

MIDSA Workshop on Forced Migration

Final Report

Countries, Presenters and Observers

Participants from Governments were as follows: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe. **Presenters** included representatives of the Governments of Zambia, Angola, DRC, and Mozambique; the United Nations High Commissioner for Refugees (UNHCR), United Nations Office of Coordination of Humanitarian Affairs (OCHA), International Committee of the Red Cross (ICRC), Forced Migration Programme of the University of the Witwatersrand, Johannesburg; INTRAC -Oxford, Regional IDP Programme (NGO), Jesuit Refugee Services (ORS), IOM and SAMP. **Observers** included officials from the African Union (AU), the Southern African Development Community (SADC) Secretariat, the European Union (EU), the UN World Food Programme (WFP) and US AID Office of Foreign Disaster Assistance (Harare).

Summary of Proceedings

DAY 1

Opening Session (Facilitated by Mr. Arnold Chitambo, SADC Secretariat)

The Workshop was opened by Mr. Hans-Petter Boe, IOM Regional Representative, the Hon. Lt. Gen. Ronnie Shikapwasha, M.P., Minister of Home Affairs of Zambia, Mr Ahmed Gubartalla, UNHCR Regional Representative and Mr Vincent Williams, SAMP Manager.

Mr. Hans-Petter Boe, IOM Regional Representative, said that the MIDSA process continues to grow and attract interest from Governments and civil society at large in the region. As such it mirrored similar migration dialogue processes in other parts of the world, including East and West Africa, the Mediterranean, the Americas and Asia. He said it was gratifying that SADC, AU and NEPAD agendas increasingly feature migration issues. The idea of this workshop was to try and encompass just about all kinds of issues related to non-voluntary migration, of which there was far too much on the Continent, through impartial deliberations that would hopefully leave politics aside and focus on a productive search for collaboration on practical solutions that can benefit all concerned. Lastly, Mr. Boe thanked the Government of Zambia for its willingness to host the workshop and for its generous humanitarian traditions in support of refugees and displaced persons.

The **Hon. Lt. Gen. Ronnie Shikapwasha, M.P., Minister of Home Affairs of Zambia**, welcomed all the participants and organizers. The workshop was organized under the regional framework of the Migration Dialogue for Southern Africa (MIDSA) to address the important issues of forced migration, including refugees, internally and externally displaced people in the SADC. He particularly mentioned that the Southern African Region has experienced forced migration trends largely due to armed conflict and fear of violence, as well as threats to human rights and persecution. He commended the on-going peace initiatives in Angola and the DRC and that the signing of Tripartite Agreements between the concerned countries have given way to fruitful operations that are presently supporting the organized repatriation of refugees to their countries of origin. At the same time, he commended the initiatives undertaken by Government

of the Republic of Rwanda aimed at securing a conducive environment for the initial return of a small number of Rwandan refugees. He stressed the need for all participants to continue cooperating and coordinating with regards to confronting the common challenges faced by all concerned with regard to forced migration, especially in the case of harmonizing procedures and legislation that would not only support the SADC region, but also help the entire African continent. He stressed the need for countries in the region to continue to work together in ensuring the creation of sustainable reintegration opportunities for the returning populations, be it refugees or IDPs. He noted that the full representation of all the SADC countries at the workshop, as well as Madagascar, reflected a common desire for cooperation and harmonization of procedures' and policies in the resolution of common goals.

Mr. Williams, Southern African Migration Project (SAMP), welcomed the participants on behalf of SAMP. He reiterated that one of the main purposes of MIDSA was for governments to engage in dialogue with each other about how best to develop migration-related policies and management systems. Mr. Williams spoke of the responsibilities that governments have to ensure that refugees and internally displaced persons are granted protection. He emphasised that in the context of the SADC region, ways and means had to found to share the responsibility of providing protection between the various member states to ensure that the costs (financial and otherwise) was not just borne by a few countries. Mr. Williams wished the participants a fruitful and productive workshop.

Mr. Ahmed Gubartalla thanked IOM for inviting UNHCR to the workshop and stressed the effective partnership that has existed for many years with the Government of Zambia, IOM and many NGOs and agencies represented in the room. He stressed that whilst UNHCR's mandate was limited to protection of refugees and asylum seekers, he recognized that non-refugee migrants have a great impact on the protection of refugees. He emphasized the importance of strengthening partnerships and for the need to continue to look for innovative ways of addressing various issues related to forced migration, as well as the need for a coherent, consistent and integrated regional approach that would underline the harmonization of policies and efforts between the countries in the region.

Workshop Objectives

Mr. Vincent Williams (Project Manager, SAMP) and **Mr. Par Liljert** (Chief of Mission, IOM Lusaka) presented the objectives of the workshop, including a presentation of the workshop participants and facilitators. The purpose of the agenda was presented, as well as a brief discussion on the expectations of the workshop, follow-up on MIDSA activities and practical information.

Regional Overview of Recent Flows/Trends Relating to Refugees and Displaced Persons (Facilitated by Mr. Charles A. Kwenin, IOM)

International Principles and Key Refugee Movements and Challenges in Southern Africa.

Mr. Aaron Parnez, Protection Officer UNHCR, provided an overview of international principles and instruments governing refugee protection with specific reference to refugee movements in Africa. He described how conflicts in various countries in the region have impacted on the ability of governments to provide adequate protection, given their limited capacity and resources. Mr. Parnez made the point that most refugees in Southern Africa do not fall within the scope of the UN convention definition, but rather under that of the OAU Convention.

National Refugee Legislation Based on the OAU Convention - the Example of Zambia

Mrs Towa Chaiwila, the Legal Adviser to the Commissioner for Refugees in Zambia gave a brief overview of the development of Zambian refugee policy and legislation. She described Zambia's past and current involvement in the hosting of refugees from various countries in the continent, in terms of the OAU Convention as incorporated into Zambia's national legislation. She provided a description of the rights and obligations of refugees

She mentioned Zambia's reservations with regard to the right of refugees to choose their place of residence, the right to seek employment and education.

Mrs Chaiwila referred to the fact that moving refugees away from borders decreased concerns related to security when countries of origin are suspicious of subversive activities being conducted from the territory of the country granting asylum.

She noted that the OAU 1969 Convention does not make provision for repatriation and consideration should be given to reviewing and updating the Convention. She also mentioned that Zambian refugee legislation is currently in the process of being reviewed and updated.

Zambia had experienced the dilemma that upon signing the Tripartite Repatriation Agreement, a significant number of refugees moved to another country to avoid being repatriated. This emphasizes the need for regional consultations ahead of entering into such agreements.

Experience Gained from Repatriation Exercises in the Region

Presentation by Angola

Almost two years have passed since the signing of the peace agreement. Angola's war caused 4 million people (or one third of its population) to become internally displaced. There are also some 400,000 refugees in neighbouring countries. 3.3 million IDPs have already returned home and the repatriation of 170,000 refugees from Namibia, DRC and Zambia is underway. During 2004, 75,000 are expected to return home in an organized manner.

Other Angolans returns fall under the category of spontaneous refugees and number some 150,000.

Request that Botswana, DRC, RSA and Namibia support the return of Angolan refugees within the next year as the Government of Angola has limited resources to do the job alone.

Presentation by DRC

The DRC is facing a serious challenge with 3.5 million IDPs and 500,000 refugees in neighbouring countries. This is the result of a catastrophic civil war, which has included 6 foreign armies. Overall some 20 million people have been affected. The speaker discussed the need to assure orderly return of IDPs to their areas of origin, and of Congolese refugees back to the country. He added the challenge of returning non-nationals from the DRC noting the particular dilemmas posed by former combatants among them. He advocated that refugee return programmes should take place in partnership with international organisations as well as with the hosting country

He stressed that returns should be sustainable. The return process for both IDPs and refugees will therefore depend on right conditions being put in place with regard to reinsertion support. For example, security structures, administrative reception structures and active reintegration assistance programmes. Due to the complexities of the humanitarian operations, it was expressed that it will require a partnership between the DRC, neighbouring countries and the international community. This year the DRC passed a law which has put in place the judiciary mechanisms that go beyond existing conventions, promulgated for the legal status of refugees on DRC territory.

Presentation by Mozambique

After independence, many Mozambicans went to neighbouring countries due to the civil war. The 1992 Rome Agreement signalled the end of the conflict and resulted in the return of 1.7 million Mozambicans from various countries. Sensitisation campaigns were done inside Mozambique and in neighbouring countries, explaining the situation in Mozambique to encourage people to return.

There was a strong and direct participation of international agencies and NGOs throughout the entire process, including food distribution, family reunification, transport, de-mining, road rehabilitation, etc. Reintegration assistance was given equally to all vulnerable groups as part of harmonization policies. Good coordination was a primary reason for success, especially when it came to the Government of Mozambique ministries. Need to include the input of the actual local people and the refugees themselves in the discussion process as this leads to more credibility at the grassroots.

Integration of ID Ps and Returning Refugees into Host Communities

Father Michael Gallagher, Country Director of Jesuit Refugee Service ORS-Zambia) stated that assistance programmes needed to be people-centred and that things should be done to take into account their concerns from their camps. He stated that in the case of the Angolan refugees, the word "repatriation" was not clear as many were third generation refugees. To support reintegration considerable assistance will be required in terms of both cultural and linguistic re-education. He emphasized the need to ensure the establishment of the right conditions that assert stable reinsertion to avoid further negative migration over the next decade in the event of durable solutions not being found.

DAY 2

IDPs, Relief, Return and Reintegration

Role and Humanitarian Activities of the International Committee of the Red Cross in the Region

Mr. Marco Jimenez (ICRC - Harare) gave an extensive introduction on the ICRC's activities in favour of Internally Displaced Persons. He explained that ICRC's mandate is to protect and assist victims of armed conflict. Further, the mission statement for ICRC is "to help all victims of war and internal violence, attempting to ensure implementation of humanitarian rules and restricting armed violence". Further he explained that ICRC works in situations of international armed conflicts, non-international armed conflict and internal disturbances. On international armed conflict he described "the right of action" and the fourth Geneva Convention. On the non-international armed conflict he emphasized on the "right of initiative". On internal disturbances

he mentioned the internal laws and human rights provision. He explained that the laws that protect the IDPs include mainly national law and in case of armed conflict the International Human rights law is implemented provide they do not take part in hostilities, therefore protected as civilians. On ICRC's response to ID Ps he mentioned it's dual purposes: namely, Providing protection to victims of armed conflicts and internal disturbances and for those in greater needs of immediate life saving assistance, usually covering those recently displaced and on need of immediate support to survive. He further explained on the ICRC's response to the needs of the IDPs in the region as well as preventive and operational activities in the region.

Role and Humanitarian Activities of OCHA in the Region

Mr. Andrew Timpson (UNOCHA - Harare) representing the UNOCHA addressed the roles and humanitarian activities of OCHA internationally as well as in the region. He explained the roles of the Office of the Coordination of Humanitarian Affairs (OCHA). He further explained the roles of the UN Special Representative of the Secretary General (SRSG) for Internally Displaced, whose office is based in the UN High Commissioner for Human Rights (UNHCHR). There is no agency in the UN-interagency system with a clear mandate for taking the lead on IDPs. However, many agencies have a mandate to assist and protect IDPs when such specialized assistance somehow fall under its traditional activities in similar contexts or situations. For agencies, IDPs are assisted according to criteria that fits in with mandates, for instance, civilian population in situations of armed conflict, food-insecure populations, or women and children, who are often more exposed to abuses in a context of generalized violence of gross violations of human rights. Under the heading IDP Policy, reference is made to documents, in which the respective agency defines its role with regard to IDPs within the context of general mandate. Further, precisely because of the many agencies acting on behalf of IDPs cooperation and collaboration is a crucial issue. Zimbabwe, he explained, is facing a serious IDP problem after the land reforms, which affects both the resettled farmers and ex-farm workers. He explained that most observers agree that there was a genuine need for land reform in Zimbabwe because of the skewed distribution of the most fertile farmland that has remained since the colonial days. However, previous attempts to undertake land distribution in an orderly manner were by the end of 1990s overtaken by political events and put on a "fast track" by the government without regard for the negative consequences in terms of national food security and the uprooting of the substantial farm worker population.

Principles Providing Protection and Assistance During Displacement, Return and Reintegration - Role and activities of IOM

Mr. Charles A. Kwenin (IOM) addressed the Principles of Providing Protection and Assistance during Displacement, Return and Reintegration. He defined the meaning of IDP. He explained the guiding Principles on Internal Displacement that seek to address the needs by spelling out the various norms relevant to providing protection and assistance in all phases of internal displacement as well as the lack of clarity and consensus on when an IDP ceases to be an IDP creates problems for compiling reliable and agreed statistics hence controversies on the IDP figures. He further addressed on the forcibly displaced persons who remain within their country of origin, the Guiding Principles in effect envisages three possible solutions to their situation of internal displacement: Return to their homes or places of habitual residence, integration where they currently reside or Resettlement in another part of the country. He explained that return or resettlement is more than the actual act of returning or resettling but presumes the existence of sustainable conditions to support the durability of return and resettlement. He gave an overview of Forced Displacement in selected countries in the Greater Horn of Africa that included Uganda, Sudan, Kenya and Ethiopia.

Forced Migration: Trends, Routes, And Legislation (Facilitated by Mr. Jacob Mphepo, Commissioner for Refugees, Zambia)

African Refugee Journeys in Southern Africa

Dr. Loren Landau (Wits University) addressed the issue of African Refugee Journeys in Southern Africa. He explained that since transition to majority rule in 1994, South Africa has become the destination for tens of thousands of forced migrants from across the African continent. Demographic findings reveal significant differences between South Africa and forced migrants living in Johannesburg. Reflecting urbanization trends worldwide. He explained that the immigrants in their sample were considerably younger than the host population, with only 5% above the age of 40 compared with 22% of South Africans. On travel experiences and motivation the data also challenged the prevailing beliefs about urban migrant's routes to Johannesburg and their motivation for coming. He explained that refugee and migrant advocates in South Africa frequent lament the treatment refugees receive at the hands of the police and the Department of Home Affairs (DHA), the department responsible for immigration and refugees. On livelihood obstacles and achievements he explained that the de facto restrictions on forced migrants' opportunities to pursue livelihoods- including prohibitions on work, lack of identity documents or papers demonstrating professional qualifications, and discriminatory hiring practices-it's surprising that an almost equal number of South Africans and migrants report being unemployed: 42% and 39% respectively. On policy options and directions for future research he explained that the presence of refugees and asylum seekers is a contemporary reality but South Africans will only benefit -from their resources if the country's leaders and urban communities welcome them.

Community Views on Refugees, Repatriation And Migration: Some Findings From Zambia

Dr. Oliver Bakewell (INTRAC) addressed the issue of Community Views of Refugees, Repatriation and Migration based on his research in north-western province of Zambia. He described that refugees were welcomed into the villages by the headmen and had not gone through the necessary asylum procedures. Over time they become completely integrated making the distinction between Zambians and Angolan refugees virtually impossible. He said that the Zambians in these villages saw the Angolan refugees has having positive impact on the community and have expressed concern about the possible negative consequence of repatriation.

Status of Regional Legislation And Actions Needed

Mr. Vincent Williams (SAMP) noted briefly that all governments in the region have accepted the right of individuals and groups to seek asylum when threatened and also the obligation and responsibility of governments to provide protection when required to do so. He pointed out however that there were significant variations in government approaches to providing protection and tabled some of these issues that were then further discussed in the working groups.

Mr. Joseph Chilengi (Regional IDP Program) recognized that some progress in terms of the IDP situation has been made, particularly at the national and community levels. He further welcomed that some governments are gradually appreciating formulation and application of UN Guiding Principles of Internal Displacement. However, further policy and institutional frameworks on internal displacement is needed. In terms of problems and gaps in addressing

issues of internal displacement he said that most governments lack policy, legal and institutional frameworks on IDPs. The Regional IDP Program is an indigenous organisation with a regional dimension and is a voluntary membership based organisation comprising citizens who are directly or indirectly affected by the effects of internal displacement.

Group Discussions - Conclusions and Recommendations

Following the identification of the key challenges and issues facing governments in the SADC region regarding refugee and IDP-related protection principles and relief mechanisms:

What specific proposals and recommendations would you put forward as possible (processes towards) solutions to be considered by the participants in this workshop?

During the group discussions the participants identified the key challenges as follows:

- There is a need for refugee laws to be harmonized within SADC and to be reviewed to ensure that all aspects of refugee protection are included (for example gender based violence);
- The protection standards applied and treatment of refugees varies significantly between countries and there is a need to develop common standards based on best practices rather than the lowest common denominator;
- There is a need for better data collection and information sharing regarding refugees and IDPs within and between states in the Region;
- That with the exception of Angola, there are no legal instruments, policies and mechanisms that facilitate the response of governments to IDP situations, at both national and regional (SADC) levels;
- Individual governments have insufficient human and financial resources to adequately implement guidelines or directives, i.e. to provide statutory protection to refugees, and therefore there is a need for governments in the region to share this responsibility in solidarity, as well as regional and international organisations to assist;
- That there is a lack of contingency plans at national and regional levels to prepare for, as well as to respond to refugee and IDP movements as and when they happen;
- There is a need for greater political will in the development and implementation of regional standards, policies and institutions related to refugee protection; There is a need for a forum for SADC governments to discuss and resolve regional issues of forced migration - including ways to mitigate population destabilization.

Based on the above challenges participants put forward the following proposals and recommendations:

- To establish a regular forum/meeting of Refugee Commissioners and Legal Advisors to work towards the harmonization of laws and policies, the integration of IDP guidelines into national legislation and as a consultative mechanism to develop protection standards based on best practices. The MID SA partners and UNHCR will consult with governments on how to achieve the establishment of such a forum.
- To create a regional mechanism to review international instruments, including the 1969 OAU Convention, and to work towards the development of a SADC protocol! refugee charter and to monitor the implementation of refugee laws and policies;
- The development of a regional database on refugees and IDPs to aid in planning

- as well as to serve immigration processing;
- To advocate for and work with international organizations, UN-agencies and donors in the development of a regional programme to share responsibility for refugee protection, and in the context of prolonged refugee stays to develop programs aimed at mitigating the potential negative impact on local refugee hosting areas;
- To involve local government structures and other local actors in the protection of refugees and other displaced persons;
- For governments to work with MID SA partners, UNHCR and other agencies to provide training and capacity building programs for state and non-state actors;
- That SADC states supported by international organizations consider establishing a core Comprehensive Plan of Action (CP A) to assist countries in urgent need, to mitigate possibilities of displacement spilling across borders. Concretely, such plans would consist in direct relief, help for medium term recovery, support to the internally displaced, de-mining and organised return of externally displaced persons including refugees. Such plans could already now be discussed.
- That SADC States consider other broadly accepted 'non-refugee' solutions in case of a forced migration crisis, such as the 'temporary protection' regime, or 'right to remain on humanitarian grounds'. Such non-refugee solutions may include permanent residence but will be subject to the immigration laws of individual countries.
- That repatriation exercises be approached in a consistent manner throughout the region to prevent refugees moving from one country to another to avoid repatriation.
- Work to reduce push factors of displacement, hereunder support conflict resolution, development/prosperity, respect for human right and for the rule of law.

DAY 3

Closing Session

Mr Vincent Williams, SAMP expressed SAMP's satisfaction with the results of the workshop, its attendance and participants' engagement. He also said the emerging consensus demonstrated a commitment on behalf of SADC Governments to move towards a regional approach to the issue of forced migration. He pledged to continue SAMP's collaboration through continued data collection and research, which was SAMP's strength.

Mr. H.P. Boe, IOM echoed Mr. Williams, adding that IOM would take the recommendations to heart and use them to work towards concrete activities to support governments and migrants, as always in collaboration with governments, UN partners, NGOs and donors. He called for governments to work with SAMP and IOM to help mobilise donor resources for projects. In concluding, he again offered a vote of thanks to the Government of Zambia for its hospitality and very active and constructive participation in the workshop.

Mr. Peter Mumba, Permanent Secretary in the Ministry of Home Affairs of Zambia, speaking on behalf of his Government, said he was pleased to note from the discussions that the right to seek asylum and the protection of refugees within the existing framework remain undisputed and that most countries in the SADC region do have in place mechanisms for providing effective protection to refugees. He noted, on the converse, it is apparent that there is no clear legal or institutional framework dealing with internally displaced persons at

international, regional or national levels. Mr. Mumba further noted that policies, laws and institutions have been developed to address the challenges of forced migration, but there is a need for consistency in the application of these policies to achieve an effective regional response. In his final remarks he emphasised that co-operation amongst states and relevant actors should thus become an integral part of our regional strategy. The Permanent Secretary declared the Lusaka MIDSA Workshop on Forced Migration closed.