



Institute for Security Studies
Institut d'Etudes de Sécurité
Knowledge empowers Africa • Le savoir émancipe l'Afrique

TOWARDS THE FREE MOVEMENT OF PEOPLE IN SOUTHERN AFRICA?

Hussein Solomon,
*Senior Researcher, Human Security Project, Institute for
Security Studies*

Occasional Paper No 18 - March 1997

INTRODUCTION

In June 1995, the Draft Protocol on the Free Movement of Persons in the Southern African Development Community (SADC) was announced with much fanfare. In the course of the following two years, however, it became the object of considerable criticism from a plethora of actors, and January 1997 witnessed the 1995 Protocol being overturned and replaced by the Draft Protocol on the Facilitation of Movement of Persons in the Southern African Development Community.

The purpose of this paper is to seek to analyse the 1995 and 1997 protocols with a view to examine the feasibility of the free movement of people at this juncture of SADC's development. The paper also raises broader questions related to the issue of regional integration.

THE 1995 DRAFT PROTOCOL ON THE FREE MOVEMENT OF PERSONS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

The Preamble to the 1995 Protocol notes that the objective of attaining the free movement of people is intimately related to the promotion of interdependence and integration of the SADC region. The free movement of people was also to result in the fostering of a 'community spirit' among SADC citizens. But, the 1995 Protocol was more ambitious than simply trying to foster regional integration in Southern Africa. It saw such regional initiatives as the first step towards building an African Economic Community by the year 2000, resulting in the free movement of people throughout the continent. Thus, the free movement of people and regional integration as its concomitant, were seen as the first steps in realising Kwame Nkrumah's vision of a 'United States of Africa', by the drafters of this Protocol.

According to Article 3 of the Protocol, the ultimate objective was to achieve the progressive elimination of all controls on SADC citizens so that there would be free movement of people in the region within ten years from the date of entry into force of this Protocol. Article 2, more specifically, mentions the following rights to be accorded to citizens of member states:

- the right to enter the territory of another member state freely and without a visa for a short visit;
- the right to reside in the territory of another member state; and
- the right to establish oneself and work in the territory of another member state.

In order to realise the objectives of the Protocol, four phases were identified. Phase 1 was to see the visa-free entry of SADC nationals into member states for short visits not exceeding six months. Phase 2 was to see the rights of residence extended to all SADC nationals, while phase 3 was to result in the right to establish, including the right to work. Phase 4 aimed to result in the elimination of all internal national borders between SADC member states.

There are certain positive features of the Protocol. Firstly, the abolition of visa requirements coupled with the harmonisation, standardisation and easing of the entry procedures for all

SADC nationals could have practical spin-offs for all member states.¹ These benefits, in large measure, relate to the promotion of intra-regional trade with the facilitation of travel of business people.

A second positive feature of the Protocol relates to asylum-seekers and refugees. According to Chapter 12, Articles 45 and 46 of the Protocol, member states reaffirm their support for the international refugees regime as represented by the 1951 Geneva Convention Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967; the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969; as well as other aspects of international humanitarian law as it relates to refugees. This would mean that contracting states are compelled by international law to house and protect these refugees. A concomitant of this would be that there can be no enforced repatriation of refugees, unless the situation in their countries of origin stabilise. But this is not all. Member states also committed themselves to find regional solutions to the refugee problem which would seek to address the root causes of forced migration. In this, the Protocol was clearly farsighted enough to look for longer term solutions. Implicit in this new approach, was an understanding that longer term solutions, which seek to address the root causes of population displacement, were needed to complement shorter term measures seeking to manage mass migrations.

However, these positive features were overshadowed by the weaknesses inherent in the Protocol. The first problem relates to the fact that, contrary to international experience, the Protocol assumes that the free movement of people would result in the "... *interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region...*"² In fact, the free movement of people results from the harmonious integration of national economies which are of the same relative size. By way of illustration, Turkey's application for membership of the European Union was turned down for fear that the wage differential of 10:1 might lead to substantial emigration from Turkey to Western Europe with integration.³ In this context, it is important to point out that South Africa's Gross National Product (GNP) contributes 84 per cent to Southern Africa's regional GNP. To put it another way, the average South African earns 36 times more than the average Mozambican.⁴ Such wide wage disparities and economic imbalances have traditionally served as an impediment to regional integration, as the European case illustrates. Other examples from the developing world also emphasise the point. The collapse of the East African Community in 1977 and the demise of the Latin American Free Trade Association in 1980 bear testimony to this sad truism.⁵

One of the problems dogging regional integration efforts in the Third World is that labour and capital gravitate to the most developed country in the region. The reasons are obvious – better economic infrastructure, as well as the fact that there is a larger supply of workers used to the rigours of industrial labour in the regional hegemon.⁶ In Southern Africa, South Africa is such a regional hegemon. Thus, far from resulting in a more equitable regional development, integration could simply result in widening disparities between the core and the periphery within the region. That this is already occurring, is seen in the fact that in 1991, nearly 200 recently qualified Zimbabwean medical doctors settled in South Africa and Botswana.⁷ This brain-drain from Zimbabwe to South Africa subsequently became a source of tension in the bilateral relations between the two countries.

Problematic as brain-drain migration from the regional periphery to the core is, the real headache for Pretoria is the movement of unskilled labour into South Africa. It is estimated that the overwhelming majority of the five million illegal immigrants in the country do not have more than three years of formal education and most do not have skills other than those of subsistence agriculture.⁸ It is these migrants who serve to drain the resources of the South African state. They overburden health and educational facilities and also contribute to the decreasing employment opportunities available to South Africans. Unscrupulous South African employers prefer employing illegal aliens, since they work long hours for little or no remuneration, and because they are, as a result of their illegal status, resistant to unionisation.⁹

One may conclude from the above that the free movement of people in the region will not be

to the benefit of either the more developed or the least developed states of Southern Africa. From the perspective of states like South Africa, Botswana and Namibia, the free movement of people will place an additional burden on the socio economic infrastructure which would, in turn, spill over into the political sphere, as seen in the rising tide of xenophobia against illegal aliens. From the perspective of states like Lesotho, Malawi, and Mozambique, the free movement of people will intensify brain-drain migration to the core, thus consolidating their underdeveloped status within the region. At the heart of the criticism, therefore, is the fact that the 1995 Protocol did not pay sufficient attention to the importance of the wide discrepancies existing among the various national economies. If this fact is not taken on board when contemplating the free movement of people within a region, historical experience indicates that such economic differences could serve to scuttle the entire process of regional integration – precisely the opposite result to that desired by the drafters of this Protocol!

It is also precisely for this reason that, where regional integration efforts have proceeded among economies of disparate sizes, no provision is made for the free movement of people. Consider here two such regional integration efforts. In the case of the North American Free Trade Association (NAFTA), there is no free movement of people between Canada, the United States and Mexico. In fact, the signing of NAFTA has seen the US strengthening its border controls with Mexico, as well as the promulgation of new anti-illegal immigration legislation. In the case of the MERCOSUR agreement of 1991 between Brazil, Argentina, Paraguay and Uruguay, no specific provisions related to the free movement of persons is contained.¹⁰ It is incredible to think that, despite this international experience, the drafters of the 1995 Protocol were unaffected by the comparative dynamics of regional integration and the free movement of people.

This, however, is not the only problem inherent in the 1995 Protocol. As noted above, phase 4 was to result in the abolition of all internal borders between Southern African states, but with the external borders being strengthened. In practice, this means that once a national of a 'third' state enters, for example, Tanzania, (s)he can then proceed to any other member state, such as South Africa, without any further legal hindrance placed in her/his path. But, the fundamental issue is that South Africa's own security depends on other countries' abilities to police its borders effectively. Can Pretoria take the risk? Can South Africa trust its neighbouring states to carry out its part of the bargain? Experience would indicate otherwise. Border police and Customs and Excise officials of our neighbouring states are known to be inefficient and corrupt. In addition, there is no centralised computerised data pool that would enable all member states to keep track of movements of third country nationals. Thus, there is a contradiction between the theoretical objective of policy and the practical reality of logistics.

In their attempt to eliminate all internal controls and beef up external controls, SADC seeks to imitate the Schengen experience in Europe. It would therefore be instructive to briefly examine this experience.

In June 1985, Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain signed the Schengen agreements, although full implementation was only to occur on 1 July 1995.¹¹ Like SADC, Schengen member states sought to remove internal controls while strengthening external controls. The weak link in 'Schengenland', however, were the southern European states. They soon became the conduit through which third country nationals moved to the richer northern European Schengen states, resulting in an increase in illegal immigrants and the smuggling of contraband. The situation became a source of tension between northern and southern Schengen states. As a result of this, France, citing internal security reasons, decided to continue with passport controls at all its borders.¹² The lesson from this is clear: where certain states abrogate their responsibility to effectively police their borders, either due to a lack of financial or competent human resources, the security of all states in such a union becomes compromised. This, in turn, results in tensions between states which could be counter-productive to the entire integration process.

But, it is not only with regard to third country citizens that the removal of internal controls is problematic. There are an estimated 400 crime syndicates operating in the region. The scrapping of all internal controls in the SADC region would only serve to boost their illicit

activities. Placing these concerns in a nutshell, Dumiso Dabengwa, Zimbabwe's Home Affairs minister, declared: "*We are not ready to sign the protocol on the free movement of people. Doing it at the moment would be like opening floodgates to criminals.*"¹³

Given these weaknesses inherent in the Protocol, it came as no surprise to SADC member states and to outsiders when the Protocol was retracted and replaced in January 1997 by the Draft Protocol on the Facilitation of Movement of Persons in the Southern African Development Community. It is to this Protocol that our attention now shifts.

THE 1997 DRAFT PROTOCOL ON THE FACILITATION OF MOVEMENT OF PERSONS IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

Unlike its predecessor, the 1997 Protocol is more modest in its aims. This is evinced by its very title: the 'facilitation of movement of persons', as opposed to the 1995 Protocol's 'free movement of persons'. More specifically, Chapter Two, Article 2 of the 1997 Protocol lists the objectives as follows:

- to facilitate the movement of citizens of member states within the region by gradually eliminating obstacles which impede such movement;
- to expand the network of bilateral agreements among member states in this regard, as a step towards a multilateral regional agreement;
- to co-operate in preventing the illegal movement of citizens of member states and the illegal movement of nationals of third states within and into the region;
- to co-operate in improving control over external borders of the SADC community; and
- to promote common policies with regard to immigration matters where necessary and feasible.

While the 1997 Protocol also sought to result in the free movement of people within the region, it was clearly cognisant of the difficulties attached therein. Note, in this regard, its concern with illegal immigration and the fact that it did not specify a time-frame to achieve the objective of the free movement of persons. This latter fact is of crucial importance, if one has to consider the time-frame in the European integration process from the Treaty of Rome in 1957 to Maastricht nearly four decades later.¹⁴ Understanding that regional integration and the free movement of people are fraught with obstacles, it is clear that SADC has adopted a gradual, incrementalist approach as opposed to the 'Big Bang' approach which characterised the 1995 Protocol. Underlining this new approach was an understanding that uneven economic development and the inability of some member states to effectively police their borders could prove to be the Achilles Heel for the integration process and the free movement of people. Thus, Article 4 notes that

- the progressive implementation of the objectives of the Protocol shall particularly be guided by economic and other developments in the region and the particular circumstances of each member state, the degree to which control over external borders can effectively be established, as well as the requirement for migrant labour within the region; and that
- it is recognised that disparities in the levels of development in the region have led to imbalances and large scale population movements within SADC, which, if not addressed, will be to the disadvantage of certain member states.¹⁵

From the above, it is clear that the drafters of this Protocol have understood that the free movement of people in the region has to be preceded by the integration of economies at similar levels of development.

The emphasis on bilateral as opposed to multilateral relations is also a welcome break from the past. It recognises the truism that, while rhetoric of a common regional identity is frequently used in such multilateral forums, it really is at the bilateral level where the tangible results of co-operation are often realised. Consider, in this regard, the agreements reached between South Africa's Minister of Home Affairs and his Zimbabwean and Mozambican counterparts.¹⁶ In this, South Africa is drawing on the rich African tradition of bilaterals concerning the regulation of population movements: for example, between Nigeria and Equatorial Guinea; between Burkina Faso and the Ivory Coast; between Burkina Faso and Gabon; between Gabon and the Cameroon; and between Ghana and Libya.¹⁷

The 1997 Protocol keeps a practical and realistic tone pertaining to the free movement of people throughout. A case in point is the visa-free entry of SADC nationals into member states for short visits. Recognising that thousands such people overstay their welcome, the Protocol redefines a 'short visit' to mean a period not exceeding thirty days, as opposed to the 1995 Protocol's six months! In addition, Article 13 states that such a person must meet the requirements for entry into that member state. This would include proof of financial support during the period. While Article 14 notes that visa-free entry for short visits should be encouraged, it also notes that, "[t]he establishment of such an arrangement or not will *inter alia* be determined by the number of citizens of each Member State who overstay or fail to comply with the conditions attached to their temporary permits in the territory of another Member State, as well as the number of illegal aliens present in a particular Member State: These being issues that will be detrimental to the signing of such bilateral agreements."

If there is any criticism to be levelled at the 1997 Protocol, it is that, while member states reaffirm their obligations under the international refugee regime, no provision is made to address the root causes which generate such refugee movements, unlike the 1995 Protocol. While this is an obvious failure, it is also true that the 1997 Protocol as a whole constitutes a marked improvement on its predecessor. As such, the Protocol's various strengths clearly obviate its weakness on this aspect.

CONCLUSION

It is obvious that Southern Africa is not yet ready for the free movement of people at its current stage of development. A concomitant of this, is that the 1997 Protocol is far more realistic than the rather idealistic 1995 Protocol.

But, this is not all. The paper also revealed the links between the free movement of people and regional integration. If the free movement of people results from the integration process of national economies of the same relative size, then it is clear that the various regional economies need to be kick-started. But this can only occur in an investor-friendly environment. One of the key elements of such an environment is political stability. This, in turn, means that some permanent solution for the carnage in Angola needs to be found. It means that one of the world's last remaining feudal states – Swaziland – has to embrace constitutional democracy. It means that Zimbabwe's and Zambia's tarnished human rights records needs to be rectified. It means that the security forces in coup-ridden Lesotho need to understand what proper civil-military relations mean. Of course, this is a tall order, one that challenges the various national *élite* groupings in SADC states, precisely those people who sign much vaunted human rights declarations when they gather at the SADC Summit. But, if this is not done, if the patent lack of a regional political value system continues to exist, the free movement of people will remain a dream, and the quest for regional integration will remain as fruitless as it has been in other parts of the Third World. In this, it is perhaps instructive to note that Portugal only became a full-fledged member of the European Union after the collapse of the Salazar military dictatorship, and Spain was admitted only after the end of General Franco's fascist rule.

ENDNOTES

1. Centre for Socio-political Analysis, A Research Review of the Policies surrounding the Issue of the Free Movement of People across International Borders with Specific Reference to Southern Africa and the Particular Effect thereof on South Africa, Human Sciences Research Council, Pretoria, 1995, p. vi.
2. SADC, *Preamble*, Draft Protocol on the Free Movement of Persons in the Southern African Development Community, SADC secretariat, Gaborone, June 1995, p. 1.
3. H Solomon, *Strategic Perspectives on Illegal Immigration into South Africa*, [African Security Review](#), 5(4), 1996, p. 13.
4. H Solomon and J Cilliers, *Sources of Southern African Insecurity and the Quest for Regional Integration*, in H Solomon and J Cilliers (eds.), *People, Poverty and Peace: Human Security in Southern Africa*, [ISS Monograph Series 4](#), Institute for Security Studies, Halfway House, 1996, p. 24.
5. J L Ray, *Global Politics*, Houghton Mifflin Company, Boston, 1987, pp. 346-347.
6. *Ibid.*, p. 345.

7. E Leistner, *Migration of High-level Manpower to South Africa*, Africa Insight, 23(3), 1993, p. 218.
8. Solomon, *op. cit.*, p. 9.
9. H Toolo and L Bethlehem, *Labour Migration to South Africa*, paper read at the Workshop on Labour Migration to South Africa, National Labour and Economic Development Institute (NALEDI), Johannesburg, 31 August 1994.
10. Centre for Socio-political Studies, *op. cit.*, p. iv.
11. *Ibid.*, p. ii.
12. *Ibid.*
13. *Nipping Drug Trafficking in the Bud*, Southern Africa Political and Economic Monthly, 9(12), September 1996, p. 21.
14. Ray, *op. cit.*, p. 333.
15. SADC, Draft Protocol on the Facilitation of Movement of Persons in the Southern African Development Community, SADC Secretariat, Gaborone, January 1997, Chapter 2, Article 4, p. 4.
16. Solomon, *op. cit.*, p. 14.
17. S S Russel, K Jacobsen and W D Stanley, *International Migration and Development in Sub-Saharan Africa*, World Bank, Washington D.C., 1990, pp. 106-107.

This paper is published as part of the Regional Security Project, a venture jointly sponsored by the Hanns Seidel Foundation of Germany and the Foundation for Global Dialogue (FGD).