

## 2.0 LITERATURE REVIEW

### 2.1 BACKGROUND

#### 2.1.1 Geographical Setting

Lesotho is a land locked country covering approximately 30 344 km<sup>2</sup> between 27<sup>0</sup> and 30<sup>0</sup> East and about 28<sup>0</sup> to 32<sup>0</sup> South in the southern part of Africa. Most of the country lies within the Drakensberg or Maloti Mountains, which range from about 1 500 to 3 500 metres above sea level. The climate is temperate, characterised by warm moist summers and cold dry winters. Snow is common in the mountains for several months during winter and it occasionally snows in the lowlands. The daily temperature variation is high, ranging from 15<sup>0</sup>C in summer to 18<sup>0</sup>C in winter (FAO, 2000; Majoro et. al., 1999; GoL and UNICEF, 1994)

The country is subdivided into four major physiographic and agro-ecological zones. The 'lowlands' form a narrow strip on the western side, ranging between 1 500 and 1 800 metres above sea level. Most of the crop production and major urban centres are found in this region. The lowlands also accommodate about 80 per cent of the total population (FAO, 2000).

The foothills range between 1 800 and 2 000 metres above sea level and cover about 8 per cent of the total area. The mountains, starting at about 2 000 metres above sea level, constitute the sub-alpine and alpine ecological zones mainly used as summer grazing. The valley along the Senqu (Orange) River is mainly a grassland area with shallow soils.

Mean annual rainfall increases with altitude, with the lowlands averaging from 600 to 900 mm and the mountains between 1000 and 1300mm.

According to projections the population density in Lesotho for 2000 is 61 people per km<sup>2</sup> compared to 53 in 1986. Latest estimates are that 9 per cent of land is arable compared to 13 per cent in 1976 due to increased soil erosion and encroachment of settlements on arable land as a result of population pressure (GoL, 2000). This has also contributed to landlessness as indicated in table 1.1

**Table 1.1: Lesotho's National Rural Households and Landlessness**

Year	Total Number of Households		Landless %
	With Land	Without Land	
1970	212,866	26,919	13
1980	239,216	52,443	22
1990	229,292	126,947	55

*Source: NES, 1999; Ministry of Agriculture, 1994*

Current figures from the census and government reports indicate that landlessness stood at 32.9 per cent in 1996 (GoL, 2000).

## 2.1.2 Structure of the Economy

For most of its post independence history, Lesotho's gross domestic product (GDP) has never exceeded 54 per cent of its gross national product (GNP) and it has relied on a limited number of sectors (Table 1.2).

**Table 1.2: Lesotho Economy 1994-1999 (per cent share of GDP)**

Sector	1994	1995	1996	1997	1998	1999
Construction	18.9	19.8	19.0	18.2	15.8	17.9
Agriculture	17.4	17.2	18.2	16.0	17.4	16.9
Manufacturing	15.7	15.4	16.1	15.9	17.2	16.4
Public Administration	6.8	7.6	7.4	7.6	9.0	9.2
Education	8.4	9.0	8.8	8.4	9.4	9.0
Wholesale, Retail and Repairs	9.0	9.0	8.9	9.2	9.0	8.2
Other	23.7	21.9	21.7	24.7	22.2	22.4

*Source: FAO, 2000.*

Construction (which comprises government supported infrastructure projects and construction on the Lesotho Highlands Development Project) agriculture, and manufacturing are the main sectors of the domestic economy accounting for more than half of GDP. The balance constitutes a variety of private and public sector services ranging from business to education services.

The unemployment rate is high and probably exceeds the 40-45 per cent usually quoted in official documents. Sechaba Consultants (2000) for example, reported an increase in unemployment from 45.6 per cent in 1993 to 50.8 per cent in 1999. A possible explanation could be the decline in migrant labour and retrenchments on the South African mines.

Lesotho normally operates on a relatively huge trade deficit that rose from 2.1 billion Loti in 1991 to about 3.6 billion in 2000. To offset this burden government has relied on revenue generated from migrant labour. This has been declining following retrenchments on the mines. The situation deteriorated further following the 1998 political crisis when a number of businesses were completely destroyed. This not only deprived the government of revenue but also increased unemployment. For example, growth in real GDP in 1996 and 1997 was recorded at 10.0 and 8.1 per cent respectively, while growth in real GNP came to 9.4 and 5.4 percent respectively. In 1998 the economy, measured through real GDP, contracted by 4.6 per cent, followed by 2 per cent growth from this smaller base in 1999. Real GNP on the other hand remained depressed having declined by 9.7 per cent in 1998 and a further 1.7 per cent in 1999 due to that crisis (FAO, 2000).

Sechaba Consultants (2000) show that migrant labour employment declined by about 11 per cent between 1993 and 1999 while real gross earnings fell by 1.4 per cent per annum. A phenomenon such as the AIDS pandemic that demands significant resources compounds this situation. Studies indicate that since resource allocation is skewed towards urban people, rural people suffer most. For example, the Human Development Profile Survey revealed that although mountain communities constitute 22 per cent of Lesotho's households they receive only 11 per cent of total cash income (FAO, 2000). The survey estimated that 54 per cent of these rural people live below the poverty threshold and rely on food aid (Ministry of Economic and Development Planning, 2000). In 1995 for example, food aid amounted to US\$9.05 million while emergency and relief assistance reached about US\$0.5 million (UNDP, 2000). Current estimates are that 33 per cent of children under the age of five are stunted and 15.8 per cent are undernourished as a result of quantitative and qualitative food shortages (Ministry of Economic and Development Planning, 2000). Unemployment is considered a direct cause of rural poverty and female-headed households constitute about 40 per cent of total poverty in the country (FAO, 2000).

### **2.1.3 Demographic Information**

Lesotho's population is estimated at 2.1 million, with 51 per cent females. It is growing at the rate of 2.1 percent per annum. Although the life expectancy rate for females increased from 53 years in 1986 to 58 years in 1998, while the rate for men remained almost constant at 57 years during the same period, HIV/AIDS and related diseases will soon lower these figures. During the same period infant mortality rates increased from 60 per 1 000 to 74 per 1 000, while maternal mortality rates stagnated at 282 per 100 000 people despite increased government efforts to improve the health services and immunisation (GoL, 1998; FAO, 2000).

The FAO reported in 2000 that the HIV/AIDS situation is inflating adult mortality and morbidity rates in the country (FAO 2000). The report points out that labour force participation rates have decreased from 47.6 per cent in 1976 to 40.7 per cent in 1996. The total number of economically active people aged ten years and above was 573 064 in 1996. The majority of them (445 840) were in the rural areas. In 1996 there were 743 811 economically inactive people.

### **2.1.4 Health Services**

Health services in Lesotho are organised through the Health Service Area concept. These are designated geographical areas with populations ranging between about 38 000 and 225 000 people per Health Service Area Hospital (HSAH). The HSAH is responsible for supervising all training at health centres and implementing primary health care in its area of jurisdiction. By 1994 there were 19 Health Service Areas, the 19<sup>th</sup> being the Lesotho Flying Doctor Service that serves 12 very remote and inaccessible clinics. Government hospitals have a ratio of 5 000 to 13 000 patient days per doctor and between 11 000 to 28 000 outpatient attendances per doctor (GoL and UNICEF, 1994). Due to increased morbidity as a result of HIV/AIDS related diseases this picture is expected to worsen. Currently there are 160 health centres with 52 per cent government owned the rest managed by NGOs (GoL, 2000).

The full immunisation rate had reached 67 per cent by 1996. In 1998 the doctor population ratio was 1 to 16 548; the hospital bed population ratio stood at 1 to 846; the nurse population ratio at 1 to 2 340 and the doctor nurse ratio at 1 to 7 (GoL, 1998). Clearly the HIV/AIDS crisis will stretch resources even further.

## **2.2 HIV/AIDS IN LESOTHO**

The evidence shows that sub-Saharan countries are most heavily affected by the HIV/AIDS pandemic and Lesotho is no exception. Since the identification of the first HIV/AIDS case in the late 1980s the infection and death statistics have risen at an alarming rate. Various factors have contributed to this picture and the consequences affect different sectors and groups in society in different ways. The link between HIV/AIDS and land issues in Lesotho is particularly important as Lesotho is an agrarian society and the majority of people (80 per cent) depend on the land for their livelihoods.

### **2.2.1 Prevalence, Magnitude and Trends**

The first HIV/AIDS case in Lesotho was identified in 1985. By the end of the decade the number of adults living with HIV had risen to 5 585 (Ministry of Health and Social Welfare, 1998; 1999). In 2000 there were 108 174 people living with HIV/AIDS. These statistics point to the uncontained spread of the virus and its devastating impacts. This is particularly so because the statistics refer to

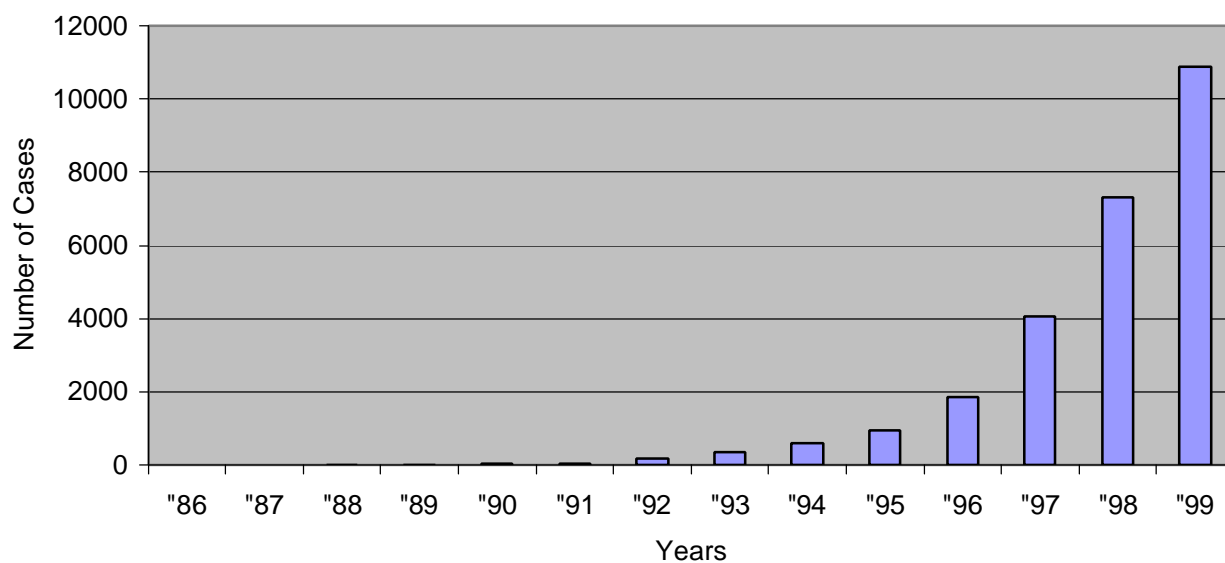
people aged between 15 and 49 and do not include younger people, especially children who are born infected.

**Table 3.1 Estimated Course of HIV/AIDS in Lesotho**

Year	New HIV infections among adults	Estimated number of adults living with HIV (exclude AIDS)	New AIDS cases among Adults	Cumulative number of AIDS cases among adults
1985	2	2		
1986	32	34		
1987	188	222		
1988	646	868	3	3
1989	1 606	2 455	15	18
1990	3 185	5 585	55	73
1991	5 357	10 786	157	230
1992	7, 943	18 362	367	597
1993	10 665	28 286	740	1 337
1994	13 212	40 176	1323	2 660
1995	15 316	53 346	2 145	4 805
1996	16 793	66 926	3 213	4 805
1997	17 559	79 982	4 503	8 018
1998	17 623	91 644	5 961	12 521
1999	17 068	101 204	7 509	18 521
2000	16 022	108 174	9 052	25 991

The number of new cases of HIV infection identified among adults each year has escalated from 2 in 1986 to 16 022 in 1999. Full-blown AIDS cases have risen from 1 person in 1986 to 7 317 in 1998 (Ministry of Health and Social Welfare, 1998).

**Cumulative AIDS Cases in Lesotho, 1986-1999**



The majority of people in Lesotho live in the rural areas. At present AIDS is more prevalent in the more urbanised lowland areas than the mountain areas, but the gap between urban and rural areas is narrowing.

Available evidence shows that more than 50 per cent of all reported AIDS cases are in the 20-39 year age group. The majority of cases in this age category are female, although amongst people aged 40 to 59 there are more male cases. In the younger age group (15-19) there are also more females than males infected with HIV. Overall the virus affects men and women equally although the factors that contribute to their rates of infection vary.

### **2.2.2 Driving Forces**

There are biological, behavioural, socio-cultural and economic explanations for both age and sex differentials among those infected with the virus (UNDP, 1998; Government of Lesotho, 2000). The fact that there are more females than males is partly explained by biological characteristics that make females more vulnerable to infection than men where safer sex is not practised (Ministry of Health and Social Welfare, 1999; Committee on World Food Security, 2001). These include the fact that in heterosexual activities they receive male semen, which may remain in their bodies for some time, thus increasing their chances of infection. The hormonal changes that affect the uterine wall during menstruation also increase women's susceptibility to infection.

At the social level it is argued that females generally experience sexual relationships earlier than males and, most importantly, they sometimes have sex with much older men who are more sexually experienced and have a number of past or current sex partners. This is the case both in and outside marriage. Sometimes, because of economic hardships and poverty, women engage in sex for economic favours. In African societies young women and girls dominate commercial sex. Patriarchy and the feminisation of poverty have therefore been blamed for the skewed distribution of AIDS cases between males and females.

The myth of monogamous relationships and false trust between regular sex partners and married couples are also responsible for high infections among women in general and married women in particular. For example, of the 2401 AIDS cases reported in Lesotho in 1998 about 62 per cent were married. Housewives accounted for 29 per cent of these cases, making up the majority of all occupational categories. It is argued that the cultural and socio-economic status of women in society make them vulnerable to infection by the virus because power relations in the social structure limit their choices and decisions regarding sex partners and safer-sex practices.

Population mobility is considered to be one of the contributing factors to the spread of HIV. For example, evidence points to high prevalence of the disease (23 per cent) amongst current mineworkers and people with a history of mine work. In South Africa truckers have also been found to be at high risk associated with prolonged absence from home. Rural-urban, urban-rural and international migration by men to South African mines are all important factors explaining the similarities between prevalence in rural and urban areas. The resulting linkages have narrowed the gap between the two sectors, increasingly defying the rural/urban dichotomy emphasised in classical literature, which was a premise of most research in the past. However, with more than 58 per cent of the population in the lowlands these districts have high HIV/AIDS statistics. Maseru, the capital, has the highest number of reported cases while Mafeteng has the highest rate of AIDS in the country at 348.6 per 100 000 people, more than double the national average of 158.7 per 100 000 people.

There are marked differences between the ten districts of Lesotho. The lowland districts show the highest prevalence rate with Maseru, Mafeteng, Leribe and Botha Bothe in descending order of

magnitude. These districts tend to have higher numbers of mineworkers and are more urbanised. Among the mountain districts, Thaba Tseka has the highest number of new AIDS cases registered annually due to its proximity to the Lesotho Highlands Water Project where there is a high influx of people and an increased rate of urbanisation.

### **2.2.3 Government and NGO Awareness Efforts**

There is vibrant collaboration between government and local and international NGOs in Lesotho on development matters, especially health. These agencies have made efforts to combat HIV/AIDS, though admittedly they have come too late, and there has been little effort to ameliorate the impacts of the disease.

Awareness campaigns by various NGOs coordinated by the Ministry of Health were one of the earliest responses to HIV/AIDS. The Disease Control and Environmental Health Division in the Ministry of Health has used educational documents and radio programmes to reach people. During the 1990s when these campaigns peaked there were also Knowledge, Attitude, Beliefs and Practices (KABP) studies of adolescents and adults. These efforts are believed to have informed people about AIDS, However, they have not translated into behaviour change as evidenced by the continuously increasing infection rates among the sexually active categories. The campaigns target various groups, including stakeholders and the “most vulnerable groups”, for example traditional healers and youth including herd boys (GoL, 2000).

National efforts include AIDS commemoration days and, recently, campaigns by the Prime Minister and the First Lady. Civil society has participated formally and informally in these campaigns through the use of drama, songs and fun walks. Generally these efforts have been ad hoc and disjointed and have not been sustained.

### **2.2.4 Impacts of HIV/AIDS**

The impacts of the pandemic are visible at various levels of society. Contrary to the view when it first emerged that it was a medical problem, HIV/AIDS is today considered the major developmental challenge for Africa (Mupedziswa, 1998). Its impacts are economic, social and psychological in nature. It affects individuals, households, communities and nations in varying degrees.

#### **2.2.4.1 Economic Impacts**

There are no studies that have addressed the impact of HIV/AIDS on the economy of Lesotho, but demographic trends suggest that the pandemic has changed the population structure in southern African countries. They suggest low population growth rates and increases in the younger and older age groups that are not economically active, while those in the economically active middle age groups are decreasing. The economy needs labour, basically the product of population growth, to operate efficiently.

The likely impacts of the epidemic on the economy can be inferred by looking at the groups mainly infected. Globally, “AIDS affects mostly the economically productive age groups since they are the most sexually active....” (Mupedziswa, 1998:22). Clearly labour is at serious risk because it has been found that apart from loss due to high mortality, AIDS also affects the productivity of available manpower through absenteeism (Mupedziswa, 1998). Thus, death and long-term illness incapacitate the labour force (Barnett. 1999).

Savings and investments are also affected by medical and funeral costs and losses made by medical aid and insurance companies and employers. This means that institutional capacity is lost due to AIDS. In 1998, 9.4 per cent of university and college blood donors were found to be HIV positive (Ministry of Health, 1998).

#### 2.2.4.2 Social Impacts

The literature shows that women in general are the most affected group (UNDP, 1999). There are also major affects on female youths. The impacts of AIDS on young people can be understood in the context of the family, which is considered to be the primary agent of socialisation and source of support. More and more children are deprived of development within the conventional family setting and some are forced to grow up in care-providing institutions or with foster parents.

In the sub-Saharan countries this poses a serious problem because the state is seriously handicapped as a provider of social welfare due to the economic crisis facing most African countries, especially as a result of structural adjustment policies. Economic constraints at household level compel young people to migrate to places where they are vulnerable and where sexual exploitation becomes a survival strategy (UNDP, 1999).

In Lesotho the family structure is already undermined by the migrant labour system and urbanisation. Because it leads to chronic illnesses and ultimately death, HIV/AIDS has added a new dimension to this phenomenon, negatively affecting household assets and incomes, reducing labour and increasing poverty.

#### 2.2.4.3 Household Impacts

The UNAIDS Review of household and community responses to the HIV/AIDS epidemic in the rural areas of sub-Saharan Africa analyses its impacts in terms of the mechanisms adopted by the affected households. It identifies various studies showing that households invariably shift from levels of endowment and capacity to levels of deprivation and destitution due to the disease. For example, Danahue (1998) is cited as indicating that households go through three stages of loss management strategies namely: reversible mechanisms and disposal of self-insuring assets; disposal of productive assets; and destitution (UNAIDS, 1999:18). AIDS has led affected families to adopt different coping strategies that include disposal of productive assets such as land, equipment and tools, reduction of the amount of land farmed, and changes in the types of crops farmed. These responses are detrimental to the welfare of households and have serious negative implications for sustainable livelihoods.

### 2.2.5 Migration and HIV/AIDS in Lesotho

Historically Lesotho's economy has depended on remittances from migrant labourers in the South African mining industry. This involved long-term absence of men from their family homes. It promoted temporary marriages and sexual relationships away from home. Access to cash income, through wages that normally remained the prerogative of men, enabled them to pay for sex while they were away. Today many of these migrants have been retrenched, some of them due to their AIDS status. When they first arrive home their status may be unknown and they have relatively large amounts of cash, which they use to obtain sexual favours. The result is that migration has contributed to the spread of the virus through the breakdown of cultural and religious values such as fidelity and no-sex-before-marriage (Government of Lesotho, 2000).

The economic crisis in Lesotho due to massive retrenchments in the 1990s has led to high levels of school dropouts and a boom in commercial sex by youth who migrate from the rural areas to places

where they can find clients. These include urban and tourism centres such as the Lesotho Highlands Water Project area. There has also been an increasing trend of young women migrating to South Africa following the retrenchment of miners – to a place notoriously known as Bekestaal – to “work” and then return home to die. These developments are some of the indicators of the historical dependence of Lesotho’s economy on remittances and the spectrum of social problems triggered by the collapse of this source of earnings. Despite their contribution to GNP over the years, the situation is exacerbated by lack of a coherent social policy targeting miners, and poor welfare services in the country.

### 2.3 LAND TENURE AND LAND POLICY REFORMS AND IMPLICATIONS FOR LIVELIHOODS IN LESOTHO

The institutional arrangements through which people access land and secure land rights are a primary concern for poverty eradication in rural areas where land is a basic livelihood asset, and the principal form of natural capital people use to produce food and earn a living (Quan, 2000). Land tenure arrangements become even more crucial for vulnerable groups in the society, such as people affected by HIV/AIDS. Their access to land presents them with opportunities to rent out or even sell land in times of hardship, thereby providing them with the needed financial security. By the same token this group and other rural poor can use land, which is a heritable asset, as a basis for livelihood security for future generations and orphans.

This notion of sustainable livelihoods refers to “an approach to maintain or enhance natural resource productivity, secure ownership of and access to assets and income earning activities, as well as to secure adequate stocks and flows of food and cash to meet basic needs ([www.undp.org/sl/Overview/an-overview.html](http://www.undp.org/sl/Overview/an-overview.html)). Livelihood refers to both economic and non-economic activities that households and members engage in to increase income, reduce vulnerability and improve the quality of life. It entails how people exploit resources and use assets and capacities. In this context livelihoods are regarded as assets, activities and entitlements that people use to make a living. Assets include natural or biological, social, political, human and physical resources. Table 3.1 below summarises the forms of assets according to the UNDP schema.

**Table 4.1 A summary of the asset components of livelihoods**

Asset type	Forms
Natural or biological	Land, water, common property resources, fauna, flora
Social	Community, family, social networks
Political	Participation, empowerment
Human	Education, labour, health, nutrition
Physical	Roads, clinics, markets, schools, bridges
Economic	Jobs, savings, credit

This approach recognises the link that exists between the means for living and the broader economic, political and institutional environment within which households constitute their coping and adaptive strategies under the impact of AIDS.

Traditionally in most sub-Saharan countries access to land was guaranteed by customary tenure systems governed by kinship and managed by individuals or families. Recently many African governments and international donors have attributed the problems of rural poverty, poor agricultural output and food insecurity to these farming systems based on customary tenure. Consequently a variety of approaches to land reform have been suggested. According to Adams, land reforms refer to a planned change in the terms and conditions on which land is held and transacted (Adams et al, 2000).



Approaches to land reform often vary from country to country depending on the problems that a particular country is trying to solve. The following are examples of tenure approaches that have been used in different countries in Africa:

- Land nationalisation, whose primary objective has been to assert the power of the state over traditional chiefs with the belief that they would act impartially in management and distribution of land (Quan, 2000).
- Tenure reform has entailed the introduction of formal titles, through granting of leases and freehold with the objective of promoting farm investment and land markets as a basis for agricultural development (Morapeli, 1990).
- According to Morapeli (1989), one of the most popular approaches to land reform has been land redistribution of private holdings to small producers under different forms of tenure and management.
- The more radical approach, according to Quan, (2000) has been collectivisation, which tried to promote cooperative associations of small producers by converting private to state farms. In most cases this entailed relocating people and dissolving customary rights to land.
- Lastly, the more recent approach to land reform has attempted to reaffirm customary rights by codifying customary law and registering customary rights on a kinship basis.

The justification for land reform is strongly supported by the economists (Williams, 1997), who argue that the contribution of land to economic growth depends on the security, duration and enforceability of property rights since these provide an incentive for agricultural investment and help develop markets to rent and sell land. This analysis has, however proved to be complex and has raised questions on the ability of economic growth to improve livelihoods strategies based on land rights, and to eradicate poverty and enhance food security. The complexity has been further compounded by the HIV/AIDS pandemic, which is likely to have far reaching implications for many countries.

This section examines the origins of land tenure and the debates on reform as a framework for identifying and evaluating the implications of proposed land policy reforms in Lesotho on the livelihoods of the people affected by HIV/AIDS.

### **2.3.1 The Evolution/Origins of the Current Land Tenure System in Lesotho**

Lesotho's customary law was first recorded as the Laws of Lerotholi at the turn of the last century. Land ownership was communal with land belonging to the King and administered by the chiefs on his behalf. Individuals or families held use rights for residential and arable land.

The law focused on giving rural households relatively equitable access to land based on the recognition that farming was the main source of livelihood for most rural communities (Phororo, 1979). Households used family labour to derive income and subsistence from the land.

Based on these characteristics many authors have argued that the customary tenure system provided security and enabled communities to engage in productive agriculture (Hoohlo, 1983, Mashinini, 1984; UNDP, 1993, Gattinara, 1984). Proponents applauded the system for its flexibility in allowing landholders to use informal transactions such as land loans and sharecropping to improve their livelihoods.

One of the provisions of the Laws of Lerotholi was that access to land was the birthright of the Basotho and allocating land to foreigners was prohibited. This provision, according to UNDP, (1993) helped Basotho to resist pressure from South Africa and the British to colonise and alienate land in Lesotho.

Though customary tenure was defended for its embedded guarantee of access to land for all Basotho, population pressure has left many individuals landless, thus increasing inequalities. For instance Maxwell (1991) estimated that the top 20 per cent of households own 53 per cent of land while the poorest own only 6 per cent of land.

The system was also thought to limit management efficiency since it depended on the personal qualities of hereditary office holders. Naturally some have been good managers while others were inefficient. Williams (1972) argued that farmers did not feel secure enough to make long-term investments on the land under this law, since the chiefs retained the right to revoke land and it could not be inherited. Defendants of the system dismissed the issue of insecurity on the grounds that land was rarely revoked, (Gattinara, 1984) and remained with the same families for a long time (Mashinini, 1984; Phororo, 1979; Mahao, 1991).

Ongoing controversy over the customary land tenure system eventually led many analysts, notably expatriates, to conclude that substantial reforms were necessary preconditions for progress in agriculture.

### **2.3.2 Provisions of the Current Land Tenure System**

The major objective of the Land Act of 1979 was to change the customary tenure system with its communal orientation and introduce a more individualised form of tenure (WCARRD, 1982; Hoohlo, 1983). It attempted to formulate a more development oriented land policy that would increase investment in land and farming through the following:

#### **2.3.2.1 Security of Tenure**

Landholders could apply for a lease on the land allocated to them. These leases are registered and are difficult to revoke unless the land is needed for public purposes. In this case compensation must be paid. It was argued that this increased security of tenure as holders could transfer their leases or obtain credit using the land as collateral.

Inheritance provisions introduced a system of succession to arable land. In the absence of a will the relatives of a deceased landholder inherit the land. This removes one of the limitations of customary tenure and enables progressive farmers to invest in land to increase productivity with the assurance that the returns will be theirs (WCARRD 1982).

#### **2.3.2.2 Equity**

The act upholds the equity principle embedded in customary law since individuals are free to apply for any vacant land and sub-leasing enables the poor to receive rents for land (UNDP, 1993). It also allows for progressive farmers to enlarge their holdings and for more formalised contractual arrangements such as partnerships and cooperatives (WCRRAD, 1982).

#### **2.3.2.3 Inheritance**

The act recognises widows as legal heirs to the land provided they do not remarry (Mashinini, 1998).

#### **2.3.2.4 Democratisation of Land Management**

The act ensures power sharing in land allocation matters between the chief, the Village Land Committee and Village Development Councils. However, Morapeli questions the willingness of the chiefs to relinquish their power and the ability of the committees to assert their authority (Morapeli, 1990).

### **2.3.3 Livelihoods/Survival Strategies**

The rural mountain communities of Lesotho are generally more inclined towards pastoral farming while the rural lowlands communities primarily practise rain-fed crop farming. These economic activities take into account the climatic and ecological characteristics of the two regions.

### **2.3.4 Sources of Livelihood**

Analysis of livelihood sources reveals that there is a spectrum of options, opportunities and constraints affecting the survival of rural households and communities. Traditionally rural communities depended on agriculture as the main source of livelihood. This consists of livestock farming and crop production mainly for subsistence. Farmers graze their livestock on communal rangelands and produce crops in open fields allocated to individual families under the Laws of Lerotholi.

The livestock they rear include cattle, sheep, goats, horses and donkeys. Different kinds of livestock have diverse economic and socio-cultural utility to households. Subsistence crop farming entails dry-land production of maize, sorghum, wheat, beans and peas. Yields in both sub-sectors are low. Cereal grains are affected by erratic climatic conditions, declines in arable land and consequent landlessness. Households also produce vegetables on a small scale in home gardens. Production is seasonal and is for household consumption. The decline in migrant remittances has had a negative effect on the agricultural sector. Loss of income from remittances has made it difficult for many rural households to invest in agriculture. Mining employment declined by 40 per cent from 127 300 in 1990 to 76 053 in 1998 (Ministry of Development Planning, 1998).

Agriculture faces serious constraints that are likely to intensify as a result of HIV/AIDS unless effective policy measures are adopted. The government has adopted crop and livestock diversification strategies to address food insecurity but these strategies have not considered the impacts of AIDS on labour in this sector. For example, labour intensive crop production strategies will be less effective given the debilitating effects of AIDS.

Apart from agriculture and remittances, livelihoods are also supported through wage employment in the urban areas, mainly in public services and manufacturing. Other informal activities include street vending and sale of traditional beer, which are mainly done by women (Sechaba Consultants, 2000). Returns from these activities are extremely low. Beer brewing is a strenuous activity because women have to get water and fire wood from a distance. Firewood is scarce due to high levels of resource degradation in the country and its links to the low yielding agricultural sector (Makoae et al, 2000).

### **2.3.5 Links Between Land Tenure and Livelihoods**

As indicated earlier, about 80 per cent of Lesotho's population lives in the rural areas and subsistence livestock and crop farming are the main economic activities (FAO, 2000). This suggests that land tenure is an important aspect of livelihoods. Fields are allocated according to customary law and provide the basis for household food production.

Over time peasant farmers have developed management strategies to provide adequate security over this essential source of livelihood. For example, the use of remittances and social capital to secure sharecropping arrangements between resource endowed and resource poor households has restrained application of the condition that land left fallow for two successive years can be reallocated. Vulnerable groups such as widows and the aged have benefited from these arrangements.

Rangelands and grazing rights are communal. Through the *mafisa* system households that do not have labour to herd livestock, or good pastures in their area lend their livestock to others who use the livestock and the products such as milk, while raising the progeny for the owner (Majoro, et al, 1999). This arrangement reflects how the land tenure system allowed households to adjust to changing conditions and respond to shocks by using social capital. The philosophy behind this form of tenure, although described as anti-development by some (Williams, 1972) assured sustainable livelihoods and household food security because ideally, land allocated to households remained in the same lineage for a long time.

### **2.3.6 Impact of HIV/AIDS on Rural Livelihood Strategies**

The advent of HIV/AIDS has placed pressure on households in rural sub-Saharan Africa. The most apparent impacts are the various forms of capital that households lose as a result of the epidemic. These losses lead to responses that are adopted to cope with the disease and survive. Some of these responses, which may include land sales, are negative and have serious repercussions for food security and sustainable livelihoods.

### **2.3.7 Food Security**

According to the FAO (1990), food security means that every individual has a sustainable food supply of adequate quality and quantity, so that nutrient requirements are satisfied and a healthy active life can be maintained. At household level food security refers to the ability of households to meet target levels of dietary needs for their members from their own production or through purchases (FAO, 1990; Tola, 1988; Swallow and Boris, 1988).

With more than 80 per cent of the population living in rural areas and 72 per cent of the labour force engaged in agriculture, AIDS is likely to pose a serious threat to the agricultural sector in Lesotho. Food production is labour intensive and still depends on rudimentary hand held implements. Two major realities dictate this situation: poverty in the form of low incomes, and terrain. Both morbidity and mortality decrease the labour force, (Committee on World Food Security, 2001) and affect agricultural activities through time lost to taking care of the ill and through illness and death. As Mupedziswa (1998:23) indicates, "In many African countries AIDS triggered funerals have already begun to drain household resources". Money used to purchase inputs goes on medical expenses and food from the market in order to survive. Loss of labour reduces yields and the amount of food available.

### **2.3.8 Poverty**

The HIV/AIDS epidemic coincides with a serious economic crisis on the African continent in general and sub-Saharan Africa in particular. In Lesotho more than 50 per cent of people living below the poverty line are in the rural areas, with the worst poverty in the mountain areas (Ministry of Finance and Economic Planning, 1996). Poverty stricken households and communities will suffer most from AIDS because responses to the disease will lead to the rapid loss of resources needed for survival, deepening poverty in the affected household.

### **2.3.9 Land Sales/Land Conversions**

Land is the essential resource in an agrarian economy. However, with poverty diminishing choices and increasing vulnerability, HIV/AIDS can trigger anti-development behaviours and shortsighted actions that lead to loss of access to land. While everybody is at risk of contracting HIV, not all people will be infected at the same time. Faced with crisis families may surrender their title to land to those with money in order to secure short-term survival. One sees a bleak future full of calamities, diseases, incapacitated labour, greed, hunger and food insecurity.

## **2.4 LAND TENURE REVIEW DEBATES**

Since the enactment of the 1979 Land Act two Land Review Commissions have investigated and reviewed land tenure arrangements and their administration under the existing land policy. These commissions were also required to suggest and advise the government on changes in the legislation to improve the management, use control and conservation of Lesotho's land.

### **2.4.1 The 1987 Land Policy Review**

The commission highlighted a number of deficiencies ranging from mismanagement of arable and grazing lands to inability of households to invest in land improvement and soil conservation (Land Review Commission, 1987). It made the following recommendations to improve agricultural production, security of tenure, equality and inheritance:

- Formal and legalised sub-leasing by people who, through lack of resources, are unable to achieve potential production.
- Strict enforcement of sanctions to revoke allocations where farmers ignore good land use and refuse to remove noxious weeds.
- Introduction of taxes on agricultural lands.
- Introduction of grazing fees with the proceeds invested in funds to increase rangeland productivity.

Some of the deficiencies the Commission highlighted were rectified, but the legal, policy and institutional frameworks were not modified resulting in insignificant impact on the livelihoods of the rural poor (IIED, 2000).

### **2.4.2 The 2000 Land Policy Review**

The review proposes a number of reforms to current land policy (Mashinini 2000). Under the 1979 Land Act, land belongs to the Basotho nation and is held in trust by the King. The review recommends that the state hold land in trust through the National Land Council operating through District Land Boards and Local Land Boards.

It further proposes abolishing all laws that discriminate against women accessing land. This would entitle women to own land registered in their own names. The proposed land policy reform would also repeal all laws giving male heirs preference over women in access to land. The new policy also contrasts with the current land tenure system on inheritance and succession provision. For instance, under the 1979 Land Act land reverts to the family for reallocation after the death of the heir. The proposed land policy reform stipulates that on the death of the heir, a person nominated by the family has to be considered on merit by the Land Board for reallocation.

In an attempt to enhance agricultural productivity, the land policy reform proposes that land left fallow for two successive years automatically reverts back to the allocating authority. This is meant

to ensure that all cropland is used productively. The reform also proposes the identification of prime agricultural areas to be declared Selected Agricultural Areas (SAA). This land will be consolidated into block farms and will revert to the state, which will reallocate it for intensive commercial farming with a limit of one hectare per person.

The review proposes replacing customary tenure with transferable leasehold with a limit of three hectares of arable land per person. The basis for this proposal is that customary tenure is not conducive to efficient administration, security of tenure, high productivity and development.

To enable allotment holders to rent and sub-lease land and use it as collateral for credit the review commission proposes the development of land markets under leasehold tenure.

Lastly, the proposed land policy reform advocates a tax on all livestock grazing on communal lands and the establishment of Grazing Associations to manage rangelands. These associations would be given lease rights over the grazing areas (Land Review Commission, 2000).

While the issue of grazing fees has been very unpopular and a source of controversy, if the fees are ploughed back into improving rangelands they signify hope for the regeneration of Lesotho's disappearing rangelands. However, for the programme to succeed proper consultations with the stakeholders are needed.

The proposed lease rights over grazing areas would instil a sense of ownership, reducing the problems often associated with the tragedy of the commons.

## **2.5 THE IMPLICATIONS OF THE PROPOSED LAND POLICY REFORM ON PEOPLE AFFECTED BY HIV/AIDS**

Many authors have used sustainable livelihoods frameworks (Adams, Sibanda and Turner, 2000; Mashinini 1998; Phororo, 1979; Morapeli, 1990) to analyse the strength of particular systems of land tenure and land policy reforms and their impacts on agricultural production and the livelihood strategies of rural communities. However, few research efforts have attempted to redesign the frameworks to include the impacts of land tenure and land policy reforms on people and households affected by HIV/AIDS pandemic. This section will therefore examine the basic features of the proposed land policy reform in Lesotho and evaluate its implications on the livelihoods of the people affected by the pandemic.

### **2.5.1 Replacement of Traditional Authorities by the Land Boards**

One of the major departures of the land policy reform from the current land tenure system is the replacement of traditional institutions governing land with land boards to ensure more economically efficient land management and fair distribution and allocation of land. The potential of the land boards to bring about a more accountable pattern of land management is undeniable. For instance in Botswana the land boards have been noted as good examples of how traditional powers can be reined in by local structures resulting in a more efficient and fair distribution of land (Toulmin & Quan, 2000).

Nevertheless Morapeli (1990) questions the feasibility of such centralised bodies that often lack the on-site knowledge to make informed decisions at the local level. In contrast the chiefs' network of headmen, though in most cases unable to cope with land allocation problems under increasing population pressure, are in close contact with the day to day activities of the communities and relate with them on a more personal basis. This makes them more knowledgeable about problems of access to land faced by poor households and vulnerable groups such as those affected by

HIV/AIDS. This awareness might compel them to find solutions that would ensure efficient use of land without necessarily jeopardising the rights of landholders and worsening their situation, something that a de facto land board might not be able to effect.

The Committee On World Food Security (2001), however, cautions that these customary institutions can crumble under the pressure of high proportions of household affected by HIV/AIDS. The resulting situation may overwhelm the ability of traditional safety mechanisms to care for vulnerable groups. They also cannot replace the role of land boards in major land use decisions such as urban developments, and the setting up of irrigation schemes and Selected Agricultural Areas (SAA).

### **2.5.2 Women's Land Rights**

Protecting women's land rights is a commendable move that might present widows and orphans of HIV/AIDS victims with a more secure source of livelihood. Secure titles for women, who are more vulnerable in HIV/AIDS affected households, would make a big difference. This is because they are the ones who often care for the sick and dying, in addition to maintaining heavy workloads related to providing and feeding the households. For them secure title to land could mean access to money from renting and sub-leasing land.

However, the assumption that land rights will solve all the land-related problems women face is a gross simplification since in Lesotho women's rights of access are highly dependant on social ties that link them to land. Initially the changes brought about by the proposed land policy reform might upset the patrilineal customary norms and values by alienating them from their husbands' family and the community. This would deny them the social security often derived from the community. For women affected by the pandemic, isolation from the community might aggravate even further the stigmatisation associated with HIV/AIDS affected people.

### **2.5.3 Land Markets**

Converting customary rights to leasehold is likely to exacerbate the problem land markets represent for people forced by the pandemic into distress sales to meet increased spending on health care. While money from land sales will give these households some measure of financial security, it is likely to be temporary. The situation might also be open to exploitation by local elites with better access to legal information. The temptation to obtain advances in rent might be hard to avoid because of the impoverishment that often accompanies the disease. As a result HIV/AIDS affected households might end up indebted to the more progressive community members.

On the other hand, the development of the land markets might not enhance agricultural productivity as envisaged, since people who obtain land from the vulnerable groups might not necessarily be interested in agriculture. Instead they may either re-sell the land at a profit, or convert it to more profitable non-agricultural uses. As a result agricultural production might decline negatively affecting the livelihood strategies of rural communities, particularly members of poor and vulnerable groups whose nutritional status is crucial for effective treatment of HIV/AIDS. Sale of productive assets such as land might also aggravate inequalities, but even more devastating, AIDS orphans might be left destitute with no means of survival. This would have serious implications for sustainable livelihoods. Traditional systems on the other hand have, embedded within them, social security principles that could provide alternatives to land sales as a way of coping with the shocks characterising HIV/AIDS.

### **2.5.4 Conditions Against Fallow Land**

The proposal that land left fallow for two successive years be reallocated might have far-reaching implications for households affected by HIV/AIDS. In most cases these people cannot work on the land because of their failing health and inability to reach the remote fields.

Prolonged illness of members is likely to deprive such families of the capital needed for agricultural activities thus increasing their chances of being dispossessed. Additionally the delays in farming operations and abandonment of soil conservation measures because of the need to give priority to immediate survival needs might also worsen their situation.

### **2.5.5 Selected Agricultural Areas**

Economic arguments in favour of Selected Agricultural Areas (SAAs) and consolidation of smallholdings into large, possibly irrigated ones would admittedly eliminate the problem associated with small fragmented landholdings. However, such schemes often depend heavily on the government for finance, research and extension support. They also often require financial capital in the form of credit from lending institutions. For most HIV/AIDS victims, who are often considered credit unworthy by lending institutions, this move might mean automatic marginalisation and complete denial of land rights.

However even in cases where they obtain credit for agricultural purposes, they might easily divert it for medical care of sick relatives, funeral expenses and food, resulting in decline in income and defaults on loan repayments (Committee On World Food Security, 2001).

An examination of a scenario where HIV/AIDS affected people are incorporated in such schemes suggests that they might not have the physical strength to effectively participate in such intensive agricultural productions. Consequently SAAs might only benefit those not affected while depriving people affected by HIV/AIDS of the means of survival.

Argued from another angle one can say that small farms have a potential to provide a better spread of income and assets among the various groups. For example with small holdings it is easier to make arrangements through which affected people can gain access to land and its products even though they might not be able to work on it themselves. These include informal sharecropping (since the legalised one might have conditions that the vulnerable groups might not be able to meet), lending out land and gaining access to crop residues for their livestock. Moreover, increased agricultural productivity does not necessarily mean large holdings but can be attained by less labour demanding cash crops, in which the country has a comparative advantage, and by using improved production practises.

Participation by HIV/AIDS affected households in such schemes would assure them of income for food and medical expenses. Nevertheless switching from labour intensive approaches to less demanding ones might also lead to decline in a variety of crops and a change in cropping patterns resulting in decreased agricultural productivity.

### **2.5.6 Inheritance/Succession**

Entrusting the land boards with decision making powers to approve or reject heirs to land might have both advantages and disadvantages for the vulnerable group. For instance, it is highly likely that the health status of such groups might not meet the criteria laid down by the land boards. On the other hand, if the heirs are assessed objectively, the interests of the orphans are likely to be protected from opportunists who want to exploit them and cheat them of their inheritance. The families might also decline to nominate heirs to avoid rejection and continue operating under the



rights of the deceased. However, the prerequisite for success would be local based land boards with first hand information about the plight of HIV/AIDS affected people.

### 2.5.7 Grazing Associations

The land boards represent models of successful economic agricultural enterprises used to replace the traditional subsistence systems. Therefore they are unlikely to be drawn from the traditional institutions. However, the Grazing Associations are community based and cost effective reform structures with minimum social dislocation. They are more likely to be sensitive to the problems of rights and access to land of the HIV/AIDS affected households. Also, their non-discriminatory nature would ensure that the HIV/AIDS affected households remain part of them. Nonetheless, the proposed grazing fees, though low, might be unaffordable to the vulnerable groups.

The foregoing analysis suggests that changing the tenure system to meet the needs of the modern economy, while ensuring that the changes do not marginalize more vulnerable groups, will be challenging. Customary tenure systems may not be able to cope with changing socio-economic and environmental conditions, but at the same time it might not be feasible to adopt foreign models wholesale. More research is needed in order to make informed recommendations that will result in land policy reforms sensitive to the serious challenges posed for social policy by HIV/AIDS.

Government needs to adopt a land policy as a matter of urgency instead of relying on acts and laws that are often contradictory, ambiguous and silent on important issues.

## 2.6 LAND AND HIV/AIDS POLICIES IN LESOTHO

### 2.6.1 HIV/AIDS Policy

The Lesotho 1999 policy framework on HIV/AIDS Prevention, Control and Management currently provides direction on how to deal with the pandemic.

The policy has the following positive aspects or strengths:

- It is progressive and clearly recognizes the importance and contributions that can be made by scientific research and participation by the various sectors of society and human groupings.
- Its objectives include empowering women, youth and all vulnerable and disadvantaged groups. It also stipulates the need to protect such groups against HIV/AIDS and other sexually transmitted diseases (STDs) (Section 2.2).
- It tackles HIV/AIDS within a wider context by making other STDs part of this struggle (Section 2.2).
- It ensures government's commitment by making all Ministers, together with representatives of selected NGOs part of the National Co-ordinating Committee chaired by the Deputy Prime Minister. This committee is expected to meet quarterly.
- It stipulates the formation of the AIDS Task Force to advise the co-ordinating committee. The task force is supposed to be a multi-sectoral and multi-disciplinary group comprising technical staff from the fields of health, education, communications, social sciences, religion, law, human rights, economic development and social welfare. The chairperson and secretary of the AIDS Task Force will automatically be members of the National AIDS Committee (Section 3.3).

The policy embodies the following opportunities:

- It gives people living with HIV/AIDS the opportunity to actively and openly participate in information, education and communication forums to counteract complacency and denial about the magnitude of the country's HIV/AIDS problem. It also gives them the opportunity to become active participants, influencing decisions and directions taken (Section 3.4). Whether this opportunity will be used remains to be seen.
- It makes HIV testing mandatory for rapists and suspected rapists (Section 3.5). This should help to make informed decisions and implement effective measures for sentencing and isolating such elements. However, for the rest of the population testing remains voluntary and confidential.
- It provides for appropriate health facility based care for people with HIV related conditions and AIDS, including counselling (Section 3.6). Although this is a positive move it is doubtful whether there are sufficient trained counsellors at present or whether enough can be trained in time to address this issue, especially considering the escalating numbers of sufferers.
- It declares that HIV/AIDS and STD education will be integrated into school curricula at all levels (Section 4.3). Though positive, effective implementation will take time since it requires the retraining of teachers to deliver the message effectively. However, once it gains momentum it will be a useful strategy to combat the problem right from the early stages where young people are extremely active by assisting them to make informed decisions.

The policy has the following weaknesses:

- It is progressive in suggesting that efforts will be increased to improve women's access to accurate and comprehensive information and counselling on HIV transmission. Also that the government is going to review religious, legal and cultural traditions that impact negatively on women (Section 4.5). However, it doesn't stipulate how and when these things will be done.
- It points out that commercial sex workers will be targeted with appropriate information and education to empower them to use condoms at all times to protect themselves and their clients (Section 4.7). However, unless this type of work is legalised these efforts are unlikely to take root.
- It points out that if someone dies of an HIV/AIDS related illness, his or her surviving family members should not be denied full insurance benefits (section 4.12). This is positive but mainly affects urban middle class and rich people who have insurance policies. It does not mention other assets such as land, which affects the livelihoods of most rural people
- It advocates the protection of prison inmates from rape, sexual violence and coercion (Section 4.13). Though positive, it does not say how! It should mention that the laws will be enacted or regulations passed, to protect such prisoners, or that existing laws will be revised to accommodate the new dispensation.
- It talks about treating orphans of the HIV/AIDS pandemic the same as other orphans and encouraging and assisting extended families to care for orphans (Section 4.15) However, it does not specify how this will be done. With social welfare services already under strain this will require a clear commitment, probably from the government, to provide assistance rather than leaving the issue open-ended.
- Section 4.18 mentions the need to increase awareness among men of the dangers of HIV/AIDS. Though positive, one questions why particularly men? A possible reason could be that men have greater negotiating power over sex. If that is the reason, it needs to be spelt out.

## 2.6.2 An Analysis of The Land Laws and Acts

Without a working land policy in Lesotho, land issues are managed by various acts or laws enacted by parliament from time to time. Unfortunately, according to the Land Policy Review Commission findings, some of these acts contradict each other. Similarly, some of these laws conflict with Lesotho's constitution (GoL, 2000). This section will focus on the strengths and weaknesses of

these acts and laws, particularly those regarding inheritance and succession. These provisions are particularly important in ensuring sustainable livelihoods for HIV/AIDS affected households.

### 2.6.3 Strengths and Opportunities

The strength of various land laws and acts in Lesotho has been the concerted effort to democratise land administration, improve agricultural land, and promote farm investments as a basis for agricultural development. For instance the Land Act of 1973 introduced development committees to advise chiefs on matters of land allocation, a responsibility they used to carry out themselves. This power sharing innovation was seen as threatening the chiefs' power base (Mphale et al, 1999). The Land Act of 1979 further delegated the chiefs' powers over development and resource management issues to the Village Development Councils.

The Land Act of 1973 introduced major shifts in the customary tenure system by introducing lease, land revenue and negotiable land rights. These were later codified by the Land act of 1979 thus enabling land users to transfer land rights and use them as collateral for credit.

The Land Husbandry Act of 1969 on the other hand gave the state powers to control and improve agricultural land through proper planning of land use, soil conservation and water resources, and to introduce agricultural practices deemed necessary to preserve the land.

These strengths are meant to improve the livelihoods of the rural poor. They can operate effectively in a business-as-usual scenario but lack the flexibility to deal with crisis situations such as the one brought on by the spread of HIV/AIDS.

### 2.6.4 Weaknesses and Limitations

One of the perceived weaknesses of the Lesotho land acts and laws has been the discrimination against women, female children, and other children who are not first born.

For instance Section 11 of the Laws of Lerotholi recognises the first male child of the first wife as the rightful heir to land. The discrimination extends to women since the law stipulates that only where there is no male heir is the widow considered as an heir. However, she is expected to consult the relatives of her deceased husband before allocation (GoL, 2000; GoL, 1987; Laws of Lerotholi).

Despite these weaknesses the Constitution recognises the customary Laws of Lerotholi making them legitimate. Even after the enactment of the Land Act of 1979 these laws continue to be recognised by government bodies and machinery such as parliament. In fact at grassroots level it is the only law that people recognise and identify with (Mphale et al, 1999; Hartley et al, 1999). The Land Review Commission of 2000 made a similar finding (GoL, 2000).

There is a contradiction between the Laws of Lerotholi and the constitution. The commission notes that section 18 of the constitution stipulates that:

- (i) "Subject to the provision of subsection (4) and (5) no law shall make any provision that is discriminatory either of itself or in its effect
- (ii) Subject to the provision of subsection (6), no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the function of any public office or any public authority.
- (iii) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

Based on this it is clear that, from a constitutional point of view, the discrimination embedded in the laws of Lerotoli and the Land Act of 1979 should not occur, especially since they are likely to aggravate the problems experienced by HIV/AIDS affected households.

The laws also fail to integrate women's rights on inheritance and land ownership. However, the Land Act of 1979 touched on the predicament of widows by giving them title to land as long as they did not remarry (GoL 1987; GoL 2000).

### **2.6.5 Opportunities Afforded by the Land Policy Review of 2000**

The report of the Land Policy Review of 2000 suggested the following fundamental changes:

- Without delay repeal or abolish all laws concerning land in Lesotho that discriminate against women.
- Without delay repeal all laws concerning land, whether customary or legislative, that prefer male heirs over women.
- Base access to land or landed property and inheritance on merit regardless of sex.
- Without delay amend or delete all laws in the constitution that justify discrimination.

However, despite its strengths, the report and its recommendations did not put the HIV/AIDS pandemic and its implications for land issues into the picture.

Timely implementation of its recommendations is, however, crucial to avoid continued suffering of women and children.

## **2.7 CONCLUSION**

The literature review clearly shows that the HIV/AIDS problem in Lesotho, as in other sub-Saharan countries, has reached pandemic levels. This is illustrated by the high prevalence and trends since the first case was identified in 1986. The current magnitude of the problem is of particular concern given the lack of diversification in Lesotho's economy and the fact that agriculture has been the second largest contributor to GDP for the period between 1994 and 1999.

It is also clear that the nature of HIV/AIDS makes it a developmental problem that affects various facets of society including the economy, different levels of social life including the family and family assets, and that it is linked to poverty and livelihoods. With about 80 per cent of the population living in the rural areas and depending on agriculture for their livelihood, the advent of HIV/AIDS negatively affects the pillars of survival for the majority of people.

Although Lesotho's policy on HIV/AIDS is commended for being progressive and inclusive, and the legal framework around land issues is being continuously reviewed, both policies are likely to be ineffective because they do not address the predicament of HIV patients. The debilitating effects of long-term illness associated with HIV/AIDS are likely to have direct impacts on security of tenure and land management ability. Even the Land Policy Review of 2000, although its recommendations represent a milestone in land management, ignores HIV/AIDS issues.