

**THIRD MIDSA FORUM ON:
HARMONISATION OF MIGRATION POLICIES, LEGISLATION AND
DATA COLLECTION SYSTEMS**

**1 – 3 DECEMBER 2003
MASERU, KINGDOM OF LESOTHO**

The MIDSA Forum on the Harmonisation of Migration Policies, Legislation and Data Collection Systems in the SADC Region was held in Maseru, the Kingdom of Lesotho from 1 – 3 December 2003. The governments of Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe as well as observers from the Regional representations of the UN High Commissioner for Human Rights (UNHCHR) and the UN Office on Drugs and Crime (UNODC) were represented.

DAY 1

OPENING SESSION

Mr. Vincent Williams, Project Manager of the Southern African Migration Project (SAMP) facilitated the opening session and introduced the panel of speakers who did the official opening and welcoming statements:

Mr. Hans-Petter Boe, Regional Representative of the International Organization for Migration (IOM) welcomed all the participants on behalf of the IOM. He provided an overview of the MIDSA Process, now entering its 4th year, and including a brief description of MIDSA workshops and activities to date. He stressed that the MIDSA process is owned not by IOM or SAMP but by participating Governments. He added that the issue of Harmonisation was like a 'red thread' through the past five MIDSA events, and that time had come to take stock of where Governments see developments going - including on the draft SADC Protocol on Facilitation of Movement of Persons. There was a conscious intent therefore, to invite trilateral delegations- Ministries of Home Affairs, Justice, and Foreign Affairs. MIDSA partners therefore appreciated the high level of participation by Governments. He expressed thanks to the Government of Lesotho for agreeing to host the event.

Ms. Matseliso Ramathe, Director of Immigration and Passport Services in the Lesotho Ministry of Home Affairs, welcomed all the participants on behalf of the Government of Lesotho. In her statement, Ms. Ramathe referred to the need for governments to confront the challenges of poverty and underdevelopment and the need to respond to potential security threats as well as increases in the levels of trafficking and smuggling in persons and in corruption. She noted that migration management was a key issue that confronted all the SADC member states and that there was a need for government to develop collective and joint efforts to ensure that migration had a positive and beneficial impact. Ms. Ramathe observed that migration is an inevitable function of the human being, and that through initiatives such as the establishment of the African Union and the NEPAD, there was increasing consensus amongst governments of the Region and the continent that increased co-operation and integration in the area of migration, asylum and refugees was desirable. In this context, the harmonisation of migration policies and

legislation was particularly important because of its potential contribution to development.

She hoped that after this workshop, participants would come away energised to push for the political will in their countries to enable the SADC Region to move in the same direction. Participants must keep working.

Professor Jonathan Crush, Director of SAMP, also welcomed participants to the MIDSA Forum and briefly described the activities of, and the interest that SAMP has in the MIDSA Process. He observed that workable migration policies and legislation needed to be based on good information about the causes and consequences of migration and that it was in this respect that SAMP could make a meaningful contribution to the MIDSA process. SAMP hoped the workshop could result in meaningful and operable recommendations.

WORKSHOP OBJECTIVES

Following the opening statements, all participants were given the opportunity to briefly introduce themselves after which Mr. Vincent Williams provided an overview of the programme and agenda for the workshop. He stressed the informal bridge-building nature of MIDSA events, and requested participants to speak freely; MIDSA does not take decisions, rather it fosters a forum for participants to make recommendations for actions in the national and Regional contexts.

HARMONISATION OF MIGRATION LEGISLATION AND DATA COLLECTION SYSTEMS: THE INTERNATIONAL EXPERIENCE

Ms. Erica Usher, representing the Migration Research and Policy Programme of IOM, based in Geneva, provided a description of regional processes and initiatives in other parts of the world aimed at achieving the harmonisation of migration systems. She distinguished between non-formal processes in which the emphasis was on the need for dialogue and the sharing of information and experiences, and formal processes that are based on bilateral or multi-lateral treaties or agreements between governments. amongst others, Ms. Usher gave examples of the Berne Initiative and the Puebla Process (hereunder the SIEMCA website), and various EU, CARICOM, ECOWAS, South American and Asian Consultations - as processes, discussing common themes and challenges - that were similar to the MIDSA Process in terms of what their objectives were.

She noted that there were several challenges facing governments in working towards the harmonisation of migration systems of which the most important were to ensure that governments had the necessary capacity and infrastructure to achieve such harmonisation, as well as the required legal and policy frameworks. She suggested the development of certain common minimum standards and the development of common procedures.

- In the ensuing discussion, participants noted the porous nature of the borders in the SADC region, the disparity in development, and the heritage of colonial-era frontiers as particular challenges. Moreover, several countries in SADC have many countries bordering them, including several who are not SADC members, and for whom therefore harmonisation in SADC could pose dilemmas.

COMPARISON OF MIGRATION POLICIES AND LEGISLATION

Professor Bonaventure Rutinwa and Professor Jonathan Klaaren of SAMP presented a summary of their research findings pertaining to existing migration policies and legislation of SADC member states. This research project was initiated on the basis of a request from the MIDSA Forum held in Mbabane, Swaziland in November 2000 and was commissioned by SAMP.

In their presentation, Professors Rutinwa and Klaaren outlined the various topics/themes that their research covered, including policies and legislation on citizenship, births and deaths, migration and refugee protection. They then presented a summary of the similarities and differences in the policies and legislation of the various member states.

The overall conclusion of the research findings is that while there are significant variations in terms of the policy and legal frameworks within SADC member states, there remains a high degree of consistency that could support and facilitate a process of harmonisation.

It was noted, however, that the research was only conducted in nine of the SADC member states and that consideration should be given to conduct the research in the remaining countries.

A detailed report, containing all the research findings and various recommendations were made available to all participants.

DATA COLLECTION SYSTEMS IN SADC

Mr. Vincent Williams and Ms. Tiffany Tsang presented the results of the research finding pertaining to migration data collection. This project was also undertaken as a result of the request from the MIDSA Forum of November 2000 and was supplementary to the research project on policy and legislative harmonisation.

In their report, Mr. Williams and Ms. Tsang noted that there was a high degree of uniformity between that data collected in the various SADC member states and the manner in which such data was collected. A key element of the research findings, however, was that while most governments collect data, not all the data collected is necessarily processed, analysed and disseminated. For the most part, cumulative statistics are only made available within the departments responsible for immigration.

The presentation also focused on both the unevenness of and the lack of capacity in many member states to effectively collect, process and analyse data and information, particularly due to the lack of technological infrastructure.

- The ensuing discussion also stressed the fact that most SADC countries needed both the technology and the training that goes with effective and harmonised and compatible migration management. Some participants also raised the need for resource mobilisation to this end.

DAY 2

THE DRAFT SADC PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS

Mr. Arnold Chitambo, Senior Officer responsible for Employment and Labour in the SADC Secretariat presented a detailed overview of the contents of and current process in place with regard to the Draft SADC Protocol on the Facilitation of Movement of Persons in SADC. Mr. Chitambo noted that the discussion on this protocol started in 1997, but that after a period during which there was no progress, it had recently been revived under the auspices of the SADC Organ on Defence and Security.

Mr. Chitambo covered the various concerns and reservations expressed by governments during the course of the consultations on the protocol and outlined the current process as proposed. This includes the need for national consultations within each member state and the submission of recommendations by November 2003. It is intended that a SADC Workshop to discuss amendments to the protocol and to decide on a future process will be held in February 2004.

- In the ensuing discussion a number of questions were raised both on the substance of the Draft Protocol as well as the deadlines requested by the SADC Organ on national consultations. The participants received copies of the Draft Protocol and were asked to report on the status on domestic deliberations through Working Groups.

POTENTIAL SOURCES OF MIGRATION DATA

Dr. Miranda Mafafo of Statistics South Africa, described the role and mandate of the statistical offices in SADC member states as that of being responsible for the production and dissemination of official statistics. With regard to migration, she noted the increasing difficulties of collecting and processing migration-related data and statistics, partly as a result of the fact that statistical offices rely on the original source of the data (in this case Departments of Home Affairs). Dr. Mafafo observed that if the original data collection methodology is flawed or inadequate, the final statistics made available would be equally flawed and unreliable.

Dr. Mafafo then described other potential sources of migration-related information, amongst others, the Population Census, Household Surveys and Demographic Surveillance Sites. She also described the SADC Millennium Project that is aimed at strengthening the capacity of statistical offices to collect, process and disseminate data, develop common terminology and to work towards the adoption of a SADC Protocol on Data Exchange. Dr. Mafafo stressed that there needed to be higher levels of collaboration between all institutions involved in the collection and processing of migration-related data and that any data processing and analysis must take into account the needs of the end-users and policy makers in particular.

- In the ensuing discussion it was suggested on the one hand, that information supplied to Bureaux of Statistics were indeed a function of [inadequate] capacities of the departments that supplied them, and on the other hand, that policy decisions - including on the SADC Draft Protocol- if based on flawed data, was a concern that needed to be addressed as a priority.. Many participants again reiterated the need for improved

technology and training, and explained shortcomings due to slow and manual processing of data provided by travelers at present.

WORKING GROUP REPORTS AND RECOMMENDATIONS

In discussing the primary obstacles to achieving the harmonisation of migration policies, legislation and data collection systems in the SADC region, working groups noted the following:

- Varying levels of economic development, which means that governments have different priorities that might not include the harmonisation of migration policies and legislation;
- Different legal traditions, terminology and concepts, as well as language barriers and cultural differences
- The lack of reliable data and information about migration, and where such data and information does exist, inadequate dissemination,
- Uneven capacity (technical and human) and resources between member states in terms of their ability to develop and implement migration management systems,
- A lack of consensus on the benefits of harmonisation and different perceptions about what it means to harmonise;
- The lack of political will and concerns that migration harmonisation might have an impact on the sovereignty and security of individual member states;
- The non-implementation or non-functioning of protocols that have an impact on migration on migration;
- Xenophobia and negative attitudes towards migration harmonisation;
- The non-incorporation of international instruments into national legislation;
- Lack of in-depth knowledge of existing policies and legislation and what it would require to achieve harmonisation.

Pertaining to the data and information requirements that could assist in the development of well-functioning migration management systems, the following issues were tabled:

- Information required includes biographical (personal details) data, purpose of travel, length of stay, address, available funding and so on;
- The need to develop data and information on migration trends, patterns and flows in various categories that would not only provide the information required for decision-making and planning, but could also alert governments to potential problems such as trafficking and smuggling of persons.

In terms of the obstacles to obtaining the above information and data, the following were identified:

- The lack of resources and institutional capacity to collect, process and analyse such data and information, including the lack of technological infrastructure (Information Technology at borders in particular);
- Incompatibility of data collection systems;
- Absence of or inadequate/outdated legislation, regulations and procedures that govern the collection and processing of data.

During the working group discussions, it was noted that the discussions and activities related to migration harmonisation in the region should be linked to other initiatives that can support and promote the process. In particular, participants identified international processes such as the Berne Initiative and the Schengen Agreement, and regional and continental processes with the framework of the African Union and NEPAD. Reference was also made to bilateral and multilateral agreements that facilitate harmonisation that are already in place, such as the COMESA Free Movement Protocol. It was noted that the MDSA process and the expertise being developed through MDSA needs to be more closely aligned with and integrated into the institutions and activities being undertaken within the SADC region, including by SADC bodies and organs.

In discussed the Draft Protocol on the Facilitation of Movement of Persons within SADC and specifically, the process of consultation that had been requested by the SADC Organ in 2003, all countries, with the exception of the DRC, noted that such consultations were ongoing at a national level.

RECOMMENDATIONS:

1. There is a need for better systems of information sharing and dissemination.
2. Communication and regular meetings between individuals and government ministries and departments involved in immigration and citizenship need to be increased to facilitate cooperation. This must be done at national, bilateral and regional levels.
3. Further research on trends and patterns of migration in specific countries and across the region needs to be undertaken to increase the ability of member states to develop and implement better migration management systems.
4. A needs assessment, looking specifically at the existing capacity and training needs of member states should be undertaken and should form the basis of a capacity-building and training programme. Such a needs assessment and the development of a capacity-building and training programme can be undertaken by a team of regional experts through visits to individual member states.
5. Member states that have better-developed institutions and systems and that have access too more resources should provide assistance to other member states that might not have the capacity or resources.
6. There should be more research done on the varying costs of visa and other fees with a view to achieving some level of reciprocity between member states.
7. MDSA should continue to organise similar workshops and forums, but participation should be extended to include higher-level officials, policymakers and representatives of civil society organizations with an interest in migration. Participants inter alia requested ant reports and documents be made available prior to workshops to facilitate more in-depth discussion and interaction.

III MDSA FORUM

As is customary, participants sit once a year as the MDSA Forum, to review past and future activities and developments. Mr. Boe introduced this session, highlighting the achievements and constraints of the Process. He stressed the linkage to the SADC system and said his hope remained that SADC at some future point could take MDSA into its structure. Meanwhile, the MDSA partners were committed to continue the process, which had seen consistently, improved levels of participation in the five workshops he had attended. The question of follow-up on the recommendations from

past workshops remained a concern, and in this respect he urged participants to remain in contact with both the organisers and themselves. A compendium on MIDSA recommendations 2001-2003 was distributed to participants for ease of reference.

He made specific mention of the need, expressed by several workshops in the past, to bring in the political level of government, and the MIDSA partners had therefore proposed to organise a one-day MIDSA Ministerial Consultation on Migration in Southern Africa. He urged participants to support this initiative within their home structure, as appropriate.

On administrative aspects of the process, he highlighted the need to broaden the donor base and urged participants to support MIDSA in their contacts with donors.

CLOSING SESSION:

Prof. Crush (SAMP), Mr. Boe (IOM) and Ms. Ramathe (Lesotho) made closing remarks expressing their appreciation for the participation and for the headway made on the issue of Harmonisation in SADC. They hoped this would have a beneficial effect on speeding up work on the SADC Protocol. - Special thanks were expressed to all the presenters and participants - and to Mr. Chitambo from the SADC Secretariat in particular. The Government of Lesotho was thanked for its collaboration in hosting this important workshop, and the Government in return thanked the organisers for choosing 'the Mountain Kingdom' as a venue.