



SOUTHERN AFRICAN
MIGRATION PROJECT

M I D S A

**Migration Dialogue for Southern
Africa**



IOM • OIM

INTERNATIONAL
ORGANIZATION
FOR MIGRATION

REPORT: Workshop 11-13 October 2006, Republic of Mauritius - on *Irregular Migration, including Trafficking and Smuggling in Persons in Southern Africa*

Countries, Presenters and Observers

The MIDSAs Workshop on *Irregular Migration, including Trafficking and Smuggling in Persons* was held on 11-13 October 2006 in the Republic of Mauritius. The participants included officials from the Ministries/Departments of Home Affairs, Foreign Affairs, and Justice of the Governments of Botswana, the Comoros, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe participated. Representatives of the African Union (AU), the SADC Secretariat, UNHCR, UNODC, South African Institute of International Affairs (SAIIA) also attended, as well as the Director General of IOM.

Summary of Proceedings

Opening Session

Mr. Hans-Petter Boe, IOM Regional Representative for Southern Africa, welcomed all the delegates present and outlined the theme of the workshop as focusing on migration management, capacity-building, and irregular and unauthorized migration. He noted that this theme had been discussed in previous workshops and that some follow-up on earlier recommendations have been made. He expressed his thanks for support and assistance from the Mauritian government and that MIDSAs was privileged to have the Director-General of IOM joining them. He informed that there will also be special interventions from friends and colleagues from other Regional Consultative Processes on Migration – Bali, North Africa (5+5) and Puebla. This is the first time MIDSAs –or any other RCPs- had been able to implement recommendations for increased contacts from other RCPs and he expressed the hope that this would lead to reciprocal invitations and increased information sharing in the future.

Ms. K.O. Fong Weng-Poorun, Permanent Secretary of the Prime Minister’s Office noted that the focus of the workshop is to discuss irregular migration. She emphasised that migration is an established feature of social and economic life, and that all governments are challenged to develop strategies to manage migration effectively. She noted that even with a plethora of international instruments dealing with migration, with the exception of the EU, there is no multilateral body that brings together instruments on migration.

She briefly provided an overview of the current migration situation and challenges in Mauritius and more generally noted that Southern Africa faces many migration issues including the spread of HIV and AIDS and brain drain. These issues need to be addressed in the context of migration management. These have been already addressed by COMESA, and by SADC through the Facilitated Movement Protocol, working towards visa-free movement. MIDSAs has provided an

informal dialogue and a framework for cooperation on migration at the regional level. It is important to support these efforts in dealing with irregular migration.

The Hon. Minister of Foreign Affairs, International Trade and Cooperation of the Republic of Mauritius, His Excellency **Mr. Madan Dulloo** welcomed all participants on behalf of the Government of Mauritius and expressed his thanks to the MIDSA organisers for arranging the workshop in Mauritius. Commenting on the situation in Mauritius, he outlined the following:

Despite the fact that Mauritian citizens are migrating, and have created a global Mauritian diaspora of which population is estimated to be 120,000 or 10% of the actual population, there is no structured/centralized database in place. The Government is embarking on a desk research and field surveys to identify the diaspora to benefit from their resources.

Mauritius is currently embarking 10-year reform programme, which inevitably results in labour retrenchment in some sectors. The government is in the process of devising temporary migration programmes that would offer an opportunity to the unemployed skilled workers in Mauritius to spend a few years in Europe, Middle East or elsewhere to build their skills before returning home to find employment in the new sectors or to start business.

Southern Africa is facing problems associated with illegal migration and Mauritius as a new member of IOM will need to take the necessary preventative measures. Multi-dimensional aspects of migration include brain drain, gender, security and human rights. The complexities of migration require that benefits and negative aspects are balanced bearing in mind the protection of the rights of migrants. Migrants should be supported to earn their living in a safe environment.

Effective implementation of anti-trafficking measures including prevention, investigation, persecution and protection for victims needs to be introduced through concerted international efforts.

Ms. Phyllis Coven, IOM Technical Cooperation Specialist provided an overview of the patterns and trends of irregular migration in other regions in Africa and a description of the activities of IOM/TCM in collaboration with governments in response.

Ms. Coven gave a briefing on emerging trends in the region, of which highlights are:

- Extra-regional migrants often have visas and ticket for neighbouring countries allowing legal entry through Johannesburg Airport;
- Fly onwards, then cross land-border back to South Africa and wait to get ticket and documents to fly beyond;
- Often allowed in or returned by airline –only to South Africa;
- Groups of 5-20 people;
- Use of safe houses in the border regions while waiting for land transportation back to South Africa.

Currently, there is a serious law enforcement gaps to effectively tackle the issue of human trafficking and organized crimes. In this connection, Mr. Coven presented the TCM technical assistances available to the governments, namely the **Capacity Building for Migration Management Programs¹ (CBMMP)**.

Major-General Krerkphongse Pukprayuyra, Office of the Commissioner General, Royal Thai Police, Kingdom of Thailand gave an overview on current situation of irregular migration to Thailand as well as on Bali Process which started in 2002.

¹ see summary of Ms. Coven's presentation on p.7-8

The Regional Ministerial Conference on *People Smuggling, Trafficking in Persons and Related Transnational Crime* was held in Bali, Indonesia from 27-28 February 2002² (Bali Conference). It provided an opportunity for Ministers and senior officials throughout a broad region to exchange information and plot new directions in combating smuggling and trafficking in persons and related transnational crime.

The objectives of the Bali Process are, among others, to: develop more effective information & intelligence sharing arrangements; improve law enforcement co-operation; enhance co-operation on border & visa systems; verify identify & nationality of illegal migrants; and to strengthen legislation.

Ms. Agueda Marin, IOM San Jose, Costa Rica, gave a presentation entitled “Reflections from the Puebla Process as Region of Transit, Origin and Destination--Arrangements Between Neighbouring States and Lessons Learned”.

The agreed plan of action of the Puebla Process includes: Migration Policy and Management (Guidelines and Agreements on migration management issues such as readmission); Human Rights, including human smuggling and trafficking); Migration and Development. Specific activities such as seminars and workshops, which focus on critical migration related issues, training efforts and technical assistance (including counter-trafficking and counter-smuggling) and exchange of information and best practices have been carried out.

Mr. Aziz Jilali, Assistant Director of Migration and Border Surveillance, Ministry of Interior, Kingdom of Morocco gave a presentation on *Moroccan National Strategy of the Fight Against Human Smuggling and Trafficking* as well as the outcomes of the Rabat Conference in 2006.

Mr. Jilali described the main outcomes of the Rabat Conference (10-11 July 2006) as follows:

Adoption of a political declaration defining shared doctrines relating to the regulation of migratory flows, and based on the principles of;

- Co-responsibility of regional partners and acting solidarity
- Linking migration and development for durable solutions
- Adoption of a concrete and pragmatic action plan combining short and medium-term measures according to the following objectives:
 - to facilitate legal migration and integration conditions in receiving societies;
 - to promote cooperation in the field of local development: income-generating projects; the transfer of technology; access to social services;
 - to strengthen cooperation in education and knowledge-sharing;
 - to fight against clandestine immigration, particularly human trafficking networks (cooperation between security services; information; border control; logistical and financial cooperation for the return of irregular migrants to the country of origin);
 - to create follow-up mechanisms and regular evaluation systems.

AFTERNOON SESSION

Dr. Daniel Tevera of the Southern African Migration Project provided an overview of migration trends in the SADC region. Amongst other things, he referred to the feminisation of migration, xenophobia, the brain drain and social and economic challenges posed by migration.

2 The official web-site of the Bali Process is available at: www.baliprocess.net

In describing the situation related to irregular migration, he noted that poverty and desperation remains high, and globalization is a project which is well-entrenched in the region. He emphasised that the problem of irregular migration also has to do with the management of migration in the region and with restrictions on movements of people residing near borders. He concluded by stating that there is a need for increased cooperation on how to deal with irregular migrants between national governments. He was pleased that SADC is encouraging this kind of cooperation and interaction, although a lot still needs to be done. Forums such as MIDSA where governments, international agencies, researchers and other role-players can share dialogues are important and must be encouraged.

Tour de Table

During the Tour de Table, all participating government were given the opportunity to share their views and experiences relating to irregular migration, focusing on policy and management challenges, logistical and resource constraints and capacity-building needs and requirements. Brief summaries of the country presentations are:

- Strengthening dialogue, cooperation and partnership between countries affected by illegal immigration
- Some countries established joint-regional committees with all its neighbouring states where common operational issues are discussed
- Region needs coherent policy for assisting victims with shared resources from SADC
- Need for harmonization of Immigration Laws and procedures within the East African Community (EAC) and the SADC Framework. i.e. Standard Operation Procedures
- Some countries conducted legal reforms in an effort to counter trafficking effectively while some has no law prohibiting smuggling in place yet
- Lack of integrated computer systems at some ports of entry due to limited resources
- Fundamental inadequacies in systems of data collection and analysis as well as inadequate security of travel documents
- The cost incurred repatriating illegal immigrants is a big burden for the government
- Concern about the World Cup and security
- Brain Drain: Large scale emigration of local professionals; local students studying abroad not returning; no specific data/policy; increased migration of nursing staff and doctors
- Recent increase in the VoT from Asia
- Problems with non-official border points

- Cooperative Agreements (e.g. international agencies) on information sharing
- Need to ensure data collection and rights of privacy
- Need for further research on human trafficking and its social impact
- Management of cross-border crime and criminal information

- Need to extend campaigns to rural areas at risk
- Proposed the establishment of the trafficking units in the region
- Requested an international support for legal frameworks, capacity building of police on borders, IOs, ID system.
- Monitoring and enforcement mechanisms need to be introduced
- Need for the training for data collection, judiciary, law enforcement, border officials, investigators to ensure coherence

Following the Tour de Table, **Mr. Natangwe Angula** of the SADC Organ on Defence, Peace and Security observed the lack of coordinated strategies and legal framework for dealing with

irregular migration and human trafficking in the SADC Region. He noted that SADC had embarked on ground-breaking efforts in achieving its main goal of closer regional cooperation and integration among its Member States. These include the implementation of the yet to be ratified Protocol on the Facilitation of Movement of Persons and the envisaged SADC UNIVISA (for extra-regional nationals travelling to SADC Member States).

In order to prevent irregular movers and traffickers to carry out their illegal activities, it is necessary for the region to formulate and implement the SADC Protocol on Irregular Migration and Human Trafficking.

The other processes that may prove to pose challenges as far as the issue of irregular migration is concerned are;

- The process towards the realization of a SADC Free Trade Area by 2008;
- The process towards the realization of a SADC Customs Union by 2010;
- The preparation for the SADC Region to host the World Cup by 2010;
- The process towards the realization of a SADC Common Market by 2015.

In view of the above, it is also worth to take cognizance of existing SADC mechanisms that assists in dealing with issues of irregular migration and human trafficking, namely;

- The Protocol on Politics, Defence and Security Cooperation;
- The Protocol on the Facilitation of Movement of Persons;
- The Protocol Against Corruption;
- Protocol on Combating Illicit Drugs;
- The Protocol on Mutual Legal Assistance in Criminal Matters;
- The Protocol on Extradition;
- The Protocol on Control of Firearms, Ammunition and Other Related Materials; and
- The SADC Early Warning System.

The Director-General of the IOM, **Mr. Brunson McKinley** thanked the Mauritian government for its hospitality and noted that Mauritius is one of the newest members of IOM. In his brief input, Mr McKinley made the following points:

During the UN-HLD Sessions, Migration and Development issues were heavily discussed. The North-South disagreement, which is often the case in the Migration and Development discourse did not take place and MIDSAs Statement from the region was well-received. The importance of the economic aspect, such as remittances was recognized by all that took part in the sessions and there was a general consensus on the importance of the Migration and Development issues. International dialogues, such as MIDSAs and International Dialogue on Migration (IDM) help both developing and developed countries to reach consensus around migration issues.

DAY TWO

Morning Session

Mr. Jonathan Martens, Program Manager of the IOM counter-trafficking programme II (SACTAPII), provided an overview of the situation regarding the trafficking in persons to, through and from the Southern African region. He described the nature and patterns of trafficking, the most likely source and destination countries of victims, as well as the most common methods and routes used by trafficking syndicates. In addition, Mr. Martens described the IOM SACTAP programme, which consists of 4 pillars, namely: 1) Research (8 issues of

“Eye”); 2) Information Dissemination (print material and radio, help line in RSA); 3) Capacity building (training workshops for police and immigration at key ports of entry and workshops for civil organizations); 4) Victim Assistance (emergency and short to medium-term assistance package available to beneficiaries, including shelter, med/psychosocial, AVR and reintegration). He had also briefed the participants on the key recommendations arose from external review in 2006 as well as on SACTAP II programme.

Mr. Abel Mbilinyi, Deputy Regional Representative of the UNHCR, focused on the links between irregular migration and refugee/asylum flows noting while refugees and asylum seekers may often be undocumented, this would not fall into the category of illegal migration. He expressed the view that there are significant gaps in refugee law, i.e. that it is silent on the question of where anyone should choose to be a refugee. Refugee law also does not oblige an asylum-seeker to stop moving – this would place a huge burden on countries bordering other countries in perpetual conflict. The interpretation therefore is that there is no general prohibition for refugees and asylum-seekers to move on. He expressed the view that the seeking of asylum is not an offence and that there is no reason for an asylum-seeker to be detained or punished.

In relation to harmonization, he observed that a number of SADC countries have not ratified key treaties protecting refugees, and that lack of ratification or domestic legislation to deal with refugees would hinder efforts towards harmonization or readmission. In closing the presentation, Mr. Mbilinyi made few suggestions:

- Joint advocacy and fund-raising need to be in place;
- Burden sharing, instead of burden shifting must take place. i.e. regular dialogue to enhance understanding of refugee protection;
- Need to seek other ways in border management/monitoring.

Advocate Ray Nelson, Crime Expert of the UNODC provided an overview of the *Palermo Protocol on Transnational Organised Crime* and other international instruments pertaining to international crime and trafficking in persons. He noted that while many countries have ratified these instruments, many are not providing for effective implementation given the lack of appropriate domestic policies and legislation. He reiterated the importance of standardized legislation to effectively tackle the issue of human trafficking.

Adv. Nelson also provided a brief description of the current activities of the UNODC and invited participating governments to approach the UNODC for support and assistance.

Dr. Thomas Bisika of the Social Affairs Department of the African Union Commission provided a description of the processes being undertaken at a continental level related to migration policy and legislative harmonisation, with a particular focus on the Migration Policy Framework for Africa and the AU Common Position on Migration and Development.

The Migration Policy Framework for Africa addresses issues relating to migration and development, human rights of migrations, remittances, irregular migration, forced migration especially covering refugees, asylum seekers and internally displaced persons, and brain drain among several other things and outlines some recommended actions, priorities and way forward. The Framework is very comprehensive and is meant to harmonize migration policies on the continent. Although it is non-binding, countries are encouraged to draw inspiration from it. On the Banjul Summit, he noted that the following had been decided:

- Member States and RECs were urged to utilize the Policy Framework as a guideline when developing migration policies;

- AU Commission, IOM and other partners were requested to assist member states in the implementation;
- As a follow-up, the Summit mandated AU Commission to develop a follow-up mechanism in collaboration with partners;
- The AU Commission chairperson was requested to periodically report on the implementation of the Policy Framework.

Ms. Gail Wannenburg of the South African Institute of International Affairs provided information on research being done on the linkages between organized crime and irregular migration. The overall conclusion presented was that, there is no empirical evidence that links irregular migration to a high incidence of crime. However, migration may facilitate trans-national organized crime (OC) as the controls on migration create lucrative opportunities for OC such as human trafficking. Migration is also linked to trans-national OC in the sense that OC network is often based on family or kinship ties and that historical ties & traditional trading routes in region can be used to facilitate OC.

Ms. Wannenburg presented three possible solutions to this issue of Migration and OCs. Approach 1 calls for market driven approach. The idea is to bring informal contractors, cross border traders and border communities into legal economy by providing incentives for participation, which will allow a focus on real problem of OC networks and illegal activities. Approach 2 aims to gradually relax migration control as the region develops. This approach would require information & intelligence sharing on syndicates involved in human trafficking and OC, improved state capacity at ports of entry as well as education and assistance to victims of trafficking to increase reporting to the authority. Finally, approach 3 calls for long-term approach to OC, such as rebuilding judiciary, policing, public sector governance and encouraging civil society involvement.

DAY THREE

Mr. Vincent Williams, Project Manager of SAMP provided brief information on activities undertaken to support the MDSA process, with particular reference to the research and training activities conducted by SAMP. **Ms. Ntombi Msibi**, also of SAMP, provided an overview specifically of the SAMP Certificate Course in Internal Migration Policy and Management and invited governments to apply to participate in the course.

Ms. Phyllis Coven, IOM Technical Cooperation Specialist for Africa, provided a briefing on the new **Capacity Building for Migration Management Framework for Southern Africa (CBMMP)** and facilitated a session aimed at soliciting MDSA participants' input and guidance on this new initiative.

The CBMMP is the first comprehensive program to build governmental capacity to manage migration in Southern Africa and has as its goal to assist the region in developing regionally compatible migration management systems. The Framework has been designed to reflect and respond to the numerous recommendations that MDSA has issued on irregular migration, most notably at the Blantyre and Centurion meetings in 2004 and 2005. The CBMMP is specifically designed to build upon the region's existing institutions and strengths, as well the unique challenges posed by implementation of the Protocol on the Facilitation of Movement of Persons, the envisaged SADC UNIVISA System and the 2010 World Cup.

In order to facilitate development of the CBMMP in the region, participants were encouraged to:

- Provide any additional comments to the IOM Regional Office for Southern Africa;
- Share and solicit support for the CBMMP Framework within their respective ministries

- letters of support from their governments for the Framework as a whole would be beneficial to IOM's efforts to secure donor support;
- Provide IOM with information they have on automation and to send written responses to the questions by November 15th.

The Future of MDSA

Mr. Vincent Williams from SAMP introduced and facilitated a discussion about the future of the MDSA process, based on the following background information and questions:

Background of MDSA: After 6 years of its launch, MDSA holds 2-3 workshops per year which all the SADC member states participate in. MDSA provides opportunities for the member states to informally engage in dialogue, sharing information and experiences, which enables the participating governments to learn from each other. MDSA's informal nature enables the member states to openly discuss controversial issues on migration, in the spirit of collaboration and cooperation. When discussion in SADC resumed in 2003, MDSA continued as a parallel process, and possibly impacted on formal state processes.

The Mauritius MDSA workshop reflects some of the recommendations made during the previous MDSA workshop in Windhoek, Namibia in April 2006:

1. Effective policies and practices must be put in place to address irregular migration, including trafficking and smuggling;
2. Efforts should be made to harmonize immigration laws and policies among the SADC countries;
3. Capacity building in aspects of migration policy and management is encouraged.

However, there is apprehension on sustainability regarding a) resource constraints and 2) continued governments' interest to participate in MDSA. Furthermore, after 6 years, a number of questions are being raised about the future of MDSA- is there a way to link the informal discussions to formal discussions within states.

In the past, there have been two proposals: (1) a Ministerial consultative meeting, in addition to regular workshops, to raise the political will and the issues to the political level which make a commitment; (2) Establish a MDSA focal point at national level – the idea was that in each national government one person would be delegated as the focal point who can contribute to discussion on themes and assist with logistics. In this way, there will be some reliance on participants to go back to their governments, discuss and implement recommendations. While MDSA has been useful in building relationships, sharing experiences and information, ultimate questions arise as to how the MDSA process can be linked to what happens elsewhere. With this question in mind, Mr. Williams posed the following 3 specific questions to the participants;

- 1) How do we enhance government participation in the planning and organizing processes and funding of MDSA?
- 2) How do we ensure that the MDSA process is linked into the formal state processes in the sub-region?
- 3) Is there a need to consider re-structuring MDSA, both in terms of its Steering Group and workshop sessions, and if yes, what recommendations would participants put forward in this regard?

Following the discussion on the above questions, the recommendations below were agreed to in principle:

1. **There continues to be a need to include MIDSAs work in national, regional, continental processes. However, caution should be exercised to maintain the informal nature of MIDSAs;**
2. **The recommendations on establishing a focal point and organising a workshop at Ministerial level should be pursued;**
3. **Efforts should be made to sign MoUs with the SADC Secretariat to ensure the formal recognition of the MIDSAs Process. This would also be an important entry point for achieving the above recommendations;**
4. **The current Steering Group consisting of IOM and SAMP should pursue the above recommendations and make every effort to achieve their implementation.**

CLOSING SESSION

Mr. Hans-Petter Boe, IOM Regional Representatives for Southern Africa reiterated the point he made during the opening session, which was to encourage participants to think globally and act regionally and in this respect, he welcomed the participation of the representatives from other Regional Consultative Processes. He noted that the establishment of RCPs had become one of the biggest new emerging trends and that RCPs not only have a “right to life”, but are essential to global migration management. He expressed his thanks to all the participants and presenters and in particular to the Government of Mauritius for their initiative and support.

Mr. Brunson McKinley, IOM Director-General also expressed his appreciation for the dynamic quality of the workshop and his thanks for the efforts and contributions of all participants. He noted that a big step forward has been achieved and that he was pleased to see that MIDSAs has come thus far. He described MIDSAs as a real engine for progress in migration management in the region and emphasised that the recommendations regarding: 1) a MoU with the SADC Secretariat; 2) the establishment of national focal points/ MIDSAs secretariat; as well as 3) hosting of a Ministerial meetings needed to be pursued.

Finally, he also expressed his sincere thanks to the Government of Mauritius for their excellent preparations, hospitality and the participation of the Minister.

H.E. Ambassador Anand Newoor, Secretary for Foreign Affairs of Mauritius noted that MIDSAs as an RCP has become an important opportunity for dialogue and exchange of experiences and practices and expressed his wish that this should be a continuous exercise in and outside workshops of such nature.

He emphasised that migration cannot be dealt with in isolation, but that it must be managed collectively, requiring co-operation among governments, NGOs, regional/international organizations. In formally closing the workshop, he expressed his thanks to the IOM and SAMP and appealed to those who were not already Member States to consider joining IOM.