

Zimbabweans in South Africa: Failure of immigration policy and precarious livelihoods.

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## **Abstract**

### **Zimbabweans in South Africa: Failure of immigration policy and precarious livelihoods.**

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Since 2000, South Africa has received an influx of Zimbabwean migrants in search of a better living. However, due to South Africa's apartheid inspired immigration laws, many of these immigrants are faced with increased difficulty in regularising their stay to realise their immigration dream. This thesis examines South Africa's immigration legislation and how it negatively impacts the livelihood regimes of Zimbabwean migrants living in South Africa, from a development perspective. Through a critical investigation of South Africa's immigration policy, literature and document analysis, this thesis argues that the South African government is reluctant to overhaul its restrictive apartheid inspired immigration laws to safeguard its national interests, while covertly concealing its lack of capacity and tact to manage the Zimbabwe migrant situation. The study concludes that South Africa's immigration policy is outdated and exclusionary at the core. This has had deleterious effects on livelihood regimes of Zimbabwean immigrants as they are unable to access critical resources and services such as healthcare, employment, banking and legal protection due to the precarious nature of their immigration status.

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## Abbreviations

ACM	African Centre for Migration
ANC	African National Congress
COSATU	Congress of South African Trade Unions
DFA	Department of Foreign Affairs
DHA	Department of Home Affairs
DZP	Dispensation of Zimbabweans Project
ESAP	Economic Structural Adjustment Programme
EU	European Union
GDP	Gross Domestic Product
HRW	Human Rights Watch
HSRC	Human Sciences Research Council
ISS	Institute for Security Studies
IOM	International Organisation for Migration
ILO	International Labour Office
LHR	Lawyers for Human Rights
NEDPP	National Economic Development Priority Programme
RDP	Reconstruction and Development Programme
SACP	South African Communist Party
SADC	Southern Africa Development Community
SAHRC	South African Human Rights Commission
SAPS	South African Police Services
SAMP	Southern African Migration Project
SANDF	South African National Defence Force
STATSSA	Statistics South Africa
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
ZIMPREST	Zimbabwe Programme for Economic and Social Transformation
ZSP	Zimbabwe Special Permit

# Chapter 1

## Introduction

International migratory movements have been on the rise since the global economic crisis of 2007 (Basso, 2015. p. 86). As the deep underlying causes of the global crisis continue unresolved, so have the myriad factors forcing people to migrate, including wars, diseases, human rights abuse and economic implosion of weak economies. While international migration has been increasing, predominantly driven along the lines of the South – North nexus, South – South migration also continues to swell, with “the world’s 82 million South-South migrants forming about 36% of the total stock of migrants” (Organisation for Economic Co-operation and Development, 2016. p. 3). Such statistics show that South – South migration is an increasingly significant factor in the economic and social development of many developing countries. However, restrictive and repressive migration policies, particularly in the receiving countries, have situated immigrants in a place where they have inferior legal, financial, economic, social and political positions. Subsequently, these policies have contributed to the rise in undocumented immigrants, and formation of a precarious, flexible, super exploited pool of migrant labour; used by governments and employers to “pull down wages and working conditions of the entire labour force” (Basso, 2015. p. 86).

This study focuses on the South – South migration problem within the global South, particularly Africa, looking at the South Africa-Zimbabwe immigration crisis. South Africa has been experiencing an influx of Zimbabwean migrants since 2000. This

group of migrants includes documented and undocumented migrants, skilled and unskilled persons, formal and informal traders, students, and asylum seekers. Although the exact numbers are unknown, and subject to debate, it is estimated that between 1.5 million and 2 million Zimbabweans live in South Africa, making up the largest group of foreigners in South Africa (Polzer, 2008. p. 6; Landau, 2007; Muzondidya, 2010. p. 38; Chiumia, 2013. p. 1; Bolt, 2015. p. 5). Approximately 400 to 700 Zimbabweans are estimated to cross the border into South Africa daily; some of whom return to Zimbabwe, while others stay (Chiumia, 2013. p. 1). These estimates vary due to several reasons, including large numbers of undocumented migrants crossing South Africa's porous borders, and inefficient and unreliable data collection techniques of responsible formal authorities such as the South Africa Department of Home Affairs and the Zimbabwe Department of Home Affairs. Despite of proper travel documentation, the majority of this group of Zimbabweans moves to South Africa as a survival strategy, given the deepening social, economic and political challenges facing Zimbabwe, particularly since 2000.

However, many Zimbabweans who find their way into South Africa, and wish to stay and work legally, are finding it increasingly difficult to regularise<sup>2</sup> their stay, with or without legal travel documentation upon entering South Africa's borders, hence this study. Without proper legal documentation, this group of immigrants is unable to access critical resources such as banking, legal representation, proper jobs, and other social services like affordable health care and housing. Some Zimbabweans enter South Africa without proper documentation because they simply cannot afford the expenses involved,

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<sup>2</sup> Regularize stay (here and henceforth), refers to acquiring proper legal documentation that allows an immigrant to stay or live and work in South Africa legally, such as work permit or permanent residence permit or South African passport through citizenship.



on the backdrop of major social challenges like hunger and lack of basic needs such as a home. For example, due to displacements under the *Murambatsvina* (government initiated operation clean up of 2005), thousands of Zimbabweans were left homeless and resorted to moving into South Africa in a desperate need of survival. While the definite figures of the numbers undocumented immigrants cannot be ascertained, reliable estimates place the number of illegal Zimbabwean immigrants living in South Africa at between 1.5 and 2 million (Chiumia, 2013. p. 1; Polzer, 2008. p. 6). These are alarming figures, which raises concern and an urgent need for investigation, particularly in the interest of development for both Zimbabweans and South Africans.

As such, this thesis aims to investigate the challenges faced by Zimbabweans who move to South Africa in search of a better living, away from the long standing economic, social and political complexities engulfing their home country, with no immediate or long-term solution in place. One of these main challenges is acquiring legal documentation that allows the Zimbabwean immigrants to stay and work in South Africa in order to realise their immigration dream. This study questions why it is difficult for Zimbabweans living in South Africa (both documented and undocumented) to acquire proper documentation that allows them to stay and work in South Africa legally. The significance of this study lies in the fact that proper immigration documentation is vital for this group of immigrants to make a steady income and build a decent sustainable livelihood for themselves and their families back home. The answer lies mainly in examining South Africa's immigration policy. Hence, the objective here is to uncover the evolution of South Africa's immigration policy, highlighting the failure of the South African government to overhaul its outdated and restrictive immigration legislation,

which remains rooted in segregationist and apartheid inspired policies and is ineffective in addressing South Africa's contemporary immigration challenges.

To meet the objective of this study, the first chapter of this thesis introduces the nature of the problem under study and addresses its significance for international development studies. Through review of literature, on the main theoretical debates surrounding international immigration and its linkages to international development are discussed. This helps to understand the underpinnings of South Africa's immigration problems that have been exacerbated by the flooding of Zimbabwean migrants. The review of literature also helps to build the argument that answers the research question at hand, which asks why it is difficult for willing Zimbabweans living in South Africa (both documented and undocumented) to acquire proper documentation that allows them to stay and work in South Africa legally. Some of the main theories that shall be discussed include the social capital theory, neoclassical economic theory, new economics of labour migration theory, world systems theory, and the historical-structuralist theory. Chapter 1 concludes with the thesis statement and discussion of methodology used in this thesis.

Acquiring proper immigration documents that allow one to stay and work in a foreign country, such as a work permit, permanent residency or passport through citizenship hinges on a variety of factors, but especially the immigration policy. Thus, it is important to critically discuss and trace South Africa's immigration policy from its roots, through its reforms, into understanding the present-day immigration legislation and its effectiveness or rather lack of. It is considering the above that, Chapter 2 seeks to frame the historical background of South Africa's immigration policy, from its inception in 1913, under the Dutch and British colonial control, up to the time of independence in 1991. The discussion here shows the number of immigration reforms undertaken through

the decades, and how the core aspects of that immigration legislation remained unchanged and are now outdated, and ineffective in managing contemporary migration issues in present day South Africa.

A more detailed discussion of the root cause of South Africa's contemporary immigration problem with the influx of Zimbabweans is explored in Chapter 3. Chapter 3 provides a synopsis of the main challenges facing contemporary Zimbabwe, and how it has led to millions of Zimbabweans fleeing into South Africa as a survival strategy. This chapter clearly outlines problems faced by Zimbabweans as undocumented migrants in South Africa, and the livelihood strategies they have adopted to supplement their incomes while grappling with constant fear of apprehension by law enforcement agents.

Chapter 4, addresses how the South African government has responded to its immigration challenges. The focus in chapter 4 is directed towards understanding the "attempts" at processes of policy reform and many of key pieces of immigration legislation are analysed with the intent to examine the actual contents of the legislation. As part of the process of creating legislation the Green and White papers (1997-1999) set the stage for the South African government's first attempt at overhauling immigration legislation. As such, the contents of the Green and White papers (1997-1999) will be analyzed alongside actual immigration legislation, which include the Immigration Act of 2002, the Immigration Amendment Acts of 2011 and 2014, the Dispensation of Zimbabweans Project (DZP) 2010 and the Zimbabwe Special Permit (ZSP) of 2014. This chapter 4 is pivotal in addressing the research question of why it is difficult for Zimbabweans to acquire the necessary documentation which allows them to work and stay in South Africa legally. The chapter also helps to bring to light the proposed changes, and allows the identification of problematic positions that may resemble, or point to

colonial legislation. Lastly, Chapter 5 provides the conclusion, drawing from the reviewed literature and other key discussions in this thesis.

## **Literature Review**

### **Introduction**

Literature shows that migration is a complex phenomenon that requires an interdisciplinary approach to understand it, particularly as it relates to development. To better understand the ensuing review of literature, it is important to understand the definitions of migration and development adopted in this study. This study defines migration as “the temporary or permanent movement of individuals or groups of people from one geographic location to another, for various reasons, ranging from better employment possibilities to persecution (Hagen-Zanker, 2008. p. 4). Then development is here defined as “expansion of people’s freedoms, which consists of the removal of various types of “unfreedoms” that leave people with little choice and little opportunity of exercising their reasoned agency” (Sen, 1999. p. xii). The objective of this review of literature is to discuss the main theoretical underpinnings of migration, showing the migration-development linkages that help to explain the Zimbabwe-South Africa immigration problem. The main migration theories discussed include the neoclassical economic theory, the dual or segmented labour theory, push and pull theory, the new economics of migration theory, the world systems theory, the historical structural theory and the social capital theory. The findings of this literature review make a significant contribution in the long standing migration – development debate, and provide a better understanding of the agency of Zimbabwean migrants as they continue to play a central

role in the social and economic development of their households, and ultimately that of both South Africa and Zimbabwe as a whole. The discussion begins with looking at the current migration and development linkages, followed by the theoretical underpinnings.

## **Migration and Development**

Despite growing research and theorisation of the linkages between migration and its impact on development, there have been inconclusive discussions on whether migration leads to development (Castles, 2008. p. 10). Discussions on the relationship between migration and development highlight both positive and negative impacts of migration on both the sending and receiving area. Historically, the various approaches to migration and development linkages have informed much debate among lawmakers and academics. De Haas (2008) notes that the migration and development intersection debate evolved over four distinct phases. The first phase was between the 1950's and 1960's, which was characterized by "optimism" in the potential developmental impact that migration inflows would bring to sending areas (De Haas, 2008, p. 2). De Haas (2008) points out theoretical positions that support the notion of positive developmental interactions that came with migration. Free population movements in the post-war reconstruction period for most European countries saw increased migration from the developed countries into more developed economies. Theorists acknowledged the brain drain that ensued. However, they argued that the return of migrants with skills, knowledge and remittances would power development in the less developed sending areas (Hennings, 2008. p. 13).

The second phase in the evolution of the migration and development debate was the period 1970's and the 1980's. This phase was dominated by neo-Marxist views,

which harboured pessimistic positions about the development-migration nexus. The third phase was between 1990 and 2000 and was characterized by changing perception about the migration–development relationship. During this third phase, researchers and policy makers warmed up to new theoretical views, such as the New Economics of Labour Migration theory, replacing the neo-classical theory of migration (De Haas, 2008. p. 2). The New Economics of Labour Migration theory questioned over reliance on the individual as the sole initiator and decision maker with regards to migration and held the notion that the family or the household is central in decision making about migration (Castles, 2008). Thus, the New Economics of Labour Migration theory argued that the decision to migrate tends to be influenced by the potential economic returns, should a family member migrate. It also stresses that the net increase in income for the migrant has a direct impact on how much of that income is remitted back to the country of origin for family related expenditure.

However, debate and theorization on migration and development from the 2000s onward has become highly optimistic, albeit unresolved. On one hand is a group that views migration as “a virtuous cycle of reciprocally positive impacts” in both the sending and receiving countries, where the receiving country benefits from human capital needed for profitable business and investments, while the sending country benefits from remittances sent back home and the return migrants (Hennings, 2008. p. 13). On the other hand is a group that views migration as “a vicious cycle of reciprocally negative impacts” in both sending and receiving countries (Hagen-Zanker, 2008. p. 4). This group argues that migration perpetuates underdevelopment and structural inequalities in the sending countries through, for example, brain drain.

Brain drain causes further weakening of already weak economies from which emigrants are running, forcing the remaining citizens to also migrate outward, as conditions continue to deteriorate due to the brain drain. For example, the most educated and skilled citizens in the developing or underdeveloped economies are lured out of their countries of birth by prospects of higher wages and rewarding careers in developed economies, causing further underdevelopment in the areas they are running away from. Good examples of this phenomenon are Zimbabwe, South Africa, and India. Zimbabwe and India have highly educated and technologically savvy graduates who move out from their home countries to either Gulf countries, the United States and or Europe. In post-Apartheid South Africa, medical professionals have migrated to Australia, New Zealand and Canada (Labonte and SAMP, 2006). Such movements leave economies in developing countries with a significant skills deficit, which impacts overall economic wellbeing of a country, causing further migration of the remaining disadvantaged populations, as is now the case with Zimbabwe.

Arguably, migration can also aid in the transmission of knowledge and ideas that can result in positive transformation of cultures, traditions and politics, especially in countries that do not have “democratic” governments. Repressive regimes tend to monopolize media to their advantage. However, with improved new communication technologies (social media) and huge migrant populations in the diaspora, social organizing is rapid and can result in governments being forced to address the needs of the people. The uprisings in Egypt in 2011 that led to ouster of leaders, Mubarak and Morsi, were instigated by a large Egyptian migrant population and nationals organizing together through social media platforms. In Zimbabwe, a similar organizing occurred in 2016 with citizens, both at home and abroad, using social media to organize against the government.

Central to more recent migration-development debates is the issue of remittances. Renewed vigor and substantial research supporting positive interactions between migration and development point to remittances as a significant source of capital and short-term relief for households in times of emergencies. For example, remittances by migrants have been significant in helping families during times of natural disasters, like the earthquake that hit Haiti in 2010. The World Bank cited an increase in remittance as Haitians in the diaspora remitted money to assist their loved ones in the aftermath of the devastating earthquake (World Bank, 2010). Clearly, remittances do play a significant developmental role in mitigating the impacts of natural disasters. However, research remains inconclusive on the far-reaching effects of remittances on overall development of sending regions. The issue of remittances is in itself such a contentious issue that it requires further discussion and elaboration as provided in the next section.

## **Remittances and Development**

The World Bank (WB), International Monetary Fund (IMF), and other global financial institutions have embraced the idea of the potential of remittances as a development tool. Remittances can be monetary, technological, and even knowledge/ideas (Faist et al, 2011; Ratha, 2011; Scheja, et al, 2011). Due to the global economic restructuring that is in motion, more people from the developing world are forced to migrate to seek better opportunities to earn a dignified living. The goal for the migrating is to earn, and when this happens, money starts to trickle slowly back to developing regions. The amount of remittances keeps growing exponentially. For instance, in 1990, the total amount remitted was valued at only US\$40 billion, in 2005 it had grown to US\$167 billion and was up to US\$338 billion in 2008 (World Bank, 2009).



In 2015-16, the total amount of remittances through official channels is estimated to be US\$431.6 billion (World Bank, 2016). In contrast, development aid to developing countries was US\$131 billion, which is almost four times less than the total amount remitted by migrants. The question, however, is how does repatriation of the huge sums of money translate into real development? To clearly understand the developmental impacts that remittances have, there is need to analyze both the micro and macro level at which remittances contribute to development.

In most developing countries, migrants move because of many factors, which include lack of employment, lack of health care, famines, wars and political repression. The people that migrate vary from individuals to whole families, and they are spurred to do so by the need to improve their livelihood situation and that of their extended families. As such, when migrants earn money they send it back to their home countries to fund education, health insurance, income generating projects and building homes (Ratha et al, 2011). Due to collapsed social welfare systems in many developing countries, individuals are left with no option but to seek ways to sustain themselves and to augment their incomes to improve their livelihoods. Interestingly, the collapse of these welfare systems, for example in Africa and Latin America, were because of structural adjustment programmes (SAP's) instituted by the World Bank and IMF.

Remittances can bring about development to countries of origin, and India is a notable example of a country that has benefited immensely from remittances. With a population of 25 million diasporians, India had a staggering US\$55 billion remittance windfall in 2011, rising to US\$71 billion in 2014 before declining to US\$69 billion in 2015, due to a slowdown in oil prices in the Gulf countries (Rebello, 2016). Meanwhile, in the Mexico-United States corridor, Mexico realized remittances of up to US\$24 billion

in 2014, exceeding revenues attributed to oil (Associate Press, 2016). Zimbabweans in the diaspora remitted close to US\$1 billion in 2015, which constituted 48% of all foreign currency entering the economically troubled country (Mataranyika, 2016). For rapidly industrializing countries like India, which is a sending country, migration and the resulting remittances led to many developments including increased incomes and poverty reduction, improved health and educational outcomes, while promoting productivity and access to finance (Scheja et al, 2011). The developmental impact that comes with remittances varies, but mostly it has been economically gainful and transformative at the micro level, which “individuals and households” fall into. However, these improvements in livelihoods come at a cost, especially socially, as it disrupts family cohesion, which leads to dysfunctional marriages, and often times children growing up without proper guidance of parents and a host of other social ills (Ratha et al, 2011).

However, not all migrants are highly skilled; some are just high schooled and have no specialized training. It is generally accepted that huge influxes of migrants in developed economies has an enormous effect on the wage rate (Brettell et al, 2015. p. 93). For example, in the United States of America, numbers of undocumented Mexican immigrants continue to swell and with no legal rights they cannot work in the formal sector. The Mexican migrants are relegated to informal job market where they take the lowest paying jobs and in the process, keep wages low. As such, most indigenous people of the receiving countries resent migrants on the basis that they are an additional burden to the socio-economic system resulting in xenophobic reactions, racism, and strengthening of elite social groups that keep to themselves, but exploit desperate immigrants for capital gain. According to most economic studies, an increase in cheap immigrant labour promotes economic expansion because the more the people, the more

the tax paid, and the higher the consumer expenditure, which is a cornerstone of industrial capital (Brettell et al 2016. p. 95).

To harness the economic and social potential of migration, there is need for a broader outlook in development planning that allows governments in both receiving and sending countries to create policies that complement overall development (Scheja et al, 2011). The discussion above highlighted many ways that make migration a solid development tool, particularly through remittances, which benefit not only the families of migrants back home, but the overall economy of the countries of families which receive the remittances.

While remittance benefits have sometimes been equated to the benefits of aid, caution must be exercised when dealing with remittances as they cannot replace development aid (Scheja et al, 2011). The irony here lies in that there is a wave of scholarship that is anti-aid as they believe that aid is a tool that is not meant to solve the development problem in the developing world, but is rather a tool used to control governments and suppress real economic growth (Moyo, 2010).

Economists like Ratha et al (2011) have aggressively tabled their research, which shows that if remittance fees are slashed, it will allow migrants to remit more as it becomes cheaper to remit. There is evidence that even when experiencing recession, migrants keep remitting to their home countries to help keep their families afloat in times of severe economic stress (World Bank, 2010). Global remittance companies have a stranglehold on the remittance market, which deprives developing economies close to half a trillion dollars that could be diverted to easing some of their economic woes (World Bank, 2010).

In addition, remittances seem to tell only part of the story about economic and social development. There are other development net gains that are a result of migration. These include inward investment, technology transfer, increased trade flows, and charitable activities of diaspora communities (Srisikandarajah, 2005). At this juncture, it is important to discuss the nature of the relationship between migration and trade linking it to the broader development conversation. The point to address is, can migration increase trade and propel development in both the sending and receiving areas.

### **Impact of Migration on Trade and Development**

Immigration can lead to increased trade. If done systematically, with proper selection of immigrants depending on the sending country, the type of commodities, and the already existing immigrant population (Genc, 2014). The huge migrant population in the Organisation for Economic Co-operation and Development (OECD) countries can help increase merchandise trade. As nicely put by Genc (2014, p. 1), *“immigration induced population growth increases aggregate demand and output, which in turn increases the demand for imports. Exports may increase as well if the presence of immigrants in export industries lowers unit production costs or if immigration enhances the international competitiveness of the host country more broadly.* The case of South Africa shows how increased population influxes into the country has led to high demand for consumer goods. At the height of Zimbabwe’s economic turmoil in 2008, 1.5 to 2 million Zimbabweans crossed into South Africa (Polzer, 2008, p. 8; Crush, 2008). The proximity of the Musina Border post plays a crucial role in the movement of goods from neighboring South Africa to Zimbabwe. Cross border traders from across Southern Africa cross daily to buy goods for resale and the influx of foreign nationals, especially

Zimbabweans, has pushed down labour costs for most companies as they exploit the surplus labour availability. Between November 2014 and November 2015, Zimbabwe imported about USD 2 billion worth of goods from South Africa (Sharara, January 8, 2016). These figures could be higher, considering that there are some goods that are smuggled out of South Africa into Zimbabwe.

The above discussion provides an example that validates Genc (2014)'s thesis on migration and trade. However, it should be noted that Genc (2014) is aware of the downside of this position and as such he forwards both the negative and positive with regards to the impact of migration on trade. Using results from own research together with other data from research done elsewhere, Genc et al (2011) find out that there is a causal relationship between international migration and trade. Genc et al (2011. p. 18) note that *“a 10% increase in the stock of immigrants can boost trade by an estimated 1.5% on average.”* However, the downside is that *“results from cross-sectional studies need to be interpreted with caution as they may overestimate the impact of immigrants.”* Studies such as those carried by Genc (2014) evidence strong correlation between increased immigration and trade surplus. However, some skeptics believe that although these net trade gains may translate to development, they are highly dependent on context. The case of Zimbabwe and South Africa has a unique interface that projects a positive causal relationship as Zimbabwe has a significantly dysfunctional production economy and South Africa has a relatively better production economy. This works well for South Africa in that all the human capital coming in from Zimbabwe creates an abundant cheap labour pool, which lowers production costs for South African industries while boosting net exports and increasing local consumption.

The discussion above has helped articulate the migration and development linkages, highlighting the historical development of the theorization on this subject. From the post-World War reconstruction period to the current period, theorization on migration and development has been inconsistent. However, over the past few decades, increases in population movements have reignited the migration- development linkage debate and the role of remittances has taken centre stage. Creation of rich cultural mosaics, diffusion of ideas, brain gain and drain, proliferation of technology are some of the attributes discussed that make the migration and development debate relevant at a time when population movements are at their highest. As such, the next section in the literature review attempts to address the actual population movements, giving vital statistics to show the extensive nature of global population movements. Later, I will also address a number of theories forwarded by various scholars to establish why people move and structural barriers that they encounter in their process of moving. This discussion will help contribute to understanding of the Zimbabwe and South Africa migration phenomenon, especially how Zimbabweans are moving and the problems they face in their quest for a better life in South Africa.

### **Contemporary Global Migration: Scope and Patterns**

Statistics show that there is an increasing need to understand population movements across the globe. The number of international migrants, that is those that were born in countries other than where they live, is estimated to be around 244 million, a 42% increase from the year 2000 (UN, 2016). The new United Nations dataset on *Trends in International Migrant Stock: The 2015 Revision*, shows that the number of international migrants has grown faster than the world's population. As a result, the share of migrants

in the global population reached 3.3% in 2015, up from 2.8% in the year 2000, albeit with considerable differences between large regions of the world (UN, 2015). These statistics clearly show the growing need to understand population movements.

The United Nations claims that Africa has the highest number of international migrants who originated from another country of the same region (87%), followed by Asia (82%), Latin America and the Caribbean (66%) and lastly Europe at 53% (UN, 2015). This claim is also supported by Ratha et al (2011), who assert that migration in Sub-Saharan Africa is predominantly movement within the continent, and “few stocks” moving outwards to Europe and the Americas. Statistically, North Africa leads with 90% of immigrant movements into France, the Middle East and the Americas (Ratha et al, 2011). Since the fall of apartheid, approximately 6% of the total African migrant count is believed to have moved into South Africa, mostly attracted by the economic viability in the Southern African country (Ratha et al, 2011). However, researchers argue the possibility of even higher numbers of migration that are not reported. The question is why are people moving? Are they moving individually or in chains, and what are the factors behind their decision to move? These questions can be addressed through various theories that have been posited by various scholars including early theorists like Ernest Ravenstein (1885), as will be further discussed in the following section.

### **Why do people migrate?**

The reasons why people move are as diverse and complex as the migration phenomenon itself. As such, there is no one theory that can fully explain why people migrate. This section delves into the various contending theories of migration that have been forwarded to understand population movements. Each theory is discussed showing

how it helps to understand why Zimbabweans are moving to South Africa in floods, and what then makes it difficult for them to acquire legal documentation required for them to live and work in south Africa legally to earn a steady income for themselves and their families back home.

The limitations to each theory are also discussed, highlighting how other competing theories explain the limitation of each preceding theory. For example, Massey and Espinosa (1997) argue that most law makers in countries that have robust economies tend to adopt policies that draw their positions from neoclassical theories (p. 940). Such policies drawn from neoclassical theories tend to focus on deterring undocumented migrants by raising costs of migration while lowering the benefits (Massey and Espinosa, 1997, p. 940). The goal, as with many such governments, is to craft policies that dissuade mass migration to protect their national interest. The United States of America is one other example of a government that constantly battles undocumented mass migration from Mexico and other countries from across the globe (Massey and Espinosa, 1997). However, the limitation in adopting policies based on the neoclassical theories is that while the policies may deter undocumented migrants, there is no consideration of the possible social development implications, which are then addressed in the social capital theories of migration. Understanding these theoretical frameworks from which immigration policies are built helps to understand and evaluate the impact of pre-and post-Apartheid South African immigration policy initiatives, which were designed to curb the mass flow of undocumented Zimbabwean migrants to South Africa.



## **The Push and Pull Theory**

Ravenstein, a geographer, was one of the earliest theorists to seek to understand the migration phenomenon. The stage for his work was set in England, where he observed various migrants' movements among the Scots and Irish working men and women drawn into an industrializing England (1885), and noted the presence of two forces, which he labelled the "push and pull factors" (Castles and Miller, 1998. p. 20). The "Pull" factors point to the presence of something of significance that attracts people, especially the working migrant, to want to move to get better value for their labour. This could be, for example; better wages, less working hours and health care incentives. In contrast, "push" factors denote all the undesirables that prompted populations to move away from their place of origin. These "push" factors include, for example; inadequate health care provision, low wages, high unemployment, and political repression (Castles and Miller, 1998).

This positioning by Ravenstein (1885) is logical, but was embryonic in its articulation of migration as a contributor to the further industrialization of England. The "New World" would bring about new trends in movement and challenge his logic. This theory has been criticized for its individualistic and ahistorical nature as it emphasizes the individual as the decision maker in migration matters, based on a cost benefit analysis of remaining in the area of origin or moving to alternative destinations (Castles and Miller, 1998). However, the "push and pull" theory is arguably the antecedent of the much more recent neoclassical economic equilibrium theory, the new economics of migration theory, segmented labour market theory, historical-structural theory, and the world system theory (Castles and Miller, 1998. p. 20). While the push and pull theory might explain why Zimbabweans leave their home country (push factors) and are attracted to move to South

Africa (pull factors), it does not fully address the complex contemporary migration problems of South Africa. The theory only focuses on the broad economic cost-benefit analysis without taking other social factors into consideration, such as personal aspirations, the migrants' kin, family, friends, and community members in explaining why people migrate (De Haas, 2008. p. 11). This social dimension is a critical factor when looking at the Zimbabwe and South Africa migration problem because there is a long-standing history of migration, which is influenced by social networks. The push and pull theory also ignores the structural concerns, which imply unequal access to resources like information for individual migrants. Some of these inadequacies are partly addressed by the neoclassical economic theory of migration, which is discussed next.

### **The Neoclassical Economic Theory**

The neoclassical economic theory has both a “macro” and “micro” dimension, which originated because of the inadequacies of the former. Main proponents of this neoclassical economic theory are Harris and Todaro (1970). On the one hand, the neoclassical “macro” economic theory asserts that the main causes of labour migration are wage differentials. In other words, the guaranteed propensity to earn more in the developed economies triggers a desire to relocate to such spheres of economic robustness (De Haas, 2008. p. 5). The logical reasoning in this theory is that if the wage differentials are eliminated, then net labour migration is reduced. Thus, governments have the capacity to regulate migration by supporting bi-lateral development strategies that eliminate wage differentials (Tomanek, 2011).

On the other hand, the neoclassical micro economic theory takes a more individualistic approach by asserting the rationality of individuals to assess and make

decisions, based on the possibility of receiving improved economic gain in their destination country (Castles and Miller, 1998; Borjas, 1990). Accordingly, the policies that affect expected earnings in sending and receiving countries can influence the size of migration flows (Massey, 2005). Through a closer look at the logical composition in the theories above, one cannot dismiss these assertions, and that they partially hold true. In the case of African migration, in this case between Zimbabwe and South Africa, this theory, however, would fall short in explaining a migration terrain that is characterized by historically uneven economic growth and other multiple factors that can influence decisions to migrate, which are not based on economic gain. The example of South Africa highlights the presence of a robust economic engine in the earlier period after independence.

The current political and economic climate in South Africa presents challenges to the neoclassical economic theory approach. Due to South Africa's waning economic fortunes, migration into South Africa is no longer about better economic returns, but more of a vehicle for survival. For example, migrants are moving away from regions with nothing to offer them besides political persecution and famine, to a country that once was a destination for gainful migration. This is a phenomenon not explained by the neoclassical economic theory of migration. As such, the theory has been criticized for its simplistic nature and incapacity to explain actual movements, and or to predict future ones (Castles and Miller, 1998. p. 21). Hence, the new economics of migration theory was developed in response to the oversights of the neo-classical economic theory, as will be further elaborated in the following section.

## **The New Economics of Migration Theory**

The new economics of migration theory was forwarded by Oded Stark and David Bloom (1985). The theory asserts that it is not the individuals who count for analysis of migration research. Instead, it is the families, households and other culturally defined units of production and consumption, which matter (Stark and Bloom, 1985. p. 174). The new economics of migration theory rejects the use of wage differentials as the basis of the decision to migrate, and that population movement would still occur, even if wage differentials were eliminated. As such, there are other non-wage related factors, which influence people to move. These could include credit market facilities, insurance, and accessible entrepreneurial platforms. So far, it can be argued that although these theories above seem deficient in adequately addressing all aspects of migration, there is, however, complementarity among them. However, it is evident that labour seems to be a recurrent aspect in migration theory, and the desire for people to enhance their economic viability remains central in the decision to migrate. This leads to the next theories, known as the historical structuralist approach and migration systems theory.

## **The Historical-Structuralist Approach and the Migration Systems Theory**

The historical-structuralist approach is rooted in the center-periphery model of development and the Marxist development theory (Castles and Miller, 1998). This approach stresses the power dynamics involved in migration, based on the unequal distribution of economic and political power in the world economy (Castles and Miller, 1998). Under this approach, the assertion is that population movements or labour movements are controlled by capital; and that exploitation of migrant labour and repression of their rights is for the benefit of capital.

The historical-structuralist approach's view on migration and development explains the cumulative causation of migration, where valuable human and material capital movement from one underdeveloped country to a developed/industrialized country (in the case of international migration) or from an underdeveloped region to a more developed/industrialized region (in the case of local migration), further undermines development in the source/ sending country or region. The argument is that migration deprives the sending country of the much-needed human capital increasing dependency on the core countries, thus stimulating further outward migration (De Haas, 2010). The sending country would have invested in its productive human capital, through for example, education and training. However, the already developed industrialized receiving countries will continue to benefit from the pool of cheap valuable migrant labour at the expense of the brain drain in the sending country, thereby perpetuating un/underdevelopment in the already deprived countries (De Haas, 2010).

The historical structural theory is crucial in this study as it lays the basis for understanding South African migrant labour regimes and why they were set up to operate in the way they did. The labour recruitment process was cyclical and characterized by excessively low wages and hard menial labour. Most of the workers were discarded and returned to their countries after their contracts ran out, and were thus unable to acquire legal documentation to stay and work in South Africa legally. Therefore, the historical structural theory sheds light on why, in this instance, migrants, especially Zimbabweans, continue to encounter barriers when trying to get legal documentation. It also explains the continued mass migration of Zimbabweans into South Africa, because the massive brain drain is worsening the situation in Zimbabwe, triggering further outward migration. As such, the historical structural theory also suggests that the problem of mass exodus of

Zimbabweans into South Africa is more of a structural problem that requires a structural solution to effectively manage the migration problem from both countries.

Looking at the case of South Africa, the logic in the historical-structuralist theory leads to a significant contribution in understanding the immigration policies that helped South African based, European owned transnational companies to exploit foreign migrant labour. The discovery of mineral deposits (diamonds and gold) in Kimberly and Witwatersrand set the stage for a well-orchestrated labour recruitment drive that was cleverly veiled to exploit migrant labour, while not guaranteeing citizenship rights (Wilson, 1972; Crush et al, 1991). Although at a significantly reduced degree, this recruitment is still in motion today. It has evolved into many new forms that are addressed in later chapters of this thesis. Discussion of these new forms of labour recruitment will in turn help illuminate the conditions of Zimbabwean migrants and other groups in South Africa, and how they continue to be deliberately excluded with regards to citizenship rights.

However, the historical-structuralist approach does not adequately explain the complexity of migration. It especially ignores the fact that not all migrants who move are coerced by capitalistic elements. Also, it considers group migration and does not account for individual decisions that people make when migrating, which is a crucial aspect in the nature of migration that is occurring between Zimbabwe and South Africa, where migration decisions are also personal and often chain linked. It is against this back drop that the migration systems theory was forwarded to explain the interlinkages that date back to colonial periods. The relationship between the sending and receiving areas is tied to prior contact (Castles and Miller, 1998). An example of this is the relationship that Britain has with countries in the Commonwealth.

Countries like India, Zimbabwe and South Africa, are former colonies of Britain and population movements are heavily influenced by this hegemonic relationship, where Britain is the “core” and the former colony is the “periphery,” and where economic resources and labour flow from the periphery to the core. As nation states continue to interact with each other, migration cannot only be seen to be a predominantly labour issue, but that production, distribution and exchange have also shaped the movement of population. Looking closely into the theoretical logic in the migration systems theory and South Africa’s economic viability, it is evident that South Africa, as the strong industrial hub surrounded by failing economies, has adopted a “pseudo-core status,” where it is a destination of economic significance to would be migrants.

The migration systems theory discussed above undoubtedly provides more insight into past relationships between countries and how they influence the movement of populations. The migration systems theory is arguably closely tied to the network theory in that historical past relationships between countries help to forge, for example labour treaties that lead to initial movements of migrant labour to the economically viable country. The initial migrants over time become conveyors of valuable information about migration, which in turn influence other migrants to migrate to the country where economic returns are higher. This logic is the basis of the migration network theory, attributed to Massey et al (1993).

### **Social Capital Theory**

The social capital theory is also known as the network theory. According to Massey et al (1993), “*the network theory focuses on those interpersonal ties that connect migrants, former migrants, and non-migrants in origin and destination areas through ties*

*of kinship, friendship and shared community origin*” (p. 448). The network theory posits that the lowered cost and risk associated with migration significantly increases the propensity to migrate (Massey et al (1993). Also, the availability of information and strategic help tends to influence the belief that the rate of economic gain improves upon settling in the destination area. Unlike the neoclassical theory which centered on wage differential being a critical factor in the decision to migrate, the network theory does not have a strong emphasis on this aspect. The network theory holds the view that the size of the migration flow does not strongly correlate to wage differentials and employment rates, these tend to be offset by lower costs and risk associated with the migration costs (Massey et al, 1993. p. 449).

The network theory provides a profound proposition that explains the Zimbabwe-South Africa migration context. The long and well documented history of labour migration from Zimbabwe into South Africa is a point of origin in explaining how Zimbabwean migrants’ networks evolved. During apartheid, movement into South Africa was strictly regulated though many Zimbabweans that went to work in the mines stayed and established themselves. The fall of Apartheid triggered migration into South Africa, meaning that those migrants already in South Africa could assist their kin in Zimbabwe to come to explore work opportunities. Despite a long-shared history of labour movements between Zimbabwe and South Africa, most Zimbabwean migrants especially recent migrants have been unable to acquire or renew their legal documentation to allow them to work and stay in South Africa. The social network theory to a large extent is the most efficacious theoretical approach in explaining the Zimbabwean migrant situation. As information permeates about which loopholes to exploit in the migration process, the structural barriers or inadequate policy stipulation become apparent because these are the



ones that most migrant groups are privy to and avoid them at all costs. The social network theory explains how relationships play an import role in the exchange of ideas and information about how to migrate without risking their lives like what others undocumented migrant end up doing. The downside to this approach is that it does not adequately address the individual decisions that are made by would be migrants that have no social ties to anyone in South Africa.

While the above section discussed the main theoretical approaches in migration literature, especially the debates surrounding the reasons why people move, it should be noted that there is no one main theory. Instead, the theories complement each other. In as much as this thesis hinges on economic, and socio-political aspects of migration, there is need to focus on the legalities surrounding migration. It can be ascertained from the above discussion that the movement of people can, and should be regulated. As such, this translates to the position that those migrants moving need to adhere to a system, and that system supposedly has to protect their migration experiences without exception. However, this is not always the case. As global capital continues to expand and the divide between the rich and the poor increases, the movement of migrants will also increase, but not their freedom to do so without restriction. This is one of the main reasons that has resulted in many different forms of “illegal migration” or undocumented migrant movements.

Considering recent theorization on the importance of migration to development, the theories discussed above help shed light on the intricate nature of population movements. These theories help to create a better contextual understanding of migration, and can help shape policy formulation, resulting in legislation that protects migrants while fostering development through migration. Immigration legislation should consider

the positive attribute that come with migrants, such as ideas, innovation, cultural richness, and remittances, which can have a significant impact on development of both receiving and sending countries.

### **Permanent and Temporary Migration**

The following discussion on permanent and temporary migration adds to the previous discussion on why people migrate and further provides an understanding of the migration-development nexus. The discussion here aims to address the nature of mobility that most migrants undertake, and to establish the forces that shape their movement to be either permanent or temporary. The region under study (Southern Africa) provides a suitable model to illustrate how permanent and temporary migration comes to be. The socio-economic and political climate in South Africa, before and after the apartheid era, presents a marked dichotomy, which will help illustrate how permanent and temporary migration regimes are distinct. However, before delving into the discussion, there is a need to clearly outline what constitutes temporary and permanent migration, a discussion that will be approached from an economic standpoint, highlighting how temporary migrants are perceived in the host country.

The main difference between temporary and permanent migration lies in the time the migrant intends to stay. Simply put, temporary migration refers to a process that involves a one-time only temporary stay and the eventual return, which closes the migration cycle (EMN, 2011. p. 21). The United Nations defines temporary migration in relation to labour migration. It stipulates that labour migrants move for a period of time to take up employment and then remit money to their countries of origin (UNESCO, 2017). These, however, are not standard definitions, but simply variations of definitions, as the

term temporary migration is context dependent. For example, the meaning of temporary migration in European contexts may vary from the meaning of temporary migration in the African contexts, depending on legislature, which stipulates conditions and time periods migrants can stay in a specific country.

There are various groups of people that constitute temporary migrants. These include students, skilled and highly skilled professionals, low skilled workers, family members, tourists, refugees, asylum seekers and undocumented migrants. Although temporary, these groups of migrants are typically considered economic assets in that they help to alleviate shortage of labour in host countries in need of labour. These temporary migrants often provide a cheap labour pool from which industries and the local economy can benefit and maximize profits through low labour costs (EMN, 2011. p. 11). An example was the labour shortage in South Africa after the discovery of gold in the Rand and diamonds at Kimberly Mine in the 1890's. Cheap labour from several Southern African countries, notably from Zimbabwe, was employed in these mines and it made strategic business sense for the mining corporations and government as it has far less reintegration expenditure beside the low labour costs (Bell and Ward, 2000).

Central to the permanent and temporary migration discourse is the legality aspect that determines who is allowed not only to enter, but also to stay in the host country and for how long. The world over, stays of migrants in a host country are controlled by issuance of visas or permits by the host country. These visas and permits require constant renewal, as they are only valid for a specified period, ranging between 1-5 years (De Jager and Musuva, 2016). Failure to renew the visa and permit means that the immigrant must leave the country, otherwise, he or she will be considered an illegal immigrant, subject to deportation or criminal charges. To return to that country, that individual would

have to reapply, often from outside that country's borders, a process that becomes a vicious circle for the immigrant until they acquire citizenship, or at least permanent residency.

However, some studies established that constant periodical renewal of visas and permits contributes to regimes of illegal migration (EMN, 2011; Standing, 2011). This is arguably so because the migration fees that some of these migrant groups pay to acquire their documentations are exorbitant and unaffordable to most immigrants. As a way out, those who cannot afford the associated fees resort to “overstaying” and work until they have enough money to pay for documentation. In some instances, for example, between South Africa and Zimbabwe, most migrants from Zimbabwe are so poor that their whole migratory process is funded by relatives and sometimes by middle men, with hope to repay them once they get to their destination. However, this is what drives them into extreme cases of labour exploitation, especially in the fringes of the farming areas of the Limpopo Province. Thus, it is logical to conclude that the harder it is for the temporary migrants to access legal and affordable support systems to process legitimate documentation and immigration status, the easier it is to create illegal migration and precarious document regimes of both permanent and temporary migrants.

Central to this study is the research question why it is so difficult for Zimbabwean immigrants to legalize their stay in South Africa, having entered either legally or illegally. The history of South Africa suggests that the answer lies in the history of capital accumulation and expansion in South Africa led by Cecil Rhodes and the British Crown as well as significant Dutch interests in gold and diamond deposits discovered in the Rand and Kimberley Mines, respectively. In addition, apartheid policies were crafted to create distinct socio-economic pseudo caste-type communities, where some other racial groups

had more citizenship rights than others. This subject is succinctly addressed in chapter 3 of this research study.

Moving on to permanent migration, this entails movement that is long term, where the migrants leave their countries of origin to settle permanently in another. This type of movement is the most controlled population movement and involves comprehensively satisfying the host country that one is suitable to participate productively in that country over the long term. It is a complement to temporary migration in that before you can migrate permanently, you would have, often, firstly held temporary status that allows you to gain knowledge and skills to become productive at the acceptable and satisfactory standard of the host country. A close look at movements of populations shows that these stages happen in two dimensions, namely time and space (as it relates to the administrative boundaries crossed by the moving population) (Posel and Casale, 2003). Permanent migration tends to be consistent through-out the year or over long periods, whereas temporary migration tends to be seasonal or having marked highs and lows over time (Posel and Casale, 2003). The phenomenon that characterizes the situation that exists in South Africa, especially with Zimbabweans, clearly shows that migrant influxes have peak times and vice-versa. This is attributed to the political and economic instability of Zimbabwe, which is characterized by flight from political violence and high unemployment rates, especially during election season.

Permanent migration into highly developed economies is highly regulated and strategic, for the interest of the host country. In the United States, Canada and New Zealand, for example permanent migration has “numerical limits or quotas” that are rigidly set as a mechanism to control the number of migrants that get permanent status (OECD, 2006). According to the OECD (2006), statistics on work-related permanent

residency permits granted in 2003 (2002 for the United States), “77% went in the United States to persons already present in the country, 33% in Australia, over 55% in New Zealand but less than 2% in Canada” (OECD, 2006). These figures clearly show the high level of control involved in this type of migration. It is thus no surprise that issues surrounding migration and citizenship dominate major electoral platforms in the developed countries, and that in most cases, immigration policy issues can help determine who governs, based on who implements sound policies on immigration.

Compared to the developed world, availability of such statistics in the developing world, particularly Africa, remains a huge conundrum. South Africa is no exception. It is estimated that South Africa has a migrant population between 1, 5-2 million, most which are undocumented (Chiumia and Van Vyck, 2014). Statistics South Africa (STATSSA, 2011) for instance, reports that only 10 000 permanent residence permit were issued between 2011- 2013. This reported figure is too low for a three-year period, posing serious questions about the collection of statistics and their reporting. Also, a close look at the statistics for temporary resident’s permits for the same period shows that about 100 000 temporary residence permit (TRP) were issued, with the largest chunk allocated to Zimbabweans (STATSSA, 2011). This is questionable, due the fact that it is estimated that between, 1.5 – 2 million Zimbabweans are living in South Africa. If that many Zimbabweans are in South Africa and only 100 000 permits were issued, then this points to a large undocumented population. Explaining the slow or rather deliberate non-documentation of migrants, especially Zimbabwean migrants, therefore becomes a rather tenuous task.

## **Thesis Statement**

This thesis argues that South Africa's immigration policy framework is shaped by outdated and non-evolving segregationist and apartheid inspired positions, which remain discriminatory at the core. South Africa's current immigration dispensation is designed to deter certain migrants from the legal path of immigration, channeling them into precarious temporary migrants. As segregation of migrants is also based on the country of origin, in the selection of who enters the country or not, Zimbabweans are especially a group of interest, as they constitute the majority of immigrants entering and living in South Africa. Without proper immigration documentation, many Zimbabweans are forced to provide cheap labour and are unable to access critical services such as healthcare, banking and legal protection.

Failure to access these critical services has direct negative implications on these immigrants' livelihoods. For example, without formal employment, they are unable to earn a steady income to care for themselves in South Africa and or send remittances to their families back home in Zimbabwe. Subsequently, without steady income, they are also unable to send their children to school to access better education, food security becomes a problem, and access to health also becomes a challenge. Because of these livelihood challenges, the capabilities of these immigrants to contribute to their own development is significantly diminished.

Review of literature shows that most governments take a neo-classical economic approach when formulating immigration policy. Their main concern in reducing net labour migration is based on addressing wage differentials that attract migrant labour. This is mostly done through supporting bi-lateral development strategies that eliminate wage differentials. However, this is a limited approach to dealing with a migration crisis

such as the one South Africa is experiencing from an unprecedented influx of Zimbabweans over the past decade.

Looking at the various theoretical underpinnings on migration, including why people migrate, there is a need to understand multiple factors that cause people to migrate, including the historical, social, economic and political relationships between the countries involved, and their domestic state of affairs. This is what is, for example, addressed by the new economics of migration theory, which states that there are other non-wage related factors, which influence people to move. These could include credit market facilities, insurance, and accessible entrepreneurial platforms. The social capital theory or network theory also supports this position in asserting that low cost and low risk associated with migration can influence a person to migrate, with hope of a better living in the country of destination, where wage differentials and employment rates tend to be offset by lower costs and risk associated with the migration costs. In addition, the long-standing migration history of Zimbabweans into South Africa provides a deep seated social migration network that is proving difficult for South Africa to manage.

Further, South Africa has adopted a “quiet diplomacy” policy with regards to the role it plays in influencing change in Zimbabwe’s current socio-economic and political predicament. As such, South Africa has been dealing with symptoms of a problem, rather than helping to address the actual problems in Zimbabwe, which could ultimately reduce the mass exodus of Zimbabweans, in this case, into South Africa. This position is supported by the historical structural approach of migration, which illuminates the cumulative causation of migration, based on the core-periphery model of development. In this case South Africa represents the core due to its relatively more industrialized economy, which attracts migrants, while Zimbabwe is the less-developed periphery



country. The historical structural approach explains how mass migration is perpetuated, resulting in the continued underdevelopment of Zimbabwe through, for example, brain drain and loss of human capital, which in turn continuously benefits South Africa. This may also explain why South Africa is reluctant to overhaul its immigration legislation, in a way that eases the plight of Zimbabwean migrants in legalizing their stay in South Africa, either as students, workers, permanent residents, entrepreneurs or citizens.

Furthermore, the large pool of cheap migrant labour provided by Zimbabweans, especially the undocumented migrants, is of major economic value to South Africa's labour intensive industries. It allows employers to hire and exploit cheap labour (which could otherwise not be available among indigenous populations), thereby maximizing profits. The dual or segmented labour theory supports this argument. It postulates that foreign workers tend to accept less desirable low skill, low wage, and insecure jobs in the secondary labour market, which are shunned by indigenous workers. Due to the excessively large numbers of Zimbabwean migrant labour, employers offer increasingly low wages, which, to an extent, has also attributed to the rise of xenophobic attitudes.

Clearly, there is no single explanation as to why it is difficult for Zimbabweans to legalize their stay in South Africa, but a range of complementary factors explained in the various theories provided in the review of the literature. It may also be argued that the South African government does not have the capacity and tact to manage the influx of Zimbabwean migrants. Nonetheless, policy is central to addressing any immigration problems and requires constant revision to deal with the ever changing problems of migration. Although South Africa has attempted to make some changes to its immigration policy over the years, the main policy position remains discriminatory, outdated, and ineffective in dealing with its current Zimbabwe migrant crisis.

## **Methodology**

This library based qualitative study draws from both primary and secondary sources of data to provide valuable information needed to meet the objective of the study. Understanding South Africa's current immigration problem of the influx of Zimbabwean migrants and why it is difficult for this group of migrants to acquire legal migration documentation that allows them to stay and work in South Africa legally requires a critical analysis of the historical context of the problem, leading to the current status quo. As such, the study analyses existing literature and empirical research of various renowned scholars on South Africa and Zimbabwe, particularly in the area of immigration and policy, from both a historical and contemporary perspective. These sources provided valuable data and information such as historical patterns of population movements on both South Africa and Zimbabwe, statistics of migrant populations, reasons for migration, their activities, livelihood strategies and problems encountered in their country of destination, in this case South Africa. Understanding all this information provides an informed knowledge base to build on the analysis and understanding of the immigration problem at hand.

In addition, legislation plays a critical role in determining immigration outcomes. Thus, it is important to also trace the trajectory of South Africa's immigration legislation from the time of its inception during the colonial period in 1913, following through its various transformations up to 2016, in present day South Africa under a black majority government. This was done, in this study, through a policy analysis approach, which helped build a concrete understanding of South Africa's immigration legislation trajectory, showing how the policy has remained exclusionary and discriminatory at its core, despite some modifications over the years. Tracing this trajectory also helped to

illuminate the genesis of South Africa's current immigration problem. This policy analysis involved identification of all major colonial and apartheid legislation, followed by an analysis of specific textual information contained in each of the major immigration laws since 2013, through to the current immigration policy of 2016. Apart from creating a deeper understanding of South Africa's immigration policy, this analysis also helped to question the intent in the formulation of the policy, and to critically examine the far-reaching impact of these laws. For instance, to fully appreciate how the laws were discriminatory, the study singles out all textual evidence that speaks to any form of exclusion, by either race, sex, gender or nationality.

To understand the South Africa-Zimbabwe migration problem, reference is made to a number of recognised sources for statistical data, including Statistics South Africa (STATSSA) and the Department of Home Affairs (DHA). Independent research institutes such as the Southern Africa Migration Project (SAMP) and the African Centre for Migration (ACM) at Witwatersrand University also provided statistical data used in this study. This statistical data includes, for example, population movements by numbers, that is those crossing the South African borders according to their nationality, travel documentation used to enter South Africa, percentages of migrant population being apprehended or deported, estimates of the numbers of undocumented migrants, employment/unemployment rates, literacy rates, income and remittance trends, processing times involved in acquiring documentation for those wishing to regularize their stay. These statistics are valuable in highlighting the migration patterns showing who is moving, immigration system inefficiencies, and how these contribute to pathways leading to precarity, and adoption of the various unsustainable livelihood approaches by immigrants.

However, one major challenge was availability and reliability of statistical data. There were several data inconsistencies due to the plurality of sources, and below standard record keeping capacities associated with some of the organisations from which the data was obtained. To alleviate this problem, there was a need to verify the same data with a number of different sources and to understand how the original data was obtained by the source. Also, to address this problem, the study focused on government issued reports and those from other reputable research institutions that produced statistical data that closely resembled government sources. Also, keeping in mind that the concept of migration itself is complex it was also important to undertake an in-depth analysis of the available data to ascertain its validity and reliability. For example, due to differences in definitions and measurement methods, migration data provided by a sending country may be different from the data provided by the receiving country. The differences were harmonised by considering the methodologies and benchmarks used in ascertaining immigration statistics, especially with government sources in both South Africa and Zimbabwe.

## **Chapter 2**

### **South Africa's Immigration Legislation (1913-1991)**

#### **Introduction**

This chapter traces the history of South Africa's immigration legislation and provides an overview of the evolution and transformation of South Africa's immigration laws since the passage of the first South African Immigrants Regulation Act of 1913 up to the Aliens Control Act of 1991, the last immigration legislation Act under Apartheid. This analysis mainly focuses on major aspects of immigration legislation such as choice of immigrants, role of the judicial system and power of the state apparatus; showing how this legislation was deeply engraved in the construction of South Africa's national identity and economic structures. The objective is to show the trajectory of South Africa's immigration legislation, highlighting how the legislation remained discriminatory and segregationist at the core, despite changes or amendments over years.

Globally, immigration legislation is used as a tool to determine who is or is not allowed entry into a country. It is also used to enforce the terms and conditions that migrants adhere to in the given country. Hence, immigration legislation sets the requirements and processes involved in naturalization of immigration status for those immigrants who wish to stay. For South Africa, these immigration terms and conditions

are rooted in a historical period characterized by colonialism and apartheid, a system where laws were segregationist and discriminatory, strictly instituted on the grounds of gender, national origin, class and, especially, race (Crush, 1998 in Brewer 1999. p. 261). The chapter concludes by highlighting notable changes in the immigration legislation over the years, showing a pattern where such changes did not address the segregationist and discriminatory aspects of the apartheid inspired immigration laws.

### **The Immigrants Regulation Act of 1913**

The Immigrants Regulation Act of 1913 was instituted following the formation of the Union in 1910 (Peberdy, 1999). At that time, each province had its own immigration policy. Hence, the Immigrants Regulation Act of 1913 was created to replace all the different provincial immigration policies with one inclusive policy accepted by all provinces, the Parliament, and the then British colonial government (Peberdy, 1999). The 1913 Act had a number of main provisions. First, clause 1 of the Act called for the creation of a Department of Immigration (present day department of Home Affairs), which showed the high level of importance that it placed on the need to control movement of people across the South African borders (Peberdy, 1999).

The enactment of the first Immigrants Regulation Act of 1913 introduced the first Immigration Board in the history of South Africa (Peberdy, 1999). Members of this immigration board were appointed by the Minister to hear appeals of prohibited immigrants. These prohibited migrants include a cross-section of the Black, Indian and Jewish populations. However, the amount of power vested in this board was excessive, such that the rights of prospective immigrants and prohibited persons were severely challenged, setting precedents that exist to this day (Peberdy, 1999). Nonetheless, there

was an established process of appeal against prohibition by those immigrants declared prohibited by an Immigration Officer, which was also laid out in the 1913 Immigrants Regulation Act. A prohibited person wishing to appeal had 3 days to present their written appeal and was also expected to present an amount of money to cover “detention expenses” and return fare (Peberdy, 1999). The board decision was final, and could not be further appealed in the court of law, “except on a point of law” (Peberdy, 1999). Thus, the immigration process was completely beyond the jurisdiction of the judicial system. Additionally, it was the immigrant’s full responsibility to prove to the government their admissibility and that they were not prohibited immigrants.

At the time of the newly formed Union, the first census carried out in 1910 shows that the estimated white population was 1.1 million, the Bantu “black” population was around 4 million and the Coloureds constituted about 600 000 people (Dale, 1913. p. 13). Looking at these numbers, and the racist and segregationist legislation that was used to subjugate the populations of those considered undesirables, the obvious intent was to keep in check, especially the growth of the Black population, by controlling their movement (Peberdy, 1999). The white controlled state was fixated on collecting social statistics concerning the black population to track its rate of reproduction. The focus was to slow the rate of growth while promoting immigration from Europe to maintain a sizeable white population in South Africa.

It is imperative to note that this piece of legislation was not only targeted at black South Africans, but also others considered *undesirables*<sup>3</sup>. The legislation restricted inter-provincial movements, which literally prohibited Indian workers from living with

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<sup>3</sup> Undesirables refer to a cross-section of non-Nordic whites, blacks, Indians, coloureds population that made up South Africa.

their families. Between (1860- 1911), Indians were brought to South Africa as indentured labour to work on Natal's sugar plantation and were given five year contracts. Upon expiration of their contract, the workers had the option to return to their country of origin or stay in South Africa as free slaves (Peberdy, 1999). Indians protested against this 1913 Immigration legislation, led by Mahatma Ghandi, which later led to amendments with little significance to accommodate Indians and their families.

According to the Immigration Act of 1913, blacks were not considered full citizens, and were governed by the Act of 1913 that controlled the movement of non-South Africans. Technically, blacks were not accorded any rights under this dispensation, which made them extremely vulnerable to brutal treatment by law enforcements agents and employers. However, the South African government empowered organisations within the mining and agricultural sectors to recruit labour from surrounding countries like Zimbabwe, Malawi, Lesotho, and Mozambique. These African migrant workers had no immigration status accorded to them. They could only work in mines and in the farms. When their contracts expired, they were repatriated to their countries of origin and while some stayed, they were undocumented migrants.

There has always been discord about the immigration policy position and bi-lateral treaties that promoted huge influxes of migrant labour. Mining companies evidently operated on a different policy platform, which allowed them to recruit and control movement of labour into and out of the Union. As such, the notable 'us and them' tone in the legislation was largely imprinted into the immigration control apparatus, and it kept an all-white nation agenda as an ideal within grasp. This trend is evident in almost all the immigration legislation passed after the 1913 Immigration Act. The following



discussion further highlights the segregationist and exclusionary nature of immigration legislation passed between 1913 and 1991.

### **Jewish Immigration and the Immigration Quota Act of 1930**

The immigration of Jews into South Africa was nothing new. Records show a steady flow of Jews from 1904 onwards (Peberdy, 1999). After World War 1, South Africa was faced with the so called “Jewish immigrant threat.” Jewish migrants from Eastern Europe arrived in substantial numbers, which raised alarm within the Department of the Interior. The South African government’s main point of argument was that Jewish migrants were undesirable and incapable of assimilation (Bradlow, 1978). According to some sections within the body politic, Jewish immigrants were considered ‘diseased’ and would corrupt the white genetic pool (Peberdy, 1999). As such, legislation that prohibited the influx of Jewish migrants was passed in 1930, under the Jewish Immigration and the Immigration Quota Act of 1930.

The Jewish Immigration and the Immigration Quota Act of 1930 was a direct adoption from that adopted by the United States of America, which limited the number of Jewish immigrants into the United States. All the countries of Eastern Europe were divided into distinct sections. Jewish immigrants coming from Lithuania, Russia, Latvia, Greece, Poland, Palestine fell under those considered ‘undesirable’ (Bradlow, 1978). Those from the British Commonwealth, the United States and Western Europe were considered ‘desirables.’ The Immigration Quota Act of 1930, under Section (2) 1 of the immigration quotas, was to be implemented on a quota basis with each country considered undesirable only being allocated 50 migrants (Bradlow, 1978). Also, under this quota, the scheduled countries allowed to bring in the so called ‘white immigrants’

were given a quota of 1 000 immigrants per annum (ibid). Bradlow (1978) notes that this bill did not directly mention Jews by name as undesirables; rather, it placed restriction on specific countries. Hence, the position that the Bill did not discriminate on racial grounds, but rather on the grounds of nationality (1978. p. 229). However, for this discussion, it is clear to note that the legislation was created with intention to exclude other people based on race and country of origin. Traits of this kind are arguably still present in the current immigration legislation in South Africa, except that they have morphed into various forms of immigration dispensations, which target specific groups of immigrants.

The Quota system discussed here was implemented by the Department of Home Affairs to address economic migrants coming in from Zimbabwe, but without success. It was not a successful project because the Department of Home Affairs did not fully comprehend the magnitude of the Zimbabwean immigration quandary and their rigidity in reforming immigration policy to suit a dynamic youthful democracy with massive economic potential. Consequently, the anti-Semitic tone in this 1930 Immigration Quota would lead to sharp criticism of the Bill from within sections of South Africa. Unlike in contemporary times, the Jewish population had some of representation that allowed those in positions of power to discuss the dissatisfaction and resistance towards the Immigration Quota Act of 1930, and how it threatened the immigration of those of Jewish origin. In contemporary time, for instance, the consultations done for the drafting of the 1999 White Paper, were all thrown out at the crucial moment before the Immigration Act of 2001 was passed into law.

To adjudicate immigrant applications under the Immigration Quota Act of 1930, an immigration board was set up. This board was made up of Secretary of Labour, Chairman of the Board of Trade and Industries, and other high ranking government

officials (Peberdy, 1999). The attention given to immigration was elevated because of a real threat that the Jewish immigrant posed to the white European utopia, which the white nationalist wanted to create in South Africa. It was an 'Us versus Them' mentality, which similarly pronounced in the current immigration policy, with the only difference being that this time is black South Africans directing this positioning to other Africans from the rest of the continent.

### **The Aliens Act of 1937**

This piece of legislation evidences the chicanery used by some sections of the political elite to intentionally dissuade Jewish migrants from migrating to South Africa. For this legislation to be passed there was a renewed influx of Germans who identified as Jews, which was a cause for concern for most who aligned with the 'white supremacist agenda.' For instance, an ambassador identified as Eric Louw, in 1935 wrote to all other South African emissaries citing an increased keenness by Jewish would be migrants to migrate to South Africa (Peberdy, 1999). Louw is cited as inciting other fellow emissaries to discourage immigration of Jewish Germans to the extent of overcharging immigration application fees, charging £250 where there would normally be a charge of £100 (Peberdy, 1999. p. 164). This type of disingenuity and total disregard for the rule of law is not unique to this historical period. In contemporary South Africa, Acts such as these have become rampant, and the core of the immigration system has been corrupted by those seeking to gain from immigrants in vulnerable positions.

At the core of this Act, was the desire to bar German Jewish immigration, and, to a large extent, the Aliens Act achieved this. A look at the numbers of Jewish arrivals in 1936 shows that an estimated 2,500 Jewish immigrants landed on South African shores

(Peberdy, 1999. p. 169). However, just a few years later, in 1938, those numbers had declined to 438 and 236 respectively (Peberdy, 1999. p. 169). The Aliens Act of 1930 was heavily influenced by ‘eugenics,’ a scientific doctrine that swept across Europe and North America in the 1920s. Originally the ideas surrounding racial eugenics were forwarded by theorists like Madison Grant (1916). Grant (1916) believed in the superiority of the white race and was convinced there was scientific evidence to back up his positions. He believed the so-called Nordic white races to have been the pioneers of human development and argued for the separation of other races, as they were weak, diseased and inept in advancing the human project (Grant, 1916. p. 46). The ideas of individuals like Grant (1916) played an infusive role in getting the South African white political elite to envision an “all-white state”. A substantive number of individuals in political office clearly believed in the science of eugenics as the cornerstone to building a nation state dominated by whites Peberdy (1999).

This discussion is not merely centered on the composition of the legislation and the segregationist racial policies that characterized the Aliens Act of 1937 and other immigration bills. Rather, it is also about comprehending the processes and environment in which the legislation was passed, and the specific implications the legislation would have on the South African society and those aspiring to acquire membership into the ‘White South Africa’ project. The far-reaching effects of these policies are still being felt to this day, under black majority rule in South Africa. The point is, despite independence from white minority rule, and the change of government, which came with a new constitution, there are sections or remnants of the old South Africa that still exist and latently shape legislation, especially from an immigration perspective.

The Aliens Act of 1937 became the cornerstone of all immigration legislation until 1991. Under this 1937 Act, immigrants were selected by a board appointed by the Governor General (Peberdy, 1999; Bradlow, 1978). The immigrants had to be assimilable, and if offered a temporary permit, the immigrant who overstayed the duration of their permit would end up being ejected from the Republic (ibid). The terminology used in this Act speaks volumes. To refer to other racial groups as Aliens points to the deep-seated racialized psyche of the individuals advocating for this policy. It should be noted that nowhere in the immigration legislation does it mention Africans as immigrants. During this period, Africans were considered labour migrants to be discarded once the employer has no further use for them.

### **The Rise of Afrikaner Nationalism during the Apartheid Period**

After the passing of the Aliens Act of 1937, there were no major immigration legislation overhauls, except amendments that were instituted by rival political parties in the form of the United Party and the National Party after 1940. The National Party leadership believed that the United Party, during their tenure, had amended immigration legislation in a skewed fashion to increase immigration of English speaking whites for electoral purposes. The constant political jockeying that characterized the late 1940's points to contested ideological positions on what constituted a 'white South Africa.' Peberdy argues that the 'Afrikaner Nationalist party' recalibrated the immigration agenda by dismantling of sections of the legislation that promoted British immigration to South Africa (1999). Upon seizing political power in 1948, the National party saw the need for increased white immigration to offset the balance with a growing urban black population. Amendments to the immigration laws targeted creation of a new Afrikaner State and

changes saw the reinstating of the disbanded Ministry of the Interior and the appointment of Afrikaner leadership in most government institutions (ibid).

Despite all these changes in immigration policies, the need for cheap labour in the mines was real and persistent. To fulfill this need, labour was to be first recruited in South Africa. If not enough, it had to be brought from elsewhere in the region. The National Party was largely faced with the reality of a growing black population and rising political organizing. Keeping in mind that the policy on Black migration was governed by the Immigration Act of 1913, which considered blacks non-citizens and undesirable. However, because of the need for black labour in the mining and agricultural industries the 'two gates' policy was instituted.

The "two gates" policy was essentially a segregationist system where whites of European origin had legitimate access to immigration into South Africa (Seidman, 1999, p. 422). The 'back door' policy focused on the oscillatory recruitment of cheap African migrant labour from neighbouring Zimbabwe, Malawi, Mozambique and Botswana (Seidman, 1999, p. 422). The creation of this labour system would give birth to some of the immigration policy confusion to bedevil South Africa in the post-Apartheid era. Plural legislative frameworks governed migration differently for whites and blacks. Cheap migrant labour regulation was strictly enforced with pass-laws that kept black migrant populations within their designated stations of employments. However, no matter how long black migrant mine workers worked, they were never illegible for permanent residency (Crush and Tshitereke, 2001, p. 50).

## **The Alien Act of 1991**

The Immigration laws that guide South Africa's positions on immigration are deeply rooted in Apartheid. As discussed in the earlier section of this chapter, the Immigration Act in South Africa was first passed in 1913 by the first Union government of South Africa (Perbedy, 2009). This immigration Act of 1913 was exclusionary and only meant to recognize other whites as immigrants (Peberdy, 2009. p. 68). Despite being heavily aligned to benefit whites, it had provisions that allowed black African labour to be allowed to filter through to work in the mines and in agriculture. The 1913 Act was only amended in 1972 to deter Jewish immigrants from entering South Africa. This Act worked in conjunction with the 1937 Aliens Act. These two bodies of legislation would control immigration into South Africa until the Alien Act of 1991 (Perbedy, 2009, Crush and Dodson, 2007)

Fearing an influx of Africans from other parts of the continent, with the advent of majority rule, the De Clerk government overhauled the Immigration legislation and instituted the Aliens Act of 1991 to further protect their borders. The 1991 Aliens Act was referred to as the "dying act of apartheid," because it was the last piece of legislation authored under a racist South African government (Perbedy, 2009; Wa Kabwe-Segatti 2006; Crush and Dodson, 2007. p. 436). The 1991 Aliens Act was to become the blueprint to guide South Africa's immigration post 1994. It would remain intact until 2002, and be effectively amended in 2005 (Crush and Dodson, 2007. p. 436).

The Alien Act of 1991 is problematic. The ensuing discussion makes direct reference to the actual clauses in the Bill to understand its contents, while illuminating contested areas. First, the Aliens Act of 1991, Section 39 addresses the most controversial aspects of the bill, which addresses prohibited persons. According to Section 39 (2) a) a

prohibited person is “*any person who is likely to become a public charge by reason of infirmity of mind or body, or because he is not in possession of sufficient means to support himself and his dependent’s that he brings or has brought with him into the Republic*” (Aliens Act of 1991. p. 17). A close look at the definition evidences the desire by the South Africa government to bar entry to people that did not have sufficient financial resources to support their sojourn. This could be, arguably, because the government does not want to be held liable financially for the upkeep of such ‘prohibited individuals’ as it would add unnecessary pressure on the welfare system.

In the Alien Act of 1937, one of the clauses that was used to discriminate against whites of Eastern European origin was a requirement to have enough funds to support their settlement in South Africa (Peberdy, 1999). The link here is the discrimination on the grounds of financial viability. Discrimination of this kind is unconstitutional under South African law, and counterproductive to the reconstruction of the South African national identity as constitutional democracy. Section 39 (e) categorizes prohibited person as:

*a) “mentally ill person, or any person who is deaf and dumb, deaf and blind, or dumb and blind, or is otherwise physically afflicted, unless in such case the person concerned or the person accompanying him or another person gives security, to the satisfaction of the Minister, for his permanent support in the Republic or for his removal there from when required by the Minister”. (f) “any person who is afflicted with any such contagious, communicable or other disease, or who is a carrier of such a virus, as may be prescribed” (Aliens Act, 1991).*

As a human rights issue, the above definitions are not only abhorrent, but a violation on the personhood of those to which it refers. Neither is this the first time that reference to diseased and undesirable persons has been used in a piece of legislation. In the earlier discussion on the concept of racial ‘eugenics,’ the term diseased featured in the description of an inferior species of eastern European white Jewish race. These Jewish



migrants were unwelcome to the Republic of South Africa as they were liable to contaminate the ‘white master race’ (Peberdy, 1999). If a prohibited individual was found in the Republic of South Africa, they were faced with arrest and deportation. Notably, the Aliens Act of 1991 gave sweeping powers to the Minister of immigration and immigration officials. The Minister had the power to issue a warrant of arrest and deportation order. This clause armed the various law enforcement agents with power to stop anyone who they ‘suspected’ to be an illegal alien and demand documentation on site. Failure to produce the required documents meant detention pending deportation.

Although many amendments were made to the Aliens Act of 1991, there is strong evidence of unconstitutional apprehension and detention of migrants. The South African Police Services has been accused of being complicit in gross human rights violations by using excessive force and detaining migrants under inhumane conditions (Human Rights Watch, 2007). For instance, Human Rights Watch notes that undocumented migrants are targeted and identified in a variety of ways that include language capabilities, dressing, and physical attributes (1998). Chapter 2, Section 12 of the Bill of Constitutional Rights of 1996 clearly states that, *the “freedom and security of the person” secures the right to “not be deprived of freedom arbitrarily or without just cause,” to “not to be detained without trial,” to “not be treated or punished in a cruel, inhumane, or degrading way,” and to be “free from violence from both public and private sources.”* (South Africa, 1996). Clearly, despite some changes over the years, the Aliens Act of 1991 remained discriminatory and segregationist at its core.

In conclusion, this chapter highlighted the origins of discriminatory and segregationist immigration legislation in South Africa, which targeted all non-Nordic white races. The trajectory of South Africa’s immigration laws, discussed from 1913 up

to 1991, shows a continuous and deliberate effort to deter out non-white races from the country. This was achieved by instituting restrictive immigration legislation over the years, with total disregard of the cosmopolitan nature of their country. For instance, the deliberate exclusion of whites of Jewish origin, Indians, and the non-recognition of black Africans as immigrants, as shown under the various Acts discussed, highlights the discrimination and segregation contained in the immigration law, which has remnants still visible in present day South African immigration legislation. The question is why, despite this clear discrimination, black Africans, and in particular Zimbabweans as they are the subject of study, continue to flock to a country with such segregationist immigration laws? The answer lies in understanding Zimbabwe's current socio-economic and political climate, and the various push factors that are forcing Zimbabweans to migrate to nearby South Africa in floods, with or without proper documentation.

Theoretical foundations discussed in chapter one helped identify push factors as the reasons why people migrate, while the discussion on South Africa's immigration legislation trajectory in Chapter 2 helped us get a deeper understanding of the historical background of South Africa's immigration laws. The following discussion in Chapter 3 will show and explain why Zimbabweans are migrating to South Africa in masses, particularly since 2000. The issues discussed will provide an understanding of the root causes of the Zimbabwe - South Africa immigration crisis, and help identify possible effective ways to manage the problem.

## **Chapter 3**

### **Contemporary Zimbabwe: A Synopsis of an Economy**

## **in Crisis and the Mass Exodus into South Africa**

### **Introduction**

This chapter examines current complexities of Zimbabwe's multi-dimensional national crisis and how those problems have pushed people to look for alternative means of survival through migration into neighbouring South Africa. The chapter especially focuses on macro-economic policies instituted to try to solve deeply embedded national problems, such as remnants of the failed Structural Adjustment Programs of the 1990s and unequal land ownership inherited at independence in 1980, which was skewed in favour of the former white colonialists at the expense of the indigenous Zimbabweans. The goal is to understand the crisis in governance and social problems like citizenry unrest, collapsing infrastructure and other numerous factors that crippled Zimbabwe, thereby placing into context the mass exodus of Zimbabweans into South Africa. This is important because understanding these issues helped to get to the root problem of the Zimbabwe-South Africa migration crisis to find effective ways and approaches to manage the actual problem, and not just the symptoms.

Lack of strong, relevant and enforceable national policies, worsened by maladministration of the already existing policies can largely be attributed for most of Zimbabwe's national crisis today. Faced with constant domestic and international pressure and worsened unexpected fast paced turn of events on the social, political and economic front, the Zimbabwean government has constantly resorted to creating a cocktail of reactionary policies to try and mend an economy in freefall. Not surprisingly, the result was a deepening national crisis and an economy in freefall, forcing millions of

Zimbabweans to flee the country, escaping to mostly neighbouring South Africa en-masse, both legally and illegally.

The recent wave of migration into South Africa is one of Zimbabwe's four notable waves of mass migration whose roots can be traced back to the time of independence in 1980. The first immigration wave was triggered by the liberation war victory of the black majority, led by Robert Mugabe of the ZANU-PF party, against the white government led by Ian Douglas Smith. As a result, the defeated former white colonialists left Zimbabwe in large numbers to settle in South Africa. The second notable wave of mass migration was between 1983 and 1987. This is when the Ndebele people fled into South Africa in search of refuge against large-scale massacres orchestrated by the ruling government under ZANU-PF, during the *Gukurahundi*<sup>4</sup>. The third wave of migration is noted between 2000 and 2008, involving the mass exodus of economic and political refugees at the height of economic and political turmoil in post-independent Zimbabwe. The fourth, and most recent (2013 onward) mass migration was in response to an economic and political crisis under the multicurrency economic dispensation led by the US dollar as the main currency (De Jager and Musuva, 2016. p. 15). These distinct phases of post independent Zimbabwe came with several challenges that forced millions of Zimbabweans to flee to South Africa in search of a better living.

In response, South Africa instituted a number of immigration policies to try and curb the influx of immigrants from Zimbabwe and other African countries. Some of these policy reactions are concurrently decrypted in this chapter, from the 1990s to date,

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<sup>4</sup> Gukurahundi was a period (between 1983-1987) of large scale massacres of the Ndebele people led by the Zanu-P.F government under R.G Mugabe, who unleashed a North Korean trained military unit known as the 5<sup>th</sup> Brigade to reign terror and silence dissent from the Ndebele people. 3, 750 to 30, 000 deaths were recorded during this period (Hill, 2005. p. 77).

looking at their “supposed” evolution and suitability in dealing with the mass migration problems. Focus is placed on analysis of South Africa’s immigration policy instruments, such as the Aliens Control Act of 1991, the Draft Green and White policy papers between 1992 and 2000, the Immigration Act of 2002 and the Amendment Acts of 2011 and 2014. Focusing on these policy instruments will help illuminate the defective immigration policy prescription of racist Apartheid. Additionally, the chapter discusses the ability of the ruling government under the African National Congress (ANC), to address South Africa’s immigration policy inadequacies, or rather out-datedness. This discussion will ultimately help in analysing South Africa’s current immigration policy and other efforts made to address the Zimbabwe situation. These included, two emergency dispensations, the Dispensation of Zimbabwean Project (DZP) of 2010 and the Zimbabwe Special Dispensation Permit (DSP) of 2014, which were created to deal with the influx of Zimbabwean immigrants.

Recent studies indicate that the number of Zimbabweans flowing into South Africa has doubled since the electoral victory of ZANU-PF in the 2013 presidential elections (De Jager and Musuva, 2016. p. 15). It is estimated that an average of 700 undocumented Zimbabweans are making their way into South Africa daily, in addition to the 3 to 4 million Zimbabweans who left Zimbabwe in the last decade (Sisulu, Moyo and Tshuma, 2007. p. 553). Clearly, this is indicative of a problem within Zimbabwe’s borders, which is causing citizens to leave the country in unprecedented numbers. Ironically, not long ago Zimbabwe used to be considered an economic powerhouse with the second most viable economy after South Africa in the period just before and soon after independence in the early 1980s. Today, Zimbabwe ranks one of the lowest on the

Southern African development index. The distinct superiority of the South African economy has no doubt been a huge pull factor for Zimbabweans.

To better understand the Zimbabwe-South Africa migration nexus, it is equally important to take a close look at the nature of the population movements, including both legal and illegal migration currents that swept through South Africa especially from the year 2000 onwards. The desperation for alternative “decent” forms of livelihoods created impulsive and unplanned migrant courses. These movements are characterized by lack of education on immigration processes and lack of financial resources to file for the necessary legal immigration documentation. All this alludes to be a highly prevalent form of precarity amongst most Zimbabwean migrants in South Africa. This precariousness is further exacerbated by a hostile immigration policy and a political and public discourse that denigrates the rights of immigrants.

### **Zimbabwe’s Economic Decline**

Zimbabwe’s economic and political problems are a result of a myriad of factors, ranging from poor monetary policies, to fiscal indiscipline, cronyism and constant political jockeying by political figureheads. The subject of Zimbabwe’s economic decline has been widely documented. As such, focus will centre on poor macroeconomic policy, land-reform, and a political climate characterized by decaying rule of law, intimidation, and violence against anyone in opposition with the ruling Zimbabwe African National Union Patriotic Front (ZANU PF). As such, it is plausible to conclude that the problem in Zimbabwe is political as much as it is economic.

Since adoption of the Structural Adjustment Programmes (SAP’s) between 1991 and 1995, Zimbabwe’s economy has been in perpetual free fall. Despite several efforts by

the Zimbabwean government to rescue the situation through instituting a number of economic development strategies, the results have been dismal. This study, however, focuses on the period between 1997 and 2011 because it is a critical period that helps to appreciate the depth of problems facing Zimbabwe and why Zimbabwean masses are in exodus to South Africa in hope of better opportunities. This period also exposes the failures of the Zimbabwean government, with regard to implementation of sound economic reforms that positively transform the lives and livelihoods of its citizens.

The period 1997-2011 is also the most controversial period in Zimbabwe's history as it was characterized by massive political upheavals and, catastrophic levels of inflation and unemployment unprecedented in the history of independent Zimbabwe. To try to deal with the situation, among a number of other strategies, the Zimbabwean government developed a cocktail of economic strategies. Focus of this discussion will be on only two strategies: The Zimbabwe Programme for Economic and Social Transformation (ZIMPREST) (1996-2000), and the National Economic Development Priority Programme (NEDPP) (2006). Failure of these programs to achieve the needed change showed that they were simply ineffective reactionary projects created to try and "jumpstart" a decaying economy. The year 1996 marked a huge shift in Zimbabwe's economic and political landscape. Visible signs of economic stress and growing dissent among citizens over the state of affairs began to surface, resulting in the creation of ZIMPREST.

ZIMPREST was created as a macroeconomic policy response meant to play a reconstructive role. It was a development strategy that was initially supposed to be launched in January, 1997, but due to numerous factors, which included food price hikes, industrial stagnation and advice against its implementation from the International

Monetary Fund (IMF), it was later launched in February, 1998 (Logan and Tevera, 2001). It was launched as a successor to the failed Economic Structural Adjustment Programmes (ESAP), which were officially disbanded in 1996. The mandate of ZIMPREST was that of consolidating or rather realigning the economic machinery, which had been destabilized by the implementation of the neoliberal informed SAP's. According to the African Development Bank (1999. p. 13), "the major themes of ZIMPREST were, urgent restoration of macroeconomic stability (low inflation and interest rates, stable exchange rate); facilitating the public and private savings and investment needed to attain growth; pursuing economic empowerment and poverty alleviation by generating the opportunities for employment and encouraging entrepreneurial initiative; investing in human resources development; and providing a safety net for the disadvantaged."

ZIMPREST commenced with an overall GDP growth of around 7 %. It targeted budget-deficit cuts to 6.5 % of GDP by 2001, inflation reduced to 5 per cent by the end of 2000, and the creation of 42,000 jobs in the next three years (Kanyenze et al, 2011. p. 40). During the 1996-2000 period, the average annual GDP growth rate was 2, 41% (Ruwo, 2014). This was a considerable decline from the projected 6.5%, which was anticipated. Impressive but unrealistic targets were set, but the reality with ZIMPREST was that it was guaranteed to fail from the onset. In 1997, it became visibly clear that Zimbabwe's economic decline was in effect. The Stock Market crash on November 14, 1997 was a huge blow to ZIMPREST as an economic recovery blueprint (Munangagwa, 2009). As a result of the economic turmoil, civil strife sprouted and became pervasive in most urban and rural centres with record numbers of strikes (232) being recorded as the people were disgruntled after the previous failure of ESAP and now ZIMPREST (Munangagwa, 2009).



To create even more uncertainty, the war veterans, in protest, staged demonstrations demanding reinstatement of their benefits to levels prior to the liberalization and downsizing brought about because of ESAP. The war veterans proved a powerful bunch that had the political clout that forced the government into making another economically inept decision. In December 1998, the Zimbabwean government agreed to award each registered war veteran ZW \$50 000 and a monthly equivalent of 2000 USD (Kanyenze et al, 2011). The government had no money for such a capital-intensive project. As such, this was a purely political and economically unsound decision, which proved costly. Around that same period, war broke out in the Democratic Republic of the Congo (DRC) and the Robert Mugabe led government, against advice from the International Financial Institutions (IFI), went ahead to commit to a perilous and unwarranted war. This war exercise cost Zimbabwe, “3 million US dollars” per single day and the government spent an estimated “6 billion Zimbabwe dollars,” which was unbudgeted for, with innocent lives were lost for an unjustified cause (Munangagwa, 2009). Meanwhile, these policy failures were triggering panic and social unrests among Zimbabweans.

In response to the failures of ZIMPREST, the Zimbabwean government sought to reengage themselves through implementation of another macroeconomic policy called the National Economic Development Priority Programme (NEDPP). This programme was launched at the height of a politically tense environment in Zimbabwe. The succession battles of who would succeed Robert Mugabe were just gathering traction. Launched in 2006, its mandate was to cut bureaucratic red tape and accelerate solutions to declining economic performance by reducing inflation and raising 2,5 billion (US) dollars for recapitalization of the national economy (Matikinye, April 13, 2006). The NEDPP, sold as a joint economic revival effort by government and the private sector, was designed to

create economic stability within a period of 6 to 9 months (Ndlela, 2004). With inflation hovering around 913% and unemployment rising above 85% at the point of launch, NEDPP was not only supposed to ease the problem, but to “create something out of nothing, which was not only a dream, but also a pure disregard for the wellbeing of the Zimbabwean people (Ndlela, 2004).

Due to the fact that Zimbabwe had defaulted on its loans with the IMF, and the subsequent suspension and sanctioning of Zimbabwe, there was not a clear explanation as to how the government was to raise money to fund their ambitious project NEDPP. This project also had a role to play in re-addressing the displaced market vendors in most urban centres, who were forcibly removed from their places of business and homes under the “*Operation Murambatsvina project.*”<sup>5</sup> This clean-up operation left hundreds of thousands homeless, without adequate sanitation and clean water. This resulted in catastrophic humanitarian conditions where people fell ill to preventable water borne diseases such as cholera and dysentery due to lack of proper sanitary infrastructure and clean water (Ukuthula Trust and Solidarity Peace Trust, 2015). Due to its failures, the NEDPP project was abandoned within less than two years of its launch.

The constant policy changes and failures were a clear indication of a government under duress and without a clear sense of direction. One cause of concern was also that the government had divided efforts as the ruling party was constantly in a campaigning mode, which encouraged politically motivated decisions rather than economically sound ones. As a result, the ruling government was faced with increasing unpopularity and a waning support base in the face of strong opposition of the increasingly popular

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<sup>5</sup> Operation Murambatsvina refers to the clean-up operation to remove all illegal settlements in undesignated spaces.

Movement for Democratic Change (MDC) party. To try and regain popularity, ZANU-PF had to come up with other creative strategies, including revisiting the unresolved land question of unequal land ownership between the whites and indigenous Zimbabweans, resulting in the controversial Fast Track Land Reform Program of 2000.

The Fast Track Land Reform Program was controversial in that while it was an effort to correct a long standing historical injustice in land ownership between the former colonial white settlers and the indigenous Zimbabweans, the manner in which it was done led to deep suspicions that it was more a political move by the ruling party to drum up its waning support base and silence critics, especially the MDC, who were largely supported by the white commercial farmers base. While the main objective of this land reform was to correct a historical injustice and to empower indigenous Zimbabweans, it was also meant to boost agricultural production and contribute to the overall economic growth of the whole country. However, the results were another disaster. As an agro-based economy, 60-70% (two-thirds) of the country is employed in the agricultural sector (Maiyaki, 2010). Disruption of economic activity in the agricultural sector through the land grabs thus obviously created a host of socio-economic and political problems that recalibrated life for the majority of Zimbabweans.

At independence in 1980, about 5, 600 white commercial farmers controlled almost 15.5million hectares of Zimbabwe's prime agricultural land, while about 780, 000 black Zimbabweans had access to less than 16, 4 million hectares, a position that indeed needed to be corrected (Moyo, 2011). Although the majority of the land was now transferred to the majority of Zimbabweans, the manner in which the programme was implemented, involving inadequate planning, lack of post settlement support, violence, and political intimidation resulted in unforeseen problems (Musodza, 2016). Since then,

agricultural production has gone down, food insecurity increased, loss of jobs on the farms forced former farm workers into the already struggling job market and unemployment increased to unprecedented levels, companies are underperforming and shutting down and there is increased international isolation. As a result, the crisis in Zimbabwe continues to deepen without a clue by the government on how to fix the entanglements holding back the country's development trajectory. With no sign of hope and a solid plan in place to correct the crisis, Zimbabweans have been left with no option but to flee the country and migrate to other countries, such as South Africa, to find a better living.

### **The Zimbabwean Exodus into South Africa**

As mentioned earlier, although mass movement of Zimbabweans out of the country into South Africa happened in notable waves starting from the early 1980s, the mass exodus of 2000 and 2008 can be said to be the biggest wave of migration in the history of independent Zimbabwe to this date, although people continue to move albeit in smaller numbers. A string of damaging policies to the well-being of Zimbabweans, such as political violence leading up to the re-election of President Robert Mugabe in 2009, Operation Murambatsvina<sup>6</sup> (clean up the slums) of 2005, and the ill planned Fast Tracked Land Reform Program of 2000 forced millions of Zimbabweans to migrate to South Africa in search of a better living (Sisulu, Moyo and Tshuma, 2007, p. 555). As migration continued, so did the brain drain. The majority of people leaving the country were

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<sup>6</sup> Operation Murambatsvina refers to the "clean-up operation that was carried out by the ZANU Pf led government to rid urban high density suburbs of so-called illegal dwellings.

qualified professionals as well as skilled and unskilled workers who were obviously much needed in the growth and overall development of the nation of Zimbabwe.

The period 2006-2008 was especially critical as that was the time many highly qualified and skilled workers like teachers, doctors, nurses, technicians, accountants, lawyers, engineers, skilled farmers and also those with modest high school education left the country in a rush. For instance, the Progressive teacher's Union of Zimbabwe estimates that over 26, 000 qualified teachers left the country between 2006 and 2008, leaving an obvious dent on the county's education system among a host of other related social and economic problems (De Jager and Musuva, 2015. p. 24).

It must be noted that the cross-section of both professional and non-professional Zimbabweans experience the migration process differently. For example due to the high demand of actuarial scientists, medical doctors in South Africa, these group are recruited while in Zimbabwe and their work permits are processed by the South African High Commission in Zimbabwe. This makes their migration process fast and allows them to settle in South Africa without facing many bureaucratic hurdles.

In contrast, the proximity of South Africa made it a destination of first choice to the majority of Zimbabwean migrants, particularly those who were not well connected and well financed to move across the seas too Europe or the Americas.. The Beitbridge border post is the busiest point of entry in Southern Africa and the trade gateway to Zimbabwe, Zambia, Malawi, Tanzania and other countries in the region. However, this border is not the most secure point of entry as it is riddled with loopholes that can be manipulated to allow illegals to enter into South Africa for a fee (Tshivhase, 2015). Corruption amongst border enforcement agencies at the South Africa –Zimbabwe border post is an old phenomenon that has since become highly systematic and lucrative to the

individuals involved. Migrants without proper legal documentation and low skill levels resort to clandestinely crossing into South Africa through risky channels operated by smugglers. There is more than enough documented evidence citing cases of inhumane experiences that desperate men, women and children migrating into South Africa are subjected to.

According to the Human Rights Watch (HRW) some of the most brutal circumstances that Zimbabwean migrants face are when jumping the border through crossing the crocodile infested Limpopo River and directly through the border post dealing with law enforcement agents (2006). Substantiated investigative journalism professionals established that the South African police are complicit in the ill-treatment of undocumented migrants (HRW, 2006).

As an effort to rid South Africa of illegal Zimbabwean immigrants, the South African government, through their anti-immigrant policy stance, deported close to 200 000 Zimbabweans in 2006 (Human Rights Watch, 2008). However, because of the porous border, many of these deported individuals illegally found their way back into South Africa (Human Rights Watch, 2008). More recently, mid 2015, approximately 5 000 migrants were crossing into South Africa daily, which translated to almost 40 000 migrants per week (The Financial Gazette, August 21, 2015). These figures are just estimates of those that were using designated points of entry, suggesting an even larger number of Zimbabwean migrant populations still trickling into South Africa during this period, considering the unaccounted illegal immigrants.

Considering Zimbabwe's historical political and economic turmoil leading to the current status quo, it is undeniable that Zimbabwe's economy is comatose and this is directly linked and positively correlated to the mass exodus of Zimbabweans into South

Africa. The manufacturing industry is not existent anymore, the agro-industry is broken, and the dollarized economy is making it difficult for Zimbabweans to afford necessities such as health, education, and food against an irregular meagre monthly salary that can hardly cater for the family through to the next paycheck. Faced with limited choice, migrating to South Africa is the immediate plan in hope for a better living.

It is one thing to hope for a better living, and it is yet another, to actually experience and live the dream of migrating across the border. For most Zimbabweans, this remains just but a dream as the following discussion will show. The viability of the decision by many Zimbabweans to migrate to South Africa is analysed in the following discussion, exploring South Africa's current state of affairs economically, receptiveness to Zimbabwean migrants, and the various livelihood strategies adopted by Zimbabweans to stay afloat in an increasingly hostile foreign environment. With a rising unemployment rate estimated at 26%, and, among other domestic challenges, increased pressure on local resources exerted by the over 2.5 million Zimbabwean migrants living in South Africa, such as housing, health facilities, and the scarce job market, Zimbabweans are faced with obvious challenges including legal rights and violent xenophobic reactions from the local South African citizenry, particularly in the high density areas and informal market environments where they interact and clash with higher populations of disadvantaged indigenous South Africans populations. (STATSSA, 2016. p. iv).

Although there is much debate among researchers, media reports and government statistics on the actual numbers involved in the cross-border traffic between Zimbabwe and South Africa, what is at least certain is that the numbers are on the rise. Estimates by the official South Africa statistical office show a steady rise of South Africa-Zimbabwe cross border traffic from just fewer than 200,000 in the mid-1980s to over 700,000 in

1995 and over 1.6 million in 2010 (Statistics South Africa, 2010; Crush and Tawodzera, 2016. p. 4). Although these statistics represent legal document holders crossing the South African borders through Zimbabwe, for various trades and reasons, the numbers of the undocumented is still to be ascertained, yet they are the very group of people that are often desperate and require attention of the governments of both the sending and receiving country, in this case Zimbabwe and South Africa respectively. Understanding the phenomena of undocumented migrants is paramount to the drafting of domestic and international development goals such as food security, housing, employment, service, social impacts and international relations between the countries involved.

South Africa is 2011 census recorded about 515, 824 black Zimbabweans living in South Africa, an increase from an estimated 509, 000 in 2007 (according to various projections). More recent figures show that over 1,5 -2 million Zimbabweans are now currently living in South Africa and over half of them are undocumented (Chiumia and van Vyck, 2014). Normally, immigrants need visas or permits to be allowed into countries where they are not citizens. Undocumented migrants are those migrants who do not possess the required legal documentation to be in the country as stipulated by the laws of that country (International Organization for Migration (IOM), 2015). For this study, undocumented migrants refer to asylum seekers, refugees, and illegal immigrants. This broad categorization of undocumentedness stems from the fact that the South African immigration law treats these groups of people the same due to their lack of citizenship rights, which renders them *aliens*. A big part of understanding the national development problems associated with illegal or undocumented immigrants is to first understand their livelihoods or survival strategies after migrating, hence, the following discussion.



## **Livelihood Strategies of Immigrant Zimbabweans Living in South Africa**

Zimbabweans are the largest population of immigrants living in South Africa, both documented and undocumented Zimbabwean migrants find it increasingly difficult to make a decent living, in South Africa. One of the main causes of such difficulties stems from failure to acquire legitimate stay, due to increased difficulty in naturalising their stay. South Africa's restrictive immigration policy, and increased xenophobic attitudes from South African locals are but some of the main reasons that make it a tumultuous task for Zimbabweans to secure decent livelihoods. To survive, Zimbabwean immigrants have had to come up with different, sometimes very creative strategies to eke out a living in a seemingly hostile, but promising land. Through practical on the ground studies done by a number of other researchers and scholars, as well as personal experiences and first hand witness and encounters with family members and friends I lived with in South Africa for over 2 consecutive years, it was interesting to note how the majority of illegal Zimbabwean migrants living in South eked out a living through a number of tactics elaborated below.

### **Selling Cheap Labour**

Despite South Africa's strong economic and political foundations compared to other countries in the region, the country suffers from severe income inequality, poverty, unemployment and inadequate job skills among its local labour pool (OECD, 2015). Forced out of the already tough job market, undocumented Zimbabwean migrants in South Africa quickly opt to sell cheap labour in the country's various economic sectors, particularly in the mining, agriculture and manufacturing industries. In many cases, immigrants find employment as petrol attendants, security guards, waiters, janitors, farm

labourers, and domestic help for some well to do families (Hungwe, 2013). As domestic help, the immigrants often live in with the families who employ them and are paid low wages, just to survive and send as much as they can from the little income as remittance to care for their families back home.

Overall, South Africa has a high unemployment rate estimated at 27.1% among active job seekers and projected to be much higher among youths, at over 30% (STATSSA, 2017, p.9 &11). Although young South African's are given first preference to employment compared to foreigners, many employers, are more ready to hire foreign labour because it is cheaper and makes more business sense to them. Employers also maximise on the desperation of foreigners, especially undocumented immigrants, by offering a job, but at a low wage, something which the local South Africans are not ready to accept. As a result, Zimbabweans providing cheap labour end up taking more of the jobs that would have otherwise gone to local South Africans.

In addition to being inexpensive, South African employers are also attracted to foreign Zimbabwean nationals because they are more skilled, qualified, flexible, and therefore provide higher productivity benefits compared to indigenous labour. A big problem with this set up is that it has caused a lot of social unrests and violent xenophobic attitudes and attacks by local South Africans on foreign nationals particularly Zimbabweans. The local South Africans claim foreigners are taking over not only their jobs, but also their livelihoods, resources, and potential spouses whom the foreigners marry at the expense of the locals. So violent were some of the xenophobic attacks that they led to the killing of 62 foreigners, and displacement of between 80 000 and 200 000 people in 2008 (Landau and Wa Kabwe-Segatti, 2009). Development experts project that if unaddressed, xenophobic attacks on foreign nationals and the problem of

unemployment among the historically disadvantaged youths threaten the country's stability and its potential to foster growth and investment in the region.

### **Self-employment and Informal Trade**

After failing to acquire formal employment on the South African job market, the majority of Zimbabwean migrants resort to self-employment and informal trade as an alternative way of survival. By nature, Zimbabweans are very hard working, determined and creative people who try different channels and any business opportunities that may come their way. Examples of self-owned businesses they engage in range from computer technology and services, children's day care services, security, welding, electrical engineering, motor mechanics, human resource management, hair dressing salons and petty trade (Hungwe, 2013). An on the ground research by Hungwe (2013) showed that over 20% of Zimbabwean migrants living in South Africa were involved in self-employment or some kind of informal trading that was in line with their line of business or line of work back-home before coming to South Africa (p. 68). For example, school teachers start day care centers, computer and information systems would start professional information technology services, and so on. This was how they were able to choose a line of business to pursue. Interestingly, other researchers note that Zimbabwean migrants start up small business at a higher rate than most foreigners from other countries like Nigeria, Tanzania, Congo, and Somalia, including the native South African's (Brettell and Alstaff, 2007 in Hungwe, 213. p.69 ).

### **Use of Fake Identification Documents**

Use of fake identity documents is one common survival strategy used by many undocumented Zimbabwean immigrants living in South Africa, particularly to find

employment in the formal sector. In an in-depth study of survival tactics used by Zimbabwean migrants living in Johannesburg, South Africa, using a random sample size of 58 migrants, Hungwe (2013) noted that a considerable number of migrants used fake South African identity books. These identity books are typically stolen, “lost and found,” or purchased or used sometimes with consent (with terms and conditions that may also benefit the bona fide identity book owner) from other South African Citizens then only the photo on the original identity book is removed and replaced with a photo of the undocumented immigrant (Hungwe, 2013 p. 59-60). The falsified identity book holder will then use all the identification details on that bank book including the name and identification numbers of the previous owner. In the study carried out in Johannesburg, it was discovered that some employers actually offer such fake identity books to undocumented immigrants and use that to keep the undocumented employees hooked on the low paying job and harsh working conditions.

With growing desperation to acquire residency or worker’s permits, some corrupt officials of the South African Department of Home Affairs are in many cases involved in the production of fake documents through a whole chain of legit, but corrupt channels. Sometimes the individuals are also given South African names, have their year and place of birth altered, and then in many cases learn to speak the South African languages to become conversant like a real South African. The kind of documents produced this way are often more difficult for the police to detect authenticity as they are produced by the right offices with official stamps. Hungwe (2013) noted that because the process involved a chain of corrupt officials to produce a final fake document, the process was often costly, involving amounts ranging from R4, 000 to R10, 000 (about USD400-1000 at the exchange rate of 1USD to R10) (p. 59). Although the practice of falsified identification is

common, the South African government is now aware of this illegal practice and embarked on a drive to arrest any fake identity book holders, making this practice less popular among immigrants for fear of arrest and immediate deportation (Hungwe, 2013. p. 59-60).

## **Crime**

Crime in South Africa is a concern and it is a known fact that the country has a violent crime epidemic stemming from violent oppression and racist historical apartheid legislation (Harris, 2001). However, the dominant crime narrative has become linked to immigrants as the core perpetrators. Zimbabweans are known for petty theft and robberies in and around Johannesburg and Nigerians are known for illicit drug dealing and prostitution rackets. It has been established by the South African Police Services (SAPS) that this criminal activity has become a livelihood strategy mostly for undocumented Zimbabweans migrants (Irin News, 2010). Zimbabwean immigrants involved in theft and other criminal activities mainly do so for resale of the stolen goods. Goods that are known to have substantial resale value like cell phones, tablets, televisions and other household electrical goods are targeted. Resale of such goods at cheap prices raises quick cash that is used for daily subsistence.

Zimbabweans are also actively involved in criminal rackets that deal with fake documentation. The failure by the South African government to tactfully engage its regional partners in coming up with a migration policy that creates an open platform for migrants to declare their statuses and an enhanced regional documentation regime has led to the rise in criminal activity of this kind. For instance, for 500 Rand a migrant can access a fake permit that allows them to go undetected at many checkpoints. Also because

of tight-knit social networks, information about who has access to a DHA official travels fast and migrants will pay amounts ranging from 500-5000 rand (Hungwe, 2013). The money to pay for these documents comes in the form of loans from relatives in the diaspora namely the United Kingdom, United States, Canada and Australia. Sometimes the migrants work menial jobs despite having superior qualifications so that they can raise the capital for purchasing the fake documentation. However, completely blaming crime on migrants is tantamount to oversight. South Africa social and cultural fabric is characterized by a history of widespread and embedded criminality fostered by rogue elements in the apartheid system.

### **Marriage**

Zimbabwean migrants have also resorted to “sham marriages” as a survival strategy to get legal documentation to remain legal in South Africa. Evidently, a corrupt and an inefficient documentation regime characterized by many logistical backlogs and long waiting periods, has fuelled the rise of “sham or fake” marriages. Sham marriages are those unions where a man and woman enter into a legal union recognized under the law of that country, but under false pretences. In South Africa these sham marriages have distinct variations. The first is the common type, where the woman is ‘supposedly’ the citizen and consents to being paid to enter into a fake matrimonial marriage. This is then used by the male party to lodge applications for permanent residence or a work permit. Zimbabweans, Nigerians, and other migrants from other African countries have been cited in many studies as engaging in this criminal act.

The Second marriage fraud involved Department of Home Affairs officials that randomly create marriage licences with random unsuspecting South African women that

would have been accessed in the Department's electronic national registration portal (Lafraniere, 2004). In simple terms these unsuspecting women are married unknowingly. As of 2004, the Department of Home Affairs publicly acknowledged a breach in the system operated by corrupt officials for financial gain. Lafraniere notes that in 2004, an estimated 3387 women were married off without their knowledge. The whole process cost an equivalent of \$US 750, which was approximately 8000 Rand in South African currency. As such migrants have exploited some criminal elements in the beleaguered South African Home Affairs Department to gain legal status, which they would never get through a legitimate application process. In the Freestate Province, 39 Department of Home Affairs officials were dismissed for being part of a fake marriage racket (Lafraniere, 2004). The argument that the Department of the Home Affairs ministry is compromised becomes apparent as reports of corruptions and fraud start surfacing. This further strengthens the argument in this study that the problem lies in rigid immigration policies, which have not been reformed and have failed in their attempt to regulate immigrants. In fact, it is partially this rigidity that promotes criminality and clandestine attempts by migrants to regularize their statuses.

### **Undocumented Migrants**

This section forms the core of the discussion surrounding undocumented migrants and livelihood regimes. Earlier sections helped illuminate who the undocumented migrants are and what triggered them to end up in the precarious situation that they are in. Following this trajectory, focus shall now turn to a comprehensive analysis of how the process of being undocumented unfolds prior to and after migrating. Being undocumented is not the ideal that most Zimbabwean migrants want to be in but it is a condition that

they are lured into by circumstances beyond their control. Using substantiated evidence, the relationship that is characteristic of illegality and the impact it has on the migrant, the family and the quality of their livelihood will be explored. This will provide a collective analysis of the broader development issues that restrictive immigration policies create, such as precarity and economic segregation based along the lines of the concept of citizenship. Using the historical background discussed in chapter two, the soundness and or comprehensiveness of the immigration policy and its lack of clarity on the unique case of Zimbabwean migrant flows will be queried.

Each country, and, in some instances, economic zones (a group of countries with trade agreements), have stipulated requirements for gaining access to that country or countries. Normally to be allowed into a country where they are not citizens, immigrants need visas or permits. Prior to 1994, South Africa was fortified by restrictive immigration policies that did not recognize Africans as immigrants, but as temporary labourers (Landau, 2010). As such gaining citizenship or permanent residence status was virtually impossible for the African immigrant. However, the coming of independence led to a few changes that saw a huge surge in the numbers of African migrants landing into South Africa. This surge included both legal and illegal arrivals. It is also important to highlight that for this thesis, undocumented refers to asylum seekers, refugees, and illegal immigrants. This broad categorization of being undocumented stems from the fact that the law, in most instances, especially in South Africa, treats these groups of people the same due to their lack of citizenship rights, which renders them aliens. Thus, it is equally important to also analyse the trajectories that result in migrants becoming undocumented.

In the case of Zimbabweans going into South Africa, the focus lies on proper documentation at the “source,” which is the Zimbabwean Home Affairs department,



which issues travel documents. It takes between US\$ 315- \$ 253 to apply for a passport that should come out in 1-3 days (Zimdev, 2014). This is the most recent cost and waiting period after major upgrades to the documentation system. At the peak of the exodus in 2002 and 2008, the old system was ineffective, often taking months to get a passport. In addition, the high demand of passports during these times meant backlogs of applications to be processed usually delaying the travellers. Without employment and sound access to finance, getting a passport in Zimbabwe was a complicated process and still very unaffordable to the ordinary citizen displaced during farm invasions and operation “*Murambatsvina*.” The median monthly salary for the average Zimbabwean is around \$US 253 and around 30% of the population is employed (Hobbes, 2014). The question is how then were the majority of people under severe economic stress able to afford such high fees to obtain travel documents in time to escape the extent of hunger faced in 2008? Furthermore, there is one South African consulate in Harare, the capital of Zimbabwe, which processes travel documents for the massive numbers of potential migrants. It is such conditions that force the majority of Zimbabwean migrants to clandestinely cross the border into South Africa illegally, so that they can work cheap menial jobs, remit money to feed their families and pay for proper documentation. As such, the lack of documentation begins right at the source. This study later addresses how a regional policy in the SADC region has been implemented to try and deal with some of these problems discussed above.

While it is difficult and relatively expensive to access travel documents in Zimbabwe, the process is expected to be less tedious and more affordable in a relatively more stable economy like South Africa compared to that of Zimbabwe. With a well-funded Home Affairs department boasting an estimated 2014/15 budget of 6.6 billion

Rand (about USD 530 million), and a massive restructuring and modernizing exercise, domestic documentation of new births and national identification cards has been a resounding success (DHA, 2014).

However, this success has not been translated to immigrants with the issuance of legal documentation, which has remained unstructured and characterized by policy discord (Landau, 2010). Zimbabweans keep showing up at the South African Department of Home Affairs to submit applications and most of them are turned away. Asylum and permanent residency applications for Zimbabweans are often delayed by months or years, leading to frustration of applicants (Landau 2010, p. 66). For a process that the DHA claims to take about 3 weeks, most applicants have cited their frustration as they have had to wait for months leading to them becoming illegals due to decisions that are pending (Hungwe, 2013). Hence, they are stuck with no work or the ability to travel. In addition, the community-policing regime that has been advocated for previously leads to social fragmentation as police and locals take it upon themselves to attack foreign nationals believed to be undocumented. There is numerous evidence that shows xenophobic sentiments in the South African Police Service itself. For instance, a 2006 survey highlighted that only 35% of the South African Police (SAPS) in metro Johannesburg had received training on diversity and racism (Masuku, 2006, p. 20). According to this survey, almost 87 % believed undocumented immigrants were involved in criminal activity (Masuku 2006, p.21). As such, the police force itself contributes to xenophobic sentiment which then spills to the communities they police making life for undocumented migrants extremely precarious characterized by constant fear of being apprehended (Masuku, 2006).

Clearly, the immigration policy focus is on the wellbeing of South Africans, it however downplays the development potential that migrants bring to South Africa. The inability of the DHA to reform on the position of migrants is a cause for concern, especially from a development perspective. Both the DHA and the Gauteng provincial government have been cited on the record proclaiming that their mandates were aimed at creating socio-economic growth and inclusivity regardless of one's place of origin (Landau, 2005, p. 1). This, however, has not been reflected in their actions on the ground, as migrants especially the undocumented continue to face public harassment from law enforcement agents, local populations and also the continued denial of their legal rights under the 1996 constitution.

As such, it is important at this point in this study to explore the developmental issues associated with being an undocumented immigrant and how that shapes livelihood regimes for Zimbabweans in South Africa. In simpler terms, the goal is addressing the current living and working conditions that Zimbabweans experience because of not being properly documented.

According to the Immigration Act 13 of 2002, South African businesses that employ foreigners are liable to a heavy fine should they be found harbouring illegal foreign workers. If the workers are found to be working illegally, they are arrested and detained pending deportation (Immigration Act, 2002). Deportation and community policing have been South Africa's two most preferred strategies when dealing with illegal Zimbabweans. An estimated total of 700 000 Zimbabweans were deported between 2004 and 2009 (Ukuthula Trust and Solidarity Peace Trust, 2010, p. 19).

This deportation strategy was a massive failure financially, as deportation would not deter the Zimbabweans who had clandestine means of getting back into the country

within days (Human Rights Watch, 2006). Through numerous interviews with some undocumented Zimbabwean migrants, Human Right Watch (HRW) researchers show how Zimbabwean migrants are ill-treated during the deportation process and how quickly they return to South Africa once handed to the Zimbabwean immigration authorities. In one of the interviews, the undocumented migrant highlighted his deportation and the extract below shows the how desperate the migrants become in their bid to remain in South Africa, and also how easy it is to enter South Africa undetected.

*I arrived in Musina (South Africa border town) on Tuesday morning. They deported us to Beitbridge from the Musina station. In Beitbridge police station [Zimbabwe], we were kept there 20 minutes. We were told to go home. There was no paper work.... From there we tried to come back on Thursday and we were caught. There were about 15 in our group. Most in the group were those who were deported.... On Thursday around 1 a.m. we crossed the border. From the border crossing point, we walked from 1 a.m. to 5 a.m.... We hired a car in Musina. It was around 1 p.m. (Human Rights Watch, 2006)*

The above is but one of the many cases of thousands of migrants from Zimbabwe who return after being deported from South Africa. Clearly, in this instance the deportation exercise was futile, as it became a very expensive exercise for the South African government (Human Rights Watch, 2006). South Africa has a vast border, which stretches an estimated 3,500 kilometers and is shared with Botswana, Namibia, Mozambique, Lesotho, Swaziland and Zimbabwe (Hennop et al, 2001). Unlike the Apartheid era when the South African National Defense Forces (SANDF) used to run the border patrol, the independent democratic dispensation under Thabo Mbeki disbanded the SANDF border services and replaced them with South African Police Services (SAPS) (Landau, 2010). The SAPS have been ineffective as they are poorly funded and this has opened the vast border lines to abuse by illegal immigrants.

The deportation strategy dismally failed to yield any significant reduction in the influx of undocumented migrants. In fact, it partially strengthened the resolve of undocumented migrants to enter and avoid detection. As such, when referring to the influx of Zimbabweans as a survival strategy, one cannot overlook the dangers that the migrants face during the journey into South Africa only to be faced with an uncertain livelihood regime and constant xenophobic sentiments. In as much as the migrants might desire to follow the legitimate channels of immigration, it takes too much of their meager resources, and the waiting times are unrealistic for a people on the verge of destitution and starvation. Hence, their lifeline becomes border jumping, as it is referred to in Southern Africa.

Furthermore, these illegal immigrants due to securitization measures enshrined in South Africa's immigration legislation (Immigration Act of 2002) cannot access: i) educational institutions; ii) vital financial institutions (banks)- meaning no access credit facilities, real estate, and employment agencies (Landau, 2010). Anyone found to be aiding illegals in any form deemed illegal is subject to doing extensive jail time, and as such, the environment for the undocumented migrant is suffocating. This bring us to the issue of livelihood trajectories that undocumented migrants end up adopting for survival despite all the draconian measures meant to exclude them from participating in the South African economy. The question is how are the undocumented migrants navigating the economic landscape and what are their conditions of existence like from a development context?

As the South African economy continues to struggle from effects of the global crisis, unemployment (26, 7%) is at an all-time high (STATSSA, 2016). Manufacturing jobs are on the decline and more South Africans are being pushed into the growing

informal sector. Informalization according to Crush et al (2010) has become rampant and as unemployment rises, many South Africans are finding livelihoods in the informal sector. However, the informal sector is also heavily crowded with migrants both legal and undocumented. Zimbabwean, Malawian, Somali, and Nigerian immigrants among others have swarmed the Johannesburg inner city informal markets and are very competitive in their entrepreneurial enterprises. Despite massive clampdowns by law enforcement agents on some of these foreign owned informal small businesses, they do create livelihood regimes for otherwise unemployable and undocumented migrants. It is true that, not all migrants are enterprising to the extent of starting flourishing informal businesses, the majority are poor and have no skills to compete in a politically charged environment characterized by soaring xenophobic sentiments.

A Journey Man (2008) video documents the gruesome conditions that most undocumented migrants live and work in. The documentary portrays illegal migrants in the Fordsburg area of Johannesburg working in ‘sweat shops’ are in appalling conditions. The undocumented workers work longer hours (18 hour days) and under dangerous conditions. Some of these workers reside in the factories with their families out of fear of apprehension due to their illegal status, limiting their mobility (Journey Man Pictures, 2008). These workers are paid as, and when, the owner deems is suitable. For two weeks of 18 hour long days, the workers report receiving 250 (Rands)<sup>7</sup> which is an equivalent of 18 USD (Journey Man Pictures, 2008). This is just but one case highlighting the atrocious conditions of survival that undocumented workers are faced with. Numerous other

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<sup>7</sup> Rand is the South African currency

examples within Johannesburg, Durban and Cape Town's inner cities have highlighted even worse living conditions.

The question, however is what creates these forms of exploitative conditions? It leads back to the question of securitization of legislation that equips the system with draconian laws that impede human development, all in the interests of a few "elites" who use the politics of fear to advance their own political agendas. The Gauteng provincial government has acknowledged the need to create an economic environment that fosters the development of all citizens of Gauteng by developing livelihood activities for its citizens and by creating a conducive and civil environment for both non-nationals and nationals to co-exist harmoniously. The first call to action was their information drive. Research was documented a lack of knowledge on proper immigration protocol that undocumented migrants could access to know where to get assistance with immigration issues. The Gauteng provincial government set up call centers and funding was rolled out to partner with other civic organizations in their drive to bring awareness on the importance of getting legal documentation. This initiative however did not last as some within the ruling African National Congress felt it was ineffective and wasteful of resources (Landau, 2010).

In South Africa, research shows that most migrants have a more relentless passion towards entrepreneurial activity to improve their livelihoods (Landau, 2010, Crush & Frayne, 2010). Also, migrants are prepared to work any type of low paying jobs to put a meal on the table for their families and they tend to adapt faster to economic stress than locals. However, in the South African context they are accused of lowering wages, which is also, where some of the xenophobic sentiments stem from (Landau, 2010).

Considering all this knowledge on the conditions of undocumented migrants in South Africa, the government has been ineffective in dealing with the issue of undocumented migrant influxes from Zimbabwe. Since the year 2000 up until 2016, there has not been clear policy on how to address the Zimbabwe undocumented migrant crisis. Several temporary and reactionary measures were put in place but without a defined proposal that would address the situation in all its totality. Documenting an estimated 250000 Zimbabwean migrants when research shows that their numbers exceed a million leaves one to question why there has been no effective planning for the unique Zimbabwean situation. It is therefore important to look at the legislation in the form of the immigration law to look at the evolution of the Immigration rules and laws in post-Apartheid South Africa. This will allow us to understand the State haggling, inadequate and unresponsive action concerning the plight of migrants, especially those from Zimbabwe, which seem to be the immediate threat to their socio-economic system.

This section illustrated the nature of the problems Zimbabweans are facing in their home country that caused them to migrate to South Africa in large numbers. However, due to the restrictive and exclusionary immigration policy in South Africa their hopes of a better life have been elusive. Zimbabwean migrants living in South Africa have precarious livelihoods stemming from their undocumented status. They are pushed to the margins of the employment market characterized by low wages and exploitation. As such, the migrants have adopted a variety of livelihood strategies to cater for their families and those left in their country of origin. However, it should also be noted that the South Africa government has tried to institute changes to their immigration laws, though not successful enough to stabilize its current migration problem especially with Zimbabweans. Chapter 4, addresses immigration policy responses by the South African government from 1995 -



2015, with the intent to show the evolution of the legislation and how some exclusionary aspects of the legislation were linked to racist apartheid policies.

# Chapter 4

## South African Immigration Policy Responses (1995-2015)

### Introduction

This chapter discusses post-independent South Africa's immigration policy responses. The goal is to further trace the continued reliance on restrictive policies that were instituted by the colonial and apartheid regimes. Crucial will be the documenting the unconstitutionality of some sections of the immigration policy that had been rendered obsolete by adoption of the new Bill of Rights adopted in 1995. The new South Africa presented new challenges for the new African National Congress (ANC) government from an immigration perspective. The Alien act of 1991 became an outdated piece of legislation due to its divergence from the new constitution of the republic (Wa Kabwe-Segatti, 2006). To further tighten the positions put into effect by the Aliens Act of 1991, the Aliens Control Amendment Act was gazetted in 1995.

After gaining independence in 1994, South Africa had the tenuous task of creating an immigration legislation that would conform to the non-racial nation building that Nelson Mandela passionately advocated for. Despite this new direction towards inclusivity for all, the Minister of Home Affairs then, Mongosuthu Buthelezi, would go on to continue the further political hardening of immigration instituted by the last apartheid leader, De Klerk.

The 1995 Aliens Control Amendment Act continued being segregationist against black foreigners from other parts of Africa. For instance, immigrant selection was based on qualification and skills, showing the desire by the new ANC government to only

attract a certain kind of immigrant considered desirable, while barring the majority. Crush and Williams note that, “*policy strongly favoured skilled migrants from Europe and the West* (2001, p.11). *In 1995, 65% of work permits went to Europeans, 12% to North Americans and only 8% to citizens of the 12 SADC states* (Crush and Williams, 2001, p.11)”. This was a clear indication of the protectionist and segregationist stance that the new South African government adopted to keep out African populations coming from surrounding SADC countries.

During his tenure, Mongosuthu Buthelezi (the then Minister of Home Affairs for South Africa), commissioned the Department of Home Affairs to strengthen restrictions, especially against undocumented immigrants. Migrant workers in the mining and agriculture sectors remained under their apartheid contract based immigration, which meant that they could not become permanent residents. Detentions and deportation were given a boost under this Act, and community policing went into effect (Peberdy and Crush, 1998).

In a gesture of goodwill, in 1996, the South African government gave amnesty to African migrants who had lived and worked in the Republic of South Africa for more than five years (Peberdy and Crush, 1998). The amnesty was meant to make it easier for this group of migrants to acquire documentation that would ensure their stay was regularized. However, with the passage of time, there was increased discontent about the unconstitutionality of some aspects of the immigration legislation and inquiry was set into motion to have new immigration legislation within a manageable time frame. Despite the obstructionism coming from the ANC, then Minister Buthelezi eventually came up with new recommendations for amendments of the 1995 immigration Act, which were adopted in 2002 (Crush and Dodson, 2006. p. 436).

For purposes of this study, focus is on following the trajectory of changes in South Africa's immigration laws, highlighting how these changes worsened or improved the apartheid inspired immigration restrictions and the actual implications for the "undesirable groups" of immigrants, who were the majority. Following the 1995 Immigration Amendment Act, years went by without new immigration reforms. This meant continued community policing which led to numerous violations of human rights violations on immigrants and the increase of xenophobic violence in the townships where foreign black populations lived (Wa Kabwe-Segatti, 2006). The migrants did not possess any legal rights and were subject to unlawful detentions and inhumane treatment during the deportation process.

The Minister had absolute power to make decisions on immigration at his discretion (Wa Kabwe-Segatti, 2006. p. 178). Deportations were the order of the day. Numerous reports showed undocumented immigrants faced unprecedented abuse from law enforcement agents during that period (Wa Kabwe-Segatti, 2006). Meanwhile, during this period, before the passing of the new immigration Act of 2002, Zimbabwe's economic woes had intensified. The situation was made worse by the fact that South Africa was concentrating on operating on archaic immigration legislation without bearing in mind a looming intensified influx of Zimbabwean migrants, which the South African government did not anticipate.

### **The Green Paper (1997) and the White Paper (1999)**

The Green and White papers were attempts by the South African government to transform their immigration legislation. These policy papers called on all civil society to discuss and forward feasible policy position that could be further refined into law.

In what is referred to as the lost decade of immigration (1994-2004), a legislative reform process was launched, which would culminate in a new Immigration Act (Crush and Dodson, 2006). This process would produce the draft “green and white” papers on immigration, with the former preceding the latter in the South Africa system. The Green paper is that first draft of a new policy tabled for public consultation and other stakeholders. The White paper contains detailed proposals for legislation.

The initial observation that stands out in the 1997 Green Paper is the changing language, which morphed from a racist and segregationist tone to a much more nationality-oriented position (Centre for Development Enterprise (CDE), 1997). This was signaling a shift from an apartheid position, which discriminated against immigrants on racial grounds replacing it with an all-inclusive regulatory framework.

Unlike the 1991 Aliens Act and the 1995 Immigration Amendment Act, the 1997 Green Paper focused on four major attributes that would contribute to a progressive and effective immigration policy framework. The focus of immigration policy according to the Green paper would be to:

*“ (a) to enhance the country’s integration into, and competitiveness within the global economy; (b) to further the process of regional integration and development within the Southern Africa Development Community (SADC) (c) to generate macro-economic growth and employment opportunities in the formal and informal sectors, as outlined in the Growth, Employment and Redistribution (GEAR) framework; and (d) to provide improved living standards for our people”*(Department of Home Affairs, Green Paper, 1997. p. 13).

In an ideal scenario, the above goals, if achieved, would aid in creating a developed national economy that has a global, regional and local appeal. Surprisingly, some of the Green Paper points outlined above only appeared on this paper, and were not incorporated into the new legislation. As the deadlines effected by the Constitutional court to revise the Aliens Act of 1991 approached, some of the major issues raised in the

Green Paper were set aside as the ANC, its elite, and other members of the Tripartite Alliance (SACP and COSATU) conjured up amendments that added more restrictions to the proposed *Bill* (Wa Kabwe-Segatti, 2006). For example, the remnants of senior white officials in the Department of Home Affairs, who were playing an advisory role to the ANC, submitted what Crush and McDonald (2001) called a chilling communiqué that called for a bold declaration of war against undocumented immigrants, characterizing them as “one of the country's major social and economic plagues,” which require “draconian measures” to deal with (p. 10). Clearly, with immigration advice coming from apartheid ideologues, the chances of immigration reform were temporarily halted.

Obstructionism and power brokering have no doubt been complicit in creating the policy discord that characterizes immigration in South Africa. The obstructionism referred to here, is that which saw influential political figureheads in South Africa’s tripartite alliance composed of the African national Congress (ANC), Congress of South African Trade Unions (COSATU) and South African Communist Party (SACP) refuse to overhaul legislation over fear of being engulfed by foreigners (Wa Kabwe-Segatti, 2006. p. 183). In another important policy position, South Africa categorically denounced any chance of bilateral agreement between Southern African countries to create a free mobility zone that resembles that of the European Union (Green Paper, 1997). Instead, South Africa opted to carry out its own screening of migrants, citing wealth disparities that would fuel increased competition for opportunities, which would disadvantage South African nationals.

As such, there are some “positives and negatives” that the Green Paper 1997 brought to the fore in the bid to create a sound policy position on immigration. These, however, cannot all be discussed here. The focus is to draw on those aspects of the

policies that contribute to the disenfranchisement of undocumented migrants.

Consequently, further refinement of the Green Paper culminated in the creation of the White Paper, which also was problematic overall. The Lawyers for Human Rights (LHR) responded with sharp criticism on some the propositions tabled in this paper. First, the Lawyers for Human Rights were concerned that the White Paper failed to adequately address the issue concerning human rights afforded to non-South Africans. They cited a few areas of concern pertaining to i) border control ii) training of immigration officials and xenophobia (LHR, 1999).

During the period under analysis, South Africa considered opting out of border control to border management. The point of order that the Lawyers for Human Rights raised was that, though it was plausible to forward recommendation on how to transition from border control to management it should also be something done with a policy to guide its implementation (LHR, 1999). This observation has some credibility in that there are major logistical backlogs in the implementation of more recent border management controls. In addition, corrupt officials have soiled the image of the institution that is supposed to create fluid legal relationships with immigrants.

The White Paper 1998-1999 uses language that seems to condemn “discrimination” against any person, which aligns with the constitution. However, in addressing the undocumented migrant question, the White Paper recommended making South Africa unattractive to would be migrants (LHR, 1999). In other words, South Africa wanted to tighten legislation to have a gridlocked employment market, which was accessible to citizens first. Also, added to this would be increased policing, to close all the loopholes that undocumented migrant might have access to. It should be noted that this strategy was one of the main causes of the disruptions in livelihoods in most informal

settlements when xenophobic violence first erupted. For instance, towards the 2010 Soccer World Cup, the police adopted a zero tolerance approach to crime and because attitudes in the South African Police Services (SAPS) attribute crime to migrants, Zimbabwean migrants were targeted and arrested. The migrants would be detained for long periods of time before being deported (HRW, 2006). Despite the construction job boom associated with hosting the Soccer World Cup, most migrants were unable to continue work as result of harassment from the police and locals.

In addition, the White Paper categorized non-nationals as “undesirables” without specifically delineating who was represented by such demeaning terminology (LHR, 1999). It is such small nuances that evidence a deeply ingrained “us and them” mentality, which blinds policy formulation processes and impact development, not only of individuals, but communities at large. The White Paper did not wield a powerful position to influence change in the approach to addressing the plight of migrants. In all its totality, it had the skeletal framework like that of the Alien Act of 1991, which fostered a “we and them” position. Both the Green and White papers were never used when it came to creation of new legislation.

### **The Immigration Act of 2002**

This Act was the result of a controversial process which excluded all the recommendation put through both the Green and White Papers. The Tripartite Alliance<sup>8</sup> has been largely held responsible for derailing the possibility of a decent process that would have ushered a transformational approach to immigration. The Immigration Act of

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<sup>8</sup> Tripartite Alliance refers to the pact between the ruling African National Congress (ANC) of South Africa, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU)



2002 repealed the 1991 Aliens Act and the Aliens Amendment Act of 1995. This Act of 2002 was supposed to be revolutionary in its overhaul of apartheid inspired legislation. Instead the Minister, Mongosuthu Buthelezi, gave his office sweeping powers to delegate duties concerning immigration to other sections of the Public Service. As such, the Department of Home Affairs enlisted the South African Police Service (SAPS), and the South African Defense National Forces (SANDF) to conduct arrests, searches and deportations. This directive clearly mirrors the tools that the apartheid regime used to employ to enforce their brutal crackdown on other races considered inferior (Peberdy and Crush 2008).

Under the Immigration Act of 2002, there are a few legal stumbling blocks that migrants face in an attempt to regularize their documentation for them to get jobs. This legislation made it more complicated and time consuming to get legal documentation to work in the Republic of South Africa (Human Rights Watch, 2008).

Furthermore, the Immigration Amendment Act, section 21(4)(b), ended employers' access to special exemptions for the recruitment of foreign workers based on ministerial approval, but preserves existing treaties with governments in the region. This section highlights the desire by the ANC-led government to close the legal "immigration gate," while maintaining access to cheaper labour. This further reinforces the argument that the current immigration legislation bears the hallmarks of discriminatory apartheid inspired positions.

As mentioned earlier, not all migrants enter South Africa illegally. Some become illegal immigrants under a variety of circumstances. For example, since the documentation is temporary, when the documentation expires, and upon renewal, the DHA is highly inefficient in renewing the documents. This inefficiency has been seen as

a tactic to keep people in an undocumented state, and explained through the concept of “institutionalized illegality” (Klaaren and Ramji, 2001, p.38). This concept can be likened to that of Spain, where the Spanish government makes it very difficult for migrants from Africa to renew their status (Klaaren and Ramji, 2001, p.38). Because of this approach, the host government slowly disposes large numbers of people into illegality taking away any rights they might have had as documented migrants.

Long queues and long wait times have been a consistent point of contention from most applicants, forcing some immigrants to be illegal by default due to system inefficiencies (Rasool, Botha and Bisschof, 2012, p. 405). With a renewal application tendered, one is required to stop working until they are issued with new documentation. Subsequently, there are running battles between undocumented immigrants and law enforcement personnel, who will arrest and deport anyone suspected of being an illegal immigrant. In most cases when migrants encounter law enforcement agents, they do not have a chance to furnish evidence, which explains why they do not possess the required travel or immigration documents.

In addition, the required documentation for one to submit a successful application keeps changing. For instance, before one can submit all the supporting documents to their application, they need to furnish a police clearance for every country they have stayed in for at least one year (Rasool, Botha and Bisschof, 2012). Some of these people can barely afford bus fare to go and submit the application. The expectations are simply unrealistic. Such small impediments create difficulties for migrants in the quest to regularize their status in South Africa. As such, some of the legal requirements need to be revised to make it less complicated for the applicants.

For example, under the stipulations of this Immigration Act of 2002, for a migrant to start a small business, one needs to have capital to invest. This capital contributes to the overall application for a business permit. However, the amount that is requested by the DHA is unreasonably high (5 million rand or US 350 000), which most migrant entrepreneurs cannot afford (Rasool, Botha and Bisschof, 2012; South African Immigration, 2016). Most undocumented migrants have limited skills and their informal businesses do not need that much capital. As such, this requirement is highly unreasonable to both those that can afford it and those that cannot.

Although the 2002 Immigration Act removed most of the racial undertones characteristic of the apartheid era, it remained restrictive in that it inhibits most African migrants from participating in the economy. Rather, it channels migrants into precarious roles characterized by low wages and exploitation. Institutions like the Lawyers for Human Rights believe that these restrictions have made a significant contribution to the clandestine migration that the government is trying to reduce. This is because migrants, in desperate need of survival, develop creative strategies and find ways of manipulating the repressive system in a way that eludes the legal channels and resorts to “border jumping” or corruption to buy their way across the borders.

Since the Immigration Act of 2002, there has not been a significant overhaul of the South African immigration policy. A few amendments were made in 2005 and 2014, but did not address the reality of the immigration problems besieging South Africa, especially the Zimbabwean problem. There are still numerous migrants that applied to the DHA, who either have not received correspondence, or are still awaiting responses.

The petty corruption that each new Minister of Home Affairs pledges to eradicate has become a highly efficient and lucrative crime syndicate (Landau, 2010. p. 71). The

corruption is out in the public domain, for instance, 83 people were arrested in 2016, of which 42 were officials of the department and 41 were non-officials (van Wyngaardt, 2016). They operated a syndicate of fake documentation targeting desperate Zimbabweans. It should be noted that these corrupt activities are not new: even during apartheid fake document syndicates existed.

Such bureaucratic hurdles in the immigration system have contributed to a complex socio-political environment difficult to navigate, for both documented and undocumented migrants. For example, the longer waiting times and documentation demands translate to lengthy periods of unemployment and reduced income, which has ripple effects on the immigrants' livelihoods and well-being of their families back home as it affects remittances that would otherwise help those that remained in countries of origin. However, it would be inaccurate to fail to acknowledge that the South African government through the DHA has made progress in some areas, especially abandoning their community-policing program, which overtly created vigilantes and perpetuated xenophobic violence.

Notably, the DHA went on to create special a dispensation for Zimbabweans in South Africa in a bid to document the many undocumented Zimbabweans so that they can legally work and improve their income and livelihoods. The two dispensations will further be discussed after the section below.

### **The Immigration Amendment Act of 2011 and 2014**

The Immigration Act of 2011 was an amendment of the Immigration Act of 2002. This Act did not diverge from the positions that characterized the 2002 Act. In fact, it added more restrictions in a bid to make South Africa unattractive to migrants. Notable

changes included the repealing of the Quota work permit and the Exceptional skills visa, which were merged to create the Critical Skills visa. This signaled a protectionist stance by the government to try to limit the number of foreign migrants entering the labour force. The positions in the Amendment Act of 2011 resemble the restrictions that were instituted against Jewish immigrant in the Aliens Act of 1937, which was an attempt to protect the white labour market against Jewish migrants. As such, I argue as shown in this study that there is a continued remodeling of immigration legislation based on historic racist positions.

Section 20 (c) of the Amendment Act of 2011 added a clause that penalized migrants that overstayed the time stipulated on their visas ( Republic of South Africa, 2011). Considering the known logistical and organizational problems that plague the Department of Home Affairs (DHA), there is evidence of periodic delays in renewal of visas. As such, most migrants who are the majority on temporary visas run the risk of becoming “undesirables” and facing deportation from South Africa. This move, although meant to enforce strict rules of stay in South Africa, also contributes to the problem by supporting the creation of undocumented aliens due to the inefficiency of the documentation systems.

The Amendment Act of 2014 was aggressive in its exclusion agenda. The Department of Home Affairs contracted a private company, VFS Global, to handle all visa related applications. This not only makes it difficult for applicants to appeal but also shifts the handling of application traffic from the DHA to VFS Global. Such a move was meant to deter corrupt administration rackets from handling applications and direct contact with migrants. The move cost South Africa an estimated 4.4 billion Rand in tourism revenue in 2014-2015 because of the expenses and inconveniences faced by

would be migrants and tourists (Eisenberg, 2015). Furthermore, Eisenberg notes the rate at which applications for work permits and permanent residence are denied is alarming and sometimes no satisfactory reasons are given (2015). This leads applicants to file appeals, which can last between 5-6 months. During this adjudication process most applicants automatically become ‘undesirables’, as per the Immigration Act.

The Amendment Act of 2014 virtually makes it “impossible” for migrant worker to access formal employment. Section 18 (3) a) 1 stipulates that for one to get a work visa, *there must be a certificate from the Department of Labour confirming that- (i) despite a diligent search, the prospective employer has been unable to find a suitable citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant.* Eisenberg notes the Department of labour does not support employment of migrants; hence, it is difficult for a migrant worker to get endorsement (2015).

It is understandable that governments are supposed to look out for the interests of their citizens first before foreigners. The South African case presents notable points to reflect on, however, in that the country needs skilled migrant labour to remain competitive in the international markets (Eisenberg, 2015).

### **Dispensation of Zimbabweans Project (DZP) and the Zimbabwean Special Dispensation Permit (ZSP) 2010-2014**

The DZP was launched in 2009 after approval by the South African government and Department of Home Affairs. Its mandate was to i) Regularize Zimbabweans residing in South Africa “illegally”. ii) Curb the deportation of Zimbabweans who were in SA” illegally”. iii) Reduce pressure on the asylum seeker and refugee regime

iv) Provide amnesty to Zimbabweans who obtained SA documents fraudulently (Rogers and Chandersath, 2014. p. 1). This project was also a reaction to the xenophobic violence that erupted towards the kickoff of the 2010 Soccer World Cup in South Africa. Due to the nature and magnitude of the impending event, South was put under the spotlight as they were the hosts.

The xenophobic violence that erupted was captured around the world and questions concerning the capability of South Africa to host the Soccer World cup in such an environment were asked. As Zimbabwe was collapsing in 2008, all the undocumented labour traffic that poured into South Africa from Zimbabwe created a labour surplus which was welcomed for stadium and other infrastructure construction ahead of the World Cup (Raftopolos, 2013). However, this excess labour, would need to be regulated after the World cup was over because the economic boom that came with the World Cup would have dissipated (Cottle and Rambaldi, 2013. p. 4). The fear was that it would result in increased competition for jobs and resources causing unprecedented antagonism between locals and migrants.

Under this dispensation, the DHA had received 294,511 applications (242, 731 were granted, with 51,780 either rejected or not finalised) for DZP permits to work, study or conduct business in South Africa (Chiumia and Van Wyk, 2014). This dispensation was a massive disappointment in that the numbers of application that were accepted is far too small compared to the actual estimates of Zimbabweans thought to be in South Africa, which is between 1, 5 to 3 million undocumented Zimbabweans (Chiumia, 2013). The number of approved applications is less than a third of the estimated total population, and the question to ask is how does DHA address the rest? Zimbabweans did not respond

to hand in their fake documents for amnesty because of a lack of trust in the system and the operations of the DHA and fear of deportation (Amit, 2012).

Most Zimbabweans, as mentioned earlier, are accustomed to long queues and prolonged waiting periods. Many Zimbabweans were skeptical to get some work is not an option as it has direct impact on their livelihood. It was rather suspicious for many Zimbabwean migrants as a system that has continuously restricted migrants through policing, deportation and xenophobic violence to suddenly change course. Trust in the institutions that safe guard the people's sovereignty is a principle that fosters development (Sen, 2000). Adopting the Sen logic, if the Department of Home Affairs was run efficiently and policy reforms were carried out in the interest of developing the lives of both the citizen and the non-citizen, meaningful development would take place.

Furthermore, some people in positions of influence have misplaced conceptions about the impacts of migrants in South Africa. Those migrants are part of the informal sector, which alone contributes an estimated 28 % of GDP (The Times Editorial, January 11, 2016). From a policy perspective, it is a prerogative for the South African authorities to create permanent lasting solutions whose reach aims to empower the marginalized.

Moving on to the Zimbabwe Special Dispensation Permit (ZSP) (2014), which was the successor of the DZP, and a vehicle that the DHA sought to use as a way to document and an attempt to regularize Zimbabwean migrants in South Africa (De Jager and Musuva, 2016), the purpose of the ZSP was to institute a head count of Zimbabwean migrants under the guise of extending their legal documentation that allowed them to remain legal in South Africa. Like all its predecessors, the ZSP was an exclusive dispensation that sought to restrict a group of migrants. Just as the Immigration Act of 1913 was set up to bar Indians from inter-provincial movements in the Union, the ZSP



had a similar mandate. It sought to enforce conditions that did not allow the holders to apply for permanent residency or to renew the permits. Once a Zimbabwean applied and was granted this permit they could not change the conditions of the permit (Moyo, 2015).

There is a peculiar trend visible in this dispensation. It shows a continued pattern and positioning that is characteristic to most historic immigration legislation in the post-apartheid period. The DHA's argument is that they are giving Zimbabweans a reprieve allowing them to remain in the country. This is not however a permanent solution but rather temporary one that pushes most Zimbabwean migrants into precarious occupations (De Gruchy, 2015).

The ZSP is solely controlled by VSF- Global an international company contracted by the government to process applications (Chiumia and Van Wyk, 2014). The ZSP was meant only to benefit those that had successfully applied and received their DZP. However, those Zimbabwean migrants that had been rejected in the first dispensation were to re-apply under the new ZSP. The outsourcing of the VSF Global was meant to increase the efficiency of the application processes and the turn over times that applicants had to wait before receiving their decisions. VSF global is a known international company that provides its services in many other economically advanced countries like Canada, Australia and the United Kingdom. Because of the reputation that VSF Global has, it would be logical to expect a change in the service delivery. However, a close look at the applications processed from the time of the launch shows no change from how the DHA handled the same processes (De Gruchy, 2015).

Furthermore, the cost of filing an application with VSF Global range between 800 rand- 1350 rand which is 56-95 US \$ (Chiumia and Van Wyk, 2014)). This is clearly a price out of reach for most poor Zimbabwean migrants. For instance, a family man with

two children and a spouse to apply for this permit will have to pay an estimated 3200 Rand/ 225 US\$ minimum. This is seriously problematic even for visa application for international standards. It points again to a form of segregation, which all the other prior immigration legislation enforced as well. It means that those who cannot afford to raise this much money for application fees will end up illegal. In addition, when the ZSP expires in 2017, all those that want to remain in South Africa to work or for school would have to reapply from outside South Africa (New World Immigration, 2016). The ZSP though it was meant to be a reprieve, certainly was nowhere near a solution. When the permits expire come December 2017, Minister Malusi Gigaba reiterated resorting back to the Immigration Act, which clearly has an even more restrictive impact on migrants. It is this continuous state of precariousness that this thesis sort to address and arguments as those above are evidence of a system deeply flawed which places focus nationalistic values at the expense of development and human rights.

In conclusion, since 1994 the South African government has struggled to create an immigration legislation regime, which embodies some of the values enshrined in their Constitution. The Constitution is considered the most progressive in the world, with a Bill of Rights second to none. However, their immigration legislation speaks otherwise. As discussed earlier, the implementation of numerous amendments to the Immigration Act were halted and challenged for non-conformity with the constitution of the land. There is a need for a paradigm shift in the treatment of immigrants. This begins with a total overhaul of the immigration legislation that is still influenced by apartheid and pre-apartheid practices. Migration can be managed effectively, while keeping in mind that

migrants are a useful resource that can bring about meaningful development in both the host and home country.

## **Chapter 5**

### **Thesis Conclusion**

This thesis set out to examine South Africa's immigration policy, specifically how it affects the livelihoods of Zimbabwean migrants living in South Africa. Both documented and undocumented Zimbabwean immigrants have increasingly faced difficulty in regularizing their stay in South Africa resulting in precarious livelihoods. Zimbabwean immigrants are a group of interest because they constitute the highest number of immigrants in South Africa, as compared to the rest of Africa. The main reason for this influx is the continued deterioration of the political and socio-economic landscape in Zimbabwe.

The study shows that despite numerous amendments, South Africa's Apartheid and pre-Apartheid inspired immigration policy remains outdated and exclusionary at the core. Tracing the evolution of South Africa's immigration policy from 1913 to 2016, the

study evidences visible remnants of colonialism and apartheid inspired ideas that helped shape South Africa's current migration policy. Through critical literature review, policy and document analysis the study found that the South African government is reluctant to overhaul its restrictive apartheid inspired immigration laws, while covertly concealing its lack of capacity and tact to manage the Zimbabwe migrant situation.

First, the study shows how migration is a critical development issue in the Global South, particularly in Africa, where population movements are exacerbated by incessant socio-political and economic crises. The influx of Zimbabweans migrants in South Africa presents a complex dilemma in the context of development, where development is here defined as, "enhancement of human capabilities, which comes through removal of "unfreedoms" like tyranny, poor economic opportunities, systematic social deprivation, intolerance and repression by state entities". (Sen, 1999.p.xii)

While the influx of Zimbabwean migrants is clearly putting pressure on South Africa's resources, meant for its citizenry, such as housing, jobs, health care, legal and social services, South Africa has some measure of responsibility to ensure that the rights of immigrants are respected and that they live a secure comfortable life. Bound by the Constitution (1996) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), South Africa is expected to ensure that "*every person living in South Africa*" has the right to "*equality before the law, human dignity, personal freedom and security, privacy, due process of law, freedom of expression and association, fair labour practices, adequate housing, health care, sufficient food and water, and social security*" (Human Rights Watch, 2007)

The study also highlights the complexities of migration in that there is no one theoretical position that explains the phenomenon of migration. To understand migration,

there is need to incorporate theorization from several fields that include, for example, Geography, Economics, Political Science, and Anthropology. However, this study is informed by several theories. The earliest one being the push and pull theory presented by Ravenstein as the most basic theory in understanding migration that was linked to his time. This theory elucidates the presence of forces that influence people to leave their communities and those factors that would have drawn them to move. The theory helped to explain the reasons behind Zimbabweans flooding into South Africa. The historical structural approach, also helped consider historical relationships between Zimbabwe and South Africa and analyse forms of capital accumulation that existed. This analysis showed that Zimbabwe and South Africa had pre-existing labour –migrant networks that were run by both governments using companies like Wenela Teba. Based on this approach, most Zimbabweans and their families are naturally drawn to South Africa because of the deeply imbedded pre-existing labour –migrant historical links, which are further strengthened by a relatively robust economy in the destination country compared to the country of origin. In other words, South Africa commands a “pseudo core” status in Southern Africa by the size of its economy and relatively advanced infrastructure.

Furthermore, such economic dimensions that trigger populations to move are also explained by the neoclassical theories of migration, also discussed in the introductory chapter. This theory also embraces the concept of wage differentials, as envisaged by Harris and Todaro, which ascertains that people move to where there is more economic gain. As such, this explains the influx of both documented and undocumented Zimbabwean migrants who are drawn by the expectation of better wages and working conditions across the border.

Through historical evidence, the study examines immigration legislation from 1906 to 1991. The purpose was to incisively focus on each phase of immigration legislation highlighting its composition and the driving factors, which led to the crafting of the legislation. Evidence shows that there was a deliberate formulation and implementation of racist legislation influenced by the science of ‘racial eugenics’. The Immigration Act of 1913 was a blatant racialization attempting to restrict Black and Indian populations from inter-provincial movements within the Union of South Africa. The Immigration Quota Act of 1930 was put in place to prohibit Jewish immigration from Eastern Europe, including other white races considered non-Nordic races which were labelled as “undesirable and diseased”.

Arguably, the current Department of Home Affairs (DHA) immigration dispensations are not new. The Dispensation of Zimbabweans Permit (DZP) (2010) and Zimbabwe Special Permit (ZSP) (2014) are but a modernized version of the old “pass system” that was used by the apartheid regime to manage migrant labour going into the mines. The only difference between the new and the old passes is that new dispensation allowed Zimbabweans to work, and to do so with freedom of movement. As such, adoption of these forms of immigration control programs points to a systematic recycling of practices that were forged under the past racist apartheid governments.

To further understand the nature of the problem with Zimbabweans fleeing into South Africa, the study addresses the precipitous decline of Zimbabwe’s economic fortunes, many Zimbabweans were forced to look for alternative means of survival in the face of mass starvation. Zimbabwe’s economy has been in freefall for almost two decades with relatively no cessation in sight. The ZANU PF government has tried to “jumpstart” the economy through implementing a number of fiscal policies and development projects

without success. ZIMPREST and the NEDPP are some of the programmes implemented to resuscitate the decaying economy, but to no avail.

As South Africa is in proximity to Zimbabwe and its economy is fairly robust, most Zimbabweans find refuge by moving into South Africa. However, the patterns of movement and motivations to move are varied and context dependent. The *Operation Murambatsvina* was devastating to most Zimbabweans, especially urban dwellers, as it left many families without shelter and basic amenities like clean water and access to clean food. Hence, most people sought refuge in neighbouring South Africa.

I established that most Zimbabweans going into South Africa illegally, without proper documentation, do so because of a lack of procedural knowledge on immigration, they also lack financial resources to fund their document acquisition, and a strong desperation to escape the dire situation that characterizes Zimbabwe.

The study also shows the quandary in which most undocumented migrants are in because of a highly the securitized South African immigration regime. South Africa has not overhauled its immigration legislation since the 2002 amendments. The Alien Control Act of 1991 is in effect though with minor changes. The Green and White Paper of 1997 and 1998 respectively presented a real chance at immigration reform but due to obstructionism and power brokering from some powerful political institutions like the ANC, SACP and COSATU, the process of creating substantive new legislation was abandoned. The obstructionism led to the stifling of the policy formulation process as it excluded civil society from participating in the creation of a new policy. With the exception of a few minor changes, removal of racialized language, the core of the new legislation, that is still influenced by apartheid, which championed exclusion of particular

groups of people. In this instance, the exclusionary policies were aimed at keeping African migrants out of South Africa.

This study finds that the South African government has had an inclination to taking neoclassical positions, which tend to focus on the policies that keep migrants entering South Africa at a minimum. The South African governments' approach is that of making South Africa unattractive to would be migrants by instituting restrictive policies. For instance, heavy community policing, refusing access to social services like health care facilities, housing, and delays in getting legal documentation are factors that can contribute to people not migrating to South Africa. However, the complexity of the Zimbabwean migrant problem requires a broader outlook to manage the crisis, which is why the discussion of theories like the social capital theory and others were incorporated to understand the complex nature of the crisis and allow the examination of the crisis from a multi-dimensional perspective.

The social capital theory does not look at the individual's agency in making decisions to migrate, but rather focuses on the relationships with other entities such as family and friends that can help provide information that contributes to a smooth migration experience. Evidence shows that Zimbabweans have been going into South Africa over time and allowed most to settle regardless of the nature of their legal status. These immigrants have gained the knowledge of South Africa's political and socioeconomic landscape, which allow them to provide that vital knowledge to family and friends that are en-route into the country. As a result, the new migrants make smarter immigration plans that reduce risk. The availability of this information is vital as it guides migrants when navigating their way into South Africa and quickly getting employment. Due this availability of information from family already in South Africa, migrants know



most of the loopholes on how to get into South Africa with or without documentation.

This explain the continuous influx of Zimbabwean even though the immigration regime is restrictive and full of systemic barriers.

As such, the social capital theory helps inform this study through pointing out why Zimbabweans, despite all the structural and bureaucratic impediments, still find migrating to South Africa a better option than staying Zimbabwe.

The assessment of the contents of the Aliens Act of 1995, Immigration Act of 2002, and the Amendment Acts of 2011 and 2014 was undertaken to highlight the clauses that inhibit migrants to participate in the economy. It is clear from the discussion and the hesitance on the part of government to be more accommodative with immigration stems from the need to retain the national interest while also addressing the human rights entitlements enshrined in the constitution. There is no doubt that migrants' livelihoods are impacted by legislation and the immigration laws in South Africa are harsh and foster a "we and them" position. The DZP and ZSP are temporary solutions that do not solve the problems of those that are undocumented. With the expiry of the permits in 2017, the DHA has reiterated that they will not be renewing the documents; hence, Zimbabweans will need to apply from outside the country. The logistical inconsistencies meant to be addressed by hiring a private company in form VSF Global to assist DHA in expediting the application process have not made a difference. Most applicants are still awaiting responses months after submitting their applications. Some have been quoted to have lost their livelihoods due to this long turn over period (Washinyira, 2015).

As this thesis has shown, it is important to have reliable data and research capacities that allow institutions to capture data about migration with increased accuracy. This would help in the case of South Africa for purposes of planning. Currently, the DHA

cannot make headway logistically because it has unreliable statistics about the numbers of migrants and other vital statistics like levels of education of migrants, destination areas, and languages spoken. Also, research should be done regionally in the SADC region showing potential areas of stress that may trigger more than anticipated population movements.

The aim of migration policy should be to inform and guide the law-making process, which enables the government of any country to recruit immigrants that suit their specific needs for continued socio-economic growth. This would require a progressive policy that minimizes bureaucracy and “red tape” if it is to achieve its mandate (De Haan, 1999). In addition, it is important to appreciate that migration is a normal phenomenon that enriches peoples’ lives in both destination areas and areas of origin. Policy must therefore focus on how best to support the development of migrant communities so they can harness their development potential, which eventually can contribute to the collective.

It should be noted that policies that are anti-migrant are costly, and they disadvantage the poor more than the rich. For instance, the 800 (Rand) (62 USD) fee that Zimbabweans pay at VSF Global to apply for a ZSP is too costly and most people in that category cannot afford it. This renders these people illegal by not having sufficient financing, as such, it does not solve the problem but prolongs it. It is important to note that South Africa must take a realistic approach to their immigration policy challenges, bearing in mind that, *“Migration is a process that governments learn to manage; it is not a problem that governments ever solve”* (Martin, 2011, p. 9). This study has demonstrated through the analysis of past immigration legislation, that the South African government has not re-imagined its strategies to help manage extra-ordinary immigration issues like the one Zimbabwe or Zimbabweans present.

Lastly, the Zimbabwe situation is likely to worsen, if the political climate remains uncertain. As such, the South African government needs to create new legislation to accommodate the “extra-ordinary” Zimbabwean situation. The South African government needs to diverge from the continued reliance on immigration policies inspired by racism and segregation. Temporary measures like DZP and ZSP are not adequately suited to address the Zimbabwean migrant crisis in a way that fosters development and stability while enhancing the socio-economic viability of both South Africa and Zimbabwe.

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