



ASILE

Global Asylum
Governance and
the European
Union's Role

Country Report

SOUTH AFRICA

Complementary pathways and the
Zimbabwean Dispensation Project

D4.5 Final Country Reports

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Executive Summary

The object of this Report was to consider the temporary protection granted to Zimbabweans by the South African government under the so-called Zimbabwean Dispensation Program. Further, it was considered if this temporary protection amounted to a 'complementary pathway' as enshrined in the United Nations Global Compact on Refugees (GCR), or if it was a form of containment.

South Africa, as a neighbouring country to Zimbabwe, has hosted many Zimbabwean nationals either as refugees, asylum seekers or economic migrants. A unique legal Dispensation Program was authorised by the South African government in 2010, allowing Zimbabwean nationals to transition from their existing permits, refugee or immigration alike, to hold a temporary Zimbabwean Dispensation Permit. In subsequent years, the South African government had maintained this dispensation under various titles, shifting conditions and creating an increased sense of precarity for Zimbabweans living and working in South Africa. The political shift in both South Africa and Zimbabwe has called for a focus on the issue of migration and has been a longstanding point of contention. In 2021, a decision was made to terminate this dispensation program, triggering litigation charged by South African human rights organisations. The effect of this was a direct impact on an estimated 178 000 Zimbabwean nationals and their legal status in South Africa.

In 2021 and 2022, the University of Cape Town Refugee Rights Unit followed a qualitative research framework and held interviews with affected Zimbabwean nationals, including asylum seekers, refugees, holders of the various versions of the dispensation permit and economic migrants. The purpose of which was to elucidate the impact that the pending termination of the Dispensation would have on their livelihoods, their options to remain in South Africa and broader sentiments regarding the prospect of their return to Zimbabwe. The findings reflect a generalised sense of uncertainty and an overwhelmingly negative response towards the South African government's decision to terminate the dispensation.

It was determined against existing legislation, namely being the Refugees Act of South Africa, that the South African government, along with its international obligations, had options that would have saved the decision to terminate the Dispensation Program. The research conducted, enhanced by the content provided through the interviews, supported the fact that South Africa could have adopted a broader humanitarian approach, in line with the Organisation of African Unity (OAU) Convention governing the Specific Aspects



of Refugee Problems in Africa. However, their consequent failure to provide for a robust and timely solution to what has become a protracted problem is a clear indication that the South African government was set on prioritising ‘migration management and control’ over safeguarding human rights as emphasised by the Refugees Act. The decision to terminate the dispensation, which has now been stayed, in large part a result of civil society litigating the matter, sought only to benefit the state¹.

Introduction

This Report follows from the ASILE Project Workpackage (WP) 4 Interim Report,² which considered whether the temporary protection granted to Zimbabweans by South Africa could be considered a complementary pathway as identified in the Global Compact on Refugees (GCR), or whether it is a form of containment.

The impact on the rights and lives of over 178,000 holders of a temporary protection permit, the Zimbabwean Exemption Permits (ZEPs), are considered in this report as the withdrawal is imminent. These permits were previously due to expire on 31 December 2022 and are now due to expire on 30 June 2023. Since September 2010, qualifying Zimbabwean nationals have been permitted by the Minister of Home Affairs (the Minister) to live, work and study in South Africa. In reliance on these permits, ZEP holders have established lives, families, and careers. All of which have now been placed in jeopardy.

The Minister has decided to terminate the ZEP programme and has refused any further exemptions. Although the Minister has recently extended the “grace period” by a further six months, until 30 June 2023, his decision to end the ZEP programme remains unchanged. Indeed, the Minister states in unequivocal terms that “there will be no further extension”.³ The extension was motivated by a belief that a surge in applications from ZEP holders for

¹ This Report takes into account key developments regarding the ongoing litigation in the superior courts of South Africa, up until April 2023. Thus, it doesn’t cover the latest developments in litigation proceedings since that time.

² Refer to Rayner, N. (2022), *South Africa*, ASILE Interim Country Report, available at [D4.2_South-Africa_Interim-Country-Report.pdf \(asileproject.eu\)](#)

³ Media statement, *Home Affairs Grants Zimbabwean National Exemptions in Terms of Immigration Act*, 2 September 2022, Department of Home Affairs.



an alternate immigration status was impending and that the Department of Home Affairs (the Department) needed more time to consider such applications.

This research and report supplement the previous report as these individual interviews and the focus group discussion have been conducted after the South African government decided to withdraw the (ZEP) temporary protection permits for Zimbabweans. Previous research on the ZEP was conducted before the withdrawal of the ZEP permits. In addition to the interviews, a desktop review examining the legal arguments provided by civil society organisations challenging the termination as well as the government's response thereto will be undertaken. *Annex 1* of this Report outlines in detail the methodology that was followed, and *Annex 2* provides the full list of interviewees.

The Country Report focuses specifically on the following issues:

- The legality of the withdrawal of the ZEP permits
- The government's decision to withdraw the temporary protection
- The ZEP holder's/Zimbabwean's perspective of the government withdrawal
- The impact of the withdrawal on the lives of the ZEP holders
- Whether the withdrawal will have an impact on the asylum system

A Brief Synopsis of The Zimbabwean Dispensation Permits

In or around 2005, as neighbouring Zimbabwe experienced a political and economic crisis, the kind of migration and asylum shifted to that forced and permanent in nature (Crush et al, 2015) and a large number of Zimbabweans (approximately 1.5 million) entered South Africa searching for permanent options of stay. In response to this situation, South Africa initially resorted to large-scale deportations – this raised the ire of human rights activists. This cost South Africa billions of rands, it harmed the country's image as a vanguard of human rights in southern Africa and the rest of Africa, and it potentially upset a neighbouring country. South Africa in turn decided on a special response to the Zimbabwean migrants in South Africa.



South Africa initially addressed the influx of Zimbabweans into the country by granting 3-month ministerial exemption permits, however (as stated in Section A of this report) several researchers and scholars claim that the domestic political and economic considerations played an important role in the discontinuation of this 3-month visa that allowed all Zimbabweans to come into South Africa to work. To these scholars and researchers,⁴ it was apparent that the policy of allowing Zimbabweans free entry and the right to work (even though it was for short periods) without any limitations was unsustainable. This led to increased xenophobia and on 2 September 2010, the South African government announced the Dispensation Zimbabwean Project or Program (DZP) permit for four years. This permit was extended for a further four years in August 2014, it was then named the Zimbabwean Special Permit (ZSP), and thereafter, the final extension was referred to as the ZEP which was granted for another three years ending December 2021.

A grace period for ZEP holders to seek alternate status in South Africa was granted until June 2023. The impact of the withdrawal of this special dispensation permit is the focus of the fieldwork in round two of ASILE WP4. According to the government at the time the objectives of the special dispensation permit were fourfold:

- to regularise the stay in South Africa of large numbers of undocumented Zimbabweans;
- to reduce pressure on the asylum and refugee system;
- provide an amnesty to Zimbabweans who had obtained fraudulent South African identity documents (Gigaba, 2014a); and
- to curb the deportation of illegal Zimbabwean migrants.

⁴ Tara Polzer, Sergio Carciotto, Jonathan Crush, Abel Chikanda, and Godfrey Tawodzera separately published research on Zimbabwean migration to South Africa including various analyses of its motivations. Their relevant work is cited from Crush, J., 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), pp. 363-382; Carciotto, S., 2018. The Regularization of Zimbabwean Migrants: a Case of Permanent Temporariness. *African Human Mobility Review*, 4(1) pp. 1101-1116; and Polzer, T., 2008. Responding to Zimbabwean migration in South Africa: evaluating options. *South African Journal of International Affairs*, 15(1), pp. 1-28.



The South African government saw the DZP as a temporary solution to growing incidents of economic migrancy and, more importantly, an experimental model for the broader implementation of strategies used in similar cases from other countries. In the short term, the DZP offered an alternative to a clogged asylum system, mainly as a result of new asylum applications from Zimbabweans. Thus, the DZP was consistent with South Africa's position, that economic factors were the reason for the mass Zimbabwean migration to South Africa.

Under the new system, work, study, and business permits were granted to migrants employed, schooling, or running businesses in South Africa. It was also extended to migrants who had already acquired fraudulent documents as well as asylum seekers who were willing to forgo their asylum claims. To qualify, applicants had to be domiciled in South Africa and be in a position to provide a host of documents: a valid Zimbabwean passport; proof of employment (usually an affidavit from an employer); proof of registration with an academic institution; or proof of entrepreneurship. Of the 294,511 applications, 242,731 were successful and 51,780 were either rejected or processed late. Statistics also show that approximately 13 000 fraudulent South African identity documents were surrendered voluntarily, while only 49,255 individuals gave up their asylum claims. The process was a complex and haphazard one, in which migrants were made to spend days and nights waiting in long queues to have their documentation processed.

The permit however successfully relabelled a large number of asylum seekers as DZP permit holders, within the immigration system. It also managed to contain more than a million Zimbabwean migrants by either granting them temporary protection or by creating a legitimate avenue for their deportation if they remain undocumented. In the opinion of the South African government, because of the generous DZP permit, they could not be accused by human rights activists of denying assistance to a neighbouring country or for failing to protect Zimbabweans.

Doctrinal Research

The Research undertaken in this section will largely refer to the Court Papers challenging the decision of the South African government's withdrawal of the dispensation permits. This doctrinal research sheds some light on:



- The legality of the withdrawal of the ZEP permits by the South African government;
- A view of the government's reasons for this withdrawal; and
- Whether the withdrawal will have an impact on the asylum system.

Litigation:

The Legality of the Withdrawal

The South African government is currently facing a legal challenge from the Helen Suzman Foundation as well as the Consortium of Refugee and Migrants in South Africa (CORMSA). Both groups are contesting the validity of the protection granted to Zimbabweans. These court documents have all been within the public domain since these cases were launched. Two broad legal challenges have been posed by these groups.

Firstly, that the impugned decision is reviewable – both in terms of the South African constitution's principle of legality as well as under its administrative laws in the Promotion of Administrative Justice Act (PAJA). This is the case because the disputed decision can affect rights in the broader sense.

For over a decade (2010 to 2021), the ZEP (or its predecessors) has been the basis on which approximately 180 000 Zimbabweans have been able to live, work, study, and contribute to South Africa. It is evident that the Minister's decision to terminate the ZEP has materially infringed upon these rights, or that its termination likely will. Because the government did not provide a rational explanation for the withdrawal of the permit, its decision is being challenged in court. Any law or conduct which is not rational offends the principle of legality inherent in the Constitution and must be held to be invalid.

In a meeting with civil society, the Minister responded to the request to be heard before the announcement of the withdrawal by stating that “the attorneys for the Minister and DHA received representations for reconsideration of the decision that I have made from affected Zimbabwean nationals. They were informed that there is no scope for reconsideration as the decision was taken after careful consideration and supported by the National Executive (Cabinet). It has become practically impossible to continue with the exemption regime.”

That is, affected Zimbabweans were allowed an opportunity to make a representation to the Minister after and not before the withdrawal. However administrative law demands that the opportunity to make representations should ideally be offered before any decision is taken, and thus before there is any question of a ‘clear statement of the administrative action’.



Secondly, the challenge faced by government is one of a legitimate expectation held by the ZEP holders. The repeated and settled renewal of the ZEP and its predecessors has established a legitimate expectation on the part of ZEP holders to at least be heard before the ZEP system was withdrawn. Also, the repeated extensions (three times over a 10-year period) minimised the temporary nature of the protection. This does not necessarily amount to a substantive legitimate expectation. CORMSA does not contend that the Minister is obliged to extend the ZEP system indefinitely. However, should he decide to exercise his powers to withdraw the ZEP under section 31(2)(b) and (d) of the Immigration Act, he must afford those affected a hearing.

The Minister's Justifications in The Answering Papers

The situation in Zimbabwe

The first justification the Minister gave for the withdrawal of the ZEP was that the ZEP was only a temporary measure “pending improvement of the economic situation in Zimbabwe”. But there are two material flaws in this reasoning. First, the economic situation in Zimbabwe has not improved and the second flaw is that it is incorrect to view the crisis in Zimbabwe as being solely economic or due to hyper-inflation alone. The economic devastation is, and has always been, caused by and intertwined with the political crisis in Zimbabwe.

The 2008 crisis in Zimbabwe was primarily the result of the political violence utilised by the ruling party (ZANU-PF) to ensure its grip on power, notably by persecuting its opponents in the 2008 election. ZANU-PF and the senior leaders who executed this violence (with the sole exception of former President Robert Mugabe, who was ousted by undemocratic means in 2017) remain in power to this day.

A national election is looming in 2023, and multiple, credible, and independent commentators have raised serious warnings that political repression is again being imposed by ZANU-PF, notably against the main opposition party (Citizens Coalition for Change (“CCC”). To quote only two of the alarms raised about events in Zimbabwe: The Zimbabwe Lawyers for Human Rights issued a report titled “Human Rights Defenders Under Threat: An analysis of the shrinking civic space in Zimbabwe”.

Similarly, the Zimbabwean Human Rights Association, having conducted and published its 2021 State of Peace Report, stated on 22 June 2022: “[E]lections in Zimbabwe have become a nightmare. They come with the assurance of violence but no development. Unemployed youths are deployed to terrorise communities and harass NGOs that are deemed to be interfering with the political objectives of the elites. Our peace activists say each time an election date is announced, fear grips the communities. This is not how things must be. Elections must bring joy to citizens that they now have an opportunity again to have their



say in how the country is run. But this is not the situation. In Zimbabwe, it brings fear because violence is assured. Elections mean violence, communities say, because the outcome is predetermined while the process is polarising and destructive to social values.”

In short, there has been no improvement in the political situation in Zimbabwe. There have been no free and fair elections. There have been no peaceful transfers of power. There has been no significant change in the main actors controlling ZANU-PF and the Zimbabwean state, nor any in the means used to control the outcomes of the electoral process.

In its answering papers, the South African government does not genuinely contest these facts, as it relates to the current economic and political situation in Zimbabwe. The South African government does not provide any evidence of improvement in Zimbabwe, save for the comments of the Zimbabwean government itself.

It must be reiterated that the Minister has seen fit to terminate the basis on which thousands of people have lived in South Africa for more than a decade. As stated in the court papers - “A decision of this nature requires evidence other than the mere *ipse dixit* of the Zimbabwean government.” Yet no such evidence has been provided. On this basis alone, the impugned decision should be set aside.

The impact on South Africa’s asylum and immigration systems

Another one of the justifications for discontinuing the permit was said to be due to the Department’s limited budget and restricted capacity. South African courts have often found the South African immigration and asylum systems to be defective and underfunded. However, it is argued that the destitution of the asylum system should rather be regarded as a reason to continue with the Zimbabwean Exemption Permit. This is justified as these permits have proven to be more economical and cost-efficient than individuals being processed in the asylum system or alternative routes for Zimbabweans to achieve legal status in South Africa.

One of the reasons provided by the then Minister for the introduction of the initial dispensation permit was that it would work to “reduce pressure on the asylum seeker and refugee regime”.

In a press statement by the current Minister, Dr Motsoaledi, dated 7 January 2021, in which the Minister intended to “set the record straight” about the dispensation permits, he explained the need to reduce the pressure on an already strained asylum system. In the statement, the Minister explained when referring to the dispensation, ‘It all started in 2008 when South Africa experienced an influx of asylum seekers from Southern African Development Community (“SADC”). The majority of them were Zimbabwean nationals.



The Department of Home Affairs was unable to cope with the numbers. By way of example, the Musina Refugee Reception Office on the Zimbabwean border was receiving more than 1000 asylum seeker applications daily. It had neither the staff complement and financial resources to deal with the influx’.

The organisations challenging the Minister’s decision in court argue that it is disingenuous of the Department to now propose that the ZEP programme places more of a strain on the asylum or immigration systems. They sight that if this were the case, the ZEP programme would not have been created, as the predominant reason for the permit was to relieve the burden on the asylum/immigration systems. The reason for the permit being less burdensome is that the asylum system can be a convoluted process. Firstly, each person applying for asylum in South Africa requires a relatively extensive interview. If this interview is unsuccessful, applicants may appeal which would require a full hearing, it is the appeal system where most of the backlog in the system exists, this is a result of a variety of reasons. When compared to the ZEP appeals by the Immigration Act, which is conducted exclusively on paper, the asylum system process is considerably more complex, requiring many resources. In addition, each asylum application needs to be thoroughly assessed, requiring the official to make the decision to determine the prevailing conditions in their country of origin as well as looking at the applicant’s claim, this is both a complex and time-consuming process. Furthermore, the asylum permits require regular renewals as opposed to the ZEP, which was used for around four years, the prior requiring the Department’s resources.

There has not been a discernible increase in the applications for asylum by current ZEP holders. The Helen Suzman Foundation argument in their founding affidavit suggests that ZEP holders need to fully grasp the decision of the Minister to discontinue the permit as well as take legal advice and consider their options before being able to fully establish how ZEP holders will seek legal status in South Africa in future. It is further stated that the government has a limited capacity to determine whether or to what extent the strain on the asylum system has increased as it is often only felt by the applicants.

The processing of ZEP applications itself requires the identity of the applicant to be verified, proof of employment submitted, and all relevant documents. However, this processing and provision of documents are not exclusive to ZEP applications, but all visa applications. Therefore, it would be irrational to permit the application for other visas and not the ZEP visa.

In conclusion, the Minister has provided no persuasive reasoning for the discontinuation of the ZEP. The ZEP is cost-effective especially as compared to the alternative of asylum



applications. The ZEP should not be withdrawn unless it can be demonstrated that it has placed an undue financial strain on the Department, which as of yet has not been proven.

In sum, the Minister's justification for the termination of the ZEP is fundamentally irrational. Given that the ZEP is both explicitly and by design a cost-saving mechanism, the Department should not withdraw the ZEP unless and until its budget and resources increase to the point where it can handle any consequent strain on the asylum and immigration system. On the Minister's version, which places great emphasis on the decrease in the Department's funds, this time has not yet arrived.



Findings

This section of the report focuses mainly on the findings of the interviews as well as the interview group discussion. It will provide information on the impact on the lives of Zimbabweans since the announcement of the withdrawal as well as the Zimbabweans' view of the government's withdrawal of the DZP.

Zimbabweans' thoughts on the ZEP Withdrawal by the South African government

When asked why the South African government chose to discontinue the Zimbabwean Dispensation Permit, many interviewees suggested that this decision was largely based on political motivations.

A considerable number of interviewees⁵ held the belief that the motivation was political in nature. They believed that the South African government's ruling party is seeking support from its constituents, by demonstrating their dedication to expelling Zimbabweans who are blamed for taking jobs and using resources that should be reserved for South Africans exclusively. The decision to discontinue the permit a 'political gimmick' by the South African government under pressure from its citizens⁶. Furthermore, this interviewee stated that the expulsion of Zimbabweans will not alleviate joblessness for South Africans.

Those interviewed drew a connection not only between domestic politics but regional political considerations. Some suggested that the South African government intends to send Zimbabweans back, in the belief that those returning will vote in the Zimbabwean general election scheduled for 2023. It was suggested during the interviews that the South African government would like the ruling party of Zimbabwe, ZANU-PF, to lose power and that the government believes that if the Zimbabweans living in South Africa returned to Zimbabwe, they could successfully vote ZANU-PF out of power⁷. The theory is that a change in the ruling party would result in a change in the economy and eliminate the need for South Africa's continued support of Zimbabweans.

⁵ Interviewees 003, 005, 007, 012, 017, 020 and 021.

⁶ A sentiment held by Interviewee 020.

⁷ These were views expressed by Interviewees 014 and 015.



Another participant⁸ believed that it was the Zimbabwean government that wished for the return of Zimbabweans for the 2023 elections and that both the South African and Zimbabwean governments were working together to ensure the return of Zimbabweans to Zimbabwe for these reasons. However, the belief shared amongst many interviewed is that Zimbabweans returning would be targeted by the ZANU-PF as it would be assumed that if they had fled to South Africa, then they would have been supporters of the opposition.

Interviewees 016 and 018 stated that the reason for the discontinuation of the permit is a direct result of the xenophobia of the South African government. In contrast to this, interviewee 024 expressed the belief that the South African government has assisted and taken care of Zimbabweans for many years and, the interviewee believed that Zimbabweans should return and that, 'Zimbabwe must look after its own people'.

Impact on the lives of ZEP Holders

When asked what the potential consequences would be, should the dispensation not be renewed, the interviewees responded that, for the most part, indicate an overall grim outlook. From Table 1 (Annexure 1 below) it is evident that there are three general responses; return to Zimbabwe, remain undocumented in South Africa, or apply for asylum. However, most of the interviewees said they will try their luck with the immigration system but know that it is unlikely to succeed.

For some, the consequences of the non-renewal will be deportation and expulsion from South Africa, forcing Zimbabweans to return to Zimbabwe.⁹ All interviewees expressed that the most significant consequence of the Minister discontinuing the dispensation would be the deportation of Zimbabweans. Consequently, this (as put by Interviewee 001) would lead to the potential increase in illicit activity to avoid deportation. A suspicion that was commonly expressed was that if deportation is going to be a consequence of the withdrawal of the permit, there would be a spike in bribery of law enforcement. Further, it was added that this will cost affected dispensation holders a great deal of money. Throughout the interview process, various interviewees expressed the potential for illicit and or illegal activity that will take place. However, one specific interviewee indicated that a consequence of the dispensation ending is dispensation holders will turn to fraudulent

⁸ Interviewee 01.

⁹ This was a sentiment shared by 001, 003, and 019.



documents or illegal means for obtaining documents¹⁰. The interviewee expressed that returning to Zimbabwe is such an undesirable and grave reality, that they feel many people would sooner turn to illegal means of securing and regularising their stay in South Africa.

Some interviewees honestly expressed that they were not sure or could not know what the potential consequences would be following the non-renewal of the dispensation. Some interviewees shared that at present they do not know what will happen to them once the dispensation comes to an end.¹¹ The sentiment expressed is indicative of the precarious nature of the circumstances before them. There is a measured level of uncertainty regarding the dispensation, with little information being shared with the public and dispensation holders that indicate what will happen when the dispensation comes to an end. In turn, dispensation holders cannot readily determine or predict what might happen to them once the dispensation ceases.

For some interviewees, the obvious consequence of the discontinuation of the dispensation is that they will have to voluntarily return to Zimbabwe. This is motivated by various factors including the desire to remain law-abiding, to avoid the outbreak of violence. Several interviewees indicated that this would be the ultimate outcome of the discontinuation.¹² Some interviewees indicated that they will return to Zimbabwe, citing that there are no other options available to them that would regularise their stay in South Africa, however, they are fearful of starting over in Zimbabwe.¹³

This is a considerable number of interviewees from the sample size who have shared in this sentiment, possibly highlighting the general response that Zimbabweans have towards the circumstance before them. An uneasy acceptance and capitulation to circumstances, where the return to Zimbabwe serves as the path of least resistance.

In contrast to the above, interviewees¹⁴ shared that they would attempt to resettle elsewhere, neither in South Africa nor in Zimbabwe, but rather in neighbouring states or the Global North. This is spurred on by the reality that if they are unwanted in South Africa, and there is no intention to return to Zimbabwe, then they will find home and protection elsewhere. One of the interviewees, presented an outcome where Zimbabweans will

¹⁰ Interviewee 003.

¹¹ Interviewees 002, 005, 010, and 011.

¹² Interviewees 004, 006, 007, 009, 012, 017, 021, 022, and 023.

¹³ Interviewees Z05, Z09, and Z10.

¹⁴ Interviewees 008 and 014.



return to Zimbabwe and once again will find themselves needing to flee the political turmoil and prompting their return to South Africa, potentially under a fresh asylum application.¹⁵

In light of the dispensation coming to an end, some ZEP holders have decided to move to alternative immigration visas including general work visas and critical skills visas. Interviewees expressed that they have begun the process of applying for the relevant work visas available under the Immigration Act¹⁶. While all three interviewees are aware that the requirements for these visas are onerous, one interviewee¹⁷ indicated they are unsure what they will do if their application is unsuccessful whereas two interviewees¹⁸ will apply for asylum as a last resort.

In some instances, dispensation permit holders have been in South Africa since 2010, consequently having settled here and created a life here, with the comforts of home and familiarity. Interviewee 014 expressed that Zimbabweans who have property and money in South Africa will lose this if they are made to return to Zimbabwe. The cost of maintenance of their assets in South Africa will become a near impossible task from Zimbabwe.

One interviewee expressed that family homes and families will be broken and split once the dispensation has expired. While another was concerned most with the social and psychological impact that this would have on the family unit of those affected¹⁹.

For some interviewees²⁰, they expressed that affected Zimbabweans will remain in South Africa undocumented because there is nothing for them in Zimbabwe. This sentiment is confirmed by two interviewees²¹, both of whom are ZEP holders who are unwilling to return to Zimbabwe and have indicated that they will remain undocumented in South Africa. Other interviewees expressed the concern that the consequence of terminating the dispensation will put returning Zimbabweans in a position where they are forced to join ZANU-PF.

¹⁵ Interviewee 013.

¹⁶ Interviewees Z08, Z11, and Z12.

¹⁷ Interviewee Z08.

¹⁸ Interviewees Z11 and Z12.

¹⁹ Interviewee 015.

²⁰ Interviewees 016, 018 and 020.

²¹ Interviewee Z06 and Z07.



Why some Zimbabweans chose to remain within the Asylum System?

Of the 25 Zimbabwean refugees interviewed when asked why they did not transfer to a Zimbabwean dispensation permit, the majority responded that they did not transfer to the DZP or its later iterations as they had genuine refugee claims.²² This group of interviewees believed that the Dispensation Permit did not provide as much protection as refugee status or asylum permits. In addition, many of these interviewees expressed the opinion that the permit was not intended for individuals with a genuine refugee claim as it allows for a holder to return to Zimbabwe, which would prove dangerous for refugees fleeing the country. One interviewee²³ believed that asylum or refugee status would be more internationally recognised.

Four of the interviewees shared in the fact that they had no knowledge of the Dispensation Permit at the time and some were still not aware of the permit²⁴. Two interviewees²⁵ explained that they had not transferred to the Dispensation Permit as they believed it to be a temporary measure and that it would not result in more secure options for formalising an individual's stay in South Africa, in contrast to refugee status which may lead to permanent residency status.

Some of the interviewees expressed their desire to have applied for the Dispensation Permit, however, they said they were prevented from doing so either because they had no passport, their passport had expired, or the details on their passport were incorrect. Interviewee 018 expressed that they were not to apply as they did not have proof of employment as they were unemployed at the time. Interviewee 25 who arrived in South Africa in 2015 believed she was too late to apply for the Dispensation Permit. Two interviewees²⁶ already had refugee status and were instructed by Home Affairs officials that they could not transfer to the Dispensation Permit with refugee status.

The discontinuation of the permit served as an affirmation of the choice of refugees and asylum seekers to remain in the asylum/refugee system. For many this proves that

²² Interviewees 005, 015, 017, 020, 021 and 024.

²³ Interviewee 01.

²⁴ Interviewee 002, 010, 011 and 022.

²⁵ Interviewees 003 and 006.

²⁶ Interviewees 014 and 023.



remaining in the asylum system, although burdensome at times due to the frequent renewal of documents, has provided greater safety mechanisms.



This development has changed the focus of the second phase of research for the ASILE WP4 South Africa. The second phase of the research will focus on issues associated with the discontinuation of a long-standing pathway to regularisation considering the complementary pathway framework. The discontinuation of the dispensation will further have implications on access to protection, vulnerability, and self-reliance, which will also be explored. In the second phase, we hope to speak to Zimbabweans on/previous on the dispensation, asylum, and refugee permits; international organisations; and government actors from the Department of Home Affairs, Department of International Relations, and the Department of Labour. We also plan to do follow-up interviews with certain participants considering the findings of this interim report and recent developments.

The research for this phase presented areas for further research. The first area identified would be the need for a large-scale study on the driving forces of migrations from Zimbabwe to South Africa., to produce statistical data on Zimbabweans in South Africa. Secondly, the report identified the need for more research on complementary pathways in the context of Africa. Lastly, further research could explore the reasons for the discontinuation of the dispensation and the effects thereof.



ANNEX 1

Methodology

This Country Report forms part of the broader Work Package 4 of the ASILE research project, which is exploring themes of access to protection, rights, and refugee self-reliance in refugee protection around the world. The work in this report has included the research completed in 2021 and 2022, with an extension into June 2023 to include the recent High Court judgment that directly related to the termination of the dispensation. In South Africa, the research team explored these themes in relation to specific laws and policy instruments, which included the Zimbabwean dispensations. More specifically the study attempts to critically understand the dispensations through a complementary pathway to protection framework — a framework intended to facilitate safe and orderly refugee mobility to protection (United Nations Global Compact on Refugees, 2018).

The study implemented a qualitative research framework as well as a doctrinal review. The qualitative research relied on the views of various stakeholders. Interviews were conducted with refugee community leaders, civil society actors, and international organisations in South Africa, ZEP holders as well as Zimbabwean refugees regarding the protections granted by the South African government to Zimbabweans, the Zimbabwean Dispensation Permits, and the withdrawal thereof. The interview questions were based on a common questionnaire developed and shared by the ASILE WP4 coordination teams to ensure consistency on themes and issues covered by each country team. For South Africa, the questionnaire was adapted to focus on specific instruments and issues in South Africa, in particular as regards the Dispensation Program.

Research for this project included two sets of interviews, one set before the announcement of the termination of the special dispensation programme and the second round after the announcement of the termination of the special dispensation. Feedback from external reviewers was given both as commentary feedback²⁷ and in-person at the ASILE Annual Meeting held in Cape Town, South Africa, 2023.

(1): The participants

²⁷ An acknowledgement for Nicholas Maple from the Institute of Commonwealth Studies, University of London for providing necessary feedback on this Report.



Thirty-three Zimbabwean migrants were interviewed, and of those interviewed 25 are recognised refugees or asylum seekers from Zimbabwe. Thirty of these interviews were conducted telephonically and three were conducted in person. Each telephonic interview lasted between 20 to 35 minutes. All interviewees were informed that the purpose of the interview was to gather research for a report on the Zimbabwean Exemption Permit. Each person was advised that participation in the research was voluntary and that all personal details such as names and phone numbers would not be included in the final report and held in strict confidentiality. As most of the participants were selected through their engagement with the Refugee Rights Clinic, they were also informed that non-participation or participation would not affect their ongoing legal assistance from the Clinic.

In addition to 33 interviews (25 Zimbabwean refugees and asylum seekers and 8 Zimbabwean Exemption Permit (ZEP) holders, an interview group of 5 ZEP holders was also held. The discussion was simply guided by questions asked by the two facilitators of the group. The focus group questions were the same ones asked in the ZEP holder's telephonic interviews. Eighteen questions were asked, all of which had ethics approval in accordance with ASILE Data Management Plan. The group consisted only of ZEP holders and each participant had been a holder of all three of the dispensation permits that have been issued since 2010. The questions asked by the facilitators, resulted in an open discussion about the participants' experiences and views.

(2) The Questions

For the second round the same set of interview questions were used with slight adjustments but remained consistent with the themes covered by each country team under WP4. The questions were devised by drawing on the key themes identified in the original interview guides and the interim findings for the above-mentioned Country Report²⁸. The questions focused on two over-arching themes – precarity and legal status.

The group interview session began with a welcome, introduction, and explanation of the objectives for the session. It was explained that the purpose of the session was to collect

²⁸ The interviews were based on a standardised questionnaire and interviewed guide, developed by the Work Package 4 (WP4) co-ordination team. This included feedback from multiple colleagues and from the ASILE Civil Society Group. The questionnaire was fine-tuned and adapted in the instrument-focused case studies of Brazil, Canada, South Africa and Turkey. This ensured all WP4 themes were consistent and covered in the four named countries, and maintained comparability of all findings.



first-hand information regarding the experiences of permit holders. The group participants were informed that at all times the information they provided would remain confidential, and that should they wish to, they may refrain from answering or terminate their participation at will. The questions that were asked remained the same as for the individuals, although, between questions, sufficient time was given for participants to allow the session to flow organically. This allowed the participants to share and express their experiences easily without mechanically extracting the information by stop-start asking.

(3) Organisation

The twenty-five Zimbabwean refugees and asylum seekers interviewed were all clients of the UCT Refugee Rights Clinic (Clinic) since 2018. It is a standard practice of the Clinic to have all clients' contact details on file. We compiled a list of 121 existing refugee and asylum seekers clients from Zimbabwe. However, eighty of the numbers called were unresponsive, thirteen people called were too busy at the time to do the interview.

The interviewers were able to conduct 25 interviews. Four of the ZEP holders interviewed had also previously attended the Clinic for services and introduced us to other ZEP holders who could be called for interviews.

The group interview was organised by the Clinic. The participants were all ZEP holders and all of them have been in South Africa for more than 13 years on a temporary visa. The group interview took place at the University of Cape Town Refugee Law Clinic. It was challenging to get ZEP holders to attend an in-person focus group meeting. It is a requirement for the ZEP holder to be employed, and due to the precarity of their jobs, ZEP holders were unlikely to forfeit their work for a focus group meeting. Nevertheless, of the 8 who confirmed only 5 ZEP holders were in attendance for the session.

The doctrinal research relied on various scholarly research produced on migration from neighbouring countries to South Africa as well as specifically the migration of Zimbabweans that led to the introduction of the special dispensations. The Report also relied on Court papers submitted by civil society challenging the government's termination



of the ZEP.²⁹ This doctrinal review of the court papers was particularly helpful because it enabled the study to obtain the government's response to the withdrawal of the temporary permits. Extensive desktop research was conducted in particular to understand South Africa's adoption of this temporary approach to protection.

²⁹ Helen Suzman Foundation and Another v Minister of Home Affairs and Others (32323/2022) [2023] ZAGPPHC 490 (28 June 2023); Consortium for Refugees and Migrant in South Africa & Helen Suzman Foundation v Minister of Home Affairs & Director General of the Department of Home Affairs (32323/2022).



ANNEX 2

Table 1: ZEP holders

Z1 to Z4 – See supporting affidavits in the Case launched by the Helen Suzman Foundation

Z5 – Z12 – Interviews conducted by the UCT Refugee Rights Unit.

Designation	Gender	Number of years in South Africa	Occupation	Intentions after withdrawal
Z1	Woman	16 years	Teacher	Intends to exhaust all immigration related possibilities to remain in South Africa. However, if no favourable options avail themselves, they will apply for asylum.
Z2	Man	13 years	Industrial Engineer	Exhaust all possibilities of staying in South Africa in terms of the visas offered by the Immigration Act. Their best chance at remaining in South Africa legally is through a business visa in terms of section 15 of the Immigration Act. If the immigration route fails, they will consider once again applying for asylum
Z3	Man	12 years	Self-employed	Doesn't believe that they will be able to apply for any alternative forms of immigration permits that will regularise their stay in South Africa. Apply for asylum
Z4	Man	17 years	Business man	Return to Zimbabwe
Z5	Man	13 years	Land scaping Manager	Return to Zimbabwe. However, is currently in the process of applying for general work visa, but fears that



				the requirements are too onerous, and he will be rejected.
Z6	Man	12 years	Domestic Worker	Remain in South Africa undocumented. Does not qualify for working visa.
Z7	Woman	15 years	Chef	Remain in South Africa, undocumented.
Z8	Man	14 years	Science Teacher	Applying for critical skills visa in terms of Immigration Act. Should this be unsuccessful, he is unsure what he will do.
Z9	Woman	13 years	Hospital Worker	Return to Zimbabwe, as there are no other options to be explored.
Z10	Man	15 years	Business man	Return to Zimbabwe. However, is fearful of starting over after being in South Africa for such a long time.
Z11	Man	14 years	Print estimator	Applying for a general work permit in terms of the Immigration Act. Asylum if it fails
Z12	Man	2 years	Business Analyst	Applying for relevant work permit in terms of the Immigration Act Asylum if it fails

Source: Author's elaboration