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The Political Work of Migration Governance Binaries: Responses to Zimbabwean "Survival Migration" at the Zimbabwe–South Africa Border

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ABSTRACT

This article's purpose is to analyse the political work of binaries used in both domestic and global migration governance responses with a particular focus on Zimbabwean "survival migration" at the Zimbabwe–South Africa border. This article finds that there is peculiar complementarity between South Africa's domestic migration governance framework and global migration governance frameworks aimed at a migration management approach. This article argues that this nice fit normalises the ostensibly clear distinction between migrants and refugees to deny protection to deserving asylum-seekers, which is productive in serving the political interests of the South African government. Without access to the appropriate papers and encountering a border refugee reception office that has developed de facto gatekeeping measures to prevent them from seeking asylum, as well as a United Nations High Commissioner for Refugees field office that perceives them as economic migrants, many Zimbabweans living in South Africa occupy a liminal area of categorisation and protection. Hence, the possibilities of the global migration governance providing legitimacy to exclusionary practices at the national level in South Africa are immense. This points to the need for serious engagement with "survival migration" as a category of mobility in analysis, policy, law as well as practice.

KEYWORDS: migrants, refugees, asylum seekers, governance, Zimbabwe, South Africa, binaries, global compacts, survival migration

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1. INTRODUCTION

Several studies over the past two decades have unpacked the reasoning for systematic failures in both the immigration and refugee regimes of South Africa.[1] What seems to be lacking however is an analysis of the political motivations behind the regulatory mechanisms and why they persist, in the face of mounting conflicting empirical evidence. This article's purpose is to analyse the political work of binaries used in both domestic and global migration governance responses with a particular focus on Zimbabwean "survival migration" at the Zimbabwe–South Africa border.

It reveals the political expediency of the distinction between more voluntary forms of mobility, such as economic migration, and more forced forms, such as refugee movements, which overlooks the messy realities of migration. This analysis contributes to an understanding of the political motivations behind migration regulatory mechanisms and why they persist. Indeed, this helps in revealing the possibilities of global migration governance providing legitimacy to exclusionary practices at the national level, which points to the need for serious engagement with survival migration as a category of mobility in analysis, policy, law, as well as practice. Looking forward, this article's findings suggest that, without this kind of engagement, we are likely to see global migration governance frameworks like the Global Compacts reinforcing securitisation discourses, agendas, and policies even in other contexts where the asylum space is shrinking as states question the legitimacy of asylum-seekers who are in similar situations of survival migration.

Under the leadership of Robert Gabriel Mugabe, Zimbabwe experienced a meltdown that was mainly characterised by eroding value of salaries as a result of hyperinflation, the shortage of commodities and resultant long queues, and the growing number of emigrants.[2] Most Zimbabweans who left during the 2000's headed towards South Africa's vibrant economy.[3] Thousands of displaced and undocumented Zimbabwean migrants sought refuge in the bushes and streets of Musina, in northern South Africa around 15km from the border with Zimbabwe. Since then, a substantial number of Zimbabweans have crossed the border to live and work in the Limpopo province.[4] The data from the 2017 White Paper on International Migration suggests that between the period 2011–2016, Zimbabwean migrants were the second largest group of arrivals in the country after Lesotho, constituting 21 per cent of total arrivals. While Zimbabwean migrants may have other goals in mind, such as reuniting

1 Loren B. Landau, "Protection and Dignity in Johannesburg: Shortcomings of South Africa's Urban Refugee Policy", *Journal of Refugee Studies*, 19(3), 2006, 308–327, https://doi.org/10.1093/jrs/fel012 (last visited 24 Mar. 2023); Loren B. Landau & Roni Amit, "Wither Policy? Southern African Perspectives on Understanding Law, 'Refugee' Policy and Protection", *Journal of Refugee Studies*, 27(4), 2014, 534–552, https://doi.org/10.1093/jrs/feu005 (last visited 24 Mar. 2023); Amit, "No Refuge".

2 Wendy Willems, "Comic Strips and 'the Crisis': Postcolonial Laughter and Coping With Everyday Life in Zimbabwe", *Popular Communication*, 9(2) 2011, 126–145, https://doi.org/10.1080/15405702.2011.562099 (last visited 24 Mar. 2023).

3 R. Chinyakata & N.R. Raselekoane, "A Study of the Effects of Zimbabwean Youth Migration on Musina Area, South Africa", *Social Sciences*, 10(3), 2016.

4 Blair Rutherford, "An Unsettled Belonging: Zimbabwean Farm Workers in Limpopo Province, South Africa", *Journal of Contemporary African Studies*, 26(4), 2008, 401–415, https://doi.org/10.1080/02589000802481973 (last visited 24 Mar. 2023); Blair Rutherford & Lincoln Addison, "Zimbabwean Farm Workers in Northern South Africa", *Review of African Political Economy*, 34(114), 2007, 619–635, available at: https://doi.org/10.1080/03056240701819491 (last visited 24 Mar. 2023).

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with relatives in the province of Gauteng (which is home to the City of Johannesburg) or elsewhere, or seeking better-paying positions outside the agricultural industry, there is little doubt that the humanitarian nature of Zimbabwean migration blurs the traditional distinctions between refugees and economic migrants.[5] So in as much as many end up working on border farms in Limpopo as seasonal pickers, pack shed workers, or permanent employees,[6] or others may choose to stay in Musina and save money in order to travel further south,[7] these migrant labourers search for physical safety cannot be separated for their yearning to maintain a privileged status rooted in Zimbabwe's former grandeur as "Africa's bread basket." As a result, many perceive vocational niches on the border as a potential route to socioeconomic and personal mobility, as well as a way to integrate into South Africa's larger society, which offers them, in turn, physical protection. Within this form of "survival migration", others have fled persecution as a result of their political beliefs and are simply seeking protection.[8]

Many of these migrants travel without papers and considering this complexity, there is little resolution of getting new ones either as labour migrants or asylum-seekers. They regularly face unexpected delays after crossing the border, finding themselves in situations and areas of immense ambiguity and utter negation, which have a significant impact on their goals and life paths. In this environment, border towns like Musina frequently serve as safe havens for Zimbabwean migrants who become what something akin to "floating populations."[9]

This has also led to an influx of humanitarian actors to assist these immobile migrants including a United Nations High Commissioner for Refugees (UNHCR) field office that opened in 2008. In addition, a refugee reception office (RRO) also opened in the same year to process Zimbabwean migrants asylum applications. Yet, the realities of applying for asylum are extremely difficult, with migrants encountering an RRO that is available to them on paper but has developed numerous de facto gatekeeping techniques to prevent them from accessing asylum. First, as the South African government has continued to view the majority as "economic migrants," many are instructed to apply for one of the country's temporary residency permits. Secondly, through a deportation regime which criminalises undocumented migrants such that Zimbabweans are regularly arrested, detained, and ultimately returned.

These practices are perhaps not that surprising, when you consider South Africa has one of the most negative public attitudes towards immigration of all Global South countries.[10] As widely reported, this has developed into xenophobic attitudes

5 Sharon Petersen, "Thin Line between Economic Migrants, Refugees Blurred", *Citizen*, 1 Dec. 2009, SA Media, available at: https://discover.sabinet.co.za/document/6860589 (last visited 24 Mar. 2023).

6 Rutherford, "An Unsettled Belonging"; Rutherford & Addison, "Zimbabwean Farm Workers in Northern South Africa".

7 See Inocent Moyo, "Changing Migration Status and Shifting Vulnerabilities: A Research Note on Zimbabwean Migrants in South Africa", *Journal of Trafficking, Organized Crime and Security*, 2(2), 2017, 108–112; Rutherford, "An Unsettled Belonging".

8 Rutherford & Addison, "Zimbabwean Farm Workers in Northern South Africa".

9 Jean-François Bayart, "*Global Subjects: A Political Critique of Globalization*", Cambridge, Polity, 2007.

10 Jonathan Crush, "Deadly Denial: Xenophobia Governance and the Global Compact for Migration in South Africa" (Cape Town: Southern African Migration Programme (SAMP), 2021), available at:

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and violence, which have been inadequately addressed by the state.[11] These public attitudes then influence policy spaces which in turn influence South Africa's responses to migration. Years of corruption and bad governance that have added to a complex history of harsh social, economic, and political marginalisation of black South Africans make this link particularly obvious. Immigration has become a politicised and even emotionally charged issue since the government has failed to deliver on its promises to the black majority. At the same time, the country also requires certain skills that its local labour force does not fully possess. Yet, international migration is for the most part, framed by politicians and policymakers in a negative, scapegoated narrative, often misrepresenting the numbers and outcomes of immigration.[12]

Ultimately, the asylum space in South Africa has been reduced to the point where many see the national refugee regime as no longer relevant because it fails to fulfil its primary protective function.[13] Instead, it now serves as a control system for so-called economic migrants.[14] Similarly, the labour migrant regime is not necessarily open to low-skilled Zimbabwean migrants because, albeit some bilateral mechanisms exist, most are outdated and require extending while there are no provisions to provide work permits for those working in sectors like domestic work, agriculture, or hospitality.[15] Thus, you have two migration regimes both failing to perform their core mandates.

The crude irony in this status quo exists in a context where South Africa's domestic migration governance framework is in line with global migration governance frameworks, which are framed as promoting human rights, but often appear to

https://www.africaportal.org/publications/deadly-denial-xenophobia-governance-and-global-compact-migration-south-africa/ (last visited 24 Mar. 2023).

11 Loren B. Landau, "South Africa Has a Plan to Fight Prejudice. But It's Full of Holes", *The Conversation*, 1 Apr. 2019, available at: http://theconversation.com/south-africa-has-a-plan-to-fight-prejudice-but-its-full-of-holes-114444 (last visited 24 Mar. 2023); Jonathan Crush et al., "The Owners of Xenophobia: Zimbabwean Informal Enterprise and Xenophobic Violence in South Africa", *African Human Mobility Review*, 3(2), 2017; Jean Pierre Misago, "Politics by Other Means? The Political Economy of Xenophobic Violence in Post-Apartheid South Africa", *The Black Scholar*, 47(2), 2017, 40–53, https://doi.org/10.1080/00064246.2017.1295352 (last visited 24 Mar. 2023).

12 K.P. Vanyoro, "Pragmatic Pathways: Critical Perspectives on Research Uptake in the Global South", Igrating out of Poverty RPC Working Paper No. 30 (Brighton, UK: Migrating out of Poverty Consortium, University of Sussex, 2015), available at: https://www.gov.uk/dfid-research-outputs/pragmatic-pathways-critical-perspectives-on-research-uptake-in-the-global-south-migrating-out-of-poverty-rpc-working-paper-no-30#citation (last visited 24 Mar. 2023); Ingrid Palmary & Thea de Gruchy, "The Globalisation of Trafficking and Its Impact on the South African Counter-Trafficking Legislation", *Critical Social Policy*, 1 Mar. 2019, 0261018319829640, https://doi.org/10.1177/0261018319829640 (last visited 24 Mar. 2023).

13 Roni Amit, "No Refuge: Flawed Status Determination and the Failures of South Africa's Refugee System to Provide Protection", *International Journal of Refugee Law*, 23(3), 2011, 458–488, https://doi.org/10.1093/ijrl/eer015 (last visited 24 Mar. 2023).

14 *Ibid.*

15 Zaheera Jinnah & Janet Munakamwe, "A Bitter Harvest: Migrant Workers in the Commercial Agricultural Sector in South Africa", MiWORC (Johannesburg: University of the Witwatersrand, 2015); Kudakwashe P. Vanyoro, "Regularising Labour Migration of Zimbabwean Domestic Workers in South Africa", Johannesburg, University of the Witwatersrand, 2019, available at: http://www.migration.org.za/wp-content/uploads/2017/08/Regularising-labour-migration-of-Zim-domestic-workers-in-SA-Issue-Brief-15-July-2019.pdf (last visited 24 Mar. 2023).

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predominantly focus on the management of migration. Working from this tension, this article argues that this nice fit normalises the ostensibly clear distinction between migrants and refugees to deny protection to deserving asylum-seekers, which is only productive in serving the political interests of the state. This article locates this nice fit in the political expediency of the distinction between more voluntary forms of mobility, such as economic migration, and more forced forms, such as refugee movements. These neat, orderly, and well-defined policy categories obscure the messy, overlapping, and complicated realities of migration in southern Africa.

Previous scholars have noted how in the face of changing conditions in southern Africa, the analytical distinction between displacement (in the forced and involuntary aspects of the human movement/migration continuum) and migration (visible in the voluntary aspects of the continuum) is getting more elusive.[16] The presumption that labour migration governance and its object(ive) (labour migrants and labour migration) can be neatly separated from "forced migration" (asylum-seekers, refugees and their attendant protection regime) may be true for some historical and geographic contexts. Yet this does not hold up for ones where the lines between force and volition are blurred as migrants face risk to physical security associated with violations of basic human rights, discrimination, or persecution. This article thus utilizes the responses to "survival migration" at the Zimbabwe–South Africa migration corridor as a case study. Betts broadly defines "survival migration" as referring to people:

> who are outside their country of origin because of an existential threat for which they have no access to a domestic remedy or resolution. The concept does not focus on a particular underlying cause of movement—whether persecution, conflict, or environment, for example. Instead, it is based on the recognition that what matters is not privileging particular causes of movement but rather clearly identifying a threshold of fundamental rights which, when unavailable in a country of origin, requires that the international community allow people to cross an international border and receive access to temporary or permanent sanctuary. Refugees are one type of survival migrant, but many people who are not recognized as refugees also fall within the category.[17]

The empirical data for the case study was obtained through an ethnographic investigation of the experiences of Zimbabwean migrants who had their journeys disrupted when crossing the Zimbabwe–South Africa border. This qualitative research was conducted at the Zimbabwe–South Africa border from 2019 to 2022. Interviews with Zimbabwean migrants, humanitarian workers working on migrant and refugee rights as well as delivering social and legal services and an analysis of scholarly papers, grey literature, newspaper articles and policy documents were used to compile this study.[18] Interviews were taped, downloaded, and saved on a password-

16 Chris De Wet, "Reconsidering Displacement in Southern Africa", *Anthropology Southern Africa*, 31(3–4), 2008, 114.

17 Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, Ithaca and London, Cornell University Press, 2013, 4–5.

18 Ethical clearance for this project was obtained from the University of the Witwatersrand Ethics Committee for Non-Medical Research on Human Subjects (H18/10/31).

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protected hard disc before being transcribed electronically for data processing. Observation and diary methods were used in addition to this procedure. This ethnographic approach was complemented with an analysis of direct quotes from politicians, speeches, and statements in media articles.

This article begins by exploring the alignment of South Africa's domestic framework for governing migration with international frameworks, which are framed as advancing human rights yet seem to be primarily focused on managing migration (Section 2). This is done through a careful examination of the domestic and international frameworks for managing migration (in Section 2.1 and 2.2, respectively). As the findings show that many Zimbabweans occupy a liminal area of categorisation and protection by the UNHCR and border RROs, this article tries to help the reader comprehend the messiness of Zimbabwean migration through an understanding of the morphology of the crisis that gave rise to it (Section 3). This article proceeds to discuss the political purpose of the refugee/migrant dichotomy in South Africa to unpack the aims of this approach and explore who stands to benefit (Section 4.1). It suggests that as a tool for denying protection, these policy and legal distinctions are expedient to the South African state for whom migration governance is politically contested. Although it is not immediately apparent that each action is planned, the African National Congress (ANC) government benefits from keeping migrants in difficult situations because this allows them to purport to be responding to the needs of black South Africans in an increasingly xenophobic context. This approach is couched in narratives of "national interest" and "security," which help garner votes when migrants are perceived as the problem regarding issues that are related to corruption and poor governance. This approach has become more evident through the instrumentalisation of Zimbabwean migrants in this sphere of contentious politics. This article then examines the state and non-state responses to the Zimbabwean crisis from 2006 to date with a particular interest in how in fulfilling its mandate, the UNHCR identifies itself as a neutral actor that is bound by international and domestic law, which, in the process, reinforces these governance frameworks (Section 4.2). It then investigates the situation at the border in relation to novel forms of de facto governance; moving beyond the de jure frameworks to extend its interest to what these dichotomies create (Section 4.3). Finally, conclusions are offered.

2. THE NICE FIT BETWEEN INTERNATIONAL AND DOMESTIC GOVERNANCE STRUCTURES

Although South Africa's domestic framework for governing migration is consistent with international frameworks, which are framed as advancing human rights, it seems to be primarily focused on managing migration. This nice fit normalises the purportedly distinct line between migrants and refugees to deny protection to legitimate asylum seekers, which only serves the state's political interests. It is necessary to carefully examine the domestic and international frameworks for managing migration to provide context.

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2.1. International governance frameworks

Refugees and migrants are entitled to a number of the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times.[19] Yet migrants and refugees also remain distinct groups governed by separate legal frameworks.[20] For refugees, there is the 1951 Convention relating to the Status of Refugees ("1951 Refugee Convention") and its 1967 Protocols and a number of regional conventions that focus on refugee rights, including the Organisation of African Unity (OAU) Convention in Africa. South Africa has ratified both, with both also being domesticated through the Refugees Act. This means refugees in South Africa are entitled to several international rights such as freedom of movement, travel documents, and right to work.

In contrast to the range of international legal frameworks relating to forcibly displaced persons, international frameworks surrounding the treatment of international migrants remain thin. The most significant convention, in terms of migrant worker rights and the protection of migrant workers and their families (regardless of their legal status) is the Convention on Migrant Workers (Van Eck and Snyman, 2015), however South Africa is not signatory. While also not a party to several key International Labour Organisation (ILO) conventions focussed on the rights of migrant workers,[21] South Africa has though signed the ILO Domestic Workers Convention 2011 (No. 189) which sets out rights to decent work for all domestic workers (Dodson and Crush, 2015). For migrants who cross borders but do not fit the restrictive criteria of the Refugee Convention or national or international norms governing different forms of labour migration, there is much less access to governance frameworks, and by extension very limited legal rights.[22]

Other global migration governance frameworks like the recent Global Compacts have buttressed this dichotomy between the different "groups" of migrants. Indeed, the shift in early discussion of the compacts to have two separate migration governance frameworks normalised the ostensibly clean distinction between migrants and refugees. In particular, the Global Compact on Migration (GCM) is clear that migrants and refugees are two different populations that are governed by two different legal systems. The GCM and the discussions that led to its formation like the Global Forum on Migration and Development (GFMD) have primarily focused on improving labour migration regulation to improve developmental outcomes for all stakeholders. Refugees, on the other hand, were conspicuously absent from these debates, and their issues were dismissed as coming under the UNHCR's mandate in the Global Compact on Refugees (GCR).[23] This is in line with International

19 Annick Pijnenburg & Conny Rijken, "Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move', *Interventions*, 23(2), 2021, 273–293, https://doi.org/10.1080/1369801X.2020.1854107 (last visited 24 Mar. 2023).

20 *Ibid.*

21 Including the Migration for Employment Convention (Revised) No. 97 of 1949 (1949 Convention) and the Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 (1975 Convention).

22 Pijnenburg & Rijken, "Moving beyond Refugees and Migrants".

23 Kellynn Wee, Kudakwashe P. Vanyoro, & Zaheera Jinnah, "Repoliticizing International Migration Narratives? Critical Reflections on the Civil Society Days of the Global Forum on Migration and Development", *Globalizations*, 12 Mar. 2018, 1–14, https://doi.org/10.1080/14747731.2018.1446600 (last visited 24 Mar. 2023).

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Organisation for Migrations (IOM) objective to create policy categories that are tidy, orderly, and well-defined.[24] The GCM aligns with the underlying assumptions built into ostensibly "neutral" keywords within the global governance vocabulary, such as the sustainable development goals (SDGs), reducing the messiness of migration drivers to a preference for orderly solutions. Following this dichotomy, the GCR and the New York Declaration are a response to "an urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees."[25]

On the ground in locations like Southern Africa, the extent to which migrants and refugees are distinct groups governed by separate legal frameworks is questionable. The Global Compacts are a clear example of how global migration governance frameworks and narratives "aspire at a double order"[26] by first producing neat, orderly, and well-demarcated policy categories out of the messy, overlapping, and complicated realities of migration, and then prescribing recommendations that "manage" migration in balanced and organised ways. The compacts reflect the global migration governance regime's bifurcation, which seeks to distinguish between more choice types of mobility, such as economic migration, and more forceful forms, such as forced migration.

Yet as distinct as each regime is, individually or collectively they are not comprehensive enough to protect everyone on the move. Individuals fleeing across borders to avoid the danger of war or other forms of widespread violence are not always protected under the 1951 Refugee Convention.[27] Irregular migrants are often not offered the same protections offered to labour migrants who move in a "safe, orderly and regular" manner. Hence, the ostensibly neat distinction between migrants and refugees does not always hold. Yet there is a growing complementarity of domestic and global migration governance frameworks oriented towards a migration management approach aimed at distinguishing between more choice forms of mobility, such as economic migration, and more forced kinds, such as refugee migration. This overlooks several crucial occurrences in which tidy, orderly, and clearly defined policy categories conceal the overlapping realities of migration.

2.2. Domestic governance frameworks

South Africa's two domestic migration governance frameworks are in line with global migration governance frameworks aimed at a migration management approach. In this regard, there is a nice fit between South Africa's migration regimes and international law, particularly in relation to the intransigent emphasis on the dichotomy between migrants and refugees. Two sections of legislation govern migration in South Africa. Asylum-seekers and refugees' rights to enter and settle in South Africa

24 Antoine Pécoud, *Depoliticising Migration: Global Governance and International Migration Narratives*, Basingstoke, Springer, 2014.

25 United Nations, "Global Compact on Refugees", New York, United Nations, 2018, 1, available at: https://www.unhcr.org/5c658aed4.pdf (last visited 24 Mar. 2023).

26 Antoine Pécoud, "Depoliticising Migration", in *Depoliticising Migration: Global Governance and International Migration Narratives*, Basingstoke, Springer, 2015, 92; Pécoud, *Depoliticising Migration*.

27 Arthur C. Helton & Eliana Jacobs, "What Is Forced Migration", *Georgetown Immigration Law Journal*, 13, 1998, 521.

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are governed by the Refugees Act. South Africa signed the OAU Convention in 1995 and the 1951 Refugee Convention in 1996. The Refugees Act became a domestication of international legal instruments such as the 1951 Refugee Convention and its 1967 Protocol, the OAU Convention, and the Universal Declaration of Human Rights as adopted by the general Assembly of the United Nations. As noted by Amit (2011, 462–463), drawing on international and regional law, Section 3 of the Refugees Act defines three categories of persons qualifying for refugee status:

1. a person forced to flee his country of origin because of a well-founded fear of persecution based on race, tribe, religion, nationality, political opinion, or membership in a particular social group and who is unable or unwilling to seek the protection of his or her country of origin;
2. a person who is compelled to leave his or her place of habitual residence as a result of external aggression, occupation, foreign domination, or events seriously disturbing or disrupting public order in either a part or the whole of his or her country or origin;
3. a dependant of a person described in the above two categories.

An asylum-seekers permit, also known as a Section 22 Permit (Refugees Act No. 130 of 2008), permits asylum-seekers to work or study in South Africa while their claim for refugee status is processed. After a successful Refugee Status Determination (RSD) procedure, asylum-seekers are formerly recognised as refugees in South Africa and given a Section 24 Permit (also known as a "Refugee Permit").[28] The permit is good for two years and must be renewed at least three months before its expiration date. A refugee identity paper and a travel document are available to all Section 24 Permit holders. Refugees have access to most of the same rights as South African citizens (except the right to vote). A person with refugee status is protected by the South African government and cannot be forced to return home until it is deemed safe to do so. Recent changes, however, to national law and policy have the potential to severely restrict the rights of refugees and asylum-seekers in South Africa. On 1 January 2020, the Refugees Amendment Act 2008 (RAA, 2008) came into force, which also triggered the coming into force of the Refugees Amendment Act 12 of 2011 (RAA 2011) and of the Refugees Amendment Act 2017 (RAA 2017). These pieces of legislation along with their accompanying regulations include the loss of refugee status for voting or participating in any political activity in refugees countries of origin, as well as seeking any consular services from their countries of origin (for example, requesting a birth certificate at a consulate); tightening administrative rules for applying for asylum; and limiting asylum-seekers' right to work and study in South Africa.

These changes aim to match South Africa with many other countries' more exclusionary and restricted treatment of asylum-seekers and refugees.[29] This is detrimental

28 As per the Refugees Act No. 130.

29 Jonathan Crush, Caroline Skinner, & Manal Stulgaitis, "Benign Neglect or Active Destruction? A Critical Analysis of Refugee and Informal Sector Policy and Practice in South Africa", *African Human Mobility Review*, 3(2), 2017, 752.

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for refugee entrepreneurs because refugee status is necessary for their entrepreneurship and long-term livelihoods. It also furthers the possible marginalisation of asylum-seekers and refugees who already can become undocumented from problems and barriers they face in renewing permits and the long waiting time for RSD and appeals.[30]

In contrast, "voluntary" migrants are regulated and regularised by the Immigration Act 13 of 2002 and the Immigration Regulations to the Act (2014). In support of the White Paper on the Management of International Migration, which Cabinet authorised on 29 March 2018, Immigration Services started drafting changes to the Immigration Act in 2018–19.[31] This process is yet to be concluded. Those who are not refugees, or who are not deemed refugees by the state, must apply for one of the permits listed in the Immigration Act (for example, Study, Business, Work, Critical Skills, Spousal etc.), which are usually referred to as temporary residency permits (TRPs).

In practice, it is not easy to get a work permit in South Africa because any person who employs a foreign national must ensure that there are no persons in the Republic, other than foreign nationals, with the requisite skills to fill the vacancy according to labour law in the Employment Services Act.[32] In addition, South Africa has bilateral arrangements with some countries that allow people to come into the country as visitors and receive up to 90 days at the port of entry. While this allows for relatively freer movement, the visa imposes restrictions. For instance, the Immigration Regulations (2014) have made it illegal to apply for a work permit, or any other long term TRP, if one arrives in the country on a visitor's visa.[33] This restriction establishes the first way in which many migrants end up becoming undocumented. The process of applying for a permit "from outside the Republic" can take from three months to over a year, which inevitably jeopardises migrants' jobs, as there are few employers who are willing to either wait that long for a new employer or provide that much leave. Dodson argues that an almost inevitable consequence of this legislation is the separation of South African citizens from their foreign spouses while such applications are pending.[34] As a result of these restrictions, some migrants, particularly those from the region, prefer to overstay their visitor's visas as they often cannot afford to return home to apply for a work permit.

Another reason migrants become undocumented is because low-skilled migrants fall through the cracks of the Immigration Regulations as they often do not meet the necessary requirements for regularisation. For example, they may not possess 'critical skills', and often cannot afford supporting requirements like medical cover, lease agreements, and face difficulties showing proof of formal employment because they

30 Betts, *Survival Migration*.

31 Department of Home Affairs, "Department of Home Affairs Vote No. 05 Annual Report 2018/19", Pretoria, Department of Home Affairs, 2019, available at: https://nationalgovernment.co.za/department_annual/276/2019-department-of-home-affairs-(dha)-annual-report.pdf (last visited 24 Mar. 2023).

32 ILO, "Draft National Labour Migration Policy for South Africa" (Pretoria: ILO, 2022).

33 There are extenuating circumstances where this is possible. These included but not limited to those individuals who are on a visitor's visa who would like to apply for a spousal visa.

34 "Discrimination by Default? Gender Concerns in South African Migration Policy", *Africa Today*, 48(3), 2001, 73–89.

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work in sectors like domestic work where employment contracts are often not provided owing to employer and social ideologies that refuse to recognise domestic work as real work.[35]

Thus, in terms of documenting Zimbabwean migrants, these two migration governance regimes have never been enough to respond to survival migration. While South Africa is moving towards a first comprehensive national migration policy, some of the proposals made in the new Draft National Labour Migration Policy Framework (2022) like the quota proposal intend to reserve a "proportion generally be fixed at 60 percent" of total staff complements for South African citizens and permanent residents, in view of the high unemployment rate in South Africa.[36] This is likely to reinforce restrictions placed on documenting migrant workers. The limitations in South Africa's migration management approach to providing documentation to low-skilled migrant workers has meant that South Africa has resorted to ad hoc policy measures to regularise them.[37] These include several special permit (visa) regimes that have been implemented in previous years. The limitations in the formal regimes have also meant that Zimbabwean migrants have had to rely on humanitarian assistance from organisations like the UNHCR and the IOM as they reach the borders of South Africa. However, as this article shows, de facto governance dictates how UNHCR and its implementing partners respond to these migrants' needs, due to the organisation's relationship with the government, which prompts the agency to label them as "economic migrants." These responses and evident limitations in the current regimes raise the need to urgently rethink South Africa's approach to migration governance.

3. OVERVIEW OF THE ZIMBABWEAN CRISIS

Comprehending the messiness of Zimbabwean migration requires first an understanding of the morphology of the crisis that gave rise to it. Following Zimbabwe's independence in 1980, Samora Machel and his Harare agent Fernando Honwana counselled Robert Mugabe to avoid "revolutionary zeal" and learn from Mozambique's experience in 1974–75, when the country chased out the Portuguese and nationalised the economy.[38] They warned that a mass exodus of white people would be terrible for the economy.[39] Tanzania's Julius Nyerere similarly pleaded with his friend to "preserve the jewel in Africa" that he had inherited. Zimbabwe had been Africa's envy until 1995, with the continent's best educated and literate

35 Kudakwashe Vanyoro, "Activism for Migrant Domestic Workers in South Africa: Tensions in the Framing of Labour Rights", *Journal of Southern African Studies*, 47(4), 2021, 663–681.

36 International Commission of Jurists, "South Africa: Legal Reform on Employment of Non-Nationals Must Comply with Human Rights", *International Commission of Jurists* (blog), 1 June 2022, available at: https://www.icj.org/south-africa-legal-reform-on-employment-of-non-nationals-must-comply-with-human-rights/ (last visited 24 Mar. 2023).

37 Sergio Carciotto, "The Regularization of Zimbabwean Migrants: A Case of Permanent Temporariness", *African Human Mobility Review*, 4(1), 2018, 1101–1116.

38 Richard Bourne, *Catastrophe: What Went Wrong in Zimbabwe?*, 1 ed., London, New York, Zed Books, 2011; Godfrey Kanyenze et al., "Beyond The Enclave", *Towards a Pro-Poor and Inclusive Development Strategy for Zimbabwe. Harare: Labour and Economic Research Institute of Zimbabwe and Alternatives to Neo-Liberalism in Southern Africa*, 2011, 1.

39 *Ibid.*

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population, a sophisticated healthcare system, bustling tourism, and wealthy and fertile farmland that fed the region.[40] This ruse, however, was not going to last long. The Zimbabwean migration, which surged in the 1980s, was initially influenced by ideas of race and ethnicity. This exodus consisted of white people fleeing the former colony after it gained independence, aided by guaranteed pension packages established by the Muzorewa government and used as an incentive to leave.[41]

Ethnic tensions between Shona and Ndebele, which were once useful in the administration of colonial divide and rule and an alternate history advanced by British, South African, and Rhodesian historians in the 1950s, and taken up by Shona historians as well,[42] were exacerbated by state massacres in the 1980s. Ndebele communities were deeply outraged as a result of the genocide.[43] They retaliated with a military insurrection headed by enraged former fighters, as well as destabilisation actions in the Midlands and Matabeleland by armed organisations that the apartheid government allegedly supported. South African intelligence had a vested interest in inflaming tensions between the Zimbabwe African National Union (ZANU) and the Zimbabwe African People's Union (ZAPU) in order to cut off supply lines to the uMkhonto we Sizwe (MK), the ANC's guerrillas, and spark a civil war in Zimbabwe.[44] Bandits and ex-Zimbabwe People's Revolutionary Army (ZIPRA) combatants were thrown together with innocent Ndebele people by the newly constituted Zimbabwean government, which crushed the uprising mercilessly.[45] This genocide, which took place in the early post-independence years between 1982 and 1987 and was dubbed Gukurahundi after the name of the Fifth Brigade that coordinated it, claimed the lives of 20,000 people in Matabeleland and left 7,000 individuals suffering from the torturous aftereffects.[46]

These measures forced the ZAPU to sign an uncomfortable unification accord (Unity Accord, December 1987), with the Zimbabwe African National Union–Patriotic Front (ZANU-PF), essentially forming a single party and formally transforming Zimbabwe into a Shona-dominated one-party state.[47] Between 1983 and 1987, many Ndebele escaped the genocide and killings in Matabeleland and the

40 *Ibid*; Douglas Rogers, *Two Weeks in November: The Astonishing Untold Story of the Operation That Toppled Mugabe*, Johannesburg, Jonathan Ball Publishers, 2019.

41 Rogers, *Two Weeks in November*.

42 Dumisani Ngwenya, *Healing the Wounds of Gukurahundi in Zimbabwe: A Participatory Action Research Project*, vol. 19, Cham, Springer, 2017.

43 JoAnn McGregor, "Abject Spaces, Transnational Calculations: Zimbabweans in Britain Navigating Work, Class and the Law', *Transactions of the Institute of British Geographers*, 33(4), 2008, 466–482, https://doi.org/10.1111/j.1475-5661.2008.00319.x.

44 Bourne, *Catastrophe*.

45 *Ibid*; Amanda Hammar, "In the Name of Sovereignty: Displacement and State Making in Post-Independence Zimbabwe", *Journal of Contemporary African Studies*, 26(4), 2008, 417–434, https://doi.org/10.1080/02589000802481999 (last visited 24 Mar. 2023).

46 Jocelyn Alexander, JoAnn McGregor, & Terence O. Ranger, *Violence & Memory: One Hundred Years in the "Dark Forests" of Matabeleland*, (Oxford, James Currey Oxford, 2000; Bourne, *Catastrophe*.

47 Reason Beremauro, "Living between Compassion and Domination? An Ethnographic Study of Institutions, Interventions and the Everyday Practices of Poor Black Zimbabwean Migrants in South Africa", Johannesburg, University of the Witwatersrand, 2013, available at: http://wiredspace.wits.ac.za/jspui/bitstream/10539/13427/1/130910%20PHD%20thesis%20FINAL%20for%20submission.pdf; Bourne, *Catastrophe*.

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Midlands, with many entering South Africa illegally.[48] As a result of job prospects in care and nursing, the Zimbabwean movement extended and feminised throughout the 1990s.[49] Zimbabweans who relocated to the farms in northern Limpopo province during this time did so to join several generations of Zimbabweans who had already settled there due to declining economic possibilities in Zimbabwe.[50] Others travelled to Botswana, and some to the United Kingdom. These individuals were displaced as a result of Zimbabwe's 1990 adoption of a structural adjustment programme.[51] When it became clear that the economy was not generating enough jobs due to a lack of investment, the government, like many other African countries, adopted the Economic Structural Adjustment Programme (ESAP) in 1991, on the advice of the World Bank and the International Monetary Fund (IMF).[52] The ESAP signified a dramatic shift from the 1980s' state-led economic development policy to a more market-driven approach.[53] The ESAP, though was a colossal failure that resulted in the cataclysmic collapse of the Zimbabwe currency on 14 November 1997. This date, known as "Black Friday," marks the start of the country's ongoing crisis.

The government's unbudgeted payment of gratuities to liberation struggle war veterans only contributed to exacerbate the crash and its consequences.[54] War veterans sought their part after seeing the political elite living large, forcing Mugabe to offer them cash handouts in 1997, which triggered hyperinflation because it necessitated printing money.[55] Zimbabwe also launched a fast-track land reform program (FTLRP) in June 2001, which involved the occupation of white-owned commercial farms by war veterans and a violent youth militia known as the "Green Bombers." This resulted in a lengthy economic and political crisis marked by high inflation and unemployment, as well as political violence directed at members and supporters of the Movement for Democratic Change (MDC), labour union and non-governmental organisation (NGO) activists, and other social groups like teachers.[56] The MDC was a popular opposition group led by Morgan Tsvangirai that had risen to confront Mugabe by winning a referendum in February 2000 on a state-sponsored draft constitution, only four months before vital parliamentary elections in June.[57]

48 Nicola de Jager & Catherine Musuva, "The Influx of Zimbabweans into South Africa: A Crisis of Governance That Spills Over", *Africa Review*, 8(1), 2016, 15–30, https://doi.org/10.1080/09744053.2015.1089013 (last visited 24 Mar. 2023).

49 S. Chiumbu & M. Musemwa, *Introduction: Perspectives of the Zimbabwe Crisis. In Crisis! What Crisis?*, Cape Town, HSRC Press, 2012; McGregor, "Abject Spaces, Transnational Calculations".

50 Rutherford, "An Unsettled Belonging".

51 Rutherford & Addison, "Zimbabwean Farm Workers in Northern South Africa".

52 Chiumbu & Musemwa, *Introduction*; Kanyenze et al., "Beyond The Enclave".

53 Kanyenze et al., "Beyond The Enclave".

54 *Ibid.*, 40.

55 Rogers, *Two Weeks in November*.

56 McGregor, "Abject Spaces, Transnational Calculations".

57 Dumisani Moyo, *Mediating Crisis: Realigning Media Policy and Deployment of Propaganda in Zimbabwe, 2000–2008, Crisis! What Crisis? The Multiple Dimensions of the Zimbabwean Crisis*, Cape Town, HSRC Press, 2012; Grace A. Musila & Dumisani Moyo, *Subterranean Faultlines: Representations of Robert Mugabe in South African Press Cartoons, Crisis! What Crisis? The Multiple Dimensions of the Zimbabwean Crisis*, Cape Town, HSRC Press, 2012; Rogers, *Two Weeks in November*.

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In response, Mugabe embarked on a campaign of physical persecution and official media attacks against the MDC, branding them as puppets of the British and Western countries collaborating with Tony Blair to bring about regime change.[58] Overall, Zimbabwe's relationship with its development partners deteriorated to the point where Zimbabwe was designated as a high-risk country.[59] Direct aid to the government was halted, and the country was denied access to loans from international institutions such as the World Bank.[60] Zimbabwe became a Western pariah. The result was: the value of salaries eroded because of hyperinflation (to the point where a wheelbarrow heaped with billions would be required to buy a loaf of bread), commodity shortages and lengthy lines, job losses, violations of human and property rights, and an increase in the number of immigrants.[61] Mugabe went to war in the Congo to produce income, but the expense of the conflict – US$27 million per month – further ruined the economy and enraged many.[62] Agriculture, which had been the country's backbone failed, and the West applied sanctions, sending the economy into freefall.[63]

By 2008, men and women who could no longer rely on their husbands' earnings left Zimbabwe in search of work in Europe, the United States, Australia, South Africa, Botswana, and other parts of the world.[64] Four million Zimbabweans fled the country between 2000 and 2010.[65] Between 2009 and 2013, Thabo Mbeki did mediate the Government of National Unity (GNU) power-sharing arrangement between the MDC and ZANU-PF. While this provided some economic stability, the MDC never won elections, thus those who returned from the diaspora soon found themselves in similar situations, because the stability was only temporary. According to the Solidarity Peace Trust,[66] a total of 3 million Zimbabweans have been displaced, accounting for nearly 25% of the country's population.[67] According to the Zimbabwe National Statistics Agency (ZIMSTAT) and the International Organisation for Migration (IOM), there are up to 1.5 million Zimbabwean migrants in South Africa, both regular and irregular.[68] According to the 2011 national census, there were

58 Hammar, "In the Name of Sovereignty"; Moyo, *Mediating Crisis*.

59 Kanyenze et al., "Beyond the Enclave", 41; Sam Moyo & Paris Yeros, "Intervention the Zimbabwe Question and the Two Lefts", *Historical Materialism*, 15(3), 2007, 171–204.

60 Moyo, *Mediating Crisis*; Moyo and Yeros, "Intervention the Zimbabwe Question and the Two Lefts".

61 Anna Chitando, Joseph Chikowero, & Angeline M. Madongonda, *The Art of Survival: Depictions of Zimbabwe and the Zimbabwean in Crisis*, Newcastle Upon Tyne, Cambridge Scholars Publishing, 2015; Maxwell Kadenge, "Linguistic Negotiation of the Zimbabwean Crisis", *In Crisis! What Crisis? The Multiple Dimensions of the Zimbabwean Crisis*. Cape Town, HSRC Press, 2012, 143–160; Willems, "Comic Strips and 'the Crisis'".

62 Rogers, *Two Weeks in November*.

63 Inocent Moyo, "The Beitbridge–Mussina Interface: Towards Flexible Citizenship, Sovereignty and Territoriality at the Border", *Journal of Borderlands Studies*, 31(4), 2016, 427–440, available at: https://doi.org/10.1080/08865655.2016.1188666 (last visited 24 Mar. 2023); Rogers, *Two Weeks in November*.

64 Chiumbu & Musemwa, *Introduction*.

65 Rogers, *Two Weeks in November*.

66 "No War in Zimbabwe: An Account of the Exodus of a Nation's People" (Solidarity Peace Trust, 2004).

67 Francis Musoni, *Border Jumping and Migration Control in Southern Africa*, Bloomington, Indiana, Indiana University Press, 2020.

68 ZIMSTAT and IOM, *Migration in Zimbabwe: A Country Profile 2009*, Harare, ZIMSTAT and IOM, 2009, available at: https://publications.iom.int/system/files/pdf/mp_zimbabwe.pdf (last visited 24 Mar. 2023).

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2,188,872 foreign-born persons living in South Africa, with 672,308 of them from Zimbabwe.[69]

4. "NOW THAT MUGABE IS GONE YOU ARE FREE": THE INSTRUMENTALISATION OF ZIMBABWEAN MIGRANTS IN CONTENTIOUS POLITICS

This article now documents how the limits of the interaction between domestic and global migration governance regimes that distinguish between migrants and refugees are expressed in the instrumentalisation of Zimbabwean migrants in a sphere of contentious politics. It also introduces the influence of UNHCR as an actor whose activities are aligned to these national and international frameworks, yet at the expense of the regional, (including the OAU Convention) in both legal and humanitarian practice.

4.1. The political purpose of the migrant/refugee dichotomy

This section discusses the political purpose of the refugee/migrant dichotomy in South Africa to unpack the aims of this approach, and explore who stands to benefit. In the wake of a landscape of increasingly competitive politics characterised by a government that is insecure of losing the popular vote – which has already happened at a local level – the space for informed policy debate and rational engagement on migration issues especially is narrowing. Immigration has featured prominently in the election manifestos of most political parties. Opposition parties like the Democratic Alliance (DA) and ActionSA have adopted a securitisation and anti-migrant position. Meanwhile, the ANC has been reluctant to include immigration in significant policy stances such as the Redistribution and Development Programme (RDP) (1994–1996) and the Growth, Employment and Redistribution Plan (GEAR) (1998). Instead of harnessing the positive benefits of migration, the ANC revised its attitude on migration in a 2012 policy document that voiced worry about the passage of international migration laws that did not take into account the country's internal implications of migration.[70] The policy statement proposed that individuals who had transited other countries en route to South Africa should be denied asylum. In 2022, the ANC tabled its proposed migration policy framework at the 55th ANC Conference. Proposals were concerned with making it difficult for foreigners to become citizens, tightening the Immigration Act and calling communities to action by reporting undocumented migrants.[71]

This politicking at party level reflects the South African state's increasing scepticism of migration, which see it consequently engaged in a range of policies and practices that do not facilitate easy movement or permanent settlement, especially for low-skilled migrant workers. Zimbabwean migration has become a particularly

69 Statistics South Africa, *Census 2011: Census in Brief*, Pretoria, Statistics South Africa, 2011.

70 Roni Amit & Norma Kriger, "Making Migrants 'Il-Legible': The Policies and Practices of Documentation in Post-Apartheid South Africa", *Kronos*, 40, 2014, 269–290.

71 SABC News, "ANC Proposes a Migration Policy Framework to Improve the Immigration System", *SABC News - Breaking News, Special Reports, World, Business, Sport Coverage of All South African Current Events. Africa's News Leader.* (blog), 23 Dec. 2022, available at: https://www.sabcnews.com/sabcnews/anc-proposes-a-migration-policy-framework-to-improve-the-immigration-system/ (last visited 24 Mar. 2023).

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politicised and even emotionally charged issue since the ANC government has also failed to deliver on its promises to the black majority. This has necessitated a political response that relies on two things: first the scapegoating of Zimbabweans in the media, which is characterised by singling them out for different social ills. This begins with an understanding by South African citizens that links Zimbabwe's woes and subsequent "invasion of other countries in search of better economic conditions and standards of living."[72] This perspective is expressed in a letter to the editor by a concerned citizen in 2021 which stated that:

> The problems in Zimbabwe are indirectly affecting other countries which host Zimbabwean migrants who are fleeing economic meltdown, poor governance and grave abuses of human rights. The main countries picking up the pieces of the failure of Zimbabwe's government are SA with an estimated 6-million Zimbabwean migrants . . .[73]

This number (that is not actually substantiated) goes on to account for the ills. For example, Eric Naki reported that allegations of health care facilities being overwhelmed were rife, purveyed by an "official report" that showed that "for every 10 patients admitted at Gauteng neonatal healthcare facilities, six were foreigners. The bulk of migrants who entered healthcare facilities were Zimbabweans."[74] This was accompanied by a fear that "some of the immigrants are involved in crimes such as cash heists, murders, rape and stock theft within South Africa, especially in the border areas."[75]

Second is through South Africa's reluctance to categorise Zimbabweans as asylum-seekers. For example, the Refugees Act adopts both definitions of a refugee set out in international and African regional refugee law. This means while the Refugees Act includes the narrow definition of a refugee contained within the 1951 Refugee Convention, Section 3(b) of the Refugees Act also permits claims from people fleeing "events seriously disturbing or disrupting public order," meaning people experiencing human rights violations because of an economic collapse and a failed state, like Zimbabweans in the early 2000s, could potentially qualify for refugee status.[76] Yet in practice, the state has been very hesitant to implement the extended regional definition within RSD processes, especially since the mid-2000s.[77] Rather, the RSD process in South Africa has slowly changed from one that relies on an individualised consideration of persecution into a system that establishes general categories of eligibility depending on country of origin,

72 Letter to the Editor, "Rest of the World Must Stop Ignoring Zimbabwe's Plight", *Saturday Dispatch*, 2 Oct. 2021, 14, SA Media, available at: https://discover.sabinet.co.za/document/10381833 (last visited 24 Mar. 2023).

73 *Ibid.*, 14.

74 Eric Naki, "Pay Us for Immigrants", *The Citizen*, 9 Dec. 2020, 4, SA Media, available at: https://discover.sabinet.co.za/document/9153002 (last visited 24 Mar. 2023).

75 *Ibid.*, 4.

76 Nicholas Maple, Kudakwashe Vanyoro, & Jo Vearey, "The Role of Institutional Architecture in the Reception of Refugees in South Africa" (PROTECT, 2022).

77 Amit, "No Refuge".

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effectively creating a set of refugee and non-refugee producing countries.[78] This change is due to the widespread reliance on general country conditions rather than individual case histories.[79] For Zimbabweans, this has meant falling back on the migrant/refugee dichotomy, with the Department of Home Affairs (DHA) persistent on viewing most Zimbabweans as being economic migrants.

While South Africa has always had a problem with categorising Zimbabweans as asylum-seekers, this dichotomy requires certain myths to sustain. In 2007, DHA Minister Nosiviwe Mapisa-Nqakula "rejected as 'misplaced' a DA call for refugee camps on South Africa's northern border, saying only one Zimbabwean had been recorded as applying for asylum at Beit Bridge between January 1 and June 30 this year."[80] This was refuted by Lawyers for Human Rights as "a crude distortion of reality," while indicating that close to 19000 Zimbabweans had applied for asylum in 2006. Instead, Mapisa-Nqakula's statement had no trouble conceding that there had been recorded increases in the number of people entering the country illegally, which fits the consensus that "economically desperate migrants crossing in search of basic goods or work – who have no legal claim to refugee status – make up the vast bulk of arrivals."[81] In a 2009 commentary, Malusi Gigaba in his capacity as Deputy DHA Minister also wrote:

> In South Africa, over 60 percent of asylum seekers state clearly that they seek employment. This included those from Zimbabwe, and it cannot be the responsibility of the South African government or Home Affairs to compel them to claim they are seeking asylum in South Africa because of political or other persecution whence they come.[82]

The proposed solution was to class Zimbabweans as economic migrants. Hence, after establishing that most asylum-seekers are from stable countries in the Southern African Development Community (SADC) region and Asia, Gigaba went on to say that this response would relieve pressure from RROs, regularise many and also address issues of security with a view to reap immense benefits of migration and simultaneously minimise the risks and negative impact. [83]

These dichotomies are expedient to wider political concerns of the ANC. One of the concerns among the ANC's constituents is that jobs are prioritised for foreigners hence Gigaba acknowledged in 2017 that "migration policies must contribute to getting locals employed so they realise the benefits of migration and support our progressive policies, while eradicating xenophobia that may arise from our failure to appreciate the social pressures the poor experience."[84] He added that the ANC thus

78 *Ibid.*

79 *Ibid.*

80 Drew Forrest, "SA's Zim Exodus Plan", *Mail & Guardian*, 16 Aug. 2017, 1, SA Media, available at: https://discover.sabinet.co.za/document/4338755 (last visited 24 Mar. 2023).

81 *Ibid.*, 1.

82 Malusi Gigaba, "Tackling Migration Holistically", *The Star*, 15 Dec. 2009, 24, SA Media, available at: https://discover.sabinet.co.za/document/7803581 (last visited 24 Mar. 2023).

83 *Ibid.*, 24.

84 Malusi Gigaba, "Prioritise South Africans for Jobs", *City Press*, 5 Feb. 2017, available at: https://discover.sabinet.co.za/document/4054104 (last visited 24 Mar. 2023).

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would respond to these grievances "by insisting first on the clear line between those seek asylum and those seeking economic opportunities."[85] In this regard, Gigaba acknowledged the need for managing "economic migrants" from SADC. This approach would help achieve the National Development Plan Vision 2030. One way of doing this Gigaba acknowledged would be through the special permits for Zimbabwean and Lesotho migrants.

This dichotomy is useful for the state because it is by talking about genuine refugees that it renders some as the other, which beneficially keeps framing Zimbabwean as economic migrants that helps an embattled government's popularity with the public. For example, considering the upcoming 2024 general elections, the DHA announced the withdrawal of Immigration Directive No. 10 of 2021 on the Zimbabwe Exemption Permits (ZEP).[86] This essentially indicates that the DHA has opted not to renew the permits issued to over 2,50,000 Zimbabweans in South Africa. The permits expired at the end of December 2021, after which Zimbabweans must now apply for mainstream visas (works visas and critical skills work visas), according to the DHA.[87] This Directive imposes a condition giving a 12-month grace period during which time ZEP holders need to regularise their stay through normal immigration laws of the country.[88]

4.2. State and non-state responses to the Zimbabwean crisis (2006–2023)

This section examines the state and non-state responses to the Zimbabwean crisis from 2006 to date. This section first gives some background to the establishment of humanitarian spaces in Musina in response to Zimbabwean migration and the relative speed with which they have transformed the border. The nadir of the Zimbabwean economic and political situation gave rise to an influx of numerous humanitarian actors to assist immobile Zimbabwean migrants as the bureaucratic state lacked the capacity to do so. Musina was ill-equipped to deal with the growing migrant population given its relatively small population and distance from major urban centres.[89] The dramatic increase in Zimbabwean migrants "overburdened" the municipality's resources, as Musina Mayor Caroline Mahasela admitted in 2008.[90]

85 *Ibid.*

86 The details and context regarding these special permits are discussed in the following section.

87 KVN Law, "Home Affairs Withdraws Immigration Directive on the Zimbabwean Exemption Permit (ZEP) - KVN Law", *KVN Law* (blog), 14 Dec. 2021, available at: https://kvnlaw.co.za/home-affairs-withdraws-immigration-directive-on-the-zimbabwean-exemption-permit-zep/ (last visited 24 Mar. 2023).

88 Department of Home Affairs, "Department of Home Affairs - Minister Motsoaledi Welcomes the Decision of the High Court: Gauteng Local Division, Pretoria to Struck from the Roll Urgent Applications by Zimbabwe Exemption Permit Holders for Lack of Urgency", 30 Dec. 2021, available at: http://www.dha.gov.za/index.php/statements-speeches/1505-minister-motsoaledi-welcomes-the-decision-of-the-high-court-gauteng-local-division-pretoria-to-struck-from-the-roll-urgent-applications-by-zimbabwe-exemption-permit-holders-for-lack-of-urgency (last visited 24 Mar. 2023).

89 Rosalind Elphick & Roni Amit, "Border Justice. Migration, Access to Justice and the Experiences of Unaccompanied Minors and Survivors of Sexual and Gender-Based Violence in Musina", *African Centre for Migration and Society Research Re-Port: Johannesburg. Online: Ww. Migration. Org. Za/Sites/Default/Files/Bor-Der_justice_migration_access_to_justice_and_the_experience_of_unaccompanied_minors_and_sgbv. Pdf. Accessed December*, 2012.

90 IOL News, "Musina at Breaking Point as Refugees Pour In", 23 Dec. 2008, available at: https://www.iol.co.za/news/politics/musina-at-breaking-point-as-refugees-pour-in-429590 (last visited 24 Mar. 2023);

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Zimbabwean migration also tested South Africa's legal and institutional infrastructure for migration management and refugee protection as there was no institutional experience to draw upon in developing and implementing responses to this first large-scale in-migration post-apartheid.[91] Limpopo province and the border town of Musina developed a national disaster management contingency plan in relation to successive Zimbabwean elections as possible migration triggers.[92] This plan, however, did not provide a broader framework for enabling assistance to Zimbabweans in situations where the negative impacts of their presence had not yet reached crisis level.[93] Many local NGOs and faith-based organisations (FBOs) formed or extended their services in that area to meet the needs of cross-border migrants.[94] A number of international non-governmental organisations (IGOs) also established their presence by opening local offices and building capacity. For example, The UNHCR opened a field office in 2008.

There was no DHA office in Musina before the Zimbabwean crisis. In 2008–2009, Zimbabwean migrants in Musina were dying, sleeping in the bush and women were experiencing sexual violence. The South African state began to put in place a few ad hoc structures to regulate the Zimbabwean migrant population in response to pressure from several humanitarian organisations. DHA first opened a small local office at a local hotel (Limpopo River Lodge) in the town of Musina. Then DHA moved and established a RRO in a mobile vehicle within the Showgrounds compound in July 2008 to process applications for asylum and migrants with or without asylum permits. They often converged there and the surrounding area, with many camping in the surrounding bush.[95] The newly established RRO began to process asylum claims. Thousands of Zimbabweans who had previously been in hiding began to "flock" to seek asylum.[96]

Here, the state's response was an intermediate one with some degree of tolerance of Zimbabweans but certainly not full stretching of the refugee norm to incorporate them. With no genuine possibility of gaining a work permit, the only way Zimbabweans could be able to regularise their stay in the country (at least in the

Cerise Fritsch, Elissa Johnson, & Aurelija Juska, "The Plight of Zimbabwean Unaccompanied Refugee Minors in South Africa: A Call for Comprehensive Legislative Action', *Denver Journal of International Law and Policy*, 38(4), 2010, 2009, 623–658.

91 Tara Polzer, "Responding to Zimbabwean Migration in South Africa: Evaluating Options", *South African Journal of International Affairs*, 15(1), 2008, 1–28, https://doi.org/10.1080/10220460802217926 (last visited 24 Mar. 2023).

92 *Ibid.*

93 *Ibid.*

94 Elphick & Amit, "Border Justice. Migration, Access to Justice and the Experiences of Unaccompanied Minors and Survivors of Sexual and Gender-Based Violence in Musina"; Zaheera Jinnah, "We Have to Go into the Bush", *Understanding the Responses of NGOs and Government in Addressing Conditions Faced by Cross Border Migrant Workers in Musina*, 2012.

95 IOM, *Migrants' Needs and Vulnerabilities in the Limpopo Province, Republic of South Africa*, IOM Pretoria, 2009, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/EF29025533EE23B8C12575670042267A-full_report.pdf (last visited 24 Mar. 2023); Médecins Sans Frontières, "No Refuge, Access Denied: Medical and Humanitarian Needs of Zimbabweans in South Africa", *Médecins Sans Frontières. South Africa*, 2009; Blair Rutherford, "The Politics of Boundaries: The Shifting Terrain of Belonging for Zimbabweans in a South African Border Zone", *African Diaspora: A Journal of Transnational Africa in a Global World*, 4(2), 2011, 207–229.

96 *Ibid.*

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short term) was applying for asylum and obtaining an asylum card (Section 22 Permit) even though their chances of a successful RSD was remote.[97] Indeed, since the crisis started, the South African government has classified Zimbabweans as "economic migrants" rather than genuine asylum applicants. At the heart of the rejections of Zimbabwean migrants' refugee applications is the notion that they are not escaping "well founded persecution" which refugee status determination officers (RSDOs) often conflate with contexts of war (see Amit 2011). Despite not escaping any outright war or targeted persecution, Zimbabweans could fit the definition as they are outside their country because they are fleeing serious rights deprivations in a fragile state.[98]

Nevertheless, during the early days of the crisis, the government did commit to finding alternative ways to enable Zimbabweans to avoid being returned to their country of origin, mainly by drawing on and reinterpreting existing legislation, which gave rise to the special visas.[99] The Dispensation Zimbabweans Project (DZP) was implemented by the DHA in 2009 as a way of creating a record of Zimbabweans who had been living illegally in South Africa, and of providing amnesty to those in possession of fraudulent South African identity documents. DHA waived some permit requirements and applications fees.[100] Even those without passports could apply in a bid to speed up the process. The permits were valid for four years from the date of issue. The then DHA Minister Malusi Gigaba claimed that approximately 295,000 applied, and that just over 245,000 permits were issued. Once these permits expired (in 2014), those Zimbabweans who had been issued the DZP could choose to apply for the Zimbabwe Special Dispensation permits (ZSP) or could return to Zimbabwe to apply for a regular study or work visa if they met the requirements. No applications from people who did not already hold the DZP were permitted. Those who applied for the ZSP, which was valid for three years and expired in 2017, could in turn apply for another permit called the Zimbabwean Exemption Permits (ZEP). This means that a maximum number of 245,000 persons have had access to any of the special dispensations since 2009.

Even for these people, certain limitations arose in relation to those that applied for the ZSP, which sustained migrant precarity. A permit holder does not qualify for permanent residence on the basis of their temporary residence in South Africa under the DZP and ZSP systems.[101] In addition, the application process was marred by several inconsistencies. The application and adjudication processes were long, and there was no clear appeal process for those whose applications were rejected. Furthermore, while DHA issued a directive to banks that people could keep their accounts while waiting for new permits, banks regularly closed accounts, and some employers were threatening to fire people. There also remains a question of the reach of these permits. If Zimbabwean migrants in South Africa are estimated to be somewhere under 1,000,000, then the figure of those covered by the ZSP is modest.

97 Betts, *Survival Migration*.
98 *Ibid*.
99 *Ibid*.
100 Moyo, "Changing Migration Status and Shifting Vulnerabilities".
101 *Ibid*.

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These critiques, however, does not take away from the benefits of the DZP and ZSP to thousands of previously undocumented Zimbabwean migrants living and working in South Africa. Indeed, in comparison to their previous undocumented status, DZP and ZSP documents have greatly improved immigrants ability to negotiate daily life (Moyo 2017). "... Employment conditions (wages, working hours and benefits such as leave) improved; they had greater employment mobility; were treated with more respect; and could travel to Zimbabwe to visit family and friends without the financial and 'safety costs' associated with cross-border undocumented movements."[102] Nonetheless, precarity remains attached to this immigration policy for Zimbabwean migrants and is marred by several uncertainties. It also provided amnesty to a small number of Zimbabweans, leaving the rest undocumented. Drawing on Didier Fassin's work Moyo convincingly demonstrates how the DZP and ZSP programmes demonstrate "ambivalent hospitality" in "governing the unwanted."[103] Those who did not trust the state or arrived too late remain undocumented. It was also never streamlined into the country's migration governance framework. South Africa's current position on these special visas is that they should not be renewed.

Nevertheless, in 2017, the situation fundamentally altered, with humanitarian reasoning for limited forms of protection and the use of special measures being removed. In their place was a doubling down on the economic migrants argument. The shift in power that occurred in Zimbabwe on the night of 15 November 2017 has not helped matters. Indeed, the country witnessed the first change in leadership since independence of 1980. Major-General Sibusiso Busi Moyo went on Zimbabwe Broadcasting Corporation (ZBC) to give a speech that announced a coup described as a military intervention "in sanitised and couched language."[104] As a result, Robert Mugabe left the position of Zimbabwe's president through resignation, which he opted for over the humiliation of a parliamentary impeachment. At this point, some hoped the country would quickly recover from years of economic turmoil and authoritarian rule.

Since 2017, Zimbabwe has been led by Mugabe's former ally-turned-opponent President Emmerson Dambudzo Mnangagwa.[105] Mnangagwa returned from his short-lived exile in South Africa as the president-designate and as the national president after his inauguration on 24 November 2017, and then won a contested democratic election that was upheld by the compromised courts of law. Mnangagwa purveyed an image of himself as an agent of change, to root out corruption, election fraud and transform the economy. Yet since the election, the Mnangagwa administration, the "New Dispensation," has done little to convince that real change has occurred. Indeed, many Zimbabweans continue to come to South Africa for a combination of political, humanitarian, and economic reasons. Others regularly travel back and forth between Zimbabwe and South Africa as cross-border traders and

102 *Ibid.*, 111.

103 *Ibid.*, 111.

104 Lucky E. Asuelime, "A Coup or Not a Coup: That Is the Question in Zimbabwe', *Journal of African Foreign Affairs*, 5(1), 2018, 5–24, https://doi.org/10.31920/2056-5658/2018/v5n1a1 (last visited 24 Mar. 2023).

105 BBC, 'Is Zimbabwe Worse off Now than under Mugabe?', *BBC News*, 25 Aug. 2019, sec. Africa, available at: https://www.bbc.com/news/world-africa-49375096 (last visited 24 Mar. 2023).

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farmworkers or to visit family.[106] The images of congestion and even death at the Zimbabwe–South Africa border in the festive season of 2020 at the height of a global pandemic bear testament to this.[107]

This shift in power created new political motivations relating to how migrants would be welcomed that arose from the bilateral relations between Zimbabwe and South Africa. In this article, the phrase, "now that Mugabe is gone you are free" expresses the idea that over and above not fleeing war, Zimbabwean migrants since 2017 have no legitimate claim to seeking asylum because the main reason, or perpetrator, behind their troubles related to economic deprivation and human rights abuses had left office. This situation has led to the retreat of South Africa's policy response to Zimbabwean migration from a "ad hoc, incoherent, and somewhat schizophrenic policy response" that shows "some degree of tolerance of Zimbabweans but certainly not full stretching of the refugee norm to incorporate them," to one that is less ambiguous about its lack of concern for them.[108] These political motivations also explain the country's retreat from the ZSP. This article therefore argues that the interpretation that centres Mugabe belies how the survival migration of Zimbabweans is not removed from wider political context and goals.

South Africa's responses to the coup also gave legitimacy to this "New Dispensation." The coup took place at a time when South Africa was the chair of the regional body of the SADC. President Jacob Zuma issued a statement in which he called for "calm and restraint" and "expressed hope that developments in Zimbabwe would not lead to unconstitutional changes of government as that would be contrary to both SADC and African Union ('AU') positions."[109] This led to lip-service like actions from SADC, while to some, this statement sounded like a reminder to the army to act with SADC and AU rules in mind.[110] The AU could have taken punitive measures that would have sent a clear message that it did not support any changes of government involving military pressure on a civilian leadership, but it chose not to.[111]

The element that changed in Zimbabwe after the 2017 coup was the person (Mugabe); not the ZANU-PF culture and administration.[112] By not condemning these actions, the external actors further marginalised Zimbabweans by enabling their continued oppression that continues through a regime that the international community has recognised as legitimate (this legitimacy has, of course, been contested, especially since 2020). This shift on the Zimbabwean question is expedient for external actors like South Africa who have long provided a safe haven for Zimbabweans, as it

106 See Elphick & Amit, "Border Justice. Migration, Access to Justice and the Experiences of Unaccompanied Minors and Survivors of Sexual and Gender-Based Violence in Musina".

107 See Liesl Louw-Vaudran & Ringisai Chikohomero, "Dialogue Could Have Averted COVID-19 Border Chaos", ISS Africa, 19 Jan. 2021, available at: https://issafrica.org/iss-today/dialogue-could-have-averted-covid-19-border-chaos (last visited 24 Mar. 2023).

108 Betts, *Survival Migration*, 47.

109 eNCA, "UPDATE: Mugabe Says Confined to Home, but Fine: Zuma", *eNCA*, 15 Nov. 2017, available at: https://www.enca.com/south-africa/zuma-calls-for-calm-restraint-in-zimbabwe (last visited 24 Mar. 2023).

110 Asuelime, "A Coup or Not a Coup".

111 *Ibid.*, 15.

112 *Ibid.*

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allows them to focus on responding to their own citizens' forgotten futures; particularly the urban poor.[113] In 2019, journalist Shannon Ebrahim wrote:

> The economic meltdown of our northern neighbour poses a serious threat to our national interest. If Zimbabweans are unable to survive, it is to South Africa that they will turn. How will we absorb thousands of new economic migrants with our current levels of unemployment and already overstretched social services?[114]

In her view, this is a great challenge since "we are already home to the highest number of asylum seekers in the world."[115] Such a view makes it conceivable that by legitimising the "new dispensation" in Zimbabwe, the South African government has reinforced pre-existing symbolic boundaries for categorising Zimbabweans as "economic migrants" who should not be protected since the country's "governance crisis" has been resolved; bringing to an end their vulnerability. In a context where Robert Mugabe has emerged as "this larger-than-life political figure who was midwife to the birth of the nation before becoming its undertaker,"[116] this legitimation leads to a presumption that all is well for Zimbabwean migrants in their home country since the source of this problem, is gone.[117] An operator who transported immigrants between Johannesburg and the border fence said "It's no longer justifiable for Zimbabweans to cross into South Africa because political persecution had subsided since [former president] Robert Mugabe died. Even those who come in search of better opportunities have no reason to come and should be controlled."[118] This perspective focuses on Robert Mugabe as responsible for the collapse of Zimbabwe.[119] However, prominent lawyer and MDC member Fadzayi Mahere suggests an alternative interpretation of events, noting that, "Life in Zimbabwe was better under (former president) Robert Mugabe."[120] Furthermore, economic data has suggested that Zimbabwe's economy had actually been shrinking since 2018 as measured by gross domestic product (GDP) per capita. Through its support for the "new" ZANU-PF-led government as a legitimate expression of sovereignty and the right to self-

113 See Anne Hammerstad, "Securitisation from Below: The Relationship between Immigration and Foreign Policy in South Africa's Approach to the Zimbabwe Crisis", *Conflict, Security & Development*, 12(1), 2012, 1–30, https://doi.org/10.1080/14678802.2012.667659 (last visited 24 Mar. 2023) for example.

114 Sharon Ebrahim, "Zim Economic Meltdown Poses Threat to Our National Interest", *Pretoria News*, 1 Aug. 2019, 7, SA Media, available at: https://discover.sabinet.co.za/document/4328086 (last visited 24 Mar. 2023).

115 Ebrahim, "Zim Economic Meltdown Poses Threat to Our National Interest".

116 Sabelo J. Ndlovu-Gatsheni, "Beyond Mugabe-Centric Narratives of the Zimbabwe Crisis", ed. Daniel Compagnon et al., *African Affairs*, 111(443), 2012, 316.

117 See Bourne, *Catastrophe*; Daniel Compagnon, *A Predictable Tragedy: Robert Mugabe and the Collapse of Zimbabwe*, London, University of Pennsylvania Press, 2011, https://muse.jhu.edu/book/910 (last visited 24 Mar. 2023); Zvakanyorwa Wilbert Sadomba, *War Veterans in Zimbabwe's Revolution: Challenging Neo-Colonialism & Settler & International Capital*, Rochester, N.Y., Boydell & Brewer Ltd, 2011, for this kind of reading.

118 Naki, "Pay Us for Immigrants", 4.

119 Ndlovu-Gatsheni, "Beyond Mugabe-Centric Narratives of the Zimbabwe Crisis".

120 BBC, "Is Zimbabwe Worse off Now than under Mugabe?".

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determination, South Africa has disregarded "the credible cries of long-suffering Zimbabwean citizens."[121] This kind of context enables South African society to perceive representations of Zimbabwean migrants experiencing physical and sexual harm – or death in the most extreme cases – as instances of indigence that must be punished through more robust criminalisation by means of more concerted border militarisation. The delegitimisation of a Zimbabwean crisis aims at making South African citizens think that these strangers are deliberately exerting pressure and disregarding South Africa's borders while transforming border areas like Limpopo into places of horror and chaos.

4.3. De facto governance at the border for Zimbabweans

This final part concludes by investigating the situation at the border in relation to novel forms of de facto governance. The instrumentalisation of Zimbabwean migrants in contentious politics has legitimised a scenario where the RRO in Musina is open to Zimbabwean migrants on paper but has developed gatekeeping methods of barring them. A person enters the Republic of South Africa through a port of entry (a land border post, airport or harbour), claims to be an asylum-seeker and is, therefore, issued with a Section 23 Permit which is a non-renewable "asylum transit permit" of the Immigration Act. The permit is valid for a period of 14 days only and authorises the person to report to the nearest RRO in order to apply for asylum (and obtain an asylum-seekers permit or Section 22 Permit). While transit permits are issued at the border to those intending to claim asylum (giving them 14 days to do so), not everyone receives them. Smugglers know this and they warn Zimbabweans to not waste their time (which benefits their business too), leading them to border jumping; some with the hope of taking a chance at the RRO in Musina. When they do, Zimbabweans often speak of being led into a purported office that leads to the back of a *gumba kumba*[122] police truck. These methods of undercutting the right to asylum have meant that many now know better than to go to the RROs. The message being, Zimbabwean migrants are not accepted, in the same way as Congolese and Burundians (not all of whom have asylum transit permits) are.

In the words of one Zimbabwean migrants seeking asylum at the Zimbabwe-South Africa border while residing at a transit shelter for migrant men:

> During the time I came in South Africa, I thought I could get an opportunity of getting an asylum, which would allow me to move freely going wherever I want searching for a job not knowing that we Zimbabweans are not issued that document. The reason why we are not allowed to get the asylums is as follows – it is being said that in Zimbabwe there is peace and there is no war, yet there is cold war of leaders who are busy showing each other powers rather

121 Tafi Mhaka, "The Problem with SADC's 'brotherly' Stance on Zimbabwe Sanctions", 11 Oct. 2019, available at: https://www.aljazeera.com/opinions/2019/10/11/the-problem-with-sadcs-brotherly-stance-on-zimbabwe-sanctions (last visited 24 Mar. 2023).

122 Shona colloquial for dragging people back home en masse, which implies the use of generalized force.

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> than making efforts to stabilise the economy. Truly, they don't have people at heart.[123]

This conception is also writ large in RSD processes even for those who are able to put in a successful application. Amit found that few RSDOs correctly understood or utilised Section 3(b) of the Refugees Act, which incorporates the OAU Convention definition of a refugee, which includes anyone fleeing "external aggression, occupation, foreign domination, or events seriously disturbing or disrupting public order."[124] This has closed the little space there was for Zimbabwean migrants to access protection through the asylum system, especially in the time following Mugabe's demise.

Beyond the bureaucratic state, these migrants also interact with the UNHCR. The above framing of Zimbabweans also shapes how UNHCR responds to these migrants, due to their relationship with the state. UNHCR, like DHA, also responded to the crisis by opening a field office in 2008. Although being constrained in taking on a strong role, it was able to do so when ambiguities in government positions opened up space for assistance.[125] During that time, it provided humanitarian aid to the Zimbabwean migrants residing at the two transit shelters for men and women and shelters for children (food and remuneration for staff such as security, matrons, and managers) and, with the IOM, put mobile showers at the Showground where people were camping.[126] The UNHCR and IOM then began supporting FBOs to set up temporary transit shelters in Nancefield to house those waiting for their asylum-seeker permit to be processed covered by the agreement with local authorities not to arrest and detain those in specific areas who were engaged in securing temporary asylum.[127]

By 2019, UNHCR's humanitarian focus had shifted, however, to Congolese and Burundian asylum-seekers whose vulnerability and political persecution was broadly accepted by the South African state. At that time the UN agency also started "decentralising" its approach, by utilising implementing partners to give social and legal assistance, with partners moving into the UNHCR field office – and UNHCR officials leaving Musina. When the provision of relief-oriented material assistance became more ad hoc to the Zimbabweans after 2017, UNHCR insisted that it was not mandatory or guaranteed but based on an "assessment of needs." The agency's support for the transit shelters also started dropping with the perceived "waning" of the Zimbabwean crisis. Furthermore, when bills for the shelters were not paid, UNHCR refuted any claims implying that they had made a long-term commitment to pay for the water at the men's shelter. Some of my interlocutors alleged that UNHCR had made such commitments. They accused UNHCR of perceiving the men's shelter as "too compassionate" by allowing Zimbabwean "economic migrants" to stay for "too long."

123 Interview with a Zimbabwean migrant man, Musina, August 2019.
124 Amit, "No Refuge".
125 Betts, *Survival Migration*.
126 Elphick & Amit, "Border Justice'.
127 *Ibid*; Jinnah, "We Have to Go into the Bush".

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In contrast, the UNHCR office in Musina continued to have a cordial working relationship with the state as they worked closely with DHA and government at large. For example, UNHCR moved more towards doing capacity building workshops for department officials. To many, the UN agency seemed to be appeasing the bureaucratic state, while remaining unmoved on the ongoing asylum erasure of Zimbabweans. This closeness combined with a lack of willingness to speak out about protection concerns, can be read as at least a tacit approval of the regressing refugee protection in the country.[128]

When UNHCR left Musina in 2019, it was at a time Zimbabwean migrants felt they still needed them. Some perceived this action as part and parcel of xenophobic state practices. UNHCR framed its exit in a technical managerial manner, suggesting that this was necessary given that it was going through a process of regionalisation and decentralisation.[129] These developments are also tied to how humanitarianism is inherently a moving sovereignty, shaped by its categorical nature. This is a view some of my interlocutors shared. One of them recounted a conversation with a top UNHCR official in 2018 in which he got the impression that "they don't see the refugee anymore. South Africa, no, in the sub-Sahara, is no longer their concern or priority. They are focusing on people who have got real problems." Yet, the question of protection remains, certainly if Zimbabwean migrants were fleeing political-induced economic crisis, should this not count as political persecution? The following argument by one of my interlocutors – a Shelter Manager – is compelling in making this case:

> If I were at a policy promulgation level, I would say let's have economic refugees and let's attach these conditions and see if it doesn't work. Because at the end of the day in 1950 when UNHCR started they were saying "no people are being persecuted so they need to be staying safe somewhere". If I am hungry, am I not being persecuted somehow? If somebody is dying of these contagious diseases which are there among them being HIV and AIDS and that person cannot access medication like what is happening now in Zimbabwe right, are those people not being persecuted? I mean there has to be a redefinition of the word persecution and actually be taken to say how then do we include these people and how then do we also budget to make sure that we also cover Zimbabwean migrants.

5. CONCLUSION

This article has shown the alignment between global and domestic migration management and governance practices and policies and how they are productive in the South Africa state's realisation of political goals. It has demonstrated the centrality of binaries of migrant/refugee in creating a gap when it comes to documenting and

128 Franzisca Zanker, "'Nowhere to Be Found': Three Decades of UNHCR in South Africa", 23 Mar. 2021, available at: https://voelkerrechtsblog.org/nowhere-to-be-found-three-decades-of-unhcr-in-south-africa/ (last visited 24 Mar. 2023).

129 Details and information in this paragraph from interviews with a UNHCR official, two officials from UNHCR implementing partners and two faith-based humanitarian actors, August–October 2019.

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protecting Zimbabwean migrants who find themselves in-between them as survival migrants. These gaps arise from different places. First, Zimbabweans are not considered genuine asylum-seekers and South Africa has yet to pursue the domestication of the OAU Convention beyond its inclusion in the National 1998 Refugees Act ("the Refugees Act"). Secondly, the state labels them economic migrants, hence it expects them to apply for visas, which are largely inaccessible especially to low-skilled workers. Third, in as much as there are special (visa) permits for Zimbabweans, their coverage is limited and they are being withdrawn. This state position has informed the responses of the UNHCR such that its work is not able to offer legal and social protections, as illustrated in the case of the Zimbabwe-South Africa border.

Hence the need for a protection regime that meets different kinds of migrants at their point of need i.e., including economic deprivation, particularly emerging from drastic political crisis, as a novel protection issue is clear. Yet because this does little in terms of the realisation of stated political goals, especially in the current political climate, this leaves open the continued use of the special permits as an albeit imperfect alternative that covers some of the gap between the dichotomy of the migrant and refugee categories. This article concludes that these developments are all likely to be calculated according to their influence on the realisation of stated political goals, which also reflects the permits and Zimbabweans as an instrument for post-apartheid political governance. Hence, the possibilities of the global migration governance providing legitimacy to exclusionary practices at the national level in South Africa are immense. This points to the need for serious engagement with survival migration as a category of mobility in analysis, policy, law as well as practice.

Looking forward, this article's findings suggest that, without this kind of engagement, we are likely to see global migration governance frameworks like the Global Compacts reinforcing securitisation discourses, agendas and policies even in other contexts where the asylum space is shrinking as states question the legitimacy of asylum-seekers who are in similar situations of survival migration. For such survival migrants, this means continued reliance on the good faith and charity of state and non-state actors instead of the full beneficence of their basic rights. While defined categories are productive in shaping different kinds of protections for groups, they are of little use if they cannot guarantee the eligibility of people whose experiences cut across them in oblique yet harmful ways.

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