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The uncertain lives of Zimbabwean Exemption Permit holders: Zimbabwean waiters in Johannesburg.

By

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A research report submitted in partial fulfilment of the requirements for the

Degree of:

Master of Arts in Migration and Displacement

at the University of the Witwatersrand

Supervisor: Professor Loren B. Landau

Declaration

I hereby declare that this research report is my original work. Where the work of others has been used, it herein has been acknowledged using references. I also confirm that it has not been submitted for any degree or examination at this or any other institution before.

Nothandо Phuti



Signed on 31 March 2025

Dedication

This project is dedicated to my late grandmother, **Reginah Mayethe**, whose unconditional love shaped me into who I am today, and to my mother, **Elizabeth Phuti**, for all her sacrifices and unconditional love. This project is also dedicated to all migrant waiters trapped in lives of unseen struggle. I see you.

My deepest gratitude to the Africa Centre for Migration and Society (ACMS) and the Mandela Institute for Development Studies (MINDS) for funding this research project. Many thanks to my supervisor, **Prof Loren Landau**, who encouraged me throughout this entire project. A special thank you to Dr Jean-Pierre Misago for the critical thinking and writing foundation, as well as to my colleagues and the ACMS team as a whole. To my mentor, **Professor Morgan Ndlovu**, thank you for the unwavering support! Finally, a very big thank you to my **Father God**, for giving me the strength and courage to dream, without whom this project would be impossible!

Abstract

Drawing on the social and economic experiences of Zimbabwean migrant waiters who hold the Zimbabwean Exemption Permit (ZEP) in Johannesburg, South Africa, this study aims to understand what it means to live in a state of uncertainty. Zimbabwean migrants are a crucial group in the South African migration discourse, as they have historically dominated the migration space, making them a critical group from which to understand the migrant experience, particularly within the informal sector. Qualitative in nature, this comparative case study examined the uncertainty of legal status through interviews with documented and undocumented migrant waiters. It enabled the interrogation of migration governance in determining the experiences of migrants in host countries and a reconsideration of the categories attached to migrants, which shape their experiences in host countries. Thematic analysis was used to analyse the data, and the following themes emerged: Changing Migration Status, Misinformation, Scepticism and Deflection to Illegal Migration, Invisibilised Legal Status, Conditioned State of Exploitation, Living in Fear, Future Perceptions, and Agency. Evidence from the data suggests that living in uncertainty does not only mean bearing an unpredictable legal status, which frames the social and economic uncertainties of international migrants, but also living with intertwining factors that reinforce uncertainty in complex ways. However, this also means living with agency to confront the uncertainties.

Key words: uncertainty, migration governance, migrant waiters

List of Acronyms and Abbreviations

BCRCAT – Bargaining Council for the Restaurant, Catering and Allied Trades

BCEA – Basic Conditions of Employment Act 75 of 1997

CoRMSA – Consortium for Migrants and Refugees in South Africa

DEL - Department of Employment and Labour

DHA - Department of Home Affairs

DoL - Department of Labour

EC – European Commission

EU - European Union

GWV - General Work Visa

HSF - Helen Suzman Foundation

ILO - International Labour Organisation

OAU - Organisation of African Union

UN - United Nations

UNDP - United Nations Development Program

UNHCR - United Nations High Commissioner for Refugees

ZDP - Zimbabweans Dispensation Project

ZEP - Zimbabwe Exemption Permit

ZSP - Zimbabwe Special Permit

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CHAPTER 1: INTRODUCTION

Migration is a complex phenomenon confronting the modern world, with its management and regulation being a significant priority for many countries and organisations. Geddes (2022:312) states that migration governance systems are not only limited to managing migration but also actively shaping it. Chief among the many global migration governance systems is the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention), which regulates the treatment of forced migrants. The Refugee Convention defines refugees as those fleeing persecution in their country of origin due to their race, religion, nationality, social group, or political opinion (Pijnenburg & Rijken 2021:276). Contrary to forced refugees, many migrants, such as economic migrants, fall outside the restrictive definition of the Refugee Convention and its associated norms, and enjoy limited access to legal rights. However, both are entitled to the same universal human rights and fundamental freedoms (Vanyoro, 2023; Pijnenburg & Rijken, 2021). Migration governance systems aim to understand the causes and effects of historical, contemporary, and future migration (Geddes 2022:312). However, the migration process is fluid and complex, as are the reasons people migrate (Turton 2003:9). Migrants are thus subjected to such migration governance systems, which organise and classify them into strict categories. These categories do not necessarily reflect the complexity and fluidity of migration, which can have significant impacts on the experiences of migrants in their host countries.

1.1 Background

In December 2023, I witnessed the public denial of service to a documented Zimbabwean migrant man at Hillbrow police station in Johannesburg because he held an expired Zimbabwean Exemption Permit (ZEP). Ironically, the Department of Home Affairs had released a media statement two days before stating all ZEPs had automatically been extended for two years (i.e., until December 2025). I unsuccessfully tried to raise this in support of the man. The police threatened him with arrest until I stepped out of the station with him. He then disclosed that he was a waiter and that his migrant colleagues had advised him to go to the Bedford Police Station because the Hillbrow Police Station had refused to assist ZEP holders. He also

described missing work the previous day because his colleagues had informed him that the police were randomly raiding restaurants and arresting undocumented migrants. As the ZEP had expired, he could not risk it. The irony was that as a documented migrant, he had been denied the service of certifying his permit right at the police station.

A paradox has existed since the attempts to cancel the ZEP were first made in 2021. Documented ZEP holders struggled to attain services and protection ordinarily ascribed to documented immigrants in South Africa. The permit seemed to produce ambiguous forms of legality for the migrant holders, blurring the lines in the experiences of both documented and undocumented Zimbabwean migrants, and thus leaving the holders in a very precarious position. However, as I had observed, the migrant ZEP holders did not appear to be just passive victims of an ambiguous permit. Instead, their social networks seem to facilitate navigating some of the ambiguous legalities created by the ZEP. As I wished the migrant waiter the best of luck with processing his documents at Bedford Police Station, I was left questioning how such documented migrant waiters live with ambiguity, particularly within precarious conditions. This is what this study seeks to explore. In doing so, it contributes to the broader literature on the instability and precarity faced by migrants (and those around them) in South Africa and elsewhere.

1.2 Problem Statement

Between 2005 and 2008, a unique case of mixed migrants emerged in South Africa, from about 2 million Zimbabweans who fit neither the strict definition of refugees nor that of economic migrants. Nyakabawu (2021b) described this mixed case of migrants as having been unclassifiable liminal beings. Betts (2010) argues that the increase in migration into South Africa was a combined result of the deprivation of the migrants' socioeconomic rights and the political fragility in Zimbabwe. Synonymous with the migration of Zimbabweans to other countries, the increased migration of Zimbabweans into South Africa was precipitated by the country's protracted economic and political crises (Crush, Chikanda, and Tawodzera 2015:364; Ndlovu & Landau, 2020). De

Jager and Musuva (2016) attribute this increase in migration to an indirect manifestation of the governance crisis that unfolded in Zimbabwe.

According to Vanyoro (2023:301), South Africa adopted both the international and regional legal definitions of a refugee, thus, the human rights violations facing fleeing Zimbabwean migrants qualified them for refugee claims in South Africa. That is, the UN Refugee Convention's narrow refugee definition for people facing persecution, as well as through the adoption of the Organisation of African Union (OAU)'s Refugee Convention, whose Section 3(b) of the Refugees Act allows people facing alarming events or situations disrupting public order to make refugee claims (ibid). However, the South African government insisted on classifying them as economic migrants instead of refugee seekers. It gave them special permits, citing the lack of war or their targeted persecution in Zimbabwe (Amit, 2011; Amit & Kriger, 2014), which ignored the provisions of the Refugees Act and the messiness of Zimbabwean migration (Vanyoro, 2023).

In April 2009, the South African Department of Home Affairs announced that deportations would temporarily be halted. Furthermore, a 90-day visa was also offered free of charge to Zimbabweans entering South Africa, and a 12-month Special Dispensation Permit was available to undocumented Zimbabweans already in the country. This decision was justified with economic and humanitarian reasons according to Section 31 (2) (b) of the South African 2002 Immigration Act (Baumann, 2010:64). In the following year, 245,000 4-year visas, known as the Zimbabweans Dispensation Permit (ZDP), were introduced, extending the 1-year Special Dispensation Permit and commencing deportations. This granted Zimbabwean holders the rights to domicile, study, work, and engage in entrepreneurship, thereby alleviating congestion in the asylum system (Thebe, 2017; Amit, 2011; Vanyoro, 2023). In August 2014, the then Minister of South Africa's Department of Home Affairs, Malusi Gigaba, announced the expiry of the DZP. The Zimbabwean Special Dispensation Permits (ZSDP) were then introduced to serve similar functions as the DZP (DHA, 2014) and would be an avenue for DZP holders to extend their documents. The ZSP was again cancelled in 2017, which led to the introduction of the Zimbabwe Exemption Permit (ZEP), intended for ZSP holders to apply for (DHA, 2017).

GroundUp (2021) reported that when the ZEP was set to expire in December 2021, a decision was announced in November 2021 to abolish the ZEP and provide holders

with a one-year grace period to apply for other standard permits. Those who would not have used it would have to leave South Africa or risk deportation (Mlilo 2023:4). Three years after making that announcement, the Minister of Home Affairs issued multiple directives extending the validity of the ZEP for a period of up to 31 December 2023. On 4 December 2023, the Minister of Home Affairs, Dr PA Motsoaledi, issued another directive, extending the validity of the ZEP to 29 November 2024, citing the need to allow them to apply for exemption permits that would grant them standard permits (DHA, 2023). Notwithstanding the decision to cancel the ZEPs and the subsequent directives for extensions by the DHA, challenges to this decision were raised by the Helen Suzman Foundation (HSF) and other civil society organisations (Mlilo, 2023). These civil organisations requested that the Pretoria High Court declare the decision to permanently abolish the ZEPs and their limited extensions illegal, unconstitutional, and invalid, citing a lack of consultation with the impacted ZEP holders and the public before the decision to cancel the ZEPs was announced in November 2021. Once again, the new Minister of Home Affairs, Dr Leon Schreiber, extended a temporary visa concession until December 31, 2024, due to delays in processing the ZEPs and other visa alternatives (DHA, 2024).

While the DHA lauded the special dispensation process as a success, studies by Thebe (2017) and Polzer (2008) found it an unsuccessful and inadequate instrument for managing complex mixed migration. Vanyoro (2023) acknowledged the limited extent to which the special permits improved the living and working conditions of their holders compared to their previous undocumented statuses. For example, the permit afforded them greater work and travel mobility, as well as improved dignity and respect since they were now documented. However, Vanyoro (2023:306) problematised the requirement for ZEP holders to apply for mainstream visas. This is because the majority of permit holders were found to be non-qualifying, low-skilled workers employed in informal sectors without contracts, and who also did not have or could not afford the lease agreements and medical coverage required to apply for standard visas.

The multiple and differing directives by the DHA since November 2021 left holders without a clear direction on what the state intends to do with the ZEP and when. On the one hand, the ZEP is considered a legal document by law, but on the other, the

rights of ZEP holders are unclear and can be withdrawn at any time, which makes them as precarious as undocumented migrants. This study identifies the ZEP as having failed to guarantee its holders the benefits and protections expected from a legal document. It is this in-between state of legality and illegality for ZEP holders that this study is interested in. It hopes to understand what it means to be a documented migrant and yet still live in uncertainty.

1.3 Rationale

Despite the significant contributions migrants make to their home and host countries, the United Nations Development Programme (UNDP. 2011:7) and Hennebry (2014:371) have noted that migrants often face inadequate social protection and other forms of vulnerability. According to Goldring, Berinstein, and Bernhard (2009), the majority of studies on migrants globally focus on undocumented migrants, albeit as their non-documentation would be expected to render them more vulnerable. However, a growing number of studies on documented migrants have found that documentation is insufficient in preventing instability and uncertainty (Anderson, 2010; Fudge, 2012). This is particularly true within restrictive immigration regimes, neoliberal labour markets, and the informal labour sectors, which are dominated by migrants (Lewis, Dwyer, Hodkinson & Waite, 2014). This paradox has been well-captured in the literature on the limitations of protection documentation ascribed to documented migrants (Landau & Amit, 2014; Landau, 2006a, 2017; Landau & Duponchel, 2011; Kathiravelu, 2012). Vearey (2013) further argued that documented migrants at times fare worse than their undocumented counterparts as a result of the skills undocumented migrants are forced to develop to navigate the challenges they face in their host countries. Instead, studies on documented migrants have found that legal status takes a subordinate position to social networks in providing migrants with the power to navigate their precarious experiences (Landau & Duponchel, 2011; Thebe, 2017; Madhavan & Landau, 2011; Landau, 2017).

This study views the administration of the ZEP as mirroring the typical postcolonial state's illegible and enigmatic approach to the law and the regulation of immigrants. From the granting of the Special Dispensation Permit to the ZEP, the special permits appear to have been adopted in an unclear and ambiguous manner, without a long-

term plan for the future consequences for permit-holding immigrants. The recent multiple directives issued by DHA left holders in a state of uncertainty, as they did not know what the following directive would say or when it would be released. As the literature review demonstrates, migrants are regulated by states with the exceptional power to create ambiguous laws and policies that are often disconnected from the realities of migrants in practice, leaving them in a state of uncertainty. These documented migrants not only face legal uncertainty from the ambiguity of their permit, but they often also exist within precarious informal sectors, which combine with restrictive immigration regimes to produce uncertain and unstable living and working conditions for migrants.

Acknowledgement is made that this study will not be the first to address the predicament of the impending cancellation of the ZEP on ZEP holders in South Africa. The survey by Tarisayi (2022) on teachers who hold the ZEP found that they were hanging on a thread due to the ambiguity of the permit. The study examined the precarity of the license in the experiences of migrant teachers working within the formal sector, whose experiences differ from those of migrants in the informal sector. While building on such work, this study differs in that it interrogates the experiences of migrant workers in the informal sector, rather than the formal one. A similar study was also conducted by Ndebele (2018) on Zimbabwean Special Permit holders within the informal sector, focusing on the impact of the permit on holders' access to decent work in the informal migrant industry. However, the ZEP had just been introduced as an extension of the ZSP; therefore, this study provides a timely broadening of the inquiry into the ongoing experiences of ZEP holders. It further examines the effects of access to social protection on other aspects of migrants' lives and their families, beyond the informal sector.

An existential understanding of what it means to live in uncertainty, as experienced by migrant waiters who hold the ZEP, which evolved from the ZSP, is necessary. The study aims to provide a contemporary understanding of the lived experiences and the meaning of uncertainty for ZEP holders from the perspective of the precarious sectors in which they work, as well as other aspects of their lived realities outside of work. This will be drawn from the subjective perspectives of both documented and undocumented migrants on their documentation status vis-à-vis their access to and/or inclusion in

social and economic activities (e.g., education, banking system, labour protection). While undocumented migrants are not the focus of the study, their perspectives will allow for a comparative lens on the experiences of the ZEP-holding migrant waiters. Uncertainty will be understood from Waite's (2009) understanding of uncertain and unstable forms of life experiences that are produced by precarity. It considers the ZEP as legally generating uncertainty for its holders through its ambiguous, inconsistent and shifting legal status, which has a profound impact on their access to social and economic rights. While a state of uncertainty is generally expected for undocumented migrants with no legal claim to social protection and other rights, this study also examines the similarities in their lived experiences compared to those of documented ZEP holders. Migrant waiters work in the hospitality sector, which is often used interchangeably with the restaurant sector. It aims to contribute to the growing literature on the regulation of migrants and their experiences of instability and precarity worldwide.

1.4 Research Questions

The main research question of this research study is:

What does living in uncertainty mean for Zimbabwean migrant waiters in Johannesburg who hold the ZEP?

To respond to the main research question, the following sub-questions will be answered:

1. What are the subjective social and economic experiences of ZEP-holding migrant waiters in Johannesburg?
2. What are the similarities between the experiences of documented migrant waiters who hold the ZEP and Zimbabwean undocumented migrant waiters?
3. How does living in uncertainty impact ZEP-holding migrant waiters' perceptions about their future in South Africa?

1.5 Chapter Outline

The report is divided into five chapters. Chapter One serves as the introduction chapter, providing the background and rationale for the study while presenting its aims and research questions. Chapter Two reviews the literature, examining the politics of global and regional migration governance and its framing of the legal uncertainty faced by migrants, as well as the social and economic experiences of migrants. The reviewed literature sets the context of the study within existing theoretical and empirical discourse to understand what it means to live in uncertainty for ZEP holders. Chapter Three describes the methodological approach adopted in this research study, outlining the research method and design, data collection methods, sampling strategy, and analytical framework used to explore the research questions. The chapter also addresses the ethical considerations and limitations of the study. Chapter Four presents and discusses the research study's findings, providing a detailed analysis of the collected data while critically engaging with the themes that emerged from the data. Chapter Five concludes the study by giving a summary of the key findings related to the research questions posed in the survey.

CHAPTER 2: LITERATURE REVIEW

2.1 INTRODUCTION

This chapter reviews the existing literature on the legal uncertainty faced by migrants, with a particular focus on the legal uncertainty experienced by migrant waiters holding the Zimbabwe Exemption Permit in South Africa. Migration is a historical aspect of society (Castles, 2010). However, migrants often encounter regulatory, political, and socio-economic uncertainties that impact their access to social and economic services in host societies. This study situates itself within this broader discourse, focusing specifically on the experiences of ZEP holders in Johannesburg. The literature on migration governance highlights the tensions between state sovereignty, human rights and various political interests, which often lead to ambiguous policies and inconsistent enforcement mechanisms (Geddes, 2022). Consequently, this section departs with an exploration of migration governance and the politics of migration, fundamental features of international migration management that engender legal uncertainty for migrants. Furthermore, the review examines the literature on the legal uncertainty faced by migrants, outlining the broader existing empirical and theoretical contexts in which this study is situated.

2.2 Migration Governance

Migration governance refers to the policies and regulatory frameworks that shape the management of international migration (Betts, 2008). According to Betts (2008), the policy on global migration governance historically stems from the convening of the Global Commission on Global Governance in the 1990s, which sought to forge the cooperation of States to address challenges to the environment, trade, trans-national crime, finance, and conflict and to date dominates rhetoric on the regulatory roles of international institutions and organisations beyond the Nation-State. On the other hand, Betts (2008) further states that in academia, the history of global migration governance emerged from efforts within international relations to understand the influence of international institutions and regimes on the behaviour of states, that is, the politics of international migration.

Contemporary understandings of global migration governance have combined the policy and academic origins to indicate a shift in the absolute power of migration policy-making from nation-states to the formal and informal, complex, and diverse multi-levels of governance by multilateral institutions, states, and non-state actors (Betts, 2008; Lavenex, 2016). This signals the development of multi-level governance systems, where states, regional bodies, and global institutions interact to manage migration. Betts (2008) also noted that, within the deeply complex area of international migration, migration policies are often informed by the varying actors involved in global migration and their interests, which shape migration governance.

2.2.1 Migrant Categorisation

The complexity of global migration governance is evident (Newland, 2005). On the one hand, Betts (2008) noted that regulatory frameworks and migration policies have an impact on migrants' and their host communities' access to human rights, development, and security. On the other hand, Geddes (2022) stated that, despite migration governance appearing illusory, it has far-reaching effects on migrants and their host communities, which emanate from the categorisation and classification underpinning migration governance. This makes migration governance even more significant to migrants' experiences. The necessity of constructing human categories in the governance of migration has been acknowledged by many writers (Geddes, 2022; Raghuram, 2021; Talleraas, 2022). However, it also poses many limitations for the analysis of migration. In response to the limits and impacts of migrant categorisation, Pijnenburg and Rijken (2021) argued for a broader study of the categories embedded within migration governance frameworks that draw a line between migrants and refugees. Such dichotomies warrant an analysis of the challenges posed by the categories and definitions employed within global migrant frameworks.

Geddes (2022) stated that categorising people determines whether migrants are included or excluded, and ultimately, their ability to migrate. Other scholars (Mainwaring & Bridgen, 2016; Collyer & De Haas, 2012; Crawley & Skleparis, 2018) have also argued that categories assume simplistic, clear-cut, and homogeneous

migration trajectories, whereas the migration journey is complex, as are the reasons people migrate. This dichotomy was evident in the use of exclusionary policies to respond to migrants who arrived in Greece in 2015, where the diversity and complexity of migration drivers for different groups of migrants were overlooked (Sigona, 2018; Crawley & Skleparis, 2018). In reality, mixed motivations for leaving home countries exist for most migrants, as declared by Costello (2018) and Liodden (2020).

The incoherence in the labelling of migrants and the subsequent disconnected policy was captured by Zetter (2015), who stated that it emanates from the contradictions between contemporary flows and patterns of forced migration and the modern legal and normative frameworks existing within the global protection system. The differentiations struck between migrants have been discouraged in literature before. Pijnenburg and Rijken (2021) use the example of the distinction made between economic migrants and refugees to show how they are entitled to similar universal and fundamental human rights. As such, categorising them or their migration experiences as different within migration frameworks attempts to restrict their access to the legal protection of their rights. Ramji-Nogales (2017) also problematised the dependence of migration law on the framework of refugee law, which not only creates worthy/deserving refugees and unworthy/undeserving migrants but also limits the understanding of migration dynamics and, further, the response and effectiveness of migration law to the mass and mixed movement of people. Similarly, Pijnenburg and Rijken (2021) and Chetail (2016) highlighted the exclusion and discrimination that underpins the Refugee Convention because of the narrow grounds for persecution it ascribes to forced migration. Besides the Refugee Convention, Vanyoro (2024) noted that more recent global migration governance systems, such as the Global Compact for Migration, have reinforced the distinction between migrants and refugees and their governance through separate legal frameworks.

Migrant categories have far-reaching implications for international migrants in various forms of labour migration, as they define legal status, which determines access to rights and resources (Bakewell, 2021). Many scholars (Crawley & Skleparis, 2018; Zetter, 2007; Becker, 2014) agree that the construction of migrant categories is a complex and political process that establishes policy agendas and warrants the objectification of people in policy. Despite the existence of several international human rights frameworks, gaps in the social and economic protection of many international

migrants persist due to the uncertainty of their legal status (Weissbrodt & Meili, 2009; Bloom & Feldman, 2011).

2.2.2 The politics of migration governance globally

State sovereignty plays a key role in migration governance. While modern nation-states do not hold absolute power in global migration governance, the literature on state sovereignty (Landau, 2017; Sassen, 1996; Rudolph, 2005) highlights the centrality of modern nation-state sovereignty in controlling state borders and immigration law. By extension, Landau (2017) states that this includes the framing of responses to migration, which defines the experiences and well-being of refugees and other migrants. Geddes & Korneev (2015) note that the regulation of international migration through state border control is where the power of state sovereignty is most visible.

According to Martin, Weerasinghe and Taylor (2013), since the end of World War II, causality has been the logic underpinning migration governance. De Haas (2011) and Van Hear, Bakewell, and Long (2020) argue that state-centric categories of migration imply that push-pull factors, stemming from differences in wages and living conditions between the place of origin and the place of destination, drive migration. Schewel (2020) and Willekens (2018) further suggest that theorising migration solely from an economic perspective ignores the structural and personal forces that enable or impede people's ability to migrate. Further, Maru, Nori, Scoones, Semplici and Triandafyllidou (2022), Czaika and Reinprecht (2022) agree that migration should be understood from its multiple drivers, while Bakewell (2010), Carling and Talleraas (2016) and Czaika and Reinprecht (2022) diverge from this view by asserting that this does not consider the agency of people. Geddes (2022), however, warns that the causes and effects of migration are understood against a shadow of uncertainty built on either facts or values and beliefs. It is evident from the different positions of the scholars mentioned above that there are numerous causes of migration. The framing of global and regional frameworks within national or domestic immigration policies presents an essential precursor for migrant experience, rendering the analysis of the modern nation-state's

decision-making mechanisms on immigration and the consequences for migrant experiences critical.

Hollifield (2012) highlighted the shift in the regulatory functions of immigration management from sovereign states to external humanitarian players since the end of the Cold War. Brown (2022) and McAdam (2019) argue that an increased emphasis has accompanied this shift on human rights and international cooperation in migration governance. Globally, the signing of the United Nations' Global Compact for Safe, Orderly, and Regular Migration by 152 countries demonstrates a commitment to human rights and cooperative governance of migration (ibid; Lavenex & Piper, 2022). More regionally, the OAU's 1969 Refugee Convention was adopted to provide a deeper level of protection for refugees in Africa through cooperation. However, Mathew & Harley (2016) and Lavenex (2019) have warned that its implementation has been limited in practice. What is essential is this contemporary global emphasis on human rights and cooperation in migration governance. This does not always take the power of states, as posited by Geddes (2022) and Landau (2017); nation-states remain central in managing national borders. For Geddes (2022), governance is not just a reaction to migration by the state but its understanding of the causes and effects of the 'challenge' of migration flows and its response to this challenge.

Davitti (2018) and Cantat, Pecoud & Thiollet (2023) emphasise the importance of the sovereign state's framing of increased international immigration flows as migration crises, as it shapes migration policies and the experiences of migrants. Hollifield (2012:186) further asserts that "at the heart of the migration crisis are concerns about sovereignty, citizenship, national security, and identity". The literature by Martin, Weerasinghe, and Taylor (2013), Crush, Tawodzera, Chikanda, Ramachandran, and Tevera (2017), and Betts (2014) on crisis migration suggests that it is often a result of humanitarian crises. Immigrants entering a country as a result of humanitarian crises in their home countries are thus considered crisis migrants, and they frequently fall outside the protective legal and institutional frameworks (ibid). Bijak and Czaika (2021) depart from this notion by suggesting that the migration crisis instead emanates from a crisis of migration governance, where states perceive unwelcome increases in immigration as pressure and as being beyond their control over migration. Gatta (2019) goes even further by viewing the migration crisis as a result of a crisis of law in the face of increased international migration. In all state approaches to migration as a crisis, increased migration flows are perceived as a threat to state sovereignty;

therefore, the state response is characterised by increased securitisation of migration and reduced protection for those deemed to be crisis migrants. This study adopts the understanding of a migration crisis from the premise of these writers. It views it as a situation of increased migration flows, which, rather than being out of control, produces crisis migrants who do not fit a country's ordinary immigration flows and migration frameworks.

State sovereignty plays a critical role in migration governance. In Europe, the externalisation of borders has been a key feature of the sovereign state's response to crises on its borders, aimed at dissuading political and economic migration flows to Europe. Through the EU-Turkey Statement, the European Commission (EC) circumvented the increased migration of millions of economic and political migrants coming from Syrian and other migrants into the European Union (EU) by signing an agreement with Turkey, outsourcing their humanitarian and legal obligations to Turkey in exchange for financial support (European Commission 2015; Burgin, 2021; De Marcilly & Garde, 2015). According to Leonard and Kaunert (2016) and Nakache and Losier (2017), further interventions have also been proposed in response to the Mediterranean migration crisis, including outsourcing asylum processing to countries outside of Europe, such as North Africa, before resettling them in European countries. However, Carrera and Guild (2017) and Nakache and Losier (2017) argue that the fruition of such proposals has stalled by uncertainties around the weak administrative capacity of off-shore asylum processing and the European Court of Human Rights' decision to upholding the legal responsibility of the European Union to refugees according to the European Convention of Human Rights (ECHR). In Australia, the processing of refugees has been offshored to the Pacific island states of Nauru, justifying this by humanitarian reasons of reducing deaths at sea and human trafficking. Although this practice violates the Refugee Convention and has been found to create appalling conditions for refugees, it has been justified by domestic laws (Nakache & Losier, 2017; UNHCR, 2015; Carrera & Guild, 2017). It is apparent from the responses of these countries to migration crises that their efforts have been an attempt to stop irregular migration, a clear struggle to maintain a balance between border security and humanitarian obligations. For the millions of migrants seeking

protection in Europe, the response provided temporary solutions that were likely to evolve into long-term uncertainty and vulnerability for migrants.

The last decade has signalled a rise in nationalism, from the rhetoric of "Trump's 'make America great again', to Modi's Hindu nationalism, to Bolsonaro's Brazilian populist nationalism, to Orban's Hungary, and Le Pen's or Salvini's 'patriotic' overtones" (Triandafyllidou, 2022, p. 207). Both economic migrants and refugees have been on the receiving end of political opportunists who have ridden the anti-migrant wave created by their citizens' fears of job losses to score votes (Ramji-Nogales, 2016). In Western Europe, new movements and anti-immigrant political parties with electoral support have shifted the balance of forces, rendering immigration a dominant political issue with significant influence on how European governments perceive and approach social, economic, and political challenges (Baldwin-Edwards & Schain, 1994). Bauman (2007) found that in Italy, undocumented migrants were referred to as 'the army of evil' by Prime Minister Berlusconi in his first statement upon re-election in 2008, after which he legalised anti-migrant vigilante groups. Amnesty International (2017) reported that this was followed by the eviction of thousands of Roma from Naples's Gianturco informal settlement in 2017. Geddes (2018) highlighted that in 2017, immigration governance played a significant role in the outcome of national elections, as political parties with radical and populist anti-migrant rhetoric performed relatively well in Austria, France, Germany, and the Netherlands. More recently, Lester, Phillips, Reddy, and Shoki (2024) also found an increase in support for right-wing populist parties that rode the anti-immigrant wave in the European parliamentary elections in 2024, for example, in Austria, Romania, Portugal, and Germany. The saliency of immigration in politics globally exemplifies the extent to which politics shape restrictive policies that impact all migrants, both documented and undocumented (Hatton, 2011; Czaika & Hobolth, 2016).

Crush, Williams, and Peberdy (2005), Adepoju (2006), and Gibb (1998) have documented how, in Africa, migration has historically been characterised by high levels of cross-border movement in various forms, which the socio-economic and political landscape has shaped. Achiume and Last (2021) and Moyo (2024) also wrote about how, within the Southern African region, migration governance is a contested and contentious issue, entrenched in historical labour migration systems and perceived through the prisms of economic stability and national security, which shape public opinion and restrictive policies. An increase in the migration of both legal and

illegal migrants has been sustained, rendering migration a highly politicised issue (Cornelissen, 2009; Hammar, McGregor & Landau, 2010). Campbell (2003), Crush and Pendleton (2007), and Cornelissen (2009) note that an increase in hostility and xenophobic attitudes towards migrants among the majority of communities across the region has accompanied this trajectory. Cornelissen (2009) further states that efforts to develop a standard migration policy have also been resisted, for example, with the 1996 SADC Protocol on the Free Movement of Persons, which was unsupported by South Africa, Botswana and Namibia. The fragmentation of regional migration policy has created various administrative and legal uncertainties for migrants, including both documented and undocumented individuals (Crush, Williams & Peberdy, 2005).

2.2.3 The politics of migration governance in South Africa

In South Africa, public perceptions of migrants have primarily been influenced by economic and social factors, especially when public officials frame migration as a crisis (Hiropoulos, 2020; Parshotam & Ncube, 2017). There is a consensus among scholars across the social domain (Bijak & Czaika, 2020; Ravenstein, 1885; Rees & Lomax, 2020) that ascertaining the precise number of migrants in South Africa is nearly impossible. However, Banda and Mawadza (2015), McDonald and Jacobs (2005), and Nkala and Masuku (2023) have documented that media and public discourse often link immigration with crime, irregularity, and the notion that foreigners are stealing jobs, fueling hostility toward migrants. Xenophobic rhetoric is deeply entrenched in public discourse through the scapegoating of migrants for political expediency (Moyo & Zanker, 2020; Machinya, 2022; Mlio, 2023).

This study argues that, within the global anti-migrant sentiment, the South African context of anti-migrant rhetoric has been exacerbated by the country's contemporary multiple crises. Schneider (2024) describes the various crises in South Africa as ranging from systematic corruption, rampant crime, inequality, increased unemployment and crumbling infrastructure, all of which point to a failed state. Schneider (2024) further suggests that the xenophobia and anti-migrant sentiment in South Africa is fuelled by the increased immigration of African migrants from African countries facing their own economic, environmental and political crises. Misago’s

(2025) analysis of xenophobic violence in South Africa also suggests a multi-determinant approach to the analysis of xenophobia in South Africa, dissuading reductionist and simplistic approaches. This study views xenophobia as a response to the multiple socio-economic crises identified by Schneider (2024), rather than a direct response to increased migration, as migration has a deep history within the Southern African region and South Africa.

The African National Congress (ANC), which ushered in democracy in South Africa, has failed to deliver on the promises of independence, 3 decades after attaining independence. Yingi, Ncube and Benyera (2024) support this notion by arguing that the ANC has not managed to right the wrongs of apartheid by creating an inclusive economy, which they believe has driven a wedge between citizens and foreigners. Faced with the threat of losing power and the pressures of competitive politics, South African politicians have historically resorted to populist and nationalist rhetoric to quell government failures, particularly during elections Asuelime, 2020; Ngcamu, 2024). This assertion was supported by Bornman (2019), who found that the then-Mayor of Johannesburg, Herman Mashaba, publicly blamed migrants for crime in an attempt to downplay the country's multiple crises. In 2017, the then-Minister of Police, Fikile Mbalula, also blamed the high incidents of violent crimes in the country on former Zimbabwean soldiers (Amnesty International, 2018; Mvundura, 2024). The then-Minister of Health, Dr PA Motsoaledi, later shared similar sentiments, publicly accusing African migrants of flooding South Africa and overburdening the health sector (Maromo, 2017; Mvundura, 2024). More recently, in May 2024, the national general elections in South Africa were marked by particularly charged anti-immigrant and xenophobic rhetoric, similar to the phenomenon unfolding in other parts of the globe (Mathekga, 2025). Unsurprisingly, the ruling ANC was not the outright winner in the 2024 elections, but fell below 40% in votes for the first time since independence (Everatt, 2024). While the decline in votes for the ANC might demonstrate how blaming immigrants for societal ills in South Africa has not been sufficient for the ruling party to maintain political popularity, a different outcome of migrant scapegoating has ensued for new political parties. Anti-immigrant rhetoric has also been adopted by new political parties seeking to enter the political realm. Human Rights Watch (2024) reported an alarming rise in the popularity of new political parties, such as the Patriotic Alliance and Action SA, in the lead-up to the 2024 elections, which leveraged the narrative of out-of-control migration and blamed undocumented migrants for the country's social

ills. This is despite the existence of the electoral code of conduct, which forbids the use of violent or provocative language by political candidates and instead requires them to speak out against it (ibid).

The scapegoating of migrants has not been limited to politicians in South Africa but has also been seen in the rise of vigilante formations. Dratwa (2024) wrote that the economic constraints of the COVID-19 pandemic exacerbated xenophobic violence and anti-immigrant sentiment in South Africa. Xenophobic formations like Put South Africans First (PSAF) and Operation Dudula emerged from social media in 2020 and 2021, respectively, with their messaging initially based on calls to deport African immigrants, who were said to compete for the limited resources and opportunities with locals. According to Hlatshwayo (2023), xenophobic formations are formed to carry out organised and constant campaigns like protests, marches and heavy social media presence against immigrants in South Africa, whom they accuse of causing crime, poverty, and unemployment. These sentiments have increasingly been expressed in the messaging of PSAF and Operation Dudula more radically. In an environment of migrant scapegoating, this study argues that migration policy becomes overly politicised to serve the interests of politicians and the agenda of vigilante groups. This corresponds with Vanyoro's (2023) assertion that informed and rational policy-making is especially narrow as a result of the competitive politics in South Africa.

Anti-migrant sentiments in South Africa are not limited to public discourse but inform public policy (Crush, 2022; Butz & Kehrberg, 2019). This thus leads to the erosion of migrants' constitutional and legal rights and may constrain their access to basic services and resources. The administration of the ZEP exemplifies the politicisation of immigration by the state, where policy decisions are driven not by regulatory purposes but by political expediency. Mlilo (2023) highlighted that, given the initial introduction of the ZEP was meant to document and regularise 178,000 ZEP holders, the attempt to terminate the ZEP is counterproductive, as it will leave legal holders undocumented and unemployed. The multiple extensions and potential termination of the ZEP exemplify the instrumentalisation of migration policy and law to serve political interests, rather than regulating migration with disregard for the legal ambiguity and instability the extensions create for ZEP holders.

Another example is the post-election policing shifts experienced in South Africa. Hofmeyr (2024) reported an intensification of inspection raids by the Department of Employment and Labour (DEL) in October 2024, particularly in industries dominated by migrants, such as the hospitality sector. Pillay (2024) also reported that the DEL, DHA, and the Bargaining Council of the Hospitality Sector conducted coordinated blitz inspections and raids during the same period. The Minister of Employment and Labour, Meth Nkosazana, applauded the raids as successful for upholding compliance with the industry's obligations under DEL and DHA laws (ibid) and ensuring the protection of the rights of all workers. However, this study questions the convenience of the timing of the raids and identifies them as a shift in state policing, masquerading as law enforcement. It argues that this was instead a consequential response to the electoral immigrant scapegoating narrative, which transformed populist rhetoric into observable and tangible state practices aimed at appeasing public discontent. Instead of the protection of workers' rights, the blitz raids led to the arrest of undocumented migrant workers, as reported by Pillay (2024). Such policy and policing responses add to the uncertainty of migrant workers, instead of giving them recourse in exploitative sectors.

Parshotam and Ncube (2017) observed that public intolerance of foreigners extends to documented migrants, despite the existence of the constitution and other laws which protect the rights of non-citizens. This indicates a "precarious gap between legal principle and popular legitimacy", as illustrated by Landau (2010:217). This challenges the popular notion that the hostility against migrants in South Africa is based on their illegality and criminality, suggesting other reasons for the hostility. Evidence from the 2008 xenophobic violence in South Africa (Crush, Tawodzera, Chikanda, Ramachandran & Tevera 2017; Bakewell, 2021) shows that the hostility and violence targeted all African migrants in general. For example, Somalian and Zimbabwean homes and businesses were attacked, whether they were economic or displaced people and whether they were documented or not (Crush, Tawodzera, Chikanda, Ramachandran & Tevera, 2017).

South Africa's migration management is deeply intertwined with the country's historical, economic, and socio-political landscape (Fine, 2014). While South Africa's migration policies have evolved, for example, through being "party to a memorandum of understanding between SADC and the UN High Commissioner for Refugees" (Parshotam & Ncube 2017:7), legacies of apartheid in migration governance have

persisted (Landau, 2011; Crush & Dodson, 2007). However, similarly to the EU case, since the 2008 economic recession, nationalistic sentiments and restrictive migration policies have prevailed in South Africa, fuelled by negative perceptions of economic migrants (Parshotam & Ncube, 2017). After gaining independence, South Africa adopted a human rights-based approach to immigration (Amit & Kriger, 2014). In 1995, South Africa became a signatory to the OAU Convention. In 1996, it ratified the UN Refugee Convention, thereby conferring legal status and protection on those deemed to be refugees or refugee seekers through the issuance of asylum permits (Vanyoro, 2023).

On the other hand, through the Immigration Act 13 of 2002 and the 2014 Immigration Regulations Act, voluntary or economic migrants in South Africa receive the legal status of economic migrants through different Temporary Visa Permits (TVPs) (ibid). The UN International Convention on Migrant Workers is the only international legal framework that focuses on the protection of the economic rights of all migrant workers and their families, regardless of their legal status. However, South Africa is not a signatory (Vanyoro, 2023; Van Eck & Snyman, 2015). This means that undocumented migrant workers in South Africa have limited recourse when facing social and economic insecurity.

South Africa's immigration approach has shifted to become increasingly restrictive and exclusionary (Amit & Kriger, 2014; Crush, Skinner & Stulgaitis, 2017; Moyo & Zanker, 2020). The South African Cabinet's approval of the White Paper on the Management of International Migration, which enables the drafting of amendments to the Immigration Act (DHA, 2019), has been particularly significant. This corresponded with the proposal to review the country's accession to the UN Convention without reservation (DHA, 2023). Both policy shifts were endorsed as resolutions by the African National Congress (ANC) in its 2022-2023 national conference (ANC, 2023). While they are still pending, this highlights the politicisation of migration policy-making. Indeed, South Africa is party to numerous international human rights protocols. However, the proliferation of policy shifts and their embedded exclusionary language aimed at controlling and dissuading immigration has significant consequences for the legal ambiguity and uncertainty for both documented and undocumented migrants (Peberdy, 2001).

2.3 The uncertainty of migration

Academic literature on uncertainty from a vast array of social sciences indicates that uncertainty is a constant condition of human existence, often perceived alongside risk (Horst & Grabska, 2015; Dennler, 2023; Maas, Munch, Schader & Schammann, 2021). It arises from the contrasting sources of imperfect knowledge, based on current unobservable conditions that have already occurred, and the unpredictability of the future, given ambiguous information (O'Connell, 1997; Williams & Balaz, 2012; Horst & Grabska, 2015; Stirling, 2010). Bijak and Czaika (2021) identify regular migration flows as manageable and predictable, whilst irregular migration is often unpredictable, unwanted and seen as a crisis by states. Existing literature on uncertainty in migration has observed that, within the different forms of migration (forced, voluntary, regular, or irregular), risk and uncertainty are deeply informed and generated throughout the migration cycle (Williams & Balaz, 2012; Maas, Munch, Schader & Schammann, 2021; Bijak & Czaika, 2021).

Uncertainty, risk, and heterogeneity underscore migration decisions, which are often made in conflicting contexts with limited information about current conditions and an unpredictable future (Martin, Weerasinghe & Taylor, 2013; Kleist, 2016; Griffiths, Rogers & Anderson, 2013). Koser's (2000) study of Iranian asylum seekers in the Netherlands reported that it is only upon the rejection of a visa application that the majority of them began their journey as undocumented migrants. The decision to leave Iran as undocumented migrants was underscored by the uncertainty on whether or not they would be later documented in future. Uncertainty is also maintained throughout the migration cycle (Geddes, 2013). Burda (1993) and O'Connell (1997) state that migrants facing greater uncertainty about the region of their destinations become even more inclined to try their luck in foreign job markets through speculative migration, evidencing that uncertainty does not necessarily dissuade migration.

Social and economic pre-migration conditions may necessitate migration, but states must be politically and legally willing to accept international migrants and confer them with social and economic rights (Hollifield, 2012). Various immigration regimes within different states produce uncertainty by determining the legal status and conditions of presence and access for different migrants (Dennler, 2023). The study by De Lang

and Van Walsum (2014) demonstrated that, in France, the legal status of temporary migrants who are seasonal workers provides them with less uncertainty than irregular migrants, who cannot secure future social and economic security for themselves or their families. This demonstrates that the extent of uncertainty experienced by different migrants differs (Jeffrey, 2008). The protection and enforcement of migrants' rights are contingent upon the status assigned to the migrant by the state, which depends on the state's policies (Bloom & Feldman, 2011).

Ambiguity in government policies and laws can increase uncertainty regarding the legal status of migrants and their access to social and economic services (Goldring & Landolt, 2013). Uncertainty in accessing social and economic services is not limited to migrants in their host countries but also extends to citizens. In South Africa, the DHA is mandated to administer registration and documentation to citizens and immigrants (Belverdere, 2007) under the Civil Service branch and Immigration Service branch (Maple, Vanyoro & Vearey, 2025), respectively. Although academic discourse and civil society narratives often contend that the Department prioritises citizens over migrants in service provision, in practice, both branches are equally affected by corruption, processing delays, and poor customer service (ibid). Both migrants and citizens thus face uncertainty about legal status and access to social and economic services.

Discrepancies exist between ambiguous policies, their implementation, and their impact, for example, in the different governmental departments and levels of decision-making where they must be enacted (Czaika, Erdal & Talleraas, 2021; Czaika, Bohnet, Zardo & Bijak, 2024). This may create unintended consequences that undermine the success of policies by driving a wedge between policy intentions and outcomes (Castles, 2004; De Haas, 2024). Landau (2016) notes the variation of practice among national administrations that hold bureaucratic autonomy across South Africa and the arbitrary power of municipalities to assist vulnerable migrants as they see fit. Elsewhere, Amit and Kriger (2014) provide evidence of new policies emerging from street-level approaches in bureaucratic practices, such as those in the administration of the asylum system and ZDP in South Africa. The denial of documentation rights to those whom the policies are meant to regulate undermines the state's goal of knowing who is in the country, thus creating more undocumented migrants unknown to the

state's keeping. However, Amit and Kriger (2014) further show that the denial of rights by such policies is not limited only to undocumented migrants. This was evidenced by Hungwe and Gelderblom (2014) in their account of the social exclusion of ZEP holders, where the permit has left holders' legal status unrecognisable to the police, who arbitrarily define their legality on the streets. Therefore, documented migrants may initially enjoy the rights that undocumented migrants are deprived of. Still, such rights may covertly cease in practice in the lives of the documented migrants while the state continues to claim their continued provision.

Scholars who have written on liminality (Nyakabawu, 2022; Menjivah, 2006; Rojas, 2019; Chacon, 2015; O'Reilly, 2018) understand it as the in-between space of uncertain legal status that justifies structural legal violence against migrants who exist in the grey area between documentation and non-documentation. O'Reilly (2018) further asserts that migrant experience of liminality is based on waiting or limbo (time), space, political and legal status. Drawing on this understanding of liminality, this study argues that ZEP holders hold a liminal legal status, and thus, their life experiences exhibit structural violence. Menjivah (2006) highlighted the case of legal migrants from El Salvador and Guatemala who are in the United States but do not enjoy the same rights as other documented migrants, as a result of their and their families' existing in shifting legal statuses. Nyakabawu (2022) notes that a similar liminal legality exists in the lives of Zimbabwean migrants who transitioned from being undocumented to the DZP, now ZEP, as they have a perpetual temporary status that does not permit permanent residence. Their legal status is ambiguous, particularly when the permit expires and has to be extended. Hungwe and Gelderblom (2014) argue that by creating a group of migrants who are neither legal nor illegal, the ZEP process created migrants who are in limbo. This is despite the holders having lived in this state for over 15 years, yet still living in ambiguity. The liminality of the ZEP has implications for how the legal status of migrants is interpreted in practice in the broader society.

According to Waite (2009), precarity refers to those whose lives are plagued by instability and insecurity. The term originates from the earlier works of Bourdieu (ibid.), who first wrote about the precarity of Algerian casual workers compared to permanent workers. Precarity studies have since been framed around how the subjectivities and livelihood experiences of migrants are shaped by their legal, social, and economic uncertainties. Anderson (2010) and Fudge (2012) wrote that the lives of undocumented migrants are particularly precarious, both socially and economically.

However, Lewis et al. (2014) challenge the strict legalist binary by arguing that even documented migrants often exhibit precarious positions, especially in contexts where restrictive immigration regimes intersect with neoliberal labour markets. In such settings, the distinction between documented and undocumented status is blurred by bureaucratic ambiguity, policy inconsistency and shifts, as well as systematic instability and insecurity, resulting in a continuum of precarity that includes all legal categories. This framework is particularly salient in the South African context, where the ZEP has generated intense uncertainty among its holders. Introduced as a temporary and conditional form of regularisation, the ZEP has historically provided legal recognition without long-term stability or a citizenship pathway. Its periodic renewal and recent threat of discontinuation have placed permit holders in a liminal legal space, where legality is contingent, rights are provisional, and futures remain suspended. Scholars like Standing (2011) and Lewis et al. (2014) conceptualise this condition as a form of institutionalised precarity, where uncertainty rather than a permanent resolution governs migrants. The threat to withdrawal or non-renewal of the ZEP precipitates not only legal instability but also economic exclusion and social dislocation, highlighting how, for ZEP holders, precarity becomes a permanent condition rather than a phase. This study engages with these debates by interrogating how ZEP-related uncertainty reshapes the lived experiences, survival strategies, and affective worlds of Zimbabwean migrants in South Africa.

2.3.1 The economic and social experiences of migrant waiters

Migrant workers, as defined by the United Nations in Article 2 (1990), are individuals engaged in remunerative activities in a country other than their own. A growing body of literature highlights that migrant workers predominantly fill low-skilled, precarious roles in sectors such as hospitality, construction, agriculture, and sex work—industries that heavily rely on migrant labour (Anderson, 2010; Ruhs & Anderson, 2010; Fine, 2014). These workers often face vulnerability due to exploitative working conditions and legal uncertainties, as many are employed in sectors that fail to comply with labour regulations (Mantouvalou, 2012; Alberti, Holgate & Tapia, 2013). Precarious labour is characterised by uncertainty, informality, low wages, unstable working conditions, and

a lack of social benefits and legal rights (Kalleberg & Hewison, 2013; Hewison, 2016; Kalleberg & Vallas, 2017; Waite, 2009).

The hospitality industry is particularly notorious for its substandard working conditions, including precarious employment contracts and low wages (if any), long and irregular hours, and difficult human resource management practices (Alberti, 2014; Lo & Lamm, 2005). Various forms of precarious work are prevalent in the hospitality industry, including casual, part-time, temporary, and seasonal labour (Zhang, Nardon & Sears, 2022). For instance, in London, migrant hospitality workers often face casual employment through agencies, enduring harassment and unpaid overtime (Alberti, 2014). Swart (2005) attributes the rise in labour casualisation across sectors, including hospitality, to global economic trends, such as seasonal demand fluctuations and efforts to reduce costs by paying less for more labour. Undocumented migrants particularly face more exploitation in the workplace (Olivier, 2011).

The persistence of exploitation in the hospitality sector does not render the workers helpless victims. A growing number of studies demonstrate that migrant workers are not merely victims of the precarity of their work, but actively negotiate ways to mitigate their precarity through their agency (Berntsen, 2016; Zhang, Nardon & Sears, 2022). Sibeon (1999) emphasised the importance of understanding the concept of agency in the investigation of social phenomena. He (ibid) defined agency as the inherent capacity of individuals to respond to situations that arise in their lives. For undocumented migrants, working in unregulated sectors, such as the hospitality industry, is in itself a form of agency, serving as a means to survive non-documentation (Bloom & Feldman, 2011).

Furthermore, a study by Muzeza (2023) focused on Zimbabwean migrant women to demonstrate the power of social networks through the participation of precarious migrants in Workplace-Based Stokvels (WPBS), aiming to mitigate the financial uncertainty associated with the vulnerability of the hospitality industry. Furthermore, Matina’s (2017) study found that migrant waiters often resort to stealing from their employers, sometimes with the assistance of managers. While this may be unethical, it demonstrates the workers' agency and use of social networks to mitigate their precarity.

Blaauw and Viljoen (2009) note that in South Africa, the working conditions and remuneration of waiters improved after the introduction of Sectoral Determination 14 to the Basic Conditions of Employment Act 75 of 1997 (BCEA). Prior to 2007, most waiters relied solely on tips for their income, as the BCEA only regulated full-time employment (Ngindana, 2020). The Department of Labour (DoL, 2007) introduced Sectoral Determination 14 to enforce that employers in the hospitality sector pay waiters standard wages based on the prevailing hourly rate, excluding tips. A tip is a voluntary contribution given to waiters by customers as a gesture of appreciation for service deemed friendly or efficient (Muzeza, 2023). However, nearly two decades later, many restaurants still rely on the commission or tip system and continue to offer substandard wages, highlighting a disconnect between legal mandates and actual practices in the hospitality sector (ibid). This highlights the disconnect between legal mandates and actual practices in the hospitality sector, which leaves workers precarious even when there is established law to protect them. Several scholars (Anderson, 2010; Kononen, 2019; Fudge, 2012; Zou, 2015) emphasise that the precarious conditions of migrant workers are often shaped by the different legal statuses dictated by immigration laws. However, what remains less explored is how the uncertainty experienced by documented and undocumented migrant workers within the same industry can differ. For example, the migration status of a worker, that is, whether they are documented or not, and whether they are temporary or economic migrants, can significantly influence their level of employment precarity.

Goldring and Landolt (2013) highlight that the categories conferred upon migrants by the state are fundamental, as they generate legal status that configures the political, civil, employment, and social rights of migrants. Machinja's (2019) study of undocumented Zimbabwean workers found them to be more inclined to abuse because of the fear of arrest and deportation. Illegality also structured their work ethic, based on their fear of the employer and forced their living and working habits to be inconspicuous to authorities, perpetuating their exploitation and rendering their labour regulation impossible (ibid). This elucidates the common notion that migrant workers in South Africa are apathetic to labour movement or trade union representation (Griffiths, 2014). However, such a view is limited in that it assumes that the precarity faced by migrant workers only results from fear of deportation because they are

undocumented, when even documented migrants also face similar conditions (Hlatshwayo, 2019). A report by Elgersma (2007) also found that, despite migrants in Canada being documented under the Temporary Foreign Worker Program (TFWP), they do not have access to economic protection through basic employment insurance and often work in unstable and non-unionised sectors of the economy. Zou (2015) asserts that the TFWP exacerbates hyper-precarity, which is a multi-dimensional form of insecurity in work relations emanating from precarious legal statuses, which produce a lack of recourse "to a range of employment and social protections in the host state". Zou (2015) demonstrates how employer-sponsored Temporary Migrant Worker Permits grant employers control over the legal status of temporary migrant workers by influencing the terms of employment, such as the right to collectively bargain or join unions.

Beyond labour precarity, the economic uncertainty of migrant workers is compounded by a range of factors that make them vulnerable not only in the workplace but also to broader social inequalities and exclusion (Alberti, Holgate & Tapia, 2013; McLaughlin & Hennebry, 2013; Syed, 2016). The precarious nature of migrant workers' lives is intricately linked to the unpredictability of their legal status, employment conditions and social insecurity, all of which reinforce each other in complex ways. In line with the aims of this study, the next section will further explore how uncertainty manifests in the everyday social experiences of both documented and undocumented migrant workers.

Regardless of their legal status, South Africa's Constitution affords comprehensive legal protection to all individuals residing in the country, encompassing civil, political, and socio-economic rights (Van Eck & Snyman, 2015). However, in reality, even when social security is stipulated in legislation, the social and economic benefits that both documented and undocumented migrants enjoy are limited (Olivier, 2011; Sabates-Wheeler, Koettl & Avato, 2011). Hungwe and Gelderblom's (2014) study of the social exclusion of Zimbabwean migrants in South Africa identified migrants' social experiences as shaped by their access to or exclusion from social services, such as banking, healthcare, and education.

As Jeffrey (2008) mentions, the extent of uncertainty regarding access to social services differs among migrants due to their varying legal statuses. ZEP holders might experience less uncertainty than undocumented migrants. However, temporality is

also deeply embedded in the legal statuses of most migrants, which exacerbates experiences of uncertainty. According to Lapshyna (2025), temporary protection status provides short-term benefits that do not lead to a lawful citizenship pathway or another similar immigration status, leaving migrants uncertain. De Lang and Van Walsum's (2014) study demonstrated how French immigration authorities excluded Moroccan and Tunisian workers from securing permanent employment and, subsequently, social security, by keeping them on temporary visas for extended periods. By denying them permanent residence permits, they had exposed them and their families to a life of uncertainty, demonstrating that documentation and temporary legal status are insufficient to provide social protection.

Bakewell (2021) argued that the recognition of a migrant as a refugee may initially bring the benefit of access to rights and resources similar to those of citizens in their host countries, but this may change over time. The change in their access to social protections can be attributed to shifts in policy, which change the migrants' legal status. Wealthier countries have historically offered a pathway for refugees to become citizens, but this is changing as more countries restrict this pathway by offering temporary statuses (ibid). Policy shifts may also mark changes to the social rights of migrants. The recent proposal to withdraw from the UN Convention with reservations in South Africa as a result of the inability to provide socio-economic rights to refugees in South Africa, as envisioned by the UN Convention (DHA, 2023), exemplifies a policy shift. If finally approved, it will fundamentally withdraw South Africa's obligations towards some of the social and economic rights of refugees, who are documented migrants in South Africa. While refugees have historically enjoyed social rights like education, jobs and healthcare in South Africa, current refugees in South Africa are living in uncertainty about future access to these social rights if this policy shift is enacted.

Migrants experience challenges with accessing education services. Notwithstanding the access to education being a fundamental right ascribed in Section 29 of the South African constitution, regardless of legal status, asylum seekers, refugees, and migrant children face significant barriers in accessing non-payment public education (Cormsa, 2011; Meda, Sookrajh & Maharaj, 2012). These barriers are a result of the temporality

of legal status mentioned earlier in this study, where migrant children grapple with the extension of their documents, which create an oscillating legal status. Cormsa's (2011) report notes that migrant children are pushed out of the public schooling system, a direct violation of the South African Schools Act. Meda, Sookrajh, and Maharaj's (2012) illustrated this when the respondents to the study highlighted that they were forced to enrol in private schools, which are fee-paying.

Migrants also face social exclusion in what Atkinson (1998) referred to as social exclusion of consumption. This occurs when they are excluded from accessing banking services themselves due to their documentation or legal status, which may not meet the requirements for inclusion under the policies of international banking. Hungwe and Gelderblom (2014) state that financial institutions view migrants as a risk and therefore exclude them from banking services. However, to mitigate such financial precarity, Zimbabwean migrants in South Africa utilised their agency and social networks to capitalise on cash transactions, informal stokvels, and cross-border clandestine remittances instead of relying on formal banking systems (ibid).

Access to healthcare is another major challenge for migrants in South Africa. Although the National Health Act (2004) of South Africa stipulates that primary healthcare should be free for all citizens and all migrants in state-run facilities, the country's healthcare provision system struggles to cater to all people, including its citizens (Maphumulo & Bhengu, 2019; Crush & Tawodzera, 2014). Crush and Tawodzera (2014) argue that medical xenophobia is deeply rooted in South Africa's health systems, challenging migrants' rights to access healthcare. In South Africa's public health institutions, as in other state departments, state officials act as gatekeepers, dedicated to excluding migrants whom they believe do not deserve these services (Cohen, 2024). Undocumented migrants are mostly affected as they are considered illegal and undeserving of healthcare, but as mentioned earlier, the legal status of documented migrants is also unstable, rendering them uncertain in accessing healthcare. Besides the medical xenophobia from the state officials, migrants have faced xenophobia from the general public, which has raised the uncertainty of migrants' access to social services in South Africa. This has emanated from vigilante groups like Operation Dududla, which announced the removal of African migrant children from schools in Diepsloot and the blocking of healthcare access to undocumented migrants from institutions in Johannesburg (Mlilo, 2023).

As mentioned earlier, migrants in South Africa are not merely victims of social exclusion; instead, they intentionally seek to address the challenges they face through their agency and social networks. Both documented and undocumented migrants experiencing exclusion in accessing healthcare rely on social networks to navigate their illegal status. These networks are crucial for undocumented migrants in South Africa as they seek to overcome the barriers to accessing social services caused by their illegal status. The respondents in the study by Sabates-Wheeler, Koettl and Avato (2011) illustrated how, to be able to give birth at a South African hospital, one undocumented respondent had to 'borrow' an ID document from a Malawian who had somehow managed to obtain one. Both migrant women were undocumented but drew on their social networks to mitigate their social exclusion.

2.4 The concept of exceptionalism

In response to the main question posed by this research, it is necessary to understand the mechanisms underlying the legal uncertainty that underpins the social and economic experiences of ZEP-holding migrant waiters. As such, this study draws on the concept of exceptionalism to understand what living in uncertainty means for migrants who hold the ZEP in South Africa. The uncertainty of ZEP holders will be evident in the existential conditions that arise for migrants when the legal order is suspended and becomes subordinate to the sovereign's power.

Agamben's (1995) concept of exceptionalism can be traced back to earlier ideas by Schmitt on the configuration of the state's sovereignty, where the state draws on the power of its sovereignty to declare a state of exception, justifying the state's decision to suspend the regular legal order. A brief background on the exceptionalism of postcolonial states reveals that it was inherited from the global hegemony of colonial regimes' biopolitics, which initially emerged from capitalist colonialism in Europe and other global regions as a development project (Patel & McMichael, 2004; Sylvester, 2016; Foucault in Noxolo, Raghuram & Madge, 2012). It justified the mutilation, slavery, murder, capitalist colonisation and control of bodies. Underpinned by capitalist development, the colonial state relied on controlling bodies to regulate citizenship, marriage, education, and labour based on rules framed by one's race, class, or gender

(Sylvester, 2016). Patel and McMichael (2004) argued that within the contemporary global world, biopolitics have converged with neoliberalism to create and control neoliberal subjects. Exceptionalism within the global neoliberal world has sustained the state's power to determine who lives or dies, who is excluded or included, and who is a citizen or becomes identified as an outsider (Sylvester, 2016; Das & Poole, 2004; Noxolo, Raghuram & Madge, 2012).

More recently, exceptionalism has re-emerged to analyse the conditions giving rise to a state of exception, where legislation loses its power over authority and sovereignty, ushering in the maintenance of what would ordinarily be under the control of the law to rest in the deciding power of the leadership (Agamben, 2005; Landau, 2006b). The body of literature on the state of exception in postcolonial states (Noxolo, Raghuram & Madge, 2012; Das & Poole, 2004) describes this practice as being constituted on the margins of uncertainty, characterised by the illegibility, incongruity, and paradox of the state's measures. The decisions of the state become sanctioned outside the law (Landau, 2006b), and a disjuncture between law and practice ensues (Asad, in Das & Poole, 2004). In a state of exception, the decisions of the state no longer require legal justification or sound reasoning, but rather, as in the case of what the state deems a crisis or threat, justify its suspension. In Landau's (2006b) account, the threat is the unwelcome influx of refugees and other migrants, a justification for the state to declare a migration crisis, warranting the assertion of the state's sovereignty through the suspension of the rule of law. However, exceptionalism is not limited to the state's decision, but extends to other migration governance frameworks. Lewis et al (2014) illustrate how the UN Convention's approach to migrant refugees as distinctive from economic migrants is a language of exceptionalism. Although refugees belong to the broader category of migrants, the Convention established a separate framework for refugees, whose differentiated regulation is justified by the distinct categories assigned to them, which differ from those of other migrants.

Agamben (1998) and Landau (2006b) also invoke the manifestation of exceptionalism within the nation-state through the creation of categories of people, wherein they forfeit their inalienable rights and suffer a loss of protection of the rights ascribed to native citizens. Refugees and other legal migrants existing in exceptional circumstances become increasingly thrust outside of legal protection and subjected to a physical existence that lacks political or legal recognition- bare life. The state of exception is

crucial in this study, as it reveals the decision-making processes of states that govern the regulation of people, particularly during times of emergency or crisis.

This study draws on the concept of exceptionalism to understand what it means to live in a state of uncertainty for ZEP holders. However, unlike the state of exception explained above, which suspends the legal order and takes away the legal rights of exceptional subjects, the ZEP suspends the certainty of the legal order. Fundamental in this conceptualisation of the ZEP is an understanding that a state of exception would entirely suspend the legal order of the ZEP, taking away all the rights of ZEP holders. Instead, with the introduction of the ZEP, the South African state decided to indefinitely delay the suspension of the legal order, creating a state of existential uncertainty for ZEP holders.

Vanyoro 2023 states that, faced with an increase in the immigration of mixed Zimbabwean migrants who fit the refugee definition of the OAU Convention and the Refugee Convention and could fall under the jurisdiction of the UNHCR as refugees, the South African state opted to create a different category of migrants in the form of the ZEP. According to Nyakabawu (2021a), Section 13 (2) of the Immigration Act 13 of 2002 was the basis of the introduction of the ZEP:

> *"Upon application, the Minister of Home Affairs may under terms and conditions determined by him grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which should justify such a decision. Provided the Minister may (i) exclude one or more identified foreigners from such categories (ii) or with good cause, withdraw such rights from a foreigner or a category of foreigners"*.

Khan (2024) adds that a humanitarian logic was the justification the state used to avoid its obligations to the Zimbabwean migrants as refugees, taking away the jurisdiction of the UNHCR. The majority of the migrants were asylum seekers or well on their way to applying for the asylum seeker permit. The ZEP guaranteed the state's temporary protection obligations, which it could revoke at any time. At the same time, the asylum seekers unobtrusively forfeited the route to a refugee status, which would have provided them with a legal pathway to permanent resident status and a relatively

stable legal option (Lapshyna, 2025). This cast them into a state of permanent temporality as the asylum seeker process would have allowed an appeal process when rejected, whilst the ZEP process arbitrarily depends on the state. Over a decade after the ZEP was introduced, its holders are living in unpredictable and uncertain conditions (Hage, 2009; Biehl, 2015).

Conclusion

This literature review has explored existing relevant literature on the uncertainty faced by migrants. It began with a broad exploration of migration governance frameworks and the politics of migration, fundamental features of international migration management that shape the experiences of migrants in their host countries, and the uncertainty they face. The reviewed studies evidence the blurred lines in the experiences of undocumented and documented migrants, illustrating the existence of temporality and legal status as dominant features that engender economic and social uncertainty for international migrants. Gaps exist in the literature regarding the tensions between state sovereignty and the need to control migration, as well as the human rights and socioeconomic needs of international migrants. These gaps might be addressed to improve the protection of international migrants.

Chapter 3: Research Methodology

3.1 Introduction

This chapter outlines the research methodology employed in this study. It outlines the philosophical perspective underlying the research, the design chosen to address the research question, and the specific methods employed for data collection and analysis. Furthermore, it also outlines my positionality and the ethical considerations observed in this study. The purpose is to display the methodological choices which were appropriate for answering the research question.

3. 2 Research Method

This study is situated within an interpretivist paradigm, which posits that reality is socially constructed and best understood through the subjective meanings individuals attach to their experiences (Rosenthal, 2018). The interpretivist approach was found to be well-suited for exploring the lived realities of migrants, as it facilitates a deep engagement with the participants' perspectives. The interpretivist approach thus aligns with the aim of this research study, which is to explore the nuanced and subjective experiences of the legal uncertainty faced by migrant ZEP holders. By privileging participants' narratives, this study seeks to uncover meanings that may be obscured in quantitative, positivist approaches. Consequently, this study employs a qualitative research strategy, which allows for an in-depth exploration of social phenomena (Creswell, 2009). The qualitative approach was adopted in this study, specifically to gain an in-depth understanding of living in uncertainty through the lens of migrant waiters holding ZEPs, as well as undocumented migrant waiters, in order to gain a comparative understanding.

3.2.1 Research Design

A comparative case study design was adopted because it provides a framework that allows for the examination of similarities and differences across contexts, thus giving the study rigour and enabling the transferability of the research findings (Bartlett & Vavrus, 2017). This allowed for a nuanced understanding of how legal uncertainty is experienced by both migrant waiters who hold the ZEP, as well as the distinct yet related participant group of undocumented migrant waiters. The triangulation of perspectives synonymous with comparative case study design go further than a normal case study (Gustafsson, 2017; Cousin, 2005) and in this research, ensured that the meaning of legal uncertainty was not only examined from the vantage point of those directly affected, but also undocumented migrants who do not hold the ZEP (Bartlett & Vavrus, 2017). It also allowed for the heuristic process of discovery (ibid), inherent to qualitative research, which enabled me to explore new ideas and leads (Becker, 2009), thereby deepening the analysis by situating individual experiences within broader social contexts.

3.3 Study Setting

The city of Johannesburg in South Africa is a central African economic hub which has historically attracted international migrants due to its economic opportunities (Peberdy, Crush, Msibi & Box, 2004). Hillbrow in Johannesburg was chosen as the perfect study setting because it is a high-density inner-city suburb known as a key entry point for migrants into Johannesburg (Schuler, 2013). Initially, the McDonald's restaurant in Hillbrow was conveniently selected as a central location for many participants who live in the vicinity of Hillbrow. It was also selected for the security of the migrants, who would be able to navigate the familiar area better. However, as discussed further below, the majority of participants opted for telephone interviews, citing convenience as the primary reason.

3.4 Population and sampling

The study population consisted of Zimbabwean migrant waiters. The Zimbabwean migrant waiters were chosen because Zimbabwean migrants have been found to

dominate the South African hospitality sector (Muzeza, 2023). The sample included six ZEP-holding migrant waiters and four undocumented Zimbabwean migrant waiters working in different restaurants around Johannesburg, residing in the Hillbrow area. While the primary focus was on documented ZEP holders, incorporating undocumented migrants provided a comparative lens to understand how uncertainty manifests differently among migrant groups (Acharya, Prakash, Saxena & Nigam, 2013:330).

A non-probability sampling method was utilised, which is appropriate for small sample sizes and the exploration of real-life phenomena (Taherdoost, 2016). I employed the snowballing, non-probability sampling technique by identifying the first participant from my network of ZEP-holding migrant waiters. The first participant was then asked to refer other eligible participants, including undocumented waiters. I found that identifying the first participant from my network eased the snowballing process, as further participants were more willing to speak to me based on our mutual connection—the first participant. This not only built trust between me and the participants, but it also made the recruitment process smoother. To comply with the Protection of Personal Information Act (POPIA), participants who were asked to identify other potential participants were instructed to obtain permission before sharing their contact details (Arthur, 2020). Recruitment continued until the saturation was reached after the 10th participant, when the responses of the participants were now similar, and no new or different responses were recorded

A brief discussion of the participants' demographics is necessary. Unlike the more systematic random-probability sampling technique (Creswell, 2009), the participants in this study, including their gender and other characteristics, could not be predetermined. The participants depended on those who were willing and able to speak to me after being referred. The study’s participants comprised 10 Zimbabwean migrant waiters currently employed in various restaurants across Johannesburg, South Africa. Out of the 10 participants, 6 were women and 4 were men, indicating a slightly higher proportion of women. The majority of the participants were unmarried, suggesting that they had left their families behind in Zimbabwe, a common trend among international migrant workers seeking better economic opportunities (Urano & Yamamoto, 2008). In terms of the age range of the participants, they were between

31 and 43 years, with the majority (6 out of 10) falling within their 40s. Based on their educational backgrounds, most participants were relatively well-educated, having attained secondary education, but only one had attained tertiary education. This suggests that the majority of participants are low-skilled workers, which is likely why they are involved in the restaurant industry. Most of the participants arrived in South Africa between 2006 and 2010. This period aligns with the severe Zimbabwean political and economic crisis, which forced many citizens to seek better livelihoods abroad. These arrival patterns also indicate that some migrants have spent almost two decades in South Africa, potentially navigating complex legal, economic, and social uncertainties throughout their stay.

TABLE 1: The profile of the participants

Name	Age	Gender	Marital Status	Educational Level	Year of Arrival in SA
Samu	39	Female	Single	O Level	2009
Peter	42	Male	Married	O Level	2002
Rose	37	Female	Single	O Level	2008
Belinda	36	Female	Single	O Level	2010
Portia	42	Female	Single	Certificate	2006
Packs	43	Male	Married	O Level	2007
Melusi	32	Male	Single	O Level	2011
Faith	42	Female	Single	O Level	2007
Martha	31	Female	Single	Tertiary	2009
Dlulas	42	Male	Married	O' Level	2008

3.5 Data Collection

To answer the central question in this study, which sought to understand what it means to live in a state of legal uncertainty, an interview schedule was developed based on questions that explored the participants' perceptions of their subjective social and economic experiences. The questions were asked to allow participants to share their perceptions of uncertainty. Primary data were collected through individual, in-depth, open-ended, and unstructured interviews to gain a rich, detailed, and thick description

of the participants' experiences (Creswell, 2014). The interviews took between 45 minutes and an hour. Rahman (2023) highlighted that both telephonic and in-person interviews are equally effective for collecting valid data. Therefore, participants were asked to choose between in-person and telephone interviews, depending on their convenience. The majority of the participants opted for telephonic interviews, while only 2 out of the 10 participants chose to have the interviews in person. Saarijarvi and Brattfound (2021) found that in-person interviews provided the interviewer with observable social signs, a safer and more comfortable environment for participants, as well as fewer technical delays. Indeed, even through the telephonic interviews, I was able to record social cues from the participants, for example, through verbal signs like deep sighs and non-verbal signs, e.g., a long pause or silence before responding. However, Saunders, Lewis, and Thornhill (2009) argued that telephonic interviewing is ideal in qualitative research because it provides anonymity, privacy, and minimal distraction to both participants and researchers. This study considered migrants to be a vulnerable group, and their vulnerability was exacerbated by restaurant raids and the general anti-migrant environment in South Africa, which was mentioned earlier, necessitating telephonic interviews. The vulnerability of the participants might also explain and justify their preference for telephonic interviewing over in-person interviews. The interviews in this study were conducted in Ndebele and English, and I asked the participants to use either of the two languages with which they were most comfortable. A recording device and field notes were used to record the data.

3.6 Data analysis and interpretation

Thematic analysis was used in this study. According to Saldana (2021), thematic analysis involves interpreting data through the creation of symbolic constructs by coding data in an iterative process that refines and recodes the codes until a point of saturation is reached, at which point themes emerge. I adopted the method of reading, reviewing, and annotating the text before beginning the actual systematic thematic coding (O'Leary, 2004:196). In this study, the data collected in the interviews were first sorted through by listening to the recordings, reading the notes, and transcribing the data verbatim, and then further recorded as a dialogue. From the transcripts, analytical

categories were assigned and codes were generated inductively through a continuous process of revisiting and refining the codes. This process was repeated until themes emerged, at which point no new codes were generated. The themes were developed inductively from the data collected and were also informed by the theoretical concepts discussed in the literature review. Throughout the analysis, no data was deemed irrelevant until the analysis was complete, to avoid losing important data unnecessarily (Caudle 2004:419).

3.7 Challenges and limitations of the study

Several challenges were encountered during this study. Unlike in quantitative research studies, where probability samples are large and presumed to be representative, this study will not necessarily be representative of all migrant workers, as only a small sample will be investigated; thus, the findings will not necessarily be generalisable (Schoch, 2020). Because this study employed the snowball technique, recruiting participants proved to be more challenging than I had anticipated. Most of the people I spoke to about taking part in this study were very sceptical, and ironically, the scepticism was from both documented and undocumented migrants. This was a result of the precarity and vulnerability of migrants, as discussed earlier, exacerbated by the escalation of anti-migrant rhetoric reported by the Human Rights Watch (2024) since the end of the 2024 election season. The intensification of raids in restaurants, as mentioned earlier in this study, can also be viewed as having left migrants in South Africa's hospitality sector apprehensive about participating in the study. However, to a large extent, identifying the first participant from my network helped build trust and rapport between me and the other participants after I informed them of my referral.

In line with the literature above, which found that migrant waiters are precarious, regardless of their documentation status, a general misconception existed among both groups of participants. It was that, in researching the uncertainty of the ZEP, I might have had the power to address the challenges they raised. I constantly had to remind them of my position as only a researcher. I shared with them the contact details and address of the Lawyers for Human Rights in Johannesburg, as included in their informed consent form, who could address some of the questions and challenges they were raising.

3.8 Access

Getting the participants to agree to do the interview and then meet up with me proved to be more difficult than I initially thought. I had planned to begin the data collection process at the end of November 2024 and complete it before the Christmas holidays. However, because the hospitality industry is bustling in December, many of the participants were too busy to participate in the interview. Ultimately, I had to wait until the beginning of 2025 to complete some of the interviews. Even after identifying willing participants, another challenge arose in scheduling them. For some participants, I had to make appointments, which they confirmed, and then I had to reschedule them numerous times. Therefore, the majority of the interviews had to be done telephonically instead of in person, which was difficult even then.

3.9 Positionality and ethical considerations

According to Cousin (2010), our worldview is shaped by our cultural resources and is reflected in the research. Throughout this research, I was aware that my values, interests, and subjectivity could not be separated from the research due to my positionality. Being a Zimbabwean migrant in South Africa gave me the position of insider status, particularly because I share the same language and culture as Zimbabweans, who speak Shona and Ndebele. This promoted better communication and fostered feelings of openness and trust from the participants. However, my shared nationality hindered communication with one of the participants, Packs, who appeared to hold back in sharing some of his experiences and gave straightforward yes/no answers, even when I tried to probe. I interpreted this as him assuming that, based on being a migrant from Zimbabwe myself, I already knew the answers to the questions I was asking, even though I have never held a ZEP. As a former migrant waiter and Zimbabwean national myself, I presented a challenge in maintaining objectivity, particularly when participants shared sad or emotional parts of their own experiences, which I may have resonated with. I overcame this by explaining my research methods

and approaches as well as separating my own experience from the findings through the use of theoretical evidence and literature to interpret and support the findings.

Having an insider position allowed the dialogue with the participants to be casual and free, although at the end of the discussion, most participants seemed to have questions that extended beyond the research questions. Even though I had stressed that the research was for academic reasons only, their questions related to what I believed would be the future of the ZEP extensions or if I knew what they could do about their vulnerability, which made me realise that they did not consider me just an insider but an expert, which I was not.

In line with the requirements of the University of the Witwatersrand's Human Research (Non-Medical) Ethics Committee, I requested ethical clearance while submitting my research proposal. Subsequently, my application was approved and I was issued with a clearance certificate, Protocol number: ACMS24/10/04.

Upon receiving ethical clearance, participants provided consent in both written and verbal forms, along with information sheets outlining the study's aims and procedures. However, to protect the anonymity and confidentiality of the participants, consent was obtained through verbal agreement instead of written consent, due to the vulnerability of the undocumented participants who were already apprehensive and sceptical about participating in the study. Using their real identities could expose them to the risk of being identified and arrested or dismissed from work; thus, pseudonyms were used. Permission to audio record the interview was also requested before each interview. The audio recordings were stored on a password-protected laptop, and field notes were kept in a secure drawer. The participants were informed that their participation would be entirely voluntary and that they would not receive any compensation for taking part in the study. They were also made aware that their participation was strictly for academic purposes. It was also made clear to them that they could withdraw from the study at any time without facing negative consequences.

Conclusion

This chapter outlines the research methodology employed in this study, grounded in an interpretivist paradigm and informed by the aim of exploring the lived experiences of Zimbabwe Exemption Permit (ZEP) holders as they navigate legal uncertainty in South Africa. The qualitative research strategy within a comparative case study design enabled the centring of the subjective voices of ZEP holders and undocumented migrants, who both face legal uncertainty. The chosen methods were particularly selected to ensure methodological alignment with the research objectives and to enable rich, nuanced, and contextually situated insights. Furthermore, the chapter demonstrates the importance of researcher positionality, acknowledging how my background and involvement in migration advocacy have shaped my access, interpretation, and ethical accountability. The balance between insider familiarity and critical distance was maintained through ongoing reflexivity and methodological transparency. This provides a solid foundation for the data presentation and analysis that follows in Chapter Four. Through this design, the study aims to make a meaningful contribution to the scholarship on migration and precarious legal status in South Africa.

CHAPTER 4: STUDY FINDINGS AND ANALYSIS

4.1 Introduction

This chapter presents and analyses the findings of the qualitative research, as outlined in the methodological chapter above. It draws from the data collected to answer the question posed by this study, to understand what living in uncertainty means for migrants who hold the ZEP. The following themes were identified from the qualitative interviews and are discussed below: Changing migration status, Misinformation, Scepticism and deflection to illegal migration, Invisibilised legal status, Conditioned state of exploitation, Living in fear, Future perceptions, and Agency.

4.1) Changing migration status

Czaika, Bohnet, Zardo and Bijak (2024) highlighted that both migration decisions and migration processes are not static but evolve as they respond to changing circumstances and opportunities, which are usually based on future expectations. The fluidity of the migrant categories and the practical realities of the migration process have often been lost in the institutional framing of migration, contrary to unrealistic, homogeneous assertions on migration (Crawley & Skleparis, 2018). The changing migrant status of the research participants was very evident from their responses, as 90% of them disclosed that they had once held an Asylum seeker's permit. It is worth noting that the introduction of the ZEP initially appeared to offer a 'better' documentation option for many Asylum holders, who hoped for a more effective administration of their permit. They had jumped at the opportunity of an alternative visa option because the administrative requirement of the Asylum permit demanded its extension every 6 months (Crush, Skinner & Stulgaitis, 2017), contrary to the then DZP, which required an extension every four years. The reason for moving from the asylum seekers' permit to the ZEP (then DZP) was illustrated by one of the participants, Rose:

> ***Researcher****: Is there any other document you have used before the ZEP?*
>
> ***Rose****: Yes, I did use an Asylum seekers' permit for a year, because we were told to submit them.*

***Researcher**: Um! Was the Asylum seekers' permit valid?*

***Rose**: Yes, my permit was valid then.*

***Researcher**: Uhm! Thank you.*

***Rose**: But because of the hype of the DZP, we started with the DZP. The DZP hype that we would get our papers fixed and find ourselves working well and stopping this thing of stamping or extensions because remember there was the stress of getting the Asylum stamped.*

***Researcher**: How was it stressful?*

***Rose**: When you had to go and get it stamped you would have to have stress first*

***Researcher**: Why*

***Rose**: Sometimes you would get returned back home, sometimes they would stamp and sometimes they would not want to.*

***Researcher**: Oh! Alright, alright, So you thought the ZEP, the DZP would be better?*

***Rose**: Yes, so that perhaps the up and down I did would end and a person could work well and not get disturbed not that every time one should be in Home Affairs.*

The ZEP was initially welcomed as a permit that would provide access to social security, including better working conditions and opportunities for economic and social services, such as banking and healthcare. However, the comments of one of the respondents, Peter, show that what was anticipated has since changed with the shifts in the permit:

> *"Me on my side, for example, on my side being a ZEP holder I have realised that at first it gave me an opportunity to live like another person, giving me an opportunity to have a bank account, however, right now I don't have a bank account that is working."*

4.2) Misinformation

Griffiths (2013) emphasised that for individuals to manage risk and uncertainty effectively, access to information is crucial. A lack of or limited information has clouded the entire term of the ZEP. From the participants' responses, it was also evident that the initial introduction of DZP was plagued by limited information and ambiguity about the benefits and future of the ZEP, which would later have a profound impact on their migration lives and those of their families.

For many ZEP holders, the ZEP presented an alternative to either ending the tedious process of extending the Asylum permit every three months or obtaining a legal document. Those who previously held asylum seeker permits had handed over their asylum documents with the anticipation of a longer-term 4-year permit, in the hope of receiving more benefits in the future. The future impact of the ZEP on the holders and their family members was unknown to the holders at the time of application. They had also believed that, just like other mainstream visas, their children would be documented under them. However, while ZEP holders enjoy the limited benefits of having a legal status, their children and immediate family members do not, but continue to be undocumented (Alberti, Holgate & Tapia, 2013; McLaughlin & Hennebry, 2013; Syed, 2016). According to one of the participants, Faith, her son was unable to attend school for over a year as a result. Asked whether she could have her son documented under her as a ZEP holder, she responded:

> *"I did not know, and I still don't know. I didn't have any other information about that. Now he had to start grade 8, I had to look for private schools, you know those funny schools you know, and then I used to pay a lot of money.*

Another participant, Samu, shared how this was affecting one of her children, who was nearing matric and had to be documented for the final high school exam.

> **Researcher**: *Okay… and then for documentation, do they not have problems at schools etc, what do they use?*
>
> **Samu:** *Um! They usually have problems because they need permits at schools but in other schools, like for example if I have a ZEP, if you show them in other schools they agree even if the child is not under me in the permit. And then if you want to apply for a child, because I tried to apply*

for her, they say that must go to Home Affairs and request a letter good cause but it was a struggle and I ended up leaving it.
Researcher: *Alright, and then is the child in Matric? Are they in primary level?*

Samu: *The child is in primary, because the child is 14 years old it is finishing grade 7.*

Researcher: *Yah! I hear what you mean. Now when they keeping saying they are changing the ZEP, now they extending, now it's being cancelled, now we do not know what is going to happen to the ZEP, does this not affect the child at school?*

Samu: *No, no at school it doesn't affect him now, it will only affect him when he goes to write his final Matric because when he go to secondary they will be want documentation, especially when he writes Matric they want documentation because she can't write without documentation.*

Researcher: *So for now are you using your ZEP permit at their school, if* you *show them your permit do they allow him to learn?*

Samu: *Yes, at their school for now they agree, It depends with the school, others do not agree.*

Samu's responses showed that regardless of their legal status, migrant children face challenges with being enrolled into school. However, even when migrant children can access education in schools at a particular point, shifting migration policies and the arbitrary policies within different schools present significant uncertainty about the long-term or future access to education for migrant children. Migrant parents thus have to make decisions about the current and future education of their children based on minimal knowledge. Faced with a lack of information on the available and feasible avenues for documenting the children of ZEP holders, Samu admitted to trying the many different advice she received until she eventually gave up. Samu's tone, as inferred from the statement "I ended up giving up", suggests emotional exhaustion, which is an adverse psychological effect of discrimination and long-term exposure to unfavourable circumstances that often affects stigmatised groups (Schaufeli, Leiter & Maslach, 2009; Mokoena, 2020).

For Faith, her documented status could not save her undocumented son, whose undocumented status later bore far-reaching consequences during and after the COVID-19 pandemic, when he had to stay at home and not go to school, which impacted his health to date:

> *"…From my point of view, I think it was the stress of not having papers and no work that he started hanging around the wrong people and started to smoke weed unfortunately, according to the doctors, where they were buying the weed it was being mixed with something (drugs) so he started having a mental problem so from then I went to a hospital…So when I got there, they asked me what do I use, I produced my son's passport, I produced my own papers then so now, they wrote whatever they wrote down so according to the bill they gave me I owed R16000…since he came out of the hospital, he was under medication, and then I had to look for money to take him to a rehab because in a hospital he didn't stay for long, he stayed only December, January, two months and then he was out. So that whatever it was, it wasn't totally out, so I had to look for money to pay for a rehab…he went there, he stayed there for three months".*

The lack of information and the subsequent uncertainty this generates for holders has been sustained throughout the life of this special permit, from the DZP to the ZEP. The administration of the permit has also been plagued by irregularity and inconsistency, as the constant shifts in information dissemination regarding the legal status have been lacking clarity not only for the holders but also for their employers and the general public. Faith captured the consequence:

> *"….you never know what is said, you never know what is decided at the end of it. Here we are paying money now, every now and then we have to renew. We have to pay money. You know there was a time when they were saying when your waiver is out you have to pay something like 3000, I'm earning 150 per day I'm working four or five days a week. The tips they take 20 % of them how long do I have to, you know, come up with that type of money and then I have to go there and pay you know. It's a problem. It's a big problem".*

4.3) Scepticism and deflection to illegal migration

Migration policies, just like other migration processes, are not static but change over time. The impact of changing policies was highlighted by Czaika and Hobolth (2016),

who noted that policy changes have the potential to generate uncertain outcomes, thereby creating volatile and uncertain conditions that deter people from using legal migration channels and lead them to resort to illegal ones. The deflection from legal migration to illegal migration was first evidenced in the responses of the undocumented migrants who held the asylum permit before, but eventually stopped going to extend the Asylum documents because of the change in the administration of the asylum permit, which subjected them to deportations at the Refugee Centre when extending their permits. They are now living and working in South Africa without documentation. Belinda clarified why she deflected from being a legal to being an undocumented migrant:

> ***Researcher:*** *Since you came to South Africa, have you ever used any form of documentation?*
> ***Belinda:*** *Yes I did, I once used in asylum seekers permit.*
> ***Researcher:*** *Is that so, and what happened to it?*
> ***Belinda:*** *Yes, I used it and eventually I felt tired and became afraid to go and renew it because, anyway, there were rumours with people saying that if you went there you would get arrested whilst trying to extend your asylum and they send you back to your home country. So I ended up just sitting and going there.*
> ***Researcher:*** *Okay, when was it then when you last went there, when did it expire?*
> ***Belinda:*** *I was, I had taken it in 2011, oh no, I think 2014, that's when I got it, and then I used it like uh, I think 3 years then I left it because I was afraid of getting arrested.*

It was apparent that both documented and undocumented migrants did not trust the process of attempting to apply for documentation through the refugee process for the first time, and for those seeking to renew their Asylum permits. As a result, there is a possibility of a deflection from a legal migration status to an illegal migrant status. This is not limited to ZEP holders, but also applies to other documented migrants, such as refugees. Similarly, ZEP holders have been subjected to different shifts in the special permit since its introduction in 2009. However, since the attempt to cancel the permit in December 2021 was announced, various directives with differing degrees of severity

have been issued, and legal challenges have accompanied these. Holding a ZEP permit means that the holders have had to endure the strenuous process of navigating life through the uncertain shifts of the permit. Indeed, the majority of respondents initially complied with the directives, even though the permit generated vulnerability and uncertain conditions for the holders. However, the recent waiver and General Work Visa appear to have dissuaded many ZEP holders from applying for a change to their ZEP. The responses from ZEP holders displayed a loss of faith or scepticism in the directives and recent measures to transition them from the ZEP to the General visa, and they experienced reluctance to apply for the waivers. This has the potential to deter the dissuaded ZEP holders from pursuing legal migration and instead lead them to an illegal migration status. Peter shared this scepticism:

> ***Peter:*** *For now I am confused that with the new permit that is coming through eh, they are saying we must apply, we must have the waiver first. I don't know the reason why to be honest because I am feeling like this may be just another way of us spending more money on this ZEP. So with the permit they are giving us same time, I think that (pause), even if I have not applied for the waiver I must just apply for the permit. Instead of applying for a waiver because I think it's just a waste of time.*
> ***Researcher:*** *Have you ever applied for a waiver?*
> ***Peter:*** *No, I have only applied for it this month. I have a January submission date.*

In another discussion with a different respondent, Portia, who herself applied for the waiver, highlighted that many other people had not applied for the waivers, suggesting ignorance as the reason:

> ***Portia:*** *…last time we were told to apply, and many people did not apply.*
> ***Researcher:*** *For waivers?*
> ***Portia:*** *Yes, and people's applications came out, so that thing of being always remaining behind it doesn't help. You'd rather lose money but know that you the receipt here it is, but if you remain behind again you will cry at the end of the day to say if only.*
> ***Researcher****: Um! What do you think is making people to not apply for the first waivers?*
> ***Portia:*** *Haa! People are lazy, people do not want to spend money*

> ***Researcher:*** *Could it not because they have grown tired?*
> ***Portia:*** *Nooo…it's not being tired. It's like now if we were to say there are visas for overseas that are coming out, I will go for it, everyone will go for it. Where there is money, you make sure you go there, but if you have…there are some people who are just ignorant.*

The financial requirements attached to the shift of the ZEP towards a work visa, in the form of paying to apply for the waiver and, thereafter, the General Work Visa, appear to have exacerbated the scepticism of the ZEP towards holders, who perceive it as a financially burdensome and unwarranted exercise. This is because not only did the respondents pay R1550 for waiver applications, which they were unsure would be successful, but those who were rejected were also supposed to reapply for appeals. Upon getting the waivers, they were also required to pay an additional R3500 for the General Work Visa (GWV). For some respondents, the payments for waivers and then for the GWV were unnecessary and only served to deter them from applying. Not only did the application for the ZEP extensions or waivers appear to be a futile financial exercise, but the participants also weighed the costs of regulating an uncertain permit against many other financial obligations they had; thus, the ZEP was at the bottom of their hierarchy of responsibilities. The precarious nature of their employment also exacerbated this, where waiters are already exploited and not earning standard wages, rendering the process of applying for the waivers and the subsequent GWV too expensive for the ZEP-holding waiters.

The period between applying for the waiver and the GWV was also marked by legal contestations between the state and civil society regarding the ZEP; thus, the process of extending the ZEP generated apathy among some participants, dissuading them from applying for the waiver.

4.4) Invisibilised legal status

A paradox exists in the visibility of migrants to the government relative to society. Amit and Kriger (2014) argued that the invisibility of undocumented migrants to the government renders them very visible to society as a result of their undocumented

status, while, in contrast, documented migrants remain very visible to the government. However, their documented status is unrecognised by society. This tragedy is a result of ambiguous policies, whose enforcement in different areas of decision-making or levels of government faces a lack of consistent interpretation or coherent clarity (Czaika, Bohnet, Zardo & Bijak, 2024). Policy inconsistencies create confusion for migrants and the stakeholders tasked with implementing the particular policy (Ibid, 2024). Since the 31st of December 2021, ZEP holders have held a 'legal' document through the multiple verbal directives given by the Minister of Home Affairs, but because the extension does not physically appear on the permit, service providers (banks, police, employers, etc) and the general society do not acknowledge the ZEP as valid. This paradox was well articulated by the participants on their access to the banking system, where banks either ignore or do not understand the multiple directives and respond by arbitrarily freezing ZEP holders' bank accounts:

> ***Researcher:*** *And then in terms of access to the bank, your bank accounts etc?*
>
> ***Rose:*** *The bank accounts of most people were closed, for many people, which is why their waivers are not coming out, they had to deposit money physically. Do you remember when last people had permits, to actually have it as a valid permit…is it 2020.*
>
> ***Researcher:*** *By 2021 they were announcing cancelling it.*
>
> ***Rose:*** *So when you are going to the bank they request people to produce new permits, people do not have permits, permits are still not out, people only have waivers and the banks do not care about that.*
>
> ***Researcher:*** *Do they not take the extensions because when the directives expire they announce on TV that they are extending the permits*
>
> ***Rose:*** *Yes, if you have applied for an extension but remember that most people have only done the waiver and not the new recent extension that has been given by Schreiber now. You see?*
>
> ***Researcher:*** *But I am asking that from 2021 when they have been giving the extension, has it only been verbally and not on paper?*
>
> ***Rose:*** *Yah! No,no,no,no,no, the bank does not recognise that! Especially FNB, FNB has been giving many people headaches because of bank accounts. So much so that even where the Minister has spoken*

they do not believe, they are not taking from whatever the Minister says, they only want it on paper. And that causes corruptions, it causes that become forced to say here is a little R300 please help me you see?

Researcher: *Uhm! How would they assist you?*

Rose: *At work they need an account, I don't know but at work they need an account. I do not know how but some games will be played for you to also get an account.*

Agamben (1998) highlighted that there exists a "zone of indistinction" where it is difficult to establish which side of legality a person belongs to. For undocumented waiters, the uncertainty of navigating the employment pool appeared to be a standard condition, as employers have always been sceptical of hiring undocumented waiters. However, the data from the participants suggests that since the crackdown on restaurants by the Department of Labour and Immigration, an increasing number of employers now prefer people with South African ID documents to migrants because of the risk of fines or arrest that comes with being found with a worker with an expired or no document. Ironically, the same fate seemed to affect documented migrants. According to most ZEP holding respondents, employers are now sceptical about the legality of the ZEP due to the multiple extensions and the legal contestations surrounding the permit. Holding a ZEP becomes similar to not being undocumented, as employers do not recognise or trust the ZEP as a legal document. This means that ZEP holders thus become tied to their current jobs, and by extension, conditioning them to live in exploitation. As a result, ZEP holders forfeit opportunities for alternative employment, as illustrated by Peter:

Researcher: *In terms of moving, getting a job elsewhere…are you able to get a job now?*

Peter: *These days it's very tough, there are many people who are no longer working because they do not have papers. There are many many people, simple because they are hardworking yes, but because the owners realised that it does not help to pay fines and all each time authorities come. There are many people that are not working, so for those people who cannot get documentation they cannot get a job*

Researcher: *Oh Alright, but I am asking specifically as a ZEP holder.*

Peter: *At the moment myself, I have enough experience as both a manager and a waiter, so there is this place where I, I won't mention the name right?*

Researcher: *No, you do not have to.*

Peter: *Yeah! I got a job, yes I got a job and I went for an interview, so when I went for an interview, immediately when I went for an interview everything was fine right?*

Researcher: *Yes*

Peter: *Let me say that I killed the interview and after I finished the interview they told me directly that, they said that Man you did well, very well but however, because you do not have a Green barcoded ID we can't hire you, you see that?*

Researcher: *Umm! But the ZEP is legal*

Peter: *That time we are told that since we have the ZEP eh Yes, we can do anything, see.*

Researcher: *Yah neh!*

Peter: *So I did not get that job because I am a ZEP holder, you see.*

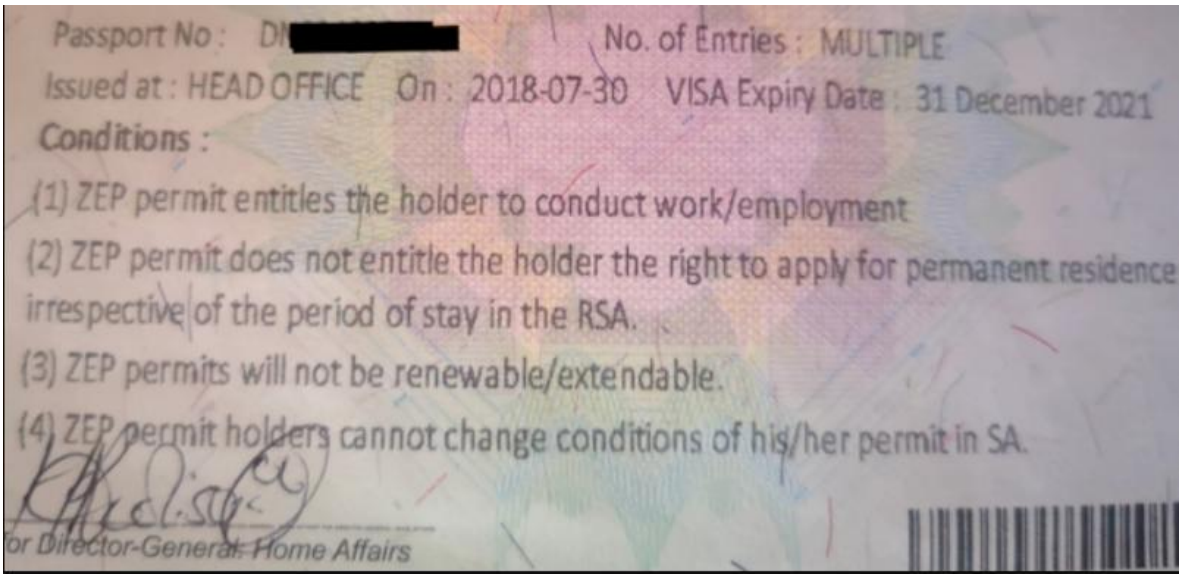

FIG 1 Zimbabwean Exemption Permit Expiry Date

The invisibilised status of ZEP holders was also evident in the uncertainty surrounding their movement when travelling domestically and across the South African

border. State officials did not understand or recognise the extensions as per the multiple directives from the Minister of Home Affairs:

> ***Researcher:*** *Are you able to travel, particularly these days?*
> ***Samu:*** *Yeah, to travel home is possible to travel home, but then it's also depends when you get to the border, the official that you find because another person ne, others give, is it there supposed to stamp on entry, for those with ZEP, you might find maybe the official has stress they can give you days.*
> ***Researcher:*** *Oh! Are they not meant to give you days?*
> ***Samu:*** *Yes they are not supposed to, they are just supposed to stamp entry, as long as you have the ZEP you show them it's just stamp.*
> ***Researcher:*** *Alright.*
> ***Samu:*** *I have heard others say even if you have shown them, other officials stamp, I mean just give you days.*
> ***Researcher:*** *Um, and then when he gives you days, what must you do, what must you then do, go out of the country again?*
> ***Samu:*** *Ah (sullen tone)! Others say you would have to go out again and then others you'd find that they had been arrested by police and the police would say this ZEP paper is expired, wanting money so AH!*
> ***Researcher:*** *Oh! They will be wanting money? Alright…uhm. Then how much money will they be asking for at the border that people end up paying for?*
> ***Samu:*** *For the borders I really do not know how much, but I usually hear so, yes because when you have a ZEP they are just supposed to stamp for you the entry.*
> **Researcher***: Without putting days?*
> **Samu***: Yes*
> ***Researcher:*** *Alright*

The ZEP was indeed anticipated to be a more stable type of documentation that recognised holders as economic migrants compared to the asylum permit, which had categorised them as refugees, but that has not been the case. Bakewell (2021)

highlighted the preclusionary future impact attached to particular migrant categories, which he stated can become a trap for them and their families in the future by inhibiting the pathway to citizenship and leading to a life of perpetual migrant status. In changing from an Asylum seeker's permit to a ZEP, the migrants initially hoped to benefit from the stability of the ZEP, which could ultimately lead to citizenship. However, since the announcement of the intention to cancel the ZEP and the subsequent directives, the ZEP now appears to have trapped ZEP holders in limbo, ironically, very similar to, or even worse off than, the Asylum permit they ran from. Faith demonstrated how the lasting preclusionary effects are exhibited in the ZEP through constant shifts in the policy, which make it impossible for them to move towards a status of citizenship:

> *"I think they should just give us permanent residence, because how many years have we been using this? I mean, from what I hear, what I understand, there is a certain time that a person stays in a country and after that they are given a permanent residence so now, we keep on renewing and paying money, renewing and paying money, I don't know is this is a scheme of just you know putting money".*

4.5) Conditioned state of exploitation

Machado's (2024) study on deviant policies found that some policies can be legal traps that produce uncertain zones of exploitation and vulnerability for documented migrants. The evidence from this research showed that while targeting undocumented migrants, the increased crackdown on illegal immigrants by the Department of Home Affairs in collaboration with the Department of Labour, unintentionally impacted documented ZEP holders. Holding a ZEP reduces the holders' inclination to challenge unlawful labour practices, such as deductions on tips, lack of employment contracts, and substandard wages, as it creates the risk of losing one's job in a period where the potential for finding a new job is reduced, thus rendering them more precarious. This was highlighted in my discussion with Faith:

> ***Researcher:*** *…what impact does the ZEP, holding a ZEP and its uncertainty have on your working conditions?*
> ***Faith:*** *The problem is when you...uh, I don't have an ID here, so I can't really go to the bosses, even if I have queries, I can't really go to the*

bosses and say, this is 1, 2,3,4,5 you are paying me less and I'm working more hours and stuff like that. I don't know there's just that uncertainty in that uneasiness, that what if they fire me and it's not easy because most companies right now, you know, there's home affairs all around, running up and down about these permits and stuff. So you just have to say this is where I am right now, let me just make do with where I am and what I have".

Researcher: *Are you able to find a job elsewhere, like as a ZEP holder now, if you decided that maybe they were not treating you well at work, or you were not happy or any other reasons that would make you want to market and look for another job?*

Faith: *I'm not sure because when I applied for my waiver, it says I'm a waitress, so maybe if someone wants, needs a receptionist or different kind of job, I can't really go and apply for that because my waiver says I'm a waitress. So it means if I'm to go and apply I'm stuck in the same job position.*

The majority of participants reported that they were not part of any trade union and expressed a lack of interest in joining labour movements or attending sectoral institutions established to regulate the restaurant sector. One participant, Dlulas, shared the same sentiments. Although he was documented, he exhibited a disinterest in speaking for better employment rights or joining a trade union:

"You just have to know that you are a visitor, and you are not wanted, so some of these things you cannot talk too much".

The reluctance to join trade unions may also be attributed to migrants' loyalty to their employers or managers for several reasons. As mentioned earlier by Machinya (2019), it is not loyalty per se but being at the mercy of the employer. The casualised nature of waiters' employment means that they may not be permanently employed but on short-term contracts, making them disposable at any time. Joining a trade union carries the risk of being laid off or put on short time by the employer. In some instances, the legal status of migrant waiters is contingent upon the employer (McLaughlin &

Hennebry, 2013), particularly if the employer is responsible for processing or meeting some of the documentation requirements.

The recently proposed shift of the ZEP to alternative visa streams requires applicants to submit proof of employment and other supporting documentation from their employer. Therefore, the employer holds some power over the migrant waiters, and ZEP holders might feel indebted to the employers. This requirement also ties the ZEP holders to the same employer, as changing employers would mean starting a new process of registering for the permit on new terms, which may not be possible.

4.6) Living in fear

The responses of the majority of the respondents demonstrated that fear underpins the uncertainty of the lives of migrants. This fear stems from the legal uncertainty that persists with the ZEP, even when directives extending the ZEP are announced or when holders spend thousands of rands following the guidelines outlined in the directives. This is because the directives are only announced verbally, usually by the Minister of Home Affairs on the news and in the media. The physical ZEPs do not exhibit any changes as per the Minister's directive. The extensions are not recognised in the everyday lives of ZEP holders by banks, when they look for jobs or seek banking services. Fear replaces the right of access to social services that the ZEP holders are supposed to enjoy as documented migrants. The following dialogue with one of the participants, Portia, summarises what it means to live in fear for ZEP holders:

> ***Portia:*** *Aiii! For now 'sihlalele evelweni" (we are living in fear), we are living in fear, we are holding money in case anything opens up and we have to go and pay.*
> ***Researcher:*** *What do you mean when you say "lihlalel' evalweni?" we are living in fear?*
> ***Portia:*** *Like that we are afraid that what if they will say totally the ZEP is no longer there, you understand?*
> ***Researcher:*** *Uhm!*
> ***Portia:*** *That's if they say it's totally not there. What will we do?*
> *But if they say pay, we will pay again, yes!*
> ***Researcher:*** *Because you were already paying, not knowing whether you will get extensions?*

***Portia**: Unknowingly, yes, because they said the money we paid is no longer existing, the R1500, but they have introduced another one of R3500 and they are taking it in Pretoria, seems we are still going to pay, they are taking so you also have to follow. As for the money, we will always work for it, but as long as you have that receipt, there is nothing that any police officer can do to you. Even at work, at least you will be working.*

***Researcher:** Hey! But living in fear, I hear you when you say you are living in fear.*

***Portia:** No, it's difficult!*

***Researcher:** What does it mean to live in fear, even for the children?*

***Portia:** Yes, to hear that they are not learning and stuff.*

***Researcher:** What about accommodation?*

***Portia:** Accommodation is the serious one because you must have money for rent but if you are not working, who will give you money for rent? However much you make, you must have money for rent. But if you are not working, who will give you money for rent? No matter how much they say you are working for, you must take it because no one can give you money. On the streets, even if you try and sit and sell vegetables, the Metro Police will come and get the vegetables. The day would have ended, and you would have nothing, no vegetables, no money, you understand?*

Fear is thus embedded in the uncertainty of the everyday experiences of ZEP holders, from their not accessing accommodation, social services and work, to their children failing to access education. To mitigate the fear, having money (cash on hand) becomes central to counter the fear that comes with living in uncertainty. What the qualitative data also show, however, is that the use of money in countering fear in the context of uncertainty is consistent across the experiences of both documented and undocumented migrants. The following exchange with a documented migrant, Melusi, demonstrates the importance of money in reducing fear in the ability of undocumented migrants to move freely within South Africa and to access healthcare:

Researcher: *So, when you are travelling here, do you have challenges going up and down as a person without any documentation?*

Melusi: *Yes*

Researcher: *Is it a big problem?*

Melusi: *Yes because when you meet the police you get arrested, you must pay a bribe, so when travelling you much always have money to pay bribes to the police.*

Researcher: *Um! If you bribe then do they let you go?*

Melusi: *Yes if you bribe they let you go.*

Researcher: *And then what about travelling internally in the country, is it the same in terms of your experiences with travelling outside the country? Let's say you are travelling to go to work or moving from one place to the other, is it difficult for you as someone travelling without documents?*

Melusi: *It is very difficult because you are always fearful, asking yourself what will happen, will I be able to come back home. Because if you do not have money. Even if there is something urgent you have to do, you end up not doing it because sometimes if you go out without money, you will struggle to come back because if you get arrested, the police want cash.*

Researcher: *Cash? So it must be cash on hand.*

It must be cash on hand unless you have an app on your phone and can transfer money.

Researcher: *So they even want a transfer, they don't decline?*

Melusi: *They want everything.*

The importance of having money readily available also influenced the methods for mitigating health precarity among undocumented migrants who cannot access healthcare. The experiences of undocumented migrants seemed to be more precarious than those of documented migrants. What also emerged was a preference for private medical care through private doctors rather than in public health institutions. Melusi continued to clarify*:*

Researcher: *And then at the hospitals or clinics, do you not have a problem because of documentation?*

Melusi: *At the clinic they don't to give you medical care if you don't have papers, even… although you may, let's say, you get sick and go and they welcome you, when you get there your card will be written foreign patient. So if it's written foreign patient they cannot treat you like all the other patients, so you see it better to rather die at home than to go and get mistreated.*

In places where you must get assistance, at the end of the day, you do not get that assistance.

Researcher: *Umm…umm! Oh, the card would be written foreign patient?*

Melusi: *Yes*

Researcher: *Yah, I see! So what do you end up doing when…*

Melusi: *To this extent of…you have to pay, to the extent that you will definitely not receive medical care if you do not have money, it's useless for you go to the hospital if you are a foreigner…that is all what I can say.*

Researcher: *So what do you eventually do, what do you do for…because if you are sick you cannot die, what do you do?*

Melusi: *In the end we go to the private doctor where you will pay, basically everything in South Africa demands money, if you do not have money you will have to go back home.*

Researcher: *Um! So, being undocumented demands that you have money.*

Melusi: *Yes, money is what talks. If you don't have papers and don't have money, basically you are in trouble.*

4.7) Future Perceptions

Kleist's (2016) assertion that uncertainty is imbued with hope was reflected in the participants' responses, emphasising potentiality and anticipation even amid fear and doubt. Despite the many challenges posed by living with an uncertain legal status, worry, and an uncertain future, both ZEP holders and undocumented migrants remained optimistic about the future. Portia was very sure that the government would keep extending indefinitely:

Portia: *…This is life hey! Let's hope they will try something for us. But, but they will extend, if I'm not mistaken, how many years is it been, is it 12 years… in June they keep saying one year, one year. But to extend they will eventually, because how many millions of people applied, where would the money of the people have went? This is what people are telling themselves, that our money must then come back*.

Researcher: *But did you not consider going back home when they started to say that they would cancel it, did you not think of packing your belongings?*

Portia: *We didn't, we check papers and keep them in our pockets at all times, is known as it is they who started. What they do not want to say is that, what do you call that is it residency, is the only thing that we must know and accept. They will keep on extending, extending.*

Researcher: *But that is a problem because the more they extend, it will be difficult for them to cancel it.*

Portia: *Yes, they will keep one extending they do not have a choice.*

Asked what they would do if the ZEP were eventually cancelled, many responded that they felt unwanted in South Africa and back home, but would rather dodge the police as undocumented migrants in South Africa than go back home, as the situation back home had not improved. Dodging the police or returning to South Africa after being deported is a form of agency, as it is a response to challenges arising in migrants' lives (Sibeon, 1999). Agency was also exhibited by waiting; this idea was demonstrated by Portia, who said she considered carrying the extension receipt a sign of waiting, even if she was not sure whether the ZEP would ever be a regular visa again with valid physical stamps:

Researcher: *Uhm! No, what I really heard was that you stay in fear, what about at work, are you afraid everywhere?*

Portia: *Everywhere, you must always carry a certified copy, so that if they find you at you can say I have something, I am on the line, I am waiting, you understand?*

Researcher: *Even if you might be unsure of what you are waiting for?*

Portia: *Yes, because they cannot arrest you as long as you have a valid thing that shows you are waiting, it's not the same as someone who does not have anything.*

Researcher: *Um! No I hear you. Someone else shared the same sentiments that you do what they say to survive but that it does does not mean that like is now alright.*

Portia: *No, No, it can't be alright, it's just like overseas. Do you know that overseas if you don't have papers life is just rough. It's unlike here where you do a short left until you are caught by another police officer that asks you to bribe and go, but there they deport you there and there, you understand?*

Researcher: *You are saying there is a short left it's not the same?*

Portia: Here there is a short left and my home is just how many hours? I can turn around and come back but overseas they deport you, whether you are naked or not, they deport you just like that.

Researcher: *Uhm!*

Portia: *Yes, you see, it's close here. This is life hey! Let's hope they will try something for us. But but they will extend, if I'm not mistaken, how many years is it been, is it 12 years… in June they keep saying one year, one year. But to extend they will eventually, because how many millions of people applied, where would the money of the people have went? This is what people are telling themselves, that our money must then come back*.

Researcher: *But did you not consider going back home when they started to say that they would cancel it, did you not think of packing your belongings?*

Portia: We didn't, we check papers and keep them in our pockets at all times, is known as it is they who started. What they do not want to say is that, what do you call that is it residency, is the only thing that we must know and accept. They will keep on extending, extending.

While many studies have focused on the vulnerability of undocumented migrants (Goldring et al., 2009), who are considered more precarious, the above responses by

Portia capture the contradictions of being documented in the South African context, particularly for ZEP holders. Inferred from Portia's submission is that being documented in South Africa as a migrant is a different experience from what is imagined elsewhere in the world. In South Africa, ZEP holders experience a distinct, localised form of legal precarity, shaped by everyday forms of informal survival, policing, corruption, and the arbitrary application of laws and policies. Their experiences differ from those of other documented migrants who enjoy a relatively stable or certain legal status, a phenomenon that is very understudied.

Faith also shares similar sentiments, which align with those of Burda (1993) and O'Connell (1997), who noted that migrants facing greater uncertainty about their future host destinations are drawn to the same host countries in speculative migration. Faced with imminent uncertainty about the future of the ZEP, as the state has attempted to cancel the permit numerous times and remains ambiguous about what will ultimately happen to the holders, the respondents demonstrated a willingness to take a chance by following the directives and waiting for any outcome.

> ***Faith**: "They will just have to chase me around, and then I dodge even if they deport me I'll just have to sneak back in. Because what else am I supposed to do? Maybe if they cancelled it, I don't know maybe if there will be a chance for me to apply for…(pause)...Something else, a work permit or even a permanent residence, because according to the document that they gave me before we applied for the ZEP, I should probably be a permanent resident".*

Even when they acknowledged that South Africa was a harsh, uncertain, or unliveable place, they somehow chose to live in those conditions rather than return to Zimbabwe. This could be linked to the factors that drove them to leave Zimbabwe and persist to date. It also highlighted how living in uncertainty means enduring the most unliveable conditions rather than going back home. It also demonstrates that they consider living in uncertainty in South African a better alternate than going back home. Many thus thought that they should be allowed to obtain permanent residency due to the time already spent in South Africa.

> **Rose**: *You know that since the situation is like that in South Africa, it is not liveable. You are unwanted back home where you come from and unwanted here in South Africa as well, the only remaining option is just to go back home but going back still is going back to another dead end. It would seem like us the ZEP people do not have hope because it's the same, we have lived 12 years of our lives here working and paying taxes here under the permit, being legally. And now it seems they are trying to make us illegal, in which they are chasing us away, we were legal. Why don't they leave us ZEPs to continue to work as we were working and paying taxes and benefitting the economy, for us to continue working and assist where we can in the country and not this this of us being unwanted?"*

Rose's reflections point to the irony of the perceived legality of ZEP holders, whose experiences mirror those of undocumented migrants in South Africa.

Conclusion

This chapter explored the complex and multifaceted lived experiences of Zimbabwean Exemption Permit (ZEP) holders in South Africa, highlighting the shifting, uncertain, and often contradictory nature of their legal status. Drawing on the participants' subjective perspectives, the chapter underscores how changing migration policies have not only shaped their legal positioning but also profoundly affected their access to education, employment, healthcare, sense of belonging, and that of their families.

Through the themes of changing migration status, misinformation, scepticism, invisibilised legal status, conditioned exploitation, living in fear, and future perceptions, it became evident that the ZEP, while initially conceived as a stable legal document, has instead entrenched many of its holders into a cycle of legal ambiguity and social and economic exclusion. The promise of a more secure and functional legal identity has, for many, led to greater vulnerability, particularly as policies surrounding the ZEP have remained inconsistent, ambiguous, and costly, both financially and emotionally, as well as socially.

Notably, the chapter also revealed the paradoxes inherent in holding a legal status that is neither fully recognised nor protected in everyday life. Migrants with valid ZEPs are rendered invisible in bureaucratic systems but hyper-visible in society, exposed to discrimination and suspicion. These conditions create a state of ‘limbo’, where ZEP holders are neither fully included nor entirely excluded, forcing them into conditioned exploitation, muted resistance and adaptive survival strategies. Despite these challenges, the voices of participants also reflected remarkable resilience, agency and hope. While fear and frustration were dominant emotions, many participants expressed a belief in the eventual possibility of stability for the permit, or at least its continued existence within the ambiguous legal space they inhabit.

Ultimately, the findings in this chapter reinforce the argument that legal status, especially under temporary and shifting regimes like the ZEP, is not merely a bureaucratic classification but a powerful determinant of everyday life, access, identity, and future orientation. The next chapter will synthesise these findings and discuss their broader implications for migration policy, legal frameworks, and the theorisation of uncertainty in migrant lives.

CHAPTER 5: CONCLUSION

5.1 Introduction

This chapter concludes the study and presents the key findings, reflecting on their broader implications. This study sought to understand the meaning of legal uncertainty from the subjective perspectives of ZEP holding migrant waiters. The experiences of uncertainty from both ZEP holders and undocumented migrant waiters were interrogated to get a relative understanding of legal uncertainty. ZEP holders' lives are characterised by uncertainty due to their legal status, which is influenced by policy shifts and the instability of the ZEP. The responses from the ZEP holders showed that being documented is not enough to protect migrants from uncertainty; in fact, many of the experiences of the ZEP Holders were similar to those of the undocumented migrants.

In the second chapter, the literature review is initially reviewed from the broader existing literature on migration governance and its different global frameworks, an important phenomenon that frames the categories attached to different international migration (Geddes, 2022; Raghuram, 2021; Talleraas, 2022). This was followed by a discussion on the politics of migration, the uncertainties of migration and finally the experiences of uncertainty facing migrants from the workplace and the broader society (Williams & Balaz, 2012; Maas, Munch, Schader & Schammann, 2021; Bijak & Czaika, 2021; Goldring & Landolt, 2013). Ambiguity and shifting policies were found to underpin the experiences of uncertainty for migrants (Czaika, Erdal, & Talleraas, 2021; Czaika, Bohnet, Zardo, & Bijak, 2024). The concept of exceptionalism (Agamben, 1998; 2000) conceptualised how the uncertainty of migrants can be viewed, that is, from the sovereignty of states, which holds to suspend its legal order, but in the ZEP case, what was suspended was the certainty of the legal order, delaying the suspension of the legal order indefinitely.

The study's findings revealed that legal uncertainty is deeply embedded in the governance of migration in South Africa. Despite formal documentation, ZEP holders

occupy a liminal legal position where their status is always unstable, insecure and subject to sudden policy changes. There is a thin line between the experiences of documented and undocumented migrants. Undocumented migrant in the hospitality sector know they have no legal status as a result of their non-documentation and as a result, are exceptional. For ZEP holders, legal status exists in law but not in practice. This has implications for how the two groups of migrants live with uncertainty and the everyday and future decisions they must make. While uncertainty initially arises from an unstable legal status, factors emanating from this uncertainty intertwine to create different forms of precarity, both in the workplace and in finances, as well as in access to social services such as healthcare and education. It also means existing in a state of permanent temporality, which impacts the ZEP holder and their family. This study highlights the need to rethink South Africa's approach to migration governance. Legal documentation alone does not guarantee protection or inclusion if it is not accompanied by policies that ensure stability, enforce rights, and resist the political accountability of politicians. Rethinking the categories assigned by international frameworks and national policies in a way that recognises the heterogeneity of migration is imperative to protect the rights of all migrants and their families.

5.2 Limitations of the study

A few limitations were encountered in this study. While the 10th participant reached saturation, a bigger sample size would allow for more data to be recorded, improving the validity of the study. The participants in the study were also very busy, as data collection occurred around the festive season. Better planning and time management can mitigate this challenge in future studies. The snowballing technique is also quite complicated, as you do not have direct contact with participants until they consent to participate in the study, which can prolong the data collection process. However, once the first participant is identified, it becomes easier to build trust and rapport with other referred participants.

5.3 Final Reflections

Legal uncertainty, as experienced by ZEP holders, is not a temporary bureaucratic delay but a systemic condition embedded in state practices and political discourse. Rooted in their subjective perspectives of migrants, this study found that legal

uncertainty affects how migrants live, work, relate to others, and imagine their futures; however, it also reflects their resilience and agency in the face of exclusion. Resolving legal uncertainty does not only require documentation, but it demands a transformation in how migrants are perceived, governed, and protected. Of course, the legal uncertainty faced by migrants in their host countries is a function of broader and more complex factors, including international frameworks, national policies, and state sovereignty. Beyond an analysis of international migration, examining the uncertainty of other migrant groups, such as internal migrants and undocumented migrants, might also be worthwhile.

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Interview Dates

Samu: 29 November 2024

Peter: 02 December 2024

Rose: 02 December 2024

Portia: 04 December 2024

Packs: 03 December 2024

Melusi: 04 December 2024

Faith: 05 December 2024

Belinda: 02 January 2025

Dlulas: 20 January 2025

Martha: 06 February 2025

APPENDIX 1: Interview guide

Section 1: Basic or Demographic questions

1) Participant Code name
2) Age
3) Gender
4) Educational Background

Section 2: Social experiences

1) When did you come to South Africa and was the impetus to migrate?
2) Have you ever had another document?
3) Do you have any other family or responsibility?
4) Do you have any family in South Africa – children or spouse?
5) How has holding a ZEP impacted your family members?
6) How does non-documentation affect your family members?
7) Are you been able to travel in and out of the country and how has the travel experience been since 2009?
8) Does the holding a ZEP affect your movement within the country and if yes, how?
9) Does non-documentation affect your movement within the country and if yes, how?
10) Do you have access to accommodation and what has been your experience to date?
11) Do you have access to the banking system and what has been your experience?
12) Are you able to access the health services and what has been your experience?
13) How does non-documentation affect your family members?
14) Does holding a ZEP assist you in integrating or coexisting in the South African society?
15) Do the extensions of the ZEP assist, do they bring relief?

Section 3: Economic Experiences of the ZEP

1) How long have you been a waiter?
2) Do you earn a basic salary/?
3) How much is remuneration/commission?
4) How many hours do you work?
5) Do you earn tips?
6) Any deduction?
7) Do you have a contract?
8) How are you working condition?
9) Are you able to apply for a job elsewhere?
10) Are you registered for social services?
11) Do you have access to legal services?
12) Are you registered with a trade union?
13) Have you faced any challenges at your current employment with the ZEP?
14) Have you been able to seek alternative employment?

Section 4: Perception of ZEP holders about their future in South Africa

1) Have you applied for the exemption waivers?
2) Do you see the possibility of going back home.
3) Why do think the Department of Home Affairs wants to cancel the ZEPs?
4) What do you think is going to happen with the ZEP?

APPENDIX 2: INFORMED CONSENT FORM

INFORMED CONSENT FORM FOR UNDOCUMENTED PARTICIPANTS

The uncertain lives of Zimbabwean Exemption Permits holders: The experiences of Zimbabwe migrant waiters in Johannesburg.
Nothando Phuti

I, …….., agree to participate in this research project.
I agree to the following:
(Please circle the relevant options below)

The research study was explained to me. I understand what this study is about	YES	NO
I understand that my participation in the study will only be voluntary	YES	NO
I agree that the researcher read out the consent form to me and I gave verbal consent to participate in the study	YES	NO
I agree that the interview may be audio-recorded	YES	NO
I agree that the researcher may use direct quotations from my interview in their research report	YES	NO
I agree that my participation will remain anonymous (my name or other identifying data will not be used by the researcher in their research report)	YES	NO
I agree that other researchers may use the information I provide in my interview but my name and any personal information will not be used or passed on	YES	NO

…… (name of participant)
…… (signature of participant)
…… (date)
……(Name of Research Supervisor)
……(Email address of Research Supervisor)
……(Phone number of Research Supervisor)

UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG

AFRICAN CENTRE FOR MIGRATION & SOCIETY ETHICS COMMITTEE
CONSTITUTED UNDER THE UNIVERSITY HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER: ACMS24/10/04**
PROJECT TITLE	The Uncertain Lives of Zimbabwean Exemption Permits Holders: The Experiences of Zimbabwe Migrant Waiters in Johannesburg
INVESTIGATOR	Ms Nothando Phuti (2921080)
SCHOOL/DEPARTMENT OF INVESTIGATOR	African Centre for Migration & Society
DATE CONSIDERED	15 November 2024
DECISION OF THE COMMITTEE	Approved unconditionally
RISK LEVEL	LOW RISK
EXPIRY DATE	Date of submission of the Research Report

ISSUE DATE OF CERTIFICATE 20 November 2024 **CHAIRPERSON** _____
(Dr Jean Pierre Misago)

cc: Supervisor:

DECLARATION OF INVESTIGATOR

To be completed in duplicate and **ONE COPY** returned to the Chairperson of the School/Department ethics committee.

I/we fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure be contemplated from the research procedure as approved, I/we undertake to submit an amendment of the protocol to the Committee.

N. Phuti
Signature

21 / 11 / 2024
Date

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES