

**Lesotho – Khotso, Pula, Nala**

**INITIAL REPORT OF LESOTHO  
ON THE IMPLEMENTATION OF THE  
AFRICAN UNION CHARTER ON THE RIGHTS  
& WELFARE OF THE CHILD  
1999-2013**

## ABBREVIATIONS & ACRONYMS

AHC	Adolescent Health Corner
AIDS	Acquired immuno-deficiency syndrome
ART	Anti-retroviral treatment
BOS	Bureau of Statistics
CGPU	Child and Gender Protection Unit
CPW Act	Children's Protection and Welfare Act
CRC	Convention on the Rights of the Child
DCPT	District Child Protection Team
DHS	Demographic and Health Survey
EU	European Union
FIDA	Federation of Independent Women Lawyers in Lesotho
FPE	Free Primary Education
GOL	Government of Lesotho
HIV	Human immuno-deficiency virus
HPSU	Health Planning and Statistics Unit
ICHR	Inter-sectoral Committee on Human Rights
IECCD	Integrated early childhood care and development
ILO	International Labour Organization
IMCI	Integrated Management of Childhood Illnesses
IMAAI	Integrated Management of Adult and Adolescent Illnesses
IMAM	Integrated Management of Acute Malnutrition
JTC	Juvenile Training Centre
LCCU	Lesotho Child Counseling Unit
LCGP	Lesotho Child Grants Programme
LCN	Lesotho Council of NGOs
LCS	Lesotho Correctional Service
LDTC	Lesotho Distance Teaching Centre
LGGA	Lesotho Girl Guides Association
LMPS	Lesotho Mounted Police Services
MCC	Millennium Challenge Account
MDG	Millennium Development Goal
MOET	Ministry of Education and Training.
MOFDP	Ministry of Finance and Development Planning

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MOGYSR	Ministry of Gender, Youth, Sports and Recreation.
MOHA	Ministry of Home Affairs
MoSD	Ministry of Social Development
MOJHRCS	Ministry of Justice, Human Rights and Correctional Service
MOLE	Ministry of Labour and Employment
MOLGC	Ministry of Local Government and Chieftainship
MOTEC	Ministry of Tourism, Environment and Culture
NGO	Non-Governmental Organization
NGOC	Non-Governmental Organizations on the Rights of a Child
NOCC	National OVC Co-ordinating Committee
OVC	Orphans and vulnerable children
PEPFAR	President's Emergency Fund for AIDS Relief
PMTCT	Prevention of mother-to-child transmission of HIV
RSA	Republic of South Africa
SADC	Southern African Development Community
TB	Tuberculosis
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
VC	Vulnerable Children
WFP	World Food Programme
WHO	World Health Organization

## 1.0 INTRODUCTION

The Government of Lesotho (GoL) hereby presents its combined initial, second, third and fourth report on the African Charter on the Rights and Welfare of the Child to the African Committee of Experts on the Rights and Welfare of the Child. The Charter was ratified on 27 September 1999.

The report outlines the measures taken by Lesotho, since it ratified the Charter in 1999, to fully comply with its obligations to children under the Charter. The report highlights the strong legislative and policy framework for the protection of Basotho children, coupled with the practical inability to execute many of the measures outlined in the framework.

The articles of the Charter and the Guidelines for Initial Reports of State Parties guide the content and structure here. Primary developments in more recent years are the focus of the report, given the extensive period under review.

Lesotho is a country with a population of almost 2 million. Given that more than 50% of citizens live below the international poverty line of \$2 per day, poverty is a major inhibitor of child rights. Children account for 49% of the population, largely owing to a high rate of HIV and AIDS. At 23% incident rate, Lesotho has the 3<sup>rd</sup> highest in the world.

## 2.0 GENERAL ENABLING MEASURES

### 2.1 *Legislative measures adopted to give effect to the provisions of the Charter*

Lesotho is a constitutional monarchy. *The Constitution of Lesotho (1993)* (the Constitution) was in force at the time of ratification of the African Union on the Charter of the Rights and Welfare of the Child and specifically provides in Article 32 for the protection of children and young persons. It mandates that parliament formulate laws and regulations to ensure all children are afforded protection and assistance, without discrimination. It also stipulates protection from exploitation and abuse. Labour exploitation is explicitly prohibited and the Constitution requires minimum ages for work.

In efforts to satisfy this obligation the Government of Lesotho (GoL) has passed new legislation to bring domestic laws into harmonisation with the African Union Charter on the Rights and Welfare of the Child.

The *Children's Protection and Welfare Act (CPW Act)* was enacted in 2011. This repealed the *Children's Protection Act (1980)*, *Adoption Proclamation (1952)*, *Succession and Administration of Estates Proclamation (1935)* and *Women and Girls Proclamation (1949)*. The objects of the new Act are to extend, promote and protect the rights of children as defined in the UN Convention on the Rights of the Child and the

African Charter on the Rights and Welfare of the Child. It was drafted on the pillars of best interests of the child, non-discrimination, right to life survival and development and child participation. This is a comprehensive legal instrument on children's issues in Lesotho for the enhancement of safety and well-being of children.

The CPW ACT covers: the care and protection of children in need; alternative forms of care such as residential care facilities, fostering and adoption; the administration of children's inherited property; trafficking and abduction of children; children in contact and conflict with the law and restorative justice measures; legal representation and sentencing; trafficking of children; establishment of children's courts; police powers and duties in relation to children; parentage, custody & maintenance; and the employment of children. The content and effect of the CPW ACT Act are discussed at length in this report.

The *Education Act (1995)* was repealed by the *Education Act (2010)* & its Amendment Act of the same year. This made primary education free and compulsory for children ages 6 -13 years.

The *Sexual Offences Act (2003)* articulates the offence of sexual abuse of children and imposes severe penalties for perpetrators. The *Legal Capacity of Married Persons Act 2006* prevents forced marriage of minors and states the age at which a child has the capacity to consent to marriage. The *Drugs of Abuse Act (2008)* criminalises the growth, production and sale of drugs for adults and children.

## **2.2 Measures taken to integrate the rights and welfare of the child into the legislation or other conventions**

The following international instruments were ratified:

<b>INSTRUMENT</b>	<b>RATIFIED</b>
The Hague Convention on Inter-country Adoptions 1993	2012
Convention on the Rights of Persons with Disabilities 2006	2008
Optional Protocol on Involvement of Children in Armed Conflict	2003
Optional Protocol on Sale, Trafficking and Child Pornography	2003
Protocol to African Charter on Human & People's Rights on the Rights of Women in Africa 2003	2004
Committee Against Torture (CAT)	2001
ILO Convention 138 on Minimum Age of Employment, 1973	2001
ILO Convention 182 on Worst forms of Child Labour 1999	2001
UN Declaration on Social and Legal Principles Relating to the Protection of Children	1986
Subscriber to Millennium Development Goals	

In Lesotho, international treaties and conventions are not self-executing, and must be domesticated through legislation and policy in order to be enforced.

Institutional changes:

The department of social welfare within the Ministry of Health (MOH) was abolished in 2011 and the Ministry of Social Development (MoSD) was subsequently established as a separate government line Ministry. Within MoSD there are three distinct departments - the department of children's services, department of disabilities and the department for the elderly. The Director of children's services is tasked with the care, protection and development of children.

With the introduction of the CPW Act in 2011, a separate Children's Courts was established in the capital city Maseru, to deal with children's matters covered in the Act. Applications for fostering and adoption remain the jurisdiction of the High Court of Lesotho. Although specific children's courts have so far been piloted in Maseru District, the CPW Act does envisage that subordinate courts in all Districts practice in the same physical premises with the same staff, but with the child-friendly procedures outlined in the Act. Significantly more training of the prosecution and judiciary is required before this can be an actuality.

The Government of Lesotho has established the Child and Gender Protection Unit (CGPU) within the Lesotho Mounted Police (LSMP) in each of the ten Districts for the enforcement of the aforementioned pieces of legislation. Child Helpline is a new reporting mechanism for members of the community to lodge complaints related to children's matters in an anonymous manner. The telephone number is advertised on billboards in some Districts.

The enactment of the CPW Act catalyzed a review of all related legislation, regulations and policy to ensure alignment with the Charter. Committed donors such as UNICEF, MSH and Global Fund have provided technical and financial support for such reviews and operationalising the Act in the communities. Not all relevant documents have been reviewed to date but the Ministry of Justice (MOJ) in cooperation with the MoSD intend to complete this task in due course.

Policies established:

<b>POLICY NAME</b>	<b>YEAR</b>
CPW Act Regulations & Court Rules – presented to Cabinet in 2013	Not final
National Foster Care & Adoption Guidelines	2013
Guidelines on Care and Standards for Residential Care Institutions	2013
Integrated Education Childhood Care and Development Policy (IECCD)	2013
Social Welfare Service Provision Guidelines	2013
National Social Welfare Strategic Development Plan	2012
National Strategic Plan on OVC	2006-2011
National Strategic Plan on VC	2012-2017
National Action Plan for Women, Girls and HIV and AIDS	2011-2016
National Disability & Rehabilitation Policy	2011
Situational Analysis of Orphaned and Vulnerable Children	2011
Operations Manual on Bursaries	2011
Operations Manual on Cash Grants	2008
National HIV and AIDS Policy	2006
Guardian Fund Regulation	2006
Orphan and Vulnerable Children Policy	2006
Foster Care & Adoption Policy	2006
Social Welfare Service Provision Guidelines	2005
Guidelines for Management of Sexual Abuse	2005
Standardized Format for OVC Registration	2005
Education Sector Strategic Plan	2005-2015
Poverty Reduction Strategy	2004-2008
National Health and Social Welfare Strategic Plan	2004
National Action Plan for OVC	2004
Development of Directory of Services (for social welfare)	2004
Rapid Assessment and Analysis Action Planning	2004
Situational Analysis of Orphaned and Vulnerable Children	2003
National Social Welfare Policy	2003
Vision 20/20	2003

The Lesotho National Strategic Plan on Vulnerable Children (NSPVC) 2012–17 replaces the outgoing National OVC Strategic Plan (2006-10). It notes the MoSD as the body responsible for providing leadership in the national response to vulnerable children, providing policy guidelines and developing plans for Lesotho's response to vulnerable children. The plan also articulates a paradigm shift to more human rights and results-based approaches, moving Lesotho from a social welfare to a social development approach. It focuses more on child vulnerability rather than a child's orphan-hood status.

Further, the plan explicitly adopts a broader definition of vulnerability than the CPW Act which defines a vulnerable child as "a person who is below the age of 18, who has one or both parents who have deserted or neglected him, to the extent that he has no means of survival and as such is exposed to dangers of abuse, exploitation or criminality and is therefore in need of care and protection." Instead it defines vulnerable children as those whose rights to survival, development, protection and participation are not met because of certain conditions or circumstances beyond their individual control.

The NSPVC offers five priorities: raising awareness and commitment to vulnerable children's rights and needs through advocacy and social mobilization; strengthening the capacity of families and communities to protect, care for, and support vulnerable children; strengthening social, legal, and judicial protection of vulnerable children and their families; scaling up availability and access to services by vulnerable children and their families; and strengthened systems. The plan highlights the importance of strengthening families and communities in which children live rather than focusing on the individual child.

The Situational Analysis on Vulnerable Children and Women in the Kingdom of Lesotho (Sitan) was conducted in 2011. It primarily utilized a desk review methodology for data collection coupled with a causality analysis of client's verbal responses to survey questions. The Sitan examined the problems affecting women and children and their causes and linkages.

Created in 2006, the National HIV and AIDS Policy had specific objectives to reduce the vulnerability of women, orphans, and under-privileged children to HIV and AIDS, and to increase access to information and services to all young people. The policy outlines commitments by the government to address violence against women and children, including: protection of women and girls against gender based violence; protection of women's rights to have control over their own bodies, and to make decisions free from discrimination or coercive violence on matters related to their sexual and reproductive health; development of mechanisms for protecting women who suffer abuse and domestic violence, to assert their rights to safer marital sex and other rights; ensuring that vulnerable populations have unimpeded access to affordable legal support services to enforce their rights; development of guidelines and minimum standards of care that would ensure that orphaned and vulnerable children (OVC) are not exploited or abused; strengthening and enforcing legislation to protect children and young people against any type of abuse or exploitation; establishment of guidelines for the management of sexual abuse at health care delivery and law enforcement offices; development of guidelines

for the prevention of sexual abuse, harassment, or exploitation of students by peers or education sector employees; enactment of legislation that shall prohibit education sector employees from engaging in sexual activities with students.

Amendments to existing laws:

*Education Act Amendment (2010)* made schooling free of charge and compulsory for children between the ages of 6 – 13 years. The *Penal Code* was also updated in 2010 to move away from a common law based system to restate many well-established common law principles in statutory form. The amendments to the criminal law were at that time conscious of Lesotho's ratification of both the UN Convention on the Rights of the Child and the African Unions Charter on the Rights and Welfare of the Child.

### Difficulties

Although the proportion of the GoL's annual budget allocated to children's matters is significantly higher than previous years, much of the funding for programs is provided by international development aid donors such as UNICEF, Global Fund, EU, Irish Aid and USAID. The GoL is aware that the budget in 2014 is insufficient to fully implement, for instance, the CPW Act in all of its forms. The CPW Act is currently undergoing a full costing exercise, being undertaken by a consultancy firm of economists. It is hoped that when items yet to be implemented have an attached price, levying the Ministry of Finance for further funding will render more success.

Perhaps the greatest obstacle to children's rights and welfare in Lesotho is socio-cultural – that is, a lack of understanding and acceptance of new laws when they are in contradiction to social norms and cultural practices. For instance the practice of sending young boys to tend livestock for long periods of time, known as herding, without proper shelter, food and no education is in direct contravention of many provisions of the CPW Act. It has however been practiced by many generations of Basotho and is an economic necessity in many poverty stricken families, so it is culturally acceptable to infringe this law. Significantly more awareness raising within remote communities is needed before these issues can begin to be addressed.

Lesotho now has a heavy base of legislative instruments, many of which are not employed to their fullest potential. A severe lack of relevant structures & institutions for the proper execution of provisions under the Act is a major hurdle. There is also a shortage of guiding regulatory documents for the implementation of the new Act. Both of these issues lead in turn to ineffective and often significantly delayed enforcement of provisions. The shortages mentioned are due to a combination of financial constraints, lack of human capacity and willingness, as well as a much-needed training on legislation and policies not being available.

### **2.3 *The initiatives undertaken to promote the positive cultural values, tradition and practices, and discourage those incompatible with the rights, duties and obligations set forth in the Charter***

Encouragement of positive practices:

- There are several cultural values, traditions and practices specific to Basotho which are positive to the growth and development of a child. A Masotho woman traditionally breastfeeds her child for as long as possible, usually until the next child is born. The colostrums in the mother's milk provides much-needed nutrients for a growing baby as well as immune protection from illnesses. Prolonged breastfeeding is a custom which broadly continues, despite there being some confusion over the effects of breastfeeding when HIV positive.
- Women carry their children on their backs until the child is age two or three. This promotes strong mother-baby bonds which also has positive effects on a child's immune. Circumcision is a common practice for male children in Lesotho. This can reduce the risk of contraction of HIV when completed by medical staff. Circumcisions in Lesotho however are more often than not, completed as part of ritualistic initiation ceremonies which are a rite of passage for young men. These ceremonies are not publically discussed and therefore relatively little is known about them. Medical circumcision has potentially positive effects on the male child, however the ritualistic cutting of a boys foreskin serves no beneficial purpose in relation to HIV.
- Birth registration and naming of children has had enormous support in recent years. Traditionally the father's family names a child within a few days of its birth. This is further encouraged with sections 8 & 9 of the CPW Act which requires parents to register the birth of their child within three months, whether still born or alive, and affords the same rights to orphaned and vulnerable children. Section 10 goes on to articulate that children should grow up in a caring environment with their parents.
- World Vision Lesotho encourages mothers to breastfeed through education on its link to reduced infant mortality, in their Child Health Programs at community level. The benefits of positive cultural practices are further taught to communities through the celebration of commemorative days such as Disability Day and the Day of the African Child, which in 2013 had a theme of eliminating harmful cultural practices.
- The Initiation Schools Council of Lesotho now require boys to provide their age document called a Bukana (health visit booklet) to prove that they are 16 years of age or older, in order to be admitted to the initiation school.

- The establishment of the Child Grants Program in 2008 aimed at enabling children to remain residing with their families where parents or guardians could not afford to continue caring for them. Conditional Cash Grants require parents to routinely immunise their babies in order to receive the payment, again reducing infanticide. Another of the conditions for payment is that the children in the household must have good school attendance records.
- Shortly after the enactment of the CPW Act the MoSD was formed as a separate line Ministry which is mandated with the protection of children as well as adults and children with disabilities. This allowed the GoL to further encourage the positive cultural practices and regulate the negative ones.

#### Discouragement of negative practices:

- There are some traditional customs practiced by Basotho which are detrimental to the well-being of children. As already mentioned, the circumcision of boys in ritualistic ceremonies can cause severe disfigurement and even death where the boy bleeds out. There are some community concerns regarding the attitudes of boys towards women, following the boy's involvement in the initiation ceremony.
- Boys are also frequently deprived of their education when they are forced to herd livestock. This requires the child to stay in quite remote areas, with only his animals and little food or proper shelter. Lesotho's heavy snowfall in mountain areas during winter months means boys herding have been known to die from hypothermia. Their lack of nutrient rich food also leads to stunting of their bodies and impedes their brain development.
- Birthing in the home is still widely practiced in the rural areas in Lesotho, despite provision of alternative mid-wifery in most rural clinics. The causes of this are a combination of women being skeptical of the cost of using a hospital or clinic, as well as an inability to travel the long distances from their home to a clinic once in labour. Traditional women still return to their home District to birth their child – particularly their first born.
- When a girl child is raped she is often forced by her family and community members to marry her rapist. This is to lessen the stigma attached to the rape victim and her family following the rape. By the girl marrying her perpetrator, some face is saved.
- Young girls are also abducted and forced to marry their abductors. These are practices which are still culturally acceptable, primarily in rural areas. Girls can also be withdrawn from school in order to provide domestic help in the family home, depriving them of the ability to gain an education and potentially break the cycle of poverty.

- Children with physical disabilities and mental illness are shunned and culturally marginalised. Children born out of wedlock suffer the same treatment. This is related to strong superstitious beliefs in Lesotho. For example, it is often said by Basotho that a child with a disability has been cursed by ancestors or “muti” has been used on the child or family, such to create their condition. The child is therefore bad luck for the family and must be outcast. Basotho also still utilise traditional medicines which can be particularly problematic in child birth and post-natal care. This is especially so when Western medicine is shunned entirely in favour of more traditional options.
- Care of children with no parent or guardian is often shared amongst extended family members. When one family is no longer able to care for the child, they will move the child to another family member's home. While this informal kinship care has its merits, it creates an unstable environment for a child.
- Extended family is often involved in the practice of property grabbing. That is, where a child's parents are both deceased, the extended family take what should be the child's inherited property for themselves. This is however legislated against in the CPW Act along with several other harmful cultural practices.
- Section 17 of the CPW Act expressly prohibits cultural practices which are harmful to children. This includes involvement of a child in any practice or ritual which causes or is likely to cause damage to a child's physical, emotional or psychological health or well-being. In Lesotho this would include such things as early and forced marriage, child labour including herding and domestic work for girls, initiation of boys and exorcism.
- The establishment of Child Helpline, funded by Global Fund, has provided a mechanism for complaints and referrals. Establishment of the Child and Gender Protection Unit (CGPU) in 2005, the Probation Unit and more recent establishment of the Children's Court in Maseru in 2011 were to assist in enforcement of the provisions against harmful cultural practices.
- At community level GoL and non-government organisations sensitize and create awareness on issues pertaining to the protection of children such as: World AIDS Day commemoration; International Disability Day commemoration; 16 Days of Activism on Violence Against Women and Children; Day of the African Child commemoration; Undertaking public gatherings known as Pitsos, segments on television shows and radio programs.

#### ***2.4 Existing or planned mechanism to coordinate policies and monitor implementation of the Charter***

The MOH in 2008 established a Monitoring and Evaluation (M&E) unit with the financial assistance of Global Fund. This unit continued operation under the newly established MoSD in 2011. A coordination unit was established with two positions created, within the

MoSD with UNICEF's technical support and funding in 2011. At the local level MoSD is represented in each District to coordinate policy and legislation and service delivery.

At the national level Lesotho established the National OVC Coordinating Committee (NOCC) and the National Secretariat on Coordination of OVC, both in 2007. These coordination bodies are made up of stakeholders from different government Ministries as well as NGO's and CSO's involved in matters regarding children. They meet on a monthly basis.

At the District level members of District Child Protection Teams (DCPT's) meet monthly to discuss child protection coordination issues. DCPT's are in each District. Members include Social Workers in MoSD, staff of residential care facilities, juvenile detention centre staff, participants from other line Ministries, and CSO's and NGO's involved in child programming. Membership of the DCPT varies in each District but is consistently chaired by the District Council Secretary from the Ministry of Local Government, Chieftainship and Parliamentary Affairs.

Their terms of reference include: monitoring compliance with CPW Act and National Strategic Plan on VC; promote development of partnerships among stakeholders who are implementing children's activities; undertake trainings and research activities at District level; advocate for the protection of children's rights; advise and support government in the domestication and reporting on the implementation of relevant international legal instruments relating to care and welfare of children; liaise with the NOCC secretariat on a regular basis; and assist in the preparation of reports to Cabinet. Distribution of information to these groups could therefore be used as a key dissemination tool at grassroots level.

In much the same vein, the Lesotho Mounted Police Service (LMPS) has established a multi-sectoral team for anti-trafficking at the national level. This body meets monthly with the objective to coordinate and guide the referrals and programming to ensure that the best interests of the child under the Charter are best served at all times.

Village Child Justice Committees are a community level institution envisaged by the CPW Act to employ alternative dispute resolution measures in order to deal with children in conflict with the law. These bodies are only operational in two of the ten Districts and as yet no budget exists to roll out these bodies into all geographic areas.

## Difficulties

In practice most districts do not contain the necessary human resources within MoSD. Under the proposed structure, the District office of MOSD would be comprised of four sections: 1) District Clinical Social Welfare Services; 2) District Elderly Care Services; 3) District Child Welfare Services; and 4) District Social Rehabilitation Services. District Child Welfare Officers have been appointed to each District and are becoming gradually

more conversant with child development issues. The intent is that these officers serve as managers of the community council-based Auxiliary Social Welfare Officers. At a physical resource level the district offices lack sufficient transport. All four divisions share a single vehicle, which means in practice there is virtually no capacity to do outreach visits or case follow-ups.

Difficulties exist in the monitoring and evaluation of delivery of services across the board, including the MoSD. The lack of human resources at district level means that the time and, often, the skills to manage the M&E system are lacking, with consequent impacts on the timeliness, quality, and availability of information. Data clerks are in short supply at the district level, which means that the manual nature of data management at that level is not translated into the electronic data required at the national level.

The Situational Analysis of VC in 2011 correctly noted:

*MoSD lacks the influence and capacity to manage the broader data collection requirements associated with the OVC response. Vertical reporting structures in line ministries meant that data which was relevant for monitoring the OVC response was not provided to MoSD except on request. During the development of OVC M&E indicators, all line ministries were involved and indicated that data would be made available for these indicators. However, in practice this has not been the case. While advances had been made in terms of education data, for example, data were only collected on orphans, not other vulnerable children. For food security, there were no data that allowed the tracking of food security interventions for OVC caregiving households compared to other households....*

It goes on to note key challenges of the NOCC comprised of both structural matters and operational issues:

- *Lack of statutory authority of the NOCC to co-ordinate the multi-sectoral OVC response. The absence of a Cabinet instruction to enable NOCC with management and decision-making authority.*
- *Lack of political backing for the NOCC.*
- *Lack of Parliamentary oversight and lack of a Parliamentary Memo that would give the NOCC legal status to perform its functions.*
- *Lack of visible commitment of senior actors in the NOCC to the operations of the Committee.*
- *Loss of interest in the NOCC by a number of stakeholders, who view the Committee as not especially relevant to advancing the interests of OVC stakeholders.*

The district arms of the NOCC, the District Child Protection Teams (DCPT) are often most active when implementing programs, rather than in co-ordination of the OVC response.

## **2.5 Measures taken or planned to disseminate knowledge of the principles and provisions of the Charter to adults and children**

Given that the CPW Act is an embodiment of the provisions of the Charter, the primary push has been for its dissemination to the community and training for the role players. The GoL manages country-wide efforts to disseminate the provisions of the CPW Act and its underlying child focused messages to stakeholders, community leaders and village members. Printing of fifteen hundred copies of the Act was paid for by UNICEF in 2013 in order to provide copies to interested stakeholders and members of the judiciary who required the Act to properly implement it. The CPW Act has been simplified for community members into a succinct A5 document and translated into Sesotho by Management Sciences for Health (MSH) in partnership with MoSD. MSH is a not-for-profit corporation which aims to strengthen health systems. Their main aim is to strengthen the overall sustainability, quality and reach of care and support interventions for vulnerable children and their care-givers living with HIV and AIDs.

UNICEF also coordinated with MoSD to produce a simplified version of the CPW Act which is a call to action specifically for community leaders. The Act has also been posted on the internal government portal for further distribution and dissemination. There has been recent discussion to make the government portal available to the public.

The Ministry of Justice (MOJ) with the technical assistance of The University of Western Cape are currently conducting the second of three, week-long training sessions on the provisions of the Act for key role players. The first of the trainings was provided in December 2013 to Magistrates, prosecutors and members of the Office of the Master of the High Court. The second training will focus on social workers employed by MoSD, members of the CGPU, and the probations unit. The third training is scheduled for March 2014 and is aimed again at the judiciary to provide a follow up with more detail on sections pertinent to their day-to-day work. Emphasis has been to provide the trainings to recipients who have never before received CPW Act training. This has been a joint project lead by MOJ, funded by Global Fund with technical assistance provided by UNICEF.

Heads of department within the MoSD present regular radio segments on Lesotho National radio and television to discuss issues relating to children and specifically children with disabilities. They also facilitate annual celebrations of commemorative days, with the assistance of donor funding, such as the Day of the African Child and Disability Day.

The MoET in conjunction with Sentebale hold evening classes for herd boys. The children are taught basic level literacy, as well as life-skills such as prevention of HIV, what constitutes abuse and where to report it, and how to cook simple meals for themselves when herding away from home. MOET also have a special education unit to focus on the schooling needs of children with disabilities.

The Ministry of Youth, Gender, Sport and Recreation (MYGSR) too have a young ambassador program focused on primary and high school children. The ambassadors speak to child about issues such as positive living with HIV and domestic violence.

Lesotho Child Council Unit (LCCU) in partnership with World Vision Lesotho publish *Children's Voice* newsletter which is specific to children's issues and encourages child contribution of articles. World Vision Lesotho in conjunction with MoSD and MSH build local capacity by training support groups in some villages known as Community Care Coalitions. A children's parliament is also held annually by World Vision during which child participants (usually teenagers) hold mock debates on issues relevant to child rights. World Vision Lesotho also fund paralegal teams who visit remote villages and provide quasi legal information during public gatherings called "pitso's" in Sesotho. These are ad-hoc meetings called at whim by a chief to discuss all kinds of issues. Focus on these by government and non-government actors alike is crucial to the successful spreading of the principles of child rights.

The National Olympic Committee and the not-for-profit organisation Kick4Life provide education to youth on HIV through sport. They are a non-governmental organization that delivers a range of programmes focused on tackling HIV through sports-based health education, voluntary testing, life skills development and support in education and employment with a particular focus on orphans and vulnerable children. Kick4Life specifically uses soccer to attract the attention of children living on and of the street and offers classes and counseling on children's right issues.

The MoSD in conjunction with the Republic of South Africa's adoption agency, known as ABBA, trained approximately thirty (30) staff of residential care facilities on the Guidelines for Standards of Care for Residential Care Facilities and operating procedures in 2012.

## Difficulties

Although Lesotho is a relatively small country geographically, its topography means that getting from the capital city Maseru to some villages can take an entire day's travel in a car plus another day on horseback. Efforts to spread information are therefore time consuming and costly. This means that most of the efforts by government and large NGO's are concentrated on the urban centers of each District. It is left to smaller, less equipped grass-roots organisations to get the information wider-spread to more remote areas. Dissemination of information to these remote corners is difficult and people who reside there often live by different rules and cultural norms to those in urban areas.

Given the need to capacitate grass-roots organisations and community leaders in order to pass the information to a wider audience, there can be inaccuracy in the interpretation of legal instruments. This is not intentional, rather a consequence of information being passed through several hands. There is not just a shortage of financial resources to disseminate information, but also a lack of human resources in the form of sufficiently skilled trainers to educate people far and wide.

The CPW Act was a statutory instrument which was only printed in English for its first two years. English is only one of the two official languages of Lesotho and is the lesser spoken. Sesotho translations were printed in late 2013 but are not full texts of the Act. They are instead condensed versions which focus on the primary provisions only.

Even where community members are aware that an act constitutes an offence, they are often unaware of how or where to report it. Tied with this is the stigma associated with reporting a fellow member of a very close community, which often prevents people from lodging a complaint. Community members are also accustomed to reporting issues to their village Chief. This can be problematic where the Chief has a personal relationship with the accused – not unheard of in small communities – and the Chief chooses to deal with the issue himself rather than make the appropriate referrals.

Community attitudes towards children in Lesotho are such that they are to be seen and not heard. There is therefore resistance to the idea of children having rights and being able to make complaints. Even child witness testimony is not weighted the same as an adult, which is especially problematic in cases of child sexual assault and rape.

## ***2.6 Measures taken or envisaged to disseminate the report on implementation of the Charter***

The preparation process of the report has been participatory, with involvement of partners of GoL, stakeholders and Government Ministries, thus allowing ownership of the document. The submitted report will be presented to the Parliamentary Cabinet of Lesotho. It is envisaged that once the report has been submitted to the African Union, the document will be reproduced for wide dissemination to Government Ministries, coordinating structures such as NOCC and DCPT's, NGO's & CSO's, donors and technical partners engaged in child related activities. Lack of financial resources and prior allocated budget may hinder this process.

### 3.0 DEFINITION OF CHILD

#### 3.1 *Definition of Child in the country's laws and regulations*

The African Charter on the Rights and Welfare of the Child in article 2 defines a child as “any human being below the age of 18 years”. Lesotho too uses age as the benchmark. As previously mentioned, much of the legislation in Lesotho has been reviewed to ensure compliance with international treaties and conventions. There is also much still to be reviewed, primarily legislation whose content does not directly relate to children. This is polarised by the varying ages which define a child in the different sectors.

##### *Child Protection Definition*

The CPW Act fully adopts the charter definition when it enunciates that a child is any person under the age of eighteen (18). The Act when read together with the *Labour Code (1992)* requires that a child be of at least fifteen (15) years to be engaged in any formal employment under section 228(1). A child of at least thirteen (13) years may be employed in light work, defined as work that is not likely to harm a child's health and development and does not interfere with a child's schooling. Section 226 of the same Act prohibits the employment of any person under eighteen (18) years in any form if exploitative labour, which deprives the child of access to health, education or development. Section 227 says no person under eighteen (18) years shall be employed in night work or industrial work and section 230 prohibits children under eighteen (18) from employment in hazardous work. This can include mining, carrying heavy loads, manufacturing where chemicals are used and commercial sex work, per section 230(3).

##### *Marriage Definition*

The marriage age in Lesotho is age eighteen (18) years but culturally children marry much younger in rural areas, sometimes as young as commencement of puberty. *The Identity Cards Act (2011)* says a child will not be given a national identity card until age sixteen (16) years.

##### *Penal Definition*

The penal age of a child in Lesotho varies according to which Act they are being prosecuted under. The CPW Act in section 79(1) espouses that a child under age of ten (10) years cannot be prosecuted. It goes on to say in section 79(2) that a child between ten (10) and fourteen (14) years will be presumed to lack the capacity to know right from wrong and can therefore not be criminally prosecuted. It is for the prosecution to rebut this presumption. A child over the age of fourteen (14) years, the CPW Act deems can be prosecuted. Children under the age of fourteen (14) years cannot be detained in a detention centre according to section 156(1) of the CPW Act.

The *Penal Code (2010)* says that a child under seven (7) years is not criminally responsible and a child above seven (7) years and below fourteen (14) years is not

criminally responsible unless proven otherwise. The difficulty is that this is not in line with the African Charter and is yet the most utilised of the legislation amongst prosecutors. Some prosecutors in the more remote Districts have never seen a copy of the CPW Act, so still utilise the outdated provisions of the Penal Code.

The *Sexual Offences Act (2003)* has varying definitions of “child” depending on its Parts. For the purposes of Part III Offences Against Children (e.g. child molestation) a child is under sixteen (16) years and for purposes of Part IV (Commercial Sexual Exploitation of a Child) a child is under eighteen (18) years. *Sexual Offences Act* makes it an offence for a person to have sexual contact of any kind with a child below the age of twelve (12) years. At such an age a child is deemed to have no capacity to consent. A child over the age of twelve (12) years is able to consent to sexual activity provided the other person is also over the age of twelve (12) years. The exception to this is where there is an element of coercion or exploitation in which case consent will be no defense.

#### *Political Definition*

The political age of a person in Lesotho under the *General Election Act (2007)* is eighteen (18) years. That is, a child is anyone under that age and can therefore not vote. The *Education Act (2010)* makes schooling compulsory between six (6) and thirteen (13) years.

#### *Medical Definition*

Children twelve (12) years or older can consent to medical treatment provided they have the mental capacity to appreciate the benefits and risks of the proposed treatment. Practically the HIV Testing and Counseling Policy allows children of twelve (12) years and above to choose for themselves whether to be tested for HIV, without the need for parental consent.

#### Difficulties

Harmonisation is urgently needed between the legislation and policies in different sectors. This recommendation was made in the National Strategic Plan for VC 2012-2017. The pertinent Ministries must urgently advocate for relevant amendments. The subsequent consideration of the amendments by the Parliament also needs a high degree of expediency.

## 4.0 GENERAL PRINCIPLES

### 4.1 Measures taken to ensure non-discrimination (Articles 3 and 26)

#### Legislative

The Constitution enshrines the principle of non-discrimination in Articles 4(1)(n) and 18. It espouses freedom from discrimination in all laws and their effect and refers specifically to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and disabilities.

The CPW Act in section 6 prevents discrimination based specifically on race, religion, language, age, cultural activity, colour, or sexual orientation. A more broad reading of the Act also makes discrimination based on disability, child's name and being born out of wedlock (section 19) an offence. Section 11(4) of the CPW Act says a child cannot be denied education based on pregnancy, initiation or other cultural practices. Section 13 protects the rights of those children with disabilities and ensures they have equal access to special care, medical treatment, rehabilitation, education and training.

The *Legal Capacity of Married Persons Act (2006)* provides women with legislative rights to inheritance and equal powers as their husbands to contract, which previously did not exist. This includes where the wife is still a child. The *Education Act (1980)* provides for non-discrimination based on gender in all schools. The *Labour Code (1992)* prohibits discrimination at work.

#### Administrative

Lesotho ratified the Optional UN Protocol on Elimination of All Forms of Discrimination Against Women 2004 that same year. The MYGSR has been tasked specifically with the protection of women's rights. This of course includes the girl child. The Education Strategic Plan aims at gender equity in the education system, by way of equal enrollment numbers between boys and girls, by 2015. Another of the Plan's objectives is to have gender responsive curriculum and mainstream gender equity by forging partnerships with stakeholders to better monitor the interventions.

The MOH's National HIV/Aids Policy 2007 protects children living with HIV/ Aids from discrimination. There are a range of measures employed by clinics to protect the privacy of children receiving HIV treatment to ensure that they are not affected by societal stigma.

Local Government elections employ positive discrimination by providing a quota of at least 30% of seats reserved for women. The GoL promotes non-discrimination through awareness building activities such as celebrating Disability Day annually. In 2013 GoL also took part in a global event called Sixteen Days of Activism Against Abuse of

Women. Lesotho also has an active CSO called Master of Healing Foundation which works to advocate for the rights of gay and lesbians of all ages.

There are a number of financial assistance programs such as conditional cash grants and the bursaries scheme which provide material help to orphaned and vulnerable children in order to allow them equivalent access to school. Members of DCPT's actively seek to identify vulnerable children to ensure they have equal access to education, health and social services.

### Progress

Positive discrimination of women has benefited enrollment of girls in schools as well as employment of women, particularly in government. Land and property rights for women have also been improved.

### Difficulties

Although rights are protected at a legislative level, there is still significant discrimination which is not prosecuted in communities. This is partially because discrimination is not justiciable. That is, there is no offence created by the CPW Act for discrimination and therefore no related penalties exist.

Endemic social attitudes towards minorities such as people with physical and intellectual disabilities, sexual orientation, and HIV and Aids means discrimination continues. Without proper enforcement of the legislative provisions, societal views will remain unchanged. For instance, culturally a girl child does not inherit property, regardless of the *Legal Capacity of Married Persons Act (2006)*. People living in rural communities especially, dismiss the legislation as a tool to stamp out their culture.

Gender discrimination still exists in the *Chieftainship Act (1968)*. Women cannot legally take Chieftainship in their own right. Only if a woman's husband (who is Chief) dies, can a female become Chief. She must be over the age of 18 years. Notwithstanding the CPW Act girls who are pregnant are excluded from school enrollment in faith based schools and are not allowed back even when they have given birth to their baby. This stems from community attitudes relating to the low worth of young mothers.

## **4.2 Best Interests of the Child (Article 4)**

### Legislative

Through the Constitution of Lesotho's protection of children and young people in Article 32, best interests of the child are necessarily protected.

The drafting of the CPW Act is based on the best interest principle. Section 4 states that the best interest of the child shall be the primary consideration for all persons, courts, parents, institutions and other bodies in any matter concerning a child. This is intrinsically linked with Section 5 regarding a child's evolving capacity, whereby as a child ages they become more capable of making decisions for themselves. That is, the better capacitated a child is to consider a situation regarding their own well-being, the more weight should be given to that child's opinion. A child's view on their own adoption for instance must be sought where the child is over the age of ten (10) years and given the appropriate weight based on the child's capacity.

Decisions surrounding a child during a parental marriage break-up must be made based on the principle of the best interest of the child in accordance with the *Legal Capacity of Married Persons Act (2006)* and CPW Act. The Court of Appeals maintenance case of *Mapetla v Leboela [2012] LSCA 2* discussed the Court's duty to conduct investigation beyond evidence placed before it, if necessary, to ensure that the order serves best interests of the child.

A child's evidence should be given in camera under the *Sexual Offences Act (2003)* where it is deemed to be in that child's best interest.

#### Administration

The National Strategic Plan 2012-2017 on VC explicitly states the best interests of the child as a guiding principle. It suggests that empowerment of families and communities, child participation, political commitment and multi-sectoral and decentralised approaches are necessary for its fulfillment.

The Fostering and Adoption Policy of Lesotho follows this same guiding principle in its administration and monitoring of local and international adoptions.

A distinct Children's Courts has been established in the capital Maseru, which employs child-friendly court practices in a less formal environment, based on the best interests of the children before it.

#### Difficulties

Despite efforts, a continued lack of broad dissemination of policy and legislative texts leads to limited knowledge and understanding of these underlying principles. Cultural practices and social attitudes regarding a child's role in the community mean that the value of children is not given sufficient weight. The long-term damage done by harm inflicted to young children is misunderstood and underestimated.

### 4.3 *Right to life, survival and development (Article 5)*

#### Legislative

Article 5 of the Constitution of Lesotho protects a person's inherent right to life. The exception to this is provided in Article 5(2) for the execution of a sentence of death imposed as a penalty for a criminal offence. At Article 32 the Constitution protects against the employment of children in work which is likely to hamper their development.

Under section 161 of the CPW Act no child may be sentenced to death. That is, no person who is under the age of eighteen (18) years at the time of committing the offence may be given the death penalty upon conviction.

Section 10 of the CPW Act provides for a child's right to live with parents and to grow up in a caring and peaceful environment. The CPW Act further provides for a child's right to education and health at section 11. Section 20(2) of the Act obliges parents and guardians to provide children with good guidance, care, assistance and maintenance. Section 22 confers corresponding obligations on the GoL to form policies and programs that will ensure a child's survival and development.

The *Free Primary Education Act (2001)* and the *Education Act (2010)* also provides for a child's right to development.

#### Administration

Lesotho is a subscriber to the UNDP Millennium Development Goals (MDG's) which provide a good tool for assessment of child development. Achievement of these goals assists the development of policy which enhances child development.

The MOH has a number of policy documents which are aimed at child survival and development. The Road Map for the Reduction of Maternal and Child Mortality has renewed a commitment to lower very high rates of maternal, infant and child mortality. The Reproductive Health Policy 2011 prohibits termination of pregnancy except on medical grounds. A proposed amendment to the *Penal Code* to allow for termination of pregnancy on grounds of a suspected disabled fetus was voted down in 2012. The Expanded Program on Immunization ensures every child has doses of vaccines such as polio, Measles Mumps Rubella, BCG, and the Cervical Cancer vaccine – HPV at the appropriate times. The Prevention of Mother to Child (PMTCT) guidelines 2013 guides health practitioners in pre and post-natal care of mothers with HIV and AIDS. The HIV Policy 2013 and Policy for Adolescents Right of Access to Health Services are self explanatory, comprehensive documents on their named topics. Management of Survivors of Sexual Abuse Guidelines 2006 is a document which provides referral mechanisms for the treatment of patients mental and physical health following sexual abuse.

Integrated Early Childhood Care and Development Policy (IECCD) states concisely the principles on which a child's development is premised. The *Free Education Act (2010)* provides education to all children between the ages six (6) and thirteen (13) years free of charge. Life-skills programs are run in primary schools jointly between MOET and MOH. They mainstream sexual and reproductive education into classroom curriculum from class 3 onwards.

#### Difficulties

Lesotho struggles to provide for the survival and development of its children. It is plagued by very high rates of HIV and AIDS (23% incidence rate), orphans, malnutrition and infant death. Mothers continue to follow traditional cultural methods of healing rather than allopathic medicine, despite it becoming more widely available. Much of the population has poor access to basic services such as health and clean drinking water in some communities. The inadequacy of services offered is another inhibitor to child survival and development. These factors mean that Lesotho is lagging in the achievement of its MDG's.

### **4.4 Respect for the opinion of children (Article 7)**

#### Legislative

Article 14 of the Constitution of Lesotho provides for freedom of expression to all persons in Lesotho, which necessarily includes children.

The CPW Act in section 14 states that a child may express their opinion freely and that weight be given to the child's opinion in accordance with their age and maturity. Section 22 requires the GoL to develop policy which respects the freedom of thought, conscience and religion of children. The CPW Act also allows a child to be heard in decisions which affect their well-being, such as custody disputes, adoption applications and during restorative justice proceedings.

#### Administrative

Child participation is provided for with respect to their treatment for HIV and AIDS in the ART Guidelines where the child is above twelve (12) years of age.

In drafting the NSPVC 2012-2017 children's views were considered. World Vision Lesotho hosts a Children's Parliament annually to hear children's views on children's matters. They also fund Children's Committees in some communities which advocate for specific children, similar to case workers in social work. As previously noted they publish a Children's' Voice newsletter which is comprised of children's contributions. The

Global Fund Child Helpline gives a voice to children's complaints in a safe and private manner. Recent training of members of the judiciary drew special attention to the importance of children's views on matters that concern them.

There are a vast number of non-government actors who work in the not-for-profit sector who program to promote children's views: Kick4Life; National Youth Council; Lesotho Girl Guides Association and Adolescent Health Corners in community clinics.

### Difficulties

Social attitudes in Lesotho are such that children's opinions are rarely considered within the family unit, let alone in the broader community. Although the CPW Act requires a child's opinion be sought, practically children's court judges see children as inferior beings whose opinions matter not.

## **4.5 Enlightenment of children and promotion of their participation (Articles 4, 7 and 12)**

### Legislation

The CPW Act under section 5 encourages child participation based on a child's evolving capacity. Section 27 provides for a child's participation in their own medical treatment. The Children's Court allows children to give evidence in their own right and protects the privacy of a child who does so.

### Administrative

Dissemination of the CPW Act and its translated and simplified texts would better enlighten children as to their rights and encourage better participation.

HELP Lesotho, Sentebale and Baylor Clinics (in partnership with MOH and EGPAF) conduct youth camps where children participate in their own treatment for HIV and AIDs and counseling. Durham Link includes children in outdoor activities. Child Helpline have international conferences for children discussing child issues in a participatory manner. Kick4Life involves children in counseling through sport. Good Shepherd Health Centre manages a program for pregnant teenage mothers providing pre-natal care, counseling and female empowerment. Girls who graduate from the program receive a MOET certificate.

There are a limited number of programs aimed at the participation of children with disabilities. A sign language course is now offered at the Lesotho College of Education.

There are also 8 specialised schools for children with visual, hearing, physical and intellectual disabilities. Some of these are owned and run by GoL and others are privately owned.

The GoL involves children in its celebrations of cultural holidays such as Moshoeshoe Day. As does Morija Arts and Cultural Festival. Children often dance, sing and present readings at cultural events.

#### Difficulties

The lack of child-friendly institutions in all Districts, such as Children's Courts, means that child participation is a lot higher in the capital Maseru than in outlying Districts. Children have a correlatively decreased access to information, the more rural the area is in which they live. Due to societal values surrounding children's status within communities, children for the most part would fear the wrath of their elders in making their opinions heard. There is a severe lack of trained personnel in Lesotho capable of eliciting child views free from fear of punishment.

## 5.0 CIVIL RIGHTS AND FREEDOMS

### 5.1 *Name, nationality, identity and registration at birth (Article 6)*

#### Legislative

The Constitution at Article 38 provides persons born in Lesotho automatic citizenship of Lesotho. Article 39 says a person born outside of Lesotho, who has one or both parents who are Basotho, will become a citizen of Lesotho. Article 41 provides for dual citizenship in some circumstances. This is currently under public debate. *The Citizenship Act (1967)* provides for these same rights in more detail.

The *Registration of Births and Deaths Act (1973)* makes registration of births and deaths compulsory. This Act says that registration will be considered late if it is made one year or more following the triggering event. The CPW Act differs in its section 8 requirement that a birth be registered within three months. The Act requires registration whether still born or alive. Section 9 extends the right to registration to orphaned and vulnerable children explicitly. It further requires that the child be given a decent name under section 7. This is a reference to the cultural practice of naming a child born after the death of a previous child, in order to avoid further bad luck. The name usually given to these children is derogatory. A child who is adopted is named by the adoptive parents, which may be a name different from the one given by the biological parents.

Lesotho's *Identity Cards Act (2011)* will provide a child with an identity card from the age of sixteen (16) years.

#### Administration

The Office of the Registrar was in 2013 transferred from the Ministry of Local Government and Chieftainship (MoLGC) to the Ministry of Home Affairs (MOHA). This will harmonise birth registrations as they will now be in the same Ministry as that which houses the National Identity Card System.

#### Progress

In the Situational Analysis of VC in 2011, just over one-third of all children had a birth certificate (38.6%). A higher percentage had a baptismal certificate (57.3%). As there was some overlap between the two categories, a total of 29% of all children had neither a birth certificate nor a baptismal certificate. There was no difference across orphan status (39.7% for orphans vs. 38% for non-orphans), nor by type of orphan, or sex of child (38.1% for males vs. 39.1% for females) on the likelihood of having a birth certificate.

A national system of registration should prevent multiple registrations in more than one District. Ongoing decentralisation of registration will allow better access to this service to people residing in rural areas. The issuance of birth certificates with no fee will also be

useful in improving access. Removal of financial penalty for late registration has served as a further incentive for parents to register children.

### Difficulties

The current difference between time requirements on registration causes a lack of certainty and requires rectification. Culturally a child is not named at birth but normally once taken home. Hospital staff complete a registration form to record that a child has been born to the parents, but a name is rarely recorded at that time. So registration of the child's birth and name while still in the hospital is uncommon. Derogatory names are still given to children born out of wedlock.

Little importance is placed on birth registration in rural areas. This has flow on effects when the child reaches school age or needs to access GoL social services. Despite financial assistance from development partners resources are still sufficiently lacking that there is significant delay in receipt of birth certificates.

## **5.2 Freedom of thought, conscience and religion (Article 9)**

### Legislative

The Constitution of Lesotho provides for freedom of conscience in section 13, freedom of expression in section 14, freedom of association in section 16, and freedom from discrimination in section 18(3).

Section 14 of the CPW Act allows for the right of a child to express his opinions. Section 6 provides for non-discrimination based on religion. Section 22 requires the GoL to make available to children certain information and protect children from harmful information. Specifically section 11(6) requires children be provided with sexual and reproductive health information appropriate to their age.

### Administrative

The Lesotho Communications Authority (LCA) under the Ministry of Communications, Science and Technology (MOCST) has the responsibility of monitoring media and other nation-wide communications. This includes ensuring that content available to children is appropriate to their age and development. The independent body Media Institute of South Africa (MISA) Lesotho undertakes the role of independent watchdog in monitoring content and ensuring unbiased reporting with respect to certain groups, including people with disabilities, women and people living with HIV and AIDS.

Some primary and high schools have libraries for dissemination of information to their students. These tend to be only in urban centres. There is a State reference library in Maseru.

## Difficulties

There have been instances of criminal charges being defended on grounds of religion. For instance, where an accused genuinely believed that they committed grievous bodily harm to get good muti or luck. Further, children are not afforded an opportunity to choose their religion but rather adopt it from their family.

### **5.3 Freedom of association and peaceful assembly (Article 8)**

#### Legislative

The Constitution of Lesotho 1993 provides in article 16 for freedom of association and in article 15 for freedom of peaceful assembly.

Under section 12 of the CPW Act children may participate in social and cultural activities of their choosing except those which are not in their best interests.

#### Administrative

Children are encouraged to form clubs in schools to deal communally with the impact of HIV and AIDS on those infected and affected by the illness. Children attend church groups to discuss matters of spirituality as well as issues affecting them in adolescence.

### **5.4 Protection of privacy (Article 10)**

#### Legislative

Article 10 of the Constitution prevents arbitrary search of or entry into private space. Article 11 provides for respect of private family life and home. Exceptions are provided for things such as public security, defense and public health.

The *Data Protection Act (2012)* enables and regulates the collection, processing and handling of private data for public use. The Act recognizes the right to protection of personal data. The *Communications Act (2012)* establishes a communications authority to regulate the industry.

The CPW Act prohibits publication of details of a child appearing in court. It also provides for a child's evidence to be given in camera. It further prevents anyone aside from the adoptive parent from disclosing the adoption to the adoptive child.

The Penal Code provides that a child when released from detention will have no public criminal record.

*Labour Code Order (1992)* provides protection of employees private information, including that of children employed in the formal sector.

## **5.5 Protection against child abuse and torture (Article 16)**

### Legislative

The Constitution of Lesotho at Article 8 provides for freedom from inhumane treatment and degrading punishment.

The CPW Act in section 16 protects a child's from abuse, torture and degrading treatment. This prevents all types of corporal punishment. Section 20 obliges parents to protect children from neglect, violence, abuse, exploitation and moral hazards. Under section 22 the GoL has a corresponding duty to protect children from the same as well as the rehabilitation of victims of such crimes. Section 23 defines a child in need of care and protection and outlines what steps should be taken to care for them thereafter. Section 17 prevents harmful cultural practices being inflicted upon children.

Under Part XI of the CPW Act police powers are restricted to minimal force necessary to make arrest, with due regard to the dignity of the child and only as a last resort. Section 161 makes corporal punishment and the death penalty illegal.

The *Education Act (2010)* and the MOET's School Regulations abolish corporal punishment in schools.

### Administrative

Lesotho ratified the Committee Against Torture in 2001. The establishment of the Child Helpline, CGPU and Children's Courts all aid in the processing of allegations of abuse and torture.

Guidelines for Psycho-social Support were established by UNICEF & REPSSI. Non-governmental actors such as Sentebale, Catholic Relief Services, Red Cross Lesotho, LCCU and Touch Roots Africa provide some psycho-social support for abuse victims.

### Difficulties

Residential care facilities are generally used as the place of safety that an abuse victim would be removed to. They are privately run and are not in every District.

Abuse is not often reported, particularly where a family member is the perpetrator. Where complaints are made of this nature, referral mechanisms are often unclear. At times allegations of a grave nature are dealt with at village level by the Chief, without ever making it to a subordinate court.

Further, more awareness raising on what is appropriate chastisement is needed. The Situational Analysis of VC in 2011 presented these findings:

*All caregivers were asked whether any child had been disciplined for any behavioural problems in the three months prior to the survey. This affected 9.2% of all children who had been hit or shaken in response to a perceived behavioural problem. In the majority of these cases, an implement was used (75.1%), with the child hit on the bottom (40%), hand/arm/leg (26.8%), or face/head/ears (6.8%). In 15.4% of all cases, a bruise or other mark was left on the child due to the punishment. This means that a total of 1.4% of all children had been physically punished to such an extent that it left a mark.*

*In a separate section of the questionnaire, in households where there was at least one child aged 12-17 years, the children themselves were asked whether physical discipline was necessary to raise a child. A total of 40.8% of the children agreed with the statement. Of these children, 14.3% said that they had been called a name or called stupid in the three months before the survey.*

This analysis stems from the data on the following page, collected for the Situational Analysis of VC in 2011:

### **Physical punishment given to children**

	National			
	Freq		%	
	M	F	M	F
<i>Physical punishment (Q122)</i>				
Yes	50782	47667	9.4	9.0
No	485527	480663	90.3	90.8
Don't know	1462	947	0.3	0.2
Total	537771	529278		
<i>What was used as form of physical punishment (Q123)</i>				
Hand	11841	12685	23.3	26.6
Implement (belt, stick)	37704	33765	74.1	7.08
Both (hand & implement)	934	510	1.8	1.1
Only shook	405	718	0.8	1.5
Total	50884	47678	100	100
<i>Location on which child was hit (Q124)</i>				
Face, head or ears	3327	3348	6.6	7.1
Hand, arm or leg	13833	12297	27.3	26.2
Bottom	19931	19087	39.3	40.7
Elsewhere	13596	12127	26.8	25.9
Total	50687	46859	100	100
<i>Did physical punishment leave a mark of any kind (Q125)</i>				
Yes	9423	5603	18.6	11.9
No	39751	39043	78.6	82.8
Don't know	1386	2515	2.7	5.3
Total	50559	47160	100	100
<i>Life skills training (child &gt; 6 years) (Q126)</i>				
Yes	5883	4812	1.5	1.3
No	374164	364825	98.2	98.5
Don't know	1089	597	0.3	0.2
Total	381136	370234	100	100

## 6.0 FAMILY ENVIRONMENT AND FOSTER PLACEMENT

### 6.1 *Parental responsibility (Article 20)*

#### Legislative

The Constitution of Lesotho at Article 11 provides a right to private and family life.

Section 10 of the CPW Act protects a child's right to live with parents. This is only enforced where it is in the child's best interest to do so. Section 20 places the responsibility to provide care, guidance and maintenance to the child on the parents. Section 21 provides for a corresponding duty on children to respect their parents and elders.

Sections 53 and 56 of the CPW Act outline the effect on parental rights and responsibilities of fostering and adoption respectively. In the case of fostering the parental responsibility of the foster parent is the same as that of the biological parent as long as the child remains in their care. Where a person adopts a child they assume the parental rights and responsibilities of the biological parent and those of the biological parent are severed forevermore.

#### Administration

Financial assistance is provided to parents by GoL through cash grants, food packages, school feeding programs and bursaries to support parents who cannot financially care for their children on their own. These measures are designed to enable children to stay living with their immediate family wherever possible.

Privately run Residential Care Facilities exist in all but two Districts (Thaba Tseka & Qacha's Nek), to care for children whose parents are unable to exercise parental responsibility properly. Section 175 of the CPW Act and the Standards of Care Guidelines regulate these facilities. Subventions are paid by MoSD to Residential Care Facilities to assist them in caring for VC.

#### Difficulties

Poverty and food insecurity are intrinsic factors in families not being able to exercise parental responsibility. Parents sometimes leave children uncared for in Lesotho in search of employment in the Republic of South Africa. An HIV incidence rate of approximately 23% renders many children orphans, of which several end up residing in child-headed households where children exercise responsibility for themselves and their younger siblings. Where children are taken in by extended family members there are often blurred lines of guardianship. Informal kinship care often leads to children being sent from one well-meaning but impoverished extended family member to the next, providing no security or certainty to the child.

There is further limited guiding literature for parents on how to exercise this responsibility which leaves many parents practicing cultural norms and techniques which are not always in the child's best interest.

While the GoL and its partner donors provide some assistance to families with vulnerable children, even extensive financial resources will only begin to meet the dire need in Lesotho.

## **6.2 Separation from parents (Article 19.2 and 3; Article 25)**

### Legislative

As previously noted, under section 11 of the CPW Act children have a right to live with parents, except where it is not in their best interests to do so. Section 22 requires the GoL to make policies which support children whose parents are not capable of exercising proper parental responsibility.

A large proportion of children deprived of their parents are orphaned or vulnerable children – usually as a result of poverty and / or domestic violence in the family home. As previously noted parents may neglect or abandon children to find work in RSA. The MoSD has the power to remove children from parental care or guardianship, who they deem to be in need of care and protection.

In the event that a child needs to be removed from the care of their parents Section 23 defines a child in need of care and protection. The Act envisages separating children from their parents only where it is the best interests of the child. Where a child is removed they are to be presented before a Magistrates Court within 48 hours. This affords parents an opportunity to challenge the removal.

Where children are separated from their parents they have a right to contact with family wherever possible, regardless of the outcome of a court hearing awarding custody. This includes seeing family during holidays and making home visits wherever possible. Contact is encouraged except where it is deemed not in the child's best interest. Section 201 of the CPW Act says a non-custodial parent is to have access to a child and section 204 provides for a surviving parent to have custody. Guardianship continues until a child turns 18 under section 208.

Alternative forms of care include fostering and local and international adoption. This is dealt with under Part XIII of the CPW Act. Greater detail will be spent on these provisions later in this report.

Children may also be separated from their families as a result of being in conflict with the law, which is covered by Part XI of the CPW Act. Again, this is discussed in greater detail later in this report at section 9.3 Administration of Juvenile Justice.

Where a child resides will be a decision ultimately made by the Children's Court or High Court, in the case of adoptions and will be made in consideration of the best interests of the child.

#### Administrative

Another form of alternative care is informal fostering without an order of the court and kinship care where children are taken in by extended family members. Given the level of poverty in Lesotho this occurs less and less frequently as families struggle to provide for their own biological children without the added cost of an extra child to maintain.

Children who are born to an incarcerated mother in a correctional centre are sent to a residential care facility or to live with extended family when they reach the age of two (2) years. This is to prevent them from being kept in detention with the mother beyond infancy.

#### Difficulties

There are an array of social factors which contribute to a child's separation from parents. Poverty is both a cause of children being separated from their parents as well as a reason that alternative forms of care such as fostering do not work well in Lesotho. Resource and geographic restrictions make the funding and regulation of residential care facilities challenging. Culturally accepted promiscuity and discordant partners owing to the HIV epidemic add to the escalating rates of divorce, leaving children without both parents. Alcohol abuse and gender based violence in the home causes children to be removed. It is also an accepted practice that a child goes to find work of their own to support their family.

On a broader level, where children are separated from their parents for whatever reason the referral mechanisms thereafter are weak, if not non-existent. Very few children are placed in residential care facilities under court orders. MoSD are however improving their monitoring of residential care facilities and their record keeping of details of children in alternative care. Inadequate coordination makes it difficult to capitalise on government interventions.

### **6.3 Family reunification and children deprived of their family environment (Article 25,2b)**

#### Legislative

The CPW Act provides that children have the right to live with parents, except where not in their best interests. Where children are removed under section 23 when in need of care and protection, or as a result of being in conflict with the law, they are done so for as short a time as possible.

Under the *Anti-Trafficking in Persons Act (2011)* a child victim shall be reunified with their family as quickly as possible.

#### Administrative

Social workers employed by MoSD and residential care facilities work with officers in the CGPU to identify family members of orphaned or vulnerable children and children on the streets, and attempt to reunify them. Where it is determined that a child is not able to be reunified or it is not appropriate to do so, the social worker will investigate other family members to care for the child. Only where these measures have been exhausted will the social worker decide to place the child in a residential care facility as a last resort. Children may also be placed there in the interim while case workers locate family members.

Where a child's family cannot be located or no one is deemed a suitable care giver, the child will be placed in a care facility while determining whether that child is adoptable. It is at this stage that more thorough investigations are conducted as to the child's parentage and previous care-givers whereabouts. If unable to care for the child parents, if found, or next of kin will be asked to sign a consent to allow the child to be adopted. If no parent or next of kin can be located and have not come forward in the three months after the child was abandoned, then the child can be deemed able to be adopted

Currently foster homes outside of institutional homes, do not exist in Lesotho. The CPW Act envisages private homes being registered with the MoSD to care for children in the surrounds of a family home. This is not yet a reality. A part of the costing of the CPW Act which is currently underway is to put a price on the implementation of private fostering in Lesotho.

Non-governmental organisations like Kick4Life work with children living on and of the streets. While it is not specifically a mandate of the organisation to reunify families, social workers do whatever is in the child's best interest and within the organisations financial capabilities.

#### Difficulties

Financial resources are limited in searching for children as it is not specifically budgeted for by GoL. Transport is consistently lacking and it is often time-consuming to go searching in geographically remote locations. Sometimes families can live several days walk from a main road. Well-intentioned social workers often lack the investigative skills to do this sort of work and police are often un-obliging in their assistance or unable owing to similar resource shortcomings. Social workers and residential care facility staff further, do not make proper use of the three month rule, whereby an abandoned child can be considered adoptable if no family has claimed them within that time.

#### **6.4 Maintenance of the child (Article 18.3)**

##### Legislative

Maintenance of a child was covered by the *Children's Protection Act (1980)* until repeal by the CPW Act in 2011. Part XXIII of the CPW Act sets out the current joint maintenance responsibilities of parents whether married at the time of the child's birth or not. Section 20 (2) (b) read with section 212 provides that parents have a legal duty to support their child, up until the age of eighteen (18) years. They must provide basic primary school education up to form C. Under section 213 a child may apply for maintenance from a parent on their own behalf. A Magistrates Court has the jurisdiction to make such an order.

##### Administrative

Where a parent does not pay under a maintenance order, the Children's Court can garnish a government employee's wages and/or imprison a recalcitrant parent. There is a reciprocal agreement between Lesotho and RSA for the assessment and enforcement of maintenance orders of parents living in the alternate jurisdiction. Where parents cannot maintain a child, the child will be taken to residential care facility or the State provides public assistance. Public Assistance can come in the form of food packages in the interim while vulnerable households await payment of cash grants.

##### Difficulties

Although a biological non-custodial parent can be ordered by a court to maintain a child, culturally a child born out of wedlock is unlikely to be maintained. Further, very little effort is made to ensure that the child's father has been contacted to notify them of the birth.

#### **6.5 Adoption and periodic monitoring of the placement of the child (Article 24)**

##### Legislative

The Adoption Proclamation of 1952 covered international adoptions only and did not allow Basotho to adopt. Part XIII of the CPW Act, passed in 2011, provides for local and international adoption as alternative forms of care. Section 51 outlines criteria placed on a person wishing to adopt which applies to both local and international applicants and section 61 specifies further requirements placed on international applicants.

## Administrative

The GoL ratified the Hague Convention with respect to Inter-Country Adoption in 2012. As a result it also established the Central Authority on Adoptions in 2013 which regulates both local and international adoptions in Lesotho.

The Foster Care & Adoption Policy 2013 and Adoptions Practice Guidelines provide regulation of local and international adoptions. Currently Lesotho has a memorandum of understanding with only four different nation States – Canada, USA, Sweden and the Netherlands. There are present discussions to sign an MOU with RSA to allow for Basotho children to be cared for under adoption by family residing in RSA and vice versa. The subsidiarity principle is followed whereby Basotho adoptive parents are given priority over international parents.

Under the policy, international adoptive parents are required to send post-placement reports, facilitated by the adoption agency in the receiving State. The first report is due six months after the placement and then reports are due every 12 months thereafter, until the child turns eighteen (18) years. Members of the Lesotho Central Authority on Adoptions also travel to receiving States to personally assess the well-being of adopted Basotho children.

## Difficulties

There was a cultural misconception that Basotho children are sold to international adoptive parents, which is gradually changing. Adoption is however still not popular as Basotho parents don't give children up for adoption or take them in when for instance, they are unable to give birth to their own children. Part of the stigma attached to adopting a child as a Basotho is the possibility of receiving a child who is HIV positive. There were only 41 adoptions in 2013 and of those 19 children were placed with international parents.

<b>Year</b>	<b>Local adoptions</b>	<b>International adoptions</b>
2013	22	19
2012	7	16
2011	4	34

*Source: Lesotho Intercountry Adoptions Authority*

Insufficient investigations on children in residential care facilities are completed by MoSD. This means that many children who are potentially adoptable are left residing in institutions, rather than being placed with families. There are approximately 1475 children who reside in residential care facilities in Lesotho. Even if only half are estimated as being adoptable, that is around 750 children who could instead live with the support of an adopted family.

Further, there is a list of approximately 300 prospective adoptive parents in receiving nation States at any one time, waiting to adopt a Basotho child. If more international adoptions were processed each year by Lesotho, the number of parents wanting to adopt Basotho children would be likely to increase further. There is no doubt, given lengthy waiting lists in other countries for adoptive children, that if Lesotho had a greater supply of children, that demand would increase to at least meet it.

Throughout a Commission of Inquiry into Adoptions in 2007, Lesotho suspended its inter-country adoptions until the findings were released in 2009. Overview of the adoptions system to ensure Hague Convention compliance coupled with Central Authority staff trainings have improved the standard of adoptions processing measurably. The authority being specialist in the area of adoptions now keeps better records and better assesses the suitability of prospective adoptive parents, on a more objective basis.

### **6.6 Abuse, neglect and exploitation of the child including the physical and psychological rehabilitation and social integration of the child (Article 16 and 27)**

#### Legislative

As previously mentioned the Constitution of Lesotho protects all persons, including children, from abuse and degrading treatment.

The CPW Act in section 23 states a child is in need of care and protection where they are at risk of or have been abused, neglected & exploited. Section 46 defines neglect as leaving a child without proper supervision and care. It is an offence punishable by community service. Section 15 protects a child's right to protection from exploitative child labour.

The Penal Code at section 30 makes an offence of abuse where consent will be no defense.

#### Administrative

The Juvenile Training Centre (JTC) provides for detention of boys only under the age of eighteen(18) years where they have had custodial sentences imposed. They also provide rehabilitation of children in conflict with the law through provision of vocational and life skills.

LCCU is a non-governmental organization which provides temporary shelter to Basotho children who are experiencing all types of abuse. Children are provided with psycho-social support in relation to the trauma suffered, so as to reintegrate them back into the community. Touch Roots Africa, church groups and JTC all offer limited amounts of psycho-social support.

## Difficulties

Sentences for offences of neglect, abuse and exploitation are inadequate deterrents for the crimes so that the offences are committed without regard for the consequences. Sentences of community service are not uncommonly imposed for serious assaults, for instance.

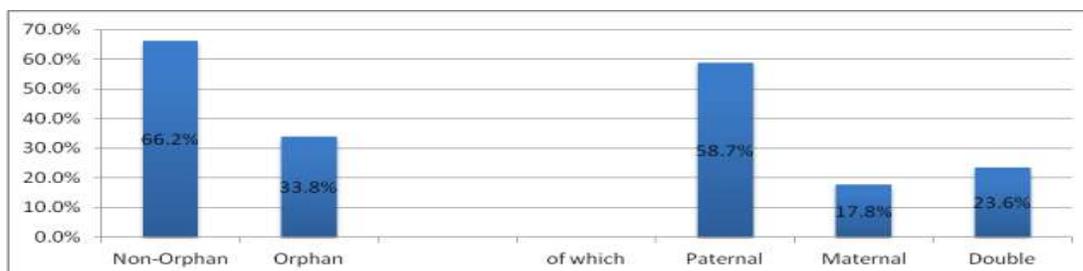
The severe lack of qualified psychologists and psychiatrists in Lesotho is partially owing to no University degree offered in Lesotho in this practice area. With such a limited resource pool of trained professionals to diagnose and provide psycho-social support, rehabilitation efforts are severely hampered. Stigma surrounding the social integration of children in conflict with the law back into the community and in admission into schools impedes a child's development and well-being.

### **6.7 Information on the number of children per year during the period covered by the report according to age, sex, ethnic group, social segment, rural and urban environment.**

Data collection surrounding children's issues is sourced through Bureau of Statistics National Census 2010, Situational Analysis on OVC 2011, as well as NISSA who collect data on a continual and ongoing basis. This data is primarily in relation to recipients of cash grants.

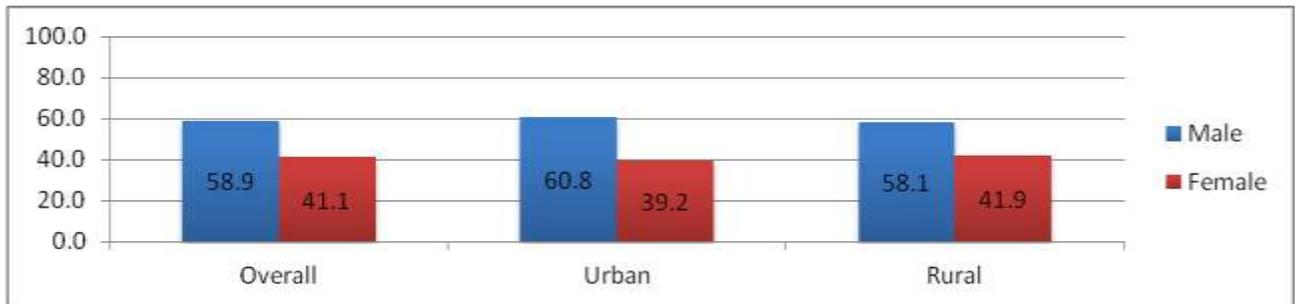
The number of orphans in Lesotho is growing. The UN World Food Program conducted a research study in 2001 and found there were 84,000 orphans. The Situational Analysis of OVC in 2004 found that there were 220,000 orphans. Of a total child population of 1,072,974 found in the Situational Analysis of VC in 2011, it was estimated that 363,526 (33% of child population) were orphans. Orphans in this more recent study included 213,248 paternal orphans and 64,647 maternal orphans and 85,631 double orphans.

### *Orphan Status*



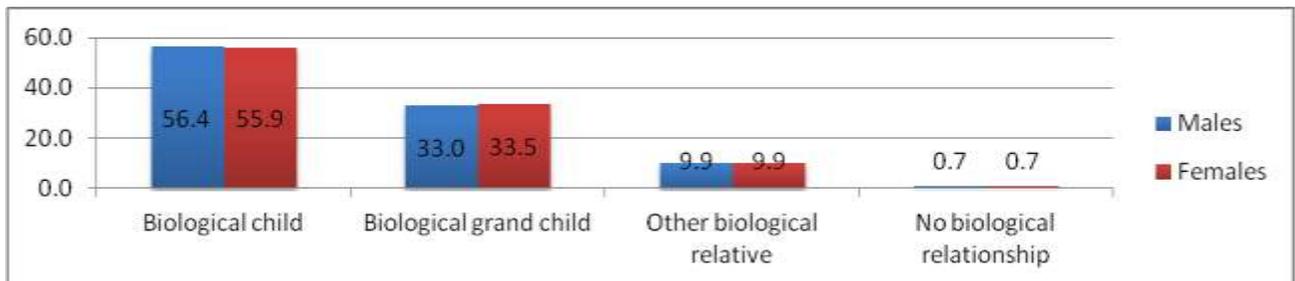
Source: Situational Analysis of VC 2011

*Sex of Household Head*



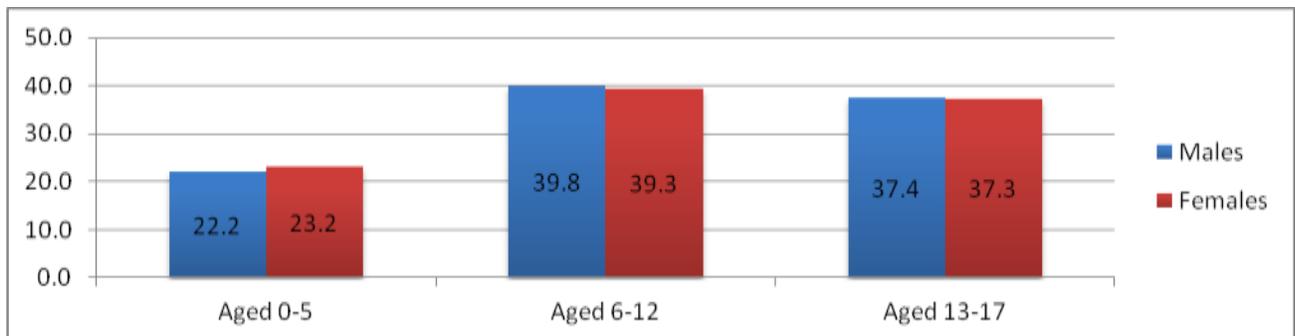
Source: Situational Analysis of VC 2011

*Relationship of Children to Household Head*



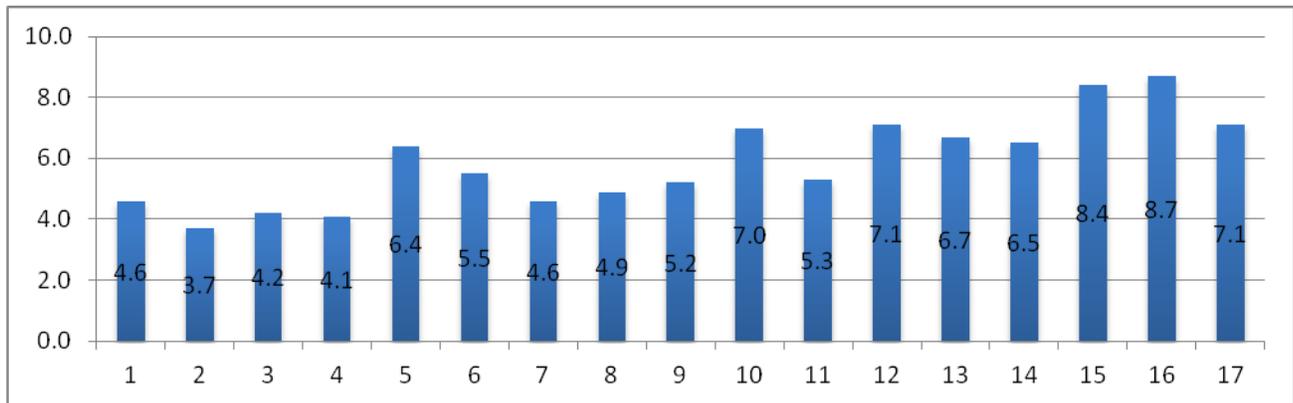
Source: Situational Analysis of VC 2011

*Age Composition of Children*



Source: Situational Analysis of VC 2011

### Age Distribution of Children



Source: Situational Analysis of VC 2011

Majority of vulnerable households were in the foothills or the mountains – that is rural and semi-rural areas.

The only data available on VC is on Basotho children. No data is disaggregated to include minority groups as vulnerable. There are small communities of Muslims in most urban areas in most Districts. There is also a significant population of Chinese expats and increasingly Basotho born Chinese, as well as Basotho born children of Indian decent. There is a very small expat community of Western workers. There is a lack of any research into the children of these minority groups and they are therefore often presumed to be not vulnerable.

Services received by households surveyed in previous 12 months: Social Welfare Services 2147, Bursary services 11,458, Child grant 3735, Micronutrient supplement 2700, Bereavement counselling services 2414, Life-skills training 1588, Funeral expenses support 1250, School related costs 2247, spiritual / pastoral care services 1758

## 7.0 BASIC HEALTH AND WELFARE

### 7.1 *Survival and development (Article 5)*

Legislative

Section 10 of the CPW Act provides for a child's right to live with parents and to grow up in a caring and peaceful environment. The CPW Act further provides for a child's right to education and health at section 11. Section 20(2) of the Act obliges parents and guardians to provide children with good guidance, care, assistance and maintenance.

Section 22 confers corresponding obligations on the GoL to form policies and programs that will ensure a child's survival and development.

The *Free Primary Education Act (2001)* and the *Education Act (2010)* also provides for a child's right to development.

#### Administration

Lesotho is a subscriber to the UNDP Millennium Development Goals (MDG's) which provides a good tool for assessment of child development. Achievement of these goals assists the development of policy which enhances child development.

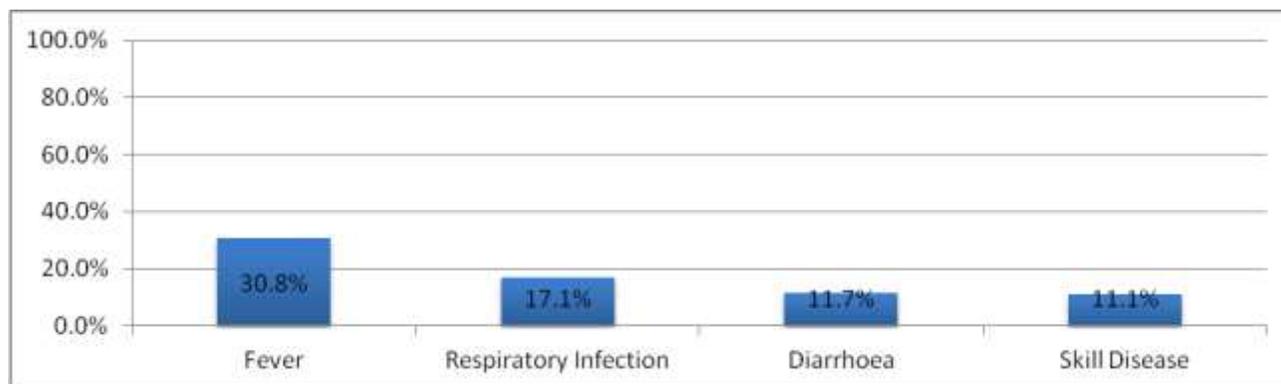
As previously mentioned, the MOH has a number of policy documents which are aimed at child survival and development. The Road Map for the Reduction of Maternal and Child Mortality has renewed a commitment to lower very high rates of maternal, infant and child mortality. The Reproductive Health Policy 2011 prohibits termination of pregnancy except on medical grounds. A proposed amendment to the *Penal Code (1993)* to allow for termination of pregnancy on grounds of likelihood of the baby having a disability was voted down in 2012. The Expanded Program on Immunization ensures every child has doses of vaccines such as polio, Measles Mumps Rubella, BCG, Cervical Cancer vaccine – HPV at the appropriate times. The prevention of mother to child (PMTCT) guidelines 2013 guides health practitioners in pre and post-natal care of mothers with HIV and AIDS. The HIV Policy 2013 and Policy for Adolescents Right of Access to Health Services are self explanatory, comprehensive documents on their named topics. Management of Survivors of Sexual Abuse Guidelines 2006 is a document which provides referral mechanisms for the treatment of patient's mental and physical health following sexual abuse.

Integrated Early Childhood Care and Development Policy (IECCD) states concisely the principles on which a child's development is premised. The *Free Education Act (2001)* provides education to all children between the ages six (6) and thirteen (13) education free of charge. Life-skills programs are run in primary schools jointly between MOET and MOH. They mainstream sexual and reproductive education into classroom curriculum from class 3 onwards.

#### Difficulties

Lesotho struggles to provide for the survival and development of its children. It is plagued by very high rates of HIV and AIDS (23% incidence rate), orphans, malnutrition and infant death. Maternal and infant mortality are contributed to by the long distances and difficult terrain women must negotiate to gain access to birthing centres.

### *Illness Among Underfives*



Mothers continue to follow traditional cultural practices rather than allopathic medicine, despite it becoming gradually more widely available. Full immunisation rates in 2011 were at only 53% in under-fives. Much of the population has poor access to basic services such as health services and clean drinking water in some communities. The inadequacy of services offered is another inhibitor to child survival and development. These factors mean that Lesotho is lagging in the achievement of its MDG's.

## **7.2 Children with Disabilities (Article 13)**

### Legislative

The Constitution at Article 18 protects freedom of discrimination. Article 33 places a further positive onus on GoL to provide rehabilitation, training and social re-settlement of persons with disabilities into communities.

The CPW Act defines a child with a disability to include children with physical, intellectual or sensory disability irrespective of its cause. Section 13 protects the rights of a child with a disability – specifically their right to dignity, special care, medical treatment, rehabilitation, family, personal integrity, sport and recreation, education and training. These rights are afforded special protection so that persons with disabilities can “achieve the greatest degree of self reliance and social integration”.

The *Sexual Offences Act (2003)* in Section 15 gives special provision for sexual acts committed against a person with a disability and provides harsher penalties. The *Education Act (2010)* requires that children with disabilities be included in mainstream schooling where ever possible.

### Administrative

The Social Welfare Policy of 2003 has some generic guiding principles in providing services to people with disabilities. The National Disability Mainstreaming Plan is

envisaged for the future to require people with disabilities to be considered in designing service provisions across all sectors to allow them to be integrated into the community.

The Disability Policy 2011 guides health service providers, institutions, care-givers and families of those with disability with more specificity as to the best way in which to provide service, care and support. It articulates that the most common causes of impairment and disability include chronic diseases such as diabetes, cardiovascular disease and cancer; injuries such as those due to road traffic crashes, conflicts, falls, mental impairments, birth defects, malnutrition, HIV/AIDS and other communicable diseases.

The GoL operates a vocational training centre, known as IVRC, for people with disabilities which offers courses in woodwork, leather work, sewing, electrical and metal work. The MoSD has community based rehabilitation (CBR) officers employed in each District to provide services specific to those with disabilities, from counseling to fitting them with assistive devices. There are also government-led community-based rehabilitation programs in each of the ten (10) Districts under which officers meet communities and support groups formed in each District.

GoL in 2013 hosted Communities of Practice Disabilities Advocacy in Mainstreaming (COPDAM) conference for over 20 African member nation States, during which issues of disability in African countries were discussed. Each year Disability Day is hosted and celebrated by the MoSD with a public event where people with disabilities are invited to participate.

There are eight (8) schools specific to people with disabilities, some for children who are hearing or visually impaired, some for children with only intellectual disabilities and some accept children with any form of physical disability. Lesotho College of Education now offers a certificate course in sign language. The MoET established Special Education Units under the Education Sector Plan to address the specific needs of these children.

<b>NAME OF SCHOOL</b>	<b>TYPE OF DISABILITY CATERED FOR</b>
St. Catherine's High School	Visual impairment
St. Bernadette Resource Center for the Blind	Visual impairment
St. Angela Cheshire Home for Disabled Children	Physical
Phelisanong Lesotho	Physical and intellectual
Kananelo Center for the Deaf	Hearing impaired
Mohloli oa Bophelo	Visual impairment
St. Paul School for the Deaf	Hearing impaired
Thuso E Tla Tsoa Kae Handicapped Center	Physical

Source: MoSD

Community based organizations such as Lesotho National Federation of Organisations for the Disabled (LNFOD) and Intellectual Disability Association Lesotho (IDAL) advocate for the rights of people with disabilities. They also attempt to educate and sensitise communities on the realities, rather than myths about people with disabilities. They accomplish this through community meetings called Pitso's, and radio and television programs. Interpreters and signers assisting on television and at public events are now more common.

Of all children survey as part of the Situational Analysis of VC 2011, 1.9% had an identifiable physical (1.4%) or mental disability (0.5%), while 10% were thought to have a learning disability.

### Progress

There have been a limited number of newly built schools which have been designed under the *Building Control Act (1995)* with ramps for better accessibility for children who use wheelchairs and other disability aids.

The Department of Disability within MoSD in 2013 advocated for quota's in employment of people with Disabilities. There were a number of sizeable employers in manufacturing and government who pledged to employ a designated number in 2014, the results of which remains to be seen. Numbers of persons with disabilities are still relatively low in employment in the formal sector. The *Disability Equity Bill* was drafted in 2013. It is currently before parliament and should be passed into legislation early 2014.

### Difficulties

The allocation of national budget resources to people with disabilities is relatively low. Employer opinions towards people with disabilities are also low. A severe lack of training and understanding of children with disabilities and their needs means that teachers are not sufficiently equipped to have children attend mainstream classes. If the school in the local area does not have any teacher trained in managing disabilities, children are turned away from school and deprived of education, despite their legislatively protected rights. Even where accepted into mainstream schools, children are neglected by teachers who are not sufficiently skilled to deal with the child's needs.

Physical access to services is an enormous hindrance to progress in the disability sector. Schools are often far away from villages, if not in other Districts entirely. There are more often than not no ramps to schools, government buildings or community clinics. Despite the Building Control Act being almost 20 years old, it is only now that there is funding for school buildings with features to improve access for children with disabilities. The topography of Lesotho does not allow for easy movement of ordinary wheelchairs. Documents are very rarely in Braille and Braille readers are expensive and reserved for a few in high-end government employment.

As previously noted, discrimination based on disability is not a justiciable right in Lesotho. There is no action stemming from it and so no way to prosecute breaches of it. Significant amounts of stigma continue to surround disabilities. This ranges from superstitious beliefs that disabilities are contagious to a complete lack of understanding that a physical disability does not impair a child's mental capabilities.

### **7.3 Health and Health Services (Article 14)**

#### Legislative

Article 27 of the Constitution of Lesotho obliges the GoL to develop laws and policies for the protection of health. It explicitly requires that policies ensure the reduction in still births and the proper development of children. Access to healthcare is further required. It also calls for the control and prevention of epidemics and diseases, as well as improved public health.

The CPW Act at section 11 protects a child's right to health, regardless of religious or other beliefs (section 11(2)). Section 11(6) provides children with the right to sexual and reproductive health information and education. Part XXV of the CPW Act provides protective measures relating to the health of children. Section 232 discusses a child's right to consent to medical treatment where they are over the age of twelve (12) years. Section 233 discusses HIV testing of a child and section 234 requires medical assistance be provided to a child who is the victim of sexual abuse or exploitation.

#### Administrative

The 2010 National Guidelines for HIV and AIDS Care and Treatment are a revision of the national ART Guidelines and are focused on HIV prevention, care, treatment, and support. HIV testing is strongly recommended for children who experience violence. The Guidelines go on to discuss Post-Exposure Prophylaxis (PEP). The policy for PEP eligibility should be founded on the principle of equity. Decisions about whether or not to offer PEP should be based purely on clinical considerations of risk and should not be tied in any way to a person's decision to file a police report or to pursue legal action.

Two of the GoL's overarching policies relating to child health are National Health Policy 2012 and Ministry of Health Strategic Plan 2012-2017. More specific policy documents include: Integrated Management of Childhood Illnesses (IMCI), Under 5's program for expanded vaccines to increase the population vaccinated, Integrated Management of Childhood illnesses for management of pneumonia, diarrhea, measles, and HIV related illnesses; Infant and Young Child Breastfeeding Policy which encourages exclusive breastfeeding; and Adolescent Health Policy to include rights to reproductive health care information. GoL further established the Pediatric Unit as a separate Ministry directorate.

All pregnant women are routinely tested for HIV when they present at a clinic for the first visit. New and expectant mothers are provided with Mother Baby Packs as part of the Plan B program. These are aimed at prevention of transmission of HIV during pregnancy and after birth. The packs which are given to mothers who are HIV positive and HIV negative look identical. The difference is that HIV positive women are provided packs with PMTCT drugs and the HIV negative women are provided with post-natal vitamins. This is to reduce stigma attached to receipt of the pack and to consequently improve compliance rates with PMTCT drugs.

GoL have several programs run out of health care clinics, such as Nutrition Corners for the feeding of children who are under five (5) years and malnourished. The MOH facilitate Health Centre Committees who coordinate activities and information exchange between the local health centres and the surrounding communities. GoL provide cash grants and food packages to families who are vulnerable which include tins of formula for babies. Agriculture programs aim to improve food security and reduce the current level of stunting and wasting in children. GoL also undertake WASH programs to improve sanitation and access to clean drinking water, particularly in rural communities.

Pediatric AIDS clinics run by Baylor College provide primary health care to children infected with HIV and AIDS and conduct research into the disease. They are located in multiple districts with a dedicated clinic in Maseru and visited clinics in other Districts. The visited clinics are District health clinics which are staffed 2-3 days per week by Baylor staff. Baylor conduct Youth Clubs in Maseru on weekends where children infected and affected get involved in physical and team building activities as ways to learn about the illness.

Non-government organisations are heavily involved in peripheral health care provision in Lesotho. Jhpiego provide medical circumcision for boys as an HIV preventative and training for nurses to bring their skills to a comparable standard to others in Southern Africa. World Vision Lesotho manages a program called Child Health Now which undertakes advocacy work to ensure children under 5 receive a high standard of medical care. Its focus is on dehydration, immunisations and nutrition. World Vision Lesotho also has Congregation Hope for Action teams in the communities who care for the infected and affected children. Many support groups exist at the community level to provide basic health care for those infected with HIV.

## Progress

Visits to health clinics are free of charge to all children in Lesotho. This is an enormous improvement to access to services.

The high rates of HIV and AIDS in Lesotho has lead to the receipt of a bulk of donor funding for the care of people infected, for instance from Millennium Challenge Account

(MCC) and PEPFAR. This has meant that overall infrastructure in health care has drastically improved, as has the provision of drugs. Most clinics now generally have consistent water and electricity. The number and quality of health care facilities has increased and the structuring of them has improved. This is thanks to technical assistance provided by partner organisations. Lesotho has seen significant strengthening of health systems with five nurses now employed in each health centre.

The MOH plans to focus on adolescent health in coming years with the addition of adolescent health corners in clinics, staffed by pediatricians and nurses familiar with youth health issues. This is because rates of compliance with HIV medication are relatively low in this population group.

### Difficulties

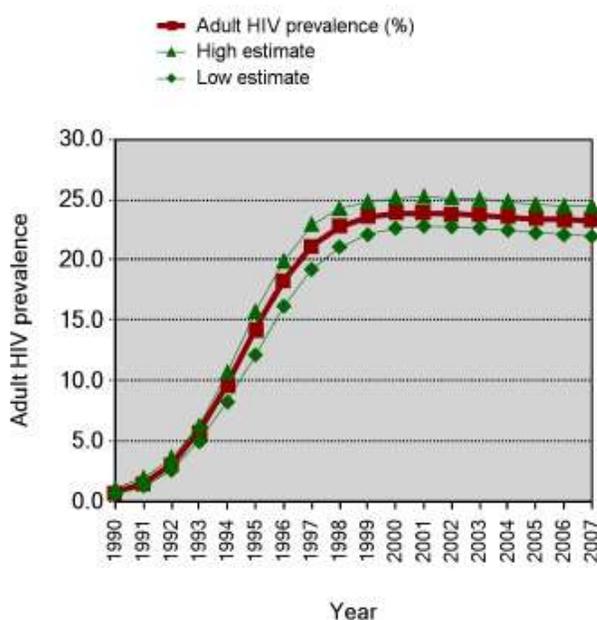
Maternal mortality rates are still very high despite the relative growth of resources being poured into the area by donors. One in nine children die before the age of five years. With a country-wide shortage of nurses, clinics schedule days for immunisations. If a child attends on a non-immunisation day they are turned away. This is unfortunate given that coverage of immunisations of children in Lesotho is still low at only 64%. This has actually decreased from 80% some years ago. Children on ART medication do not have good compliance often caused by poor parental supervision of dosage. Adolescents in particular choose not to take their medications because of the unpleasant side-effects. Further, surveys suggest that PMTC programs reach only 48% of eligible HIV positive pregnant women.

Cultural barriers still exist in the provision of health care. For instance a women married in one District must travel to the District where her family is from to give birth. A lack of education and the difficult topography of Lesotho making it difficult for women to walk to clinics to give birth once in labour, mean many choose to birth at home. This has a much higher risk for the mother and baby. To combat this problem there are Waiting Homes at most government health facilities where women can stay for the weeks leading up to their giving birth. There are also still women who seek treatment from traditional healers known as Sangoma's for themselves and their children, which contradicts or does away with Western Medicine.

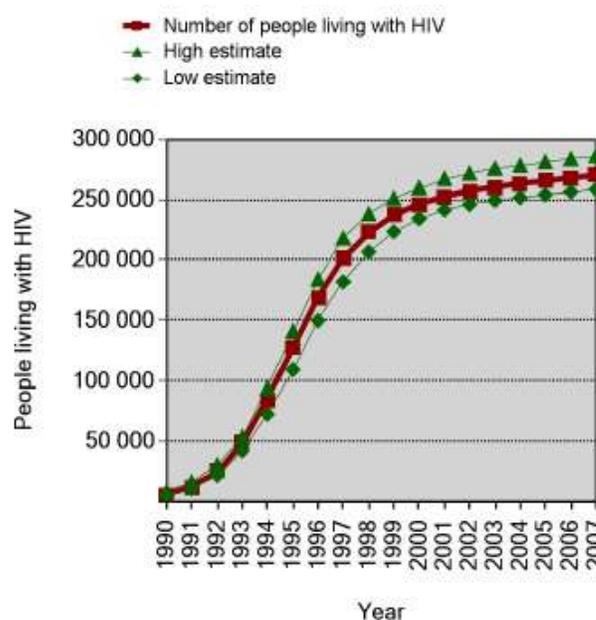
Lesotho continues to have one of the highest incident rates of HIV and AIDS in the world at 23%. It has stabilised, but not decreased in recent years.

## HIV Seroprevalence and Number of People Living with HIV

Estimated adult HIV (15-49) prevalence %, 1990-2007



Number of people living with HIV, 1990-2007



Source: *Situational Analysis VC 2011*

In 2011, a detailed assessment of Lesotho's national HIV and AIDS strategic plan was carried out using the Framework for Women, Girls, and Gender Equality in National Strategic Plans for HIV and AIDS in Southern and Eastern Africa. The assessment report states that despite the recognition in Lesotho's National Strategic Plan of the importance of legal reforms to provide an enabling environment for women and girls and to reduce the high prevalence of HIV, implementation of legal reform on gender equality has been slow; and this, coupled with "prevalent sexual exploitation," is contributing to the epidemic. Furthermore, the assessment revealed that a significant gap in the strategic plan involves education and information on human rights, and the rights of women and girls in particular.

### **7.4 Social security and services and facilities for the upbringing and development of the child (Article 20-2(a-c))**

#### Legislative

The CPW Act guides stakeholders in their roles and responsibilities with respect to social security service delivery. *The Education Act (2010)* provides free and compulsory education for children aged 6-13 years.

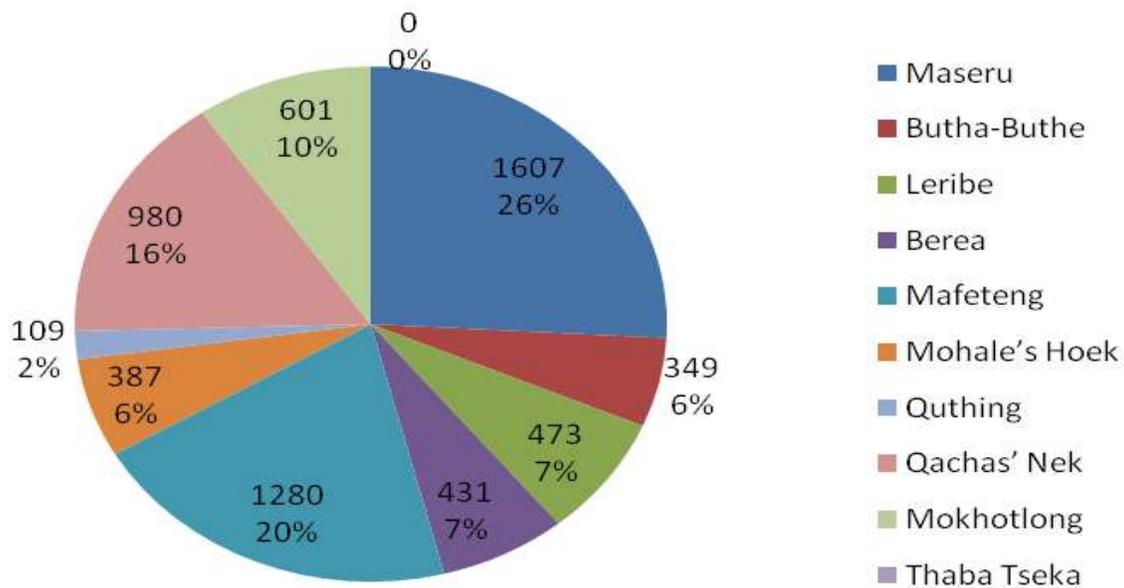
## Administrative

Lesotho provides social security to its citizens based on the SDAC Minimum Package of Services. This is domesticated in the OVC Policy 2006, the Poverty Reduction Strategy, Interim National Development Framework 2009-2011, Gender and Development Policy, as well as the IECCD Policy.

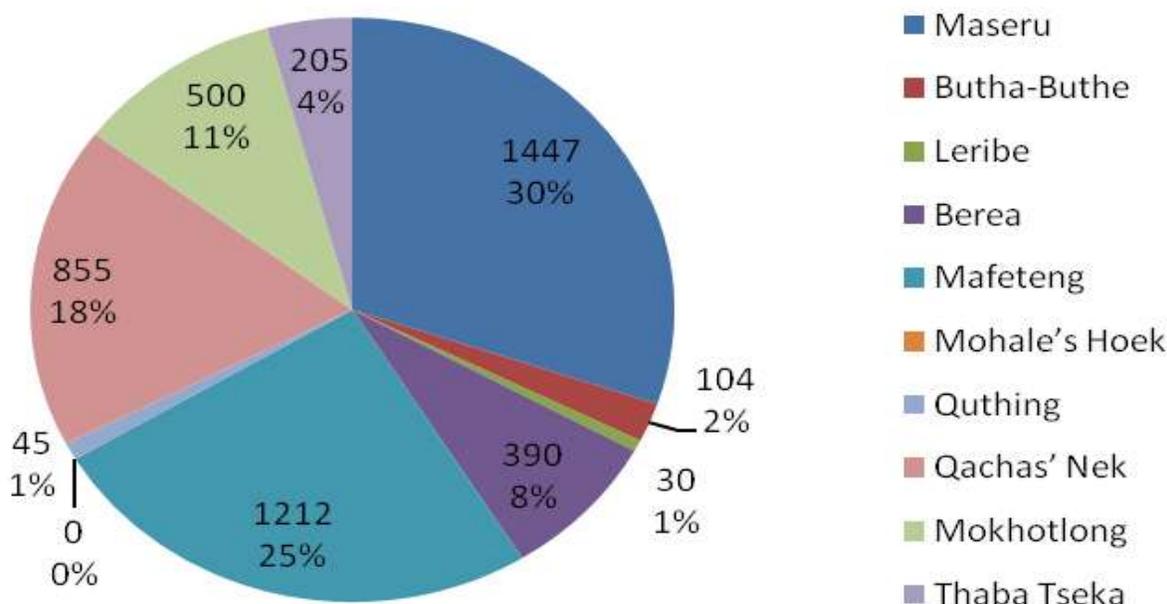
MoSD facilitates with its partners several forms of public assistance. The financial burden of these was taken over by GoL in 2013. School bursaries were funded by Global Fund and are paid to vulnerable households to cover the cost of school fees and books. Bursaries are also paid to provide children with access to services by obtaining identification cards, passports and birth certificates. Separate one-off grants are available from MoET for the cost of uniforms. Cash Grants & Conditional Cash Grants are paid monthly to eligible vulnerable households. The amount of the allowance is based on the number of vulnerable children in the household.

Eligibility for Public Assistance is determined by MoSD social workers. Due to the shortage of funds sufficient to pay all eligible beneficiaries, households may at the discretion of the social worker, be given food packages in the interim. The amount of Public Assistance payable to households reduced by over 20% from 41.3 million Rand to R32.5 million Rand in 2013.

*Distribution of Public Assistance Programme by district, 2009*



Source: MOHSW (2010)

*Distribution of food parcels by MOHSW, 2009*

Source: MOHSW (2010)

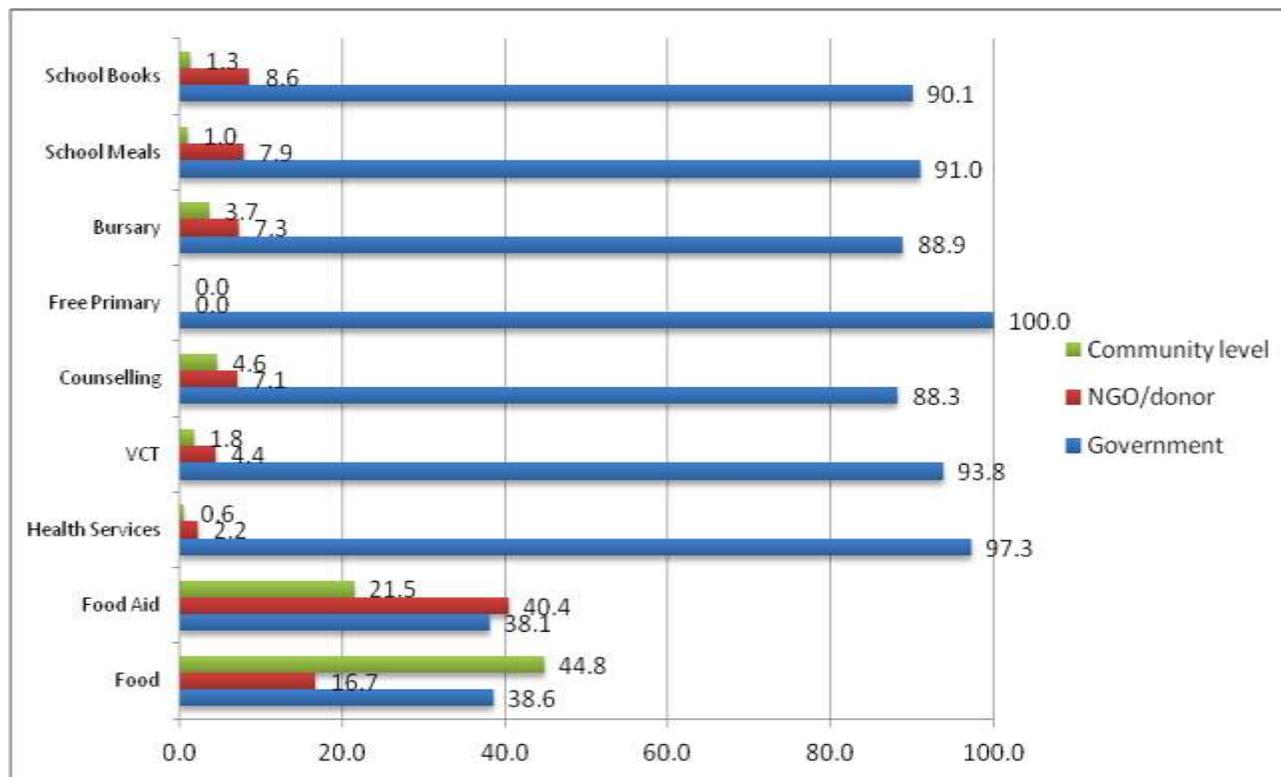
On a more institutional level, the MoSD pays subventions to residential care facilities to assist them in the care of children in need of care and protection. Poor families are also provided with exemptions from medical fees by way of a letter from MoSD. The Office of the First Lady provides uniforms for needy children.

Non-governmental organisations such as Habitat for Humanity provide social assistance in the form of building or improving existing shelters for vulnerable families. World Vision Lesotho provides material assistance like clothing, food and school needs to eligible families. Catholic Relief Services Lesotho provide substantive support to vulnerable families in the form of education and agricultural assistance.

Lesotho Red Cross is a non-governmental organization which runs an integrated community based health and care project in Qacha's Nek, Mohale's Hoek and Butha Buthe. The target population of their services are orphaned and vulnerable children and people living with HIV and Aids. They assist in access to education, health, food, psycho-social support, material, advocacy, shelter, income generation, water and sanitation. Lesotho Red Cross specifically provides garden seeds and tools for subsistence farming for families.

Social security services are primarily funded by the Government of Lesotho. The overwhelming need however is supplemented by non-government organizations and community service organizations, as seen below.

## Service Providers



Source: Situational Analysis of VC in 2011

## Progress

Lesotho receives significantly less donor funding than it used to for social development programming. The establishment of MoSD as a separate Ministry in 2011 has improved however efficacy with which this funding is used in programming for the widest benefit in provision of social security. The sustainability of cash grants has also improved with an increase in proportional GoL budgetary allocation.

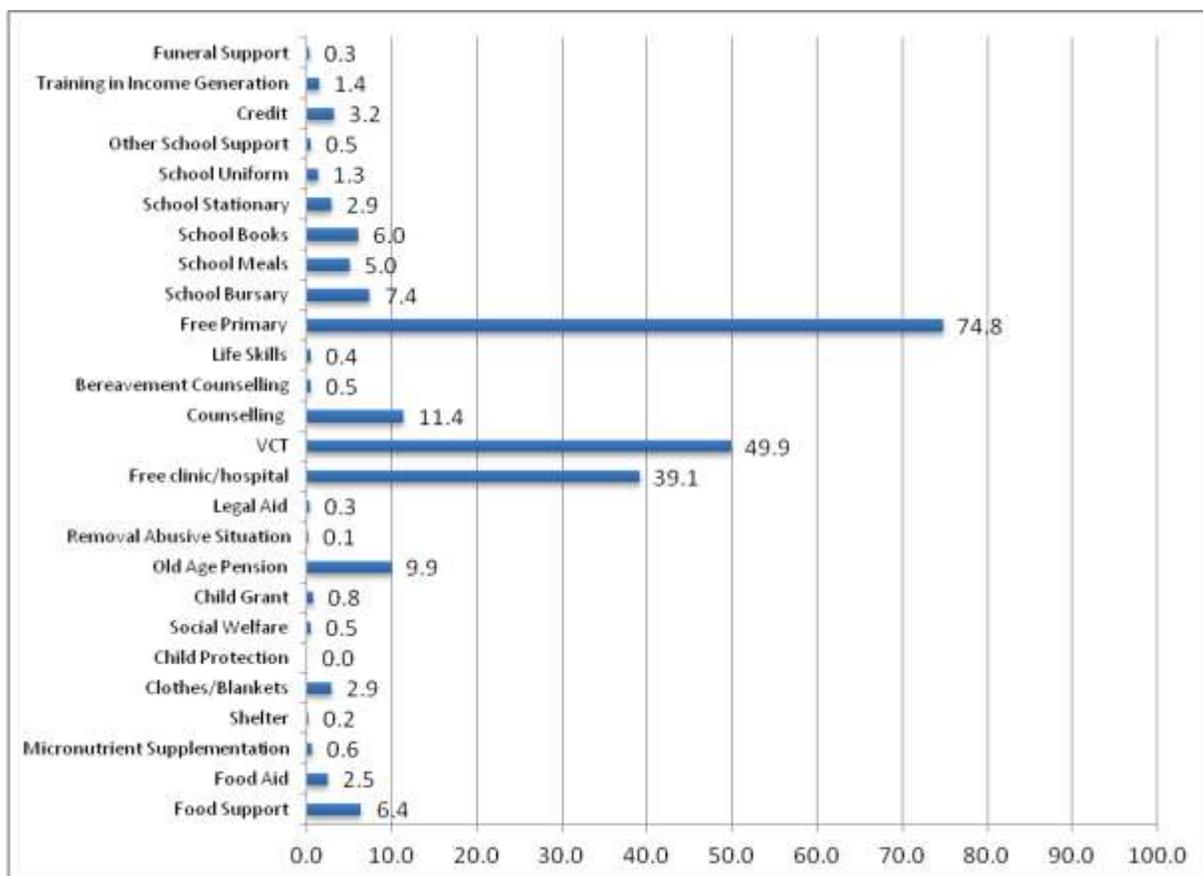
## Difficulties

The number of people living in poverty far outweighs the financial assistance available. Around questions of household food security, the Situational Analysis of VC in 2011 indicated that of survey respondents almost one-in-five (17.1%) indicated that they didn't have any staple foods in stock at the time of the interview, and over half did not have any flour (54%). A total of 4.8% of all households relied primarily on begging or borrowing to meet basic food needs. A total of 6.3% of all households had at least one member who had participated in a food-for-work scheme in the year before the survey. A total of 36% of all households had at least one member who had gone to bed hungry

in the week before the survey due to the lack of food in the household, with almost all such cases occurring 1-3 days over this week.

Beneficiaries reached are also limited due to a significant quantity of people unaware that they are able to apply for the benefits. Even where community members are aware that the benefit exists they may lack information on how to access the service. As usual financial resource constraints are present. The SDAC minimum package of service's seven indicators is not fully met due to lack of funds. Instead areas such as health and education are prioritised in programming over development

### Access to Services



Source: Situational Analysis of VC in 2011

## 7.5 Care for orphans (Article 25)

### Legislative

The CPW Act at section 9 provides the same right of orphaned and vulnerable children to birth registration as other children. Section 23 provides for the circumstances in which a child will be considered in need of care and protection. Section 175 establishes residential care facilities for the care of children in need of care and protection by way of government gazette. Fostering and adoption are provided as alternative forms of care in sections 51 & 52.

### Administrative

The Strategic Plan for OVC 2003 and the VC Policy of 2006 provide the necessary framework for action guidelines for stakeholders in provision of services and facilities. MoSD developed and trained residential care facility staff in the Standards of Care Guidelines for Residential Care Facilities. The standards presently are at a moderate level and the GoL intends to raise the expected standard once facilities have had an opportunity to reach the current standard.

Orphans are eligible beneficiaries of all the aforementioned public assistance services such as bursaries, cash grants, food packages and subventions paid to residential care facilities. They are also often recipients of services from community organisations such as Habitat for Humanity and World Vision.

### Progress

With the Standard of Care Guidelines and its associated monitoring and evaluation tool, there is better registration and monitoring of care facilities. Two care facilities who did not meet the requisite standard were closed in 2012. There is now less focus on orphans as a class in programming and shift towards recognition of vulnerable children more broadly. With this there has been an integration of social safety nets to minimise duplication of efforts.

### *Services provided to OVC – including orphans*

OVC Service Area	No. OVC Served
Food Aid	188,988
Educational Support	354,922
Health Care	7,352
Psycho-Social Services	37,443
Protection Services	10,006
Financial Assistance	37,045
Other (includes shelter, basic needs, infrastructure) support	15,252

Source: (UNAIDS, UNICEF, USAID & WFP, 2004; Tamasane, 2010)

## Difficulties

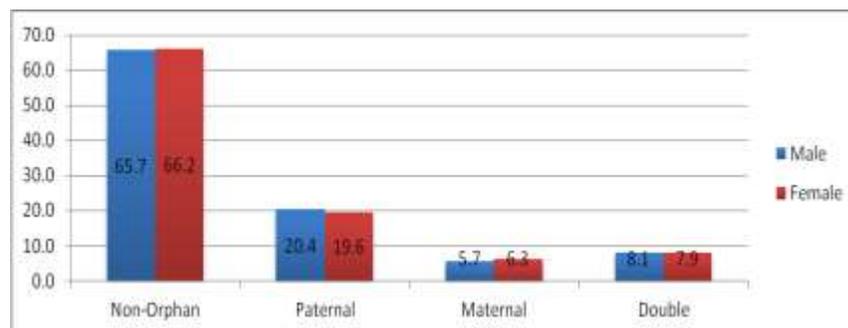
The 2006 census (Bureau of Statistics, 2006) found that the number of orphans in Lesotho grew by almost 60% over the period 1996-2006. Of these, 63% were paternal orphans, meaning that their father had died but the mother was alive, while 16.6% were maternal orphans (the mother had died but the father was alive) and 20.4% were double orphans (both parents had died). The 2004 Demographic and Health Survey (Ministry of Health and Social Welfare, 2005) found that a total of 29.3% of all children in Lesotho were orphans.

### *Orphan prevalence by age and gender, 2006*

Age Group	Male %	Female %
0-4	13.6	13.9
5-9	24.7	24.7
10-14	35.6	35.5
15-17	26.1	26.0

Source: BOS (2007: 80)

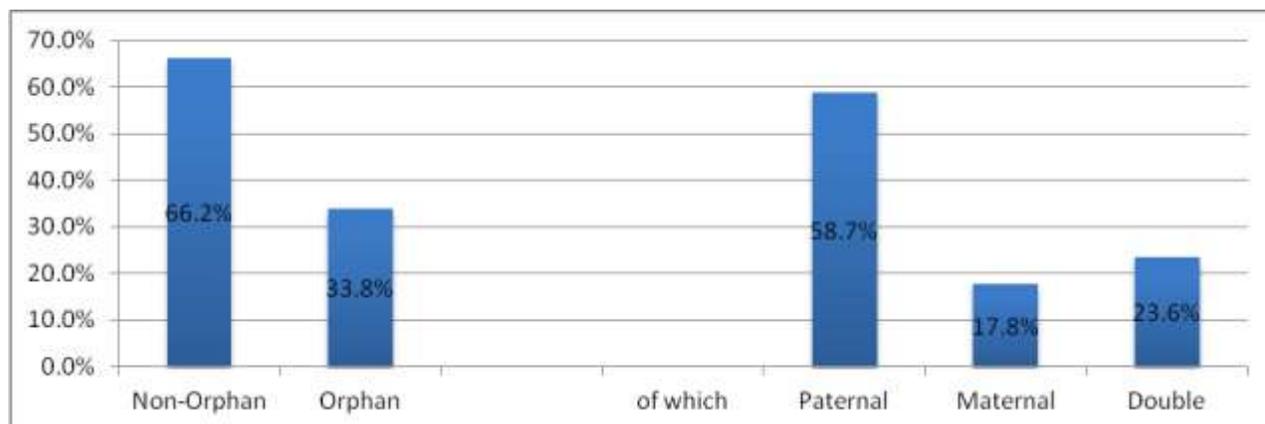
### *Orphan prevalence by age and gender, 2011*



Source: *Situational Analysis of VC of 2011*

Owing to the HIV/Aids pandemic, the numbers of orphans continues to grow. Not all of whom can be fully cared for by public assistance. There are still some vulnerable who do not receive benefit of public assistance because of lack of knowledge of the services and grants available.

### Orphan Status



Source: *Situational Analysis of VC of 2011*

Extended family of orphans, where parents have passed away as a result of HIV and AIDS, are not supportive of children. It is commonly these circumstances which lead to property grabbing of an orphans inheritance. Even where extended family is willing to care for an orphaned child, high levels of unemployment mean they may be financially unable to do so.

Despite the improved legislative environment surrounding residential care facilities, there are some facilities which do not comply with standards. The GoL does not have government run centre and many facilities are at capacity, which means that sub-standard facilities cannot be closed for lack of space for children to reside elsewhere.

Better referral services are needed between police, care facilities, hospitals and MoSD so that actor's roles are clear at each and every stage of the process. Although legislation envisages children being cared for by unrelated adults under foster care, no such private foster homes exist. There is also no plan for the development of such a system in the future.

## 8.0 EDUCATION, LEISURE AND CULTURAL ACTIVITIES

### 8.1 Education including vocational training (Article 11)

#### Legislative

Article 28 of the Constitution of Lesotho protects the provision of education to all for their full development. It makes primary education compulsory and free for all and says that high school education should be progressively free according to the means of the GoL. Free primary education is further enshrined in the *FPE Act* for children ages 6-13 years.

The CPW Act at section 11 protects a child's right to education, regardless of a disability or pregnancy. It specifies that a child has the right to sexual and reproductive education information.

#### Administrative

The Education Sector Strategy is the overarching policy document. Through the Education Policy for All, the GoL aims to ensure that all pre-primary school aged children are provided with opportunities for physical, mental, moral and spiritual growth. The Integrated Early Childhood Care and Development (IECCD) Strategy piloted reception classes in 10 primary schools for pre-school aged children to provide life skills. The School Supervision and Management Regulations abolished use of corporal punishment in schools.

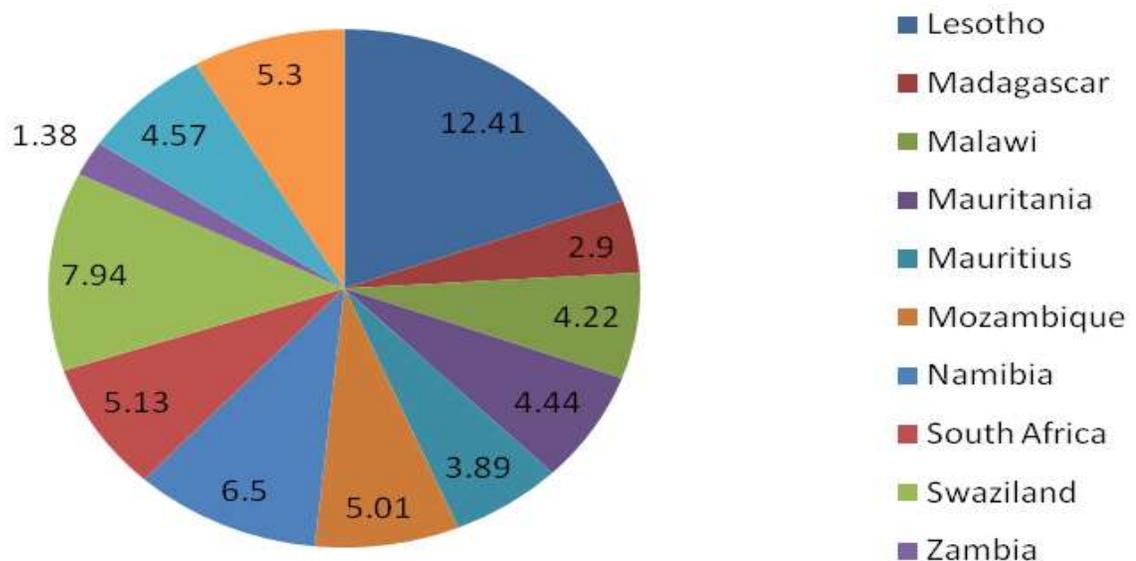
Bursary payments for school supplies and fees are part of the GoL's policy environment to improve school enrollment levels. The MoET has an inclusive policy for education of children with disability. Government and privately owned and run vocational schools offer programs to learn skills such as woodwork, metal work, leather work, sewing, plumbing and electrical. As previously noted, there are a handful of vocational schools specifically for people with disabilities. Lesotho has a specific college for agriculture to learn sustainable methods of growing crops. Vocational type subjects are also offered within primary and high schools, as well as at the Juvenile Detention Centre for boys including home economics, fashion & fabrics, woodwork, food and nutrition and agriculture.

Graduates from the JTC receive a MoET graduation certificate up until primary level, as do teenage mothers who attend and graduate from Good Shepherd Home for Mothers School for this purpose.

## Progress

In line with Lesotho's dedication to free primary education, it spends the largest proportion of its national budget on education of all SADC countries.

*Spending on education by countries across the SADC sub-region, 2008*



Source: World Bank (2010).

This budget allocation has paid off. Rates of primary school enrollment have improved and are now at around 94% country-wide and 85% in rural areas. Girls enrollment is improving at a better rate than boys given that boys still herd livestock. Repetition of a class or grade is now allowed and regulated by MOET. This means students are less likely to drop out of school if they have not done particularly well. Instead, they are able to repeat the grade the following year.

### Educational Support Services (Primary Schooling) for children still at school

Response	National				Urban				Rural			
	Frequency		Percentage		Freq		Percentage		Freq		Percentage	
	M	F	M	F	M	F	M	F	M	F	M	F
<i>Types of outside support received at primary school (Q104)</i>												
None	26404	26015	8.2	7.8	18739	15876	20.1	17.6	7664	10138	3.3	4.2
Free Primary	279176	296552	86.3	89.2	67587	72673	72.4	80.5	211589	223880	92.0	92.5
School fees/ bursary	5677	2689	1.8	0.8	2163	470	2.3	0.5	3515	2219	1.5	0.9
School meals	5896	2370	1.8	0.7	2468	302	2.6	0.3	3428	2068	1.5	0.9
Books	4996	2380	1.5	0.7	1928	226	2.1	0.2	3068	2154	1.3	0.9
Stationery	495	491	0.2	0.2	127	-	0.1	-	368	491	0.2	0.2
Uniform	632	1939	0.2	0.6	300	784	0.3	0.9	332	1155	0.1	0.5
Other costs (e.g. school trips)	133	-	0.0	-	-	-	-	-	133	-	0.1	-
Total	323409	332435	100	100	93311	90330	100	100	230098	242104	100	100

Source: Situational Analysis of VC 2011

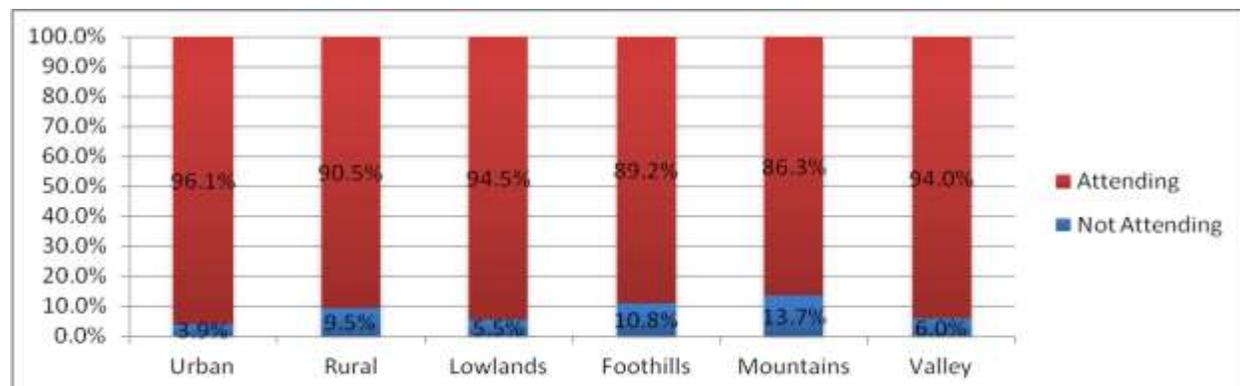
There is now a Bachelor degree in teaching offered at National University of Lesotho (NUL) which accepts enrollments of more than 200 each year. These numbers suggest that there are sufficient graduates each year to staff the schools of Lesotho, but not all are willing to live in very remote rural areas.

Vocational schools are more financially accessible to all than universities. The rate of formal unemployment is falling gradually with people undertaking small projects to earn an income without being formally employed.

Only 1.4% of children aged 7-17 had received life skills education in the year before the Situational Analysis of VC survey in 2011. This included discussions of budgeting, nutrition and sex education. Children who were not in school were more likely to have received such training. Access to life skills training did not differ across boys and girls, nor across agro-ecological zone or urban/rural area.

#### Difficulties

#### Current School Attendance by Location



Source: Situational Analysis of VC 2011

Of those students not in schools, 12.8% had never attended any school, with the figure substantially higher for boys than girls (15.4% versus 7.2%). Three-quarters of the remainder dropped out by the time they reached Grade 7. Boys were more likely to drop out at earlier grades thereafter.

Of those students currently in schools, 4.8% had missed at least one year of school, with the figure slightly higher for boys (5.2%) than girls (4.6%). Some 13% also missed classes at least four times in the past semester, with the figure higher for boys than girls. Missing a year of school was most common for girls in rural areas.

The ratio of students to teachers, despite the significant output of teacher graduates from NUL, is quite disparate. The transition to high school is at around 60-70% annually given the cost barrier incurred for high school education. Schools may also exclude children from high school admission with lower than average results to avoid disappointing averages when school results are publicized. There are also fewer secondary schools than primary schools which make the physical access to them not as readily available.

Despite Lesotho's significant spending on education, it has still not reached its Millennium Development Goal in education. Rural areas still suffer lower enrollment rates and many of the teachers in remote rural areas are unqualified. There is a program however which allows under-qualified teachers to attend college for further education during their school vacations. The course takes a total of 4 years.

Despite the prohibition of girls expulsion for pregnancy, enforcement is difficult given the large percentage of private schools being church owned. Further, despite the regulatory ban on corporal punishment in schools, teachers and administrators alike continue to use what has been a mainstay in education for many years.

## **8.2 Leisure, Recreation and Cultural Activities (Article 12)**

### Legislative

The Constitution of Lesotho 1993 at article 35 ensures a citizen's participation in cultural activities is protected.

Section 12 of the CPW Act provides a child's right to sports, cultural and artistic activities. *The Sport & Recreation Act (2002)* covers children's involvement in sport and establishes sports clubs and foundations to give children opportunities to develop skills outside of school-based learning.

### Administrative

The Ministry Youth Gender Sport and Recreation are at present drafting a Policy on Sport. Schools celebrate cultural days with children, such as Independence Day, Moshoeshoe Day, King's Birthday. The annual Morija Arts and Cultural Festival involves

child performers in song and dance. Lesotho Primary and High Schools Sport Associations facilitate competitions between schools in Lesotho as well as regional tournaments.

#### Progress

There are school scholarships paid by the National Olympic Committee, as well as the Commonwealth for outstanding sports people to study and train abroad. Children are now included in national sporting teams where they are sufficiently skilled, where participants previously had to be eighteen (18) years. Maseru City Council has also established a few parks for green space. Majority of the parks are not however open to the public, outside of special events.

#### Difficulties

Not all children are fortunate enough to be involved in these types of activities. For families struggling to provide their children with the necessities of life, recreational activities are not prioritized.

Coordination between line Ministries such as the MYGSR and MOET is inadequate.

### ***8.3 Nature and scope of the cooperation with local, national, regional and international organizations***

#### Legislative

The Interim National Development Framework is a document drafted by the Ministry of Development Planning (MoDP) that guides Lesotho's collaboration and partnership with international bodies.

#### Administrative

Lesotho is a member of SADC and packages many of its programs in line with the provided guidelines.

At a national level the National OVC Coordinating Committee (NOCC) works to liaise between NGO's and CSO's and the GoL. The NOCC has representatives from virtually all line ministries, development partners, and major civil society organisations involved in the OVC response (with over half of all ministries represented on the NOCC). It is chaired by the Principal Secretary of the Ministry of Social Development. The NOCC is supported specifically by the OVC Co-ordinator in MoSD. NOCC membership includes 'double orphan and head of household' and 'neglected child with a special need' positions, which are to be occupied by nominated vulnerable children.

In addition to the NOCC and the co-ordinating agencies that are involved in the VC arena, there are other platforms and structures through which VC issues are

considered, in particular those involved in the HIV&AIDS response. These include: DCPT's; National Stakeholders Forum; Donor Partnership Forum; Lesotho National AIDS Service Organisations; Lesotho Network of People Living with HIV&AIDS; Lesotho Inter-Religious AIDS Consortium.

The lower level of government comprises a Community Council area, which covers either a neighbourhood in an urban area or a cluster of villages in a rural area. The Councils themselves are responsible for supporting the OVC response at local level. Auxiliary Social Welfare Officers are stationed at the Community Council level.

UNICEF is a development donor with an outstanding working relationship with the GoL. They provide high level technical assistance and have good rapport with staff members of the MoSD. They have recently funded and led a Mapping & Assessment of Child Protection Systems in Lesotho. This is a consultancy which is due to be finalised in May 2014. Closely linked with this is the consultancy to cost the CPW Act legislation. These two exercises will allow the GoL to better coordinate and budget for children's programming in the future.

Letsema Network is an informal network of organisations working in the OVC arena. It is not a co-coordinating or umbrella body, rather it was created to strengthen networking across the many service providers in Lesotho. It is supported and led by Sentebele, a Lesotho-based NGO active in the VC arena. There are some 350 organisations listed by Letsema as being involved in the VC arena, comprising NGOs, FBOs, CBOs, ministries, development partners, and others. Not all are members of their network.

Lesotho has cross-border agreements with RSA on crime prevention such as drug adherence (TB & ART), trafficking, and perhaps adoption's in the future. Lesotho is also a signatory to the African Rehabilitation Institute as well as a member of the US organization Social Workers Beyond Borders.

## Progress

There has been decidedly more emphasis on coordination and recognition that duplication is inefficient. The MoSD has made concerted efforts to seek out organizations working with child programming and signed Memorandums of Understanding with them. This is to lessen duplication of services, encourage partnerships between organizations doing like work and to ensure accountability for the standard of service provided. This now means that most programs of CSO's and NGO's tie in with the objectives of the MoSD Strategic Plan for OVC.

## Difficulties

The interim findings of the Mapping and Assessment exercise thus far suggest that although there is a new focus on coordination, it is still an area which is severely lacking.

## 9.0 SPECIAL PROTECTION MEASURES

### 9.1 *Refugee, returnee or displaced children (Articles 23 and 25)*

#### Legislative

The Constitution at Article 32 obliges the GoL to take measures to provide protection to children regardless of parentage or nationality.

*The Aliens Control Act (1966)* deals with treatment of refugees in Lesotho and provides that non-citizens may seek temporary refuge. *The Refugee Act (1983)* provides protection of a refugee child within the borders of Lesotho and grants refugee status to all family members.

The CPW Act affords protections to refugee children as it does not discriminate as to a child's origin. Where a child cannot be repatriated in terms which are in their best interests, they will be given expedited naturalisation.

The *Anti-TIP Act (2011)* requires that victims be returned to Lesotho.

#### Administrative

Lesotho has a Disaster Management Authority Policy governing procedures in the cases of natural and man-made disasters and evacuation procedures. Red Cross Lesotho provides disaster relief aid in situations such as these. Beautiful Dream Society provides advocacy and shelter for human trafficking victims.

#### Progress

Lesotho has successfully placed several child refugees and their families from Zimbabwe and the Democratic Republic of Congo.

#### Difficulties

In the limited instances of trafficking the government Ministries responsible claim they have not the resources to return a child to their home following trafficking. Even foreign Embassies where the trafficking victim has come from offer very little assistance in the victims return.

### 9.2 *Children in armed conflicts including specific measures taken to protect and provide care for the children (Article 22)*

Lesotho is not involved in armed conflict.

### **9.3 Children that have infringed the law - administration of juvenile justice (Article 17)**

#### Legislative

The Constitution of Lesotho at Article 26 provides for equality & justice for its citizens. Article 12 provides anyone charged with a criminal offence a right to fair trial.

The penal age of a child in Lesotho varies according to which Act they are being prosecuted under. Part XI deals with Children in Conflict with the Law. The Act in section 79(1) espouses that a child under age of ten (10) years cannot be prosecuted. It goes on to say in section 79(2) that a child between ten (10) and fourteen (14) years will be presumed to lack the capacity to know right from wrong and can therefore not be criminally prosecuted. It is for the prosecution to rebut this presumption. A child over the age of fourteen (14) years, the CPW Act deems can be prosecuted. Children under age of fourteen (14) years cannot be detained in a detention centre according to section 156(1) of the CPW Act.

The *Penal Code (2010)* itself says that a child under seven (7) years is not criminally responsible and a child above seven (7) years and below fourteen (14) years is not criminally responsible unless proven otherwise. The difficulty is that this is not in line with the African Charter and is yet the most utilised of the legislation amongst prosecutors. Some prosecutors in the more remote Districts have not sighted a copy of the CPW Act, so still utilise the outdated provisions of the Penal Code.

The *Sexual Offences Act (2003)* has varying definitions of “child” depending on its Parts. For the purposes of Part III Offences Against Children (e.g. child molestation) a child is under sixteen (16) years and for purposes of Part IV Commercial Sexual Exploitation of a Child a child is under eighteen (18) years.

Part XIV of the CPW Act covers Restorative Justice. It envisages the establishment of Village Child Justice Committees, headed by the village Chief, to employ a range of alternative dispute resolution measures at the community level. Different types of forums for review of the crime would be equipped with varying tools of diversionary resolution techniques and punishment.

#### Administrative

In 2002, the MoHA established the CGPU, motivated by the increasing number of cases involving vulnerable children who were neglected, exploited or exposed to violence. CGPU is responsible for providing services to survivors of gender-based violence and investigation of cases of infants and children in need of care. The CGPU is operating nationwide, with branches in all 10 districts of Lesotho.

An office of Probation was established and have their role governed by the CPW Act. They conduct enquiries into age determination and should play a pivotal role in the restorative justice process. Establishment of Children's Courts ensures that children in conflict with the law are dealt with differently to adults.

JTC is the only detention centre in the country for children and only accepts male offenders. Currently female children convicted of an offence and sentenced to time in custody are detained in adult women's prisons. If they are held in Maseru women's prison they attend school at JTC.

### Progress

More alternative forms of dispute resolution are envisaged under the CPW Act which would tie in with the cultural practice of disputes being dealt with at the community level. There has been one round of trainings conducted with the judiciary and probations unit by MOJ and the University of Western Cape in late 2013 and two more are planned for 2014.

### Difficulties

An evaluation of the CGPU conducted in 2007 indicated that the capacity of the CGPU to perform its function is weak. At the time of the evaluation, there were inadequate personnel to cover the entire jurisdiction in each district, and CGPU staff members were not properly trained on gender and child-related work. This remains largely unchanged. Among CGPU staff, none had been specifically recruited to work in the Unit but rather had been transferred without choice. Even where officers are trained in children's matters they can be transferred to other units such as traffic without notice. Furthermore, the evaluation revealed that CGPU staff did not have proper supplies and logistical support, including limited transportation, minimal computer literacy, lack of good and secure office space and safe houses for children in need of custody, and no walkie-talkies, wireless devices, or cameras for documenting evidence.

Although the CGPU is mandated to provide a user-friendly reporting environment that ensures confidentiality and responds to and promptly investigates all cases involving vulnerable groups, the evaluation revealed that CGPU services do not afford the expected confidentiality and reporter friendliness. Prompt responses to reported cases and follow-up of clients were very poor.

In 2005-06, UNICEF assisted the CGPU with the development of a computerized database of reported children's and women's sexual abuse cases to help collect accurate data on the incidence of sexual abuse and to generate quality reports. The aim of the database is to capture details of reported cases and to make accurate, updated data available at all times to service providers and senior policy makers to keep them informed of the magnitude of the problem. It also aims to improve referral links between

the police and the social welfare, health, and judicial systems, thus ensuring that survivors are treated sensitively and receive the quality services due to them.

UNICEF has also provided the CGPU with in-depth orientation on child protection issues and the relevant legal and policy framework, psychosocial care and support techniques, and stress management. Furthermore, to improve reporting environments and ensure confidentiality, the Global Fund assisted the CGPU with prefabricated mobile offices in locations where available office space compromised victims' confidentiality.

Village Child Justice Committees are only operational in two Districts – Thaba Tseka and Mokhotlong. At least one of these Committees is known to use corporal punishment and community work as punishments. This is obviously outside of their legal scope and in direct contravention of the abuse provisions of the CPW Act.

Children's Courts also need to be rolled out to other Districts urgently. Despite training on the CPW Act, Magistrates and prosecutors are reluctant to use its provisions without special court processes for dealing with children differently from adults.

**9.4 Children deprived of liberty, including all forms of detention, imprisonment and placement in any detention structure and respect for the provisions of Article 5(3) prohibiting death sentence for crimes committed by children (Article 7.2(a))**

Legislative

The *Constitution of Lesotho (1993)* does not protect against corporal punishment. No corporal punishment has however been the practice. Never has a child been sentenced to death. In 2012 there was an adult sentenced to death. The last death sentence which was executed was in 1993.

The CPW Act at sections 161 (1) & (3) provides that no sentence of life imprisonment or death may be imposed on a child and no corporal punishment or cruel or degrading punishment may be prescribed. Section 156 (1) limits imprisonment to a maximum of 3 years and no prison sentence can be imposed on a child under 14 years.

Part VX of the CPW Act, Bail & Detention Pending Trial, requires a court to release a child on bail unless it is not in the child's best interest to do so. This may for example be for the child's own protection against an angry community. It also provides that wherever a child is held on remand, it must be for the shortest time possible.

Part XVII provides for legal representation at the child's own expense. Part XVIII on sentencing, specifically section 157 says that any sentence involving a residential element must be employed as last resort, boys to be kept separate from girls, and be for shortest time possible.

## Administrative

Juvenile Training Centre in Maseru keeps boys separated from girls. When children leave JTC they do not have a criminal record.

## Progress

Detention periods for children are capped at 3 years, no matter what their crime.

## Difficulties

Girls have no detention centre and are instead kept with adult women. As previously mentioned, the Probations Unit is severely understaffed and under-skilled, rendering them largely ineffective in their role in juvenile justice and alternatives to detention. This makes Judges reluctant to sentence children to alternative forms of justice given that the strict supervision supposed to be imposed by Probation Officers will not be fulfilled.

There are further no approved schools or probation hostels as envisaged under the CPW Act. Children also rarely receive legal representation given that they cannot afford this themselves. It is only in a limited number of cases where a child is charged with a serious crime that they will be granted a Legal Aid lawyer to represent them.

### **9.5 Reformation, family reintegration and social rehabilitation (Article 17(3))**

## Legislative

Section 178 of the CPW Act provides for reformation schools and probation hostels that do not physically exist. It says further at sections 182, 183 and 186 that no child under the age of 13 years will be sent there.

Restorative justice measures give those sentencing children the option to return a child to their family under an order where they must attend school. They can also impose similar orders where they report to Probation Officers under section 127.

## Administrative

There are Probation and Rehabilitation Units established within the MOJ. The latter of these Units is tasked to equip offenders with life skills for a successful reintegration into their home communities.

JTC offers counseling, rehabilitation and also vocational training to allow children to integrate back into their communities more successfully upon their release.

## Progress

Training of Probation Officers on the relevant provisions of the CPW ACT was undertaken for one week in January 2014.

## Difficulties

Probation unit being understaffed and under-skilled means that rehabilitation programming is a forgotten priority, as they struggle to keep up with the supervision of children released from detention to their control. This in turn means that diversion measures are not used to the fullest as magistrates have no confidence that supervisory orders will be carried out.

GoL must allocate budget to establish the probation schools and hostels envisaged by the CPW Act. More detention centres are also required so that there is one accessible to each District rather than there being only one in Maseru. Further the JTC requires funding for rejuvenation. It is a training facility in name only. It functions more like a prison with conditions not conducive to children.

**9.6 *Children of imprisoned mothers - Special treatment for expectant mothers and mothers of infants and young children who have been accused or found guilty of infringing the law (Article 30); Prohibition of imprisonment of a mother with her child (Article 30(d)); Reformation, integration of the mother into the family and social rehabilitation (Article 30(f)).***

## Legislative

There is no prohibition of a mother imprisoned with her child.

## Administrative

Correctional Services Operational Guidelines espouse that breastfeeding mothers stay with their children until the age of two (2) years, then the child is placed at a care facility or placed with extended family members until the mother is released from prison.

In the women's prison in Maseru District there is a clinic with a fulltime nurse employed. The nurse is capable of providing pre-natal care and care for the child after birth.

## Progress

Every six (6) months, all correctional centres host a Day for Families where the inmates immediate and extended family can attend to visit. This assists with the reintegration of the inmate into the community once released. Mothers are given light duties in prisons while they are pregnant. Pregnant girls and young mother inmates attend at JTC each weekday to attend school classes. They are eligible for a graduation certificate.

Drafting of a Correctional Services Bill is budgeted for by the GoL in 2014.

### Difficulties

Facilities could be improved in the prisons to cater for nursing mothers. This would include better privacy for the woman, better sanitation in cells and provision of sanitary pads. Some prisons in more remote districts do not provide a bed for each inmate. Nursing facilities, particularly in female prisons, should be prioritized.

There is also currently no nursery for children in the correctional centres. Correctional officers play with children while the mothers undertake their daily duties. It is however not ideal to remove a child from a mother's care to place them with strangers in an institution such as a place of safety.

## **9.7 Children in situations of exploitation and abuse**

### **9.7.1 Economic exploitation including child labor (Article 15)**

#### Legislative

The Lesotho Constitution at Article 29 provides its citizens with a guaranteed opportunity to work where ever possible. Article 30 provides for just and favourable conditions of work and article 31 protects workers rights and interests.

The CPW Act at Part XXIV covers minimum ages (section 228), types of employment permitted for children (sections 229 & 231) and prohibitions on exploitative labour (section 226), and night work and industrial undertakings (section 227).

A child from the age of thirteen 13 years may be employed in light work, provided it does not interfere with their schooling or development. Children from the age of fifteen (15) years may be employed in the formal sector.

The types of hazardous work disallowed for children below eighteen (18) years are mining, carrying heavy loads, manufacture which includes dangerous chemicals, working with dangerous machinery, herding animals, commercial sex work and tobacco production and sale.

Children employed in manufacture must provide proof of age to the employer and the employer must keep a register of children employed by them. These children are afforded the same protections under the Labour Code Order (1993) as their adult co-workers.

The *Anti-Trafficking In Persons Act* protects against exploitation where a child has been trafficked for the purposes of working.

## Administrative

GoL has signed the optional protocol on the Worst Forms of Child Labour.

Enforcement of the labour provisions in the CPW Act and the Labour Code is a joint effort between the LMPS and labour officers within the Ministry of Labour. Labour officers for instance attend factories to assess how many children are employed, if proper records of child workers are being kept and the conditions of work.

At the community level a church funded not-for-profit organisation Beautiful Dream Society provides shelter and counseling for women and children involved in commercial sex work. The Herd Boys Association of Lesotho provides services for boys employed in herding such as basic literacy classes at night as well as life-skills.

## Difficulties

The Situational Analysis of VC of 2011 said the following about child labour:

*While the vast majority of children were in school, some were working, affecting a total of 1.5% of all children. Most were in unpaid domestic work (0.6%), followed by paid herding (0.4%). Herding was an entirely male activity, while unpaid domestic work affected males and females equally. The majority of these children involved in paid labour contributed financially to the household (86.9%). Virtually none were noted to be involved in labour considered to be dangerous (although the specific type of work was not independently verified).*

*Respondents were thereafter asked how each child contributed to meeting household needs. Just under 10% did not contribute at all, while another 28.5% were considered to be too young to contribute. The remaining two-thirds contributed towards the household by collecting water (43.3%), collecting fuel wood (12.4%), tending livestock (11.7%), working in gardens (9.5%), or 'other domestic' work (28.2%). This question was followed by one where respondents were asked whether any of the work performed by these children 'prevent him/her from playing with other children, attending school or doing homework to a level that you feel it harms the child's development'. This affected a total of 1.2% of the children. In breaking this down by the child's main activity, these children were the ones working in herding animals or in paid domestic work; there was no difference across orphan status or ecological zone, although those in rural areas were more likely to be engaged in work that affected their ability to go to school and have sufficient play time for their development. Male children were more likely to be engaged in such labour (1.4%) compared to female children (1%).*

There are an alarming number of herd boys in Lesotho as it is a culturally ingrained practice. More information needs to be disseminated about the harms caused to children by herding, such as its interference with the boys education, the lack of nutrition received when eating only maize meal for weeks at a time and the lack of intellectual stimulation when children are isolated in remote areas with only animals for company.

The extreme level of poverty in Lesotho means that children are forced to work to feed their families. This includes selling an already less valuable girl child into prostitution where necessary. Further, many employers are not aware of the existence of the CPW Act.

### **9.7.2 Drug abuse (Article 28)**

#### Legislative

Lesotho has a specific *Drug of Abuse Act (2008)* which creates an offence of growing, using and distributing dangerous drugs. The CPW Act under section 18 provides a child with a right to be protected from harmful substances including hallucinogens, tobacco and alcohol.

#### Administrative

Lesotho has ratified the WHO Framework Convention on Tobacco Control.

LMPS established a specialist unit which deals with drug related crimes only. The MOH within the Mental Health Directorate offer a substance abuse program for addicts. Blue Cross offer residential care, counseling and rehabilitation for recovering addicts. Scott Private Hospital also offers a drug rehabilitation clinic.

#### Progress

The sale of tobacco and alcohol is not allowed to children under eighteen (18) under guidelines from the Ministry of Tourism. Advertising of tobacco on television and radio is prohibited to avoid exposing children to its influence. The grounds of schools and hospitals are now tobacco free zones.

#### Difficulties

The prohibition on sale of tobacco and alcohol to minors is not enforced. Store owners consequently do not request proof of age from customers. The fine for use of marijuana use is so minimal that there is no deterrent. ARV drugs are at times misused to give a sedative effect. Children on the street sniff glue to give them a high to prevent feeling the severe cold in winter. This is an all too common abuse.

### **9.7.3 Abuse and Torture (Article 16)**

#### Legislative

The Constitution of Lesotho at Article 8 provides for freedom from inhumane treatment and degrading punishment.

The CPW Act in section 16 protects a child from abuse, torture and degrading treatment. This prevents all types of corporal punishment. Section 20 obliges parents to protect children from neglect, violence, abuse, exploitation and moral hazards. Under section 22 the GoL has a corresponding duty to protect children from the same as well as to rehabilitate victims of such crimes. Section 23 defines a child in need of care and protection and outlines what should happen to them. Section 17 prevents harmful cultural practices being inflicted upon children.

Part XI of the CPW Act restricts police powers to the minimal force necessary to make arrest, with due regard to the dignity of the child and only as a last resort. Section 161 makes corporal punishment and the death penalty illegal.

The *Education Act (2010)* and the MoET's School Regulations abolish corporal punishment in schools.

#### Administrative

Lesotho ratified the Committee Against Torture in 2001. The establishment of the Child Helpline, CGPU and Children's Courts all aid in the processing of allegations of abuse and torture.

Guidelines for Psycho-social Support were established by UNICEF & REPSSI. Non-governmental actors such as Sentebale, LCCU and Touch Roots Africa provide some psycho-social support for abuse victims.

#### Difficulties

Residential care facilities are generally used as the place of safety that an abuse victim is removed to. They are privately run and are not in every District. Much more awareness raising on what is appropriate chastisement is needed.

Abuse is not often reported, particularly where a family member is the perpetrator. Where complaints are made of this nature, referral mechanisms are often unclear. At times allegations of a grave nature are dealt with at village level by the Chief, without ever being heard in a subordinate court.

### 9.7.4 Exploitation and Sexual Abuse (Article 27)

#### Legislative

Article 8 of the Constitution of Lesotho provides for protection against inhumane treatment.

The *Sexual Offences Act (2003)* makes rape, sexual assault and sodomy illegal. Section 23 requires that proceedings involving children be held in camera to protect child victims and child witness's privacy.

General provisions of the CPW Act such as section 23 (child in need of care and protection) and section 44 (ill-treatment, neglect, abandonment or exposure of children to abuse) will apply here. The latter of these provisions makes an offence of the listed acts where it has or is likely to have caused harm to the child physically, psychologically and emotionally.

The Penal Code has several provisions which criminalise sex acts:

- ⤴ Section 48 – indecency with children
- ⤴ Section 49 – Unlawful sexual intercourse with children
- ⤴ Section 50 – sexual molestation of minors
- ⤴ Section 51 – indecent assault
- ⤴ Section 52 – unlawful sexual act
- ⤴ Section 53 – incest
- ⤴ Section 55 – prostitution

The *Anti-Tip Act (2011)* prohibits the sale of and sexual exploitation of children.

#### Administrative

Lesotho ratified the Sale of Children and Pornography optional protocol in 2003.

As a response to major gaps in treatment and care for survivors of sexual abuse, the Family Health Division of the MOH, with the support of UNICEF, led the development of National Guidelines for the Management of Survivors of Sexual Abuse. The main objective of the national guidelines, which were adapted for Lesotho from the WHO Protocols for Sexual Abuse, is to ensure proper and effective management by all sectors that have responsibilities in handling cases of sexual abuse. It seeks a comprehensive, holistic and integrated approach toward managing sexual abuse to ensure the effective protection of abuse victims, mainly children, who require special sensitivity and care. It also ensures that appropriate emergency Post exposure prophylaxis (PEP) and medical treatment and psychosocial care and support are provided at a health facility.

The 2003 Gender and Development Policy states that the GoL will advocate for laws and policies against all forms of sexual abuse and exploitation. Under this policy, the MGYSR holds the mandate to coordinate gender mainstreaming throughout national and sector development policies and programs.

In 2007, the Education Sector Policy on HIV/AIDS states that HIV and AIDS safe workplaces will be established at all levels of the education system to protect all children, including those with special educational needs, from all forms of sexual abuse, including harassment, sexual molestation, sexual exploitation, and rape.

The 2008 National Reproductive Health Policy acknowledges that young persons are at increased risk of contracting HIV and AIDS and calls on authorities to strengthen and enforce laws to protect this group against physical and sexual abuse and to increase access to information and services.

A USAID funded report entitled National Response Efforts to Address Sexual Violence and Exploitation Against Children in Lesotho was released in May 2013. It revealed that almost six percent of all households with children had at least one child who had been subject to violence in the previous twelve months. Around one percent had suffered sexual violence. Approximately one out of ten respondents noted that in the year before the survey they were personally aware of situations of sexual abuse in their immediate neighborhoods. Figures in this response were higher in urban areas. It is estimated then that there were approximately 10,000 cases of sexual abuse in 2012.

### Progress

A police forensic lab was established in Maseru in 2009. Post Exposure Prophylaxis (PEP) is now routinely provided to children to avoid transmission of HIV Aids & other STI's. The PEP kit also includes prevention of pregnancy measures.

Many CGPU officers have received training on child play therapy. The establishments of children's courts means child-friendly practices are used in deducing evidence from children, without adding to their trauma.

The Penal Code was amended to allow for the termination of pregnancy where the child was conceived as result of rape.

### Difficulties

The rate of sexual assault is alarming. Reported incidents of rape have been on the rise, including cases of children of all ages, with the highest number in the 13-18 age group although an increasing number of reported rape cases involve young children and infants as young as 12 months.

Statistical evidence regarding sexual abuse of children is patchy, if not non-existent. In 2005, out of 668 cases reported to the Child and Gender Protection Unit, 339, or 51

percent, were sexual offences, and of these, 166 involved children under the age of 18. Between January and June 2006, 789 sexual offence cases were reported, of which 179 involved children. Data collected between April and December 2009 from national crime statistics indicated 57 reported cases of neglect of children and 23 cases of assault against children. These cases included child neglect, common assault, abduction (forced elopement), and sexual assault. However, experts believe the true number of child abuse cases to be much greater.

YEAR	NUMBER OF CASES OF REPORTED CHILD SEXUAL OFFENCES
2005	166
2006 Jan-June	179
2009 April-Dec	23

Culturally cases of abuse go unreported, especially those involving family members. Even where cases are reported they are then not prosecuted for varying reasons. Even where they are prosecuted, police infrequently secure convictions as children make poor witnesses. Children become stressed by the circumstances of a court room easily, avert their eyes, fidget when nervous and have poor memory surrounding traumatic events. These factors make judges think they are dishonest and therefore their testimony is not sufficiently weighted against that of an opposing adult version of events.

Further, the evidence given by a child is not given the same weight as that of an adult owing to poor cultural judgments of children. Doctors too are reluctant to give evidence in such cases which makes the job of obtaining convictions even more difficult.

Significant improvements are needed to develop and strengthen referral mechanisms within the key sectors (Police, Social Welfare, Justice and Health) involved in dealing with the survivor at all levels.

#### **9.7.5 Other forms of abuse and exploitation such as begging, early pregnancy, etc (Article 29 b)**

##### Legislative

Section 45 of the CPW Act makes begging an offence. A person who causes or allows a child to beg can be imprisoned for up to ten months.

## Administrative

GoL took preventative steps to deter teenage pregnancy by raising the age of sexual consent to sixteen (16) years for both girls and boys. The Good Shepherd home provides shelter and schooling for teenage mothers.

## Difficulties

Begging occurs as a result of poverty. It is rarely if ever prosecuted. Generally children beg during the day while there are many people on the streets to give, rather than attending school. The deprivation of their education means the cycle of poverty is likely to continue.

Despite the rise in the age of consent, girls still have babies before their sixteenth birthdays, especially in rural areas. Young pregnant mothers are incredibly vulnerable, between the risk of physical effects of pregnancy and labour on a young body to the likelihood of a lack of education continuing the cycle of poverty.

### **9.7.6 Sale, trafficking and abduction (Article 29)**

## Legislative

The CPW Act at Part IX covers trafficking and abduction. Any person who takes part in a transaction whereby the custody or control of a child is transferred permanently or temporarily, for valuable consideration, commits an offence and may be imprisoned for up to five years.

The *Anti-TIP Act (2011)* is a comprehensive piece of legislation for the prohibition, prevention, prosecution and punishment of perpetrators of trafficking. It also provides for the rehabilitation of victims. It provides for adults and children.

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## Administrative

Lesotho has ratified the Optional Protocol on the Sale of Children and Prostitution.

Beautiful Dream Society provides counseling and shelter for trafficking victims. The MGYSR also provides a shelter at Kalapeng for women who are victims of gender based violence.

World Vision Lesotho ran an Action to Combat Trafficking in Persons project which ended in 2013 due to a shortage of funding. It aimed to raise awareness about trafficking issues across five Districts.

The CGPU is tasked to investigate and prosecute these matters. They liaise with Interpol to coordinate cross-border crimes and the rescue of victims.

Year	Trafficking cases reported	Trafficking cases remanded
2011	44	13
2012	17	3
2013	66	16

Source: CGPU Database

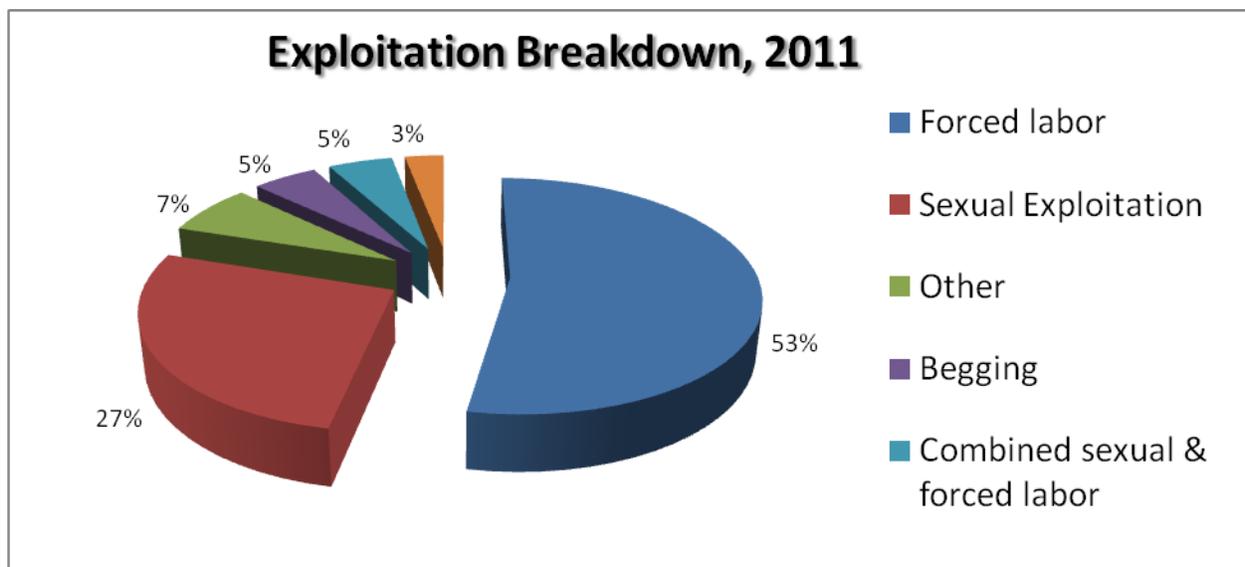
Of the cases reported in 2013, 21 % involved children.

Despite the number of cases been remanded, there have only been three (3) prosecutions of offenders and zero successful convictions.

### Difficulties

Data surrounding trafficking in Lesotho is scarce. Child trafficking for purposes of work could not be measured directly in the Situational Analysis of VC of 2011. Instead, it was measured indirectly by asking caregivers: “are you aware of any cases where a child was sent away to a place where you know the work is exploitative, dangerous and without the consent of the child since the beginning of 2010”. A total of 1.9% of all respondents felt that this was indeed going on in their neighbourhoods.

Trafficking numbers are shown to be growing but this may be an increase in reporting only, given better understanding of the crime and therefore more prosecutions. The reasons for trafficking include the following:



Source: Interpol Statistics

The CGPU could use more broad training in trafficking as there is still some confusion about what constitutes trafficking. For instance the removal of a child across a border is not necessarily trafficking within the legislative definition. Investigations into trafficking are expensive and CGPU are not equipped with nearly enough financial resources. Translators are also few in Lesotho which makes communication with victims and offenders difficult.

There are no places of safety for male victims of trafficking, as Beautiful Dream Society receive women only.

## **9.8 *Child victims of harmful social and cultural practices that affect the well being, normal growth and development of the child***

### **9.8.1 *Child marriage and betrothal of girls and boys (Article 21.2) & Forced and early marriage (Article 21.2)***

#### Legislative

CPW Act says that no child shall marry, which means no one under age of 18. The *Sexual Offences Act (2003)* states that marriage will not be a defense to any offences under this Act. *Legal Capacity of Married Persons Act (2006)* gives equal rights to spouses, for example a woman's right to inherit property upon the death of the husband. Even where they are a child, they are still entitled to these protections as a wife. Women are also granted the right to enter into a contract in their own name.

#### Administrative

The Gender and Development Policy of 2003 speaks about preventing child marriage as a necessary tool to break the cycle of poverty and gender degradation. The more educated a girl is, the less likely she is to marry young.

As previously noted the National Action Plan on Gender-based Violence is also relevant here.

#### Difficulties

The recent assessment of the situation of vulnerable children in Lesotho conducted by the MOH indicated that for girls aged 14-17 who were not in school (13,219), a total of 1742 (13.3 percent of all girls not in school) were not in school because they were married. This amounts to 1.4 percent of all girls aged 14-17, out of a total of 126,676. A further 1,567 (11.9 percent of all those girls not in school or 1.2 percent of all girls aged 14-17) were not in school because they were pregnant.

The adoption of the CPW Act raised the age requirement for written consent to 18 years, for legal guardians to approve the marriage of a minor boy or girl. Despite the presence of laws to protect children, early and forced marriage, including marriage by

abduction, continue to be a problem. This is largely accepted by the girls and their families in many rural areas. There is a lack of knowledge of legislation, coupled with doubts about the difference laws can make to such an ingrained practice.

### **9.8.2 All forms of female genital mutilation (Article 21.1(a))**

There are no reported cases of female genital mutilation in Lesotho. The cultural practice of pulling on a young girl's labia to lengthen them however, continues in some remote rural areas. This is prevented at law by section 17 of the CPW Act.

### **9.8.3 All forms of harmful social and cultural practices (Article 21.1(b))**

#### Legislative

Section 17 of the CPW Act provides the child right to be protected from harmful cultural practices. This includes any rite, ritual, custom or practice that is likely to negatively affect a child's life, health, welfare or emotional, psychological, and intellectual well-being.

#### Administrative

The African Day of the Child is celebrated each year in Lesotho. In 2013 the theme of eliminating harmful cultural practices was used as a forum upon which to discuss some of the aforementioned practices in Lesotho. A discussion group of almost 40 people met to hear speeches and have open discussions about these issues. Children were also requested to make short presentations in their local language Sesotho on some of these issues and the way they are affected by them.

#### Difficulties

There is a growing awareness and understanding of the harms of some cultural practices in urban areas at least, although some resistance to change still exists where acts are justified on a cultural basis.

Problems with high numbers of boys involved in herding persist which prevents boys from gaining an education. In the same way, domestic work for girls is so culturally ingrained that it is difficult to educate on its perils. Problems surrounding muti, traditional medicine and superstition still exist, for example child are exorcised under the guise of religious practice.

#### **9.8.4 Children from a minority group (Article 26)**

##### Legislative

The Constitution of Lesotho and all legislation guarantees the same rights on all children. Lesotho is a homogenous community and largely avoided the affects of apartheid.

##### Difficulties

Some small minority groups exists in Quithing and Qachas Nek. They do not consider themselves Basotho but are native to the land on which they live, inside of Lesotho's borders. They protest their children being taught in Sesotho and English at school and want to be taught in own language (Xhosa). They say that they cannot access services because they don't speak to Sesotho. Most do however have some understanding of the language.

Albinism is highly prevalent in Lesotho. Children with this genetic disorder, while not killed like in some other African countries, are discriminated against. Culturally people believe that these children are cursed and consequently often treat them poorly.

Children who identify as gay and lesbian may also be discriminated against. The non-government organization known as Master Healing Foundation does some advocacy work for adults and children in the gay and lesbian community.

## **10.0 RESPONSIBILITIES OF THE CHILD**

### **10.1 Responsibility towards parents, the family, community, supervisors, the State and the Continent (Article 31).**

Section 21 of the CPW Act states a child's duties and responsibilities to respect their parent, guardian, superior, elder and assist them where needed. They have duties conferred to serve the community, preserve and strengthen social and national solidarity and uphold positive values of the community.

## **11.0 CONCLUSIONS**

It should be recognized that several legislative and administrative measures have been employed by GoL to give effect to the provisions of the charter. With respect to legislative measures, Basotho children are afforded a much greater degree of protection under the new CPW Act. Administratively, the abolishment of the social welfare directorate with the MOH and the establishment of the Ministry of Social Development as a line Ministry has seen improved focus and budget allocation to children's issues. There is also an increase in the number of non-government actors involved in children's programming.

Despite efforts deployed by the State with its many partners, resulting in the progress achieved so far, the situation of children remains a concern. Infant mortality rates, HIV and Aids rates, orphanhood, sexual assault and labour exploitation of children are issues which persist. Lesotho at least acknowledges the issues. Several measures such as the NSPVC, Education Sector Strategic Plan and activities linked to the Millennium Development Goals, are planned to improve the protection of children's rights and freedoms into the future.