

THE EFFICACY OF MIGRATION POLICIES IN ADDRESSING MIGRATION ISSUES: AN ANALYSIS ON  
THE SITUATION OF ZEP HOLDERS

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## DECLARATION

I, **Nomazulu Ndebele**, do declare that this research report entitled “**The Efficacy of Migration Policies in Addressing Migration Issues: An Analysis on the Situation of ZEP Holders**” is my original research. I further confirm that this research was not submitted or published on any other academic platform. All ethical considerations have been adhered to, all sources used have been properly cited and intellectual property rights observed.

A handwritten signature in black ink, appearing to read 'Ndebele', with a period at the end. The signature is written in a cursive style.

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Signature

## **KEYWORDS**

Migration Policies, Zimbabwean Exemption Permit (ZEP), Legal Status, Employment Opportunities, Social Integration, Policy Effectiveness, Asylum Seekers, Labor Migrants, Human Rights

## LIST OF ABBREVIATIONS

|       |   |
|-------|---|
| DACA  | Deferred Action for Childhood Arrivals          |
| DHA   | Department of Home Affairs                      |
| DZP   | Dispensation Zimbabwe Programme                 |
| EU    | European Union                                  |
| BMA   | Border Management Authority                     |
| SADC  | Southern African Development Community          |
| TPD   | Temporary Protection Directive                  |
| UNHCR | United Nations High Commissioner for Refugees   |
| ZEP   | Zimbabwe Exemption Permit                       |
| ZEPHA | Zimbabwean Exemption Permit Holders Association |
| ZSP   | Zimbabwe Special Permits                        |

## Chapter 1: Introduction and background

### 1.1 Introduction

South Africa faces large migration flows into its territory, primarily by asylum seekers and labour migrants from Zimbabwe. There were approximately 242 731 Zimbabwean migrants who were permit holders in the Dispensation Zimbabwe Programme (DZP), 185 075 Zimbabwe Special Permits (ZSP) that were issued and there are 178 412 Zimbabwean Exemption Permit (ZEP) holders (Department of Home Affairs (DHA), 2023) and (Moyo and Zanker, 2020). Meeting regional challenges calls for inclusive and efficient migration policies by states to integrate large migrant populations (Landau, 2024). Generally, protection programs address problems affecting large groups of undocumented migrants by legalising their status in the country. The efficacy of protection programmes in addressing the challenges faced by migrants remains a challenge. The ZEP, a successor of the DZP and ZSP, is one of the protection programs South Africa introduced to support its response to Zimbabwean migration into its territory (Polzer Ngwato, 2011).

Dispensation programs in South Africa date back to the early 20<sup>th</sup> century when the Witwatersrand Native Labour Association (Wenela) was established, and labourers from different African states were recruited to work in South African gold mines. Amongst these labour migrants were Zimbabweans. The Wenela system had shortcomings, which included exploitation, lousy working conditions and disregard for the labour rights of labourers (Mambo, 2016). These shortcomings have influenced subsequent migration patterns and migrant experiences in South Africa. Evidence of this is seen when labour migrants from various African states, including Zimbabwe, still flow into South Africa for employment opportunities (Mujere, 2024). Due to this, South Africa faced high numbers of irregular migrants, which resulted in mass deportations and high asylum applications. In response, South Africa issued dispensation permits to Zimbabwean, Lesotho and Swaziland irregular migrants to give them legal status (Nshimbi and Fioramonti, 2014). Considering the breadth of the study on dispensation permits, this research narrows its focus to dispensation permits, which were issued to Zimbabweans only.

Crush and Tevera (2010) assert that in 2008, there were large-scale movements of Zimbabwean labour migrants and asylum seekers into South Africa. South Africa responded to

the situation by issuing temporary residence permits to Zimbabwean migrants to meet migrant needs and rights and eventually integrate them into its society while Zimbabwe's political and economic situation improved (DHA, 2023). South Africa initially issued permits valid from 2010 to 2014 under the DZP. Following the DZP, the ZSP was issued from 2014 to 2017. After the ZSP expired, South Africa issued the ZEP, which was valid from 2018 to 2021 (Nyakabawu, 2021). From December 2021, an additional twelve and three six-month consecutive extensions on the ZEPs have been granted until June 2024, but there are no further extensions. However, permit holders can apply for waivers to remain in South Africa even after the termination of their permits (DHA, 2023).

This study intends to assess the efficacy of the ZEP in ensuring the welfare of Zimbabwean migrants who are ZEP holders in South Africa (DHA, 2023). In this study, efficacy refers to the capacity of migration policies to bring out a desired effect or outcome (Czaik and De Haas, 2013). Therefore, the question of the efficacy of a migration policy intends to assess the extent to which a protection program such as the ZEP successfully addresses migration challenges its holders face. This is an examination of whether the policy meets its claimed objectives, such as enhancing the welfare of migrants, giving them legal status, or securing regional peace.

Research has been conducted to improve migration policies and decision-making. However, a gap remains in investigating the efficacy of these policies in protection programs for large populations, indicating how governmental authority may be improved to curb issues arising from actions or omissions when undertaking protection programs. Most of the literature on ZEPs accepts that the program can be an adequate migrant protection mechanism. The literature further acknowledges that, although the protection program is a significant humanitarian initiative, the temporary program cannot comprehensively address the root causes of migration or the rights and well-being of migrants (Moyo, 2018). Criticism of the program is flawed in that it omits to mention that the program fails to comprehensively address the challenges faced by migrants because it has homogenised people whose experiences vary along the spectrum of labour migration, seeking asylum, and survival migration. The criticism further omits that the protection program has potentially destroyed the focus on implementing durable reformations on the migrant labour system and that the transient nature of the program hampers plans to enact comprehensive policies that address structural problems.

Zimbabwean nationals exempt under the DZP and its succeeding programs are a mixed group of asylum seekers and labour migrants. This suggests that when issuing exemption permits, the government did not separate the two categories but issued the same kind of exemption permits to both categories (Thebe, 2016). The hypothesis that ZEP holders are a group of mixed migrant categories is based on the fact that the Department of Home Affairs stopped issuing asylum seeker permits and asked asylum seekers to apply for exemption permits (DHA, 2023). The department also instructed all Zimbabweans who had obtained a fraudulent South African identification document or an asylum seeker permit to surrender their documents and apply for the single category of an exemption permit (Thebe, 2017).

The *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* contend that the situation of ZEP holders has been manageable until now when their exemption permits are set to expire, and they must return home. ZEP holders have long been part of South African society and have contributed to the country's development. Furthermore, most children born to exemption permit holders were born in South Africa, lived in South Africa, and regarded South Africa as their home country. However, they are to travel to Zimbabwe with their parents to avoid separation from their families.

South Africa is bound by international and domestic immigration laws to protect asylum seekers and labour migrants in its territory. According to the Convention on the Status of Refugees and the Refugees Act of 1951, South Africa is required to uphold the principle of non-refoulement, which means that it may not return refugees to countries from which they fled if their lives were threatened. Furthermore, the South African Immigration Act of 2002 and the Constitution Act of 1996 added that the fundamental human rights of migrants are to be protected, including the right to equal treatment, social security, life, access to essential services, and education. These legal provisions should apply equally to ZEP holders.

## **1.2 Research question**

### **1.2.1 Main question**

- What is the efficacy of migration policies in addressing migration issues, especially on protection programs over large populations, as exemplified by the experiences of Zimbabwean migrants throughout the entire dispensation program?

### 1.1.2 Sub-questions

- What are the experiences of different categories of ZEP holders living in South Africa from 2010 up to 2024?
- Has the ZEP program been beneficial to Zimbabwean migrants since 2010?
- What are the thoughts and opinions of ZEP holders while waiting for the court's judgement on the matter of *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 490; 32323/2022 (28 June 2023) (Hellen Suzman Foundation case)?

### 1.3 Problem statement

South Africa received about 242,731 irregular migrants from Zimbabwe who were escaping economic and political challenges from their home country. South Africa introduced a dispensation program for Zimbabwean migrants as a way of legalising their stay within its borders and eventually preserving migrant rights since 2010 up to date (DHA, 2023; Moyo and Zanker, 2020). However, there are questions regarding the efficacy of the dispensation program in solving the plight of Zimbabwean migrants by examining the experiences of ZEP holders in South Africa. There are challenges such as administrative hurdles, eligibility prerequisites, permits' temporary nature, and permits' failure to lead to permanent residency. As a result, the programme fails to fully integrate migrants into society or protect their rights (Crush & Tawodzera, 2017). Migration patterns from Zimbabwe to South Africa are that there are large flows of irregular labour migrants and those who fled persecution in Zimbabwe. A backlog of applications at the DHA affected those who sought asylum. There were also mass deportations, the expenses of which the government could not keep up. In response to these challenges, the government introduced the dispensation program to legalise the status of labour migrants and asylum seekers as a single category (DHA, 2023). However, in as much as the existing literature by Crush who wrote with another on "Labour migration trends and policies in Southern Africa"; Landau who wrote about "The Southern crossroads: Human mobility, governance, and development in South Africa"; Vanyoro on his paper entitled, "The Political Work of Migration Governance Binaries: Responses to Zimbabwean "Survival Migration" at the Zimbabwe–South Africa Border"; Moyo on "Zimbabwean Dispensation, Special and Exemption Permits in South Africa: On Humanitarian Logic, Depoliticisation and Invisibilisation of Migrants"; Nyakabawu who wrote the paper entitled "Legal Violence: Waiting for Zimbabwe Exemption Permit in South Africa" and others identifies the challenges

Zimbabwean migrants faced in obtaining the ZEP, it does not document the primary reason behind the failure of the program to meet its ends, which this study proposes, is that it homogenised various categories of migrants under one protection programme.

#### **1.4 Justification**

The question of the efficacy of protection programs for large migrant populations, such as the ZEP in South Africa, is vital for several reasons. This study contributes to the theoretical understanding and policy improvements of migration governance. First, it adds to the broader conversation on the efficacy of migration policies. Despite extensive knowledge of the theme, the issue of the efficacy of the policy is still open to debate. Studies have typically focused on policy outcomes (de Haas, Natter, & Vezzoli, 2018) and ignored the efficacy of categories informing these policies in addressing migration problems. By investigating the efficacy of regularisation programs and utilising ZEPs as a case study, this research aims to close this gap in the literature.

The ZEP issue is significant owing to its scale and scope. There are 178,000 ZEP holders who constitute a large proportion of Zimbabweans living in South Africa (The Hellen Suzman Foundation case). This study highlights how South Africa, a major migration destination in Africa, handles extensive protection programs for large populations, such as ZEPs. Additionally, this study is timely as ZEPs are about to expire, and there is no clarity on the future of the program. This study contributes to the continuing policy debate. This will further shed light on the role of the ZEP, highlighting the significance of the program in migration governance.

Second, the study intends to add knowledge on migration governance that resorts to exemption and protection programs by questioning inherent assumptions about why they fail or succeed in safeguarding the welfare of ZEP holders, considering economic changes, shifting politics and leadership within which the program is implemented.

## Chapter 2: Literature review

### 2.1 Introduction

The Global Political Agreement (GPA) in Zimbabwe was formed in 2008 following criticism that elections were rigged and unfair. Members of the Zimbabwe African National Union - Patriotic Front (ZANU-PF), the Movement for Democratic Change - Tsvangirai (MDC-T), and the Movement for Democratic Change - Mutambara (MDC-M) formed the GPA to handle political and economic issues affecting Zimbabwe. The Southern African Development Community (SADC) and the African Union (AU) intervened in the issue of the GPA and led to the formation of the Government of National Unity (GNU). The GNU was intended to form a coalition government, end political violence, write a new national Constitution and find means of economic development. There was no consensus among coalition government members, no sharing of power, and human rights issues related to political violence were overlooked (Tatira and Marevesa, 2011). South Africa was compelled to assist irregular Zimbabwean migrants because of the regional political dynamics and the pressure it had at the time. South Africa was also closely involved in forming the coalition government, and it was criticised for not addressing the wrong political deeds of ZANU (PF). This led South Africa to take care of the consequences of the outcome of the discussions on the formation of the coalition government (Moshoeshoe and Dzinesa, 2024).

This literature review analyses the efficiency of migration policies using the experiences of several states worldwide, including South Africa, the United States, Argentina, and Spain. Migration is a significant issue because large flows have sociopolitical and economic consequences for sending and receiving states (Landau, 2012). An essential part of international dialogue is protection programs for irregular migrants (Boswell et al., 2011). As a policy outcome, protection programs intend to legalise the status of irregular migrants while changing migrant experiences and bringing about significant social benefits (Crush and Tawodzera, 2017).

States and various actors use complex legal systems, regulations, and practices to govern migrant flows, which is called migration governance. These movements may be internal or across borders, voluntarily or by force, legal or illegal. Migration governance is not only by states but also by various actors, such as governmental and non-governmental agencies,

migrants, and the private sector—levels of governance range from local to global (Betts and Kaytaz, 2009).

Securing national borders involves choosing who enters and exits the country. The duration of stay and maintenance of these terms form the basis of migration governance. Migration governance usually deals with conflicting objectives, such as balancing national and international obligations (de Haas et al., 2018). Furthermore, it is an evolving system that has shifted with sociopolitical transformations and migration trends (Landau, 2012). One example is the implementation of protection programs for irregular and large migration flows. The ZEP program was introduced to protect illegitimate Zimbabwean migrants in South Africa and to retain governmental control over its immigration system (DHA, 2023).

## **2.2 Zimbabwean migration to South Africa, general migration trends and statistics**

The complex relationships among economic, social, and political factors are shown by current migration patterns, especially those from Zimbabwe to South Africa. Evidence shows that migration patterns significantly affect both countries and the people involved. Crush and Tevera (2010) reveal that economic challenges and political unrest have mainly influenced the Zimbabwean migration to South Africa, seeking asylum and job opportunities. The history of migration between the two states predates the early twentieth century during the time of Wenela, when most labour migrants from neighbouring states, such as Zimbabwe, were recruited to work in South African mines (Mambo, 2016). The 2008 migration reflected the journeys that were travelled by the pioneers during the time of Wenela; however, push factors were slightly different, and the number of migrants to South Africa was too higher than usual because of the scales of both economic and political challenges that were prevailing at the time (DHA, 2023). Crush and Tevera (2010) call for sustainable economic policies and stable politics in Zimbabwe, emphasising the importance of addressing the push factors that induce migration.

Migration statistics highlight that South Africa is the leading country in which Zimbabweans migrate. In 2022, the census report showed that Zimbabwe is the highest-sending country, with 1,012,059 migrants that are accommodated in South Africa (Statistics South Africa, 2022). These statistics show the number of Zimbabwean migrants in South Africa and raise concerns about the ability of South Africa to accommodate such a sizable migrant population. Polzer and

Hammond (2008) argued that South Africa's response to high rates of Zimbabwean migration has been inconsistent. *Ad hoc* migration policies have changed between strict border control regulations and many lenient regulations, such as the DZP, which gave Zimbabweans the right to stay and work in South Africa legally. The varied regulatory nature of these *ad hoc* migration policies has hampered long-term decision-making on the part of the South African government, so it may be able to handle future problems connected with protecting large migrant populations, which has decreased the efficacy of migration policies.

McGregor (2007) examined the sociological effects of Zimbabwean migration patterns from a sociocultural perspective, noting the differences in the life patterns experienced by migrants. The author emphasises the importance of inclusive policies so that it may be easier to integrate migrants and reduce xenophobia. In addition, Betts and Kaytaz (2009) criticise South African migration policies, revealing the challenges migrants face due to the ambiguity of policies. The Immigration Act (sections 11, 19 and 23) and Refugee Act (sections 3, 22 and 24), which are fundamental South African migration policies, are restrictive and inconsistently implemented policies, impeding the ability of most Zimbabweans to attain legal status in South Africa.

Scholars have different perspectives on the consequences of Zimbabwean migration to South Africa. Landau and Segatti (2013) argue that Zimbabwean migration may not pose problems for the economy of South Africa but that it is likely to boost the country's economy because migrants tend to work in sectors that are less desirable to locals. Landau and Segatti (*ibid*) believe that large migration flows into South Africa are not the cause of economic lapse. In addition, Vearey (2017) probed the challenges that are likely brought about by migration to the South African health system and found that the system is overburdened because of limited resources. Thus, migration is not the reason why the health system is overburdened. Crush and Tawodzera (2017) state that the education sector faces challenges in satisfying the demands of migrant children, which sometimes require amendment of laws so that migrant children may be included in the system.

Human rights issues are crucial to the migration of Zimbabweans to South Africa. Murenje (2019) reports that the rights of Zimbabwean migrants are constantly abused by, among others, the police; there is xenophobia, and migrants have limited access to social services. The report calls for the protection of migrants' fundamental rights. Findings on the migration of

Zimbabweans to South Africa show that although migration brings challenges to South Africa, there are also benefits associated with it, and consistency by the South African government in implementing its migration policies may lessen irregular migration.

### **2.3 Responses to Zimbabwean migration to South Africa**

Large migration flows of Zimbabweans to South Africa stirred complex responses from the government, civil society, and local communities in South Africa. Crush and Tevera (2010) state that South Africa's response was from a humanitarian and security-focused perspective. A critical humanitarian act was the introduction of DZPs and, subsequently, giving Zimbabwean migrants the right to reside and work in South Africa. Restrictive actions included tightening border security controls and irregular deportations, which were highly criticised by Crush and Tevera (ibid). Polzer and Hammond (2008) added that the contradiction in South Africa's actions regarding regulating Zimbabweans migrating into its territory shows a lack of inclusiveness and efficacy in its migration policies. Despite the government's efforts to respond to the large migration flows of Zimbabweans into South Africa, civil society also played an essential role in addressing the challenges faced by Zimbabwean migrants. Landau (2010) states that non-governmental organisations intervened in the situation of Zimbabwean migrants by offering services and protection. When the government could not assist, these organisations provided legal aid, healthcare, shelter, and campaigns. Landau (ibid) further states that the limit on non-governmental organisations' resources raised doubts about whether they could adequately address challenges associated with the size of the migration overflow.

Local communities responded differently to Zimbabwean migration. Due to the linked historical background of South Africans and Zimbabweans, a few communities welcomed Zimbabweans. However, as Misago et al. (2010) state, xenophobic attacks emanate from non-tolerance to a substantial increase in the migrant population. Violence indicates a lack of community engagement programs and social integration strategies; therefore, there may be an understanding and acceptance between members of local communities and Zimbabwean migrants. The international community's response had an impact, although it was not as apparent on the ground. The United Nations High Commissioner for Refugees (UNHCR) petitioned South Africa for a more rational migration strategy and recognition of Zimbabwean

migrants' rights. The outcomes of these advocacy efforts remain unclear (Betts and Kaytaz, 2009).

The media played an essential role in shaping the narratives of the Zimbabweans migrating to South Africa. Danso and McDonald (2001) state that the media mostly showed migrants as undesirable, supporting preconceptions and increasing interpersonal conflict. The police's response to the administration of justice is also criticised in that the police, as the initial contact for migrating Zimbabweans, were involved in xenophobic attacks and could not protect migrants' rights (Murenje, 2019). The authors emphasise the importance of responsible journalism in migration issues to avoid harming others.

Amit (2010) stated that there was a backlog in the adjudication of asylum matters, which worsened the situation of Zimbabwean migrants in South Africa. The administrative system's inability to deal with Zimbabwean asylum applications has resulted in migrants' exposure to exploitation at work, inferior lifestyles, and imprisonment. These challenges emphasise the need for efficient policies and administrative procedures to protect migrant rights. Crush and Tawodzera (2017) stated that while some employers underpaid or offered poor working conditions, some empowered migrants.

Zimbabweans in South Africa formed organisations such as the Zimbabwean Exemption Permit Holders Association (ZEPHA) to address Zimbabwean migrant issues. They offer protection for ZEP holders against xenophobia and persecution by the government (ZEPHA, 2022). In conclusion, there were various responses to the Zimbabwean migration to South Africa. In comparison, responses, especially by the government and non-governmental organisations, were remarkable, although they did not adequately address migrant problems. All the reactions mentioned here were intended to address humanitarian problems and ensure the state's security. These efforts were acknowledged, but issuing a uniform protection program to regulate the problems of different categories of migrants may have been problematic.

## **2.4 Migration governance and law in South Africa**

South Africa serves as a typical destination for migration in the region due to its close ties with its neighbours, better political climate, and potential for economic growth. Its policies have gradually changed since the end of apartheid to cater to human rights and international relations (Minnaar and Hough, 1996). These changes are mainly influenced by intersections

between international inclinations (Landau, 2010), local situations (Misago et al., 2010), and domestic sociopolitics (Crush and Tevera, 2010). The most prominent migration laws in South Africa are the Immigration Act of 2002, the Refugees Act of 1998, and the Border Management Authority Act of 2020, which stipulate rules on migration administration. The Refugees Act is the domestication of the 1951 Convention on the Status of Refugees and protects asylum seekers and refugees. The Immigration Act regulates the arrival and departure of foreigners in South Africa by legalising their stay and employment. The Border Management Authority Act aimed to establish a border management body. Through its Bill of Rights, the Constitution of South Africa provides that human rights be respected. South Africa ratified the 1951 Refugee Convention and the 1969 African Union Refugee Convention and committed to upholding them. All other laws that are not mentioned, whether international or domestic, apply contingent on the matter; they apply secondary and complementary to fundamental laws.

Crush and Williams (2010) criticise South Africa's migration governance policies as restrictive regarding who can immigrate to South Africa and impose harsh consequences on those who violate the law. Although the authors acknowledge the role of the law in regulating migration, they argue that its restrictive nature increases irregular movements and migrant insecurity. Furthermore, there are challenges to implementing this law. Polzer (2010) argues that the legal framework may be in place, but the law is practically ineffective. Although the law is intended to protect migrants, the same system infringes on migrant rights because of a lack of resources, unfair administration, and corruption.

Social demands mainly influence the creation of policies, and laws are usually enacted to address social problems (Maweto, 2022). There is no distinction between policymaking and public demand. This non-separation occurs because violence against migrants may erupt because of the failure of the law to meet social needs (Landau, 2006). The judiciary also plays a significant role in protecting migrants from abuse and arbitrary laws, as shown in its precedent. This highlights the judiciary's ability to keep up with checks and balances in migration governance (Handmaker and Parsley, 2001). Migration policies in South Africa are inclusive. However, there is no political will to implement the law. Migration governance has also been extended to meet social and political demands. This is because South Africa attempts to balance state security and human rights issues.

Nyamnjoh (2006) states that South African migration policies do not address regional issues, only those of South Africa. South Africa cannot be separated from other regional countries. The framework of migration policies is not set within the SADC regional context. Landau and Segatti (2013) emphasise that local governance is vital in micromanaging migration issues, although it is usually undermined in discussions of policies at the national level. They state the need to recognise all government levels and their abilities.

South African migration policies are selective. Wocke and Klein (2022) state that South African laws prefer skilled migrants while neglecting low-skilled migrants. However, low-skilled migrants are in high demand in South Africa, particularly agriculture and construction. The gap left by policies causes the prevalence of unregulated migration and exploitation of migrants. As a result, South African migration policies require revision to meet labour dynamics. South Africa is also affected by migration caused by climate change (Mpandeli et al., 2020). Climate change poses a new challenge to migration governance. To address this, South Africa is urged to revise its policies to link climate change and migration to address emerging migration challenges.

In conclusion, important issues have been clarified in the analysis of migration governance and law in South Africa, emphasising the efficacy of migration policies in curbing migration challenges, as highlighted by the ZEP program. The ZEP program is a noteworthy protection program that legalises the stay of most Zimbabweans in South Africa. Nevertheless, the analysis of the efficacy of the ZEP program and other programs of the same nature reveals that the ZEP program's ability to sustain its holders' welfare relies on several factors, such as politics, the capacity of the administration, and the duty to uphold migrant needs. Complex challenges in the governance of migration in South Africa are shown when the state has to balance issues of state security, uphold migrant rights, and acknowledge the economic benefits brought as a result of migration. To ensure the efficacy of its migration policies, the South African government has to consider a comprehensive governance framework that includes a clear legal framework, capable administration, secure borders, social integration programs, and international cooperation. Protection programs such as the ZEP program require a constant review of migration policies and implementation. South Africa must continue to address its migration governance challenges, keeping its national goals while still upholding the welfare of migrants.

## 2.5 Migrant regularisation programs in South Africa and elsewhere

Migrant protection programs are amnesties intended to legalise the status of irregular migrants. These programs are usually temporary or a pathway for permanent residency or citizenship. The DZP and its successors, the ZSP and ZEP, are protection programs in South Africa. They regularised the stay of illegalised Zimbabwean migrants in South Africa. Crush and Tevera (2010) acknowledge the significance of the ZEP program as a humanitarian action in migration governance, even though it has been criticised for its temporary nature.

The ZEP program benefited undocumented Zimbabweans who were in South Africa by the time the program was established. The program was meant to legalise their stay in South Africa. Beneficiaries range from skilled to unskilled migrants who fled political and economic challenges in Zimbabwe. ZEP holders can work, study, and run businesses in South Africa. Religious organisations played a big role in assisting migrants in making their applications (Chimbidzikai, 2021). The temporary nature and uncertainty of the permit cause its holders to lead insecure lives depending on policy change (Ndlovu and Landau, 2020). Zimbabwean migrants who did not manage to apply for ZEP permits or failed to renew their permits remained vulnerable to exploitation and deportation. The excluded group of undocumented Zimbabweans reveals a gap in South African migration governance in that it addresses short-term migration problems and ignores long-term migration problems (Chimbidzikai, 2021).

Nyakabawu (2021) calls psychological experiences endured by ZEP holders legal violence when ZEP holders are left in a state of limbo through the use of legal administrative processes. The uncertainty of these processes affects the job security and social stability of ZEP holders. ZEP holders are mainly classified as a mixed group of economic migrants and asylum seekers, meaning that the program excludes survival migrants who are fleeing different issues, which may also include environmental issues. Survival migrants are irregular forced migrants who are often left in a state of limbo by the government because they are mistaken for economic migrants (Vanyoro, 2023). Furthermore, Maziyanhanga and Majavu (2023) state that the temporary nature of ZEP permits affects their holders' making of long-term plans, securing stable jobs, and obtaining social services. They further doubted the efficacy of the ZEP program in addressing issues that affect permit holders because of its temporary nature.

Outside South Africa is the most recent European response to the Ukrainian forced migration crisis. The war between Russia and Ukraine resulted in the forced migration of Ukrainians into Europe. The European Union (EU) managed the influx of refugees into its territory through the Temporary Protection Directive (TPD), which allows Ukrainian refugees to work, study and live during their stay in Europe. Assistance provided by the EU is for a duration of a year, with six months additional, which may run for a period of three years at maximum. The TPD allows a fair distribution of refugees amongst EU states and provides a mechanism for raising supporting funds. The protection will end when refugees are safe to return to Ukraine or when beneficiaries of temporary protection apply for asylums or other means of protection (Grosman and Raadschelders, 2024).

Spain introduced numerous protection programs. Gemma and Sanso-Navarro (2016) state that these programs have helped integrate large migrant populations into society. They criticised these programs as reactionary instead of proactive while recommending a systematic program. The Deferred Action for Childhood Arrivals (DACA) program, introduced in the United States in 2012, protects undocumented migrant youth from deportation and allows them to work legally. According to Gonzales and Terriquez (2013), this initiative enables beneficiaries to enjoy social mobility. However, they also stated that the program was unstable and implemented in an environment with a political shift. This instability, therefore, brings fear and uncertainty to youth in the program. Argentina implemented a Patria Grande protection program that Ronconi (date unknown) praises for being inclusive since it offers migrants from Mercosur countries social rights and the ability to reside in Argentina. He stated that the program is a rights-based policy. However, there are information gaps and ineffective administration.

The purpose and limits of protection schemes are the same across all states where protection programs have been implemented. These programs may be awarding legitimate rights to migrants as part of their social structure, but they do not offer long-term solutions (Crush and Tevera, 2010). Owing to the reactive nature of these programs and their amenability to politics, they cannot solve the fundamental causes of irregular migration. Regularisation programs generally provide robust solutions to the challenges faced by illegal migrants, even though the solutions are imperfect. Lessons are drawn from existing regularisation programs so that responsive rights-based strategies may offer long-term solutions and successfully integrate

immigrants into host societies. In South Africa, the most important lesson from the protection program was the mistake of regulating various categories of migrants under a single policy.

## **2.6 Helen Suzman Foundation and Another v Minister of Home Affairs and Others**

The Hellen Suzman Foundation case opposed the Department of Home Affairs' non-renewal of ZEP permits upon their expiry. ZEP holders could reside, work, and study in South Africa, but the South African government was about to terminate their permits, which affected the lives of many Zimbabweans.

### **2.6.1 Legal Standing of ZEP Holders**

The legal standing of ZEP holders is evaluated on human rights against South African migration law. This issue has evolved around the circumstances of the expiry of ZEP permits and its consequences. The terms and conditions of ZEP permit issuance were examined to ensure procedural fairness and adherence to the law. It is also important to consider whether fair and reasonable options were given to ZEP holders so they could apply for a waiver to remain in South Africa or a different visa. The Department of Home Affairs would have violated the principles of fairness and equity if short notice was given before the termination of permits or unclear provisions were given on available visa options that ZEP holders may apply for (Hellen Suzman Foundation case, 2023).

### **2.6.2 Human Rights Considerations**

The sudden termination of the ZEP permits may deprive permit holders of obtaining further legal visa options to remain in South Africa. Consequences of the termination of permits raised doubt about the proportionality and justifiability of the termination, of which, according to the Hellen Suzman Foundation case (2023), the government's conduct is against fair administration of justice in terms of Section 1 of the Promotion of Administrative Justice Act of 2000 (PAJA). Although termination may have been undertaken based on protecting state interests, the same cannot be said regarding justifiability in protecting human rights (Moyo and Zanker, 2020). In the case of the Hellen Suzman Foundation (2023), it is argued that ZEP holders have been residing in South Africa for over a decade and have established their lives and families. The termination of permits may lead to the destruction of lives and the disintegration of families. Some ZEP holders have family members who are South Africans, and, in instances of the termination of permits, Zimbabweans would have to leave South Africa, and those who are South Africans remain in the country. Another issue is the care of children who are born to

ZEP holders' families, as children may have to part with one of their parents or start new lives in Zimbabwe. Hence, the termination of permits destroys the children's sense of originality. The termination of permits generally leads to the destruction of family unity.

### **2.6.3 Procedural Fairness**

ZEP holders complain about late notice of the termination of their permits, which does not allow them to present their case. Considering the scale of the case and its impact on ZEP holders, lengthy time was required to ensure that satisfactory legal representation was obtained, and sufficient time was given to prepare for the case in terms of Section 3 of the PAJA. Transparency on how terminations were made was very important in ensuring that permit holders were certain of their status in South Africa. The legitimacy of the termination of permits may be questioned if there is no transparency regarding how decisions are made. In the history of renewing ZEP permits, an expiry date would be set. The government would change its decision to terminate permits towards the expiry date and make a further extension without a convincing explanation of the considerations that were made, which led to the extension of permits (Hellen Suzman Foundation case, 2023). The government's conduct creates uncertainty in the administration of the ZEP program.

### **2.6.4 International Relations and Diplomatic Considerations**

South Africa has good international relations with most states, including Zimbabwe (Mlambo, 2021). South Africa demonstrated its dedication to supporting its fellow African states when it issued ZEP permits. However, South Africa's decision to terminate ZEP permits has consequences for international relations (IR). The decision directly affects the relationship between South Africa and Zimbabwe (Hellen Suzman Foundation case, 2023). South Africa is a major African economic hub that plays a significant role in maintaining peace and cooperation in the region. Negative decisions against ZEP holders may have an impact on the economic state of South Africa because they rely heavily on their neighbours for skilled labour acquisitions (Ndlovu and Landau, 2020).

The restriction of migrants based on security reasons by South Africa to enter or remain within its borders may lead to increased illegal migration and regional instability. Surrounding countries may complain about the treatment of foreigners in South Africa, which may lead to tensions between states (Africa Economic Brief, 2014). African norms uphold family union to separation. Terminating ZEP permits may largely lead to the separation of families, which may

bring humanitarian and social challenges (Hellen Suzman Foundation case, 2023). How South Africa handles migration issues may diminish its reputation within the international community. However, humane treatment of migrants may enhance South Africa's status as a leading state in the region.

## **2.7 State sovereignty**

State sovereignty refers to the rights and powers that a state can self-govern without interference from other states. The guiding principle of international relations is that one state may not interfere with the politics of the other. A state decides how to handle internal issues. South Africa can decide who remains within its borders, regardless of clear provisions by its laws and international law against the non-refoulement of refugees (Amit, 2022). The issuance of ZEP permits was an internal decision made as a humanitarian gesture and a regulatory measure to control irregular migrants in South Africa. Numerous decisions to renew or terminate the ZEP permits demonstrate that South Africa is the only country that decides who remains within its borders and conditions of stay (Hellen Suzman Foundation case, 2023).

State sovereignty often outweighs foreign interests. Although South Africa is sovereign, its relationship with other states may affect its internal decisions. In its strife, South Africa attempts to meet its international obligations by domesticating international instruments and cooperating with fellow African states to battle regional problems. Owing to its commitment to international duties, South Africa has earned a higher rank in supporting fellow African states (Moyo and Zanker, 2020). In a few issues, such as the one concerning the ZEP program, South Africa is compelled to protect its interests over those of the international community.

Under the principle of state sovereignty, decisions made by a state are often justified internally while facing international criticism because these decisions are usually made against international regulations (Amit, 2022). On the issue of the ZEP program, South Africa has made several considerations based on the social, political, and economic pressures that it faces (Hellen Suzman Foundation case, 2023, para 8). The decisions of South Africa may affect its bilateral relations with Zimbabwe, posing diplomatic challenges. However, South African citizens may praise this.

## **2.8 Theoretical framework**

This study's theoretical framework is based on interconnected concepts from political science, sociology, and migration studies. It examines the efficacy of migration policies to ensure the welfare of ZEP holders in South Africa. The framework contextualises and examines the complex relationships between sociopolitical factors in South Africa, migration regulations, and the experiences of ZEP holders.

### **2.8.1 Migration Governance Theory**

This theory describes how states and international organisations regulate migration. The theory looks at regulations and procedures for migration across the border, migrants' rights and obligations, and how international organisations shape migration. This shows how South Africa exercises sovereignty within a world which upholds human rights and international cooperation (Landau, 2010); Misago et al., 2010; Crush and Tevera, 2010). In migration governance, states can regulate migration flow across their borders. South African laws, such as the Immigration Act of 2002, the Refugees Act of 1998, and the Border Management Authority Act of 2020, regulate migration and serve state interests. States uphold their international obligations to defend the rights of migrants and refugees. South Africa has domesticated international laws, such as the 1951 Refugee Convention and the 1969 AU Refugee Convention, demonstrating its commitment to upholding human rights and international duties.

### **2.8.2 Securitisation Theory**

Securitisation theory analyses how states treat migration as a security concern. This concept explains how South Africa handles the issues of ZEP holders. The ZEP program is handled as a security and humanitarian measure. Securitisation further explains that viewing migration as a threat to the economy, state security and social unity results in strict laws and procedures that manage migrant populations (Crush and Williams, 2010). Securitisation of migration brings challenges to migrants, such as exploitation, xenophobia, and general prejudice, which is a common experience among ZEP holders.

### **2.8.3 Social Integration Theory**

Social integration theory pertains to methods migrants use to assimilate into the host community, such as access to resources, social inclusion, and legal migration status, which can either hinder or aid migrants from assimilating into the host society. ZEP holders face several

challenges to integrating into South African society, such as limited access to social services and a lack of a pathway to permanent residence (The Hellen Suzman case). Inclusive policies, legal migration status, and community support promote social integration. Organisations such as ZEPHA promote social integration through advocacy (ZEPHA, 2022).

#### **2.8.4 Policy Review Theory**

Current policies affect political conduct and policymaking. It also includes monitoring the social reception of policies through the experiences of members of the society. The outcomes of the ZEP program impact the views of both permit holders and South Africans regarding migration policies. This will assist in formulating laws that promote social cohesion.

#### **2.9 Conclusion**

The literature reveals that examples of protection programs introduced by South Africa, Argentina, Spain, the United States, and Australia are complex tools for regulating irregular migration. Although they were formulated and implemented in different sociopolitical environments, they all showed underlying problems with migration governance. The issue of ZEP permits legalising the status of irregular Zimbabwean migrants in South Africa has highlighted how large migration flows may be controlled. The efficacy of this program is controversial and depends on the political atmosphere, ideas of the public, administrative assets, and experiences of migrants (Landau, 2012; Crush and Tawodzera, 2017). Protection programs do not provide solutions to the challenges faced in migration governance. Instead, they should be viewed within a more excellent migration governance framework that engages with other policy domains, such as social and labour policies, and integrates policies.

## **Chapter 3: Research Methodology**

### **3.1 Introduction**

This study compared experiences of six ZEP holders with those of five non-ZEP holders. The study intends to understand participants' lived experiences, views, and plans for future endeavours. Therefore, qualitative research was conducted to collect detailed data. Qualitative research assisted in obtaining information that may have been impossible to elicit from participants had quantitative research been used (Hennink et al. 2020). The importance of employing qualitative research is that the closest narration of personal experiences of ZEP holders could be obtained on reasons for migrating to South Africa, experiences faced in integration into South African society, and opportunities or challenges they met in establishing lives in South Africa.

Qualitative research has assisted in understanding the reasons for migration from Zimbabwe to South Africa. The journey from Zimbabwe to South Africa through the Beitbridge border post has been documented to be dangerous. Routes that illegal migrants often use may be through the forests on foot because they are trying to dodge law enforcement officers who patrol the border area and along the N1 road (Ndlovu and Landau, 2020). This information would not have been obtained without using qualitative research methodology, which allowed the participants to narrate the story of their journey to South Africa.

### **3.2 Qualitative research method**

This study examined the ZEP program's efficacy in ensuring its holders' welfare. It focuses on the life experiences of Zimbabweans in South Africa by comparing six ZEP holders and five non-ZEP holders to determine the migration challenges they faced in South Africa, their migration status, and the implications of the documentation they used to resolve their migration problems. This study used a qualitative research methodology so that there may be a comprehensive understanding of the stories that participants tell, the challenges faced, and the aspirations of participants in each group of Zimbabwean migrants (Creswell and Poth, 2016). The qualitative approach goes beyond numerical analysis to reveal stories that are hidden behind numbers, thus explaining complex migrant experiences.

Participants were purposively selected so that the sample represented the population of both ZEP and non-ZEP holders. The purpose of the selection strategy was to ensure that the findings

from the study were trustworthy and covered the broader experiences of the population being represented. Community outreach helped ensure the recruitment of participants (Mohajan, 2018). Engagement with long-serving community groups, churches, and social service providers to Zimbabwean migrants, who form part of the representative sample, assisted in obtaining broader points of view on the efficacy of the ZEP program. I stood outside local protestant and Pentecostal churches, informing possible participants about the study on the efficacy of the ZEP in ensuring the welfare of its permit holders and encouraging them to participate.

### **3.3 Sampling**

Convenience sampling helped reach a hidden population of the ZEP holders by targeting and including individuals from the selected population (Guest et al., 2017). The researcher asked participants after the interview to refer the researcher to a person likely interested in participating in the study. This helped select participants who represented the specific population and assisted in collecting key information on the experiences of ZEP holders (Palinkas et al., 2015). Furthermore, convenience sampling was less costly and time efficient. Looking at the size of the population of ZEP holders, which is large, it was better to use a cost - and time-efficient data collection method (Creswell, 2013).

Under convenient sampling, initial participants referred the researcher to other possible participants within their social circles. Zimbabwean migrants in South Africa tend to stay in one community and have close relations. For example, a higher population of Zimbabwean migrants in South Africa commonly resides in high-density areas (Crush and Tawodzera, 2017). Therefore, an individual participant likely knew how and where to locate the next ZEP holder or non-ZEP holder. Established social networks assisted in reaching participants who were scattered or hesitant to participate in the study (Leighton et al., 2021). Among non-ZEP holders were undocumented Zimbabwean migrants. Undocumented migrants hesitated to participate in the study if they were not referred to by someone they knew.

Participants were selected through direct engagement with the communities in which Zimbabwean migrants lived. Zimbabwean migrants were reachable in areas with community gatherings or community centres. Direct engagement with migrants assisted in obtaining the genuine life experiences of migrants, which may not have been captured if data collection had

been conducted remotely. Community outreach assisted in designing the study in line with community values (McNeill et al., 2020). Being physically present in the community where migrants lived assisted in an enhanced understanding of the contextual meaning of the information provided by the participants.

### **3.4 Screening of participants**

During screening, participants completed a questionnaire to elicit their eligibility for the study. Information gathered during screening included the individual's nationality, the year they migrated to South Africa, their existing permit status, and their consent to participate in the study. Harris (2012) emphasises the importance of preliminary screening questions as the foundation for a valuable research study. The major aim of screening was to establish voluntary participation, which aligned the study with ethical rules. At this stage, the narration of the participant's experiences as a ZEP holder confirmed the data the participant submitted during the preliminary stage. Participants' concerns regarding the study objectives were addressed at this stage.

### **3.5 Interviews**

The ZEP matter is very complicated; therefore, interviews were structured to allow participants to narrate their stories and delve into their complex experiences (Kallio et al., 2016). To encourage participants to share their complex experiences, the interviews covered reasons for migration, experiences upon reception in South Africa, relations with locals, problems faced, survival strategies, and future ambitions.

The interview allowed the researcher to follow questions as they were drawn on the questionnaire, allowing participants to freely relate their experiences in relation to the study, with each participant able to preserve the uniqueness of the story (Adeoye-Olatunde and Olenik, 2021). Different experiences were represented, ranging from those with favourable experiences in South Africa to those with considerable challenges. To meet the study's objectives, further issues were considered, such as age, gender, occupation, and duration of stay in South Africa.

Interviews were held individually so that each participant had the freedom to express their actual experience. To avoid participants telling their sensitive stories in the presence of others, one-on-one interviews were conducted to minimise breaches of confidentiality. The interviews

also focused on the experiences that migrants had in adapting to South African society. Issues of adaptation started from the time of arrival, how they lived before they had the ZEP, the ZEP application process, and how the permits were accepted by the labour industry or any other department where they were produced. When using ZEPs, participants needed to tell how they were treated at work or in hospitals when seeking healthcare. Similarly, those who were not ZEP holders narrated their stories, and there was a difference in experiences between the two groups.

### **3.6 Secondary data**

A study on the governance of migration, focusing on the challenges faced by ZEP holders, requires a thorough probe of secondary data, such as relevant laws, legal frameworks, case laws, reports, and other documents; thus, existing loopholes or irregularities in the existing framework may be identified and rectified. Assessing the existing literature gives scholars insight into the suitability of the present policies in addressing prevailing problems and means of managing existing regulatory programs, such as the ZEP.

Reference is made to international instruments such as the 1969 AU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1951 United Nations Convention relating to the Status of Refugees, the 1951 Refugee Convention and its 1967 Protocol. South African laws include the Refugees Act, Immigration Act, the Constitution, the Protection of Personal Information Act, Directive No.4 of 2023, and the Border Management Authority Act of 2020.

The ZEP program, a significant step in the legalisation of Zimbabweans' stay in South Africa, was a direct response to the migration problems faced by ZEP holders at the time of its introduction. However, the ever-evolving nature of migration issues necessitates a continuous amendment of its regulations. The current state of the ZEP program, in contrast to the provisions of existing literature, such as international instruments and recent court judgements, underscores the complexity of the situation. The experiences of ZEP holders, as illuminated by the application of the law governing the ZEP program and the judicial stance in migration governance, as discussed in the Hellen Suzman Foundation case, provide a nuanced understanding of the program's impact.

### **3.7 Research ethics**

Permission to collect data was obtained from the Human Research Ethics Committee Non-medical (HREC) of the University of the Witwatersrand under protocol number ACMS23/04. Clark-Kazak (2017) emphasises that when collecting information from migrants, it is essential to minimise harm and maximise the benefits of the research, including avoiding sensitive and traumatising topics related to the experiences of ZEP holders. Ethical considerations were strictly adhered to throughout the study. Provisions of the Protection of Personal Information Act of 2013 (POPIA) were followed. Information was obtained from the participants who provided informed consent to protect their privacy and confidentiality. Issues related to privacy and confidentiality included concealing information that could lead to participant identification. The names of participants were kept hidden and fictitious names were used in the study. Ethical guidelines were also followed for data collection, maintenance, and analysis. Participants chose whether the data were collected using audio recordings or transcripts. Any potential risks of violating the rights of the participants were addressed to ensure maximum safety.

The ethical implications of this research are paramount, ensuring the confidentiality and anonymity of the participants are protected. All participants provided informed consent, acknowledging their understanding of the study's purpose and their rights as participants. The study upholds ethical values that protect participants by allowing them to participate voluntarily and to withdraw from the study if they felt their rights were at risk. This commitment to ethical research practices is a cornerstone of the study and underscores participants' welfare.

### **3.8 Data analysis and limitations**

Data analysis was conducted following qualitative methods, which involved reflexive thematic analysis to identify common themes, patterns, and variations in the collected data (Braun and Clarke, 2019). This approach was based on the researcher's data interpretation and helped improve the validity and reliability of the research findings. For instance, the researcher's epistemological assumptions can influence the knowledge and acquisition of data and the data sources and methods used (Byrne, 2022). Similarly, ontological assumptions can impact data analysis, but they were minimised as much as possible (Braun and Clarke, 2006).

The study may have limitations, such as difficulty accessing ZEP holders and ensuring a fair representation of various migrant categories. Language barriers and a lack of trust may also have affected data collection, as well as a lack of resources in certain geographical areas. These potential limitations were considered when interpreting the findings.

### **3.9 Conclusion**

This study compares the experiences of ZEP holders and non-ZEP holders to examine the program's efficacy in ensuring its holders' welfare. Qualitative research was used to capture participants' lived experiences, the narrative of their journey from Zimbabwe to South Africa, and their attempts to integrate into South African society. Through interviews and observation of participants, findings were made on the harsh realities of migration that participants faced on their journey to South Africa, the challenges they faced when they got to South Africa and the hardships they had in obtaining legal status. The findings highlight the efficacy of migration policies to protect ZEP holders and discover the importance of inclusive and supportive regulatory measures considering different individual circumstances. This study also highlights the importance of addressing the root causes of migration from Zimbabwe and protecting migrant rights.

## CHAPTER 4: Analysis of migration governance policies in South Africa

### 4.1 Introduction

The history of South Africa has shaped its migration governance from apartheid to democracy. After apartheid, South Africa struggled to balance human rights obligations to protect its economy and security. Consequently, policy changes have occurred. South Africa is a common migration destination in the Southern African region, with most migrants coming from Zimbabwe, Malawi, and Lesotho. After apartheid, South Africa gradually introduced relaxed migration policies prioritising human rights and international law (Kabwe-Segatti, 2008; Minnaar and Hough, 1996).

During the early 2000s, South Africa experienced an influx of Zimbabwean migrants forced into its territory by unstable politics and economic inflation (Landau and Segatti, 2013). The South African government responded to the Zimbabwean migration crisis by issuing the DZP in 2009, which was changed to the ZSP in 2014. The ZSP was later replaced by the ZEP in 2017 to give permit holders a prolonged stay in South Africa (Nyakabawu, 2021). Regardless of the issuance of the ZEP, which gives legal status to its holders in South Africa, challenges such as social exclusion remain for permit holders (Misago and Landau, 2023). Criticised the most is the temporary nature of the ZEP, which leaves ZEP holders uncertain of their stay in South Africa. Furthermore, the permit limits holders from accessing basic general services such as a pathway to permanent residency. (Vanyoro, 2019).

Largely, South African migration policies are highly criticised in that they do not comply with international and constitutional law demands that all human rights be upheld, regardless of a person's migration status (Moyosore et al., 2017). The implementation of constitutional demands is usually a shortfall. Lack of proper enforcement of human rights has led to xenophobic violence in various parts of South Africa (Misago et al., 2010). The challenges ZEP holders face highlight the intricacies of South African migration policies. Although the main initiative behind the ZEP is to show the importance of the regularisation of migrants, it also brings about the need to make the regularisation programme go beyond temporary permits. The ongoing situation of South Africa as a major migration destination area in the region and lessons learnt from the ZEP regularisation program are important in framing future migration policies (Vanyoro, 2023).

## **4.1 Evolution of Migration Policies in South Africa**

### **4.2.1 The 1951 Refugee Convention and 1967 Protocol**

The 1951 Refugee Convention (Refugee Convention) and its 1967 Protocol are fundamental laws for protecting refugees. The perception of these laws within South African asylum policies, particularly in the matters of ZEP holders, requires an in-depth analysis of their principles and how they may be implemented (Vanyoro, 2023). Generally, the Refugee Convention was intended to protect European refugees after World War II, and its scope was widened by the 1967 Protocol, which gave the Refugee Convention the power to cover global refugee issues (Krause, 2021).

The Refugee Convention defines a refugee in its Article 1 as a person "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country" (Melander, 2021). Complementing the status of a refugee is the principle of non-refoulement in Article 33 of the Refugee Convention. This principle prohibits the return of refugees to territories where they are likely to be harmed or incarcerated. The principle is customary international law, which means that states, regardless of their adoption and domestication of the Refugee Convention, have a duty to obey this principle because it is also a custom that uniformly applies to all global states (Moran, 2021).

The Refugee Convention provides several rights for refugees, such as access to courts, primary education, and public relief, and requires that a refugee be issued a passport for travel purposes (Gil-Bazo, 2015). There are often challenges in implementing the Refugee Convention because its provisions sometimes cross the path of national sovereignty. Challenges include determining the status of a refugee, managing large migration flows, and dealing with prolonged refugee issues (Krause, 2021). South Africa domesticated the Refugee Convention and its Protocol through the Refugees Act of 1998. The Act regulates the legality of asylum seekers and refugees in South Africa (Ziegler 2020).

### **4.2.2 The 1969 African Union Refugee Convention**

The AU Convention Governing the Specific Aspects of Refugee Problems in Africa (AU Refugee Convention) complements the 1951 Refugee Convention and its Protocol by covering issues that are peculiar to the African region, where socio-political and ethnic conflicts are very

prevalent (Human Rights Law in Africa, Date unknown). Like the 1951 Refugee Convention, it emphasises the non-refoulement of refugees and the giving of asylums. Article II highlights the issue of asylums as an important humanitarian act. The Convention on Article VII requires African member states to cooperate on the issues of securing refugee rights and implementing long-term solutions. Refugees who volunteer for repatriation are not kept against their will in terms of Article V; instead, they assist in returning to their home countries.

The AU Refugee Convention complements the Refugee Convention by giving refugees a duty to abide by the laws of the host country and respecting regulations intended for public order. Mpabansi (2023) illustrates how the OAU Convention on Refugees was applied in the case of refugees in Burundi that Africa introduced the Convention intending to create harmony between receiving states and refugees, that refugees are to abide by the laws of the host for them to be acceptable in the receiving state.

The AU Refugee Convention stretches the definition of a refugee in Article 1 to cover ZEP holders by adding that those who are fleeing public disorder are refugees. There are challenges to the implementation of the AU Refugee Convention. The AU Convention offers a broader definition of a refugee, which brings inconsistencies in the interpretation of the law (Nyanduga, 2004). African states such as South Africa are greatly affected by a lack of resources. The Convention is difficult to apply on situations where states do not have enough resources to ensure necessary protection of refugees in terms of the Convention. The widened definition of refugees by the Convention may invoke xenophobic sentiments and social resistance when those who are not typically called refugees (like the mixed group of migrants of ZEP holders) are also included in the legal treatment of refugees (Mukumbang et al., 2020).

#### **4.2.3 Immigration Act of 2002**

The Immigration Act of 2002 (Immigration Act) regulates migration in South Africa, including the issuance of visas such as the ZEP. The ZEP was issued in Section 31(2)(b) of the Immigration Act. Supplementary directives, such as Directive No.4 of 2023, are periodically issued by the Minister of Home Affairs and give ZEP holders the right to remain in South Africa. The 2023 Directive gives ZEP holders a further stay until June 2024. In Section 2, the Immigration Act stipulates terms for the entry, stay, and leave of migrants in South Africa. It also provides for the detention and deportation of irregular migrants. The main purpose behind the provisions

of the Act, just as it is emphasised in its preamble, is to protect human rights, safeguard state security, and encourage economic growth by allowing skilled migrants into South Africa. The provisions of this Act are in line with international laws.

The ZEP may not be clearly stated in the Act, but it is classified as a special permit issued by the Minister of Home Affairs under the compelling conditions of Section 31(2)(b) of the Immigration Act. The adjudication and appeal of matters outweigh the upholding of migrants' rights. The process of balancing the two requires complicated legal and administrative measures (Mbiyozo, 2018). Furthermore, the Act is applied within a context that is highly affected by xenophobia, which hinders the social integration of migrants. Loopholes in the efficacy of the Act to address issues that it purports to cater to result in economic contributions and the needs of migrants being overlooked (Misago and Landau, 2023).

#### **4.4.4 Refugees Act of 1998**

The preamble of the Refugees Act of 1998 provides that the Act is the domestication of international law as provided for by the 1951 Refugee Convention and its 1967 Protocol and provides for the treatment of refugees within the South African context. Section 3 of the Act provides legal grounds for determining refugee status. In the case of ZEP holders, the Act in Chapter 5 provides grounds for asylum seeking and the rights and responsibilities of refugees. The Act defines an asylum seeker as a person who seeks a refugee and a refugee as a person who has been granted refugee status. As provided for in international law and the Refugee Act, refugees have the right to work and study in South Africa and are obliged to obey South African laws in terms of Section 34. Section 4 of the Act also provides for the exclusion of individuals as refugees, especially for those who have committed grievous atrocities, and states when the protection of a person ceases.

Regarding the Refugees Act, ZEP holders are granted refugee status due to the economic and political instability they fled in Zimbabwe (Vanyoro, 2023). Applications by ZEP holders are assessed in terms of this Act, and it provides a means of protection under the asylum system. Section 21 of the Act provides terms for asylum applications. However, the Act fails to address important administrative issues, such as delays and backlogs in processing asylum applications, which leave asylum seekers in limbo (Ziegler, 2020). The Act also fails to differentiate between refugees and economic migrants. In the case of ZEP holders, it is difficult to distinguish between

the two because Zimbabwean economic and political issues are intertwined. In addition, ensuring the integration of migrants in South Africa and social cohesion is an ongoing challenge (Moyo and Zanker, 2022).

#### **4.4.5 Border Management Authority Act of 2020**

The Border Management Authority Act of 2020 ensures that South African borders are secure. Section 8 of the Act stipulates that it controls the migration of people and goods across South African borders. The Act introduced the Border Management Authority (BMA) to enforce the law and ensure border security in Section 4. The MBA may search for and seize goods at the border; simultaneously, they may detain and deport migrants as part of their law enforcement functions, as provided in Section 5.

#### **4.3 Conclusion**

Post-apartheid migration governance in South Africa requires a balance between competing concepts of human rights, international law, economic demands and state sovereignty. The need to consider all these concepts in South Africa's migration governance derives from the history of the state and its role in the region. Current migration policies are based on human rights and international law, a direct shift from restrictive and racially weighted apartheid laws (Kabwe-Segatti, 2008). The influx of migrants from neighbouring states, such as Zimbabwe, brought new challenges to migration governance. Consequently, the DZP, ZSP and ZEP were issued to regularise the status of Zimbabweans fleeing economic and political challenges (Landau and Segatti, 2013). These permits are criticised for their temporary nature, leaving holders uncertain about their stay in South Africa. The Helen Suzman Foundation case (2023) emphasises adherence to procedural fairness on the notice of termination and upholding human rights. In its attempt to fulfil its international obligations, South Africa faces a challenge in protecting its security.

## Chapter 5: Research findings and discussion

### 5.1 Introduction

This study intends to highlight the efficacy of migration policies in addressing migration issues, especially in protection programs for large populations such as ZEPs (Baycan and Nijkamp, 2012). To assess the efficacy of the ZEP in ensuring the welfare of Zimbabwean migrants who are ZEP holders in South Africa (DHA, 2023), this chapter compares the experiences of both ZEP holders with non-ZEP holders, as well as ZEP holders themselves across variables such as gender, age, class, education, length of stay and so forth. This contributes to the need to understand the specific experiences of ZEP holders and their variations. Doing so allows the study to test the hypothesis that Zimbabwean nationals are exempt under the DZP and its succeeding programs are a mixed group of asylum seekers and labour migrants. This suggests that when issuing exemption permits, the government did not separate the two categories but issued the same kind of exemption permits for both categories (Thebe, 2017). The hypothesis that ZEP holders are a group of mixed migrant categories is on the basis that the Department of Home Affairs stopped issuing asylum seeker permits and asked asylum seekers to apply for exemption permits (DHA, 2023).

The special dispensation program was South Africa's response to a large migrant flow of Zimbabwean labour migrants and refugees into its territory. The program was intended to assist refugees facing a backlog in their applications and reduce the number of deportations. The program was temporarily introduced to assist its permit holders to have a legal stay in South Africa while waiting for Zimbabwe's economic and political situation to improve (DHA, 2023). This study was written when Zimbabwe's economic and political situation improved while South Africa's was declining. The analysis of this study helps position the study among most of the literature on ZEPs that accepts that the program can be an adequate migrant protection mechanism. The literature further acknowledges that, although the protection program is a significant humanitarian initiative, the temporary nature of the program cannot comprehensively address the root causes of migration or the rights and well-being of migrants (Moyo, 2018). The program's criticism is flawed in that it does not mention that the program fails to comprehensively address challenges faced by migrants because it has grouped people whose experiences vary along the range of labour migration, asylum-seeking, and survival migration. The analysis attends to this gap.

The chapter is structured as follows: brief outline of participant profiles; summary of key findings; variations in economic opportunities for ZEP holders and non-ZEP holders; how participants maintain their identity; integration of participants into the local environment; social protection of participants; social networks for migrant participants; building a future in South Africa; discussion; and conclusion.

## 5.2 Participant profiles

*Table representing participants*

| Name                 | Age | Gender | Documentation and reason for migration | Work                            |
|----------------------|-----|--------|--|---------------------------------|
| Dakalo<br>Langalanga | 40  | Female | Undocumented                           | Domestic worker                 |
| Daniel Dube          | 35  | Male   | Undocumented                           | Gardener                        |
| Zivai<br>Nyambo      | 44  | Female | Permanent resident<br>(labour migrant) | Civil Engineer                  |
| Meli Nare            | 36  | Male   | Undocumented (labour<br>migrant)       | Farm worker                     |
| Wilson<br>Siansole   | 34  | Male   | Permanent resident<br>(labour migrant) | Human Resources Manager         |
| Thandiwe<br>Sibanda  | 36  | Female | ZEP (labour migrant)                   | Domestic worker                 |
| Mqondisi<br>Nkala    | 39  | Male   | ZEP (sought asylum)                    | Chartered Accountant            |
| Munyaradzi<br>Hwakwa | 45  | Male   | ZEP (labour migrant)                   | Self-employed electric engineer |
| Steve<br>Mwanda      | 38  | Male   | ZEP (labour migrant)                   | Waiter                          |

|                  |    |        |                      |               |
|------------------|----|--------|----------------------|---------------|
| Sanele Mpofu     | 44 | Male   | ZEP (labour migrant) | Self employed |
| Sheilla Chitanda | 53 | Female | ZEP (sought asylum)  | Self-employed |

The table above shows that participants have different backgrounds, which likely means their stories will differ. Non-ZEP holders include Dakalo Langalanga, an undocumented 40-year-old female domestic worker; Daniel Dube, a 35-year-old undocumented male gardener; and Zivai Nyambo, a 44-year-old civil engineer with a permanent residence permit. These differences in documentation status reflect the socio-economic challenges faced by each, which in turn also affects the possibilities for advancing themselves in South Africa.

There are a variety of professions among ZEP holders, such as 36-year-old Thandiwe Sibanda, who is a domestic worker and 39-year-old Mqondisi Nkala, who is a Chartered Accountant. The employment position held by 45-year-old Munyaradzi Hwakwa, a self-employed electric engineer, against that of 38-year-old Steve Mwanda, who is a waiter, shows that skills held by ZEP holders in the South African economy range from skilled to unskilled. However, there is also the informality between them, as seen in the profiles of Sanele Mpofu and Sheilla Chitanda, who are both self-employed and have had to develop economic survival skills.

The reasons for migration also vary amongst participants, as some are labour migrants and others sought asylum. Most participants are labour migrants; only Sheilla Chitanda and Mqondisi Nkala sought asylum. They were members of opposition parties who fled political violence.

### 5.3 Summary of key findings

First, ZEP and non-ZEP holders who participated in this study faced challenges in maintaining their identities in South Africa. Social demands forced them to either entirely adopt South African ways of living or infuse both home and local lifestyles. Social networks facilitate transitions between the sending and receiving states by creating a joint relationship between home and local values. Social networks assist ZEP and non-ZEP holders with emotional support, migration, and settlement information.

Secondly, employment opportunities for ZEP holders and non-ZEP holders vary because different permit statuses, unrecognised academic qualifications and xenophobia influence them. This shows that being legal is important but not the sole consideration when seeking an avenue into formal employment or securing desired jobs. However, some participants resort to running informal businesses regardless of these challenges.

Thirdly, the study finds that in all their strives to survive, participants who sought asylum were psychologically affected by migration due to separation from their families and difficulties in maintaining connections with those in Zimbabwe. ZEP holders are in the worst situation to all others because of their uncertain legal status, which affects their chances of employment and psychological state.

#### **5.4 Variations of economic opportunities for ZEP holders and non-ZEP holders**

Participants in the study had different employment opportunities depending on their legal status, as well as their career qualifications or skills. Some secure formal jobs, while others obtain informal jobs. Formal jobs are stable, giving them a steady life. The availability of employment opportunities amongst participants goes from informal employment, as seen in domestic workers like Dakalo Langalanga, who is an undocumented migrant and Thandiwe Sibanda, who is a ZEP holder, up to formal employment, as seen in the stories of Mqondisi Nkala a ZEP holder who is a chartered accountant and Zivai Nyambo a permanent residence permit user who is a civil engineer. The importance of documentation is clear since documented participants can secure stable jobs.

Mafikeng generally has fewer police-related issues compared to other regions, but there is a scarcity of job opportunities. Despite my inability to obtain a work permit, I have managed to secure occasional employment in gardening. However, my efforts to secure a stable, well-paying job remain challenging.

While academic qualifications are a major determinant of the kind of employment a person is likely to secure, those with legal status are in a better position to secure better employment opportunities than those who are undocumented. As a result, some documented participants had well-paying jobs, allowing them to fend for their families in South Africa and Zimbabwe. A migrant with a legal status in South Africa is less prone to exploitation and abuse by employers. Undocumented migrants are often underpaid and have bad working conditions (Bakewell, 2020; Vanyoro, 2021). Daniel Dube is an undocumented migrant who works as a gardener. He

says that undocumented migrants are exposed to these working conditions because they have fewer job choices, and life demands force them to take any job opportunity so that they may take care of themselves. Thandiwe Sibanda, a ZEP holder who is a domestic worker, says that employers tend to observe the law the most when they have hired legal migrants because they are aware that legal migrants have the right to access labour law representation and hold wrongdoers accountable. Undocumented migrants are afraid of seeking legal recourse due to their illegal status and fear of deportation.

However, some permit holders, regardless of their legal status, cannot secure formal jobs that are inherently stable and pay well. Evidence is seen in unskilled ZEP holders who cannot secure suitable employment. The lack of necessary qualifications and language barriers are major reasons for failure to secure good jobs. Some permit holders were not proficient in the languages spoken in South Africa. Munyaradzi Hwakwa is a Shona-speaking ZEP holder with a diploma in electrical engineering. When he arrived from Zimbabwe, he lived in Potchefstroom, Northwest. Tswana-speaking people dominate Potchefstroom. Munyaradzi Hwakwa's job requires him to communicate with people, of which most of his clients are Tswanas. He is challenged speaking to the local Tswanas because he cannot speak their language. He says that the failure to communicate with locals in their indigenous languages affects the number of clients requesting their services:

As an independent electrician, the success of my business relies on my ability to communicate effectively with my clients. They provide me with instructions on how I can assist them with electrical repairs or installations. Most of my clients are fluent only in Tswana, a language I am still learning. Any miscommunication or misunderstanding of instructions may lead to incorrect execution of my work.

Another story concerns Zivai Nyambo, a civil engineer with a permanent residence permit. Her major challenge in her profession is the language barrier. She speaks Shona, and the locals in Cape Town speak Xhosa. She may communicate with some of her clients using English, but locals prefer using their local languages, affecting her relationship with some of them. As shown in the experiences of Munyaradzi and Zivai, their job opportunities are limited because they cannot communicate well at their workplace.

There is a difference in the employment sector's treatment of locals and foreigners, wherein employees prefer locals to foreigners when hiring (Gordon, 2021). The system implies that

those who bear South African identity documents are preferred over those with foreign papers. Munyaradzi Hwakwa is a self-employed electrical engineer who says that, regardless of his legal migration status in South Africa, holding a ZEP, he faces challenges in getting employed, which is why he chose to be self-employed. He further stated that foreign academic certificates are evaluated by the South African government so that their equivalence to the local education system may be ascertained. A certificate is issued to prove that the board of higher education has evaluated foreign academic certificates. However, when searching for a job, only foreign academic certificates and foreign identifications are submitted. He also adds that most employers do not recognise foreign academic certificates and prefer those with South African identities to foreign ones, so they reject the application because the person has foreign educational qualifications and identities.

Wilson Siansole, a 34-year-old Human Resources Manager with a permanent residence permit, has a different story. He says he is more likely to be hired because he has South African papers. Challenges faced in meeting job and qualification requirements limit Munyaradzi Hwakwa's chances of securing jobs in South Africa. Therefore, he wishes the government could issue a different identification for ZEP holders so the preferential policy would not prejudice them.

Most participants in the study claimed that there are no support or integration programs for migrants in South Africa. Some states have programs to assist migrants in integrating into the local community and helping with job placements so that migrants may not face challenges coping with others at work (De Grauw and Bloemraad, 2017). Most participants said such social services were available only to permanent South African residents and nationals. This was confirmed by Wilson Siansole and Zivai Nyambo, who are permanent residents of South Africa. Non-citizens in South Africa, such as ZEP holders, use their networks to find opportunities and integrate themselves into the local community. Consequently, some ZEP holders have started new business enterprises to create employment. They opened businesses to improve their trading skills and contribute to the South African economy. However, there are challenges in establishing a stable company in a foreign country owing to strict regulations and financial problems (Falkena et al., 2001).

### **5.5 Identity maintenance, integration, social protection and social networks**

Participants in this study had different levels of social integration in South Africa. Depending on their location, some can partake in local activities, build social networks, and eventually develop a sense of belonging in the host country. Sheilla Chitanda is a 53-year-old female ZEP holder who says, “The environment in Venda is homely. People are so welcoming and loving.” She married a Venda man and had two children. She said that she had a saloon. She and her clients are members of the local women’s society, where they help each other with different problems that affect women.

At the same time, others may face challenges in integrating with local society due to factors such as language barriers, differences in social values, or social exclusion (Sibanda, 2010). Those who do not speak local languages cannot easily participate in social activities like Thandiwe Sibanda, a domestic worker who uses a ZEP, works a week in Johannesburg and the rest of the month in Mafikeng. She says that she is unable to join the Mafikeng community because she cannot speak the Tswana language and cannot communicate well in English. She says that locals often exclude her from further community activities once it is noted that she cannot speak the Tswana, which leads to failure to integrate into society successfully or a feeling of belonging to the local community. However, her story is different when it comes to her life in Johannesburg; she has managed to be a part of the Johannesburg community even though she works in Johannesburg for a week. She says that she thinks she easily integrates with the Johannesburg community because she is familiar with the Zulu language spoken in Johannesburg. Failing to integrate into society in Mafikeng frustrates her a lot since she spends most of her time there.

Differences in social values affect the social integration of migrants into the host society. Customs of ethnic groups in Southern Africa are linked, although they may have slight differences (Rapoport et al., 2020). Among the ZEP holders are people from different ethnic groups. The major groups are the Ndebele and Shona. Ndebeles have a language and ethnic values that align with those of South African Zulus (Ndlovu, 2022). The Shona group aligns well with the minority group of the Vendas (Netshivhambe, 2023). Participants’ responses revealed that customary similarities made it easier to integrate into these groups. Experiences also vary depending on the communities in which migrants settled upon arrival. Steve Mwanda is a 38-year-old male waiter and ZEP holder. Upon arrival in South Africa, he settled in Durban. He

said, “I had a challenge adapting to the local lifestyle. I also could not understand the language.” Regardless of his legal migration status through the ZEP, he says he did not feel like a part of the community because his values and those of the locals could not align - he felt unsafe. He was not prepared to adopt the local lifestyle, so he moved northward to Polokwane, where he currently resides.

Participants in this study who have a legal migration status can access social services depending on the conditions of the documents that they hold. Permit holders, varying with levels of policy regulation, may access social welfare programs and government support services such as unemployment benefits or grants for those with lower or no income (Moyo, 2020). ZEP holders say they benefit from the unemployment fund, provided they can prove that they were employed in the country and contributed to it. Those with permanent residence permits may receive social grants, while undocumented migrants cannot access these services.

While identity maintenance is likely to influence integration variably, the same way documentation type variably influences social protection, participants in this study revealed that permit holders, regardless of type (ZEP, permanent residence, work permit, etc.), have better access to healthcare than undocumented migrants because they can participate in healthcare programs or access standard healthcare services. However, common challenges, such as language barriers, may still impact how easily all participants may access healthcare services. Language is a challenge in accessing healthcare in South Africa because local languages are mostly used in public healthcare centres. Thandiwe Sibanda adds that in Mafikeng, healthcare practitioners at the local hospital speak Tswana and often frown when a person does not understand their instructions.

Participants with permits also have better access to education for themselves and their children than those who are undocumented. Zivai Nyambo, who uses a permanent residence permit, and Sheilla Chitanda, who uses a ZEP, have children; they both say their children can study without restrictions. The education in public schools is free. Section 29(1) of the Constitution of South Africa (1996) states that “everyone has the right to education”. On the other hand, Dakalo Langalanga, who is undocumented and has children, is affected by the impracticality of the law. She says that the Department of Education does not allow her children to study because they are undocumented. She further says that she has resorted to

sending them to a small private school, where she pays school fees monthly. Public schools accept migrant children with permits to study while rejecting undocumented children.

### **5.6 Building a future in South Africa**

It is not necessarily the case that legal documentation leads to a feeling of interest or ease about building a life in South Africa. Indeed, the ZEP program allows family reunification. ZEP holders' immediate family members may join them in South Africa. This upholds family values and promotes emotional support for the ZEP holders. Munyaradzi Hwakwa is a ZEP holder who lives with his children in South Africa. He says that having his children stay with him assists him in providing close guidance to his children, and he does not experience the stress of sending remittances home for child support. When a family is separated, having a sense of belonging to one place is difficult. Allowing family reunification further promotes the adaptation of ZEP holders to South African society, and they feel welcomed.

Munyaradzi Hwakwa's story supports the benefits of having the family united, but he states that there are challenges in the documentation required in the process of family reunification. There is a backlog in the processing of applications, accompanied by strict rules. Others are, therefore, invested in strengthening the economy of their country of origin and are not as keen to bring their families to South Africa. Mqondisi Nkala is a chartered accountant and says he is so grateful to be part of the ZEP programme, which gives him the right to work in South Africa. He further says that:

My wife and children live in Zimbabwe. I can send remittances home and support my family. I can pay school fees and have opened businesses and built houses. Something I think that I could not have done had I been in Zimbabwe, considering the economy of the country and the scarcity of opportunities. However, I cannot visit Zimbabwe for fear of persecution.

Others acquire skills while away from home with the hope that they can one day bring home their skills and use them to develop their home country. Sanele Mpofu is a landscaper. He says that landscaping is a rare skill in Zimbabwe, and most colleges do not offer it as a course. He wishes that landscaping be introduced as a course in one of the local colleges in his hometown of Gwanda. He says that his future goal is to introduce the course at every Zimbabwe college.

Building a life in South Africa is complicated by the anxiety about the cessation of the ZEPs. The ZEP holders who participated in the study expressed varied thoughts about the outcome of

court judgments on the termination of their permits. They display anxiety and uncertainty because the result is likely to change existing migration policies or the renewal of permits. Mqondisi Nkala says that he is worried that new, more stringent policies or amendments of policies may affect the lifestyle of ZEP holders in that they may need to return home (with ZEP holders who were asylum seekers unable to return home because of fear of persecution) or their lives may get worse than they were before policy changes were implemented. Sheilla Chitanda added to her anxiety by saying that the administration of ZEP issues is usually done with incomplete information provided to members of the public, including the affected group of the concerned permit holders. Lack of clarity of the information supplied gives anxiety to permit holders because they are not aware of the consequences of their stay.

All ZEP holders who participated in the study say that they applied for a waiver that they may be condoned to remain in South Africa, even after the termination of their permits. Applications for waivers to remain in South Africa after the termination of permits were made in 2023, and up to now, there has been no outcome on their applications, nor is the reason for the delay known. Steve Mwanda worries that the duration of ZEPs may have been extended until June 2024, but that is a short period before its holders are faced with the challenge of termination of their permits again. He states that the results of their applications for a waiver to remain in South Africa after the termination of their permits may assist them in knowing their future status in South Africa. ZEP holders who participated in the study were concerned about the consequences they were likely to face in instances of termination of their permits with a failed waiver application.

South Africa is approaching political elections. Thandiwe Sibanda is worried that unstable politics and economy in the country may influence the immigration atmosphere. Further, when debates are held on migration issues, the conclusions may negatively affect ZEP holders. Termination of ZEP makes its holders feel rejected by the government of South Africa and the society because most, if not all, ZEP holders have established their lives in South Africa, and some cannot return home because they were asylum seekers who fled persecution in Zimbabwe. They do not have plans to return to their home country. Some are working or studying, and the termination of their permits implies that they cannot continue with their aspirations.

Anti-immigrant sentiments worry participants who are ZEP holders because they feel rejected by both the government and the community after all these years of dedicating themselves to the growth of South Africa. Some participants, regardless of whether they were in the ZEP program, said that they felt scared when a migrant was being ill-treated. Xenophobic attacks are very common in South Africa, and the government is trying to minimise them, but constant demands for the termination of ZEP permits give its holders the perception that the government is instigating xenophobic attacks on ZEP holders as well. Not all locals have anti-migrant sentiments, while others are supportive and have joined families with ZEP holders.

There are variations, though. Munyaradzi Hwakwa, as an electrical engineer, qualifies under the critical skills that are required in South Africa. Sanele Mpofu is married to a South African. These two participants in the study have different experiences from others. They are relieved from stresses that affect other ZEP holders because they feel they have higher chances of switching to another type of permit and avoiding returning to Zimbabwe. Both participants felt very much like they belonged to the local community because they had been accepted.

## **5.7 Discussion**

The interview drives out common themes and patterns which are related to the experiences of participating Zimbabwean migrants from both groups of ZEP holders and non-ZEP holders. Migrants have identities that differ from those of members of the receiving community. Migrants' identity recedes over time, and they adopt one of the receiving communities so that they may be accepted or able to integrate into the new community. Learning a new way of living is usually challenging because some migrants follow their individual lifestyles and those of the receiving community. In contrast, others abandon their lifestyles and live in one of the receiving communities. The grey line behind migrants' choices to maintain their social identities is marked by their protection by migration laws. On that note, interviews were intended to elicit sufficient information on the efficacy of migration policies in protecting ZEP holders through options that migrants have for keeping their identities.

Social networks assist migrants through challenges they face in their migration process and adaptation to the receiving state. Social networks are based on familial or religious ties. Sharing information on how to migrate, integrate into the receiving society, or access public services, such as obtaining permits, is done through social networking. The same social groups also

assisted with emotionally supporting migrants in adapting to the new environment. Some migrants would change their cultural identities because of a lack of social groups which help keep their culture alive. Sometimes, no cultural transition exists because no known groups create a bridge or link to change. When there is no link between the two cultures or between the sending and receiving countries, migrants suffer from receiving help so that their lives may change.

The economic experiences of migrants show their challenges and opportunities. Migrants usually face challenges in terms of employment because of a lack of proper working papers, rejection of foreign qualifications, and xenophobia. Usually, migrants are exploited in the informal sector; if employed, a few of them work. Underemployment of migrants in the formal sector leads most migrants to open individual enterprises, which also helps the local economy grow.

Migration significantly affects the psychological state of migrants. Adapting to a new environment, battling hostility by locals, and homesickness have major effects on the mental health of migrants. Matters worsen for illegal migrants who are trying to establish lives without the necessary papers which enable them to obtain essential services. Differences in language and social identity may cause migrants to become isolated. In South Africa, ZEP holders are known as a group of people whom the government does not fully accept. The constant termination of their permits has caused many employers to stop hiring them because of the uncertainty of their status in South Africa. Having the necessary documents to remain in South Africa but not being able to get jobs may affect the mental health of ZEP holders and require prioritising mental health support as a migrant program.

Migration may affect the family dynamics of ZEP holders. Some family members have separated from others, with maybe one living in South Africa and the rest living in Zimbabwe. Maintaining family relations under these circumstances is complex, especially for ZEP holders who were asylum seekers whose lives may be in danger if they return home. Thus, dividing low-wage earnings between migrants in South Africa and sending a part as a remittance home may be a major challenge. For those who have migrated with their families, adapting to a new environment may cause conflict between family members, with children adapting more quickly

than their parents. Noting the difference in adapting to the environment may assist in devising helpful methods to ensure that the entire family adjusts to the environment uniformly.

### **5.8 Conclusion**

The study on two samples of ZEP holders and Zimbabwean migrants who are non-ZEP holders in South Africa has highlighted varying experiences of migrants regarding socio-economic integration and the impact of migration policies on migrant lives. Employment challenges include difficulty securing a stable job, good income, and recognition of foreign qualifications. Social integration is affected by factors such as language barriers, cultural diversity, and community acceptance of migrants. Permit holders have better access to social services than undocumented migrants. The uncertainty of ZEP status causes its holders to be anxious about policy changes and permit renewals. The study results require policies that are more inclusive and responsive to the prevailing situation of ZEP holders.

## **Chapter 6: Recommendations and conclusions**

### **6.1 Introduction**

The study dealt with the complex subject of migration and surrounding attempts to regulate migration using programs such as the ZEP. It highlights the need for an inclusive reevaluation of migration policies by juxtaposing the aims of the law against the real experiences of ZEP holders. This study examined challenges faced by ZEP holders and gaps in the existing migration policies and recommends inclusive and long-term solutions to migration problems. The study reveals that ZEP holders pursue a vulnerable and uncertain life in South Africa. They may be documented, but structural challenges hinder their successful integration into South African society. Factors such as xenophobia, employment discrimination, and restrictions on receiving basic services hinder the successful integration of ZEP holders into South African society (Misago et al., 2010). These factors affect ZEP holders socially and economically, causing them to feel separated from the broader societal fabric.

### **6.2 Recommendations**

The efficacy of the ZEP program and other related migration policies was examined, hence defining the purpose and results of the program. Although the ZEP is a magnificent step towards legalising the migration status of Zimbabweans in South Africa, its temporary nature stresses its holders. ZEP holders cannot make long-term plans due to the temporary nature of their permits and inconsistent renewal terms (Nyakabawu, 2022). The following are recommendations for the study:

6.2.1 This study recommends an all-inclusive approach that encompasses the rights of ZEP holders and their long-term security. It emphasises a pathway to permanent residency or citizenship instead of temporary permits for individuals who require durable solutions. This pathway will give ZEP holders stability and facilitate their integration into South African society.

6.2.2 Addressing the root causes of migration in Zimbabwe will foster a regional strategy to form institutions that address migration problems and improve the economic state and political stability. South Africa can lead this initiative to change countries of origin by working with other regional states. South Africa has demonstrated its capacity to lead in this region by introducing dispensation programs for irregular migrants from neighbouring states. The possibility of it taking the initiative to address the root causes of migration in countries of origin

cannot be ruled out. Given its financial resources and its diplomatic status, South Africa would be an ideal candidate to assume a leadership role in solving migration problems in the region.

6.2.3 This study stresses that xenophobic policies and practices that discriminate against migrants be addressed. Efforts to minimise xenophobia and ensure information dissemination on the tolerance of migrants may lessen social exclusion. Furthermore, considering migrant experiences when making decisions during policymaking can result in lenient migration laws (Crush and Tevera, 2010). A review of internal policies in line with international migration standards will promote South Africa's relations with other regional states. It is justified that South Africa has a duty to uphold its interests, but when conducted disregarding international interests, South Africa may dock itself and lose support from other states in the region. Historically, South Africa has succeeded because it cooperated with neighbouring states. Attempts to strike a balance between national and international interests will assist South Africa in handling its affairs both internally and internationally.

6.2.4 This study upholds the need to ensure that participants are safe and that their dignity is preserved. Upholding this ethical consideration will ensure that future research on migration problems is understood and that migratory patterns are established. Research of the same nature as this study shapes policies, changes made in migration are based on empirical methods, and the rights of affected individuals are protected.

6.2.5 An analysis of the policies governing the ZEP program reveals a conflicting relationship between international and national interests, with the study laying out an interplay between international human rights norms and national interests. The study identified relevant national migration policies, singled out specific policies that affect the experiences of ZEP holders, and evaluated how far they align with international migration standards (Landau, 2010). The ZEP program was established to afford legal stay for Zimbabwean migrants in South Africa temporarily. Its temporary nature is the root cause of the threat to ZEP holders' return to Zimbabwe. ZEP holders in South Africa are classified as refugees and are protected by international law on the non-refoulement of refugees. As such, South Africa's intent to terminate ZEPs and return its holders to their home country is inconsistent with international and national laws.

6.2.6 Ensuring that ZEP holders continue to have a legal stay in South Africa requires the constant renewal of their permits. ZEP holders rely on renewing their permits to access social services, earn a living, and contribute to their community (Ndlovu and Landau, 2020). However, ZEP holders face challenges in renewing their permits, making them feel vulnerable and uncertain about their stay in South Africa. The study calls for a simplified way of permit renewal if permanent residence or citizenship is not provided to ZEP holders. Simplifying ZEP permit renewal leans for several reasons, such as reducing the burden on the administration of ZEPs and ensuring that ZEP holders comply with the permit renewal process. If the renewal process was simplified, there would be less time required to renew permits and fewer mistakes by applicants.

6.2.7 The ZEP program grouped different categories of Zimbabwean migrants, ranging from asylum seekers to labour migrants. Putting together different categories of migrants under one migration program is the reason why South Africa faces challenges when attempting to terminate ZEPs. Terminating ZEPs means permit holders are compelled to return to their home country. Among the ZEP holders are labour migrants and asylum seekers (Vanyoro, 2023). Labour migrants may return to Zimbabwe, but asylum seekers are not able to return home because they fear persecution. For future issues connected to this one of the ZEP programs, South Africa has to separate migrants and assist them according to their needs. It is noted that it may not be possible to address individual issues, but it can group them according to common problems that affect them. Separating ZEP holders may now have discriminatory discourse, so the only solution that South Africa remains with is to provide a solution that favours both labour migrants and asylum seekers, which allows ZEP holders to remain in South Africa.

6.2.8 ZEP holders also contribute to the economy of South Africa, but the temporary nature of their permits hinders them from being a part of the local society and showing their potential. Giving ZEP holders essential services that are comparable to those of permanent residents helps them easily integrate into society. This is especially essential for ZEP holders with no prospect of returning to Zimbabwe, even for a visit. To offer the ZEP program a permanent residence pathway requires implementing various strategies. Reviewing the existing legal migration framework in the regulation of ZEPs can assist in identifying hindrances to establishing a permanent residence pathway.

6.2.9 The government gave an option for ZEP holders who want to remain in South Africa to apply for a waiver. The government made this announcement without giving out any possible options that may make it easier for ZEP holders to apply for the waiver to remain in South Africa (DHA, 2023). The lack of easier options to use as a waiver to remain in South Africa makes most ZEP holders, who were formerly asylum seekers, vulnerable to refoulements. The study suggests that when allowing ZEP holders to apply for waivers to remain in the country, it also introduces special pathways that may make it possible for ZEP holders to apply for permanent residence in South Africa. The criteria for qualifying the introduced pathways may be based on the merits of service of an individual in South Africa.

6.2.10 Further legal assistance and support for ZEP holders is crucial in ensuring they choose a permanent residence pathway that suits their circumstances. This could be made possible through the stationing of legal clinics, setting up helplines, and undertaking outreach programs, which will aim to ensure that ZEP holders understand their migrant rights, know which documents to gather, and complete application documents.

6.2.11 The government may also involve various stakeholders in monitoring the inputs and outcomes of the proposed permanent residence pathways. These stakeholders will consult with the ZEP holders and gather their experiences on the proposed pathways. The government may further establish means to monitor and evaluate the efficacy of permanent residency pathways by checking application rates and processing times and identifying areas that need improvement.

6.2.12 Reviewing administrative procedures may assist in avoiding the situation where South Africa is forced to introduce an umbrella solution to different categories of migrants. South Africa had a backlog in issuing asylums, so it resorted to grouping asylum seekers and labour migrants under one type of permit system, the ZEP (DHA,2023). ZEP holders applied for waivers to remain in South Africa, but they are still waiting for the outcome, yet their permits will expire in a few months. There is a likelihood that their permits may reach the expiry date before they receive the outcome of their waiver to remain in South Africa. The reason for the delay in the outcome is still the backlog in the processing of applications by the Department of Home Affairs.

6.2.13 The study notes the importance of improving labour protection and establishing enforcement mechanisms. Regardless of their legal status, ZEP holders in South Africa are still identified and treated as migrants. They complain about discrimination in the employment sector based on their nationality and the uncertain status of the termination of their permits. Enacting or amending labour policies in line with the safeguarding rights of migrant workers will ensure fair labour practices and working conditions and protect migrants from exploitation in the labour sector. Fair labour practices may be upheld through the introduction of an enforcement mechanism. The body that monitors fair labour practices audits, inspects, and fines those who violate rules. Offering legal aid and support to ZEP holders will assist them in seeking legal remedies against violations of their rights. Support networks may further assist in information dissemination on how ZEP holders may be assisted when they encounter labour malpractices.

6.2.14 Establishing social integration programs may assist in successfully integrating ZEP holders into local society. These programs may provide services such as language training, dissemination of information on migrant tolerance, and enhancement of the employability of ZEP holders. The integration program may further ensure that ZEP holders, regardless of their migration status, access social services and basic services such as healthcare and education. Holding community engagements in which intercultural discussions are held will create solidarity between ZEP holders and host communities.

6.2.15 Transparency on the grounds of the termination and renewal of ZEPs may create a bond of trust and accountability between the government and ZEP holders. If the South African government can state the reasons for the termination and renewal of ZEPs, ZEP holders will be aware of the fairness of the gesture. In instances where there is doubt about the fairness of the procedure, ZEP holders may be able to hold the government accountable because they have clear issues condemning the government. Having clearly laid out procedures will also assist the government in taking care of the individual issues of ZEP holders. For example, the ZEP program comprises a mixed group of migrants: labour migrants and asylum seekers. Having clearly laid out the conditions of ZEP termination, the government may also try to look at exceptional issues, such as making sure that ZEP holders who want to return to Zimbabwe may go, asylum seekers who were issued ZEPs may remain, and ZEP holders with children who were born in South Africa may remain.

### **6.3 Conclusion**

Overall, when looking at the population scale of ZEP holders, this study notes the ZEP program as an important humanitarian response that was never given by any African state except for South Africa. South Africa demonstrated its commitment to cooperating with neighbouring states to fight migration challenges through the ZEP program. Even though South Africa may not be able to control the root causes of migration in Zimbabwe, the ZEP program showed that South Africa could still try to deal with the outcome. Efforts to combat regional migration challenges have been noted; however, South Africa cannot be blamed for serving its interests in the process.

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The 1951 Refugee Convention and 1967 Protocol

The 1951 United Nations Convention relating to the Status of Refugees

The 1969 AU Convention Governing the Specific Aspects of Refugee Problems in Africa

## 5. Appendix A:

### THE EFFICACY OF MIGRATION POLICIES IN ADDRESSING MIGRATION ISSUES: AN ANALYSIS ON THE SITUATION OF ZEP HOLDERS

#### Semi-Structured Interviews for Zimbabwe Exemption Permits (ZEP) holders

##### 1. Introductory questions

What is your name? When were you born? Where were you born? Where did you grow up? What is your highest education and qualification? When did you come to South Africa? What was your reason for coming to South Africa?

##### 2. Experiences had on migration

Would you narrate how you migrated to South Africa? Did you travel alone? Did you come through the Beitbridge border?

Which problems did you encounter during your journey?

Where were you heading? Did you have a family or friend expecting you? Did you have a job lined up?

When you arrived, were you part of any church/burial society/NGO/support group?

What challenges did you face living in SA?

##### 3. Experiences with ZEPs

Have you participated in any protection program like the ZEP program? Which program could that be and why did you choose to participate?

Can you tell your experiences with the application procedure for exemption permits?

How has being a part of the ZEP program impacted your life? How does the ZEP help you in life? How does it feel to have to renew permits every 4 years? Do you have children, what are their goals in the next 5 years? Do your children see themselves in South Africa in the future? Do you have children with a fellow Zimbabwean or a South African?

##### 4. Understanding the efficiency of the ZEP program

How much do you think the ZEP program successfully resolves your problems?

Which characteristics of the program do you believe are effective and which are not?

##### 5. Advice on developing the program

What do you wish could be changed in the ZEP program, and why?

What do you recommend to enhance the efficiency of the ZEP program?

##### 6. Conclusion

Could there be anything else you would like to tell about your experiences in the ZEP program?

## 6. Appendix B:

### PARTICIPATION FORM

Dear Sir/ Madam

I am Nomazulu Ndebele, a Masters student in the Department of Humanities at the University of the Witwatersrand, Johannesburg, studying MA in Migration and Displacement under the supervision of Dr KV Vanyoro. The research that I am doing is titled "The Efficacy of Migration Policies in Addressing Migration Issues: An Analysis on the Situation of ZEP Holders." This study aims to assess the efficacy of the Zimbabwe Exemption Permit (ZEP) program in ensuring the welfare of its holders in South Africa.

This is an invitation to participate in the interviews in this study. You may be required to participate for five minutes, telephonically or in person, on a date and time that is convenient for both of us. I will record the activity or interview with your consent. Data collected from you will be kept on a password-protected device for a period of three years and deleted afterwards. I will be the only person with access to collected data. During the interview, I will ask about your reasons for migration to South Africa, years of migration, experiences upon arrival, how you interact with locals, and your survival strategies.

I promise that the data I will collect from you will remain anonymous and confidential. Your names or any information that may lead to your identification will not be included in the findings of this study. Other researchers may use the information that you have provided only with your consent and ethical assurance that they will maintain information confidentiality. You will willingly participate in the study and will withdraw at any time. You may also not respond to questions you are not willing to answer. There are no costs or benefits in taking part in the study; however, there may be Internet data reimbursement to the maximum of 100 rands, in case of need.

There is less risk associated with this study, it is close to daily life experiences. If some of the questions are distressful, we may pause the interview and resume on another day. Support or counselling will be provided by the South African Depression and Anxiety Group (SADAG), if needed. The findings of this study will be accessible at the university's online library. A summary of a research report may be provided to you if needed. If you have questions or queries, please contact or my supervisor. For ethical concerns, please contact the University Human Research Ethics Committee (Non-Medical) at telephone +27(0) 11 717 1408 or email [hrecnon-medical@wits.ac.za](mailto:hrecnon-medical@wits.ac.za).

Thank you for your participation in this study. Your input will enhance the understanding of the efficacy of migration policies, ensuring the well-being of ZEP holders.

Yours sincerely,

Researcher: Nomazulu Ndebele, 2685965@students.wits.ac.za, +27656613396

Supervisor: Dr. Kudakwashe Vanyoro, kudakwashe.vanyoro@wits.ac.za,  
+27117174413

7. Appendix C:

TOPIC: THE EFFICACY OF MIGRATION POLICIES IN ADDRESSING MIGRATION ISSUES: AN ANALYSIS ON THE SITUATION OF ZEP HOLDERS

NAME: NOMAZULU NDEBELE

STUDENT NO: 2685965

I, ....., hereby consent to participate in the research project.

I confirm the following:

I confirm that the concept of the study has been explained to me satisfactorily, and I understand its aims and nature. Due to my understanding of the study, I willingly participate in it. I consent to be interviewed, to be part of focus groups and to take part in activities that are in connection with the study to be audio recorded or transcribed. I am also giving consent that the researcher may directly quote from my interview, focus group, or any other activity that I will participate in in the study. I know and agree that my participation will remain anonymous and that my name or any identification information will not be used in the study. I consent that other researchers may use the information that I provide for as long as they have ethical clearance to do so. However, my name and personal information were not disclosed in this study.

..... (signature)

..... (name of participant)

..... (date)

..... (signature)

..... (name of researcher/person seeking consent)

..... (date)



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

**CLEARANCE CERTIFICATE**

**PROTOCOL NUMBER: ACMS23/04**

**PROJECT TITLE**

THE EFFICACY OF MIGRATION  
POLICIES IN ADDRESSING MIGRATION  
ISSUES: AN ANALYSIS ON THE  
SITUATION OF ZEP HOLDERS

**INVESTIGATOR**

Nomazulu Ndebele

**SCHOOL/DEPARTMENT OF INVESTIGATOR**  
Society (ACMS)

African Centre for Migration &

**DATE CONSIDERED**

September 2023

**DECISION OF THE COMMITTEE**

Approved unconditionally

**RISK LEVEL**

LOW RISK

**EXPIRY DATE**  
Research Report

Date of submission of the

**ISSUE DATE OF CERTIFICATE**

September 2023



**CHAIRPERSON** \_\_\_\_\_

(Associate Professor Jo Vearey)

cc: Supervisor: DR. KUDAKWASHE VANYORO

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**DECLARATION OF INVESTIGATOR**

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

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

*Shelby*

\_\_\_\_\_  
\_12\_ / \_03\_ / \_2024\_

**Signature**

**Date**