

“Two Steps Forward, One Step Back”: Zimbabwean Migration and South Africa’s Regularising Programme (the ZDP)

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Abstract: South Africa’s announcement and implementation of a legalising amnesty under the Zimbabwe Documentation Project (ZDP) in 2010 was lauded as a step away from the *laissez faire* approach to Zimbabwean immigration. The amnesty, granting migrants stay, work, study and business operation rights in the country on four year permits was clouded by uncertainties and exclusions and implementation hassles. This article explores this legalising amnesty in relation to trends in Zimbabwean immigration over the years, noting in particular the complexity and fluidity in migration patterns. The article highlights these complexities and how they expose the limitations of any *ad hoc* and short-term approach to managing complex immigration flows. It argues that such an approach fails to recognise differences in migration trends over time and space, sources of migration and migrant’s strategies, and more importantly, that these factors result in different migrants with differing needs. As way of conclusion the article suggests that any progressive immigration strategy on Zimbabwean immigration should build on the “Temporary Immigration Exemption Status for Zimbabweans” of 2009, embrace ideals of diversity, inclusivity and openness, but also draw upon existing efforts at regional cooperation and integration.

Key words: Immigration policy, migrants, South Africa, ZDP, Zimbabwe

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Introduction

In September 2010, South Africa approved a legalisation amnesty for Zimbabwean migrants already in the country. These could apply for rights of domicile, study, work and entrepreneurship on four-year permits under the “*Zimbabwe Documentation Project*” (ZDP) (Amit 2011). This *ad hoc* approach to the Zimbabwean migration crisis was a response to lobby by human rights groups, but also, the Department of Home Affairs saw it as significant in relieving a clogged asylum system. It was also symptomatic of South Africa’s cautious and exclusionary approach to migration from the rest of Africa. This was highlighted by qualification criteria that effectively disqualified some migrants and a four-year permit period that left migrants outside the qualification criteria for permanent residence (Crush 2011). One linked issue was the “surrender your other legalising documents (be it ID or asylum-seeker permit) and apply for permit” requirement, which sought to shift migrants to a single category of a ‘special’ type that required only a temporary solution.

The process itself was strewn with challenges, and has since proven to be an unsuccessful instrument for managing complex mixed migrations like those experienced from Zimbabwe since the 1980s. While the DHA has passed the process as a success, statistics tell a different story. At the time, the population of Zimbabweans in South Africa was estimated at 1.5 million, yet the process resulted in only 242, 731 DZP permits being issued. As might be imagined, only a minority of people – 4, 000 – surrendered fraudulent documents at the end of the process, while 49, 255 exchanged their asylum seeker permits for DZPs (Crush 2011). The permits expired in 2014 and a new process, the Zimbabwe Special Dispensation Permit, was instituted as a legal framework guiding the renewal of permits, but some deserving migrants still remained excluded and had to resort to the asylum system to secure legal status (Morreira 2015).

This case reflects in part, the contradictions of liberal democracy and globalisation, but also, the inadequacies of the current protection regimes to adapt to “protection needs that arise from the contemporary realities of forced migration” (Betts and Kaytaz 2009, 2). In a liberal democracy, states are confronted with the basic question of whether to exercise the sovereign right to exclude noncitizens, and the principles of openness and freedom of movement. I begin my analysis from Didier Bigo’s argument that in liberal

democracy and market economy regimes, effective control of cross-border activities is nearly impossible since states have to maintain open borders for the free movement of goods and services. He thus, cautioned:

It is vital to have a long-term economic and social policy on migration that provides for decent conditions of family unification,...and cross-border movements facilitated by international agreements...a prohibitionist policy creates more problems than it solves in as much as it does not prevent fraud, but causes it to become professionalized (Bigo 2009, 581).

Such a position is useful if immigration issues are to be understood in relation to South Africa's adoption of a "neoliberal economic doctrine" (Crush and McDonald 2001, 3) and efforts to "give effect to the principles of regional cooperation and integration within the [SADC] community" (Oucho and Crush 2001, 140).

The primary research method for this paper consisted of a systematic review of academic and policy documents, which brings together previously unconnected statistical data with policy and legal documents. I have selectively on the written sources that primarily illuminate the colonial and postcolonial political economy and the dynamics of postcolonial ethnic struggles and also, the migration crisis and South Africa's immigration responses. These sources include scholarship on Zimbabwe and migration in South Africa, official presentations and documents, online publications, and civil society documents.

I look back and explore South Africa's *ad hoc* approach to Zimbabwean migration in relation to migration trends and the environment in Zimbabwe over time, noting in particular the complexity and fluidity of migration patterns, migrants' strategies of survival, and a variety of historical, socio-cultural and political factors that informed migration decisions. By focusing on migration trends and phenomena at both the country of origin and host country, I highlight the different forms of survival migration from Zimbabwe since the 1980s, and indeed, the need for an approach that embraces this diversity and principles of inclusivity and openness. I argue that the ZDP lacked attention to these critical factors, and subsequently, fell short on basic principles of a progressive

approach to immigration in a democratic, market economy system. I begin by tracing South Africa's policy approaches towards Zimbabwean migration before analysing migration trends from Zimbabwe over time. I then turn my attention to the post-2000 influx and the terrain of events in Zimbabwe that prompted a mass exodus of people.

Managing Migration from Zimbabwe to South Africa (1920 – 2010)

Since the discovery of the rand, South Africa employed a variety of strategies, ranging from solicitation to limited assimilation, towards Zimbabweans. This was characteristic South African policy towards noncitizens since apartheid, and over the course of the country's independence in 1994, the dominant aspects were "tough enforcement" and exclusion through control and expulsions as new South Africa displayed "little appetite for immigration" (Crush and McDonald 2001, 4).

From the 1920s, South Africa actively sought cheap labour from the northern states (now Malawi, Zambia and Zimbabwe) through the Witwatersrand Native Labour Association (WNLA) (Crush et al. 1991; Johnson 1992). As a regulatory framework, WNLA adopted a contract labour system where labour was subjected to certain restrictions and controls, and although Zimbabwe did not have a formal labour treaty with South Africa, the recruitment of Zimbabweans continued until the 1986 ban. In 1960, Zimbabweans were estimated at about 30, 000, but the recruitment of Zimbabweans actually peaked in the 1970s and 1980s (Crush et al. 1991).

But other groups of migrants crossed into South Africa outside the formal labour system. Crush and McDonald (2001, 3) noted:

Many migrants did not qualify for the organized trade in cheap contract labour. They went to South Africa of their own volition and performed vital work in the factories, farms, and white homes of apartheid. The state was ambiguous in its response to irregular migration, sometimes turning a blind eye and sometimes dragging migrants to work in labour-starved sectors.

South Africa also employed the visa system to control the flow of Zimbabweans into the country. While the visas were free, the accompanying conditions, which included proof

of sufficient funding and a letter of invitation from a hosting person, effectively excluded the majority of people from entering South Africa legally (Polzer 2008).

Between 1995 and 1997 the South African cabinet approved three immigration amnesties for non-South Africans: the first was targeted at contract mine workers who had worked in the country for ten years; the second covered SADC citizens who had crossed into South Africa before 1990 and could prove domicile and occupation; and the third, for Mozambican refugees (Crush and Williams 1999). In 1996, Zimbabweans submitted 25, 000 applications, second only to Mozambicans, and of these 20, 000 were approved (Klotz 2013). Through the amnesties South Africa demonstrated its moral obligations towards illegal migrants, but ‘[b]y choosing 1991 as the cut-off date, Cabinet made it clear that those who had entered clandestinely after that date would be treated very differently’ (Crush and McDonald 2001, 5).

South Africa also ensured a continued supply of labour for commercial farms in Northern Limpopo through a “special dispensation” that allowed farmers in the Soutpansberg to employ Zimbabweans outside normal work permit procedures (Rutherford and Addison 2007). Such arrangements were well adapted to the long history of interaction between Zimbabwean and the farmers north of the Soutpansberg, and built on cultural and linguistic ties between communities on both sides of the Limpopo River. Venda people north of the river would enter South Africa through undesignated entry points to visit families and to work. In the 1990s, Zimbabweans were mainly seasonal workers, but numbers working and living in the farms peaked after 2000, and were estimated at between 15,000 to 20,000 (Lincoln and Mararike 2000). While the special dispensation ended in December 1999, farmers continue to hire foreigners under the provision of the Immigration Act of 2002 and its 2004 amendments that allow for the employment of foreigners through a “corporate permit” if they get a Department of Labour attestation that South Africans were not available to do the job (HRW 2006; Rutherford and Addison 2007).

Outside the agriculture sector, South Africa continued to issue work permits to people with skills. The Immigration Act of 2002 shifted policy towards skills immigration as the government openly courted skilled foreign labour. Under the Act, the Minister of Home Affairs in consultation with the Ministers of Labour and Trade and

Industry identified areas of scarce, critical and special skills required each year before drawing a list of professional categories and occupational classes for which work permits were made available (RSA 2002). A quota permit system was adopted to draw individual with the requisite scarce skills as outlined in the Accelerated and Shared Growth Initiative for South Africa (ASGI-SA), a comprehensive government plan to ensure the continued success of South Africa's vibrant economic growth. Coinciding with brain drain-induced migration in Zimbabwe, more professionals headed for South Africa, with a 1998 study by Fultz and Pieris showing that 600, 000 professionals – teachers, academics, medical professionals, engineers and accountants were working in South Africa (Zinyama 2000).

In 2009, the Department of Home Affairs invoked section 31 (2), (b) of the Immigration Act (2002) and granted Zimbabweans 12 months “special dispensation” permits, which allowed holders to live and work in the country for three months at a time. This was accompanied by a moratorium on deportations and removal of visa requirements for Zimbabwean wishing to travel to South Africa. The policy shift was lauded as beneficiary to both parties. For Zimbabweans, such an initiative would accommodate the needs of a variety of migrants by facilitating free movement and legalising their presence and employment. For South Africa, it would free resources that were previously committed into immigration enforcement while also enhancing the country's human rights standing in the international community.

Nonetheless, the policy was recalled by cabinet, and replaced by a legalisation amnesty, the ZDP on 20 September 2010. As with the preceding TIESZ, the DHA saw the ZDP as a temporary solution to growing incidents of economic migrancy, and more importantly, an experimental model for broader implementation in similar cases from other countries (Amit 2011). In the short-term, the ZDP offered an alternative to a clogged asylum system, mainly from new application Zimbabwean. Thus, the ZDP was consistent with South Africa's position on migration from Zimbabwe being motivated by economics. Under the new system, work, study and business permits were granted to migrants employed, schooling or running businesses in South Africa, although it was also extended to migrants who had already acquired legal status fraudulently and asylum seekers who were willing to forgo their asylum claims (Crush 2011; Morreira 2015). To

qualify, migrants had to be domiciled in South Africa and be in a position to provide a host of documents – a valid Zimbabwean passport; proof of employment, usually an affidavit from an employer; or proof of registration with an academic institution; or proof of entrepreneurship – some of which were difficult to obtain (Amit 2011; Crush 2011).

The process, which started in September 2010, had a deadline of 31 December 2010 but was later extended to August 2011, and resulted in 294,511 applications (242,731 successful and 51,780 either rejected or processed late) (Amit 2011; Crush 2011). Statistics also show that 5,186 passports, 3,600 IDs, 619 birth certificates, 3,378 ID copies, 69 birth certificate copies, 372 passport copies and 19 temporary IDs were surrendered voluntarily while only 49,255 individuals gave up their asylum claims. The process was a complex and haphazard one where migrants had to spend days and nights on long queues in order to get processed.

The majority of permits expired in December 2014, but the DHA only announced the renewal process under the Zimbabwe Special Dispensation Permit (ZSP) on 12 August 2014. Under the new framework, permit holders who wished to remain in the country and satisfied the same conditions as before, could apply to continue to work, study and to conduct business in the country (DHA 2014). The new permits are only valid for three years, after which those who wish to remain in the country should apply for standard work, study and business permits following normal procedures.

Trends in Zimbabwean Migration

Precise figures of Zimbabwean migrants in South Africa have been quite elusive, mainly because of the clandestine character of some movements. The numbers entering South Africa started to increase in the 1990s and kept rising after year 2000. The post-2000 surge in migrant flows caught South African authorities unprepared, mainly because of its large-scale nature, although it was expected, given the perpetual decline in Zimbabwe, South Africa's porous borders and the extent to which migrants across time have exploited this loophole.

Clandestine movements of people from northern parts of the Limpopo River into South Africa have a long history, and this history is important in understanding why the DHA's *ad hoc* approach stands limited chances of success. One particular difficulty is

the complexity of migrant categories, which over time have been shaped and transformed by different phenomena.

In some parts of Zimbabwe clandestine cross-border movements first emerged alongside the formalised migrant labour system after the discovery of the rand. For young men, unofficial migration into South Africa was considered a rite of passage (Mlambo 2010). They would venture into South Africa, usually on foot across the Limpopo River, and take work in farms *en route* to Johannesburg (Mlambo 2010). But also, migrants could easily be assimilated in South Africa's labour-starved economy (Crush and McDonald 2001). Thus, migrants were primarily temporary labour and later returned home, although others still disappeared in Johannesburg.

The history of movements from the territory also reveals the significance of certain political events within Zimbabwe and social networks in South Africa. Migration was a response to incidents of a political nature during both the colonial and postcolonial period. The first, one documented by David Johnson, was the recruitment of *chibaro* (forced or slave) labour following the enactment of the Compulsory Native Labour Act of 1942. Johnson highlighted incidents of cross-border flights to the Union of South Africa by men avoiding conscription, and identified these incidents mainly in Matabeleland, where men would flee to the Union of South Africa for up to three years (Johnson 1992). The second relates to the post-independence political conflict in Matabeleland and Midland regions and the resultant incidents of displacement and neglect in the 1980s (Alexander et al. 2000; Herbst 1990). Following the discovery of arms caches and increasing incidents of banditry and a military operation that degenerated into a near-genocide (Alexander et al. 2000; CCJP and LRF 1997; Sachikonye 2011), people fled to Botswana and South Africa.

Persecutions were also accompanied by covert strategies as the state starved 'dissident' regions of much needed development resources (Musemwa 2006). Thus, besides people fleeing violence between 1982 and 1987, survival migration to South Africa continued as perceptions of neglect and disenfranchisement dominated the post-conflict discourse (Alexander 1991; Musemwa 2006). Numbers are difficult to determine due to the clandestine nature of these movements, but according to records from the South African Department of Trade and Industry about 200, 000 people crossed into

South Africa through legal entry points every year in the 1980s (Crush and Tevera 2010). Such statistics are however blurred by occurrences of circulatory migration that were common in the 1980s and 1990s (Zinyama 2002).

The flow of migrants was also spurred by the hardship brought by the adoption of the Economic Structural Adjustment Programme (ESAP), a (World Bank/IMF motivated) stimulus package to induce economic growth and stimulate employment, between 1991 and 1996. ESAP led to massive retrenchments from the public and private sectors, spiralling inflation and unemployment, and deepening poverty caused by cuts on social expenditure and subsidies. These failures and the accompanying hardships on individuals and households led to increased cross-border flows to neighbouring states as people engaged in a variety of coping strategies to survive (Zinyama 2002). These migrants included the poorly educated, semi-skilled and highly qualified professionals; women and men; and informal traders (ibid).

Migration took three forms: 1) circulatory, mainly by informal traders to sell wares and stock for resale in Zimbabwe; 2) migrating for varying periods of time to seek employment; 3) migration of a long-term nature (Thebe 2013). The latter group included professionals, over-stayers and irregular migrants of low skills (Zinyama 2002). Official figures on legal cross-border movements between 1990 and 1999 show an annual increase from about 400, 000 in 1991 to a peak of about 750, 000 in 1994 before dropping to around 500, 000 in 1999 (Crush and Tevera 2010). As shown earlier, these movements took place amid tightening of restrictions on Zimbabwean movements. On the background of the above, that migrants managed to remain in the country had something to do with social networks within the country, and there can be little doubt that the availability of these intensified migrant inflows in the 1990s (Thebe 2011). These, often early migrants, but also the local people, provided new migrants with a safety net, and made their integration easier (SPT 2004).

It is clear that migrants originating from communities that share certain common cultural aspects including language with some local groups managed to blend easily with locals in their efforts to legitimise their existence and right to employment (SPT 2004; Thebe 2013). Some migrants indeed received South African documents, and others, often those who had not managed to legalise their status, were assisted with cloned documents

– a process known as '*khupha faka*' (Thebe 2013). Cloning identities is fraudulent, and possession of such documents does not confer legal status on the bearers, but it is a popular practice and strategy for migrant job seekers.

Despite their illegal status and vulnerability to arrest and deportation, many never got deported, and where deportations were instituted, migrants quickly returned as networking allowed them to return through a variety of illegal channels. In part, all this reflects the complexities in managing mixed migration patterns, as migrants often engage in a variety of strategies to remain, and to legalise their status, and develop complex relationships with locals. These strategies were successful because from the 1980s and well up to 2000, migration of a permanent nature was dominated by migrants sharing similar cultures with South Africans, mostly the Ndebele, but also to a lesser extent those of Sotho, Tsonga and Venda origin (SPT 2004; Thebe 2013).

The context dramatically changed after 2000, when, spurred by declining conditions, out-migration gained momentum, and South Africa became the primary destination for individuals and groups. Using year 2000 as a starting point, I could count certain economic, social and political phenomena, which on the short, medium, and long term, combined to create an environment more appropriate for human flight. In economic terms, the economy contracted annually from 1999 and was about 40% smaller in 2007, while inflation reached triple digits (1,593%) in January 2007 (Moss 2007). Socially, half the population faced food insecurity following a series of droughts and harvest deficits, and the aftermath of a land reform began to be felt. At the household level, poverty deepened as the Zimbabwean dollar increasingly became worthless, and shop shelves completely emptied. There were other challenges associated with the erosion of state services including health care (SPT 2004).

Politically, the 2000s were characterised by political contestation between Zanu (PF) and the opposition Movement for Democratic Change (MDC) (Sachikonye 2011). This was a landscape where violence, intimidation and other kinds of human rights abuses, were committed with impunity by Zanu (PF), war veterans and sometimes the security forces. The target groups for political violence were largely opposition supporters, white farmers, farm workers and everyone perceived as a political dissident (Sachikonye 2011; SPT 2004).

Given the different sources for migration, it would be surprising if the crisis did not generate a mix of migrants. Indeed, groups of new migrants were added to those who were already established in South Africa (SPT 2004). Migrants came from all over Zimbabwe; the majority were Shona-speaking, did not speak or understand local dialects, had never been to South Africa and knew no one in the country, and needed assistance (Morrreira 2015; SPT 2004). However, South Africa's position is that "there is no war in Zimbabwe" and thus, migrants are not recognised as refugees as defined by the 1951 and OAU Conventions (STP 2004). But, migrants could still apply for renewable asylum seeker permits under Section 22 of the Refugee Act, something that most did in order to regularise their status and be able to seek employment (Bretts and Kaytaz 2009; Morrreira 2015).

There were other migrants that also entered the country illegally but had relatives in South Africa, and these relatives facilitated the migration process by entering either one of the two types of contracts – "advance payment" or "pay upon delivery" (pay forward) with cross-border smugglers (*omalayisha*) – who in turn bribed state officials to enter the country (Thebe 2011). Other migrants, also those with networks in South Africa, entered the country legally but over-stayed (Zinyama 2002). Over-stayers fall into two categories: those who allowed their visas to expire, and those who remained in South Africa while their passports were processed out and into Zimbabwe by *omalayisha* and cross-border bus crews, at a price (Thebe 2011). These migrants, like those who entered the country illegally often made attempts to legalise their status through the asylum system (Betts and Kayzat 2009; Morrreira 2015).

Some migrants during this period, mainly those captured in official entry statistics, still remained circulatory, short-term and purpose specific, mainly to visit relatives, seek medical help or commodities that were not available in Zimbabwe (Crush and Tevera 2010). Evidence suggests that Zimbabweans were getting the bulk of essential requirements from Botswana and South Africa, which partly explains the increase in cross-border entrants on "Holiday" after 2000 (ibid). Apart from those that entered the country illegally or on holiday, some migrants were professionals with work permits.

Conclusion

There is no better way to describe the ZDP than Kenichi Serino's "Two steps forward, one step back" article in the July 17, 2011 edition of the *Fair Observer*. The policy fell way short of common international practices to manage complex mixed migrations. Zimbabwean migration patterns are complex and fluid, and such complexity and fluidity lies in the different circumstances and how people perceived them. It would be a mistake, as it has been with previous approaches, to engage short-term, temporary solutions. They are unlikely to do more than marginally affect the various forms of survival strategies that migrants employ, and increase the population of those deemed "illegal". South Africa's policy dilemma towards migration from Zimbabwe reflects in part, the contradictions of liberal democracy and globalisation, the state's sovereign right to exclusion on the one hand and the principle of openness, but also, the inadequacies of the current protection regimes to deal with changing migration trends. Allowing that an *ad hoc* and temporary response in the form of the ZDP was appropriate in a voluntary economic migration context, we are nonetheless left with a range of people to consider. The goal, after all, of the bulk of migrants is to survive – survive today, tomorrow, next year and over a longer period – and not temporarily for four years. This goal and migrants' strategies, by contrast, did not align with the DHA's goal to relieve pressure on the asylum system, to control and to exclude.

While for the DHA, the rationalisation of migrants was a *fait accompli*, all I can conclude at this stage is that certain complex dynamics in Zimbabwean migration expose the limitations of the ZDP and its successor (the ZSP). The Zimbabwean migration crisis presented an opportunity for South Africa to align immigration management to its constitutional, democratic and Africanist emphasis, and to promote the ideals of regional integration and cooperation. However, such an opportunity was lost. The ZDP lacked the three basic elements of a progressive policy: diversity, inclusivity and openness. While not trying to prescribe a policy, perhaps we can build on the "2009 Special Dispensation" by drawing lessons from previous amnesties and ideals of the 'SADC Free Movement Protocol'.

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