

**AN EXPLORATION OF CONSTRAINTS FOR THE IMPLEMENTATION OF FREE  
MOVEMENT OF PEOPLE BETWEEN LESOTHO AND SOUTH AFRICA**

by

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## **DECLARATION**

I hereby declare that the dissertation submitted for the degree MPA, at the University of the Free State, is my own original work and has not previously been submitted to any other institution and all sources quoted, indicated and acknowledged by means of a comprehensive list of references.

**Moroesi Catherine Hlaoli**

## LIST OF ABBREVIATIONS

ABC	: All Basotho Convention
AU	: African Union
ANC	: African National Congress
BCP	: Basotho Congress Party
BNP	: Basotho National Party
CPLP	: Portuguese Speaking Country Community
CM	: Common Market
CMA	: Common Monetary Area
COMESA	: Common Market for Eastern and Southern Africa
DC	: Democratic Congress
EAC	: Eastern African Community
EC	: European Commission
ECOWAS	: Economic Community of West African States
EU	: European Union
GATS	: General Agreement on Trade in Services
IOM	: International Organisation on Migration
JBCC	: Joint Bilateral Commission of Cooperation
LCD	: Lesotho Congress for Democracy
LDF	: Lesotho Defence Force
LHWP	: Lesotho Highlands Water Project
LLA	: Lesotho Liberation Army
LLC	: Lesotho Labour Commission
MIDSA	: Migration Dialogue for Southern Africa
MFD	: Maseru Facilitation Declaration
MSA	: Maseru Security Accord
MoU	: Memorandum of Understanding

RECs : Regional and Economic Communities  
SACU : Southern African Customs Union  
SADC : Southern African Development Community  
SAMP : Southern African Migration Project  
SANDF : South African National Defence Force  
UN : United Nations  
WTO : World Trade Organisation

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.1 Introduction

International border movement may be described as a movement of people across borders from one country to another. It can also be referred to as international migration. International migration also known as immigration can be described as a movement of people from their native country to another with the aim of settling there. International migration according to Entzinger, Martiniello and Wihtol de Wenden (2004:193) "is caused by lack of job opportunities for skilled workers in their home country." Skilled people leave their home countries to seek better employment opportunities in other countries. Unemployment is not the only reason why people migrate. According to Wikipedia (2014), immigrants are motivated to leave their countries for a variety of reasons, including a desire for economic prosperity, political issues, family reunification, escaping natural disasters or conflict or simply the wish to change one's surroundings. Entzinger *et al* (2004: 193) argue that due to this international migration, many of the policy approaches to migration are being reviewed. This is the case with Lesotho and South Africa.

Lesotho is a small mountainous country that is located in the Southern part of Africa. It is completely surrounded by South Africa, which makes it dependant on South Africa. It has a population of about 1.8 million (Department of Statistics Lesotho, 2006). Due to the geographical location of Lesotho, Basotho travel frequently to South Africa for various reasons, some go for shopping, business, holiday, study or visit relatives because it is the only neighbour country Lesotho has. Crush (2013:4) argues that most Basotho travel to South Africa to buy goods and services, also to attend personal matters. Some Basotho work and reside in South Africa, as such almost every Mosotho has a relative living in South Africa. This is one of the major reasons why Basotho travel frequently to South Africa other than for commercial purposes. When travelling across the border, every traveller has to report to Immigration Offices for endorsement of entry or departure stamps. This results in long queues at the border posts.

South Africa is a huge country that is also situated on the Southern part of Africa. It has several neighbouring countries, of which, it shares borders and these are Namibia, Botswana, Zimbabwe, Swaziland, Mozambique and Lesotho. According to Statistics South Africa (Census, 2011), South Africa has a population of about 51, 8 million. It is one of the wealthiest countries in Africa, therefore has better job opportunities, health services and tertiary institutions than Lesotho. For this reason, it may further be argued that Basotho go to South Africa in large numbers to seek employment, education as well as health services.

Manicom and Mullagee (2010:190) argue that since 1994, many migrants from various African countries choose South Africa as their destination. Solomon (1997:2) supports this view and argues that these migrants overburden South Africa's health and educational facilities and also contributes to the decreasing employment opportunities available to South Africans. Due to the geographical locations of both Lesotho and South Africa, there is a lot of movement of people, goods and services happening between these two countries through the fourteen official ports of entry.

## **1.2 Background and reasons for the study**

By virtue of being landlocked, Lesotho is dependent on South Africa for the supply of goods and services, everything that Lesotho cannot produce, it gets from South Africa. Basotho are therefore forced to buy goods and services from South Africa which is their only neighbour. As mentioned on the introduction above, Basotho also go to South Africa to study and to work, eventually they become permanent residents of South Africa. All these mentioned circumstances cause Basotho to frequently travel to South Africa. This situation causes long queues at border posts because every traveller leaving his or her home country and going into another country has to report to his or her immigration office. The abolition of six months border concession for frequent travellers at South African border posts also contributed to the problem of long queues.

Crush (2013) argues that travellers between Lesotho and South Africa were not required to produce travelling documents. It was only in 1963, when the apartheid government had security concerns that led to passports being required at the ports of entry. In addressing the problem of long queues at the border posts, both the governments of Lesotho and South African drafted and signed an agreement on the facilitation of free movement of persons between their respective countries. The agreement was signed on the 19<sup>th</sup> June 2007 in Cape Town but has not been implemented to date (please see annexure 1 for the full agreement). Thus, the aim of the study is to establish the reasons why the agreement on facilitation of free movement of persons between Lesotho and South Africa has not been implemented.

### **1.3 Problem Statement**

According to Rakotsoane (2012:11), a problem statement provides a very clear picture of what it is that the researcher sees as a problem that needs to be addressed. The problem has to stand out so that the reader can easily recognise it. According to Brynard, Hanekom and Brynard (2014:18), a problem statement guides and focuses both planning of the research and the research itself. It needs a clearly defined description in as few words as possible.

In this connection, Lesotho unlike many countries is enclaved by South Africa. This has created dependency of Lesotho, a small underdeveloped country, on South Africa, one of the wealthiest countries in Africa. As the only neighbouring country to Lesotho, South Africa provides almost all goods and services to Lesotho. As mentioned above, this is one of the reasons why Basotho travel frequently to South Africa, because it is cheaper to buy those goods and services in South Africa than in Lesotho.

The free movement of people between Lesotho and South Africa was meant to relax the border controls and ease movement of travellers between the two countries. Instead of implementing the agreement, the South African Government tightened border controls and thousands of Basotho complained that they were unable to travel out of their country, and businesses also complained about the adverse effects the new controls had on them (Patel, 2014:3).

Based on the above explanation, the problem statement of this study is **to investigate whether the implementation of the free movement agreement will ease cross border movement between Lesotho and South Africa.**

#### **1.4 Aims**

The aim of the study is to establish the reasons why the implementation of the agreement (see annexure 1 for the full agreement) has not been effected.

#### **1.5 Objectives of the study**

The objectives of the study serve as a guide to the research and are summarised as follows;

- To assess the relations between Lesotho and South Africa in relation to cross-border movement;
- To establish the immigration challenges faced by both Lesotho and South Africa and;
- To evaluate the feasibility of the implementation of the agreement.

#### **1.6 Research Questions**

A research question is very similar to a research specific objective, except that whereas the specific objective is declarative in nature, the research question is an interrogative statement (Rakotsoane, 2012:13). Specific objectives are a breakdown of the general study objective or purpose of the research, while research questions are a breakdown of the general research topic.

Thus, the research questions for this study were formulated as follows;

- i) How do Lesotho and South Africa relate in terms of cross-border movement?
- ii) What are the immigration challenges that both Lesotho and South Africa face?
- iii) What approaches can be used to facilitate the implementation of the agreement?

### **1.7 Research methodology**

The study focused on exploring the constraints for the implementation of the free movement of people between Lesotho and South Africa. It used only the qualitative research method. Qualitative research methodology can be defined as a methodology that is concerned with understanding the processes and social and cultural contexts which underlie behavioural patterns. It is mostly concerned with exploring the “why” questions of research (Maree, Cresswell, Ebersohn, Eloff, Ferreira, Jansen, Nieuwenhuis, Pietersen, Plano Clark and Van der Westhuizen, 2007:51).

According to Rakotsoane (2012:21), qualitative research is a field of inquiry that cross-cuts disciplines and subject matters. It involves an understanding of human behaviour and the reasons that govern human behaviour. It investigates the why and how of decision making as compared to the what, where and when of qualitative research. Qualitative researchers rely on four methods for gathering information namely; participation in the setting, direct observation, in-depth interviews and analysis of documents and materials.

The researcher relied on the analysis of documents and materials which is secondary data that includes books, journals, official government publications, newsletters and internet sources to acquire relevant information to address the research problem. This information was useful in that it gave the researcher an insight into what other authors say about the research problem.

## 1.8 Literature Review

As mentioned above, the agreement was signed on 19 June 2007 in Cape Town, South Africa. Lesotho was represented by the then Foreign Minister Mr. Mohlabi Tsekoa while South Africa was represented by the then Home Affairs Minister Mrs. Nosiviwe Mapisa-Nqakula (Free Movement Agreement, 2007: 9). The aim was to enable easy flow of travellers between the two countries and to do away with long queues at the border posts.

Contents of the agreement include among others regulation of entry and departure under Article three. This regulation states that citizens of Lesotho and South Africa who hold valid travelling documents shall be allowed to enter and depart from any of the mentioned countries they desire to visit. These citizens will enter or depart without having to report to an immigration officer for examination provided they comply with the stipulated conditions of the agreement.

Article three of the agreement encourages citizens of the Lesotho and South Africa, who wish to travel to any of the countries for purposes other than visiting to apply for the appropriate visas or permits. Once they have applied for appropriate permits, such travellers shall be excused from reporting to an immigration office for examination. Article five relates to Diplomatic and Consular staff and explains how their exemption from immigration will work.

As alluded to above, the agreement was made to eliminate the problem of long queues at the borders between Lesotho and South Africa. According to Crush (2013:1), it is believed that liberalised border regulations would be to the exclusive benefit of migrants from neighbouring countries seeking refuge in South Africa as opposed to South Africans. He however argues that towns along the Lesotho borders would benefit more from the rationalised border regulations. This is due to the fact that Basotho travel frequently to South Africa to buy goods and services, thus they bring a lot of money to South Africa which boosts the economy of these border towns. Sechaba Consultants and Associates (2002:1) reveal that an origin and destination survey conducted in 2001, found that more than half of the people entering South Africa visited towns such as Ficksburg, Ladybrand and Wepener.

Viljoen and Wentzel (2007:124) outline the causes of cross-border movement between South Africa and Lesotho as widespread poverty and unemployment in Lesotho which is a push factor motivating people to seek employment in South Africa. Most unskilled labourers from Lesotho get employed as seasonal workers in the agricultural industry. They further argue that the ethnic bond between people in Lesotho and South Africa is probably one of the most important reasons why Lesotho citizens find it easy to visit and even stay for prolonged periods in South Africa. Some Basotho visit South Africa for business and shopping purposes and then return to Lesotho.

The Southern African Migration Project undertook a survey in 2001, which found that most of Basotho who cross the borders to South Africa go to border towns and neighbouring areas and soon return to Lesotho. Viljoen and Wentzel (2007:123) also argue that "until 1963, there were no legal restrictions on Basotho travelling to South Africa. Thus, Basotho worked, migrated and settled freely in South Africa as they could easily move back and forth over the Caledon river boundaries. This shows that large numbers of Basotho travel to South Africa for business purposes, thus helping to support the economies of these border towns. These towns just to name a few include Ladybrand, Ficksburg, Wepener, Zastron, Matatiele, and Sterkspruit, depend heavily on Basotho who buy goods and services from them (Crush, 2013:4). This shows that the implementation of the agreement on facilitation of free movement of persons would encourage Basotho to travel more to South Africa.

This agreement which was made between Lesotho and South Africa was made in line with the 2005 Protocol on the Facilitation of free movement of persons within the Southern African Development Community (SADC) and the SADC Protocol on Education of 1997 (Forere, 2011:603). He further argues that the protocols were aimed at relaxing and eventually eliminate the immigration formalities in order to facilitate the free movement of students and staff within the region. However, this has not happened as students are still forced to apply for study permits in SADC countries, on the one hand. On the other hand, the SADC protocol of 2005 sought to fulfil the objectives of the SADC treaty, which requires SADC to develop policies

aimed at the progressive elimination of obstacles to the free movement of capital, labour, goods and services and of people of the region generally amongst member states.

Though the vision of SADC is that of common future that will ensure economic wellbeing, improvement of the standards of living and quality of life, freedom, social justice, peace and security for the people of Southern Africa, citizens of Southern African countries still face restrictions when they leave their countries of origin in search for employment or investment opportunities within the region (Makochekanwa and James, 2009:1). They further argue that a positive and encouraging development towards achieving the objectives of the free movement of people within the SADC region was indicated by member states' agreement to speed up the process of establishing a single visa (Univisa) for tourists visiting Southern Africa. This agreement was made in March 2008 in Luanda. However, member states still need to resolve outstanding issues such as costs, policy agreements, procedures and requirements for issuing the Univisa.

According to Makochekanwa and James (2009:10), the factors limiting the signature and implementation of the SADC Protocol on free movement of persons include:

i) Funding of the Protocol

The funding and implementation of the protocol was seen to be a challenge by member states as it relates to funding all requisite reforms to policies, statutory rules and administrative practices. Besides being an additional burden, funding of the Protocol was and is still not a priority for some member states such as Angola, Mozambique and DRC .that face serious challenges such as HIV/AIDs pandemic and reconstruction.

ii) Harmonisation of laws

Implementation of the Protocol required that member states should modify their domestic laws, statutory instruments and administrative practices, and subordinating political interests to long term regional goals and ambitions. This was not seen as a priority by some member states.

iii) Complexity brought by overlapping membership

Some SADC member states belong to various regional communities such as COMESA and the Portuguese Speaking Country Community (CPLP) and these pose challenges in terms of undertaking binding commitments under different jurisdictions and policy environments whose mandates and objectives may not be consistent.

iv) Missing issues in the Protocol

The Protocol does not make provision on how a given SADC member state may deal with a problem which may (or is caused) by citizens from member states. The Protocol is silent about forced migration as to how member states are to handle it. For example, a case of Zimbabweans that flocked South Africa due to political instability and most of these immigrants were illegal and undocumented. As such some member states were demotivated to sign and ratify it.

v) The effect of bilateral arrangements

Existing bilateral arrangements between some member states also act as a disincentive to sign and ratify the Protocol.

However, South Africa is said to have opposed both protocols (SADC protocol of 1997, which was amended in 2005 and the protocol on education of 1997) and advocated for their non-implementation in 1998. The reasons being that such liberalisation of movement of people in the region would lead to serious brain drain and capital flight from the neighbouring country economies (Nwonwu, 2010:105). Based on these protocols, both Lesotho and South Africa met and came up with an agreement that would facilitate free movement of its citizens. All the necessary consultations were made and an agreement was reached and signed by both parties.

According to Minnaar (2009:1), the Southern African context greater regional cooperation in tightening both border and internal controls over the migratory and cross-border movement of

goods is obviously necessary. He further argues that if like the European Union, SADC formalises cooperation on border controls by means of a Schengen-like treaty directed towards open internal borders; open for goods and services as well as people with immigration and asylum control and harmonisation, closer police cooperation and the establishment of a SADC information system, there will be a number of inevitable consequences such as the need for closer direct police cooperation between member states.

According to Fioramonti (2013:1), "Southern Africa needs a radically different approach to migration management, given the imbalances of the past and the debatable outcomes of current policies with a view to strengthening sustainable development and regional cohesion". Thus, Southern Africa is not ready to implement or facilitate free movement of people. Fioramonti (2013) argues further that the SADC draft protocol on free movement was first prepared in the mid-1990s but it never materialised. It was then superseded by a protocol on facilitation of movement, which is not yet functional because of endorsement issues among member states. Nwonwu (2010:150) argues that while South Africa is being blamed of hindering the take-off of this protocol, the country (South Africa) puts up with the burden of regional migration in SADC as it remains the main destination country for migrants from countries in the region.

The European Union has been successful in the implementation of the most ambitious free movement agreement in the world. Fioramonti (2013) argues that although the current economic crisis has caused in-ward looking debates within some member states, the free movement of people is regarded as a fundamental pillar of the integration process. The free movement of people has improved trade among member states and has facilitated a common currency among the European countries. According to the European Union (2014:1), the free movement of persons is viewed as an important right that has been assured to European Union citizens by the Treaties. It is realised through the area of freedom, security and justice without internal borders. The suspension of inside borders called for strengthened management of the Union's external borders as well as regulated entry and residence of non-European Union member states' nationals through a common asylum and immigration policy.

According to the European Union (2014:2), the concept of free movement of persons came about with the signing of the Schengen Agreement in 1985. The other Convention followed in 1990, which advocated for the abolition of border controls between participating European countries. This meant that citizens of participating countries would travel freely between the countries. This has certainly worked for the European Union, maybe SADC countries need to copy their strategy. Castles and Davidson (2000:60) argue that immigration plays a major role in the process of nation building. As such, free movement of people has successfully brought European countries together in terms of free trade and common currency.

The Economic Community of Western African States (ECOWAS) has also successfully implemented the free movement of people and goods. According to Deng (2010:150), "ECOWAS has already established a custom union, common market and monetary union. ECOWAS' citizens currently enjoy freedom of movement and visas requirements have been abolished." Fioramonti (2013:2) supports this argument and argues that ECOWAS has put in place an ambitious protocol on free movement of people, residence and establishment as early as 1980 though it was fully put into operation in three phases by 1995.

To ensure commitment and political will from member states, the ECOWAS developed a policy paper on migration named the ECOWAS Common Approach on Migration. The sole purpose of the policy paper was to ensure that regional free movement of people and goods as well as regional cooperation is attained. Currently, ECOWAS provides citizens with travel documents, international health certificates, and the right to entry, residence and establishment in any other country or region. As a result, citizens can choose from one of the three documents when travelling within ECOWAS: the travel certificate, the common passport or the national identity cards (Fioramonti, 2013:2).

The East African Community (EAC) has also successfully implemented the free movement of persons and goods in their region. The Treaty of establishment of the East African Community article 76 (1)(4) authorises the community to establish a common market in which there will be free movement of labour, goods and services and the right of establishment and residence and also mandates it to develop a protocol to regulate the maintenance of these rights (EAC, 2002).

The initiative has resulted in a common East African passport as well as freely exchangeable currencies throughout the East African Community. Like the ECOWAS, the EAC has developed a migration policy referred to as a General Consensus, to make sure that East African Community citizens enjoy the rights of establishment and residence and free movement. Deng (2010:151) shares the same sentiments that since its establishment in the 1940s, the East African Community has worked hard to ensure that the free movement of persons and goods is achieved within their region.

However, it has not been an easy task for the EAC to reach where it is today, as the community was first established in 1947 but collapsed in 1977 due to lack of political will to deal in a spirit of unity and in the awareness of the interdependence with the inevitable difficulties of international cooperation between poor countries (Deng, 2010:150). The community was then resurrected in the 1999 after the member states realised the importance of preserving its identity and political, cultural and socio-economic underpinnings. The three member states namely Kenya, Tanzania and Uganda signed the establishment of treaty and the EAC was re-established but became operational in July 2000. Other member states re-joined later.

Focusing on Lesotho and South Africa, it should be easy to implement the free movement of people agreement based on the countries' geographical position. However, there seems to be problems that are not openly put on the table for discussion. According to Crush (2013:2), "Lesotho contributes over 40% of the movement of people across South African borders from all neighbouring countries." This means there are more people entering South Africa through the borders it shares with Lesotho than other borders. The Lesotho National Migration and Development Policy(2013:17) supports this argument as it reveals that the South Africa Department of Home Affairs reported that there were almost 3.3 million lawful arrivals from Lesotho in 2012 and for purposes of regular border crossings into South Africa, Lesotho tops the list of all SADC countries.

Maseru and Ficksburg bridges handle more travellers than other border posts with any country with more than one million travellers per year (Lesotho Immigration Annual Report, 2014). Six months border concessions were a tool used to reduce the traffic as well as long queues at

border posts. Though six months border concessions are no longer issued by the Department of Home Affairs in South Africa to frequent Basotho travellers, border problems that include long queues of travellers waiting to report to immigration have resurfaced.

According to Ferreira and Ferreira-Snyman (2012:132), "migrants in and from Africa are often accused of spreading HIV/AIDS and being involved in human trafficking." They further argue that migrants in and from Africa are therefore often viewed with suspicion which at times may even result in xenophobic attacks on foreigners. This therefore might have had a certain effect on the implementation of the agreement as according to Crush (2013:3), South Africa might have reservations to the free movement of people due to fear that their country's security might be compromised.

Lesotho's geographic location makes it extremely vulnerable to political and economic developments in South Africa (Wikipedia, 2014). Politically, Lesotho was a strong public opponent of the apartheid in South Africa and granted a number of South Africans refugee and asylum during the apartheid era (Patel, 2014:6). Whereas economically, Lesotho gets almost all its goods and services from South Africa, as such Lesotho contributes to the South African economy.

## **1.8 Chapter outline**

In order to reach the study objectives, the following framework of the research is formulated;

Chapter 1: Provides an introduction and the problem statement, background of the research and clarification of key terms.

Chapter 2: Presents the discussion on the relationship between Lesotho and South Africa.

Chapter 3: Comprises the experiences of Lesotho and South Africa on movement of people between the two countries.

Chapter 4: Deals with the analysis and interpretation of the agreement between South Africa and Lesotho.

Chapter 5: Comprises of the findings, recommendations and conclusions of the study.

### **1.9 Keywords and concepts**

For the purpose of this study, it is necessary that the following terms be defined in order to clarify the context within which they are used in the study.

**Agreement:** A document or contract made with someone (Oxford dictionary, 2005:30).

**Bilateral agreement:** A document made by two countries on a certain subject.

**Border towns:** Towns that are near the Lesotho border posts mainly found in the Free State

**Borderline villages:** These are villages situated mostly along the Free State / Lesotho border line, they are separated by a stream or fence. Residents of these villages co-exist as one huge community though from different countries.

**Diplomatic or Consular staff:** These are government employees working in different Embassies or Missions representing their countries.

**Government:** A group of people who are responsible for controlling a country or state (Oxford dictionary, 2005:646).

**Apartheid government:** A former political system in South Africa in which white people had full political rights than others especially black people (Oxford dictionary, 2005:56).

**Ports of entry/Border posts:** A place where people or goods can enter or leave a country.

**Protocols:** the first of original version of an agreement (Oxford dictionary, 2005: 1168).

**Univisa:** A common visa proposed for all SADC member states.

### **1.10 Limitations of the study**

Since the research topic is a very sensitive issue to both countries, only secondary data was used for the purposes of this study. The study would have been more informative perhaps if senior government officials from both Lesotho and South Africa who are policy makers, immigration officers deployed at different borders and the public had been interviewed and shared their views.

### **1.11 Summary**

This chapter has introduced the problem statement of the study. The chapter discussed the background and motivation of the research project. The chapter advanced the research objectives and definitions of terminology in the context within which they are used in the study. In chapter two, a critical discussion on the relationship between Lesotho and South Africa is provided.

## **CHAPTER TWO**

### **AN OVERVIEW OF THE RELATIONSHIP BETWEEN LESOTHO AND SOUTH AFRICA**

#### **2.1 Introduction**

As it has already been indicated in the previous chapter, Lesotho and South Africa have a unique relationship resulting from their unique geographical locations, Lesotho being an enclave by South Africa. Everything that happens in South Africa affects Lesotho, be it politics, economic crisis and/ or natural disasters. This is because Lesotho depends on South Africa for the supply of goods and services. Anything that is not produced in Lesotho is acquired from South Africa because it is the only neighbour Lesotho has. This is the major reason why whenever South Africa tightens its border controls, Basotho suffer the most as opposed to other South African neighbours like Botswana, Namibia and Zimbabwe to name a few.

This chapter seeks to look at the relationship between Lesotho and South Africa. According to Viljoen and Wentzel (2007:119), Lesotho's relationship with South Africa can be viewed in terms of socio-political relations, cross-border crime, migration motivation, Lesotho mine workers, the presence and status of Lesotho farm workers, brain-drain and the nature and implications of large scale movements through border posts.

#### **2.2 The political relations between Lesotho and South Africa**

Lesotho and South Africa's relations began way back in the 18<sup>th</sup> century but their political relations began when Basutoland Congress Party (BCP) under Dr. Ntsu Mokhehle and Basotho National Party (BNP) under Dr. Leabua Jonathan fought for power in 1965 (Coplan, 2001:93). In 1970, Basotho National Party lost elections to Basutoland Congress Party but Dr. Jonathan declined to hand over power to Dr. Mokhehle. He declared a state of emergency instead and threatened BCP followers, and sent their leaders into exile. Many Basotho professionals linked to the BCP fled and sought permanent employment in South Africa (Coplan, 2001:94). He

further explains that Lesotho under the leadership of the BNP worked together with the South African Government to set up the Maputsoe Industrial area near Ficksburg Bridge in 1972 as a processing zone for South African exporters seeking to dodge international sanctions.

Lesotho and South African's political relations soured when the then Prime Minister of Lesotho Dr. Jonathan made a conscious decision to oppose the South African apartheid government. Lesotho therefore became a refuge for opponents of the apartheid administration and of cadres of the liberation movements such as the Communist Party. Jerodlycett (2015:1) argues that the South African authorities temporarily closed border crossings to strangle Lesotho's commercial economy and threaten its leaders. He further argues that in December 1982, the South African military staged a raid on African National Congress safe houses in Maseru killing many Lesotho citizens and South African refugees. Thereafter, many Basotho professionals were forbidden to enter and work in South Africa.

The other issue that put a strain on Lesotho and South African political relations was the struggle for the conquered territory. Viljoen and Wentzel (2007:123) concur and argue that from the earliest times, there was conflict over land issues between the Basotho people and the inhabitants of the present day Free State. They further argue that in 1869, the current borders of Lesotho were established by the Second Treaty of Aliwal North which deprived Lesotho of much of the western part of its territory. Kapa (2015:2) concurs and argues that the present boundaries were defined by the 1869 Treaty of the Aliwal North that was signed by the British and the Boers of Orange Free State. The accord effectively reduced Lesotho to half of its size; the original Lesotho consisted of high plains of the Mohokare valley and adjacent areas. This land was named the conquered territory by Basotho and tried all they could to regain their land to no avail.

Coplan (2001: 96) further argues that Basotho had no say whatsoever in these arrangements; they had to stand by while the British and the Free Staters drew the boundary amidst their land. The Free State went on to build its eastern towns and occupied the conquered territory but Basotho never forgot and forgave this expropriation. They also never accepted the treaty of 1869 and did whatever they could to reclaim their "stolen" land. Kapa (2015:2) further states that

although Lesotho lost most of its fertile land to the Boers, it survived under the leadership of King Moshoeshoe, the kind of pressure which destroyed other African Kingdoms.

According to Coplan (2001:95), Lesotho lodged a complaint at the United Nations regarding their conquered territory by South Africa. Lesotho demanded that the British Government approach South Africa to discuss the matter. However, the then South African Prime Minister, Verwoerd rejected the proposal. Lesotho Government approached the United Nations several times but in vain. South Africa demanded the establishment of a border commission while Lesotho wanted an international mediation and not politically compromising local negotiations to resolve the matter (Coplan, 2001:96). As a result, the South African Government assisted the Basutoland Congress Party and its guerrilla force Lesotho Liberation Army (LLA) to topple Prime Minister, Jonathan in 1986. Jerodlycett (2015:1) argues that South Africa gave a decisive assistance to a successful military coup that toppled Lesotho Government in 1986 because it sought greater access to Lesotho's water supply.

During the military regime in Lesotho, the government sought to mend their relations with their only neighbour South Africa, though still maintaining their independence. This resulted with the South African Government donating large amounts of military equipment to the then Royal Lesotho Defence Force. Also, the Lesotho Highlands Water Treaty that Prime Minister, Leabua resisted for twenty years, was quickly negotiated and gave birth to the Lesotho Highlands Water Project. The South African Police were also granted the right to pursue criminals over the border into Lesotho, while members of the South African Liberation movements who had fled to Lesotho were ordered to leave (Coplan, 2001:95).

Lesotho reinstated parliamentary democracy in 1993, while South Africa underwent its democratic transformation in 1994. According to Viljoen and Wentzel (2007:124), since then the interaction between Lesotho government and the South African Government became more relaxed but the legalistic and diplomatic forms of border relations have remained tense. A lot of work had to be done to mend the wounds that each nation suffered at the hands of the other.

The newly formed governments worked hard to build and maintain harmonious relations that would benefit both countries. The improved relations were conducive to trade between Lesotho and the then Orange Free State. The towns in the eastern border districts benefited from increased traffic, improved roads and communication systems, export of agricultural products from Lesotho and increased movement of people to Free State farms and industrial areas afield (Viljoen and Wentzel, 2007:123).

The initiative was however short-lived as the relations between the two countries soured again in 1998 when the South Africa National Defence Force invaded Lesotho and attacked the Lesotho Defence Force. Many people were killed in the incident and mostly were members of the Lesotho Defence Force. Dixon (1998:1) argues that the invasion was South Africa's first military adventure in the new democratic dispensation. Its results were much bloodier than the apartheid's regime's notorious 1982 commando raid on Lesotho's capital Maseru in which 42 people were killed including 30 African National Congress (ANC) members. At least 113 people were killed, most of them were members of the Lesotho Defence Force, and 47 of them were civilians, while 10 were members of the South African National Defence Force (Dixon, 1998:1). This created a lot of hatred and anger to South Africans by Basotho; as a result many South African owned businesses were destroyed and cars with South African registration were stoned.

In an attempt to strengthen the broken relations between Lesotho and South Africa, the Joint Bilateral Commission for Cooperation (JBCC) was established. The JBCC agreement was signed on 19 April 2001 by Lesotho Prime Minister, Pakalitha Mosisili and the then South African President Thabo Mbeki in Maseru, Lesotho. According to the agreement, the Commission would operate at two different levels, namely; the Council of Ministers and the Council of Senior Government Officials from these two countries. The Council of Ministers would meet three times a year while the Council of Senior Governmental Officials would meet four times a year alternately in Lesotho and South Africa. The key objectives of the Commission were to:

- i) Guide the strategic partnership between Lesotho and South Africa;
- ii) Promote mutually beneficial economic integration between the two countries with the aim of closing the existing economic disparities;

- iii) Promote co-operation in the field of science and technology with the aim of bridging the technological divide which exists between the two countries;
- iv) Cultivate and promote good governance, beneficial social, cultural, humanitarian and political cooperation and facilitate contact between the public and private sectors of the two countries;
- v) Maintain peace and stability between the two countries and general stability in the Southern region through collective action based on respect for democratic institutions, human rights and the rule of law and;
- vi) Facilitate movement of people, goods and services between the two countries taking into consideration the unique geographic position of Lesotho.

Patel (2013:2) concurs and states that the objective of the JBCC was to consolidate not only the historical and cultural ties that exist between South Africa and Lesotho, but also to enhance the bilateral cooperation between the two countries. He further argues that the JBCC as an agreement was conceived as a strategic partnership to assist Lesotho to accelerate its economic development and ease cross border movement between Lesotho and South Africa. These bilateral meetings were meant not only to mend relations between the two countries but also to tackle the cross-border challenges including health, security, economic, labour and immigration to name a few, faced by the two countries (JBCC report, 2015:1). This is because the borders Lesotho shares with South Africa account for 40% of the movement of people across South Africa's borders from all neighbouring countries (Crush, 2013:2).

During his state visit in Lesotho in 2010, the South African President Jacob Zuma pledged the commitment of his country to ensure that together with the government of Lesotho, they bring Lesotho out of the least developed status to a developing country. He stated that signing the JBCC agreement in 2001 and 2006 sought to promote political, economic and social cooperation between the two countries. He further outlined the milestones that have already been achieved through the JBCC such as the bilateral projects including Phase II of the Lesotho Highlands Water Project, Sani Top road construction and Metolong Project, all which are expected to provide a strong foundation for economic growth and development. These projects are expected to further enhance employment for Basotho while also attracting investment; all which could bring Lesotho out of its current state of least developed country (Lesotho News

Agency, 2010:2). In his response, His Majesty, King Letsie III assured President Zuma of Lesotho's unwavering support in its bid to become a permanent member of the United Nations Security Council, as South Africa will fully represent African interests.

Both Lesotho and South Africa are members of the Southern African Development Community (SADC), and South Africa is currently holding the chairmanship of the Organ on politics, defence and security. This position enabled South Africa through its Deputy President to mediate in Lesotho's political crisis resulting in the collapse of the first ever coalition government in Lesotho. This coalition government was formed by three political parties, namely; the All Basotho Convention (ABC), Lesotho Congress for Democracy (LCD) and Basotho National Party (BNP). The three coalition partners had unresolved differences that no mediation from SADC, Non-governmental Organisations (NGOs) or Christian Council of Lesotho (CCL) could fix. The Deputy Prime Minister, Mr. Mothejoa Metsing accused Prime Minister, Tom Thabane of making unilateral decisions on key issues with a bearing on good governance hence the collapse of the ruling alliance resulting in unforeseen 2015 elections (Mohloboli, 2014:4).

The premature elections were the result of the Maseru Facilitation Declaration (MFD) signed by all the political stakeholders on 02 October 2014 through South African Deputy President's mediation (Mohloboli, 2014:6). The Maseru Facilitation Declaration is the agreement that was reached between all political stakeholders on how to solve the political crisis in Lesotho. The Maseru Facilitation Declaration committed all political parties to the reconvening of Parliament by His Majesty, King Letsie III on 17 October 2014 following its prorogation by the then Prime Minister, Thabane. Once opened, Parliament's business would be limited to budget discussion and all matters relating to elections preparation. The main objective was to restore peace and stability in Lesotho but in reality, this goal is far from reached.

It was also realised during mediation that security agencies, namely; the Lesotho Mounted Police Service (LMPS) and the Lesotho Defence Force (LDF) were at the centre of the political crisis; as such, the Maseru Security Accord (MSA) was also established and signed on 23 October 2014. The leaders of the Lesotho Mounted Police and the Lesotho Defence Force committed themselves to ensuring that peace and stability were restored in the country. Under

the Maseru Security Accord facilitated by the South African Deputy President Mr Cyril Ramaphosa, the three security bosses LMPS Commissioner Tsooana, Lt. General Kamoli and Lt. General Mahao were required to go to an African or Commonwealth country on special leave. This was done to allow the smooth restoration of peace between the LMPS and LDF whose continued feuding (mainly due to personality clashes between commanders) had brought Lesotho to the brink of civil war (Mohloboli, 2014:9). This was to happen ahead of the 2015 National Assembly elections. The MSA also highlighted the need for the development of the long-term security sector reform to address the security challenges Lesotho is facing. This was to be done after the elections.

South Africa has now turned into a safe haven for the exiled Lesotho opposition party leaders, namely; All Basotho Convention (ABC) leader Dr. Thomas Thabane, Basotho National Party (BNP) leader, Thesele Maseribane and Reformed Congress of Lesotho (RCL) leader Keketso Rants'o. These three leaders have sought refuge in South Africa in May 2015 allegedly after being alerted of a ploy to assassinate them by renegade Lesotho Defence Force (LDF) members (Maqelepo, 2015:18). They also went there to seek SADC's intervention in the matter as South Africa is currently the chair of SADC's organ on politics, defence and security. South Africa had to welcome them and return the favour as Lesotho also provided asylum to their freedom fighters and risked the lives of the Basotho in the process. The Lesotho government however dismissed the allegations and appealed to the three leaders to return home and assured them of safety.

### **2.3 Economic Relations between Lesotho and South Africa**

Since time immemorial, Basotho have relied on agriculture and farming as a means of survival. Quinlan (1996:397) concurs and argues that following the circumscription of Basutoland in 1869, Basotho relied on farming and occasional wage employment as a complementary means of survival." This means Basotho depended on agriculture to survive; they had livestock and planted their fields to put food on the table. South Africa therefore developed markets for agricultural commodities through the expansion of the mining industry and this brought prosperity for Basotho farmers. These agricultural products and their market however, were

vulnerable to environmental hazards such as droughts and political upheavals in South Africa. Despite these fluctuations, Basotho continued to rely on agriculture as their main means of survival. South Africa provided Basotho farmers with the market for wool and mohair obtained from their livestock and Basotho responded readily to efforts by the colonial authorities to improve the production and sale of wool and mohair (Quinlan, 1996:397).

Both Lesotho and South Africa are members of various regional economic organisations including Southern African Development Community (SADC), Southern African Customs Union(SACU), United Nations (UN), Commonwealth to name a few. In her 2015/2016 budget speech presentation, the Minister of Finance, Dr. Mamphono Khaketla stated that the Lesotho Government has two main sources of revenue, namely; domestic tax revenue and Southern African Customs Union revenue, of these, Southern African Customs Union revenue accounts for 50% of the total revenue. However, this source of revenue, Lesotho has no control over it as its movement is very volatile and is dictated by external economics and other factors. According to Akokpari (2005:91), Southern African Customs Union was established in 1910 with five countries, namely; South Africa, Lesotho, Botswana, Namibia and Swaziland.

The establishment of Southern African Customs Union gave birth to the Common Monetary Area (CMA) which was established in the mid-1970s, which ties currencies of Lesotho, Namibia and Swaziland to that of South Africa and gives them a stronger currency against the dollar (Akokpari, 2005:91). He further argues that this arrangement however, increases Lesotho's vulnerability to the rand. The depreciation in the rand in 2001 and 2002 weakened Lesotho's ability to attract and keep professionals as salaries fell in dollar terms, while some professionals previously employed in Lesotho returned to their home countries, some left for Botswana and South Africa.

Lesotho has been a great exporter of labour to South African mines, in 1989, there were more than 120,000 migrants from Lesotho though the number declined in 1999 (Coplan, 2001:96). Matlosa (1996) agrees that since the 1960s about a quarter of Lesotho's population of working age (approximately 100,000) have been employed in South Africa, mostly in the mines. According to The Employment Bureau of Africa (TEBA) Lesotho, the recruitment agency for the

South African mining sector, the number of Lesotho mineworkers who are employed on South African mines through TEBA has diminished from 111,000 in 1987 to 31,000 in 2012. This has had a severe impact on household survival given the reliance on remittances in Lesotho. Even though the total value of remittances has not declined, the number of households benefitting from remittances has declined.

According to Akokpari (2005:89), in 1990, migrant remittances contributed towards 67% of the country's GNP but the number has declined to 33% due to massive retrenchments that took place in the South African mines. According to Viljoen and Wentzel (2007:122), the mineworkers' remittance constituted a significant proportion of Lesotho's foreign exchange earnings. The World Bank Report (2006) revealed that such remittances were estimated to account for 26% of Lesotho's Gross Domestic Product in 2004 (Lesotho National Migration and Development Policy, 2013:17). An amount of M370, 425,138.10 was sent to Lesotho as remittances in the form of deferred pay in 2012 reflecting 30% of the miner's income. However, most miners prefer to withdraw the remaining 70% of their income with TEBA bank in Lesotho, and a total of M1.365 billion was withdrawn in 2012 (TEBA report, 2013). This money withdrawn in Lesotho is used to buy food, clothing, transport and pay for school fees to name just a few. This boosted Lesotho's economy as there was a lot of money coming into the country every month.

Remittances are paid into Lesotho in three different forms, namely;

**i) Compensation in respect of mining related diseases**

This is covered by the Occupational Disease in Mines and Works Act no 78 of 1973. It is paid by the Department of Health in South Africa through its Compensation Commissioner in Johannesburg. The Compensation Commissioner makes such payment through the Office of the Master of the High Court in Lesotho.

**ii) Workmen's compensation and pension benefits**

This facilitates receipts of workmen's compensation, money and pension benefits from South Africa in respect of returning Lesotho workers who were subject to an employment injury or disease in South Africa and/or their dependants. The fund has statutory obligation to pay such benefits to the emigrant workers and their lawful dependants and other lawful beneficiaries. The trust fund is administered by the Ministry of Labour and Employment, and used to receive and disburse social security benefits due to Lesotho workers who were employed in South Africa and their dependents (Lesotho National Migration Policy and Development, 2013:43).

### iii) **Deferred Pay:**

The Deferred Pay Act of 2008 empowers TEBA and other labour agents to maintain the individual bank accounts of mineworkers recruited by them on behalf of employers in respect of deferred pay deposits and keep or cause to be kept proper annually audited accounts and records thereof on behalf of Lesotho Government. The employers can be required to provide a bank guarantee and are both criminally and civilly liable in the case of failure to deposit the deferred pay into the employee's individual bank account. An amount of M370, 425,138.10 was transmitted into Lesotho in the form of deferred pay in 2012 (Lesotho National Migration and Development Policy, 2013:17).

Ashton (2012:1) argues that South Africa plays a large role in the affairs of the kingdoms of Lesotho and Swaziland, as these kingdoms receive substantial amounts of their Gross Domestic product from South Africa. He further states that both Lesotho and Swaziland are extremely depended on South Africa for the supply of food, fuel, goods and services and linking infrastructure to the world. Crush (2013:4) agrees that Basotho travel to border towns such as Ladybrand, Ficksburg and Wepener to name a few to buy goods and services and the economies of these towns depend heavily on Basotho. This is one of the reasons why Basotho travel frequently to South Africa. Viljoen and Wentzel (2007:119) also argue that cross-border movement between Lesotho and South Africa has occurred since the earliest times. An origin and destination survey conducted at Maseru and Ficksburg Bridges in 2001, found that more than half of the people entering South Africa visited towns such as Ficksburg, Ladybrand and Wepener (Sechaba Consultants, 2002).

The Lesotho Highlands Water Project (LHWP) played a major role in the economic relations between Lesotho and South Africa. According to Jerodlycett (2015:1), the mid 1980s witnessed a prolonged drought throughout Southern Africa which was seriously beginning to threaten the regional economy. The normally arid and now parched South African region of Transvaal was in distress. South Africa was in need of large volumes of water to supply regional industries particularly mining and the growing urban centre of Johannesburg because the local water resources were running thin. The mountainous watershed across the border in Lesotho appeared to offer an ideal solution to this water problem through the establishment of the Lesotho Highlands Water Project.

The project would divert water from Lesotho's mountainous regions to South Africa's farms and industries (Jerodlycett, 2015:1). However, negotiations over the project, that is, South Africa's access to Lesotho's water supply, lasted thirty years due to political and environmental factors. Politically, Lesotho did not want to be associated with the apartheid government while environmentally, Lesotho Government was doubtful of the benefits as opposed to the costs of the project. The Lesotho Highlands Water Treaty was quickly negotiated in 1986 after the military coup that toppled Prime Minister Leabua's government. The Treaty also helped to set up the partnership that led to the birth of the Lesotho Highlands Water Project (Coplan, 2001:95).

According to Akokpari (2005:89), the project has been useful to the Lesotho economy because South Africa pays royalties to the Lesotho government which account for 25 percent of the country's revenue and 5 per cent of the country's GDP. Matlosa (2000) concurs and argues that the project that supplies water to South Africa benefits Lesotho in various ways. The project created employment for many unemployed Basotho and also helped Lesotho to be self-sufficient in power. Strom (1986:1) argues that the Lesotho Highlands Water Project is one of the largest inter basin water transfer schemes and has the potential to expand for several more decades. He goes further to say Lesotho was considering the potential of building pumped storage hydro-electric scheme to sell green power to South Africa. The project would also benefit Botswana and Namibia while Lesotho would be forced to supply water to South Africa even in times of drought (Dixon, 1998:2). Phase II of the Lesotho Highlands Water Project and Metolong projects continue to provide employment opportunities for Basotho.

Brain drain has been regarded as one factor that jeopardises relations between Lesotho and South Africa because many Basotho professionals migrate to South Africa in search of better employment opportunities. South Africa is wealthier than Lesotho therefore skilled jobs are better remunerated in South Africa than in Lesotho. This is why many Basotho professionals choose to work in South Africa instead of Lesotho. Basotho teachers, clerks, accountants, and other professionals found ready market for their skills across the border. Many stayed more or less permanently and ended becoming permanent residents of South Africa or South African citizens. Such people rarely gave up their ties from their communities or lost their strong sense of social identification with their country of birth (Coplan, 2001:92). The World Bank estimated that 208,226 Lesotho citizens resided in South Africa in 2010; the 2001 South African Census estimated 114,991 while Lesotho Census of 2006 estimated 118,904 (Lesotho National Migration and Development Policy, 2013:17).

Low skilled workers from Lesotho also migrate to South Africa; they are usually employed as domestic workers, gardeners, farm workers or engage in informal trading. Akokpari (2005: 96) supports this argument and argues that Lesotho faced a lot of unemployment due to post election disturbances of 1998; as such many Lesotho citizens went to South Africa to seek employment. According to the Lesotho National Migration and Development Policy (2013: 17), younger and single or separated Lesotho females have increasingly been employed in domestic work in South Africa.

Apart from domestic work and work on commercial farms, female migrants from Lesotho tend to be better skilled than males therefore, access a range of other work opportunities in South Africa. This has caused conflict between Lesotho and South African citizens. Viljoen and Wentzel (2007:133) argue that many South Africans view Lesotho citizens as the cause of their unemployment problems and they complain that Basotho are taking their jobs because of their willingness to accept lower wages. They further argue that more often Basotho workers reside and work in South Africa illegally without proper documentation therefore do not enrol with trade unions or complain about unfair labour practices.

Lesotho's dependence on South Africa has negative consequences for Lesotho's economy. Maleleka (2009:12) concurs and argues that much of the inflation in Lesotho is an indirect consequence of the large number of imports from South Africa. Lesotho as a small and a least developed country imports more than 80% of its consumables from South Africa, thus, issues of price stability in South Africa affect Lesotho directly. Following the destruction of the capital Maseru and other neighbouring towns in 1998, due to political unrest, Basotho have to buy goods and services from the border towns. As mentioned earlier on, this is one of the reasons why many Basotho travel frequently to South Africa especially the border towns such as Ladybrand and Ficksburg.

Viljoen and Wentzel (2007:133) argue that in recent years, Ladybrand and Ficksburg have experienced an increase in business opportunities. An origin and destination survey conducted at Maseru and Ficksburg in 2001 also found that more than half of the people entering South Africa visited towns such as Ficksburg, Ladybrand and Wepener (Sechaba Consultants, 2002). This is because the prices are lower in South Africa than in Lesotho. According to the Lesotho Immigration report (2014), there were more than 320,000 Basotho that went into South Africa through Maseru Bridge, while more than 200,000 Basotho entered South Africa through Maputsoe Bridge in 2014.

#### **2.4 The social relations between Lesotho and South Africa**

Coplan (2001:82) argues that since the colonial annexation of the Basotho in 1871, social and economic interactions between citizens of Lesotho and South Africa have remained continuous, extensive and even intimate. Since many Basotho men worked in the South African mines for a long time, many of them acquired South African citizenship and reside in South Africa permanently with their families. As a result, Basotho travel frequently to South Africa, to visit friends and relatives. As mentioned earlier on, Crush (2013:2) argues that Lesotho contributes over 40% of the movement of people across South African borders from all neighbouring countries, with Maseru and Ficksburg Bridges handling more travellers than any other border posts with any country.

Viljoen and Wentzel (2007:125) argue that the nature of the border between Lesotho and the Free State as well as the Eastern Cape is such that it does not really form a physical barrier between these two countries. It is relatively easy for people to cross over through any of the 14 official border posts as well as the illegal border crossings known as "*paqama*". Crush, William and Peberdy (2005:5) also argue that many colonial boundaries severed societies and cut communities in half. In many parts of the sub-continent, members of the same family or lineage live on the opposite of the border, as such cross border social interactions continues unabated. Many villages along the border lines have strong social ties; villagers view one another as neighbours even though they live across the border. Children cross over to attend schools; adults invite one another to social gatherings such that it is very difficult to differentiate between these people. Along the Dili- dili/ Sixondo borderline, people in those villages speak the same language, IsiXhosa, they share the same culture as such they regard themselves as one.

Patel (2013:3) states that in recent years cross border crimes affecting both Lesotho and South Africa have strained diplomatic relations between these two countries. These border crimes include stock theft, car theft, drug smuggling, money laundering and human trafficking. He further explains that in response to complaints of cattle theft from across the border, South Africa tightened border restrictions in 2010 ahead of the soccer world cup, and detained several Lesotho nationals after a spate of criminal activities along the border. Kynoch and Ulicki, Cekwane, Mohapi, Phakisi and Seithleko (2000:2) argue that as a result of cross border crimes mainly stock theft, cross-border cooperation, activities and initiatives have collapsed and there is animosity and hatred between the communities on either side of the border. Even casual visiting and shopping have all ceased.

Minnaar (2009:4) argues that although it is difficult to prioritise specific crimes, the present flow of drugs, weapons, and the illegal movement of motor vehicles are possibly the most serious crime problems facing South Africa. All the three are linked to the cross-border movement of people and the exploitation of porous borders. This is the major reason why countries are working on how to tighten their borders in order to prevent criminal activities. Minnaar (2009:3) further argues that some of the motivations for enhancement and tightening of border controls has been growth in cross border crime, the globalisation of the activities of organised crime

syndicates and the international dimensions of crimes such as gun running, drug-smuggling and money laundering.

Patel (2013:4) argues that Lesotho's geographic location of being completely surrounded by South Africa makes it extremely difficult to separate the fortunes of one from the other. Ever since the establishment of Lesotho as a British protectorate, Basotho nationals have always been part of the South African community. Besides taking part in the South African economy as wage labourers, traders, produce exporters and retail consumers, Basotho have always regarded South Africa as their second home. Coplan (2001:83) argues that Basotho then and now perceive the border of their country as something imposed by foreign powers to which they have never assented.

Steinberg (2005) shares the same sentiments and argues that the South African state has neither the capacity nor the moral authority to keep Lesotho citizens out of South Africa, and that border controls between the two countries are bound to whittle away. The South African Minister of International Relations and Cooperation, Mrs. Nkoane- Mashabane also pointed out that Lesotho and South African commonalities do not end only with language, geography and culture, but their destiny, development and hopes are inextricably intertwined, hence their common resolution to continue working together for the emancipation of their people. Quinlan (1996:377) also suggests that due to Lesotho's economic dependence on South Africa, citizens might be better off if Lesotho became part of South Africa. He further argues that this is because the people depend on South Africa for the material means to sustain their homes in Lesotho and hence their cultural heritage.

As was previously alluded to in chapter one, many Basotho travel to South Africa frequently for various reasons, such as to buy goods and services, visit friends or relatives, work or study. Most of them use public transport when travelling to South Africa. The Public transport is operated by various taxi associations. The Maseru Region Transport Operators (MRTO), a taxi association based in Maseru had a bilateral agreement with the Manyatseng Taxi Association based in Ladybrand to allow Lesotho taxis to cross over into South Africa and transport travellers to Gauteng. Also the Gauteng taxis would also do the same and cross over into

Lesotho. This was meant to enable easy movement of Basotho to and from Gauteng. The agreement was however short-lived as a cross border taxi war was experienced in the middle of 2015 whereby Lesotho taxis were no longer allowed to transport travellers to Gauteng by their fellow counterparts. The angry taxi operators closed Maseru Bridge in that no vehicle, public or private was allowed to pass through; even pedestrians were not allowed to pass (Maama, 2015:4). This rivalry affected travellers, businesses, patients going for medical check-up, workers and students. The angry taxi operators vowed to keep the status quo until the governments of both Lesotho and South Africa intervened and addressed their grievances.

Based on the above arguments, it is clear that Lesotho and South Africa have a unique relationship due to their geographic locations. It is also evident that although Lesotho depends heavily on South Africa, the reverse is also true as South Africa depends on Lesotho for the most precious resource, water. Since the study focuses on why the agreement on free movement of people between these two countries, the way they relate to one another will enable the researcher to determine whether the implementation of the free movement of people will strengthen their relationship or the implementation is a far-fetched dream.

## **2.5 Summary**

This chapter provided an overview of the relationship between Lesotho and South Africa. A number of issues can be attributed to the relationship Lesotho and South Africa have, apart from their geographical locations. Even though the South African Government is trying their level best to prevent illegal migration into South Africa, mostly by Basotho, it has proved impossible to prevent it because Basotho use different ports of entry to enter South Africa in both legal and illegal ways. They work and reside in South Africa as wage labourers, traders, domestic workers and farm workers to name a few. They are pushed by unemployment in Lesotho to seek employment in South Africa, mostly without proper documentation. The relations of the two countries go beyond politics and economy because Basotho and South Africans marry each other; almost every Lesotho citizen has a relative living in South Africa. One of the reasons for travelling frequently to South Africa is to visit relatives. In chapter three,

the discussion focuses on the experiences of people in relation to movement between Lesotho and South Africa.

**CHAPTER THREE**  
**EXPERIENCES OF PEOPLE IN RELATION TO MOVEMENT**  
**BETWEEN LESOTHO AND SOUTH AFRICA**

**3.1 Introduction**

The relationship between Lesotho and South Africa discussed in the previous chapter, results mostly from cross border movement that occurs between these two countries. This movement is referred to as immigration. Immigration can therefore be described as a movement of people from one country to another or region to which they are not native in order to settle as permanent residents or future citizens (Oxford Dictionary, 2000:406). As mentioned in chapter one, people leave their countries of origin for a number of reasons such as desire for economic prosperity, political instability, escaping conflicts or natural disasters, family reunification, transnational marriages or the desire to change one's surroundings. These various reasons why people move can be categorised as pull and push factors. Push factors refer primarily to the motive for immigration from the country of origin. In the case of economic migration, the push factor may be the differences in remuneration for the native country and the desired one.

Escape from poverty is the main push factor and the availability of jobs is the pull factor. Some immigration may be for personal reasons such as joining family or relatives in another country as well as transnational marriage, whereby the bride has to join the husband in his home country or vice versa ([www.wikipedia.com](http://www.wikipedia.com)). Emigration and immigration are sometimes mandatory in a contract of employment such as religious missionaries, employees of transnational corporations (such as Vodacom), international non-governmental organisations and the diplomatic service. These immigrants are often referred to as expatriates and their conditions of work are typically equal to or even better than those applying for the similar job in the native country.

Both Lesotho and South Africa are members of the African Union and Southern African Development Community (SADC). They are committed to the implementation of the African union's strategic Framework on International Migration and Common Position on Migration and

Development. They are also active participants in the Migration Dialogue of Southern Africa (MIDSA), an inter-governmental forum for policy dialogue on migration within SADC. They have also ratified a range of international agreements pertaining to migration and migration related matters including the 1990 United Nations International Convention on the Protection of the Rights of all migrant workers and members of their families (Lesotho National Policy for Migration and Development, 2013:13).

Lesotho has also adopted new laws to deal with human trafficking and smuggling of persons, the issuing of passports and travel documents. Lesotho has also entered into bilateral agreements with South Africa in a number of key areas including memorandums of understanding (MoUs) focusing on cooperation in the field of labour and access to security benefits by Lesotho migrants and a bilateral agreement on the facilitation of cross border movement of citizens (Lesotho National Policy for Migration and Development, 2013:13). Basotho travel to South Africa in large numbers for various reasons as such, there is a lot of movement of people, goods and services between these two countries. This chapter focuses on the experiences of people in relation to movement between Lesotho and South Africa. The discussion is based on the experiences of people in relation to brain drain, cross border crime, unskilled labour and mine migrants.

### **3.2 Legislation that govern cross border movement in Lesotho and South Africa.**

Both Lesotho and South Africa as sovereign states have legislation that govern movement in and out of the two countries. These legislation are meant to regulate movement and sojourn of non-citizens. For Lesotho, these laws include Aliens Control of 1966 and Citizenship Order of 1970 which are currently under review, Anti –Trafficking in persons of 2011 and the Refugee Act of 2008. According to Lesotho Aliens Control of 1966, a foreigner may enter or land in Lesotho through the designated ports of entry and shall sojourn as a temporary or permanent resident or asylum seeker. He shall possess a valid travel document and proof that he has been permitted to enter land and sojourn in Lesotho. The anti- trafficking in persons act's aim is to combat the trafficking and smuggling of people in Lesotho which is one of the cross- border crimes that have emerged recently. Temporary residence is granted for visiting, work, business and study

purposes and duration differs according to the purpose of stay, while indefinite or permanent is granted for foreigners who wish to reside permanently in Lesotho.

In South Africa, cross border movement is regulated through the Immigration Act, 2002 (Act 13 of 2002), amended in 2004. The first attempt to alter the legislative framework came in 1995 with an amendment to the Aliens Control Act, 1991 (Act 96 of 1991); the aim was to improve control over immigration. The amended law placed greater emphasis on the skills and qualifications of potential immigrants than before and the department clearly stated that no one in the unskilled and semi-skilled categories would be accepted as an immigrant (Peberdy, 2009:10). The Immigration Act, 2002 (Act 13 of 2002) was amended in 2004 in an attempt to bring it in line with the constitution. This legislation works together with the immigration regulations in order to ensure that movement of non-citizens in South Africa is effectively controlled. Peberdy (2009) further argues that there were no law governing refugees in 1994 though the United Nations High Refugee Commission (UNHRC) had secured an agreement with the government to allow asylum seekers and refugees to be granted special permits under the Immigration Act, 2004 (Act 19 of 2004).

According to the Immigration Act, 2004 (Act 19 of 2004), foreigners can enter South Africa as immigrants (permanent residents) or migrants (temporary resident and contract workers) or asylum seekers who are classified as refugees if and when their applications are approved, (Peberdy, 2009:10). Apart from contract mining and agricultural permits, temporary residence is granted for visiting, work, business, study and medical treatment purposes. New categories of temporary residence permits were also introduced in the amendment of the Immigration Act, 2002 (Act 13 of 2002) to facilitate the entry of skilled workers, particularly those working in the corporate sector.

### **3.3 Experiences in relation to labour migration**

As a least developed country, Lesotho experiences a slow economic growth and therefore it fails to create employment opportunities for its people. Lesotho has therefore perceived labour

migration as one avenue for promoting employment among its work force (Lesotho National Policy for Migration and Development, 2013:16). It has acknowledged that migration flows experienced by Lesotho are influenced by a multiplicity of socio-economic challenges such as reduced employment opportunities which increase the poverty level, food insecurity and unfavourable climatic conditions. The main destination for Basotho migrants is South Africa, as 98% of Lesotho Migrants are said to work in South Africa (Labour report, 2013).

Akokpari (2005:91) consents and argues that there is a chronic shortage of qualified personnel to fill vacant posts in the public and corporate services in Lesotho. Trained Basotho prefer employment at much higher salaries in South Africa. He further argues that cultural similarities and family relationships across the border make it easier for Basotho to find openings in South Africa and qualified Basotho academics left for South Africa in large numbers following the new political dispensation in 1994. A large salary differential between Lesotho and South Africa remains the reason for shortages of many kinds of skilled manual workers and professionals (Cobbe, 2012:4). This brain drain from Lesotho forced the National University of Lesotho to accept foreign academics. The health department was also affected by the brain drain as many Basotho health workers including doctors, dentists and nurses migrated to South Africa and these posts had to be filled by immigrants (Akokpari, 2005:92).

According to Cobbe (2012:1), Lesotho once had a distinction of having a higher proportion of its labour temporarily employed outside its borders than any other country. Coplan (2001: 92) concurs and argues that Lesotho provided better opportunities and training for Africans than the public education system in South Africa even before the imposition of Bantu Education in 1953. However Lesotho had far fewer and more poorly paid employment opportunities for its graduates than did South Africa. As a result, Basotho teachers, clerks, accountants and other professionals found a ready market for their skills across the border (Coplan, 2001:92). Also after 1994, many Basotho professionals obtained employment in South Africa including in government service. They had to either claim South African citizenship or have some form of legal residence such as a spouse with legal residence. Many of these professionals and other highly skilled Basotho migrants privately expressed every intention of returning to Lesotho eventually but to retain their employment in South Africa they had to categorise themselves as permanent migrants (Cobbe, 2012:3).

For most of the 20<sup>th</sup> century, as much as half of the adult male population worked on a temporary basis in South Africa, especially in gold mines, but also in most other sectors of the South African economy (Coplan, 2001:92). He further argues that until the tightening of border controls in the mid-1950s, many Basotho also migrated permanently though illegally in South Africa. With the heightened opposition to apartheid from the late 1950s and the introduction of the democratic dispensation in South Africa, substantial changes occurred regarding how migration was experienced in Lesotho, both skilled and unskilled Basotho men and women went to South Africa in search of employment opportunities. Cobbe (2012:4) argues that as early as 1970s when mine wages started increasing, there were widespread stories of male teachers leaving schools in Lesotho to take up jobs in South African mines.

During the 1970s and 1980s, the number of workers from Lesotho in the South African mines increased substantially due to the rise in wages and Lesotho became the preferred source of labour (Cobbe, 2012:1). However the numbers declined from 1990 due to a variety of reasons including the general decline in mine employment because of mechanisation, preference for employing South African citizens and relative stagnation in gold mining (Lesotho National Policy for Migration and Development, 2013:17). The numbers diminished from 111,000 in 1987 to approximately 31,000 in 2012 (The Employment Bureau of Africa, 2012:4). The retrenchments of Lesotho citizens from the mines caused poverty as most men were breadwinners in their families and their households depended on the remittances for survival. Lesotho citizens also used migrant remittances from the mines to capitalise agriculture. The consequences of mine retrenchments spread to the Lesotho's agricultural sector as output declined by about 40 percent (Steinberg, 2005:3). This situation forced Lesotho women to leave their families and migrate to South Africa in search for employment in commercial farms and domestic service in order to provide for their families.

All Lesotho nationals employed in the South African mines were employed as temporary or contract workers, as such they were regarded temporary migrants. Sechaba Consultants and Associates (2002: 9) argue that while both the then Orange Free State and the colonial British officials imposed various kinds of pass laws and travel restrictions on Basotho, in practice Basotho worked, migrated and settled freely in South Africa as they moved easily back and forth over the Caledon River boundary. They further argue that in 1963, South Africa embodied its

security concerns and economic nationalism by imposing passport controls for all persons crossing to and from Lesotho. At the same time, all Basotho who did not have permanent residence, work permits or labour contracts in South Africa were repatriated if caught. However, in 1995, mineworkers who had been employed in the mines since 1986 and before who had also voted in the 1994 elections were allowed to apply for permanent residence. More than 51,000 miners got permanent residence through this process (Peberdy, 2009:6).

Cobbe (2012:3) echoes the same sentiments and argues that all miners were legally temporary residents but after the mid-1980s when recruitment of the new novices to the mines stopped and total mine employment started falling, miners from Lesotho had to behave as permanent residents whether they intended to return to Lesotho eventually or not. The reason was that following a period of leave at the end of a contract, if they did not return to work on or before their recall date, they would lose their jobs permanently. Those who had lived in South Africa for five years were permitted to vote in the 1994 elections and since then those with long residences were permitted to have their families join them and seek permanent residence in South Africa.

Steinberg (2005:3) argues that the devastating turn of events in Lesotho due to mine retrenchments has left its mark on the Free State side of the border. Many Lesotho people from households previously supported by mine wages cross the border in search for work. Some settle in shack settlements that have emerged on the outskirts of the eastern Free State towns looking for work in the kitchens and gardens. Others travel further into South Africa as far as Gauteng and venture into the survivalist sector of the informal street trade while others look for continuing and or day work harvesting vegetables on the fruit and vegetable farms along the Caledon valley.

Large numbers of Basotho mostly women have sought employment in South Africa as seasonal labourers on the farms of the Caledon valley (Steinberg, 2005:6). According to the Lesotho Ministry of Labour (2014), to recruit seasonal workers from Lesotho, South African farmers have to act in accordance with a set of regulations established by the Lesotho Labour Commission (LLC). A farmer has to sign a contract for each worker he recruits; this contract clearly specifies

the terms and conditions of employment and the rate of remuneration. He or she is under obligation to provide all workers with transport to and from his farm, free accommodation, three meals a day for the duration of his/her contract as well as free medical treatment. The Labour Commission is therefore mandated to ensure that the farmers comply with these conditions. For example, before a South African farmer is granted a licence to recruit Basotho labour, the Commission is required to inspect the farm, its standards of workers' accommodation in particular. If a farmer breaches his contract in any way, seasonal workers are entitled to lodge a complaint with the Commission (Steinberg, 2005:8).

However, the South African farmers do not conform to these obligations set by the labour Commission while the Commission does not enforce and monitor compliance. According to Steinberg (2005:8), the survey conducted by Ulicki and Crush in the 1990s revealed that the majority of the Basotho workers believed that they were paid less than what was stipulated in their contracts, 30% said the cost of their meals, accommodation and medical care was deducted from their wages. 60 percent said they had their wages withheld until the day they returned to Lesotho, while 40 percent said they were not permitted to leave the farm for the duration of their contract nor their grievances welcome at the Lesotho Labour Commission offices. Mazars, Matsuyama, Rispoli and Vearey (2013:16) argue that many cross-border migrants are involved in informal employment. They work in labour intensive sectors, are often employed on a casual basis, have little opportunity to claim work related benefits and rights, largely remain un-unionised and are not protected against exploitation.

During the 19<sup>th</sup> and 20<sup>th</sup> century, Basotho commercial farmers had become serious players in supplying Southern Africa's emerging mining towns with grain. Traditional extended family labour units had adapted well to European agricultural technology and were sensitive to the opportunities presented by nascent industrialisation in Southern Africa, black farmers and white farmers therefore competed against one another (Steinberg, 2005:3). The white farmers did all they could to destroy black farmers and took their land. The destruction of independent black agriculture is clearly remembered in local history today and explains the attitudes of Basotho towards white farmers. Steinberg (2005:5) further argues that Many Basotho farmers who had been dispossessed of their land and pushed across the Caledon River returned to the white farms in the Free State as sharecroppers. This was because the black farmers had the will and

the tools to farm but they had no land. The white farmers who employed share coppers had land but was underutilised and needed black farmers to assist in producing surplus.

Lesotho has a high HIV/AIDS prevalence rate of 23percent, which is believed to be among the highest in the world. It also has a distinction of being the only country in Southern Africa in which there are more men than women who are infected with the HIV virus. According to Cobbe (2012:4), this is the result of the prosperity of the former South African miners who lived in single sex hostels at the mines leaving their families in Lesotho. Also, since these miners lived far away from their homes, it was easy for them to engage in extra-marital affairs and have more than one sexual partner. It is common knowledge that having more than one sexual partner makes one vulnerable to sexually transmitted diseases such as HIV/AIDS.

Upon their return to their marital homes after retrenchments, the former miners infected their wives and the number of infected people in Lesotho increased. Mazars *et al* (2013:6) argue that the conditions associated with migration and the poor well-being of migrants make them vulnerable to HIV infection especially women. Basotho's culture contributes to the vulnerability of women in that it requires a wife to submit to her husband no matter what the circumstances are. Talking openly about sexual issues and use of condoms in marriages was a taboo. Most miners also hid their HIV status from their families until it was too late. This is why many women married to Lesotho men who worked in the mines were infected with the virus and prevalence rates increased. High HIV prevalence rates not only affect the migrants' well-being but also the well-being of migrant sending countries and communities and ultimately affect development negatively.

During the apartheid era, many black and some white South Africans chose employment in Lesotho over discrimination in South Africa and made important contributions to the health care, education, government and the professional sector in Lesotho (Cobbe, 2012:8). They returned to South Africa in 1994 after the first democratic elections and the end of the apartheid era. While South African professionals fled their country, Basotho professionals also left their country for South Africa. However, Basotho never returned after 1994, instead the number of Lesotho migrants entering South Africa increased due to salary differentials. Also, Lesotho became a

refuge for opponents of the South African apartheid regime, that is, all cadres of the liberation movements whom one of them was the most prominent Communist Party leader, Chris Hanani (Coplan, 2001:94). They lived in Lesotho's capital Maseru. This shows that these two countries have always depended on one another.

### **3.4 Experiences in relation to cross-border crime between Lesotho and South Africa**

Some of the most important motivations for the enhancement and tightening of border controls have been the growth in cross-border crime, the globalisation of activities of organised crime syndicates and the international dimensions of crimes such as gun-running, drug-smuggling, money laundering and human trafficking. The concerns of security agencies are that criminals may exploit illegal entry and exit of migrants by hiding themselves in this movement and goods may easily move across uncontrolled or poorly managed borders with high levels of porousness. These fears have been the basis for many of the calls for stricter controls at borders (Minnaar, 2009:1).

According to Sechaba Consultants and Associates (2002:12), there are four types of border posts between Lesotho and South Africa, namely;

**i) Official border posts-** these are borders with official opening hours and they are fully staffed on both sides;

**ii) Partial borders** - these are borders staffed by only one country;

**iii) Local convenience border posts / crossings** – these are points where people are allowed to cross to access stores or farms to purchase goods and;

**v) Illegal crossings** – these are used for either the undocumented entry and exit of goods and persons or merely to connect farms on the Free State side with villages on the Lesotho side that have well established social and economic ties.

They further argue that the Lesotho and South African borders are very porous and there are many crossing points that exist to serve the daily convenience of both Lesotho and South African border residents, some of which have been decriminalised in recognition of important economic and social ties. Illegal crossing is one of the main crimes occurring between the Lesotho and South African borders. Cobbe (2012:5) is of the opinion that the borders between Lesotho and South Africa are of a kind that can never be sealed. In the western lowlands, the border is a river that for much of a year can be walked across while much of the rest is in the mountainous territory that prohibits practical and effective fencing. It is therefore easier for people to move in and out of Lesotho without difficulty. Once in South Africa, Lesotho citizens can seek employment or self-employment without fear of detection and not much risk of deportation if detected, even if they are deported, it is easy to return to South Africa. According to Mazars *et al* (2013:16) management of undocumented migration in South Africa is ineffective and often leads to human rights abuses that are done through deportations of illegal migrants.

The river crossings for the most part connect Free State farms with Lesotho villages. Most illegal crossings take place where there is no formal border post for a considerable distance such as between Maseru Bridge and Van Rooyen's gate or along the rivers such as Caledon and Tele. Some illegal crossings happen by just jumping the fence that separates the two countries (Crush, 2013:7). He further argues that many Southern African Migration Project (SAMP) surveys have revealed a great number of Basotho who have a significant regular involvement in South African society; the difficulty of separating Lesotho nationals from the rest of South African population and the futility and waste involved in efforts to keep Basotho out of South Africa. Steinberg (2005:1) concurs and argues that the South African government has neither the capacity nor the moral authority to keep Lesotho citizens out of South Africa.

On the issue of farm labour, it is extremely difficult to prevent Basotho who have been crossing the river into South Africa without proper documentation for generations from doing so now. Basotho are well aware that the permit system can serve as their legal protection as it will prevent farmers who employ Basotho without permits from having them arrested and deported when the time comes for them to pay their wages (Crush, 2013:8). He further argues that there is simply no way to prevent the daily casual use of the informal river and fence crossings visible every one hundred metres along the entire length of the Free State-Lesotho border.

Still on the issue of illegal crossing into South Africa, Akokpari (2005:92) argues that those citizens of the third states use Lesotho and its borders to obtain entry and even six months border concessions enabling them to reside illegally in South Africa. Crush (2013:8) supports the argument in that some immigrants come to Lesotho not as an ultimate destination but as a transit country to Europe or South Africa. Some have succeeded in reaching South Africa through Lesotho because of the artificiality but also the porosity of the borders between the two countries. Viljoen and Wentzel (2007) support this argument and argue that the nature of the border between Free State and Lesotho is such that it does not really form a physical barrier between the two countries.

Cross-border stock theft is also one of the cross border crime experienced between Lesotho and South Africa. Since 1990, 85 percent of stock owners in the border villages have lost animals to thieves as compared with 49 percent from non-border villages. Most cattle and sheep are stolen from cattle posts where they are guarded only by shepherds. Stock is also taken from village kraals and on occasion, whole villages have been attacked and all the stock driven (Kynoch *et al*, 2000:1). They further argue that stock thieves come from within Lesotho as well as cross the border in South Africa. Basotho stock thieves also carry out raids in South Africa and vice-versa. Gun use is widespread, although South African raiders seem to have greater access to arms. Much of the theft appears to be coordinated by well organised criminal gangs but reliable information and organisation is difficult to access. Criminal networks in Lesotho and South Africa also cooperate to dispose the stolen animals in the lowlands of Lesotho as far as Port Elizabeth, Durban and Welkom.

According to Kynoch *et al* (2000:3), household economies have been negatively affected by stock theft. A household's entire wealth and livelihood can be wiped out in one attack and cause absolute poverty. Increasing stock theft and related violence have deep consequences resulting in fear, poverty, hatred and insecurity to ordinary people. People in South Africa, abandon their villages and migrate to towns while Basotho go to South Africa in search for jobs. Due to stock theft, cross border cooperation activities and initiatives have collapsed and there is considerable animosity as well as hatred between the communities on either side of the border. Cross border

counter raids aimed at recovering lost stock and revenge attacks are also common on both sides of the border. South African victims then target Lesotho border villages for revenge raids resulting in great tension and friction between Basotho and South Africans. The situation is so bad that even casual visiting and shopping have all stopped (Kynoch *et al*, 2000:3).

Human trafficking and smuggling of persons has become a growing phenomenon affecting Lesotho women and children (Lesotho National Migration and Development Policy, 2013:53). They are deceived and promised glamorous jobs outside the country and forced into taking drugs and prostitution. Lesotho has therefore taken several steps to address this problem of human trafficking. Minnaar (2009:1) argues that humanitarian concerns about the trafficking and smuggling of people have also prompted supporting calls for better screening of and control over migratory movements. This concern has also partly been based on the fact that people who are smuggled are exploited and are more likely to end up in bondage or will be forced to participate in criminal activities in the country of their destination.

According to Minnaar(2009:2), the spin-off of weak and poor controls at borders and ports of entry include the proliferation of fire arms and drugs, increased criminal activity by organised crime and international syndicates, the entry of smuggled goods and fraud through non-payments of customs and excise duties, round tripping of vehicles and other manufactured goods and many more. He further argues that although the lax and the porousness of the borders do not cause criminal activities, they create the space to pursue them with ease. It was estimated that in 1997 the value of illegal goods crossing at South African borders was approximately US\$ 2, 5 billion (Minnaar, 2009:3). Such illegal movement represents an enormous loss to the South African fiscus in terms of revenue and customs and excise duties through the non-declaration of values or the provision of false values and forged manifests. This has also impacted negatively on investor confidence apart from other serious effects such as deaths as a result of illegal firearms and increased health hazards and drug use.

According to the American Embassy Lesotho Report (2012), Lesotho is a country of origin for trafficking in women and children mainly to South Africa. The 20 kilometre trafficking route from Maseru, Lesotho to Ladybrand, South Africa may constitute the world's shortest international

trafficking route. The Maseru and Ficksburg bridges are the two most popular border crossing points for traffickers. Fowler (2004:1) argues that trafficking in African women and children for forced prostitution or labour is exacerbated by war, poverty and flawed or non-existent birth registration systems; this is according to a recent United Nations Children's Fund (UNICEF) study. More specifically, porous borders combined with recurrent civil and political unrests and lack of economic opportunities has ensured a consistent southward flow of both legal and illegal migrants to Southern Africa.

The scale of trafficking of Basotho children to South Africa is unknown. In Ladybrand, Fouriesburg and Bloemfontein, South Africa, it has been confirmed that Basotho children have been exploited within the past two years (American Embassy Lesotho report, 2012). Children from rural areas of Lesotho who are escaping poverty hardship and the effects of HIV/AIDS move to Maseru where they are forced or kidnapped by Afrikaans-speaking white South Africans, they are taken across the border in private cars to asparagus farms and border towns in Eastern Free State. They are held captive in private homes where they suffer a particularly sadistic and macabre sort of exploitation (International Organisation for Migration, 2003). The children are often locked in the house and left alone during the day; at night they are violently raped, verbally and sexually assaulted by groups of white men. They spend between one night and one week in such conditions after which they are returned to the streets of border towns in the Eastern Free State (Bermudez, 2008:2).

### **3.5 Summary**

There is a need to improve management of undocumented migration in both Lesotho and South Africa and to work hand in hand to strengthen border controls in the light of porous borders that encourage criminal activities. Both Lesotho and South Africans have had not so good experiences in relation to the movement between the two countries, however Basotho have the worst experiences because there is a lot of movement from Lesotho to South Africa. This chapter has shown that most of the towns on either side of the border owe both their origin and their current viability to commerce and trade across the border. Whilst relations between neighbours are neither happy nor smooth, the border's inhabitants are mutually depended on

one another. This chapter further looked at the various experiences of people resulting from movement between South Africa and Lesotho while the next chapter will focus on the agreement on free movement of people between Lesotho and South Africa.

**CHAPTER FOUR**

**ANALYSIS AND INTERPRETATION OF THE AGREEMENT ON FACILITATION OF  
FREE MOVEMENT OF PEOPLE BETWEEN LESOTHO AND SOUTH AFRICA**

**4.1 Introduction**

As alluded in the previous chapters, the agreement on facilitation of the free movement of people between Lesotho and South Africa was signed on 19 June 2009 in Cape Town, South Africa. It was made in line with SADC Protocol on facilitation of the Movement of Persons of 2005. This Protocol requires that SADC member states should develop policies that are aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services and of people of the region amongst member states (SADC, 2012). The protocol was also developed with the objective and eagerness to support, assist and promote the efforts of the African Union which advocates for free movement of persons in the African Regional Economic Communities. In response to the call by the African Union, SADC developed the Protocol on facilitation of the movement of persons to facilitate entry with lawful purpose, without visa into another member state for a maximum of 90 days, permanent and temporary residence in the territory of another member state and establishing oneself and working in the territory of another member state (SADC, 2012).

Based on this protocol though it has not been effective and the unique geographic location of Lesotho, Lesotho and South Africa also developed and signed an agreement on facilitation of free movement of persons. This agreement was also made in line with the Joint Bilateral Commission for Cooperation (JBCC) which was also signed in 2001. Patel (2013:2) argues that the objective of JBCC was conceived as a strategic partnership to assist Lesotho to accelerate its economic development and ease cross border movement between Lesotho and South Africa. The objective was also to consolidate not only the historical and cultural ties that exist between Lesotho and South Africa but also to enhance the bilateral cooperation between the two countries. This chapter therefore seeks to interpret and analyse this agreement as well as to establish the feasibility of the implementation of the agreement.

## **4.2 Interpretation and analysis of the Agreement on facilitation of cross border movement of people**

The agreement has been divided into different articles and they are interpreted and analysed separately as outlined below;

### **4.2.1 Regulation of Entry and Departure**

In this article, the agreement states that citizens of both Lesotho and South Africa who hold valid and authentic travel documents shall be permitted to enter into and depart from the territory of the other party at the agreed and designated ports of entry on their common border without having to report to an immigration officer for examination. This examination refers to a process of measuring a person's compliance with all entry and departure requirements. Further, they shall also be permitted to sojourn in their respective countries for purposes of holiday, business and transit without visas and or temporary residence permits. The article goes further to show that no entry and departure stamps would be endorsed in the passports of these citizens at the land ports of entry and their movements shall not be recorded or restricted.

This means that even if the free cross border movement agreement between Lesotho and South Africa is implemented, citizens of these countries will still be expected to carry their valid and authentic travel documents when travelling across the border even though they will not report to immigration for examination and endorsement of entry and departure stamps. For example, a South African citizen travelling to Lesotho will be allowed to cross the border and visit without any restrictions to his movement in terms of where he is going and how long he is expected to stay because there will be no stamp in his passport. This means Basotho can stay in South Africa for as long as they want and the same thing applies to South Africans as long as their stay is for holiday, business and transit, no permit is required. This will be good news to Basotho as they have a tendency to visit friends and family in South Africa and stay for prolonged periods of time, as this means they can stay as long as they want provided they only visit.

Currently when Basotho travel to South Africa they have to report to immigration where their passports will be examined for validity and authenticity. Thereafter, the passports are endorsed with entry stamps as well as the 30 days visitor's permits which have to be renewed at the nearest Home Affairs Office once it has expired. Failure to renew the permits results in penalties or punishment of being declared undesirable, such declaration prohibits the traveller from stepping on South African soil for a whole year for someone who overstayed for one day to 30 days. As for South Africans visiting Lesotho, they are also expected to hold valid and authentic travel documents and they have to report to immigration where they are examined and their passports are endorsed with entry stamp as well as 30 days visitor's permits. This permit has to be renewed at immigration offices once it has expired, failure to renew results in penalties or being charged for violation of the Lesotho Aliens Control of 1966 (which is currently under review).

This therefore means that once the agreement is implemented, Lesotho citizens when travelling to South Africa will no longer have to be granted a 30 days visitor's permit as was the case. They will no longer be accused of overstaying or being called illegal immigrants or declared undesirable and be prohibited from visiting South Africa for a specified period of time. According to the new Immigration Regulations of 2014, a person who overstays in South Africa for one day up to 30 days is declared undesirable and is forbidden to step on South African soil for a period of twelve months if it is a first offence, but if it is not the first offence, such a person is prohibited to cross the border into South Africa for twenty- four months (2 years). While a person who overstays for a period of three months and above, he or she is punished by being declared undesirable for five years. This law is however harsh on Lesotho citizens who cannot go anywhere outside their country without passing through South Africa. It is indeed a punishment.

Furthermore, the implementation of the free movement agreement will set Lesotho citizens free. This new South African Immigration law will not restrict their connection to the rest of the world. Basotho will no longer have to be chased by law enforcement agencies and get arrested for overstaying, worst of all they will escape being declared undesirable. They will also escape the torture of being unfairly deported and leaving their possessions even their salaries at times, as more often than not they are illegally employed and when their pay day approaches, their employers notify the police that there are illegal immigrants at a certain place and they are

arrested and then deported back to Lesotho. Since Lesotho citizens regard South Africa as their second home, the implementation of the agreement will definitely grant them greater access to the land.

However, according to the agreement, such citizens shall only report to the immigration officers or any duly appointed official in command of the perimeter gates of their respective countries' ports of entry for purposes of verification of the validity and authenticity of their national passports prior to admission to and departure from the territory of the other party. The agreement further states that citizens of both Lesotho and South Africa can be subjected to examination in relation to compliance with entry or departure requirements by immigration if there is a reason or suspicion of non-compliance.

Since there are many recorded cross border crimes that occur at Lesotho/South African border posts such as trafficking of persons, money laundering, possession of illegal firearms and car theft, if there is suspicion that a certain traveller might be involved in any of the crimes, he or she may be subjected to examination by immigration officials or any duly appointed official from the border agencies. This will ensure that even though travellers are not examined but criminals should not take advantage of the situation. There are also criminals who have been placed on the wanted lists and these types of people can only be apprehended through scanning of travel documents. Some travellers use fraudulent passports in order to carry out their criminal activities so the examination by immigration will be helpful in that regard. Minnaar (2009:1) argues that humanitarian concerns about the trafficking and smuggling of people have also prompted supporting calls for the better screening of and control over migratory movements.

#### **4.2.2 Temporary and permanent residence permits**

Article 3 of the agreement suggests that citizens of the Lesotho and South Africa who wish to enter the territory of the other country for purpose other than visiting shall be required to apply for the appropriate visas or residential permit at the diplomatic or consular mission of the other party in accordance with relevant legislation, where after they shall be subject to the domestic

laws in force in their respective countries and will also be exempted from reporting to an immigration officer for examination on entering or departing from the territory of the other party whilst such visas or permits are valid. Crush (2013:4) argues that Lesotho citizens are given visitor's visa as long as they have valid passports.

This therefore means that if a South African citizen wishes to work or gets employment in Lesotho, he or she will have to apply for the work permit as well as the temporary residence permit for the duration of his or her stay. Also a person who comes to Lesotho for purposes other than visiting should apply for the relevant permits, for example, business permit, missionary residence permit, study permit to name a few. These permits are obtainable from the diplomatic missions of Lesotho and can also be acquired upon arrival from the department of Immigration. Once a person gets the permit, he or she can be excused from reporting to immigration for examination. This exemption will be effective based on the validity of the permits. However, if there is reason for the immigration officials or official from the border agencies to suspect that a traveller may be involved in criminal activities, such a person may be subjected to examination.

Minnaar (2009:1) concurs and argues that the humanitarian concerns about the trafficking and smuggling of persons have also prompted supporting calls for the better screening of and control over migratory movements. These concerns have also partially been based on the fact that people who are smuggled are themselves exploited and will more than likely end up in bondage or will be forced to participate in criminal activities in the country of their destination. It is therefore the responsibility of everyone to be involved in the fight against trafficking and smuggling of persons especially at border posts. The immigration officials during examination are likely to suspect that a traveller is being trafficked as such this exercise may be helpful and save a person's life.

This article will be more beneficial to Basotho as they work in South Africa in large numbers. In most cases, most of them work illegally without proper documentation and work as unskilled labourers, mostly as gardeners, domestic workers, and seasonal workers while others engage in informal trade. The National Migration and Development Policy (2013:16) shows that the

main destination for Basotho migrants is South Africa. The policy further shows that 99.8% of Basotho migrants are working in South Africa and most of them work and reside illegally. The World Bank also estimated that 208,226 Lesotho citizens resided in South Africa in 2010 (Lesotho National Migration and Development Policy, 2013:16). This agreement may encourage them to apply for the work permits and reside legally in South Africa as their legal status will qualify them for exemption from immigration.

#### **4.2.3 Labour Agreement**

Article 4 of the agreement states that citizens of both Lesotho and South Africa whose employment in the territory of the other party falls within the purview of the 1973 agreement relating to the establishment of a Lesotho Labour Office and the Movement of Persons across the common border, or any other agreement in force governing labour issues between the parties shall be subject to the domestic law in force in their respective countries, report to an immigration officer for examination only on their first entry after the date of issuance of each contract. The travel documents in which the contracts are endorsed will be checked for validity and authenticity.

Like article 3, this article permits citizens of both Lesotho and South Africa to work in the other's territory. It stipulates that every worker whose employment falls under the stipulated labour laws shall be expected to report to immigration on their first entry into the other party's territory after the new contract has been issued. Thereafter the worker will be exempted from reporting to immigration until the expiry of the contract. This is applicable to mineworkers who are employed on a contractual basis as well as seasonal workers who are employed in South African farms through Lesotho Labour office. These workers have to report to immigration only once on their first entry after their contract has been issued. Thereafter they will be exempted from reporting to immigration every time they cross the border. The exemption will last for the duration of their contracts.

According to The Employment Bureau of Africa (2013), there were approximately 31,000 Lesotho mineworkers who are employed on the South African mines through TEBA in 2012. Due to the decline in the mine employment for Basotho, there have been new forms of migration from Lesotho to South Africa that include female migration, mostly involved in domestic service. Currently both Lesotho and South Africa are in negotiations on how these domestic workers can be granted work permits or equivalent that will help them to reside legally in South Africa. Should the agreement be implemented it will be very helpful to them and many others working in different sectors of the South African economy.

#### **4.2.4 Diplomatic and Consular staff (article 5)**

Both Lesotho and South Africa shall facilitate the movement across the common border of such representatives and their dependants by exempting them from the need to report to immigration official for examination on entering and departing from the territory of the other party for the duration of their accreditation. Such representatives shall report to the immigration officials of the respective countries' designated land port of entry for purposes of verification of the validity and authenticity of their national passports and their visas or permits as may be relevant. The agreement further states that the procedure for obtaining visa or permits for diplomatic and consular staff in the territory of the other party and their dependants shall continue to be governed by the Vienna Conventions on Diplomatic and Consular Relations.

This simply shows that Diplomatic and Consular staff and their immediate families from both Lesotho and South Africa shall also be excused from reporting to immigration upon entry into and departure from the other party's territory for the duration of their appointment into such office. However these officials and their dependants are expected to report to immigration of their own countries at the land ports of entry for examination that includes verification of the validity and authenticity of their travel documents and visas and permits where necessary. This is to make sure that they possess the necessary documentation before they leave their home country and to avoid deportations.

#### 4.2.5 Exclusions

The parties being Lesotho and South Africa shall exchange lists of names of any individual citizens who may be excluded from the privileges of this agreement for reasons such as but not limited to security. The agreement shall not exempt citizens of both Lesotho and South Africa from observing the customs, police, port health and other requirements. Such citizens are also not exempted from the provisions of the current and future extradition treaties. This means therefore that both parties are to submit lists of unwanted persons or criminals, blacklisted travellers, deported and undesirable persons to the border posts so that such people may not be allowed to pass through either from Lesotho to South Africa and vice versa.

Medical cases such as *Ebola* may also cause travellers not to be exempted from reporting to Immigration and port health for examination. Citizens of both Lesotho and South Africa though exempted from reporting to immigration will still have to fulfil their customs, port health and agricultural obligations when either entering the two countries. The agreement shall also not apply to citizens of Lesotho and South Africa who enter and or depart from their respective territories through designated international airports. It shall also not extend to citizens of the parties who wish to cross the common border at any place other than the agreed and designated land ports of entry as well as those people who are not citizens of Lesotho and South Africa.

This means that the agreement will only be operational at the land ports of entry between Lesotho and South Africa and not the airports. Citizens using airports to either enter or depart Lesotho and South Africa will have to undergo the normal border operations of reporting to immigration officials for examination and validation of their travel documents. These travel documents will then be endorsed with entry or departure stamps and temporary visitor's permit issued depending on where the traveller is going. In this way, their entry will be recorded and their movements in the country they are visiting will be monitored and they risk facing charges of overstay if they choose to stay longer than permitted and therefore risk being declared undesirable persons by the department of Home Affairs.

#### **4.2.6 Communication and Compliance**

According to the agreement, the parties being Lesotho and South Africa are committed to clearly communicate the terms and conditions of the agreement to their respective citizens as well as to third country nationals residing in their respective territories. The parties shall monitor the compliance of their respective citizens with the terms and conditions of this agreement. There is need for the contents of this agreement to be clearly explained to citizens of both these countries. The people need to be informed of the new changes and how the borders would operate once the agreement is implemented.

Since there are terms and conditions as how and where the agreement will be effective, all the details need to be clearly communicated so that the people can understand because Basotho travel to South Africa in large numbers on a daily basis. As mentioned on previous chapters, they travel to South Africa for various reason such as shopping, medical, study, work and visiting relatives. Sechaba Consultants and Associates (2002:17) argue that one of the most marked differences between Lesotho and other countries is the sheer number of people who have visited South Africa from Lesotho and the long history of this movement.

Both Lesotho and South African citizens have to be aware that the agreement would only be implemented at the land ports of entry that Lesotho shares with South Africa not the airports and many other terms of the agreement. There is therefore a need for awareness campaigns especially in Lesotho because most movement comes from Lesotho to South Africa. It is also the responsibility of the two countries to ensure that their citizens comply with the requirements of the agreement. This can only be achieved through education and awareness.

#### **4.2.7 Safety and Security**

In an attempt to protect the agreement from possible abuse, both Lesotho and South Africa committed themselves to intensify their patrol of the borderline, secure their national passports

and other enabling documents against fraud and fraudulent issuing, safeguard their national territories against abuse and secure improved cooperation and exchange of information at all levels. This means that both countries had security concerns with regard to the implementation of the agreement and the possibility of it being abused, as such they came up with ways to safeguard the implementation of the agreement.

The Lesotho-South Africa borderline is notorious of being porous due to the geographic location of Lesotho of being completely surrounded by South Africa. It is very easy for Basotho to cross border into South Africa, there are many crossing points, and therefore there is a need for the countries to intensify their borderline patrols to do away with illegal crossings. Crush (2013:8) argues that some immigrants come to Lesotho not as an ultimate destination but as a transit country to Europe or South Africa. Some have succeeded in reaching South Africa through Lesotho because of the artificiality but also the porosity of the borders between the two countries. Akokpari (2005:92) concurs and argues that citizens of third states use Lesotho and its borders to obtain entry and even six months border concessions enabling them to reside illegally in South Africa.

According to the Lesotho National Migration and Development Policy (2013:36), effective management of Lesotho's borders cannot be limited to national initiatives taken by Lesotho as this evidently requires collaboration with South Africa. A key challenge is to establish a balance allowing Lesotho and South Africa to meet their humanitarian obligations to refugees and others eligible for protection while concurrently addressing the need to manage their borders effectively though it is not easy as most illegal crossings occur where there is no formal border post. Border fencing where it has not been destroyed has no practical effect on crime or unauthorised crossing (Crush, 2013:7).

The other concern for South Africa was Lesotho passports are not secured; they can be easily duplicated and tampered with. As such, Lesotho further committed itself to ensuring that its passports are secured against fraud through the phasing out of the traditional machine readable passport and the introduction of the electronic passports. This initiative was done concurrently with the introduction of the national civil register whereby every citizen would be registered and

issued with a national identity card. This is helpful to the passport issuing department in that only deserving people will acquire the newly introduced electronic passports.

Both Lesotho and South Africa agreed to set up a task team that will develop an implementation framework to tackle any security issues that may arise from the implementation of this agreement. The task team would comprise of representative from both countries and would work together to determine the ways to address the pre-conceived security issues. The framework shall be adopted by the Joint Bilateral Commission established in terms of the 2001 Joint Bilateral Commission of Cooperation Agreement between the parties. This is because one of the objectives of the JBCC is to facilitate movement of people, goods and services between Lesotho and South Africa and to maintain peace and stability between these two countries as well as general stability in the region through collective action based on respect for democratic institutions, human rights and the rule of law (JBCC agreement, 2001).

#### **4.2.8 Settlement of disputes**

It was agreed that any dispute between the two countries arising from the interpretation or implementation of this agreement shall be settled amicably through consultation or negotiations between the two countries. Since the agreement involves two different countries, different in size, population, economically to name but a few, there are bound to be disagreements and the other party may have reservations about some issues. It was therefore resolved that such disputes be discussed harmoniously as the agreement was made to benefit the two countries.

#### **4.2.9 Entry into force, duration and termination**

The agreement shall enter into force on the date on which the parties have notified each other in writing through the diplomatic channel of their compliance with their respective constitutional requirements necessary for the implementation of this agreement. The date of entry into force shall be the date of last notification. This means that the agreement will be effective once the

representatives of the two countries have agreed on the contents, terms and conditions of the agreement and have put their signatures on the dotted line. The date of last notification shall be the date on which the parties signed the agreement.

However the agreement shall remain in force until terminated by either party by giving three months written notice in advance through the diplomatic channel of its intention to terminate it. In this case, although the agreement was signed on 19 June 2007 in Cape Town, South Africa it has never been implemented. The reasons for non-implementation as sighted by South Africa at the JBCC meeting in March 2010 were mostly security concerns, namely;

- I) Lesotho has no population register;
- II) Lesotho travel documents are not secured;
- III) Third country nationals use Lesotho as a channel to South Africa; and
- IV) Lesotho does not check the passports of its nationals when crossing the border.

Lesotho responded that it is currently working on:

- i) The establishment of a properly functioning civil registration;
- ii) Establishment of National Identity Register (population register);
- iii) The introduction of the bio-metric identity cards;
- iv) Phasing out of traditional machine readable passport to electronic passport; and
- v) Introduction of properly functioning border management system.

All the above initiatives, Lesotho indicated were expected to be implemented within the 2013/2014 financial year (JBCC report, 2013:2). The Lesotho government has adhered to this commitment in that it has established a properly functioning civil registration and a national identity register though the process is still on-going. All Lesotho citizens are to apply for the new birth certificates and the biometric identity cards as part of the registration. The information gathered is stored into a system and can be retrieved whenever need arises. The government went further to phase out the traditional machine readable passports and replaced them with electronic passports. This was done to restore the lost dignity of the Lesotho passport that could easily be forged or tampered with.

The new electronic border management system was also introduced whereby the fourteen (14) Lesotho border posts were to be computerised, though the installation process is not yet completed. It is expected that by the end of the 2015/2016 financial year, the whole process will be completed. In this system, all travellers' passports are examined and authenticated through scanning and then endorsed with either entry or departure stamps. This system was introduced to improve and enhance border management as well as to minimise fraudulent activities in as far as travelling documents are concerned.

There have recently been new developments in as far as cross border movement between South Africa and Lesotho is concerned. The South African Home Affairs Minister Malusi Gigaba in his visit to Lesotho on 22-23 September 2015 announced that the South African Government has decided that it would regularise the illegal stay of Basotho in South Africa and to simplify cross border movement between the two countries (Ntsukunyane, 2015:4). This regularisation would be done through the introduction of the Lesotho Special Dispensation. Under this dispensation which is set for implementation in 2016, Basotho would be given special permits for work, business and study purposes that will enable them to stay for purposes other than holiday and visits.

This arrangement is meant to regularise undocumented Lesotho citizens residing in South Africa as well as Lesotho citizens who fraudulently acquired South African documents such as identity documents and passports. Those who acquired documents fraudulently will be urged to come forward and be regularised while being indemnified from prosecution. The arrests, detentions and deportations of illegal Basotho migrants in South Africa would also be suspended under the new dispensation. According to Minister Gigaba, the new dispensation was meant to enhance historical relations between the two countries adding that South Africa and Lesotho share a common destiny. The measures that were taken would benefit not only the people of both countries, but their respective economies and security as well (Ntsukunyane, 2015:4).

Also under this new dispensation, a new cross border system would be introduced whereby Lesotho passports would only be scanned and not stamped, (Ntsukunyane, 2015:4). The cross border system will benefit frequent travellers mostly whose passports get full quickly due to endorsement of entry and departure stamps. This will ensure that travelling for Basotho to and from South Africa is a lot easier and safe. The Minister further stated that in order to ensure that security is not compromised in the cross border movement; both Lesotho and South Africa have agreed to collaborate in capturing and storing information. They would be piloting biometric capture on all ports of entry to ease movement of people between the two countries while also providing South Africa with the necessary guarantees that the travellers are who they claim to be since there would be records in the systems of both countries.

There has been another recent development in cross border movement between Lesotho and South Africa. The Lesotho Social Development Minister Letlotlo Molahlehi and his South African counterpart Bathabile Dlamini have signed a Memorandum of Understanding (MoU) to enhance cross border movement of vulnerable groups on 7 October 2015 in Bloemfontein. This memorandum is meant to do away with trafficking of children, women and other vulnerable groups (Pitso, 2015:2). He further stated that Minister Molahlehi said the newly forged relationship between the two countries was meant to improve the lives of vulnerable groups that suffered because of uncoordinated cross border laws. As a result, the two countries are committed to ensuring that they have constant consultations to exchange and review programmes as they strive to better their socio-economic status. The final agreement would however be signed at a later stage after aligning it with the laws of the two countries (Pitso, 2015:2).

### **4.3 Summary**

The chapter focused on the interpretation and analysis of the agreement on cross border movement of people between Lesotho and South Africa. There are mixed feelings as to whether the agreement should be implemented or not. As stated in the discussion, South Africa has its concerns regarding the implementation of the agreement. Lesotho on the other hand has its

own perceptions regarding the issue, and they did their best to allay South Africa's fears and took a bold step of correcting the mistakes South Africa pointed out. It can be argued that Lesotho's freedom depends on the implementation of this agreement, due to its geographic location. The new South African immigration laws also worsened matters for Basotho travellers.

Due to the recent developments that have taken place relating to cross border movement between the two countries, there is hope that Lesotho will be liberated. This means Lesotho citizens will travel to and from South Africa without any difficulty or restrictions. Also because Lesotho citizens regard South Africa as their second home, they can stay for prolonged period without fear of being arrested and detained. The next chapter presents the findings, conclusions and recommendations.

## **CHAPTER FIVE**

### **FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

#### **5.1 Introduction**

As stated in chapter one on the chapter outline section of the study, this chapter presents the findings, conclusions and recommendations drawn from the study. The aim of the study was to establish the reasons why the agreement on the facilitation of free movement of people between Lesotho and South Africa has not been implemented. In order to achieve this aim, the following were examined; the relations between Lesotho and South Africa, the immigration challenges that both countries face and the feasibility of the implementation of the agreement.

#### **5.2 Overview of the study**

The aim of the study was to seek to establish the reasons why the agreement on facilitation of free movement of people between Lesotho and South Africa which was signed in 2007 was not implemented. The agreement was signed in order to ease movement of people between the two countries and eliminate long queues of people waiting to report to immigration for examination and endorsement of their travelling documents at various border posts that Lesotho shares with South Africa. These long queues are caused by many Lesotho citizens who frequently travel to South Africa in large numbers. They visit South Africa for various reasons that include shopping (buying goods and services), study and work as well as to visit family and friends.

The objectives of the study were developed so that they can assist towards the achievement of the research aim, which is establishing reasons for non-implementation. The reasons were thus sought based on the analysis of the relationship that Lesotho and South Africa have, the immigration challenges that both countries encounter as well as the analysis of the agreement itself. From the discussions already presented, it was evident that these two countries have

always interacted from time immemorial due to their geographical location, though their relationship always had its own ups and downs.

Due to the fact that Lesotho is completely surrounded by South Africa, there has always been a greater movement of Lesotho citizens visiting South Africa as their destination or on transit to other countries. It is therefore very easy for Lesotho citizens to enter South Africa, either legally or illegally as there are many crossing points apart from the designated ports of entry. This reality has created many immigration challenges for the South African Government especially in its attempt to force Lesotho citizens out of its country. They get arrested as illegal immigrants, are detained and deported back to Lesotho, but they always go back through the various crossing points surrounding Lesotho. The analysis of the agreement itself has provided an insight as whether the implementation of the agreement is feasible or not. Based on the discussion, conclusions were drawn and recommendations made.

### **5.3 Realisation of the research questions and objectives**

In order to achieve the aim of the study, both research questions and objectives were developed, these were meant to assist the researcher to get the answers needed for the study. The research objectives were developed as follows;

- To assess the relationship between Lesotho and South Africa in relation to cross border movement.
- To establish the immigration challenges faced by both Lesotho and South Africa
- To evaluate the feasibility of the implementation of the agreement.

Firstly, Lesotho and South Africa's relationship has always had its ups and downs, that there has always been good times when they relate well and times when they fought. For instance, in the eighteenth century relations were good until Lesotho decided to oppose the apartheid government and assist the liberation movements. The situation was so bad that the South African Government closed down its borders, knowing quite well that there is nothing Lesotho

and its citizens can do without passing through South Africa as it is an enclave. Furthermore, the South African Government further staged a raid on ANC safe houses in Maseru and killed many Lesotho citizens in the process.

The issue of the conquered Lesotho territory by South Africa was, is and will always be an issue between the two countries. This is due to the fact that Basotho still feel that South Africa unjustly occupies Lesotho's land especially the most fertile land through the Aliwal North Treaty. This treaty reduced Lesotho to half its size and many Lesotho citizens believe there is no hope in as far as recovering the land. This issue will go on for decades and generations to come will be mindful of this fact as it will always come up whenever South Africa is mentioned. The 20 year struggle for the LWHP also put a strain on the relations between the two countries. In order to access Lesotho water resources, the South African Apartheid Government assisted the military to topple the then Prime Minister Jonathan.

Economically, South African has always been a giant compared to Lesotho though Lesotho citizens have contributed immensely to the South African economy through mining and their contribution in various sectors of the economy. This is because many Lesotho professionals sought employment in South Africa due to better remuneration than Lesotho. The situation however has not changed as many Lesotho citizens are still employed in South Africa in all categories such as skilled, semi-skilled and unskilled professions. This migration has caused a lot of problems for the two countries because South African citizens complain that Lesotho citizens are stealing their jobs and settle for lesser wages.

Socially, both Lesotho and South African citizens will always relate to one another due to the ethnic bond that exists between the two countries. Basotho will always treat South Africa as their second home because they have family and friends permanently living in South Africa. This is the main reason why Lesotho citizens visit South Africa frequently apart from shopping. Since there are many villages along the Lesotho-Free State borderline on both sides, the residents of these villages co-exist and regard one another as neighbours. They attend the same public gatherings, celebrations, funerals and cross-over to the nearest social service provider when a need arises without difficulty.

Secondly, both Lesotho and South Africa encounter many challenges related to immigration. These challenges, for South Africa, include among others, large numbers of illegal migrants coming to seeking informal job opportunities (such as domestic service and gardening), xenophobia, and high unemployment rate for citizens as foreigners settle for lower wages. While for Lesotho these immigration challenges include poverty as a result of mine retrenchments whereby many Lesotho men who were bread winners lost their jobs in the mines. This gave birth to female migration whereby women left their families and went to South Africa in search for jobs to provide for their families.

Repatriation or deportation is another challenge that Lesotho faces because Lesotho citizens are deported back to Lesotho in large numbers due to their illegal stay in South Africa. Many Lesotho citizens especially those in the informal and labour intensive sectors, work and reside in South Africa without proper documentation. They are employed on a casual basis, have little or no opportunity to claim work related benefits and rights therefore not protected against exploitation. They are illegal immigrants and are legible for deportation.

Another challenge that Lesotho faces is that of dual citizenship. Many Lesotho residents who worked in the mines before and in 1986 were granted permanent residence permits together with their families. Holders of permanent residence qualify for citizenship after a certain period, as such many miners acquired South African citizenship without renouncing their Lesotho citizenship as required by the Constitution. This has been a great challenge because Lesotho does not allow dual citizenship and these miners upon retrenchment or retirement go back to their home country and expect to be treated as Lesotho citizens though they possess South African documents.

HIV/AIDS is yet another challenge that Lesotho faces as a result of cross border movement between Lesotho and South Africa. Lesotho's 23% HIV/AIDS prevalence rate is believed to be among the highest in the world and it is the only country in Southern Africa where there are more infected men than women. This happened because many Lesotho men were employed in the South African mines and they lived in hostels away from their families. Most of these miners engaged in extra-marital affairs and had more than one sexual partner exposing themselves to

sexually transmitted diseases such as HIV/AIDS. They then infected their wives in Lesotho with the virus, and the number of infected people increased. Due to these infections, many parents have died and left orphans.

Lastly, based on the discussions in the study, it is evident that the agreement is feasible. The agreement states that all South African and Lesotho citizens who wish to cross the border into either country has to possess a valid and authentic travel document. They will be exempted from reporting to immigration for examination and endorsement of entry and departure stamps unless there is suspicion of fraud or illegal activity. These citizens will be allowed to stay in one of the countries for holiday, business and transit for as long as they want, without any restrictions and their movement will not be recorded. Though exempted from immigration, all travellers still have to fulfil their customs, port health and agricultural obligations when entering either of the two countries. This agreement will however be operational only at the land ports of entry between Lesotho and South Africa and not airports.

Any citizen of the two countries (Lesotho and South Africa) who wishes to go to another country for purposes other than visiting shall be required to apply for the appropriate visa or residential permit at the diplomatic or consular mission. Holders of such permits shall also be exempted from reporting to immigration on entering or departing from the territory of the other country based on the validity of their permits.

Work permit holders will only report to immigration on their first entry after the issuance of their contract or permit. Their travel documents in which the contracts have been endorsed will be checked for validity and authenticity. Thereafter, they will be exempted from reporting to immigration until their contract expires. The same principle will apply to Diplomatic and Consular staff and their family members. Both Lesotho and South Africa, according to the agreement have to provide lists of people who may be excluded from the privileges of the agreement for reasons such as but not limited to security.

The two countries have committed themselves to clearly communicate the contents and conditions of the agreement to their citizens and third country nationals residing in their countries, so as to ensure compliance. There is need for education and awareness by the parties. In an attempt to protect the agreement from abuse, both parties have committed themselves to intensifying their patrols of the borderline, secure their national travel documents and other enabling documents against fraud and fraudulent issuing safeguard their national territories against abuse and secure improved cooperation and exchange of information at all levels. The parties agreed that any dispute between the two countries from the interpretation or implementation of this agreement shall be settled amicably through consultation or negotiations.

#### **5.4 Findings**

The study has revealed that both Lesotho and South Africa have strong historical, political, economic, social and cultural relations since time immemorial. The fact that Lesotho is an enclave of South Africa makes it difficult for these two countries to be separated from one another. Lesotho depends on South Africa for the supply of goods and services, and that is why Lesotho citizens cannot stay away from South Africa. They cross the border into South Africa both legally and illegally for various reasons such as shopping, work, study, medical purposes and to visit friends and relatives. There is evidence that Lesotho citizens travel to South Africa in large numbers especially through Maseru and Maputsoe/Ficksburg Bridges.

The Lesotho/South Africa border posts are regarded to be porous due to the fact that there is no physical boundary that separates the two countries. Along the Free State-Lesotho border, an erected fence serves as a boundary, while in some instances it is a valley or a river that separates the two countries. Lesotho citizens just cross the river, valley or the fence to get into South Africa. It is therefore not easy for South Africa to keep Lesotho citizens out of South Africa as some authors have argued. For a long time residents of the Lesotho and South African villages along the border have lived harmoniously, their children attend the same schools; get health and other basic services, for example, on either side of the border. One such instance is Bebeza village in South Africa and Dili-Dili in Lesotho (along the Eastern Cape and Lesotho

border), these two villages are separated by a small valley and their residents coexist and have become one huge community.

There is a lot of labour migration occurring between Lesotho and South Africa. Many Lesotho citizens travel to South Africa in search for better job opportunities. It has also been discovered that many Lesotho nationals have contributed to the South African economy through the mining sector and many different professional sectors. This is because many Lesotho professionals preferred to work in South Africa as compared to Lesotho because remuneration is higher in South Africa than in Lesotho. Lesotho has also been a great exporter of labour for the South African gold mines; more than hundred thousand Lesotho men were employed in the mines. Lesotho benefited from the remittances from South Africa and the wages these men brought back home to support their families and engage in agricultural activities. This helped Lesotho to become self-sufficient as it produced more than enough agricultural products that it was able to export the surplus.

However, with the mining retrenchments that affected mostly Lesotho citizens, agricultural production declined as it was supported by mine wages as a result, many households have been struck with poverty. This gave birth to a new form of migration, which is female migration. Women were forced to leave their families and seek employment in South Africa in order to avoid poverty. They work as domestic workers or seasonal farm workers while some engage in informal trade in order to support their families back in Lesotho. The study revealed that there is indeed a lot of movement taking place between Lesotho and South Africa.

The study further revealed that although Lesotho and South Africa have signed the agreement in 2007, South Africa had its own reservations in as far as implementation is concerned. Lesotho has always been ready for the implementation of the agreement but was held back by their partner in the agreement. In 2010, South Africa revealed their security concerns and urged Lesotho to address them so as to pave way for implementation. Lesotho on the other hand has successfully addressed the issues that South Africa raised through the population register, identity cards, electronic passports and the electronic border management system though it is not yet complete.

Following Lesotho's initiative in allaying South Africa's security concerns, South Africa through its Home Affairs Minister Malusi Gigaba recently announced that a decision was made to regularise the illegal stay of Lesotho citizens in South Africa, normalise Lesotho citizens that fraudulently acquired South African documents and to simplify cross border movement between the two countries. This regularisation would be done through the introduction of the Lesotho Special dispensation, which is set for implementation in 2016. Under this dispensation, Lesotho citizens would be granted special permits for work, business and study purposes. The arrests, detention and deportation of undocumented or illegal Lesotho migrants would be suspended under this dispensation.

The new cross border system whereby Lesotho passports would only be scanned and not endorsed would be introduced across all border posts during the last quarter of the 2015/2016. This system will be gladly received by Lesotho citizens following the stoppage of six months border concessions in 2010. It will also benefit frequent travellers as their passports will not be stamped every time they cross the border. The two countries have agreed to collaborate in capturing and storing of information so that security cannot be compromised.

Another milestone in relation to cross border movement between Lesotho and South Africa was reached whereby the Lesotho Minister of Social Development Mr. Molahlehi Letlotlo and his South African counterpart signed a Memorandum of Understanding (MoU) on 7 October 2015 in Bloemfontein, South Africa to enhance cross border cooperation on the movement of vulnerable groups such as women and children. The main aim is to stop the trafficking of children, women and other vulnerable groups. The final agreement would be signed at a later stage after it has been aligned with laws of the two countries.

## **5.5 Recommendations**

Since there have been new developments in relation to the free movement of people between Lesotho and South Africa whereby South Africa has decided to review its policies and treat

Lesotho citizens differently, it is therefore recommended that both countries especially South African Government should be serious and stay true to their promises and not repeat what happened with the agreement whereby the Minister signed on behalf of the South African Government but later changed their mind without informing their partner. The announcement was happily received by Lesotho citizens so it would be a major blow if this did not happen.

There is a need for awareness in relation to the terms of the Lesotho Special Dispensation and the permits that will be offered to Lesotho citizens. Lesotho citizens staying and working in South Africa need to be informed and made aware of the changes that will occur so that they may regularise and legalise their stay in South Africa. Also, those who fraudulently acquired South African documents need to be educated so as to come forward and return the documents. Lesotho Government has to make sure that every Lesotho citizen has access to passports by means of affordability so as to reside legally in South Africa.

Since both Lesotho and South African Governments have committed themselves to ensuring that security is not compromised by collaborating in data capturing and storing of information, there is need for Lesotho Government to ensure that automation of all fourteen border posts is completed so that every traveller leaving and entering the country can be captured by the immigration system. When the traveller's information has been captured and stored into the system, it will be easy to share the information with South Africa.

The study has revealed that the borders are porous and that there is a problem of staff deployed at the borders, based on these findings, it is recommended that additional staff that is more better trained be deployed at the borders. Due to the apparent reality of various cross border crimes, such as human and drug trafficking, money laundering, car and stock theft to name a few, there is a need for intensive training for immigration officials so that they can be able to identify criminals as well victims through body language and be able to assist those that need help through victim support system. There is also a need for the strengthening of the criminal justice system of Lesotho as a means to deal with human traffickers.

There is also a need to enhance the already existing bilateral relations between the two countries, which provide a platform to address the different challenges that both countries face. Also, there is a need for cross border cooperation between borderline villages so that residents from these villages can work together to fight crime such as stock theft which is a concern among borderline residents as it has recently escalated. Cross border cooperation will ensure that thieves are apprehended and stolen stock is returned to the rightful owners.

## **5.6 Conclusion**

This study was aimed at exploring the reasons why the agreement on the facilitation of free movement of people between Lesotho and South Africa has not been implemented. A number of reasons were identified by the study though it is evident that not much research has been done, that is, directly related to this study. However, the obstacles for the free movement of people among SADC member states were identified as fear for increased unemployment, possibility of increased illegal immigrants, unnecessary pressure on social services, security concerns, and the possible spread of diseases like HIV/AIDS. Some of these identified obstacles were identical to those found to be the cause for non-implementation of the agreement of free movement of people between Lesotho and South Africa. It is therefore hoped that finally, freedom that Lesotho citizens have been promised will come to pass.

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**AGREEMENT BETWEEN**  
**THE GOVERNMENT OF THE**  
**KINGDOM OF**  
**LESOTHO**  
**AND**  
**THE GOVERNMENT OF THE**  
**REPUBLIC OF SOUTH AFRICA**  
**ON**  
**THE FACILITATION OF CROSS**  
**BORDER MOVEMENT OF**  
**CITIZENS OF**  
**THE KINGDOM OF**  
**LESOTHO AND THE REPUBLIC OF SOUTH**  
**AFRICA**

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**PREAMBLE**

The Government of the Kingdom of Lesotho and the Government of the Republic of South Africa (hereinafter jointly referred to as the ("Parties" and separately as "a Party");

**RECALLING** that the Parties subscribe to the objectives of closer cooperation for mutual benefit as enshrined under Article 2 (7) read with Article 9 of the Kingdom of Lesotho / Republic of South Africa Joint Bilateral Commission of Cooperation signed on 19 April 2001;

**GUIDED** by the discussions held between the Parties regarding the facilitation of the movement of their respective citizens across the border;

**RECOGNISING** the geographic proximity and socio-economic interdependency that bind both countries;

**INSPIRED** by the aspiration to strengthen and intensify the existing close relationship among the citizens of both countries;

**BEING MUTUALLY DESIROUS** to deliver on improved service regarding the immigration clearance of their citizens who routinely cross the common border; and

**IN ORDER** to minimize the escalating costs;

**HEREBY AGREE** as follows:



**ARTICLE 1  
DEFINITIONS**

In this Agreement, unless the context indicates otherwise—  
"designated land ports of entry" means the approved ports  
of entry along the common land border between the Parties;

"examination" means the process of measuring a person's  
compliance with all the entry and departure requirements;

"relevant legislation" means the immigration laws in force in  
the countries of the Parties.

**ARTICLE 2  
REGULATION OF ENTRY AND DEPARTURE**

(1) The respective citizens of the Parties who hold valid national  
passports shall be permitted to enter into and depart from the  
territory of the other Party at the agreed and designated land  
ports of entry on their common border without having to report  
to an immigration officer for examination, provided they comply  
with the requirements of Articles 2(5), 3 and 5.

- (2) Such citizens shall only report to the immigration officers or any other duly appointed official in command of the perimeter gates of the respective countries' ports of entry for purposes of verification of the validity and authenticity of their national passports prior to admission to and departure from the territory of the other Party.
- (3) Notwithstanding the provisions of sub-Articles (1) and (2), an immigration officer may for good cause subject a citizen of the Parties to an examination as contemplated in Article 1.
- (4) No entry and departure stamps shall be endorsed in the passports of such citizens at these land ports of entry and their individual movements shall not be recorded.
- (5) The Parties shall permit such *bona fide* citizens to enter and sojourn in their respective countries for the purposes of holiday, business and transit, without visas and / or temporary residence permits.

### ARTICLE 3

#### TEMPORARY AND PERMANENT RESIDENCE PERMITS

Citizens of the Parties who wish to enter the territory of the other Party for purposes other than visiting shall be required to apply for the appropriate visas or permits at the Diplomatic or



Consular Mission of the other Party in accordance with relevant legislation, whereafter they shall, subject to the domestic laws in force in their respective countries also be exempted from reporting to an immigration officer for examination on entering or departing from the territory of the other Party whilst such visas or permits are valid.

#### ARTICLE 4 LABOUR AGREEMENT

Citizens of both countries whose employment in the territory of the other Party falls within the purview of the 1973 Agreement relating to the Establishment of a Lesotho Labour Office and the Movement of Persons across the Common Border, or any other Agreement in force governing labour issues between the Parties shall, subject to the domestic law in force in their respective countries, report to an immigration officer for examination only on their first entry after the date of issuance of each contract.

#### ARTICLE 5 DIPLOMATIC AND CONSULAR STAFF

- 1) The procedure for obtaining visas or permits for representatives accredited in the territory of the other Party and their dependents

(2) The Parties shall facilitate the movement across the common border of such representatives and their dependents as referred to in sub-Article (1) by exempting them from the need to report to an immigration officer for examination on entering or departing from the territory of the other Party for the duration of their accreditation.

(3) Such representatives shall report to the immigration officers of the respective countries' designated land port of entry for purposes of verification of the validity and authenticity of their national passports and their visas or permits as may be relevant.

#### ARTICLE 6 EXCLUSIONS

(1) The Parties shall exchange lists of names of any individual citizens who may be excluded from the privileges of this Agreement for reasons such as, but not limited to, security.

(2) This Agreement shall not—

(a) exempt the citizens of the Parties from observing the Customs, Police and other requirements. Such citizens are also not exempt from the provisions of current or future extradition treaties.

- (b) apply to citizens of the Parties who enter and/or depart from their respective territories through designated international airports;
- (c) extend to citizens of the Parties wishing to cross the common border at any place other than the agreed and designated land ports of entry;
- (d) apply to persons who are not citizens of the Parties.

**ARTICLE 7**  
**ADDITIONAL ANNEXES**

The Parties shall develop such annexes as maybe deemed necessary to facilitate the implementation of this Agreement and such annexes shall form an integral part of this Agreement.

**ARTICLE 8**  
**COMMUNICATION AND COMPLIANCE**

- (1) The Parties shall clearly communicate the terms and conditions of this Agreement to their respective citizens, as well as to third country nationals residing in their respective territories.
- (2) The Parties shall monitor the compliance of their respective citizens with the terms and conditions of this Agreement.

*MS*

*AS*

**ARTICLE 9**  
**SAFETY AND SECURITY**

In order to further protect the other Party from possible abuse of this Agreement, the Parties shall *inter alia* intensify their patrol of the borderline, secure their national passports and other enabling documents against fraud and fraudulent issuing, safeguard their national territories against abuse and ensure improved co-operation and exchange of information at all levels.

A task team established by the Parties shall develop an implementation framework to address any security issues that may arise from the implementation of this Agreement. The implementation framework shall be adopted by the Joint Commission established in terms of the 2001 Joint Bilateral Commission of Cooperation Agreement between the Parties.

**ARTICLE 10**  
**SETTLEMENT OF DISPUTES**

Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiations between the Parties.

**ARTICLE 11**  
**ENTRY INTO FORCE**

This Agreement shall enter into force on the date on which the Parties have notified each other in writing through the diplomatic channel of their compliance with their respective constitutional requirements necessary for the implementation of this Agreement. The date of entry into force shall be the date of last notification.

**ARTICLE 12**  
**AMENDMENTS**

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

**ARTICLE 13**  
**DURATION AND TERMINATION**

- (1) This Agreement shall remain in force until terminated by sub-Article (2).
- (2) This Agreement may be terminated by either Party giving three months written notice in advance through the diplomatic channel of its intention to terminate it.



Annexure 2: Editing Letter

**ARTICLE 11**  
**ENTRY INTO FORCE**

This Agreement shall enter into force on the date on which the Parties have notified each other in writing through the diplomatic channel of their compliance with their respective constitutional requirements necessary for the implementation of this Agreement. The date of entry into force shall be the date of last notification.

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