

PROTECTING ORPHANED CHILDREN THROUGH
LEGISLATION: THE CASE OF LESOTHO

Presented by:

Itumeleng Kimane

*Senior Lecturer, Department of Social Anthropology & Sociology
National University of Lesotho and
Member of the Lesotho Law Reform Commission*

At the

4th World Congress on Family Law and Children's Rights
20th – 23rd March 2005,
Cape Town, REPUBLIC OF SOUTH AFRICA

PROTECTING ORPHANED CHILDREN THROUGH LEGISLATION: THE CASE OF LESOTHO

By Itumeleng Kimane

Senior Lecturer, Department of Social Anthropology and Sociology, National University of Lesotho and Member of the Lesotho Law Reform Commission¹.

Introduction

For countries such as Lesotho, orphaning has reached crisis levels in the recent years. While there have always been orphaned children, it is believed that the HIV/AIDS pandemic has fuelled the numbers beyond proportion (Ansell and Young, 2004; Kimane and Mohale, forthcoming). The HIV sero-prevalence rate for Lesotho is estimated at 29 % (UNAIDS 2004). This puts her as the number three of the countries most ravaged by the pandemic in the world. Like elsewhere in the world, the HIV/AIDS pandemic in Lesotho has also turned into the greatest humanitarian, social, economic and developmental challenge of today. Both traditional and contemporary social, economic and legal structures and remedies can no longer cope with the magnitude of the problem in the present day (Kimane, 2004; DMA et al, 2003; UNAIDS et al, 2004).

Children under 18 years of age constitute Fifty percent of Lesotho's population of 2.2 million people. According to USAID, UNICEF and UNAIDS (2002), orphaned children account for 17% of the total population and half of these is due to AIDS. The remainder is due to deaths resulting from other causes. Hunter and Williamson (2002) have pointed out that the numbers of orphaned children increased rapidly from 76 000 in 2000 to 137 000 in 2001. Earlier on, the Lesotho Population Census data of 1996 had come up with a figure of 85 543 orphaned children and the United States had reported 103 073 for 1997. The most recent figures from the DMA et al (2003) have come up with 91 844 orphaned children. The sources of information regarding the magnitude of the problem have provided fluctuating and conflicting figures. Therefore, it is believed the information they have given is inadequate and has somewhat underestimated the magnitude of the problem. The NGOC (2000) observed that the numbers of orphaned children in Lesotho grow on a daily basis and that as the rapid spread of the HIV/AIDS pandemic continues the numbers of orphaned children will continue to swell.

¹ The author was also the chairperson of the Child Law Reform Project Committee from 2001 to 2004.

Orphaning has truly become a reality in Lesotho. Consequently, there have been a number of actions undertaken in the most recent years to address this problem. One of them is the review of the laws for the protection of children. In addition, there is also at the moment an ongoing exercise aimed at developing a national policy for orphaned and vulnerable children. The Lesotho Law Reform Commission has just completed the review of the child protection legislation and, there is a bill ready for tabling before parliament. In this paper, the author discusses the remedies the new child protection legislation for the protection of orphaned children and for the promotion of their rights is going to institute. The discussions in the paper provide the following:

- ❖ An overview of the plight of orphaned children in Lesotho;
- ❖ An overview of the state of children's protection legislation;
- ❖ An explanation of the child law reform process in Lesotho; and
- ❖ A description of the main section of the new draft legislation which will protect and protect the rights of children.

The first two issues form the beginning of the discussions because they provided the reason and impetus for the child law review process undertaken by the Lesotho Law Reform Commission.

The plight of Lesotho's orphaned children

A series of studies undertaken to explore the magnitude and impacts of the HIV/AIDS pandemic on orphaned children in Lesotho have revealed that there is a myriad of deprivations and indignities suffered by these children. The studies have revealed that there are social, economic, psychosocial and health related risks associated with orphaning. The concern in several of these studies has largely been with how orphaning affects the total well-being and livelihoods of these children.

As mentioned by Sechaba Consultants (1993), MOHSW (1999 and 2001), UNICEF (1999) and NGOC (2000), the problems confronting orphaned children in Lesotho can be summed up as follows:

- ❖ Generally poverty-stricken life marked by hunger and consequently, malnutrition;
- ❖ Self-pity that is accompanied by an extreme dependency syndrome;
- ❖ Feelings of social exclusion;
- ❖ Stigmatization

- ❖ Lack of trust resulting from feelings of rejection;
- ❖ Emotional insecurity;
- ❖ Lack of food, clothing and suitable shelter;
- ❖ Lack of suitable parental care and guidance;
- ❖ Lack of adequate access to education;
- ❖ Exposure to different kinds of abuse and exploitation, e. g. physical and sexual abuse, child labour, etc.;
- ❖ Poor health coupled with inability to access or afford medical care;
- ❖ Premature exposure to employment; and
- ❖ Early marriage.

The problems listed above appear to be largely interrelated and highly complex. For instance, poverty and lack of parental care are correlated to the stated inability to access food, clothing, education and health care. Consequently, they are related to the malnutrition and pre-mature exposure to employment. For the Lesotho Demographic Survey (2001), other social costs of HIV/AIDS can be uplifted and they include dropping out of school, psychological stress, and problems with inheritance and children's involvement in care giving.

The problems children face with inheritance have been under-researched. Besides their mention in the Lesotho Demographic Survey (2001), the MOHSW (2001) study report has claimed that there is generally not much property left for the children to inherit by the time parents pass away except perhaps in the form of shelter. A recent qualitative study by Kimane and Mohale (forthcoming)² demonstrates that contrary to this claim, other kinds of properties are usually left for the benefit of these children. However, Kimane and Mohale further indicate that the issues regarding the inheritance, ownership and disposal of such properties by the children need to be investigated and straightened in their best interests.

The complex relationships in the nature of the problems confronting orphaned children are also noted because some of them constitute both survival strategies and problems at the same time. Evidence provided in MOHSW (2001) demonstrates that early marriage, commercial sex work,

² This is a report of a research undertaken under the auspices of the Gender Research in Urbanization, Planning, Housing and Everyday Life Programme. Institute of Southern African Studies, National University of Lesotho.

domestic work, herding, living and working from the streets, substance abuse, adoption and placement into childless families are survival and coping strategies adopted by orphaned children. Yet, as already demonstrated, many of these are also presented as problems manifest among them.

The multitude of problems discussed above bear evidence to the extent to which the rights of orphaned children in Lesotho are violated. Practices such as early marriage, engagement in economic activity at an early age, sexual abuse and others of a similar kind infringe upon these children's rights to survival and development. Furthermore, early marriage and sexual abuse increase the chances of the se children to contract HIV and AIDS. The stigmatization and social isolation resulting from the HIV/AIDS scourge accentuate the violation of their rights.

The state of existing legislation for the protection of orphaned children in Lesotho

This section of the paper begins by providing an overview of the general state of children's protection legislation in Lesotho. It latter explains the inadequacies inherent in it with particular reference to orphaned children. As the HIV/AIDS problem advanced from the 1990s, the numbers of orphaned children in Lesotho began to swell at an alarming rate. Problems affecting these children became visible by the day. Among these were problems of lack of parental care and guidance, emergence of child headed households, abuse of these children through exposure to child labour, sexual exploitation by relatives and other community members and abandoning of babies. Consensus began to emerge especially among individuals and organizations working in the area of child rights and protection that some of these problems could be remedied through legislation.

The magnitude of orphaning led to the increased realization that Lesotho had no administrative and legal measures intended for the protection and promotion of the rights of the concerned children. It became clear that the 1952 Adoption Proclamation that came into force during colonial times was too outdated to cope with the situation. The Proclamation in question discriminates against Africans and set prohibitions that make it impossible for them to adopt children. In this manner, it limits the numbers of potential adoptive parents such that it would serve no real purpose in the era of so much orphaning as witnessed in contemporary Lesotho. Even the 1980 Children's Protection Act

has proved not very useful because it deals predominantly with the protection of children in conflict with the law. The other kinds of issues and problems confronting orphaned children are not catered for in this Act.

It has also become obvious that the extended family system, which has acted as the safety network from times immemorial, is confronted with many constraints and challenges. Thus, because of problems such as the high rate of unemployment, retrenchment of male migrant workers from the South African mines, poor agricultural production and poverty, the extended family is no longer in a position to grant these children the care and support as it used to in the past. The informal arrangements of foster care within families also proved to be no longer suitable for a number of reasons. For example, several studies and reports (MOHSW, 2001; Byrne, 2002; Kimane, 2004) have demonstrated that there is a high rate of abuse of children in these informal foster care arrangements. The very relatives who are supposed to provide foster care to orphaned children are abusive. Orphaned children get hired out by relatives as domestic workers or herdboys. They get physically, emotionally or even sexually abused and exploited. Sometimes, they do not get equal opportunities to attend school because they have to perform certain chores for the families fostering them. Again there is no legal recourse for children in these matters.

Furthermore, it emerges from some of the studies that orphaned children are confronted with a lot of problems in trying to secure rights over family properties and estates. The report by MOHSW (2001) alludes to the problems of "property grabbing" experienced by these children. Kimane and Mohale (forthcoming) have made a more in-depth study of issues of property rights among orphaned children. The findings of their study show that the problems orphaned children face in trying to gain access to and control over properties left behind by their deceased parents are regular phenomena and highly complex. Kimane and Mohale in their conclusions make a suggestion that legislation could be one of the strategies used to resolve many of these problems. The report of the United Nation's Secretary General (n.d.) has noted that without the enforceable right to own and inherit land and property, children, especially girl children, face destitution after the death of their parents. For this reason, they are left dependent and exposed to increased sexual exploitation and violence which are additional problems confronting orphaned children in Lesotho as revealed by earlier discussions.

The impetus to reform the child protection legislation also came about because of the pressure felt by the institutions that provide care for orphaned children. Since there are very few such institutions in Lesotho, it is no longer possible for them to admit any more children yet the demand is there and keeps growing. Without a better alternative, large numbers of children without parental care live with grandparents. As revealed in the report by DMA et al (2003) and further confirmed by Kimane and Mohale (forthcoming), a significant proportion of these grandparents is without visible means of support. They are mostly women and widows whose economic status is already below status.

The point in question is that the existing child protection legislation is not capable of dealing with these problems

The child law reform process in Lesotho, 2001-2004

The child law reform process was a highly consultative process involving government ministries (Ministry of Justice, Human Rights and Rehabilitation; Ministry of Health and Social Welfare; Ministry of Education and Training; Ministry of Labour and Employment; etc.) as well as non-governmental organizations (e. g. Non-governmental organization coalition on the rights of the child, Lesotho Girl Guides Association) and development partners (UNICEF, Save the Children- United Kingdom and Save the Children- Sweden)³ working in the area of child protection. Consultations were also made with communities and children during the child law review process. The process was initiated in 2001 as one of the projects under the Lesotho Law Reform Commission and it lasted for about four and half years ending in mid-2004.

The Child Law Reform Project was launched as a result of the many inadequacies identified in the current child protection legislation for Lesotho. Of particular interest in the context of this paper is the fact that the existing legislation is not able to address the needs and interests of orphaned children as discussed in the two preceding sections. However, the other concerns regarding child protection are still relevant and are presented in brief below.

³ These partners constituted the membership of the Child Law Reform Project Committee. The last three provided technical and financial support for the project.

One of the primary concerns which provided impetus for the child law reform process was that the existing legislation does not protect certain categories of vulnerable children in contemporary Lesotho. The main child protection law, the Children's Protection Act of 1980 focused only on children who are in conflict with the law. It contained nothing regarding how the following categories of children were to be protected:

- ❖ Those without parental care namely, the abandoned and orphaned;
- ❖ Those with disabilities;
- ❖ Those who are victims of violence and other forms of abuse and exploitation including the sexually abused and child labourers;
- ❖ Those in institutional care; and
- ❖ Those infected and affected by HIV/AIDS.

The work of the Child Law Reform Project focused on these vulnerable groups in addition to that of the children in conflict of the law. Of relevance to the paper are the groups mentioned first and last.

The child law reform process also became necessary because of the recognition that Lesotho has ratified several international instruments and protocols relevant to children yet these have not been harmonized with the domestic legislation. For instance, Lesotho is signatory to the United Nations Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child and ILO Conventions 138 and 182 on the Minimum Age of Employment and the Elimination of the Worst Forms of Child Labour and the SADC Addendum on Violence Against Women and Children. She has also been participant in important fora and milestone meetings in the region and internationally where matters of concern to the human rights of children were discussed. The feeling among the different stakeholders who were involved in the child law reform process was that the domestic child protection legislation was no longer sufficient and could be informed and strengthened by borrowing from international experiences and protocols to which Lesotho is committed.

At the beginning, the process was informed by the deliberations of thematic groups that were formed to discuss around issues and matters of child protection for the various groups listed above. Research was also conducted on the same issues and matters by commissioned researchers. Research was also conducted on the themes of community-based forms of care and protection of

children and on the strengths and weaknesses of the Department of Social Welfare. The research mainly looked into gaps that exist in the current pieces of child protection legislation with respect to each of the identified groups of vulnerable children and made proposals as to how those gaps could be filled. The suggestions emanating from this research have been used in drafting the Bill discussed below.

Capacity building activities undertaken during the law reform process varied to include workshops, dialogues and roundtable discussions on topical issues pertinent to the process and study tours. For example, workshops and roundtables were held on topics such as child rights, adoption and foster care, orphaned and vulnerable children, investigation for child protection, use of child-friendly language and procedures in the courtroom and the role of intermediaries in court. During the process, members of the Project Committee and other stakeholders were able to attend regional and international fora such as the conference on commercial sexual exploitation of children (CSEC) in Japan, Family Law conferences in South Africa (learned of concepts such as family courts and family advocate) and a conference in Southern African child law reform best practices in Johannesburg. A lot of useful information was gathered from these activities and it has informed the drafting of the new child protection legislation for Lesotho.

Study tours were undertaken to Ghana to look at their experience of implementing child protection law. Other study tours were mainly to South African organizations/programmes such as

- ❖ Khulisa-an organization that runs diversion programmes for people in conflict with the law
- ❖ One stop service centre for children in conflict with the law based in Bloemfontein
- ❖ The South African Human Rights Commission
- ❖ Nelson Mandela Foundation (Children's fund)
- ❖ National Prosecution Authority, SA
- ❖ Restorative Justice Centre in Pretoria
- ❖ NICRO, SA
- ❖ Teddy Bear Clinic for children involved in cases of sexual abuse and exploitation.

A lot of useful data and experiences were gathered during these tours and they have become invaluable in informing the draft legislation.

From the beginning of the Project, child participation was seen as critical and was emphasized throughout the process. To this end, in addition to the main Project Committee, a Junior Committee of the Child Law Reform Project was formed. This Committee constituted a very important body in the Project. It organized its own activities to contribute to the process of reviewing the national laws pertaining to children. It functioned to put the voices of children high on the agenda of the child law reform process. The children on the Junior Committee got the opportunity to participate in national initiatives such as the PRSP and attended other for at the international level. This way, they were able to have a broader view of the law and protection issues relevant to children.

This approach made the child law reform process in Lesotho not only inclusive of stakeholders and service providers working in the area of child protection and welfare, but also turned it into the most consultative and representative process. The voices and views taken on board to inform the process of drafting the new child protection legislation came not only from stakeholders drawn from government, non-governmental organizations and relevant service providers as mentioned above, but from the communities and the children at different levels of society who were engaged through involvement in the children's committee, research and focus group discussions.

Protection and promotion of the rights of orphaned children through legislation: the Lesotho Children's Protection and Welfare Bill 2004

As heralded in UNAIDS et al, 2004, the Lesotho Children's Protection and Welfare Bill 2004 is a landmark piece of legislation. It is going to provide protection to among others, orphaned children which hitherto has been absent in all child related legislation. Although the legislation is yet to be enacted, the general view is that it will go a long way towards protecting and promoting the rights of orphaned children.

This piece of legislation is intended to consolidate and reform the laws relating to the protection and welfare of children as well as to provide for all other incidental matters relating to them. It has successfully brought together pieces of legislation in line with current child protection issues. It is designed to extend, promote and protect the rights of children as defined in the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child

and other relevant international instruments, protocols, standards and rules to which Lesotho is signatory. It provides for the administrative, legal and judicial measures necessary to facilitate, encourage and foster the full enjoyment by children of the rights they are entitled to. It makes provisions for all children in general. But some of the provisions in the new legislation are specific to orphaned children as the next discussions are intended to demonstrate.

The provisions specific to the protection and promotion of the rights of orphaned children include those related to vital registration, those putting in place safeguards protecting properties and inheritance rights of orphaned children, those related to the administration of the properties of children by the office of the Master of the High Court, those related to fosterage and adoption, and those on custody and guardianship. The focus of the discussions will be on provisions that seen to have direct relevance for orphaned children because it will not be possible to discuss every provision in this paper. The provisions cover all areas of concern discussed in the preceding section with reference to orphaned children living without parental care.

(A) The right of orphaned children to vital registration

Section 8 of the new legislation provides that orphaned children shall have a right to vital registration. The state is mandated to put in place a system of civil registration that shall maintain systematic and comprehensive and well disaggregated data in both quantitative and qualitative forms on all groups of orphaned and other vulnerable children. This section mandates the Bureau of Statistics to institute mechanisms and strategies for the collection, analysis and dissemination of data in respect of orphaned and vulnerable children which has not been the case so far. The data to be compiled as proposed shall be extremely useful for purposes of planning and programming for orphaned and all other vulnerable children. It shall, for instance, inform programming and budgeting processes for the education of such children.

(B) Right to parental property

As discussed earlier on in the paper, orphaned children in Lesotho are confronted among others by problems of getting access to and control over the properties of their deceased parents. Section 18 of the Bill in question gives this (orphaned) and other categories (those born out of the wedlock) of children rights to reasonable provision out of the estate of their parents. Other provisions relevant

to property ownership, inheritance and disposal by orphaned children are contained in Sections 38 to 43.

Under Section 38, the Bill provides that in all instances where a parent is survived by minor children, any of the following, be it the surviving parent, guardian, closest relative or any member of the community shall report the estate to the office of the Master of the High Court within two months of the death of the parent. According to Section 39, any of the persons referred to above is directed to seek the permission of the Master of the High Court when alienating, disposing off or selling children's property. The section also creates an offence and sets suitable penalties in respect of those who fail to abide with the provisions of this section.

The duties of the Master of the High Court in handling matters associated with the properties of children are set out clearly under Section 40. Emphasis is made that the Master shall ensure that

- ❖ The best interests of the children are met in administering their shares to parental property;
- ❖ Children are not left destitute, and/or homeless where the assets of the estate are being alienated, disposed off or sold and appropriate permission should be granted as already mentioned above;
- ❖ He/she retains the power to administer and confiscate property belonging to children and to delegate such powers to any person or institution; and
- ❖ Where he/she discovers that the property belonging to the children has been negligently used by the successful heir or any other person, such individual is requested to pay that property.

The sub-sections outlined above are those that would be applicable to orphaned children. Others which concern neglected or abandoned children have not been mentioned because they may not be directly relevant for orphaned children.

In addition to the duties of the Master of the High Court, the Bill empowers the District Secretaries (Section 41), employers and financial institutions to deal with certain matters related to properties belonging to children. For instance, in accordance with the stipulations of the draft legislation, District Secretaries are supposed to make sure that when successful heirs are presented before them, the names of minor children of the deceased appear on all relevant documents. They also

have to liaise with the office of the Master of the High Court in the administration of the properties of children. On the other hand, the legislation places upon the employers the duty to send all the property to the office of the Master upon the death of their employees (Section 42). Failure to comply with provisions of this section becomes an offence punishable by law.

Duties of the financial institutions with respect to these matters as stipulated in the Bill state that they shall not open any account in respect of an orphaned children without prior consent of the Master of the High Court (Section 43). Any action contrary to these provisions would constitute an offence punishable in the eyes of the law.

(C) Fosterage and adoption

The first comprehensive system for foster care and adoption in Lesotho is established in terms of Sections 51 to 69, Part VII of the Bill. A number of issues are dealt with in these sections including,

- ❖ Provisions on who can foster and adopt;
- ❖ Establishment, membership and duties of district-based foster care and adoption committees;
- ❖ Rights and responsibilities of foster and adoptive parents;
- ❖ Standards and procedures for applying for fostering and adopting children and for the processing of such applications;
- ❖ Conditions and restrictions for making adoption orders; and
- ❖ The right of the child to know about the adoption.

Sections 58, 65, 66 and 68 make very important provisions in respect of adopted children. For the first time in the history of Lesotho, the Department of Social Welfare is legally empowered to act as the lead role player in foster care and adoption placements. The Department is authorized to present applications for adoption before the High Court, the power they have been denied up to the present moment. The Social Welfare Department has to produce assessments of the potential foster and adoptive parents and the conditions surrounding the child before putting an application before the High Court. This will guarantee that the best interests of children shall remain paramount throughout the process.

The new law opens up opportunities for nationals of Lesotho to adopt children. This was not possible under the Adoption Proclamation of 1958. In this way, the roll for potential adoptive parents will be augmented to cater for the increasing numbers of orphaned children. Inter-country adoption is provided for in terms of Section 65 of the Bill. Basotho children can be adopted by non-citizens of Lesotho and non-citizen children can also be adopted by Basotho nationals. The Director of Social Welfare is directed to maintain a register of all adopted children whether they are from inside or outside Lesotho with relevant particulars of the adoption orders made in respect of the concerned children. Other crucial provisions are with regard to the devolution of property on adoption (Section 66). For instance, the law provides that where an adoptive parent dies intestate, his/her property shall devolve in all respects as if the adopted child is the natural child of the adoptive parent. Specific provisions are also made to apply in testamentary disposition of property (Section 67).

(D) Guardianship

The Bill provides that appointment of a person to assume parental responsibility over the child may be by a will made by a parent of the child, an order of the Children's Court, the family or the Master of the High Court. The appointment may be made by any of these parties acting alone or in conjunction with the surviving parent of the child where one parent is deceased. This is relevant for orphaned children. But other children like those born out of the wedlock or those whose parents are no longer living together can have applications for guardianship submitted on their behalf. The law gives anyone of the surviving parent the rights to be the guardian of the child subject to the stipulated provisions.

The law further stipulates that a guardian may be appointed in respect of the person or estate of the child or both. Where the appointment is only in respect of the estate of the child, he/she need not be in the actual custody of the guardian. However, with the authority of the Master of the High Court, such a guardian would have

- ❖ the power and responsibility to administer the estate of the child and to receive, recover and invest the property of the child for the benefit of the child;

- ❖ the duty to take all reasonable steps to safeguard the estate of the child from loss or damage;
- ❖ the duty to produce and avail accounts in respect of the child's estate to the parent or custodian of the child or to some other individual as the Children's Court may direct on every anniversary of his appointment; and
- ❖ to produce any account or inventory in respect of the child's estate when required to do so by the Children's Court.

Neglect or misapplication of assets forming part of the estate belonging to a child is an offence in terms of this law and anyone found guilty of such an offence is liable to make good any loss or damage occasioned by such action.

(E) Summary of other provisions relevant to orphaned children

There are several other provisions contained in the Bill which, though not specific, are relevant to the situation and problems of orphaned children. Due to the lack of space in this paper, this will be highlighted in brief. Firstly, orphaned children are going to benefit because the law reiterates children's rights to education, health services, adequate diet, clothing, shelter, medical attention, social services and any other services required for the child's development and survival. Emphasis is made to the effect that no child shall be denied or hindered from accessing medical treatment by reason of religious or other beliefs. Secondly, all children are granted the right of protection from exploitative labour as well as from torture and degrading treatment or punishment whether physical, psychological, emotional or otherwise. The discussions on the plight of orphaned children indicate that they do experience these kinds of problems. Hence, they have to be protected.

It goes without saying that many other provisions in the new legislation would apply equally to these children. Among these, one could single out those on issues such as trafficking and abduction of children; traditional practices that may be harmful to the development of children; the employment of children and protective measures relating to the health of children including HIV/AIDS related ones. These are only a few examples. But in general, orphaned children would benefit from all provisions in the Bill.

Conclusion

During the dissemination of the contents of the Bill which is still ongoing⁴, the Bill is commended for its several strengths. It is praised for the way in which it has most ably codified and centralized all laws pertaining to the protection of children in one statute. Above all, it seems to have been able to address the vulnerability of the various groups of children as it had been intended. Innovative ways of protection and promoting the rights of all vulnerable children have suggested. However, some of the innovative ideas contained in the legislation may not be easy to implement. A good example concerns the child participation provisions, which permit children to have "locus standi" to approach the children's court in their own name. This may not be easy to swallow for most of the adult Basotho people.

Other commentators have spoken about the way in which the Bill is written in simplified language and style, which makes it user-friendly and accessible to a wider audience. Because the issues of orphaning are so diversified and complex, the duties and roles of protecting and promoting the rights of the affected children are allocated to different duty bearers namely, relatives, communities, chiefs, employers, the Master of the High Court, District Secretaries and financial institutions. The manner in which the tasks of respective players have comprehensively been stated will make the implementation of the various provisions smooth and effective.

The law is presented in very culturally sensitive terms. For instance, a lot of care has been maintained in assigning tasks and roles so that they remain sensitive to local and indigenous norms. This is evident from the way chiefs are to be retained in offering child protection services and in facilitating several procedures and processes for the benefit of children. Cherished African values that stipulate that children have to respect and help grown-ups are also given a high place in the Bill. For this, many people want to identify with it.

While Lesotho is yet to ratify some of the relevant protocols in this piece of legislation she has, for example, already made provisions to regulate inter-country adoption. Great steps have also been taken to legislate for the Optional Protocols to the Convention on the Rights of the Child namely, one on the Sale of Children and another on Child Trafficking. Extensive efforts have also been

⁴ UNICEF has been supporting the dissemination activities over the past twelve months.

made to protect the inheritance rights of orphaned children and to deal with issues of their fostering, adoption and custody and guardianship.

Finally, the Bill is a tool that can be used by everyone in dealing with issues that affect children in a holistic manner. It will assist the government and its developmental partners to translate policy into clear “deliverables” in order to make children’s rights a reality in Lesotho. Now the Bill is with the Minister of Law and Constitutional affairs. Soon it will be placed before the Cabinet en route to parliament hopefully to be enacted before June 2005.

REFERENCES

1. Ansell, N. and Young, L. (2004). Enabling households to support successful migration of AIDS orphans in southern Africa. AIDS CARE. Vol. 16, No. 1, pp3-10.
2. Byrne, J. (2002). Guidelines for OVC Programming in Lesotho. Document prepared for UNICEF. Lesotho, Maseru.
3. Bureau of Statistics (2001) Lesotho Demographic Survey 2001, Government of Lesotho.
4. DMA (Disaster Management Authority) et al (2003). Lesotho Orphan Database, Draft report on a Census Data Collected with the joint participation of the MOHSW, DMA, NGOs and WFP. Maseru.
5. Government of Lesotho (2002). Children and Youth Thematic Group Report to the Poverty Reduction Strategy Paper. Ministry of Development Planning. Maseru.
6. Hunter, S. and Williamson, J. (2002). Children on the Brink, Strategies to Support Children Isolated by HIV/AIDS. Washington, D.C. USAID.
7. Kimane, I. and Mohale, N. (Forthcoming). Generational, Gender and Socio-Legal Issues Related to Orphaned Children’s Access to and Control Over Wealth-creating and Livelihood-sustaining Properties in Lesotho.
8. Kimane, I. (2004). Update on the Situation Analysis of Orphaned and Vulnerable Children in Lesotho. Report for MOHSW, Lesotho Save the Children and UNICEF.
9. Ministry of Health and Social Welfare. (2001). The Problems of Orphans in Lesotho. Final Report by Ntlafalang Consultants.
10. Non-Governmental Organizations Coalition on the Rights of the Child (2000). The State of Children’s Rights in Lesotho. Maseru.

11. Ntlafalang Consultants (2002). The Problems of Orphans in Lesotho. A Research Conducted for the Ministry of Health and Social Welfare (Unpublished Draft Report).
12. UNAIDS (2002). Report on the Global HIV/AIDS Epidemic.
13. UNAIDS et al (2004). OVC Rapid Assessment Analysis and Action Planning, Lesotho.
14. UNICEF (1999). Children Orphaned by AIDS, Frontline Responses from Eastern and Southern Africa. New York, USA.
15. UNICEF. Orphans in Lesotho (a Powerpoint presentation by NYHQ HIV/AIDS Unit). First National Conference on Orphans and Other Vulnerable Children. Windhoek, Namibia: May 8-10 2001.
16. UNICEF (2003). Africa's Orphaned Generations. New York USA.