

**MIDSA WORKSHOP ON:
TRAFFICKING AND MIGRANT SMUGGLING**

**20 – 22 SEPTEMBER 2004
BLANTYRE, REPUBLIC OF MALAWI**

The MIDSA Workshop Trafficking in Persons and Migrant Smuggling was held in Blantyre, Republic of Malawi 20 - 22 September 2004. 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 UN High Commission for Refugees (Malawi), UNICEF (Malawi), the US Embassies in Malawi and Pretoria, the African Union, the UNODC, the UK and Northern Ireland High Commission (Pretoria, South Africa), the Royal Norwegian Embassy (Malawi), UNFP (Malawi), and the University of South Africa (UNISA) were represented.

Opening Session

Mr. C.P Msosa, the Principal Secretary of the Ministry of Home Affairs and Internal Security of the Government of the Republic of Malawi facilitated the opening session and introduced the three speakers.

Mr. Hans-Petter Boe, Regional Representative of IOM for Southern Africa, welcomed participants on behalf of the organisers and expressed his gratitude to the government of the Republic of Malawi for agreeing to host the workshop and for its co-operation. He said that Malawi was an appropriate venue as it lies in the crossroads of migration flows - it has a long history of providing shelter and protection to refugees and displaced people; it serves as a transit point for people moving between Eastern and Southern Africa as well as for people from other continents. It is also a country of emigration in its own right. The global aim of the MIDSA process, currently in its fifth year, was to provide a forum for facilitating cooperation, networking and assistance among SADC Member States, donors, international agencies and civil society in the area of migration management. He added that while there is broad agreement on common problems, common solutions remained elusive partly because there is a need to raise them to the political level. Migration management is continuing to rise on the international agenda and governments are speaking up - whether they represent countries of origin, transit or destination. A multitude of UN and other agencies are entering into this cross-sectoral issue which encompasses everything from poverty to health and social welfare, to human development, to governance, to protection in conflict, even to combating international organised crime and international terrorism. This workshop would present participants with overviews on global and regional trends in trafficking in persons and migrant smuggling, but it was also aimed at grappling with how the Region and its governments in very practical terms can deal with the challenge of reducing the success rate of traffickers and smugglers. Last but not least on improving prevention, protection of victims as well as prosecution of perpetrators of people smuggling and trading in human beings.

The Minister of Home Affairs and Internal Security of the Government of the Republic of Malawi, the Honourable Uladi B. Mussa welcomed all participants to Malawi on behalf of the Government. He noted that the fight against trafficking in human beings is a fight against international organised crime that requires collaboration between countries and

for this reason, commended the MIDSA Process as an important initiative to promote and support this type of collaboration. The Honourable Minister emphasised the need for governments to find creative ways to respond to the increasing problem of trafficking in persons and migrant smuggling and that this response needed to include the development of appropriate legislation, engaging nongovernmental organisations to create awareness of the problem and that victims of trafficking needed our sympathy, understanding and support.

The Minister described trafficking and smuggling as a danger and evil to democracy and development. He expressed the commitment of the Malawian government to increase its efforts to reduce the incidences of trafficking and smuggling, and added that he looked forward to cooperating with IOM in particular on the issue.

Mr. Vincent Williams, Project Manager of the Southern African Migration Project (SAMP) welcomed all participants on behalf of SAMP and also expressed his gratitude to the government of Malawi for hosting the workshop. He emphasised that trafficking in persons and migrant smuggling are in the first instance criminal acts and not necessarily a migration issue and that those responsible must be dealt with to the fullest extent of the law. He noted, however, that most countries in the region do not have adequate legislation to respond to trafficking and that this poses a significant challenge. He also cautioned that in the absence of appropriate legislation, governments would be tempted to use its immigration laws, but that this would be counterproductive to the increasing understanding that migration is beneficial and that it can make an important contribution to economic and social development.

Irregular Migration in the global and regional context

Mr. Yorio Tanimura, Director, Migration Management Services at IOM, Geneva started his presentation by stating that while migration is generally agreed to be beneficial, there is a sinister side to it; namely, irregular migration including the trafficking and smuggling of persons. He noted that smuggling and trafficking is a major criminal enterprise that increases the burden on governments' capacities to manage migration and endangers the safety and well being of migrants.

Mr. Tanimura briefly described the UN Protocol against the smuggling of migrants and how it defines smuggling and that it criminalises smuggling and smugglers, but not illegal migration itself. Despite the risks involved and even if people know what these risks are, smuggling is on the increase because for many poor people, the potential benefits outweigh the risks.

He emphasised that while trafficking and smuggling are intertwined, trafficking is not considered as a violation by the migrants of immigration law, but rather as a severe violation of human rights. Mr Tanimura also described the UN Protocol against Trafficking in Persons and its definition of trafficking as a coercive and exploitative business that is constituted by three elements; namely, activity, means and purpose. However, in the case of minors, the means element does not apply.

Mr. Tanimura concluded his presentation by explaining the IOM's strategy and the support it could offer to counter the phenomenon of trafficking.

Mr. Jonathan Martens of IOM did a presentation of the findings of research conducted by IOM into trafficking in Southern Africa. The focus of his presentation was on the forms of recruitment, transportation used and means of exploitation perpetrated by traffickers and he gave examples of these based on research conducted in various countries in the SADC region. Mr. Martens noted that while the IOM research does not provide quantitative data that can be used to verify the extent and volumes of trafficking, it does provide important information about the nature of trafficking and the range of methods being used by traffickers. He added that the trafficking patterns identified in the research assessment might prove particularly useful to law enforcement agencies in categorising specific trafficking patterns and drawing broader conclusions.

During the discussion following the two presentations, participants raised questions about the relationship between trafficking and HIV/Aids, trafficking in human organs as well as noting that in trafficking cases, there are also other forms of exploitation besides sexual exploitation. Participants also discussed services and protection measures that might be available to victims of trafficking and the fact that victims are not only women, but also young men and boys.

Country Presentations

Angola:

The representative of Angola thanked IOM for organising the workshop and inviting Angola to present. He stressed the importance of the workshop for Angola and explained that as a result of the war, borders at one stage had become unmanageable but that control is being re-established following the end of the war.

He noted that the Angolan government has begun a process of reviewing and introducing legislation aimed at criminalising trafficking in persons.

With specific reference to trafficking in minors, the representative from Angola noted that the Government of Angola has established a juvenile court to facilitate the protection of minors. The Angolan government has also set up several joint committees with neighbouring countries to try and control irregular migration and manage borders, which serves to combat trafficking and smuggling.

Democratic Republic of the Congo:

The representative of the DRC noted that efforts are being made to monitor cross-border movements of DRC nationals. Following the civil war in the DRC, the Government taken measures to deal with the problem of displaced persons and that this is being done in collaboration with international organisations.

He explained that significant problems are being experienced with the identification of actual Congolese nationals, but that through collaboration with the UNHCR and IOM in particular, this 3 problem is being addressed. The delegate from the DRC noted that his country could play an important role in the development of the Continent given its geographical location.

Zimbabwe:

The representative of the government of Zimbabwe explained that it is only recently that trafficking in persons has been identified as a significant problem in Zimbabwe and that it is usually perpetrated by persons who are familiar with immigration systems. He also

noted that Zimbabwe subscribes to the definition of trafficking as given in the UN Protocol and that they are in the process of ratifying the convention and its related protocols. He emphasised that many traffickers have infiltrated border control systems and that they work in collaboration with immigration and airline officials as well as officials from other security agencies.

The delegate from Zimbabwe called for more resources to combat trafficking and stressed the need for a collaborative approach, better systems for information collection and sharing, better remuneration of officials to prevent corruption and the development of common legislation and instruments across the region.

Namibia:

The representative of the Namibian government reported that Namibia does not have specific anti-trafficking legislation in place, but that it has ratified the UN Convention against Organised Crime. Later this year, legislation will be tabled in the Namibian parliament that covers a wide range of organised criminal activity. He also noted that there have been no reported incidents of trafficking in Namibia. However, Namibia also has good co-operative relationships with neighbouring countries to facilitate the management and control of borders.

International and Domestic Law and Prosecutions

Ms. Natalia Ollus of the UNODC provided a brief historical overview of the development and increase in trafficking in persons globally and the emergence of transnational instruments to combat transnational criminal activities, specifically the UN Convention and protocols on trafficking and smuggling.

She explained the contents of the Convention and Protocols and the obligations on governments that have ratified it. The key element of this obligation is that in terms of their domestic legislation, governments are required to criminalise trafficking in its totality, rather than the individual offences/criminal acts that may be committed.

Ms. Lowesa Stuurman of the South African Law Reform Commission (SALRC) provided an overview of the SALRC's process in preparing and drafting new legislation and specifically its investigation into trafficking in persons and the preparation of the Children's Bill and Sexual Offences Bill and how these may be used as instruments to combat trafficking. This will include measures such as providing protection and compensation to victims, ensuring that the legislation will have extra-territorial application and the training of law enforcement officials.

Ms. Nolwandle Qaba of the Sexual Offences and Community Affairs (SOCA) Unit of the National Prosecuting Authority in South Africa explained the structure and operation of the National Prosecuting Authority and specifically the function of the Sexual Offences and Community Affairs Unit. She made the point that South Africa does not have a legal framework to combat trafficking directly, but that various other pieces of legislation are currently used to prosecute people suspected of being involved in trafficking.

She also described the establishment of a national Task Team consisting of various government departments as well as international organisations and an NGO under the auspices of the NPA to develop a collective approach to trafficking.

Discussion:

The subsequent discussion raised questions about who has jurisdiction over prosecutions in trafficking cases, given its transnational nature and emphasised the need for regional co-operation and collaboration in the development of a strategy to combat trafficking and the development of regional plans. It was also noted that inter-ministerial and inter-departmental co-operation at a national level was required if efforts at preventing and combating trafficking are to be successful.

Prevention and Protection in the context of human trafficking discourse

Mr. Yitna Getachew of the IOM office in Addis Ababa provided a brief overview of migration in Ethiopia in which he noted that migration was on the increase both in terms of volume and social significance.

Many of the migrant women are coerced or deceived when recruited and while employed, often work long hours, have their wages withheld, their travel documents confiscated, suffer verbal and physical abuse and are forced into prostitution.

Mr. Getachew reported on the information campaign conducted by the IOM that had as its objective, the prevention of trafficking in persons by providing information to those at risk. The information campaign included the publication of a brochure, producing an educational drama and a regular radio program.

Other projects include a counselling, a victims assistance and reintegration programme, a project targeting high school students who have been identified as the most likely victims of trafficking and training programmes for teachers.

He concluded by summarising lessons learnt including the need to engage with government and other partners, making sure that messages are clear, and involving destination countries in the information campaigns.

Ms. Lidia Futter who is based in the IOM Cape Town office presented a capacity building training module that has been developed to build government capacity in countering trafficking in persons. She noted four key elements in capacity building; namely, human resources development, organisational development, institutional and legal framework development and partnership development.

Ms. Futter outlined the steps that can be taken in the development of a response to trafficking. These include doing research into the trafficking situation, doing an assessment and evaluation of existing measures that can be used to respond to trafficking, preparing a National Plan of Action, setting up a Task Team, conducting training for service providers, developing inter-ministerial and inter-governmental dialogue and the development of anti-trafficking legislation.

Mr. Alan Spencer briefly described his role and function as the Liaison Officer for the UK government and stressed the importance of co-operation between countries in developing counter-trafficking measures. He gave examples of some of the co-operative measures in place to prevent undocumented migration and policies in place in the UK that are specifically directed at minimising irregular migration. He noted that anti-

trafficking legislation was in place in the UK and that this served as a deterrent to trafficking operations.

Ms Kiera Emmons, Attaché at the US Embassy in Malawi described some measures taken by the US government to prevent trafficking, such as the annual report on trafficking that rates countries on the basis of the extent of the trafficking problem and the success that governments have in combating trafficking. She reported that trafficking also takes place in the US and described the domestic attempts at minimising trafficking and providing assistance to the victims of trafficking.

Mr Michael Owor of the UNHCR in Malawi provided a brief description of the situation with refugees in Malawi and how this relates to the issue of trafficking and smuggling. He noted that the smuggling of refugees and others was a known problem in Malawi and outlined the role of the UNHCR in attempting to minimise this problem. In terms of the UNHCR mandate, he noted that their concern was with making sure that bone fide asylum-seekers do not become victims of smuggling, either directly or indirectly. Much of this effort is directed towards developing a collaborative approach with various government ministries and agencies, as well as traditional leaders and people possibly involved in the transporting of asylum seekers and so on.

Dr Zlatko Milovanovic of the US Embassy in Pretoria also informed participants of the existence of the International Law Enforcement Academy (ILEA) based in Botswana and the training that they provide to governments in the region.

Irregular Migration and Organised Crime

Mr. Mukelabai Mukelabai of the Institute for Security Studies based in South Africa noted that the notion and recognition of organised crime is a relatively recent phenomenon in Southern Africa. He briefly described the historical development of organised crime in the region and early attempts at co-operation between law enforcement authorities to curb organised crime, such as the setting up of SARPCCO that focuses on cross-border criminal activities.

He noted that there are various organised criminal groups operating in the region that are involved in various cross-border criminal activities, such as drug smuggling, forged documentation and money laundering. Increasingly, these organised criminal groups are becoming involved in the trafficking in persons and smuggling of migrants. He emphasised that organised criminal groups do not cause illegal migration, but use it as an opportunity to make money and that perhaps one of the solutions to dealing with this problem is to relax the current stringent visa requirements in operation between SADC member states.

Mr. Immanuel Sam of Interpol, based in Harare stressed the need for internationally acceptable legislation that can combat trafficking and smuggling in persons. He noted that in terms of profits, trafficking in persons was second only to drugs and that existing legislation was inadequate to deal with this problem.

He expressed Interpol's commitment to pursuing its activities against trafficking and smuggling and noted that a new legal framework needs to be created if Interpol is to be more successful in its attempts to combat trafficking and smuggling.

Closing Session

The workshop was officially closed by Mr. HP Boe of IOM and the Honourable Principal Secretary in the Ministry of Home Affairs and Internal Security of the Government of Malawi, who both expressed their thanks and gratitude to all participants and observers and expressed the hope that governments will continue to co-operate and collaborate to find solution to the problems of trafficking in persons and migrants smuggling in the SADC region.

Conclusions and Recommendations

Participants agreed that the MIDSA Process and other forms of inter-governmental dialogue provide important forums in the initiation and development of collaborative efforts to reduce trafficking in persons and migrant smuggling in the SADC region. To further strengthen and promote anti-trafficking and anti-smuggling initiatives in the region, the following recommendations are put forward for consideration by SADC member states, NGO's, intergovernmental agencies and donors:

1. Governments who have not yet done so, should ratify the UN Convention against Transnational Organised Crime and its supplementary protocols on trafficking in persons and migrant smuggling.
2. Governments should develop national legislation that specifically criminalises trafficking. Consideration should be given to harmonising such legislation throughout the region and where possible, such legislation must have applicability
3. Public education and sensitisation programmes and information campaigns, targeted at potential victims of trafficking and smuggling as well as the general population need to be developed and implemented to create awareness of the dangers and consequences of trafficking and smuggling. beyond national borders.
4. Strategies and systems for the collection and sharing of information regarding trafficking and smuggling in the region need to be put in place to facilitate inter-governmental co-operation in the detection and combating of trafficking and smuggling operations. Efforts should be made to establish a regional data centre to co-ordinate and manage the collection and sharing of such information.
5. Governments of neighbouring countries should establish joint committees to develop integrated and co-operative border control and management systems.
6. Capacity building and training programmes to assist governments in the combating of trafficking and smuggling need to be conducted. Where possible, such training should be offered at a bilateral, multi-lateral and regional level, and must include the development of human resources, legislative, institutional and infrastructural capacity.
7. International agencies that offer advice, support and training to governments should collaborate and develop a co-ordinated and integrated approach to their activities to avoid duplication and to ensure that such support and training is delivered in the most effective manner.

8. Through the development of partnerships, governments should involve NGO's and community-based organisations in their efforts to prevent and combat trafficking and
9. Donor agencies as well as countries with existing legislation, mechanisms and systems in place should be approached and encouraged to support initiatives and programmes aimed at combating trafficking and smuggling. Support should include both expertise and funding to operationalise such initiatives. smuggling.
10. Recognizing that corruption is often a problem, governments should among other measures, make efforts to improve the working conditions and levels of remuneration of officials to enhance the successful combating of trafficking and
11. Urgent consideration should be given to the establishment of Senior Focal Points/Liaison Officers or special anti-trafficking and anti-smuggling units at both national and regional levels. smuggling operations.
12. Governments, donors, and international agencies should include victim assistance and support programmes in their counter-trafficking initiatives.
13. National consultations should be held at a ministerial level with a view to developing an inter-ministerial network or Task Team directed at improving and enhancing the will and capacity of governments to implement anti-trafficking and anti-smuggling programmes.
14. Taking into account the Draft SADC Protocol on the Facilitation of Movement of Persons in the SADC Region, SADC member states should work towards the drafting and adoption of a SADC Protocol on Trafficking in Persons and Migrant Smuggling.
15. Further research should be undertaken to better understand the main causes and consequences of trafficking in persons and migrant smuggling.
16. The MIDSA Secretariat should elevate these recommendations and other issues to the political level by arranging a Ministerial Consultation on Migration in Southern Africa.