Enforced Sojourn: Zimbabwean Dispensation, Special and Exemption Permits

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Abstract

This thesis investigates Zimbabwean's immigration to South Africa. Zimbabwean's immigration to South Africa dates back to the early 2000s. This thesis uses a combination of theories to interrogate and discuss the Zimbabwe special permits and some of the post-apartheid government's amendments to the South African Citizenship Act and other immigration policies. Some of the theories that theoretically underpin this research project's methodology include Marxism, Pan-Africanism, Liberalism and culture-based theories. This thesis interrogates the discursive strategies these permits draw on to frame and understand Zimbabwean immigrants in South Africa. This study has found that these permits use similar operating logic as the White South African governments used the migrant labour system to exploit Blacks from all of Southern Africa in the 20th century. For instance, the migrant labour system used during apartheid made all Blacks in South Africa "guest workers" who could be deported at the government's whim. The apartheid government used racist pass laws to regulate the movement of Black people in South Africa, whereas the post-apartheid government uses Zimbabwean special permits to regulate the movement of Zimbabweans in South Africa. The pass laws were fundamentally racist, and their ultimate objective was to reinforce the idea of White citizenship, whereas the Zimbabwe special permits are not racist. Their colonial similarity, however, lies in how they make Zimbabwean migrants perpetual migrants in South Africa and the various ways in which they cast Zimbabweans as not deserving of South African citizenship. These special permits force Zimbabwe migrants to become "guest workers" who build the post-apartheid economy and then return home when they are no longer "useful" to the economy. This thesis concludes that the post-apartheid Zimbabwe special permits achieve analogous objectives.

Keywords: Zimbabwean, citizenship, permits, South Africa, immigrants, permanent residence

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List of Abbreviations

APC	Asylum Seeking Processing Centres
BMA	Border Management Authority
DHA	Department of Home Affairs
DZP	Dispensation of Zimbabweans Project
EFT	Electronic Funds Transfer
MDC	Movement of Democratic Change
OAU	Organisation of African Unity
PMG	Parliamentary Monitoring Group
SA	South African
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
UDHR	Universal Declaration of Human Rights
VFS	Visa Facilitation Services
ZEP	Zimbabwean Exemption Permits
ZSP	Zimbabwean Special Permit

Chapter One: Introduction

1.1 Push and Pull Factors of Zimbabwe Migration to South Africa

This thesis investigates Zimbabwean's immigration to South Africa. Zimbabwean's immigration to South Africa dates back to the early 2000s. It is well documented that politically motivated violence in Zimbabwe in the early 2000s was a key driver of Zimbabwean migration to South Africa. Politically motivated violence in Zimbabwe occurred within the politically charged atmosphere of the land reform programme introduced by the Mugabe government in the early 2000s and the formation in 1999 of a new opposition political party, the Movement of Democratic Change (MDC) (Howard-Hassman, 2010). Feeling threatened by the MDC, the Zimbabwean government recruited a trained youth militia and former liberation war fighters to attack its opponents to maintain power (Howard-Hassman, 2010). The Peace Solidarity Trust highlighted that as many as 300 000 people were victims of human rights violations during this period, ranging from torture, denial of food and destruction of homes (Crush et al., 2015).

In addition, the Operation Murambatsvina (Operation Restore Order/Drive Out Trash) of 2005 further escalated the violence. It is reported that through Operation Restore Order, businesses and homes of approximately 700 000 Zimbabweans were destroyed (Crush et al., 2015). This destruction and chaos affected up to 2.4 million Zimbabweans (Crush et al., 2015). Potts (2006) argues that Operation Murambatsvina was driven by vindictive elections and the intention to reduce the urban population for economic and political reasons. In this regard, ZANU-PF unsuccessfully hoped that those whose houses were demolished would move to the rural areas. Those affected migrated to South Africa, Botswana and overseas.

Furthermore, when Morgan Tsvangirai, the leader of the MDC, won 47.9 per cent of the votes in the 2008 presidential elections, that pushed a politically fragile situation into chaos (Howard-Hassman, 2010). For starters, the MDC's political success made Tsvangirai fear for his life to the extent that he lived in South Africa for several months after the 2008 elections (Howard-Hassman, 2010). Tsvangirai had valid reasons to fear for his life because there were reports that several MDC supporters were tortured, assaulted and killed between March and June 2008 (Howard-Hassman, 2010). The police refused to investigate these crimes, and consequently, according to reports, 153 MDC supporters were killed between March and June 2008 (Howard-

Hassman, 2010). Many scholars have presented different arguments about the motivation of these attacks. Howard-Hassman (2010), similar to Potts (2006), highlights that the ZANU-PF wanted to punish the MDC and its urban supporters.

During this political violence, the Zimbabwean currency collapsed, sending the economy into a deep crisis from which the country has yet to recover. Howard-Hassman (2010) explains that the Zimbabwean economy was in deep crisis with over 80 per cent unemployment, a collapsing Zimbabwean dollar and an inflation rate of over 1 million percentage points (Howard-Hassman, 2010). The International Federation of Red Cross and Red Crescent Societies outlined that about 5.1 million out of the country's 11.6 million people had limited to no access to food by the end of 2008 (Tawodzera, 2015). At this time, food shortages were the order of the day for many households in rural and urban areas. Tawodzera (2015) highlights that the government could not import due to rising inflation and inadequate funds. Therefore, increasing food insecurity was due to unemployment, poverty, hyperinflation and the rising costs of other essential services (Zvikomborero and Chigora, 2010). Hence, there was no food in the shops, and any food that was sold was either expensive or sold in foreign currency on the Black market (Zvikomborero and Chigora, 2010).

Furthermore, political violence and the country's economic collapse triggered mass immigration to South Africa (Crush et al., 2015). Desperate Zimbabweans crossed the border into South Africa. They had lost their livelihoods, leading them to move to South Africa for economic opportunities and a safe environment (Bimha, 2017). However, the problem was that many Zimbabweans crossed the border to South Africa without valid immigration papers (Crush et al., 2015). Rather than show sensitivity to the plight of Zimbabweans who left their country in a hurry because they feared for their lives, the South African Government intensified efforts to arrest and deport undocumented Zimbabweans migrating to South Africa. Consequently, just over 200 000 Zimbabweans were deported in 2007 (Crush et al., 2015). In 2007, two-thirds of all deportations were from South Africa to Zimbabwe (Crush et al., 2015).

To avoid deportation, some Zimbabweans paid bribes to officials and the police (Crush et al., 2015). Others moved to cities where the police presence and policing were minimal or non-existent (Crush et al., 2015). Many Zimbabweans applied for asylum and refugee status (Moyo, 2018). Crush et al. (2015) argue that asylum applications rose from less than 6 000 in 2004 to 150 000 in 2009. The Zimbabweans were applying for asylum because it was the easiest way

to regularise their stay in South Africa. They also could not meet the requirements for work permits such as a contract of employment.

1.2 Zimbabwean Mixed Migration

A refugee is a "person who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted due to their race, religion, nationality, political opinion or membership of a particular social group" (UNHCR, 2010:3). This is the exact definition under chapter 1 (3) of the South African Refugee Act. However, chapter 1 (3)(b) further includes "events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality" (RAA 1998). In addition, asylum seekers are "individuals who have sought international protection and whose claims for refugee status have not yet been determined" (UNHCR, 2010:16). In other words, they are waiting for their cases to be determined. Once their claims have been approved, they transition to refugee status.

Furthermore, the United Nations Human Rights Commission (UNHRC) has defined Zimbabwean migration to South Africa as mixed migration to describe "flows that include refugees, asylum seekers, people who are leaving their own country in response to governance and development failures, those who are seeking economic, educational and family reunion opportunities, as well as some who regard the journey to South Africa as the first step towards more distant destinations such as Europe and North America" (Crisp and Kiragu, 2010:1). The UNHRC's conception of mixed migration outlines that refugees and migrants are difficult to differentiate from one another. The South African Government also adopted this stance that Zimbabwe is not a "refugee generating country" and Zimbabweans are not refugees (Polzer, 2010). It was difficult for Zimbabweans to have successful refugee claims and they only received asylum seeker permits. The success of asylum seeker permits was only five per cent in 2006 (Polzer, 2010).

This research acknowledges Polzer's (2010) argument that it is challenging for host states to structure policy responses that address both "political" refugees and "economic" migrants. South Africa had no institutional experience to draw upon, especially in the Southern African Development Community (SADC) region (Polzer, 2010). South Africa continues to implement typical migration management strategies such as arrest and deportation and the option of work

permits and asylum applications. However, these responses usually do not address the scale or nature of Zimbabwean migration to South Africa.

In addition, Nyers (2006:7) argues that the "process of assigning labels or identity to individuals or entities gives order to the world by placing limits, policy boundaries and setting positions". Categorising individuals as "illegal migrants", "refugees" and "asylum seekers" represents a political intervention determining how the state will respond (Nyers, 2006). Therefore, the terms "legal" or "illegal" migration gives the state the power to decide on issues of inclusion or exclusion from its territory. This research supports Thomaz's (2018) argument that migrant labels involve creating, transforming and manipulating specific identity categories. In this regard, labelling is an act of governance because it is an exercise of power. For instance, if an individual is referred to as a foreigner or an alien, they are the responsibility of another state (Thomaz, 2018). However, once the individual is classified as a migrant, there are responsibilities to the host state (Thomaz, 2018).

Scholars such as Sajjad (2018) examine labels such as "threats", "influx", "victims", and "security problem" associated with migrants. Sajjad (2018) argues that two opposing tensions define these labels: the recognition of protection for the people forcibly displaced and the intensification of measures to exclude them. Refugees can be political symbols because they represent a profound criticism of their fled state (Sajjad, 2018). Therefore, their presence implies either they are unsafe or undesirable (Sajjad, 2018). This leads to the local population being resentful and highly alert to any threat to their interests. For example, the local people usually fear competition in the job market and refugees' resources. This thesis supports Sajjad's (2018) argument that the label "refugee" is changeable, dependent on context and linked to citizenship and state ideas. This means that labels have political, personal and practical significance.

1.3 Enter the Zimbabwean Exemption Permits

Since the South African Government did not view Zimbabweans as refugees, many Zimbabweans were living in South Africa "on the margins of legality, without valid visas or permits" (Nyakabawu, 2020:18). To manage the Zimbabwean immigration to South Africa, in 2010 the South African Government introduced special temporary residence permits for Zimbabweans called Dispensation of Zimbabweans Project (DZP) as well as the ZSP in 2014

and ZEPs in 2017 (Moyo, 2018). These will be collectively referred to as special permits for this research.

A critical goal of the DZP was to regularise the status of economic migrants who were overly using the asylum system in large numbers (Amit and Krieger, 2014). The Department of Home Affairs (DHA) report (2014:np) stated that the main reason for the DZP regularisation process in 2010 was to regularise undocumented Zimbabweans, "reduce pressure on the asylum and refugee system, and provide an amnesty to Zimbabweans who had obtained fraudulent South African documents".

In addition, these permits gave Zimbabwean migrants legal rights to live, work, conduct business and study in South Africa (Moyo, 2018). To access the DZP, Zimbabwean migrants who had asylum seeker permits were required to surrender them (Nyakabawu, 2021). At the time, there were "at least 400 000 Zimbabwean asylum seekers" (Nyakabawu, 2021:8). The DZP was valid from 2010 to December 2014. The DZP process faced many challenges and is argued to have been unsuccessful in regularising the stay of many Zimbabweans (Thebe, 2017). It is estimated that out of approximately 1.5 million Zimbabweans, only 242 731 received their DZP permits (Thebe, 2017). Four thousand people surrendered their fraudulent documents and 49 255 people exchanged their asylum claims for DZP permits (Thebe, 2017).

Furthermore, when these permits expired in 2014, they were replaced by the ZSP (Nyakabawu, 2021). The ZSP were officially introduced from 2015 to December 2017, after which they were replaced by the ZEP, "effective from 2018 to December 2021" (Nyakabawu, 2021:2). However, these permits came with stringent conditions attached to them (Moyo, 2018). For instance, they "did not entitle the holder the right to apply for permanent residence irrespective of the period of stay in the Republic of South Africa" (Gigaba, 2014). The ZSP and the ZEP "are not renewable or extendable; their conditions cannot be changed as long as the holder is in South Africa" (Moyo, 2018:1147). In addition, on the expiry of the ZSP, Zimbabweans had to leave South Africa to apply for the renewal of their permits from Zimbabwe (Moyo, 2018).

Zimbabwe Exemption Permits (ZEP) were introduced in 2017. The ZEPs were a consolation to the ZSP and the DZP. Former Minister of Home Affairs Malusi Gigaba (2014) explained that "the Zimbabwe Special Permits (ZSP) was seen as a temporary bridge when all Zimbabweans will re-enter the mainstream immigration process in South Africa". In this regard, ZSPs and ZEPs were a way for Zimbabweans to rebuild their lives in South Africa

before returning to Zimbabwe. Therefore, based on the statement made by Gigaba (2014), the ZSPs and ZEPs were seen as temporary measures to help the South African Government deal with issues associated with irregular migration.

At the start of 2022, the South African Government extended the ZEP to the end of 2022 (Singh, 2022). The Minister of Home Affairs, Motsoaledi (2022), outlined that "during this period, the holders of this permit should apply for other permits appropriate to their particular status or situation" (cited in Singh, 2022:para 2). In this regard, Zimbabweans on the ZEP have been given until the end of 2022 to regularise their stay in South Africa by applying for mainstream permits. This thesis argues that some Zimbabweans on the ZEP do not meet the requirements for work permits. The South African Government policy review outlines that the government is open to "skilled migration" (Bernstein, 2021). For instance, ZEP holders range from self-employed individuals to teachers, mechanics, truck drivers and others. This research argues that the lack of opportunities for ZEP holders to apply for permanent residency and eventually citizenship appears to be a move by the South African Government to make citizenship inaccessible. In this regard, Zimbabweans would have lived in South Africa for more than 10 years under these permits.

This research supports Carens' theory of citizenship and the principle that "the longer one stays in a society, the stronger one's claim to remain" (Carens, 2013:17). Carens (2013) outlines that continuous temporary residence should be converted to permanent residence at some point. This research supports Hobden's (2020:169) argument that "once individuals have been admitted there should be a clear and accessible path towards citizenship". Therefore, people should not reside as second citizens, and in due time they should have voting rights of citizenship within the country they live (Carens, 2013).

1.4 Postcolonial Citizenship

This research locates the study of Zimbabwean immigration to South Africa within the history of immigration to the Southern African region and colonialism. Dzingai (2016:70) explains that the "historical evolution of SADC countries, colonial experience, postcolonial development strategies and current political and economic situations are linked to migration in the region". Therefore, colonialism in Southern Africa was a form of migration that influenced other forms of movement. This research supports Adepoju's (1995) argument that migration

during colonialism was linked to the economic strategies of the colonial governments through the discovery of gold and diamonds. This led to labour migration which led to the establishment of urban settlements. Adepoju (1995) argues that the colonial system created the region's present-day demographics, flows and patterns of migration. In this regard, the evolution of human settlement and socio-economic development in Southern Africa was shaped by migration.

Furthermore, Wentzel and Tlabela (2006) argue that as early as 1840, before the discovery of minerals, Bapedi men from Sekhukumeland had worked on the farms and public works in South Africa. In addition, Mozambicans in the late 1860s worked as seasonal workers on the farms in the Western Cape (Wentzel and Tlabela, 2006). The agricultural sector needed immigrant labour because it was labour intensive. Interestingly, before discovering minerals in South Africa around 1874-86, migrant labour mainly was in agriculture. However, the discovery of minerals in South Africa and later in Zambia and Namibia led to migrant labour, creating new livelihoods for millions of people in Southern Africa (Wentzel and Tlabela, 2006).

In addition, the opening of the Kimberly diamond fields in 1874 and the discovery of gold in the Witwatersrand in 1886 led to an increase in migrant labour from neighbouring countries (Wentzel and Tlabela, 2006). Wentzel and Tlabela (2006) argue that between 1890 and 1899, the number of Africans working in gold mines rose from approximately 14 000 to 97 000, with 60 per cent being Mozambicans. Wentzel and Tlabela (2006) highlight that between 1920 and 1990, every country in the SADC region at one time sent migrants to work in the South African mines. Wentzel and Tlabela (2006) identified Mozambique, Botswana, Lesotho and Swaziland as longstanding supply countries. Malawi and Zimbabwe were episodic supply countries and Zambia, Tanzania and Angola were occasional supply countries (Wentzel and Tlabela, 2006).

According to Dzingai (2016), the economic attraction of work in the core economy of the region that is South Africa shaped the migration system in Southern Africa. Dzingai (2016) argues that in the 1970s, Malawi, Mozambique and Lesotho were the leading suppliers of labour to South Africa. Similar to the rest of Africa, the history of migration into South Africa can be traced from before colonialism till now. It is a common occurrence in a globalising world. The history of international migration to South Africa was shaped by different global events that were taking place in South Africa and around the world. These include colonialism, the discovery of minerals, industrialisation, agricultural activities and South Africa's

incorporation into the global world by signing treaties such as the United Nations Convention for Refugees and Asylum seekers of 1951 (Dzingai, 2016). Other events included the fall of apartheid and the political and economic downfall of Zimbabwe, the DRC and Mozambique (Dzingai, 2016).

Furthermore, the end of apartheid and the integration of South Africa into SADC led to a significant increase in legal and undocumented cross-border migration. Since 1990, legal migration has increased due to South Africa's economic growth and reinsertion into the global economy (Dzingai, 2016). Wentzel and Tlabela (2006) argue that migrants to South Africa have increased since the early 1990s. Most immigrants come from South Africa's traditional labour supply areas, especially SADC. Du Pisani (2000) argues that in 1993, South Africa received 582 000 immigrants. However, the current number varies between two million and three million immigrants from Mozambique, Zimbabwe, the DRC, Somalia and Nigeria (du Pisani, 2000).

After apartheid, South Africa joined the Southern African Development Coordination Conference, which later became SADC, which was formed in April 1980 (Dzingai, 2016). Members of SADC aim to achieve regional development by integrating their economies into a regional economic community. The SADC recognises that a "regionally harmonised and well managed regional migration governance system enhances cooperation and contributes to regional development" (SADC Secretariat, 1993:3). Therefore, SADC is committed to promoting Article 5 (2)(d) of the Declaration and Treaty of SADC which states that member states shall "develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States", within a framework of the rule of law, democracy and human rights (SADC Secretariat, 1993:3).

Although post-apartheid South Africa (SA) is a signatory to the Declaration and Treaty of SADC. Peberdy (2001) highlights that the history of South Africa outlines that the first impulse of the post-apartheid governments is to articulate an immigration policy that reflects a new vision of national identity that redefines the racial and cultural boundaries of belonging and exclusion. For instance, the post-apartheid government introduced the South African Citizenship Act of 1995 (SACA), which repealed the existing apartheid citizenship laws such as the SACA of 1949 and the Citizenship of Transkei Act (Hobden, 2020). This entitled all

citizens to common citizenship which was not race-based but was enshrined in the Constitution. This was a significant achievement because it provided the platform to address the citizenship status of SAs and non-SAs. The SACA outlined that citizenship status could be acquired through birth, descent and naturalisation (Hobden, 2020). This was a transformative piece of legislation because it addressed the past, as many people had lost their citizenship through the creation of "homeland citizenship" (Hobden, 2020).

In addition, the South African Government, straight after independence, granted amnesty to mine workers, members of the SADC and Mozambicans who were illegally residing in South Africa (Peberdy, 2001). The amnesties wanted to address the realities of those who had been living in South Africa. The National Union of Mineworkers (NUM) requested the first amnesty for non-citizens who had worked in the mines for at least 10 years (Peberdy, 2001). The NUM unsuccessfully requested a five-year exemption for miners who had been retrenched or sent home due to injury (Peberdy, 2001). Nevertheless, the amnesty was a generous offer to compensate a few for the past sufferings of all (Crush and McDonald, 2001). This resulted in about half of the miners who were eligible applying (Peberdy, 2001). The amnesty was a step in the right direction because it compensated a few of those who had suffered in the past.

The second amnesty in 1996 was aimed at SADC members who could prove that they had legally or illegally resided in South Africa for at least five years (Peberdy, 2001). Crush and Williams (1999) outlined that 201 602 people applied, but only 124 073 were accepted. The third amnesty was announced in 1997 but only implemented in late 2000 due to resource and logistical reasons (Peberdy, 2001). This amnesty was aimed at the Mozambican refugees who fled to South Africa before 1992 (Peberdy, 2001). The amnesties were a way to show African solidarity.

As a compromise between addressing its moral debt and stabilising its boundaries, the South African Cabinet approved three different sets of amnesties in the mid to late 1990s that would grant permanent residence, namely: a 1995 mineworkers' amnesty, a 1996 general amnesty for residents and citizens of SADC countries as well as Angola, and a 1996 amnesty for Mozambican refugees. The state's decision to grant these amnesties, particularly the one to SADC residents, was generally well-received amongst African National Congress government officials (Crush and Williams, 1999).

Overall, the SACA, as amended in 2004, 2007 and 2010, contains relatively standard modes of acquisition and loss. In most cases, citizenship is passed through parents, regardless of the territory of birth (Hobden, 2020). Research by Hobden (2020) suggests that since the amendments to the South African Citizenship Act in 2010, the South African government appear to show an inclination towards making SA citizenship inaccessible for many migrants. For instance, "children of permanent residents who were once able to be citizens at birth are now only eligible for citizenship" at the age of 18 (Hobden, 2020:168). Similarly, migrants who have a permanent residence visa have more extended residence requirements to meet before being granted SA citizenship (Hobden, 2020). Furthermore, migrants "who seek to acquire SA citizenship as their second citizenship face additional requirements of proving their home state allows dual citizenship or evidence of their choice to give up their other citizenship" (Hobden, 2020:169).

This research acknowledges the progressive steps such as granting naturalisation rights upon reaching the age of majority to non-citizens and non-permanent residents born in South Africa. However, the move towards restrictive citizenship laws overshadows the progressive amendment to the law. Hobden (2020) argues that the tightening in access to SA citizenship has also been influenced by the strict interpretation of the law by the DHA. There appears to be a tightening of access to citizenship at the same time there is an increase in xenophobic attitude within both government and some citizens.

The SA state self-describes as a constitutional democracy that is progressive, liberal and inclusive. The founding provisions of the SA Constitution under section 3 provide that "there is a common South African Citizenship" (The Constitution, 1996). Section 3 (2)(a) of the Constitution outlines that all citizens are equally entitled to the rights, privileges and benefits of citizenship and (b) equally subject to the duties and responsibilities of citizenship. The guarantee of equal and common citizenship is part of the foundation of the new democratic South Africa, in contrast to the oppressive apartheid regime. Section 3 (3) requires that founding provisions be enacted through national legislation that provides citizenship acquisition without discrimination based on race, ethnicity or gender (The Constitution, 1996).

In addition, according to Chipkin (2007), the Preamble of the 1996 Constitution outlines who is a SA citizen. The Preamble of the Constitution states that "we the People of South Africa believe that South Africa belongs to those who live in it". Chipkin (2007) suggests that the

mere fact of living in South Africa is considered sufficient for entry into the political community. Similar to Chipkin (2007), this thesis argues that it is enough to live in South Africa to qualify for citizenship. The term "the people" refers to everyone in a non-racial, non-sexist and non-discriminatory way.

Furthermore, it is also worth noting that the history of state formation worldwide was based on the arbitrary construction of national borders (van den Boogard, 2017). Therefore, the "notion of citizenship formulated around the nation and state is problematic" (van den Boogaard, 2017:45). The notion of citizenship is socially constructed and problematic because it excludes others (van den Boogaard, 2017). Even though it is widely understood that colonial powers arbitrarily drew colonial borders in Africa, postcolonial states in Africa seem to be emotionally invested in these borders. Peberdy (2001) explains that the symbolic acts of inclusion and exclusion through controlling who enters the state are intertwined with the nation-state's foundation and nation-building.

Consequently, the new forms of Pan-African citizenship imagined by Pan-African thinkers in the years leading up to independence have not been implemented in many postcolonial African states (Groves, 2020). Pan-African citizenship is premised on the 'African experience' and African 'traditional' values, as well as the organised assertion of "cardinal ethical concepts" such as "humanism," "egalitarianism" and "collectivism" (van den Boogard, 2017:48). Nkrumah (1973) argues that these were the underlying and unifying forces of the African revolution. Egalitarianism explains that equal and fair opportunities are essential for everyone for the complete development of society (Nkrumah, 1973). Humanism emphasises the indivisibility of humanity and collectivism outlines the interests of the collective over the individual (Nkrumah, 1973). The values of humanism and collectivism are common in many African traditional societies, which emphasise the concept of unity and recognition that we are bound together. This is similar to the philosophy of Ubuntu which is widely practised in South Africa.

Furthermore, Pan-Africanism explains the existence of an African imagined community that is not solely focused on the territorial foundations (van den Boogard, 2017). Pan-Africanism aims to build a nation outside the state through a citizenry that extends beyond the national boundaries (van den Boogard, 2017). Nkrumah's conception of an imagined polity was not constrained by race; instead, he cautioned against dividing Africa into fictional zones which

emphasised racial, cultural and religious differences. Nkrumah emphasises African Personality which is the oneness of Africans because of our colonial past, common aims and cultural and social bonds (van den Boogard, 2017). The African Personality unites all Africans because it does not belong to any language, religion, political system or state (Nkrumah, 1970b). Therefore, Nkrumah explains that all people of African descent belong to the “African nation” because they are held together by “bonds of blood and kinship” (Nkrumah, 1970a:87).

In addition, Pan-Africanism outlines that the “fate of all African people and countries are intertwined through not only a common history but a common destiny” (African Union, 2013:1). Similarly, Mbembe (2017) argues that the African continent must open itself to itself. Mbembe (2017) believes that the next phase of Africa’s decolonisation is about granting mobility to all her people and reshaping the terms of membership in a political and cultural ensemble that is not confined to the nation-state. This statement recognises that a significant part of South Africa’s history is a history of movement and circulation. This research supports Klaaren’s (2017) argument that we need to move away from citizenship based on attachment to the territory to one that is based on devotion to a pluralist world.

Ultimately, this research advocates for citizenship that understands Africa and its culture. The thesis does this by investigating the impact of the ZSPs on Zimbabwean migrants in South Africa, which as far as I know, is the first study to research this.

1.5 Limitations

This research is a policy analysis hence its scope is narrow in that it does not interview actual people. It does not interview Zimbabwean migrants or South African government officials. In-depth interviews could have been used as an additional research tool. This was not possible due to financial constraints and time. It takes time to set appointments with government officials. The researcher recommends in-depth interviews for future long-term studies.

1.6 Chapter Outline

Chapter One started by providing a historical context of the Zimbabwean migration to South Africa. It explained the push and pull factors of this migration. In this historical context, Chapter One highlighted that there has been mixed migration, which means that there are different types of migrants simultaneously. A critical discussion on the different types of

permits was introduced. A history of migration and regional integration in Southern Africa was provided. Lastly, there was the introduction of Pan-African citizenship to argue for citizenship that extends beyond national borders.

Chapter Two provides a literature review of the existing research on Zimbabwean migration to South Africa. The literature reviews suggests that minimal research has conducted a policy analysis. Chapter Three outlines the methodology and theory used in this study. This chapter explains a combination of theories used to interrogate and discuss the Zimbabwe special permits and some of the post-apartheid government's amendments to the South African Citizenship Act and other immigration policies. This Chapter outlines the Marxist approach, culture-based theories, Pan-Africanism, and a liberal framing. The theory section explains how nativism influences immigration policy in South Africa. In addition, this section suggests how this thesis will challenge nativism.

Chapter Four explains how the South African government, since 1994, has tried to deal with the issue of Black African migration to South Africa. This chapter explains how the South African Government has constantly amended the SACA and introduced various immigration policies which appear to be designed to make South African citizenship inaccessible to African migrants. This chapter critically analyses the SACA and its different amendments in 2004, 2007 and 2010. It further examines the Border Management Authority Act and the Refugee Amendment Act.

Chapter Five provides a critical analysis of the three special permits. This chapter examines the legal conditions attached to these permits and explains how they limit the holder's access to permanent residency and citizenship. This chapter introduces the apartheid migrant labour system and describes how these special permits operate and achieve analogous objectives to the apartheid migrant labour system. This chapter provides an alternative perspective on how these permits can be understood. The permits are analysed within the history of immigration in apartheid and post-apartheid South Africa.

Chapter Six summarises the key research findings of the study and provides recommendations.

Chapter Two: Literature Review

This chapter critically engages with some of the key research on Zimbabwean migration to South Africa. The literature reading revealed that research on Zimbabwean migration to South Africa tends to be framed around three themes: xenophobia, migration management and the criminalisation of Zimbabwean immigrants in South Africa. The majority of studies are empirically based, by and large, meaning research studies on Zimbabwe migration to South Africa are designed mainly to generate data through interviews with participants affected by xenophobia and the migration management by the South African government. Although some studies have assessed and analysed the DZPs, ZSPs and ZEPs, these migration tools are rarely foregrounded as the focus of research projects. A close reading of the literature highlights that minimal research has conducted a policy analysis while drawing from the South African Constitution, laws and the Declaration and Treaty of SADC.

The literature discussion begins by critically engaging with Tara Polzer's (2008) paper titled 'South African Government and Civil Society Responses to Zimbabwean Migration'. Polzer (2008) employs a "mixed migration" frame to discuss Zimbabwean migration to South Africa. Mixed migration means "many different 'types' of Zimbabwean migrants" in South Africa left Zimbabwe due to multiple factors (Polzer, 2008:7). "These 'types' include politically persecuted refugees, economic migrants (from professionals to unskilled persons), humanitarian migrants (including unaccompanied children), traders, shoppers and transit migrants" (Polzer, 2008:7). Although Polzer's (2008) framing of Zimbabwean migration to South Africa is insightful and accurately captures the reality on the ground, the fact of the matter is that there are "no international or domestic legal frameworks for dealing with mixed migration" (Polzer, 2008:7). The standard practice used by governments worldwide is to separate migrants into two fixed categories: motivated humanitarian migrants like refugees or economic migrants who migrate because they view the grass as greener on the other side of the world (Polzer, 2008). This has been the problem for many Zimbabweans who have migrated to South Africa post-2000.

Polzer (2008) identifies the standard and one-size-fits-all migration approach as problematic and inappropriate because most migrants do not fit into one category. Therefore, Polzer (2008)

advocates for a substantial response to the migration flow and settlement pattern scale that can easily be accessed throughout the country. Polzer (2008) outlines that responses should address different motivations for migration, especially the right to asylum. A significant weakness of Polzer's (2008) argument is that she does not address national sovereignty or South Africa's legal framework issues. Polzer (2008) fails to address whether South Africa is obligated to Zimbabwe and Zimbabweans and also fails to address why other SADC countries like Botswana and Namibia have not implemented responses. This research acknowledges the scale of Zimbabwean migration to South Africa. More importantly, this master's thesis builds on Polzer's (2008) framing of Zimbabwean migration to South Africa as "mixed migration" by pointing out that the ZEPs could be read as a poor attempt by the South African government to respond to the mixed migration of Zimbabweans to South Africa.

The SA response to Zimbabwean migration ought to be designed to respond to a "migrant-centred understanding of migration" rather than be based on "the narrow policy and state-centred definition" of migration (Crush et al., 2015:366). According to Crush et al. (2015), the state-centred understanding of migration oversimplifies a far more complex reality and fails to understand the changing nature of Zimbabwean out-migration. Crush et al. (2015) carefully periodise mixed migration flows from Zimbabwe to South Africa, tracking how they have changed over time. In this regard, Crush et al. (2015:365) impressively employ the mixed migration frame to argue that the Zimbabwean migration to South Africa over the last 20 years can be characterised as "archetypal mixed migration" in nature.

Furthermore, Zimbabwean migrants are increasingly adopting South Africa as their second home, "a place to try and build a new life rather than a place of temporary respite and ready income" (Crush et al., 2015:365). The shift to a permanent migration by Zimbabweans creates new areas for further research, such as the role of the diaspora in the current or new Zimbabwe, issues of citizenship, identity and belonging. This is because Zimbabwean migration to South Africa has always been seen as permanent and temporary. This thesis suggests that ZEPs are not sensitive to the changing nature of Zimbabwean migration. This study suggests that the ZEPs undermine the aspiration of Zimbabwean migrants to build a new home in South Africa. In short, The ZEPs do not lead to permanent residency or citizenship in South Africa.

Shingirai Nyakabawu (2021:1) has described the DZP as casting Zimbabweans into a role of "liminal beings who were unclassifiable, situated between legal and illegal, legitimate and

illegitimate status". Nyakabawu (2021) critically interrogates the waiting time and queuing involved in applying for the DZP, demonstrating that the long queues Zimbabweans have to endure defines the lived experiences of Zimbabwean migrants in South Africa. Nyakabawu (2021:10) argues that by making Zimbabweans "queue in precarious and unsafe environments, the South African government exercised its sovereign power as disciplinary power by controlling people's time". Nyakabawu's (2021) fundamental thesis is that the waiting time and queuing when one applies for ZEPs gravely inconveniences migrants.

However, Nyakabawu's study does not consider that queues and long waiting times are generally defining features of post-apartheid South Africa. In South Africa, people queue at shops, post-offices, Home Affairs and the traffic department. Similarly, crime and violence affect everyone in South Africa. Research shows that people most affected by crime and violence in post-apartheid South Africa are poor Black people living in the townships (Glaser, 2008). Therefore, although this thesis employs Nyakabawu's (2021) research insights into the bureaucratic conditions that negatively impact Zimbabwean migrants in South Africa, it nevertheless aims to deepen the analysis by framing the issues within a broader socio-economic frame that takes into consideration the challenges faced by the post-apartheid state.

Furthermore, Nyakabawu (2021) argues that Zimbabweans first experienced liminality in their home country through the erasure of democratic freedoms and economic opportunities. However, Nyakabawu (2021) fails to outline whether the South African government has an obligation to provide residence permits to Zimbabweans who have illegally migrated to South Africa. Nyakabawu (2021) explains that documentation guarantees legal status but does not account for full inclusion. Different scholars, including Moyo (2018) and Thebe (2017), have argued that DZPs and subsequent permits have not been inclusive and without consideration of context. The permits improved many Zimbabweans' legal and economic status, ending the conditions that had left them vulnerable to exploitation, underemployment, unemployment and in constant fear of the police. In this regard, Nyakabawu (2021) only focuses on the Zimbabwean immigrants but does not consider other perspectives from the South African government, the DHA or SA citizens.

A study by Amit and Kriger (2014:269) claims that the SA DHA has not only struggled bureaucratically to manage the increasing levels of migration in South Africa since 1994 but has "both relied on and sought to undermine documentation attempts as part of its migration

management efforts". Amit and Kriger's (2014) study examined two SA documentation schemes: the asylum system and the DZP. They found that the DHA has actively worked to limit documentation through various administrative procedures, making it difficult for migrants to obtain documentation or refugee status. They also found that the department's strategies to limit documentation for asylum seekers included "establishing barriers around accessing documentation for the first time and maintaining documented status" (Amit and Kriger, 2014:277). Regarding the DZP, Amit and Kriger (2014:286) assert that "the implementation of the DZP suggests limited DHA support for the regularisation scheme". They base these claims on their understanding of the DZP as a programme that was not designed to allow for "the documentation of as many Zimbabweans as possible", but rather a programme that was created to minimise "the reach of the programme before the resumption of deportations" (Amit and Kriger, 2014:286).

In addition, Amit and Krieger (2014) highlight the conflicting purposes of keeping track of how many migrants are in the country and ensuring that many migrants remain undocumented in order to deport them. Amit and Kriger (2014:288) have found that these competing state intentions around documentation "limit the bureaucracy's effectiveness and control regarding obtaining knowledge or choosing to ignore social reality elements to achieve certain objectives". This suggests that bureaucratic practices around documentation regarding DZP and subsequent permits undermine state goals of recording who is in the country, resulting in many undocumented migrants being removed from state records. Removing undocumented migrants from state records makes them less visible to the government (Amit and Kriger, 2014). Still, they remain visible to the society where their undocumented status has significant economic, social and political effects on the labour market and social cohesion (Amit and Kriger, 2014).

Therefore, the DHA's efforts to limit documentation of Zimbabwean migrants have resulted in a situation where migrants are being criminalised. A study by Alfaro-Velcamp and Shaw (2016) documents how the current situation has compelled many undocumented migrants to purchase illegal documents, leading to migrants being criminalised. The discursive criminalisation of migrants has been accompanied by police operations and raids such as Operation Fiela and the SAPS and DHA illegally detaining immigrants. According to Alfaro-Velcamp and Shaw (2016), the discourse about migrants in South Africa is characterised by xenophobic themes that scapegoat migrants for the prevalence of drugs and drug dealing,

human trafficking and "stealing" jobs that belong to South Africans. In this xenophobic climate, the South African Government tolerates the abuse and xenophobic violence that many migrants face despite the country's progressive Constitution and statutes (Alfaro-Velcamp and Shaw, 2016). Moreover, Alfaro-Velcamp and Shaw's (2016:996) study exposes the widespread practice of unlawful detainment of migrants who are accessing legal visas to stay in the country. "Anecdotes and court judgments further reveal the practice of unlawfully detaining immigrants waiting for or trying to attain asylum-seeker status or seeking to renew papers, only to be faced with DHA-constructed obstacles" (Alfaro-Velcamp and Shaw, 2016: 996).

In addition, Moyo (2020), similar to Thebe and Maombera (2019), explains that securitising the border and prohibitionist policies have led to the professionalisation of crime. This is because prohibitionist policies create more problems than they solve, such as the professionalisation of fraud and crime. For instance, the securitisation of the border and prohibitionist policies do not provide decent conditions for family unification (Thebe and Maombera, 2019). As outlined by Thebe and Maombera (2019), Zimbabwean women often resort to the help of human smugglers (omalayitsha) and corrupt immigration officials to facilitate the movement of their undocumented children and families. Interestingly, Thebe and Maombera (2019) challenge traditional framings that understand migration flows to be dominated by economically motivated young males. Thebe and Maombera (2019) highlight an increasing feminisation in Zimbabwean migration to South Africa. Importantly, they find that the women have become essential in using their agency to unify families and finding new ways to navigate the border regardless of the prohibitionist policies.

It is against this backdrop that Moyo's (2018) study grappled with whether South Africa has a responsibility towards Zimbabwean migrants. Moyo (2018) found that South Africa has a right to manage its immigration policy and the country's security. However, it is also responsible for the free movement of people from SADC countries such as Zimbabwe (Moyo, 2018). Moyo (2018) argues that as a member of SADC, South Africa is aware that the region aims to promote economic and social integration. SADC aims to "strengthen and consolidate the longstanding social, historical and cultural affinities and links among the people of the region" (Southern African Development Community, 1992:5). In this regard, SADC is committed to "developing policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among the Member

States" within a framework of the rule of law, democracy and human rights (SADC Secretariat, 1993).

Despite being a member of SADC, research by Christine Hobden (2020:159) suggests that the post-apartheid government's amendments to the SACA of 1995 in 2004, 2007 and 2010 "represent a tightening in access to South African citizenship". Based on the 2010 amendments, the SACA could be defined as using the jus sanguinis principle, which establishes children's nationality based on the nationality of their parents irrespective of their place of birth (Lee, 2011; Menzel, 2013). For instance, under the current citizenship regime, "children of permanent residents are therefore not citizens" (Hobden, 2018:4). According to the 2010 Amendment Act (No. 17 of 2010), "any person who is born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen, shall be a South African citizen by birth" (SACA 2010, s.2(1)(b)). The Amendment Act (No. 17 of 2010) allows children of migrants to access SA citizenship when they "reach the majority, if they have lived in the Republic from birth to majority, and their birth was registered in terms of the Birth and Death Registration Act" (SACA 2010, s.4(3)).

This thesis suggests that the ZEPs are consistent with the spirit of the SACA (No. 17 of 2010), which Hobden (2020:159) describes as representing "a tightening in access to South African citizenship". Furthermore, this study suggests that the securitising of borders between South Africa and Zimbabwe is part of the larger project to restrict SA citizenship to African migrants (Moyo, 2020). Moreover, the DZP, ZSP and the ZEP embody "ambivalent hospitality and the contradictory logic of hostility and hospitality" of the post-apartheid SA migration policies (Moyo, 2018:1152). Based on the reading of the literature, this Master's thesis suggests that the political function of the Amendment Act (No. 17 of 2010) as well as the migration regimes such as DSP, ZSP and the ZEP, is to engender a situation in which Zimbabwe migrants and other African migrants are perpetual second class citizens or migrants who forever reside in a state of limbo. This thesis will argue that the South African Government ought to correct this state of affairs by designing context-specific immigration policies that are sensitive to the history of migration in the SADC region, and more importantly, that the post-apartheid government ought to develop migration policies that promote the spirit of the Constitution (Moyo, 2018).

Chapter Three: Methodology and Theory

3.1 Methodology

This thesis uses a combination of theories to interrogate and discuss the Zimbabwe special permits and some of the post-apartheid government's amendments to the South African Citizenship Act and other immigration policies. Some of the theories that theoretically underpin this research project's methodology include Marxism, Pan-Africanism, Liberalism, and culture-based theories.

A Marxist theoretical approach explains xenophobic sentiments by highlighting changes in the economy (Favell, 2014). The Marxist approach argues that immigration policies are shaped by economic factors and a class-based political system (Favell, 2014). Marxist migration theories investigate the movement of people from one area or nation to another as a response to the economic factors at play in a particular historical setting (Vogel, 2013). The Marxist theories of migration mainly focus on labour migration under capitalism, thereby outlining that migration is a reaction to poverty or conflict (Vogel, 2013). Vogel (2013) argues that when the economy is expanding, there is a demand for workers, encouraging domestic labour movements to industrial centres and international migration to developing nations. On the other hand, when the economy is contracting or stagnating, there is less labour demand, resulting in unemployment, conflicts and repatriation (Vogel, 2013). This results in migrants becoming competition for the local labour force (Vogel, 2013).

This approach argues that capitalists import foreign workers to drive down wages and boost their profits while dividing the working class (Favell, 2014). The capitalists divide the working class by encouraging racism and xenophobia through their control of the media and education system (Meyers, 2000). Marxists further explain that foreign workers often join the society at the bottom of the socioeconomic scale, pushing native workers to a higher tier or creating competition (Meyers, 2000). Higham and Jones (cited in Meyer, 2000) argue that this creates social cleavages and unrest that stimulate fears of losing national identity and a national breakdown. This results in nationalism and nativism (xenophobia) (Higham and Jones cited in Meyer, 2000).

Furthermore, this thesis uses culture-based theories to research how xenophobes use national identity to justify their xenophobia. Meyers (2004) argues that culture-based theories outline the cultural conflict between the native-born and the immigrants. Husbands (cited in Meyers, 2004) explains that culture-based theories see racism and xenophobia as an immediate response to what is seen as strange and unfamiliar. Meyers (2004) highlights how the degree to which immigrants deviate from the mainstream norm regarding race, ethnicity, and culture influences how natives view them. The culture-based theories prioritise cultural value and primarily regard national identity as a critical factor in determining immigration policy (Meyers, 2004). In this regard, changes to immigration policy are explained as a response to the size of immigration and the cultural differences between immigrants and natives (Meyers, 2004).

An example of the culture-based theories referred to as the national identity approach argues that each country's immigration policies are shaped by its unique history, conceptions of citizenship, and nationality, as well as discussions of national identity and internal social disputes (Meyers, 2004). The national identity approach places less emphasis on the importance of external and situational factors (Meyers, 2004). Instead, it uses social conflicts and debates over national identity to justify the timing of immigration policies (Meyers, 2004). Therefore, it links differences in conceptions of national identity or other characteristics between countries of destination to differences in immigration and citizenship laws (Meyers, 2004).

Another immigration theory that shapes this study's theoretical framework is the international relations analysis. This thesis uses an International Relations framing to critique South African immigration policy. It is worth pointing out that the discussion on international relations in this thesis is framed around a Pan-Africanist paradigm. Pan-Africanism is underpinned by the belief in unity and common purpose among all African people and the African Diaspora (Aniche, 2018). Pan-Africanism is central to all endeavours and initiatives aimed at African regional integration (Gumede, 2019). Therefore, Pan-Africanism underpins the progression and advancement of all Africans without the oppression of other nationalities and races (Gumede, 2019). In this regard, the African Union's Pan-Africanism encourages AU members to promote liberal democratic governance centred on human rights, good governance, democratic culture and the rule of law (Mickler and Sturman, 2021).

Pan-Africanism encourages African Continentalism, whereby states come together to establish new rules, values, institutions and political frameworks and agree to live by these new rules and frameworks while living in peace with one another (Landesberg, 2012). This thesis argues that SADC states are bound by Pan-African Continentalism, which aims to commit states to live by a shared standard of rules and values (Landesberg, 2012). Pan-Africanism encourages close trade links, close political association or common policies and common rules, institutions and values among independent states (Landesberg, 2012). For instance, South Africa's African agenda is informed by the perspective of the Continental-Africanist or Union of African States. South Africa holds this to be a massive political and sentimental vision (Landesberg, 2012). According to the institutionalist continental perspective promoted by South Africa, Africa should pursue a dual-track strategy that involves strengthening continental institutions, norms, and values while adhering to the guidelines and principles outlined in the AU Constitutive Act and working toward the establishment of an eventual AU Government (Landesberg, 2012).

This thesis uses the Pan-Africanist approach to explain that labour mobility is not new in SADC because, during the colonial era, individuals moved within the region in search of new opportunities (Mlambo, 2020). Pan-Africanists argue that international agreements among states on the continent need to acknowledge this historical context (Mlambo, 2020). This thesis supports the Pan-Africanist perspective, which explains that borders were imposed on the African continent and hinder regional integration (Mlambo, 2020). Pan-Africanists argue that states should acknowledge how post-colonial African borders have become reinforced and consolidated (Mlambo, 2020). This thesis, similar to Mlambo (2020), does not advocate for the total removal of borders, but it argues for a Pan-Africanist border management approach that upholds state sovereignty but also promotes integration and development in the SADC region. In this regard, African states should develop policies that view the borders as bridges instead of barriers that should be reinforced and consolidated (Michael, 2012).

In addition, this thesis also uses a liberal framing to critique South African immigration policies. Liberal theorists argue that there is an equal moral worth that applies to all human beings (Song, 2018). Therefore, there is no basis for distinguishing between citizens and foreigners who aim to become citizens (Song, 2018). Carens (1992:26 cited in Song, 2018) argues that the need for equal opportunities entails that "access to social positions should be decided by an individual's talents and capabilities rather than being limited to arbitrary innate qualities such as race, class or sex". In this regard, citizenship is an arbitrary characteristic;

therefore, it should not determine access to rights and opportunities (Song, 2018). Liberalists argue that immigration restrictions are an unfair type of discrimination, like discrimination based on class, race and sex (Song, 2018).

The 1948 Universal Declaration of Human Rights states that there is a right to leave any country (Song, 2018). Liberal theories view the right to emigrate as a fundamental right that cannot be constrained as it is enshrined within international law (Verlinden, 2010). Cole (2000 cited in Song, 2018) argues that any restriction on immigration means that liberalism ends at the national border. Cole (2000 cited in Song, 2018) contends that the right to leave one country involves the right to enter another because there is a consistency between exit and entry. Therefore, liberals assert that the fundamental right to emigrate should have the right to immigrate (Song, 2018). Song (2018) concludes that freedom of international movement is a basic human right that requires the state to open its borders. In this regard, Song (2018) argues that there should be consistency between exit and entry.

In the final analysis, this thesis argues that immigration policies are never shaped by one factor but through a combination of different factors. There is an interaction of cultural, socioeconomic and foreign policy issues that are always operating in the political background of any policy discussions, especially immigration policies. Therefore, this thesis uses the theoretical concept of "Nativism" to capture and discuss these various factors.

3.2 Nativism: A Theory

The modern understanding of the nation-state outlines the idea that legitimate governments should only be based upon the principle of national self-determination and "that, at least ideally, state and nation ought to be identical with each other" (Axtmann, 2004:260). The notion of nationalism was leveraged to tighten the relation between state and society and overcome local ethnocultural diversity to create standardised citizens loyal to the nation-state (Axtmann, 2004). The tightening of the relation between state and society resulted in civic and ethnic nationalism. Civic nationalism defines the nation in terms of a shared commitment to the public institutions of the state and society (Guia, 2016). At the same time, ethnic nationalism describes the nation by emphasising cultural sameness and common descent (Guia, 2016). In this regard, ethnic conceptions of the nation are more exclusionary, while civic notions are inclusive as long as the new members accept the nation's political creed (Guia,

2016). This is what Anderson (2006) termed the notion of "nation-ness", which is an "imagined political community" that is socially constructed through historical and cultural ties. This resulted in the modern state effectively distinguishing between citizens and foreigners and regulating the movement of each.

Furthermore, Anderson (2006) argues that modern nation-states tend to encourage "nativism." Fry (2006:6) argued that the concept of nativism was first coined in the mid-nineteenth century to communicate the notion that, among other things, the duty of nation-states was to privilege "the interests of natives over those of immigrants." Katerberg (1995) outlined that nativism is an ideology that wants unity of state and nation. The social meaning of the term has evolved. For instance, it has been shown that nativism is often triggered "by a sense that 'foreigners' threaten or will threaten 'native' prerogatives and positions" (Fry, 2006:6). Similarly, Guia (2016) argues that nativism highlights the "us versus them" division that emerges in immigration and cultural diversity contexts.

Additionally, Newth (2021:14) argues that "nativism is a racist and xenophobic form of politics that discursively constructs a 'non-native', 'foreigner' or even the 'non-integrated co-citizens' against the native people'". Newth (2021) argues that the process of othering results in the exclusion of 'non-native' and other racialised fellow citizens from belonging to the nation-state. This differentiates nativism from concepts of national identity and nationhood. This is because "nativism is a way to reshape the features and contours of an already established construction of national identity in order to exclude from nationhood people who have a claim to it" (Guia, 2016:123). In this regard, nativism connects the concepts of national identity and nationhood. Therefore, nativism presents immigration as a threat to the nation because it relies on the racist and racialised process of othering while emphasising stopping the perceived threat (Newth, 2021). This thesis argues that nativism turns xenophobia into a way of redefining the nation in the face of constructed fundamental threat.

Guia (2016) argues that for a nativist logic to become hegemonic, it needs a clear internal or external enemy, a dominant and compelling narrative of belonging and the erasure of internal divisions among the native population. Guia (2016) further explains that nativism should be understood as a wide range collection of policies that redefine who the real people of a nation are and who should have more rights and decision-making power to determine the characteristics of that society in comparison to a group considered non-native. This research

argues that nativism emerges as a process that modifies existing nationhood constructions and the categories of native and non-native. This is because nativism does not focus on the external constraints but the internal minorities created by immigration. Therefore, the arrival and settlement in the country of new immigrants is deemed dangerous for the preservation of the essence of an existing nation (Guia, 2016).

This thesis suggests that nativism influences immigration policy in South Africa. Furthermore, this thesis aims to challenge nativism by arguing that being born in a nation-state is a matter of luck: it is "'so arbitrary from a moral point of view' but so strongly determines our prospects in life" (Rawls, 1971 cited in Song, 2018:389). This study is further theoretically shaped by the Universal Declaration of Human Rights, which, among other things, states that 1) people have the right to freedom of movement and residence within borders of each state, 2) people have the right to seek and to enjoy in other countries asylum from persecution, and 3) people have a right to change nationality.

Chapter Four: Data Analysis

4.1 Introduction

The presence of foreigners in post-apartheid South Africa has presented a challenge to nation-building and the political idea of a rainbow nation (Beetar, 2019). The following quote from Derrida (cited in Beetar, 2019) encapsulates this challenge: “The foreigner is a destabilising presence in our midst; he is posing questions of who he is and what his presence signifies, but ultimately he is posing questions of who ‘we’ are and what we signify to him”. This chapter suggests that the South African Government has, since 1994, dealt with the challenges posed by the foreigner in post-apartheid South Africa by constantly amending the South African Citizenship Act, as well as by introducing various immigration policies that are designed to make South African citizenship inaccessible to African migrants. Furthermore, this chapter suggests that the amendments to the SACA in 2004, 2007 and 2010 are part of the broader political strategy to manage and deal with the foreigner in post-apartheid South Africa.

Interestingly, the SACA is not the only document or immigration tool used to manage the foreigner that has been amended or passed in parliament in recent years. For instance, the White Paper on International Migration 2017 (WPIM), which led to the amendment of the Refugee Act, is another immigration tool that the government introduced to make South African citizenship inaccessible to refugee migrants. The Border Management Authority Act, 2 of 2020 (BMAA) is the latest government attempt to militarise the border (BMA 2020). The BMAA enables the Border Management Authority (BMA) to use surveillance technologies, checkpoints and guards to control and patrol the borders (Business Tech, 2021; Correa and Simpson, 2022). According to the BMAA, the function of the BMA is to, among other things, “co-operate and co-ordinate its border law enforcement functions with other organs of state, border communities or any other persons” (BMA 2020, s.5(c)).

This chapter interrogates how these new immigration policies, new immigration agencies and amendments to existing immigration policies serve the larger agenda of making South African citizenship inaccessible to African migrants. In addition, this chapter argues that there appears to be a history of institutionalised xenophobia that aims to restrict African refugees and asylum seekers from accessing state resources and securing the right to work and study in South Africa.

It is worth noting that the immigration amendments that the post-apartheid government has instituted over the past 20 years have primarily occurred against a background of widespread xenophobia in the media, society and broader political culture.

4.2 South African Citizenship Act, 1995

The SACA 1995 replaced apartheid citizenship laws such as the 1949 SACA and other laws established by the homelands, such as the Citizenship of Transkei Act 26 of 1976 (Hobden, 2018). As the supreme law of the Republic, the South African Constitution established common citizenship set out in section 3 (Hobden, 2018). In this way, the SACA of 1995 was generous and accommodated all who had been denied citizenship by the apartheid government (Hobden, 2018). This included those who stayed in the homelands and were banished from the category of South African citizens. In addition, as specified in Chapter One, the post-apartheid South African Government, straight after independence, granted amnesty to mine workers, members of the SADC and Mozambicans who were illegally residing in South Africa (Peberdy, 2001).

The SACA 1995 was generous in the sense that it stated that people born in South Africa to at least one parent who was a legal resident or a citizen and registered at birth according to the Birth and Deaths Registration Act were entitled to South African citizenship by birth (BDRA 1992, s.2(1)(b); s.2(2)(b)). This meant that children born to one parent who was a citizen could acquire citizenship. This also allowed children to have a nationality at birth and indicated that they could exercise their rights to education and healthcare (BDRA 1992). The SACA 1995 also gave opportunities to those born to parents who were permanent residents (Hobden, 2020).

The 1995 SACA also required that a person had to live in South Africa for not less than a year immediately preceding the date of their application (SACA 1995, s.5(1)(c)). In addition, it specified that a person had to live in South Africa for at least four years during the eight years preceding the date of their application (SACA 1995, s.5(1)(c)).

However, in post-apartheid South Africa, xenophobia began to take hold in society and the broader political culture. For instance, there was a lot of sensationalism when reporting on migration issues in the press (Crush, 1999). Some of the headlines in the newspapers included "Africa floods into Cape Town", "6 million migrants headed our way" and "Illegals in SA add to decay of cities" (van Rensburg, 1994; Mlangeni, 1996; Smith, 1996 cited in Danso and McDonald, 2001). There was the use of metaphors such as "floods", "streaming", "flocking"

and “hordes” in the text of articles (Amankwaa, 1996; Staff Reporter, 1996; Zaina, 1996; Kagee, 1997 cited in Danso and McDonald, 2001).

The South African press has been accused of using negative stereotypes to perpetuate xenophobia against migrants (Dolan and Reitzes, 1996). Migrants are described as job stealers, criminals and illegals (Dolan and Reitzes, 1996). In addition, there is the blurring of lines on who is categorised as a migrant, immigrant, asylum seeker and refugee. Many South Africans believe African migrants are job stealers, criminals and disease carriers (Danso and McDonald, 2001). This is supported by the general impression that migrants are migrating to South Africa to find jobs despite the high level of unemployment in the country (Danso and McDonald, 2001). For instance, a respondent in the Mail and Guardian survey complained that they failed to get jobs because most jobs were given to foreigners (wa ka Ngobeni, 1998 cited in Danso and McDonald, 2001). To stop this, demands made in newspaper publications include the withdrawal of work permits issued to foreigners and strict control of foreign migrants (wa ka Ngobeni, 1998 cited in Danso and McDonald, 2001).

In addition, several articles have blamed foreigners for the high crime levels. One article stated that the high rate of crime and violence, including gun trafficking, drug trafficking and armed robbery, is strongly linked to the increasing number of illegal immigrants in South Africa (Anonymous, 1994 cited in Danso and McDonald, 2001). Other articles reporting on crime associate migrants with anti-crime programmes taken on by the government and security forces stated that during high-density crime operations, security forces arrested 931 persons, including 464 illegal immigrants (Anonymous, 1998 cited in Danso and McDonald, 2001)

A lot of attention was paid to traders and hawkers who were accused of taking over the township economy and the informal sector, which should be reserved for South African nationals (Jossel, 1997 cited in Danso and McDonald, 2001). These are critical migration debates for journalists and editors. However, there has been no proof of the impact of international migration on the South African labour market and how it relates to the unemployment of South Africans (Danso and McDonald, 2001). To argue that migrants are taking jobs and are responsible for the high employment rate ignores research by Rogerson (1997) and Peberdy and Crush (1998) that the migrants who migrated in the 1990s also created jobs.

Mangosuthu Buthelezi, who later presented the 1999 White Paper on International Migration, was one of the most vocal anti-immigrant government officials. For example, at a press conference in February 1998, as the Minister of Home Affairs, he stated that "with an illegal alien population estimated at between 2.5 million and 5 million, it is obvious that the socio-economic resources of the country which are already strained, are further being strained by the presence of these illegal aliens. The cost of these illegal aliens is around billions of rand per year" (Human Rights Watch, nd:para 4).

The Minister was constantly quoted in the media for making negative comments about migrants and is responsible for some of the most xenophobic statements made in public (Danso and McDonald, 2001). He stated that "the county is struggling to meet the needs of its people. … We are perceived as an island in a sea of poverty, making us a magnet of migration" (Human Rights Watch, nd:para 6). This chapter argues that news and media organisations are businesses that aim to build relationships with their readers instead of challenging their views. In this way, the relationship between the media, public attitudes and policymaking is complex and mutually constitutive (Anderson, 2017). The media and political elites always use natural disaster metaphors to explain migration. The use of metaphors creates anxiety among the population and portrays migrants as the invasive other (Anderson, 2017).

Amid this xenophobic media discourse, it was suggested that for the government to deal effectively with illegal immigration, changes needed to be made to the post-apartheid South African Citizenship Act (Hobden, 2018; 2020). In this regard, the 1999 White Paper on International Migration sought to institutionalise these changes. In South Africa, a White Paper is a primary policy document that offers recommendations on current policy and suggests strategic interventions (Handmaker and Nalule, 2021).

4.3 The 1999 White Paper on International Migration

The ultimate objective of this White Paper was to clamp down on illegal immigration. Furthermore, the White Paper advocated for stricter control of migration into South Africa and zealous enforcement of immigration laws (DHA, 1999). The White Paper echoed xenophobic views that linked migrants to crime; basically, it was shaped by a narrative that viewed migrants as people who put undue pressure on the countries' resources and unfairly competed with citizens for jobs (DHA, 1999). The White Paper was premised on the assumption that there

were too many illegal immigrants in South Africa, and the government needed to do something to reduce this number. In this regard, the WPIM 1999 appeared to create an environment that did not offer migrants employment opportunities and limited migrants' access to public services (DHA, 1999).

The paper had clauses that empowered the police with powers to stop anyone, including citizens to prove their immigration status (DHA, 1999; Neocosmos, 2010). It shifted enforcement from border control to community and workplace inspection with the cooperation of different branches and spheres of government (DHA, 1999; Maharaj, 2002). Some clauses encouraged community organisations to "root out" and report suspected "illegal immigrants" (DHA, 1999; Neocosmos, 2010). The paper expected citizens to ensure that they were not sheltering non-citizens by checking, in cooperation with officials, that migrants were not receiving services from schools, banks and hospitals (Maharaj, 2002). Some of these clauses were removed when the Bill was made the Immigration Act 13 of 2002. However, the new Act still contained provisions that enabled the police to stop and ask people about their immigration status (DHA, 1999; Neocosmos, 2010). This often resulted in intimidation and harassment of people suspected of being illegal immigrants (Neocosmos, 2010).

This thesis suggests that the White Paper's xenophobic spirit and the approved public discourse that promoted the view that there were too many illegal migrants in South Africa created the xenophobic climate that produced the 2008 xenophobic violence. Consistent with the White Paper clauses that encouraged community organisations to "root out" and report suspected "illegal immigrants". Black communities around the country resorted to vigilantism to remove foreigners living in their communities in 2008 (Landau, 2006). This resulted in the death and displacement of many migrants, which led to human rights abuses. The May 2008 xenophobic violence has been presented by numerous researchers, journalists and writers in the following statistical terms: "two weeks of violence; 62 dead, including 21 South Africans; 100 000 displaced; more than 1 300 arrests" (Monson and Arian, 2011:26). In addition, the migrants' houses and businesses were destroyed (Chigeza, de Wet, Roos and Vorster, 2013).

The xenophobes roamed the township streets with makeshift weapons declaring to the media that they would kill any foreigners they found (Solomon, 2019). The xenophobes used the language of citizenship to justify their violent attacks. They argued that African migrants were undermining the rights of locals and the government was not doing enough to enforce a secure

border (Solomon, 2019). The xenophobes deployed the discourse of nativism to justify their xenophobia. Nativism is a discourse rooted in the formation of nation-states and nationalism, which claims that outsiders and foreigners "threaten or will threaten 'native' prerogatives and positions" (Fry, 2006:6). The discourse of the nation-state and nationalism, on the other hand, is premised on the notion that "nationalism is an ethic of heroic sacrifice, justifying the use of violence in defence of one's nation against enemies, internal or external" (Ignatieff, 1994:3)

The White Paper encouraged communities, with the cooperation of different branches of government, to enforce the law and root out illegal immigrants from their communities. The eruption of 2008 xenophobic violence could be linked to the White Paper's discourse that seemed to advocate for communities to "root out" illegal migrants. The 2008 xenophobic violence seems to explain what happens when the media creates widespread social angst about a supposedly out-of-control immigration problem in post-apartheid South Africa. This thesis suggests that the xenophobic media narrative of the late 1990s and early 2000s nurtured xenophobic sentiments. The White Paper on International Migration seems to have given political legitimacy to a post-apartheid xenophobic discourse.

4.4 Post 2008 Xenophobic Violence: Amendments to the SACA

Two years after the xenophobic violence, the post-apartheid government introduced amendments to the SACA that also embraced a nativistic worldview. The South African Government used the jus sanguinis principle to formulate and amend its citizenship laws. Jus sanguinis is the principle that citizenship is hereditary and, therefore, one's citizenship is determined by the citizenship or ethnicity of one or both parents (Hobden, 2020).

The current law, through the 2010 Amendment Act, states that any individual born in or outside of South Africa is a South African citizen if one of their parents was a citizen of South Africa at the time of their birth (SACA 2010, s.(2)(1)(b); Hobden, 2018; Hobden, 2020). The 2010 amendment was noteworthy because it barred non-citizens from acquiring citizenship by birth for those born in South Africa (Hobden, 2020). This also applies to children whose parents were legally in the country and not permanent residents (Hobden, 2020). For instance, children of permanent residents can now only become citizens when they reach the age of majority if they have lived in South Africa from their date of birth (SACA 2010, s.2(3); Hobden, 2020).

In this regard, children of permanent resident parents are not citizens, a situation that negatively affects their access to healthcare and education.

In addition, the 2010 SACA amendment, which states that the children of permanent residents are only eligible to apply for citizenship upon reaching the age of majority, is arguably against section 28(a) of the Constitution that guarantees every child the right "to a name and nationality at birth" (Hobden, 2020). Interestingly, the SACA has a stateless exception that states that citizenship can be granted to individuals born in South Africa who do not have the citizenship or nationality of any other country or have no right to such citizenship or nationality (SACA 2010, s.2(2); Hobden, 2020). However, the DHA has failed to fully provide regulations that clearly outline how one can acquire citizenship using this provision (Hobden, 2020). Similarly, the requirement that citizenship by birth must be registered in the Birth and Deaths Registration Act has proven difficult for parents in irregular positions (Hobden, 2020).

The 2010 Amendments to SACA were a radical departure from the post-apartheid generous spirit of the 1995 SACA. For example, the 1995 SACA required a person to normally be residing in South Africa for a period of not less than a year immediately preceding the date of their application (SACA 1995, s.5(1)(c); Hobden, 2020). In addition, it stipulated that a person must have lived in South Africa for at least four years in the eight years preceding the date of their application (SACA 1995, s.5(1)(c); Hobden, 2020). In contrast, according to the 2010 Amendment Act, a person must have lived in South Africa for at least five years immediately before the date of application (SACA 2010, s.5(1)(c); Hobden, 2020). This section is more restrictive because it requires five consecutive years instead of four in eight (Hobden, 2018; 2020).

This research argues that the amendments to the original 1995 SACA in 2004, 2007 and 2010 appear to show an inclination to limit access to South African citizenship and permanent residency. Ultimately, this research suggests that the continuous shift of limiting access to citizenship and permanent residency happens against a background of widespread xenophobia. For instance, post-apartheid citizenship has been reduced to indigeneity or autochthony, where citizenship is given by attachment to a territory, descent and birth for those who belong to the "we", and that definition of citizenship reflects the xenophobic narrative of nativism (Neocosmos, 2010). Indigeneity means that citizenship and nationality define those who

belong within territorial boundaries and those who do not are excluded from rights and entitlements (Neocosmos, 2010).

4.5 The Refugees Amendment Act 11 of 2017

Before 1993, South Africa did not recognise refugees. However, after the transition to democracy, it became a signatory to the United Nations and the Organization of African Unity conventions on refugees (Odunayo et al., 2017). The South African Government passed the Refugees Act of 1998 that established institutions and procedures that offer protection to individuals fleeing persecution and instability in their home countries. This resulted in South Africa being distinguished as one of the few African countries encouraging refugees to self-settle in urban areas (Landau, 2006). The law was progressive and did not require refugees to stay in camps (Landau, 2006). The state enabled the temporary integration of individuals with an asylum seeker permit (Landau, 2006). The refugees with a positive asylum decision were granted rights to health care, education and social grants normally afforded to South African citizens (Landau, 2006).

Handmaker (2001) outlines that between 1995 and 1998, many asylum seekers were from neighbouring SADC countries, the Great Lakes region and the Horn of Africa. A smaller number came from Nigeria, Senegal, India and Pakistan (Handmaker, 2001). The new democratic state became home to millions of people fleeing persecution. However, 19 years later, the post-apartheid government made amendments to the Refugee Act due to xenophobic discourse and violence.

The 2017 White Paper precipitated the Refugee Act on International Migration amendments. The DHA (2017) proposed changes to how permanent residency and citizenship were granted. The WPIM aimed to stop refugee status from automatically becoming permanent residence (DHA, 2017; Handmaker and Nalule, 2021). The DHA (2017) proposed that refugees should not have access to South Africa's permanent residency and that a long-term residence visa would replace the permanent residence permit (Handmaker and Nalule, 2021). To change this, the White Paper proposed de-linking temporary residency and refugee status, which previously entitled refugees to access permanent residency (DHA, 2017; Handmaker and Nalule, 2021). It also aims to de-link permanent residence leading to citizenship (DHA, 2017).

In addition, the DHA (2017) also states that refugees would be entitled to a long-term residency visa if they have lived in South Africa for 10 years. Interestingly, the period considered is the time taken as a refugee. However, some people have been asylum seekers for more than five years and others for more than 10 years (Handmaker and Nalule, 2021). This long-term visa would not result in citizenship. The Minister of Home Affairs can only grant citizenship in exceptional circumstances after being advised by a Citizenship Advisory Panel (DHA, 2017; Handmaker and Nalule, 2021).

The amendments to the Refugee Act seem to be designed to make South African citizenship inaccessible to refugee migrants. For instance, the Refugee Amendment Act 2017 which came into effect on 1 January 2020, implemented some of the propositions outlined in the WPIM. The RAA has doubled the time a refugee has to reside in South Africa to be eligible for permanent residency (RAA 2017). The application to be recognised as an indefinite refugee only applies to those granted refugee status for 10 years (RAA 2017). This is a move away from the current requirement of five years.

The DHA (2017) proposed overhauling the entire asylum system, which it states is overburdened, non-functioning and underfunded. The DHA (2017) details a plan to construct Asylum Seeking Processing Centres (APCs) closer to South Africa’s northern land borders (Handmaker and Nalule, 2021). This is where asylum seekers will be accommodated while their asylum claims are being considered (DHA, 2017; Handmaker and Nalule, 2021). The confining of asylum seekers in APCs is a move to avoid competition between them and the citizens (Kavuro, 2022). In this regard, the WPIM seeks to remove asylum seekers from the community and its economy (Kavuro, 2022). This is seen in the WPIM’s (2017) proposal for removing asylum seekers’ right to work and study and the restricted access to permanent residence for recognised refugees. The White Paper states that the basic needs of the asylum seekers will be catered for in the processing centres (DHA, 2017). In exceptional cases, certain asylum seekers will have the right to work (Kavuro, 2022).

Interestingly, the RAA implemented the proposals in the WPIM 2017. The RAA states that asylum seekers do not have an automatic right to work or study (RAA 2017, s.18(6,7,8); Handmaker and Nalule, 2021). The Act states that the right will be endorsed on an asylum visa after assessing whether the asylum seeker can support themselves (RAA 2017, s.18(6,7,8); Handmaker and Nalule, 2021). However, previous South African Supreme Court of Appeal

decisions state that asylum seekers and refugees should be able to work and study. In the Minister of Home Affairs v Watchenuka case, the state justified the exclusion of asylum seekers from employment because it deprived citizens of employment opportunities (Watchenuka case, 2015). This has been an argument raised by the state, society and xenophobes. However, the court held that the prohibition against employment amounts to "a material invasion of human dignity that is not justifiable in terms of section 36 of the Constitution" (Watchenuka case, 2015:para 33).

Similarly, in the 2015 case of the Somali Association of South Africa v Limpopo Department of Economic Development Environment and Tourism, asylum seekers and refugees successfully challenged their exclusion from engaging in business and trading (Somali case, 2015). Using section 22 of the Constitution, the state justified its decision by arguing that engaging in trade and business was only reserved for citizens (Somali case, 2015:para 31). The court rejected this argument because the state was narrow-minded on the issues faced by asylum seekers and refugees; hence prohibiting them from engaging in trade would diminish their status (Somali case, 2015: para 33). The court held that section 22 of the Constitution does not prevent refugees or asylum seekers from working (Somali case, 2015).

The United Nations Charter of 1945 established the right to work as a human right (UN Charter, 1945; Baidoo, 2016). This is because this right is instrumental in promoting a dignified life, socio-economic progress and development (Baidoo, 2016). The right to work is further enshrined in the Universal Declaration of Human Rights (UDHR) as a fundamental right that promotes a high quality of living and protects workers from unfair or exploitative labour practices (UDHR, 1948, Art. 23(1); Baidoo, 2016). In addition, the 1951 Refugee Convention Article 18 and its 1967 Protocol Article 19 (1) guarantee the right to work (Baidoo, 2016). The right to work, education, freedom of movement within a territory and the right not to be punished for illegal entry into the territory of a contracting state apply to all refugees. These are all guaranteed in the Refugee Convention and its Protocol.

The RAA states that all asylum seekers must obtain an asylum transit visa at the ports of entry to apply for asylum (Republic of South Africa, 2017). The visa is only valid for five days, and after that, individuals would become illegal immigrants if they have not applied (RAA 2017, s.4(1)h and 15(1)a). Amit and Krieger (2014) have thoroughly documented the challenges and barriers asylum seekers encounter when accessing the refugee reception centres. One thing that

stands out from Amit and Krieger's (2014) research is that even with the previous law that gave asylum seekers 15 days to apply for asylum, it was still almost impossible due to bureaucratic and administrative barriers.

The 1951 Refugee Convention and its 1967 Protocol provisions state that refugees are entitled to the same treatment as other foreign nationals in a given country and, in many situations, the same treatment as nationals (Clark and Crépeau, 1999). The concept of non-refoulment, enshrined in Article 33 of the 1951 Convention, is its cornerstone (Refugee Convention, 1951). The principle of non-refoulment states that a refugee should not be repatriated to a nation where they pose substantial dangers to their life or freedom (Refugee Convention 1951, Art. 33; Clark and Crépeau, 1999). Refugees convicted of a serious crime or regarded as a threat to the country's security are not eligible for this protection (Refugee Convention, 1951; Clark and Crépeau, 1999). The Organisation of African Unity Convention (OAU), similar to the 1951 Convention, contains the non-refoulment clause (OAU, 1969, Art. II(3); Schreirer, 2014; Baidoo, 2016). The OAU Convention's provisions on asylum in Article II encourage states to do their best, in line with their legislation, to admit refugees and ensure the settlement of those refugees who are unable or unwilling to return to their place of origin for well-founded reasons (OAU, 1969, ArtII. (1); Schreirer, 2014; Baidoo, 2016). Many scholars consider this the Convention's most significant contribution to refugee jurisprudence.

As a result, per the Refugee Convention and the OAU Convention, a host state should provide refugees and asylum seekers with favourable chances to earn a living through work (Costa, 2006; Baidoo, 2016). Interestingly, refugees who cannot fit under the OAU definition of a refugee are provided humanitarian protection through the right to temporary refuge (OAU, 1969, Art. II(5); Baidoo, 2016). This means that states are obligated to offer temporary shelter to asylum seekers who have received a negative outcome on their application until they can be assigned to a third country (Baidoo, 2016). Da Costa (2006) states that the term "all refugees" in the Refugee Convention includes recognised refugees, asylum seekers, undocumented asylum seekers or those who have overstayed. The longer a refugee stays in the host country, the more rights they are entitled to, based on the fact that the longer they remain as refugees, the more rights they require (Clark and Crépeau, 1999). This thesis argues that the right to work, the right to study and the right to freedom of movement within a territory are fundamental in international law. The RAA limits these basic rights.

4.5 Border Management Authority Act

The 2017 WPIM acknowledges the need to position South Africa's migration policy within the African development agenda (DHA, 2017; Handmaker and Nalule, 2021). However, the dominant discourse is on security; the DHA (2017) states that irregular migrants such as border jumpers, overstayers and smuggled and trafficked persons pose a security threat to the country's economic stability and sovereignty. The DHA (2017) reported that many irregular migrants migrate to South Africa because of the fragmented border approach, which affects the integrity of the already long and porous land and maritime borders. To manage this, the WPIM proposed the establishment of the BMAA that would take over the management of South Africa's 72 official ports of entry (DHA, 2017; Handmaker and Nalule, 2021).

The post-apartheid border policing policy proposed by the 2017 White Paper is aimed at policing "7,000 kilometres of land borders which South Africa shares with Namibia, Botswana, Zimbabwe, Mozambique, Swaziland and Lesotho" (Peberdy, 1999:305). An electric fence built by the apartheid government separates the land border with Zimbabwe, Botswana and Mozambique (Peberdy, 1999). The new BMAA is based on the political perception that undocumented migrants from the SADC region are most likely to be "border jumpers" due to geographical proximity (Peberdy, 2001:22).

The BMAA states that the BMA is a national public entity and an armed service which will have law enforcement capabilities (BMAA 2020). The DHA (2017:40) also states that the BMA is supposed to "create an operational balance between security, trade facilitation, tourism promotion and socio-economic development both within South Africa and the SADC region". The proposal of the BMA in the WPIM received legal backing and resulted in the passage of the BMAA (BMAA 2020). In this regard, the BMAA established the BMA, whose job is to facilitate and manage the legitimate movement of goods and persons within the border law enforcement area and at ports of entry (BMAA 2020).

The BMAA has been criticised as xenophobic because it restricts and violates migrants' rights (Mlambo and Adetiba, 2020). Section 15(3) requires the BMA officers to respect fundamental rights outlined under Chapter 2 of the Constitution, especially those of vulnerable groups such as asylum seekers, refugees and trafficking victims (BMAA 2020). This presents challenges to the DHA, which has a well-documented poor track record of managing issues of xenophobia

and human rights violations (Mlambo and Adetiba, 2020). Numerous documented accounts show that authorities working around the border were corrupt and abused migrants (Mlambo and Adetiba, 2020). Mlambo and Adetiba (2020) argue that the culture of corruption and human rights abuses might extend to the new authority. This is because armed border guards with law enforcement capabilities could increase arrests and detention of migrants, asylum seekers and refugees (Mlambo and Adetiba, 2020).

The BMAA aims to militarise the border, whereas the vision advocated by the AU and SADC aims to facilitate free trade, free movement and progressive border schemes. Mlambo and Adetiba (2020) use the securitisation theory to explain the BMAA. The securitisation theory explains that political situations deemed dangerous, threatening or alarming require emergency action by a securitising actor with the social and institutional power to move the issue beyond politics (Mlambo and Adetiba, 2020). The securitising actor articulates the issue as a problem (Mlambo and Adetiba, 2020). In this regard, the securitisation theory coincides with the political rhetoric in South Africa that there is a need to militarise the border to protect South Africans and keep migrants out. The BMAA addresses a need identified by the government as a security issue.

The close collaboration between the military and police has been described as a "military-police assemblage", which presents the border and its inhabitants as an area needing ongoing management and control (Correa and Thomas, 2018:2). This partly explains the militarised expansion and policing of South African borders. Militarisation involves recruiting law enforcement personnel, armament, physical barriers and surveillance technology to monitor and secure territory (Correa and Simpson, 2022). When analysing the militarisation of the border, there is a need to highlight the normalising discourse that portrays African migrants as a threat to the South African nation (Correa and Simpson, 2022). Historically, the South African state, from apartheid South Africa to post-apartheid South Africa, has regarded the border it shares with other Southern African states as a "nervous landscape" (Correa and Simpson, 2022:7). This is seen through the state's creation of a "nervous landscape" in the border regions such as Beitbridge-Musina, where national security trumps social harm against African migrants (Correa and Simpson, 2022). In this regard, the militarisation of the border allows the state to destroy people and communities through national security and war-making discourse (Correa and Simpson, 2022).

Furthermore, Slack et al. (2016) state that border enforcement strategies are guided by violence rather than security objectives. The use of phrases such as 'war to control the border' and 'invasion at the border' have changed the border from a place of reasonable immigration to a place of defending the state from outsiders (Slack et al., 2016). This is because migrants are presented as a threat that needs to be neutralised. For instance, mainstream media's political discourse describes a secure border as synonymous with physical barriers, military presence and armament (Slack et al., 2016). However, border policing premised on military rhetoric and ideology as well as military techniques, strategy, technology and forces will likely clash with cross-border human rights (Slack et al., 2016). Militarisation will likely lead to migrant deaths due to human smuggling and dangerous routes (Slack et al., 2016). This thesis, similar to Slack et al. (2016), suggests that there is a need to shift from the militarisation-securitisation nexus and refocus the concept of security to one that emphasises an inclusive understanding of human life.

4.6 Conclusion

This chapter suggests that the amendments to the SACA in 2004, 2007 and 2010 are part of a broader political strategy to manage and deal with the foreigner in post-apartheid South Africa. The RAA is another legislation the government introduced to make South African citizenship inaccessible to refugee migrants. In addition, the RAA restricts refugees and asylum seekers' access to state resources and securing the right to work and study in South Africa, even though the right to work is a fundamental right in international law, it is guaranteed in the UNDHR, 1951 Refugee Convention, 1967 Protocol and the OAU Convention. The post-apartheid immigration policies seek to limit these rights. The immigration amendments that the post-apartheid government introduced over the past 20 years seem to have occurred against widespread xenophobia in the media, society and broader political culture. This can be seen from the xenophobic political discourse by Mangosuthu Buthelezi in the late 1990s to the recent xenophobic utterances by Herman Mashaba. The relationship between the media, public attitudes and policy is complex but cannot be separated.

The 1999 WPIM assumption that there are too many illegal immigrants in South Africa is still prevalent today. The communities have resorted to "rooting out" illegal immigrants through Operation Dudula and #PutSouthAfricansFirst. Operation Dudula members can be seen in national media with makeshift weapons and protesting. The members of Operation Dudula

blame foreigners for illegally migrating to South Africa, taking jobs and being involved in crime (Wroughton, 2022). The South African Government appear to be moving towards militarising the border through the BMAA. This chapter suggests that the border appears to be changing from a place of reasonable immigration to a place of defending the state from military authority (Slack et al., 2016). This raises the question of how the new BA and the DHA will respect human rights, given the department's poor record of protecting the human rights of African migrants in post-apartheid South Africa.

Chapter Five: Data Analysis

5.1 Introduction

This chapter interrogates the immigration tools the post-apartheid government has deployed since the 2000s to manage Zimbabwe immigration into South Africa. To that end, the chapter discusses, in particular, the DZP, which was introduced in 2010 as well as the ZSP instituted in 2014 and the ZEP authorised in 2017. As explained in Chapter One, an important goal of the DZP was to regularise the status of Zimbabwe migrants who were overly using the asylum system in large numbers (Amit and Krieger, 2014). The DZP was valid from 2010 to 2014 (Bimha, 2017). In addition to reducing pressure on the asylum and refugee management systems, the DZP aimed to provide amnesty to Zimbabweans who had fraudulently acquired South African documents (Bimha, 2017). After the DZP, the South African Government introduced the ZSP, valid from 2015 until December 2017 (Moyo, 2018). The ZEP replaced the ZSP from 2018 to December 2021 (Moyo, 2018).

However, these three special permits had stringent requirements, which meant they were not renewable and limited the holder's access to permanent residency and citizenship (Matsvai-Mutsau, 2018). This chapter will also highlight how these special permits operate and achieve analogous objectives to the apartheid migrant labour system.

5.2 The Migrant Labour System

Following the discovery of gold on the Witwatersrand in 1886, the mining companies developed a racist migrant labour system to reduce mining and operating costs (Paret, 2011). Paret (2011:69) explains that "the decision to mine low-grade ore, combined with the fixed international price of gold and high overhead and development costs, meant that companies were required to minimise costs and maximise output to make a profit". Consequently, the whole mining industry depended on the racist migrant labour system "to secure a large supply of ultra-cheap" Black labour (Paret, 2011:69). Cheap Black labour was recruited from up to 20 territories, with major areas being Mozambique, Lesotho, Malawi and the former Transkei within South Africa (Harington, McGlashan and Chelkowska, 2004). By 1936, over 40 per

cent of the Black labour force originated from Southern African countries (Yudelman and Jeeves, 1986).

At its peak, the mining industry in South Africa employed nearly half a million people, with only one-tenth of them White (Lelyveld, 1981). Throughout most of the twentieth century, the mining industry in South Africa relied on cheap Black labour that continuously migrated "back and forth from several countries in Southern Africa … as well as from all over South Africa itself" (Harington et al., 2004:70). The "alternative to this mass movement was the largescale resettlement of the miners and their families" in the Witwatersrand, but that option was out of the question as far as White mine owners and the racist colonial government were concerned (Harington et al., 2004:70).

Therefore, the migrant labour system was used to reinforce racialised conceptualisation of citizenship – in other words, to keep South Africa White, and it was used to police the borders of South Africa. This thesis suggests that similar to the twentieth-century migrant labour system, the White governments in South Africa have used special permits to banish all Blacks from the category of citizenship. The ZSPs appear to make South African citizenship inaccessible to Zimbabweans and keep Zimbabweans in the perpetual category of migrant workers. In a way, the ZSPs socially function like the pass laws of the apartheid government. White governments throughout the twentieth century deployed pass laws to reinforce the idea of White citizenship and the racist notion that Blacks were perpetual outsiders in South Africa. Although the ZSPs are not racist tools, this thesis suggests that they are xenophobic tools that embody analogous exclusionary and othering logic as the pass laws. The following section interrogates how the ZSPs are exclusionary and othering tools. It is worth reiterating that the reading of the ZSPs and the critical discussion of these permits is undertaken in this thesis within the historical background of the migrant labour system in South Africa. Therefore, this thesis provides an alternative perspective on how these permits can be understood.

5.3 Dispensation of Zimbabweans Project

The South African Government (2014a) developed the DZP project to regularise Zimbabweans illegally residing in South Africa. This stopped the deportation of undocumented Zimbabweans and reduced pressure on the refugee and asylum seeker management systems (South African Government, 2014a). Lastly, to provide amnesty to Zimbabweans who had acquired fraudulent

SA documents (South African Government, 2014a), the DHA carried out the DZP regularisation project between 20 September and 31 December 2010 (Amit, 2011). The permits were valid for four years and scheduled to expire on 31 December 2014 (Amit, 2011). These permits regularised undocumented Zimbabweans, giving them the right to work, study and conduct business in South Africa (Amit, 2011).

In addition, the DZP relaxed the standard requirements for the mainstream permits, which require applicants to submit documents such as bank statements and proof of medical cover (Bimha, 2017). The DZP process only required applicants to submit an application form with fingerprints, a Zimbabwean passport, proof of employment or business or proof of studies at an institution (Nyakabawu, 2020). This resulted in 81 per cent of the DZP applicants being people who were not previously in possession of an asylum permit or fraudulent South African documents (DHA, 2014). An additional 17 per cent were individuals who had applied for asylum but voluntarily changed to the DZP (DHA, 2014). Only two per cent of the applicants had fraudulent South African documents (DHA, 2014). This suggests that the DZP attracted undocumented Zimbabweans without asylum permits or fraudulent documents. The DZP process regularised undocumented Zimbabweans who could never have acquired regular work and study permits.

According to the DHA (2014), one of the main reasons for the DZP was to provide an alternative to the already flooded asylum and refugee management systems. The DHA encouraged a lot of asylum seekers to apply for the DZP because they considered most Zimbabweans to be economic migrants (DHA, 2014; Bimha, 2017). Despite this, only 17 per cent managed to surrender their asylum claims (DHA, 2014). The 17 per cent appear to suggest that some people believed the asylum and refugee status permits were better than the DZP (DHA, 2014). Others did not view themselves as economic migrants; hence a DZP would not be helpful (Bimha, 2017).

As a result of the special immunity for Zimbabwean nationals who had fraudulent documents, the DHA managed to recover 13 251 documents such as South African passports, identity books and identity copies (Portfolio Committee of Home Affairs, 2014). This allowed the South African Government to clear the population registry (Portfolio Committee of Home Affairs, 2014). This crackdown on fraudulent documents was not a vital outcome of the DZP because not many Zimbabweans gave up their documents (Bimha, 2017). Pokroy (2013)

explains that most Zimbabweans who surrendered their fraudulent documents had acquired driving licences, bank accounts, mortgages, and academic qualifications. However, nothing was done to correct this upon their acquisition of the DZP.

Amit (2011) argues that the three-month timeline for the DZP regularisation process was too short to reach out to an estimated 1,5 million undocumented Zimbabweans. The short period allocated to the DZP application process was its most significant obstacle because this limited its effectiveness (Amit, 2011). For instance, approximately 400 000 Zimbabwean asylum seekers had been processed since 2008 (Amit, 2011). This short timeline resulted in long queues and delays in the application process (Amit, 2011). The DHA failed to provide a sufficient explanation for the short period except that it thought it was enough to document all undocumented Zimbabweans (Amit, 2011). The three months proved insufficient because many undocumented Zimbabweans did not have passports, or their passports had expired (Amit, 2011). This resulted in high demand for passports that the Zimbabwean consulate could not meet (Amit, 2011). In this regard, many applicants had to travel to Zimbabwe to obtain a passport. This took a lot of time and financial costs, and many individuals struggled to get passports before the deadline of 31 December 2010 (Amit, 2011).

Many applicants struggled to access the Home Affairs offices during the application period, spending the night in the queues (Nyakabawu, 2021). This suggests that the DHA was ill-prepared for the large numbers. The DHA ignored the queues and relied on the number of people who applied per day as proof that there were not a lot of undocumented Zimbabweans in South Africa (Bimha, 2017). This is despite the DHA having relied on statistics that overestimated the number of undocumented Zimbabweans in South Africa (Bimha, 2017). The fact that most offices were ill-prepared resulted in inconsistent application procedures (Amit, 2011; Bimha, 2017). The application process created further barriers because individuals had to queue three times to submit application forms (Amit, 2011; Bimha, 2017). The rash implementation of the application process left many employers unwilling to provide the necessary documents to their employees (Amit, 2011; Bimha, 2017). The employees outlined that the employers were reluctant to give them affidavits due to the legal implications of employing an undocumented migrant (Amit, 2011; Bimha, 2017). The DHA failed to communicate with the employers about the DZP adequately.

The lack of queue management affected the documentation process because individuals queued for days outside the offices before going inside to apply (Amit, 2011; Bimha, 2017). The collection of application forms also contributed to the inefficiency of the queues because applicants would queue for hours or days to receive an application form (Amit, 2011; Bimha, 2017). This affected a lot of applicants because they could not queue for a long time due to childcare, school and work commitments (Amit, 2011). The lack of queue management resulted in a lack of information about the application process and likely cut-off points for the day (Amit, 2011; Bimha, 2017). For instance, applicants would likely receive information from other individuals in the queue (Amit, 2011; Bimha, 2017). In addition, others would be turned away at the end of the day despite being in line for the whole day (Amit, 2011). This frustrated many undocumented Zimbabweans, and they did not apply for the DZPs (Bimha, 2017).

Washinyira (2015a; 2015b) argues that the DHA did not implement a gender-sensitive migration management approach to document undocumented Zimbabweans. There was an over emphasis on migrant workers and business operators, and this enabled the exclusion of people who would join the informal sector (Washinyira, 2015b). The requirement for proof of employment or business meant that many women working in the informal sector as hawkers, hairdressers, child minders and shopkeepers could not be regularised (Washinyira, 2015b).

On the other hand, the DZP project allowed the DHA to curb deportations of undocumented Zimbabweans, which proved to be inefficient and costly (Pokroy-Rietveld, 2014). The deportation system proved ineffective because most deportees would bribe officials at the border and return to South Africa (Meldrum, 2007). As a result of undocumented Zimbabweans being regularised under the DZP, the deportation rates went down from 280 837 in 2009 to 101 060 in 2010 and 55285 in 2011 (Pokroy, 2014; Bimha, 2017). In addition, the DHA managed to regularise only 242 731 undocumented Zimbabweans out of 294 511 applicants. This is despite estimates in 2009 of over a million undocumented Zimbabweans in South Africa (Pokroy, 2012; Bimha, 2017). The DZP project's failure to regularise many undocumented Zimbabweans has been regarded as its primary weakness. This is because there were a lot of undocumented Zimbabweans in the informal labour market who could not be regularised.

Nevertheless, Çağlar (2022) argues that coloniality continues to be present in border regimes of today's nation-states. Imperial borders and frontier laws implemented by colonial powers still exist in nation-states today, not as remnants of the colonial era but because this type of

control heavily relies on separating and categorising people (Çağlar, 2022). As has already been pointed out, the DZP embodied a colonial logic in its conceptualisation of citizenship. Similar to the migrant labour system that was used to build modern South Africa, the DZP, ZSP and ZEP did not allow permit holders to apply for permanent residency and later citizenship irrespective of their extended and continuous stay in South Africa (Carciotto, 2018).

Furthermore, "One of the fundamental features of the migrant labour system was that foreign workers were denied the opportunity to live or work permanently in South Africa, regardless of how long they were employed under subsequent contracts or their established familial or social ties" (Wentzel and Tlabela, 2006:76). Paret (2011) states that newly recruited workers were given short-term labour contracts which usually lasted between six to 12 months. At the end of their contracts, migrant workers were required to return to their home countries even if it was to sign new contracts for the same jobs (Wentzel and Tlabela, 2006; Paret, 2011). Unlike the short-term labour contract used by the apartheid government, the ZSPs last longer than six months. However, the point is that they are short-term visas requiring Zimbabweans to renew them every four years (Carciotto, 2018). Like the apartheid pass laws, these permits appear to prevent the permanent settlement of Zimbabweans in South Africa.

The apartheid government used the Native Urban Areas Act 21 of 1923 and the Native Urban Areas Consolidation (NUCA) Act 25 of 1945 to further prevent Black South Africans from settling permanently in South Africa (Wentzel and Tlabela, 2006). The 1923 Act implemented an influx control which gave the police powers to arrest and deport to the rural areas those who were not "honestly employed" or "lived a disorderly life" (Wentzel and Tlabela, 2006:85; Gelderblom and Kok, 1994). A further restriction was added with section 10 of the NUCA, which allowed Africans to claim permanent residency in an urban area if they had resided there continuously since birth (Wentzel and Tlabela, 2006). In addition, section 10 of the NUCA further outlined that Africans could claim permanent residency in an urban area if they had lawfully resided there for 15 years or had worked for the same employer for 10 years (Wentzel and Tlabela, 2006). In this regard, pass laws were used as a way to efficiently implement these laws (Wentzel and Tlabela, 2006).

In twenty-first century South Africa, the post-apartheid government has, in addition to deploying the ZSPs to discourage Zimbabweans from settling permanently in South Africa, made amendments to the South African Citizenship Act that make it hard for Zimbabweans

and other migrants from African countries to access citizenship in the country. As outlined in Chapter 4, the 2010 amendment barred non-citizens from acquiring citizenship by birth for those born in South Africa (Hobden, 2020). For instance, children of permanent residents can become citizens when they reach the age of majority if they have lived in South Africa from their date of birth (SACA 2010, s.2(3); Hobden, 2020). Lastly, the 2010 amendment states that a person must have lived in South Africa for at least five years immediately before the date of application (SACA 2010, s.5(1)(c); Hobden, 2020). This section requires five consecutive years, unlike the 1995 SACA, which required four in eight years (Hobden, 2018; Hobden, 2020).

Mbembe (2017) argues that coloniality of the border has led to permits with strict requirements, arrests and deportations. The DZP had strict conditions, such as not being extendable and renewable in South Africa (Carciotto, 2018). The DZP strongly emphasises nationality and colonial borders through the requirement that it does not allow permit holders to apply for permanent residence (Moyo, 2020). Coloniality has become how borders and citizenship are managed (Moyo, 2020). This strong emphasis on colonial borders and nationality, like during colonialism, ignores cross-border ties and interactions between border citizens (Moyo, 2020). The coloniality of the borders and citizenship has resulted in the border citizens of the Beitbridge-Mussina area between Zimbabwe and South Africa having relatives on both sides of the border (Moyo, 2020).

The coloniality of the border and citizenship appear to stand against the vision of free movement and regional integration in the SADC region. This chapter acknowledges that states have a right to manage and implement policies that regulate immigration and protect their citizens. However, this is hard to implement in the SADC region because it hinders the drive toward regional integration (Moyo, 2018; Moyo, 2020b). The Declaration and Treaty of SADC encourages SADC member states to enforce policies that promote regional integration (SADC 1992, s.5.2(a-j); Moyo, 2018; Moyo, 2020b). Human mobility is essential to the broader regional integration promoted by SADC (Moyo, 2018; Moyo, 2020b). This regional integration aims to remove the impact of the border and create a regional citizenry (SADC, 1992).

Whether South Africa has an obligation towards Zimbabwean migrants has proven to be a contestable one for academics, media and government officials (Moyo, 2018; Hobden, 2020; Moyo, 2020a). However, as a member of SADC, South Africa is one of the countries that wants

to promote regional integration (Moyo, 2018; Moyo, 2020b). Among its many goals, the SADC seeks to strengthen the region's people's longstanding historical, social and cultural bonds (Moyo, 2018; Moyo, 2020b). This is seen through Article 5.2 (d), which encourages countries to implement policies that gradually eliminate barriers to the free movement of people, goods, services and capital among member states (SADC, 1992). This research suggests that South Africa is responsible for supporting the free movement of people from SADC nations like Zimbabwe, in addition to managing its immigration policy and national security (Moyo, 2018; Hobden, 2020; Moyo, 2020a).

This research does not aim to outline that SADC policies should take precedence over South African law, but the South African law should be consistent with the values promoted by the SADC and the Constitution. This research suggests that the conditions on these permits do not reflect a move towards fulfilling the SADC goal of the free movement of people even though South Africa subscribes to the ideals outlined in the SADC draft protocol on the facilitation of movement of persons (Moyo, 2018; Moyo, 2020b).

5.4 Zimbabwean Special Permit

In September 2014, the Home Affairs Minister introduced a ZSP (Carciotto, 2018). The applications for the ZSP were open between 1 October 2014 and 31 December 2014 (Pokroy-Rietveld, 2014). The ZSP was valid until 31 December 2017. The ZSP allowed DZP holders to continue working, conducting business and studying in South Africa for an additional three years. The ZSP allowed those who had failed to obtain their permits in 2010 another chance to regularise their stay in South Africa (Moyo, 2018). This was only possible if they could confirm that they had a valid DZP application reference number (Moyo, 2018). One of the advantages of the ZSP is that it gave a regularisation opportunity to those whose DZP applications had been rejected in 2010 (Parliamentary Monitoring Group (PMG), 2014). These individuals were given another chance because some applications were rejected due to DHA administrative inefficiencies (PMG, 2014). The ZSP meant that many Zimbabweans remained regularised beyond 31 December 2014.

The ZSP was different from the DZP because it was conducted using an electronic permit application system facilitated by Visa Facilitation Services (VFS) Global (Bimha, 2017). This was a new system, unlike the DZP, which was facilitated through direct interaction with the

DHA and DHA officials (Bimha, 2017). The applicants were required to book an appointment on the VFS website to capture their biometric photographs and fingerprints (Bimha, 2017). These were submitted to SAPS for verification and criminal record checks (Bimha, 2017). The original documents and certified copies were submitted to VFS on the appointment day, and DHA was only liable to adjudicate the permit applications (Bimha, 2017). The application processes for the ZSP were more efficient due to the DHA outsourcing VFS Visa Application Centres to handle visa applications (Bimha, 2017). The outsourcing of VFS improved the DHA in terms of efficiency, quality of services and queue management (DHA, 2015). The booking of appointments meant that the VFS officials could easily manage and regulate the number of people visiting their offices (DHA, 2015). The online application process resulted in no queues because applicants did not have to queue to collect an application form (DHA, 2015). The process of filling out and submitting an application form was shortened (DHA, 2015).

The applicants during the ZSP were required to pay R870 for adults and R800 for minors to get DHA clearance and VFS services (Chiumia and van Wyk, 2014; Washinyira, 2015a). An additional R1 350 was charged to those who wanted to transfer their ZSP permits to their new passports (Chiumia and van Wyk, 2014; Washinyira, 2015a). The ZSP fees were high to the extent that some could not apply (Chiumia and van Wyk, 2014; Washinyira, 2015a). Unlike the DZP, the DHA did not waive some of the application fees for the ZSP (Bimha, 2017). Minister Gigaba explained that the ZSP fees were reasonable and relieved the DHA from paying ZSP processing costs (South African Government, 2014b). The Minister also outlined that the ZSP fees were lower than the amount required for regular work and study permits (South African Government, 2014b).

The new visa application process through VFS resulted in the South African Government curbing corruption because before 2014, applicants engaged directly with DHA officials (Bimha, 2017). In this regard, before 2014, some officials required bribes to facilitate any visa application process (Bimha, 2017). The outsourcing of VFS eliminated some corruption practices because VFS does not grant or refuse visa applications (Bimha, 2017). In addition, VFS does not take cash payments and only uses Electronic Funds Transfer, reducing the likelihood of bribery (Bimha, 2017).

However, technical constraints with the VFS online application system made it difficult to schedule an appointment or submit completed application forms (De Gruchy, 2015). These

technical constraints required applicants to have regular internet access for extended periods (De Gruchy, 2015). This highlights that these new technical constraints replaced the problems associated with long queues and poor queue management during the DZP project. Access to the internet continues to be a challenge for many people as they have to travel long distances or use a lot of money to access internet cafes (Washinyira, 2015b). In addition, those who were not computer literate could not submit physical copies at VFS because everyone had to submit their forms online (Washinyira, 2015b).

The ZSP, similar to the DZP, had timeframe and planning issues due to the short three-month period (Portfolio Committee of Home Affairs, 2014). This impeded the application process, and the DHA extended the DZP expiry until 30 September 2015 (South African Government, 2015). This appears to suggest that the DHA had failed to plan and adequately stipulate the time it would need to accept 294 511 ZSP applicants (Bimha, 2017). By the beginning of November 2014, only 104 315 people had applied, with only 20 per cent of these applications adjudicated by the end of November (Portfolio Committee of Home Affairs, 2014). The ZSP project is argued to have been for a select few because it left many undocumented Zimbabweans with limited opportunities to regularise their stay (Lawyers for Human Rights, 2014).

Bimha (2017) argues that poor public information strategies affected the ZSP similar to the DZP. The information was mainly conducted through newspaper articles and public media announcements (Bimha, 2017). This meant that those with access to this form of media could access the information. There was a need for educational engagements with stakeholders representing Zimbabwean migrants so that they could spread the news to ZSP applicants (Portfolio Committee of Home Affairs, 2014). The education engagements could have been conducted at schools, employers and with the Zimbabweans on the DZP (Portfolio Committee of Home Affairs, 2014). The DHA continuously faces problems regarding communication and educational engagements.

Research by Washinyira (2015b) argues that the ZSP, similar to the DZP and the ZEP, lacked a gender-sensitive approach because many female informal traders could not obtain business permits for their saloons, vending and craft businesses. These women also did not qualify for mainstream business and work permits (Washinyira, 2015b). The informal sector that many women occupy needs to be considered in the DHA's migration management strategies. These

women are forced into undocumented status. Minister Gigaba, during the ZSP application process, outlined that “regularising Zimbabwean women who offer services in diverse sectors of the economy was a priority which the DHA would consider by ensuring that women, children and persons with disabilities are assisted in applying” (South African Government, 2015:np). These efforts were not good enough. Women in the informal sector remained undocumented. This can be seen through the former spokesperson of Home Affairs statement, “it is difficult to please everyone because people will always have a story” (Washinyira, 2015b).

In November 2015, the Minister of Home Affairs reported that out of 208 967 applications received by the DHA, 197 790 permits were approved (South African Government, 2015). Although that number seems high, it is worth noting that this was lower than the 294 511 DZP applicants and the 242 731 successful DZP applications. This seems to suggest that the number of regularised Zimbabweans was going down. The ZSP was not an attempt to regularise new undocumented Zimbabweans or those who had not applied for DZPs.

More importantly, the time spent under the DZPs and ZSPs does not count towards years for permanent residence or citizenship. Carens (2008a; 2008b; 2008c; 2013) asserts that regardless of sojourn or immigration status, the claim to be a member of a political community strengthens as the time spent in the country increases. Carens (2008b) explains that democratic states can temporarily accept immigrants for a limited time and limit their access to public assistance programmes, but other limitations are morally problematic. This research, similar to Carens (2008b), argues that democratic legitimacy lies in the participation and inclusion of all members of the settled population, including immigrants who have contributed to society for numerous years and deserve to be considered citizens. A temporary work visa constantly renewed should eventually be turned into a right to permanent residence (2008a). This is the foundation of Caren’s theory of citizenship which points to the principle that the longer one stays in a country, the stronger the claim to remain (Carens, 2008a).

In addition, Mares (2017) supports this assertion that continuous residency should lead to permanent residence. Mares (2017) explains that the foundation of a consistent liberal approach to temporary migration must be an unconditional road to permanent residency after a specified amount of time. This follows Caren’s (2008a; 2008b; 2008c) assertion that temporary immigrants and workers must not be allowed to remain as some permanent underclass but

should enjoy similar rights to natives in due time. In this regard, Carens (2008a; 2008b; 2008c) argues that immigrants have a legitimate claim for permanent residency and citizenship after a given time ranging from five to 10 years.

Furthermore, the ZSPs had unintended consequences of othering Zimbabweans (Moyo, 2018). The ZSPs effectively marked Zimbabweans as outsiders, as people who do not belong in South Africa, people who are temporarily residing in South Africa for work purposes but will eventually "go back home" (Moyo, 2018:1153). The ZSP, unlike the DZP, did not allow holders to change their permit status while in South Africa (Matsvai-Mutsau, 2018). This means that after the expiry of the permits, Zimbabweans were required to leave South Africa and apply for mainstream permits while in Zimbabwe (Moyo, 2018; Moyo, 2020a; Nyakabawu, 2020). This was a stringent requirement because many Zimbabweans on the ZSPs could not meet the criteria for regular permits (Amit and Krieger, 2014). This is because standard permits have more requirements, unlike special permits (Amit and Krieger, 2014).

In addition, this stringent requirement highlight an underlying objective, which invokes the migrant labour system of the apartheid government, that ensured that Zimbabweans under the ZSP had to periodically leave South Africa and return to Zimbabwe (Moyo, 2018). Similarly, Matsvai-Mutsau (2018) argues that the ZSP, similar to the ZEP, was not extendable, meaning it presented Zimbabwean immigrants as short-term visitors who had to return to Zimbabwe after the expiration of their permits. The migrant labour system was similarly designed to force migrants to be perpetual "worker migrants" without the possibility of ever becoming citizens in South Africa. Like the migrant labour system, the Zimbabwe permits seem to ignore that some Zimbabweans had started a new life in South Africa (Moyo, 2018). The construction of Black migrants as short-term visitors is not only an act of politicisation that marginalises migrants when they want to reside in South Africa, but it is a longstanding othering immigration tool that the apartheid government employed to exclude Black migrants from South African citizenship (Moyo, 2018). Like the twentieth-century Black migrant workers from Southern African countries who built modern South Africa, Zimbabweans migrants are forced to be short-term "migrant workers" indefinitely and hence are continuously placed on special temporary permits with names such as "dispensation", "exemption" and "special" (Moyo, 2018).

5.5 Zimbabwean Exemption Permits

The DHA extended the ZSP by introducing the ZEP, which allowed ZSP holders to work for an additional four years until 31 December 2021 (Moyo, 2018). The DHA outlined that the ZEP was in line with the 2017 WPIM and was part of the government's aims to address the migration of low-skilled African migrants (Carciotto, 2018). The application of the ZEPs, similar to ZSPs, was done through the online VFS application process (Bimha, 2017; Nyakabawu, 2020). The ZEP application process was only applicable to those previously under the ZSPs (Pokroy, 2018). The individuals under the ZSPs were given the option to apply for the ZEP or a mainstream visa (Pokroy, 2018). The administrative fee was R1 090 required by DHA and an additional R1 300 fee for VFS (Bimha, 2017). The applicants were required to submit a valid Zimbabwean passport and either proof of employment, business or studies (Bimha, 2017; Nyakabawu, 2020). The applicants were then issued a receipt by VFS, which allowed them to continue studying, working or conducting business while waiting for their application's outcome (Bimha, 2017; Nyakabawu, 2020).

The application for the ZEP started on 15 September 2017, with the cut-off date being 31 November 2017 (Amit, 2011). This was a short period to regularise all the Zimbabweans on the ZSPs. The allocation of short periods to regularise Zimbabweans was also seen during the DZP and ZSP projects. The expiration of the ZSP on 31 December 2017 resulted in various employers and service providers terminating services to individuals who could not produce evidence of a new visa (Pokroy, 2018). There was a lack of communication or unwillingness by other government departments to help those without a ZEP (Pokroy, 2018). For instance, the traffic department and some banks were unwilling to help individuals who only had a VFS receipt to show they had applied for a ZEP (Pokroy, 2018). This affected many individuals studying, working or conducting business in South Africa.

The Minister of Home Affairs extended the application for ZEPs to the end of February 2018 (Pokroy, 2018). Pokroy (2018) explains that individuals with an original ZSP, a VFS receipt for ZEP application and had paid the administration fee were allowed to continue working, studying and conducting business in South Africa. Despite the extension, service providers did not immediately resume services with Zimbabweans as the processes took time (Pokroy, 2018).

Nyakabawu (2021) explains that the ZEP adjudications, similar to the ZSP, had more extended waiting periods. Nyakabawu (2021) argues long adjudication processes are characteristic of the migrant experience of the DZP, ZSP and ZEP. The long waiting periods associated with the DZP, ZSP and ZEP have subjected migrants to the disruption of livelihoods and business opportunities (Nyakabawu, 2022). This is because some migrants who did not have permits struggled to interact with service providers and employers.

Lastly, the government continuously emphasises the need for African solidarity with the countries that supported them in their struggle against apartheid (Hobden, 2020). For instance, in 2017, Mkhize incorrectly explained that the "ZEPs as an implementation of the AU's Agenda 2063 which facilitates the movement of people to promote development, trade, transfer of skills and social cohesion through cultural integration" (Mkhize, 2017:para 7). The ZEPs do not reflect the entrenchment of Pan-Africanism and regional integration that Minister Mkhize outlined; instead, the ZEPs are arguably a resuscitation of the migrant labour system (Moyo, 2018). The ZEPs force Zimbabwe migrants to occupy a position of a precarious labour force that continuously has to renew its short-term work visas. Instead of making South African citizenship accessible to Zimbabweans, the ZEPs appear to compel Zimbabweans to be perpetual "guest workers" in South Africa. Moreover, the ZEPs undermine the Pan-Africanist project to decolonise citizenship in postcolonial Africa.

This study advocates for postcolonial citizenship based on the African moral philosophy of communitarianism. A concept that fully captures the African moral philosophy of communitarianism is Ubuntu. Ubuntu revolves around the notion that the status of a person in African society is expressed in the statement, "I am because we are; and since we are, therefore I am" (Gyekye, 1997:32). Appiah (2004:540) further adds, "The African should always ask, 'who are we?' and not, 'who am I?' because 'my' problem is not mine alone, but 'ours'". At its core, postcolonial citizenship challenges the Eurocentric assumptions that influence our understanding of nation and citizenship (Nkrumah, 1973; van den Boogard, 2017). It does this by emphasising the sense of the shared history of colonialism among African states, as well as by framing the interests of individual African states around the philosophy of Pan-Africanism (Nkrumah, 1973; van den Boogard, 2017).

Pan-Africanism is the acceptance of oneness and unity among all people of African descent for the collective betterment of all Africans (Agohambe, 2008). This research argues for a modern

understanding of citizenship that acknowledges the history and legacies of colonialism that affect African people. This research argues against Western understandings of citizenship as membership in a nation-state. This is because the history of state formation in Africa, similar to the rest of the world, was based on the arbitrary construction of national borders (van den Boogard, 2017). Therefore, the "notion of citizenship formulated around the nation and state is problematic" in the postcolonial world (van den Boogaard, 2017:45).

In addition, Julius Nyerere, on top of his Ujamaa, also advocated for Pan-African citizenship as the best way to transform the African continent (Bird, 2016). Nyerere, similar to Nkrumah, emphasised changing the idea of what it means to be a citizen (Bird, 2016). Nyerere explains that citizenship should be expanded beyond the borders of national identity and should be viewed regarding membership in the African continent (Bird, 2016). The fundamental idea is that individuals of African descent have had similar experiences and histories wherever they live (Bird, 2016). Racial injustice, colonialism, and slavery are a few of these experiences (Bird, 2016). The post-apartheid conceptualisation of citizenship disregards this history. It could be argued that the DZPs, ZSPs and ZEPs fundamentally reject the idea of Pan-Africanism and postcolonial citizenship.

Furthermore, this chapter suggests that these special permits contradict the SADC Treaty and Declaration and the SADC Protocol on Facilitation of the Movement of Persons (Amadi, 2019). The SADC is committed to promoting Article 5 (2) (d) of the Declaration and Treaty of SADC, which states that member states shall "develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States", within a framework of the rule of law, democracy and human rights (SADC Secretariat, 1993:3). The SADC Protocol on Facilitation of the Movement of Persons (hereafter Facilitation Protocol) serves to implement this provision of the SADC Treaty (Amadi, 2019). In this regard, the Protocol promotes the African Union's vision for the free movement of persons (Amadi, 2019).

5.6 Conclusion

In conclusion, the ZSPs have managed to regularise undocumented Zimbabweans who would never have qualified for regular work and business permits. The relaxation of requirements for regular permits under the DZP enabled different undocumented Zimbabweans to legalise their

stay in South Africa. As a result, the regularisation of these undocumented Zimbabweans led to upward social mobility. It led to many Zimbabweans being employed, accessing loans and sending their children to better schools (Nyakabawu, 2021).

However, this chapter suggests that these special permits have strict conditions. For instance, the time spent under these permits does not count towards years for permanent residence or citizenship. In other words, these permits do not make South African citizenship available to Zimbabweans. In addition, these permits are also not extendable, meaning they present Zimbabwean immigrants as short-term visitors who have to return to Zimbabwe after the expiration of their permits (Moyo, 2018). The permits ignore that some Zimbabweans have started a new life in South Africa (Moyo, 2018). In this regard, the construction of migrants as short-term visitors is an act of politicisation that marginalises migrants when they want to reside in South Africa (Moyo, 2018). This contradicts the SADC Treaty and Declaration and the SADC Protocol on Facilitation of the Movement of Persons (Amadi, 2019). The SADC treaty encourages states to enforce policies that promote regional integration and human mobility.

More importantly, this thesis suggests that these permits use similar operating logic as White South African governments used the migrant labour system to exploit Blacks from all of Southern Africa in the 20th century. The DZP, ZSP and ZEP strongly emphasise nationality and colonial borders, simultaneously making Zimbabwean migrants perpetual "guest workers" who cannot access South African citizenship via these permits. The apartheid government also used colonial borders and the migrant labour system to exclude Black Africans from permanent settlement and citizenship. The migrant labour system used by the apartheid made all Blacks in South Africa "guest workers" who could be deported at a government's whims. The apartheid government used racist pass laws to regulate the movement of Black people in South Africa.

In contrast, the post-apartheid government uses ZSP to regulate the movement of Zimbabweans in South Africa. The pass laws were fundamentally racist, and their ultimate objective was to reinforce the idea of White citizenship, whereas the ZSPs are not racist. Their colonial similarity, however, lies in how they make Zimbabwean migrants perpetual migrants in South Africa and the various ways in which they cast Zimbabweans as not deserving of South African citizenship. These special permits do not lead to the acquisition of South African citizenship,

irrespective of how long one has had one of these permits. In effect, these special permits force Zimbabwe migrants to become “guest workers” who build the post-apartheid economy and then return home when they are no longer “useful” to the economy. This was the logic behind the pass laws and the migrant labour system. The migrant labour system made all Black workers temporary visitors on short-term contracts and required them to return home when their contracts expired. This system was meant to benefit the mining companies and the state (Paret, 2011). At its core, the migrant labour system reinforced the idea that Black Africans did not belong in South Africa (Johnstone, 1976). The migrant labour system made Black Africans perpetual outsiders who were banished from permanent settlement in the Union of South Africa and citizenship (Johnstone, 1976). The ZSPs achieve analogous objectives.

Chapter Six: Conclusion

This chapter concludes this thesis by summarising the key research findings. This research has contextualised Zimbabwean immigration to South Africa within the history of colonialism and migrant labour in Southern Africa. Global events such as colonialism, industrialisation, the discovery of minerals and South Africa's incorporation into the global world have played an active role in shaping the history of international migration to South Africa. This colonial history continues to influence policy, border management and immigration control. The amendments to the SACA, Refugee Act and the new BMAA highlight that this history continues to be instrumental. This study has critically discussed these policies. In addition, it has critically analysed the ZSPs within the historical background of the migrant labour system in South Africa.

The South African Government introduced the DZP in 2010. The DZP regularised Zimbabweans who overly used the asylum system (Amit and Krieger, 2014). The DZP regularised undocumented Zimbabweans who could not qualify for standard work, business and study permits. In addition, the DZP gave amnesty to those who had obtained fraudulent documents. The DZP was replaced by the ZSP, valid from 1 January 2015 until 31 December 2017. In 2017, the ZSP was replaced by the ZEP, valid from 2018 to 31 December 2021. These permits regularised over 200 000 undocumented Zimbabweans. This gave many Zimbabweans more economic opportunities as many families benefited from this regularisation process.

However, as explained in Chapter Five, these permits had stringent conditions. These permits were not extendable and could only be extended by the DHA. The years spent under these permits did not count for permanent residency or citizenship. This research has explained how these special permits effectively mark Zimbabweans as outsiders, as people who do not belong in South Africa, and people who are temporarily residing in South Africa for work purposes but will eventually "go back home" (Moyo, 2018:1153). The expiry of the ZEPs has resulted in many Zimbabweans returning to Zimbabwe because they will become illegal immigrants if they stay in South Africa beyond 31 December 2022. This stringent requirement appears to show an underlying objective similar to the migrant labour system of the apartheid government, which ensures that Zimbabweans under these permits should periodically leave South Africa and return to Zimbabwe (Moyo, 2018). The migrant labour system was similarly designed to force migrants to be perpetual "worker migrants" without the possibility of ever becoming

citizens in South Africa. This research suggests that presenting Zimbabweans as short-term visitors politicises and marginalises migrants when they want to stay in South Africa. These special permits function similarly to the apartheid pass laws that presented Black Africans as perpetual outsiders who did not qualify for citizenship in the Union of South Africa. This thesis acknowledges that the ZEPs and the previous permits are not racist per se, but they are xenophobic tools that embody the same exclusionary and othering logic as the pass laws.

This thesis suggests that the ZEPs highlight what seems to be "a tightening in access to South African citizenship" (Hobden, 2020:169). This research argues that post-apartheid citizenship has been reduced to indigeneity or autochthony, where citizenship is given by attachment to a territory, descent and birth (Hobden, 2020; Neocosmos, 2020). Indigeneity means that citizenship and nationality define those who belong within territorial boundaries, and those who do not are excluded from rights and entitlements (Neocosmos, 2010).

It is important to point out that the introduction of DZPs and ZEPs occurred against the background of various amendments to the SACA. The South African Government amended the SACA in 2004, 2007 and 2010. As mentioned in Chapter Four, the 2010 amendment stopped non-citizens from acquiring citizenship by birth for those born in South Africa (Hobden, 2020). This also applies to children whose parents are legally in the country and not permanent residents (Hobden, 2020). Therefore, children of permanent residents can now only become citizens when they reach the age of majority if they have lived in South Africa from their date of birth (SACA 2010, s.2(3); Hobden, 2020). Children of permanent resident parents are not citizens, a situation that negatively affects their access to healthcare and education.

The government further amended the Refugee Act in 2017. The Refugee Act amendments aim to make South African citizenship inaccessible to refugee migrants. The amendments state that refugees and asylum seekers do not have an automatic right to work or study (RAA 2017, s(18)(6,7,8). In addition, the South African Government adopted new policies such as the BMAA to make it difficult for Zimbabweans and other migrants from African countries to access citizenship in the country. The BMAA militarises the border and establishes a task force responsible for "tightening border management" (DHA, 2022a). Border militarisation represents African migrants as a threat to the South African nation (Correa and Simpson, 2022). The first 200 BMA border guards were unveiled on 8 July 2022 (DHA, 2022a). This research

suggests that these new policies are part of a plan to make South African citizenship inaccessible to African migrants.

In addition, the recent critical skills visa lists highlight the 2017 White Paper proposed changes to de-link critical skills and be eligible for permanent residence status (DHA, 2022b). Notably, the White Paper proposed de-linking temporary residency and refugee status, which previously entitled refugees to access permanent residency (DHA, 2017; Handmaker and Nalule, 2021). It also aims to de-link permanent residence leading to citizenship.

These amendments are not in line with the Constitution as outlined in the Watchenuka case because the prohibition against employment amounts to “a material invasion of human dignity that is not justifiable in terms of section 36 of the Constitution” (Watchenuka case, 2015, para 33). In addition, the right to work is instrumental in promoting a dignified life, socioeconomic progress and development (Baidoo, 2016). This right is established in the UN Charter and enshrined in the UDHR. The Refugee Convention and its 1967 Protocol guarantee the right to work. This thesis suggests that the right to work, study, and freedom of movement within a territory are fundamental in international law. Therefore, the amendments to the Refugee Act limit these basic rights.

The South African Government has been progressive in some aspects of its citizenship laws, such as granting naturalisation upon reaching majority to non-citizens and non-permanent residents born in South Africa. However, there has been a strict interpretation of the law, reflected by increasing xenophobia among some government officials and citizens. This is not in line with how the South African state identifies itself as a liberal and democratic state. This research has referenced the South African Constitution, which envisions a non-racialist, non-sexist, liberal, and free society. This document suggests that it is enough to live in South Africa to qualify for citizenship. The SACA amendments, the Refugee Act amendments, and the BMAA appear to highlight an agenda to tighten access to permanent residence and citizenship.

It is worth pointing out that the immigration amendments implemented over the past 20 years have primarily occurred against a background of widespread xenophobia in media, society and broader political culture. There has been xenophobic discourse in the media that uses metaphors to describe African immigrants as “floods”, “streaming”, “flocking”, and “hordes” (Amankwaa, 1996; Staff Reporter, 1996; Zaina, 1996; Kagee, 1997 cited in Danso and McDonald, 2001). There is a complex and mutually constitutive relationship between the

media, public attitudes and policymaking. In this regard, this relationship between the media and public attitudes highlights the direction of policymaking. This xenophobic discourse in the media and society has pushed for changes that effectively deal with African migration to South Africa. Zimbabweans in South Africa are seen as criminals, job stealers, illegal immigrants, drug traffickers, and as individuals who undermine the rights of native South Africans. The xenophobes in society, media and political elites have used "nativism" to justify their xenophobia.

This research argues that the construction of SA citizenship based on indigeneity is problematic because the modern African state is an artificial creation of colonialism with minimal regard for African people's cultural and lived realities. The post-apartheid government constructed and put into practice a narrow definition of citizenship based on indigeneity to nation-state borders. This limited understanding of citizenship excludes others based on colonial borders and encourages Afrophobia and xenophobia. Isike and Isike (2012) argues that South Africa's nationalist discourse of immigration portrays Africans as foreigners and a danger to citizens' social and economic rights. Neocosmos (2010) described this as a state "hegemonic conception of citizenship" where there is agreement that SA citizenship should be limited to those who can prove they are indigenous to the nation-state borders.

Similar to colonialism, there is a strong emphasis on nationality and colonial borders. This stands against regional integration and the vision of free movement in the SADC region. This thesis acknowledges that South Africa is a sovereign state with a right to manage and implement policies that regulate immigration and protect its citizens. This is difficult to implement in the SADC region because this hinders the drive toward regional integration (Moyo, 2018; Moyo, 2020b). This study suggests that South Africa has a responsibility toward Zimbabweans as a SADC member. This is because South Africa is a signatory to the SADC protocol/project/agenda that aims to promote regional integration through the free movement of people from SADC countries such as Zimbabwe. As a member of SADC, South Africa is responsible for developing policies that promote the free movement of persons.

In addition, that emphasis on national borders and identity should not be used to exclude other Africans unfairly. This study, similar to Bird (2016), argues that citizenship should be transformative and expand beyond limiting national identity and boundaries. Therefore, "national identity, however effective it has been in modern history, is only one of the possible

institutional forms of the community of citizens, and it neither encapsulates all of its functions nor completely neutralises its contradictions" (Baliba, 2001:438 cited in Bird, 2016:268). In this regard, it is not enough to use national identity to exclude others from citizenship.

This thesis advocates for a Pan-Africanist conception of citizenship, which is egalitarian, progressive and inclusive (Isike and Isike, 2012). A Pan-Africanist immigration policy can be derived from Julius Nyerere's principles of humanism which state that all humans are equal and every person has an equal right to a decent life (Nyerere, 1968; Chaulia, 2003). This is similar to the liberal perspective on citizenship, which states that where one is born is morally arbitrary (Song, 2018). In this regard, the state can play a pivotal role in encouraging human dignity and cultural traditions of hospitality, justice and compassion for distant and near relatives (Nyerere, 1968; Chaulia, 2003). These civic virtues can be used to prepare South Africans and other Africans for citizenship and integration (Chaulia, 2003). A Pan-African immigration policy should reflect these values of Pan-Africanism, liberalism or humanism. This thesis supports Nyerere's view of Pan Africa citizenship through the phrase, "I am because you are" (Nyerere, nd cited in Chaulia, 2003:154). In this regard, Pan-African citizenship states that "the wealth of a country or region is in its people" (Nyerere, nd cited in Chaulia, 2003:154).

Furthermore, this thesis acknowledges that Africa is diverse because of political, economic and cultural differences (Bird, 2016). Nyerere (1973, cited in Bird, 2016) explains that mutual involvement and sentiment of "African-ness" can be used to overcome these political, economic and cultural differences. This is what Nkrumah referred to as the African personality. African Personality is the social and cultural ties that bind all Africans and people of African descent (Nkrumah, 1973; van den Boogaard, 2017). The African personality is associated with our colonial past and our one-ness as Africans, which aims to liberate and unify Africa to create a just society (Nkrumah, 1973; van den Boogaard, 2017). This one-ness is rooted in humanism, egalitarianism and collectivism (Nkrumah, 1973; van den Boogaard, 2017). In this regard, differences in nationality and national identity among Africans are not barriers to Pan-African citizenship.

This thesis, similar to Nyerere (1973), does not deny the differences, but these differences should not be seen as barriers to Pan-African citizenship. The differences must be accommodated and used in a way that allows for the coexistence of differences (Nyerere, 1973). This is the vision that guides SADC. SADC acknowledges this and aims to "strengthen

and consolidate the longstanding social, historical and cultural affinities and links among the people of the region" (Southern African Development Community, 1992:5). Therefore, member states should be committed to developing policies that aim to eliminate obstacles to the free movement of the persons as outlined in the Facilitation of Movement protocol.

Appiah's (2004:540) describes the African personality by emphasising the importance of community: "The African should always ask, 'who are we?' and not, 'who am I?' because 'my' problem is not mine alone, but 'ours'". In this regard, the fate of all Africans is intertwined because of a shared history and a common destiny. This thesis argues that advocating for Pan-African citizenship alone is not enough, but there must be a change in thinking towards migration and the movement of people in the SADC (Lenaghan and Amadi, 2020). The critical step to effective responses and a progressive regional human mobility framework lies in changing policymakers' attitudes and easing their concerns about immigration (Lenaghan and Amadi, 2020). Some domestic immigration laws have adopted this protectionist approach, which has affected and influenced public opinion towards immigration, even at the grassroots level (Lenaghan and Amadi, 2020). This can be seen through xenophobia and negative public opinions that foreign nations will take away jobs from foreign nationals. Lenaghan and Amadi (2020) argue that rather than being seen as a problem, the movement of people should be viewed as a potential solution to economic needs. This study finds that adopting the protectionist approach at the domestic level has hindered the progression towards a more liberal and restrictive immigration framework at the regional level. This thesis, similar to Lenaghan and Amadi (2020), recommends that SA and SADC member states must get informed analysis and research from experts and intellectuals, which explains the developmental benefits of a gradual and liberal approach to the movement of people.

In addition, Gumede (2019) explains that Pan-Africanism, other than state-to-state relations, also emphasises people-to-people relations because communities are essential in the Pan-African unity that will take Africa forward. Isike and Isike (2012) argue that the SA government should facilitate discussions on constructing a new understanding of citizenship that is more Pan-Africanist, inclusive and linked to a broad vision of South African development. The inclusive nature of Pan-African citizenship entails making provisions for legal migrants and skilled Africans to earn SA citizenship periodically (Isike and Isike, 2012). Over time, there must be a pathway towards access to permanent residence or citizenship.

Ultimately, this thesis argues that the SA government needs to design context-specific immigration policies sensitive to migration history in the SADC region. More importantly, the post-apartheid government ought to develop migration policies that promote the spirit of the Constitution (Moyo, 2018). This is an area for further research because there is a literature gap on what a sustainable and context-specific immigration policy would look like. In this regard, this thesis argues that SADC should play a role in the formulation of immigration policies of all the SADC countries, including South Africa. As per the Ubuntu philosophy, which this thesis argues ought to underwrite Pan-Africanist citizenship, no country is an island in today's global economy. Therefore, the prosperity of each country in the SADC region depends on the prosperity of other countries in the region (Lenaghan and Amadi, 2020). In the interconnected world that we live in, the well-being of South African citizens is partly dependent on the well-being of the citizens of the SADC countries. The post-apartheid immigration policies in South Africa ought to acknowledge and recognise that simple fact.

With the above in mind, this study offers the following policy recommendations:

1. Active regional unity and coordination on issues of migration (Landau and Gindrev, 2008). This can be through bilateral agreements and regular consultations with non-governmental organisations, community leaders and trade unions (Landau and Gindrev, 2008). The bilateralism should not be exclusive but a steppingstone towards a sustainable regional framework for migration (Nshimbi and Fioramonti, 2014). Existing bilateral agreements should be redesigned to support regional policies (Nshimbi and Fioramonti, 2014).

2. Develop neutral policy frameworks that do not scapegoat African migrants (Landau and Gindrev, 2008).

3. A collaborative effort among SADC states in implementing proactive rather than reactive migration management frameworks that aim to promote the free movement of persons in the short and long term (Polzer, 2008).

4. South Africa to implement migration responses and frameworks that abide by the country's Constitution and the international law that South Africa is a signatory (Polzer, 2008).

5. A new temporary residence permit category that caters to those who do not meet the requirements for a business permit (Peberdy, 2008). This will help women in the informal sector of cross-border trading and individuals with small businesses.

References

Adepoju, A., 1995, Emigration Dynamics in Sub-Saharan Africa, *International Migration*, 33(3-4): 313-390.

African Union, 2013, AU Echo. Issue 5: Special Edition for the 20th AU Summit, January 27, http://summits.au.int/en/sites/default/files/AUEcho_27012013_v2.pdf [Date of access: 1 March 2022].

Alfaro-Velcamp, T. and Shaw, M., 2016, 'Please GO HOME and BUILD Africa': Criminalising Immigrants in South Africa, *Journal of Southern African Studies*, 42(5): 983-998.

Amadi, V.T., 2019, Facilitating Intra-Regional Trade Through the Movement of People in the Southern African Development Community (SADC).

Amankwaa, c., 1996, SA-Twilight World for Many: There has Been Criticism that the Government is Hard Only on Africans. *Sowetan*, 1 July 1996.

Amit, R. and Kriger, N., 2014, Making Migrants' Il-legible': The Policies and Practices of Documentation in Post-Apartheid South Africa, *Kronos*, 40(1): 269-290.

Amit, R., 2011, *The Zimbabwean Documentation Process: Lessons Learned*, African Centre for Migration and Society.

Anderson, B., 2017, The Politics of Pests: Immigration and the Invasive Other, *Social Research: An International Quarterly*, 84(1): 7-28.

Anderson, G.L., 2006, The Idea of the Nation-State is an Obstacle to Peace, *International Journal on World Peace,* 23(1): 75-85.

Aniche, E.T., 2018. Post-neo-functionalism, pan-Africanism and regional integration in Africa: Prospects and challenges of the proposed Tripartite Free Trade Area (T-FTA). *State and development in post-independent Africa*, pp.155-174.

Appiah, K.A., 2004, "African Philosophy and African Literature". In Wiredu, K. (ed.), *A Companion to African Philosophy*, Blackwell Publishing: Malden, Massachusetts, pp. 538-548.

Axtmann, R., 2004, The State of the State: The Model of the Modern State and Its Contemporary Transformation, *International Political Science Review / Revue Internationale De Science Politique,* 25(3): 259-279.

Baidoo, S., 2016, 'Bridging the Gap': Appraisal of the Factors Which Limit and Impede the Realisation of the Right to Work of Refugees and Asylum Seekers, *Pretoria Student L. Rev.*, 10: 18.

Beetar, M., 2019, A Contextualisation of the 2008 and 2015 Xenophobic Attacks: Tracing South African Necropolitics, *Current Sociology*, 67(1): 122-140.

Bernstein, A., 2021, South Africa's Rigid Policy on Immigration of Skilled People is Hard to Fathom, *Maverick*, 25 May, https://www.dailymaverick.co.za/article/2021-05-25-south-africas-rigid-policy-on-immigration-of-skilled-people-is-hard-to-fathom/ [Date of access: 4 March 2022].

Bimha, P.Z.J., 2017, *Legalising the Illegal: An assessment of the Dispensation of Zimbabweans Project (DZP) and Zimbabwe Special Dispensation Permit (ZSP) Regularisation Projects.* Master's thesis. University of Cape Town.

Bird, G., 2016, Beyond the Nation State: The Role of Local and Pan-national Identities in Defining Postcolonial African Citizenship, *Citizenship Studies*, 20(2): 260-275.

Business Tech, 2021, South Africa is Making Major Changes to its Borders – Here's What to Expect, *Business Tech*, November 24.
https://businesstech.co.za/news/government/541052/south-africa-is-making-major-changes-to-its-borders-heres-what-to-expect/ [Date of access: 10 June 2022].

Çağlar, A., 2022, Reorganisation of Borders, Migrant Workers, and the Coloniality of Power, *Citizenship Studies*: 1-10.

Carciotto, S., 2018, The Regularisation of Zimbabwean Migrants: A Case of Permanent Temporariness, *African Human Mobility Review*, 4(1).

Carens, J.H., 2008a, Live-In Domestics, Seasonal Workers, and Others Hard to Locate on the Map of Democracy, *Journal of Political Philosophy*, 16(4): 419-445.

Carens, J.H., 2008b, *Of States, Rights, and Social Closure,* New York: Palgrave Macmillan.

Carens, J.H., 2008c, The Rights of Irregular Migrants, *Ethics & International Affairs*, 22(2): 163-186.

Carens, J.H., 2013, *The Ethics of Immigration*, Oxford: Oxford University Press.

Chaulia, S.S., 2003. The politics of refugee hosting in Tanzania: from open door to unsustainability, insecurity and receding receptivity. *Journal of Refugee Studies*, *16*(2), pp.147-166.

Chigeza, S., De Wet, A., Roos, V. and Vorster, C., 2013, African Migrants' Experiences of Xenophobic Violence in South Africa: A Relational Approach, *Journal of Psychology in Africa,* 23(3): 501-505.

Chipkin, I., 2007, *Do South Africans Exist?: Nationalism, Democracy and the Identity of 'the People',* Johannesburg: Wits University Press.

Chiumia, S. and Van Wyk, A., 2014, *Factsheet: The new special dispensation permit and what it means for Zimbabweans in SA.* https://africacheck.org/factsheets/what-does thenew-special-dispensation-permit-mean-for-zimbabweans-in-sa/ [Date of access: 16 July 2022].

Clark, T. and Crépeau, F., 1999, Mainstreaming Refugee Rights. The 1951 Refugee Convention and International Human Rights Law, *Netherlands Quarterly of Human Rights*, 17(4): 389-410.

Correa, J.G. and Simpson, J.M., 2022, Building Walls, Destroying Borderlands: Repertoires of Militarisation on the United States–Mexico Border, *Nature and Culture*, 17(1): 1-25.

Correa, J. G. and Thomas, J.T., 2018, From the Border to the Core: A Thickening Military-Police Assemblage, *Critical Sociology*, 45(7-8): 1133-1147.

Crisp, J. and Kiragu, E., 2010, *Refugee Protection and International Migration: A Review of UNHCR's Role in Malawi, Mozambique and South Africa, Policy Development and Evaluation Service Report,* Geneva: UNHCR.

Crush, J. and Peberdy, S., 1998. Trading Places: Cross-Border Traders and the South African Informal Sector.

Crush, J.S., 1999, The Discourse and Dimensions of Irregularity in Post-apartheid South Africa, *International Migration*, 37(1): 125-151.

Crush, J.S., Chikanda, A. and Tawodzera, G., 2015, The Third Wave: Mixed Migration From Zimbabwe to South Africa, *Canadian Journal of African Studies/Revue Canadienne des Études Africaines*, 49(2): 363-382.

Crush, J.S. and McDonald, D.A., 2001, Introduction to Special Issue: Evaluating South African Immigration Policy after Apartheid, *Africa Today*, 1-13.

Crush, J.S. and Williams, V. (eds.), 1999, *The New South Africans?: Immigration, Amnesties, and Their Aftermath*, South Africa: Idasa.

Da Costa, R., 2006, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations,* prepared on behalf of United Nations High Commissioner for Refugees, Legal and Protection Policy Series, POLAS/2006/02.

De Gruchy, T.S., 2015, *Immigration Practitioners, Brokers, Agents: Investigating the Immigration Industry in South Africa*. Master's thesis. University of the Witwatersrand.

Danso, R. and McDonald, D.A., 2001, Writing Xenophobia: Immigration and the Print Media in Post-apartheid South Africa, *Africa Today*: 115-137.

Department of Home Affairs, 1999, *White Paper on International Migration*, Pretoria: Government Printer.

Department of Home Affairs, 2014, *Presentation on Zimbabwean Special Dispensation Permit ("ZSP") by the Home Affairs Portfolio Committee.* http://slideplayer.com/slide/4898352/ [Date of access: 16 July 2022].

Department of Home Affairs, 2015, *Statement by Home Affairs Minister Malusi Gigaba at the media briefing on progress made in the issuance of the Zimbabwe Special Permit (ZSP).* 24 August.http://www.dha.gov.za/index.php/statements-speeches/665-statementby-home-affairs-minister-malusi-gigaba-at-the-media-briefing-on-progress-made-in-theissuance-of-the-zimbabwean-special-permit-zsp-24-august-2015-pretoria [Date of access: 16 July 2022].

Department of Home Affairs, 2017, *White Paper on International Migration for South Africa*, Pretoria: Government Printer.

Department of Home Affairs, 2022, *Minister Motsoaledi unveils BMA Border Guard and Welcomes New Recruits.*http://www.dha.gov.za/index.php/statements-speeches/1572-minister-motsoaledi-unveils-bma-border-guard-and-welcomes-new-recruits [Date of access: 3 August 2022].

Department of Home Affairs, 2022b, *Withdrawal of waivers granted in terms of section 31(2)(c) of the Immigration Act 13 of 2002: Granting of permanent residence status in terms of section 27(b) of the Immigration Act: Graduates from SA tertiary institutions in the area of critical skills.* http://www.dha.gov.za/index.php/notices/1510-immigration-directive-02-of-2022 [Date of access: 5 August 2022].

Dolan, C. and Reitzes, M., 1996, The Insider Story? Press Coverage of Illegal Migrants and Refugees, April 1994-September 1995, *Centre for Policy Studies* (No. 48), Johannesburg, Research Report.

Du Pisani, A., 2000, Migration and Politics in Southern Africa: Past and Present. In J. Whitman (ed.), *Migrants, Citizens and the State in Southern Africa*, Great Britain: Macmillan Press Ltd, pp. 11-24.

Dzingai, M.C.N., 2016. *The Impact of Immigration on the Planning of Mining Cities in the North West Province.* Doctoral dissertation. North-West University.

Favell, A., 2014. The fourth freedom: Theories of migration and mobilities in 'neoliberal' Europe. *European Journal of Social Theory*, *17*(3), pp.275-289.

Fry, B.N., 2006, *Nativism and Immigration: Regulating the American Dream*, Texas: LFB Scholarly Pub.

Gigaba, M., 2014, DZP for Zimbabweans in SA to be Replaced by ZSP. http://www.politicsweb.co.za/party/dzp-for-zimbabweans-in-sa-to-be-replaced-by-zsp-m [Date of access: 20 January 2022].

Glaser, D., 2008, Connections: Elite and Popular “Common Sense” on the Matter of “Foreigners”. In *Go home or die here: Violence, xenophobia and the reinvention of difference in South Africa*, pp. 53-63.

Groves, Z., 2020. ‘Zimbabwe is my home’: Citizenship and Belonging for ‘Malawians’ in Post-Independence Urban Zimbabwe. *South African Historical Journal*, *72*(2), pp.299-320.

Guia, A., 2016, *The concept of nativism and anti-immigrant sentiments in Europe*, MWP 2016/20 Max Weber Programme.

Gumede, V., 2019. Revisiting regional integration in Africa-towards a pan-African developmental regional integration. *Africa Insight*, *49*(1), pp.97-111.

Gyekye, K., 1997, *Tradition and Modernity: Philosophical Reflections on the African Experience,* New York: Oxford University Press.

Handmaker, J., 2001, No Easy Walk: Advancing Refugee Protection in South Africa, *Africa Today*, 48(3): 91-113.

Handmaker, J. and Nalule, C., 2021, Border Enforcement Policies and Reforms in South Africa (1994-2020), *ISS Working Papers* - General Series 686, The Hague: International Institute of Social Studies of Erasmus University Rotterdam.

Harington, J.S., McGlashan, N.D. and Chelkowska, E.Z., 2004, A Century of Migrant Labour in the Gold Mines of South Africa, *Journal of the South African Institute of Mining and Metallurgy*, 104(2): 65-71.

Hobden, C., 2018, *Report on Citizenship Law: South Africa*. https://cadmus.eui.eu/bitstream/handle/1814/51447/GLOBALCIT_CR_2018_01.pdf [Date of access: 12 June 2022].

Hobden, C., 2020, Shrinking South Africa: Hidden Agendas in South African Citizenship Practice, *Politikon*, 47(2): 159-175.

Howard-Hassmann, R.E., 2010, Mugabe's Zimbabwe, 2000-2009: Massive Human Rights Violations and the Failure to Protect, *Hum. Rts. Q.*, 32: 898.

Human Rights Watch., nd, *Xenophobia and Attacks Against Migrants*, https://www.hrw.org/legacy/reports98/sareport/Adv5a.htm [Date of access: 15 July 2022].

Ignatieff, M., 1994, *Blood And Belonging: Journeys into the New Nationalism*, London: Vintage.

Isike, C. and Isike, E., 2012. A socio-cultural analysis of African immigration to South Africa. *Alternation*, *19*(1), pp.93-116.

Johnstone, A.F., 1976, *Class, Race, and Gold: A Study of Class Relations and Racial Discrimination in South Africa*, London: Routledge and Kegan Paul.

Jossel,. 1997, Should our Migrants be Welcomed as Assets, or Kicked out as Liabilities?, *The Star*, 21 July.

Kagee, H., 1997, Ad Hoc Immigration Policies Feed Xenophobia as Africa Moves South, *Argus*, 1 February 1997.

Katerberg, W.H., 1995, The Irony of Identity: An Essay on Nativism, Liberal Democracy, and Parochial Identities in Canada and the United States, *American Quarterly*, 47(3): 493-524.

Kavuro, C., 2022, The Disappearance of Refugee Rights in South Africa, *Obiter*, 43(1): 49-78.

Klaaren, J., 2017, *From Prohibited Immigrants to Citizens: The Origins of Citizenship and Nationality in South Africa*, Cape Town: Juta and Company (Pty) Ltd.

Landau, L.B., 2006, Protection and Dignity in Johannesburg: Shortcomings of South Africa's Urban Refugee Policy, *Journal of Refugee Studies*, 19(3): 308-327.

Landau, L. and Gindrey, V., 2008. Migration and population trends in Gauteng province 1996–2055. *Migration Studies Working Paper Series*, *42*.

Landsberg, C. (2012). Afro-Continentalism: Pan-Africanism in Post-Settlement South Africa's Foreign Policy, *Journal of Asian and African Studies,* 47(4), 436–448.

Lawyers for Human Rights, 2014, Press Statement: Lawyers for Human Rights responds to the new Zimbabwe permit announcement. http://www.lhr.org.za/news/2014/pressstatement-lawyers-human-rights-responds-new-zimbabwe-permit-announcement [Date of access: 12 June 2022].

Lee, C.J., 2011, Jus Soli and Jus Sanguinis in the Colonies: The Interwar Politics of Race, Culture, and Multiracial Legal Status in British Africa, *Law and History Review*, 29(2): 497-522.

Lelyveld, J., 1981, At South Africa's Mines, Race Barriers are Rigid, *The New York Times*, June, 9. https://www.nytimes.com/1981/06/09/world/at-south-africa-s-mines-race-barriers-are-rigid.html [Date of access: 10 June 2022].

Lenaghan, P. and Amadi, V., 2020. Advancing regional integration through the free movement of persons in the Southern African Development Community (SADC).

Maharaj, B., 2002, Economic Refugees in Post-apartheid South Africa–Assets or Liabilities? Implications for Progressive Migration Policies, *GeoJournal*, 56(1): 47-57.

Mangosuthu Buthelezi, Minister of Home Affairs, at the Southern African Migration Project's Conference, 'After amnesty: the future of foreign migrants in South Africa' (20 June 1997).

Mares, P., 2017, Locating Temporary Migrants on the Map of Australian Democracy, *Migration, Mobility, & Displacement*, 3(1): 9-31.

Matsvai-Mutsau, C., 2018, *Challenges to the Free Movement Residence and Work Rights of Foreign Migrant Workers in South Africa and Kenya: A Comparative Study.* Doctoral thesis. University of Pretoria.

Mbembe, A., 2017, Africa Needs Free Movement. *Mail and Guardian*, 1 July, https://mg.co.za/article/ 2017-03-24-00-africa-needs-free-movement [Date of access: 20 July 2022].

Meldrum, A., 2007, Refugees Flood from Zimbabwe. *The Guardian*, 1 July, https://www.theguardian.com/world/2007/jul/01/zimbabwe.southafrica [Date of access: 5 July 2022].

Menzel, A., 2013, Birthright Citizenship and the Racial Contract: The United States' Jus Soli Rule against the Global Regime of Citizenship, *Du Bois Review*, 10(1): 29-58.

Meyers, E., 2000. Theories of international immigration policy—A comparative analysis. *International migration review*, *34*(4), pp.1245-1282.

Meyers, E., 2004. *International immigration policy: A theoretical and comparative analysis*. Springer.

Michael, B.O., 2012. Panafricanism, African Boundaries and Regional Integration. *Canadian Social Science*, *8*(4), pp.232-237.

Mickler, D. and Sturman, K., 2021. Pan‐Africanism, Participation and Legitimation in the African Governance Architecture. *JCMS: Journal of Common Market Studies*, *59*(2), pp.446-458.

Minister of Home Affairs and Others v Watchenuka and Others [2004] 1 All SA 21 (SCA).

Mkhize, H.B., 2017, Statement by Minister Mkhize on the Closure of the Zimbabwean Special Permits (ZSP) and the Opening of the New Zimbabwean Exemption Permits (ZEP). http://www.dha.gov.za/index.php/statements-speeches/1034-statement-by-minister-mkhize-on-the-closure-of-the-zimbabwean-special-permit-zsp-and-the-opening-of-the-new-zimbabwean-exemption-permit-zep [Date of access: 10 June 2022].

Mlambo, V.H., and Adetiba, T.C., 2020, Illegal Migration and Cross Border Crimes: Reflecting on the Challenges of South African Borders, *Loyola Journal of Social Sciences*, 34.

Mlambo, V.H., 2020. Consolidating regional integration through a free movement protocol: the quest for collective development in the SADC. *African Journal of Governance and Development*, *9*(2), pp.455-471.

Mlangeni, B., 1996, 6 Million Headed Our Way, *The Star*, 31 May.

Monson, T. and Arian, R., 2011, Media Memory: A Critical Reconstruction of the May 2008 Violence. In Landau, L.B. (ed.), *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, Johannesburg: Wits University Press, pp.26-55.

Moyo, I., 2018, Zimbabwean Dispensation, Special and Exemption Permits in South Africa: On Humanitarian Logic, Depoliticisation and Invisibilisation of Migrants, *Journal of Asian and African Studies*, 53(8): 1141-1157.

Moyo, I., 2020a, On Borders and the Liminality of Undocumented Zimbabwean Migrants in South Africa, *Journal of Immigrant & Refugee Studies*, 18(1): 60-74.

Moyo, I., 2020b, On Decolonising Borders and Regional Integration in the Southern African Development Community (SADC) Region, *Social Sciences*, 9(4): 32.

Neocosmos, M., 2010, *From Foreign Natives to Native Foreigners. Explaining Xenophobia in Post-apartheid South Africa: Explaining Xenophobia in Post-apartheid South Africa: Citizenship and Nationalism, Identity and Politics*, UK: African Books Collective.

Newth, G., 2021, Rethinking 'Nativism': Beyond the Ideational Approach, *Identities*: 1-20.

Nkrumah, K., 1970a, *Class Struggle in Africa*, New York: International.

Nkrumah, K., 1970b, *12 Key Speeches of Kwame Nkrumah*, London: African Publication Society.

Nkrumah, K., 1973, *Revolutionary Path*, New York: International.

Nshimbi, C.C. and Fioramonti, L., 2014. The will to integrate: South Africa's responses to regional migration from the SADC region. *African Development Review*, *26*(S1), pp.52-63.

Nyakabawu, S., 2020, *Liminality, Papers and Belonging Amongst Zimbabwean Immigrants in South Africa*. Doctoral thesis. University of Western Cape.

Nyakabawu, S., 2021, Liminality in Incorporation: Regularisation of Undocumented Zimbabweans in South Africa, *Anthropology Southern Africa*, 44(1): 1-15.

Nyakabawu, S., 2022, Legal Aliens: Experiencing Civic Marginalisation in Entrepreneurship in South Africa, *Frontiers in Human Dynamics*: 14.

Nyerere, JK, 1968. *Ujamaa--essays on Socialism* (Vol. 359). Dar es Salaam: oxford university press.

Nyerere, J. 1973. "All Men Are Equal." In Freedom and Development: *A Selection from Writings and Speeches*, edited by J. Nyerere, 1968–1973. New York, NY: Oxford University Press.

Nyers, P., 2006, *Rethinking Refugees Beyond States of Emergency*, New York: Routledge.

Odunayo, M.A., Asuelime, L.E. and Okem, A.E., 2017, South African Policy on Migration and its Alignment with the UNO Charter on Refugee and Asylum-seekers, *Journal of African Union Studies*, 6(1): 81-96.

Organisation of African Unity, 1969, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, 10 September, 1001 UNTS 45, https://www.refworld.org/docid/3ae6b36018.html [Date of access: 7 June 2022].

Paret, M., 2011, Borders and Exploitation: Migrant Labor Systems in California and South Africa, *Berkeley Journal of Sociology*: 57-96.

Parliamentary Monitoring Group, 2014, *Zimbabwe Special Dispensation Permit: Department of Home Affairs update,* 4 November, https://pmg.org.za/committeemeeting/17791/ [Date of access: 10 June 2022].

Peberdy, S.A., 1999, *Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies, 1910 to 1998*. Doctoral thesis. Queen's University Kingston.

Peberdy, S.A., 2001, Imagining Immigration: Inclusive Identities and Exclusive Policies in Post-1994 South Africa, *Africa Today*, 48(3): 15-32.

Peberdy, S., 2002, April. Hurdles to trade? South Africa's immigration policy and informal sector cross-border traders in the SADC'. In *Workshop on regional integration, poverty and South Africa's proposed migration policy* (Vol. 23).

Crush, J. and Peberdy, S., 1998. Trading Places: Cross-Border Traders and the South African Informal Sector.

Pokroy, J., 2012, *Home Affairs Did Not Do So Well Last Year.* http://reference.sabinet.co.za/webx/access/electronic_journals/om_hrf/om_hrf_mar_2012_a20.pdf [Date of access: 16 July 2022].

Pokroy, J., 2013, *Department of Home Affairs 2012 Report Card: Legal-Border Crossing.* http://reference.sabinet.co.za/webx/access/electronic_journals/om_hrf/om_hrf_mar_2013_a19.pdf [Date of access: 16 July 2022].

Pokroy, J., 2018, Zimbabwe Exemption Permits and Multiple Passports. *HR Future*, 1: 46-47.

Pokroy-Rietveld, T., 2014, *Zimbabwean Special Dispensation Permits: Legal – Border Crossing.*http://journals.co.za/docserver/fulltext/om_hrf/10/1/om_hrf_oct_2014_a24.pdf?expires=1480087529&id=id&accname=57709&checksum=DC5BBB89A792E261B0F53532154ECE63 [Date of access: 16 July 2022].

Polzer, T., 2008, South African government and civil society responses to Zimbabwean migration, *South African Migration Programme*, 83.

Polzer, T., 2010, Silence and Fragmentation: South African Responses to Zimbabwean Migration. In Crush, E. and Tevera, D. (eds.), *Zimbabwe's Exodus: Crisis, Migration, Survival*, Ottawa and Kingston: IDRC and SAMP, pp. 377-399.

Portfolio Committee of Home Affairs, 2014, Steady Inflow of ZSP Applicants Welcomed, 5 November, http://www.parliament.gov.za/live/content.php?Item_ID=6756&Revision=en%2F0&SearchStart=0 [Date of access: 16 July 2022].

Potts, D., 2006, 'Restoring Order'? Operation Murambatsvina and the Urban Crisis in Zimbabwe, *Journal of Southern African Studies*, 32(2): 273-291.

Refugee Convention, 1951, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.*

Republic of South Africa, 1992, *Birth and Death Registration Act, No. 51 of 1992*, as amended.

Republic of South Africa, 2020, *Border Management Authority Act, Act 2 of 2020* (received Presidential Assent to 16 July 2020).

Republic of South Africa, 1976, *Citizenship of Transkei Act, No 26 of 1976.*

Republic of South Africa, 1996, *Constitution of South Africa (Act 108 of 1996).*

Republic of South Africa, 1995, *South African Citizenship Act, No. 88 of 1995.*

Republic of South Africa, 1997, *South African Citizenship Amendment Act, No. 69 of 1997.*

Republic of South Africa, 2004, *South African Citizenship Amendment Act, No. 17 of 2004.*

Republic of South Africa, 2010, *South African Citizenship Amendment Act, No. 17 of 2010.*

Republic of South Africa, 1998, *South African Refugees Act 130 of 1998.*

Republic of South Africa, 2017, *South African Refugees Amendment Act 11 of 2017.*

Rogerson, C.M., 1997, International Migration, Immigrant Entrepreneurs and South Africa's Small Enterprise Economy, *Migration Policy Series*, 3, Cape Town and Kingston: Southern African Migration Project.

Sajjad, T., 2018, 'What's in a Name? 'Refugees', 'Migrants' and the Politics of Labelling', *Race & Class*, 60(2): 40-62.

Schreier, T.H., 2014, *A Critical Examination of South Africa's Application of the Expanded OAU Refugee Definition: Is Adequate Protection Being Offered Within the Meaning of the 1969 OAU Refugee Convention?* Master's thesis. University of Cape Town.

Singh, O., 2022, *Zimbabwean Exemption Permit Extended to End-2022*, Businesslive, 7 January, https://www.businesslive.co.za/bd/national/2022-01-07-zimbabwean-exemption-permit-extended-to-end-2022/ [Date of access: 7 February 2022].

Slack, J., Martínez, D.E., Lee, A.E. and Whiteford, S., 2016, The Geography of Border Militarization: Violence, Death and Health in Mexico and the United States, *Journal of Latin American Geography*: 7-32.

Smith, A., 1996, Africa Floods Into Cape Town: War Refugees, Job-seekers, Changing the Face of City, *Argus*, 19 November 1996.

Solomon, R., 2019, Xenophobic Violence and the Ambivalence of Citizenship in Post-apartheid South Africa, *Citizenship Studies*, 23(2): 156-171.

Somali Association of South Africa v Limpopo Department of Economic Development Environment and Tourism 2015 (1) SA 151 (SCA).

Song, S., 2018, Political Theories of Migration, *Annual Review of Political Science*, 21: 385-402.

Southern African Development Community, 1992, *Declaration of Treaty*, http://www.sadc.int/documents-publications/sadc-treaty/28022015 [Date of access: 28 March 2022].

Southern African Development Community, 2005, *Draft Protocol on the Facilitation of Movement of Persons*. http://www.sadc.int/english/key-documents/protocols/protocol-on-the-facilitation-of-movement-of-persons/ [Date of access: 7 February 2022].

Southern African Development Community Secretariat, 1993, *Treaty of the Southern African Development Community*, Gaborone, Botswana.

South African Government, 2014a, *Remarks by Minister Malusi Gigaba, on the announcement of the Zimbabwean Special Dispensation Permit in Pretoria,* 12 August. http://www.gov.za/remarks-minister-malusi-gigaba-announcement-zimbabweanspecial dispensation-permit-pretoria [Date of access: 16 July 2022].

South African Government, 2014b, *Statement by the Minister of Home Affairs, Mr. Malusi Gigaba, in relation to the implementation of the Zimbabwean Special Permit,* 25 September. http://www.gov.za/statement-minister-home-affairs-mr-malusi-gigaba-relationimplementation- zimbabwean-special-permit [Date of access: 16 July 2022].

South African Government, 2015, *Minister Malusi Gigaba: Media briefing on closing of the Zimbabwe Permit Programme and the opening of the Lesotho Special Permit*, 25 November, http://www.gov.za/speeches/minister-malusi-gigaba-media-briefing-closingzimbabwe-permit-programme-and-opening-lesotho [Date of access: 18 July 2022].

Staff Reporter, 1996, Mozambicans Stream into SA., *Cape Times*, 6 December.

Tawodzera, G., 2014, Household Food Insecurity and Survival in Harare: 2008 and Beyond, *Urban Forum*, 25(2): 207-216.

Thebe, V., 2017, "Two Steps Forward, One Step Back": Zimbabwean Migration and South Africa's Regularising Programme (the ZDP), *Journal of International Migration and Integration*, 18(2): 613-622.

Thebe, V. and Maombera, P., 2019, "Negotiating the Border": Zimbabwean Migrant Mothers and Shifting Immigration Policy and Law in South Africa, *African Studies Review*, 62(4): 134-153.

Thomaz, D., 2018, 'What's in a Category? The Politics of Not Being a Refugee', *Social & Legal Studies*, 27(2): 200-218.

United Nations, 1945, *Charter of the United Nations*, 24 October, 1 UNTS XVI, https://www.refworld.org/docid/3ae6b3930.html [Date of access: 7 June 2022].

United Nations General Assembly, 1948, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), https://www.refworld.org/docid/3ae6b3712c.html [Date of access: 7 June 2022].

United Nations High Commission for Refugees (UNHCR), 2010, *Convention and Protocol Relating to the Status of Refugees*. Geneva: UNHCR.

van den Boogaard, V., 2017, Modern postcolonial approaches to citizenship: Kwame Nkrumah's political thought on Pan-Africanism. *Citizenship Studies*, 21(1): 44-67.

van Rensburg, A. J., 1994, Illegals in SA Add to Decay of Cities, *Sunday Times*, 25 September.

Verlinden, A., 2010. Free movement? On the liberal impasse in coping with the immigration dilemma. *Journal of International Political Theory*, *6*(1), pp.51-72.

Vogel, R.D., 2013. Marxist theories of migration. *The Encyclopedia of Global Human Migration*.

wa ka Ngobeni, E., 1998, Too Much Competition for Locals, *Mail and Guardian*, 11-17 September.

Washinyira, T., 2015a, Returning Zimbabweans Battle with Bureaucracy, *Ground Up*, 15 January,http://www.groundup.org.za/article/returning-zimbabweans-battlebureaucracy_2594/ [Date of access: 16 July 2022].

Washinyira, T., 2015b, Zimbabweans Remain Unhappy with Special Permit Process, *Ground Up*, 20 March, http://www.groundup.org.za/article/zimbabweans-remain-unhappyspecial-permit-process_2774/ [Date of access: 16 July 2022].

Wentzel, M. and Tlabela, K., 2006, Historical Background to South African Migration. In Oucho, J., Gelderblom, D. and Van Zyl, J, (eds.), *Migration in South and Southern Africa: Dynamics and Determinants*, HSRC Press.

Wroughton, L., 2022, *Vigilantes and Violence have Migrants in South Africa Scared for Their Lives*, The Washington Post, 5 June, https://www.washingtonpost.com/world/2022/06/05/south-africa-operation-dudula-immigration/ [Date of access: 8 June 2022].

Yudelman, D. & Jeeves, A., 1986, New Labour Frontiers for Old: Black Migrants to the South African Gold Mines, 1920-85, *Journal of Southern African Studies*, 13(1): 101-124.

Zvikomborero, M.E. and Chigora, P., 2010, An Analysis of the Coping Strategies Arising out of Food Shortages in Zimbabwe: A Case of Chitse and Kamutsedzere Wards of Mt Darwin District from 2007-2008, *Journal of Sustainable Development in Africa*, 12(2): 1-34.