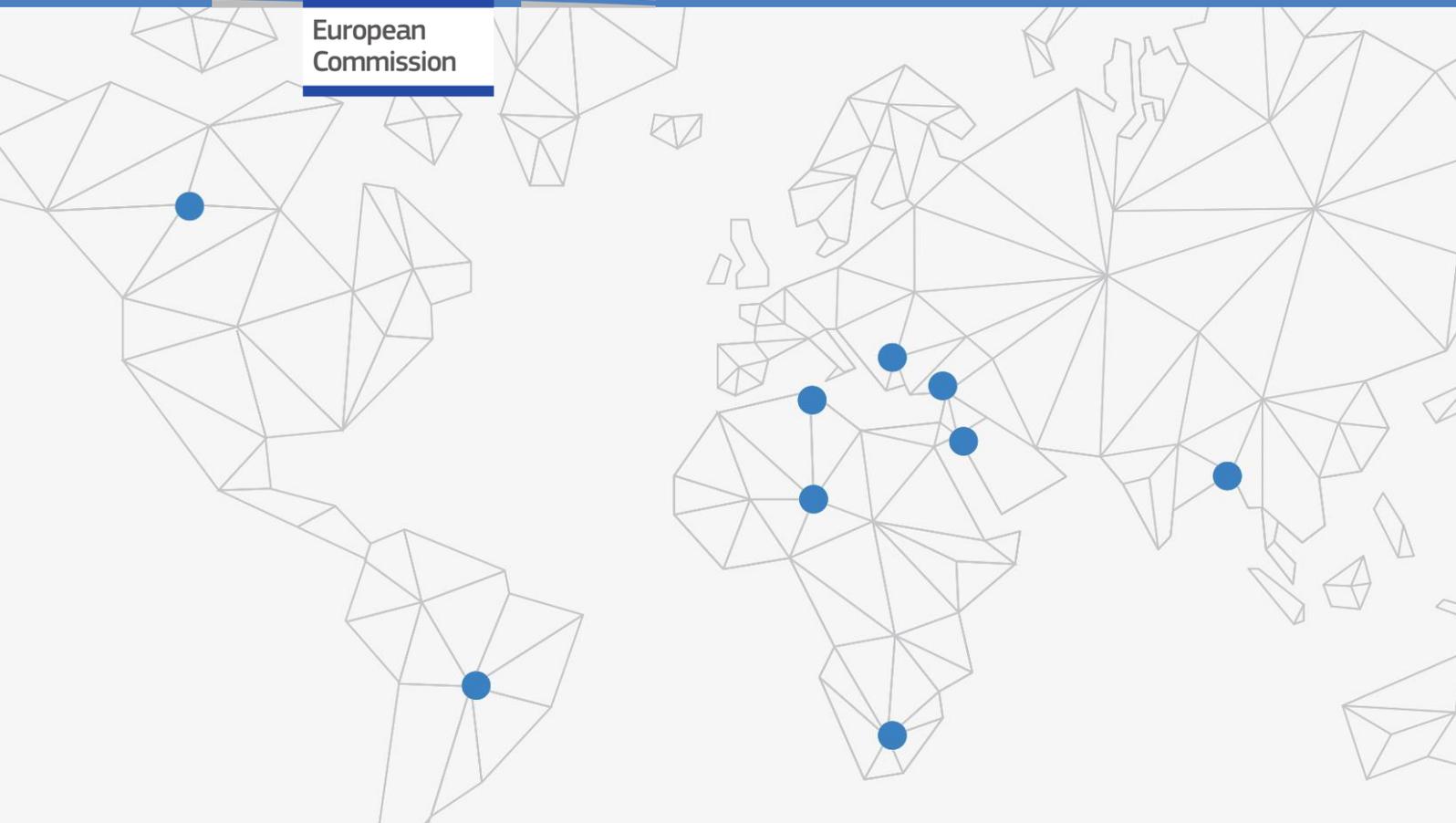


EUROPEAN POLICYBRIEF



European
Commission



ASILE

Global Asylum
Governance and
the European
Union's Role

Assessing the effectiveness of South Africa's Zimbabwean Dispensation policy

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ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

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Abstract

This policy brief assesses the effectiveness of South Africa's Zimbabwean Dispensation policy. It starts by providing an overview of the use of temporary protection for Zimbabweans by the South African government. Initially the temporary permit (the Zimbabwean Dispensation Permit) was issued for a period of 3 years, but its renewal on three occasions amounting to a total of 13 years led to a legitimate expectation of further renewals. This policy brief further explores whether the temporary protection granted to Zimbabweans by South Africa was a viable form of international protection and whether it could be considered a 'complementary pathway' as identified in the Global Compact on Refugees (GCR) or whether it, in fact, amounts to a form of containment or contained mobility. The key findings are based on three sources: qualitative research conducted by the University of Cape Town, Refugee Rights Unit, court cases launched to challenge the termination of the temporary dispensation project as well as a task force held at the University of Cape Town with participants including Zimbabwean refugees and dispensation holders.

1. Introduction

Since September 2010, qualifying Zimbabwean nationals have been permitted, in terms of a special dispensation, by the Minister of Home Affairs (the Minister) to temporarily live, work and study in South Africa. In reliance on these special permits, Zimbabweans have established lives, families, and careers. All of which have now been placed in jeopardy because a final expiration date has been issued to all Zimbabweans issued with these permits. By the end of June 2023, the temporary residence permits of 178 000 Zimbabweans should be [withdrawn](#). However, there has since been a Court intervention and the expiration date has been shifted to the 31 December 2023 to allow the holders to seek an alternate status in South Africa.

Notwithstanding the fact that these permits were issued 13 years ago in 2010, renewed three times since,¹ were due to expire on 31 December 2021 and are now given a grace period and a final date for expiration of the 31st December 2023 with no possibility of renewal. This Policy Brief explores whether the temporary protection granted to Zimbabweans by South Africa under the so-called Dispensation Project was a viable form of international protection and whether it could be considered a ‘complementary pathway’² as identified in the [Global Compact on Refugees \(GCR\)](#) or whether it, in fact, amounts to a form of containment or contained mobility.

2. Methodology

This policy brief analyses the *effectiveness and fairness* of granting temporary residence status to refugees or other vulnerable foreigners requiring protection. The analyses require an understanding of the logic behind opting for temporary residence as a solution to a class of people who might have qualified for refugee status. The effectiveness of the temporary dispensation can be measured by looking at what was specifically achieved.

On the other hand, to test the fairness of the temporary dispensation requires an understanding of how such temporary residence might lead to rights violations and fundamental compliance with well-established refugee law principles such as the principle of non-refoulement.

1 On the 2nd of September 2010, the South African government announced the Dispensation Zimbabwean Project (DZP) permit for a four-year period. 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, referred to as the Zimbabwean Exemption Permit (ZEP), was granted for another three years ending December 2021.

2 A ‘complementary pathway’ are considered as safe and regulated avenues for persons in need of international protection that provide for a lawful stay in a third country where the international protection needs of the beneficiaries are met. They are other pathways for the admission of persons with international protection needs that can facilitate access to protection and/or solutions and are a complement to resettlement.

The policy brief makes use of the key findings of the two ASILE Country Reports carried out by the University of Cape Town (UCT), Refugee Rights Unit which implemented a qualitative research framework as well as a doctrinal review. The qualitative research relied on the views of various stake holders. Interviews were conducted with refugee community leaders, civil society actors, international organisations in South Africa, Zimbabweans holders of this special temporary residence 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 doctrinal research relied on various scholarly research produced on migration from neighbouring countries to South Africa as well as specifically the mass migration of Zimbabweans in and around 2009 that led to the introduction of the special dispensations ([Amit](#), [Polzer](#), [Moyo](#), [Crush](#)). Extensive desktop research was conducted to understand South Africa's adoption of this temporary approach to protection. The Report also relied on Court Papers submitted by civil society challenging the government's termination of the special permits for Zimbabweans.³ 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.

In addition, the policy brief also relied on the input from a task force on Zimbabwean dispensation that was held at the University of Cape Town Conference on the 25 January 2023. All the ASILE Project partners and other participants, including Zimbabwean refugees and dispensation beneficiaries participated in the reflection and debate around policy options and recommendations. The task force was provided with four questions to consider the effectiveness and fairness of the ZDPs.⁴

3. A brief synopsis of the Zimbabwean dispensation permits.

In or around 2005, as neighbouring Zimbabwe experienced a political and economic crisis, the kind of asylum shifted to that of 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

³ Helen Suzman Foundation v Minister of Home Affairs & Director General of the Department of Home Affairs (32323/2022); 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).

⁴ The four questions were: 1. Was the ZDP covertly used by South Africa to restrict refugee and /or migrant mobility? 2. Using a law vs pragmatism approach – what are your thoughts on whether the use of temporary protection should be invoked in the case of a mass refugee influx? 3. What role can the UNHCR play if such a scenario should arise again? What would be the value UN GCR? 4. Did South Africa have other options in the case of Zimbabwe? More generally – what are South Africa's options in the case of a mass influx of refugees?

resorted to large-scale deportations – this raised the ire of human rights activists, cost South Africa billions of rands, 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 therefore decided on a special response to the Zimbabwean asylum seekers in South Africa.

South Africa initially addressed the entry of Zimbabweans into the country by granting 3-month ministerial exemption permits, however 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([Amit](#), [Polzer](#), [Moyo](#), [Crush](#)), 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 (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, a third permit, the [Zimbabwean Exemption Permit](#) (ZEP) was granted for another three years ending December 2021. This third permit has not been renewed but as a result of court challenges, a [grace period](#) for holders to seek alternate status in South Africa has been granted until December 2023.

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 and to curb the deportation of illegal Zimbabwean migrants. ([Gigaba, 2014a](#)).

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 large-scale Zimbabwean migration to South Africa.

Under the new system, work, study, and business permits were granted to Zimbabwean asylum seekers employed, schooling, or running businesses in South Africa. It was also extended to those 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 able 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 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.

4. Findings

The main aim of the interviews and doctrinal research was to consider whether the special dispensation for Zimbabweans can be considered a 'complementary pathway'; but it also revealed findings that spoke to issues of [contained mobility](#),⁵ promotion of refugee self-reliance and access to rights.

KEY FINDING # 1

Interviewees and task force participants revealed the need for a comprehensive approach to migration and asylum instead of the strict delineation between economic migrants and refugees. The suggestion appears to link to two issues. Firstly, if the dispensation was not classified as purely a solution to 'temporary economic migrants', it would have been able to integrate a protection mechanism for the complex nature of the migration and asylum streams from Zimbabwe. Secondly, abandoning strict categorisation as "either-or" (i.e., economic migrant or refugee) within the asylum system may assist in understanding the complexities of asylum streams.

KEY FINDING # 2

The governments assertion that most Zimbabweans moved to South Africa for economic reasons and therefore overburdening the asylum system remains speculative in nature and has never been quantified by the DHA. The DZP was consistent with South Africa's

⁵ See: Sergio Carrera & Roberto Continovis (2019) 'The EU's Role in Implementing the UN Global Compact on Refugees, Contained Mobility vs. International Protection. The authors make reference to this concept of contained mobility. These are migration and asylum pathways which have elements of both containment and mobility. Containment elements would be principles and practices that include safe third country rules, border surveillance or interception – policy and practices that prevent a person from accessing a pathway. The mobility element would be access to a pathway, but the mobility itself is highly selective or restrictive and thus contained.

position, that economic factors were the reason for the large-scale Zimbabwean migration to South Africa. Though a small number of the interviewees acknowledged during the UCT study to using the asylum system because no other avenue was available, the government did not provide any evidence how they came to the is conclusion. A key finding is therefore that the adoption of the DZP policy is not evidence-based.

KEY FINDING # 3

Interviewees, in their answers also saw the need for the utilisation of the dispensations to relieve the pressures on the asylum system. One participant noted the need for a more efficient and quicker way to identify individuals in need of protection and divert those who are not refugees away from the asylum system. While the authors agree the dispensation should be extended, or a new dispensation be created, the dispensation should meet the objective of additionality⁶, as proposed by Wood (2020). The complementary pathway category should be carefully used so as not to artificially relabel asylum seekers and refugees as purely economic migrants. This rhetoric will undermine rather than support persons who are seeking protection.

KEY FINDING # 4

The biggest critique of the dispensation as a 'complementary pathway' and a finding of the ASILE research is its lack of durable solutions. The implication of this is that dispensations would benefit from more permanent solutions and security of residency, especially in situations where the beneficiaries of the permit are from a country facing a protracted humanitarian crisis. This could be solved by allowing for durable solutions, such as naturalisation after a 5- to 10-year period.

KEY FINDING # 5

When asked what the potential consequences would be, should the dispensation not be renewed, the interviewees and task force participants responded that, for the most part, indicate an overall grim outlook. All interviewees and task force participants expressed that the most significant consequence of the Minister discontinuing the dispensation would be the deportation of Zimbabweans. Consequently, this 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

⁶ The additionality principle requires that the pathway is "additional" to protection, and that it increases solutions as opposed to limiting them (ASILE Country Report at [page 22](#))

will take place. However, interviewees indicated that a consequence of the dispensation ending is dispensation holders will turn to fraudulent documents or illegal means for obtaining documents. The interviewees 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. The views expressed by the interviewees exposed the temporary protection as an unfair system.

KEY FINDING # 6

For some interviewees, the obvious consequence of the discontinuation of the dispensation is that they will have to return to Zimbabwe. This is motivated by various factors including the desire to remain law-abiding, to avoid the outbreak of violence. About a quarter of the interviewees have all indicated that this would be the ultimate outcome of the discontinuation. 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.

KEY FINDING # 7

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. Interviewees 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. Interviewees generally expressed the sentiment that family homes and families will be broken and split once the dispensation has expired.

KEY FINDING # 8

It would perhaps be too simplistic to conclude that on the basis of the fact that the ZDP curtailed the established rights and protections of refugees, it is not beneficial. There *are* some benefits to temporary protection, however, the South African government's current categorization of a discretionary, *de facto* status that has been held, on a continuous basis, for 13 years as "temporary" is not merely prejudicial, but both irrational and discriminatory.

This categorisation is irrational because the South African government did not consider what would happen at the expiration of the ZDP, specifically, whether those with a refugee claim are able to apply for refugee status or whether they will be deported. Further, South African authorities did not consider what would happen in the case of a protracted refugee situation. This is exacerbated by the fact that the temporary discretionary permit was not geared towards providing asylum from persecution—

accordingly, this is not a consideration that the South African government took into account when it explored possible avenues of access by asylum seekers and refugees to existing channels of legal entry for study and work. The dispensation programmes do not make any mention of the refugee status that many abandoned.

I contend that the categorisation is also discriminatory, on the basis of the fact that the asylum system creates a pathway to naturalisation in that, at the time, refugees that had been continuously residing in South Africa for a period of five years would have met the requirements to be granted permanent residence. Accordingly, had these applicants remained in the asylum system, they could have become eligible for permanent residence. Further, any migrant with a five-year continuous work permit also meets the requirement for permanent residence ('Immigration Act 13 of 2002 | South African Government' 2002), but Zimbabweans who had been employed, on a continuous basis, for more than ten years and who had the discretionary permit were not allowed to apply for permanent residence.

5. Recommendations

In light of the above finding this policy brief makes the following recommendations:

Recommendation # 1- SADC visa

If the South African governments assertion that the asylum system has been abused by 'economic migrants' is indeed accurate then this research recommends the introduction of a SADC visa where South Africa as a member of [SADC](#) has a duty to [promote economic and social integration](#)⁷ and encourage free movement of [labour, goods, services](#), and people in the region.⁸ The SADC has proposed the [Protocol on Free Movement of Persons](#), which would allow for the free movement of persons to work within the region under the protection of SADC and South Africa's actioning of this policy should be motivated by its responsibility as a member of the SADC.

Recommendation # 2 - calling for a rational end to a temporary solution.

This policy brief takes note of the benefits of a temporary permit and the need for its Issuance under certain circumstances. For this situation it recommends a non-renewable permit for a finite period. However, the inherent temporariness of the special Zimbabwean permit caused huge uncertainties for the holders having fled the political

⁷ See SADC Treaty; SADC Regional Indicative Strategic Development Plan; SADC Protocol on Trade, 1996; SADC Protocol on Finance and Investment 2006.

⁸ See SADC treaty; SADC Protocol on Facilitation of Movement of Persons, 2005.

and economic uncertainty in Zimbabwe. The possibility that the situation in Zimbabwe could have become protracted should have been factored in by the South African government. Furthermore, it is strongly recommended that priority should be given to addressing bureaucratic and administrative obstacles for renewing such permits to avoid legal uncertainty for individuals concerned. Research and task force participants recommended for a mechanism to have been built-in to avoid a situation of long-term temporary status for the beneficiaries.

Recommendation # 3- strengthen the Asylum system.

In South Africa the DZP may have taken a quarter million out of the asylum system (actual 49 000 switched from asylum to the DZP), but there is no evidence that the introduction of the DZP lead to a decline in Zimbabweans seeking asylum in South Africa. For example, if South Africa had to direct its efforts to determine all Zimbabwean asylum applications within the four years (same timeframe used for the initial issuance of the DZP), South Africa would not have been in the predicament it finds itself in now having renewed the DZP three time since 2010.

The DZP was not an effective deterrence mechanism. Therefore, this brief recommends that South Africa invest in and strengthen its asylum system and conduct proper, and within a reasonable time, asylum applications. The asylum system could build in an expedited process to deal with situations that could be qualified as 'large-scale influx.'

Recommendation # 4 - non- discriminatory

The DZP has been identified as discriminatory because the holders were stuck in this system for 12 years without the option of an alternate residence. There should be an avenue for permanent residence if it exceeds the minimum number of years generally required for eligibility for permanent residence.

6. Conclusions

This Policy Brief has demonstrated that the humanitarian logic asserted by the South African government, that by implementing a temporary protection regime it benefits the asylum seekers, cannot be upheld. In fact, the research and the task force findings have demonstrated that the temporary protection has placed holders of the DZP in a precarious situation. The state cannot avoid their obligations under the international and regional refugee regime by crafting creative categories other than 'refugee'. In doing so they avoid the legal obligations that are defined by the protective nature of the 1951 UN and the 1969 OAU Refugee Conventions. Hence, the states that had ratified the Conventions and agreed that the rights and protection of asylum seekers would be ensured cannot deny asylum seekers access, deter their integration, provide them with limited protection, and/or facilitate their repatriation.