

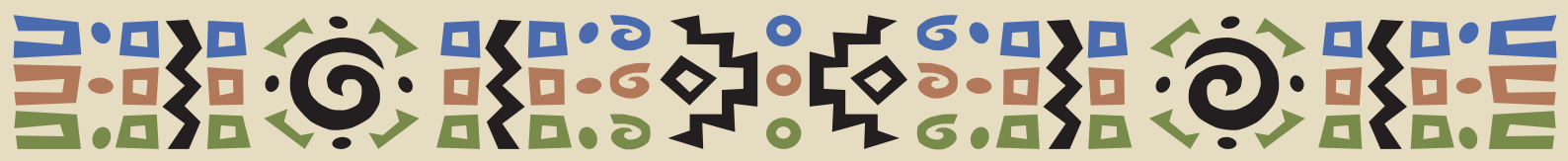


MINISTRY OF SOCIAL DEVELOPMENT
GOVERNMENT OF LESOTHO

The Children's Protection and Welfare Act of 2011



A Call to Action for Community Leaders and Community Members in the Kingdom of Lesotho





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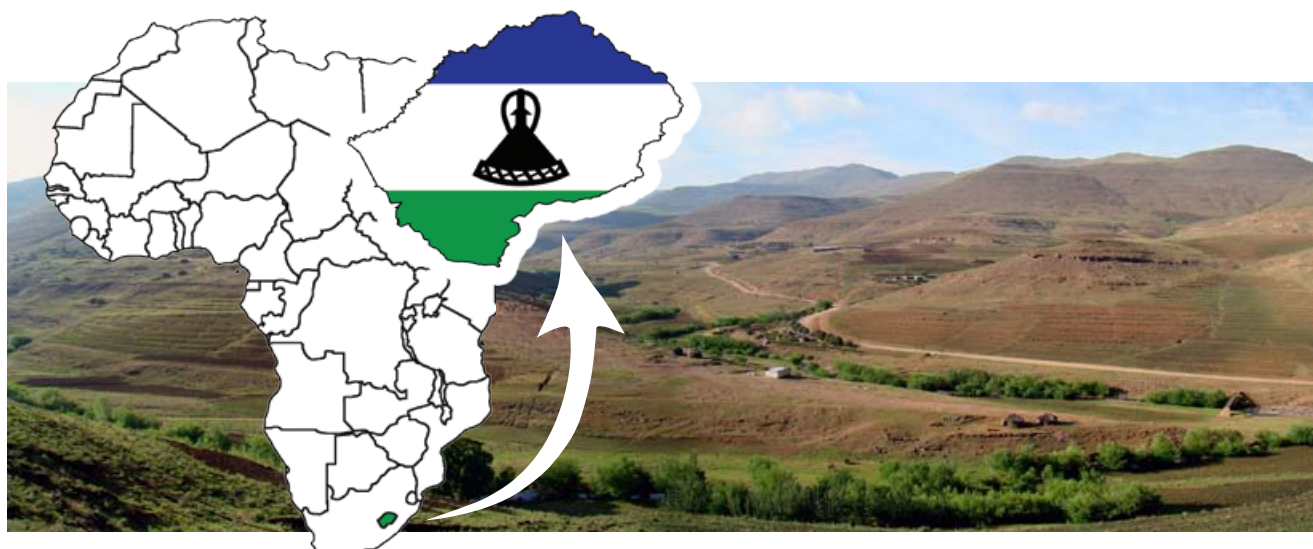
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Introduction



Lesotho has a new law called the **Children's Protection and Welfare Act**. The purpose of the new law is to promote and protect children's rights and welfare. The new law says that a child is a person under age 18. All children should be registered within three months of their birth. Birth registration has many benefits, including giving a child an identity. It also helps people to know how old a child is from the start.

The new law says that when people are making a decision about a child, they should always do what is best for the child. The Act also says that all children should be treated equally regardless of gender, race, age, religion, health, culture, order of birth or any other factors including whether a child is born inside or outside of marriage.

The Act focuses in particular on the needs of two main groups of children:

- (1) children in need of care and protection; and**
- (2) children in conflict with the law.**

Children in need of particular care and protection include children who do not have enough food, clothing, shelter, education or healthcare. This makes them vulnerable. This group also includes children

who are being abused or who might be abused one day. It also includes orphans and abandoned children.

Children in conflict with the law are children who have committed an offence. The law allows for these children to be treated differently to adult offenders. This is because children who have committed an offence may not have understood why what they did was wrong, or someone may have forced them to commit the offence. The law gives special ways to deal with children in conflict with the law.

The new law gives service providers such as social workers and police an important role in protecting children. The law also recognises that Chiefs and community leaders have an important role to play in protecting children. For example, they should make sure that the community understands why it is important to protect children and how to get the help that a child needs. They should also encourage community members to report suspected cases of ill-treatment, neglect or abuse of children. **Failure to report such cases is an offence which can be punished with a sentence to perform community service.** Ultimately, all people in a community are responsible for helping to promote the welfare and protection of the children in the community.



Abuse, neglect and abandonment



A child who has been abused, neglected or abandoned is a child in need of care and protection. Children who are neglected or abandoned are at risk of abuse, illness and failure to develop in the way that they should.

All forms of child abuse are crimes. *If someone caring for a child abuses or neglects the child, he or she could be given a fine of up to 2 000 Maloti, or be sent to prison for up to 2 months, or both. It is also against the law to unreasonably leave a child without care or supervision. A person who does this could be given a sentence to perform community service.*



Duty of parents and guardians to protect children

Both parents must protect their children even if the parents are not living together. If a child has a guardian, the guardian must also protect the child. Parents and guardians of a child must protect the child from physical and emotional abuse, discrimination, moral hazards and harmful cultural practices.

A *guardian* is any person who is in charge of a child or has control over that child, even for a short time, depending on the situation. This could be a child's parent or grandparent, or a person who has been nominated in a will to look after a child if the child's parents have died.

One *harmful cultural practice* is early marriage. This can lead to children dropping out of school. It can also lead to pregnancy at a young age, which can endanger the pregnant child's health.

No child in Lesotho can be forced to get married. Some children in Lesotho have been abducted (taken away illegally) to get married. Both of these things are against the law.

Child abuse

It is child abuse when anyone harms or mistreats a child on purpose. Child abuse includes physically assaulting or injuring a child, sexually abusing a child, exploiting a child economically, exposing a child to behaviour that could harm the child physically or emotionally, neglecting or abandoning a child, or allowing a child to take alcohol or drugs. It is a crime to abuse your child.

Child neglect

Child neglect is when a child is not properly cared for. This includes not giving the child enough food, clothing, medical treatment, shelter, care, guidance and protection. Another form of neglect is leaving a child alone without anyone to care for him or her for an unreasonable period of time or in an unsafe situation. It is a crime to neglect your child.

A parent, guardian or caregiver who does not really care about a child's wellbeing may neglect the child on purpose.

Child abandonment

Abandonment is when a child's parent, guardian or caregiver leaves the child on purpose and does not come back for the child. Children are abandoned for many reasons, such as poverty, unwanted pregnancy or the birth of a child outside marriage. An orphaned child may be abandoned if there are no extended family members who are willing or able to care for the child. It is a crime to abandon your child.



What is the role of the community?

If you know or suspect that a child has been abused, neglected or abandoned, you should report this to a representative of the Department of Social Welfare, or a police officer or a Chief. *Failure to report such cases is a crime which can be punished with a sentence to perform community service.* The law highlights the reporting duties of medical officers, child care providers and family members, but the duty to report applies to every member of the community.





Children in need of care and protection



Which children are in need of care and protection?

Children in the following situations may be in need of care and protection:

- a child who is being or may be **physically, sexually or emotionally abused**;
- a child who is **not being cared for properly** by his or her parent or guardian and is getting into trouble;
- a child whose parent or guardian is **not providing enough care, food, clothing, shelter, education or healthcare**;
- a child who **does not have a parent or guardian**;
- a child who has been **abandoned**, and the parent or guardian cannot be found and there is no one to care for the child;
- a child who is **in need of healthcare** but the parent or guardian has not or will not get the child treatment;
- a child who is **harming, or may harm, him- or herself or other people**, and the parent or guardian is not stopping this behaviour;
- a child who has such a **bad relationship** with the parent or guardian that the child is being emotionally injured;
- a child who is **being looked after by someone who has been found guilty of harming the child** (for example abusing the child or making the child work instead of going to school);
- a child who is involved with people who behave very badly or may **encourage the child to be seduced, corrupted or involved in prostitution**;
- a child who is being made to **beg**, or to do something illegal, or to do anything else that will be bad for the child's health, welfare or education;
- a child who is **affected by or infected with HIV/AIDS or another life-threatening condition**; or
- a child under the age of 15 who is involved in **child labour**.

What should you do if a child is in need of care and protection?

If you think that a child is in need of care and protection, you should inform a representative of the Department of Social Welfare, or a police officer or a Chief. The person who investigates the case may take the child to a place of safety.

If a child is in very serious danger, a community member can take the child to a representative of the Department of Social Welfare, or a police officer or a Chief.

A child who is removed from his or her home must be taken to the Children's Court within 48 hours (excluding travel time). If it is not possible to take the child to the Children's Court in time, the child can be taken to a magistrate first and to the Children's Court later. A child who needs urgent medical treatment can be taken to a medical officer first, and then to the Children's Court.

The Children's Court can make an order to care for and protect the child. For example, the Court can arrange for a social worker or another trained person to supervise the family. It can also place the child in alternative care, such as with extended family members or foster parents.



What is the role of the community?

If you know or suspect that a child is in need of care and protection, you should report this to a representative of the Department of Social Welfare, or a police officer or a Chief. *Failure to report such cases is a crime which can be punished with a sentence to perform community service.* The law highlights the reporting duties of medical officers, child care providers and family members, but the duty to report applies to every member of the community.



Adoption and foster care



When parents in Lesotho can no longer care for their children, other family members or friends often offer to care for the children. Sometimes this is only for a short time, and sometimes it is for a longer time. This is called *informal foster care*. But sometimes a child does not have any family members or friends who can care for him or her. In these cases the child can be *formally* adopted or fostered. This is when the court makes an order saying that the child will live with a new family and for how long. People who are informally fostering a child can also have their case registered as formal foster care.

Adoption or foster care can be an important option for a woman who is pregnant and does not want the baby, or for a parent who is struggling to care for a child and needs help.



What is adoption?

Adoption is when someone other than a child's biological parents becomes the legal parent of a child. Adoption means that the adoptive parent steps into the shoes of the biological parent in every way. When a child has been adopted, the biological parents do not have any rights or duties towards the child. Instead the new parent or parents must care for and protect the child. An adopted child has the same rights as a biological child, including rights under customary law.

When can a child be adopted?

A child can be adopted only if this is in the child's best interests. Usually a child is adopted only if the biological parents cannot care for the child properly, and if it is not possible for the child to live with or be adopted by members of the extended family. The High Court makes the final decision about the adoption.

An abandoned child can be adopted if no parent or guardian comes forward to claim the child within two years.

Who must consent to an adoption?

Normally the child's biological parents or guardian must give their consent to the adoption. But a parent or guardian who has neglected or persistently ill-treated the child, or cannot be found, or is mentally incapable or is unreasonably withholding consent, does not have to give consent. If the child was born outside marriage, the biological father must be consulted, but only if he is known and available.

A child of age 10 or older must also give consent to the adoption if he or she is able to do so. Younger children should be asked for their opinion.

The High Court may also require the consent of other people – for example another person who has been caring for the child, or a person who has a responsibility for the child under customary law.

What is formal foster care?

Formal foster care is when the court orders that a child lives with someone other than his or her biological parents for a temporary period. Formal foster care is usually for a short time, but some children may live in formal foster care until they are adults. The foster parent must protect the child in the same way as the parent would.

There are different forms of formal foster care:

- kinship care – when the foster parent is a member of the extended family;
- institutional foster care – when foster care is administered by an organisation; and
- cluster foster care – when a group of foster families live together.

A child who is in need of care and protection can be placed in formal foster care. The definition of a child who is in need of care and protection is explained on page 4. A parent who knows that he or she cannot care for a child can also ask a social worker to put the child into foster care.

Who can adopt or foster a child?

A person is eligible to adopt or foster a child if she or he:

- is over the age of 25 (and at least 21 years older than the child if she or he is applying to adopt – but this does not apply if the adoptive parent is an extended family member);

- has a record of good behaviour;
- is honest;
- has sufficient means to support himself or herself and a child; and
- does not have a criminal record.

An extended family member who is at least 19 years old can foster a child. There does not have to be a specific age gap between the relative and the child in foster care cases.

Someone who is not a citizen of Lesotho may adopt a child from Lesotho, and a citizen of Lesotho may adopt a child from another country. This is called inter-country adoption. There are special rules that must be followed for an inter-country adoption. The High Court will not allow a citizen of another country to adopt a child from Lesotho if there is a better option for the child's care within Lesotho.

How do I give my child up for adoption or foster care?

If you would like to give your child up for adoption or foster care, you should contact a social worker in the Department of Social Welfare.

How can I adopt or foster a child?

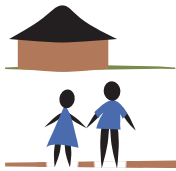
If you meet the criteria described above and you would like to adopt or foster a child, you should contact a social worker in the Department of Social Welfare. The social worker will assess whether you are suitable to be considered as an adoptive or foster parent.



What is the role of the community?

Every child needs a stable family life. Adoption and foster care can provide this for a child. Chiefs and community leaders should make sure that community members know about the options of adoption and foster care.

The law says that only the adoptive parents of a child may tell the child that he or she is adopted. A community member who breaks this rule could be given a fine of up to 2 000 Maloti, or be sent to prison for up to 2 months, or both.



Property inheritance



In many cases, when a child's parent dies, relatives or friends of the deceased person take the property and leave the deceased's immediate family members with very little or nothing. This is called *property grabbing*. Property grabbing is a problem for children because many of them cannot fight for their rights but they probably need the property to survive. Children whose parents have died or children born outside marriage may be particularly vulnerable to property grabbing. The law makes it very clear that the inherited property of a child must be protected.

Do children have a right to inherit from their parents?

A child born inside marriage has the right to inherit from both parents. A child born outside marriage has the right to inherit from the mother.

Reporting the death of a minor child's parent to the Master of the High Court

When the parent of a child under the age of 18 dies, the surviving parent, someone from the extended family or someone from the community should tell the Master of the High Court within two months of the death. You can ask your Chief to help you contact the nearest Office of the Master of the High Court. If the parent was employed, the employer must send all money owed to the parent to the Master of the High Court. The Master will make sure that the money is included with the other property. **An employer who does not pay money owed to the Master of the High Court could be given a fine of 10 000 Maloti, or be sent to prison for up to 10 months.**

Responsibilities of the guardian of a child's property

The deceased may have left a will to say who will look after the property a child inherits, or the Master of the High Court, the Children's Court or the family of the person who has died may appoint a person to look after the child's property. This can be the same person as the guardian of the child, or someone different. The guardian or anyone else who wishes to do something with the property that a child



has inherited must get permission from the Master of the High Court. This includes the surviving parent or a member of the extended family. The Master will make sure that the property is handled in the child's best interests. **Failure to get the Master's permission can result in a fine of up to 5 000 Maloti or imprisonment for up to 5 months. A guardian who mismanages a child's property can be punished with a fine of up to 10 000 Maloti, or imprisonment for up to 10 months, or both. The person could also be ordered to repay any money or property that was taken from the estate.**

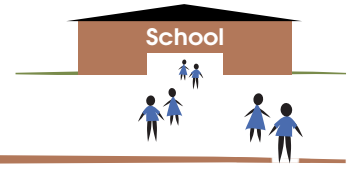


What is the role of the community?

Chiefs and community leaders should encourage community members to make wills, so that the Master of the High Court will know what the person who died wanted to do with his or her property. Chiefs and community leaders should also make sure that the Master of the High Court is notified when the parent of a minor child dies.



Child labour



Many children in Lesotho do some form of work. Sometimes this is work in their own homes, such as helping with household chores or caring for animals. Sometimes it is paid work for someone else. Sometimes boys will miss school because they are herding animals and sometimes girls will miss school because they are caring for children or are employed as a domestic worker. It is acceptable for children to help with chores at home, but it is a problem if the work stops the child from attending or benefiting from school or from doing other things that a normal child should do.

What is exploitative child labour?

Children may not be employed in exploitative child labour, which is work that affects a child's health, education or development. This includes missing school to herd animals or to care for children, or being employed as a domestic worker.

The punishment for exploitative child labour could be a fine of up to 20 000 Maloti, or imprisonment for up to 20 months, or both. If a person continues to use exploitative child labour, the punishment could be imprisonment for 2 years or more.

When can a child be paid to work?

Children under age 13 should not be engaged in any formal employment.

Children between ages 13 and 15 may do light work. Light work is work that is unlikely to harm the health or development of a child, and does not stop a child from attending or benefiting from school.

Children over age 15 may do more than light work. For example, they may work in the shopping sector and agriculture.

No child may do hazardous work such as mining and quarrying, carrying or moving heavy loads, manufacturing, working with dangerous machines, herding at cattle posts, performing commercial sex work, or producing or transporting tobacco. Any work is hazardous if it interferes with a child's health, development, safety or morals.

No child may work at night (between 6 in the evening and 6 in the morning).

What rules must an employer follow?

An employer who employs children must keep a register of the children employed, and must have proof of each child's age, such as a copy of the birth certificate or passport, or a letter from the Chief.

Using children to beg or to carry out illegal activities

It is also illegal to force or allow a child to beg or do something illegal, or to do anything else that will be bad for the child's health, welfare or education. A person who does this could be fined up to 10 000 Maloti, or imprisoned for up to 10 months, or both.



What is the role of the community?

Chiefs and community leaders should make sure that community members understand the difference between child work and exploitative child labour, and that no one uses exploitative child labour. Also, they should encourage parents to send their children to school. Chiefs and community leaders can visit workplaces where children are employed to check whether they are working in harmful situations – if the employer agrees to this.

A Chief, community leader or community member who knows or thinks that someone is using exploitative child labour should inform a District Administrator or a representative of the Ministry of Labour and Employment.

Abduction and Trafficking



There have been cases in Lesotho where children have been abducted or trafficked. For instance, some children from Lesotho have been taken to South Africa for sex work or have been forced to work on farms. Sometimes children are told that they will have the opportunity to go to school in South Africa but instead they are taken for sex work or child labour.

A child does not have to leave the country to have been trafficked or abducted. In some cases the child knows the person who takes him or her. In other cases the person is a stranger.

A child who is trafficked or abducted is vulnerable to many forms of abuse. For example, the child may be physically and/or sexually abused. The child may also suffer mental and emotional trauma.

What is abduction?

Abduction is when someone who does not have custody of a child takes the child away from the place where the child is supposed to be.

But it is not abduction if:

- the person who takes the child thought that the child's custodian had given permission, or would have given permission if he or she had been aware of the reasons for the child being taken away;
- the person who takes the child tried to contact the person with custody but was not able to;
- the child was being abused or neglected; or
- the person who has custody was unreasonably withholding consent.

Abducting a child is a crime punishable by a fine of up to 2000 Maloti, or imprisonment for up to 2 months, or both.

What is trafficking?

Trafficking is when someone takes or attempts to take a child from his or her home for the purpose of exploitation. It is not trafficking if a child is taken to live with members of his or her extended family to go to school, to get better healthcare or to visit family or friends.

Any involvement in trafficking a child is a crime. This includes allowing a child who is being trafficked

to stay in your house, even if you are not involved in the trafficking process.

The punishment for being involved in trafficking can be very severe – a fine of up to 1 million Maloti and a lifetime in prison. But it is not an offence to rescue a child who has been abducted or trafficked, provided that you report the case to the authorities as soon as possible.



What is the role of the community?

Chiefs and community leaders should make sure that members of the community understand the meaning of abduction and trafficking.

Chiefs and community leaders should consider implementing early intervention initiatives that help protect children who might be vulnerable to abduction or trafficking – for example they could help families living in poverty to access support from the government, and they could make sure that all children in the community are already attending and benefiting from school.

A Chief, community leader or community member who knows or suspects that a child has been (or is about to be) abducted or trafficked should report this to the police or a social worker.



Children in conflict with the law

Children sometimes commit crimes such as stealing peaches or chickens from a farm or stealing a loaf of bread from a supermarket. Sometimes children get into fights where someone gets injured or killed, and sometimes boys herding animals kill the livestock they are looking after.

Most boys detained in the Juvenile Training Centre (JTC) offended as a result of poverty. One of the youngest boys there stole R100 to buy food for himself and his sister and was deprived of liberty!

At what age is a child responsible for committing an offence?

Children under the age of 10 cannot be convicted of an offence. This is because the law says that children younger than 10 are not mature enough to understand why what they did was wrong.

Children between the ages of 10 and 14 can be convicted of committing an offence only if the court finds that they knew that they were doing something wrong.

What happens when a child is arrested?

When a child is arrested, a probation officer will be assigned to the case. A probation officer is a person who is specially trained to deal with people who are in conflict with the law.

When a child under the age of 10 is arrested, the probation officer may refer the child for counselling or therapy; arrange for the child and/or the family to receive support services; arrange a gathering with caregivers and other relevant people to discuss the problem; recommend that the child be taken to a place of safety; or recommend that no further action be taken.

When a child older than 10 is arrested, the probation officer may recommend that the case be heard by the Children's Court; that the child be put into a

diversion programme; that the case be referred to a prosecutor; or that no further action be taken. If the child commits a serious offence, he or she may be kept in a secure facility (JTC for boys and prison for girls). A diversion programme encourages the child to take responsibility for the offence committed, without the need for a prison sentence or a fine.

The law also gives alternatives to arresting a child (of any age). For example, the child may be asked to see a probation officer, or may be given an informal or formal warning instead of being arrested.

Restorative justice to heal and prevent further harm

Restorative justice is another alternative to the criminal justice system. Restorative justice is when the person who has committed the offence discusses his or her actions with the people who have been harmed by the offence. The purpose of restorative justice is to promote healing, to find solutions to the harm done, and to prevent the child from doing the same harm again.

The law says that every village should have a Village Child Justice Committee that is responsible for handling restorative justice matters. The Committee is made up of the Chief and six other members elected by the community. The following table shows some of the actions that the Village Child Justice Committee can take when a probation officer refers a child offender for committee action.

Types of restorative justice	
Victim and offender meeting	The victim and the offender meet to discuss the problem. The victim and offender talk about what has happened and think of ways to promote healing, including giving the offender a chance to apologise.
Family group meeting	The child's family members and any other relevant people meet to talk about how to deal with the offence.
Open village healing meeting	An open village healing meeting can be held when two or more children are involved in an offence; when a child commits two or more acts of bad behaviour; when community areas or property are damaged; when there is a group problem such as when two villages are involved; or when the bad behaviour is likely to happen again.

If the Children's Court or the police or probation officer recommended restorative justice but the victim and offender do not agree with the outcome, the case will go back to the Children's Court, the police or the probation officer for further action.



What is the role of the community?

Community members may wish to apply to serve on the Village Child Justice Committee. A Chief is automatically a member of this committee. The Chief should make sure that the community members understand what restorative justice is meant to achieve, and how the process works.

Community members may also attend meetings such as open village healing meetings.





Conclusion



Approximately 1 in 10 children in Lesotho is vulnerable. These children are *at risk of either physical or emotional harm*. Many of these children are vulnerable because their parents or caregivers are living in poverty or extreme poverty. Whether living in poverty or not, *a parent or caregiver who is able to better provide for a child but does not do so is committing an offence.*

Approximately 3 in 100 children in Lesotho are *most* vulnerable. These children are in *urgent need of care and protection* because they are facing some form of harm. This booklet has explained the types of harm that children may face. Chiefs, community leaders and community members should make sure that they are aware of the risks and dangers that children may face. Chiefs and community leaders in particular have a responsibility to make sure that people in their community know about the problems described in this booklet, and know how to prevent these problems and what to do if a child is facing one or more of the problems described. *It is particularly important to remember that all people in Lesotho have a responsibility to be aware of the needs of the children in their community, and a duty to report suspected cases of ill-treatment, neglect or abuse.* This duty is so important that failure to report can be punished with a sentence to perform community service.

Children are the future chiefs, community leaders and community members of Lesotho. The adults of today should work together to protect the children in their community to *make sure that the children can grow up in a safe environment and become the adults that Lesotho needs in the future.*



DISTRICT	SERVICE PROVIDERS	TELEPHONE
Maseru	Ministry of Social Development	22226003
	Child and Gender Protection Unit (CGPU)	22312704
	Office of the Master of the High Court	28311300/301
	Probation Unit	22322683
	Ministry of Labour and Employment	22322565
	Office of the District Administrator	22322988
Mafeteng	Ministry of Social Development	22700208
	CGPU	22700200
	Office of the Master of the High Court	28701301
	Probation Unit	
	Ministry of Labour and Employment	28700296
	Office of the District Administrator	22700215
Mohale's Hoek	Ministry of Social Development	22785987/988
	CGPU	22785215
	Office of the Master of the High Court	28780301
	Probation Unit	59007942
	Ministry of Labour and Employment	22785269
	Office of the District Administrator	22785260
Quthing	Ministry of Social Development	22750498/231
	CGPU	22750215
	Office of the Master of the High Court	28750301
	Probation Unit	
	Ministry of Labour and Employment	22750273
	Office of the District Administrator	22751453/22750201
Qacha's Nek	Ministry of Social Development	22950051
	CGPU	22950204
	Office of the Master of the High Court	28950301
	Probation Unit	
	Ministry of Labour and Employment	22950251
	Office of the District Administrator	22950261
Thaba Tseka	Ministry of Social Development	22900408
	CGPU	22900215
	Office of the Master of the High Court	28900301
	Probation Unit	
	Ministry of Labour and Employment	22900204
	Office of the District Administrator	22900208
Mokhotlong	Ministry of Social Development	22920497
	CGPU	22920203
	Office of the Master of the High Court	28190301
	Probation Unit	
	Ministry of Labour and Employment	22920255
	Office of the District Administrator	22920202/22920291
Butha Buthe	Ministry of Social Development	22461620
	CGPU	22460288
	Office of the Master of the High Court	28460301
	Probation Unit	
	Ministry of Labour and Employment	22460297
	Office of the District Administrator	22460202/22460293
Leribe	Ministry of Social Development	22401106
	CGPU	22400300
	Office of the Master of the High Court	28401301
	Probation Unit	58717519
	Ministry of Labour and Employment	22400286
	Office of the District Administrator	22400451/22400293
Berea	Ministry of Social Development	22500437
	CGPU	22500018
	Office of the Master of the High Court	28501301
	Probation Unit	
	Ministry of Labour and Employment	22500293
	Office of the District Administrator	22500284



Contact details of service providers in all Lesotho districts



