



# **GUIDELINES & STANDARDS**

## **RESIDENTIAL CARE FOR VULNERABLE CHILDREN & YOUTH**

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# TABLE OF CONTENTS

## Chapter 1: Introduction

1.	Background.....	3
2	Methodology.....	7
3.	General Comments.....	20
4.	Residential Care as a Service .....	21
5.	Standards .....	22
6.	Terminology.....	22

## Chapter 2: Rights of Children ..... 24

## Chapter 3: Approach

Strengths, Ecology and Child Rights .....	26
Diagram.....	27

## Chapter 4: Alternatives to Residential Care

1.	Early Intervention .....	28
2.	Foster Care .....	29
3.	Adoption .....	29

## Chapter 5: Placement Procedures

5.1	Identification of a child at risk .....	31
5.2	Assessment and decision-making .....	32
5.3	Placement Options .....	32
5.4	Statutory Procedures .....	33

## Chapter 6: Overall Environment of Residential Care

6.1	Staff to Child Ratios.....	34
6.2	Staffing and Training .....	35
6.3	Registration .....	36
6.4	Boards and Committees .....	36
6.5	Funding .....	36
6.6	Reportable Incidences and circumstances .....	37

## Chapter 7: Standards for Residential Care

Standard 1: Management and Leadership .....	38
Standard 2: Environment .....	39
Standard 3: Admission .....	40
Standard 4: Care .....	41
Standard 5: Medical Services and Safety .....	44
Standard 6: Respectful, positive discipline .....	45
<i>Prohibited measures:</i> .....	46
<i>Chastisement:</i> .....	46
Standard 7: Therapeutic and Developmental programmes .....	49
Standard 8: Education .....	51

## Chapter 8: Secure Care..... 53

## Chapter 9: After School and Day Care..... 54

## Chapter 10: Guidelines for Training..... 54

# CHAPTER 1: INTRODUCTION

## 1. Background

### 1.1 Orphaned and vulnerable children in Lesotho<sup>1</sup>

Lesotho is one of the six countries in Southern Africa affected by the humanitarian crisis fuelled by poverty, unemployment and HIV/AIDS. The food crisis being experienced in Lesotho today is a manifestation of these factors. The country has an HIV/AIDS sero-prevalence of 29 percent among its adult population which places it as the third most severely hit country worldwide.

UNAIDS data for 2004 has shown that some 100,000 children aged between 0 and 17 years have been orphaned in Lesotho as a result of HIV/AIDS, with the numbers continuing to increase at an alarming rate. From the data sources, the pandemic has a gender dimension as the sero-prevalence rate is shown to be 51 percent among females aged 15 – 24 years as compared to the 23 percent for males of the same age group. Among pregnant women aged 15 – 19 years, the prevalence rate is 25 percent and 41 percent among pregnant women aged 20 – 24. Moreover 52 percent of pregnant women attending for the first time at antenatal care clinics are teenagers (BOS 1994).

Given the vulnerability of children without parental care, these children, especially girls, are dropping out of school. Because of the stigma attached to HIV/AIDS, these children are discriminated against and get excluded from accessing basic services such as education, in addition to suffering abuse and exploitation. Some are being denied their rightful inheritance. Under such circumstances, some children may resort to various forms of risky behaviours and hazardous labour, including commercial sex work. Other must do work such as herding instead of attending school, in order to survive.

In particular, it has been noted that the availability of psychosocial services available in Lesotho remains very limited and inadequate to deal with the long-term psychosocial trauma resulting from caring for dying parents and the grief following their passing away. The same mental stress also affects the children's performance in school and increases their chances of dropping out.

The social costs of HIV/AIDS are more acute among women and children. The complex and interrelated problems among women, children and families affected by HIV/AIDS include the following:

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<sup>1</sup> Update on the situation analysis of orphaned and vulnerable children – UNICEF, June 2005

- ❑ Increasingly serious illness accompanied by reduced access to health services
- ❑ Problems with shelter and material needs
- ❑ Economic problems
- ❑ Inadequate food
- ❑ Children drop out of school
- ❑ Children end up without adequate adult care
- ❑ Psychological stress
- ❑ Problems with inheritance
- ❑ Exploitive child labour
- ❑ Sexual exploitation
- ❑ Stigma and discrimination
- ❑ Children become caregivers

Altogether, these problems combine to increase vulnerability to HIV infection. But most importantly and of relevance to this situation analysis is the fact that due to the high rates of adult deaths, the proportion of children orphaned and made vulnerable by HIV/AIDS will remain disproportionately high through to at least 2030 (Hunter, 1999).

*The other reality is that there are numerous other children orphaned due to other causes. This is a source of great concern because being orphaned is a threat to child well-being and protection and is bound to produce a vicious circle of deprivation. It therefore makes it imperative for Lesotho to find innovative ideas to change the situation.*

In general, the noted social-economic effects of HIV infection and AIDS on children include malnutrition, migration, homelessness, reduced access to education and health care. Added to these are the stigma, social isolation and discrimination they suffer through association with HIV/AIDS. Psychological problems such as depression, guilt and fear have been cited to also be prevalent among orphaned children. It has been argued that the combination of these factors on these children increases their vulnerability to a range of unwelcome situations including sexual abuse and exploitation. Illiteracy, poverty, child labour, sometimes early marriages, emotional torment and financial desperation UNICEF, 1999; MOHSW, 2001; UNICEF, n.d.; author not indicated, 2003).

Further evidence alludes to the fact that these children start grieving before the death and the tragedy of losing their parents. It is pointed out that a child whose father or mother is HIV positive begins to experience loss, sorrow and suffering long before the concerned parent dies. Once AIDS has claimed the life of one of the parents, the likelihood of the next one dying is increased due to the fact that HIV is mainly sexually transmitted. When parents die, children are thrust into roles of mother or father or both. They are left fending for themselves (UNICEF, 2001) and become compelled to take over the housekeeping responsibility, looking after siblings, caring for the sick or dying household members and the production of food. In most cases, the burdens mentioned above fall more on older children, girls in particular.

Focusing specifically on the problems confronting orphaned children in Lesotho as revealed by the relevant literature (Sechaba Consultants, 1993; MOHSW, 2001;

MOHSW, 1999; NGO Coalition, 2000), a number of issues are brought to light. These issues are reflected in the box below. The problems and needs of these children as summarized in the box may be the same to a large extent, with those of the other children in the larger population, however theirs are exacerbated by the fact that they are left without parental care.

#### Problems and Needs of Orphaned Basotho Children

- ❑ Generally poverty-stricken life
- ❑ Hunger and the consequent malnutrition
- ❑ Extreme dependency syndrome out of the tendency of self pity
- ❑ Emotional insecurity
- ❑ Feelings of social exclusion
- ❑ Exposure to various kinds of abuse e.g. sexual abuse, maltreatment by caretakers, child labour
- ❑ Lack of clothing including school uniform
- ❑ Lack of proper parental guidance and care
- ❑ Lack of suitable accommodation
- ❑ Stigmatization
- ❑ Feelings of insecurity
- ❑ Poor health and inability to access or afford medical care
- ❑ Early economic engagement as a survival strategy
- ❑ Lack of trust resulting in feelings of not being wanted
- ❑ Early marriage

Evidence obtained from the MOHSW (2001) indicates that orphaned children in Lesotho adopt various strategies for their survival and these include

#### Survival Strategies of Orphaned Children in Lesotho

- ❑ Early marriage
- ❑ Commercial sex work
- ❑ Working as herd boys or domestic helpers or engagement in other child labour activities
- ❑ Organized petty crime
- ❑ Living on the streets
- ❑ Abusing substances such as alcohol and other drugs
- ❑ Being adopted by childless families or well wishers
- ❑ Placement in institutions
- ❑ Staying at home unoccupied

The first line of response to the pandemic lies with the caregivers in the families and communities. In Lesotho, as in many other countries, the dominant view is that orphaned children are best cared for if kept out of institutions. The result of the MOHSW (2001) study show that despite all problems, the extended family system has to a large extent remained tremendous resilient and has been capable of absorbing a large number of orphaned children. Numerous sources however point at the constraints, which reduce the capacity of families to provide care for children.

An increasing number of households are made up of children alone and these have to struggle in order to survive and make a living alone, they have more serious security problems (MOHSW, 2001). The report shows that the child heads of households who

are either boys or girls and mostly older siblings sometimes have to quit school in order to seek employment or else they depend on the good will of neighbours and relatives (Byrne, 2002). However, Byrne points out that it is usually girls from child headed households who are likely to drop out of school in higher standards so that they can look after younger siblings and perform other household chores.

Reasons in support of the preference for keeping orphaned children in families and the community are summarized below.

#### Further reasons for Supporting Family and Community Based Care of Orphaned Children

- Caregivers derive some pleasure and satisfaction from it
- It is regarded as equivalent to lending a helping hand
- It is equivalent to showing parental love expected of adults
- Family and community are believed to provide a normal environment for bringing up these children
- It is a natural environment which allows these children to be exposed to their culture and customs

What we see from the foregoing discussions is that the impact of HIV/AIDS on children is complex and multifaceted. Another obvious revelation is that with the scarce resources already stretched beyond limits, the impact of the pandemic is placing tremendous strain on Government, individuals, families, other societal structures attempting to help and communities at large. In the end this leaves many orphaned children with little support.

### **1.2 Background from the Policy on Orphans and Vulnerable Children<sup>2</sup>**

Poverty, the HIV/AIDS pandemic and food insecurity are currently the biggest threat to the survival, care, protection and development of children in Lesotho. Together, they are constraining the provision of basic social services and jeopardizing the protection of children.

The proportion of the population falling below the poverty line has been estimated at 60% (BOS), with many households increasingly finding difficulty in meeting the basic needs of their families particularly children. Although progress in securing primary education has been remarkable, an estimated 15% of school age children are still not attending school despite the government policy of free primary education.

Child being orphaned and made vulnerable is not a new phenomenon in Lesotho, but previously it was well contained within the strong social fabric of the country. However the scope and magnitude of the problem has been worsened by the triple threat of HIV/AIDS, poverty and food insecurity.

The triple threat either singly or in combination has resulted in a dramatic increase in the number of orphans from 4,320 in 1996 to 68,000 (BOS) in 2001 to 92,000 in 2003, and currently estimated at 100,000 (UNAIDS 2004). However it is

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<sup>2</sup> Lesotho's policy on Orphans and Vulnerable Children (2004)

acknowledged that HIV/AIDS is the single most immediate contributor to the dramatic increase in orphan hood and vulnerability.

The thousands of children who are left without a mother as a consequence of maternal deaths due to pregnancy-related causes and HIV/AIDS (40% 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.

Since 2000 Lesotho has experienced unprecedented levels of acute food insecurity. Food insecurity heightens susceptibility to HIV exposure and infection, while HIV/AIDS in turn heightens vulnerability to food and nutrition insecurity.

The care and protection of this overwhelming number of children deprived of their parent/s and without the nurturing and protective environment of their primary caregivers is a national challenge. It is also concerning that there is an absence of appropriate policy and a legislative frame work specifically addressing the rights of children to access to services and other entitlements.

### **1.3 Other Vulnerable Children**

While the majority of children in Lesotho are affected by HIV/AIDS and poverty in some direct way, it is important to recognise that there are children who would not typically be included in the label of "OVC's" and/or are not directly experiencing problems as a result of HIV/AIDS or poverty. These children require as much attention as those within the OVC category. They may include; Children in Trouble with the Law, Abused and Neglected Children, Children who are homeless; Children who are disabled; children who are sexually exploited.

## **2. Methodology**

### **2.1 Consultation and site visits:-**

In order to draft these guidelines the consultant visited Lesotho for a 5 day period to hold discussions with UNICEF and the Director of the Department of Social Welfare. During this time in Lesotho the consultant was able to have a brief site-visit to many of the existing residential care facilities in the country. The consultant's observations on these site visits included the following:

- ❑ 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.

- ❑ There are very few social workers throughout the country.
- ❑ The involvement of chiefs and community is a very positive aspect of the child welfare system and exists throughout Lesotho
- ❑ There are great needs in the rural areas. These areas are remote, have few resources and villages are isolated from one another.
- ❑ The village/traditional ways are intact in much of Lesotho and these can be seen as an important strength
- ❑ No or poor funding from government to the facilities leaves staff stressed, too few staff, and children very vulnerable
- ❑ 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
- ❑ Training is critical to all levels. There have been positive efforts to get training, but generally there are too few trained personnel working with vulnerable children.
- ❑ Early intervention, working with chiefs and communities is a good possibility. There is a need to link in community strategies for OVC, not look at residential care in isolation.
- ❑ Inter-sectoral cooperation is weak and requires urgent attention.
- ❑ It was impressive to see how so many initiatives of individuals and organisations are a result of their own commitment to the community and they do this with very few resources from government.
- ❑ The registration criteria for facilities should be clear and located with one department.

## **2.2 Review of CPW Bill and UNCRC**

In addition to the above, the consultant has worked with a South African Advocate (Advocate Ann Skelton) who is an international expert on child rights, children's law,



and child justice, to review the proposed CPW Bill, and to evaluate it against the UNCRC and other international instruments.

The review is as follows:-

### **A. Overview of the Children's Protection and Welfare Bill 2004**

The Children's Protection and Welfare Bill 2004 is a comprehensive instrument for the protection of children and the promotion of their rights. It seeks to regulate the rights of children living with their parents, as well as the responsibility of such parents towards their children, including custody, guardianship and maintenance; provide for children in need of care and protection; including foster care, adoption and residential care (referred to as "institutions"); provide for children in conflict with the law, including children referred to as being in need of rehabilitation, and those "at risk of offending"; provide special protection for certain vulnerable groups such as children at risk of trafficking and abduction, orphaned children who may lose their property rights, children at risk of being used as child labourers; and children who may require medical testing and treatment.

The resources required to support this system are: a functioning children's court, sufficient social workers and probation officers, and sufficient numbers of trained staff to work with children in residential care settings. The Bill also provides for the establishment of an Independent Children's Commission.

### **B. Review of Parts**

Certain parts of the Bill are reviewed below, with a specific emphasis on residential care, understood within a continuum of services, including foster care and adoption. There is a description of the notable features in each part relating to residential care, followed by a commentary on the part.

#### Part 1: Introductory Provisions

##### *Notable features*

- ❑ The objects of the Bill are to extend, promote and protect the rights of the child as defined in the United Nations Convention on the Rights (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) and other international instruments to which Lesotho is a signatory.
- ❑ The Bill demonstrates a very positive spirit towards children's rights, expressly stating that the intention of parliament is that the legislation should be interpreted purposively and liberally. This means that judges and others reading using the law should remember what it intends to do, and should give a generous interpretation to the specific clauses. Included in the objects is provision that any criminal sanctions should be strictly rehabilitative. Informal and traditional regimes are recognised.

### *Commentary*

- ❑ The relevant articles of the UNCRC included are 3, 5, 9, 16, 19, 20, 21, 25, 34, 37 and 40. The relevant articles of the ACRWC are articles XVI, XVII, XVIII, XIX, XX, XXIV, XXV.
- ❑ Another important instrument is the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL's). These rules should be read together with the UNCRC. The rules provide detailed guidelines relating to children in residential care.

### *The following is observed relating to certain definitions:*

- ❑ The definition of assessment is positive in that it is an evaluation of the child's development and competencies (abilities). Beyond this, however, the definition seems to be designed specifically for use with children in trouble with the law. Assessment is an important process with regard to all children in residential care. It forms the basis of the individual treatment plan for each child, and is an ongoing process that will finally inform the child's reintegration back into the community. The definition may thus need to be altered to make it more broadly applicable.
- ❑ Detention covers different forms of children being deprived of liberty, in a range of places of detention. Two such types of places, namely approved schools and probation hostels, form part of the residential care system, and will be included within the guidelines. Other places of detention, such as police cells and prisons, are not included in the ambit of the guidelines. (Guidelines or standards are necessary for such places of detention, but they are beyond the scope of this study).
- ❑ Place of safety has a very broad definition. As well as including both institutions and individual persons, the definition also includes both temporary care (e.g. pending a children's court inquiry) and longer term care (e.g. placement in an institution by the children's court). The guidelines can help to provide clarity on this range of applications of the term "place of safety".
- ❑ It is clear, therefore, that *residential care* has a focus on two aspects of the system: institutional places of safety into which children have been placed either temporarily or for a period of two or three years, and approved schools and probation hostels where children are being detained by order of court. All of these options operate within a broader continuum of care (in other words, there are other options as well as residential care, such as alternative family care).

## Part II Rights of the Child and Responsibilities of Parents and the State

### *Notable features*

- ❑ Clause 9 states the important primary principle that a child has a right to know and live with his/her parents and family and to grow up in a caring

and peaceful environment. Failing that, the State has express duties (clauses 22 (b) and (i)) to ensure for the care and protection for children, including the provision of appropriate alternative family care or institutional placement. Children are to be protected from torture and degrading treatment. Clause 15(2), however, allows for children to be chastised.

#### *Commentary*

- ❑ The responsibility of the State to provide alternative care (including institutional care) for children who require such care means that the government may need to assess the current arrangements which rest heavily on donor and charitable contributions.
- ❑ The prohibition on degrading treatment is an important guiding factor. With regard to “chastisement”, the guidelines must provide clear limits and alternatives to chastisement with regard to behaviour management in residential care settings.

### Part III Child in Need of Care and Protection

#### *Notable features*

- ❑ The reasons set out in clause 23 on which a child may be declared in need of care is very broad.
- ❑ Clause 24 allows for a police officer, social worker, chief or any member of the community who is satisfied (on reasonable grounds) that a child is in need of care and protection, may take a child place him/her in a place of safety. Such a child must, within 48 hours, be brought before the children’s court which then makes a further order for the care of the child pending the outcome of the children’s court.
- ❑ If the children’s court finds that a child is a child in need of care there are a range of options including placement in a place of safety for two years or until he or she is 18 years (which ever is shorter), and in foster care with a suitable person.

#### *Commentary*

- ❑ The grounds are broad, and whilst this is no doubt aimed at providing maximum protection, some caution should be exercised. For example, a child who is affected or infected by HIV/AIDS and other life threatening conditions is considered a child in need of care. If such a child is living at home with people who can care for him/her, he/she is not in need of care and to remove him/her to a place of safety on those grounds alone would be discriminatory, traumatic and unnecessary. This ground should thus be qualified by wording such as “...and no person is able or willing to care adequately for such child”.
- ❑ The fact that any person can take a child to a place of safety, even though he or she may have no qualifications or experience is a surprising feature.

The fact that the children's court must consider this within 48 hours is positive though, because hopefully at that first children's court hearings people with knowledge and experience will be involved. This is the point at which children first enter the residential care system, and the guidelines must therefore include provisions relating to these removals and temporary placements in places of safety.

#### Part IV Administration of Property of Children by Office of the Master of the High Court

##### Notable Features

Clause 38 requires any person to report to the Master of the High Court any estate where a parent is survived by minor children, within two months of the death occurring. "Minor" is not defined in the Bill, but it is assumed that minority lasts until the young person turns 21 years of age. The property belonging to such minors cannot be alienated (given to someone else), disposed of or sold without the permission of the Master. Clause 40 sets out the duties of the office of Master. These are clearly aimed at ensuring that the children's interests are protected and that children are not left without money or property due to the actions of adults who may have bad intentions. It is also apparent that the Master of the High Court is responsible for the collection of maintenance for children where there is a surviving spouse.

The protection of children's property is therefore not confined to cases where children are orphaned (where both parents have died) but also covers the situation where one parent dies and the remaining one survives.

##### *Commentary*

The use of the Master of the High Court (as the upper guardian of all minors) to administer the estates of orphans is not unusual. The "estate" simply refers to all the belongings left behind by the dying parent, including the home. It is used in many systems, but was initially aimed to deal with a situation where children were rarely orphaned, and where the estates would be fairly large. In sub-Saharan Africa today, the situation has changed dramatically, so that there are likely to be many orphaned children, and the estates are likely to be very small.

These protections here go wider than the situation of orphans' estates, as it all applies where there is a surviving spouse, who also cannot give away or sell property without the consent of the Master. This throws the protective mantle very wide.

It is likely therefore that the High Court could become inundated with reports of estates, requests for permission to sell children's property and the like. It is therefore necessary to ensure that the Masters' Office is adequately staffed to deal with the workload. Also, easy access to the Masters' office needs to be ensured. As the Masters' Office is usually located at the High Court, and the High Courts tend to be in the larger towns or cities, getting access to the Masters' Office may prove difficult for care-givers of orphaned children. It appears that the District Secretary referred to in clause 41 is more easily accessible. Administration must be smooth because one can

foresee, particularly with older children, that things may sometimes need to be sold to pay for education and the like.

The reporting of the estates and the requests for permission to sell or give away property will not be generally known to the public and these provisions therefore need to be publicized, there will need to be a campaign to educate care-givers and community members about this. It is clear that employers and officials working in banks will also have to be educated about their responsibilities when dealing with the property of children who survive a parent.

It is not clear from considering this part of the Bill in isolation what the effect of the customary law of succession (the law dealing with passing on property after someone dies) would have with regard to these protections. For example, the rule of primogeniture (the rule that the male inherits before females in the family), if such a rule is applicable in Lesotho, may well result in the brother of the deceased parent becoming the heir to the estate if only girl children survive the deceased. Does the house in which girl children are living then become the property of the deceased parent's brother? Would this then escape the process of Master's Office protection?

It is evident that wherever money is being handled or managed there is scope for fraud and mismanagement. Strictly monitored procedures for receipt, payment and investment of money will have to be applied to any monies "brought to the office" of the Master as contemplated in clause 40(g).

#### Part VI Conditions for Taking a Child into Care

##### *Notable Features*

- ❑ This part apparently seeks to provide a legal framework for existing informal arrangements where people are taking care of children. Where such informal arrangements occur, the person must notify the social worker, who will conduct an inquiry and then either order that the child be returned to his or her parent, or will permit the taking of the child into care by the person concerned.

##### *Commentary*

- ❑ The provisions in this part do provide an opportunity for oversight of informal arrangements that occur. The successfulness of the provisions to protect children will depend on the availability of social workers to receive notifications, and to carry out the inquiries.

#### Part V Foster Care and Adoption

##### *Notable features*

- ❑ Clauses 52 and 55 provide for the establishment, membership and duties of the "foster care placement and adoption committees" at district level. The task of these committees is to screen applications of potential foster and adoptive parents and monitor the situation of children under foster care or

adoption. The Department of Social Welfare retains the responsibility to facilitate assessment of potential foster and adoptive parents and the conditions surrounding the child to be fostered or adopted. In the case of adoption, the Department of Social Welfare presents applications for adoption to the High Court. The part includes provisions on both domestic and inter-country adoptions.

### *Commentary*

- ❑ The “foster care placement and adoption committees” appear to be a creative way to provide for screening and monitoring methods using a community based approach. Guidelines can ensure that the work is done effectively according to appropriate principles and procedures.
- ❑ The extent to which oversight by the Department of Social Welfare will be effective depends on the number of social workers available and their workloads.
- ❑ Whilst it is clear that all adoptions will be channelled through the High Court it is not absolutely clear whether all foster care placements must proceed through the children’s court. The children’s court has the power to order foster care, but it is not clear whether the intention of the legislature is that certain foster care placements, if recommended by the district committees and approved by the Department of Social Welfare, can be finalised administratively without the intervention of the children’s court. Greater clarity on this point is advisable. The provisions relating to domestic adoptions are fairly standard.
- ❑ The provisions relating to inter-country adoptions, however, give rise to further comment. As a basic principle it is clear that whilst domestic adoptions are preferable to inter-country adoptions, inter-country adoptions may provide an appropriate alternative form of care, provided that they are carried out in accordance with approved international standards and practices. It is noted that Lesotho has not ratified the Hague Convention on Protection of Child and Co-operation in Respect of Inter-country Adoption (1995). This would be advisable, and would need to be followed by the passing of domestic law to enable the convention. In the interim, Lesotho can look to article 21 of the UNCRC and article XXIV of the ACRWC.
- ❑ Of concern in the provisions of the Bill is the requirement that a persons considering adoption would need to be resident in Lesotho for three years prior to the adoption and have fostered a child for at least two years under the supervision of a social worker. These provisions would make inter-country adoption almost impossible. Whilst remaining cautious about the risks that inter-country adoptions can bring about, it is quite possible, if international standards are adhered to, to ensure the protection of children.

### Part IX Child in Need of Rehabilitation and Urgent Protection

#### *Notable features*

- ❑ Clause 77 defines certain children as being “in need of rehabilitation”, broadly included are children who are being sexually exploited or are at

risk thereof, and children who are habitual substance abusers. A police officer, social worker or chief who is satisfied on reasonable grounds that a child is a child in need of rehabilitation may order the child to be removed to a place of safety.

- ❑ The children's court, after considering a report by a social worker, has the power (amongst other options) to place a child in a place of safety for a period not exceeding three years.
- ❑ Clause 80 defines the circumstances in which a child is deemed to be in need of urgent protection. Any person (or the affected child) may then make an application to a social worker, police officer or chief for the child to be admitted to a place of safety.

#### *Commentary*

- ❑ The idea of the children being able to be removed because they "are at risk of" certain kinds of danger rings alarm bells. This type of provision, though clearly aimed at the protection of children, can lead to over-use of institutionalisation.
- ❑ It is not clear why the children's court is empowered to make orders of up to three years in a place of safety in these instances, whereas when dealing with children who have been found to be in need of care the maximum period is only two years.
- ❑ Guidelines are thus important in this area to ensure that these provisions do not result in more children ending up in residential care for longer periods.
- ❑ The clauses on children needing urgent care provide for a quicker resolution of matters, as the social worker is expected to see the child within the first 48 hours and conclude a full report on the circumstances. A question to be asked is whether there will be sufficient social work services available to achieve this?

### Parts X – XIX Children in Conflict with the Law

#### *Notable Features*

- ❑ These parts of the Bill deal with a range of matters relating to children in trouble with the law, ranging from the minimum age of criminal responsibility (10 years), age determination and assessment, police powers and duties, the preliminary inquiry, restorative justice and diversion, bail and detention, children's court, legal representation and sentence.
- ❑ Probation orders are generally aimed at keeping children out of custody, but a probation order can include a requirement that the child live in a probation hostel for a period not exceeding 12 months.

#### *Commentary*

- ❑ The entire framework relating to children in trouble with the law is aimed at keeping them out of any form of detention, which is stated to be a measure of last resort.

- ❑ There are several options at both the pre-trial and sentencing phases which will allow for children to remain in their own families rather than being placed in detention.
- ❑ The situations where residential sentences can be used are limited by a set of principles to be applied by the presiding officer of the court.
- ❑ Sentences to approved schools are limited to two years in duration.
- ❑ With regard to a sentence of imprisonment, this applies only to children over 16 years and shall not exceed 15 years.
- ❑ The sections of the Bill relating to children in conflict with the law, when compared with other systems internationally, amount to a highly progressive and creative system, utilising restorative justice options within a modified criminal justice process which includes an emphasis on rehabilitation.
- ❑ Probation officers are granted very wide powers (for example whether to divert certain petty cases), and will thus need to be well trained and supervised.

## Part XX Children at Risk of Offending

### *Notable Features*

- ❑ This clause enables a parent or guardian of a child to request the children's court orally or in writing to detain a child in an approved school, probation hostel or centre on the grounds that the parent or guardian is unable to exercise proper control of the child. After an inquiry, the children's court may make such an order and the child may, after hearing be temporarily detained. If the probation officer so recommends, the children's court may order that the child be sent to an approved school, probation hostel or centre for a period not exceeding three years.

### *Commentary*

- ❑ With the greatest respect to the drafters of the Bill, it must be stated that Part XX flies in the face children's rights and human rights standards. It stands in stark contrast to the approach reflected in Parts X to XIX, which work effectively to keep children in trouble with the law out of detention.
- ❑ Part XX, on the other hand, seems to belong to a bygone era in which insitutionalisation was seen as a primary solution to behavioural problems.
- ❑ Once again, like the children who may be found to be "in need of rehabilitation" because they are at risk of being sexually exploited, these children who are described as being "at risk of offending" can be institutionalised for three years, whilst their counterparts who are actually in need of care, or actually in conflict with the law, can be placed or detained only for a period of two years.
- ❑ There is a lack of logic in the time periods set, but the fundamental problem goes deeper, as children who are thought of as "at risk of offending" are being denied their rights to a proper hearing and to what is known in law as "audi alterem partem" – they are not given a chance to tell their side of the story. There is no requirement that such children



should be legally represented (unlike children in conflict with the law), and yet they face a possible deprivation of liberty for a longer period.

### *Child Justice Theory placed in Historical Context*

To understand the reason why these two approaches do not fit comfortably side by side, a very brief explanation of the history of child justice theory may be of assistance. During the first half of the 20<sup>th</sup> century child justice theory (often referred to as juvenile justice theory) was dominated by a “welfare” approach. According to this, children were not held responsible for their criminal acts; they were seen as children in need of care who had been caused by their environment to commit crimes. The preferred solution was to change this environment by placing the child in an institution. This way of thinking was championed in the first “juvenile court” in Illinois, USA, and spread throughout the world. By the middle of the 20<sup>th</sup> century the awareness had grown that institutionalisation itself can do serious harm. In 1968 a landmark case in the US Supreme Court held that children’s rights, like adults’ rights, to a fair trial had to be upheld, and that you could not institutionalise children who had not been found guilty of crimes through a proper legal process. This then led to child justice systems being adjusted throughout the world. In some countries (notably the USA) this has unfortunately opened the door to more punitive solutions.

Fortunately, however, restorative justice has gained ground since 1990 to become a highly influential policy driver in child justice. Parts X to XIX of the Children’s Protection and Welfare Bill provide a model reflection of the new children’s rights, restorative justice orientation to child justice. Part XX simply does not accord with this approach, and is reminiscent of welfare approaches to child justice that have become out-dated. Children should only be detained (as a last resort) if they are awaiting trial or have been found guilty of a crime after a fair legal process. Children should only be placed in residential care if they have been found to be in need of care and protection after a proper legal process of the children’s court.

### Part XXXI Institutions

#### *Notable Features*

- ❑ The minister may establish, appoint or designate places of safety for the care and protection of children, and shall determine conditions and requirements to be met.
- ❑ The Director of Social Welfare shall advise the minister of the designation, establishment or appointment. The Department is also responsible for keeping a register and for monitoring and supervising the places of safety.
- ❑ The Minister may establish a commission of inquiry into a particular place of safety, and has the power to revoke the gazette which established, designated or appointed the place of safety.
- ❑ When a child has escaped or been removed from a place of safety unlawfully, a child may be apprehended by a police officer or social worker and brought back to the place of safety, the reasons for the escape to be investigated by the social worker.
- ❑ With regard to places of detention for children in conflict with the law, the Minister has identical powers as he/she does in relation to places of safety

regarding establishment, appointment, designation and revocation. However, it is the Probation Unit, not the Department of Social Welfare that has powers and duties relating to registration and supervision of places of detention and to advise the minister on establishment, appointment and designation.

- ❑ More detail is provided as to the inspection of detention facilities (than places of safety) and the Minister must provide regulations regarding the classification, treatment, employment and control of children detained in places of detention.
- ❑ Outside visits by suitable persons are also to be provided for in regulations. A child escaping (or unlawfully removed) from a place of detention may be arrested and brought back to the place of detention.
- ❑ Probation Hostels are dealt with separately from places of detention, and the Minister is given powers to establish, designate or appoint such hostels. The Probation Unit will make regulations for the management and inspection of probation hostels.
- ❑ Approved Schools are also dealt with separately from places of detention, and the powers and duties of the Minister differ in this regard. There is no requirement that he be advised by the Department of Social Development or by the Probation Unit with regard to these schools.
- ❑ Clause 193 provides details about when a child can be sent to an approved school. This includes as a sentence, where parents can no longer exercise control, where the child is “in need of institutional rehabilitation” or even in cases where although the offence was minor it is “expedient” that the child be subjected to detention.

### *Commentary*

- ❑ The part is complex due to the fact that there are different arrangements for establishment, designation, appointment, revocation, and supervision of the different types of institutions. Particularly confusing is the fact that “place of detention”, is defined in part I of the Bill as including approved schools and probation hostels. In the Part XXI, on institutions, they are described separately. Clarification is needed on this point.
- ❑ The guidelines can assist to simplify this complex picture in the following ways: One model of residential care should form the core of all institutions
- ❑ There can be a core content of the conditions and requirements to be met, with additional features required for certain kinds of care – e.g. when secure care is required. Indications can be provided as to what the Minister may determine as conditions and requirements. The advice to be provided to the minister by the Dept of Social Welfare and the Probation Unit can be underpinned by the guidelines. The monitoring and supervision aspects can be underpinned by developmental quality assurance provisions that can be included in the guidelines.
- ❑ Programmes for the care and treatment of children in institutions will be described in the guidelines, as no detail on this is currently provided by the draft legislation.
- ❑ With regard to clause 193, which sets out the circumstances in which children may be sent to approved schools, two observations may be made. The first is technical: that the clause does not really belong in this part

because it deals with reasons for referral, and this chapter deals with practical arrangements regarding institutions. The second is that the grounds on which children may be sent to approved schools are concerning. “Expediency” is not a good enough reason to deprive a child of his or liberty, if viewed through a children’s rights lens.

## Conclusion

The Children’s Protection and Welfare Bill for the most part provides a positive and creative framework for the protection of children. Although the majority of the provisions provide suitable alternatives that will ensure that residential care is only utilised in cases where it is deemed the most suitable option, certain clauses have been highlighted as placing children at risk of an over-utilisation of residential care. The provisions are not very specific about the care of children in institutions, and provide only a bare framework for their establishment, management and quality assurance. The guidelines will thus provide detail that will assist government and non-government practitioners to ensure a residential care system within a broader continuum of care, keeping in mind the realities of the infrastructure and resources, both human and financial, that exist in Lesotho.

### 2.3. Review of the OVC Policy for Lesotho

All the principles in the Lesotho National Policy on orphans and vulnerable children are clearly appropriate to all services to children and their families and must form the foundation of any guidelines or policy developed on residential care. Principles form the foundation of practice and are thus the basis on which standards are formulated.

Existing Principles:

- ❑ Political Commitment
- ❑ The Best Interests of the Child
- ❑ Promotion and Protection of the Rights of the Child
- ❑ Empowerment of Families and Communities
- ❑ Reduction of Vulnerability
- ❑ Non-Discrimination and Gender Equality
- ❑ Strengthening partnerships
- ❑ Access to Quality Services, Information and Resources
- ❑ Mitigating the Impact of HIV and AIDS

It is the consultant's opinion that a few principles which are not clearly portrayed in the policy but which are critical to a rights-based and developmental approach to vulnerable children and youth should be reflected in the residential care guidelines. These include

- (a) Early intervention – Identification of children at risk and providing services to children within their family and community as a priority, in order to prevent placement in any form of alternative care. This includes both family preservation and diversion for children in trouble with the law.
- (c) Reunification - Ensuring that all children in care have a specific plan and program to ensure their earliest integration back into their family and community

The definition of OVC is quite broadly defined in the policy on OVC encompassing various forms of vulnerability, and then again in the Bill where vulnerable children are described as those needing care and protection. The broadness of the definition in the policy is however likely to be overshadowed by the tendency world wide to associate the term "OVC" with children infected and affected by HIV/AIDS. The fact that the basic policy underpinning legislation is a policy on 'OVC' gives the impression that legislation and thus services to children should primarily be concerned with children affected and infected by HIV/AIDS.

The suggestion is therefore that these residential care guidelines and any other guidelines which may form part of Regulations attached to the Act should be written for *children needing care and protection (including those in trouble with the law)* and government should encourage a move away from framing services to children (under the legislation or a specific policy) as those intended for OVC's.

Understanding vulnerability in terms of children 'needing care and protection' as defined by the Bill, rather than the OVC policy, is more likely to require that children be offered a holistic service, including developmental and therapeutic intervention. This would be appropriate and in line with child rights.

### **3. General comments**

- 3.1 When planning for services to increasing numbers of vulnerable children in a context of poverty, HIV/AIDS and unemployment, it is critical that government ensure that children are not exploited in order to bring in income to individuals and/or families. Both a grant system - for foster care, adoption or residential care; and the setting up of residential care by NGO's or CBO's on the basis of fundraising (locally and internationally) must be carefully structured and monitored to protect children.
- 3.2 It is important that individuals and organisations do not simply set up residential facilities in their own homes, or otherwise, on the basis that they have unilaterally decided there is a need in the community and they then proceed to fundraise and find the kids to fill that facility. The Department of Social Welfare should be involved in every decision to establish foster care or residential care centre for vulnerable children.
- 3.3 A real strength in Lesotho is the fact that many communities actually still function as communities - depending on one another, being aware of what goes on in the community, direct involvement of chiefs etc. This is particularly important for the very remote areas, but in all parts of Lesotho this strength should be seen as a resource. This particularly refers to early intervention which is far more effective in the long run than placing children in Care. Resources go into the community rather than into residential care.
- 3.4 Once children are in residential care, families and community must continue to play a role, with active facilitation by the residential care centre in making it possible for them to do so. This helps with preventing stigma as well as increasing community understanding and knowledge of what children need. If

possible, residential care centres should be developed to the point where they act as a resource to the whole community, not simply as a safe haven for vulnerable children.

- 3.5 General comments on adoption, foster care and early intervention in this set of guidelines are offered only in terms of their connection to and impact on residential care. It is however recommended that as some stage specific standards on foster care and adoption are developed. Where foster care and adoption are used as alternative care for children, government has to give attention to issues of screening, preparation and regular follow-up.
- 3.6 Given the very rural nature of Lesotho, the distances between towns, and thus the difficulty in accessing a range of resources, it would make sense to encourage the development of multi-purpose centres in as many villages and towns as possible rather than isolated, specialised services for only certain children. In other words residential care centres could be encouraged to serve more than one purpose.
- 3.7 While the willingness to establish and run facilities on a voluntary basis is appreciated, it is not recommended as an ongoing solution with regard to orphans and vulnerable children. Managing a residential care facility requires a specific level of knowledge and is an intense and complicated role, which is key to effective practice throughout the facility. Having a manager who is receiving a very small wage, an irregular wage, or no salary at all can be seriously problematic for their accountability with regard to standards, and may, over time, be experienced by workers as exploitation by the government. [During site visits it was noted that some managers (mostly volunteers) were not present for days at a time, and/or were providing no leadership and oversight, and/or were permitting that a substandard if not abusive level of service was delivered]

## 4. Residential Care as a Service

- 4.1 *Residential care is clearly a need for some children in every country, whether HIV/AIDS is a problem or not.* With the exception of children in trouble with the law where prison should always be a last resort, residential care should neither be thought of as 'last resort' or a 'first resort', but as one form of service programme which may be the most effective option for a particular child/family. The need for such a service should be directly linked to the individual circumstances and the developmental/therapeutic needs of the child/family.
- 4.2 No form of alternative care (including foster care and adoption) should be viewed as a general answer to what may be perceived as similar needs in a group of children (such as orphans).
- 4.3 It must be recognised that residential care is never a benign option. Even the best residential care has to some extent a psychological/emotional affect on children. In addition, children in any form of residential care are extremely

vulnerable, because they are totally dependent on staff, and isolated from their family and community. Anyone running or working in a residential care facility has considerable power over children. This element alone calls for vigilance with regard to standards and protection of Rights - and thus regular monitoring from government.

- 4.4 A further issue is the fact that all children have a universal need for *attachments and a sense of belonging* in order to thrive. The more broken attachments experienced by a child (which often come as a result of moving children from the family and then moving them from one programme to the next), the more damaged a young person may eventually become. An example: - 'Poor care' (according to our standards) with a granny, may be the best option for a child who has lost her parents and already has an attachment with the granny. In this situation, supporting the granny with whom the child experiences a great sense of belonging, would be 'in the best interests of the child', not the removal of the child.

The above-mentioned are the main reasons why all residential care must be of the highest standard possible, and must be carefully monitored.

Residential care must have an element of therapeutic intervention in order to make it effective. Simply providing custodial care is never enough for children who must live away from their family in a group environment, particularly if they have experienced trauma and/or loss in their life.

## 5. Standards

- 5.1 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 which relate in any way to protection from abuse and the meeting of basic needs are required immediately. The Department of Social Welfare should stipulate the period of time in which development towards the other standards will take place.

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.

## 6. Terminology

### 6.1 Vulnerable Children

For the purposes of these guidelines the term *vulnerable children* will be used as a generic term to represent all children needing care and protection, children in trouble with the law, and orphans and vulnerable children affected and infected by HIV/AIDS.

## 6.2 Residential Care Centre

For the purposes of these guidelines the term *residential care centre* will be used as a generic term to include all forms of a Place of Safety, Probation Hostels, Approved Schools, Special Schools, and Hospital sites for vulnerable children.

## 6.3 Secure Residential Care

For the purposes of these guidelines *secure care* will be used as the term for any locked residential care centre which provides services to children who are a danger to themselves and/or others. Such a centre detains children and does not permit children to freely leave the centre and interact within the community. Children are placed in the centre by court order and in the majority of cases secure care would apply to children in trouble with the law who cannot remain in the care of family and community while awaiting trial or serving a sentence.

## 6.4 Management

For the purposes of these guidelines the word *management* refers to a Board of Management or a Committee which is comprised of community members and professionals who volunteer their time to contribute to fundraising and oversight of the residential care centre.

## 6.5 Director or manager

These terms refer to the person employed or who volunteers to manage the residential care centre on a day to day basis.

## 6.6 Early Intervention

This term refers to the first stage of the intervention continuum where every means possible is used (a) to identify vulnerable children in the earliest stage of possible risk, and (b) to ensure that children at risk for various reasons can remain in their families and/or communities. This includes, but is not limited to such activities as family preservation strategies; support to caregivers; strengthening of communities, families and child headed households; and diversion strategies.

## 6.7 Continuum of Care

This refers to a range of services which can be offered to vulnerable children based on individual need. Such services would begin at one end of the continuum with the least intrusive and disruptive intervention, such as supporting the child within the family context, and would move incrementally towards those services at the other end of the continuum which are most intrusive, restrictive and disruptive, such as a secure residential care centre for sentenced children. The nature of a continuum also allows for the possibility that two or more services can run parallel to each other and be delivered by the same or different organisations working in partnership. For example, an organisation offering short-term residential care could, at the same time, be supporting and strengthening the community and families.

### 6.8 Staff

For the purposes of these guidelines, this term will be used as a generic term for caregivers, professional staff such as nurses and social workers, and volunteers.

### 6.9 Multi-purpose centres

This refers to residential care centres which offer a range of services, using the centre as a resource. For example a centre might offer residential care to 30 children, a day care and after-school care programme for vulnerable children in the community, and/or support to families and children in the community, and/or a hospice for children with HIV/AIDS.

Multi-purpose centres would typically use a multi-disciplinary and inter-sectoral approach, so that organisations and government departments could pool resources and make it possible for a child or family to access a variety of services at one place.

## CHAPTER 2: RIGHTS OF CHILDREN IN CARE

The guidelines and standards ensure that the Rights of Children as indicated in the Lesotho Children's Protection and Welfare Bill 2004 are protected. These include all Rights indicated in the UNCRC, the ACRWC of the Child, and the guidelines given in the JDL's.

These Rights include:

- ☐ Right to name and nationality
- ☐ Right to birth registration and citizenship
- ☐ Right of orphaned and vulnerable children to registration
- ☐ Right to knowledge of parents and to grow up within a family environment
- ☐ Right to Education and Health
- ☐ Right to Social Activity
- ☐ Rights of children with disabilities
- ☐ Right of opinion
- ☐ Right to protection from exploitive labour
- ☐ Right to protection from torture and degrading treatment
- ☐ Right to refuse betrothal, marriage and harmful cultural rights
- ☐ Right to be protected from harmful substances
- ☐ Right to parental property

*It is recommended that the DSW ensure that copies of documents on Child Rights be attached as an annexure to the guidelines and standards once they are ready for distribution.*



**In addition to general Child Rights, children in residential care have rights (based on the UNCRC and JDL's) which are specifically formulated for this particular context.**

Such rights are as follows:

1. The right to know their rights and responsibilities
2. The right to a developmental plan and programme, which includes a plan reunification into their family or extended family, or for life-long relationships in alternative family care.
3. The right to expect that their plan and programme is based on an appropriate, holistic and competent assessment.
4. The right to be consulted and to express their views, according to their age and capacity, about decisions affecting them.
5. The right to privacy and to possession of their personal belongings
6. The right to be informed of expectations regarding procedures, behaviours and rules of the residential care centre, and the consequences of not meeting those expectations.
7. The right to care and therapeutic interventions which respect their cultural, religious and linguistic heritage and the right to learn about and maintain this heritage.
8. The right to regular contact with parents/guardians, family, and friends, unless a legal order stipulates against this or such contact can be shown not to be in the best interests of the child for safety reasons.
9. The right to be free from physical punishment or inappropriate isolation
10. The right to age-appropriate positive disciplinary measures when discipline is necessary.
11. The right to protection from all forms of abuse and exploitation.
12. The right to education appropriate to age, aptitude and ability.
13. The right to be informed that prohibited items may be removed and withheld.
14. The right to send and receive mail without having such mail opened and read by others. In cases where it is deemed necessary to open mail for safety reasons, the child should be present or give permission for mail to be opened and read.

## CHAPTER 3: APPROACH

### **Approach: Strengths, Ecology and Child Rights.**

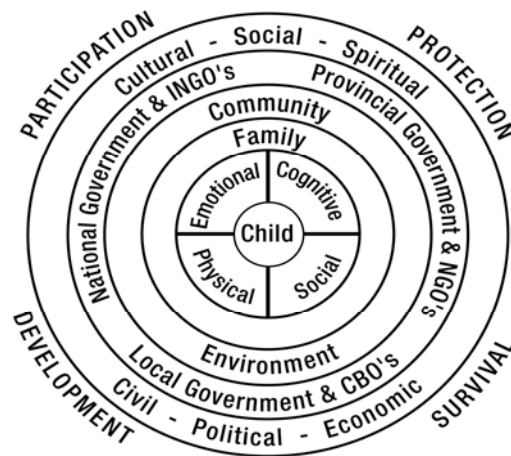
- ❑ These guidelines and standards are based on a developmental and ecological approach. While this may not be the only approach to residential care, it is the recommended approach because it allows for the context of the country, the community, the family and the child to be taken into consideration. It does not impose strategies on children and families which may suit government or stakeholders, but do not work in practice. Furthermore, it allows for different applications with regard to programmes or responses to vulnerable children in a variety of settings. Lesotho has both extremely remote, isolated communities, as well as communities situated in and near cities and towns. An ecological approach takes these differences into consideration.
- ❑ A recognition and respect of strengths in communities, families and children is critical, particularly where material and professional resources are minimal. When we work from a point of 'building on strength' it makes it possible to protect and support children and youth in ways which are less dependent on 'expertise' and it build self-worth which is critical to well-being.
- ❑ Children's Rights are aligned to this approach. As indicated in the diagram below, Rights form the supporting framework in which services are provided and hold service providers to a certain standard of practice.

Research and practice in most professions is now leaning towards taking a more holistic and strengths-based view of individuals and families who experience problems. **This type of approach to practice requires that:-**

- ❑ The individual and family is always assessed and understood within their specific context i.e. their particular ecology
- ❑ No two individuals (adults or children) experience a similar problem in the same way. Individual differences must thus be considered.
- ❑ Children living away from home and community retain psychological ties to their ecological world i.e. community and family. This means children should be enabled to successfully keep ties with family and community and be able to move between community and residential care with ease as well as back into that 'world' should they be reunited with family/community.

- ❑ The child's individual, holistic, age-appropriate development is critical and must be deliberately fostered. Blockages to healthy development must be addressed, so that the child moves forward and does not deteriorate. Behavioural difficulties are recognised as pain-based behaviour which requires therapeutic responses, rather than punishment.
- ❑ Professional 'experts' play an important role, but those who work or live closest to the child are equally recognised as providing invaluable support and understanding of the child – and thus require training and support themselves.
- ❑ There is recognition that the real experts on themselves are the children, families and communities.
- ❑ Multi-disciplinary teamwork is fundamental.
- ❑ Recognition that all individuals, families, and communities have strengths. Identification and fostering of strengths is as important as addressing needs.

**Diagram:** By Dr Philip Cook, UVIC, Canada. Developed in relation to research on a project on OVC in QwaQwa, South Africa.



## CHAPTER 4: ALTERNATIVES TO RESIDENTIAL CARE

### 4.1 Early Intervention

With regard to children needing care and protection, early intervention involves keeping the child in a family context (even a child-headed household) and providing sufficient support and protection to the child/children and the family in order to prevent placement in foster care outside of the extended family, or within residential care. Most early intervention programmes include family preservation strategies which can be provided separately or as a cluster of interventions, such as

- ❑ placing a support person in the family for a period of time each week or each day, or having someone visit on a regular basis (for example a trained volunteer, youth worker or child & youth care worker)
- ❑ intensive family therapy from a social worker or psychologist
- ❑ having the child and/or family participate in a programme on a daily or weekly basis
- ❑ providing food and medical support
- ❑ teaching new skills for self protection and survival
- ❑ having caring persons in the community provide voluntary support and regular monitoring
- ❑ diversion opportunities

When a child needs care and protection and is in trouble with the law, the choices are not necessarily diversion OR family preservation. In most cases, if a child in trouble with the law and can be diverted, then they are also likely to need and benefit from family preservation strategies.

With specific regard to children in trouble with the law, the most useful early intervention mechanism is diversion. The Bill creates a number of restorative justice processes as diversion opportunities, namely family group conferences, open village healing circles and victim offender mediation. Once convened, these forums are to decide on the procedure to be followed. This is obviously aimed at flexibility and informality, and gives community “ownership” to the forums. It is important, however, that there should be guidelines according to which the procedures are carried out. The guidelines include both a description of restorative values, as well as some indication of fair restorative procedures. Failing this, children’s rights may be put at risk.

Important values underpinning restorative justice can (according to author John Braithwaite) be divided into three groups:

**Constraining standards** – these are procedural safeguards:

Empowerment, respectful listening, not punishing more harshly than the legal system would, no inhumane or degrading treatment, equal concern for stakeholders, accountability, appeal ability, respect for human rights as set out in the international instruments.

**Maximising Standards** – these aspects should be promoted and encouraged for effective restorative justice processes:

These values relate to healing and restoration, with obvious aims such as returning property and compensation but also more complex ones such as the restoration of dignity, compassion, social support and the prevention of future injustice.

**Emerging Standards** – these do not need to be actively pursued, but should be allowed to emerge naturally from the process. The emerging standards include: Remorse about injustice, apology, censure of the act, forgiveness of the person and mercy.

## **4.2 Foster Care**

The foster care placement and adoption committees, once appointed, should receive training and written guidelines to assist them with their task. Before considering a foster care placement, there must be a (developmental) assessment of the child, to determine that this is in fact the most appropriate option for this particular child. This should ideally be done first, before recruiting or approaching adoptive parents. Once it is established that foster care is the most suitable option, screening of the prospective foster care placement can be taken forward. After being satisfied that the prospective foster carer meets the criteria set out in clause 51 of the Bill, the following factors should be considered:

- ❑ Does the child have an existing relationship with the prospective foster carer?
- ❑ Is the foster care placement going to provide continuity in the child's upbringing?
- ❑ With the placement be in a community that will allow him or her to remain in touch with his or cultural, religious and linguistic background?
- ❑ If he/she is old enough to express an opinion, what are the views of the child regarding the foster care placement?
- ❑ Is there a risk of the child being exploited (for example for the purpose of child labour)

## **4.3 Adoption**

Adoption is an intervention that has profound effects that will last for the life of that child. The child legally becomes the child of the adoptive parents, and his or her natural parents and other biological family members are cut off from being able to exercise any rights in respect of the child. For this reason the utmost care must be taken by the Foster Care Placement and Adoption Committee when making decisions about the adoption of children.

Once again, it must first be ascertained if adoption is in the best interests of the child.

Adoption practice must always be child-centred, and not built around the needs or wishes of the prospective adopters. With babies and toddlers, the most important aspect is to consider if they are not able to be placed with family members within Lesotho rather than being adopted by other families.

With older children, there must also be an assessment of the child. The Bill requires that a child who is 10 years or older must consent to the adoption. Even with children younger than ten, their views should be considered if they have the capacity to express an opinion.

With regard to inter-country adoptions, extra care must be taken because the child will be removed from Lesotho once adopted. Nevertheless, inter-country adoption, like domestic adoption, remains one of several options and can play an important role in suitable cases provided that it is done according to the following principles, which are set out in the UNCRC and ACRWC:

- ❑ The best interests of the child is the paramount consideration
- ❑ Inter-country adoption is viewed by the ACRWC as a “last resort” and by the UNCRC as “an alternative means of care” if the child cannot be placed in a foster or adoptive family or cannot in any suitable manner be cared for in the child’s country of origin. (This is known as the subsidiary principle – it ensures that inter-country adoption is subsidiary to other placement options)
- ❑ Ensure that inter-country adoption enjoys the same safeguards and standards as those for national adoption
- ❑ Ensure that inter-country adoption does not result in trafficking or in improper financial gain for those involved
- ❑ The government should conclude bilateral or multilateral arrangements or agreements in order to sure that the placement of a child in another country is carried out by competent authorities or organs.

A particular concern is that children should not be easily sent out of the country to international families. While this may indeed be a help for many children, Lesotho should consider the long term effects of thousands of Basotho children leaving the country.

## CHAPTER 5: PLACEMENT PROCEDURES

### 5.1 Identification of a child at risk

- ❑ The first step in placement procedures is to accurately identify a child who is vulnerable to the extent that the child and family may require an intervention. This basically involves a simplified form of 'risk assessment' and should be outlined in regulations, obviously including any criteria and procedures reflected in legislation.
- ❑ Criteria such as indicated in 23(1) of the Bill should be broken down into factors and behaviours which can be recognised. For example, "substantial risk that the child will be physically, psychologically or emotionally injured or sexually abused" is too vague and does not allow for individual circumstances to be assessed. A risk assessment protocol would provide the detail by which risk to the individual child can be identified and a decision made with regard to referral.
- ❑ The risk assessment protocol or 'tool' does not have to be complex or sophisticated, but will safeguard children from community or family members and organisations taking action based on their own values, needs or agenda, and which may not be in the best interests of the child. Such a tool could be used by a Chief, a social worker, a youth worker, a probation officer, a police officer and a volunteer for example. People permitted to do this risk assessment should be identified in the Regulations and should be provided with training on how to use the tool. The essential aim of this first assessment is to know whether to refer the child/family to a social worker in an agency, or the Department of Social Welfare.
- ❑ Once this very basic identification of risk is established a formal process of assessment and placement must be undertaken by a social worker in line with the Bill and Regulations. The social worker may for example then decide to refer the child to the Foster Care and Adoption Committee, or to facilitate that the child goes into residential care.
- ❑ [Until such time as sufficient social workers are available, the Department could create interim measures for other professionals, such as nurses, doctors, teachers, police officers, youth workers, magistrates to assist in this matter. Training must however be provided to any person given this authority. It is recommended however that the increase of social workers be considered a priority by the Department of Welfare. The Department would have to consider realities and feasibility in this regard.]

## 5.2 Assessment and decision making

- ❑ An assessment by at least 2 professionals (one being a social worker or professional trained in assessment), should happen before any decision to apply early intervention strategies or undertake statutory intervention.
- ❑ A developmental assessment is the general approach beginning to emerge around the world. This type of assessment is strength-based and takes into account the total ecology of the child, existing capacity, the protection of Rights, universal needs, and developmental needs of children and youth. Psychological testing or special medical tests are not excluded but are only undertaken if deemed to be absolutely necessary.
- ❑ The assessment should result in a decision with regard to placement according to the continuum of care, a permanency plan for the child, an individual plan and programme to address the child's needs, and any reports required for the Court.
- ❑ While proper assessment is critical, it does not have to be sophisticated beyond the capacity of those who will be involved, or disregarding of the specific realities in both the rural and urban areas of Lesotho. Training in developmental assessment should be a priority once the tool has been developed.

## 5.3 Placement options

- ❑ Placement options should include all options identified on the continuum of care.
- ❑ Early intervention support and services to the child in the family and community should be considered before any removal to a family other than the biological family or kin, adoption, or placement in residential care.
- ❑ While adoption may be seen as an excellent option for orphans, it is important to ensure that possibilities of the child staying with guardians or family members have been adequately explored. Serious attempts to find parents/guardians should, for example, be given priority. Otherwise there is a danger that adoption be seen as an easy solution to a community or country's problem, but this is not necessarily the best option for every orphan.
- ❑ The government should thus be placing more resources and training into (a) developing early intervention services, and (b) facilitating that existing services and organisations develop an early intervention strategy if not already in existence.
- ❑ With regard to a child in conflict with the law, detention in a police cell or prison should be a measure of last resort and for the shortest possible period of time. The first option is to allow children to remain in their



families, and only if the protection of the community or child makes this inappropriate, should the child be deprived of his or her liberty, following the principle of the least restrictive and most empowering option available.

#### 5.4 Statutory procedures

- ❑ Statutory Procedures identified in the Bill and written into Regulations must uniformly apply to all placements. The government must ensure that individual social workers or organisations or magistrates or police officers or Chiefs know and apply the procedures and do not simply do what they want to do, do what is expedient, or bow to pressure, and disregard such procedures.

### Risk Assessment Protocol or Tool

Lesotho would need to develop an assessment tool which is suitable to the country's context and those children who are identified in legislation and policy as vulnerable. Once this is developed, practitioners would have to be trained in its use.

#### The type of areas of such a tool might include:

##### 1. Friends

*Example: Describe the friendships important to the child, the number and nature of the friendships, the context in which those friendships take place, and the significance of those friendships to the child.*

##### 2. Significant adults (Parents, Guardians, extended family, Elders/Chiefs, teachers etc)

##### 3. Community (cultural structures/practices; religion; community groups)

##### 4. Resources (supports which can be drawn upon)

##### 5. Challenges faced by the child & family

##### 6. Emotional reactions and patterns associated with these challenges

##### 7. Present and past ways of coping with challenges (negative and positive)

##### 8. Strengths of the child (and family)

##### 9. Identification of immediate Risk

- *Is this child (and family) at immediate risk of physical or emotional harm by self or others?*
- *Is this young person at immediate risk of harming others?*
- *Does this young person (and family) have their basic needs met?*

## CHAPTER 6: OVERALL ENVIRONMENT OF RESIDENTIAL CARE

### 6.1 Staff to Child Ratio

The general principle would be that the young people who are most dependent and/or most hurting or troubled require a higher staff to child ratio. "Staff" alluded to here would include all those who play an active role in much of the daily care, development and therapeutic work with children, such as care givers, child and youth care workers, social workers, nurses, principals, managers, teachers and trained volunteers. In situations where human resources are scarce, professionals such as social workers, teachers and nurses should be encouraged to be part of a team and thus not only provide their specialised service, but take part in care and developmental activities when they are not otherwise engaged. This would help in ensuring the appropriate ratio. If a staff member is sitting in an office all day or most of the day and not engaging with the children then they would not be included in the ratios mentioned below.

Inevitably effective residential care is more expensive than foster care or any form of early intervention. One aspect which increases expense is the salary budget and this should be realistically taken into account when making provision for residential care centres. Too many children and too few trained staff is a potential recipe for some form of neglect and/or abuse of children plus it may also place staff in danger of burn out or physical/emotional harm. The state has a clear responsibility to ensure that all children who are wards of the state are safe and provided with the optimum services. Staff to child ratios should improve as services are developed and additional human and financial resources are more available in Lesotho, but within the present situation the following is recommended as a minimum:

Children under the age of 3 years:

Day: 1 staff to 3 children

Night: 1 staff to 5 children

Children between the ages of 3 and 6 years:

Day: 1 staff to 5 children

Night: 1 staff to 10 children

Children between the ages of 6 and 12 years:

Day: 1 staff to 10 children

Night: 1 staff to 15 children

Children between the ages of 12 and 18 years:

Day: 1 staff to 12 children

Night: 1 staff to 15 children

Children in secure care who are a danger to themselves and /or others:

Day: 1 staff to 6 children

Night: 1 staff to 10 children

Children who are disabled to the extent that they need 24 hour assistance

Day: 1 staff to every 3-5 children

Night: 1 staff to every 5 children

## 6.2 Staffing and training

The number and range of staff needed depends on the particular developmental and therapeutic needs of the children admitted to the centre. The staff team could be made up of employed staff, services accessed in the community, and trained volunteers.

For example:

- ❑ Young children should have trained caregivers and access to pre-school teachers and medical care
- ❑ School going children should have trained child and youth care workers and access to teachers and any necessary medical care
- ❑ Adolescents should have trained child and youth care workers, access to teachers and any medical care needed.
- ❑ In addition to the above, children who have suffered trauma and/or are behaviourally and emotionally troubled should have access to services from a professional trained to offer therapy to children and youth, such as a social worker, professionally trained child & youth care worker or youth worker, or psychologist.
- ❑ In addition to the above, children who are ill should be under the in-patient or out-patient care of a medically trained professional in addition to caregivers trained to deal with children who are ill or dying.
- ❑ In addition to the above, children who are disabled should have caregivers who are specifically trained with regard to the various disabilities.

Every child in residential care (and his/her family) should have access to a **social worker** who (a) takes the statutory responsibility i.e. reports to court and the Department of Social Welfare, and oversees the protection of children, (b) directs and monitors the assessments and placement decisions for children, (c) provides therapy to children who are traumatised or troubled, (d) facilitates reunification work, (e) interacts with the department of social work, and with families/community, and (f) provides guidance and support to staff on therapeutic and developmental work with the children. If the manager of the residential care centre is not a social worker, the centre should be required to officially involve a social worker on a part-time or full-time basis.

As social workers appear to be a scarce resource in Lesotho at present, the state should for an interim period, and where a centre does not have a social worker on staff, ensure that sufficient social workers are available in each district to assist centres with the above mentioned social work tasks. Centres can be encouraged to share social work services, or the social workers employed by the state can provide such services.

All care giving and professional staff working in residential care should have at least the minimum training required to implement the Law, Policy, and Minimum standards. Training will be dealt with in more detail in a later section of this document.

### 6.3 Registration

Other than facilities for children in trouble with the law, all residential care facilities are framed in the Bill as *Places of Safety* i.e. places where vulnerable children will live in some form of residential care which provides a safe haven.

In order to avoid individuals or organisations assuming that keeping children safe and meeting basic needs is all they have to do, it is recommended that Places of Safety be registered and designated according to a specific purpose, for which they are then held accountable.

It is further recommended that all centres are required to register with the Department of Welfare according to certain basic criteria set by the Department, or set out in Regulations related to the Bill. Such criteria should include:

- ☐ The capacity to meet minimum standards, particularly those on Care
- ☐ Qualification criteria for the person who manages or directs a centre
- ☐ Criteria for the Board
- ☐ Staffing
- ☐ Numbers of children

### 6.4 Boards and committees

In the absence of a Board or Committee the specific department responsible for the centre should take responsibility for the roles indicated in the standards as belonging to the Board or Committee

### 6.5 Funding

Other than land and buildings, residential care should be strongly supported by government. Given that these children are wards of the state, the government has an obligation to ensure quality care for each child. Leaving NGO's to establish centres if and when they decide to do so, and leaving centres to do the bulk of their own fund raising can place children at risk (a) because organisations might try to get funds for other purposes while indicating that children will receive funds, (b) NGO's may simply be unable to raise sufficient funding even if every attempt is made, and (c) because organisations which have every intention of working to the minimum standards might find it impossible to do so while depending on the good will of donors. In the latter cases one often find that the manager is so focussed on ensuring sufficient funds that attention is not paid to the standard of actual service delivery. Anxiety is high and affects the entire facility.

Funding of residential care should be based on the total programme (programme funding model), including staffing, programmes for children, numbers of children etc. A per capita model of funding should be avoided.

Financial management in every residential care centre should be monitored quarterly by the government. This should be one component of quality assurance and should also be linked to continued registration.

## 6.6 Reportable Incidences and Circumstances

There are certain incidences or circumstances which may be harmful to the child or may violate a child's rights. These must be reported to the necessary authorities immediately, using the prescribed reporting procedures. The identification of authorities and the reporting procedures are documented under "Child Rights".

### **Reportable incidences and circumstances include but are not limited to:**

1. Removal or any attempted removal of a young person from the residential care centre, school, approved schools, probation hostel or related programme by anyone who does not have the appropriate permission.
2. Any situation in which a child is restrained or isolated by a staff member.
3. Any situation in which a staff member uses measures to control behaviour which are listed as prohibited (see discipline and chastisement).
4. Chastisement of a child which violates the child's rights and responsibilities.
5. Allegations or observations of physical, emotional, sexual or verbal abuse of a child or group of children.
6. Absence of a child from the residential care centre without permission or knowledge of whereabouts by staff.
7. The death or serious injury of a child within the centre.
8. Any circumstance at the residential care centre which may affect the safety or well-being of a child or the group of children.
9. Substance abuse, including alcohol and drugs, by a staff member or volunteer whether on or off duty at the centre.
10. Criminal charges against a staff member or volunteer at the residential care centre.
11. Any form of discrimination against a child or their family.

## CHAPTER 7: STANDARDS

### Standard 1: Management & Leadership

The Manager/Director of the residential care centre is sufficiently trained, efficient, experienced with children and knowledgeable of child rights, and ensures that (a) the best interests of each child are central, (b) and the goals of the centre are achieved.

#### **CHILD**

- ❑ Each child experiences the manager/director as someone who cares about their well-being and creates a safe, supportive environment.

#### **PRACTICE**

- ❑ Personnel are able to respect the manager/director and look to this person for leadership, direction and guidance
- ❑ Personnel experience the manager/director as knowledgeable and experienced in residential child care work.
- ❑ Personnel feel supported by the manager/director
- ❑ Personnel are accountable to the manager/director
- ❑ The manager/director ensures that staff receive the required training for the particular work that they do.
- ❑ The manager/director understands and uses a team approach and encourages all personnel to work as a team
- ❑ The manager ensures that sufficient child care personnel are on duty day and night as per the minimum ratios.
- ❑ Personnel and children understand 'reportable incidences' and how to report as a staff member or a child.
- ❑ The manager/director creates an enabling environment for reporting critical incidences and prohibited behaviour management, and follows up every reported incident appropriately and efficiently.

## MANAGEMENT

- ❑ The Board/Committee ensure that the manager/director is sufficiently qualified and experienced to run the particular type of residential care facility
- ❑ The Board/Committee holds the manager/director accountable for the well-being of the children, good governance, leadership of the staff, and the achievement of goals.
- ❑ The Board/Committee ensures that the centre has sufficient, well-managed funds and assists the manager to raise funds.
- ❑ The Board/Committee requires a team approach and thus encourage multi-disciplinary and inter-sectoral cooperation under the leadership of the manager.

## Standard 2: Environment

A clean, hygienic, well maintained and child friendly environment is provided for every child in a residential care centre.

### CHILD

- ❑ Each child experiences their environment as warm, welcoming, clean, and friendly to their particular developmental needs.

### PRACTICE

- ❑ Staff ensure that the centre and grounds are kept clean and hygienic. In accordance with their age and capacity children may participate in appropriate ways with staff in keeping the centre clean.
- ❑ Sleeping arrangements are appropriate to age and gender of the child.
- ❑ No child may be used to replace the tasks of staff in cleaning and repairing buildings and grounds.
- ❑ No child is given cleaning and repair work (beyond their normal daily responsibility) as a punishment.
- ❑ Children are encouraged to decorate their own space with items and pictures which have meaning to them.
- ❑ The centre has sufficient accessible amenities which are appropriate for the age group of children in residence.
- ❑ Buildings are in good repair and safe for children at all times.
- ❑ There is adequate protection against the hazard of fire.

## MANAGEMENT

- ❑ The manager and Board/Committee ensure that staff have the necessary resources and skill to keep the centre clean and child friendly
- ❑ The manager and Board/Committee monitor the environment and hold staff accountable for maintaining the centre in a healthy condition.
- ❑ The manager and Board/Committee ensure that no children are exploited in terms of keeping the facility clean and well-repaired.
- ❑ The manager is ultimately accountable for achieving and maintaining this standard.

## Standard 3: Admission of the child (and family)

Identification, referral and admission of a child to the residential care centre is respectful, professional, done according to required procedure, and takes into account the affects on the child (and their family).

## CHILD

- ❑ The child (and family) experiences the process of placement as compassionate and respectful.
- ❑ Depending on age and capacity, the child has participated in decision-making and been kept informed at each stage of the placement process.
- ❑ The child feels welcomed and safe at the centre.
- ❑ The child understands rules, Rights, responsibilities and access to resources at the centre.

## PRACTICE

- ❑ In as far as circumstances allow the child (and family) is prepared for the placement through (a) visiting the Centre prior to placement (b) receiving information about the Centre in a child-friendly, age appropriate manner, (c) discussing options and reasons for placement with a social worker, and (d) participating in an assessment and decision-making process if age and capacity permit.
- ❑ Upon admission the child is immediately orientated to the Centre through (a) introduction to care staff and professional staff, and children, (b) allocation of their sleeping and living space, (c) child-friendly, age appropriate information on their Rights, responsibilities, complaint



procedures, any rules, procedures and routines, and any other information which will make them feel welcome and comfortable.

- ❑ Upon admission the child is given child-friendly, age appropriate information on complaint processes by the manager, social worker, or care staff – who to go to, and what to do if they feel unsafe, have been hurt, or feel exploited.
- ❑ Upon admission staff ensure that the basic needs of the child are addressed – food, clothing, a safe place to sleep, blankets, and medical attention if needed.

## MANAGEMENT

- ❑ The manager and Board/Committee ensure that he/she, all care staff, and social workers understand admission procedures and how to orientate a child.
- ❑ The manager ensures that child-friendly materials are available for those children who can read or follow pictures.
- ❑ The manager and Board/Committee ensure that necessary provision is made for any child who is disabled.
- ❑ The manager and Board/Committee monitors the implementation of this standard and is ultimately accountable for maintaining this standard.

## Standard 4: Care

Every child in residential care is provided with unconditional physical, social and emotional safety and care by sufficiently competent care givers and professional staff.

*The provision of physical, emotional and social care and protection is at the heart of both foster and residential care and should be considered both a priority and non-negotiable. If a residential care centre is unable to meet minimum standards on Care, then it should not be permitted to exist.*

## CHILD

- ❑ Children have reasonable and appropriate access to the community
- ❑ Children have some choice in arranging and decorating their personal space
- ❑ Children are informed of options to keep possessions safe and secure
- ❑ Children confirm that their privacy is respected
- ❑ Children have opportunities for positive interaction with peers

- ❑ Children experience relationships with staff and volunteers as positive and respectful
- ❑ Children are encouraged to restore, maintain and improve relationships with family and significant people in their life
- ❑ Children are actively encouraged to build positive relationships with friends, family and staff.
- ❑ Children experience emotional support during times when there is change or loss in their environment, family, or personal life.
- ❑ Children know how to identify and express emotions in a positive manner.
- ❑ Children receive sufficient, nutritious food appropriate to their age and developmental need.
- ❑ Children have a warm, comfortable and safe place to sleep, with sufficient and appropriate bedding for their age.
- ❑ Children have facilitated opportunities for exercise and other fun physical activities appropriate to their age, interests and capacity
- ❑ Children are physically safe at all times
- ❑ Children are know how to report any abusive or hurtful behaviour from peers or staff
- ❑ Children have access to clean ablution facilities and toiletries appropriate to their age, and babies and young children are given all necessary assistance.
- ❑ Children have sufficient, appropriate clothing which is clean and maintained in a good state of repair.

## PRACTICE

- ❑ Caregivers and professional staff ensure that children have:- reasonable and appropriate access to the community; some choice and assistance in arranging and decorating their personal space; are taught to interact with peers, and have opportunities for positive interaction with peers
- ❑ Caregivers and professional staff inform children of options to keep possessions safe and secure and help ensure that these possessions are safe
- ❑ Caregivers and professional staff understand what privacy entails within residential care, know how protect privacy, and ensure that privacy is protected.

- ❑ Caregivers, volunteers and professional staff build and maintain positive, respectful relationships with each child, and encourage children to build, restore, maintain and improve relationships with family and significant people in their life
- ❑ Caregivers and professional staff understand the emotional needs of children and provide emotional support during times when there is change or loss in a child's environment, family, or personal life.
- ❑ Caregivers and professional staff teach children to identify and express emotions in a positive manner.
- ❑ Caregivers and professional staff understand nutrition and ensure that each child receives sufficient, nutritious food appropriate to their age and developmental need, and that each child has a warm, comfortable and safe place to sleep, with sufficient and appropriate bedding for their age.
- ❑ Caregivers and professional staff have knowledge and skill with regard to age appropriate activities, and facilitate activities and opportunities for each child to have exercise and other fun physical activities appropriate to their age, interests and capacity
- ❑ Caregivers and professional staff know how to keep children safe and ensure that each child is physically safe at all times
- ❑ Caregivers, volunteers and professionals understand procedures for reporting critical incidences and prohibited behaviour management and ensure that children know how to use these procedures and feel secure in doing so.
- ❑ Caregivers and professional staff understand the importance of hygiene and ensure each child has access to clean ablution facilities, and have toiletries appropriate to their age. They ensure that babies and young children are given all necessary assistance.
- ❑ Caregivers and professional staff ensure that each child has sufficient, appropriate clothing which is clean and maintained in a good state of repair.

## MANAGEMENT

- ❑ The manager and Board/Committee ensure that staff provide effective Care as indicated under practices and have been given procedures to be followed.
- ❑ The manager and Board/Committee ensure that staff receive the necessary training to make them competent to provide Care

- ❑ The manager and Board/Committee Management employ staff who have the appropriate attitudes and capacity to learn Care and provide unconditional Care and protection to each child.

## **Standard 5: Medical Services and Safety**

Children receive services in a safe environment; all reasonable measures are taken to ensure that children and staff are safe from risk of fire, accidents and other hazards; children have access to and receive adequate health care.

### **CHILD**

- ❑ Children feel physically, emotionally and socially safe in the company of staff, volunteers, visitors and management.
- ❑ Children (who are old enough) know who to contact, and how to contact them in the event of harm or threat of harm to themselves or others.
- ❑ Children know what to do in the event of fire, accident or other emergency
- ❑ Children feel safe in the centre or when transported anywhere by the centre.
- ❑ According to their age and capacity, children have been taught about HIV/AIDS and how to implement universal precautions.
- ❑ Children have their health needs met in a timely way
- ❑ Children have access to health care services both on a prevention and treatment level
- ❑ Children are given caring support and medical treatment when ill
- ❑ Health care issues and information on communicable disease are treated sensitively and confidentially

### **PRACTICE**

- ❑ Caregivers, professionals and volunteers describe how visitors to the centre are screened and monitored
- ❑ Caregivers, professionals and volunteers describe measures which are intended to prevent, or respond to physical, social, or emotional harm, or threatening circumstances for the children
- ❑ Caregivers, professionals and volunteers ensure that children are fully informed (in a manner suitable to their age) and have practiced what to do in the event of a fire, accident or other emergency.

- ❑ Caregivers, professionals and volunteers ensure that they and children (where old enough) know how to, and do practice universal precautions with regard to HIV/AIDS, TB and Hepatitis.
- ❑ Caregivers, professionals and volunteers ensure the timely provision of preventive, routine or emergency medical or dental care to each child
- ❑ Caregivers, professionals and volunteers ensure that they obtain necessary and appropriate medical information about each child and make provisions accordingly
- ❑ Caregivers, professionals and volunteers provide caring support and attention when a child is ill.
- ❑ Caregivers, professionals and volunteers ensure that no child (over 10 years) is tested for infectious or communicable disease without their understanding of the illness and testing, without their permission, and without knowledge and counselling regarding potential results. Where children are under the age of 10 years, the latter must apply to their guardians and children must be given all the appropriate support and information as appropriate to their age.
- ❑ Caregivers, professionals and volunteers ensure that all immunizations for each child are up to date.

## MANAGEMENT

- ❑ The manager and Board/Committee ensure that staff and volunteers have received training and written procedures with regard to all of the above that staff follow these procedures on a daily basis.

## Standard 6: Respectful Positive Discipline

The general approach in child and youth care, particularly any form of foster or residential care, is to avoid an approach of control and punishment and use care and discipline. Personnel working directly with children need to be trained in how to discipline children without using any form of punishment.

Although training and good management are the best way to ensure positive discipline it is necessary to protect children's right by prohibiting certain measures. However, this should not be done in a vacuum without training and discussion of alternative approaches, because the personnel are likely to initially feel disempowered and anxious if some of their approaches are prohibited and they have insufficient knowledge of positive discipline. When staff are anxious they might increase anxiety in children and thus escalate challenging behaviours.

### **Prohibited Measures**

1. A child may not be restrained (physically or through drugs), other than for the immediate safety of the child, the group of children, or staff. Restraint of a child is used as an extreme measure and only as a last resort. Only staff trained in acceptable restraint techniques may use this intervention. Each restraint intervention must be reported in the required manner.
2. Verbal, emotional, sexual or physical harm to the child or group of children.
3. The use of position, power, or relationship to influence children to change their personal, religious or cultural beliefs.
4. Any form of discrimination on the basis of culture, language, gender, race, or sexual orientation.
5. Using one child or a group of children to punish another child.
6. Threats to the child or family.
7. Humiliation of a child or group of children
8. Group punishment for an individual child's behaviour.
9. Depriving a child or group of children of basic care (such as food, clothing, shelter, or bedding).
10. Denying a child visits, telephone calls, correspondence or visits to family and/or significant adults; unless it can be proven that this is unsafe for the child or that a court order prohibits these activities.
11. Forced isolation from staff and peers, other than for the immediate safety of the child and/or staff and only after other measures have been tried. Forced isolation must comply with the standards set out in this regard.
12. Chastisement which is unsuitable to the child's age or capacity and which violates the child's rights.
13. Using exercise or work as a punishment, or forcing a child to undertake the work of staff.
14. Adding on "time" to the period of the placement as authorised by court.

### **Chastisement**

Chastisement should comply with all prohibited measures and must not violate any of the child's Rights.

### Standard:

Through respectful, positive discipline children are provided with the understanding, skill and adult support which enables them to behave in constructive and socially acceptably ways.

#### **CHILD**

- ❑ Children are aware of and assisted to understand the behaviour expected of them and consequences of misbehaviour
- ❑ Children are aware of the prohibited behaviour management measures from service providers and how to report if these measures are used on them.
- ❑ Children are have the assistance and support of staff to enable them to meet age appropriate behavioural expectations
- ❑ Children experience all interventions as respectful of their dignity and self-esteem
- ❑ Children are given plenty opportunity and encouragement to demonstrate and practice positive behaviour.
- ❑ Children are given therapeutic assistance when their behaviour is continuously self-defeating and thus indicative of inner pain.
- ❑ Children understand what they are responsible for and are guided to make amends when they are unable to be responsible.

#### **PRACTICE**

- ❑ Caregivers, professionals and volunteers ensure that each child is aware of and assisted to understand the behaviour expected of them and consequences of misbehaviour
- ❑ Caregivers, professionals and volunteers ensure that each child is given clear age appropriate and child friendly information on the prohibited behaviour management measures from staff and how to report if these measures are used on them, or if they are hurt or feel threatened in any way.
- ❑ Caregivers, professionals and volunteers teach children skills and provide developmental and/or therapeutic support to ensure that they are able them to meet age appropriate behavioural expectations
- ❑ Caregivers, professionals and volunteers ensure that children are not subjected to prohibited behaviour management measures.
- ❑ Caregivers, professionals and volunteers have the skill and knowledge to ensure that children experience all interventions as respectful of their dignity and self-esteem

- ❑ Caregivers, professionals and volunteers ensure that children are given plenty opportunity and encouragement to demonstrate and practice positive behaviour.
- ❑ Caregivers, professionals and volunteers ensure that children are given therapeutic assistance when their behaviour is continuously self-defeating and thus indicative of inner pain.
- ❑ Caregivers, professionals and volunteers ensure that children understand what they are responsible for and are guided to make amends when they are unable to be responsible.
- ❑ Children are encouraged to learn through their experiences to manage their behaviour through internal value systems, and not have external control imposed upon them
- ❑ Caregivers, professionals and volunteers ensure that disciplinary measures are not arbitrary; they must be relevant to the misbehaviour and suited to the particular child.
- ❑ Caregivers, professionals and volunteers ensure that if the child has victimised another child or an adult, the victim should also be encouraged to explain his or her feelings and the disciplinary measure may involve making amends directly to the victims.
- ❑ Caregivers, professionals and volunteers ensure the disciplinary action is always proportionate, not only to the behaviour but also to the child and the circumstances.
- ❑ Caregivers, professionals and volunteers ensure that children are not labelled as naughty or unmanageable or with any other derogatory labels.
- ❑ Caregivers, professionals and volunteers ensure that all discipline is respectful of age, capacity, and cultural, religious and linguistic heritage of the child.
- ❑ Caregivers, professionals and volunteers document any discipline measures taken with a child.

## MANAGEMENT

- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given policy and procedures on all practices
- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given appropriate and thorough training on respectful, positive discipline; and on procedures.



- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given support and appropriate resources to enable them to provide respectful discipline.

## **Standard 7: Therapeutic and Developmental Interventions**

On the basis of an appropriate assessment, each child is unconditionally provided with appropriate developmental opportunity and effective programmes which enable them to meet their universal needs, developmental goals. Additional therapeutic support and/or special programmes are unconditionally provided to any child who requires this support.

*Such programmes should on the basis of an individual plan for the child, include among others; facilitating education, supporting children with homework, counselling, effective behaviour intervention in response to pain-based behaviour, play/recreation activities, crafts, stimulation activities to promote development, early childhood development programmes, psychotherapy, and learning such responsibilities that will keep them connected to the community to which they are likely to return, such as looking after cows, helping with gardens etc.*

### **CHILD**

- ❑ Children are unconditionally provided with a variety of appropriate developmental opportunities and/or programmes, and unconditionally receiving therapeutic support and/or special services to meet their universal needs and developmental goals.
- ❑ Children feel emotionally, socially and physically safe in all programmes.
- ❑ Children can confirm that they are given information about opportunities and programmes and how these would be helpful to them as young people.
- ❑ Children experience the opportunity and encouragement to make appropriate decisions and choices with regard to involvement in developmental opportunities and programmes.
- ❑ Children confirm that they are not coerced into any developmental programme.
- ❑ Children confirm that all developmental programmes help them to identify and use their strengths, and while they are assisted to deal with trauma, personal problems, and/or inappropriate behaviour, they do not feel labelled or unacceptable as young people.
- ❑ Children feel emotionally and physically safe in all therapeutic situations and that information which they share is kept confidential.
- ❑ Children are not forced into any therapeutic intervention and that they can disengage from the intervention if they so choose.

- ❑ Children do not experience any developmental programme or therapeutic intervention as a behaviour management strategy.

## PRACTICE

*All programmes in residential care should foster positive relationships between children and between staff and children so that attachment/belonging needs are met. In addition, programmes should wherever possible include and foster relationships with family members. Staff should not merely be watching or supervising children, but should be actively participating in programmes with children. The principle is that staff work with children, they don't do or offer something to children.*

- ❑ Caregivers, professionals and volunteers ensure that young people are unconditionally receiving access to a variety of appropriate opportunities and programmes to meet their universal needs and developmental goals, and that they are given encouragement and support to make the best use of these resources.
- ❑ Caregivers, professionals and volunteers confirm measures taken to ensure that young people feel emotionally, socially and physically safe in all developmental and therapeutic programmes.
- ❑ Caregivers, professionals and volunteers ensure young people are given information about opportunities on programmes which would be helpful to their development.
- ❑ Caregivers, professionals and volunteers ensure children are given the opportunity to make appropriate decisions and choices with regard to involvement in programmes.
- ❑ Caregivers, professionals and volunteers ensure that young people are not coerced into any developmental or therapeutic interventions.
- ❑ Caregivers, professionals and volunteers ensure that developmental and therapeutic programmes help young people to identify and use their strengths, and while they are assisted to deal with trauma, personal problems, and/or inappropriate behaviour, young people do not feel labelled or unacceptable as young people.
- ❑ Caregivers, professionals and volunteers provide a reunification programme which aims to place each child back into a community and family context as soon as possible, taking into consideration the specific needs of the child and their need for life-long relationships.
- ❑ Caregivers, professionals and volunteers ensure that every effort is made to trace and facilitate a placement opportunity with family (kinship care) and within the community and culture from which the child comes.
- ❑ Caregivers, professionals and volunteers ensure that every effort is made to avoid long-term residential care for any child.

- ❑ Caregivers, professionals and volunteers ensure that each child is assessed just before or immediately after placement and that this assessment is.
- ❑ Caregivers, professionals and volunteers ensure that no assessment is done by an individual who (a) does not have the required training (as stipulated by the Department of Social Welfare), and/or (b) is not a professional.
- ❑ Caregivers and professionals ensure that, depending on age and capacity, each child is given every opportunity to participate fully in the assessment and assist in any decisions which affect him or her.
- ❑ Caregivers and professionals ensure that family and/or community members or Chiefs directly involved with the individual child are invited to participate in the assessment at the relevant time in the process.
- ❑ Caregivers, professionals and volunteers ensure that assessments result in an individual plan and programme for the child which can be monitored and reviewed on a regular basis.
- ❑ Caregivers, professionals and volunteers confirm that young people are unconditionally receiving therapeutic support and/or special services where these have been identified in their assessment.

## MANAGEMENT

*Precautions should be taken against having residential care facilities functions as an adoption agency for orphaned and abandoned children i.e. seeking adoption placements as a priority, before attempting reunification.*

- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given policy and procedures on developmental opportunities and programmes for young people.
- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given training and support to effectively implement policy and practice on development and therapeutic opportunities and programmes for young people.

## Standard 8: Education

Each child is unconditionally provided with appropriate and relevant education suitable to their capacity, circumstances, and developmental need and is given assistance to make effective use of the education provided.

### CHILD

- ❑ Children confirm they have access to an education programme which is suitable to their capacity, circumstances and developmental needs, and that

they are given support and assistance to use this education programme effectively.

- ❑ Children are helped to identify and use their strengths within the education programme, and while they are assisted and supported to deal with inappropriate behaviours and/or learning challenges, they do not feel labelled or unacceptable as young people.
- ❑ Children are provided with adequate resources, space and support to undertake their educational work.

### **PRACTICE**

- ❑ Caregivers, professionals and volunteers ensure that children are able to access an education programme which is suitable to their capacity, circumstances and developmental needs, and that they are given support and assistance to use this education programme effectively.
- ❑ Caregivers, professionals and volunteers help children to identify and use their strengths within the education programme, and ensure that while young people are assisted and supported to deal with inappropriate behaviours and/or learning challenges, they do not feel labelled or unacceptable as young people.
- ❑ Caregivers, professionals and volunteers ensure that within the school programme children are not discriminated against on the basis of behaviour, gender, sexual orientation, disability, orphan hood, religion, race, culture or language, and that every effort is made to prevent discrimination and/or bullying by peers.
- ❑ Caregivers, professionals and volunteers ensure that children are provided with adequate resources, support and space to undertake their educational work/studies.

### **MANAGEMENT**

- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given policy and procedures on educational programmes for young people.
- ❑ The manager and Board/Committee ensure that caregivers, professionals and volunteers are given training and support to effectively implement policy and practice on education for young people.

## CHAPTER 8: SECURE CARE

- ❑ Secure Care in any form should be subject to the same guidelines, standards and quality assurance as those for residential care as outlined above and in the quality assurance procedures.
- ❑ As is reflected in the Bill, the continuum of care should apply as much to children in trouble with the law as to any other vulnerable children. It is important to recognise that the 'difference' we assume between children whom we usually see as vulnerable, and those in trouble with the law, is a false one. In a country where poverty, loss and illness are widespread, this divide is even more likely to be artificial. For example, an abused child, if not identified and provided with appropriate support may very well commit a crime. An abandoned child on the streets, surviving by his wits, may resort to theft. Such children are in need of care and protection as much as any other vulnerable child.
- ❑ The most effective and child-friendly form of secure care is to secure the perimeter of the building or section of the building rather than locking children into cells or rooms.
- ❑ The only children who should be in secure care are those who have been assessed to be a danger to themselves and/or others. Secure care is thus a last resort and should be kept to a minimum in any country.
- ❑ Because of the level of troubled behaviour and thus the inner pain of the child in secure care, this type of residential care should have a higher staff to child ratio and better qualified staff than any other form of residential care, so that therapeutic intervention is provided together with effective positive discipline, leading to successful re-integration back into the community, or less secure facility as soon as possible.
- ❑ Children in secure care should always be under the supervision and care of staff members who has specific training in working with troubled children and youth.
- ❑ A secure care centre should be physically designed and maintained in such a way as to maximise the safety of children.

## CHAPTER 9: AFTER-SCHOOL CARE, ALTERNATIVE EDUCATION, AND DAY CARE STANDARDS

At some stage in the future specific standards will be developed by the Department of Social Welfare for after-school care and day care. In the meant time any facility running these services is required to (a) register with the Department of Welfare, and (b) abide by the guidelines and standards for residential care.

### After school or alternative education:

For the purposes of these guidelines this will be defined as any programmes provided to children between the ages of 5 and 18 in the afternoons once children have completed the formal school day, or any informal education or special education programme provided at care facilities (whether residential or not).

### Day Care

For the purpose of these guidelines day care is defined as any non-residential care and/or intervention programmes which are provided to children of any age.

## CHAPTER 10: GUIDELINES FOR TRAINING

All staff, including managers, who work with vulnerable children and youth should have (a) basic training which is appropriate to their professions and related to the needs of the children with whom they work, (b) specialized training where this is necessary, and (c) continuous in-service training which supports ongoing well-being and increased skill development.

Volunteers, Boards, and Chiefs should receive any training which would assist them to be effective in their specific roles in the lives in vulnerable children and youth.

Lesotho would need to establish an overall strategic programme of training which supports implementation of guidelines and training over 3-4 years which can be phased in from 2006. Eventually it would be preferable for professional staff working with vulnerable children and youth i.e. social workers, probation officers, child and

youth care workers, and youth workers to have received formal tertiary formal education before working with vulnerable children and youth in residential care.

**Core Basic Training suggested for staff and volunteers working in residential care, after-school care and day care:**

- Understanding Standards
- Vulnerability, loss and grief
- Developmental needs and strengths of children – including psycho social and universal needs.
- Orientation to Child Rights
- Positive discipline
- Physical, emotional and social care
- Activity programmes which support needs and build strengths
- Communicating and building healthy relationships with vulnerable children and youth
- An orientation to assessment (prior to placement and after placement)

[This training can be accessed through South Africa either by way of specially developed short courses tailored for Lesotho, or existing courses. The training could be done in two to three 4-5 day workshops or extended over a period of time (such as one year) using 1-2 days each month.

The suggested approach is that an initial cadre of 30-40 people, including social workers from the department of welfare, is trained and then a selected group from this cadre be trained as trainers.]

**Specialised training for social workers, probation officers, youth workers, and child and youth care workers:-**

In addition to the above, professionals working in the relevant departments and/or residential care should be trained in the following:

- Strengths-based, ecological models for working with vulnerable children
- Lesotho Legislation for children and families
- Life-space counseling of adolescents who demonstrate difficult, self-defeating behaviours e.g. the Response-Ability Pathways (RAP)course
- Counselling vulnerable children of all ages
- Developmental assessment (risk assessment, and assessment of children in care)
- Quality Assurance of residential care
- Family preservation and reunification work
- Developmental and therapeutic programmes for vulnerable children
- Diversion programmes for children in trouble with the law
- Probation services
- Community-based child/youth development work

Most of these curriculum components would usually be taught individually as a 3-5 day workshop, although training organizations may be willing to combine 2-3

components into one workshop. Not all of the professionals named above would necessarily have to do all specialized components.  
The model of training a cadre and then trainers should be applied for specialize training as well.

The following are resources for advising on, or offering training which can be accessed through South Africa. The information marked in red are the areas in which organizations having experience and/or training courses :-

- Cecil Wood, Child & Youth Care Agency for Development (CYCAD)  
[cecilwood@isat.co.za](mailto:cecilwood@isat.co.za). (basic and specialized training reVulnerable children and youth in Residential Care, including assessment and RAP)
- Advocate Ann Skelton, Centre for Child Law, University of Pretoria  
[ann.skelton@up.ac.za](mailto:ann.skelton@up.ac.za) (Children in Trouble with the Law, restorative justice, Child Rights, Child related Legislation)
- Nico Els, Child & Youth Care Agency for Development (CYCAD),  
[nico@cycad.org.za](mailto:nico@cycad.org.za) or 012 3486625 (Community-based youth development)
- Jacqui Michael, Child and Family Counselling Centre at  
[jaxnads@netactive.co.za](mailto:jaxnads@netactive.co.za), (Counselling children and youth)
- National Association of Child Care Workers (NACCW) – (Family preservation)
- Community Law Centre, University of the Western Cape  
[jgallinetti@uwc.ac.za](mailto:jgallinetti@uwc.ac.za) (Child Justice and Child legislation)
- Lukas Muntingh, CSPRI [muntingh@worldonline.co.za](mailto:muntingh@worldonline.co.za) (Diversion, restorative justice, children in prison)
- Cheryl Frank (consultant) [cdfrank@worldonline.co.za](mailto:cdfrank@worldonline.co.za) (social work services, child justice, restorative justice)