

Integration and co-operation in the SADC sub-region:

**Towards a harmonised approach to migration
policy and management**

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May 2010**

Introduction

April 1980, the governments of nine Southern African states- Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe (known as the Frontline States) established the Southern African Development Co-ordination Conference (SADCC) to

- Reduce their dependence on particularly, though not only, apartheid South Africa

Introduction

August 1992, (SADCC) transformed into the Southern African Development Community (SADC) and established as its objectives:

- the achievement of development and economic growth and the alleviation of poverty to enhance the standard and quality of life of the people of Southern Africa;
- the evolution of common political values, systems and institutions;
- the strengthening and consolidating of the

Introduction

- Context of regional economic development and integration - accepted that regional cross-border migration is a key issue, but that it cannot be adequately managed and regulated on the basis of the domestic legislation of individual member states. Therefore, countries in the region need to co-operate to develop appropriate policies, legislation and mechanisms to govern a regional migration regime.
- Free movement of persons continues to be balanced against the political and economic interests of

Migration in SADC: History and Background

- Cross-border migration, particularly for employment purposes within the SADC region was prevalent long before the 1990s
- Countries of Southern Africa have been sending and receiving both kinds of migrants since the mid-nineteenth century when 50-80,000 labour migrants came to work on the Kimberley diamond mines, including from modern-day Lesotho, Zimbabwe and Mozambique.
- Discovery of gold on the Witwatersrand changed the entire pattern of labour migration in the sub-continent

Migration in SADC: History and Background

- 2004 survey with a sample of 30,000 migrants from five SADC countries conducted by the Southern African Migration Project (SAMP) reflects this long-standing history of migration in the SADC
- 23% of migrants interviewed had grandparents who had gone to work in another country and 57% had parents who had done so.
- Lesotho's figures were the highest (44% of grandparents and 76% of parents) but all of the other country's migrants showed significant numbers of grandparents, and particularly parents, who had also migrated for work across borders

Migration in SADC: History and Background

To accurately assess the exact dimensions of migration within SADC at the present time is difficult for the following reasons:

- National data collection systems do not collect systematic time-series data on foreign employment in the country
- Census data can potentially yield valuable information but census must be oriented to migration-related questions
- Clandestine migration is difficult to count since

Migration in SADC: History and Background

- best available approximation is UN data for “migrant stock,” defined as the number of foreign-born people in a country at the time of the most recent census
- According to the UN, the total African migrant stock of SADC was 3.4 million people in 2000
- Of these, 2.4 million (72%) were from within SADC and 966,307 (28%) were from the rest of Africa
- Over 80% of the non-SADC migrant stock was concentrated in only two states: Tanzania and the DRC, both with extensive borders with non-SADC

Migration in SADC: History and Background

SADC member states have immigration laws and policies that are based on three fundamental principles:

- the sovereignty of the nation-state;
- the integrity of national boundaries; and,
- the right to determine who may enter its national territory and to impose any conditions and obligations upon such persons.

Migration in SADC: History and Background

- Migration laws and policies of most SADC member states date back to the colonial era and are largely “protectionist” and discourage the movement of persons across borders
- Klaaren and Rutinwa usefully classify the existing migration regimes of SADC member states into three types; namely, control-oriented, regulative and facilitative
- They place the majority of SADC member states in the control-oriented category, thus suggesting that migration policies on the whole continue to be restrictive

Migration in SADC: History and Background

- Current institutional arrangements in most SADC member states, cross-border migration inevitably creates a “dilemma of jurisdiction”
- It becomes a tug-of-war between the Ministry/Department of Home Affairs/Immigration and the Ministry/Department of Labour
- In its extended form, it also involves Foreign Affairs, Social and Welfare Services and so on.
- Question is- who decides on the numbers of people who should be allowed into a country and the purpose and conditions under which they will be allowed:

Towards the free movement of persons

- Early as July 1993, a SADC workshop on the free movement of people was held in Harare and following the SADC Council of Ministers meeting in Swaziland in July of 1994, a team of consultants was appointed to prepare a SADC protocol on free movement
- March 1996, the *Draft Protocol on the Free Movement of Persons in the Southern African Development Community* was submitted to SADC member states for their comment
- Objective of this protocol was to phase in, over a period of ten years, the free movement of citizens of

Towards the free movement of persons

- Discussion on the Protocol was revived in 2003 when questions related to the movement of persons repeatedly surfaced during the deliberations of the SADC Organ on Politics, Defence and Security Co-operation
- set in motion a plan that consisted of national consultations in each member state, a joint workshop at which member states were to submit their amendments and proposals, after which a redrafted Protocol would be submitted to the SADC Summit for adoption and subsequent ratification by member states

Objectives of the Protocol

Article 10.3 of the *Treaty Establishing SADC* authorises the Summit to adopt legal instruments for the implementation of the provisions of the Treaty. The facilitation protocol is one such legal instrument which, in its preamble, expresses commitment to various provisions of the Treaty, including the following:

- the duty to promote the inter-dependence and integration of our national economies for the harmonious, balanced and equitable development of the region;

Objectives of the Protocol

- protocol envisages a phased approach to the freer movement of persons in SADC, consistent with the vision contained in the Treaty Establishing SADC
- However, all the provisions contained in the protocol are subject to the domestic policies and legislation of member states
- While states are 'encouraged' to modify their policies and legislation to give effect to the provisions of the protocol, there does not appear to be any mechanism to ensure compliance
- Protocol calls for an increase in infrastructure and personnel to manage the movement of persons

Migration Dialogue for Southern Africa (MIDSA) Process

November 2000, the Migration Dialogue for Southern Africa (MIDSA) Process was launched in Mbabane, Swaziland with the aims of:

- promoting informal dialogue on migration policy and management;
- enhancing co-operation and collaboration between SADC member states;
- providing a forum for the exchange of information and experiences;

Migration Dialogue for Southern Africa (MIDSA) Process

Not possible to draw the links conclusively, it has been observed that the MIDSA Process has:

- been instrumental in encouraging a process of ongoing dialogue and inter-action;
- been educational through the provision of information and the sharing of experiences;
- informed bilateral discussions and agreements;
- contributed to a shared sub-regional perspective on migration policy and management;
- resulted in enhanced co-operation between governments in the sub-region; and.

African Union Migration Policy Framework and Common Position on Migration and Development

African Union argues for a comprehensive continental set of migration policies in its Migration Policy Framework. The AU suggests that migration can have both negative and positive outcomes and that the way in which migration is managed is the crucial determinant:

Well managed migration has the potential to yield significant benefits to origin and destination states...However, mismanaged or unmanaged migration can have serious consequences for States'

Prospects for the future

- SADC member states have tended to view and manage migration as primarily a national competency and have developed and implemented their policies in relative isolation, adopting a largely restrictive and protection-oriented approach
- However, consistent with global developments, there has been an increasing recognition of the potential economic and social benefits of migration and over time, both the discourse about, and approach to migration have become more positive and key to this, has been the extent to which governments have begun to co-operate either

Prospects for the future

There is a need for a comprehensive and balanced approach in the implementation of migration policy and service delivery. The respective roles and responsibilities of stakeholders regarding migration policymaking, management and development planning must be clearly defined.

Capacity in migration policy formulation and migration management should be strengthened, and coherence must be pursued within and between states and also in the formulation of social and economic policies and migration policies. Cooperation between State and non-State

Prospects for the future

- None of the instruments address what is arguably the single most important obstacle to the level of inter-state co-operation required in migration management; namely, the willingness of governments to ‘surrender’ some of their sovereignty in relation to decision-making about the entry and sojourn of people in their countries
- It is perhaps, therefore, not surprising that all the provisions of the SADC Protocol remain subject to domestic policies and legislation (for the time being at least) and the both the AU Framework and Common Position are provided as 'guidelines' to