

POVERTY

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

POLICY PAPER
No 14.6 (E)

Human Trafficking in Lesotho:

ROOT CAUSES AND RECOMMENDATIONS



Human Trafficking in Lesotho: Root Causes and Recommendations

POLICY PAPER POVERTY SERIES N° 14.6 (E)
Paris 2007

ACKNOWLEDGEMENTS

This policy paper is based on a UNESCO research study on “Human Trafficking, especially of Women and Children in Southern Africa (Lesotho, Mozambique and South Africa)” coordinated by Elize Delpont, Mhlava Consulting Services (South Africa).

The choice of the material contained in this report and the opinions expressed therein do not necessarily represent the views of UNESCO and do not commit the Organization.

The designations employed and the presentation of material throughout this publication do not imply the expression of any opinion whatsoever on the part of UNESCO concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Research Team:

Mr. Victor Nkiwane, National University of Lesotho, Faculty of Law
Ms Lydia Muso, Lesotho Child Counselling Unit

Contact:

Saori Terada, Project coordinator
UNESCO Project to Fight Human Trafficking in Africa
1, rue Miollis 75732 Paris Cedex 15
Tel: 33 (0)1 45 68 40 86
Fax: 33 (0)1 45 68 55 97
Email: s.terada@unesco.org
Web: www.unesco.org/shs/humantrafficking

Layout and realization:

Soledad Munoz Gouet and Marina Taurus
solemg@free.fr

© UNESCO 2007. All rights reserved.

Foreword

UNESCO contributes to the global fight against human trafficking by encouraging more effective and culturally appropriate responses based on research and community participation.

The basis of this policy-paper is a combination of qualitative analysis of interviews with stakeholders in 2004-2005 completed with a critical review and analysis of available literature on human trafficking, especially of women and children in Sub-Saharan Africa.

This policy-paper was validated at the occasion of a regional workshop on “Human Trafficking in Southern Africa (Lesotho, Mozambique and South Africa): Root Causes and Policy Recommendations” organized by UNESCO in Pretoria, South Africa on 22-23 November 2005 and was presented at a Stakeholders National Workshop organized by the UNESCO National Commission in Maseru on 14 August 2006.

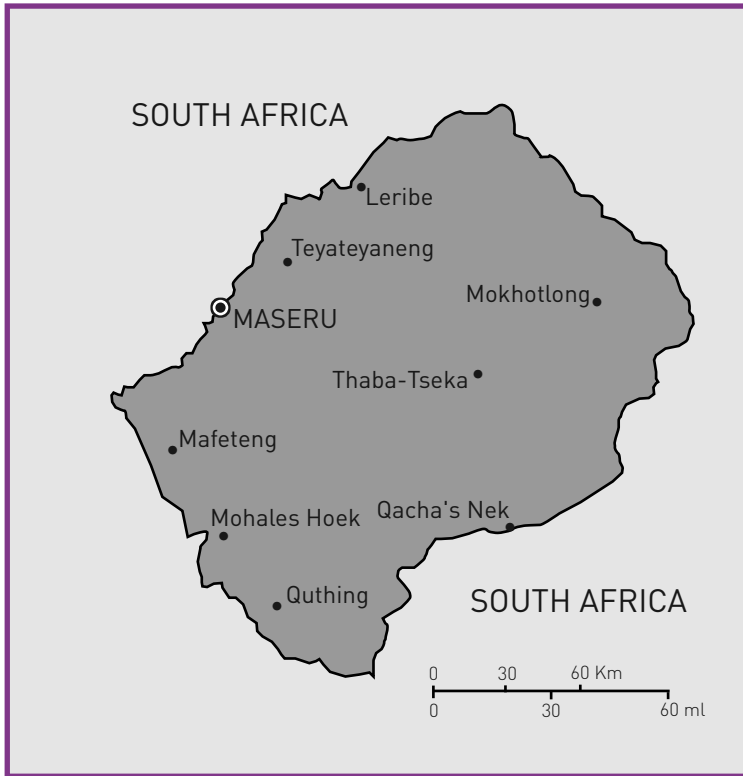
It is intended to serve as a tool for advocacy and awareness-raising to fight human trafficking in Lesotho, with concrete recommendations to be implemented by a wide range of actors working to fight human trafficking in Lesotho (including the government, international and local organizations).

TABLE OF CONTENTS

1. INTRODUCTION	11
1.1. Executive Summary.....	12
1.2. Methodology	13
1.3. Limitations of the Study	14
1.4. Key Facts.....	14
2. HUMAN TRAFFICKING IN LESOTHO: MAIN FEATURES	19
2.1. Human Trafficking: Definition.....	19
2.2. Geographical Dynamics and Purposes of Human Trafficking in Lesotho	24
2.3. Main Actors in Human Trafficking: Trafficked Persons, Traffickers and Users	26
2.4. Root Causes.....	30
3. POLICIES AND PROGRAMMES	39
3.1. Current Legal Framework.....	39
3.2. Current Projects and Programmes	47
4. RECOMMENDATIONS	53
4.1. Legal Actions.....	53
4.2. Policy Change	54
4.3. Research, Awareness-Raising and Training	55
5. CONCLUSION.....	57
REFERENCES	59
ANNEX : Testimonies of Trafficked Persons	63

ACRONYMS

CGPU:	Child and Gender Protection Unit
IOM:	International Organization for Migration
ILO:	International Labour Organization
LCN:	Lesotho Council of Non-Governmental Organizations
LCCU:	Lesotho Child Counselling Unit
LECAWU:	Lesotho Allied Workers Union
LMPS:	Lesotho Mounted Police Services
NGO:	Non Governmental Organization
NGOC:	The NGO Coalition
PRSP:	Poverty Reduction Strategic Paper
SADC:	Southern African Development Community
UNICEF:	United Nations Children's Fund
UNODC:	United Nations Office for Drugs Control



Map of Lesotho

1

Introduction

COUNTRY PROFILE

Independence:	4 th October 1966, former British protectorate
Head of state:	King Letsie III (Non-Executive)
Political System:	Multi-party democratic system
Capital:	Maseru
Other major cities:	Mafeteng, Qacha's Nek, Teyateyaneng, Hlotse
Area:	30 355km ²
Population:	2.1 mil. (1998) ¹
Languages:	English and Sesotho (both official)
Currency:	Maloti (the SA rand is also legal tender in Lesotho and is equivalent to the local currency).

Lesotho is a small country entirely surrounded by South Africa. It relies heavily on migrant worker remittances (although declining), its share of income from the Southern Africa Customs Union, and manufactured products mainly for the South African market. Furthermore, income is generated by the supply of water to South Africa from the Lesotho Highlands Water Project. Other revenues accrue from the taxes mainly contributed by textile exports to the USA (now declining) and internal tax collection which has improved markedly under the recently established Lesotho Revenue Authority (established in 2002).

The Government of Lesotho has committed itself to sustainable economic growth and human development through institutional and regulatory reforms in order to attain maximum levels of investment and

1. The Government of Lesotho conducted a national census in 2006. However, the official results of the census have not been released.

export opportunities. In addition, the prevailing political stability in Lesotho is the key foundation for economic growth and foreign investment.

In order to reach the targets for Lesotho's development strategy on poverty reduction, there are vigorous programmes followed for poverty alleviation as contained in the Poverty Reduction Strategy Paper.²

1.1. EXECUTIVE SUMMARY

Lesotho is mainly a country of origin and transit for human trafficking activities and the country experiences internal and international human trafficking flows. The main actors involved in this crime are the trafficked persons, the traffickers and the users of trafficked victims. These people end up being part of the human trafficking chain because of various reasons that are either push or pull factors. Pull factors might include a demand for domestic and sexual services, economic differentials that make even relatively poor neighboring cities, regions or countries seem a likely source of livelihood. Push factors mainly include poverty, gender discrimination, lack of information and education, HIV and AIDS, violence against women, harmful socio-cultural practices and lack of legislative and policy frameworks. The infrastructure and trends associated with a rapidly globalizing world – like increasingly open borders, better transport, and increased overall migration flows – complement the forces of supply and demand that underlie trafficking. Globalization has provided the impetus to both those who wish to migrate and those who traffic the unwilling. Women and children tend to be the most vulnerable to human trafficking as they very often carry the burden of poverty.

The laws that are currently in place in Lesotho are inadequate. It is not helpful to enact laws without giving the law enforcement agents the capacity to do so. The Child and Gender Protection Unit, which should play a key role in the fight against trafficking, is under-funded, under-staffed and lacks sufficiently trained personnel to deal with this specialized area of law enforcement. There is also a need for policies or projects that are directly geared towards eliminating the push and pull factors of human trafficking to accompany adequate legislation.

2. See Government of Lesotho, Poverty Reduction Strategy Paper, 16 December 2003. The Ministry of Development Planning spearheaded this paper and contributions thereto came from government, civil society organizations, the private sector and development partners. It is a comprehensive document setting out, *inter alia*, indicators and monitoring mechanisms for measuring poverty in Lesotho. Currently, Lesotho is ranked 137 out of 173 countries and is classified by UNDP amongst the 49 Least Developed Countries (LDCS).

In order to eradicate trafficking of women and children there is a need to address its main root cause: poverty. Women are vulnerable to trafficking because they have less access to employment, resources and other means of earning a livelihood. Lack of access to education and means of livelihood expose children to situations of trafficking. It is critical that development policies are targeted at poverty alleviation.

There is a lack of information and knowledge about trafficking because of the silence surrounding the problem. Public acknowledgement and creation of awareness of the problem would contribute significantly towards its eradication. If policy makers, law enforcers and communities are aware of the existence and evils of human trafficking, it will be easier to identify, prosecute and punish all actors in human trafficking. Legislative, political and economic measures must be undertaken at national, regional and international levels to eradicate human trafficking.

1.2. METHODOLOGY

This report is based on a review of current literature on human trafficking by academic writers, NGOs and activists in the fight against human trafficking. Both primary and secondary sources have been consulted, covering literature from Lesotho, Southern Africa and beyond. A thorough review of Lesotho's laws, both statute and common law has been undertaken with a view to determining the extent to which the laws comply with international standards, in particular, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention Against Transnational Organized Crime (Palermo Protocol). This was necessary because Lesotho has signed and ratified the Protocol.

The report has also relied on information gathered from in-depth interviews conducted with women and children who have experienced trafficking in one form or another.

Altogether about 20 people were interviewed and we chose to relate the stories of seven in the appendix to this report. Interviews were carried out with sex workers in the streets of Maseru in order to find out how and why the sex trade could expose women and children to trafficking. One officer in the Child and Gender Protection Unit of the Lesotho Mounted Police Service was interviewed with a view to establishing the role and efficacy of the Unit in the fight against trafficking of women and children.

1.3. LIMITATIONS OF THE STUDY

The study should be seen as a first step (albeit a major one) in mapping out the trends, politics and dynamics of human trafficking, especially of women and children, in Lesotho. Time, resources and logistics could not allow for an exhaustive and complete analysis (if such was ever possible) of the problem. An obvious shortcoming is the lack of statistics showing the extent of the problem. The lack of statistics is a direct result of lack of and/or inadequate awareness of the problem by law enforcement authorities (the police, the prosecution), NGOs and the public in general. Moreover, those women who have experienced trafficking are not willing to come forward as they fear stigmatization or criminal prosecution, e.g. for crossing borders illegally. There are no previous studies of the problem in Lesotho from which to build upon. However, it would be naïve to conclude that because research is not based on statistics (which at present are impossible to get) it therefore lacks validity. Available literature and testimonies from some of the trafficked persons clearly indicate that trafficking of women and children is taking place internally and externally in Lesotho.³ One of the recommendations in this report challenges the Child and Gender Protection Unit to undertake a study and assessment of the extent and magnitude, including the provision of statistical data, of the problem of human trafficking in Lesotho. It is our respectful submission that this report provides an adequate basis and justification for such a study.

1.4. KEY FACTS

International level

- Human trafficking data are often debated as the methodologies used to produce them are not always scientific. The UNESCO Office in Bangkok decided to trace the origin of these data to clarify the situation.⁴ It is thus possible that the following figures may not be correct.
- 2005 US State Department figures estimate that 600,000-800,000 people are trafficked annually across international borders. Approx-

3. This study came across about 20 women and children who had experienced trafficking in one form or another. The stories of eight of these trafficked persons are summarized at the end of this report.

4. UNESCO Bangkok, Trafficking in Persons Project, <http://www.unescobkk.org/>

imately 80% are women and girls, of whom 50% are minors. The vast majority of those trafficked under 18 years of age are girls.⁵

- UNICEF estimates 1,200,000 children were trafficked globally in 2000.⁶
- People are trafficked for many purposes – sexual exploitation, begging, underpaid and exploited forced labor in the agriculture, manufacturing and construction industries, domestic service and organ harvesting.
- Transnational organized criminal syndicates and networks are responsible for the bulk of human trafficking, which is linked to a range of other trafficking – drugs, firearms and consumables – and other criminal activities - money laundering, smuggling and political bribery and corruption.
- Trafficking in humans is a lucrative business. Estimated profits are between US\$7-10 billion annually.⁷
- Trafficking operations range from tightly structured and controlled hierarchical groups involved in transnational trafficking of various commodities, to formations of ‘core’ groups, with a loose network of ‘associates’ seeking maximum profit opportunities, specializing in human trafficking.
- Weak state structures, resulting from the upheaval of transitional economies contribute to an environment favoring predatory criminal organizations. Parallel structures that substitute for state security dominate such economies and flourish through fear and intimidation.
- The widespread reach of these networks and perceptions of their ability to retaliate against ‘victims’⁸ and their families reinforce their clandestine nature, difficulty of investigation and lack of evidence.
- Armed conflicts destroy livelihoods, damage national economies and cause mass population movements. Through heightened insecurity, wars increase the vulnerability of women and children,

5. US Department of State (2005) *Trafficking in Persons Report, 2005*.

6. UNICEF (2006) *State of the World's Children: Excluded and Invisible* <http://unicef.org/sowc06/index.php>

7. US Department of State, *Ibid*. It is important to note this report uses a statistical method based on “plausible estimates”; the only reliable figures are those related to seizures and confiscation [which require the crime to be consumed, detected and tried through the legal system].

8. The word ‘victim’ is typically regarded as disempowering. The term ‘trafficked people/ persons’ is the term of choice on this report and efforts have been made to use it as much as possible. However, in some circumstances the term ‘victim’ has been considered appropriate for use.

promote dramatic survival strategies such as prostitution and often involve the abduction of women and children into armed groups/factions. Increased poverty for survivors, particularly widows and female headed-households, is an endemic feature of armed conflicts.

- Migration as a response to armed conflict and insecurity results in large refugee populations, exposing the most vulnerable to an array of dangers - sexual violence, recruitment into armed forces and trafficking.
- Stringent entry requirements have increased the regulation of population movements. When would-be migrants fail to meet these requirements, they may resort to illegal means, giving rise to people smuggling and trafficking.
- The increase in demand for cheap labor continues to attract people flows from poorer to more prosperous locations. As a result, with populations moving in search of employment, with the attendant opportunities for exploitation, there is often overlap between trafficking source, transit and destination sites.⁹
- The globalized commercial sex industry has greatly expanded and become integrated with other aspects of modernization. The demand factors dominating commercial sex work require a constant supply of women and children. The commercial sex industry is often inextricably linked with tourism, both domestic and foreign, and some countries are specifically promoted for “sex tourism”.¹⁰
- Widespread gender discrimination that denies women their rights, as well as attitudes that consider women and girls inferior and weak and thence objectify them, and tolerate violence against women support the existence of trafficking practices that deliver women and girls into appalling living and working conditions.
- Destitute families, unable to support their children, are vulnerable to persuasion to hire out or sell them, girls being most vulnerable to commercial exploitation.
- In spite of international conventions, there remains indifference and a lack of domestic commitments to protect those most at risk through legislation, awareness and information, and training of the authorities responsible to provide protection.

9. D’Cunha, Jean (2002) *Trafficking in Persons: a gender and rights perspective*, Expert meeting on trafficking in women and girls.

10. Corner, Lorraine (2002) *A Gender Perspective to Combat Trafficking*, Strategy Paper on an Integrated Approach to Livelihood Options for Women & Girls, Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, Bangkok.

Regional level

- UNICEF has noted that although no official statistics are available, a rapid increase in the trafficking and commercial exploitation of Basotho¹¹ children and women to neighbouring countries (particularly South Africa) is being reported by non-governmental organizations and the media.¹²
- Trafficking into South Africa is particularly easy. Some of the borders are open for 24 hours and late at night, border control is very slack. Lesotho provides the shortest route into South Africa for traffickers because once one has crossed the border, the nearest South African town is no more than a few kilometers away.

National level

- Most trafficked persons in Lesotho are male and female street children, sex workers and ordinary women and girls living a normal life in their homes.
- In Lesotho, the primary types of trafficking are cross-border and Lesotho is essentially a country of origin where women and children are trafficked mainly to South Africa. Lesotho also experiences internal trafficking where women and children are trafficked to major urban areas for exploitation as domestic workers or sexual exploitation.
- In 2003 the number of AIDS orphans in Lesotho was estimated at 100,000.¹³ By the end of 2003, 28.9% of adults and children (0-49 years old) were living with HIV in Lesotho.¹⁴ HIV and AIDS are explanatory factors for human trafficking; human trafficking is also triggering more HIV infections.
- Lesotho ratified the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children in September 2003.

11. The name Basotho refers to the inhabitants in general, the singular is Mosotho.
 12. UNICEF Humanitarian Action: Southern Africa Crisis: Donor Update 18 July 2003: <http://www.unicef.org/emerg>
 13. UNAIDS, UNICEF, USAID (2004) *Children on the Brink 2004: A joint report of new orphan estimates and a framework for action*, www.unicef.org/publications/index_22212.html. More information on the links between HIV and AIDS and human trafficking is available in this report.
 14. <http://www.unaids.org> (Lesotho page).



Human Trafficking in Lesotho: Main Features

2.1. HUMAN TRAFFICKING: DEFINITION

Since the 1990s in particular there has been awareness of trafficking in persons, yet it is only since the adoption of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) that an international definition of “trafficking in persons” has been accepted. The definition¹⁵ identifies three key features of the trafficking process, namely:

- the act of recruitment and transportation
- the means by which this is done, and
- the exploitative practice or purpose for which it is done.

15. Article 3 of the Palermo Protocol specifies:

- (a) “*Trafficking in persons*” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person less than eighteen years of age.

In terms of article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, also known as the Palermo Protocol:

Trafficking in persons means the:

- recruitment,
- transportation,
- transfer,
- harboring or receipt of persons.

By means of:

- threat or use of force or other forms of coercion,
- abduction,
- fraud,
- deception,
- abuse of power or of a position of vulnerability,
- the giving or receiving of payments or benefits.

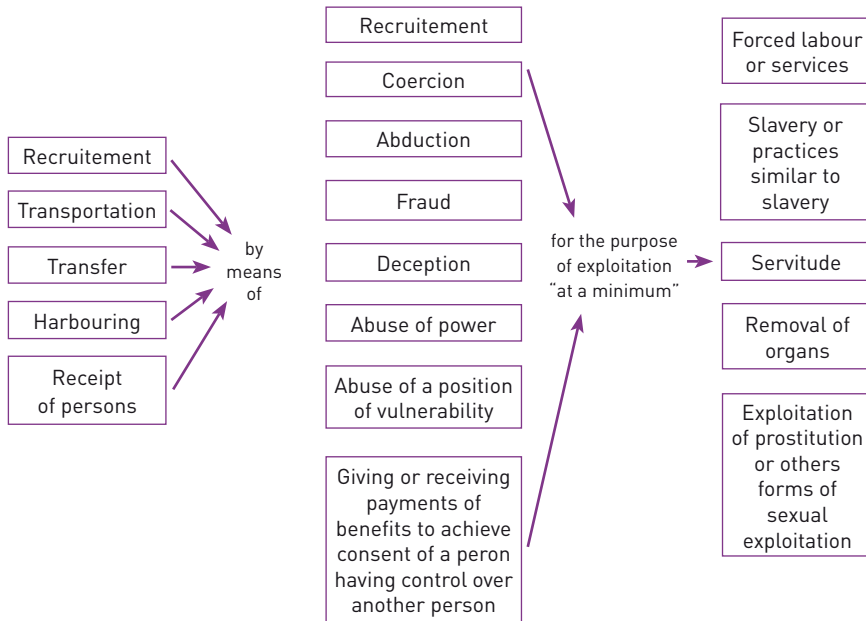
To achieve:

- the consent of a person having control of another person for the purpose of exploitation.

Exploitation shall include at a minimum:

- the exploitation of the prostitution of others or other forms of sexual exploitation,
- forced labor or services,
- slavery or practices similar to slavery,
- servitude or the removal of organs.

Elements of the Palermo Protocol's Definition of Trafficking



Source: Trafficking in Persons: An Analysis of Afghanistan, IOM Kabul, 2004

The Protocol recognizes that trafficking can take place with the trafficked person's consent but this is deemed irrelevant where any of the means set out in the definition have been used.¹⁶ In terms of article 3, the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be regarded as "trafficking in persons" even if none of the means outlined in the definition have been used.¹⁷ A child is any person under the age of 18 years.¹⁸ It is also the characteristic of *deception, coercion and exploitation* that distinguishes this type of trafficking from other forms of trafficking, such as trafficking in drugs or counterfeit goods.

16. Article 3(b) of the Palermo Protocol (2000).
 17. Article 3(c) of the Palermo Protocol (2000).
 18. Article 3(d) of the Palermo Protocol (2000). It is worth noting that the age of majority in Lesotho is 21. However, for purposes of protection of children, Lesotho's law is in line with the age limit of 18 in the Palermo Protocol. See section 2 of the Children's Protection Act 1980 and Section 2 of the proposed Children's Protection and Welfare Bill (2004).

While its human rights provisions could be expanded, enriched and made obligatory on States, the Protocol is nonetheless an important step towards locating trafficking within a rights framework.¹⁹

The following table provides additional detail on the rights violated in the context of human trafficking and the corresponding legal instruments.²⁰

Human Rights Usually Violated in the Context of Human Trafficking	Corresponding International Legal Instruments and Articles
Right to Health and Social Services	<ul style="list-style-type: none"> • Articles 22 and 25 (1) of the Universal Declaration of Human Rights (UDHR) • Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 24 of the Convention on the Rights of the Child (CRC) • Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Right to Education and Training	<ul style="list-style-type: none"> • Article 26 of the Universal Declaration of Human Rights (UDHR) • Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 18 of the International Covenant on Civil and Political Rights (ICCPR) • Articles 28, 29 of the Convention on the Rights of the Child (CRC) • Article 10 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) • UNESCO Convention Against Discrimination in Education
Right to Liberty of Movement and Freedom to Choose one’s Residence	<ul style="list-style-type: none"> • Article 13 (1) of the Universal Declaration of Human Rights (UDHR) • Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR)
Right to a Decent Work	<ul style="list-style-type: none"> • Article 23 of the Universal Declaration of Human Rights (UDHR) • Article 8 (3) of the International Covenant on Civil and Political Rights (ICCPR) • ILO Convention 29 • Article 23 (1) of the Universal Declaration of Human Rights (UDHR) • Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
Right to Freedom from Slavery	<ul style="list-style-type: none"> • Article 4 of the Universal Declaration of Human Rights (UDHR) • Article 8 of the International Covenant on Civil and Political Rights (ICCPR) • United Nations Slavery Convention Supplementary Convention on the Abolition of Slavery, the Slave Trade and institutions and Practices Similar to Slavery

19. UNIFEM Asia (2002) “*Trafficking in Persons: A Gender and Rights Perspective*,” Briefing Kit.

20. This table is adapted from the *Human Rights Standards for the Treatment of Trafficked Persons* published by the Global Alliance Against Trafficking in Women (GAATW) and from *International Perspectives and Nigerian Laws on Human Trafficking* by Olaide Gbadamosi Esq, Network for Justice and Democracy.

Right not to be Tortured and/or Submitted to Other Cruel, Inhuman or Degrading Treatment or Punishment	<ul style="list-style-type: none"> • Article 5 of the Universal Declaration of Human Rights (UDHR) • Article 7 of the International Covenant on Civil and Political Rights (ICCPR) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Right to Peace and Security	<ul style="list-style-type: none"> • Article 3 of the Universal Declaration of Human Rights (UDHR)
Right to Non-Discrimination	<ul style="list-style-type: none"> • Articles 1, 2 and 7 of the Universal Declaration of Human Rights (UDHR)
Right to Access to Justice	<ul style="list-style-type: none"> • Article 6 of the Universal Declaration of Human Rights (UDHR)
Right to Freedom of Expression and Participation	<ul style="list-style-type: none"> • Articles 19 and 21 of the Universal Declaration of Human Rights (UDHR)

Today trafficking in persons is regarded as illegal all over the world and as a result we do not have accurate statistics on the numbers of people who are trafficked into exploitative situations.²¹ Human trafficking tends to elude regular systems for gathering statistics. United Nations crime data, for example, did not include trafficking as a specific category for which it provides data.²² This creates difficulties for Governments and civil society in devising prevention and intervention strategies. In addition the clandestine and illegal nature of trafficking in persons also makes it a difficult area to research as reliable research methods can often not be used. Existing information is scattered and in some regions, notably Latin America and Africa, trafficking in persons is considered a ‘new’ issue “with the result that data collection methods are not yet fully developed.”²³ In such a context the tendency to conduct what researchers call ‘quick and dirty’ studies has dominated. And “while such projects can produce findings speedily to feed into policy debates, the quality and reliability of data are often uncertain.”²⁴ As a result, researchers and consequently also policy makers are reliant on anecdotal evidence. This makes the scale of the phenomenon difficult to assess. This major difficulty that is the lack of verifiable and reliable figures on the phenomenon makes it difficult to take appropriate measures. Here, UNESCO conducts literature

21. UNICEF estimated in 2003 that 1.2 million children alone are trafficked globally every year in a thriving USD billion business (UNICEF (2003) *End Child Exploitation: Stop the Traffic*, New York).

22. Skinner, E., Kran, M., Adamson, R. and Townsend-Gault, I. (1997) “Illegal labor movements and trafficking of women: International dimensions in the era of globalization” in *Proceedings of the 1997 Regional Conference on Trafficking in Women and Children: Bangkok, Mekong Regional Law Centre*, p.143.

23. ILO- IPEC (2002) *Unbearable to the human heart: Child trafficking and action to eliminate it*, Geneva, p. 11.

24. Kelly, L. (2002) *Journeys of Jeopardy: A Commentary on Current Research on Trafficking of Women and children for Sexual Exploitation Within Europe*, EU/IOM Conference on Preventing and Combating Trafficking in Human Beings: A Global Challenge for the 21st Century, p.4.

reviews and meta-analysis of existing statements on trafficking. The UNESCO Trafficking Statistics Project in Bangkok is tracing the origin of numbers cited by various sources worldwide, attempting to ascertain the methodology by which these numbers were calculated, and evaluating their validity.²⁵ The aim is to clarify the bases on which estimates of the numbers of trafficked persons are derived, and to separate trafficking myths from trafficking realities.

Despite being unable to access reliable data, we know that trafficking in persons has been practiced for centuries. However, it is only since the last decade of the 20th century that we have witnessed an increased awareness of the problem and the social, political and economic ills that it engenders. This in turn has led to an increased focus on efforts to combat trafficking in persons and the exploitative situations it leads to.

2.2. GEOGRAPHICAL DYNAMICS AND PURPOSES OF HUMAN TRAFFICKING IN LESOTHO²⁶

Despite little information being available about trafficking of women and children in Lesotho, recent studies²⁷ show that Lesotho is essentially a **country of origin** where women and children are trafficked internally (from rural areas to main cities especially the ones along the border to South Africa) and externally mainly to South Africa.²⁸ As Lesotho is completely surrounded by South Africa, every border post is potentially an exit point for trafficking of women and children into South Africa. South Africa is particularly easy to access for traffickers. Some of the borders are open for 24 hours and late at night border control is very slack. This research has also revealed that one of the easiest avenues for crossing without proper documentation is boarding the goods train with or without the connivance of the train driver. It is hardly ever checked. Once the train has crossed the border, a person can disembark anywhere he/she wants. Perhaps even more significant is the fact that Lesotho provides the shortest route into South Africa for traffickers because once one has crossed the border from

25. <http://www.unescobkk.org/index.php?id=1022>

26. The different countries and the different activities underlined in this part are of course non exhaustive.

27. Martens, J at al (2003) *Seduction, Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa*, IOM Regional Office for Southern Africa: Pretoria.

28. There is a need for further investigation to determine the extent to which Lesotho is a country of origin as well as destination for human trafficking.

Lesotho, the nearest South African town is no more than a few kilometres away. In the case of Maseru, Ladybrand is only 15 km from the border and in the case of Maputsoe, Ficksburg is right at the border. Once a trafficker crosses with the trafficked person, he/she disappears into the town.

The main **purpose for which women and children are trafficked** is **sexual exploitation**. In cases of trafficking carried out by white South Africans, victims are often taken to private homes where they are systematically sexually abused for days (sometimes by groups of 2 to 4 men) in a “ritual male bonding”, “as a feeding frenzy for fantasies of hatred, humiliation and revenge.”²⁹ The trafficked persons are usually dumped on the streets and left to find their way home without any money, thereby exposing them to further exploitation. Some of the cases outlined in the annex at the end of this paper, especially cases 1, 2 and 3 bear testimony to this. In many instances, trafficked persons do not report their ordeal to parents due to fear of their reaction since they would have left home without permission. Neither can they report to the police because they crossed the border without passports. In cases where women are trafficked by long-distance truck drivers, they usually become sex-slaves of these drivers en route to countries such as Zimbabwe, Malawi or Zambia. There is also growing evidence that some women are taken beyond South Africa to work as prostitutes overseas. This research came across one case of a girl who had been trafficked to London and was brought back after the intervention of the Lesotho Consulate (see case 4 in the annex).

Apart from sexual exploitation, women and children who are trafficked into South Africa are used either as **cheap labour or forced unpaid labour in farms and homes**. The South African Government has no real control over what happens on these farms.

In the case of boys, evidence shows that some are trafficked from South Africa to work as herd-boys in Lesotho for little or no pay (see case 5 in the annex). There is also growing evidence that some Basotho women and girls are trafficked to South Africa to be **forced into marriage**. UNESCO research came across a case involving two women who were trafficked to Durban for that purpose, but managed to return to Lesotho (see case 6 in the annex).

At this stage, it is impossible to estimate the magnitude of the problem of trafficking of women and children. However, what is evident is that it is a serious problem for the country, although little is known or said about

29. IOM (2003) *The Trafficking of Women and Children in the Southern African Region*, Geneva.

it. It is also unfortunate that the media does not seem to be aware of its existence and there are hardly any reports on trafficking.

2.3. MAIN ACTORS IN HUMAN TRAFFICKING: TRAFFICKED PERSONS, TRAFFICKERS AND USERS

2.3.1. The Trafficked Persons

Broadly, poverty, lack of information, gender imbalances and a high level of demand for cheap labor as well as sex workers put certain demographic groups at higher risks of being trafficked. Women and children happen to be the main component of this group. In Lesotho, persons who fall prey to trafficking are male and female street children, sex workers and ordinary women and girls living a normal life in their homes. They are either forcibly bundled into private vehicles and abducted or voluntarily agree to be taken across the border on false promises of employment. Others are sex workers who willingly go, thinking they are dealing with genuine paying clients only to fall prey to violence and abuse.

2.3.2. The Traffickers

It has been proven that the high benefit and the low risk of punishment encountered in human trafficking have made trafficking in human beings an attractive business. The trafficker – i.e.: the one who traffics a human being for the purpose of exploitation or, in other words the intermediary in the trafficking chain between the supply and the demand – can be embodied in a long chain of different people. Recruiters, agents, transporters, counterfeiters, pimps, brothel owners, a loose network of individuals, a formal group or network of people, an organized gang, a trans-national crime syndicate or any combination of these various groups or individuals and in some instances friends and family members of the victim of trafficking or former trafficked persons play an active role in trafficking in human beings. It is pertinent to note that traffickers do not always operate in groups, some of them engage in solo operations. These people can play different roles in different situations. For instance an individual could be a pimp or brothel keeper who takes receipt of trafficked persons. In this role he is responsible for paying recruiters, agents or other intermediaries for the people he takes receipt of. He could then want to recover this cost through exploiting the victim. He would also have to ensure that the victim brings in enough money not only to

recover his costs, but also to make a profit for him. In order to achieve this he would have to exploit the victim. This same individual can also be a recruiter of trafficked person for exploitative farm labor and his benefits would usually be dependent on his ability to recruit the required number of people. His role would end once he has delivered them to the agent, transporter, farmer or whoever is next in the particular chain that he is a part of.

Traffickers of human beings earn nearly as much as drug traffickers, although the sanctions they encounter when the police arrest them are less significant. These comparatively weak sanctions encourage many to continue with human trafficking. They are the ones who promise the parents and the children decent jobs in cities with good wages, but never fulfill such promises. Women acting as eventual employers or intermediaries are often involved in the trafficking network. They travel from village to village where they know poor people are willing to leave for employment in town or to send their girls or boys overthere. In the case of trafficking in children, the terms of the contract between the trafficker and the parents of the victims are rarely clear. Parents only know that their child is going to work and earn money to provide for the needs of the remaining members of the family in the village without being informed on the living and working conditions of the child.

According to research conducted by the International Organization for Migration Regional Office of Southern Africa,³⁰ a large number of traffickers in Lesotho are white Afrikaans-speaking men and long-distance truck drivers. However, information gathered from interviews³¹ with persons who have experienced trafficking suggests that other foreigners and black South Africans are involved in trafficking. Furthermore, even though there is no concrete evidence gathered as yet, there are growing suspicions that textile factories, where women and even young girls queue daily desperately hoping to be recruited, may be places of recruitment for trafficking.³²

30. IOM (2003) *The Trafficking of Women and Children in the Southern African Region*, Geneva. Concrete information regarding the main actors in human trafficking can only be established from police investigations. However, at this stage, such information does not exist as there have not yet been specific and focused police investigations on this problem.

31. In the annex at the end of this report, we present the experiences of trafficked people as related to us.

32. A recent study on the conditions of workers in the textile industry in Lesotho by the Lesotho Council of Non-Governmental Organizations (LCN) and the Lesotho Allied Workers Union (LECAWU) has revealed widespread abuse of women in the factories, including sexual abuse. Though not pointing directly to trafficking activities, it raises the need for investigations into the possibility of such activity taking place. See *Public Eye*, 28 July

The methods used by the traffickers to recruit women and children can be threats, abductions, fraud, forced marriages, clan-based recruitment, peer pressure or recruitment through newspaper or Internet ads. In some cases parents and/or guardians unwittingly expose their children to trafficking by innocently giving them away to well-off friends or relatives who have promised to provide employment to such children but actually have sinister motives.

2.3.3. The Users

The users of trafficked victims are the people who arrive at the end of the trafficking chain. They can be either prostitute users or the head of a farm or a shop who need access to cheap labor. According to UNICEF, “very often they do not perceive themselves as part of the trafficking network, although they are, in fact an engine in the machinery of exploitation. All aspects of the role of users require further research”.³³ Below is the profile of children users for sexual abuse in South Africa. As this country is the main destination country of Basotho trafficked persons, it is relevant to know more about these South African users.

Profile of Children Users for Sexual Intercourse³⁴

There is no typical profile of those who sexually exploit children and they “cannot be distinguished by any specific inner quality, personality trait or even sexual proclivity.”³⁵ Their only distinguishing feature is that they sexually exploit children. This they do “in a range of social settings and contexts, for a variety of reasons.”³⁶ The people who have sex with children vary from those who choose to engage in this activity, to those who do not care, to those who do not realize that their sexual partner is a child. It “is (therefore) impossible to speak of the sex exploiter in the sense of a single type of person who possesses some particular or unique set of characteristics.”³⁷

2006, front page.

33. UNICEF Innocenti Research Center (2003) *Trafficking in Human Beings, Especially Women and Children, in Africa*, p.9.
34. Excerpt from the UNESCO research study (2005) *Human Trafficking, especially of Women and Children in Southern Africa (South Africa, Lesotho and Mozambique)*, coordinated by Elize Delpont, Mhlava Consulting Services, South Africa.
35. O’Connell Davidson, J (2001) *The Sex Exploiter*, NGO Group for the Convention on the Rights of the Child, p. 7
36. Ibid, p.7.
37. Moela, S. (19 September 1999) “Not All Girls have the Luxury of a Real Childhood”, in *City Press*.

It is however possible to distinguish certain distinct categories of sex exploiters within this amorphous group. These categories are: pedophiles, preferential sex exploiters and situational sex exploiters.

First and most easily distinguishable - but in the minority - are **pedophiles**. These are men who have a marked preference for sex with prepubescent children.

Secondly, there are people who do not care whether their sexual partner is a child or not and have sex with children without questioning the age of the partner. Most noticeable in this group are those generally referred to as "sex tourists". Whilst there are some among this group who travel specifically to have sex with children most however would, in "normal" circumstances not choose to have sex with a child but for a variety of reasons do. These reasons include: the freedom of a holiday in a foreign "exotic" location, being drunk or affected by drugs, ignorance or lack of care in recognising the likelihood that an offered partner is under-age. People in this group are referred to as **situational sex exploiters**. They engage in sex with children because they are usually morally and/or sexually indiscriminate and wish to 'experiment' with child sexual partners, or they have entered into situations in which children who match their ideals of physical attraction are sexually accessible to them, or certain disinhibiting factors are present which allow them to either delude themselves about the child's true age or about the nature of the child's consent. However, the globalized flow of money has increased demand for commercial sex, and many exploiters are local men, often regular-users of commercial sex workers, who do not distinguish on the basis of age. In the South African context they have been described as "men of all ages, colours, creeds and religions."³⁸

Thirdly, there are those whose demand for sex with children is based on a belief that children are less likely to have had multiple partners, and so are less likely to transmit infection. This group falls into the category of those regarded as **preferential sex exploiters**.

Although some children are sexually exploited by and/or specifically for pedophiles and preferential exploiters (the majority of men who sexually exploit children), situational sex exploiters - i.e. regular prostitute users - are involved in the sex industry first and foremost. They become child sexual exploiters through their prostitute use, rather than the other way around. Unlike preferential sex exploiters and pedophiles, then, situational exploiters do not consistently or consciously seek out children as sexual partners, and it is often a matter of indifference to them whether their sexual partners are 14 or 24, providing they are 'fit' and 'attractive'. This type of offender cannot necessarily be described as sexually "perverse"³⁹ (in the sense of deviating from culturally prescribed sexual norms). The physical characteristics that he or she is attracted to often conform to cultural ideals of 'youthful' feminine or masculine beauty, and not to cultural ideals of childlike innocence. Children mature physically

38. Idem.

39. Kelly, L. (November 2001) *From Aspirations to Intervention: Trends, Issues, Priorities and Lessons Learned: Keynote to the COE Conference Protection of Children Against Sexual Exploitation*, European Preparatory Conference for Yokohama, Budapest.

at very different rates, so that a 14 or 15 year old girl, for example, can combine the physical characteristics associated with an adult woman with attributes of youth that are much admired. It has been observed in this regard that: "It is also worth noting here that many models used in the production of pornography aimed at 'normal', and not pedophile, men are actually under the age of 18, and an adult who is sexually aroused by the sight of someone who is legally and chronologically a child, but physically 'mature' and/or close to cultural ideals of sexual beauty, cannot necessarily be understood as sexually or psychologically 'aberrant'."⁴⁰ Generally, child sex exploiters are drawn primarily from the following groups: local prostitute users; the military; seamen and truckers; migrant workers; traveling businessmen; tourists; expatriates; aid workers; and employers of domestic workers.⁴¹ In South Africa they are also usually identified by their occupation and they have been identified as: taxi drivers, migrant workers, lawyers, doctors, farmers, local and foreign tourists, men who frequent bars and shebeens and employers of domestic workers.⁴² Despite this identification we still do not know much about those who sexually exploit children.

2.4. ROOT CAUSES

Trafficking in persons is generally described in terms of supply and demand or push and pull factors. Trafficking in human beings occurs first and foremost because there is a market for children and adults in business enterprises and in the sex industries. This demand is matched by an abundant supply of people, very often from impoverished circumstances, who follow traffickers to try to escape from poverty. "Push factors typically include poverty, family break-up, violence or other dysfunction, lack of job opportunities, low education levels or the wrong skills for the jobs that are available, family pressures or a sense of responsibility to provide for the family"⁴³ and also traditional practices like early marriage or the fostering of children. There is a broad panel of causes to underline in order to understand human trafficking. One has to keep in mind that these explanatory factors can be mutually reinforcing and that some of these causes can also be the consequence of other ones.

40. See for instance Molo Songololo (2000) *Trafficking of Children for Purposes of Sexual Exploitation: A Report* Cape Town, p. 37. Koen, K. and Van Vuuren, B. (2002) *Children in Domestic Service the Case of the Western Cape*, Terre des hommes, Switzerland.

41. O'Connell, J. and Sanchez Taylor, J. (1996) *Prostitution and Child Sex Tourism: South Africa*, ECPAT International.

42. See for instance Molo Songololo, Ibid, p. 37, K. Koen and B. Van Vuuren, Ibid.

43. Kane, J. and Saghera, J. (2001) *Trafficking in Children for Sexual Purposes*, UNICEF, p.5.

2.4.1. Push Factors

For Lesotho specifically, the following push factors have been identified:

- Poverty
- Unemployment
- Harmful socio-cultural practices
- Increase in the magnitude of prostitution
- HIV and AIDS, AIDS orphans
- Gender inequalities

Poverty

There are many reasons why trafficking of women and children is taking place in Lesotho. Perhaps the most significant factor creating the conditions for trafficking is poverty. Lesotho is a country with very little by way of natural resources. It has relied largely on remittances from nationals working in South Africa. Over the years, each working Mosotho⁴⁴ in South Africa has supported several members of his/her household. However, these remittances have dwindled recently due to retrenchments and other economic hardships. Since the beginning of 2004, more than 6,000 jobs have been lost due to closure of textile factories. As a result many families in the urban and rural areas have lost financial support.

Agriculture, which is the mainstay of Lesotho's largely rural population, has virtually collapsed due to land degradation and natural causes such as drought. Poverty in both rural and urban areas has increased significantly. This has in turn resulted in rural-urban migration by men, women and children in search of employment. The existence of street children and beggars in the streets of Maseru and other cities are testimony of this phenomenon.

Unemployment

In Lesotho, the unemployment rate for women is particularly high (up to 70%). The closure of textile factories has left a lot of female workers without any activity and this economic reality makes them particularly vulnerable to traffickers. On the other hand, South Africa is perceived as the place to go to find a job. As a result, false promises of a better future in South Africa expose Basotho women to human trafficking situations.

44. The name Basotho refers to the inhabitants in general, the singular is Mosotho.

Harmful socio-cultural practices

Similar to many developing countries, Lesotho is a patriarchal society in which women's rights have long been violated and denied. As mentioned above, the major cause of trafficking is poverty. The root cause of poverty in Lesotho, beyond the lack of income-generating activities, relates to factors that maintain the cycle of poverty from generation to generation. Patriarchy is one of these factors which deny women equal access to resources and opportunities. In addition, the cultural expectation that children should support their parents and elders puts pressure on children forcing them to take risks in an attempt to satisfy these expectations. Many are forced to move into cities where they may turn to prostitution and other activities that expose them to trafficking situations.

Increase in the magnitude of prostitution

A major factor contributing to trafficking is the increase in the levels of prostitution in Lesotho. There is no law prohibiting prostitution in Lesotho⁴⁵ where it involves consenting adults above the age of 16. On any day after dark, especially on weekends, if one drives along the mini by-pass to the Maseru Bridge border⁴⁶ one sees dozens of women and girls as young as 14 lining up the street in the hope of securing clients who will pay for sex. Not only do they wave at passing cars, but will rush towards any car that stops. They appear extremely desperate and are ready to go anywhere the client decides. It is in these situations that they are sometimes bundled into cars and driven across the border to be abused. There is also growing evidence of young women crossing the border to the nearest South African town (e.g. Maseru Bridge to Ladybrand) both legally and illegally where they stand by the main road and wave at passing cars purportedly to obtain a lift when the real object is to sell sex. It is in such situations that they expose themselves to trafficking because some of the prospective "customers" are in fact traffickers ready to take advantage of the vulnerability of such women. They end up getting more than what they have bargained for as they may end up being trafficked to places like Johannesburg, Durban and even beyond.

45. This should not be construed as suggesting that there should be such a law. Experience e.g. in Zimbabwe, has shown that criminalization does not work and drives the trade underground thereby endangering lives of women.

46. Maseru shares a border post with Ladybrand in South Africa.

HIV and AIDS, AIDS orphans

While the AIDS pandemic is playing havoc in the country⁴⁷, young Basotho women and children are prepared to risk their lives for survival. According to an article by Integrated Regional Information Networks (IRIN)⁴⁸ on the growth of the textile industry in Lesotho, many of the Basotho women sex workers are fully aware of the AIDS pandemic and the risks involved, but are prepared to risk their lives by having unprotected sex if a client will pay more. It also appears that women, who are sexually abused by traffickers, are also subjected to unprotected sex. While it may be said that the Government's policy on AIDS has been inadequate, it appears that those women working in the streets understand and appreciate the consequences of AIDS.

HIV and AIDS have left many orphans in Lesotho; this was conservatively estimated at 2% of the population in 2001.⁴⁹ In 2003, HIV and AIDS accounted for 56% of orphans in the country. Many of these children find their way into the towns in search of means of survival and find themselves at risk of being trafficked.

On the one hand, the prevalence of HIV and AIDS increases the number of persons trafficked. The demand for young virgin girls is getting higher as they supposedly present less risk to be contaminated with HIV and AIDS or because some believe that a sexual relationship with these virgin girls is the way to be cured of HIV and AIDS. On the other hand, trafficking increases the number of HIV infected persons. In general, women and girls are more vulnerable to HIV infection so it may be argued that trafficked girls and women are those who are most at risk. In the case of those trafficked for purposes of commercial sex work, vulnerability is increased in a number of ways:

- Trafficked people are unable to insist upon condom use.
- Trafficked people may be forced to endure sexual practices most associated with HIV transmission.

47. 23.2% of adults (15-49 years old) are living with HIV in Lesotho. Cf. <http://www.unaids.org> (Lesotho page).

48. "Growth of garment industry fuels AIDS concerns", *Irin*, 16 June 2003. While the textile industry has been beneficial to women by creating more employment for them, there has been a downside to it caused mainly by the low wages paid to them. Textile workers earn, on average, a pitfall of M800.00 per month (about US\$115.00). As early as 5.00 a.m. on a week-day one sees a human chain of women walking several kms to the factories because they cannot afford public transport. Many of them resort to prostitution to supplement their income. http://www.irinnews.org/report.asp?ReportID=34776&SelectRegion=Southern_Africa&SelectCountry=LESOTHO

49. UNAIDS, UNICEF, USAID 'Children on the Brink 2004: A joint report of new orphan estimates and a framework for action' www.unicef.org/publications/index_22212.html.

- Trafficked people are forced to have sex with multiple partners.
- Violence in commercial sex is common, especially where women or children are forced to have sex against their will. Injuries sustained during forced sex may increase vulnerability to HIV transmission.
- The physically immature bodies of young girls are extremely vulnerable to injuries. Such injuries increase their risk of infection.
- Many trafficked people have other sexually transmitted diseases (STDs) due to their forced and so unsafe sexual activities. This heightens the risk of contracting HIV by up to a factor of 10.⁵⁰

The vulnerability of those trafficked to sexually transmitted diseases is compounded by their inability to receive medical testing, treatment, counselling or other health services. Their inability to understand or speak the language in a foreign land, their poverty and lack of freedom may also impede access to health care.⁵¹ Thus they become an infection risk to future partners and any child they conceive. This is of particular significance when it is mothers and other female ‘carers’ who are sick.

Family poverty is here compounded by the loss of labour, the high cost of medical care and funerals. Families eat less and sell their assets.

Children are particularly impacted by the loss of the professional generation as well as by losing their parents. As infected parents become unable to provide for their children, and relatives shun them or are also unable to provide support, the children suffer emotional neglect before the parents die, in addition to having to care for them and assume responsibilities they are ill-equipped for. Children also suffer the distress of their parent’s death and the need to adjust to a life of minimal support and possibly social stigmatization.

Possibly deprived of their inheritance, shunned by family, stigmatized and poorly educated with limited marketable skills, AIDS orphans become socially isolated and rejected. They have limited survival opportunities and are extremely vulnerable to abuse and exploitation. This is particularly true of girls who may have been forced to leave school early to fulfil their socially ascribed role of ‘carer.’ Uneducated and unskilled, they become prey to unscrupulous employers and thence to trafficking. Children are subsequently more exposed to traffickers and trafficking – and ultimately to HIV and may be infected and affected on a large scale.

50. Burkhalter, Holly [25 June 2003] “Sex Trafficking and the HIV/AIDS Pandemic” *Testimony of, Physicians for Human Rights, before the House International Relations Committee*; pp 1-2.

51. *Idem.*

Gender inequalities

Until recently, a married woman in Lesotho could not, without the consent of her husband, enter into contracts, access credit directly or administer the joint estate on an equal footing with her spouse.⁵² The patriarchal structure of the society translated into the interdiction of women from access to property and goods. The customary and common law was rooted in the culture of male superiority. As a result, women were (and still are) viewed as “commodities” for sexual relationships. One of the ways to get out of this situation was for the Government to pass a law making the husband and wife equal partners in marriage. On the 6th of December 2006 the Government of Lesotho finally passed into law the Legal Capacity of Married Persons Act.⁵³ The Act abolishes marital power for both customary and common law marriages. An interesting feature of this law is that it has retroactive effect as it removes the marital power which the husband had over the person and property of his wife before it came into force.

Prior to the passing of the equality law, a married woman was totally incapacitated legally. This was reinforced by customs and practices that regard women as perpetual minors. This has been compounded by laws which make divorce a difficult and arduous process. Even though one cannot readily point to specific cases, it is possible to postulate that a woman frustrated by marital power and the inability to obtain a divorce for one reason or another, could opt for the first available opportunity to cross the border. Her vulnerability was increased by the fact that she could not even obtain a passport without the consent of her husband, in which case illegal crossing became her only option with its attendant dangers like human trafficking.

It is too early to assess the impact of the Legal Capacity of Married Persons Act. Indeed, there are major challenges towards the achievement of its objectives such as deep-rooted patriarchal customs and practices. It will also take political will and resources to implement. However, it does send a clear message (legally at least) that inequality in marriage between men and women should no longer be accepted.

52. In Lesotho, all marriages are in community of property unless the parties have contracted otherwise. In the past, the husband enjoyed automatic marital power over the person and property of his wife unless the parties have expressly contracted out of it under an ante-nuptial contract. Hardly any couples exercised this option. The majority of women did not even know of this option. The few who knew did not exercise the option for fear of alienating their male partners. The customary marriage was even worse because the wife virtually had no say over matrimonial property issues.

53. The Bill was drafted in 2002 as The Married Persons Equality Bill. However, because of resistance by men within and outside Government it took nearly 5 years for this law to be passed.

In the field of education, there are more female children than male children in schools and colleges. Many young male children are not able to go to school because of family obligations of herding cattle. This also makes young boys vulnerable to trafficking for purposes of herding. This situation explains why the law on compulsory education is targeted more towards boys.

2.4.2. Pull Factors

Based on available research, the main explanatory pull factors of human trafficking appear to be:

- Need for cheap and low-skilled labor
- Sex tourism and industry

Trafficking in women and children is often seen as a development problem from the supply side. It is argued that young women and children are forced or pressured into the sex and domestic service industries by poverty and lack of alternative employment and income-earning opportunities. However increasingly, trafficking in persons is also seen as a development issue from the demand side.

The demand for cheaper labor and sexual services from women and children both within developing and developed countries is regarded as a function of economic development. Economic growth tends to result in increased demand for cheap migrant labor because the domestic workforce is able to move from low-skilled and low-wage employment thanks to the increasing ease and frequency of international travel, together with the growing phenomenon of temporary migration for work.⁵⁴

Economic disparities between regions also lead to more general migration flows, as more affluent countries draw upon the potential workforce of poorer countries as a source of labor. Western Europe, for example, is estimated to need an injection of 75 million migrants by the year 2050 if it is to maintain current levels of economic prosperity, suggesting significant and sustained migration into Western Europe over the next 50 years. Irregular migration and trafficking generally accompany such large people movements.⁵⁵

54. In 2000, the United Nations estimated that 13 million people, or 2 percent of the world population, are on the move at any given time (in International Labour Organization-IPEC (2002) *Unbearable to the human heart: Child trafficking and action to eliminate it*, Geneva, p.22).

55. ILO- IPEC, *Ibid*, p.27.

With respect to sex industries, it has been argued that development projects in comparatively underdeveloped countries often bring with them a rapid increase in the demand for commercial sex. This is due to the growing sex industry, especially in industrialized countries, and in the sharp increase in the numbers of unaccompanied male workers in areas where there are few outlets for recreation and entertainment. Patterns of development that depend heavily on temporary migrant workers, particularly male workers, are generally associated with a sharp increase in the demand for commercial sex. This is coupled with an unmet demand for cheap and malleable labor, demand for sexual services such as those linked to the development of tourism or shifts in the supply of local women in the sex sector in places of destination.⁵⁶

The infrastructure and trends associated with a rapidly globalizing world – like increasingly open borders, better transport, and increased overall migration flows – complement the forces of supply and demand that underlie trafficking. Globalization has provided the impetus to both those who wish to migrate and those who traffic the unwilling. Women and children tend to be the most vulnerable to human trafficking as they very often carry the burden of poverty.

56. Kane, J. and Saghera, J. (2001) *Trafficking in Children for Sexual Purposes*, UNICEF, p.5.

3 Policies and Programmes

3.1. CURRENT LEGAL FRAMEWORK

3.1.1. International Instruments Addressing Aspects of Human Trafficking

The following international instruments can be used in case of human trafficking in order to prosecute some aspects of a trafficking situation. The table gives an overview of the text ratified and/or signed (or not) by the Government of Lesotho.

Relevant Legal Instruments with Regard to Human Trafficking	Signature	Ratification
ILO Convention No.182 on the Worst Forms of Child Labour (1999)		14 June 2001
UN Convention against Transnational Organized Crime (2000)	14 December 2000	24 September 2003
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo protocol) (2000), supplementing the United Nations Convention against Transnational Organized Crime	14 December 2000	24 September 2003
1989 UN Convention on the Rights of the Child (CRC)		6 April 1992
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)		24 October 2003
Rome Statute of the International Criminal Court (2002) Article 7-1 ⁵⁸	30 November 1998	6 September 2000

57. According to article 7.1 of the Rome Statute of the International Criminal Court, "For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...] (c)enslavement; [...] "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children [...]."

UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)		4 November 1974 (Succession)
Hague Convention no.33 on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993)	No signature	No ratification
Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	24 September 2004	No ratification
Convention on the Elimination of All Forms of Discrimination against Women (1979)	17 July 1980	22 August 1995 (Accession-Declarations or reservations)
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)	6 September 2000	24 September 2004
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	No signature	No ratification

3.1.2. Regional Legal Instruments

African Charter on the Rights and Welfare of the Child (1990)		27 September 1999
African Charter on Human and People’s Rights (1986)	7 March 1984	10 February 1992
Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (1998)	No signature	No ratification

It is also worth noting that in 1998, SADC Member States including Lesotho, signed an Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State or Government which commits all signatory countries to take measures to prevent and deal with increasing levels of violence against women and children through legal, social, economic, cultural and political policies.

Although many international and regional instruments have been ratified, they have not yet been translated into national laws. In terms of Lesotho’s Constitution, international Conventions and treaties have to be domesticated to become part of the national laws. However, under modern jurisprudence judges have not shied away from embracing these Conventions even before domestication where human rights are concerned because of the now generally accepted notion of the universality of these norms.

3.1.3. National Legal Instruments

Lesotho’s legal system comprises both common law and statutory law. The former is an amalgam of the rules of Roman-Dutch law and English

law that were applicable in the Colony of the Cape of Good Hope (now Cape provinces of South Africa) in 1884, and the decisions of the superior courts of both Lesotho and South Africa, which relate to the interpretation and application of Roman-Dutch law. It was received in 1884 while Lesotho was a British Protectorate ruled indirectly through the Cape Colony establishment. The latter i.e., statutory law, is made up of the laws passed by the parliament of Lesotho and any authority empowered by parliament to make law or by-laws in the country. Lesotho's laws also include customary law that refers to the laws of the indigenous Basotho, as developed and modified through practice. Customary law operates side by side with the received law.

There is no specific national law in Lesotho, either statutory or common law that directly addresses the problem of human trafficking. However, there are laws that indirectly, and to some extent, provide for the liability of the perpetrators of human trafficking and for the protection of trafficked persons.

A. The Common Law

Under the common law, the crimes of kidnapping and abduction would fit in the broad definition of trafficking and would be punishable under Lesotho's criminal law. However, there have been hardly any prosecutions on either kidnapping or abduction.⁵⁸ This can be explained by lack of knowledge of trafficking by law enforcement authorities and the difficulties involved in investigating and arresting traffickers.

Kidnapping

The crime of kidnapping is committed when one person intentionally and unlawfully deprives another person of liberty or movement and/or custodian's control. This definition is broad enough to capture situations where women and/or children are conveyed from their country of residence or domicile to Lesotho (transportation or transfer), harboured or received in Lesotho through use of force, threats, or by coercive, fraudulent or deceptive means or by virtue of their position of vulnerability as a result of which they are deprived of liberty or their custodians are deprived of control over them. It also captures a situation where the victims are travelling through Lesotho to some other country or where the victims are directly taken out of the country. Of special relevance here, in the case of children, is the element of depriving the custodians of control. In practice

58. In this research, we came across only one case where a man was arrested and tried for child stealing (case No.5 in the annex).

however, this law has not been used as there are hardly any prosecutions in the courts involving kidnapping.

Abduction

This refers to the unlawful removal of a minor from the control of his or her custodian, with the intention of enabling someone to marry or have sexual intercourse with that minor. It is clear that abduction, as a crime under Lesotho's common law, is different from the way in which the term abduction is used in international law. That notwithstanding, if a minor is taken out of or brought into the country without the consent of his/her legal guardian, that would constitute abduction. That may include a case where the consent has been obtained by giving a guardian some payments or benefits.

Over and above the criminal offences outlined above, victims of kidnapping and abduction may institute civil proceedings under the law of delict and claim compensation in the form of damages. However, there are no recorded cases of delictual claims based on either abduction or kidnapping.

B. Statutory Law Position

Lesotho's Constitution of 1993

Trafficking is a violation of the human rights of trafficked persons through the exploitation they face. Chapter two of the Constitution of Lesotho enshrines a number of fundamental human rights, which are guaranteed to all persons regardless of their race, sex, religion or political affiliations. Amongst the rights protected hereunder, the following are relevant to trafficking in persons: right to life, right to personal liberty, freedom of movement and residence, freedom from inhuman treatment and freedom from slavery and forced labor. Section 22 of the Constitution provides for the justiciability of these rights and any person whose rights have been violated, has a remedy before the courts of law.

The Children's Protection Act No.6 of 1980

The provisions of this Act deal with the protection of children in cases of abduction, child-stealing, assault, sexual offences, and any offence involving bodily injury to a child. The Act vests power in a police officer or probation officer to remove a child from any place to a place of safety if there are reasonable grounds for believing that any of the offences mentioned above has been, or is being, committed upon or in connection

with that child. This power can be exercised only if the relevant officer has obtained either a temporary removal order from the chief of the area where the child is to be removed or the Children's Court has issued a warrant to that effect. What is important to note is that this Act does provide some measure of protection to vulnerable children, over and above the ordinary criminal sanctions in that they can be removed from a place where they are actually, or about to be, exploited to a place of safety even before the perpetrators could be arrested and/or prosecuted. However, the Act does not directly address the problem of trafficking of children. Moreover, this Act is now outdated (it is more than 25 years old) and its implementation is hampered by lack of resources and personnel. It is fair to point out that at the time of its enactment, trafficking of children was not yet as much of an issue as it is today. In fact, the Government has responded to these shortcomings by drafting the Child Protection and Welfare Bill which will repeal this Act and consolidate all laws on children. The Bill is discussed further below.

Sexual Offences Act No.29 of 2003

The Act details a number of substantive sexual offences and prescribes specific minimum sentences to be imposed upon those who commit the specified offences. Apart from that, it amends some evidential and procedural rules pertinent to sexual cases and broadens the definition of rape at common law. In accordance with this Act, it is an offence for a person to engage in a sexual act with another person through the use of force (physical or psychological) or threat, other forms of compulsion or coercion, inducement by false pretence or by fraudulent means, and/or by administering a substance for the purpose of committing the sexual act. A sexual act includes direct or indirect contact with the anus, breasts, penis, buttocks, thighs or vagina of one person and any other part of the body of another person. It also includes an exposure or display of the genital organs of one person to another person.

The following acts are recognized as offences against children under this Act:

- Child molestation, that is, the commission of a sexual act with a child below the age of sixteen. This extends to the invitation or persuasion of that child to engage in a sexual act (section 8).
- Persistent sexual abuse of a child, that is, engaging in a sexual act with a child below sixteen years of age for more than once (section 9).

- Child prostitution, which includes committing a sexual act with a child below the age of sixteen for financial or other reward, favor or compensation to the child or to any other person, inviting, persuading or inducing that child to allow himself/herself or another person to commit a sexual act with that child for financial or other reward, favor or compensation to the child or to any other person, conceding to the invitation or persuasion or inducement to commit a sexual act with that child (section 10).
- Procurement of child prostitution, which entails procuring a child below the age of eighteen with the intent that the child becomes a prostitute or inmate of a brothel (section 11).
- Offering or engaging a child, which pertains to a situation where one offers or engages a child for purposes of committing a sexual act for financial or other benefits (section 12).
- Facilitating or allowing the commission of a sexual act with a child below the age of eighteen for financial or other benefits. A parent, guardian or custodian who allows the commission of a sexual act on a child for financial gain commits an offence (section 13).
- Offering, receiving or living on financial or other rewards for the commission of a sexual act with or in relation to a child below the age of eighteen (section 14).

Minimum sentences for those who commit the foregoing offences range from eighteen years imprisonment to the death sentence. It is clear from the above outline of the provisions of the Act in question that it is broad enough to capture any trafficking act that is carried out for the purposes of any form of sexual exploitation. This Act applies to both Basotho and non-Basotho in cases where the offences have been committed within Lesotho. Where they have been committed outside Lesotho, section 35 of the Act provides for extra-territorial jurisdiction. In terms of that section a person who, while being a citizen or a resident of Lesotho, commits an unlawful sexual act outside Lesotho in relation to another citizen or resident of Lesotho, can be tried in the courts of Lesotho. The importance of this provision vis-à-vis our inquiry in this report is that where a citizen or a resident of Lesotho conveys a Mosotho woman or child or any woman or child who resides in Lesotho to another country for purposes of sexual exploitation, and indeed while in that foreign country commits any of the sexual offences provided for under this Act, the Lesotho criminal justice system shall have power to bring him to court. Lesotho has signed an extradition treaty with South Africa, making it possible for Basotho

nationals committing these offences in South Africa to be brought back for prosecution.

Labor Code Order No.24, 1992

The provisions of this Act prescribe the minimum standards regarding the employment of women and children and the suitable conditions of work. For instance, they deal with issues of minimum age for the employment of children, special conditions of work that are to be accorded to women and children such as time for work, types of industries in which they cannot normally work and so on. There are also provisions dealing with sexual harassment and discrimination in the workplace, as well as forced labor. Failure to comply with these standards amounts to criminal offences for which the perpetrators will be punished. Where a trafficked person, national or foreigner, has been brought into Lesotho in order to be subjected to exploitative labor, the Code will therefore be applicable. However, this Code cannot be applied to members of armed forces, police, watchmen, and other categories of employees who may be excluded from the scope of this Act by the Minister responsible for labor. Although Lesotho has enacted laws addressing child labor, the problem is still rampant in the country.⁵⁹ Many under aged boys and girls are employed under harsh conditions and very low wages as either herd boys or domestic workers respectively. Some of the children are trafficked for these purposes. In the case of women, we have pointed out elsewhere in this report, the appalling conditions under which women textile workers are employed in violation of both international and local labor laws.

Criminal Procedure and Evidence Act No.4, 1981

Section 59 of this Act provides that where a woman or a girl is unlawfully detained for immoral purposes in any place in the country, a magistrate court with jurisdiction over that place may issue a warrant for the removal of the detainee to a place of safety and for the arrest of the person who unlawfully detained that woman or girl and that person will in turn be charged. This section can be applied in cases where a trafficked woman or girl is harbored or received in any place in the country for purposes of sexual exploitation, forced labor, slavery, servitude, removal of organs or any other immoral purpose. The Act applies to all women and girls irrespective of their nationality.

59. For a detailed account on child labor in Lesotho see Letuka, P. "Child Labor in Lesotho" in Ncube, W (Ed) (1998) 203-224 *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa*, Dartmouth, England, pp. 203-224.

Aliens Control Act No.16, 1966

This Act has to be read with Aliens Control (Amendment) Act No.19, 1983, Aliens Control (Amendment) Regulations LN.113, 1983, Aliens Control (Amendment) Regulations LN.178, 1989, Aliens Control (Amendment of Schedules) Regulations LN.118, 1992, Aliens Control (Amendment) Regulations LN.58, 1996. Together they provide for the curtailment and regulation of the movement of aliens⁶⁰ into and out of Lesotho, for their registration, sojourn, and for matters related thereto. In terms of this statute, the relevant Minister has discretion whether or not to grant the alien a permit to sojourn in Lesotho. In considering the application of the alien, the Minister is directed to apply a number of principles all of which are meant to guide him in establishing whether or not the alien is a law-abiding person. Most importantly, the Minister is obliged to establish whether or not the alien's purpose for coming to Lesotho is not contrary to public morality or fundamental human rights. It is an offence for any alien to enter land or stay in Lesotho without the Minister's approval and in case the alien commits this offence he/she may be deported, and/or punished under criminal law. It is not difficult to see that the Act in question and the regulations made there under may be used to prevent trafficking in persons and to provide for the punishment of those who commit acts of trafficking. However, the provisions of the same Act may be used to charge trafficked people with unlawful entry. For this reason, they may either have to put up with the exploitation or to face criminal charges. This research has revealed that some aliens have engaged in trafficking activities while in Lesotho and have done so with impunity (case 7 involved a Nigerian national. He has never been brought to court.).

C. Proposed Legal Reforms***Children's Protection and Welfare Bill, 2004***

The most significant proposed legal reform in the laws relating to trafficking of children is contained in the Children's Protection and Welfare Bill of 2004. If enacted, it will repeal the now outdated and inadequate Children's Protection Act of 1980 previously discussed. The Bill provides for the consolidation and reform of the laws on the protection and welfare of children. Part VIII of the Bill is devoted to trafficking and abduction of children. The Bill also has a comprehensive definition of trafficking, which

60. An alien is defined in the Act as a person who is not a citizen of Lesotho (Section 2).

is substantially the same as the one in the UN Protocol.⁶¹ Section 2 of the Bill defines trafficking as “the recruitment, transportation, transfer, sale, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.”

In terms of the Bill, trafficking of children is an offence, the commission of which will expose a convicted person to imprisonment of not less than twenty years. A social worker is charged with the responsibility of investigating matters involving trafficking of children, causing the arrest and prosecution of the perpetrators and taking care of the trafficked children.⁶²

The Bill, if enacted and properly implemented, would provide a comprehensive legal framework for addressing trafficking of children for exploitation. However, it should be pointed out that its application will be limited to children and in this case, persons below the age of eighteen. A gap will still remain when it comes to trafficking of persons above eighteen years of age, as they will not be covered.

3.2. CURRENT PROJECTS AND PROGRAMMES

3.2.1. The National Vision 2020 Report and the Gender and Development Policy

It would seem that the Government of Lesotho⁶³ has neither formulated a policy, nor facilitated the establishment of a project, that has a direct bearing on trafficking in persons. Nevertheless, there are state policies in Lesotho that indirectly seek to root out the causes of trafficking. Quite recently the Government of Lesotho has adopted a **National Vision 2020 Report**, the main goal of which is to ensure that by the year 2020, Lesotho shall be a stable democracy, a united and prosperous nation at peace with itself and its neighbors. It shall have a healthy and well-developed

61. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) (2000), supplementing the United Nations Convention against Transnational Organized Crime.

62. Detailed provisions on trafficking are contained in sections 70-76 of the Bill.

63. In this context, we use the term Government to mean the Executive branch (i.e. the Prime Minister and his Cabinet) and the Legislative branch (Parliament). These two bodies are responsible for policy formulation, legislation and implementation. The third branch of Government, the Judiciary, has no direct role in policy formulation since its function is to ensure accountability and adherence to the laws by the other arms.

human resource base. Its economy shall be strong, its environment well managed and its technology well established. This report was compiled by a committee made up of representatives of all the social, economic and political groups in the country and it was launched in a National Dialogue for the Development of a Long Term Vision for Lesotho Report prior to its adoption by the government.

The National Vision 2020 Report highlights the most prominent social, political and economic problems facing the country at the moment, examines the past and present governmental policies and development plans vis-à-vis the eradication of the same problems, outlines the strengths and shortcomings of those policies and plans, examines possible reforms and recommends appropriate reforms accordingly. Among the things captured in this report are the measures that the government should take to remove poverty alleviation barriers, strengthen its position in relation to the prevention of the HIV and AIDS pandemic and the treatment of those who live with AIDS, and the suppression of all laws that hinder the full and equal enjoyment of human rights (social, economic, cultural or political) by all without any discrimination whatsoever on grounds of sex, religion and so on.

Pursuant to the National Vision 2020 Report, the Minister of Gender, Youth and Sports has published the **Gender and Development Policy**, the objectives of which have been outlined as follows:

- To ensure equal opportunities and participation of women and men, girls and boys in the development process in order to promote a better standard of living for all and to achieve economic efficiency.
- To ensure equal access to education, training, and health services and control over resources such as land and credit.
- To conserve positive and mitigate negative aspects of Basotho culture in order to promote equality of women and men, girls and boys and to sustain social stability and peaceful co-existence.
- To ensure that gender-sensitive laws are in place and are enforced.
- To guide the allocation of resources and public expenditure so that they are equally beneficial to women and men, girls and boys.
- To set guidelines for public awareness and promotion of understanding of the link between gender equality and development through the media.
- To promote equal opportunities and participation in politics and decision-making.

- To provide direction for development of effective programmes on awareness creation on the causes and consequences of gender-based violence and of mechanisms geared to eradicating such problems.
- To facilitate the acquisition of life skills in order to overcome gender and development problems.
- To promote equal decision-making power in sexual matters in order to reduce the spread of STDs and HIV among women and men, girls and boys.

This policy reaffirms the fact that marginalization of women makes it difficult for them to refuse to engage in unsafe sexual activities. It further states that the Government of Lesotho is intent on establishing funds for projects geared towards uplifting women and children from their disadvantaged position so that they would be able to fully enjoy all human rights on equal footing with men. It also stipulates the government's desire to wipe out all stereotypes and beliefs that undermine the principles of gender equality and equity.

With regard to the HIV and AIDS pandemic, the government undertakes to:

- Increase and strengthen gender-sensitive campaigns on sexual behavior change and for the prevention and control of HIV and AIDS.
- Advocate for the improvement and expansion of gender-sensitive home-based health care delivery services with particular attention to HIV and AIDS affected and infected patients to alleviate the burden of responsibility on women.
- Advocate for the development and implementation of gender-sensitive health policies, programmes and plans.
- Advocate for laws and policies that discourage and prohibit all forms of sexual abuse and exploitation.

All the aforesaid policies are in line with the provisions of Chapter three of the Lesotho Constitution, which sets out the principles of state policy. These principles cannot be enforced by the courts of law, but they are meant to guide government authorities with regard to the policies that should be adopted and implemented.

3.2.2. The Child and Gender Protection Unit

In November 2002, the Lesotho Mounted Police Services (LMPS) established the Child and Gender Protection Unit. This is a project supported by UNICEF through its Adolescent and Youth Protection Project. UNICEF has noted that although no official statistics are available, a rapid increase in the trafficking and commercial exploitation of Basotho children and women into neighbouring countries, particularly South Africa, is being reported by non-governmental organisations and the media.⁶⁴ Part of the project involves community-based sensitisation to educate people at grass roots level regarding their rights and how to safeguard them.

The Child and Gender Protection Unit (CGPU) was established as a special unit within the Lesotho Mounted Police Services. This was in response to a general out-cry from stakeholders who felt that the police were doing a disservice to society's most vulnerable groups, namely women and children. Currently the CGPU has an office in each of the 11 police districts in Lesotho. Three officers (male and female) are assigned to each office.

The Unit is entrusted with protecting the children and women with a full understanding of their rights as defined in the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination Against Women, as well as the Constitution of Lesotho. Cases of trafficking of women and children would naturally fall within the jurisdiction of this unit. However, it appears that very few cases of trafficking are reported to the police. Between 2002 and 2004, only five cases of trafficking have been reported and investigated by the police and there has been only one prosecution (see case 7 in the annex).⁶⁵ However, the police cannot charge a suspect with trafficking because there is no such crime in Lesotho. In the only case of prosecution, the police could not charge a man who had abducted a 13 year old boy from Rustenburg, South Africa, and used him as an unpaid herd-boy with the crime of child trafficking. Instead, this particular man was charged with child-stealing and on conviction was sentenced to five months imprisonment or a fine of M500.00 (i.e. USD 70), half of which was suspended.

It is too early to assess the impact of the CGPU, but it is already facing major challenges including inadequate training and resources. Currently

64. UNICEF Humanitarian Action: Southern Africa Crisis: Donor Update (18 July 2003)

65. This information was obtained through an interview with a female sergeant in the Child and Gender Protection Unit as well as a document supplied by the same officer entitled: *Lesotho Country Report on Trafficking in Human Beings*, presented at a SADC conference on trafficking in Harare, Zimbabwe in 2004.

there is no specific budget allocated to this unit because it has not yet been understood or appreciated that such a special unit with specialized duties has specific needs. There is no doubt that with proper training and allocation of resources, the CGPU could reverse the current trends in trafficking in Lesotho. One of the welcome outcomes of this development is that the unit now works and holds consultative meetings with its counter-parts in the border towns of South Africa.

3.2.3. Work of NGOs and IGOs

- The **NGO Coalition (NGOC)** is the umbrella of all NGOs dealing with children. They are currently doing work formerly performed by Save the Children Sweden which trained NGOs on child trafficking.
- The **Lesotho Child Counselling Unit (LCCU)** is running a programme to raise awareness on human trafficking. The LCCU undergoes the following activities:
 1. Formation of child focused groups: a group of children comes together for activities (dance, music) and it is used as a place to educate them on trafficking, and especially on children's rights.
 2. Creation of child welfare forums: a group of volunteers from communities holds workshop to encourage parents to act for children's rights. If abuse occurs, it has to be reported to the chief of the community who then reports the case to the police which in turn goes to the legal officers.
 3. Psycho-social support (including temporarily shelters, counselling...)
 4. Link with the police (including the border police) to trace where the trafficked persons come from in cooperation with IOM and try to reintegrate them into their communities.
- The **International Organization for Migration (IOM)** does not run a specific programme on human trafficking, but it assists NGOs when they come up with trafficking cases for reporting and follow-up. IOM staff also trains NGOs and law enforcement officials.
- **UNICEF** and the social welfare department have trained traditional healers on child rights.

However, the main problem is that intervention activities by NGOs and other governmental bodies are uncoordinated. For example, where a case of trafficking is discovered by the LCCU, it is not referred to the police or the department of social welfare as a matter of procedure. As a result, most of the cases requiring a follow-up in order to identify and prosecute offenders are in fact not followed up. Moreover, there is no system in place nor facilities to rehabilitate persons who have been subjected to and survived trafficking.

3.3 LESSONS LEARNT

The laws that are currently in place are inadequate. Further, it is not helpful to enact laws without giving the law enforcement agents the capacity to enforce the law. The Child and Gender Protection Unit, which should play a key role in the fight against trafficking, is underfunded, under-staffed and lacks sufficiently trained personnel to deal with this specialised area of law enforcement. There is also a need for policies directly geared towards eliminating the push and pull factors of human trafficking to accompany adequate legislation.

While NGOs such as the Lesotho Child Counselling Unit are doing sterling work in addressing trafficking, they have limited resources and capacity to deal with such a complicated problem. There is a clear need for the Government to take the lead playing a supporting or complimentary role vis-à-vis the NGOs.

4

Recommendations

4.1. LEGAL ACTIONS

The Government and State institutions are encouraged to:

- Enact a specific national law on human trafficking making trafficking in human beings a serious criminal offence, in line with the UN Convention. The law should be comprehensive and address all aspects of trafficking and should provide *inter alia*: appropriate sanctions for offenders, protection of trafficked persons from prosecution, rehabilitation and where possible compensation for trafficked persons and confiscation by the state of proceeds earned from trafficking.
- Pass into law, as soon as possible, the Children's Protection and Welfare Bill. The provisions of the Bill on trafficking are comprehensive and would compliment a national law on human trafficking. The Bill also has provisions to enforce compulsory registration of children born in the country. Setting up of mobile registration centres would facilitate implementation of this law.
- To sign and ratify the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Many of the root causes of human trafficking are addressed in this legal document (gender inequality, HIV and AIDS)⁶⁶.

66. Text of the African Charter on Human and People's Rights on the Rights of Women in Africa <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>

- Ratify the UN Convention on the Rights of Migrant Workers and Members of their Families.
- Enter into extradition treaties with other countries in order to establish a smooth and swift system of prosecution and punishment of traffickers. An extradition agreement with South Africa is not sufficient, since women and children are trafficked to other countries in the region and beyond.
- Establish bilateral and multilateral agreements to run joint actions against human trafficking and exploitation of women and children in transit and destination countries.
- Provide adequate training for all stakeholders: chief of communities, border officials, media, the judiciary and police officers to become sensitive towards trafficking offences, in particular with regard to the causes of trafficking, identifying cases of trafficking and the prevention methods.

4.2. POLICY CHANGE

- The Government and State institutions are encouraged to prioritize the fight against trafficking in women and children as a political issue that must be part of the governance agenda, given the specificities it entails. This implies the inclusion of the trafficking issue in the Poverty Reduction Strategy - a Policy Framework paper in terms of which Government will implement its program over the next five years.
- The Lesotho Interim Poverty Reduction Strategic Paper (I-PRSP) of 2000 includes a poverty diagnosis, an analysis of past policies and their shortcomings, an outline of the various elements of the strategy, a policy matrix, and selected indicators for the monitoring and evaluating of the strategy. The Government prepared the document through a consultative process with representatives from government, private sector, non-governmental organizations (NGOs), the National University of Lesotho and the donor community resident in Maseru. Work is currently underway to develop a full PRSP.
- Gender mainstreaming should be institutionalized as a national development strategy. Gender mainstreaming requires changes at different levels within institutions and organizations, paying attention to equality between women and men in agenda setting, policy making, planning, budgeting, implementation, evaluation and thus in

all decision making procedures. Mainstreaming requires that a gender analysis is carried out before the important decisions on goals, strategies and resource allocations are made. In formulating strategies therefore it is important that we include women's concerns from the outset. Women and children should therefore be integral partners of any policy or implementation strategy. This is especially important as "choices for women, especially poor women cannot be enlarged without a change in relations between men and women, as well as the ideologies and institutions that preserve and reproduce gender inequality."⁶⁷

- The Government should support groups of adults who look after orphaned children in the villages, possibly by giving them subsidies, so that they are not tempted to "give away" such children to wealthier relatives in the towns who may expose them to trafficking.
- There is a need for the Government to establish and give subsidies to a victim-support system to support, assist, rehabilitate and re-integrate victims of trafficking upon their return. This would be a way to prevent the re-trafficking of these trafficked persons.
- The Governments of Lesotho and South Africa should call for better supervision and training of border officials.
- Create a National Task Force bringing together all stakeholders (Government, NGO's civil society, private sector) to spearhead the development of a policy, laws and implementation of a strategy to combat human trafficking. Resources should be allocated to the Task Force to enable it to play an effective role rather than a token one.

4.3. RESEARCH, AWARENESS-RAISING AND TRAINING

- There is an urgent need for advocacy, education and sensitization on human trafficking, first at the level of the population so that the rulers are pressured to make changes. If one raises awareness in the local population, they know exactly what the risk is if they decide to follow a trafficker. Different channels like a radio soap opera, advertisements in newspapers and schools can be used in order to reach the highest number of people. In order to achieve this goal, there is thus a need to create awareness-raising material, which should be

67. UNIFEM (2000) *Progress of the World's Women: Empowerment and Economics*, United Nations, Geneva, p.21.

translated into Sesotho to make it widely accessible to communities.

- Organize a training of trainers and other stakeholders (chiefs, local government officials, the judiciary, the media, the judiciary, ministries, and paralegal staff) to better address human trafficking in Lesotho.
- The Child and Gender Protection unit should undertake a study and assessment of the extent and magnitude, including the provision of statistical data on the problem of trafficking of women and children for exploitation. This will assist in determining strategies for dealing with trafficking. The Government should also provide a specific budget for the unit in order to enable it to effectively function.
- Interventions should be set up with regards to HIV and AIDS. Health issues and in particular the effects of HIV and AIDS have been recognized as having serious effects on economies, particularly in sub-Saharan Africa where the infection rates are high. In seeking to address the economic and social issues associated with HIV and AIDS, it becomes necessary within a gender mainstreaming context to consider not only the policy implications for women and children but also for men and boys. It would be important to assess their objective social, economic and political conditions and assess how these conditions contribute to men's sexual behavior and how this correlates with increases in infection rates.
- Undertake further research on trafficking for adoption and body parts, the role of the Internet in the dynamics of human trafficking, the role of organized crime syndicates and the geographical dynamics of human trafficking in Lesotho.

5

Conclusion

Populations vulnerable to trafficking are growing in Africa, which increases the supply of potential victims for traffickers and the damaging effects on all segments of African society. Trafficking can be seen as a problem of migration, of organized crime, labor, human rights, of morality and as a development issue. These all have an impact of varying degrees on the very fabric of society. In practical terms some of the outcomes are likely to be:⁶⁸

Irretrievable depletion of human capital

- Negative effect on labor market
- Denial of access to education necessary to break cycle of poverty and illiteracy that creates trafficking conditions
- National labor force ill-equipped to compete in global economy where success is based on skilled workers
- Fewer people left to care for elderly and sick
- Social demographic imbalances
- Loss of human resources elsewhere, to other countries

Undermining public health

- HIV and AIDS costs to public health system
- Exposure to HIV, STDs, violence, dangerous working conditions, poor nutrition, and addictions

68. See Fitzgibbon, Kathleen (2003) "Modern Day Slavery" *African Security Review* Vol. 12 No. 1.

- Psycho trauma from experiences
- Life of crime addiction and sexual violence

Community breakdown

- Loss of family support network makes trafficking easier, undermines relationships, weakens ties of family affection and influence, interrupts passage of cultural values and knowledge, from one generation to the next, thus weakening the core of African society,
- Victims increasingly will have nowhere to go

Crime

- Links to other criminal networks, drugs, weapons
- Profits fueled into other criminal activities, car theft rings, drugs, terrorist groups

Undermining government authority

- Thwarts government attempts to exercise authority, undermines public safety
- The failure of government in fundamental responsibility, undermines its ability to combat corruption in law enforcement and judiciary

Human rights violations

- Perpetuates social inequality and injustice

Whatever strategies are developed to combat the trafficking phenomenon, **women's rights need to be at the core of every strategy** in all sectors and areas of activity. Unless women are equally situated and valued in terms of their social roles they will remain vulnerable to trafficking and abuse and the struggle to eliminate trafficking in human beings will prove endless. Awareness-raising and information, strong judicial systems and law enforcement as well as victim protection and reintegration are crucial, complementary elements in the struggle, but remain insufficient without a strong human rights foundation.

REFERENCES

- Abrahams, N. (22 September 2004) "The linguistic heritage of Cape Muslims", in *Athlone News*.
- Burkhalter, Holly (June 25 2003) "*Sex Trafficking and the HIV/AIDS Pandemic*", Testimony of H. Burkhalter, Physicians for Human Rights, before the House International Relations Committee, pp 1-2.
- ILO- IPEC (2002) *Unbearable to the human heart: Child trafficking and action to eliminate it*, Geneva.
- IOM (24 March 2003) *The Trafficking of Women and Children in the Southern African Region, Presentation of research Findings*.
- IOM Kabul (2004) *Trafficking in Persons: An Analysis of Afghanistan*.
- Kane, J. and Saghera, J. (2001) *Trafficking in Children for Sexual Purposes*, UNICEF.
- Kelly, L. (November 2001) "From Aspirations to Intervention: Trends, Issues, Priorities and Lessons Learned", Keynote to the COE Conference *Protection of Children Against Sexual Exploitation*, (European Preparatory Conference for Yokohama), Budapest.
- Kelly, L. (2002) *Journeys of Jeopardy: A Commentary on Current Research on Trafficking of Women and children for Sexual Exploitation Within Europe*, EU/IOM Conference on Preventing and Combating Trafficking in Human Beings: A global Challenge for the 21st Century.
- Koen, K. and Van Vuuren, B. (2002) *Children in Domestic Service the Case of the Western Cape*, Terre des hommes, Switzerland.
- Koh, H. (8 March 2000) *Country Reports on Human Rights Practices for 1999*, Testimony before the subcommittee on International Relations and Human Rights, U.S. House of Representatives, Washington DC.
- Letuka, P. "Child Labour in Lesotho" in Ncube, W (Ed) (1998) *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa*, Dartmouth, England, pp. 203-224.
- Martens, J., Mac Pieczkowski, M., van Vuuren-Smyth, B. (2003) *Seduction, Sale and Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa*, IOM, Pretoria.
- Moela, S. (19 September 1999) "Not All Girls have the Luxury of a Real Childhood", in *City Press*.

- Molo Songololo (2000) *The trafficking of children for the purposes of sexual exploitation: South Africa*, Cape Town.
- O'Connell Davidson, J. (2001) *The Sex Exploiter*, NGO Group for the Convention on the Rights of the Child.
- O'Connell Davidson, J. and Sanchez Taylor, J. (1996) *Prostitution and Child Sex Tourism: South Africa*, ECPAT International.
- Skinner, E., Kran, M., Adamson, R. and Townsend-Gault, I. (1997) "Illegal labor movements and trafficking of women: International dimensions in the era of globalization" in *Proceedings of the 1997 Regional Conference on Trafficking in Women and Children: Bangkok, Mekong Regional Law Centre*.
- Thanh-Dan Truong, (2005) *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO.
- UNAIDS, UNICEF, USAID (2004) "Children on the Brink 2004: A joint report of new orphan estimates and a framework for action", www.unicef.org/publications/index_22212.html.
- UNICEF (2003) *End Child Exploitation: Stop the Traffic*, New York.
- UNICEF (2005) *Fact Sheet Child Trafficking*, <http://www.unicef.org/protection/files/ipuglobaltrafficking.pdf>
- UNICEF Innocenti Research Center (2003) *Trafficking in Human Beings, Especially Women and Children in Africa*.
- UNIFEM (2000) *Progress of the World's Women: Empowerment and Economics*, United Nations, Geneva.
- U.S. State Department (June 2006) *Trafficking in Persons Report 2006*.

Websites

www.unesco.org/shs/humantrafficking

www.irinnews.org

http://www.unaids.org/en/Regions_Countries/Countries/lesotho.asp

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/LESOTHOEXTN>

ANNEX

Testimonies of Trafficked Persons⁶⁹

CASE 1

Ntsebo, a young woman aged 20, originally from Quthing, was trafficked 2 years ago. She was picked up by a white man along Kingsway in Maseru, in the middle of the day. He promised to employ her as a domestic worker at a monthly wage of M150.00 per month (18 euros). He took her to his house in Ladybrand where he demanded sex. After sex, he paid her M150.00 and asked her to push-start the car while naked (he insisted that she do so naked). He then drove off at high speed and left her stranded at night. She had to go to the nearest garage where she was offered a dustcoat to cover herself. She had to hike back to the Maseru border as the white man had disappeared with her clothes and money.

Although she was sure that she could identify the man, she did not report the incident to the police because she had crossed the border without a passport. She has since given birth to a coloured baby boy fathered by that white man. Although she wanted to terminate the pregnancy, she could not gather the courage to do so.

CASE 2

In March 2004, a white man picked up Lineo, a young woman of 24 from Thetsane in Maseru, and took her to Ladybrand in South Africa. He promised to employ her as a housekeeper. He sexually abused her and abandoned her at night in an open place. She received assistance from a stranger who invited her to his home where he also raped her the whole night. The following day, she found her way to the border and crossed through the illegal railway crossing. She normally operates as a sex worker. She is looking after two of her siblings who attend school. She admits having unprotected sex because it pays more.

69. All names used here are not real names. This is based on a random survey around the country carried out by Lydia Muso who runs Lesotho Child Counselling Unit, an NGO which looks after and counsels abused children. Some trafficked persons have been through this unit.

CASE 3

In December 2003 Malefu, a girl of 19, was trafficked from Mafeteng into South Africa by a white man. She has no recollection of the name of the place she was taken to. She had been promised employment in a restaurant. The man took her to his house where two other white men joined him. They took turns in penetrating her in the anus and vagina. They then put her in a rubbish bin and abandoned her in a forest. She spent the night in the forest and only managed to get out of the bin in the morning. She struggled to walk and managed to cross the border legally as she had a passport. She has never seen those men again.

CASE 4

Nthabiseng, a 19 year old girl from T.Y. was taken by a friend to Bloemfontein in South Africa to take up employment as a baby-sitter in 2003. After a short period of time, she was taken to London through another friend to work for a Nigerian lady. Nthabiseng was not happy about her situation because she had only wanted to work in Bloemfontein and not London. A white lady who attended the same church with her in London noticed that she looked unhappy and became curious. She talked to Nthabiseng who related her story. The white lady reported the case at the Lesotho Consulate in London. The girl was brought back to Lesotho and the Nigerian woman was arrested. The parents had no knowledge about the whereabouts of their daughter.

CASE 5

In March 2003, a 13 year old boy from Rustenburg, South Africa was abducted by a man from Lesotho. He was playing with five friends outside a shop in the town when a man wearing a blanket alighted from a minibus and chased the boys. He was caught by the man and forced into the minibus and driven all the way to Maseru. On the way the man promised him a job and good wages and assured him that he would contact his parents. At the border the man created the story that the boy's mother had passed away and that he was going to take care of him as the father. The boy tried to protest that he did not know the man but the border police would not listen to him.

On arrival in Lesotho, he was forced to herd cattle for no pay. He was beaten on several occasions for attempting to run away. When the boy could not perform as expected, the man offered him for hire to another man who became suspicious and reported the matter to the police.

The man was charged with child stealing and sentenced to five months imprisonment or a fine of M500.00 half of which was suspended. The boy was later re-united with his family in South Africa.

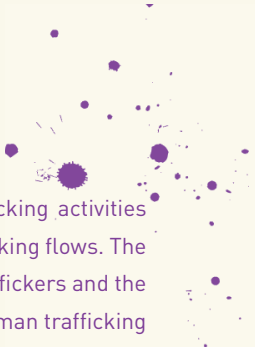
CASE 6

At the beginning of 2004, two Zulu-speaking men trafficked two women, from Maseru to Durban under the pretext of finding jobs for them. These women were respectively 24 and 25. The two men raped the women on the way to Durban. As they reached Durban, the two men told the women that they were going to marry them but when the women refused; they abandoned them in the streets of Durban. They had to beg for lifts in order to return to Lesotho. On their way back, truck drivers subjected them to rape. Before their departure to Durban, they had been queuing at the factories at Thetsane for months in the hope of securing employment without success. They now fear that they may have contracted AIDS from the sexual abuse they experienced.

CASE 7

Five Basotho girls were recruited for baby sitting in London and promised opportunities to further their studies while in London. This was done by a group of Nigerians from Lesotho, South Africa and London. A Nigerian teacher at one of the schools in Lesotho facilitated the recruitment, while another, at Free State University, Bloemfontein, South Africa, sponsored their fares and they were sent to work for Nigerian women in London. One of the victims revealed that on arrival in London her passport and ticket were taken and she was locked in the house. She was given one meal a day and was never paid. She somehow managed to escape and came home. Another victim, also a baby sitter, who was treated in the same manner fled to the Lesotho High Commission in London and was sent back to Lesotho. In the case of the third girl, the police intercepted her before she could go to London. There were no prosecutions or proper investigations of this case.

Except for Case 5, no prosecutions have been undertaken in all the above cases. In addition, no follow-up has been undertaken to find out what happened after these women and children had returned home.



Lesotho is mainly a country of origin and transit for human trafficking activities and the country experiences internal and international human trafficking flows. The main actors involved in this crime are the trafficked persons, the traffickers and the users of trafficked victims. These people end up being part of the human trafficking chain because of various reasons that are either push or pull factors. Pull factors might include a demand for domestic and sexual services or economic differentials that make even relatively poor neighboring cities, regions or countries seem a likely source of livelihood. Push factors mainly include poverty, gender discrimination, lack of information and education, HIV and AIDS, violence against women, harmful socio-cultural practices and lack of legislative and policy frameworks. The infrastructure and trends associated with a rapidly globalizing world – such as increasingly open borders, better transport, and increased overall migration flows – complement the forces of supply and demand that underlie trafficking. Globalization has provided the impetus to both those who wish to migrate and those who traffic the unwilling. Women and children tend to be the most vulnerable to human trafficking as they very often carry the burden of poverty.

The laws that are currently in place in Lesotho are inadequate. Furthermore, it is not helpful to enact laws without giving the law enforcement agents the capacity to do so. The Child and Gender Protection Unit, which should play a key role in the fight against trafficking, is under-funded, under-staffed and lacks sufficient trained personnel to deal with this specialised area of law enforcement. There is also a need for a policy or project that is directly geared towards eliminating the push and pull factors of human trafficking to accompany adequate legislation. If women who are more vulnerable to fall prey to trafficking have access to employment and other means of earning a living, they are less likely to expose themselves to the risk. If children, also more vulnerable to human trafficking, have access to education and means of livelihood, they are unlikely to be exposed to trafficking. Development policies should thus be devised to tackle these precise problems.

The silence surrounding the problem should be broken and it should be publicly acknowledged at the highest level of Government. Trafficking of persons, particularly across borders, is not a matter that can be eradicated by only one country through its national laws. It is a heinous crime which ought to be rooted out by legislative enactments, prosecution of traffickers, and also by an adequate strategy to fight against poverty. The entire world has to unite to fight against trafficking and its root causes.