

Lesotho - United States Department of State

LESOTHO: Tier 3

The Government of Lesotho does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so; therefore Lesotho was downgraded to Tier 3. Despite the lack of significant efforts, the government took some steps to address trafficking, including conducting awareness-raising activities in partnership with an international organization and an NGO, continuing to participate in a regional data collection tool, and training 27 diplomats on trafficking in persons. However, the government did not investigate or prosecute any potential trafficking cases for the second consecutive year and did not convict any traffickers for the fourth consecutive year. Despite serious concerns of official complicity in trafficking crimes, which appeared to restrict all law enforcement actions during the reporting period, the government did not report any investigations, prosecutions, or convictions of government officials for such acts. The government identified fewer victims and did not provide protective services to victims or financial support to an NGO that did. For the fourth consecutive year, it did not finalize standard operating procedures on victim identification or the national referral mechanism. The government did not allocate funding for the Victims of Trafficking Trust Fund for the ninth consecutive year or fund the Child and Gender Protection Unit (CGPU), responsible for handling trafficking cases within Lesotho law enforcement. The government did not adequately train front-line responders, which often resulted in law enforcement re-traumatizing potential victims. The government did not address issues in its legal framework for human trafficking, which did not criminalize all forms of sex trafficking and included penalties that were not sufficiently stringent to deter the crime. The anti-trafficking coordination body did not meet regularly and lacked formal processes to track progress against national anti-trafficking goals. Senior government officials did not support and continued to impede efforts made by the coordination body. The government did not finalize an updated national action plan to combat trafficking—stalled for the second year. In order to avoid prosecuting a trafficker, the government actively blocked the reentry into Lesotho of a foreign national trafficking victim who left the country to obtain a new passport.

PRIORITIZED RECOMMENDATIONS:

Increase efforts to investigate, prosecute, and convict traffickers through independent and fair trials, including officials complicit in trafficking crimes. • Finalize and implement guidelines for proactive victim identification and standard operating procedures for referring identified victims to care, in line with the anti-trafficking act regulations. • Adequately fund the CGPU and establish a CGPU focal point in all 10 districts of Lesotho to ensure effective responsiveness to all potential trafficking cases. • Adequately fund shelter and protective services for victims. • Provide trafficking-specific training to police investigators, prosecutors, judges, and social service personnel. • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment and remove the requirement of force, fraud, or coercion to constitute a child sex trafficking offense. • Allocate funds for the Victims of Trafficking Trust Fund and implement procedures for

administering the funds. • Allocate funding to support operation of the multi-agency anti-trafficking task force. • Amend the anti-trafficking and child welfare laws so that force, fraud, or coercion are not required for cases involving children younger than age of 18 to be considered trafficking crimes. • Fix jurisdictional issues that prevent magistrate courts from issuing the maximum penalty for trafficking crimes. • Increase efforts to systematically collect and analyze anti-trafficking law enforcement and victim protection data. • Increase oversight of labor recruitment agencies licensed in Lesotho to mitigate fraudulent recruitment for mining work in South Africa.

PROSECUTION

The government decreased law enforcement efforts and the human trafficking law remained inconsistent with international law. The 2011 Anti-Trafficking in Persons Act criminalized all forms of labor trafficking and some forms of sex trafficking. Inconsistent with international law, the law required a demonstration of force, fraud, or coercion to constitute a child sex trafficking offense, and therefore did not criminalize all forms of child sex trafficking. The law prescribed penalties of up to 25 years' imprisonment or a fine of one million maloti (\$71,140) for the trafficking of adults and up to life imprisonment or a fine of two million maloti (\$142,290) for the trafficking of children. These penalties were sufficiently stringent. However, with respect to sex trafficking, by allowing for a fine in lieu of imprisonment, these penalties were not commensurate with penalties prescribed for other serious crimes, such as rape. Section 77 of the Children's Protection and Welfare Act criminalized child sex trafficking offenses without requiring the use of force, fraud, or coercion, but prescribed penalties of a fine not to exceed 30,000 maloti (\$2,130) or 30 months' imprisonment, or both; these penalties were not sufficiently stringent nor commensurate with other grave crimes, such as rape.

For the second consecutive year, the government did not investigate any potential trafficking cases and did not prosecute any suspected traffickers. For the fourth consecutive year, the government did not convict any traffickers. The CGPU, a specialized anti-trafficking unit within the Lesotho Mounted Police, was operational but did not receive adequate financial or political backing to effectively investigate potential cases of trafficking. The government did not report any investigations, prosecutions, or convictions of government officials for complicity in human trafficking offenses; however, corruption and official complicity in trafficking crimes remained significant concerns and appeared to inhibit all law enforcement action for the second consecutive year. A reliable source reported a senior government official responsible for overseeing the anti-trafficking portfolio allegedly was involved in a scheme to assist third country nationals to illegally enter South Africa, which may have included trafficking victims. Lesotho offered visas on arrival for the nationals of many countries, including Pakistanis, who require a visa to enter South Africa. To circumvent South Africa's visa requirements, applicants entered Lesotho and illegally crossed the porous borders into South Africa. For a fee, the government official allegedly ensured all record of entry into Lesotho was erased from immigration records. In addition, although the government was aware of an organized crime syndicate operating a brothel in South Africa where sex trafficking of Basotho women occurred, efforts to liaise with South African officials did not yield tangible results, such as arrests, prosecutions, or convictions of the traffickers involved for the second year in a row. Observers reported the lack of progress over several years to disrupt the suspected traffickers was due to official complicity of

both Basotho and South African officials closely linked to the brothel. Many law enforcement officials had limited understanding of trafficking and of how to protect victims from potential intimidation from traffickers, and often did not demonstrate a victim-centered approach.

Many front-line officials incorrectly believed trafficking to be a movement-based crime and did not screen for trafficking among vulnerable groups, including migrant workers. Border points between Lesotho and South Africa were porous and law enforcement officials allegedly were complicit with traffickers regularly operating at the Maseru Bridge border crossing. Senior immigration officers acknowledged people, including with children, illegally cross the border in plain sight of officials without repercussion. Front-line responders conflated gender-based violence and trafficking, and some police officers exhibited extreme insensitivity towards child victims of sexual abuse, including potential trafficking victims. Observers noted that reporting potential trafficking cases to the police made child victims more vulnerable to further exploitation. In coordination with international organizations, the government trained front-line responders on the anti-trafficking law, victim identification and referral, evidence gathering, investigative strategies, and immigration procedures. Such trainings did not result in tangible efforts to identify victims, prosecute, or convict traffickers. For the fifth consecutive year, the government did not address a jurisdictional issue impeding efforts to hold traffickers accountable: the magistrate courts, which are the court of first instance for trafficking cases, lacked authority to impose the maximum penalties allowed in trafficking crimes.

PROTECTION

The government decreased efforts to identify and protect victims. The government did not finalize standard operating procedures for victim identification or the national referral mechanism for the fourth consecutive year. The CGPU identified two trafficking victims, a decrease compared to its identification of seven victims in the previous reporting period. Additionally, South African law enforcement officers identified nine Basotho victims in Welkom, South Africa, and an NGO reported identifying three victims for a total of 14 Basotho trafficking victims identified by all parties during the reporting period. The government did not provide assistance to any trafficking victims; however, it referred three victims to an NGO that provided comprehensive care. The CGPU had limited capacity to respond to potential cases in Lesotho's 10 districts because it operated from Maseru, the capital, and could only provide guidance to other police units who were less capable of responding to trafficking cases. Furthermore, the government did not provide a budget line item to fund the CGPU or its anti-trafficking activities; limited resources restricted its effectiveness assisting victims. In previous years, observers reported government social workers often did not respond to requests to certify victims or respond to potential cases. The government did not provide funding for an NGO-run shelter that cared for all identified victims throughout the reporting period. There were no shelters equipped to provide protective services for male victims. For foreign victims, provision of care beyond a 60-day reflection period was dependent on their cooperation with law enforcement; authorities repatriated victims who did not cooperate with law enforcement after the reflection period. The government did not allocate funding for the Victims of Trafficking Trust Fund for the ninth consecutive year, which it had established to ensure consistent provision of protective services and to provide compensation for victims.

The anti-trafficking act and its implementing regulations prohibited the prosecution of victims for unlawful acts traffickers compelled them to commit, afforded foreign victims permanent residency as a legal alternative to their removal, and encouraged victims to assist in the investigation of traffickers; however, the government did not implement these provisions during the reporting period. The Ministry of Foreign Affairs was responsible to coordinate with the victim's home country for the issuance of travel documents within 60 days of victim identification if the victim no longer had their travel documents in their possession. However, in the case of one Nigerian labor trafficking victim various government officials intentionally impeded his efforts to obtain a new Nigerian passport, issuing him only an exit visa for Lesotho to travel to the Nigerian embassy in South Africa. When the victim expressed his concerns that the authorities would not let him re-enter Lesotho, they refused to issue him a visa allowing his return. Officials responsible for anti-trafficking efforts publicly expressed doubt about his legitimate status as a victim, despite his certification as a victim, and refused to grant him immigration relief or allow him to see his family in Nigeria despite the protracted, five-year wait for his case to be tried. During the reporting period, the victim left Lesotho on an exit visa to travel to South Africa to obtain a new passport and when he attempted to re-enter Lesotho, immigration officials deported him to Nigeria. Observers reported the government took every action to make the case disappear. The government never tried his trafficker, who operates his business in Maseru with impunity.

PREVENTION

The government decreased its efforts to prevent trafficking. The multi-sectoral committee (MSC) met sporadically, and its member ministries, in partnership with an international organization and a local NGO, conducted public awareness activities. These activities targeted students in 10 schools, nine anti-trafficking televised events, and 18 radio spots. The MSC lacked formal processes, including administrative procedures, to determine action items and track progress against national anti-trafficking goals; it lacked coordination among members and the director of public prosecutions office did not regularly attend. Senior government officials did not support and appeared to impede efforts made by the MSC for the second consecutive year. Moreover, the MSC did not invite NGOs to participate in its meetings, which reduced transparency and efficacy of its national anti-trafficking efforts. The government's efforts to update the 2014 national action plan, originally agreed to be finalized by the end of 2018 remained pending for the second consecutive year. The government continued to participate in the Southern African Development Community regional data collection tool by uploading information on trafficking cases including victim and trafficker profiles, and sharing information with countries in the region. The government drafted a national labor migration policy in 2018, but did not provide information on its efforts to regulate and oversee labor recruitment. The government had an agreement with the Government of South Africa that aimed to increase protections for Basotho workers, including domestic workers, employed in South Africa by authorizing the issuance of long-term work permits, requiring signed employment contracts, and allowing Basotho to register for unemployment insurance in South Africa; this agreement did not result in tangible progress to reduce vulnerability of such Basotho vulnerable to trafficking. The government made no efforts to reduce the demand for commercial sex. The Ministry of Foreign Affairs reported training 27 diplomats in 2019.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit domestic and foreign victims in Lesotho, and traffickers exploit victims from Lesotho abroad. In Lesotho, traffickers exploit Basotho children in domestic servitude and animal herding; traffickers increasingly exploit children, especially orphans who migrate to urban areas, in sex trafficking. Basotho women and girls seeking work voluntarily migrate to South Africa, where traffickers detain some in prison-like conditions and exploit others in sex trafficking. Traffickers exploit some Basotho men who migrate voluntarily, although illegally and often without identity documents, to South Africa for work in agriculture and mining in forced labor; many work for weeks or months before their employers turn them over to South African authorities for deportation on immigration violations to avoid paying them. Traffickers connected to organized crime syndicates operating in South Africa exploit and sometimes kill Basotho men by depriving victims of oxygen in derelict mines. Traffickers also compel Basotho into committing crimes in South Africa, including theft, drug trafficking, and smuggling under threat of violence or through forced drug use. Foreign nationals, including Chinese, subject their compatriots to sex trafficking in Lesotho.