



RECOMMENDATIONS

- South Africa's immigration system needs a thorough overhaul. Procedures must be strengthened to deter and detect corruption, which currently undermines efforts at managing immigration influxes, including the recent Zimbabwe Documentation Process.
- For the sake of South Africa's reputation as a protector of human rights, the credibility of its asylum system must be restored. The government might consider involving the UNHCR in clearing the backlog of asylum applications and in assisting to put in place asylum determination procedures robust enough to avoid refugee protection failures but efficient enough to avoid abuse.
- To counteract the toxic effects of xenophobic violence on social cohesion and domestic stability, South Africa's political elite should speak more openly about the political as well as economic reasons why Zimbabweans are fleeing to South Africa. African solidarity should not always mean solidarity with other African regimes, but also with ordinary men and women making hard choices in times of crisis.
- The South African mediation team working on behalf of SADC should acknowledge that a lasting and democratic resolution to the Zimbabwe crisis needs to include an acknowledgment of the political, not just economic, role the Zimbabwean diaspora can play. It should consider how to include the diaspora in the constitutional reform process and ensure voting rights for the diaspora in the Zimbabwean elections scheduled for 2012.

Linking South Africa's Immigration Policy and Zimbabwe Diplomacy

Anne Hammerstad¹

EXECUTIVE SUMMARY

The political and economic crisis that has riddled Zimbabwe for over a decade has created two serious challenges for South Africa's (SA) government. The first challenge is external: SA's quiet diplomacy approach towards Zimbabwe's ruling ZANU-PF has raised important questions about SA's position and reputation as a regional power and global actor. The second challenge is internal and can be described as an immigration and asylum crisis. This domestic crisis has deepened as the political situation within Zimbabwe has been left unresolved. Some one to three million Zimbabweans are estimated to be living in SA, most of them as undocumented migrants.

The two challenges are closely linked. Despite this, there has been little co-ordination of SA's immigration policy towards Zimbabweans and its foreign policy towards Zimbabwe. The political significance and opportunities, both for SA and Zimbabwe, of having a vast Zimbabwean diaspora in SA have been mostly ignored, at least at the level of public policy. As SA's immigration and asylum crises have been left to simmer the results have been detrimental to the country's internal stability and international reputation. At the same time, SA has not harnessed the potential positive political role the Zimbabwean diaspora can play in helping resolve the crisis in their homeland.

INTRODUCTION

For SA the impact of the Zimbabwe crisis has been two-pronged, posing both foreign policy and domestic challenges. The former, concerning the impact on SA's position and

reputation in regional and global politics, has been widely discussed and will not be the focal point of the briefing. The latter domestic sets of challenges concern the influx of Zimbabweans into SA in the wake of the collapse of the Zimbabwean economy. Despite paying more attention to this issue after the xenophobic riots of May 2008, the SA government's immigration approach towards Zimbabweans can best be described as a combination of 'benign neglect' at overall policy level, quietly accepting the presence of between one and three million Zimbabweans on SA soil, coupled with harassment at the level of police and immigration officials.

A TROUBLED IMMIGRATION AND ASYLUM REGIME

The public debate on how many Zimbabweans live in SA has been filled with unfounded, contradictory and politicised numbers. The fluid nature of Zimbabwean migration patterns, with some settling in SA for longer periods, others working for a few months on commercial farms, and others again merely trading for a few hours or days before returning home, means that the number of Zimbabweans present in SA at any time will vary. Adding to the problem of determining numbers, corruption within the Department of Home Affairs (DHA) has enabled many Zimbabweans to obtain fraudulent SA identity papers. Despite these caveats, it seems safe to estimate that somewhere between one and three million Zimbabweans are staying in SA. Zimbabwe's 2002 census, withheld from publication by the Zimbabwean government but leaked in 2004,² showed that compared to projections of 'normal' population growth from the 1992 census, two to three million people were 'missing'. Some of this is due to the HIV/Aids epidemic and reduced birth rates, but a considerable proportion must be attributable to emigration. The vast majority of those leaving were bound for SA. It should also be expected that emigration numbers increased after the census as the political and economic situation in Zimbabwe continued to deteriorate. In 2008 alone, SA deported around 300 000 Zimbabweans.³

IMMIGRATION POLICY RESPONSE

SA's immigration system was already under strain

before the Zimbabwean influx. The first Home Affairs minister of democratic SA, Mangosuthu Buthelezi, spent his 10 years in office putting in place a strict anti-immigration regime, particularly aimed at keeping low- or unskilled African migrants out of the country. The tough legislation was accompanied by intemperate pronouncements on the threats of African immigrants as stealers of jobs, scroungers on welfare, bringers of disease and perpetrators of crime – reflecting widespread and hostile sentiments among the SA populace, particularly in the townships and informal settlements most affected by the influx of undocumented African immigrants.

At the same time, SA's liberal constitution bestows rights not only on citizens but also foreign residents – documented or not. Asylum seekers have the right to seek work, education and healthcare while awaiting the outcome of their application – usually years down the line. Borders are relatively open and porous, pass laws are past history, and job opportunities in the informal sector are many. Thus, the immigration system is anti-immigrant in form, but littered with legal and practical loopholes. This combination of tough talk and legislation on the one hand, and an inability to stop undocumented immigration in practice, on the other, has provided ample breeding ground for discontent and xenophobia in the townships and informal settlements, and among police and immigration officers.

The SA authorities have responded to the Zimbabwean influx with a combination of *laissez-faire* at the broader policy level and hostility and harassment at street level. Until early 2009 SA did not have a policy specifically for Zimbabweans. In political terms they were almost a non-problem, to be dealt with administratively by the DHA and the police. Zimbabweans could enter SA with relative ease, but suffered the constant threat of police harassment, detention and deportation, as well as vigilante violence and xenophobic attacks. Such attacks became increasingly frequent during the 2000s, as African immigrants became scapegoats for problems of crime, unemployment and service delivery. In 2008, Zimbabwe reached a political and humanitarian low point, with rigged elections, widespread political violence, internal displacement, hyperinflation, a food crisis and a cholera outbreak. This led to an increase in Zimbabweans arriving at Beit Bridge, many in a

desperate condition. Despite the dire situation within Zimbabwe, DHA immigration officials continued to argue that Zimbabweans were simply economic migrants looking for jobs, thus adding fuel to xenophobic discontent.

Only after May 2008, when xenophobic riots left 62 people dead – many of whom were Zimbabwean – did the government seem inclined to tackle the rise in xenophobia, first by deploying the military to restore order and protect immigrants and then to finally take a closer look at its immigration approach towards Zimbabweans, by far the largest immigrant group in the country. A moratorium on deportations and visa-free entry for 90 days was introduced. Known as the 'special dispensation' this eased the situation for undocumented Zimbabweans in SA, and contributed to stabilising the economic situation within Zimbabwe through the freer flow of remittances.

The 'special dispensation' was suddenly revoked in September 2010, and substituted with a 'Zimbabwe Documentation Process' aimed at regularising the stay of undocumented Zimbabweans. The DHA promised a four-year work, education or business permit for those who could prove they had been in gainful employment, attending an educational institution or running a business (including informal stalls) on 1 May 2010, as long as the person showed up with a Zimbabwean passport to register with immigration authorities. This documentation process has been less than successful, with around only a quarter of a million Zimbabweans applying by the deadline in January 2011. There are many reasons for the reluctance to register, including difficulties in acquiring Zimbabwean passports and proof of employment, and a strong distrust of the DHA and whether it will actually come good on its promise of four-year permits. By September 2011, 134 369 permits had been issued, out of 275 762 applications received by the DHA.⁴ The uncertainties surrounding both the special dispensation and the documentation process mean that neither succeeded in taking pressure off SA's asylum system.⁵

THE ASYLUM CRISIS

Zimbabwean asylum application figures are staggeringly high. In 2008 SA became the world's number one asylum destination, with 207 200 new

asylum claims lodged. Of these new applications, 122 600 were lodged by Zimbabweans. The year after, another 149 453 Zimbabweans applied for asylum. By 2011, over 300 000 asylum seekers, the majority Zimbabwean, were still awaiting a decision, many having waited for years.⁶

Worse than the backlog, the asylum determination system is in tatters. The long waiting time combined with a superficial and pre-determined assessment of individual applications means that SA's asylum system invites widespread abuse⁷ at the same time as allowing serious protection failures. Zimbabwean and other migrants needing work, education and healthcare apply for asylum in the confidence that it will allow them several years in the country while awaiting a decision. Zimbabweans with genuine protection needs, on the other hand, such as victims of human rights abuses, political violence and persecution, have a near-zero chance of receiving refugee protection in SA, despite the country having signed up to the UN Refugee Convention. Despite the urgent need to reform its refugee status determination procedures, the SA government has kept the UN High Commissioner for Refugees' (UNHCR) Pretoria office at arm's length. It is, for instance, slow at providing asylum statistics to the refugee agency. SA could make much better use of UNHCR expertise and resources in order to work through its asylum application backlog, train staff in refugee law, and put in place robust procedures for asylum determination.

CONSEQUENCES FOR SOUTH AFRICA AND ZIMBABWE

SA has benefited from the influx of highly skilled Zimbabweans into its formal economy, an influx that has helped alleviate SA's skills shortage. This said, the government's long neglect of undocumented Zimbabwean immigration has affected SA adversely. Domestically, it has allowed xenophobic and autochthonous sentiments to fester to the extent that xenophobic violence and vigilantism have become a threat to domestic stability – at least within the confines of the townships and informal settlements. By keeping silent over why Zimbabweans have arrived in such dramatic numbers and by downplaying the political aspects of the Zimbabwe crisis, SA's political

elite has chosen not to make a case for the need to show African solidarity with Zimbabwean brethren in a time of crisis. Internationally, SA's reputation as a liberal democracy, champion of human rights and a 'rainbow nation' has been damaged by such outbursts of xenophobic violence, and by the failings of its asylum system.

The neglectful approach to Zimbabwean undocumented immigration has played a central role in SA's handling of the Zimbabwe crisis. The combination of silence at an overall policy level, and harassment, hostility and insistence on treating Zimbabweans as any other undocumented labour migrants, has worked well to complement SA's quiet diplomacy strategy towards Zimbabwe: SA has avoided criticising conditions within Zimbabwe or legitimising the diaspora's cause for flight. By suffering the presence of the Zimbabwean diaspora enough to allow remittances to flow back and opposition activists to stay in exile, SA has helped avoid economic collapse in Zimbabwe while also providing a political pressure valve for the ZANU-PF regime. Harassment, corruption and threat of deportation has reduced the possibility for the diaspora to group together as a political force.

CONCLUSION

The SA government's somewhat laissez-faire approach to the mass influx of Zimbabweans over the past decade has contributed to its quiet diplomacy strategy, but has done so at a cost to internal domestic stability and its reputation internationally. It has contributed to stabilising the situation in Zimbabwe, but at the same time has also contributed to propping up a status quo lacking in democratic credibility. Recent efforts to regularise the stay of Zimbabweans in SA, combined with a more vigorous and forceful mediation effort in Zimbabwe, show that the challenges posed by the xenophobic reaction to Zimbabwean immigration are now taken more seriously. A change in government attitude towards the Zimbabwean diaspora could have a positive effect

both on domestic stability and the prospects for a democratic Zimbabwe. If the government were to acknowledge the political as well as economic factors causing the exodus to SA; and if it would harness the potential of the diaspora beyond remittances to contribute to shaping an inclusive and democratic future for Zimbabwe, the SA government would achieve two things: It would tell a story to its domestic audience not of job stealers, criminals and welfare scroungers but of African brothers in need of solidarity and compassion during a time of crisis. It would also prepare the stage for engaging with the diaspora groups in a more democratic and inclusive manner, which would strengthen the long-term prospective for stability in Zimbabwe. It seems short-sighted to ignore in the negotiations for Zimbabwe's future, the fact that a significant proportion of Zimbabwe's citizens have voted with their feet and are currently residing in SA.

ENDNOTES

- 1 Anne Hammerstad is a lecturer in International Relations at University of Kent, an ESRC Global Uncertainties fellow and a research associate of SAIIA.
- 2 *The Economist* (Bulawayo) 'Where Have All the People Gone?', 25 November 2004.
- 3 Polzer T, 'Regularising Zimbabwean Migration to South Africa', Migration Policy Brief. Johannesburg: FMSP and CoRMSA, May 2009, p. 4.
- 4 Parliamentary Monitoring Group, *Zimbabwean Documentation Project: Briefing by Department of Home Affairs*, 20 September 2011, <http://www.pmg.org.za/report/20110920-department-home-affairs-zimbabwean-documentation-project>
- 5 UNHCR (UN High Commission for Refugees), *Global Appeal 2012-2013*, Geneva: UNHCR, 2011, p. 108.
- 6 Figures from official statistics of UNHCR and the Government of South Africa. Exact numbers have only been made available by the DHA up to the end of 2009.
- 7 In 2009 asylum seekers arrived from all over the world, including from Iceland, Denmark and 'Utopia', according to official South African asylum records.

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