

**Report and Recommendations of the
MIDSA WORKSHOP on Irregular Migration
And Migrant Smuggling**

Johannesburg, South Africa 25-27 June 2003

Countries, Presenters and Observers

The Workshop had government participants from Angola, The Democratic Republic of Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. Botswana was excused. Presenters included IOM, SAMP, South African-based NGO Lawyers for Human Rights (LHR) and representatives of the Southern African Immigration Liaison Group (SAIL) - including Australia, Canada, The Netherlands, and the United Kingdom. Observers included officials representing Denmark, Australia, the Netherlands, Switzerland, the United States of America, and UNHCR. (Observers invited but unable to attend included: UNODC, IMP, SADC, African Law Enforcement Academy (ALEA), and SARPCCO.)

Summary of proceedings

Opening Session

The Workshop was opened with introductory statements by Mr. Barry Gilder, Director-General of the Department of Home Affairs (DHA) of the Republic of South Africa, Mr. Vincent Williams, Project Director, SAMP, and Mr. Hans-Petter Boe, Regional Representative, IOM.

Mr Gilder, welcomed all the participants on behalf of the Minister of Home Affairs and the Government of South Africa. He expressed his appreciation of the MIDSA process, as a shared forum for discussion on migration policies and welcomed its' contribution to the regional cooperation in this area. He described migration as a process that is becoming more and more circular and affecting an increasing number of countries. With it, the tasks of governments to adjust polices and laws are growing and they are facing the dilemma of maintaining sovereign rights and dealing with the dynamics of movement of people. He stressed the need to address the illegal aspects of migration, including trafficking and smuggling of people, and for countries to ratify the relevant United Nations Convention Against Transnational Organized Crime and its Optional Protocols against Trafficking in Persons and Human Smuggling. He concluded by informing participants that South Africa was about to ratify those Protocols and that DHA was committed to dealing with people smuggling and trafficking through multilateral and regional cooperation mechanisms.

Mr. Boe expressed his appreciation for the efforts made by the hosting government and introduced MIDSA to first time participants as a capacity building project, which has been running for 4 years, stressing also its value as an informal consultation process towards finding common solutions to common problems, in parallel to SADC's efforts in other sectors. He underlined how irregular migration is increasingly affecting the SADC countries and the new challenges it implies for governments and law enforcements in the region. He expressed the hope of both IOM and MIDSA that the workshop would be useful to all the participants in terms of fostering sustainable dialogue among the individuals in the room, and that it would lead to operational activities.

Mr. Williams extended his welcome to the participants on behalf of MIDSA partners. He

emphasised the transnational nature of the problem of irregular migration and the need for governments to think co-operatively in the region. He further explained how MIDSA aims to work as a dynamic forum for dialogue and facilitate collaboration between governments. The members' recommendations instruct the implementing bodies, IOM and SAMP, to undertake research, workshops and to find solutions on problems experienced by governments. He concluded by expressing his hopes for a dynamic workshop that would lead to interesting conclusions and recommendations.

Global Overview of Irregular Migration and Migrant Smuggling

Ms Irena Omelaniuk, Director, Department of Migration Management Services, IOM Geneva, provided an overview of irregular migration and migrant smuggling worldwide. The discussion covered major source, transit and destination countries and provided statistics that demonstrated the extent and impact of irregular migration in various countries. The presentation also looked at reasons for the rise in irregular migration, 'push' and 'pull' factors such as poor economic prospects on one hand and improved communications and infrastructure on the other. Regional and international trade were also described as having contributed to increased free movement.

The presentation also reflected on factors that underpin irregular migration, such as conflicts, economic globalisation and bigger international demand for migrant labour. In addition, Ms. Omelaniuk spoke about how irregular migration undermines the benefits of legal migration and the asylum process. The need for concerted and collaborative responses by governments was stressed and mention was made of several mechanisms that are already employed by some governments. While relevant laws and policies are being adopted by governments, there is a lack of enforcement and as a result there is a gap between policy goals and outcomes. As possible solutions to close the gap, the presenter suggested that reduced demand/pull and supply/push incentives, greater political and developmental cooperation, and partnerships and dialogue be combined with integrated border management and harmonized visa policies.

International Conventions

Mr James Puleo, Senior Advisor on Migration Policies and Migration Management, IOM Washington, and a former senior US Government official with extensive experience in the subject area, provided an introduction to International Conventions - and more specifically the 'People Protocols' and the guidance they provide to States in addressing the issue of migrant smuggling, including interstate cooperation. .

He described the process towards the adoption of the two protocols, which are supplemental to the Convention on Transnational Organized Crime and came into place in the year 2000. A description was given of the provisions of the protocols. It was underlined that the protocols are aimed at dealing with the offenders. The trafficking protocol also includes a protecting article and affords protection for the victim. Emphasis was also put on the return article, which is included in both protocols and clarifies that countries must accept return of migrants/victims. Significant for both the protocols is their transnational nature, their provision for criminal penalties and their emphasis on training and information sharing.

The necessity to differentiate between smuggling and trafficking was emphasised in the presentation and to separate the various cases to determine the solutions at political, legal, administrative and operational level.

Looking ahead to the next steps towards fighting both trafficking and smuggling, it was

underlined that not one country can deal with the two issues on their own and that it will take collective efforts of governments to deal with both trafficking and smuggling. Increased collaboration between governments, non-governmental organisations and international organizations, is seen as part of the solution. In his concluding remarks Mr. Puleo stressed that the protocols provide a basis on which countries can enact national legislation, 'it sets the floor not the ceiling' of what countries can do against smuggling and trafficking of human beings, - adding that it is for States to decide whether syndicates or the Government will have charge of migration management.

During the discussion following the presentations, the participating governments stressed the need to address push factors in the countries of origin, as well as pull factors in the countries of transit and destination. The issue of return was raised as a problem for developing countries, as they do not have the resources available. IOM talked about the increasing need for countries of destination to invest in joint return solutions with countries of origin and transit, as also amply reflected in European Commission communications on the subject of cooperation with "third countries". The question was also raised about what developed countries can do to address the problems in the sending countries. The suggestion was made by IOM for both developed and developing countries to ease up their legislation and open up more channels for legal migration to help undercut the profitability of irregular migration for smugglers and traffickers. IOM referred to a direct correlation drawn by the ILO between the globally regulated labour migration of the Philippines and the low incidence of migrant trafficking from the Philippines.

Regional Overview of Irregular Migration of Third Country Nationals in SADC

Country Presentations

Each participating Government gave a brief presentation on irregular migration of third country nationals and migrant smuggling through their territory. The majority of countries described irregular migration as a relatively newly discovered phenomenon but recognized that it is becoming widespread problem. Experiences made in the countries indicate that the movements are well organized and that trafficking and smuggling of people is facilitated through well established networks and points of contacts in the receiving countries.

The problems related to irregular migration are increasingly being addressed by the countries. Measures include, improvement of border controls, efforts to review and update legal instruments and introduction of mandatory visa requirements. Participants made suggestions and recommendations on how to meet the new challenges caused by irregular migration. Increased bilateral and regional cooperation and coordination was seen as crucial. A concrete suggestion was made to bring together the Ministers of Justice of the SADC region, to develop suitable legal instruments to address the issue. The need for additional research on the causes and consequences of irregular migration was raised, and IOM and SAMP were requested to assist the countries in this regard.. Calls were made for increased information sharing in the region and a specific request was made for the establishment of a regional database. As a last point, closer collaboration with civil society, NGOs and media, was suggested as an important tool to meet the challenges faced.

IOM Research Survey

Mr. Pieczkowski, IOM Pretoria, presented the findings of IOM's recent rapid assessment into the smuggling of extra-regional migrants in the Southern African region. The research was conducted over a 6-week period and found three major trends in extra-regional smuggling directed at South Africa: smuggling of (1) Chinese/Taiwanese migrants, (2) African migrants, and (3) migrants from the Indian Sub-Continent. Mr. Pieczkowski's presentation focused largely

on the final category, finding that male migrants from Pakistan, India, Bangladesh and Sri Lanka were involved in large-scale irregular migration through the region. A general trend in routes followed to South Africa was identified and a number of neighbouring Southern African countries were listed as transit points used by smugglers, namely Tanzania, Zambia, Malawi, Mozambique, Zimbabwe, Swaziland and Lesotho. Mr. Pieczkowski pointed out that migrants from the Indian Sub-Continent use both manned border posts and unmanned borderlines to enter South Africa. Southern Africa as a whole was found to be both a transit and a destination region. Mr. Pieczkowski concluded by saying that the area of extra-regional migrant smuggling through SADC remains under-researched and participants strongly urged IOM to undertake more comprehensive assessments of the phenomenon. IOM's survey was made specifically for the purposes of this workshop and was limited both in time and scope.

Migrant Experiences in South Africa

Representing Lawyers for Human Rights, **Ms. Kaajal Ramjathan**, presented to the workshop migrant experiences in South Africa. The presentation reflected on the motivations and the various reasons for migrants to come to SA and mentioned among others economic and political reasons. Ms. Ramjathan reflected on the often negative experiences of migrants in SA. Further she suggested that governments consider addressing push and pull factors as a means of reducing undocumented migration. She also recommended to legalize migrants stays through measures such as work permits and temporary resident permits. As a final point she mentioned the need to facilitate immigration processes and reminded the participants that entry restrictions exacerbated the vulnerabilities of many migrants.

In the discussion following the presentation, participants underlined the importance of accurate information and the need for governments to enforce national laws. One of the challenges of governments is to maintain a balance between protecting individuals' basic human rights and enforcing national immigration and other laws.

Managing Undocumented Extra-Regional Migration/through the SADC Region

Legal Framework in the SADC region

Prof. Jonathan Klaaren, SAMP, described the existing legal framework in the SADC region based upon a recently completed study undertaken by SAMP.

He described how the legislation of various countries provides for grounds for the exclusion, expulsion and detention of irregular migrants and listed the migration related offences for which persons may be prosecuted. With the exception of Tanzania, it was noted that no member state currently have specific legislation pertaining to trafficking in persons, however many of the provisions in existing migration legislation, such as 'aiding and abetting', could be used for prosecuting people involved in smuggling.

The full report of the study will be presented at the coming MIDSA meeting in November 2003. It should offer a good basis for moving towards harmonisation of laws in the region.

Problems related to Irregular Migration and Migrant Smuggling

Representatives from the SAIL (Southern African Immigration Liaison) group, Mrs. English (Australia), Mr. Wilkins (Canada), Ms. Geelen (the Netherlands) and Mr. Spencer (UK), gave short briefings on the problems caused by irregular migration and migrant smuggling in each of their respective home countries as well as some of the solutions to these problems.

Statistics on illegal migration were presented to the participants by the SAIL representatives and a quick overview of the major counter measures was made. These included increased control in sending countries, training of airport staff and ongoing monitoring of trends in irregular migration. The SAIL representatives offered to assist MID SA countries in the combating of smuggling and trafficking through training and information provision.

In the discussion following the presentation, participants were reminded of the MIDSA Workshop on 'Border Management' which took place in Lusaka in 2001. It was proposed that the Lusaka document be revisited and updated to incorporate new information and recommendations.

Visit to Lindela Reception Facility

The workshop included a visit to the South African transit facility for irregular migrants at *Lindela* where the participants were briefed by representatives from the Department of Home Affairs and facility management. The centre currently holds some 3,000+ persons, who spend an average of 30 days at the site pending their removal, or other solutions.

Scenarios and Group Discussions

Mr. Jonathan Martens, IOM Pretoria Programme Officer, offered government participants 4 distinct scenarios which they were asked to discuss in small groups, and identify solutions. In the plenary, group presentations highlighted the following important issues to take into consideration when dealing with irregular migration:

- In relation to smuggling activities, improvement of border control through training activities was highlighted.
- Pre-screening activities in sending countries were suggested as a means of mitigating trafficking and smuggling activities.
- The need for improved national legislation with regard to both smuggling and trafficking was raised, as well as measures to prevent sham marriages.
- Amnesty initiatives was mentioned as an option to improve the situation of irregular migrants in receiving countries.
- The importance of addressing root causes, such as poor economic conditions in source countries, as a way of curtailing smuggling and trafficking was highlighted.
- The need to harmonise data collection, including the types of data collected, the mechanisms by which it is collected, and to facilitate the sharing of information between migration and law enforcement officials in the region.

Efforts and experiences from other regions

Ms. Omelaniuk, IOM Geneva, gave an overview of strategies applied and efforts made in other regions to address irregular migration in a joint way. Reference was made to consultative processes in other regions such as the Puebla Process in Central America and the Budapest Process in Europe. Common activities and efforts through these processes have included development of common plans of action, development of counter trafficking programmes and programmes for safe and orderly return of migrants. The processes have also looked at common visa requirements, border management and information sharing with encouraging result. Progress on the ground was generally slow, and tended to have worked well and within reasonable timeframes where, as in the case of the Budapest Process, there were twinning arrangements on specific issues between countries of origin, transit and destination within the membership, or break-out expert groups working on an issue on behalf of the entire membership. The participants were informed that increasingly there were also cross-regional

processes, to enhance capacities of governments to deal with irregular migration across the global migration spectrum, and that IOM was supporting such efforts across broader Asia (Bali Process) and between Asia and Europe (ASEM).

In her concluding remarks, Mrs. Omelaniuk recommended that participants look closely at some specific experiences from other regions to see how they could be applied in the SADC region. Concrete activities could include technical workshops or task forces involving expert problem solving on behalf of the whole MIDSA membership; and technical expert exchanges with other countries, along the lines of IOM's recently arranged visit of Government officials from a range of countries in Africa, the Middle East and S. Asia to Manila to learn about the Philippines' global labour export strategies. She further encouraged a continued regional approach and continued research to ensure accurate information and informed policymaking.

In the discussion following the presentation, support was expressed by participants for a coordinated effort in the region.

Recommendations

The participating governments pointed out the need to:

- undertake further research on the causes and consequences of irregular migration.
- increase information sharing in the region and establish a regional database
- bring together the Ministers of Justice of the SADC region, to develop suitable legal instruments to address the issues of irregular migration
- encourage training for government, border personnel and others concerned.
- update the Lusaka document on 'Border Management' to incorporate new information and recommendations that resulted out of this workshop.
- in the future, start MIDSA workshops with a review of what action has been taken by governments to follow up on previous recommendations made.
- pursue and strengthen bilateral as well as regional cooperation on irregular migration
- investigate possibilities for bilateral labour agreements between countries in the region to use migration as a source for development.
- explore options and logistics of creating expert working groups among some member states on specific issues such as children, trafficking, border systems etc., to report findings of common interest to the whole membership.
- further pursue and pursue funding options with the EU for MID SA and resultant projects.

MIDSA Matters/Closing of the Workshop

Mr. Boe extended his appreciation to the participants and congratulated them for their active participation. He expressed his hope that the recommendations to come out of the workshop would lead to some concrete follow-up activities, and called on participants to support the MIDSA process with donors. Equally important was for participants to continue nurturing contacts and dialogue among themselves. He undertook that until SADC had the capacity, statutorily and otherwise to take on issues of migration, IOM and SAMP would continue to support the MIDSA process. He concluded by extending the organisers' thanks to the presenters for their valuable contribution to the workshop, to staff and interpreters for their work, to donors for their support; and to the South African Government for its hospitality.