an insufficiency in the use of the formal processes assessment, ‘best interests’ decision making, care planning, review, and reunification.

### Adoption

Section 14 of the Adoption Proclamation provides that, "this proclamation shall not apply to Africans and nothing in this Proclamation contained 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 declared this section to be discriminatory and non-applicable in 1997.

According to the National Policy on OVC Adoption is defined<sup>41</sup> as a method provided by law to establish the legal relationship of parent and child between persons who are not related by birth. In Lesotho adoption is not restricted to persons who are not related, but also includes relatives who wish to adopt children they are related to.

Following concerns about the transparency and documentation of adoption processes and practice in Lesotho a moratorium was placed on adoptions and a Commission of Inquiry<sup>42</sup> was set up in December 2007. The Commission found that the record keeping by DSW and courts to be unreliable and precise figures on successful or unsuccessful applications difficult to obtain. The 1952 Proclamation on Adoption was seen as no longer relevant and not able to safeguard the best interests of the child. In addition, there were concerns of “no transparency and accountability in the administration of these services.”

Recommendations include enacting the Child Protection and Welfare Bill, putting in place systems and processes to allow ratification of the Hague Convention.<sup>43</sup> An interim agency was proposed to oversee all aspects of administration of fostering and adoption and to work closely with the DSW. This agency would be “responsible for accreditation, registration, monitoring and supervision of all other structures involved in fostering and adoption.”

Year	Number of adoptions
2003	4
2004	4
2005	13
2006	17
2007	22

The Commission also recommended that the DSW be elevated to an individual Ministry, or given a principal secretary within MOHWSW, which would give the DSW more status in government and attract more resources and skilled career administrators. A further pertinent conclusion was that inter country adoption should be used as a measure of last resort, and that all attempts must be made to pursue national adoption before considering international applications, and then only by accredited agencies.

In November 2008 the Government lifted the suspension on inter-country adoptions for four countries: the United States, Sweden, The Netherlands and Canada. DSW records show 37 inter country adoptions identified by court order numbers from several homes and to family members. There are currently five agencies involved in adoptions with Beautiful Gate supplying most children. Beautiful Gate placed 70 children for fostering or inter-country

<sup>41</sup> This definition comes from Child Welfare League of America: 1978.11)

<sup>42</sup> Report of the Commission of Inquiry on the Adoption of Children in Lesotho October 2008

<sup>43</sup> Hague Convention on the Protection of Children and Cooperation in Respect of Inter Country Adoption 1996

<sup>44</sup> From Report of the Commission of Inquiry on the Adoption of Children in Lesotho October 2008 and DSW

adoption between 2001 and 2007. From figures available from CWU Lesotho nationals formally adopted fewer than 20 children from 2001 to 2007.

The Commission of Inquiry has comprehensively examined adoption in Lesotho. For the purposes of this assessment the following points are reiterated/raised:

- The processes of making children available for adoption or determining whether they are available for adoption becomes more difficult if there are no guidelines or procedures to follow with regard to abandoned children or children placed in Children's Homes;
- The CWU needs to make the decision on which children can be placed on a register for adoption.
- Adoption needs to be promoted and marketed within Lesotho for the Basotho so that the supply of prospective adoptive parents increases;
- Guidelines need to be made public as regards the requirements, costs and processes for adoption
- The 1952 Proclamation on Adoption needs reforming as a matter of urgency and it is noted that this will take place through the Child Protection and Welfare Bill;
- The processes need to be put in place so that Lesotho can become a party to the Hague Convention.

### **Access to justice and protecting children from violence and abuse**

The CGPU operates countrywide in all 11 police districts, dealing with crimes against women and children, especially abuse and domestic violence.

Although cases are reported to the CGPU, there are information gaps particularly as regards outcomes for the victim and the perpetrator. Many of the reported cases are settled out of court and cases withdrawn. In a recent evaluation of the work of the CGPU<sup>45</sup> 50 per cent of stakeholders had expressed dissatisfaction over the CGPU services although most of the service users scored the CGPU positively on effectiveness, it appears that the complainants usually want disputes resolved amicably without causing perpetrators to face investigation or court. This may be particularly true where the perpetrator is also the family breadwinner. There are no statistics on how children are protected when there are allegations of child abuse in the family. However Maseru Children's Village has admitted children referred by CGPU and DSW because of child abuse.

In the 3 CGPUs visited in Lesotho the average number of reported cases of abuse where a child was a victim was 5 per month. Cases included excessive punishment, child neglect, sexual abuse, rape and incest. The CGPU offices are situated within the police station or the compound and staff are uniformed and frequently male. Guidelines have been produced for initial investigation and the medical examination of victims of sexual violence, but so far there are no guidelines with regard to the role to be played by CGPU or CWU. The need for guidelines appears particularly apparent where the CGPU have insufficient evidence to prosecute an alleged abuser of a child, or the abuser is bailed by the court and the child remains at risk of further abuse. Justice is also frequently delayed with cases from 2005 not yet resolved in the courts.

### **Children in conflict with the law**

This assessment does not examine the situation of children in conflict with the law. However from discussions with the Principal Probation Officer it appears that the probation service struggles to maintain a service for children across the districts. If the Child Protection and

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<sup>45</sup> NUL-CONSULS, 2007. Evaluation of the Child and Gender Protection Unit, in the police districts of Lesotho, for UNICEF

Welfare Bill is enacted with sections on diversion and restorative justice the Probation Service will need to have greater presence within the districts. There are no remand facilities for children at district level. Alleged young offenders are remanded either in the Juvenile training centre or at police stations.

## **POLICY, LEGAL FRAMEWORKS AND REGULATIONS**

### **Policy and Strategy Development**

The following milestones have been achieved in the field of policy and guidelines development:

- National Social Welfare Policy 2003
- Social Welfare service provision guidelines
- Development of Directory of Services 2004
- Rapid Assessment and Analysis Action Planning for OVC 2004
- National Action Plan for OVC 2004
- National Health and Social Welfare Policy 2004
- Costing of the OVC National Action Plan 2005
- Development of Strategic plan 2006-2010 for National OVC Policy
- Update on the situation analysis of orphaned and vulnerable children in Lesotho June 2005
- Monitoring and Evaluation Plan for OVC National Action Plan 2005
- Guidelines on management of sexual abuse 2005
- Standardized format for orphan registration 2005
- National Policy on for Orphaned and Vulnerable Children 2006
- Guidelines and Standards: Residential care for vulnerable children and youth March 2006
- Costed Lesotho National Action Plan for Orphaned and Vulnerable Children. October 2006 (Revised.)
- Ministry of Health and Social Welfare: Department of Social Welfare -Social Welfare Strategic Plan 2005 - 2010

In fact in the last 5 or 6 years there has been extensive policy making and planning for OVC that has assisted in the mobilizing of resources from donors. The major step forward is that there is now a separate Child Welfare Unit tasked with administering social transfers, a cash grants scheme and delivering alternative care and child protection. In the OVC Policy<sup>46</sup> it is stated that the Government through the MoHSW shall ensure that adoption and foster parenting is done for the purpose of serving the best interests of the child. It shall:

- “Mandate DSW to set standards for licensing new institutions of care and formalising the existing ones while still bearing in mind that institutionalisation of children should be the last resort;
- Legalise traditional foster care;
- Ensure that private adoption agencies are established, registered and work in close collaboration with DSW; and
- DSW shall be mandated to licence, set standards and shut down those agencies that do not comply with established standards.

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<sup>46</sup> Department of Social Welfare, MoHSW, 2006, National Policy on Orphans and Vulnerable Children

- The Government shall develop and co-ordinate grants, tax incentives and other packages of support for OVC and for persons and institutions caring for children pursuant to the provisions of this policy.”

It is important to ensure that at the same time as the policies are agreed or the treaties ratified that the laws are passed and resources are obtained to implement the policies.

### Law Reform

The current laws that govern child protection, alternative care, adoption and juvenile justice are now out of date. They need to be modernised to reflect international standards, best practice and changes to the socio economic environment in Lesotho. A law reform process has been taking place for over a decade and the last published Child Protection and Welfare (CPW) draft bill was in 2004. For a full discussion of the intended improvements for children, particularly the protection of orphans please see “Protecting Orphaned Children through Legislation: the case of Lesotho.”<sup>47</sup> The desire of most stakeholders is to have a comprehensive children’s statute covering all aspects of a child’s welfare. While this may be the ideal it may also be the cause of delay. The sheer volume of the legislation to be drafted, new concepts to be incorporated and new responsibilities defined among sector ministries is a considerable undertaking and took many years to complete in Uganda. South Africa and Ghana eventually split the administration of juvenile justice away from child protection issues and placed them in a separate Act. A major concern for this assessment is the urgent need for a Ministry to be able to make regulation to cover children’s homes and adoption and for CWOs to have the authority to act in child protection.

As regards care and protection of children in the draft bill: the grounds for a child being deemed in need of care and protection are probably too extensive and some sections are still possibly discriminatory e.g. “s.23.1.a child is in need of care and protection if (l) the child is affected or infected by HIV/ AIDS and other life threatening conditions.” Also s.23.1 has a beyond control clause which is easy for a parent to prove but hard for a child to disprove:

- “(m) the child cannot be controlled by his / her parent (s) or guardian (s) or the person (s) in whose custody he / she is; and
- (n) the child is below the age of fifteen years and is engaged in regular economic activity detrimental to his/her health, educational advancement and development.”

There also seems to be duplication of part III in part IX of the bill where a child can be in urgent need of protection. If a child is in need of protection it should always be treated as a matter of urgency.

Part VI of the draft bill is an attempt to regulate informal alternative care. While it is important to try and address issues of guardianship and care the Bill appears not to differentiate between the terms which may not assist the public to understand differences between formal and informal care. The major issue is whether chiefs and social workers have the capacity to give permissions and to manage/regulate informal care when up to 30percent (over 250,000) children may be living in this form of care.

The assessment does not comment on all individual sections or articles in the draft Child Protection and Welfare Bill as during the past five years there have been a considerable number of changes and amendments but these have not yet been published.

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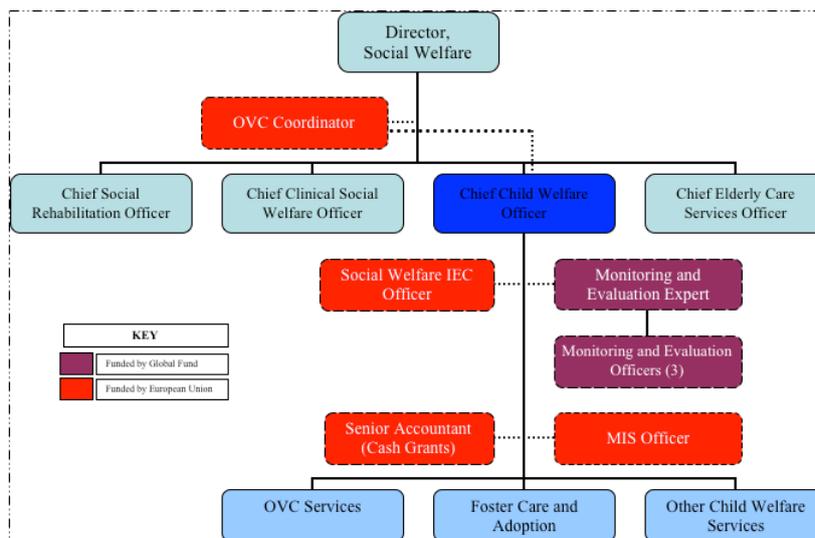
<sup>47</sup> Itumuleng Kimane: *Working Together to Safeguard Children* (2006), 5th World Congress on Family Law and Legislation Cape Town 2005. NUI, Law Reform Commission Member

It is probable that many of the current problems experienced in child protection can be overcome by improvements to practice and guidance to social workers rather than through legal reform.

### Child protection systems and structures

The Department of Social Welfare<sup>48</sup> was first established in 1976 as a response to increasing levels of poverty and other social problems. Initially this department was based in the Ministry of Interior Affairs, then it was moved to the Ministry of Justice, then Employment and in 1993 it was based within the Ministry of Health. “The goal of the department is to alleviate human suffering among the vulnerable groups in society, the emphasis tends to change overtime, but the one recurring theme is poverty and suffering. The target groups for social services include vulnerable and abused children and orphans.

A situation analysis of capacity carried out in 2004 noted<sup>49</sup> that “Social Welfare is a relatively new service area and is seriously under-developed with few appropriately trained personnel deployed at this time. The gap between the limited current service capacity and the extensive services envisaged in the new Health and Social Welfare Policy is very large indeed.” A strategic plan was then developed which looked at future human resource requirements and recommended a total of 18 Social Workers to be recruited to new posts from NUL<sup>50</sup> graduates over the next decade. In order to compensate for attrition, a total of 24 trainees will be trained and recruited.



Because of the cash grants scheme a number of new staff have been recruited. This includes 27 permanent positions approved by the Ministry of Public Service and 37 project staff funded by the European Union for a maximum period of three years.

After this the need to move forward on cash grants and the NPA for OVC led to the creation of the Child Welfare Unit<sup>51</sup> headed by the Chief Child Welfare Officer. In each district there will be a senior child welfare officer leading a team of 2 or 3 child welfare officers, and at a later date auxiliary staff, or the temporary posting of auxiliary staff to facilitate the cash

<sup>48</sup> <http://www.health.gov.ls/info/sw.php>

<sup>49</sup> Lesotho Health Sector Human Resources Development & Strategic Plan 2005 – 2025

<sup>50</sup> National University of Lesotho

<sup>51</sup> Department of Social Welfare Child Welfare Unit Concept Note on Delivery systems. Permanent positions include 1 chief Child Welfare Unit, 10 Senior District Child Welfare Officers, 10 District Child Welfare Officers, 2 accountants, 3 M&E officers 1 IEC officer. Project staff includes 1 National OVC Coordinator, 1 Child Grant Manager, 1 MIS officer, 10 District Child Welfare Officers, 10 Auxiliary Social Welfare Officers, 1 IEC officer, 2 data entry clerks, and 11 drivers.

grants programme. Besides CWU staff the DSW has rehabilitation officers to support people with disability and other social welfare staff in the District for instance to assist the elderly or assist with public assistance.

The importance of the development of social protection and the establishment of the CWU is that there is potential for resource mobilisation for the CWU. Extra resources would help to improve capacity of the CWU to delivery both social transfers and improve child protection services. At the present time the assessment and delivery of public assistance dominates the work schedule of CWU and leaves insufficient time and resources to devote to alternative care provision such as recruiting foster parents or ensuring standards of case management for children in residential care

## **ISSUES FOR DISCUSSION AND TAKING FORWARD**

Below is a list of issues for discussion within DSW/CWU to decide which can be taken forward and for discussion with UNICEF as appropriate. Among the issues will be suggestions for ways forward or suggestions with regard to actions that can be considered.

### **The need to improve information collection and knowledge management**

The Committee on the Rights of the Child recommended in its concluding observations<sup>52</sup> that the “system of data collection be reviewed and substantially strengthened . . . the data collection system should cover all children up to the age of 18 years and should include information in respect of the rights of, inter alia, children with disabilities . . . children in the juvenile justice system, children of single-parent families, children born out of wedlock, children born of incestuous relations, sexually abused children and institutionalized children.”

This recommendation from the committee is still pertinent. It is recommended that the CWU begin to consider ways of by improving the information collection and collation on its own caseloads particularly as regards foster care, adoption and residential care. Improvements are also needed as to how information is collected and shared between CWU and CGPU on children who have been abused and are at risk. The use of child abuse/at risk register should be examined.

### **Prevention and social transfers**

The Public Assistance Scheme, targeting destitute people, benefits OVCs but takes up a considerable portion of DSW officers’ time in the Districts. With the advent of the child grants programme and the delivery of assistance by (I)NGOs it is important that the District Child Protection Committees are able to coordinate the flow of assistance and to avoid different selection criteria, duplication or unequal distribution. At some point in the immediate future the CWU might wish to think about the current use of public assistance for OVCs and instead consider whether to create a budget line to support families when there are child protection emergencies.

### **Alternative Care**

It appears from the different policy, strategy and planning papers that the concepts of kinship care, foster care, residential care and adoption with particular regard to the role of the state need thorough interrogation before the new legislation is passed. The proposed legislation does not introduce the concept of the state as parent but demands an active role

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<sup>52</sup> Concluding Observations of the Committee on the Rights of the Child : Lesotho. 21/02/2001. CRC/C/15/Add.147. (Concluding Observations/Comments)

for social workers in family decision making and overseeing a child's welfare. Parental responsibility will still lie with the foster parent or manager of the residential care facility. This is less important when placements are long term but has disadvantages in short term work with abused children when placement of a child may need to be changed more frequently to meet the needs of the child or to better protect a child. The draft Bill does seem to imply that the social work services will need to become involved in the placement of children within the extended family. With nearly 25 percent of children living in informal family placements this could place a severe workload on CWU. It is perhaps timely with the draft UN Guidelines on Protection and Alternative care reaching a stage where they will become final that Lesotho takes another look at the conceptual frameworks for the care and protection of children to bring them in line with standards set by the draft UN Guidelines

As social protection and employment based or other medical insurance systems develop it will become more important to have clarity on guardianship, parental responsibilities, place of residence of children, etc. The medical insurance schemes will not want to allow treatment to children not entitled through relationship. This may result in the need to formalize some of the present informal extended family care arrangements. In particular it may be beneficial for CWU to assess family placements of children among elderly relatives who may struggle to provide adequate care for the children.

### **Residential Care**

It is important that Lesotho activates the guidelines and standards for children living in residential care. For the homes, legal regulations need to be developed to cover situations where minimum standards are not met (e.g. with regard to periodic review of placements) and systems need to be put in place for:

- An immediate inspection and collection of data on all homes and the children in them
- Registration of new homes and re-registration of existing facilities
- Approval and regular inspection
- Staff codes of conduct
- Management reporting to CWU

For the children in residential care the CWU needs to play a more formal and proactive role. This should include:

- Improving assessments and assisting families to access social protection and other services that will help keep the family together.
- Improving the best interests decision making by ensuring that all new admissions into Homes are ratified by court orders.
- Ensuring that all Homes keep a standardised case record on every child
- Upgrading the case management of all children in residential care by making periodic reviews of placement, care plans and where it is the child's best interests making decisions for a child to be resettled with his/her family or a foster parent

### **Improving coordination of child protection and support to families at District Level**

There is a process of decentralisation of service delivery taking place at District levels. CWU/DSW are part of the District Health management teams (DHMT) and all ten Districts have put in place a District Child Protection Teams out of which are developing local plans of action to better protect children. As a result of the DCPT where different government agencies, NGOs and FBOs come together there are systems in place to try and prevent duplication of services and improve identification of vulnerable groups such as poor families and child headed households. It appears that many agencies are already aware of the need

to collect and share information and are aware that particular communities and families are in need of extra support. The current arrangement of some social welfare staff being located in Hospitals isolates them from other service providers and may inhibit coordination. It might improve the delivery and coordination of services under local government if CWU, CGPU and Probation were able to share office facilities “under one roof.” A coming together of the different agencies would improve referrals and would also allow for organising duty officers, intake teams and emergency cover.

### **Establishing the role and mandate of the Child Welfare Unit**

A major constraint under current legislation is the non-recognition of DSW or the CWU. A consequent difficulty for the CWU and the DSW is that in law they are not able as government officials to act on behalf of a child in need of care and protection and either remove that child to a place of safety or ask the court for an order to protect the child. The role and responsibilities of the child welfare unit needs to be firmly established by statute.

During the assessment visit there was some discussion about whether DSW should remain within the MOHSW or become a Ministry on its own. Regardless of these discussions policy makers may also want to consider whether the child welfare unit should continue to be a sub-structure of the DSW or whether it should become a department in its own right.

In the near future social transfers and the cash grant scheme in particular will overtake public assistance and become the largest and probably best funded programme operated by CWU. Care needs to be taken that the social work and child protection responsibilities are not overshadowed by the administrative tasks involved in cash grants scheme and that it does not consume all the staff and hours available within CWU. Zambia and South Africa have for different reasons struggled to manage cash transfers and social work assessments within the same departments.<sup>53</sup> Consideration may need to be given as to whether the CWU is the best site for a long term administrative task of effecting cash transfers while at the same time trying to operate a child protection social work service which will increasingly be decentralised and have to deal with a growing problem of child abuse.

## **STRATEGIC RECOMMENDATION**

Efforts to improve child protection in Lesotho have begun but will take many years to complete. Social protection may provide the vehicle and opportunity to improve child protection services. It is recommended that the CWU MoHSW and UNICEF plus other stakeholders such as local government and CGPU come together and draw up a roadmap for a period of 10 years with milestones that need to be reached with regard to improving alternative care and the protection of children.

## **SPECIFIC RECOMMENDATIONS**

The CWU develops programmes with budget lines with the specific objective of improving the social support given to families to keep them together and upgrading the delivery of alternative care, adoption and the protection of children. These programmes could include:

1. Case management of children in residential care. To this end the CWU should make a plan to collect information on children living in the residential care homes, conduct case reviews and make decisions regarding resettlement of children who can be

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<sup>53</sup> UNICEF ESARO - Alternative Care for Children in Southern Africa; progress, challenges and future directions; Working Paper 2008

supported to return to live with their families. These children should then be reunified.

2. Establishing foster care; a bank of foster parents be recruited of at least 10 families in each district who can provide temporary family care for abandoned children and children needing a place of safety. These foster parents will need to be trained and then resourced by CWU when children are placed with them.
3. Promoting local adoption; adoptions are promoted and marketed amongst Basotho families to the extent that the demand for children matches the supply of children available for adoption.
4. Children's homes are inspected by the CWU against the standards and guidelines and the reports are made public.
5. Guidelines are developed for the use of police and social workers for the social care and protection of children who are abused.
6. The CWU should consider developing criteria to give effect to the draft UN Guidelines on Alternative Care especially the section on informal care<sup>54</sup> to support kinship care, especially for the 25 per cent of children who do not live with their biological parents.

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<sup>54</sup> Draft UN Guidelines - Informal Care

75. With a view to ensuring that appropriate conditions of care are met in informal care provided by individuals or families, States should recognize the role played by this type of care and take adequate measures to support its optimal provision on the basis of an assessment of which particular settings may require special assistance or oversight.

76. Competent authorities should, where appropriate, encourage informal carers to notify the care arrangement and should seek to ensure their access to all available services and benefits likely to assist them in discharging their duty to care for and protect the child.

77. The State should recognize the de facto responsibility of informal carers for the child.

## ANNEX 1

### PEOPLE MET

Mantsenki Mphalane	Chief Child Welfare Officer, DSW
Makhothatsa Kibi	Senior Child Welfare officer, DSW
Nteboheleng Mohai	Senior Child Welfare officer, DSW
Puseletso Lekhanga	Social Worker, DSW
Promolo Mohatuane	DSW
Mantoa Sejake	Senior Child Welfare officer, DSW
Moleleki Molikoe	Child and gender Protection Unit
Masoabi Thosa	Child and Gender Protection Unit, Police HQ
Tsitsi Monsalu	Child and Gender Protection Unit, Quthing
Molimakatso Monongoaha	Child and Gender Protection Unit, Quthing
Sgt Tefo Kopeli	Child and Gender Protection Unit
Rapelang Ramoea	Cash Grant Manager, MOHSW
Lawrence Masupha	Social Worker, Maseru Children's Village
Mateseli Mpanye	Social Worker, Beautiful Gate
Tokelo Andreas Molapo	Semonkong Community Council
Patrick Brannen	Semonkong Home
Barbara Neubert	Mantsase Home
Dr Kimane	NUL Consulting