Cover photographs: Shabba Kgotaetsho, Tsvangirayi Mukwazhi
INTRODUCTION

In the United Nations General Assembly Special Session on HIV and AIDS (UNGASS) Declaration, adopted in 2001, countries committed themselves to: “By 2005, develop and begin to implement national, regional and international strategies that facilitate access to HIV/AIDS prevention programmes for migrants and mobile workers, including the provision of information on health and social services”.

As a Member State, Lesotho has committed to pursuing this goal and is to report on its progress every two years.

In light of this commitment, the purpose of this Briefing Note is to provide an overall picture of labour migration patterns in Lesotho, present the main sectors employing migrant and mobile workers, and highlight the particular vulnerabilities to HIV of these workers. Existing plans and policies related to HIV and migration will then be highlighted and finally recommendations made on how Lesotho can better fulfil its UNGASS, and other, commitments to migrants and mobile populations.

MIGRATION: An Overview

In 2005, there were approximately 191 million migrants globally, a figure that has more than doubled since 1960: migrants now constitute almost 3% of the world population. The movement of migrants can be for a few days, to months, or for years. In recent years, women have migrated on their own as the primary income earner for their families and about half of the world’s economic migrants are now women. Approximately half of the migrants world-wide are economically active, with the other half having migrated to join family members or to study. Migrants contribute an estimated US$2 trillion to the economies of the countries in which they work, and financial remittances to migrants’ home countries were expected to reach US$167 billion in 2005. This sum represents more than twice the level of overall development aid.

Historically, some of the major causes of migration in southern Africa have been poverty, conflict, war and the apartheid policies of separate development and exclusion. In some cases, the end of colonialism resulted in arbitrary boundaries cutting across whole communities with long standing historical and kinship ties; people living in these areas move across national boundaries for various reasons such as visiting family and for work. The general decline and uneven development in South African Development Community (SADC) economies over the years has, due to the need for cheap labour and/or the skills shortage in receiving countries, set in motion a stream of migrants destined for relatively better performing countries in the region.

Because of the often undocumented nature of many migrants and mobile workers there is has been a lack of research into these groups. However, the larger sectors of employment in any country are likely to employ both internal mobile workers i.e. those from other areas within the country, as well as cross border migrants. Sectors or types of work that include significant numbers of mobile and migrant workers in southern Africa are: Mining, Commercial Agriculture, Transport, Construction, Domestic Work, Military and Uniformed Services (such as military personnel and immigration officials), Informal Cross-Border Trade, Fisheries, and Commercial Sex.

MIGRATION IN LESOTHO

Like the rest of the Southern African region, Lesotho has had a long history of internal and external migration. Traditionally, migrant labour has been a male preserve with males constituting the majority of migrant workers largely geared for the...
South African mines. However, anecdotal evidence shows that Basotho women have also had a long history of external migration despite the harsh immigration laws of the apartheid system. Female labour migration has been on the rise in recent years with increasing numbers of women participating in both internal and cross border migration. Internal female migrants who are often very young (15-29) migrate from the rural areas towards the cities and industrial zones in the country in search of employment.

Despite the massive retrenchments of its male migrant labour force from the South African mines since the early 1990s, Lesotho has retained its status as a net exporter of labour. In 2001 it was estimated that approximately 25% of Lesotho’s population worked in South Africa’s formal and informal sectors.

MINING

The destination of the majority of migrants from Lesotho is South Africa, mainly to the mines. It is estimated that about 60% of workers in the mining sector in South Africa are from neighbouring countries, mainly from Lesotho, Mozambique and Swaziland.

Table 1 shows the number of migrants working in South African mines by sending country.

<table>
<thead>
<tr>
<th>Year</th>
<th>RSA</th>
<th>Botswana</th>
<th>Lesotho</th>
<th>Mozambique</th>
<th>Swaziland</th>
<th>Total</th>
<th>% RSA</th>
<th>% Foreign</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920</td>
<td>74,452</td>
<td>2,2112</td>
<td>10,439</td>
<td>77,921</td>
<td>3,449</td>
<td>174,402</td>
<td>43</td>
<td>57</td>
</tr>
<tr>
<td>1940</td>
<td>178,708</td>
<td>14,427</td>
<td>52,044</td>
<td>74,883</td>
<td>7,152</td>
<td>347,054</td>
<td>51</td>
<td>49</td>
</tr>
<tr>
<td>1960</td>
<td>141,406</td>
<td>21,404</td>
<td>48,824</td>
<td>101,733</td>
<td>6,623</td>
<td>375,614</td>
<td>38</td>
<td>62</td>
</tr>
<tr>
<td>1980</td>
<td>233,055</td>
<td>17,753</td>
<td>96,308</td>
<td>39,636</td>
<td>5,050</td>
<td>415,337</td>
<td>56</td>
<td>44</td>
</tr>
<tr>
<td>1995</td>
<td>122,562</td>
<td>10,961</td>
<td>87,935</td>
<td>55,140</td>
<td>15,304</td>
<td>291,902</td>
<td>42</td>
<td>58</td>
</tr>
<tr>
<td>2000</td>
<td>99,575</td>
<td>6,494</td>
<td>58,224</td>
<td>57,034</td>
<td>9,360</td>
<td>230,687</td>
<td>43</td>
<td>57</td>
</tr>
</tbody>
</table>

Lesotho has been dependent on remittances from the mines in South Africa since the latter half of the 19th century. However, due to downscaling of the South African mining sector, migrant Basotho mining labour in South Africa halved in the 1990s. Since then there has been a progressive decline in the number of Basotho miners working in the South African mining industries. Recent data on the Basotho labour complement in the mining industries show further declines down to 43,000 in 2006. This notwithstanding, Lesotho’s economy continues to depend quite significantly on migrant remittances from the mines. The mining industries that employ Basotho miners are mainly in the Free State, Mpumalanga, North West, Limpopo and the Gauteng provinces. Oscillatory migrant labour between the mines of South Africa and the rural areas of Lesotho continues to be a characteristic feature of Lesotho’s migrant economy. A study conducted by Family Health International estimated that 11 317 Basotho miners visited their homes on a weekly basis; that 60% of miners return to Lesotho monthly, and that 25% returned at least once every three months, mostly to visit families in rural Lesotho.

While migrant remittances have had a positive impact on the economy of Lesotho and have contributed significantly to the income of rural households, migrant labour has been identified as one of the key drivers behind the HIV and

9 Southern African Migration Project (http://www.queensu.ca/samp/migrantonews)
10 Family Health International (2001) Lesotho and Swaziland: HIV AND AIDS Risk Assessments at Cross-border and Migrant Sites in Southern Africa. Available at: http://www.fhi.org/NR/rdonlyres/eun6eabbx7a7q7nfmpflvaqioqmd3cgsf6cdaztckcybilmhqhdgk3now3wxtqkytal36ibzoti/FHIFINAL.pdf. This study conducted research in the following border areas of South Africa and Lesotho (the first five are Lesotho border crossings; the latter five, their corresponding sites in South Africa): Butha-Buthe (Caledonspoort Bridge); Maputsoe (Ficksburg Bridge); Masenur (Masenur Bridge); Mafeteng (Van Rooyens Gate); Outhing (Tele Bridge); Katse Dam; Mohale Dam; Fourniesburg (Caledonspoort Bridge); Ficksburg (Ficksburg Bridge); Ladybrand (Masenur Bridge); Wepener (Van Rooyens Gate); and Sterkspruit (Tele Bridge).
AIDS epidemic. Migrant labour almost always results in prolonged spousal separation that disrupts normal family life, encouraging marital infidelity and increased risk and vulnerability to HIV. Furthermore, the migrant worker is distanced from the traditional norms of his community that would normally regulate behaviour and instill a sense of personal and social responsibility. For instance, the above mentioned study by Family Health International found that;\(^\text{11}\)

Chiefs and villagers in Lesotho’s rural areas generally say the sexual behaviour of men working outside their home areas differs significantly from that of men who stay home with their families, due to increased freedom and decreased exposure to their home communities’ disapproval. The wives of these migrant workers are therefore exposed to a higher incidence of STIs and HIV. Often these women also have extramarital relationships while their husbands are away, infecting their partners with whatever STIs they may have.\(^\text{12}\)

The study also revealed that the vulnerability of villagers in Lesotho is compounded by the dearth of HIV information and solid HIV and AIDS programmes in the rural areas;

Villagers complain that they receive very little information from formal sources, such as local governments or NGOs, about HIV and the effect of migration on its transmission.\(^\text{13}\)

Other factors that may exacerbate the HIV vulnerability of mine workers include the following:

- Dangerous working conditions: Faced daily with difficult and dangerous working conditions and risk of physical injury, mine workers tend to be preoccupied with other immediate challenges and may regard HIV as a distant threat.
- Single-sex hostels and limited home-leave: Mine workers often have no choice but to live in single-sex hostels without the option of being accompanied by their partners and families. In addition, they may have limited home-leave which further distances them from their partners. These circumstances may lead some workers to seek other (multiple) relationships.
- Boredom and loneliness: There is limited availability of recreational activities such as sports or entertainment at or around mines. Workers are often distanced from traditional norms and support systems that regulate behaviour in stable communities, and coupled with feelings of boredom, loneliness, and isolation, this can result in a disregard for health. In addition, the proximity and availability of commercial sex may fill the workers’ (temporary) emotional and sexual needs.
- Lack of social cohesion: The social exclusion that migrants often feel in their new environment and the lack of community cohesiveness may lead to risky sexual behaviour among workers and members of the surrounding community. The social structures and norms in these environments may create feelings of anonymity, which could result in workers feeling less accountability and responsibility. These feelings could also be due to shifting social norms and lack of community sanction for errant individual behaviour.

**COMMERCIAL AGRICULTURE**

It is estimated that more than 7,000 migrants from Lesotho work on asparagus farms seasonally in the Free State province of South Africa.\(^\text{14}\) Many of the contract workers on the asparagus farms are older women with families and households in Lesotho.

Factors that may exacerbate HIV vulnerability of commercial agriculture workers include:

- *Poor living conditions and seasonal mobility:* The poor living and working conditions including lack of adequate accommodation, lack of security of tenure and the increasing casualisation of labour preclude workers from bringing their families to the farm sites. These circumstances may lead some workers to seek other (multiple) relationships.

11 ibid
13 ibid
• **Lack of access to health care facilities:** In general, there is a dearth of health care and HIV and AIDS services in commercial farming areas. This is exacerbated by the few rights and legal protection accorded to agricultural workers – with limited protection, especially if they are undocumented, farm workers may be unable or unwilling to access existing clinics for health related matters. In other words, the need to remain far from any type of “officialdom” may result in less access to health care facilities, impacting on health information and access to condoms, treatment for STIs etc.

• **Weak HIV and AIDS workplace programmes on farms:** A study conducted by Sechaba Consultants on farm and mine workers in early 2004\(^\text{15}\) revealed that amongst the few farms that provide HIV and AIDS programmes, the level of competence demonstrated in running such programmes is low. Furthermore, the financial support granted to such programmes is minimal, and the materials and training provided to the workers involved in HIV and AIDS work in the farms is inadequate. A further complaint among the farm workers interviewed is that print media that is used to raise HIV and AIDS awareness on the farms is often written in a foreign language rendering messages inaccessible.

• **Boredom and loneliness:** There is limited availability of recreational activities such as sports or entertainment at or around commercial farms. Workers are often distanced from traditional norms and support systems that regulate behaviour in stable communities, and coupled with feelings of boredom, loneliness, and isolation, this can result in a disregard for health. In addition, the proximity and availability of commercial sex may fill the workers’ (temporary) emotional and sexual needs.

**TRANSPORT**

The transport sector generally does not employ foreign workers, but the nature of work makes those involved, for example truckers and taxi drivers, mobile. Population mobility is at its highest in Lesotho’s busiest border towns, and it is there that HIV prevalence is the highest. In Maputsoe (Lesotho’s busiest border town) and Maseru (Lesotho’s capital city and only urban area) taxi drivers and truckers are considered to be important bridge population in the sexual network, as they serve as a link between transient and residential communities.\(^\text{16}\)

A study examining migrant workers in 12 areas of Lesotho and South Africa found, for example, that:

• In Butha-Buthe, about 1500 trucks representing 16 companies cross the border daily and depending on their destinations, truckers spent 0 to 5 days away from home.\(^\text{17}\)

• In Maputsoe, an estimated nine trucking companies use the route daily, amounting to approximately 2028 trucks monthly. The average time spent away from home is 1 to 2 days.\(^\text{18}\)

• In Maseru, an estimated 14 trucking companies use the border daily. Despite the fact that the border is open 24 hours, truckers usually sleep at the border due to the delays in customs, especially at month’s end.\(^\text{19}\)

The factors that may exacerbate HIV vulnerability of workers in the transport industry include:

• **Duration of time spent away from home:** Transport industry workers may be away from their homes for days, weeks or months. Lengthy periods away from home can create isolation from families, social structures, and traditional and cultural norms. Isolation may create a sense of boredom and loneliness and a feeling of anonymity with a limited sense of accountability. This may induce a person to behave in a way that she or he otherwise would not under normal circumstances such as engaging in risky sexual interactions.

• **Lack of access to health services:** This may be due to irregular working hours as most clinics are open during business hours and transport workers may be on the road during that time. Further, workers who cross borders may not have access to health services in other countries. Lack of access to health services also often includes lack of

\(^{15}\) 2004 Survey on the KABP of Farm workers and mine workers conducted by Sechaba Consultants. (Consultancy conducted for the Ministry of Employment and Labor in Lesotho)


\(^{17}\) Page 25.

\(^{18}\) Pages 25-26.

\(^{19}\) Pages 26-27.
information about HIV and a belief in HIV myths, lack of treatment for STIs and lack of access to condoms etc.

- **Dangerous working conditions**: Faced daily with the prospect of accidents and difficult working conditions, transport workers tend to be preoccupied with other immediate challenges and may regard HIV as a distant threat.

### CONSTRUCTION

There are construction sites in Lesotho that have immense regional significance since they will help to export water to South Africa’s densely populated industrial heartland. These sites are partly owned by South Africa, and employ many South African expatriates.

The factors that may exacerbate HIV vulnerability of construction workers include:

- **Isolated work sites for short periods**: Short term work on sites often located around isolated and impoverished communities, may lead to members of the local community, especially poor women, to engage in transactional and commercial sex with construction workers who have disposable income. Further, the isolated work sites leads to a lack of social cohesion and social norms governing behaviour of workers, which may lead to engagement in risky sexual behaviour.

- **Single-sex hostels and limited home-leave**: Construction workers often have no choice but to live in single-sex hostels without the option of being accompanied by their partners and families. In addition, they may have limited home-leave which further distances them from their partners. These circumstances may lead some workers to seek other (multiple) relationships.

- **Boredom and loneliness**: There is limited availability of recreational activities such as sports or entertainment at or around construction sites. Workers are often distanced from traditional norms and support systems that regulate behaviour in stable communities, and coupled with feelings of boredom, loneliness, and isolation, this can result in a disregard for health. In addition, the proximity and availability of commercial sex may fill the workers’ (temporary) emotional and sexual needs. It is estimated that in excess of 200 sex workers operated out of Butha-Buthe during the construction of the Katse Dam and that this number dropped below 10 after its completion. Most of the sex workers in this area subsequently migrated to Mohale, where another dam was being built.

- **Dangerous working conditions**: Faced daily with the prospect of dangerous and difficult working conditions, construction workers tend to be preoccupied with other immediate challenges and may regard HIV as a distant threat.

### UNIFORMED PERSONNEL

Uniformed personnel include those serving in the military services, as well as those working at cross border sites, such as customs officials, immigration officials and customs clearing agents. The nature of work for these uniformed personnel results in the mobility of its workers who are away from their homes for varying time periods.

The Lesotho Defense Force (LDF) is made up of the Army and Air Wing. It is comprised of approximately 2000 personnel. The factors that may exacerbate HIV vulnerability of military and other uniformed personnel are similar for other sectors, including:

- **Single-sex hostels and limited home-leave**: Military and other uniformed personnel often have no choice but to live in single-sex hostels without the option of being accompanied by their partners and families. In addition, they may have limited home-leave which further distances them from their partners. These circumstances may lead some workers to seek other (multiple) relationships.


21 The Strategy Page, Armed Forces from around the World. Available at: http://www.strategypage.com/fyeo/howtomakewar/databases/armies/default.asp. This was valid as of 2002-2003. The active military manpower is the total uniformed, paid manpower organized into combat and support units. Because of the widely varying systems of organizing military manpower, this figure is at best a good indicator of the personnel devoted to the military. The use of reserve troops varies considerably.
Boredom and loneliness: There is limited availability of recreational activities such as sports or entertainment at or around military bases and border areas. Personnel are often distanced from traditional norms and support systems that regulate behaviour in stable communities, and coupled with feelings of boredom, loneliness, and isolation, this can result in a disregard for health. In addition, the proximity and availability of commercial sex may fill the workers’ (temporary) emotional and sexual needs.

Dangerous working conditions: Faced daily with the prospect of danger and death, military personnel may be preoccupied with other immediate challenges and may regard HIV as a distant threat.

Lack of social cohesion: The social exclusion that migrants often feel in their new environment and the lack of community cohesiveness may lead to risky sexual behaviour among workers and members of the surrounding community. The social structures and norms in these environments may create feelings of anonymity, which could result in workers feeling less accountability and responsibility. These feelings could also be due to shifting social norms and lack of community sanction for errant individual behaviour.

Duration of time spent away from home: Military and immigration personnel may be away from their homes for months. Lengthy periods away from home can create isolation from families, social structures, and traditional and cultural norms. Isolation may create a sense of boredom and loneliness and a feeling of anonymity with a limited sense of accountability. This may induce a person to behave in a way that she or he otherwise would not under normal circumstances such as engaging in risky sexual interactions.

INFORMAL CROSS BORDER TRADE

Informal cross border trade with South Africa tends to be localized and cyclical – many Basotho pensioners, for example, visit the South African town of Fouriesburg to buy groceries when they receive their benefits at the end of each month. Many Basotho also cross the border to sell handicrafts, traditional foods, traditional sticks, fruits and vegetables. At the Butha-Buthe border post married women whose husbands have been retrenched from the South African mines cross the border to hawk fruits and vegetables on a regular basis. These traders normally live in the vicinity of the border and therefore return home on a daily basis. At Maseru, informal traders also tend to be women who sell food and return to their homes daily because they live close to the border.

Evidence exists to suggest that informal traders often engage in one or another form of transactional sex. According to study findings, the HIV vulnerability of young female vendors, who seek income from commercial or casual sex with truckers, taxi drivers and older men of means, is high.

The factors that may exacerbate HIV vulnerability of informal cross border traders include:

- **Extended periods of time spent in high transmission areas:** Informal cross border traders pass through and often spend extended periods of time in high transmission areas, in particular cross border areas due to unforeseen delays. Reasons for delays include inadequate infrastructure and/or staff at border posts to handle the volumes of traffic, or “early” closure of border posts, particularly busy ones. There is often limited affordable accommodation, food, transport and recreational facilities at border posts. This environment contributes to the existence of an intricate web of sexual relationships among informal cross border traders, uniformed personnel (customs officials, immigration officials and customs clearing agents), sex workers, truck drivers, money-changers (“touts”), local border-town residents and deportees, which could potentially increase HIV vulnerability for all involved.

- **Limited access to healthcare services:** Because of their meagre resources, most informal cross border traders do not seek treatment in foreign countries; rather they wait until they get home where they can access subsidized

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As STIs are a major contributory factor for HIV, such delays in treatment are a major contributory factor leading to increased HIV vulnerability.

- **Lack of HIV and AIDS interventions:** In general, there are few HIV and AIDS interventions that target informal cross border traders. For example, informal cross border traders have difficulties in accessing condoms as, in most public areas of customs or immigration buildings at border posts, there are no condoms available; rather, condoms are available at clinics, shops or AIDS service organizations, which are usually far from the border post. Further, difficulties in actually targeting informal cross border traders, who are constantly on the move, preoccupied with survival needs, and who may not be receptive to HIV and AIDS education and prevention messages, are experienced by some AIDS service organizations even when they do target the traders.

**GARMENT INDUSTRY SUB-SECTOR**

The Garment industry has been the largest private sector employer of labour in Lesotho. Rapid increases in employment in the garment industry were observed between 2000 and 2001 expanding from 20,000 to 32,000. Despite this expansion, predictions have been made for a decline in this sector in the face of possible losses of new investment to competitor countries.

The majority of garment factory workers in Lesotho are young women who often migrate from the rural areas towards the cities and industrial zones in search of work. The Garment Industry is based in the districts of Leribe and Maseru which are both high HIV transmission areas with an HIV prevalence rate of 30.6% and 29.9% respectively. Furthermore, the two districts are both located in close proximity to Lesotho’s main cross border areas and are the major migration routes for migrant workers in general. A report on a study conducted by Salm et al makes the observation that HIV poses a significant threat to the garment industry and that although the actual infection rates among the factory workers is undocumented, it most likely mirrors the high rates of infection in both Maseru and Leribe. Thus just as migrant male workers have higher infection rates than the general population the female migrant population is also at greater risk than settled workers.

The conditions under which the garment factory workers operate are often unfavorable and characterised by low pay and long working hours. The study conducted by Salm et al also revealed a paucity of AIDS programmes in the factories and poor levels of HIV knowledge among workers about the disease beyond general awareness. Studies have also shown that the bulk of sex workers in the districts of Maseru and Leribe were originally garment workers who found sex work more lucrative in the light of low wages offered by the factories.

**SEX WORK**

Sex work is a profession with high levels of mobility because women often move to different areas in response to a perceived market demand for their services, for example towards large construction projects, mining sites, trucking

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25 IOM (2005) Mission Report on HIV/AIDS among Informal Cross-border Traders in Botswana, Zambia and Zimbabwe Pretoria: South Africa. Firstly, those who command authority (such as border officials) or who possess economic resources may sexually exploit those in weaker positions. Female informal cross border traders who find themselves in situations of unexpected delays at border posts may engage in transactional sex or may be coerced into sex by customs officials to facilitate passage. Second, in some cases the sexual liaisons are in response to the loneliness arising from being away from families and supportive social support networks or boredom. Such may be the case for truckers who spend long hours on the road and long periods away from their families. Lastly, in many cases the sexual relationships are for economic reasons, such as female informal cross border traders sleeping with truck drivers in exchange for transport or even just for the opportunity to sleep overnight in the trucks.

26 Ibid.

27 Genital ulcers and lesions caused by some STIs increase the risk of HIV infection because they allow easier entry of the virus into the body. Inflammation caused by other STIs may also increase the viral load in the semen or vaginal fluids of those who are HIV positive; this increases the probability of the transmitting the virus. Thus, prompt treatment of STIs greatly reduces the probability of HIV transmission. (Source: Grosskurth H, Mosha F, Todd J, et al. (1995), “Impact of improved treatment of sexually transmitted diseases on HIV infection in rural Tanzania: randomized control trial”. Lancet 1995,346:530-536.)


29 Op cit.


31 2005 Lesotho Demographic & Health Survey
routes or cross border areas. Sex workers are often motivated to maintain their mobility and work in other areas so they cannot be identified in their own villages or cities. Further, sex work is significant because it usually involves other mobile or migrant workers such as miners, construction workers and truck drivers. For all of these reasons, it is necessary to target sex workers, without further stigmatizing or penalizing them, in order to address HIV vulnerability of mobile and migrant workers.

Because it is criminalized in southern Africa, it is difficult to find statistics on sex work or initiatives targeting sex workers. A study conducted of migrant workers in Lesotho and South Africa found that in Butha-Buthe (Lesotho) there is limited sex work because the town is small (approximately 3000 people) and sex workers preferred to go to Maputsoe, Katse, Mohale or other towns where they were unknown. The researchers estimated that Butha-Buthe had at least 10 permanent sex workers but that there were significantly more, approximately 200, during construction of the Katse Dam because there were many customers paying a lot of money. Most of these sex workers were thought to have moved to Mohale, where another dam is under construction. In Maputsoe, a town of approximately 25 000 people, it was estimated that there are at least 800 permanent, full time sex workers and that another 200 transient sex workers visit the border post on weekends, at holidays and at months’ end. The busiest days tend to be at month end, when most miners come home.

Factors that may exacerbate HIV vulnerability of sex workers include:

- **Lack of HIV and AIDS interventions**: In general, there are few HIV and AIDS interventions that target sex workers. As sex work is criminalized, sex workers may not want to come forward to access HIV services. Further, difficulties in actually targeting sex workers, who are constantly on the move, may not be receptive to HIV and AIDS education and prevention messages, are experienced by some AIDS service organizations even when they do target sex workers.

- **Inability or unwillingness to negotiate condom use**: Research shows that clients are often unwilling to use condoms or will pay for more for unprotected sex. This may result in sex workers being unwilling or unable to negotiate condom use with their clients. In addition, those with regular clients may not feel the need or may be unable to insist on condom use.

## CURRENT LEGAL AND POLICY INTERVENTIONS IN LESOTHO

The importance of migration in SADC, as well as the impact of migration on vulnerability to HIV, requires that States examine HIV and migration in an attempt to make meaningful and relevant legal and policy interventions for HIV mitigation. There are various international and regional treaties and declarations in place that, once signed and ratified/acceded, illustrate a country’s commitment to adhering to the spirit and provisions of the treaty, whether they are legally binding or not. These international and regional treaties and declarations seek to reduce the impact of the AIDS epidemic on vulnerable groups and to address socio-legal and structural factors that render certain population groups vulnerable to HIV. Since most States follow a dualist approach to treaty ratification, whereby an international or regional treaty must be officially domesticated to be relied on domestically, the most important policy document is the HIV/AIDS national strategic plan.

This section will briefly examine selected relevant international and regional treaties that impact on HIV and migration. It will then examine Lesotho’s national strategy and relevant sectoral plans in some detail, examining the impact of such a plan on migrant and mobile populations. The final section will make recommendations for Lesotho on issues relating to HIV and mobile and migrant populations.

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32 ibid
34 ibid, p. 14-15.
35 ibid, p. 15-16.
36 Op cit.
INTERNATIONAL AND REGIONAL TREATIES

There are various international and regional treaties and declarations in place relating to HIV, that are applicable to all persons, including mobile workers and migrants, refugees and other non-nationals within a Member State. Some of the relevant treaties are as follows:\(^{37}\)

- The UN International Convention on the Protection of the Rights of all Migrant Workers and Members and their Families, signed 24 September 2004 and ratified 16 September 2005 by Lesotho, in article 23 states that “migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health”.

- The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was signed on 17 July 1980 and ratified on 22 August 1995 by Lesotho, calls for the elimination of both intentional discrimination against women and acts that have a discriminatory effect on women including in employment and health care.

- The UN International Covenant on Economic, Social and Cultural Rights (ICESCR), which was acceded on 09 September 1992, in article 12 recognizes the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, which includes prevention, treatment and control of epidemic, endemic, occupational and other diseases, as well as the creation of conditions which would ensure access to all medical service and medical attention in the event of sickness.

- The AU Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which was signed on 27 February 2004 and ratified on 26 October 2004 by Lesotho, recognizes the equal rights of African women, including the right to health care, sexual and reproductive health and the right to be protected against sexually transmitted infections including HIV.

Other declarations (not legally binding) have specific provisions relating to migrants and HIV such as the UN Millennium Declaration (2000), the Abuja Declaration on AIDS, Tuberculosis and Other Related Infectious Diseases (2001), the SADC Protocol on Health (1999), the Maseru Declaration & Commitment to AIDS in the SADC region (2003) and the Brazzaville Declaration on Commitment on Scaling up Towards Universal Access to AIDS Prevention, Treatment, Care and Support in Africa by 2010 (2006) among others. Lesotho is a signatory of all of these declarations which illustrates a willingness to engage with the issues relating to HIV and AIDS.

NATIONAL POLICIES AND COMMITMENTS


Lesotho adopted a revised National HIV and AIDS Policy that provides a guideline to the scaling up of the national response to HIV and AIDS. One of the main objectives of the new HIV and AIDS policy is to promote a human rights approach to prevention, treatment, care and support and mitigation services, ensuring that every sector plays its part in fighting the HIV and AIDS epidemic.

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\(^{37}\) The United Nations Office of the High Commissioner for Human Rights, valid as of 09 March 2006. Available at: http://www.ohchr.org/english/bodies/docs/status.pdf. The difference between signature, ratification and accession is as follows: “Signature of a treaty is an act by which a state provides a preliminary endorsement of the instrument. Signing does not create a binding legal obligation but does demonstrate the state's intent to examine the treaty domestically and consider ratifying it. While signing does not commit a state to ratification, it does oblige the state to refrain from acts that would defeat or undermine the treaty’s objective and purpose. Ratification is an act by which a state signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the state first signs it and then fulfils its own national legislative requirements. Accession is an act by which a state signifies its agreement to be legal bound by the terms of a particular treaty. It has the same legal effect as ratification but is not preceded by an act of signature”. From The United Nations Children’s Fund (UNICEF) (undated). Introduction to the Convention on the Rights of the Child: Definition of Terms. Available at: http://www.unicef.org/crc/files/Definitions.pdf.
The policy recognizes population mobility and rural-urban migration as some of the key drivers behind the AIDS epidemic. It thus provides a guiding framework for the development of strategies aimed at ensuring that mobile populations, including marginalized segments of the mobile population, gain access to HIV and AIDS related services. The new policy enjoins all sectors, including workplaces, to formulate or review sector or workplace policies.

The National HIV and AIDS Strategic Plan 2006 - 2011
Lesotho’s National HIV and AIDS Strategic Plan (NSP) was adopted by Cabinet in November 2006 following the Joint Review of the national response to the epidemic and an extensive stakeholder consultation process that took place in 2005. The current strategic plan is a follow up to the strategic plan covering the period 2002 – 2005.

Lesotho’s NSP acknowledges that migrant populations, including sex workers among other vulnerable groups, are highly vulnerable to HIV infections. It recognizes that migrant populations live on the fringe of society largely due to their occupations and that they tend to have limited access to HIV information and services. The NSP also acknowledges that some segments of migrant populations are often discriminated against and subjected to various forms of exploitation and that their occupations often keep them away from areas of service.

In addressing the vulnerability of migrant populations to HIV and AIDS, the NSP seeks to reduce the vulnerability of migrants to HIV infection and to the impact of the AIDS epidemic. The objective of the NSP in respect of migrant populations is to ensure that migrants access HIV and AIDS services for prevention, treatment, care and support, and impact mitigation by 2007.

Specific strategies outlined in the NSP seek to ensure migrants’ access to services through the development and implementation of an AIDS policy and strategic plan for migrant populations by 2007. In addressing the special vulnerabilities of transactional sex workers, the NSP provides a framework for the promotion of HIV outreach services for male and female sex workers.

The NSP also provides a framework for the scaling up of workplace policies and programmes and for the promotion of employment arrangements that avoid the posting of spouses to separate places through sector policies.

Other Policies for Vulnerable Groups
There are a number of policies and legislative frameworks that have been developed to protect vulnerable groups in Lesotho. These include the Sexual Offences Act (2003), the Labor Code Amendment Act (2006), the National Gender Policy, the National Policy on Orphaned and other Vulnerable Children (2005), the Child and Gender Protection Unit Act (2003), the National Plan on Women, Girls and HIV&AIDS, and the Social Welfare Policy (2002). An Equality Bill has also been drafted in an attempt to uplift the legal status of women and to improve their property rights, including inheritance issues. The police force has also been conducting campaigns on crime and HIV throughout the country.

SECTOR POLICIES, PLANS AND PROGRAMMES

The Private Sector Coalition Against AIDS Lesotho (PSCAAL)
The Private Sector Coalition Against AIDS (PSCAAL) project was launched in 2002 in to scale up a private sector response to AIDS in Lesotho. The PSCAAL project is an initiative that seeks to ensure that private sector organisations develop workplace policies and that HIV information resources and Voluntary Counseling and Testing facilities are made available to workers. PSCAAL is a partnership between the Association of Lesotho Employers (ALES) and CARE Lesotho-South Africa.

38 The 2006 – 2011 National Strategic Plan does not distinguish between the various segments of the working migrant population. However, sex workers and herd-boys (as highly marginalized segments of the mobile population) are singled out for the provision of special services geared towards reducing their vulnerability to infection and the impact of HIV and AIDS.
39 The Lesotho 2006 – 2011 National Strategic Plan, pg 31
40 ibid
41 2006 – 2011 National Strategic Plan, pg 77
42 2006 National HIV&AIDS Policy, Lesotho
ALE, through the PSCAAL initiative, has provided some coordination support to a number of private sector companies to develop and implement Information, Education and Communication (IEC) and Behaviour Change Communication (BCC) interventions at the workplace. A rapid assessment conducted in 2005 however, revealed that 43% of member companies of ALE did not have workplace policies. Of particular concern is the informal private sector that has had a very poor response to the AIDS epidemic.

**The Public Sector**

The Public Sector has made attempts to address HIV within the workplace and as a general principle the human resource officers at sector level are responsible for workplace interventions on HIV. HIV and AIDS focal points have been established in line Ministries and 2% of every Ministry’s recurrent budget is channeled towards addressing HIV related activities. Parliamentary and Cabinet sub-committees and District AIDS Task forces have also been established to strengthen coordination and advocacy on HIV and AIDS at national and district level.

All ministries are required to develop their own prevention strategies. A multi-sectoral implementation framework is constituted of representatives from all ministries, the districts, the United Nations theme group, NGOs and bilateral donors, churches, and traditional leaders.

The department of Employment and Labour has also initiated an HIV and AIDS awareness and prevention programme for newly recruited cross border migrants. This initiative is essentially an information sharing and awareness that does not have a comprehensive strategy that can effectively foster behaviour change.

**Transport Sector**

The Corridors of Hope initiative is an integral part of Lesotho’s efforts at responding to the AIDS epidemic in the transport sector. The project targets key populations at higher risk in border areas and along the main transport and trade routes in the country. The target audience for the programme mainly includes long-distance truckers and taxi drivers, sex workers, migrant labourers, as well garment factory workers. The Corridors of Hope sites in Lesotho are mainly in Maseru and Maputsoe with particular focus on the border posts through which mobile populations pass and at factories which employ thousands of migrants.

**Garment Industry Sub-Sector**

The Apparel Lesotho Alliance to Fight AIDS (ALAMAFA) project was launched in Maseru in May 2006 to try bridge the gap. This is a comprehensive private sector response to the pandemic, driven by garment factory owners, and supported by government and international donors. The project aims to provide education and prevention, voluntary testing and counselling, and treatment of those who test positive through regular health monitoring and when necessary antiretroviral drugs.

**THE UNGASS PROGRESS REPORT**

The Lesotho UNGASS Country report covering the period 2003-2005 provides the latest update on progress made by the public sector in implementing workplace policies and programmes. The country report gives an update on progress made by five select line ministries notably; the ministries of Agriculture, Education and Training, Health and Social Welfare, Public Works and Transport and Public Service. The report[46] showed that all but one government ministry (Public Service) had not developed HIV and AIDS prevention and discrimination policies or programmes. While all five government ministries had begun to implement workplace based HIV prevention, control and care programmes, none of them had satisfied all criteria for this particular programme as stipulated in the UNGASS guidelines.

The UNGASS Progress Report does not mention migrants or mobile workers. The Progress Report states: “most-at-risk populations are groups that have been locally identified as being at higher risk for HIV transmission (injecting drug users, men who have sex with men, sex workers, motor-taxi drivers etc.)”[47].

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The National Composite Policy Index (NCPI) is found in Appendix 2. The Government states in the NCPI that there is a programme in place for migrants and mobile populations, and further affirms that:

- “The country has an action framework/strategy for addressing HIV and AIDS issues among its national uniformed services, military, peacekeepers and police” (NCPI-A-I-4).
- “The Government has, through political and financial support, involved vulnerable populations in governmental HIV-policy design and programme implementation” (NCPI-B-I-5).

However, at the time of reporting Government acknowledged that the following was not in place:

- “The country has non-discrimination laws or regulations which specify protections for certain groups of people identified as being especially vulnerable to HIV and AIDS discrimination” (NCPI-B-I-2).
- “The country has a policy to ensure equitable access to prevention and care for most-at-risk populations” (NCPI-B-I-7).
- “The country has a policy or strategy to promote information, education and communication and other preventive health interventions for most-at-risk populations” (NCPI-A-III-3).
- “The country has a policy or strategy to expand access to essential preventative commodities, including among most-at-risk populations. (These commodities include, but are not limited to, access to confidential voluntary counseling and testing, condoms, sterile needles and drugs to treat sexually transmitted infections)” (NCPI-A-III-4).

It is significant to note that Lesotho’s National Strategic Plan provides a framework to ensure equitable access to prevention and care, and IEC and other preventive health interventions for most-at-risk populations. This is evidenced through specific strategies outlined to ensure extension of HIV and AIDS preventive and care services to the marginalized and vulnerable populations groups, including migrant populations, sex workers and herd-boys, prisoners, women and girls.

**RECOMMENDATIONS FOR FUTURE POLICIES/INTERVENTIONS**

Lesotho has proved to be a leader, being the only country in the region to have signed and ratified the International Convention on the Protection of Migrant Workers and their Families. Lesotho is also one of the few countries in the region to have ratified AU Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. Building on this momentum, it is recommended that Lesotho domesticate and implement the instruments to give them legal effect in the country. This will result in greater legal protection of migrants and mobile workers in Lesotho.

It is suggested that the Government Lesotho also consider the following:

- Undertake a review and harmonization of existing legislation, especially labour and immigration legislation, which has a potential impact on migrants and mobile populations. This should include a review of various immigration and work visas.
- Include mobile and migrant workers in any national and sectoral plans, programmes and strategies to address HIV and AIDS including in treatment, care and support and prevention.
- Expand prevention strategies to include all migrant and mobile populations in existing care and support policies such as access to antiretroviral drug treatment; treatment of opportunistic infections; home and community based care; and psychosocial care.
- Strengthen both formal and informal private sector response to the AIDS epidemic.
- Work closely with other SADC countries to address issues related to migrants and mobile workers.
BRIEFING NOTE
ON HIV AND LABOUR MIGRATION IN LESOTHO

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