An overview of migration in the SADC region

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In August 1992, following the start of the process of transition in South Africa, what was formerly the Southern African Development Co-ordination Conference (SADCC) was 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 historical, social and cultural affinities amongst the people of the region; and

➢ the achievement of collective self-reliance with a high degree of harmonisation and rationalisation between member states.

Since its inception, SADC member states have formulated, ratified and signed a number of protocols. Several of these (Tourism, Trade, Transport, Education and Training and so on) recognise the desirability of increased economic co-operation and specifically, for the increased movement of capital and goods between member states. In this context of regional economic development and integration it has been 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 establish a regional migration regime.

As 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. In June 1995 this team of consultants submitted the *Draft Protocol on the Free Movement of Persons in the Southern African Development Community (SADC).* This protocol proposed a phased-in approach to eventual free movement of persons between SADC member states, including the right to be employed or seek employment, and to reside in any member state. Negative reaction to the protocol came particularly from South Africa, Namibia and Botswana, arguably the three countries with the strongest economies in the region. Even after it having undergone several revisions, member states have been unable to reach agreement about adopting the latest version (now called the *Draft Protocol on the Facilitation of Movement of Persons* dated 8 May 1998). Thus, the issue of free movement between member states remains unresolved.

Migration as a global phenomenon is fundamentally about individuals, whether skilled or unskilled, searching for better opportunities. On the other hand, the availability of migrants as a source of cheap and easily exploitable labour, particularly in sectors such as agriculture, construction and the

services industry (hotels, restaurants, domestic employment etc) mitigates against attempts in many parts of the world, including Southern Africa, to regularise the status of migrant workers and to protect their rights.

As the SADC region is moving closer towards free trade—the free movement of capital and goods—and ultimately economic integration, the issue of migration and more broadly, the free movement of persons, once again comes into prominence. Recently, the Minister in the Office of the (South African) President, Essop Pahad, made a statement to the effect that the free movement of persons within SADC was inevitable as closer economic ties were woven and member states become increasingly inter-dependent.

But the free movement of persons continues to be balanced against the political and economic interests of individual member states. Policies, legislative instruments and institutions and mechanisms designed to manage cross-border migration are inevitably couched in protectionist language and this is unlikely to change unless:

➢ a greater degree of economic parity has been achieved between member states; or

➢ a regional migration regime involving all SADC member states, that promotes the achievement of greater economic parity can be conceptualised, designed and implemented.

The achievement of either one or both of the above are relatively long-term projects. However, the starting point for engaging in such a project(s) is to understand the current state of play in relation to migration in the SADC region and to begin to develop a vision for potential future options.

Cross-border migration, particularly for employment purposes within the SADC region was prevalent long before the 1990s. In fact, international labour migration within the Southern African region for wages dates back at least 150 years. The 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. The discovery of gold on the Witwatersrand changed the entire pattern of labour migration in the sub-continent. While initially most migrants came independently, the mining industry found this unprofitable and, therefore, set up a contract labour system in collaboration with colonial governments. By 1970, there were over 260,000 male labour migrants on the South African mines.

Other mining centers in Zambia, Zimbabwe, Namibia and Tanzania also became magnets for labour migrants from other countries. The other major employer of migrants in South Africa, Zimbabwe, Namibia, Swaziland, Mauritius and Tanzania were commercial farms and plantations. Migrants also worked in the colonial period in urban centers in construction, domestic service and industry.

Informal movement of people across borders for work also has a long history in Southern Africa. There are a number of well-documented reasons for this:

(a)   International borders in the region are long and have never been well-policed. Before the 1960s, there were no border controls between many SADC states. Many migrants found it easy to move to other countries to find work.

(b)   The regional mining industry was the only sector to establish a formal contract labour system. Other employers hiring migrants did not have access to this labour and often hired migrants outside the law, *e.g.* commercial agriculture and domestic service.

(c)   Colonial regulations and the formal contract system for labour migrants were gender-biased. Female migrants could not migrate legally across borders for work. They therefore had to migrate illegally, which many did.

(d)   Employers often preferred to hire non-locals because they were cheaper and more exploitable. Employers were rarely punished for this, so there were no disincentives for breaking the law. Instead enforcement has focused on identifying and deporting migrants.

By definition, informal labour migration is extremely difficult to measure. No records were kept by employers or governments. There are thus no reliable numbers other than census data, which does not distinguish legal from undocumented migrants.

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 migrants and employers have no interest in making their presence known.

Notwithstanding, the lack of reliable data, all SADC member states have immigration laws and policies that are based on three fundamental principles:

1.   the sovereignty of the nation-state;

2.   the integrity of national boundaries; and,

3.   the right to determine who may enter its national territory and to impose any conditions and obligations upon such persons.

Most governments also have *de facto* or *de jure* policies towards emigration, based on the perceived or actual rate of emigration. However, migration laws and policies are largely "protectionist" and discourage the movement of persons across borders.

As noted by several commentators, this places immigration laws and policies at odds with the historical reality of cross-border migration and in fact encourages undocumented (illegal) movements. And by driving migration underground, it becomes more difficult to achieve what

migration laws and policies intend to achieve- the regulation and management of cross-border migration to ensure that it does not disproportionately disadvantage citizens and have a negative impact on either the source or destination countries.

In terms of current institutional arrangements in most SADC member states, cross-border migration inevitably creates a "dilemma of jurisdiction". At its most basic, 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. The 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; and once they've been granted access, what social and welfare services they are entitled to ? And how does the movement of citizens from one country to another impact on the relationship between the governments of the host and source countries ?

There are no formal institutional arrangements at a multilateral regional level that pertain to the management and regulation of migration. If anything, such institutional arrangements are conspicuously absent.

The only regional institutional arrangement that has the potential to deal with migration in the region is the SADC Employment and Labour Sector (ELS), now incorporated into the Directorate of Social and Human Development. However, the ELS has paid scant attention to questions of migration. In its *Employment and Labour Annual Report July 1999 - June 2000* there is only a cursory reference to skilled migration and the only available data on migration patterns is contained in the Lesotho country report, detailing the numbers of workers on the South African mines.

In terms of data collection and statistics, the role of the SADC Statistics Committee that has as part of its brief, "… to seek to achieve the comparability, standardisation and harmonisation of data processing, and statistical systems and policies…" is potentially crucial. Equally important is the SADC project to develop common methodologies for national censuses that, if targeted appropriately, can generate significant information about cross-border population movements.

Based on the preceding comments, the following preliminary conclusions can be drawn about the state of migration in SADC:

1   Cross-border migration is a current and historical reality that impacts directly on most, if not all SADC member states - some primarily as sending countries; others primarily as receiving countries.

2   It is unlikely that historical patterns of cross-border migration will change in any significant manner in the near future. If anything, it is likely to increase as the region develops further towards economic integration.

3   All SADC member states have laws, policies and regulations that pertain to migration. However, other than the attempt to draft a protocol on the Facilitation of Movement, there is

little initiative to try and harmonise or achieve a degree of consistency between the policies and laws of the various member states.

4. The "protectionist" approach adopted by states in the manner in which migration policies and laws are formulated, has the potential to, and does increase undocumented labor migration, making management and regulation more difficult.

5. At a regional level, there is no established forum that has as part of its brief, the consideration of migration between member states. Simultaneously, there are no regional mechanisms to manage or regulate migration between member states.

6. The development of mechanisms to manage and regulate migration between member states will not be achieved through the adoption and /or re-organisation of domestic policies, but rather through a joint, collaborative regional initiative or bilateral and multi-lateral arrangements.

7. The absence of a regional protocol or agreement on cross-border migration has been ascribed to a "lack of political will". However, this "lack of political will" is probably caused by a high degree of uncertainty about the potential impact of the free movement of persons.

8. While economic disparities between SADC member states continue to exist, coupled with the perception that migrants are a burden to the economies of the receiving countries (as opposed to the fact that they could make a substantial contribution), it is unlikely that any significant progress will be made in the development of some kind of regional protocol or agreement about the free movement of persons.

9. In this context, it is essential to dispel the perception that if increased cross-border migration between states is allowed, this will result in the "opening of the flood-gates" and the swamping of member states with more developed economies. Equally important is that any proposals regarding the free(er) movement of persons must substantially incorporate the management and regulatory aspects of such movement.

10. There is already increased co-operation between member states and several signed protocols and agreements that affect cross-border operations, including a protocol on tourism. The development of protocols and agreements about cross-border migration must build on these existing initiatives.

11. It is apparent that not all member states will simultaneously agree to protocols pertaining to migration to their countries. Therefore, as mentioned above, strategic approach would be to pursue bi-lateral and multi-lateral options that, if expanded exponentially will eventually incorporate most of the SADC member states.

12. Finally, It is critically important that a focal point for migration be developed at a regional level, preferably located within the SADC Secretariat Directorate of Social and Human Development. The role of this focal point should be beyond domestic policies and regulations, but must focus on increased bi-lateral and multi-lateral arrangements that pertain to the management and regulation of cross-border migration flows.