

Legal Violence: Waiting for Zimbabwe Exemption Permit in South Africa

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Abstract

In 2010, the South African government regularised undocumented Zimbabwean migrants through a special amnesty programme called Dispensation Zimbabwe Programme (DZP) and the permits issued under its remit were valid from 2010 to December 2014. The DZP was succeeded by the Zimbabwe Special Permit (ZSP), introduced from 2015 to December 2017; this, in turn, was replaced by the Zimbabwe Exemption Permit (ZEP), effective from 2018 to December 2021. This article analyses the experiences of Zimbabwean migrants between application for replacement of ZSP permits and adjudication of ZEP permits. I argue that waiting facilitates legal violence that harms migrants' livelihoods and their loved ones. This article does not focus on cases of interpersonal aggression, or physical violence, but it concentrates on factors detrimental to the livelihoods of migrants and their loved ones, which prevent them from thriving socio-economically. Data was gathered through interviews with Zimbabwean migrants in Cape Town, South Africa. This article argues that the legality of Zimbabwean migrants was suspended because the migrants were waiting for the directive from the national Department of Home Affairs to announce the status of the expired permits. During this waiting period, migrants were restricted from getting government services and had their personhood erased through deprivation of livelihoods for a prolonged period without certainty about the outcome of their permits. The waiting also illuminates how different governmental frontiers share their power in exercising legal violence against migrants.

Keywords: legal violence; liminal legality; legal suspension; waiting; migrant vulnerability

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Introduction

In 2010, following political and socio-economic turmoil in Zimbabwe, the South African government regularised undocumented Zimbabwean migrants who had fled to the country through the Dispensation Zimbabwe Programme (DZP). DZP permits were valid for four years, from January 2010 to December 2014. When the DZP was closed, the Zimbabwe Special Permit (ZSP) was introduced from January 2014 to December 2017 and replaced with Zimbabwe Exemption Permits (ZEP) from January 2018 to December 2021. The DZP was meant to provide humanitarian relief to thousands of undocumented Zimbabwean migrants in South Africa, but its implementation creates vulnerabilities for the migrants as their legal status is characterised by the perpetual renewal of temporary and incomplete legality.

The DZP programme enabled many Zimbabweans to gain employment and access different socio-economic services such as healthcare and banking (Nyakabawu 2020, 121). Bloch (2010, 238) argues that the immigration status allows access to the regularised labour market and this would change the lives and experiences of the most marginalised and vulnerable migrants and their families by facilitating higher wages and greater scope for transnational activities. The regularisation process provided an opportunity for some Zimbabwean migrants to move from part-time temporary work to full-time permanent jobs. The DZP permit did not only improve the social mobility of migrants but also enhanced their transnational capabilities. The Financial Intelligence Centre Act (FICA) prohibits South African banks from opening bank accounts for undocumented migrants. Having a permit allows migrants to open bank accounts with South African commercial banks. In addition, banks and other financial institutions have a duty to inquire about the immigration or citizenship status of individuals and must report illegal foreigners to the Department of Home Affairs. Undocumented migrants face the risk of deportation when reported and any minor incident may jeopardise their entire existence, so most of them avoid contact with the state or these institutions, or keep it to a minimum (Manjengenja 2014, 21). Prior to DZP, South Africa arrested and deported illegal migrants back to Zimbabwe; 97 000 were deported in 2005, 200 000 in 2007, and 165 000 in 2008 (Crush, Chikanda, and Tawodzera 2015, 371). If a migrant does not have a bank account, his life remains precarious as he cannot secure formal employment or provide financial records for landlords prior to signing lease agreements. Thus, without bank accounts, migrants remain confined to unskilled labour regardless of their qualifications (Achieme 2013, 288).

This study focuses on the various ways that waiting for adjudication of ZEP serves as a period in which Zimbabwean migrants experience legal violence. I argue that waiting facilitates forms of violence that harm migrants' livelihoods and their loved ones. Importantly, the study does not focus on cases of interpersonal aggression or physical violence, but it concentrates on those instances detrimental to the livelihoods of migrants and their loved ones, which prevent them from thriving socio-economically. Thus, the contribution of this study is to clarify the mechanisms through which waiting

for the adjudication of permits affects employment, business, and education by analysing in-depth interview data collected from ZEP recipients in Cape Town, South Africa. By assessing the legal violence that occurs, it broadens our understanding of the experiences of migrants in South Africa at a time when the future of thousands of Zimbabwean migrants hangs in limbo as the ZEP expired on 31 December 2021. To this end, this study is organised as follows: the first section outlines the theoretical framework of liminal legality. This is followed by a discussion on the immigration amnesty, the Dispensation Zimbabwe Permit and its replacements until the Zimbabwe Exemption Permit. The last part analyses the legal violence that occurs while waiting for ZEP.

Theoretical Framework: Liminal Legality

The liminal legality framework is especially useful in understanding the central role of legal status in providing legitimacy to structural and symbolic forms of violence against migrants (Menjívar and Abrego 2012, 1380). Cecilia Menjívar's concept of liminal legality describes the "grey area between [documented and undocumented] legal categories, how this "in-between" status or liminal legality shapes different spheres of life" (Menjívar 2006, 1000). Building on Coutin's (2003) notion of the "spaces of nonexistence" inhabited by legally marginalised migrant communities, Menjívar (2006, 1016) conceptualised liminal legality referring to migrants from El Salvador and Guatemala with lawful status in the United States (US), but with no rights as other migrant visas. Coutin (2003, 173) defines spaces of nonexistence as referring to when "individuals can be physically present but legally absent, existing in a space outside of society, a space of 'nonexistence,' a space that is not actually 'elsewhere' or beyond borders but that is rather a hidden dimension of social reality."

In this space, migrants can be physically present and socially active but lack legal recognition. The space of nonexistence excludes people, limits rights, restricts services, and erases personhood and is largely a space of subjugation (Coutin 2003, 173). Menjívar (2006) posits that the liminal legality of these individuals was not because their lawful status is temporary, but because they and the members of their families and communities move in and out of statuses, between tentative lawfulness and more complete marginalisation (2006, 1016). Basically, liminal legality refers to a "grey area" where the legal and the illegal are difficult to split apart or awaiting legal location within one or more legal orders.

Research on liminal legality has generally focused on recipients of temporarily protected status in the US, which provides deportation relief and work authorisation to migrants fleeing crises in their home countries, but is subject to regular review and the potential for revocation (Patler, Hamilton, and Savinar 2021). Menjívar conceptualised liminality from Turner (1967) to explain liminal migrants as structurally invisible because they are at once no longer classified but not yet classified. Noting further, Menjívar argues that while immigration temporary relief programmes are empowering

and are positive moments in the transformation of migrant lives, they lose their empowering potential when they are repeatedly extended.

Following the same logic, the initial transition of Zimbabwean migrants from an undocumented status to DZP was initially empowering, but its benefits have diminished over time. The DZP was introduced as a temporary status similar to non-permanent statuses such as Temporary Protective Status (TPS) in the US. The permits given to Zimbabweans come with the conditions that: (1) do not allow a change of status of the permit, (2) they are not renewable, and (3) the permits do not grant holders permission to apply for permanent residence regardless of the period of stay in South Africa. The South African government also uses the terms “closure” and “replacement” than “expiry” or “renewal” so that the affected migrants cannot refer to “closed” and “replaced” policies if they ever attempt to claim permanent residence in future. In this article, the researcher argues that ZEP applicants in South Africa were legal, but the waiting made them exist in and out of statuses, between tentative lawfulness and more complete marginalisation.

Waiting for ZEP is an example of a policy and legal mechanisms that produce liminal legality. In understanding liminal legality, this study takes a slight variation on Coutin’s representation: to be illegally present is not to be “outside of society” but to be allowed to participate in some aspects of society, for example, banking but not working, school, or business. The liminal legality explained in this article is typical of Agamben’s (1998) inclusive exclusion. Indeed, migrants who were waiting for ZEP did have legal rights of mobility in South Africa. They could even move freely across national borders and access other categories of human rights but did not have access to economic opportunities of earning a living for prolonged periods without certainty about the outcome of their permits. According to Agamben (1998, 166–188), inclusive exclusion refers to the ways in which life is included in the juridical order only on the condition of an arbitrary exclusion by a sovereign power.

Similarly, Zimbabwean migrants were not necessarily illegal in South Africa while waiting for ZEP, but were in a precarious legal existence that affected their livelihoods as they had little or no access to economic opportunities. Thus, the legal violence occurred through a temporary debarment from or cessation of a privilege to progress socio-economically (Nyakabawu 2020, 125). Writing about waiting on the asylum-seeking process in Ireland through the Direct Provision System (DP), O’Reilly (2018, 834) argues that the DP becomes for many people “a limbo, an in-between space, inside Ireland but outside of Irish society, included and yet excluded in Agambenian terms” as applicants to exist in a “zone of indistinction” (Agamben 1998). Agamben (1995, 18) defined a zone of indistinction as “a state between inside and outside, where there is no difference between law and force, wherein individuals are subject to the law but not subjects in the law.” Noting further, Agamben (1998, 18) argues that “what is outside is included not simply by means of an interdiction or an internment, but rather by means of the suspension of the juridical order’s validity – by letting the juridical order, that is,

withdraw from the exception and abandon it.” In the case of ZEP, the recipients were not necessarily illegal but were also not legal. The Department of Home Affairs gave them protection from deportation, but they could not enjoy the benefits of a legal status.

The waiting for ZEP subjected migrants to legal violence. Menjivar and Abrego (2012, 1380) use the term “legal violence” to refer to the harmful effects of immigration policies in that it justifies violence against migrants with liminal legal status as structural or symbolic violence. The concept of legal violence incorporates the various, mutually reinforcing forms of violence that the law or immigration policy makes possible and amplifies, and this includes the exploitation of migrant workers, the exclusion, and further barring of migrants from education and other forms of socio-economic resources necessary for mobility and incorporation. The legal violence lens is useful in South Africa in that it exposes the contradictions in the implementation of immigration policies at national, provincial, and local government levels as it captures the suffering that results from and is made possible through the implementation of immigration policies that delimit and shape migrant lives on a routine basis (Menjivar and Abrego 2012). Structural violence manifests itself in wage insecurity and a general uncertainty that effectuates the suffering of vulnerable communities from thriving economically (Farmer 2004).

When migrants are repeatedly exposed to inequalities and violence, it becomes symbolic violence (Bourdieu and Wacquant 1992). The legal violence framework is especially useful in this study, because it exposes the centrality of immigration policies in providing legitimacy to structural and symbolic forms of violence against migrants (Abrego and Lakhani 2012). These instances described in this article show forms of structural and symbolic violence that are embedded in immigration policies in that, while purporting to “follow the law”, they simultaneously gave rise to practices that targeted Zimbabwean migrants waiting for ZEP adjudications. While waiting for ZEP, Zimbabwean migrants found themselves in extremely precarious conditions as their rights were limited, their personhood erased, and their livelihoods affected. The waiting for ZEP is a liminal experience as it demonstrates how states disrupt livelihoods and affect the chronological mobility of migrants through pegging conditions to legal statuses and giving vague directives that leave room for varied interpretations by government departments. The waiting does not only disrupt livelihoods, but it demonstrates how the South African government alienates and marginalises non-citizen residents, resulting in frustrated futures. As ZEP applicants waited for their permits, their livelihoods were threatened and jobs were lost.

Methodology

This study draws upon interviews done with Zimbabwean migrants as part of the researcher’s PhD fieldwork on Zimbabwean migrant entrepreneurs in Cape Town. The entrepreneurs were involved in agro-processing, transport and logistics, information technology, transport, education, accounting, and remittances among others. Suffice to

note that not all participants were affected by legal violence. This study is only limited to the few instances that when taken individually may be interpreted (or perhaps dismissed) as exceptions, but when examined collectively across different contexts, reveal group vulnerabilities specifically linked to waiting for adjudication of Zimbabwe Exemption Permits. At the time of the interviews, participants were waiting for the adjudication of ZEP status. Firstly, on November 4, 2014, the researcher sat in a sitting of the Portfolio Committee on Home Affairs at the Parliament of the Republic of South Africa. In the sitting, the Department of Home Affairs made a presentation on the closure of the DZP and opening of ZSP permits. The researcher worked on a part-time basis for the Parliamentary Monitoring Group, and some of the duties included writing summaries of proceedings of portfolio and select committee sittings. In this study, reference was made to notes, presentation, and statistics presented by the Department of Home Affairs.

Interviews were conducted between January and August 2018 with Zimbabwean migrants who see themselves as “entrepreneurs” in the various suburbs of Cape Town, namely Bellville, Maitland, Platteklouf, Platteklouf Glen, Joe Slovo, Epping, Goodwood, Wynberg, Somerset West, Kuils River, Parow, Brooklyn, Kensington, Milnerton, Parklands, Brackenfell, and Cape Town city centre. Most of the interviews were done at their places of residence, business offices, or at restaurants. An interview guide was used during the interview sessions; however, participants were allowed to talk about their life histories in an open-ended way based on the following themes:

- demographic characteristics such as hometown, year of emigration, reason for emigration;
- life in South Africa, how, when and why they ventured into entrepreneurship;
- challenges they face in entrepreneurship;
- how they use social networks; and
- whether they will return to Zimbabwe in future.

The interview guide was adjusted after interviewing the first five people by eliminating questions that seemed irrelevant and adding questions that were emerging.

In total, 28 people were interviewed with five of them being women. This is different from other studies such as those done by Makina et al (2007), where their gender breakdown was 41 per cent female and 59 per cent male and by Dendere (2015), where the breakdown was 50 per cent female and 50 per cent male. However, this should not be interpreted as an indication that more men than women are involved in entrepreneurship. For instance, Kativhu has a business that buys peanuts as a raw material, roasts, cleans, and grinds them into a peanut butter paste. In the 2017 and 2020 Zimbabwe Excellence Awards, his wife won the Female Entrepreneur of the Year Award. The point here is that rather than focusing on gender differences, it is best to see these business activities as family businesses.

In terms of age, the respondents were between the ages of 22 and 42. Most of them exited Zimbabwe when they were between the ages of 17 and 26 after completing secondary school. The majority left the country from 2006 to 2008. When most of the respondents left Zimbabwe, they did not even have passports. They used emergency travel documents. Two of the respondents did not migrate directly from Zimbabwe. The first exited Botswana in 2001 and then came to Cape Town when her husband got a job as a lecturer at one of the top universities in Cape Town. The other one migrated from the United States when the company he was working for was establishing an office in Africa and chose not to return to the US. In terms of immigration status, twenty-three participants had applied for Zimbabwe Exemption Permits, one had South African citizenship, two had a permanent residence status, and two had refugee status. The study did not intentionally select people with this status. In October 2020, I interviewed a teacher when the Western Cape Department of Education did not pay Zimbabwean teachers who had applied for ZEP until their permits had been adjudicated. After receiving their permits, the teachers submitted the copies to the Department of Education and the department took a further six weeks to verify if the permits were not fraudulent.

The Dispensation Zimbabwe Permit

The political and economic crisis of the early 2000s in Zimbabwe led to an unprecedented influx of its population into South Africa. A lot has been written about the Zimbabwean crisis and there is no need to explore it. In summary, the crisis is argued to have begun with the introduction of the Economic Structural Adjustment Programme (ESAP) of the 1990s, which decimated the Zimbabwean economy; opportunistic interventions in the DRC war in 1997; payment of war veterans' gratuities; the rise of an opposition political party in 2000; seizure and distribution of white commercial farms; Operation Clean-up among others (Sachikonye 2011; Nyakabawu 2020; Bimha 2017; Raftopoulos 2010; Bloch 2006; Crush and Tevera 2010).

However, the South African government denied the existence of the crisis in Zimbabwe. This did not only delay a political solution in Zimbabwe, but also undermined those displaced by the situation and sought protection and assistance in South Africa. Some of the people who left Zimbabwe during this period might be considered under the 1951 Refugee Convention as they left because of political persecution. The convention defines a refugee as "any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion" (Bloch 2010, 237). However, South Africa considered all Zimbabweans as economic migrants (Bloch 2010, 237). More so, when most Zimbabweans entered South Africa, Harare was the only government that had no visa-free agreement with Pretoria. A combination of this policy and Zimbabwe's political and economic conditions made it virtually impossible for the poor to enter South Africa legally (Polzer 2008). Over a million Zimbabweans lived in South Africa

by 2007 (Makina 2010). It is argued that the sheer number of Zimbabwean migrants made “the word ‘Zimbabwean’ a synonym for foreigner” (Muzondidya 2010, 42)

In 2005, there were only 7000 Zimbabweans with work permits, while 1000 asylum applications were granted from a total of 44 000 from 2002 to 2006 (Crush, Chikanda, and Tawodzera 2015; Polzer 2008). South Africa arrested and deported illegal migrants back to Zimbabwe, of which 90 000 were deported in 2005, 200 000 in 2007, and 165 000 in 2008 (Crush, Chikanda, and Tawodzera 2015). However, those deported always found their way back to the country as the economic and political conditions in Zimbabwe were at their peak crisis. This phenomenon is known as the “revolving door syndrome”, where migrants are deported and then return (Bloch 2010). Zimbabwe’s migration tested South Africa’s legal and institutional infrastructure for migration management to the limit that a new approach was required (Polzer 2008).

In 2010, the South African government introduced a special documentation amnesty programme called the Dispensation Zimbabwe Permit (DZP). The DZP permits were issued with the aim “to regularise Zimbabweans residing in South Africa illegally; curb the deportation of undocumented Zimbabweans; reduce pressure on the asylum seeker and refugee system, and provide amnesty to Zimbabweans who obtained South African documents fraudulently” (Carciotto 2018, 1105). Zimbabwean migrants were also urged to surrender other legalising documents such as asylum-seeker permits to a single category of a special permit (Nyakabawu 2020). The DZP documentation process targeted those who were working, studying, or operating their own businesses (Amit 2011). DZP applications were made directly at Home Affairs offices in metropolitan cities such as Cape Town, Durban, Johannesburg, and Pretoria. This exposed migrants to legal violence as some people travelled from faraway cities and villages to queue overnight outside offices. The people did not only stand in queues to submit their applications, but ate and drank in them, talked and laughed in them, argued and fought in them, gave birth in them and, sadly others died in them (Nyakabawu 2020; Jones 2019, 546). Those who slept outside Home Affairs offices were accosted by criminals, raped, or endured rain and very cold conditions in their quest to end legal indeterminacy.

Prior to the DZP, the South African government had granted three immigration amnesties from 1996 to 2000. These amnesties offered permanent residence to contract mineworkers from SADC countries. The target was mineworkers who had worked in South Africa for at least ten years before 1995, undocumented citizens of SADC member states who had entered the country clandestinely during the apartheid period and lived in South Africa for more than five years, and former Mozambican refugees who had entered South Africa before 1992 (Perbady 2001). Unlike previous amnesties that offered a permanent residence status, the DZP was the first immigration amnesty which did not provide for a permanent residence status – in fact, the permit is issued with a condition that it will not lead to permanent residency irrespective of period of stay in South Africa. The DZP and its successor permits are similar to the US’s temporary protected status (TPS), such as Deferred Action for Childhood Arrivals

(DACA) programme, which offers legal residency to nationals of designated countries and does not offer a pathway for permanent residency (Menjívar 2006).

DZP permits were introduced on the basis of section 31 (2) of the Immigration Act 13 of 2002. The section indicates that: “Upon application, the Minister of Home Affairs may under terms and conditions determined by him grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist which should justify such a decision. Provided the Minister may (i) exclude one or more identified foreigners from such categories (ii) or with good cause, withdraw such rights from a foreigner or a category of foreigners.” It is important to emphasise that this section of the Act only provides for permanent residency and not temporary status, such as DZP, ZEP, or ZSP. In October 2021, an attempt by the Zimbabwean Exemption Permit Holders Association to ask the Gauteng High Court to declare them permanent residents in terms of the Immigration Act was unsuccessful. Generally, a migrant becomes eligible for permanent residency after five years on a work visa, but the South African government has been using the language that the permits were “closed” instead of “expired” and “replaced” than “renewal” to make the recipients ineligible for permanent residency, because they have not lived on the same visa for five years.

The government of South Africa saw the DZP as a temporary solution to growing incidents of economic migration, and more importantly, as an experimental model for broader implementation in similar cases from other countries (Amit 2011). After the introduction of DZP, the South African government offered similar special permits to migrants from Lesotho and Angolan refugees who were in South Africa by 1998. The Angolan case is more interesting in that, the Angolan Special Permit was only granted to people who applied for a refugee status in the 1990s, leaving children born between 1998 and 2015 in illegality, entrenching their marginalisation, and limiting possibilities for economic mobility. However, in August 2021, South Africa replaced the Angolan Special Permits with Angola Exemption Permits. The Angolan Exemption Permits were issued as permanent residency and will not have an expiry date. More so, the spouses and children of the affected Angolan nationals were allowed to apply for mainstream visas or permits after the main member has obtained his exemption permit.

The Department of Home Affairs considered the DZP process a success, but statistics tell a different story: the population of undocumented Zimbabweans in South Africa was estimated at 1.5 million (Makina 2010). More so, only 4000 people had surrendered fraudulent documents at the end of the process, while 49,255 exchanged their asylum seeker permits for DZPs (Nyakabawu 2020). In total, Zimbabweans who applied for regularisation under DZP were 275 000 and 255 000 permits were granted. DZPs were valid from 2010 to 2014. The DZP was succeeded by the Zimbabwe Special Permit (ZSP), which was in place from 2015 to December 2017. It was, in turn, replaced by Zimbabwe Exemption Permits (ZEP) from 2018 to December 2021. All permits expire on the same day (31 December) regardless of the day on which one got one’s permit.

The South African government uses the terms “closure” and “replacement” so that the affected migrants could “refer to closed and replaced policies if they ever attempted to claim permanent residence in future” (Moyo 2018, 11).

The Zimbabwean Exemption Permit (ZEP) applications started in September 2017 and were only open to those with valid ZSP permits. No legal representation was required. Applications were submitted online via Visa Facilitation Services (VFS) Global website and an administration fee of R1090 (US\$77) was required for Home Affairs and R1300 (US\$90) handling fee for VFS. The closing date for applications was 30 November 2017. Applicants were required to submit a valid Zimbabwean passport, evidence of employment for work rights, evidence of business for a ZEP business permit, and evidence of study for a ZEP study permit. Applicants booked an appointment to submit biometrics at the VFS office. ZSP applicants received a receipt at VFS offices as proof of application. Applicants could track progress of their applications on the VFS website. From three days after submission of supporting documents at a VFS office, applications would show a status: “Received at Home Affairs Pretoria”, until the permit had been adjudicated and this status remained for many months.

Findings

Experiencing Legal Violence While Waiting for ZEP

Menjívar and Abrego (2012, 1380) argue that scholars must use a sociological optic to be able to focus on the violence that might otherwise elude attention. Noting further, they call for attention to the most salient spheres of life through which migrants experience the effects of violence and come into contact with institutions in the wider society, in particular, family unification, work, and school. In addition to these, I add traffic departments as one of the institutions where migrants experience violence. Legal violence captures the suffering that results from and is made possible through the implementation of immigration laws that delimit and shape individuals’ lives on a routine basis (Menjívar and Abrego 2012). In this section, I focus on situations that when taken individually seem to be exceptions, but when examined collectively reveal vulnerabilities specifically linked to the implementation of immigration law and interpretation of a directive issued by the Department of Home Affairs on December 11, 2017. The directive drew the attention of South African banks, employers, and learning institutions. The advisory read:

The Department of Home Affairs requests all Companies, Employers, Banks and Learning institutions to note that applicants for the Zimbabwe Exemption Permit who are in possession of ZSP permits which expire 31 December 2017 must be allowed to continue giving and receiving services as necessary until such a time they get their new ZEP permits, effective January 01, 2018. The condition is that they must provide proof of application either for a ZEP permit or mainstream visa. The proof of application maybe a VFS receipt or proof of payment. The Department has discussed this arrangement with the South African Banking Information Centre (SABRIC) so that ZEP

applicants will be allowed to transact and have access to their bank accounts. This is to ensure that ZEP applicants continue to transact with banks while their applications are being adjudicated. The Department has notified its officials in all Ports of Entry to allow those who wish to travel to Zimbabwe to do so without hindrance as long they provide the necessary proof of application or VFS receipt/proof of payment. In terms of the directive, ZEP applicants will not be marked as undesirable. We will allow all ZEP applicants with a ZSP visa or visitor visa to accompany parent on the ZSP to travel in and out of South Africa provided they submit required proof. The transitional arrangement is in light of the approval by the Minister of Home Affairs of a new four-year permit (ending December 31, 2021) for all Zimbabweans in possession of ZSP permit. The submission of fully completed applications commenced October 01, 2017 and was extended until 31 January 2018. The closing date for submissions of online applications and payment of prescribed services was November 30, 2017. We look forward to the cooperation of all parties concerned (Department of Home Affairs 2017).

A general reading of the advisory seems to have been addressed to all institutions where migrants were likely to be affected if they had an expired visa. Banks, employers, and learning institutions were named in the advisory. Section 39(1) of the Immigration Act (2002) notes that “no learning institution shall knowingly provide training or instruction to (a) an illegal foreigner; (b) a foreigner whose status does not authorise him or her to receive such training.” In other words, the Act makes learning institutions responsible for ensuring that they do not admit pupils or students whose legal status in South Africa is unknown or ambiguous. Section 8 (1) of the Employment Services Act of 2014 notes that “an employer may not employ a foreign national within the territory of the Republic of South Africa prior to such foreign national producing an applicable and valid work permit, issued in terms of the Immigration Act.” According to South African regulations, a fine can be imposed on a company for employing an undocumented person.

However, some learning institutions were not patient enough to wait for the adjudication of permits. This was evident in Shava’s experience. As a parent, he ended up having to withdraw his child from the school she was studying in. Shava is an entrepreneur with seven tipper trucks, which are often hired for road maintenance and construction projects. When I interviewed him in February 2018 in Milnerton, he said.

My first born is now 10 years old, now her ZEP permit is not yet out. My child cannot get proper schooling. She was at one of the schools in Bothasig. I ended up taking her out because they were giving me a hard time. Every week, they were calling saying they want her papers to the extent that they told me that they could write me a nice transfer letter or they were going to stop the child from entering the school. So now, I can only put her in private schools which are very expensive. In private schools, they do not worry about the papers; they just want their money. Alternatively, I can put her in a cheap school where it is not competitive. Where she is now, there are no sports. I decided that if she gets to Grade Five, I can take her home in Zimbabwe, put her in a boarding school where she can get proper schooling, where she can play netball, and where she

can do swimming. When we grew up, we all had those privileges at school; why not her?

Shava's narration shows his frustration as a parent and how waiting affects even children who are recipients of ZEPs. It can be argued that the behaviour of the school was in order and can or may go unquestioned because "it is the law" and this diverts attention from the forces that created the conditions of this violence in the first place. However, it also shows how school boards and principals are caught in between constitutional provisions and directives from Departments of Education and Home Affairs (Crush and Tawodzera 2011). Section 29(1)(a) of the South African Constitution establishes the right to basic education (for all children and adults) "as an immediate right unqualified by any limitation related to progressive realisation." Government has an obligation to take active steps to ensure that every child has access to educational facilities and enjoys the right to education (Crush and Tawodzera 2011). However, Section 39(2) of the Immigration Act states that "if an illegal foreigner is found on any premises where instruction or training is provided, it shall be presumed that such foreigner was receiving instruction or training from or allowed to receive instruction or training by the person who has control over such premises unless *prima facie* evidence to the contrary is adduced." In this Act, school heads are responsible for ensuring that they do not admit students whose legal status in South Africa is undocumented. Furthermore, if found with such pupils, they can be charged for helping an "illegal foreigner" under section 42(1), which prohibits anyone from "aiding, abetting, assisting, enabling, or in any manner helping" an illegal foreigner. In this case, legal violence manifested itself in that Shava's child was unable to continue studying at the same school as before.

On December 12, 2019, in the case of *Centre for Child Law and Others v Minister of Basic Education and Others* (2840/2017) [2019] ZAECGHC 126; [2020] 1 All SA 711 (ECG); 2020 (3) SA 141 (ECG), the High Court of South Africa ruled that Sections 39 and 42 of the Immigration Act 13 of 2002 do not prohibit the admission of illegal foreign children into schools and do not prohibit the provision of basic education to children of illegal foreign nationals. The High Court also interdicted schools from removing or excluding children, including illegal foreign children who were already admitted on the basis that they had no identity numbers, permits or passports, or had not produced any identification document.

In the directive noted at the beginning of this section, the Department of Transport was not included as the directive was addressed to employers, banks, and learning institutions. This haunted Godknows when he wanted to renew licence disks for his cars. Godknows came to South Africa in 2008 and owns a driving school. He has two small sedans for code eight licence (1000kg), four small trucks (3500kg) for code ten licence, and two heavy duty trucks for code fourteen licence. In addition, Godknows assists with the theory test for driving. When a foreign national wants to renew a motor vehicle licence or driver's licence, the municipal traffic department requires proof of residence

and a passport with a valid permit. The traffic department insisted to him that the advisory did not include the Department of Transport. The fact that Godknows could still cross the border freely and bank but not renew car licence disks meant that he was in a state of inclusive exclusion (Agamben 1998). He was not absolutely illegal because he did not have a permit yet, but he was experiencing legal violence at traffic services. Godknows's case also reveals disaggregation of state actors and power in the governance of individuals with liminal legal statuses (Chacón 2015). Understanding these dynamics is important in that it overrides the presumption of a monolithic Department of Home Affairs responsible for governing a diverse migrant population.

The traffic services department insisted that the advisory mentioned only banks, learning institutions, employers, and therefore, it was not obliged to render services to migrants whose permits had closed or expired. He narrated his challenge with the traffic services as follows:

I applied for a ZEP business permit, but it's not yet out. This is March 2018. I submitted my application in October 2017. I have a business to run. I need to renew my licence discs for my vehicles to be on the road. I can go to the bank to do transactions. If you go to traffic department, they say we cannot help you without a permit. What am I going to do? I am in the country legally. I tried to explain to them that take me as an example. There is my permit, I applied for it. I have been on this permit since 2010. I had a DZP, moved to ZSP, and now I applied for ZEP. I have vehicles on the road. They tell me I need to wait for my permit to be licenced. Those are regulations we work with. They should understand since I have got a receipt, and I have been in the system. They just make things difficult where it is not necessary especially for foreigners. As a foreigner, I go through this. They gave me a hard time. You go to Home Affairs, and they say we gave them a letter, and if they do not want it, what do you think we must do? You go back to traffic, they say the letter does not state traffic department. You have those situations. It does affect our clients who are foreigners as well. As a foreigner I encounter such challenges from the traffic department because that is where we do our business. If people give you regulations that you must stick to, and if they cannot help you, there is nothing you can do.

Godknows's narration reveals some of the challenges of waiting that migrants face especially in the period between submission of an application and its adjudication. While waiting itself is a prominent feature of everyday life in South Africa, it is graver for the migrant as all things come to a standstill. Godknows had run out of options and was rendered powerless as Home Affairs could not help. At the same time, the Traffic Department has licence testing as one of its responsibilities and it does not allow an unlicensed vehicle to be used for a driving test. Traffic police officers also enforce licensing regulations on the road. Thus, the waiting for the replacement of permits gains particular meaning in relation to the context in which it plays out (Sutton, Vigneswaran, and Wels 2011). The waiting regime operates through bureaucratic violence, characterised by the imposition of delay, uncertainty, and prolonged waiting (Everaert 2020). The refusal by the municipal traffic services did not only affect the renewal of

Godknows's licence disks, but also that of his main target customers who are foreigners attempting to get driver's licences. Thus, waiting is legal violence in that it made the existence intolerable for certain groups of people affected by the delay in ZEP adjudication. In this case, the structural violence caused uncertainty of everyday life by attacking the source of livelihood, resulting in insecurity of income, which in turn results in chronic deficit in food, dress, housing, and health care, and uncertainty about the future which translates to hunger (Menjvar and Abrego 2012). Farmer (2004) argues that the suffering that results from structural violence is conspired to constrain agency and in this case, it was to limit the source of livelihood.

Migrants without permits become legal ghosts and are unable to interact with the society in the normal channels as income opportunities are lost. The High Court of South Africa previously dealt specifically with the consequences of legal violence caused by prolonged waiting for migrants in the case of *Eisenberg and Others v Director-General Home Affairs and Others* 2012 (3) SA 508 (WCC)¹ in paragraph 85 of the judgment, which reads:

For a foreigner in South Africa, these permits are the single most important document they can possess. It is the basis of their legal existence in this country. Every aspect of their lives – the ability to travel freely (s 21 of the Constitution); the ability to work and put food on the table for their families (a component of the right to dignity in s 10 of the Constitution, see *Minister of Home Affairs and Others v Watchenuka and Another* 2004(4) SA 326 (SCA) at 339B-C and F-G, 340G); the ability to keep their children in school (ss 28 and 29 of the Constitution); and the basic right to liberty (s 21(1) of the Constitution) – is dependent on the physical possession of a valid permit. The acquisition of a valid permit is the primary pre-requisite for any foreigner in South Africa.

The judgment makes it clear that without permits, migrants are subjected to legal violence. The main vulnerable group that endured the most was teachers working for the government. Their livelihoods were heavily affected. The Eastern Cape Provincial Department of Education did not pay teachers for marking matriculation examination papers because their permits had expired. This was despite the permits being valid when they rendered their services in December 2017 (Menzelwa 2018). The Western Cape Education Department also did not pay Zimbabwean teachers who had applied for ZEP until their permits had been adjudicated. After the adjudication of the permits, teachers submitted copies of the permits to the education department, but it wanted to first verify if the permits were not fraudulent. This process took a minimum of six weeks, and in some instances, more than three months to verify permits for teachers (Washinyira 2018). Some went for ten months without receiving a salary, waiting for the permit.

1 2012 (3) SA 508 (WCC) para 85.

In October 2020, I interviewed Dorcas, a teacher at one of the township primary schools. She narrated her experience of waiting for ZEP in 2018 as follows:

Certainly, I think I need a break from teaching as the past years had been rough for me. I could have broken down in 2018 but God pulled me through. I was frustrated to the marrow and I no longer want to go through this again in my life. Life as a migrant teacher with the Department of Education in South Africa has never been an easy journey... It has never been easy surviving without a payment as I have a lot of responsibilities to take care of... The 2018 situation was a nightmare. In 2018, the school arranged to give me something but the school governing body is struggling as it is in a poor community, so they were giving me R3500 (US\$200) salary per month. Imagine from around R25000 (US\$1760) a month... It was painful to work for five months for no payment. The year 2018 changed my life completely. We struggled, we only survived when I had to make *maheu* (homemade drink) that I would go around selling.

The above excerpt from the interview shows that waiting for ZEP is a form of structural violence that manifests itself in wage and job insecurity and a general uncertainty that effectuates the suffering for vulnerable communities from thriving economically (Farmer 2004). Dorcas's sense of life moving forward became suspended or stuck as her ZEP application lingered, placing the very viability of her life and family in a state of profound uncertainty (Haas 2017). Dorcas has two children in universities in Zimbabwe and complained that it is difficult to meet monthly expenses when she is not earning an income.

More so, the ZEP was problematic in that it was a temporary special conditional legality that enabled holders to be in South Africa for a specific period of time. It could be terminated at any time when the government decided not to replace it as it did in November 2021. Moyo (2018,13) argues that the conditions on ZEP permits "depoliticise and make Zimbabwean migrants invisible by constructing them as temporary sojourners who do not and should not belong." The ZEP visas have conditions that do not allow a change of status since they are not renewable. In addition, holders cannot apply for permanent residence. This means migrants live in limbo with no sense of security or control over the future, exhibiting what O'Reilly (2018) calls "ontological liminality." The inherent legal uncertainty comes from lack of assurances of definitive stay in South Africa and the permits have generally been replaced as a matter of grace. This inherent fragility creates instability in many aspects of the lives of Zimbabwean visa holders. Through the ZEP, the South African government asked Zimbabwean migrants to accept certain responsibilities, such as working, doing business, or studying, but remaining temporary by not integrating too much into the fabric of the host society. Writing on the regularisation of central Americans in Mexico, Basok and Wiesner (2018) argue that conditions attached to status regularisation of migrants from El Salvador, Guatemala, and Columbia render the legality that migrants have insecure and unstable. Ong's (1999, 215) theory of zones of "graduated sovereignty" indicated that "nation-states construct personhood and mobility through popular and policy discourses on immigration where national borders are used as a

disciplinary force to manipulate national identity.” The ZEP makes it clear that it has no path to permanent residence, regardless of the period of stay in South Africa. By granting this temporary conditional legality, the South African government “indefinitely prolongs the experience of displacement, denies individuals many rights afforded to other immigrants, and actively shapes their identities” (Mountz *et al* 2003, 336). Without prospects of permanent residency, Zimbabwean migrants remain “temporary” residents. Noting further Mountz *et al* (2003, 342) argue that when the state constructs migrants as “temporary residents”, “it affects the material struggles of daily life in profound ways.” In the United States, people with temporary protected statuses save as much money as they can all the time, because they expect a possibility of their papers not being renewed (Abrego and Lakhani 2015). More so, the DZP and its successor permits make it difficult for family unification as they cannot be easily extended to a spouse or to children. The applicants who originally applied for the permit in 2010 were the only ones who qualified for replacement. Shumba spoke of this difficulty when he said:

I am busy moving back to Zimbabwe. Nothing welcomes me here. If they had put a fee of R200 000 to get permanent residence, I would know I can buy a house. I can make proper papers for my family. We cannot even fly to England from South Africa. Now that is life. Now we have money which we cannot even enjoy. I can only enjoy it myself. Policies and systems of every country do not welcome foreigners. The problem with us is we want to stay. To be honest, I would love to stay here, but it is a pity we are building going back home. The South African government does not want to give us permanent residence. I have been here for how many years, I do not even know. I don't even have a house.

Shumba said he cannot visit the United Kingdom, because the conditions of the ZEP have led to visa denials for Zimbabweans intending to visit other countries. The embassies always say that the conditions of the special permits signal the probability that holders may not return to South Africa. The conditions of ZEP are not ideal for house ownership. Owning a house signifies a person's belongingness to a particular space and lack of it creates an existential crisis of belonging. Thus, Zimbabwean migrants are unwilling to buy houses without certainty of their residence status. The house itself is a site of materiality in which claims of belonging are made. Rykwert (1991, 53) notes that the association of a house as a site of belonging was consolidated in English case law in the early 17th century by the Jacobean Judge, Sir Edward Coke. The judge declared: “The house of every man is to him as his castle and fortress, as well as his defence against injury and violence, as for his repose” (Rykwert 1991, 53). Having a house in South Africa also constitutes a proper person as understood by Zimbabweans as part of their personhood. The anthropological concept of personhood refers to the ways in which social persons are created in different societal contexts (Morreira 2013). As a result, Shumba's wife and child cannot fly to Zimbabwe from Cape Town neither can they plan a holiday to the United Kingdom. It can be argued that Shumba has been thrust into abjection wherein “the possibility of realizing one's full and proper personhood is indefinitely suspended” (Worby 2008). Similarly, Ferguson

(1999, 236) defines abjection as “a sense of which the promise of modernization had been betrayed and there were thrown in the full circle of humanity, thrown back into the ranks of the underclass and cast down into world of rags.” It is the futility of enjoying his wealth with his family that makes Shumba experience legal violence because of the juridical status of his family members.

In October 2021, the Zimbabwean Exemption Permit Holders Association in the case of *African Amity NPC and Zimbabwe Permit Holders Association vs Department of Home Affairs*, case no. 51735/21 asked the North Gauteng High Court, on an urgent basis, to review and set aside the decision by the Department of Home Affairs not to renew residency permits knowing that the holders of the permit have known no other home besides South Africa for more than 10 years. The court denied to hear the case on an urgent basis and the case is still to be heard in court. The approval or granting of permanent residence to people on special temporary permits in South Africa was also highly unlikely. The 2017 White Paper on International Migration called for the replacement of permanent residency with long-term visas, thus delinking the progression from legal residence to citizenship. In November 2021, South Africa did not offer replacement for Zimbabwe Exemptions Permits. The affected migrants were given 12 months to migrate to mainstream visas. The Department of Home Affairs issued another directive as the one discussed earlier in this paper. Zimbabwean migrants whose areas of work are not listed in the directive will be affected. There is a possibility that ZEP holders may move from liminal legality to undocumented status at the expiry of their grace period on December 31, 2022 as some of them may not qualify for mainstream visas.

Conclusion

This article has shown that Zimbabwean applicants waiting for the adjudication of ZEP permits experienced legal violence. This analysis brought together a few situations that when taken individually may have been dismissed as aberrations or exceptions, but when examined collectively across different contexts, revealed the vulnerabilities suffered by Zimbabwean migrants while waiting for the adjudication of ZEPs. It did not focus on physical aggression per se, but how waiting affects the livelihoods of ZEP beneficiaries as salaries were not paid, learning was disrupted, and businesses could not run. The findings in this study have relevance to the ongoing uncertain futures of thousands of Zimbabwean migrants and their loved ones in South Africa. Given that there is no extension of ZEP, there is widespread concern that the future of ZEP beneficiaries will be characterised by a new cycle of legal violence. There is no doubt that the DZP and its successor permits gave holders access to the regularised labour market that changed the lives and experiences of the most marginalised by facilitating higher wages and greater scope for transnational activities. However, ZEP recipients' well-being was routinely undermined by the uncertain future of these permits, which will have enormous effects on the lives of many people. I conclude that with the non-replacement of Zimbabwe Exemption Permits, the long-term future of ZEP holders and

other liminally legal statuses in South Africa will be legal violence, uncertainty, and anxiety.

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