



An Analysis of Sexual and Reproductive Health and Rights Policies in Relation to Migrants, Sex Workers, and Young and Vulnerable People in Migration-affected Communities in South Africa

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An Analysis of Sexual and Reproductive Health and Rights Policies in Relation to Migrants, Sex Workers, and Young and Vulnerable People in Migration-affected Communities in South Africa

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ACRONYMS

AIDS	Acquired immunodeficiency syndrome
CSO	Civil society organization
DHA	Department of Home Affairs
HIV	Human immunodeficiency virus
IOM	International Organization for Migration
KII	Key informant interview
KNB	SRHR-HIV Knows No Borders Project
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex and queer
NDOH	National Department of Health
NDP	National Development Plan
NHA	National Health Act
NHI	National Health Insurance
SADC	Southern African Development Community
SALRC	South African Law Reform Commission
SDGs	Sustainable Development Goals
SRHR	Sexual and reproductive health and rights
TB	Tuberculosis
UHC	universal health coverage
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WHA	World Health Assembly
WHO	World Health Organization
YVP	Young and vulnerable people

1. EXECUTIVE SUMMARY

Background

One of the flagship programmes of the International Organization for Migration (IOM) regarding migration and health in the Southern Africa region is the Sexual and Reproductive Health and Rights (SRHR) HIV/AIDS Knows No Borders Project (KNB). The project is being implemented in six countries in the region: Eswatini, Lesotho, Malawi, Mozambique, South Africa and Zambia. The project targets migrants, sex workers, and young and vulnerable people (YVP) 10–29 years of age, living in migration-affected communities in countries where the project is being implemented. In line with the objectives, one of the activities of the project is advocacy for the inclusion of key populations, such as vulnerable migrants, young people and mobile populations, in laws, policies and programmes at regional and national levels.

This report examines the health and non-health policies that impact the positive sexual reproductive health outcomes of migrants, sex workers and YVP in South Africa to facilitate advocacy for policy implementation and review where necessary.

Methodology

The policy analysis took place between April and May 2022. A mixed-method approach was applied, using a checklist that was developed to guide the implementation of desk review, in-depth and key informant interviews with national-level representatives and relevant stakeholders, including representatives of United Nations agencies, civil society, and stakeholders in health and non-health sectors. The analysis explored existing international guidance, the resolutions of high-level meetings, treaties and agreements signed in relation to the SRHR of migrants' population, sex workers and YVP at global and regional levels, and examined national alignment and operationalization at the subnational level.

Findings

The findings of this policy analysis indicate that the national policy in South Africa on SRHR is well aligned with international and regional standards; it shows inclusiveness and is non-discriminatory against migrants. The country has also developed many specific health and non-health legal and policy documents addressing SRHR issues that include migrants, sex workers, and young and vulnerable people, including those living in migration-affected areas. However, most of the legal and policy instruments use a general language that applies to all the people living in the country. Failure to address the specific issues of access for vulnerable populations can affect health-care access at operational level.

South Africa has health and non-health legal and policy frameworks that are not discriminatory and embrace "All", as expressed in the National Health Act and the Constitution (Bill of Rights). However, the 2017 policy recommendations of the South African Law Reform Commission (SALRC) criminalize sex work, while the Immigration Act demands identity documents from migrants before accessing health services, with non-standardized practice on how to handle access to health services by undocumented migrants at the primary health-care level.

Challenges still exist in aligning key legal and policy frameworks, in translating policies to implementation and creating demand for services through advocacy to alleviate the access issues faced by migrants, sex workers and YVP living in migration-affected communities. There is a gap between policy direction and policy implementation as migrants, sex workers and YVP living in migration-affected communities continue to experience challenges at operational level in South Africa. Challenges include institutionalization of service charges for migrants, weak implementation of youth-friendly services, stigma against sex work and migrants, and fear of police arrest among sex workers. It is proposed that in addition to developing progressive legal and policy instruments, there is a need to develop policy implementation strategies to translate policy into practice at all levels of health care.

Key recommendations

- (a) The latest policy document regarding sexual and reproductive health and rights from South Africa's Department of Health, the National and Integrated Sexual and Reproductive Health and Rights Policy (2019), outlines several positive policy statements and objectives specifically targeted at migrants, sex workers, and young and vulnerable people, among others. The three policy statements that should be focused upon and operationalized to bridge the gap between policy and practice are:
 - All clients must be treated equally and promptly regardless of age, ethnicity, socioeconomic level or marital status, or similar characteristic.
 - Six interlinked peer-led packages related to health, social, legal, human rights, social capital and economic empowerment services addressing the needs of sex workers shall be implemented as outlined in the National Sex Worker HIV Plan.
 - Build and enhance the capacities of health-care providers to render culturally competent, gender-sensitive, age-responsive and migrant-friendly reproductive health services.

The rigorous implementation of these three policy statements itemized in the National and Integrated Sexual and Reproductive Health and Rights Policy (2019) could result in a new direction.
- (b) There is need to advocate for and strengthen access to SRHR services by migrants, sex workers and YVP living in migration-affected communities by aligning existing legal and policy conflicts, translating policy into implementation and communicating clearly on issues of migrant's rights to access health care. This requires that the Government of South Africa and development partners including the United Nations are involved.
- (c) There is a need for measures at the national level to ease the burden of migrants, including refugees and asylum-seekers, sex workers and YVP on accessing health care and SRHR services. The measures should be two-way: for government, this would include sensitizing health-care providers and law enforcement authorities on the rights of non-nationals, while for migrant sex workers and YVP living in migration-affected communities, it would involve educating them about rights and responsibilities.

- (d) The Department of Health should facilitate the implementation of the youth-friendly/centred services in line with the national policy and Ideal Clinic model. This would reduce the vulnerability of YVP and improve their confidence in seeking SRHR services, improving access by creating demand without affecting migrant density or high levels of population mobility.
- (e) The South African Government, development partners, civil society organizations (CSOs) and community-based organizations should create demand at community level and promote the uptake of SRHR services by migrants, sex workers and YVP.
- (f) The next National Strategic Plan should adequately cover issues of migrants, sex workers and YVP as part of the key and vulnerable population, not only at the level of activities, but also by setting realistic targets.



No stock outs!.. the SRHR-HIV Knows no Borders change agents delivering condoms at the Lebombo border post, Mpumalanga Province. © IOM 2022

2. BACKGROUND

2.1. APPROACH

One of IOM's migration and health flagship programmes in the Southern Africa region is the Sexual and Reproductive Health and Rights (SRHR), HIV/AIDS Knows No Boundaries Project (KNB). The project is implemented in six countries in the region: Eswatini, Lesotho, Malawi, Mozambique, South Africa and Zambia. The project targets migrants, sex workers, and young and vulnerable people (YVP) aged 10–29 years and living in migration-affected communities.

One of the objectives of the SRHR KNB is to create an enabling environment for YVP, migrants and sex workers living in migration-affected communities where the project is implemented. This involves having their SRHR-HIV rights and needs progressively addressed in terms of sociocultural norms, policy reforms and implementation at local, national and regional levels. This objective was designed around creating an enabling environment to impact the policy and legal environment.

One of the activities for the project is advocacy for the inclusion of key populations such as vulnerable migrants, YPV, and sex workers in laws, policies and programmes at the regional and national levels.

Therefore, to facilitate advocacy for policy implementation and review where necessary, the International Organization for Migration (IOM) commissioned a policy analysis exercise that examined the health and non-health policies that impact the positive sexual reproductive health outcomes of migrants and sex workers in South Africa.

The findings and recommendations from the review will be used to strengthen national policy advocacy efforts to promote the inclusion of migrants and other key populations in both health and non-health policies and plans.

2.2. METHODOLOGY

This policy analysis was implemented using a mixed-methods approach. A checklist was developed to guide the implementation of the desk review and in-depth discussions with national-level representatives and relevant stakeholders, including representatives of United Nations agencies, civil society, and stakeholders in health and non-health sectors.

The tool was adapted from the Policy Analysis and Advocacy Decision Model for HIV-Related Services.¹ This was specifically designed to address the policy issues around the key population. The model maps service-specific policies onto international human rights frameworks to identify needs and opportunities for policy advocacy that help to improve access to services. The UNFPA service integration tool that addresses the integration of

¹ Beardsley, K. (2013). *Policy Analysis and Advocacy Decision Model for HIV-Related Services: Males Who Have Sex with Males, Transgender People, and Sex Workers*. Futures Group, Health Policy Project, Washington, D.C. Available at www.healthpolicyproject.com/pubs/79_SWTGMSMDMSept.pdf.

SRHR services was also used to inform the final tool development (see the checklist in [Annex 1](#)).

The analysis explored existing international guidance, the resolutions of high-level meetings, United Nations Sustainable Development Goals (SDGs) and targets, treaties and agreements signed in relation to the SRHR of migrant populations, sex workers and young and vulnerable people at global and regional levels; and explored the alignment and domestication of global and regional guidance at the national level. It identified the law and policy enablers, barriers and conflicts that exist. Furthermore, it explored the challenges and opportunities that exist, as well as the gaps between policy dictates and implementation realities.

2.3. KEY QUESTIONS

The policy analysis addressed the following key questions:

1. What are the policies, legal instruments, and other high-level agreements or political declarations that guide the SRHR of migrant populations, sex workers, and young and vulnerable people (YVP) at global, regional and national levels?
2. What is the policy content that directly addresses the SRHR of migrants' population, sex workers and YVP?
3. How effectively have the identified policies covered the SRHR issues of migrant populations, sex workers and YVP at implementation level?
4. What are the gaps and discriminatory provisions in identified policies with regard to the SRHR of migrant populations, sex workers and YVP?
5. What are the recommendations and advocacy instruments emanating from the policy analysis?

2.4. LIMITATIONS

The key limitations of the policy analysis are:

- This analysis focused on policy content analysis and not on the policy development process.
- The affected populations were not consulted directly, but CSOs working directly with the migrants were engaged to understand the issues.
- The short time of implementation may have resulted in leaving out existing relevant policies or legislation. However, multiple-level validation was done within the consulting organization, at the IOM level as well as through the key informant interview sessions.

Despite the above limitations, the policy analysis process is rigorous, in alignment with the terms of reference, and answered the questions outlined above.

3. INTRODUCTION

3.1. MIGRATION

Migration is an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for any of a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.² Migration continues to be an issue of debate on the global political and economic landscape, requiring coherent and comprehensive responses that facilitate a positive development outcome to the global environment. In this paper, the term “migrants” also encompasses those subject to involuntary movements, such as refugees and asylum-seekers fleeing conflict. There is a myriad of migrant needs that have been left unmet worldwide, particularly health needs and lack of access to essential health services.³ As a consequence, meeting these needs has become a global priority, as agendas have been put on the table for universal health coverage (UHC) for all people regardless of citizenship.

The migration dimension of the SDGs goes beyond the specific target 10.7, which calls upon governments to “facilitate orderly, safe, regular and responsible migration and mobility of people including through the implementation of planned and well-managed migration policies”. Consequently, if properly managed, migration can be leveraged to enable the realization of all SDGs. The IOM *World Migration Report 2022* indicated a global estimate of around 281 million international migrants in the world in 2021,⁴ which equates to 3.6 per cent of the global population. Much larger numbers migrate within countries, although this was slowed as a result of the COVID-19 travel restrictions.⁵

3.2. MIGRANTS AS KEY POPULATIONS

Key populations in this investigation are groups of people that are more likely to be exposed to or to transmit HIV, and whose engagement is critical to a successful health intervention. The SADC HIV and AIDS Strategy Framework defines key populations as young women, sex workers, mobile and displaced populations, injecting drug users, prisoners, and sexual minorities; or as defined by the Member States in alignment with international and regional standards.⁶ The target populations of this policy analysis are all part of this group.

² IOM (2019). *Glossary on Migration*. Geneva. Available at www.iom.int/glossary-migration-2019.

³ White, J.A., D. Blaauw and L.C. Rispel (2020). Social exclusion and the perspectives of health care providers on migrants in Gauteng public health facilities, South Africa. *PLoS one*, 15(12):e0244080. Available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0244080>.

⁴ IOM (2021). *World Migration Report 2022*. Available at <https://publications.iom.int/books/world-migration-report-2022>.

⁵ Ibid.

⁶ SADC (2010). HIV and AIDS Strategic Framework 2010–2015.

3.3. FEMINIZATION OF MIGRATION

Due to its middle-income status, stable democratic institutions and comparatively industrialized economy, South Africa hosts the largest number of immigrants on the African continent. This number is thought to be underestimated because of the presence of large numbers of undocumented migrants, particularly from neighbouring countries. According to DESA,⁷ the total number of international migrants at mid-year 2020 was 2.9 million, of whom 1.2 million were female migrants.⁸

In recent years, there has been a decreasing trend in the feminization of migration. There is insufficient gender-specific migration data on the origin and destination countries of migrants.⁹ The lack of gender breakdown in the data collections is caused by insufficient collection methods to capture gender identity and sexual orientation by data producers of migration data, in particular National Statistical Offices (NSOs). It is important to note that these shortcomings need to be addressed for future analysis. At the regional level, South Africa requires its NSOs to document and capture gender identity and sexual orientation of migrants and include summaries of these dimensions in the published migration data. The traditional pattern of migration within and from Africa is more male dominated, with less feminization, although there is an emerging pattern in certain regions of the world whereby many women are not only moving, but are also moving on their own, rather than joining up with their families. Women migrants are often ignored and not properly documented, leaving a huge data gap in their experiences. Some of the main reasons for the trend shift are economic, educational, professional development, marriage and protection.¹⁰

Women are particularly vulnerable as they migrate and can become victims of discrimination, violence, sexual exploitation and trafficking. Access to family planning, protection from STIs and HIV, as well as access to maternal health services, including antenatal care, safe delivery and postnatal care, are critical for the health of migrant women. The provision of sexual and reproductive health services and making access to those services easier and affordable is of growing importance.¹¹

Many young migrants set out to find opportunities for work or education.¹² In other cases, children leave home to avoid the prospect of unwanted child marriage, female genital mutilation or gender-based violence (in the case of girls).¹³ Women and girls usually have less control over the decision to migrate than men and boys; for females, the decision is more likely to be made by their families rather than on their own.¹⁴

⁷ DESA (2022). Available at www.un.org/en/desa.

⁸ Migration Data Portal (2020). Available at www.migrationdataportal.org/search?text=south%20africa&theme=&tags=&category=.

⁹ KNOMAD (2022). Available at www.knomad.org/sites/default/files/2022-10/knomad_paper_44_gender_and_migration_g.abel_oct_2022_1.pdf.

¹⁰ Statistics South Africa (2020). Migration Dynamics of Women, Children and the Elderly in South Africa. Report no. 03-51-04 77. Available at www.statssa.gov.za/publications/Report-03-51-04/Report-03-51-042020.pdf.

¹¹ IOM (2010). *Mainstreaming Migration into Development Planning: A Handbook for Policymakers and Practitioners*. Global Migration Group. Available at <https://publications.iom.int/books/mainstreaming-migration-development-planning-handbook-policy-makers-and-practitioners>.

¹² ILO (2016). *World Employment Social Outlook – Trends for youth 2016*, pp. 12–13. Available at www.ilo.org/global/research/global-reports/weso/2016/lang--en/index.htm; Uprooted, p. 43, based on data from UNESCO, available at <http://uis.unesco.org/en/uis-student-flow>.

¹³ Temin, M., M.R. Montgomery, S. Engebretsen and K.M. Barker (2013). *Adolescent Girls on the Move: Adolescent girls and migration in the developing world – A Girls Count report on adolescent girls*. Population Council, New York, pp. 20–25. Available at www.popcouncil.org/research/girls-on-the-move-adolescent-girls-migration-in-the-developing-world.

¹⁴ RMMS and Save the Children (2016). *Young and on the Move: Children and youth in mixed migration flows within and from the Horn of Africa*. Regional Mixed Migration Secretariat, Nairobi, September, p. 45. Available at <https://resourcecentre.savethechildren.net/document/young-and-move-children-and-youth-mixed-migration-flows-within-and-horn-africa>.

3.4. SEXUAL AND REPRODUCTIVE HEALTH OF MIGRANTS

The number of international migrants has increased from 153 million in 1990 to 281 million in 2020, facilitating global attention on the wide variety of national contexts regarding policy measures to protect migrants' rights and safeguard their equal access to basic essential health services.¹⁵ Among the macroregions, Eastern and Western Africa host the largest number of migrants, with almost 60 per cent of all international migrants in Africa. However, as of 2020, South Africa and Côte d'Ivoire were hosting the highest number of immigrants among all African countries. In relation to the population, South Sudan and Burundi have the highest positive net migration rate.¹⁶

Sexual and reproductive health (SRH) is a crucial component of the overall health and quality of life. However, it is impacted by power inequities inherent to societal institutions, environments, economics and culture. In Africa, guidelines for intervention in SRH are insufficient, a gap that is more pronounced with migrant populations due to the absence of culturally sensitive indicators to assess and monitor SRH. According to UNFPA, sexual and reproductive health and rights (SRHR) are an essential part of achieving universal health coverage (UHC) under which unhindered access to health care is given to migrants, sex workers and YVP. Countries moving towards UHC need to consider how the SRHR needs of their population are met throughout the life course, from infancy and childhood through adolescence and into adulthood and old age.¹⁷

The International Conference on Population and Development Programme of Action broadly defines reproductive health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes".¹⁸ To maintain one's sexual and reproductive health, people need access to accurate information and the safe, effective, affordable and acceptable contraception method of their choice. They must be informed and empowered to protect themselves from sexually transmitted infections, and when they decide to have children, women must have access to services that can help them have a fit pregnancy, safe delivery and healthy baby. Every individual has the right to make their own choices about their sexual and reproductive health.

Access to quality sexual and reproductive health services plays a critical role in the individual's life and is most relevant for people living in forced displacement. Migrants, refugees and other displaced people, with easy access to sexual and reproductive health services, have a possible healthier future and can benefit from the positive impacts these services have on the family and the community.¹⁹

¹⁵ Candeias, P., V. Alarcão, M. Stefanovska-Petkovska, O. Santos, A. Virgolino, S. Pintassilgo, P.M. Pascoal, A.S. Costa and F.L. Machado (2021). Reducing sexual and reproductive health inequities between natives and migrants: A Delphi consensus for sustainable cross-cultural healthcare pathways. *Frontiers in Public Health*, 9:656454. Available at <https://doi.org/10.3389/fpubh.2021.656454>.

¹⁶ See IOM (2020). *Africa Migration Report: Challenging the Narrative*. Available at <https://publications.iom.int/books/africa-migration-report-challenging-narrative>.

¹⁷ UNFPA (2019). Sexual and reproductive health and rights: an essential element of universal health coverage – Background document for the Nairobi summit on ICPD25 – Accelerating the promise. Available at www.unfpa.org/sites/default/files/pub-pdf/UF_SupplementAndUniversalAccess_30-online.pdf.

¹⁸ Center for Reproductive Rights (2011). *Abortion worldwide: Seventeen years of reform*. Briefing paper, October. Available at <https://reproductiverights.org/abortion-worldwide-seventeen-years-of-reform>. Since the publication of this document, there have been further liberalizations of abortion laws in a number of countries, including Argentina, Brazil, Lesotho, Luxembourg, Mauritius, Rwanda and Uruguay. See also *The World's Abortion Laws 2012*, Center for Reproductive Rights, available at <http://worldabortionlaws.com/index.html>.

¹⁹ Kwankye, S.O., S. Richter, P. Okeke-Ihejirika, H. Gomma, P. Obegu and B. Salami (2021). A review of the literature on sexual and reproductive health of African migrant and refugee children. *Reproductive Health*, 18:1–13. Available at <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01138-3>.

3.5. SEX WORKERS

Sex workers by definition are female, male and transgender adults above 18 years who receive money or goods in exchange for sexual services. Sex work is consensual sex between adults, it can take many forms and varies between and within countries and communities. Sex work also varies in the degree to which it is more or less “formal” or organized. As defined in the Convention on the Rights of the Child, children and adolescents under the age of 18 who exchange sex for money, goods or favours are “sexually exploited” and not defined as sex workers.²⁰ Sex trade worldwide traditionally is perceived negatively by society, and consequently its practitioners face stigma and discrimination. Female sex workers (FSWs) have high rates of both unintended pregnancy and HIV, but few health promotion interventions address their contraceptive needs or other SRHR concerns.²¹ UNAIDS Global AIDS Strategy 2021–2026 classifies sex workers as a key vulnerable population and indicates a need to intensify and expand comprehensive programmes for and with sex workers globally to address persistent gaps, through expanded community-led outreach; condom and lubricant programming; increased access to pre-exposure prophylaxis, and sexual and reproductive health services; violence prevention; legal support; and general empowerment. Furthermore, intersectionality also plays a role, as many sex workers are also migrants and young people and are impacted by heightened physical and emotional abuse with high levels of mobility and irregular migration. Globally, many countries use a morality lens to view sex work. This increases the vulnerability of sex workers to sexual exploitation and fear of utilizing available health-care services.

3.6. YOUNG AND VULNERABLE PEOPLE 10–29 LIVING IN MIGRATION-AFFECTED COMMUNITIES

The World Health Organization (WHO) defines adolescents as people between 10 and 19 years of age. The great majority of adolescents are, therefore, included in the age-based definition of “child” adopted by the Convention on the Rights of the Child,²² as a person under the age of 18 years. WHO also uses the term “young people” (10–24 years) to combine adolescents and youth.²³ Migrant adolescents are often overlooked and left unattended, especially if the parents are undocumented and do not have the resources to provide adequate health care for the children. From the global level to the national level, different policies have been highlighted on ensuring adequate sexual and reproductive health care for this group of people.²⁴ A study identified overcrowding and sexual exploitation of children within refugee camps, where reproductive health services are often limited and underutilized. The research also reveals language barriers as key obstacles towards young migrants’ access to SRH information and services, because local languages used to deliver these services are alien to the migrants. Further, cultural practices like genital cutting that have survived migration could have serious reproductive health implications for young migrants.²⁵

²⁰ WHO (2017). *Sexual Health and its Linkages to Reproductive Health: An Operational Approach*. Geneva. Available at <https://apps.who.int/iris/handle/10665/258738>.

²¹ Ampt, F.H., K. L'Engle, M.S.C. Lim, K.F. Plourde, E. Mangone, C.M. Mukanya, P. Gichangi, G. Manguro, M. Hellard, M. Stoové, M.F. Chersich, W. Jaoko, P.A. Agius, M. Temmerman, W. Wangari and S. Luchters (2020). A mobile phone-based Sexual and Reproductive Health intervention for female sex workers in Kenya: Development and qualitative study. *JMIR mHealth and uHealth*, 8(5):e15096. Available at <https://doi.org/10.2196/15096>.

²² United Nations General Assembly (1989). Convention on the Rights of the Child, Treaty Series, 1577:3. New York.

²³ WHO (n.d.). Health for the world's adolescents – A second chance in the second decade. Available at www.paho.org/en/topics/adolescent-health#:~:text=Adolescents%20represent%20the%20well%2Dbeing,10%20and%2024%20years%20old.

²⁴ WHO (2018). Adolescent Health –The Missing Population in Universal Health Coverage. Available at <https://pmnch.who.int/resources/publications/m/item/adolescent-health---the-missing-population-in-universal-health-coverage>.

²⁵ Kwankye, S.O., S. Richter, P. Okeke-Ihejirika, H. Gomma, P. Obegu and B. Salami (2021). A review of the literature on sexual and reproductive health of African migrant and refugee children. *Reproductive Health*, 18:1–13. Available at <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01138-3>.

4. GLOBAL AND REGIONAL FRAMEWORK GUIDING THE SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF MIGRANTS

4.1. SUSTAINABLE DEVELOPMENT GOALS

The central reference for the global response to migration stems from the inclusion of migration in the 2030 Agenda captured in the SDGs. Target 10.7 under the goal “Reduce inequality in and among countries” is a call to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies”. Specific to the SRHR of women and girls is goal 5 on Gender Equality and target 5.6: “Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.” Furthermore, SDG target 3.8 “Achieve universal health coverage”, along with the global agenda of leaving no one behind, directly locate migration and migrants in a more relevant way as a vulnerable population that deserves a targeted approach in achieving the SDG targets.

Other frameworks that provide guidance and indicate strategic opportunities to support migration and health interventions include the 2008 World Health Assembly (WHA) resolution “Health of migrants”; the 2017 WHA resolution “Promoting the health of refugees and migrants”; the Declarations made at two Global Consultations on Migration and Health; the World Health Organization (WHO) Global Action Plan on the Health of Migrants; and the Global Compact for Safe, Orderly and Regular Migration.²⁶

Table 1. Related Sustainable Development Goals Targets

Sustainable Development Goals			
SDG 5: Achieve gender equality and empower all women and girls	5.1	End all forms of discrimination against all women and girls everywhere.	
	5.2	Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.	
	5.3	Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation.	
SDG 8: Decent work and economic growth	8.8	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.	
SDG 10: Reduce inequality within and among countries	10.7	Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.	
SDG 17: Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development	17.18	By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.	

²⁶ IOM World Migration Report 2020. Geneva.

4.2. GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

Sequel to the development of SDGs and its endorsement, the General Assembly Resolution 73/195 on the Global Compact for Safe, Orderly and Regular Migration, which was endorsed by the Member States in 2018, presents an opportunity to leverage the positive relationship between migration and development. The Global Compact for Migration anchored the 2030 Agenda and serves as a road map to help achieve the migration dimensions of the SDGs.²⁷ The Global Compact for Migration is a global framework expressing common goals in managing international migration and it recognizes migration as a social determinant of health that can impact the health and well-being of individuals and communities. Furthermore, it features health as a cross-cutting priority and encourages States to include migrants in policies and strategies. The Global Compact for Migration ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed, and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood.

In line with the goal of this policy analysis, specifically objective 7, resolution 23 calls on the Member States to address and reduce vulnerabilities in migration through a commitment to respond to the needs of migrants who face situations of vulnerability, and the development of gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women, girls and boys, which may include assistance, health care, psychological and other counseling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation. Other relevant objectives of the Global Compact for Migration are highlighted below.

Table 2. Related Global Compact for Migration objectives

Global Compact for Safe, Orderly and Regular Migration	
Objective 5 – Resolution 21	We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration
Objective 15 – Resolution 31	Addresses the access to basic services for migrants through a commitment to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services, and strengthening of migrant-inclusive service delivery systems, notwithstanding that national and regular migrants may be entitled to more comprehensive service provision, while ensuring that any differential treatment must be based on law, be proportionate and pursue a legitimate aim, in accordance with international human rights law.

²⁷ IOM (2018). *Migration and the 2030 Agenda: A Guide for Practitioners*. Geneva. Available at <https://publications.iom.int/books/migration-and-2030-agenda-guide-practitioners>.

4.3. OTHER GLOBAL FRAMEWORKS

In order to turn the General Assembly Resolution 73/195 to action, among other things, the Member States further commit to “Enact laws and take measures to ensure that service delivery does not amount to discrimination against migrants on the grounds of race, color, sex...”; “Ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or by unlawfully infringing upon the human rights to privacy”; and “Incorporate the health needs of migrants into national and local healthcare policies and plans.”

The Regional Framework situates SRHR and related issues of migrants, sex workers and YVP; more specifically, the Framework further articulates the implementation strategy of the global resolutions.

Table 3. Other global and regional frameworks

SN	Policy	Note
1.	The International Covenant on Economic, Social and Cultural Rights (ICESCR). ²⁸ United Nations, Treaty Series, vol. 993, p. 3	Recognizes that everyone has the right to the highest attainable standard of physical and mental health. Regionally, the African Charter on Human and People's Rights recognizes that every person has the right to enjoy the best attainable state of physical and mental health.
2.	End Inequalities. End AIDS. Global AIDS Strategy. 2021–2026 UNAIDS	This is a global AIDS Strategy with inequality and gender-sensitive lenses. <ul style="list-style-type: none"> • Result Area 1: Primary HIV prevention for key populations, adolescents and other priority populations, including adolescents and young women and men in locations with high HIV incidence. • End Inequalities. End AIDS. Global AIDS Strategy (2021–2026) recognizes sex workers as part of the key population that requires a targeted approach.
3.	UNHCR Global Public Health Strategy 2021–2025. UNHCR, 2018	<ul style="list-style-type: none"> • Aims to promote the right to migrants' health, reaffirming the importance of public health in preparation for and response to refugee emergencies in Member States. • Focuses on migrants, asylum-seekers, women, men, adolescents, young people, LGBTI and people who sell sex.
4.	WHO Global Reproductive Health Strategy. WHO, 2016	<ul style="list-style-type: none"> • The policy aims at women's, children's and adolescents' health care. The vision is to ensure that every woman, child and adolescent understands their health rights and is an active participant by 2030. • The policy provides a monitoring framework that assists the global economy to prevent deaths, ensure adequate health care and expand an equitable and accessible environment where no one is left behind. • Provides measures for Member States to implement adequate strategies for effective health care for women, children, and adolescents.

²⁸ United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966. United Nations, Treaty Series, vol. 993, p. 3. Available at www.refworld.org/docid/3ae6b36c0.html.

SN	Policy	Note
5.	Draft WHO global action plan, 2019–2023. Promoting the health of refugees and migrants	WHO in cooperation with the IOM, UNHCR and other relevant stakeholders, created a draft framework of priorities and guiding principles to promote the health of refugees and migrants. The framework is a resource for Member States in meeting the health needs of refugees and migrants, and contributing to the achievement of the vision of the 2030 Agenda for Sustainable Development. Priority 3 of the action plan supports advocating for the mainstreaming of refugee and migrant health into global, regional and country agendas and the promotion of refugee-sensitive and migrant-sensitive health policies and legal and social protection; the health and well-being of refugee and migrant women, children and adolescents; gender equality and empowerment of refugee and migrant women and girls; and partnerships and intersectoral, intercountry and inter-agency coordination and collaboration mechanisms.
6.	United Nations Population Fund (UNFPA) Sexual and Reproductive Policy. UNFPA, 2017	The organization works together with several partners and works towards a universal goal on access to sexual and reproductive health and rights, including family planning.
7.	Adolescent Health the Missing Population in Universal Health Coverage. WHO, 2018	According to UNICEF, all refugee and migrant children should have access to all the health services in the host countries on the same basis as national children, irrespective of their age, gender, capacity, medical status and stage of development. Sexual and reproductive health policies were initiated to: <ul style="list-style-type: none"> • Prevent unplanned early pregnancies • Provide free access to contraceptives • Provide capacity training for sexuality education • Facilitate interventions to reduce sexual risk behaviours • Prevent female genital mutilation. • Literacy for gender-based violence victims. • Promote voluntary medical male circumcision.
8.	Amnesty International, 2016, Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers	Advocates Member States to “Ensure that sex workers are entitled to equal protection under the law and access to justice and are not excluded directly or in practice from the application of anti-discrimination, labour, health and safety, and other laws.”

Keynote

Reproductive health rights, and the health of immigrants, adolescents and young people, are well covered in the SDG Framework. While there are mentions of women’s empowerment and employment and Universal Health Coverage, the SDG Framework fails to explicitly include sex workers in Agenda 2030 and in all the SDGs’ associated targets. It should be of note that one of the barriers that hinders improvement in the health status of sex workers is the lack of access to (high-quality) health care for sex workers in several Member States.²⁹ This is mainly caused by criminalization, stigma and discrimination that is directed towards sex work.

²⁹ van Ravenswaaij, H., D. Rojas, M. Sharjeel, P. Slaats, P. Andelic and M. Paric (2021). Improving the health status of sex workers in Europe. Policy brief. *SEEJPH*, 18 August. Available at <https://doi.org/10.11576/seejph-4680>.

5. REGIONAL FRAMEWORKS GUIDING THE SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF MIGRANTS

5.1. PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN

In line with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union. Maputo, 11 July 2003: Article 3 – Right to Dignity specifies that State Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her. In addition, Article 14 – Health and Reproductive Rights was ratified, stating that State Parties shall ensure that the right to health of women, including sexual and reproductive health, is respected and promoted. This includes:

- The right to control their fertility;
- The right to decide whether to have children, the number of children and the spacing of children;
- The right to choose any method of contraception;
- The right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- The right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognized standards and best practices;
- The right to have family planning education.

5.2. AFRICAN UNION MIGRATION POLICY FRAMEWORK

The African Union Migration Policy Framework Plan of Action (2018–2030) provides Member States with continental guidance and conducive conditions and elements for the management of migration. It identified the key thematic areas as the human rights of migrants, migration and health, migration and gender, and migration, children, adolescents and youth. The framework recommended strategies that include providing all migrants access to basic health care, including reproductive health, antiretrovirals for HIV, medication for non-chronic diseases and other services. In addition, it affirms that the special needs of children, adolescents and youth need to be catered for, including adequate health care, education, shelter and protection from rights violations. Moreover, it recognizes migrant women and girls as vulnerable to exploitation as highlighted by the frequently abusive conditions under which they work, especially in the context of domestic service and sex industries.

5.3. THE STRATEGY FOR SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY REGION 2019–2030

Strategy for sexual and reproductive health and rights in the SADC region, 2019–2030 provides a policy and programming framework for SADC Member States to accelerate the attainment of sexual and reproductive health and rights for all people living in the SADC region. This strategy is intended to meet the SRHR needs of all people in the SADC region, including adolescent girls and young women, women of reproductive age, men and boys, key populations including sex workers, people who inject and use drugs, prisoners, men who have sex with men and LGBTIQ+, migrants, refugees, mobile populations, people living with disabilities and victims of sexual exploitation. It emphasizes the need for strong political commitment and adequate human and financial resources, so that all people, in particular the groups identified above, can exercise their SRH rights to make decisions that govern their bodies, free of stigma, discrimination, violence and coercion, based on their specific life cycle needs. However, it does not make any specific provisions for the needs of the migrants.

Lastly, it urges Member States to actively promote SRHR as key for the realization of SDG targets, the protection of all those living in SADC, and the realization of gender equality.

5.4. REGIONAL STRATEGY FOR HIV PREVENTION, TREATMENT AND CARE AND SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS AMONG KEY POPULATIONS 2018, SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

This is a guiding framework for SADC Member States. It aims to provide details on how key populations are and remain more vulnerable to HIV than the general population. It further identifies the key barriers they face in accessing HIV and SRH services and identifies steps Member States can take to address these obstacles and thereby lower the vulnerability of key populations to HIV and increase their access HIV and SRH services. The regional strategy identified stigma and discrimination, violence, lack of a protective legal and policy environment, and lack of data as barriers facing key populations. However, the strategy does not recognize migrants as part of the key population or provide detailed approaches or strategies for this specific population group. There is no specific focus on issues of migrants and sex workers.

5.5. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY MINIMUM STANDARDS FOR INTEGRATION OF HIV AND SEXUAL AND REPRODUCTIVE HEALTH, 2015

The SADC Minimum Standards for Integration of HIV and Sexual and Reproductive Health in the Region 2015 provides direction, guidance and a mandate for integration at the systems, facility and community levels.

At the policy level, it recognizes the issue of migrants as critical, stating: “Review and revise or develop new policies that support access to integrated SRH and HIV services for key populations, especially adolescents, youth, migrant populations, LGBTIQ+ persons and people with disabilities should be implemented at the policy level by all Member States.” It recognized adolescents and young people by guiding Member States to “Develop policies that support the provision of essential reproductive health commodities, age-appropriate

services and information to adolescents and youth, especially sanitary pads and male and female condoms and contraceptives”, and further indicated that the Ministry of Education and other related agencies should ensure the integration of SRH and HIV and provision of comprehensive sexuality education for children, adolescents and youth, including those who are not at school.

At the level of national laws, it calls for the assessment of legal frameworks that impact on access to SRH and HIV information for key populations, especially adolescents and youth, men who have sex with men and sex workers. However, it did not address the need of migrants and mobile populations.

Keynotes

Apart from the regional policy and strategic documents, there are many resolutions that emanate from the senior officials’ and ministerial meetings on regional migration, with such meetings increasingly recognizing migration as a multidimensional phenomenon that requires coherent and comprehensive responses in order to bring about its potential positive development outcomes. Contextually:

- (a) Most African countries did not include the law on the specific age of consent to the sexual activity set out in the different constitutions.
- (b) There is no specific clarification in African States’ laws and policies on which age to receive medical treatment and have access to contraceptives and HIV counselling or testing.
- (c) The African States also accord minimal criminalization of consensual sexual acts between adolescents across the region.
- (d) Even though most African countries have passed laws to criminalize harmful cultural practices, the legislation of each country should be directed towards abolishing cultural, religious and traditional practices that may be harmful to women’s, adolescents’ and migrants’ health.
- (e) Sexual health services and provisions are often neglected for the youth in most countries. As a result, young people further left behind and are not consistently recognized in laws and policies in most countries across the region. The lack of provisions for young people creates a considerable gap in accessing sexual and reproductive health. Policies should address the different categories of a vulnerable population, adolescents, sex workers and migrants by setting up strategies that will help eliminate discrimination.
- (f) Legislation and policies on managing learner pregnancy and re-entry to school after delivery are another issue of debate. Most of the policies enacted by African States see girls excluded from school for pregnancy. Girls should not be excluded and must have access to education to stop perpetuating gender inequality.



A truck driver along the N4 national road receiving health information from a change agent. © IOM 2022

6. NATIONAL CONTEXT: SOUTH AFRICA

6.1. POLICY LEVEL: NATIONAL OVERVIEW ON SEXUAL AND REPRODUCTIVE HEALTH

Policies guiding Sexual Reproductive Health and Rights in South Africa among migrants, sex workers, and young and vulnerable people.

According to the South African Human Rights Commission, in order to effectively fulfill its mandate of promoting, protecting and monitoring the realization of human rights in South Africa, immigration is one of the institution's seven areas of focus.

According to the South African Constitution “everyone has the right to have access to health care services, and ‘no one’ may be refused emergency medical treatment.” This is a general law that has been embedded into the legislature and is expected to be accessible to all citizens. Section 9 of the Constitution of the Republic of South Africa, 1996 prohibits discrimination against anyone on one or more grounds, including among others race, colour, ethnic or social origin, and birthplace. In addition, South Africa is a party to international laws and agreements that commit the country to respect and protect the rights of everyone within the country, regardless of where they originally come from.³⁰ The constitutionally guaranteed right to equality and the equal protection and benefit of the law applies with equal force to foreign nationals within South Africa. The National Health Act also reaffirms these rights, as it states that: “All persons in South Africa can access primary health care at clinics and community health centres.” Furthermore, all pregnant or breastfeeding women and children under the age of six are entitled to health-care services at any level.

Immigration Act, 2002: The Immigration Act 13 of 2002 provides for the regulation of admission of persons to, their residence in, and their departure from the Republic. The Department of Home Affairs (DHA) may request any sphere of government or organ of State to (a) take actions or adopt procedures to ensure that the recipients of their services are identified as citizens and residents or foreigners: and (b) request that prescribed services, licences, concessions or other actions be subject to proof of status or citizenship. This creates a situation whereby the health-care service providers will request proof of identity before providing services. This is in contradiction of the National Health Act. The DHA has two core businesses, which are civic services and Immigration Services (IMS). Deportation management falls under the IMS branch.

The Department of Health 2007 Circular states that “Refugees and asylum-seekers, with or without permits, can access the same essential health care services as South African citizens (which means it is free at the point of use but can be charged after that), and Refugees and asylum-seekers, with or without permits, can access Antiretroviral Treatment in cases of HIV.” This does not mean that all services are free. Primary health-care services are provided free of charge, but higher levels of care are subject to a fee. In these cases, refugees and

³⁰ Khosa and Others versus Minister of Social Development and Others [CCT 12/03]; Kiliko and Others versus Minister of Home Affairs and Others (2006) (4) SA 114.

asylum-seekers are subject to a means test, which calculates the fee depending on the patient's income. This is the same test that is applied to South African citizens.

The National Adolescent Youth Health Policy 2017 aims to promote the health and well-being of young people aged 10–24 years. It also guides departments and organizations working with the Department of Health to respond to young people's health needs. This requires an integrated approach that is not just problem-oriented, but focuses on promoting healthy lifestyles, mitigating risk factors, and putting in place “safety nets” for prevention, early detection and intervention. While the policy document did not specifically address the issue of the migrant population, it covers all adolescents and youth living in the country.

The latest policy document regarding sexual and reproductive health and rights by South Africa's Department of Health, the National and Integrated Sexual and Reproductive Health and Rights Policy (2019), outlines several positive policy statements and objectives specifically targeted at migrants, sex workers, and young and vulnerable people among others. The three policy statements relevant to this policy analysis are:

- (a) All clients must be treated equally and promptly regardless of age, ethnicity, socioeconomic or marital status, or similar characteristic.
- (b) Six interlinked peer-led packages related to health, social, legal, human rights, social capital, and economic empowerment services addressing the needs of sex workers shall be implemented as outlined in the National Sex Worker HIV Plan.
- (c) Build and enhance the capacities of health-care providers to render culturally competent, gender-sensitive, age-responsive and migrant-friendly reproductive health services.

The document considers the challenges that the various groups face in accessing sexual and reproductive health care, which are also common to the group of focus in this analysis. These challenges include financial difficulties, discrimination by health-care providers, immigration status for migrants and the illegal nature of sex work for sex workers. Policy and legal instruments do not address these vulnerable populations' specific health care access issues at operational level.

The following is the overview of the existing National documents guiding SRHR of migrants and sex workers in South Africa.

Table 4. Analysis of existing national laws and policies on the sexual and reproductive health and rights of migrants, sex workers and young and vulnerable people

South Africa National/ Country/Policy level/ laws and legislation	What does it cover on migrants/sex workers/key populations?	Supportive/Enabler or Deterrent	Point(s) to note
The Constitution of the Republic of South Africa, 1996 Act, Section 27.	<p>The Constitution infers that ALL people living in South Africa have a right to access primary health care, regardless of immigration status (e.g. Section 27, p. 22).³¹</p> <p>Section 27 of the Constitution states as follows: With regards to Health care, food, water, and social security: (1) Everyone has the right to have access to: (a) Health-care services, including reproductive health care; (b) Sufficient food and water; and (c) Social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. (2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights; and (3) No one may be refused emergency medical treatment.</p>	Enabler	The Constitution uses the general terminology "ALL" and does not specify. The Constitution applies to South African residents irrespective of country of origin.
National Health Act (NHA), 2003. Act No. 61.	The NHA aligns the manner in which health-care policy is to be formulated and treatment provided with the Constitution of the Republic of South Africa Act No. 108 of 1996. It emphasizes access to health services as enshrined in the Constitution (e.g. NHA, 2003, p. 11). ³²	Enabler	It supports the provision of health-care services to all that live in South Africa.
Immigration Act, 2002	DHA may request any sphere of government or organ of State to: 5 (i) take actions or adopt procedures to ensure that the recipients of their services are identified as citizens and residents or foreigners; and (ii) request that prescribed services, or licences, or concessions or other actions be subject to proof of status or citizenship (e.g. p. 2).	Deterrent	It creates a situation whereby the health-care service providers will request for proof of identity before providing services. This contradicts the National Health Act.
The National Development Plan (NDP) 2030: Our Future make it work. The Presidency.	The plan defines the desired destination and identifies the role different sectors of society need to play in reaching that goal. It aims to eliminate poverty and reduce inequality by 2030. It recognizes that the precise number of immigrants in the country is not known, and projects a quantification of the growth in immigration to South Africa (NDP, n.d., p. 29). ³³	Enabler	This is a development plan and does not specifically address the health needs of migrants with specific content. However, it suggests more inclusiveness for all that live in the country.

³¹ The South African Constitution (1996). Available at www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf.

³² National Health Act (2003). Act No. 61 of 2003. Available at www.gov.za/sites/default/files/gcis_document/201409/a61-03.pdf.

³³ NDP (n.d.). Our Future make it work. Available at www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf.

South Africa National/ Country/Policy level/ laws and legislation	What does it cover on migrants/sex workers/key populations?	Supportive/Enabler or Deterrent	Point(s) to note
National Health Insurance NHI (2020)	This covers “All” persons, including migrants, but not undocumented persons. It calls for quantification of Migrants’ Access to Health Services in Migration-affected Communities (NHI, 2020). ³⁴	Enabler	It calls for policymakers and responders to appreciate the nexus between migration and health in the current discussions on the future of the migrant health system strengthening in South Africa.
Department of Home Affairs Strategic Plan 2020–2025	The strategic objective states that the “DHA intends to secure, effective, efficient and accessible service delivery to citizens and immigrants” (DHA, 2020, p. 11). ³⁵	Enabler	This document enables access to service delivery to immigrants.
The South African Law Reform Commission (SALRC) 2017 report	SALRC recommended the continued criminalization of sex work. The Sexual Offences Act 23 of 1957 states that any person who has unlawful carnal intercourse or commits any act of indecency for reward shall be guilty of an offence. The buying of sex has since 2012 also been criminalized, with the amendment of the Criminal Law (Sexual Offences) Act 32 of 2007 to extend penalties to anyone who unlawfully or intentionally engages in buying sex from another. ³⁶	Deterrent – it criminalizes sex work	The South African law criminalizes sex work. The 2019 Human Rights Watch research showed that almost three quarters of sex workers had been arrested more than once and that a broad pattern existed of police harassment, including extortion, coercive sex and the use of derogative language towards sex workers.
The Republic of South Africa’s National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance (2019)	The action plan aims at committing all sectors of the society to the promotion and protection of human rights and to raise awareness against racism, inequality and discrimination against migrants. ³⁷	Enabler	The document is not explicitly directed at migrants’ needs, but brought to the fore the issues of migrants.
The Republic of South Africa – Let Our Action Count: South Africa’s Strategic Plan for HIV, STIs and TB 2017–2022.	A strategic plan set to guide national responses to HIV, tuberculosis and sexually transmitted infections. It is a multisectoral document and involves, “the health and non-health strategies and interventions guiding the response in South Africa”. The National Strategic Plan classified mobile populations, migrants and undocumented foreigners as vulnerable populations for HIV and STIs. ³⁸	Enabler	The plan provides for migrants, sex workers, youth and the vulnerable in society. Goal 3: Reach all key and vulnerable populations with customised and targeted interventions. It recognizes the impact of migrants on care-seeking behaviour as one of the social drivers of HIV, TB and STIs.

³⁴ National Health Bill (2020). Available at www.parliament.gov.za/project-event-details/54.

³⁵ DHA (2020). Strategic Plan 2020–2025. Available at https://static.pmg.org.za/Department_of_Home_Affairs_Strategic_Plan_2020-2025_WEB.pdf.

³⁶ SALRC (2017). Adult prostitution: Response by stakeholders. Available at <https://pmg.org.za/committee-meeting/25902/>.

³⁷ RSA (2019). National Action Plan to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. Available at www.gov.za/sites/default/files/gcis_document/201903/national-action-plan.pdf.

³⁸ RSA (n.d.). Let Our Action Count: South Africa’s Strategic Plan for HIV, STIs and TB 2017–2022, p. 10. Available at www.gov.za/sites/default/files/gcis_document/201705/nsp-hiv-tb-stia.pdf.

South Africa National/ Country/Policy level/ laws and legislation	What does it cover on migrants/sex workers/key populations?	Supportive/Enabler or Deterrent	Point(s) to note
South African National Sex Worker HIV Plan 2016–2019. The South African National Aids Council	The plan calls for the national coordination of a range of diverse responses to the social and structural barriers that confront sex workers daily. It uses a peer-led approach to reducing high-risk sexual practices among sex workers and their clients (p. 6). ³⁹ The plan aims to achieve more than 90 per cent use of condoms by sex workers with clients and partners, and to protect them from gender-based violence.	Enabler	Addresses sex workers' specific issues. However, it expired in 2019 and did not link sex work to migration.
National Adolescent and Youth Health Policy. Department of Health (2017)	The policy helps “to promote health amongst adolescents of 19–24 years on several health issues such as tuberculosis, sexually transmitted diseases such as AIDS/HIV, unplanned pregnancy, and substance abuse among many. The strategy aims to help adolescents and youth in becoming valuable contributors to our communities” (p. 10). ⁴⁰	Enabler	Addresses mainly adolescents and youth between the ages of 19–24 years, but does not include migrant youths.
National Integrated Sexual Reproductive Health and Right (SRHR) Policy 2021	The SRHR policy advocates “providing sexual and reproductive health for all, including for adolescents, young women and girls, sex workers, LGBTIQ+, migrants, people with disabilities, young men and male partners of women seeking SRHR services, and survivors of sexual violence”(SRHR, 2021, p. 14).	Enabler	The policy covers all the targeted population groups for this study and provides policy statements that cover all vulnerable groups.
Maternal, Newborn, Child, Adolescent and Women's Health and Nutrition Strategic Plan (2018/19–2022/23)	This Strategic Plan covers all issues involving maternal, newborn, child and women's health and nutrition in South Africa (p. 10). ⁴¹	Enabler	The plan covers adolescents and young adults including sexual reproductive health issues. The content did not indicate a plan for the migrant subset of the population. However, it provides good coverage for all vulnerable populations seeking maternal and child care.
Department of Health National Adolescent and Youth Health Policy (2017)	Aims “to promote the health and well-being of young people aged 10–24 years. It also guides departments and organizations working with the Department of Health to respond to young people's health needs irrespective of their migration status” (Department of Health, 2017, p. 10). ⁴²	Enabler	Only addresses the youth and adolescents and does not indicate any plans for migrant youths.

³⁹ South African National Aids Council (2016). South African National Sex Worker HIV Plan 2016–2019. Available at <https://southafrica.unfpa.org/sites/default/files/pub-pdf/South%20African%20National%20Sex%20Worker%20HIV%20Plan%202016%20-%202019%20FINAL%20Launch%20Copy...%20%282%29%20%281%29.pdf>.

⁴⁰ Department of Health (2017). National Adolescent and Youth Health Policy. Available at www.uj.ac.za/wp-content/uploads/2021/10/key-doc-adolescent-and-youth-policy-4-sept-2017.pdf.

⁴¹ Department of Health (2020). National Strategic Plan. Available at www.health.gov.za/wp-content/uploads/2020/11/depthealthstrategicplanfinal2020-21to2024-25-1.pdf.

⁴² Department of Health (2017). National Adolescent and Youth Health Policy. Available at www.uj.ac.za/wp-content/uploads/2021/10/key-doc-adolescent-and-youth-policy-4-sept-2017.pdf.

Keynotes

- (a) Overall, the South Africa laws, policies and guidelines are non-discriminatory against migrants, and generally cover a wide range of population health needs. However, the non-specificity of policy dictates on the issues of migrants and health-care access leaves the interpretation and implementation of the laws and policies to the perception and view of the service providers at the forefront.
- (b) The Constitution of the Republic of South Africa and the National Health Act state that everyone has the right to have access to:
 - Health-care services, including reproductive health care;
 - Emergency medical treatment, which no one may be refused;
 - There should be no discrimination against anyone in receiving health-care services, including reproductive health care.
- (c) Criminalization of sex work remains one of the main barriers to sex workers having access to proper health-care services, despite a policy document that ensured sex workers' access to such services. This criminalization makes them prone to police arrest and exploitation, especially migrant sex workers.
- (d) The provisions of the National Health Care Act enable access to health services by all and state that no one may be denied access irrespective of vulnerability. However, the National Immigration Act makes provision for the identification of citizens or "foreigners" and the request for documents prior to service provision, except in an emergency.

7. OPERATIONAL LEVEL: SOUTH AFRICA

In line with the design of the policy analysis, a desk review of existing laws and policies at global, regional and national levels was conducted followed by a series of key informant interviews carried out to triangulate the findings and to link policies to implementation.

Key informant interviews (KII) were held between 25 April to 6 May 2022, using predesigned checklists (Annex 1). The profile of organizations that participated in the interviews and roles of participants in SRHR are captured below:

Table 5. Participant stakeholders' role in the sexual and reproductive health and rights

	Organization's role	Representative's role	Type of organization
WHO	Providing technical guidance and support to countries at policy and operational levels, on regulations, reviews and evaluations. Monitoring and assessing health matters and trends.	Technical Medical Officer: Provides programmatic support to the National Department of Health on SRHR services. Conducts M&E to ensure the availability and accessibility of SRHR services.	United Nations
UNHCR	UNHCR supports the South African government and is focused on refugees, asylum-seekers, stateless persons and internally displaced persons.	Protection Officer: Leads, coordinates and supervises the protection interventions and programme.	United Nations
UNAIDS	UNAIDS is a Secretariat and coordinates at country level all United Nations agencies that are involved with HIV programmes, to ensure the development of policies, implementation, availability of data, monitoring and review of the policies.	Fast-Track Advisor – Global AIDS Strategy: Supports the South African government at national and provincial levels on the implementation of the National Strategic Plan for HIV, TB and STIs 2017–2022, by ensuring that prevention, treatment and care programmes, as well as activities, are included in the annual performance plans, work plans, etc.	United Nations
National Department of Health (NDOH)	NDOH is responsible for developing and reviewing SRHR policies to ensure they are aligned with the Constitution and National Health Act, as well as other legal frameworks that surround SRHR policies, to ensure they do not discriminate migrants and other particular groups.	Sexual Reproductive Health and Rights (SRHR) Deputy Director: Assists in developing SRHR policies and guidelines at national level. Ensures that policies are implemented and monitored accordingly.	Government department
Lawyers for Human Rights (LHR)	LHR through its Refugee and Migrant Rights Programme protects the rights of refugees and migrants by: <ul style="list-style-type: none"> • Providing them with free legal advice to assist them in obtaining legal documents; • Advocating for refugees' and migrants' rights. 	Managing Attorney Legal Clinic: Refugee and Migrant Rights Programme.	Civil society organization

	Organization's role	Representative's role	Type of organization
Themba lethu Nkomazi	<p>Assists and support migrants, sex workers and YVP in accessing health-care services including SRHR.</p> <p>The organization operates at subdistrict level to support the government's HIV and AIDS initiatives.</p> <p>It has four centres that focus on orphans and support 400 children, builds houses to bring dignity to the people and operates income-generating projects for sustainability.</p>	Oversees and provides leadership to organizational activities.	Civil society organization and IOM's implementing partner for the SRHR-HIV Knows No Borders Project
Outreach Foundation	<p>Offers two major programmes to nationals and non-nationals from 14 years and above:</p> <p>(a) Development: it assists participants to generate income as most of them (migrants and refugees) are unemployed due to lack of legal documentation.</p> <p>(b) Services: focuses on trauma briefing, psychosocial support, migrant support and advocacy for accessing basic needs, health care and SRHR services.</p> <p>Offers SRHR education and has partnered with Wits Reproductive Health and HIV Institute to refer clients.</p>	Oversees the running of all the programmes.	Civil society organization and IOM's implementing partner for the Migration and Disability Project.

7.1. OPPORTUNITIES FACING MIGRANTS, YOUNG AND VULNERABLE PEOPLE AND SEX WORKERS AROUND THE SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN SOUTH AFRICA

- (a) Almost all the participants indicated the non-discriminatory policy content toward accessing health-care services, including SRHR, and affirmed that the South African Government creates policies that allows accessibility of SRHR services within the country to both nationals and non-nationals.
- (b) A participant emphasized that "Section 27 of the Constitution entitles everyone to access basic health-care services and no one, including undocumented migrants, may be denied emergency medical treatment, and Section 9 of the Constitution prohibits discrimination against anyone on one or more grounds including among others, race, colour, ethnicity or social origin and birth."
- (c) The availability of health facilities across the country was also indicated as an opportunity by a participant, saying "South Africa has health care and SRHR sites [primary health care and tertiary hospitals] to be accessed by everyone."

7.2. CHALLENGES FACING MIGRANTS, YOUNG AND VULNERABLE PEOPLE AND SEX WORKERS AROUND THE SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN SOUTH AFRICA

The key challenges found by the key informants are summarized below:

Socioeconomic challenges

- (a) The poor socioeconomic status of migrants, mainly due to unemployment and poverty, is worsened by the high cost of accessing care and out-of-pocket patient costs, especially when referred for specialized care, and the charging of service fees similar to those in the private health sector.
- (b) Participants also indicated that in 2020, the Gauteng Department of Health changed its patient fee schedule and as a result undocumented refugees and asylum-seekers are charged high fees as if they were private patients. According to an informant, “mothers (migrant) were allowed to give birth at the hospital and invoiced for R10,000 per delivery, which was beyond their affordability means. Giving birth in health facilities is now regarded as a high-cost commodity.”

Structural challenges

Participants also mentioned:

- (a) “Discrimination, moral judgment, implicit bias and marginalization by health-care providers instil distrust and discourage migrants, sex workers and YVP from accessing care.”
- (b) A participant implementing projects claimed to have experienced migrants being denied services such as termination of pregnancy, because the health-care workers believed that “she was not a South African and did not possess verifiable documents related to refugee status”.
- (c) Fear of discrimination and being arrested as irregular and undocumented migrants, or as sex workers, was also raised as the reason why the migrants and sex workers refuse to seek care.
- (d) Lack of trust in the system: a participant noted that “sex workers lost trust in the health system as the SRHR comprehensive packages are not defined according to their needs”. Therefore, they cannot access high-demand commodities because of non-aligned clinic operating hours with the sex workers’ hours of work.

Limited education, information about migrants’ rights

- (a) Some participants indicated that “both migrants and health-care workers lack adequate information; migrants do not have awareness about the availability of health-care services, while the health-care workers are not aware that non-nationals are protected in the Constitution.”
- (b) This lack of awareness increases challenges.

Other key challenges mentioned by the participants include language barriers, cultural differences and insensitive care from service providers. These discourage accessing health care and SRHR services. A participant pointed that these challenges also lead to “miscommunication, misdiagnosis, and negative attitude by health-care providers”.

The above documented responses from the KII participants are consistent with the findings of reviewed articles on accessing adolescent sexual and reproductive health services among undocumented migrants in South Africa. This study identified conflicting health and migration policies and legal status, and inadequate State protection, as the most frequently cited barriers to access in 30 of the 35 (85%) of the reviewed studies.⁴³ Findings from this study revealed that access to SRH services among undocumented adolescent migrants is poor and attributed this to diverse structural, sociocultural and financial barriers. Further, it affirms that in South Africa, conflicting health and migration policies lead to inconsistencies in service provision, making it difficult for both adolescents and health-service providers to strike a balance between migration and health considerations. The study posited that migration remains politically sensitive with punitive measures; irregular migrants are marginalized and excluded from accessing all social services, health included.

On the other hand, the study corroborated the opportunities pointed out by the participants of the KII in that South Africa's health policies are non-discriminatory and employ an all-inclusive approach to adolescents irrespective of migration status. However, the study has demonstrated that adolescent SRH services among undocumented adolescents in South Africa may be poor. Other studies indicate that an irregular legal status induces fear of arrest and deportation, which drives migrants out of facilities.⁴⁴ Lack of awareness on specific rights for undocumented adolescent migrants from health-service providers and the migrants themselves make it challenging to implement target specific interventions.⁴⁵

Keynotes

At implementation level, there appears to be many barriers to accessing health care that are not in alignment with the National Health Act. The participants interviewed in this policy analysis exercise presented a picture of a disconnect between the policy direction and implementation.

- (a) Conflicts between policies and Acts; for example the Constitution of South Africa, the National Health Act and the Immigration Act seem to have been considered at operational level within the health-care system and perpetuate practices like the identification of citizens or “foreigners” and the request for documents prior to service provision at the implementation level.
- (b) Issues of access to health care are not limited to SRHR services, but are widespread among migrants, although the legal and policy frameworks overwhelmingly support a non-discriminatory approach. Implementation is different, thus reinforcing a disconnect between the policy dictates and implementation at service delivery level.
- (c) The existence of structural barriers at the facility level impedes access to services. Lack of knowledge among both service providers and migrants with regards to SRHR rights is a major barrier to health care access for migrants.
- (d) Community members do not always see migrants as vulnerable and as a result migrants are often stigmatized. The stigma and discrimination at community level against migrants is projected on migrants seeking services in a health-care setting. After all, health-care providers often reflect the values of the community in which they live.

⁴³ Mukondwa, K. and L. Gonah (2016). Accessing adolescent sexual and reproductive health services among undocumented migrants in South Africa: a documentary review. *Medical Journal of Zambia*, 43(4):247–251. Available at <https://library.adhl.africa/handle/123456789/11636>.

⁴⁴ MSF (2009). No Refugee: Access denied. Medical and humanitarian needs of Zimbabweans in South Africa. Médecins Sans Frontières, Cape Town. Also see Veary, J. and L. Nunez (2011). *Migration and Health in SADC: A Review of the Literature*. IOM, Pretoria. Available at www.migration.org.za/wp-content/uploads/2017/08/Migration-and-health-in-SADC-A-review-of-the-literature.pdf.

⁴⁵ Swamba, A.B. (2014). Towards understanding the experiences of accessing antiretroviral treatment services among Congolese adolescence at clinics in Yeoville, Johannesburg. MA thesis, University of Johannesburg.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1. SUMMARY

The findings presented from this policy analysis indicate that South African national policy is well aligned with international and regional standards; it shows inclusiveness and is non-discriminatory against migrants. However, most of the legal and policy instruments do not address the non-health and health-care needs of migrants in specific terms. The instruments use general terminology that includes migrants, sex workers, and young and vulnerable people; the language applies to all the people living in the country. Most of the time, these instruments do not address these vulnerable populations' specific health-care access issues at operational level. These non-specific policy statements can lead to misinterpretation that might result in denial of health services at the primary care level.

South Africa has both health and non-health legal and policy frameworks that are not discriminatory and embrace "All", as expressed in the National Health Act and the Constitution (Bill of Rights). However, the South African Law Reform Commission's (SALRC's) 2017 policy recommendations criminalize sex work, while the Immigration Act demands identity documents from migrants before accessing health services, with non-standardized practice on how to handle access to health services by undocumented migrants at the primary health care level.

Challenges still exist in aligning key legal and policy frameworks, the translating of policies into implementation, and creating demand for services through advocacy to alleviate the access issues faced by migrants, sex workers and YVP. There is a wide gap between policy direction and policy implementation as migrants, sex workers, and young and vulnerable people continue to experience challenges at operational level in South Africa. It is suggested that in addition to developing progressive legal and policy instruments, there is a need for aggressive policy implementation strategies to be developed to translate policy into practice at all levels of health care, especially in the areas of standardization of practices with regards to migrants' access at the facilities.

8.2. RECOMMENDATIONS

- (a) The latest policy document regarding sexual and reproductive health and rights from South Africa's Department of Health, the National and Integrated Sexual and Reproductive Health and Rights Policy (2019), outlines several positive policy statements and objectives, specifically targeted at migrants, sex workers, and young and vulnerable people among others. The three policy statements should be focused upon and operationalized to bridge the gap between policy and practice.
 - All clients must be treated equally and promptly regardless of age, gender, sex, ethnicity, or socioeconomic or marital status, or similar characteristics.

- Six interlinked peer-led packages related to health, social, legal, human rights, social capital and economic empowerment services addressing the needs of sex workers need to be implemented as outlined in the National Sex Worker HIV Plan (2016).
- The capacities of health-care providers should be built and enhanced to render culturally competent, gender-sensitive, age-responsive and migrant-friendly reproductive health services.

The rigorous implementation of these three policy statements itemized in the National and Integrated Sexual and Reproductive Health and Rights Policy (2019) could result in a new direction.

- (b) There is need to advocate and strengthen SRHR access among migrants, sex workers and YVP living in migration-affected communities. Access to SRHR requires the involvement of the South African government and development partners to remove existing legal and policy conflicts, translate policy into implementation, and communicate clearly on issues of migrants' rights to access health care.
- (c) There is a need for measures at the national level to ease the burden of migrants, refugees, sex workers and YVP on accessing health care and SRHR services. The measures should be two-way: for government, this would involve sensitization of health-care providers and law enforcement authorities on the rights of the non-nationals, while for migrants, sex workers and YVP it would involve being aware of their rights and responsibilities.
- (d) The Department of Health should facilitate the implementation of youth-friendly services in line with the national policy and Ideal Clinic model to reduce the vulnerability of YVP and improve their confidence in seeking SRHR services in order to improve access by creating demand.
- (e) There is a need to create demand at community level and promote the uptake of SRH services by migrants, sex workers and YVP. This requires the involvement of government, development partners and CSOs.
- (f) The next National Strategic Plan should adequately cover issues of migrants, sex workers and YVP as part of the key and vulnerable population, not only at the level of activities, but also in setting realistic targets.

ANNEX 1.

CHECKLIST TO GUIDE POLICY ANALYSIS

The checklist to guide the policy documents review will be focused on:

- (a) Definitions used for SRHR, migrants and migration.
- (b) Global level
 - What are the existing global and high-level meeting policy recommendations guiding SRHR of migrants and sex workers?
 - Identify key components of SRH and identify key global guidance on SRH, HIV issues among migrants, sex workers and YVP.
 - Identify which SDG goals are specific to migrants, sex workers, YVP and other target populations.
- (c) Regional level (African Union, SADC, etc.)
 - What are the existing regional policy recommendations guiding documents on SRHR of migrants and sex workers?
 - Identify key components and assess the inclusiveness of migrants, sex workers and YVP.
- (d) National level
 - Do national policies conform to standards and guidelines developed by international, multilateral bodies and leading international and regional organizations?
 - To what extent is global and regional guidance domesticated at the national level?
 - Who are the stakeholders working on (i) SRHR in the country, (ii) SRHR among migrants and migration-affected communities in the country?
 - Government departments: health and non-health;
 - Implementing partners;
 - Civil societies;
 - Communities.
 - What are the existing national policies and legislation?
 - What is the legal basis for the national SRHR strategies?
 - Are there national policies and guidance to support the establishment and access to SRHR-related services targeting migrants, sex workers and YVP?
 - Are policies reflected and implemented at the local level?
 - What are the gaps in these policy documents with regard to coverage of SRHR for migrants and sex workers?

- What are the strengths, weaknesses, opportunities and threats that exist in the policy environment?
- What are the key recommendations emanating from the findings?
- What are the feasible policy targets for advocacy? Who are the key policy stakeholders, at both the national and provincial levels?
- Who are the in-country advocates for service implementation and scale-up, and how can a scale-up strategy be developed?

(e) Implementation level

- What is the experience of migrants, sex workers and YVP on receiving SRHR services?
- What is the experience of a health facility manager/ nurse in the migrant community on providing services for migrants, sex workers and YVP?
- Is the implementation in tandem with the national guidelines?
- Are there gaps in the implementation of policies?

(f) Key informant interviews should be conducted for the following stakeholders:

- Health, Home Affairs, Foreign Affairs, Education ministries;
- IOM, UNAIDS, UNFPA, UNHCR, UNICEF, WHO;
- IOM implementing partners;
- Civil society organizations with migration focus;
- Provincial-level representatives.

ANNEX 2. CHECKLIST FOR THE KEY INFORMANT INTERVIEWS

Operational level

- What is your role as a stakeholder in SRHR-related issues of migrants, sex workers, and young and vulnerable people, including migrants and sex workers?
- In your experience, what are the key challenges facing migrants and sex workers around SRHR?
- Are there any challenges to issues of SRHR of migrants, sex workers and YVP?
- If yes, what are the issues? How can they be addressed?
- Are there any other things you want to bring to our knowledge on this SRHR of migrants and sex workers?

National level

- What are the policy levers specific to SRHR of migrants, sex workers and YVP at legislative, administrative, regulatory and other levels?
- What is the legal landscape surrounding the policy (e.g. court rulings, constitutionality)?
- What are the roles of government departments/institutions in developing the policies? (Especially SRHR of migrants, sex workers and YVP?)
- Could you tell us the history of how the policy was developed (e.g. has the policy been debated previously)?
- Who are the stakeholders consulted in the policy development? (Specifically, migrants' representation).
- In your opinion does the policy content cover SRHR of migrants, sex workers and YVP?
- How does the policy work/operate (e.g. is it mandatory? Will enforcement be necessary? How is it funded? Who/which institution is responsible for administering the policy?)
- In your opinion, do you think the policy addresses the need of SRHR of migrants, sex workers and YVP? If yes, explain.
- Are there gaps that have been identified in the policy with regards to SRHR of migrants, sex workers and YVP?
- Is there any ongoing effort to revise or review the policies?

ANNEX 3. IMPLEMENTATION FRAMEWORK

The policy analysis will examine the health and non-health policies of sexual reproductive health outcomes of SRHR of migrants, sex workers and YVP to facilitate advocacy for policy implementation. Furthermore, a framework will be designed to ensure complete coverage of all the expected products of the consultancy tasks. This will be shared with IOM as part of project initiation. Part of the focus will include:

- Policy Barriers: restrictive, inadequate, and absent policies;
- Legal environment and public health laws that empower service providers to provide services. Any criminalization and discriminatory laws;
- Framework for coordination and response across relevant sectors;
- Recognition of the value that community/target population partnership provides;
- Funding mechanism and inclusiveness;
- Participation in decision-making.



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