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Making Migrants 'Il-legible': The Policies and Practices of Documentation in Post-Apartheid South Africa

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In South Africa, the Department of Home Affairs (DHA) – the department charged with managing migration – has struggled to control growing migration flows, particularly the increased demand on the asylum system. The DHA has both relied on and sought to undermine documentation attempts as part of its migration management efforts. These shifting practices reveal an official ambivalence toward granting foreign migrants documents and the rights that accompany them. Ensuring that foreign migrants remain undocumented fulfils the DHA's objective of facilitating their removal, but it undercuts the administration's ability to know who is in the country, another expressed DHA goal. Examining two documentation schemes – the asylum system, and the three-month documentation programme targeting undocumented Zimbabweans – this article highlights these conflicting purposes. It explores the DHA's administrative strategies and practices to withhold or deny documentation, and hence legal rights, to foreign migrants even when its stated goal is documentation. Looking at the role that documentation plays in state administration, the article argues that the street-level organisational approach and its focus on implementation best captures the actions of the DHA, underscoring the ways in which street-level bureaucrats can influence documentation policy and practice by determining who gets access to documents.

South Africa's post-apartheid immigration regime confers a range of legal rights on documented migrants. But the shifting practices of the Department of Home Affairs (DHA) – the bureaucracy charged with managing migration – indicate an official reluctance to bestow these rights through documentation. Instead, the DHA has increased the barriers or denied documentation to many foreign migrants. Ensuring that these migrants remain undocumented fulfils the DHA objective of facilitating their removal, but it also undercuts the administration's ability to know who is in the country, another expressed DHA goal. This article highlights these conflicting purposes, identifying many of the DHA's administrative strategies and practices to withhold or deny documentation, and hence legal rights, to foreign migrants even when its stated goal is documentation. These practices also underscore the ways in

which street-level bureaucrats can influence documentation policy and practice by determining who gets access to documentation.

The DHA has struggled to control increasing levels of migration since 1994. Significant numbers of migrants find their way into the country's asylum system, which gives them an opportunity to regulate their status at least temporarily. This situation has given rise to a somewhat equivocal approach towards documentation. While the DHA has introduced measures to document greater numbers of migrants, it has simultaneously undermined these measures in the belief that most lower-skilled migrants are not in the country legitimately, particularly those entering the asylum system. The DHA has actively worked to limit documentation, employing a variety of administrative procedures to make it exceedingly difficult for migrants to obtain documentation or to acquire refugee status. Even the Zimbabwe Documentation Project (ZDP), the scheme targeting undocumented Zimbabweans, was accompanied by significant administrative barriers.

The DHA's contradictory policy goals and actions on both the documentation of asylum seekers and the ZDP are emblematic of its approach toward migration more generally. For skilled migrants, Stephen Ellis and Aurelia Segatti find that, while the government has recognised the severe shortage of skilled labour and has expressed concern at the scale of the African 'brain drain', the DHA continues to impose severe limits on the number of work permits issued for foreign skilled migrants and to not process permit applications in a timely fashion.[1] Ellis and Segatti conclude that 'despite official rhetoric, government circles hold broadly negative views regarding the role of migration in skills development in South Africa.'[2] That is, the government prefers not to use foreign skilled migrants to fill the labour shortage in the country.

The Evolution of Migration and Its Management

During apartheid, immigration was limited almost exclusively to white migrants, with the exception of migrant labourers from neighbouring African countries.[3] Jonathan Crush and Raesibe Mojapelo describe the country's 'carefully managed migration policy' during this period, which was 'designed to utilize cheap labour from outside the country and dump it back over the borders when it was no longer wanted.'[4] Accordingly, the Aliens Control Act of 1991 applied largely to white migrants, while black migrants arrived in the country through bilateral labour agreements.[5] There was no refugee policy during this time, although thousands of Mozambicans who fled the civil war were allowed to live without formal legal status

1 S. Ellis and A. Segatti, 'The Role of Skilled Labor' in L. Landau and A. Segatti (eds), *Contemporary Migration to South Africa: A Regional Development Issue* (Washington, DC: World Bank, 2011), 67–79.
2 *Ibid*, 78.
3 J. Handmaker, *Advocating for Accountability: Civic–State Interactions to Protect Refugees in South Africa* (Antwerp: Intersentia, 2009); J. S. Crush and D. A. McDonald, 'Introduction', *Africa Today*, Special Issue: 'Evaluating South African Immigration Policy after Apartheid', 48, 3, 2001, 1–13.
4 J. Crush and R. Mojapelo, 'Introduction: Immigration, Human Rights and the Constitution,' in J. Crush (ed.) *Beyond Control: Immigration and Human Rights in a Democratic South Africa* (in press), 18, http://www.queensu.ca/samp/publications/book/intro.htm (accessed 16 March 2014).
5 *Ibid*. For the most part, the Aliens Control Act merely consolidated existing legislation from the earlier apartheid era.

in the 'homeland' areas. In contrast to this carefully managed migration system during apartheid, early post-apartheid immigration policy (1994 to 1998) was described as 'confused, incoherent, reactive, defensive, and lacking in vision.'[6] We emphasise the DHA's contradictory and conflicting goals in its management of the asylum system and the ZDP, thus demonstrating continuity in key characteristics in migration policy between the early and more recent post-apartheid years.

Following the transition to democracy, the government entered into a 1997 Memorandum of Understanding between the South African Development Community (SADC) and the United Nations High Commissioner for Refugees (UNHCR) that reflected a more open approach to migrants and refugees. The government then began drafting laws in line with its new rights-based constitution, including the 1998 Refugees Act and the 2002 Immigration Act. The Refugees Act was largely based on the humanitarian principles of the international refugee convention, while also recognising the large-scale instabilities giving rise to flight in the African region. The Immigration Act replaced the far more restrictive Aliens Control Act but offered few options for economic migrants in the African region.

Democratisation transformed the country from a refugee-producing to a refugee-receiving country. The new laws guaranteed all individuals the right to apply for asylum and to reside legally in the country while their claims worked their way through the system. Under this relatively permissive scheme, many economic migrants began turning to asylum as a legal way to reside and work in the country temporarily because of the lack of alternative regularisation options, further increasing the ranks of asylum seekers. Table 1 shows the increase in asylum numbers, which peaked in 2009.[7]

Although in line with the country's constitutional ideals, the country's asylum and immigration laws stand apart from public sentiment. As migration to South Africa has grown, foreigners have increasingly been blamed for the country's socio-economic ills, including high crime and unemployment rates. Much of this animosity has specifically targeted lower-skilled African migrants, seen to be competing with locals for employment and public services. In this context, increasingly restrictive migration and documentation policies play well with the population.

Government sentiment has shifted accordingly since the early days of democratisation. A 2012 ANC policy document attributed many of the current immigration challenges to the country's unconditional adoption of regional and international instruments, which had failed to take into account the migration realities confronting the state and to recognise migration as a strategic security issue during the democratic transition.[8] Noting that 95 per cent of asylum seekers are in fact economic migrants threatening the country's wellbeing, the document proposed a 'risk-based approach' that involved detaining 'high risk' asylum seekers[9] and establishing a monitoring

6 *Ibid*.
7 The figures are taken from DHA's annual summaries of asylum statistics.
8 African National Congress, 'Peace and Stability: Policy Discussion Document', 2012, available at http://www.anc.org.za/docs/discus/2012/peacev.pdf.
9 The policy document does not define what constitutes a high-risk asylum seeker.

Table 1: Asylum applications in South Africa, 1998–2011

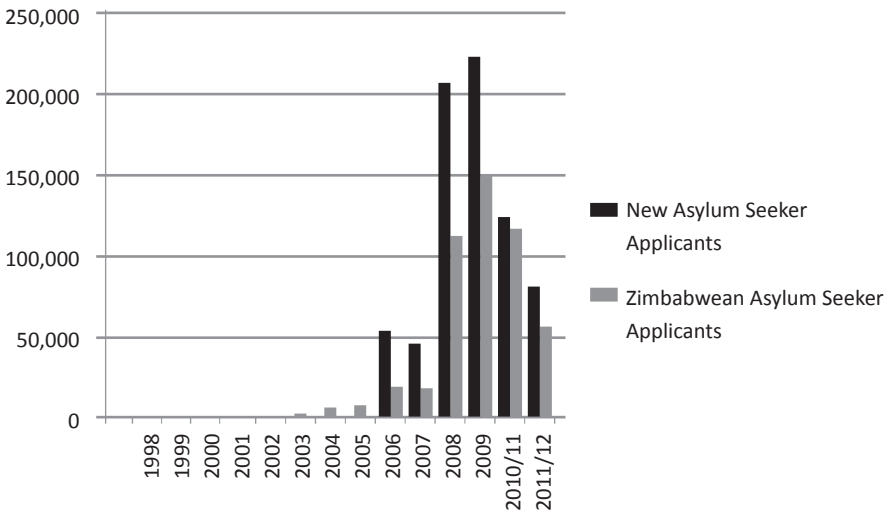
Year	New Asylum Seeker Applicants	Zimbabwean Asylum Applicants
1998	11,135	0
1999	31,592	0
2000	12,226	0
2001	16,325	4
2002	24,187	115
2003	41,741	2,588
2004	41,369	5,789
2005	43,289	7,783
2006	53,361	18,973
2007	45,637	17,667
2008	207,206	111,968
2009	223,324*	149,453
2010/11	124,336	117,194**
2011/12	81,708	55,873

Sources: DHA, *2009 Annual Report* (for 1998–2009); DHA, '2010–2011 Annual Report on Asylum Statistics', May 2011.

* DHA, '2010–2011 Annual Report on Asylum Statistics' notes that the 124,336 asylum seekers registered between April 2010 and March 2011 represented a 64 per cent decline compared to 2009 or 345,378 registered asylum seekers for the financial year 2009/2010. Segatti and Landau (eds), 2011, Appendix C, 158 presents DHA official statistics of 364,638 asylum applicants in 2009 and only 64,373 for 2008 whereas the 2008 DHA number in the table is 207,206. Discrepancies in numbers stem partly from some official reports providing data for individual years and other reports recording data for financial years. But even data for financial years may differ. Compare the financial year 2010/2011 number of Zimbabwean asylum applicants and total number of asylum applicants in Figure 1 with corresponding data provided by DHA to the parliamentary portfolio committee on 11 March 2011: 185,031 total asylum applicants and 117,194 Zimbabwean applicants (63 per cent).

** This number was provided by the DHA to the parliamentary portfolio committee on Home Affairs. The DHA's 'Annual Report on Asylum Statistics' reports the number as 96,950.

Figure 1: Asylum applications in South Africa, 1998–2011



Sources: DHA, *2009 Annual Report* (for 1998–2009); DHA, '2010–2011 Annual Report on Asylum Statistics', May 2011

system. It also advocated refusing asylum to those individuals who had transited other countries en route to South Africa.

The increasingly restrictive migration policy has existed alongside efforts to manage migration by expanding documentation. In 2008, the DHA began taking steps to make the asylum system more efficient, including the implementation of same day adjudication to move people through the system more quickly. To further ease demand on the system, the department introduced a temporary permitting scheme for Zimbabweans in 2010. The effectiveness of both the asylum and Zimbabwean documentation efforts, however, were compromised by the department's view that most lower-skilled migrants were not in the country legitimately. The conflicting goals around these documentation schemes are explored below.

Perspectives on Documentation

Existing theoretical approaches on the role of documentation as a tool of the state have shed some light on the South African example, though they cannot fully account for the processes at work. James Scott, for example, characterises documentation as an index of a modern state and the product of the capacity of the administration to measure or obtain with some accuracy the objects of its interest.[10] Some historians have presented an alternative view, drawing attention to how state administrations may deliberately not document social groups because they do not wish to empower

10 J. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999).

those groups vis-à-vis the administrative state.[11] We briefly discuss these perspectives on the function that documentation plays in state administration, indicating their strengths and limitations for understanding the South African case. We suggest that the street-level organisational approach to public policy and politics might better capture the actions of the South African bureaucracy that administers foreign migration.

James Scott presents documentation as a mechanism for imposing order on a society. He illustrates how, in modern Europe, state classification systems (and the related use of documentation, common units of measurement, and statistics) were built on growing state administrative capacity to obtain knowledge of society.[12] The knowledge acquired by state administrations was schematic, but enabled states to enhance their capacity and achieve their objectives through control and manipulation. What the state left out in the process of social simplification 'was not so much unknown as ignored lest it needlessly complicate a straightforward administrative formula.'[13] The state administration's deliberate simplification of society frequently had the power to transform social reality to coincide with the state's objectives.[14] State objectives might be positive (to provide social welfare and so on) or negative (to deport minorities, for instance).[15]

Scott's description of the simplification of society is relevant. In terms of South African refugee and immigration laws, the DHA bureaucracy is responsible for classifying and documenting foreign migrants as either asylum seekers (or other categories of legal migrants) or as illegal foreigners. Asylum status entitles migrants to remain in the country, to work, and to access some social services (health, education and so forth) while awaiting their refugee status determination. Illegal foreigner status leads to detention and deportation. In an effort to manage the high numbers of asylum seekers, DHA bureaucrats have classified most foreign migrants who seek asylum as economic migrants and thus not entitled to asylum,[16] which renders them illegal and subject to deportation. In order to simplify reality, the bureaucracy has ignored mixed migration motives that may give rise to asylum claims and labelled all those individuals with mixed motives as economic migrants.[17] As described above, this transforms social reality to serve a key DHA objective: to limit the numbers of documented migrants in the country. However, the DHA has also introduced occasional schemes explicitly designed to document foreign migrants in the country, in part to know their numbers. The DHA's decision to deny documentation to the vast

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11 S. Szreter and K. Breckenridge, 'Introduction: Recognition and Registration: The Infrastructure of Personhood in World History' in K. Breckenridge and S. Szreter (eds), *Registration and Recognition: Documenting the Person in World History* (Oxford: Oxford University Press, 2012), 1–36.

12 Scott, *Seeing Like a State*, 11, 80.

13 *Ibid*, 47.

14 *Ibid*, 47, 82–3.

15 *Ibid*, 4.

16 In 2011, the director-general characterised the majority of asylum seekers as 'economic migrants using a back door.' IRIN (Integrated Regional Information Networks), 'South Africa: "harsher regime" for asylum seekers.' 29 November 2011, available at http://www.irinnews.org/report/94337/south-africa-harsher-regime-for-asylum-seekers.

17 See R. Amit, 'All Roads Lead to Rejection: Persistent Bias and Incapacity in South African Refugee Status Determination,' *ACMS [African Centre for Migration & Society] Research Report, 2012* and R. Amit, 'No Way In: Barriers to Access, Service and Administrative Justice at South Africa's Refugee Reception Offices', *ACMS Research Report, 2012.*

majority of foreign migrants through the asylum system, while at the same time introducing schemes to document foreign migrants, suggests an ambivalent approach toward documentation and knowledge on the one hand, and the benefits that accompany it on the other. Scott's simplified classification schemes fail to capture such ambiguity in what bureaucracies may seek to know and choose to ignore.

For Scott, the modern state's administrative capacity and effectiveness are inextricably connected and premised on 'reliable means of enumerating and locating its population'.[18] In South Africa, the DHA lacks reliable numbers on foreign migrants – in part because of its documentation practices – and the effectiveness of the deportation policy growing out of these documentation practices is, at best, ambiguous. But Scott's link between administrative knowledge, capacity, and state effectiveness does not consider that administrative strategies and practices may undermine state effectiveness. DHA administrative strategies and practices that have delayed or denied the documentation of foreign migrants have had significant effects on the state's efforts to know and control migrants.

Emphasising the idea that states choose not to know, the historians Breckenridge and Szreter criticise the implicit claim of the universality of the will to know in the literature on the benefits of state documentation to state administration.[19] They claim this literature, including Scott's *Seeing Like a State*, and specifically Foucault's work emphasising how knowledge and power are mutually constituted, 'has encouraged many scholars to overstate the bureaucratic enthusiasm for information gathering and it has discouraged research into the limits of bureaucratic knowledge'.[20] Many of the chapters in their volume illustrate a more deliberate limiting of documentation efforts, showing that states have 'frequently sought to restrict, abandon or devolve registration, without any direct effect on their authority and power'.[21]

Indeed, documentation would empower citizens and, in our case, eligible non-citizens as the law intends, enabling them to remain legally in the country and to access other legal benefits. However, Breckenridge and Szreter's portrayal of bureaucracies that choose ignorance in some circumstances does not capture a bureaucracy that seeks both to know and not to know. In our case, the DHA has expressed ambiguity towards documentation because the efforts to acquire state knowledge of the foreign population confer benefits on this population. Accordingly, it is not possible to assess whether there is a link, as Breckenridge and Szreter suggest, between the bureaucracy's deliberate will not to know, on the one hand, and its authority and power, on the other.

Scott and Breckenridge and Szreter share a common focus on bureaucratic intentions – whether a will to know (Scott) or a choice to not know (Breckenridge and Szreter). These authors also link bureaucratic intent relating to knowledge (or lack thereof) and capacity to obtain the knowledge with state effectiveness (Scott) and state power and authority (Breckenridge and Szreter).

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18 Scott, *Seeing Like a State*, 77–8.
19 Breckenridge and Szreter, 'Introduction', 6.
20 *Ibid*, 7.
21 *Ibid*.

In sharp contrast to the focus on both the will to know or not to know and on state administrative capacity or lack thereof to explain bureaucratic objectives, processes, and outcomes, the street-level organisational approach emphasises how administrative practices, including those relating to documentation, both shape politics and create policy.[22] The street-level organisational approach builds on the theoretical literature on implementation and street-level bureaucracies, extending the latter's analysis of policy implementation in public bureaucracies to non-public institutions delivering public services. The shared essence of both approaches is their recognition that administrative practices may determine who gets access to organisational benefits and who is excluded from access to benefits for which they are eligible. These practices are often hidden from public view, and thus tend to be less transparent than legislative processes that are conducted in the open. Evelyn Brodkin captures the core elements of street-level approaches as follows:

> … organizations do more than "apply the law." They also engage in informal and discretionary practices that effectively "make the law," essentially constituting an "extralegal" mode of determining "who gets what and how". Thus, organizational practices are central to understanding access to benefits and, its antithesis, exclusion.[23]

Importantly, the street-level approaches do not assume that administrative exclusion – the denial of benefits to those who are eligible – is necessarily the product of intentions, although they do leave open that possibility.[24] Instead, they highlight how administrative exclusion often occurs as a result of the practices, intentional or not, employed by those who must interpret and apply eligibility criteria as they adjudicate claims for benefits.

Our analysis adopts the street-level organisational approach's focus on administrative practices and their effects, but we also discuss DHA policy intentions where they have been explicit. Our discussion of the documentation project for Zimbabweans shows that, even where intent is explicit, administrative practices may work against achieving stated objectives.

In line with the street-level approaches, the discussion below demonstrates how administrative practices relating to documentation are used to deny asylum seekers and other categories of migrants a legal basis to remain in the country, operating as a form of administrative exclusion. Administrative exclusion advances the broad interests of the bureaucracy in deporting as many individuals as possible. However, the barriers to documentation are creating large numbers of undocumented migrants in the country, while forcing migrants to turn to illegal means to obtain documentation, often through the very officials working in the street-level bureaucracy. In response

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22 See E. Z. Brodkin and G. Marston (eds), *Work and the Welfare State: Street-Level Organizations and Workfare Politics* (Washington, DC: Georgetown University Press, 2013).

23 E. Z. Brodkin and M. Majmundar, 'Administrative Exclusion: Organizations and the Hidden Costs of Welfare Claiming', *Journal of Public Administration Research and Theory*, 15, January 2010, 2.

24 *Ibid*.

to the challenge of a large undocumented foreign population, the state has at times introduced temporary documentation schemes. But here too, the state interest in limiting the numbers of migrants it regularises has undermined the effective functioning of these documentation schemes.

The following sections examine how the conflicting goals – limiting the number of legal migrants while also keeping track of who is in the country – affect the functioning of the bureaucracy tasked with administering documentation. These sections focus on two particular documentation schemes: the asylum system, where the overriding goal is exclusion; and the temporary effort to document Zimbabweans, ostensibly introduced to improve knowledge and tracking of the Zimbabweans in the country.

Documentation under the Asylum System

From 2006 to 2011, South Africa received the highest number of asylum seekers of any country in the world.[25] Although these numbers have steadily declined since their peak in 2009, the DHA continues to view the asylum system as subject to abuse and exploitation by economic migrants.[26] The broad appeal of the asylum system stems in part from the lengthy application process. The law entitles any individual to apply for asylum without qualification. Only a refugee status determination officer may subsequently determine that an individual does not qualify for refugee status, and the individual may appeal this decision. The individual remains an asylum seeker until he or she has exhausted all final reviews and appeals, and is entitled to documentation during this period, which can last for several years. The asylum seeker permit confers the right to reside and work in the country; it is often the only regularisation option open to economic migrants seeking work opportunities. To tackle the perceived exploitation of the asylum system by economic migrants, the department has sought to block access to documentation while also minimising the associated benefits.

Access to Asylum Documentation

The department's strategies to limit documentation involve establishing barriers around accessing documentation for the first time and maintaining documented status. Demand for asylum grew steadily after South Africa enacted its Refugees Act in 1998, resulting in long lines outside the country's refugee reception offices. Individuals desperate to get inside began queuing in the early hours of the morning. Many even slept outside the offices, often for several nights in a row, to gain access.[27]

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25 UNHCR, 'Global Trends 2012', 19 June 2013, available at http://www.unhcr.org/51bacb0f9.html. Preliminary numbers for 2012 indicate that numbers have dropped significantly, moving South Africa to third place.

26 In a May 2013 parliamentary briefing, the deputy director-general pointed to abuse by economic migrants in the asylum system as one of the main problems in immigration management. Parliamentary Monitoring Group, 'Deputy Minister and Department of Home Affairs Briefing on Strategic and Annual Performance Plans', 14 May 2013, available at http://www.pmg.org.za/report/20130514-deputy-minister-department-home-affairs-briefing-strategic-and-annual-perfomance-plans-2013.

27 These access problems are recorded in R. Amit, 'National Survey of the Refugee Reception and Status Determination System in South Africa', *ACMS Research Report, 2009*.

This situation was alleviated after the DHA opened two additional offices in 2010 – a second office in Pretoria (the Tshwane Interim Refugee Reception Office, or TIRRO), and an office at the border town of Musina.

For a period following the addition of these offices, asylum seekers did not face significant access problems. Rather than blocking documentation, the department focused on getting individuals through the asylum system as quickly as possible. This strategy involved introducing a system of same day adjudication. Under this system, individuals received an asylum seeker permit, had a status determination interview, and received a decision all on the day that they first applied. To the extent that same day adjudication was intended to minimise the time period that individuals remained in the asylum system, it failed in achieving this goal. The strategy merely shifted the backlog to the appeal stage, creating a waiting period of a year or more for an appeal hearing, and still longer for a decision.[28]

The situation changed again following the closure of the Johannesburg and Port Elizabeth refugee reception offices in 2011 and the Cape Town office in 2012. The department took advantage of nuisance lawsuits to close the refugee reception offices in these cities. Since these office closures, individuals have again struggled to obtain documentation as they queue to access the remaining refugee reception offices. The increased demand has also resulted in a decline in same day adjudication.[29]

The office closures are part of a wider effort to limit access to the asylum system, which includes measures to bar entry at the border and to restrict asylum access inside the country. Although the law entitles anyone to apply for asylum, immigration officers exercise great discretion in either turning away or detaining would-be asylum seekers at the border. Many of those who are detained are sent to the Lindela Detention Centre, the holding facility for illegal foreigners pending deportation that is located outside of Johannesburg. Once there, they are summarily deported without any opportunity to access the asylum system.[30]

Because of the efforts to deny entry, large numbers of migrants cross the border informally. Many are later arrested while making their way to a refugee reception office (RRO), particularly those who bypass the border RRO in Musina to apply in an urban area. In contravention of legal guarantees, the DHA has barred individuals who are arrested before they reach an RRO from obtaining documentation as asylum seekers, despite their stated intention to apply. Like their counterparts at the border, they too are sent to Lindela as illegal foreigners. The DHA has adopted other ad hoc measures to limit access to the RROs. For a period beginning in 2011, some RROs

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28 M. S. Gallagher, 'Refugee Status Determination in Southern Africa', *Forced Migration Review*, 32, April 2010, 55; DHA, '2010–2011 Annual Report on Asylum Statistics', May 2011.

29 Amit, 'No Way In'.

30 Lawyers for Human Rights (LHR), 'Monitoring Immigration Detention in South Africa', 2008, 2010, available at http://www.lhr.org.za/sites/lhr.org.za/files/LHR_2010_Detention_Report.pdf, http://www.lhr.org.za/sites/lhr.org.za/files/LHR%20detention%20monitoring%20report%2010%20Dec%2008.pdf. R. Amit, 'Lost in the Vortex: Irregularities in the Detention and Deportation of Non-Nationals in South Africa.' *Forced Migration Studies Programme Research Report, 2010*, available at http://www.migration.org.za/sites/default/files/reports/2010/Lost_in_the_Vortex-_Irregularities_in_the_Detention_and_Deportation_of_Non-Nationals_in_South_Africa_0.pdf. R. Amit, 'Breaking the Law, Breaking the Bank: The Cost of Home Affairs' Illegal Detention Practices,' *ACMS Research Report, 2012*, available at http://www.migration.org.za/sites/default/files/publications/2012/breaking_the_law_breaking_the_bank_full_report.pdf.

did not let individuals apply for asylum if they were not in possession of an asylum transit permit obtained at the border.[31] The department has further maintained that it has no obligation to assist an individual deemed to be an illegal foreigner to apply for asylum at either a port of entry or at an RRO,[32] suggesting that such assistance is discretionary rather than required by law and ensuring that individuals are classified as illegal foreigners before they have an opportunity to apply for asylum.[33] Although this strategy serves the government's direct interest in deporting irregular migrants, its long-term effectiveness is less clear, as many deportees later return to South Africa.[34] Lacking access to documentation, these individuals remain outside government control and are much harder to track.

Even those individuals who do manage to obtain documentation as asylum seekers may subsequently have this documentation revoked in an effort to remove them from the system. The department has erected various barriers to prevent individuals from maintaining their status as asylum seekers. Key among these is the difficulty in renewing expired permits. Individuals may fail to renew their permits before they expire for a variety of reasons. These include inability to access the office because of long queues, inability to take time off work, permit expiration on a day that the office was closed, illness, insufficient funds for transport to a distant office, inability to find child care, or other personal reasons.[35] When these individuals do arrive at the office, the DHA requires that they pay a fine in order to renew their permits. Fine amounts vary, but are often prohibitively expensive, making it impossible for an individual to renew his or her permit. Individuals who lose their permits (or have them stolen) face similar difficulties and may be unable to pay the fine.

Another barrier to documentation involves the practice of requiring individuals to renew their permits at the same office where they initially applied. This is particularly burdensome for those who apply at the border. After entering South Africa, many asylum seekers continue their journey to a major urban area for greater economic opportunities, as asylum seekers receive no social assistance and must support themselves. This poses a dilemma. An asylum seeker who applies at the border will have to return to Musina regularly to renew their permit or address any other aspect of the application. The logistical and financial difficulties this entails means that many asylum seekers are unable to travel to Musina as needed. When they are eventually able to make the trip, they cannot renew without paying a fine. But the alternative is to wait to initiate the asylum application after reaching an urban area, which increases the risk that an individual will be arrested during the journey before being able to apply. Moreover, the DHA has recently placed an arbitrary limit of 12

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31 *Ssemakula v. the Minister of Home Affairs* (2012). WCHC (Western Cape High Court), Case 4139/11.

32 *LS v Minister of Home Affairs*, SGHC (South Gauteng High Court), Unreported Case 49231/10 (10 December 2010), Answering Affidavit, para 26.

33 The Supreme Court of Appeal (SCA) has stated that DHA officials are obliged to provide intended applicants with "every reasonable opportunity" to apply. *Abdi v Minister of Home Affairs* 2011 (3) SA 37 (SCA) (15 February 2011), para 22.

34 The minister of Home Affairs acknowledged this problem following a visit to the country's main detention centre for illegal foreigners, adding that the country was spending 70–90 million rand annually on its failed deportation policy. South African Broadcasting Corporation, 'Up to R90 million spent on deporting illegal immigrants: Pandor', 25 January 2013, available at http://www.sabc.co.za/news/a/5f9bcb004e4fae738bdabff251b4e4e2/Up-to-R90-million-spent-on-deporting-illegal-immigrants:-Pandor-20130125.

35 See Amit, 'National Survey' and 'No Way In.'

renewals on a permit, despite the fact that in many cases it is the DHA's own bureaucratic inefficiencies that necessitate continued renewals.[36]

Procedural irregularities also impede documentation, as individuals struggle to obtain and retain their documents. The Refugees Act, read in conjunction with the Promotion of Administrative Justice Act, contains a wide set of protections to ensure that individuals have fair access to asylum seeker documentation and that officials do not unfairly or arbitrarily deny this documentation. These procedural safeguards are often ignored in practice, facilitating the denial or removal of documents.[37] Asylum seekers in detention recounted arriving at a refugee reception office and having their permits summarily withdrawn or cancelled without explanation. Those arriving for appeal hearings recounted similar irregularities, including refusals to accept appeal requests, lost appeal requests, denial of entry on the day of appeal hearings, and rejections of appeals without being informed of the hearing date. In some instances, reception offices simply refused to assist asylum seekers. The DHA has allowed these procedural irregularities to continue, noting only that different offices have different practices.[38]

The department has both actively obstructed the documentation process and has allowed procedural irregularities to go unchecked as it seeks to limit the availability of asylum seeker permits. It has done so out of a belief that economic migrants are exploiting the benefits that accompany documentation as an asylum seeker. But just what advantages does documentation confer, and to what extent are these benefits realised? The next section examines the value of documentation in practice, and whether the benefits the DHA believes are being exploited are real or illusory.

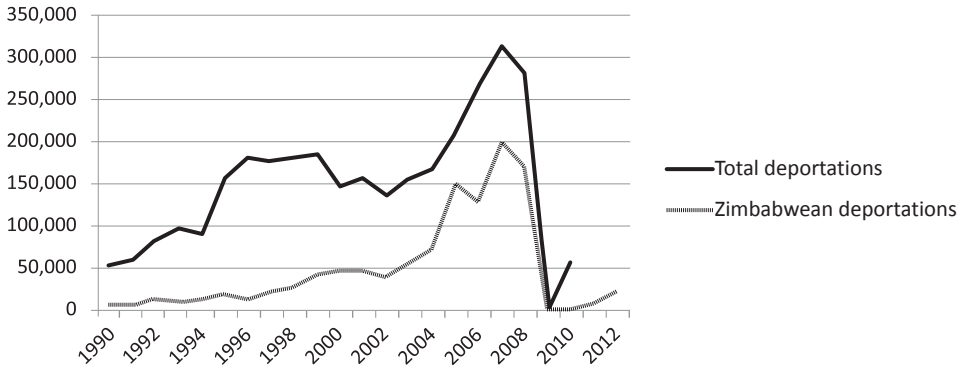
Documentation: Conferred vs Real Benefits

The asylum seeker document entitles the holder to a variety of benefits. Most importantly, it entitles the holder 'to sojourn' legally in the country until a final decision has been reached on their asylum claim. The individual retains this right until he or she has exhausted all final reviews and appeals of any decisions with the standing committee, the Refugee Appeal Board, the courts, or the minister. The right to reside legally in the country comes with a variety of accompanying entitlements. Asylum seekers are entitled to work and study, to access health care, to open bank accounts, and to reside in their communities free from the threat of arrest or detention.

While these rights exist in law, they are often more elusive in practice, diminishing the value of the asylum seeker permit. Police, banks, health care providers, schools, and other institutions often refuse to recognise the validity of these documents. Asylum seekers have gone to court to preserve their access to banking, employment, and education. Nonetheless, potential employers often refuse to hire individuals with asylum permits because they are unfamiliar with the law. Banks have also deemed asylum documents insufficient to establish or maintain access to bank

36 Information received from Tal Schreier, attorney at the University of Cape Town Refugee Rights Clinic. This clinic has brought a legal challenge against the refusal to renew asylum permits.
37 Many of these procedural irregularities are detailed in Amit, 'Breaking the Law, Breaking the Bank.'
38 Phone conversation between candidate attorney at LHR and the acting chief director, Refugee Affairs, 17 August 2010.

Figure 2: Deportations from South Africa, 1990–2012



accounts.[39] Asylum seekers and other foreign migrants have become targets of crime because these banking difficulties result in their carrying large amounts of cash. And asylum seekers have struggled to enrol their children in schools, as some principals have refused to recognise the validity of their documents. Many asylum seekers also report being turned away from public clinics and hospitals.

Those asylum seekers who are self-employed as traders face harassment from police and local authorities who question their right to trade.[40] When competing South African traders threaten to drive them out, the police often fail to protect them or their property, or to punish the perpetrators, reinforcing the notion that their presence is illegitimate.[41] The DHA – the department that issued the documentation – has itself undermined these benefits, as DHA officials have questioned the right of these individuals to run spaza shops or engage in informal trading, limiting the reach of asylum documents in conferring entitlements.[42]

Even the most fundamental of rights endowed by the asylum seeker permit – the right to legally reside in the country free from threat of arrest and deportation – has proven illusory. Documentation has not prevented asylum seekers from being placed in immigration detention, where they face deportation as illegal foreigners. Table 2 provides the number of deportations from 1990 to 2012. In some cases, police have simply ignored asylum seeker permits or even torn them up. In others, the department has refused to verify an individual's documentation, or maintained that it could not find the individual in the system even when the individual had handed over his or her documentation.[43]

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39 *CoRMSA [Consortium for Refugees and Migrants in South Africa] v ABSA Bank Limited and others* (2010), SGHC, Case 34220/10,

40 See, for example, LHR press release, 'Legal Challenge on Refugees' Right to Work and Operate Businesses,' 2 December 2013, available at http://www.lhr.org.za/news/2013/press-release-legal-challenge-refugees%E2%80%99-right-work-and-operate-businesses; IRIN, 'South Africa: Police target foreign traders in Limpopo,' 17 August 2012, available at http://www.irinnews.org/report/96130/south-africa-police-target-foreign-traders-in-limpopo.

41 V. Gastrow and R. Amit, 'Elusive Justice: Somali Traders' Access to Formal and Informal Justice Mechanisms in the Western Cape', *ACMS Research Report, 2012*.

42 Statements by DHA officials at a meeting of the Johannesburg Migration Advisory Committee, Johannesburg Theatre Penthouse, 11 September 2012. A resolution affirming that the rights of asylum seekers, refugees, and documented migrants to work included the right to establish businesses was presented at this meeting and defeated.

43 See Amit, 'Breaking the Law, Breaking the Bank' and LHR, 'Monitoring Immigration Detention in South Africa'.

Table 2: Deportations from South Africa, 1990–2011

Year	Total Deportations	Zimbabwean Deportees	Zimbabwean Deportees as % of Total
1990	53,445	5,363	10.0
1991	61,345	7,174	11.7
1992	82,575	12,033	14.6
1993	96,697	10,961	11.3
1994	90,682	12,931	14.3
1995	157,075	17,549	11.2
1996	180,704	14,651	8.1
1997	176,349	21,673	12.3
1998	181,286	28,548	15.7
1999	183,861	42,769	23.2
2000	145,575	45,922	31.5
2001	156,123	47,697	30.5
2002	135,870	38,118	28.0
2003	154,808	55,753	36.0
2004	167,137	72,112	43.1
2005	209,988	150,000	71.4
2006	266,067	127,000	47.7
2007	312,733	200,000	64.0
2008	280,837	170,000	60.5
2009	1,060*	Not available	
2010	55,825	Not available	
2011 (Oct.–Dec.)	Not available	7,755	
2012 (Jan–June)	Not available	21,162	

Sources: DHA annual reports. SAMP (Southern African Migration Project), Migration Policy Series 59, 12 for 1990–1997 data. http://www.kubatana.net/docs/migr/sarc_mixed_migration_zw_sa_series_59_120402 (accessed 2 November 2012); SAMP, Migration Policy Brief 19, 2 for 1998–2004 data. http://www.queensu.ca/samp/forms/form1.html (accessed 20 November 2012); Solidarity Peace Trust (SPT) and People Against Suffering, Oppression and Poverty (PASSOP), *Perils and Pitfalls: Migrants and Deportation in South Africa*, 2012, 11 for total deportations from 2005 to 2010; SPT, 2010, 19 for number of Zimbabwean deportees in 2005; Human Rights Watch, *Keep Your Head Down: Unprotected Migrants in South Africa*, 2007, 18 (at http://www.hrw.org/sites/default/files/reports/southafrica0207lowwcover.pdf) gives the number of Zimbabwean deportees as 80,000 for May 31 to 31 December 2006 (11,428 deportees per month) and the number for the entire year is estimated based on the monthly figure; HRW, 2008, 8 provides the estimate for the number of Zimbabwean deportees in 2007; T. P. Ngwato, 'Zimbabweans and South Africa's Immigration and Asylum Crisis: Problems and Solutions', *South African Institute for International Affairs*, 7 September 2012 provides the estimate for the number of Zimbabwean deportees in 2008; United Nations Office for the Coordination of Humanitarian Affairs, *Zimbabwe Monthly Humanitarian Bulletin*, 1–30 June 2012, citing International Organization for Migration data for 2012, available at ttp://ochaonline.un.org/zimbabwe/ReportandUpdates/2012ReportsandUpdates/tabid/7840/language/en-US/Default.aspx (accessed 7 November 2012); SPT and Passop, 12 for 2011 data.
* This figure is not reliable. For example, according to a March 2009 DHA list of Lindela detainees, there were 2,286 detainees in Lindela on the day the list was printed, and one can assume all were ultimately deported barring any legal intervention. The true number is likely to be significantly higher.

Many of the problems around documentation stem from the nature of the documentation itself. Rather than provide a more long-term, durable document, an asylum seeker permit consists of a non-laminated piece of paper that an asylum seeker must fold and refold as he or she carries it around often for months or years. This piece of paper is easily damaged or faded. Potential employers or other members of the public who are unfamiliar with the asylum system may not recognise a worn, tattered piece of paper as an official document conferring status, while malicious public officials can easily destroy such documents. The problem is exacerbated by poor record keeping that makes it hard to confirm asylum seeker status in the event that a permit is lost, damaged or stolen. Many asylum seekers and even recognised refugees have been detained at Lindela after the department maintained that it could not locate them in the system.[44] Finally, the DHA itself, despite being the issuing department, has actively sought to undermine the benefits conferred by this documentation by claiming that it does not entitle an individual 'to sojourn' free from detention.[45]

Thus, individuals who manage to overcome the obstacles around obtaining documentation may nonetheless be unable to realise documentation's full benefits because of the efforts of both government and private actors. This situation is indicative of the department's somewhat contradictory approach to documentation. Although documentation provides a mechanism to manage migration, it also creates the

44 Some of these cases are recounted in Amit, 'Breaking the Law, Breaking the Bank'.
45 *JAA v Minister of Home Affairs* (2009), SGHC, Unreported Case 9167/09, 3 March 2009.

unwanted situation of legitimising migrants perceived to be in the country illegitimately. As a result, the department has sought to minimise access to documents and has impeded the maintenance of documented status. At the same time, it has found ways to limit the benefits conferred by documentation to target those perceived to be exploiting the system.

This incongruous approach to documentation is perhaps most visible in the example of the Zimbabwe Documentation Process (ZDP) – a special documentation process introduced to regularise the status of the country's largest migrant population. Although presented as a mechanism to identify who was in the country, the DHA also created barriers that made it difficult for eligible Zimbabweans to obtain documentation under this programme. These cross-purposes reflect the conflicting views toward documentation: on the one hand, as a mechanism of control, and on the other, as a device conferring benefits that the state would prefer not to provide. The next section examines the ZDP.

The ZDP: A Mixed Message on Documentation

Zimbabweans make up the largest proportion of asylum seekers in South Africa (see Figure 1). Very few of them, however, receive recognition as refugees.[46] In 2011, 51,031 Zimbabweans applied for asylum; 83 were granted refugee status.[47] The government has categorically labelled Zimbabweans as economic migrants regardless of the reasons giving rise to their flight. Despite their lack of success in obtaining recognition through the asylum system, Zimbabweans continue to enter this system in large numbers. Between April 2008 and March 2009, roughly half of asylum applications were from Zimbabweans. The following year (April 2009–March 2010), two-thirds were Zimbabwean. An unknown number of Zimbabweans in South Africa are undocumented.

The government introduced the Zimbabwe Documentation Process in September 2010 in order to temporarily regularise the status of a large portion of the Zimbabwean population – those who were working, studying, or operating their own businesses. The ZDP relaxed the normal permitting requirements for these categories of Zimbabwean migrants. Applicants had to meet three requirements: a completed application form together with fingerprints; a Zimbabwean passport; and documentation confirming proof of employment (an affidavit from the employer, for example) or proof of registration with an educational institution or proof of business (such as company registration). The DHA stated that Zimbabweans who could not fulfil these criteria had no legitimate basis to remain in the country.[48]

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46 UNHCR reported that in 2011, Zimbabwean asylum seekers in South Africa had a success rate of 0.5. UNHCR, *Statistical Yearbook 2011*, avalable at http://www.unhcr.org/516282cf5.html.

47 DHA, 'Annual Report on Asylum Statistics', 2011.

48 News 24, 'Home Affairs to clear permit backlog' 18 November 2010, available at http://www.news24.com/SouthAfrica/Politics/Home-affairs-to-clear-permit-backlog-20101118. D. Taylor, 'Zimbabweans in South Africa Suffer under New Immigration Rules,' Voice of America, 4 November 2010, available at http://www.voanews.com/content/zimbabweans-in-south-africa-suffer-under-new-immigration-rules--106777198/160291.html.

Reasons for the ZDP

The motivations behind the ZDP are not entirely clear. DHA officials cited a variety of goals as the process got under way, but subsequent actions did not always support these goals. On several occasions, the DHA characterised the ZDP as a tool for identifying who was in the country and for what purpose. The DHA official in charge of the process explained that 'international practices and conventions and our own immigration laws required that we register every foreigner residing in our country for purposes of planning and other national requirements. Accordingly, the government decided to embark on a process of documenting Zimbabweans residing in our country illegally.'[49]

As part of this goal, the department announced that the process would gradually be extended to other nationalities in an effort to document economic migrants in the country. That this has not happened over three years later calls into question the stated intention of the initiative.[50]

The minister of Home Affairs also emphasised that the ZDP would reduce demand on an over-burdened asylum system:

> When someone comes to your offices and says they are applying for asylum, according to South African law and international conventions, you are obliged to listen to them. And precisely because this dispensation was not there initially, all of them went to the asylum offices and took that route because there was no other way. The system became really clogged.[51]

The deputy Home Affairs minister explained that the new policy was partly designed to separate economic migrants from genuine asylum seekers.[52] The problems around implementation, however, meant that many individuals who applied for the ZDP eventually made their way back to the asylum system.

On a more calculated level, the programme served to justify the resumption of deportations. When the ZDP was introduced in September 2010, a moratorium on deportations to Zimbabwe had been in effect since April 2009, together with a 90-day visa-free entry system for Zimbabweans. This set of conditions, described as a special dispensation, was the result of an April 2009 meeting between the Zimbabwean and South African Home Affairs ministers. At this meeting, the ministers discussed a special dispensation permit under section 31(2)(b) of the Immigration Act, but this permit never came to fruition. Seeking to end the special dispensation conditions, the ZDP provided a pathway for regularisation before resuming deportations.

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49 J. Mamabolo, 'Briefing to the Media by the Head of the Zimbabwe Documentation Process,' 30 June 2011, available at http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=243714&sn=Detail&pid=71656.

50 At the time of writing, the DHA had begun making statements suggesting the possible introduction of a work visa for economic migrants from SADC countries.

51 'Minister Dlamini Zuma on end of special dispensation for Zimbabwean citizens, Gallagher Estate, Midrand, Johannesburg', 3 September 2010, available at http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=12720&tid=17235.

52 D. Taylor, 'Monitors Highlight "Gaps" in New South African Immigration Policy', Voice of America, 5 November 2010, available at http://www.voanews.com/content/monitors-highlight-gaps-in-new-south-african-immigration-policy--106777833/160293.html.

The department sent conflicting messages about the link between the ZDP and developments within Zimbabwe. At a September 2011 briefing to the portfolio committee, the acting chief director for permits attributed the end of the special dispensation and accompanying ZDP decision to 'the positive socio-political development in Zimbabwe'. Similarly, the cabinet spokesman Themba Maseko said the decision to regularise Zimbabweans was based on a level of 'stability' as a result of the unity government established between the MDC and Zanu-PF.[53] The minister, by contrast, stated that the introduction of the ZDP was not linked to conditions in Zimbabwe:

> All that we are saying is that the Zimbabweans who are in South Africa must present themselves to the authorities and say who they are and what they are doing. I am really not sure what this has to do with the situation in Zimbabwe ... I have not assessed the situation in Zimbabwe … however, this dispensation was not linked to this matter – rather to those who are in South Africa undocumented and their stay in the country unregularised.[54]

The purpose of documentation under the ZDP remains unclear in light of these conflicting statements. The implementation process further calls into question its intended purpose.

Despite the department's characterisation of the ZDP as a way to establish who was in the country, its methods of implementation undermined this goal. The minister called the process a 'mopping up exercise' for those who did not register during the special dispensation, referring to individuals who 'missed the deadline' of that dispensation.[55] But individuals never had an opportunity to register under the dispensation because the special permit was never implemented. The ZDP, then, marked the first opportunity for most Zimbabweans to regularise their status outside the asylum system. If the department's main goal was to document as many Zimbabweans as possible, implementation of the programme would have been better served by acknowledging the first-time nature of this opportunity, rather than treating it as an extension of the previous dispensation for those few remaining Zimbabweans who had missed the so-called previous opportunity.

Implementation of the ZDP

The implementation of the ZDP suggests limited DHA support for the regularisation scheme. Rather than create a programme that allowed for the documentation of as many Zimbabweans as possible, the department seemed intent on minimising the reach of the programme prior to the resumption of deportations. At the same time,

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53 *Ibid*.

54 'Minister Dlamini Zuma on end of special dispensation for Zimbabwean citizens, Gallagher Estate, Midrand, Johannesburg', 3 September 2010, available at http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=197248&sn=Detail.

55 Interaction with media by Home Affairs Minister N. Dlamini Zuma regarding documentation of Zimbabweans, Home Affairs Office, Harrison Street, Johannesburg, 20 December 2010, available at http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=15359&tid=26010.

once the ZDP was under way, the department began taking incremental steps to expand its reach. While this may reflect poor planning, it also may serve as an indication of the department's conflicted approach to documentation.

The DHA announced the ZDP shortly after the cabinet terminated the special dispensation on 2 September 2010. It was implemented hastily less than three weeks later on 20 September. The short lead-up time left many offices unprepared for the process, and many migrants and their employers uninformed about the requirements and possible implications. These problems were exacerbated by the short timeline allocated to the process, which lasted just over three months and terminated on 31 December 2010. The department gave no explanation for the short time period, except to state that it believed that this period was sufficient to document all eligible Zimbabweans in the country.[56] But, given the lack of accurate estimates of the number of Zimbabweans in the country, and the fact that the department had previously relied on highly inflated estimates, the three-month period cannot be linked to any rational calculation of the time needed to reach all eligible Zimbabweans.

The minister insisted that the three-month period was sufficient to document all of the Zimbabweans in the country, even as she acknowledged that she did not know how many there were: 'We do not have a very accurate idea of the numbers we will be dealing with.'[57] A year later, a DHA official acknowledged that 'when the Project commenced, the Department did not have accurate and reliable data on the number of undocumented Zimbabweans in South Africa.'[58] As individuals struggled to gain access to Home Affairs offices, even spending the night in the queues, it became clear that the DHA was not prepared for the large numbers. Yet, in response to criticism that the department had not allocated sufficient time to document the numbers of Zimbabweans in the country, the director-general ignored the queues outside the offices and relied on the numbers of applications submitted as proof that previous estimates of Zimbabweans in the country were a 'thumb suck' that greatly overestimated these numbers, despite the department having previously relied on them.[59] In other words, the DHA altered its vision of social reality to serve its goals around the ZDP.

The department also initially limited registration to those individuals who had been in the country prior to 31 May 2010, shortly after the originally scheduled April 2010 end date of the special dispensation. Although the department did not explain the May cutoff, it had the effect of excluding otherwise eligible Zimbabweans in the country. If the goal was to document previously undocumented migrants as a mechanism of control, the cutoff date lacked a rational basis. Assuming the goal was to deter future migration, it is unclear why the cutoff date made ineligible the individuals who were already in the country before the ZDP was announced. The decision is

56 N. Tay, 'Zimbabwe Permit Deadline Stays', *Business Day*, 7 October 2010, available at http://www.bdlive.co.za/articles/2010/10/07/zimbabwe-permit-deadline-stays.
57 Minister N. Dlamini Zuma on end of special dispensation for Zimbabwean citizens, 3 September 2010.
58 ZDP: briefing by DHA, 19 September 2011.
59 'Home Affairs to Clear Permit Backlog', *News24*, 18 November 2010, available at http://www.news24.com/SouthAfrica/Politics/Home-affairs-to-clear-permit-backlog-20101118.

consistent with a desire to deport rather than document many of the Zimbabweans in South Africa.

The short preparation and implementation periods resulted in a host of problems that limited the effectiveness of the ZDP in documenting Zimbabweans.[60] As mentioned, many offices were unprepared and unfamiliar with the requirements, resulting in inconsistent application procedures across offices. The short application period also resulted in long queues, while offices battled high demand with insufficient staff and resources. Many individuals also struggled to obtain the necessary documents before the deadline, particularly Zimbabwean passports. As a result, the documentation process was largely biased in favour of those who had previously possessed passports. In response to criticism that Zimbabweans were scrambling to get passports, and in contrast to the statements above indicating that the DHA did not know the numbers of undocumented migrants in the country, the chief of immigration services stated: 'Most Zimbabweans come into the country legally. The statistics and the facts from our movement control system at Beit Bridge (border post) show that. And our system shows that they have passports.'[61] Again, this representation differed from past presentations of reality that pointed to the high numbers of undocumented migrants. In fact, these high numbers were cited as part of the motivation behind the ZDP, a motivation that then evolved to better fit with the reality of implementation.

The application process itself was highly inefficient, as individuals had to queue on three separate occasions simply to submit an application, creating further barriers. The hasty implementation also left many employers wary of the process. As a result, some Zimbabweans reported that their employers were unwilling to provide the necessary affidavits out of concern over the legal implications of acknowledging employing an undocumented migrant.[62] Either deliberately or inadvertently, the DHA failed to communicate effectively with employers about the ZDP.

All of these obstacles greatly limited the reach and potential effectiveness of the ZDP as a documentation mechanism. But the DHA also took steps to alleviate some of these obstacles after the application process began. At some point during the process, the DHA dropped the 31 May cutoff and allowed all Zimbabweans to apply, although it never officially announced this change in policy. The department also relaxed the passport and fingerprinting requirements during the last two weeks, allowing individuals to apply with a receipt showing they had applied for a passport. During the last few days, it allowed individuals with any proof of Zimbabwean nationality to apply.

These changes appeared to be well-intentioned responses to criticisms levelled during the application process. But it is unclear what effect they had, as many individuals may have given up on the ZDP in frustration and remained unaware of

60 These problems are detailed in R. Amit, 'The Zimbabwe Documentation Process: Lessons Learned', *ACMS Research Report, 2011*.
61 D. Taylor, 'Passport Panic for Zimbabwean Migrants in South Africa', Voice of America, 5 November 2010, available at http://www.voanews.com/content/passport-panic-for-zimbabwean-migrants-in-south-africa---106778418/156755.html.
62 Amit, 'Zimbabwe Documentation Process: Lessons Learned'.

these changes, particularly if they had returned to Zimbabwe for the holidays. Many Zimbabweans expressed confusion over the changing requirements. The bureaucratic inefficiencies also delayed the start of deportations, slated to resume at the beginning of 2011. The 10-day turnaround time initially projected for applications ultimately stretched well into the following year, and deportations only resumed in October 2011.

Effects of the ZDP

DHA officials characterised the ZDP as a success. According to the director-general for Home Affairs:

> The Department considered the Dispensation a success. The main goal of the project was to provide rights to those Zimbabweans who had been employed in the country but were not granted protections due to their permit status. The people who had applied had gotten a chance at receiving fair treatment and at regularizing and legitimizing their stay in the country.[63]

The ZDP project manager similarly stated: 'This is a phenomenal success. We've got people acknowledging that the way the project was managed was exceptionally good.'[64]

But such measures of success depend on the true goals of the project. A large number of Zimbabweans remained undocumented, and the department itself acknowledged that it did not know how many did not apply,[65] either by choice, ineligibility, or because of problems in the application process.

In touting the success of the project, the director-general refused to consider reopening applications in response to a request from Zimbabwe's Home Affairs co-minister, insisting: 'We have said it is closed forever. If there are those who did not take up that offer, they are now here illegally.'[66] This approach is consistent with a policy whose true goal was not documentation for its own purposes, but rather documentation as a way to reassert illegality and resume deportations of large numbers of Zimbabweans.

A total of 275,762 Zimbabweans applied for the regularisation under the ZDP, and 255,582 permits were granted.[67] There are no reliable estimates of the numbers of Zimbabweans in the country, making it difficult to assess what proportion of the Zimbabwean population this represents. Nor are the effects of this documentation effort clear. Between April 2009 and March 2010, Zimbabwean asylum applicants numbered 249,221. The following year (April 2010–March 2011), roughly half the

63 Zimbabwean Documentation Process: Briefing by Department of Home Affairs, 19 September 2011.
64 'Govt: Zim Documentation a "Phenomenal Success,"' *Mail & Guardian*, 24 February 2011, available at http://mg.co.za/article/2011-02-24-govt-zim-documentation-a-phenomenal-succes.
65 *Ibid.*
66 'Zim documentation almost done', *News24*, 19 January 2012, available at http://www.news24.com/SouthAfrica/Politics/Zim-documentation-almost-done-20120119.
67 *Ibid.*

number of Zimbabweans applied – 117,194 – though Zimbabweans still accounted for 63 per cent of total applications. In the 2011 calendar year, they accounted for 48 per cent of asylum seekers.[68] A survey of asylum seekers conducted outside of the country's refugee reception offices in 2012 found that one-fifth of Zimbabwean respondents in the asylum system had applied for the ZDP, suggesting that its effectiveness in alleviating demand on the asylum system proved temporary.[69]

As a documentation effort, the ZDP sends a mixed message regarding the desirability of documentation. While the DHA touted the ZDP as a mechanism for tracking who was in the country, the manner of implementation did not support this goal. DHA practice alternated between restricting access to the regularisation scheme and taking steps to reduce these barriers. In the end, the small scope and limited duration of the ZDP suggests that it was less about expanding regularisation options than about providing some sort of justification for resuming deportations.

Conclusion

The DHA's use of documentation in South Africa's asylum system and the ZDP (September–December 2010) illustrates the contradictory approach to documentation and the administration's conflicting goals: to maintain a record of who is in the country and to limit foreign migrants' access to documentation because of the rights that come with it. These competing state intentions around documentation limit the bureaucracy's effectiveness and control, either in relation to obtaining knowledge or in choosing to ignore elements of social reality to achieve certain objectives. This stands in contrast to documentation literature that portrays bureaucracies as making unambiguous choices to either seek or not seek knowledge. Much of this literature also gives insufficient attention to bureaucratic practices affecting documentation and their potentially powerful political and policy effects. Adopting the street-level organisational approach to analyse bureaucratic practices around documentation in the asylum system and the ZDP highlights how these practices create new policies that deny rights to the selected population while also undermining state goals around knowledge of who is in the country, resulting in greater numbers of undocumented migrants that remain removed from state record keeping. But while this makes them less visible to the government, they remain visible to society, where their undocumented status may have profound social, economic and political effects in the labour market, in crime dynamics and in social cohesion. These unintended consequences demand further exploration in theoretical approaches examining the relationship between documentation on the one hand and state authority and effectiveness on the other.

68 Numbers based on DHA's submitted response to the Parliamentary Home Affairs Portfolio Committee, on file with the author. They differ from the numbers reported in the department's 'Annual Report on Asylum Statistics', 2010/2011.
69 Amit, 'Zimbabwean Documentation Process: Lessons Learned'.