

Unmanageable “Illegals” - The Persistency of Zimbabwean Migration to South Africa



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Master's Thesis in Global Refugee Studies
By Niels Dreesen & Mikkel Otto Hansen
Supervisor: Steffen Jensen



AALBORG UNIVERSITY
DENMARK

Abstract

This master's thesis explores the relationship between migration management and migrant agency, in the context of Zimbabweans in South Africa. Southern Africa differs from other regions across the globe due to its longstanding use of labour migration, which have been indispensable to the development of national economies throughout the 20th century. However, the reliance on foreign workers have had profound consequences for black households, who became dependent on migration as a substitution for local production and livelihoods, thereby binding the region together along socioeconomic lines. To these families, the 1994 transition to democracy in South Africa represented a paradoxical change, as governmental promises of inclusion and diversity coincided with the hardening of post-colonial borders.

These processes engendered new categories of insiders and outsiders, and a previously unseen preoccupation with the management of illegal migrants. Spearheaded by the Department of Home Affairs, immigration enforcement generally entails mass arrests, detentions and deportations of undocumented migrants together with unconstitutional practices that have questioned South Africa's commitment to human rights. Consequently, humanitarian actors have voiced their concerns, albeit with limited outcomes, as the DHA enjoys a high degree of autonomy in their role as South Africa's gatekeepers. Thus, despite efforts to underscore the extralegal conduct of immigration officials, we conclude that South African nationalism takes precedence over humanitarian concerns. There are, however, few reasons to assume that a strategy of control and deterrence does anything to curb informal migration. On the contrary, Zimbabwean migration to South Africa is continuing unabated.

Rather than objectifying migrants and portraying them as victims of immigration enforcement, this master's thesis takes interests in the ways Zimbabweans overcome social insecurity and vulnerability. In other words, taking into consideration the agency of migrants, we underscore their persistent abilities to circumvent restrictive policies. What emerges then, is a peculiar and mutual dynamic between immigration enforcement and the informality of migration. In the absence of any long-term solutions

to migration in the region, these patterns are likely to continue in the future. A final point should be emphasizing the potential of migrants as contribution to society, rather than portraying them as welfare scroungers and criminals. When we look to history the answer is already there, given the fact that post-apartheid South Africa is build on the shoulders of foreign workers.

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Abbreviations

DHA – Department of Home Affairs

LHR – Lawyers for Human Rights

LRB – Late Registration of Birth

MDC – Movement for Democratic Change

NGO – Non-Governmental Organisation

NPR – National Population Register

OU – Organisation of African Unity

RRC – Refugee Reception Centre

RRO – Refugee Reception Office

RSD – Refugee Status Determination

SMG – Soutpansberg Military Grounds

TEBA – The Employment Bureau of Africa

UNHCR – United Nations High Commission for Refugees

ZANU-PF – Zimbabwe African National Union - Patriotic Front

1 - Introduction

The birth of a non-racial and democratic “rainbow nation”, a new Republic of South Africa in 1994 was initiated to unite the whole population after decades of segregation during apartheid rule. Keywords, such as voting right for everyone, participation in affairs of the state and equal access to the country's resources constituted the new tolerant and inclusive vision for South Africa, which former president Thabo Mbeki named an “African Renaissance”, that was to strengthen ties with the rest of the continent (Peberdy 2001: 15-16). These liberal norms were embedded in the new constitution, which proclaimed that “South Africa belongs to all who live in it, united in our diversity” (Republic of South Africa 1996a: 1). Thus, expectations of inclusion and universal rights for all were high, however, the democratic transition had paradoxical outcomes. The government's language towards immigrants has been characterized by “vigorous attempts to control and discourage both legal and undocumented immigration and migration” (Peberdy 2001: 16), questioning the new nation's commitment to inclusion and rights. Despite claims of diversity and multicultural aspirations, anti-foreign sentiments have dominated public attitudes and immigration enforcement in the 22 years since South Africa's independence. Attracting most attention were the xenophobic attacks of 2008, in which 60 foreigners were killed and over a 100.000 displaced (CORMSA 2009).

The xenophobic attacks coincided with massive amounts of Zimbabweans entering South Africa due to the culmination of the ongoing economic and political crisis in the neighboring country. Hyperinflation of the Zimbabwean dollar combined with the electoral violence in 2008, intensified migration flows to South Africa as well as it drastically increased the amount of Zimbabweans seeking asylum (Crush et al. 2012 & Africa Check 2013). Today, it is impossible to obtain valid numbers of Zimbabweans inside South Africa, but estimates point to one to five million (Women's Refugee Commission 2011; Africa Check 2015). These imprecise estimates indicate that a large amount of undocumented migrants continue to find their way into South Africa. In the broader context of Zimbabwean migration to South Africa, two immediate dynamics can be observed; one is the continued tightening of law enforcements together with

increased border controlling measures, the other, the intensification of informality whereby migrants are able to create social and economic formations in South Africa despite these regulations (Hammar et al. 2010: 263). Policies towards Zimbabwean migrants and asylum seekers remain provisional in nature and several researchers have pointed to the necessity of creating longer-term solutions to migration in the region (Dzingirai et al. 2014; Polzer 2008). Due to the lack of regional solutions to mobility, Zimbabweans who find themselves compelled to migrate to South Africa may choose to between two different paths; seeking protection within the institution of asylum, or migrating informally by avoiding any interference from authorities. On the backdrop of general suspicion towards their errands in South Africa, either path is likely to lead to illegalization, and the accompanying exposure to arrest, deportation and street violence.

1.1 Problem Area

Displaced people are often portrayed as vulnerable, or even passive objects, and while those hegemonic presentations are not entirely untrue, they do not reflect the whole complexity in terms of material, social and symbolic changes. Hammar (2014) points out, that these “blind spots” produce political-administrative regimes with an understanding of displacement in recognition of place, personhood and practices. “These in turn (re)produce logics of belonging, entitlement and exclusion within and across space which reinforce regimes of management to control things, bodies and borders” (Ibid.: 8-9). Consequently, this places place migrants in a subordinate position, in which the ability the to overcome structural barriers relies upon the availability of both social and economic forms of capital. From such observations, our interest is led towards a two-fold focus on how migration management produces and reproduces the structures that migrants themselves have to navigate and circumvent. Hence, although a purely analytical distinction, this master’s thesis is interested in the relationship between structure and agency. In tangible words, mapping the historic and contemporary South African immigration regime and its underlying legal framework, we want to reveal and discuss the struggle of representatives, which we have chosen to be the Department of Home Affairs, Lawyers of Human Rights and United Nations High

Commissioner for Refugees as well as the resulting changes in migration practices. Further and in contrary to the majority of academic papers, we interconnect macro structures with micro structures, by investigating the different forms and extent of latitude for Zimbabweans migrating to South Africa.

Problem statement:

With a focus on Zimbabwean migration, how is the South African migration regime changing over time and how do migrants respond to the structures imposed by migration management?

Sub-questions:

1. What are the regional consequences of the historical migrant regimes of Southern Africa, and how did they affect post-apartheid immigration?
2. What is the ideal conduct of migrant management according to South African immigration law?
3. How are migrants being represented by the DHA, LHR and UNHCR and what are the resultant practices?
4. What changes have occurred in recent migration management?
5. How do Zimbabwean migrants overcome structural barriers and social insecurity?

2 - Theoretical Framework

The following chapter theorizes migration as a social process from different perspectives, in order to answer the twofold character of our problem statement; migration as a process that is being managed by a range of actors, and migration as seen from the perspective of migrants and their ability to navigate and circumvent obstacles. Put in simple terms, the logic of the chosen structure seeks to understand how and why modern nation states react to migration and, in turn, how migrants respond and adapt to restrictions and limitations on mobility. Taking point of departure in such a binary composition, this master's thesis inscribes itself into the theoretical debate concerning the relationship between structure and agency.

2.1.1 The Inherent Logic of Migration Management

The initial part of our theoretical section is chosen to shed light on the inherent logic of nation state management in the area of immigration. In what appears a global tendency, one can observe the attempt of states to close their borders and increase regulations on who is permitted to enter. What are restrictions an expression of and how does nation state's perceive people who attempt to cross its borders? To answer such questions one has to take point of departure in the changing nature of sovereignty that is being challenged and diminished by various transnational processes, of which migration constitutes one.

To modern nation states, international migration represents an anomaly that stand in contrast to the "natural" sedentary social configuration of society. From this perspective, society is always contained in territory and belonging rooted in specific and fixed locations. Rather than seeing it as a universal phenomenon, conditional to human progress, states and branches of scholars alike have portrayed mobility and migration as modern phenomena, unprecedented in history (Schiller & Salazar 2013: 184). A core principle of modern states is sovereignty that is based upon the congruence between territory and people. This systematic equation between people and territory implies the

importance for social coherence and acceptance of common values and norms among the citizens of individual states. This leads to the necessity of balancing the rights and representation of the people within a certain territory in order to maintain a coherent society (Papadopoulos et al. 2008: 3-5). In other words, modern nation states are dependent upon the production of a common feeling of nationhood and nationality. Even if a division into different social groups cannot be avoided, the function of the nation state is to produce a sense of shared belonging and feeling of citizenship between those groups. Control and subordination become the essential elements that enable a socially stabilized society. In this way, citizens or rather subjects of power, serve as the building material of modern national sovereignty and thereby the manageable opposite of informal or invisible persons, who are disconnected from the state apparatus (Papadopoulos et al. 2008: 11). It is due to this logic, that migrants are perceived as interfering, or rather disruptive, elements challenging the ongoing production and reproduction of nationhood. Papadopoulos et al. describe the Nation States' view on migrants as agents of perpetual adaptation, enabling them responsibility of their, in direct contrast to the disciplined and obedient national citizens (Ibid. 2008: 21). This relative independence from governmental power and influence could be viewed as an element for the nation states' negative perception of migrants. In this regard, it seems relevant to understand the mechanism around the logic of nationalism:

"Methodological nationalism is an ideological orientation that approaches the study of social and historical processes as if they were contained within the borders of individual nation-states" (Schiller & Salazar 2013, pp. 185).

Here, the authors point to the perception that rootedness is somehow the norm of social life and resonates with branches of scholars and policymakers who neglects mobility as a fundamental element of human progress. Methodological nationalism has the ability to distort our view and the tendency to make a priori assumptions as to what counts as forced migration. It raises questions as to how and why states categorizes people into legal categories of forced and voluntary, economic migrant and refugees, in an increasingly interconnected and complex world.

Despite states' attempt to efficiently control that is granted access to society, people are finding their way across borders assisted by informal networks, non-state actors and modern communication. This form of transnationalism purge the old understanding of territoriality and importance of borders and re-interpretates national sovereignty, as it evaluates the participating actors even on perceived national matters. International and national actors merge together, when it comes to the matter of transnational sovereignty (Papadopoulus et al. 2008: 27). Tsianos & Karakayali (2010) argue, that uncontrolled migration flows are putting government and administration into question on a daily basis, proving that it is not a "stream of water that can turned off like a tap" (Ibid.: 377). This challenges the logic of Nation states and its definition of national sovereignty and therefore requires a reorganization of the increasing internationalization of space. However, it would appear that states continue to manage migration within separate, national frameworks, showing a reluctance to engage in bilateral and regional solutions. What are the effects of clinging to national frameworks and how can we understand the

2.1.2 Law and Social Consequences

One of the more tangible ways the state is able to address immigration, is through its legal framework. Policies and laws enacted in the area of immigration expresses the desire to control and regulate the flow of people across borders but says little about its actual outcome or effect. According to Falk Moore (1973), no law or legislation enjoys absolute domination over a social field, since the latter is self-regulated by rules and norms emanating from human relations (Ibid.: 743). The Attempt to impose social change through legislation is thus not a linear process but one that is subject to resilience, opposition and change from the social agents it seeks to control. Even if Falk Moore does not write in the context of migration, we nonetheless use her thoughts to understand the tensions between migrant behavior and laws of the state, as specific legislative imprints fail to constrain movement entirely. Further, immigration laws and policies may create a series of unintended consequences, because migrants plan their way around legal obstacles. Consequently, rather than controlling and stopping

migration flows, specific laws and policies may alter their internal composition (de Haas 2011: 27).

According to Dauvergne (2004), sovereignty and migration are interrelated phenomena as “migration laws are essential to the construction of such nations because in order for the nation to exist it must have both members and boundaries” (Ibid.: 590). Consequently, immigration law designates categories of right and wrong mobility, as ostensible labels that legitimize migration enforcement. Thus, we see migrants being ascribed an outsider identity primarily through law and not necessarily through social rules. This raises questions of how these boundaries are shaped and how migration law and social binding rules are interrelated.

Falk Moore underlines the importance between the differences of the legislature and social norms, which she refers to as semi-autonomous fields: “A court or legislature can make custom law. A semi-autonomous social field can make law its custom” (Ibid. 1973: 744). Thus, the semi-autonomous field, can be identified as the social rules as well as the practical adaptation a legal framework. Thereby the semi-autonomous field has to be understood as a social entity, which is able to manipulate and undermine governmental laws:

“The complex “law,” thus condensed into one term, is ab-stracted from the social context in which it exists, and is spoken of as if it were an entity capable of controlling that context” (Ibid.: 719).

This leads to the belief, that law is treated as an omnipresent and controlling entity, while being abstracted from the context in which it emerged. It is important to notice, that the rule of law is closely tied to the sovereignty of the nation state, but these same two entities have the tendency of being stretched and pushed by increased mobility and migration flows (Dauvergne 2004: 614). It is from such a perspective, one could wonder if a tightening of rules and laws is the attempt to clinch onto sovereignty? This notion is what makes us aware of the agenda in our legal material, as it is crucial to understand the purpose of the material in order to understand the government's intentions with it.

Leaving the structural and controlling purposes and limitations of the rule of law, we shift our focus to the contested space of a migration regimes.

2.1.3 Migration Regimes

In this section we will develop an understanding of how politics of migration are constituted and shaped by a variety of actors to underscore the complexity of migrant management. To begin with, it should be acknowledged that although states remain the major decision makers in processes of migration, it is subject to influence from outside and within. Political voices of international rights organizations and civil society display the ability to raise concern, impose standards and contest decisions of governments. Increasingly, migrants are being represented by institutions and actors other than states, indicating the end of states' absolute control over borders and territories (Sassen 2005: 40). The term migration regime is an analytical concept that includes the broader range of actors that shape and impact on migration. Despite its analytical purpose, no unanimous definition exists. Rather the term points to the contested and conflicting interests of actors who speak on behalf of migrants. In other words, a migration regime points to no coherent entity but rather set of intersecting policies, rules and practices - some of which do not even address migration directly (Koser 2010: 302). Thus, migration management is not a linear process determined by state practice and policies alone, but a matter of compromise:

“... the concept of ‘migration regime’ (...) includes a multitude of actors whose practices relate to each other, without, however, being ordered in the form of a central logic or rationality. Rather, the concept of ‘regime’ implies a space of negotiating practices” (Tsianos & Karakayali 2010: 375).

Thus, the authors apply an inclusive understanding which articulates the concept of a migrant regime as a contested space, wherein divergent agendas collide. For instance, human rights groups and civil society groupings may talk from a non-statist security discourse, advocating protection of migrants rather than emphasizing border control and national security. This diversity of representation marks a change in how migration

is being managed, as states have enjoyed a rather uncontested authority in migration management historically. Thus, the concept of a migration regime has to be understood as an unbounded space which is absent of any single international governing body and which cannot be confined to intergovernmental practices (Ibid. 2010: 376). Using the perspective of a migration regime, the matter of migration is rather a primacy of political practice than a primacy of absolute control. Tsianos & Karakayali (2010) understand a regime as a reversion of sovereignty. Instead of taking regulations for granted, it should be a matter of interest, how regulations of migration are shaped as reaction or effects to social actions (Ibid.: 376). It is important to notice, that it does not imply symmetric power relation in a migration regime. Decision makers and law enforcers still poses superior power compared to migrants, but rather it raises the question of who initiates the rules and changes in migration policies (Ibid. 2010: 378). In other words, it is interesting in what possible ways migration flows are influencing a migration regime and its laws enforcements.

In regard to migration flows, the matter of mobility and immobility becomes a relevant issue. While based on this perspective immobility is viewed as necessary for personal and political security (Isotalo & Turner in Schiller & Salazar 2013: 184), demagogues and national security experts argue for mobility to be threatening and dangerous to the State. It has to be noted though, that neither all movement nor migrants are considered a possible threat, but as Schiller & Salazar (2013) point out that, “there are several different intersecting regimes of mobility that normalize the movements of some travellers while criminalizing and entrapping the ventures of others” (Ibid.: 189). Thus, migration becomes a matter of prioritizing some on the behalf of others. In this regard we can observe a multitude of different reasons for this distinction, as for example international relations between countries, economic capital of the individual migrant or international laws and regulations which aim at protecting the vulnerable, especially refugees. It becomes evident, that migration regimes contain both international regulatory as well as state actors affecting the mobility of individuals on the ground (Ibid. 2013: 189). Having recognized that migration management happens in a contested and negotiated space, the interesting question that remains is to what extent this is the case? When are states contested in their enforcement and what degree of leverage do non-state actors poses? Furthermore, it is our position, that confining an

analysis to the management of migration runs the risks of objectifying migrants, leaving out any understanding of how they cope, adapt and impact on societal structures. Equally important:

“...both the concepts of governance and regime decenter the idea of government, but still both do not take into account the agency of migration. Just as in the classical concept of government, migrants are the ‘absent cause’ of governance” (Tsianos & Karakayali 2010: 376).

Here we leave the theoretical body that addresses migrant management, and shift our lens to an understanding of how migrants adapt and respond to the restrictions and barriers that is imposed upon them.

2.2.1 Migrant Agency - Restraints and Circumvention

By asking how migrants deal with broader societal structures we carefully enter the debate concerning the relationship between structure and agency, while noticing the shortcomings and potential pitfalls of this well-debated dualism. Several scholars agree that agency should be understood as relative and restricted by larger structures that limit the possibilities of free action (Abreu 2012; Bakewell 2010; de Haas 2011 Vigh 2009). Individual actions of social actors are never autonomous and free neither are they completely subordinate to the rules imposed on them. In migration theory, the term agency was originally applied to understand the root causes of migration, as put forth by neoclassical models of push and pull, by seeing individuals as rational decision-makers who migrate in order to optimize their economic capacities (Abreu 2012: 50). As such, this set of theory is primarily occupied with the causes of migration while neglecting aspects of integration and relations to host-societies. However, as Castles & Miller (2009) point out, such distinctions are essentially artificial (Ibid.: 20). In other words migrants are agents of change whose decisions affect both sending and receiving locations.

In what is commonly referred to as structure - which in the context of this thesis, encompasses the range of policies and practices that tries to hinder certain kinds of movement - migrants may respond by diversifying strategies in order to mitigate risks and dangers while increasing opportunities. The word structure leads to the assumption of a solid foundation, but as Bakewell argues, this connotation of stability leaves out the patterns of social change over time (Bakewell 2010: 1695). Everyone is acting in accordance to the present and presumed circumstances, as we navigate through the fluid and changeable social sphere. Henrik Vigh adds a point to this notion of structure and agency through his emphasizes of the third dimension, which is wavering and unsettled, yet engaging every single individual by moving it along while the individual tries to independently move itself. As a consequence “we act, adjust and attune our strategies and tactics in relation to the way we experience, imagine and anticipate the movement and influence of the social forces” (Vigh 2009: 420). In his fieldwork in Bissau, Vigh observed the importance of how the quickly shifting global and local situation will have influence on their lives, as it highly affects the emergence or disappearance of possibilities (Ibid. 2009: 422). In other words, the people in Bissau have to adapt to the shifting circumstances, as it determine the space of possibilities to a decisive degree. Movement in this manner becomes twofold; the ability to maneuver immediate challenges, while simultaneously planning for the future as it unfolds as a constant dialogue between changing plots, possibilities and practice (Ibid. 2009: 429). It has to be noted, that although the third dimension is wavering and fluid, Vigh is not specifying in what possible ways, or if at all, individuals exert influence on these shifting circumstances. It is in this regard, that the exertion of migrant agency raises questions.

Although not writing in the specific context of migration, French philosopher and post-structuralist Michel De Certeau made important insights into the concept of agency. Acknowledging that our actions are always constrained by power asymmetries, De Certeau developed a definition of two different facets of agency in the social sphere, which we apply in order to understand the horizons and limitations of possibilities for migrants. De Certeau distinguishes between “strategies” as tools for the dominant powers of society and “tactics” for the subordinate. He designates “a “strategy” the calculus of force-relationships which becomes possible when a subject of will and power (a proprietor, an enterprise, a city, a scientific institution) can be isolated from an

“environment”” (De Certeau 1984: xix). It implies the subject or the institution to be in a controlling position while being able to make conscious decisions, while tactics are defined as a calculated action that seeks to manipulate uncontrolled events into opportunities. In this way, tactics cannot be separated from the environment. In order to secure independence and turn an event into an opportunity, the subject has to act in accordance to the imposed circumstances. In other words, the subject may manipulate events into opportunities, but it is important to notice that, to De Certeau, such tactical triumphs do not contain the potential for profound change and must be exercised perpetually (Ibid. 1984: xix). It is important to acknowledge that although De Certeau divides between the weak and the powerful, the weak possess a degree of agency according to the immediate circumstances that surrounds them. He draws, however, a clear line between the weak and the powerful and the different forms of agency. Such power asymmetries become clear with regard to the content of this master’s thesis, given the rather clear division between the conscious “strategies” of immigration authorities that are being designed to inhibit “illegal” entries, and migrants subtle and cunning “tactics” as responses to such restrictions. In other words, our interest lies in the degree to which migrants are capable of circumventing structural and practical barriers rather than whether they possess any agency or not.

Amanda Hammar (2014) has advocated the need to broaden the scope when studying migration and displacement, because migrants impact on non-migrants and other social structures in indirect ways (Ibid.: 17). Migrants challenge restrictive governmental structures by crossing borders and avoiding patrols, showing that migration cannot be stopped just so and furthermore has effects on the adjacent areas as well (Tsianos & Karakayali 2010: 377). Human traffickers can be named as an example, as they benefit from migration through informal channels, and thus take advantage of the consequences of displacement. Human traffickers misuse the events of closed borders by smuggling undocumented migrants across borders in order to generate profit for themselves. In this way, social actors who appear to have no immediate connection to displacement or migration see themselves implicated in the process, willingly or unwillingly. Furthermore, the implication of non-migrant actors may alter social relations and hierarchies (Hammar 2014: 18). In other words, migrants are inevitably challenging and changing the social order of receiving countries. Migrants seldom move

in their own capacity, but tend to rely on social connections already established in receiving societies. These networks become important social structures that shape and transform the process of migration in multiple ways as will be shown in the following.

2.2.2 Social Networks - Multiple Dynamics

Newer migration theory has shown an increasing interest in meso-level factors, such as migrant networks, which have a major impact on migration processes. Rather than limiting the scope to micro-level decisions or macro-level structures as main migration drivers, scholars have acknowledged that contemporary migration is highly mediated. According to Xiang & Lundquist (2014) “it is not single migrants who migrate, but rather constellations consisting of migrants and non-migrants, of human and non-human actors” (ibid.:124). Decisions to migrate cannot be understood without the availability of intermediaries that help overcome the policies and barriers that inhibit movement. In this section we develop a further understanding of the effects of migrant networks as important social capital in the process of migration. While many migrants rely on social connections, how can we understand the emergence of migrant networks and what role do they play in migration?

At a most basic level, migrant networks can be seen as the natural outcome of sustained social interaction between sending and receiving societies - a kind of social capital that enhances the capabilities of would-be migrants. Migrant networks have attracted the attention of migration scholars because, once established, they develop a set of distinguished dynamics from those initiating migration (Bakewell 2010). In migration theory there has been a preoccupation with the facilitative dimensions of networks as they ease the transition of would-be migrants and mitigates the risks involved with settling in new surroundings (Castles & Miller 2009:29). Furthermore networks may become self-regulated social connections that enhance the ability to avoid the interference of states and immigration officials.

Social networks can be compared with Falk Moore’s (1973) modes of self-regulation in the semi-autonomous field, as they manifest and symbolize the annulment of absolute

state domination in the field of migrant mobility and integration (Ibid.: 742-743). In this regard it becomes important to notice, that labels, laws and procedures within migration management are rather emphasized on population than process, which only establishes a limited perspective (Hammar 2014: 7). In other words the structural procedures of the state are only established on a limited basis with short-term consequences for migrants. Arguably, this can cause difficulties for establishing social security and guidance for migrants, and could serve as one explanation of emerging migrant networks, as they develop an alternative and unofficial form of social protection. Duffield describes migrant networks as a challenge to national regulation in the area of migration control, because they are viewed as unplanned and unexpected transnational connections in spite of restrictionist policies (Duffield in Castles 2004: 212). In this way, it makes sense to view migrant networks as a parallel social structure. Furthermore, the identities and loyalties created by migrant networks transcend national boundaries in a complex web of social relations sustained by mobility (Schiller & Salazar 2013: 186). Thus, we agree on social networks to fill the gap of governmental protection.

While such theoretical insights into networks, as facilitative social structures, are valuable to the study of migration, they are inherently deterministic and neglect the potential downsides and feedback mechanisms of social networks (de Haas 2010). If migration is approached holistically, - i.e. by including every location, actor and relation affected by the process - then several factors may *decrease* the benefits associated with the reliance on social connections. For instance, migrant networks may end up demonstrating exclusive traits of their own, if would-be migrants are deemed a burden to the socio-economic condition of migrants who are already settled (Ibid.: 1603). In other words, the facilitative role of networks is contingent, among other factors, upon the availability of both social and economical capital of relatives whom many “new-comers” rely on. The internal capacity of social networks also depends on broader macro-economic structures that dictate the amount of resources available. The incentive to receive further relatives is likely to decrease if jobs are scarce, as the competition for resources may become a decisive factor (ibid.: 1604). De Haas’ theoretical contribution to migrant networks is important because they serve as a reminder that migration is not a linear process. This has to be understood in terms of

migrant networks as social structures, which are able to work against the will of the migrant members who constitutes these networks as well as state policies. Consequently, migrant networks emerge as structures that develop a set of dynamics external to the migrant members of which it consists. "The research challenge is then to identify the conditions under which such networks arise and the mechanisms by which they shape migration" (Bakewell 2010: 1703). Thus, the effects of migrant networks need to be assessed in their specific context rather than making a priori assumptions about their functions and inherent capacities.

3 - Methodology

This master's thesis makes use of both diachronic and synchronic approaches to the study of migration to South Africa. The diachronic component of this project marks the opening of our analysis, and allows us to detect changing configurations to migrant management historically. We do not confine analysis to a regime-perspective alone, but broadens the perspective by including an understanding of how migrants respond and react to broader historical changes in both receiving and sending societies. While some new empirical material is introduced, what essentially distinguishes this master's thesis from other studies of migration to South Africa lies more in method than content. Studies tend to focus on either micro-level analysis of how migrants cope and respond to given constraints or, on the other hand, institutional processes of inclusion and exclusion (Rutherford 2011: 1305). For instance, Klotz (2012), in her critique of the overwhelming amount of micro-oriented studies that occurred in the wake of the xenophobic violence of 2008, embarks on an insightful macro-journey regarding the historical development of rights-based coalitions in South Africa while leaving out any room for the practices of individual migrants. While both perspectives make vital contributions to migration as social processes, this project is guided by a dual optique - towards the institutions responsible for managing migration on the hand, and the migrants themselves on the other.

3.1 Analyzing a 'Field' and its Agents

Our historical approach and attention towards the different actors who represent migrants, is inspired by Bourdieu's theory of fields (1991). Bourdieu views fields as wavering and changing structures, wherein different forces struggle for power, while changing their relations mutually and constantly (Ibid.: 171). It is important to underline, that the use 'fields' and representation is applied more methodologically than theoretically. In other words, the thoughts of Bourdieu, and his idea of 'fields' (of various kinds), functions as inspiration for how to construct the analytical section of this

dissertation, while it makes us approach society in a certain way and, equally important, in a given sequence. Within South Africa, immigration may be seen as a domain to which an array of institutions and polities respond differently and in relation to each other. With regard to our historical examination of migration patterns in the Southern African region, we acknowledge Bourdieu's thoughts on the continuity of history. Social mechanisms tend to produce and reproduce the gap between 'active' and 'passive' agents in a given social field, "setting up as eternal laws historical regularities that are valid within the limits of a given state of the structure of the distribution of capital" (Ibid.: 171). In this way, social fields produce and reproduce themselves due to a kind of censorship which is limiting the amount of stances or rather what is thinkable in the given field (Ibid.: 172). Thus, it seems necessary to look at immigration practices in South Africa historically, in order to understand the present immigration practice, as the discourse of immigration is influenced and shaped by its own, past practices. From a historical account of the old migration regime to contemporary immigration into South Africa, we shift our focus to a more synchronic mode of analysis, i.e. the present migration regime.

The methodological consequences of using Bourdieu's terminology of fields, is in our interpretation, a mapping of actors who respond to and represent migrants in different ways, guided by specific sets of rules and norms, and their hierarchical relation to each other. Furthermore, law cannot be abstracted from a field, as it tries to externalize values and norms designed to enhance control (Falk Moore 1973: 719). In order to understand the framework to which actors within a field must always relate, we begin by a tangible examination of law texts and changing regulations as primary sources. The struggle of the different actors needs to be further differentiated. Thus, the professionals in the field of immigration can only be considered representatives providing a representation of the actions, situations and agents who are being represented. As a consequence, maybe even without admitting it, these representatives tend to pursue their own interests according to their given position in the field and their constitutive space (Ibid.: 182-183). In other words, representatives are bound to their structural position in the field. Even if they are trying to increase their influence in the ongoing power struggle, it is fundamental to understand that these power struggles between representatives not necessarily collide with the interests of the represented

situations and agents. Bourdieu identifies a political discourse to be produced by its professionals on a dual determination, as it derives “from the necessity of serving at one and the same time the esoteric aims of internal struggles and the exoteric aims of external struggles” (Ibid.: 183). Summing up, a field has to be defined and analyzed as one continuous entity in order to understand the different actors in relation to each other, their intentions and power struggles influencing their agendas. Our curiosity lies in identifying the interrelated practices of institutional actors who respond to migration. Thus, we are not interested in internal struggles taking place within the institutions themselves, but rather between institutions on different levels of a field. Consequently, we combine primary and secondary literature to understand the positions and practices of selected actors, with a particular focus on Zimbabwean migration.

Bourdieu emphasizes, that the competition of the professionals in a field is counterbalanced by the relative dependence on mobilization from outside the field, in order to increase genuine power from within (Ibid.: 188). Furthermore, powerful groups from civil society are able to exert and lend power to representatives in hope for them to act in their favor. This practice becomes extremely ambiguous, if we talk about groups that do not possess a significant amount of power or recognition in civil society, which one could argue is the case for Zimbabwean migrants in South Africa. Nonetheless, we are interested in the given practical measures deriving from the South African field of immigration. This leads us to the last part of our analysis.

Having examined the field of actors that emerge in relation to migration, and the practice and management that it produces, we proceed with an analysis of how migrants cope and navigate in South Africa. Thinking in terms of navigation (Vigh 2009) leads our attention towards an understanding of migrant horizons as they work their way around immediate obstacles while simultaneously planning for a better future in wavering and unstable circumstances. In order to gain insight into the lives of Zimbabwean migrants, we make use of secondary literature written by experienced field researchers. Broadly speaking, this body of literature seeks to understand the limitations and possibilities of migrant practices and aspirations giving us indispensable knowledge of conditions on the ground. Furthermore, the notion of migration as

constellations (Xiang & Lundquist 2014) leads us to look at the broader social structures and agents that influence and facilitate migration processes, such as networks. To gain insight into such processes, we carefully apply quantitative and qualitative data from reports carried out by various Non Governmental Organizations, as complementary to secondary literature. The former mentioned material often testifies to the negative aspects of immigration management, emphasizing protection gaps and the failure to meet international protection standards but is seldom placed within a broader analysis of migration or grounded in any theoretical framework. Loaded with criticism as such data may be, it provides important on-ground information on migrant responses to legal and structural obstacles. Finally, few newspaper articles have been singled out to compliment research findings, containing unprocessed migrant interviews and observations from the ground.

3.2 Clarification of Concepts

The following contains an elaboration of central terms used in this master's thesis. As it remains the prerogative of states to determine what is "right" and "wrong" movement, labels are never neutral nor capable of reflecting the complex process of migration. Rather individuals who cross national borders become entangled in a normative framework of legal categories that have consequences for how they are received.

How 'illegal migration' is applied in law and public discourse is not unproblematic. In many countries globally, the category conflates criminal behavior with persons who do not possess necessary identification papers, and has caused human rights organizations to criticize its widespread use and the stigma that it carries with it. The International Organization of Migration (IOM) advocates the use of 'irregular migration' to denote the "[m]ovement that takes place outside the regulatory norms of the sending, transit and receiving countries."¹ According to this definition, undocumented migration is separated from criminal cross-border activities, such as smuggling and trafficking, yet still represented as an anomaly - an element in need of correction. While constituting a

¹ Taken from IOM's 'Key Migration Terms'. Available from: <http://www.iom.int/key-migration-terms>, accessed on the 5th April 2016.

gradual improvement to the oversimplification of illegal migration, the use of the word irregular remains underpinned by the normative framework of state practice, and what constitutes wrong and what is right mobility. For this master's thesis 'informal' and 'undocumented' migration are used interchangeably as more descriptive categories. Using the category illegal migration uncritically neglects the historical and social process that led to its formation and takes the international system of states for granted. Furthermore, informal migration seems a preferable wording as it reflects social processes from the point of view of migrants while connoting the reliance on social non-legal connections. Whenever illegal migration is referred to, it is in relation to a law text or official statements.

Further, in this dissertation we apply displacement limitedly, when authors refer to it, but we ourselves prefer to use the term migration. In our view, the term displacement objectifies migrants by subjugating people to be tied and bound to a specific place. The term migration is more flexible in its interpretation, while allowing to discuss not only root causes, but responses and effects of migration flows as well. In this way, we migration can be understood as the consequential answer to displacement.

The use of migrant management is used to denote the range of enforcements, practices and policies, in the area of migration, carried out by the various political actors we have chosen to include for this project.

Throughout this project we make use of two similar concepts, migration regimes and fields, which may require a short elaboration. The common denominator of the two terms is their preoccupation with political and societal actors that emerge to address a given process. However, as applied in this paper, the term regime is used contextually, to describe and detect changes in the political economy of Southern Africa, together with the practices of political actors. As such the term is deployed to designate the contested space in which states operate and thereby used to critically discuss the intentions and struggles of nation states, within the specific context of this master's thesis. The term field, on the other hand, is used to understand the interrelated dynamics between political actors, enabling us to grasp how positions and practices play out in a representational struggle. In other words, the term regime is used to

denote the concrete processes and practices of our specific case study, while a field is used to understand the dynamics between actors in the matter of migration. Hence, the notion of a field functions as a complementary analytical tool that allows us to look at the dynamics and continuities of changing migration regimes.

3.3 Reader's Guide

In this section we will reflect on the scope and the limitations of our thesis, which derive from our choices both theoretically and empirically. We will further present the underlying thoughts and methods that we use throughout our analysis. On a first note, the analysis of this master's thesis is divided into three main chapters: A historical analysis, the contemporary migration regime and migrant responses.

First, we identify historical patterns and changes in migration management in South Africa over time while analyzing the consequences of political economies for migrants in the region. Leading up to the democratic transition in 1994, we examine how the nationalization of South Africa, engendered new forms of migration. In order to understand the massive amounts of migrants in South Africa, we inquire the recent history of Zimbabwean displacement and its root causes.

Second we approach the contemporary migration regime on three different levels, namely, immigration law, the practices of different institutional actors, and recent changes in migration management. To begin with we analyze the two legal frameworks of the Refugee Act of 1998 and the Immigration Act of 2002, and the subsequent amendments, in order to obtain knowledge of the juridical grounds on which actors in migration matters operate. Furthermore, we have deliberately gone through a process of selecting actors who represent migrants on different institutional levels, namely the DHA, LHR and UNHCR. While we are well aware that this entails a deselection of other actors, our choice is based on their prominence and recurrence in both primary and secondary literature. According to the three different representatives, we will disentangle how they are positioned in relation to each other. Finally, we discuss recent initiatives and changes in managing Zimbabwean migration.

Third, we investigate Zimbabwean migration, primarily, through a micro-level analysis. This shift allows us to analyze migration processes through a migrant-centered perspective thus introducing the complex tactics and processes necessary for migrating to South Africa. We have identified migration processes to include circumvention of legal and practical obstacles, changing aspirations and the consequences of relying on social connections. We are fully aware, that these aspects only reflect a part of the entire picture, but are confident to include important aspects for Zimbabweans migrating to South Africa.

With regard to our empirical data, we have not collected our own, but rely on several reports and academic articles. Apart from the material from South African immigration law, which represents primary data, our articles and reports may contain tendencies for subjectivity. We are fully aware of this fact and we will apply selected material with caution.

4 - Reintroducing History: the Historical Patterns of Migration in Southern Africa

In this chapter we will develop an understanding of migration in Southern Africa from a historical perspective in order to show how migrants have adapted to changing political economies. By elaborating on the political economy and its effects on regional migration, we may emphasize continuity in migration flows rather than taking the post-1994 divisions of insiders and outsiders for granted. Although Zimbabweans did not play a major role as migrants until the second part of the 20th century, we will briefly touch upon the gold mining industry that had profound consequences for the region as a whole. While there is a comprehensive body of literature on migration in Southern Africa during the colonial era, current debates and policies seem to forget the historical interdependence of the region (Crush & Tevera 2010: 21), leaving out any understanding of continuity and change in present migration patterns to South Africa. Finally, we examine the recent history of Zimbabwean migration, while emphasizing its profound consequences for the region, most visibly South Africa.

4.1 The Emergence of Migration Regimes

Migration in Southern Africa is not a new phenomenon, as formal labor exchange can be dated back to the middle of the 19th century². In South Africa gold was discovered in the historical province of Transvaal (present-day Gauteng) in 1886, and emerged into a substantial demand for cheap labor that could not be met domestically. Decades after the discovery of gold and other minerals, hundreds of thousands of young able-bodied black males from across the region arrived to South Africa and were settled in confined single-sex compounds under the supervision of white authority (Wilson 2001: 104). During the first half of the 20th century, young males from Mozambique, Lesotho and

² Earlier migration was less voluminous and involved rural proprietors seeking paid work in South Africa in order to obtain hunting equipment, pastoral instruments and bride wealth for their homesteads (Kok et al. 2006: 72).

Botswana represented the largest proportion of foreign mine workers. Payments remained constantly low due to the industry's monopolization of labor through the Chamber of Mines in 1889, which effectively eradicated competition between mine owners (Wilson 2001: 103). The foreign workforce was an invaluable asset to the development of the South African economy, but migrants were consistently retained in a subordinate position. Upon expiration of their time-limited contracts, miners were forced to return to the rural areas. Any aspiration to settle was prevented by a range of discriminative and degrading pass laws designed to "cleanse" urban areas from the presence of black Africans (Kok et al 2006: 84-90).

At the same time, colonial Rhodesia (present-day Zimbabwe) was engaged in its own labor exchange with the diamond mines of Kimberley but differed from South Africa by being both a migrant sending and receiving country. Black Africans who left Rhodesia primarily engaged in circular migration in order to find work in neighboring countries and predominantly saw mine work as inferior to the opportunity of agricultural activities (Crush & Tevera 2010: 63). The outcome of these newly emerged labor "hot-spots", was a Southern Africa that was gradually tied together across colonial borders in a far-reaching labor regime, relying on intra-regional labor exchange. At its peak, at the beginning of the 1970's, the Employment Bureau of Africa actively paid visits to young men from their 130 hiring stations spread across the region, offering jobs in mines or on commercial farms (Davis & Head 1995: 442). In other words, colonial borders were subject to little attention compared to the preoccupation of maintaining the internal socio-spatial division that fueled the labor migration system. Interestingly, black Africans who participated in the old labor regimes can hardly be described as migrants, since they were forced to oscillate between rural and urban areas. From this point of view, South Africa did not experience actual immigration until the abolition of pass laws in the 1980's. Although Zimbabweans represented a small proportion of foreign miners, they became an important substitution for other labor supplier countries (mainly Malawi and Mozambique) who had retraced their workforce by the 1970's. Regional connections were, however, never confined to formal labor exchange. To many black Africans, borders represented arbitrary boundaries that were placed between them and their relatives. Due to limited control and surveillance of colonial borders, relatives continued to visit each other informally and thus maintained their social ties (Crush et

al. 2005: 5). For Ndebele-speaking Africans living in the southern parts of Rhodesia, linguistic and social ties worked to facilitate job hunting and integration into the local working environments of South Africa. In these parts, young men became attracted to mine work in “Egoli” (Johannesburg), because of the status associated with bringing home money and goods (Crush & Tevera 2010: 69)

In addition to the gold mining industry, commercial farms in the Limpopo province presented, and still do, alternative livelihood opportunities to agricultural production near home for black families. Contrary to the highly regulated mine work, employment to commercial farms have always taken place outside any formal institutions or legal framework (Crush et al. 2005: 5). Migrants working on commercial farms knew little of any minimum rights or minimum salaries and have tended to live in more extreme conditions (Derman & Kaarhus 2013: 212). Consequently, it has been a less preferred choice compared to work in the mines. Like the mining sector, the industry of commercial farming was closely tied to the economic interests of the government, whose policies paved the way for the use of cheap foreign labor (Ibid.). Despite the poor conditions on commercial farms, undocumented Zimbabweans poured into the region during the latter part of the 20th century working seasonally in circulative patterns (Rutherford & Addison 2007: 621). For many Zimbabweans, work on the farms was easier to obtain due to the proximity to the Zimbabwean border together with socio-linguistic ties and the presence of relatives.

Overall, Zimbabweans increasingly migrated to South Africa during the later half of 20th century, primarily looking for jobs on commercial farms or in the mines to compensate for a lack of livelihood opportunities in Zimbabwe. Work in Limpopo was more easily acquired due to the absence of any major cultural or linguistic barriers between black Africans. As the Apartheid government opened up for the use of foreign labor in several sectors, a series of restrictive measures were set in motion to prevent the urbanization of black Africans, usually referred to as influx control (Kok et al. 2005: 76). The consequences of the regional labor regimes were devastating in several ways. Firstly, work offered by white employers were degrading and dehumanizing. Secondly, whenever a black household decided to replace migration to the gold mines with agricultural activity, a kind of dependency on white formal economy emerged that

endangered the welfare of rural communities and their ability to develop from within. This had made more black households decide to migrate informally.

4.2 Changing Borders and the Informalization of Migration

In the 1970's Southern Africa witnessed increasing levels of informal migration when white employers began discarding its foreign workforce. This was a response to regional instability and global recession, and consequently diminished legal labor exchange between countries (Wilson 2001: 110). Such fundamental changes were introduced rather suddenly and essentially ignored the dependency of black households on the regional political economy. Reduced to labor reserve and dependent on remittances from the work of their relatives, many Zimbabweans were compelled to move informally, at any rate, as a means to survive.

During the transition to democracy, informal migration intensified due to the process of determining who, and more importantly who would not, become a part of the new South Africa. Despite promises of diversity, the inclusion of Africans involved the exclusion of others:

“While the dissolution of the internal borders of the new nation state in order to unify the nation has been inclusive, it has recast the external borders as the threshold of national belonging, with dire consequences for members of the Southern Africa region, which have been excluded from pursuing crucial economic and social livelihood strategies” (Buur et al. 2007: 17-18)

Thus, the new discourse of belonging - a citizenship based on the congruence between people and territory - cut off ties to families who had part in building the new nation through decades of participation in labor migration to South Africa. The practical dimension of the changes revolved around the re-militarization of South Africa's borders, in the attempt to hinder informal cross-border activities and border jumpers (Derman & Kaarhus 2013: 154). Despite newly introduced restraints on movement, Zimbabweans, as well as other migrants in the region, were drawn to South Africa due

to a combination of expectations of new democratic values and the beginning of economic decline in their home country. Many households had no choice but to move informally as formal economies broke down.

Seeing the historical development of the region, and especially the Gauteng province, as products of social processes and political changes could help break down post-colonial categories of citizenship and foreigner, South African and immigrant, etc. As Klotz (2012) cursorily points out, Zimbabweans could have been included as members of the new rainbow nation, rather than unwelcomed aliens, had they possessed the necessary bargaining power to obtain citizenship during the transitional years (Ibid.: 204). For black Africans of the region, the new borders were merely an arbitrary addition to the former porous colonial borders that had been placed in between relatives.

4.3 Recent History of Zimbabwean Migration

The following section explores the root-causes of Zimbabwean migration, which escalated during the former decade. Having enjoyed 2 decades of relative stability since independence, the Zimbabwean population witnessed extensive displacement due to a series of government appropriations and centralizations beginning from around the year 2000 (Hammar et al. 2010). Previously, emigration from Zimbabwe had been a response to the economic hardship caused by Mugabe's anti-imperialist stance, which obstructed the proper implementation of Economic Structural Adjustment Programmes aimed at developing the economy from within (Crush et al. 2012: 7). In rural Zimbabwe, black households were displaced due to land resettlement schemes, initially targeting white owned commercial farms. In urban areas the Harare-regime has intervened to eradicate informalized livelihoods. The "Operation Murambatsvina" (restore order / clear out the trash) has resulted in the massive loss of housings and jobs together with the displacement of large proportions of the urban population (Crush & Tevera 2010: 98-100). In other words, the above-mentioned enforcements and policies have been enacted by the Zimbabwean government for political ends and have caused severe economic distress due to a loss of livelihoods, both urban and rural.

The crisis reached its peak during the 2008 elections, when Mugabe's Zimbabwe African National Union - Patriotic Front and the newly emerged political opponent Movement for Democratic Change competed for power. In addition, the Zimbabwean economy witnessed an all time low with uncontrollable levels of inflation, food shortages and economic distress (Crush et al. 2012: 13). In the wake of elections, thousands of Zimbabweans left their country to seek shelter in surrounding countries, with a majority jumping the border to South Africa. It is important to notice, that the annual numbers of asylum seekers from Zimbabwe rose from zero in 2000 to nearly 20,000 in 2006 and almost 150,000 in 2009 (Africa Check 2013). While many have fled direct political persecution and torture (Human Rights Watch 2008), the economic grievance that has devastated the country is essentially also political in nature. In sum, the Zimbabwean crisis is the outcome of a centralist military regime whose policies have reduced the availability of jobs and livelihoods and whose hegemony has made political opposition dangerous. If we are to understand the root causes of Zimbabwean displacement and migration, then it is crucial to realize the interdependence of political and economic factors. Hence, Zimbabwean migration elucidates the arbitrariness of legal distinctions between refugees and economic migrants, implicit in provisions of international protection.

While circulation has been the defining trait of Zimbabwean migration for decades, the demographic profile of migrants has changed and diversified considerably over time. In general, circular migration has been a risk-spreading strategy and a means to withstand the lack of social protection and income opportunities. Historically, migration has been dominated by males looking for contract work in South Africa, while women took on informal jobs and street vending (Crush et al. 2012: 8)³. The far-reaching impact of resettlement policies taking place from 2000 have stimulated the need to search for livelihood opportunities in South Africa and appear to affect a broader section of Zimbabwean society than previously. Zimbabwean migration has generally intensified and diversified as it now includes young people dropping out of school, an almost equal

³ According to the SAMP household survey in Zimbabwe, 65 % of female migrants occupied informal income activities in South Africa compared to 32 % of men, in 1997. In contrast, 41 % of male migrants sought legal jobs compared to 4% of females.

number of female migrants, and highly skilled professionals. Migration to South Africa appear to offer improved income opportunities compared to staying in Zimbabwe, however, migrants increasingly take up more menial jobs despite their educational status (Ibid.: 25).

When heading to South Africa, Zimbabweans tend to choose between two different locations. Due to the historical ties between Southern Zimbabwe and the Limpopo province, Zimbabweans are likely to find jobs there, albeit in conditions short of working standards. Another preferred option is to reach Johannesburg representing better livelihood opportunities in the informal sector together with a limited exposure to xenophobia (Crush & Tevera 2010: 238). Here we have elaborated on the root causes of Zimbabwean migration in order to highlight the dependence on migration to ensure a basic standard of living. The indirect consequence of the Zimbabwean crisis has been the emergence of informal connections and cross border activities that affect the entire region, while triggering responses and restrictions from neighboring governments (Hammar et al. 2010).

4.4 Sub-conclusion

It is argued, that a historical analysis of migration patterns serves multiple purposes. First of all, it provides a tangible account of the mutually constitutive relationship between mobility and location. The development of the South African economy was possible by imposing a system of forced oscillation onto black migrants, whose local areas were reduced to labor reserve over time. Participation in labor systems became the only means by which black families could retain a viable standard of living. Secondly, when analyzing migration in a historical perspective, and the effects of changing political economies, contemporary patterns of migration become clearer. By keeping in mind the historical interdependence of the region, and the socio-economic structures that it was based upon, we avoid seeing the democratic transition in 1994 as an autonomous event that abandoned the legacy of apartheid. In other words, the new nation-building project neglected the historical processes that led to its creation. If we

see history from the perspective of migrants, then post-colonial borders appear as arbitrary interventions and barriers that attempt to exclude them from the post-apartheid nation. The following chapter examines how migrants, and especially Zimbabweans, are received and represented within contemporary South African society by a variety of actors, making up the contemporary migration regime.

5 Contemporary Migration Regime

Throughout this chapter we conduct a research of the contemporary migration regime in South Africa and how it changes over time. This chapter will be divided into three sections: First we examine the legal framework for migration in South Africa, while we define and discuss different components and changes. We will not conduct a comprehensive analysis, but rather introduce the main elements that legitimize immigration enforcement. Second, it is necessary to understand the different actors in the contemporary regime and define their relation to each other. This section is further divided into three levels of institutional actors, namely the DHA, UNHCR and LHR. Finally we want to explain the decisions or rather outcomes of negotiations between different actors, in order to disentangle the dynamics of the regime.

5.1.1 The legal Framework

Contrary to other nations in the Southern African, South Africa has developed a comprehensive legal framework to manage immigration. Although the new constitution of 1994 bestowed a set of minimum universal rights upon citizens and noncitizens alike, it took years before immigration law was properly re-assessed and adjusted to meet international protection standards. A first noticeable change was the adoption and implementation of the Refugees Act 130 of 1998. Moving beyond the Eurocentric refugee definition of the 1951 UN convention⁴, the Refugees Act contains the expanded OAU⁵ definition of 1969, “Governing the Specific Aspects of Refugee Problems in Africa”, which takes into consideration:

“... every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of

⁴ The 1951 UN Refugee Convention defines a refugee as “[a] person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (UNHCR 1951).

⁵ The Organization of African Unity was superseded by the African Union (AU) in 2002.

origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality” (OAU 1969)

By lowering the threshold of victimhood from individual persecution, as put forth in the UN convention, to more generalized forms of violence, leaders of the African continent and international human rights organizations have praised the expanded definition as a progressive step towards a more inclusive protection regime. Although containing noticeable improvements to the UN convention, critics have argued, that the expanded definition remains elusive considering the root-causes of flight, and the question of when individuals are actually “compelled to leave” (Okoth-Obbo 2001: 116). This juridical ambiguity is crucial with regard to Zimbabwean migrants who, contrary to their presumed position as beneficiaries to the convention, fall short of refugee protection. The convention has been signed by virtually every African nation and remains the only common framework that addresses refugee protection.

One of the central components distinguishing South African immigration law from the framework of other countries in the region is its “no-camp policy”. As prescribed by the refugees act, the section 22 permit, allows asylum seekers to “sojourn in the Republic temporarily”, while a case is being processed (Refugees Act of 1998, s. 22). Contrary to the spatially confined environment of camps, asylum seekers and refugees are entrusted with free movement and the possibility of providing for themselves thus escaping absolute dependence on humanitarian aid. Depending on the outcome of a case, an applicant may either be granted a refugee permit, or in the case of rejection, appeal to the Refugees Appeal Board. Taken at face value, the entire institution of asylum in South Africa is constructed in such a way, that an applicant has sound opportunities to obtain socio-legal protection, including several monitoring mechanisms. Among these is a Standing Committee, which may review the decisions of a Refugee Status Determination Officer at any time, to ensure the quality of the determination process. In practice however, free movement is not without implications as the permit is hard to obtain and must be renewed every three months, rendering migrants less mobile and more exposed to arrest and deportation, while a case is pending (Makhema 2009: 32). In other words, the noteworthy protection mechanisms of South African immigration law are conditional from the point of view of migrants who wish to seek lawful residence.

Most importantly, this implies that seeking residence through legal processes may increase the vulnerability of applicants.

The other part of South Africa's immigration legislation, is the Immigration act of 2002 which represents the first visible break away from apartheid legislation. The post-apartheid government had only made minor revisions to the 1991 Aliens Control Act, with an amendment in 1995, so as to bring immigration law in line with the new constitution (Peberdy 2001: 22). The reluctance to introduce major changes was arguably based on the concern for informal migration that was increasing during the democratic transition, as described in chapter 4. Contrary to the rights-based content of the Refugees Act, the Immigration Act is characterized by a high degree of controlling measures targeting illegal foreigners, but also sets important standards for the conduct and practice of DHA officials. For instance section 2(h) of the act stated as one of its main objectives; "...discouraging *illegal foreigners*" and "detecting and deporting *illegal foreigners*" (Emphasis in original, Immigration Act No. 13 of 2002). The Immigration Act has been subject to several amendments since its implementation, including both relaxations and new restrictions. Improvements to the treatment of illegal foreigners include newly instituted rights to get a thorough hearing from a DHA officer, before being detained and deported (Immigration Regulations of 2014, s.30 (1)). As opposed to earlier legal provisions, migrants now have a better chance avoiding immediate deportation or detention, although their fate continue to rest in the hands of officials.

Following is a concise analysis of the 2011 Amendment Act, which introduced considerable restrictions to immigration. The Immigration Amendment Act no. 13 of 2011 was proclaimed by the South African president Jacob Zuma and represents one of the latest follow ups to the original act of 2002. For migrants, the 2011 amendments contain new hurdles that decrease chances of legalizing their stay in South Africa. One of the more conspicuous changes of the new amendments is the reduction from 14 to 5 days an applicant has to renew her or his asylum transit visa (Immigration Amandmant Act of 2011, s.15). As noted by Lawyers for Human Rights' staff-member Ramjathan-Koegh (2014), this may prove difficult for asylum seekers coming through official gates other than Beitbridge, the border town from Zimbabwe to South Africa. Asylum seekers who do not apply within five days are rendered *de jure* illegal foreigners and face the

risk of being arrested, detained and deported despite the validity of their claim. Although a minor revision, we argue the devil is to be found in the detail and reveals the attempt to create new peculiar obstacles that makes it harder for migrants to obtain legal status.

The categories “undesirable and prohibited” persons introduced further sanctions and restrictions. The first category relates to people who have overstayed their visas and are denied re-entry in varying periods of time, as opposed to earlier monetary penalties (Ramjathan-Koegh 2014). The second category of prohibited persons includes traffickers (Immigration Amendment Act of 2011, s.19). The equation of human smuggling and trafficking with murderous acts as genocide and terrorism, can be considered a measure of criminalization of intermediaries. The Amendments further reveal more strict punishment of illegal immigrants together with any intermediary involved in undocumented cross-border activities and hiring. The maximum sentences increased from three months to two years for illegal trespassing of the South African border, from nine months to four years for assisting illegal immigrants with entering the Republic and from three years to five years for knowingly employing illegal foreigners (Immigration Amendment Act of 2011). Thus, the punishment for intermediaries has increased, which can be seen as an attempt to affect non-migrants in the process. The increasing restrictions towards intermediaries may also be indicative of the state’s awareness of informal border crossing activities. In other words, the whole process and everyone involved in informal migration are increasingly criminalized. This leads us to a broader discussion of the criminalization of migrants in order to understand how South African law is legitimizing their politics and practice.

5.1.2 Who is the “illegal migrant”?

This Master’s thesis works from the basic assumption that legal categories of migration are unable to reflect the reality of individuals who move across national borders, as we have elucidated in chapter 3.2. Reasons for Zimbabwean migration as well as seeking refuge are often diverse and contradictory, which results in blurred lines between different categories in reality as we have shown in chapter 4.3. The differentiated categories of economic migrants and political refugees conceal the fact that root-causes

are increasingly complex and intertwined. Furthermore, on the backdrop of South Africa's immigration framework, migrants find themselves trapped within the strict legal dichotomy of being either an illegal foreigner or a refugee, in which the notion of economic migration is absent. In this regard it is important to understand Zetter's (2007) argument about the change from humanitarian agencies to national governments as the dominant power transforming and politicizing labels, such as illegal migration and refugees. The bureaucratic labeling has to be understood as means by which the marginalization and exclusion of forced migrants is legitimized (Ibid. 2007: 189). In other words, migration and refugee law serves to draw the line between "us" and "them", and enables the internal exclusion of foreigners through practical measures. In this way the law constitutes a community of insiders, while also supporting the feeling of belonging, which results in a hierarchical division between citizens and foreigners (Dauvergne 2008: 17). This subtle function of immigration law helps underscoring, that an illegal migrant is someone you become, when the system itself prevents the possibility of obtaining protection. This either-or-scenario renders large amount of migrants de jure illegals, and targets of deportation and detention once inside South Africa. The preoccupation with detecting and punishing illegal border crossings is what outdistances refugee status, from the view of migrants, making it nearly unobtainable. In other words, while protection is evidently there, through its implementation in law, the practical hurdles are increasing and thereby diminishing the means of obtaining it. Further Dauvergne explicates:

"The labeling of part of the population as "illegal" accomplishes this exclusion when the border itself does not. Capturing the moral panic about extralegal migrants and enshrining it in law allows governments control that their borders lack. When a part of the population is labeled "illegal" it is excluded from within" (Dauvergne 2008: 17).

In our case Zimbabwean migration to South African happens through a plethora of informal paths beyond governmental control. Detentions and deportations can be seen as the practical means for exclusion, and it is the illegalization of migrants and asylum seekers that enables and legitimates the state to do so in the first place. The illegalization becomes necessary, as the South African frontier itself cannot actively divide people between "us" and "them" sufficiently. Thus, the illegalization of those

people becomes a last resort to recapture or regain control over the South African territory, or what Dauvergne (2004) coins “the last bastion of sovereignty” of the nation state. It is in this regard that sovereignty and illegality can be recognized as mutually connected, which can be one explanation for the increasing criminalization of informal migrants.

5.1.3 Sub-conclusion

Summing up, we have inquired the development of South Africa’s comprehensive immigration law, and its contradictory directions. While many provisions represent liberal norms, such as free movement and the right to work, others remain essentially restrictive and preoccupied with the control of movement. Interestingly, the law itself can be seen as a contested site, as content is derived from different sources, both national and international. The forces behind this legislative body may even be incommensurable as international rights-based organizations advocate humane treatment for all, while nationalism inevitably excludes those who are portrayed as foreign economic migrants. Restrictions and penalties are increasing both with regard to informal migrants but also the intermediaries who enable and support informal migration. In a broader perspective the criminalization of migrants and intermediaries through immigration law can be viewed as an exclusion from within the country, since borders have proven to be an insufficient means to exclude the unwelcome foreigner. Here we move on to examine the reality on the ground, and the degree to which law is being upheld and applied in practice.

5.2 Actors within the Contemporary Migration Regime

After introducing the framework of immigration law, and with a field of migration in mind, we find it necessary to develop an understanding of actors who exert influence in matters of migration in South Africa. Our division of institutional actors is divided into three levels, namely the state, domestic civil society and the international human rights

regime, and how they represent migrants in different ways. Like the nature of any given field, we argue that representations of migrants can only be understood as interrelated, rather than intersectional, while mutually constituting each other in a contested space. Hence, what follows is an analysis of both representation and practice.

5.2.1 South African State and The Department of Home affairs - A Matter of Control

“the Department of Home Affairs (DHA) remains committed to upholding the dignity of all South Africans, based on a common citizenship. This informs our core business of recognizing and safeguarding the identity and status of every South African” (Department of Home Affairs 2016: 2).

With the coming of a new nation in 1994, the DHA was entrusted with the role of supplying South African citizens with public services, jobs and health care⁶ in order to address a century of socio-economic inequality - the legacy of the apartheid regime. It is in light of the post-apartheid nation-building project that foreigners are viewed as a threat to societal security and portrayed as welfare scroungers and criminals who undermine the potential for development. Put in other words, the mandate of the DHA is, above all, to safeguard the hard-won liberty and freedom which is perceived to be the exclusive prerogative of South African citizens (Belvedere 2007: 58). Underpinning the notion of “foreign threats” is the idea that migrants will become a burden for South Africa, per se, unless equipped with a special set of “needed skills” to the benefit of national interest (DHA 2015: 76). Attempts to make efficient distinctions between citizens and non-citizens are facilitated by technological measures such as the highly prioritized National Population Register. The emphasis on sharp regulations as well as the ending of the Late Registration of Birth, aiming to avoid fraud and criminal activity (Ibid.: 2), indicate the strong division between South African and non South Africans: “After the deadline, people claiming they do not have a birth certificate or identity document (ID) will be put through a stringent process to prove to us that they are South

⁶ DHA's is divided into three main branches: Immigration, Citizen Affairs and Administration.

Africans” (DHA 2016: 2). South African citizenship is thus a highly valued asset in this matter.

DHA’s securitization of immigration is arguably justified on the grounds that South Africa attracts the highest amount of migrants in the region - both formal and informal. With the democratic transition and the following proliferation of informal migration to South Africa⁷, the DHA began working towards an enhancement of internal and external control (Peberdy 2001: 20). At the border, technological instruments, screening procedures and increased border patrols have been deployed to detect undocumented migrants, or so called border jumpers, who enter South Africa outside designated entry points. Furthermore official crossing points seem to be the epitome of the South African state’s desire to determine who gets to enter. This is visible in the stated objectives of the new Border Management Agency aiming:

“... at facilitating the efficient movement of bona fide travellers to support national interest and priorities, and to prevent and prohibit the movement of undesirable persons in the interest of national security” (DHA 2015: 76).

Here the notion of selective migration is stated explicitly, with strong connotations of suspicion towards people who enter informally, as they are framed in relation to “national security”. Besides official border initiatives, there are numerous reports of migration enforcements taking place outside South Africa’s legal framework. Raising concern from humanitarian actors, the infamous Soutpansberg Military Grounds has served as unlawful detention centers, in the Limpopo province, and deported minors and women in the absence of immigration officials (CoRMSA 2011, The Solidarity Peace Trust 2012). However, DHA has consistently ignored court rulings of the center’s status as illegal and unconstitutional, continuing its operation unprovoked (Derman & Kaarhus 2013: 161). Overall, and contrary to the language of official reports and DHA statements, South African borders are characterized by informal activities beyond the grasp of the government. Most interestingly, this informality is not confined to non-state actors, and some DHA officials are known to facilitate the border crossing of

⁷ The process of informalization during the democratic transition in 1994 is more thoroughly described in chapter 4.

undocumented migrants against bribery (The Solidarity Peace Trust 2012: 26). The contradiction of unlawful immigration enforcement as a means to both prevent and facilitate entry into South Africa, suggests that border officials attempt to reinsert the state's ability to determine who gets to cross its borders (Vigneswaran et al. 2010: 474). Due to the proliferation of smugglers and intermediaries, border officials are compelled to reinsert authority by outcompeting informal activities. In other words, the personal and local practices of DHA officials take precedence over national and international obligations, for the government's own sake.

Whenever South Africa's porous borders fail to deter undocumented migrants, DHA usually apply a range of internal track-down mechanisms. Typical enforcements from within are deportation raids that target undocumented foreigners, carried out in collaboration with police forces and the army. Due to the large numbers of undocumented migrants making their way to Johannesburg, there are reasons to view such raids as a form of extended border control (Kanstroom in Gibney 2013: 119). In what was allegedly an attempt to arrest perpetrators of xenophobic violence in 2015, "Operation Fiela" reportedly involved mass arrests and detentions of as many as 800 undocumented migrants in a period over three weeks (Mail & Guardian 2015). Although denied by the government, several voices from civil society observed armed patrols swiping through areas of Johannesburg, including the Central Methodist Church known for housing refugees and migrants in particularly poor conditions. Deportation raids like Operation Fiela, are legitimized by being portrayed as anti-crime provisions⁸ but can be considered more than the alleged enhancement of control. Such operations are essentially extreme forms of what De Genova (2013) terms "spectacles", events that stimulate public suspicions by rendering visible the presence of illegal, and thus criminal, persons (ibid.: 1182). In this way, deportation raids appear to serve the interest of South Africans by cleansing urban areas of criminal elements and equally important reproduce the need for continuous immigration enforcement. In other words, by criminalizing and exhibiting illegal migrants during deportation raids, the DHA is simultaneously strengthening its positions as a much needed law enforcement capacity.

⁸ Indeed, in similar operations taking place during the 1990's described by Peberdy, arrest figures were reported as crime statistics (2001:21). It was not possible to acquire whether the same can be said for Operation Fiela.

This has to be understood as the DHA is legitimizing its own practices by visualizing the illegality of migrants. It is crucial to notice in this regard, that migrants are being reduced to legal objects and thus rendered criminals in relation to law (and law only), in the absence of any evidence of criminal activities. A quantitative study from 2011 showed that 20% of South African citizens would support the deportation of all foreigners, regardless of their legal status or rights, while 67% did not trust foreigners at all (Krönke 2015: 2). This study is a striking revelation about the proliferation of the anti migrant sentiment in the country, intensifying in the years between 2008 to 2011. Furthermore, such numbers testifies to the correspondence between DHA's practices, whether legal or extralegal, and the wider public attitudes.

Interestingly, Vigneswaran et al. (2010) indicate, that immigration enforcement in Johannesburg is far from exerting and maintaining the immigration law at all time. One police officer actually compares himself to a soccer referee, as:

“Even though the laws are there and may apply all the times to a playing offence, the referee can exercise discretion when he deems it necessary. So some migrants may be found without papers, but if they show respect and a good attitude, they may be let loose. This was validated by the way Prince was letting go most of those found without papers, but not before a thorough interview” (Ibid.: 480).

We can observe then, the informal practices on the streets of Johannesburg being exerted on the basis of immigration officials' personal beliefs and ideologies, rather than the actual provisions of immigration law. Informal migrants, who display a cooperative attitude, thus bypass investigations, even when they are found without papers. This might be a polished description of bribery, and must be taken with a grain of salt, as it cannot represent immigration enforcement entirely. Nonetheless, it reveals a recurring gap between the official immigration law and the informal practice of it in South Africa.

The DHA has taken a particularly critical stance on Zimbabwean immigration and the resulting pressure on the institution of asylum. The limited amount of refugee reception centers has created an ongoing backlog with long lines of applicants and poor determination procedures, however, rather than allocating additional resources and

personal for faster procedures, the DHA has continuously blamed “bogus claimants” for the failure of the asylum institution (Belvedere 2007: 61). Here the suspicion towards Zimbabweans becomes clear, as they are seen as exploiting the institutions of South African:

"Workers from other countries, and I dare say Zimbabwe, have flocked to South Africa seeking asylum. We must ask: Is there a conflict in Zimbabwe which necessitates that Zimbabwean nationals must apply for asylum in South Africa?" (Current DHA's Minister Mr Malusi Gigaba as cited in Times Live: 2014).

While the minister is somewhat right to state that no major outburst of violent conflict is currently taking place in Zimbabwe, others argue that the country still witnesses destitute conditions including sustained joblessness, a lack of social services and deficit food supplies (Polzer 2008; Crush et al. 2012). In other words, the minister draws attention away from the root causes of Zimbabwean migration by emphasizing notions of direct political conflict while affirming public sentiments of migrants as welfare scroungers. Based on fieldwork conducted in 2008 in Musina, Derman & Kaarhus (2013) found Refugee Status Determination Officers working under the instructions that no actual conflict was taking place within Zimbabwe. Rather, the distress that had caused the influx would soon come to an end, as a political agreement between ZANU-PF and the opposition party MDC had been struck (Ibid.: 167). Thus, in the department's view, Zimbabweans are predominantly economic migrants and have no legitimate claim to protection of any kind. Even during the well-documented electoral violence of 2008 displacing thousands of Zimbabweans, the DHA remained skeptical of their presence in South Africa. Pressured by both UNHCR and civil society actors, the DHA eventually opened a reception office on the Musina show grounds. This granted Zimbabweans the opportunity to apply for asylum near the border, albeit with resources that did not correspond to the severity of the situation. Nonetheless this can be interpreted as DHA's willingness to compromise with other actors while recognizing of the increased influx of migrants and asylum seekers.

Taken together, the above-mentioned practices of the DHA are all processes of exclusion working at different levels; Structurally this takes place in relation to laws, policies and

incapacities. More direct measures include deportation raids, detention and border enforcement. Finally DHA has shown the capability to extend its mandate with the unconstitutional SMG's and deportation of minors. On the surface, the department represents two different, contradicting, positions; on the one hand its mandate is based on one of the world's most progressive and liberal legal frameworks. On the other hand, DHA's mandate is based on putting South Africans first, ensuring that resources are preserved for citizens. Because citizens are a first priority, foreigners who are perceived to have no legitimate claim to South African society are to be excluded at any cost. In short, for the DHA, the end seems to justify the means, since their role as gatekeepers takes priority over the universal rights embedded in their constitution. Based on the obligation to protect the exclusive status of South African citizenship, the DHA is arguably allowed to bend its mandate and step beyond the provisions of immigration law, in a relatively uncontested fashion. Furthermore, there appears to be congruence between the practices of DHA and the attitudes of South African citizens, although public sentiment may be reproduced by these same practices. All this positions the DHA against the inclusion of migrants, even if some degree of cooperation can be observed, as shown in the subsequent section. Before assessing potential compromises, the positions of two humanitarian actors of the contemporary migration regime are considered.

5.2.2 A righteous challenger

Governments and state officials are increasingly being scrutinized by humanitarian non-state actors who are raising concerns about the treatment of migrants and refugees. What this signifies is, that state practices and decisions are no longer autonomous but subject to review from experts and human rights groups. The state may now find itself internally in conflict when organizations defend the rights of migrants within the judicial system (Sassen 2005: 40-41). Today in South Africa, a myriad of non-governmental organizations fight for the rights and protection of migrants and refugees and their presence can be viewed as responses to immigration enforcement. One of the more prominent NGO's in South Africa is Lawyers for Human Rights, who defend the rights of migrants through monitoring and litigation. The reason this organization is

particularly interesting is the practical influence it has had on immigration matters in South Africa by challenging the DHA within the court system. It is an organization whose work has produced tangible outcomes by successfully changing DHA decisions such as the closing of certain refugee reception offices. Here, we will mainly focus on LHR's review of the 2011 amendments.

LHR expressed their concern according to five different aspects: group exclusion, access barriers, limitations of basic rights, reception offices and appeals (Lawyers for Human Rights 2013: 3). While some of these aspects are primarily administrative concerns, LHR point out that group exclusion or the limitation of basic rights are qualitatively different and a change of the whole nature of the asylum system (Ibid.: 11). This critique of immigration practices stands in clear contrast to the DHA and indicates a direct power struggle with regard to the practice of immigration law. It is noteworthy, that LHR's main approach is to make sure that the practices of DHA is in compliance with the country's immigration law, in order to represent and protect the rights of asylum seekers. LHR only has the power to respond to and criticize past changes of immigration law, instead of challenging the more substantial components of the law itself. One fundamental aim of the LHR report is the appeal to a more substantive and transparent discussion about future asylum policy changes in South Africa (Ibid.: 14). Such appeal, resonates with previous research findings, revealing the reluctance of DHA to include civil society actors in processes of policymaking (Belvedere 2007: 59). Overall this leads to the conclusion, that discussions about immigration law in South Africa are characterized by opacity. LHR position themselves as a contestant in the form of legal practice, reminding the DHA of their obligation to the law, though not being able to change the latter.

Furthermore, LHR expressed concern over the vulnerability of immigrants and refugees, as the amendments of 2011 may push people to cross the border irregularly thereby exposing them to various dangers such as rape, assault, smuggling and human trafficking or even death (Lawyers for Human Rights 2013: 6). LHR display a great deal of compassion with immigrants and asylum seekers, which can be understood as an attempt to represent the fears and troubles of people crossing the border into South Africa. The content of these fears comprise an effect of the amendments, which will push

people into informality without stopping actual immigration flows. In addition, LHR point to the risk of asylum seekers becoming undocumented and thereby sanctioned or even criminalized. Inevitably this violates both domestic and international refugee and human rights law (Ibid.: 7). By articulating these particular concerns, LHR position themselves as representatives of the needs and rights of the people of concern. According to LHR, one of the reasons for undocumented migration is the struggle to access distant port-of-entry based refugee reception offices (Ibid.: 8). This has to be understood as a structural critique, which in practice undermines DHA's aim for control over migration flows, as the structural shortcomings of registration points may lead to an increase of unregistered migrants, who are even more difficult to control. LHR is thereby countering the logic of the DHA. It is by use of DHA's own framework and documents that LHR have the opportunity to negotiate in the field. In this way LHR form a part of the contested space, i.e. the contemporary migration regime, by making objections to the officials in charge of migration management. Their presence and protests underscore the relational nature of what we have chosen to designate as a migration regime, always in dialogue with the shortcomings of established practice.

5.2.3 UNHCR - Representing Who?

UNHCR is an internationally well-known and respected agency leading the management and protection of refugees and asylum seekers. In relation to South Africa, UNHCR established its practice as the first UN organ in 1993 after the democratic transition. While its initial activities in the country revolved around the voluntary repatriation of Mozambican refugees, the Zimbabwean crisis has constituted an unfamiliar scenario, in which the role of the refugee agency has been challenged and reshaped consequently, as will be shown in the following.

In the context of South Africa's urban refugee protection model, UNHCR operates in circumstances that are far beyond its mandate. Important to note is, that the underlying purpose of the refugee organization serves to reproduce the international system of states by managing large scale displacements based on provision and protection in spatially confined settings (Belvedere 2007: 64). Thus, historically as well as

functionally, the refugee organization represents the interest of states as much as forced migrants whom it offers protection. UNHCR's bias towards the representation of states has been especially noteworthy with regard to Zimbabwean immigration. Despite acknowledging the external pressures that induce migrant flows to South Africa, UNHCR clings to the governmental position that most Zimbabweans are not conventional refugees (Crisp & Kiragu 2010: 14)⁹. By implicitly denying Zimbabweans the refugee label, and thereby contributing to the exclusion of the latter, UNHCR has stepped out of its role as a neutral humanitarian actor. This is thought provoking, as the DHA only recognizes 0.1% of all Zimbabweans the right of asylum, while those rates were 250 to 750 times higher in other countries in 2008 (Crush et al. 2012: 22). It indicates UNHCR to be an institution or instrument working alongside South African state interests and further stresses the non-challenging role in the field.

Furthermore, UNHCR approaches refugees and displaced people as a temporary concern, a challenge overcome by aiming at durable solutions such as voluntary repatriation, being the preferred option (Ibid.). This modus operandi is profoundly challenged in relation to the refugee communities in South African cities, dispersed and informalized due to the government's no-camp policy. However, despite the self-reliance of urban Zimbabwean migrants, UNHCR has primarily transposed the provisions of its camp-based mandate. Although UNHCR has indeed recognized the need to adjust its operations, camp-based provision, such as legal status, shelter and aid to vulnerable groupings has continued in urban settings (Landau 2014: 143). Hence, rather than a focus on empowerment and the specific needs in urban areas, UNHCR has continued to view urban refugees as victims, and excluded those who have been able to make a living outside institutional structures and protection.

However, the representational bias does not go uncontested as UNHCR is experiencing internal pressure from staff members who favor a shift in strategy. Rather than adhering to a top down institutional strategy, these employees advocate a community-based participative strategy that takes into consideration the voices of civil society and grassroots organizations (Crisp & Kiragu 2010: 21). Thus, certain branches of UNHCR

⁹ Co-author of the cited article, Jeff Crisp, is a senior consultant within the Policy Evaluation and Development Service (PDES) of UNHCR.

aim at balanced representation between the societal security of the South African state and the individual protection of migrants and asylum seekers in distress. Further, UNHCR has pointed to the incapacity of the asylum system resulting from the overwhelming amount of applications and a continued backlog (Ibid.: 17). However, rather than advocating the relocation of additional resources, UNHCR shares governmental notions of Zimbabweans as abusers of the asylum system, whose applications are a solely means to obtain work permits; "in doing so, they have placed unbearable pressures on the country's asylum system" (Ibid.:17). Summing up, it appears that UNHCR is reproducing the state's view on Zimbabwean migrants as bogus claimants preventing them from obtaining legal protection. The position of UNHCR is further visible in its relation to civil society actors:

"The human rights movement, for example, has been very litigious in nature, bringing cases against the government to court on a regular basis. While UNHCR staff appreciate the value of such activism, they also express concern that this approach can sometimes impede the search for practical solutions to immediate Problems" (Ibid.: 20).

Appreciating the efforts of human rights organizations, such as LHR, UNHCR also approach their practices as possible obstacles. This is yet another indicator that shows the difficulties for UNHCR as a state funded organization, to overcome its political ties to the South African government. On the one hand the state influence becomes evident, on the other hand, the emphasis for practical solutions, indicates UNHCR to be an organization of more pragmatic nature. Hence, we can conclude UNHCR to work alongside the DHA, not against it.

Several goals for UNHCR South Africa are expressed, such as increasing the protection of new arrivals who tend to be exploited on commercial farms (Ibid.: 32). This is no direct critique of governmental or DHA practice, but rather an attempt to improve the situation on ground for Zimbabweans by a pragmatic approach in collaboration with the DHA. In addition, UNHCR unfolds a five point plan of improvements for the authorities to create a more efficient and equitable migration and asylum system. These five points have to be acknowledged as an attempt to protect the interests of immigrants and asylum seekers, as it emphasizes a prolonged moratorium and a transparent policy

regarding sanctions such as deportation (Ibid.: 32). Nonetheless, a reproduction of the governmental discourse is revealed as well, as another point includes: “the creation of camps for Zimbabwean new arrivals.” (Ibid.: 32). The latter mentioned recommendation can be seen as a step back into the innate mandate of the UNHCR, and its attempt to manage displacement in relation to state interests. Thus, instead of adapting to reality of Zimbabwean refugees, and their self-reliance in urban communities, the policy adheres to the solution of spatial confinement.

Summing up, and despite the importance of UNHCR’s mandate to protect refugees and asylum-seekers, the outcome of its practices in South Africa have, at times, functioned in a contradictory manner. Generally speaking, two major issues have challenged the role of UNHCR in South Africa; first, the attempt to find a balanced position between representing migrants and refugees on the one hand, and the interest of the South African state on the other. Second, South Africa’s urban-based refugee protection model, and its no-camp policy, has represented a scenario that has compelled the agency to readapt to different circumstances compared to what it usually operates in. Although it cannot be denied that UNHCR is trying to improve their management as well as the management of the DHA. Hence, the divided position of the refugee agency, between the state and the applicant, appears to play out in favor of the institution of asylum itself. Yet again, we have observed a political actor whose policies and strategies relate to existing practices and the limits imposed by the legal categories of state parlance.

5.2.4 Sub-conclusion

Our “mapping” of predominant actors have revealed power asymmetries and a limited degree of negotiation, as DHA enjoys a high degree of autonomy in their practices and policies. In some cases, the department simply disregards critique and voices of concern regarding activities that are in direct conflict with the constitution and international law. While LHR contest DHA practice through litigation and monitoring, UNHCR has a more ambiguous role, and struggles to find a balanced position. We have underscored these measures of exclusion not to direct critique against the department (of this there is abundant), but to make sense of the role with which it is entrusted. Both structural

measures designed to inhibit movement - such as policies and laws - and unlawful practices - such as the SMG detention centers - are ultimately expressions of the same underlying ideology. This engenders a strategy of exclusion and deterrence directed at foreigners who, allegedly, threaten South African society. While many inclusive components may be found in South African law and practice, experience on the ground contradicts obligations. Put in other terms, the real takes precedence over the ideal, as the undercurrent of exclusivism appears to dominate the field.

5.3 Outcomes and Deviations of Migration Management

In the following section we will emphasize deviations and changes in migrant management. External events such as the Zimbabwean crisis from 2007, has had a visible effect on the representation of actors. The DHA has taken steps towards a seemingly more proactive solution to Zimbabwean migration; After pressure from UNHCR and civil society groups during the events of Musina in 2008, DHA agreed to instate a moratorium on deportation of Zimbabweans. Consequently, the asylum system drowned in new applications - a challenge the DHA addressed by introducing a new 'special dispensation permit' for Zimbabweans in 2010 which allowed them the opportunity to regularize their stay in South Africa temporarily (Derman & Kaarhus 2013: 165). Considering the reluctance of the DHA to allocate adequate resources to the reception of Zimbabweans, the moratorium arguably testifies to the importance of UNHCR's bargaining power. The effects of the moratorium and the following special dispensation permit drastically reduced the numbers of deportations as shown in Figure 1:

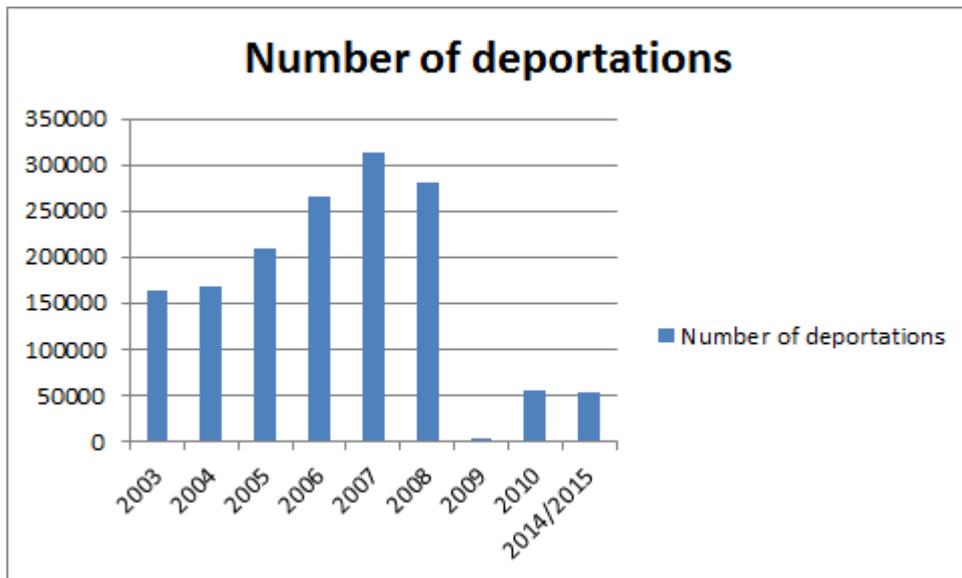


Figure 1. (Graph, based on numbers from The Solidarity Peace Trust 2012 & DHA 2015)

Although the effects of the moratorium is visible in the declining number of deportations, DHA re-engaged in deporting undocumented migrants shortly after. It has to be noted, that the official numbers of deportations have drastically declined after its peak in 2007.

The 'special dispensation permit', which was applied to legalize residence and work for Zimbabweans, may be commended as an indirect exertion of non-refoulement. Although a conspicuous improvement, the special permit did not address Zimbabweans in particularly vulnerable situations, as it was only designed for Zimbabweans who were in some form of skilled or unskilled employment (CoRMSA 2011: 80). We can conclude, that these regulations most probably limited the amount of issued permits as they were directed at Zimbabwean who already contributed to the economy (Africa Check 2014). Thus, only a small number of Zimbabweans actually benefitted from the special permit. During the process, DHA showed several signs of willingness to facilitate the process of applicants, such as a relaxation of documents required to obtain the permit and an amnesty to Zimbabweans who had obtained fraudulent documents (Ibid.: 81). Furthermore, the project is also a rare example of a bilateral agreement between the countries and may stand out as a preferred model for future migrant management in the region. Despite the signs of DHA's goodwill, the amount of bureaucratic obstacles required to obtain the Zimbabwean permit was rather high. Initially a Zimbabwean

passport was required in order to apply, essentially compelling undocumented migrants to return to Zimbabwe, only to face additional waiting time and processing (Derman & Kaarhus 2013: 166). Many who had entered South Africa in 2008 from political violence and economic hardships, had little incentive to return to the conditions they had fled from recently. Beginning from the time of the moratorium in 2008, the series of dispensations introduced by the DHA have all been temporary and conditional, enacted with the implicit assumption that Zimbabweans are bound to return in the foreseeable future. In other words, Zimbabweans who left their country in the wake of the 2008 elections were seen as temporary visitors and represented a deviation from the normal order of immigration affairs. Therefore, the response of the department was confined to an ad hoc solution to Zimbabwean displacement, as the special permit was limited to a period of three months during 2010. The reluctance to introduce long term solutions to Zimbabwean migration, and the possibility of legalizing their stay permanently, may be understood on the backdrop of the department's view on the Zimbabwean situation. As shown previously, there is a perpetual denial of the ongoing crisis in Zimbabwe; migrants are seen as workers rather than people in need of protection.

While there can be no denial that pressures from the high amount of asylum seekers and immigrants in South Africa poses serious challenges to the DHA, responses are seldom based on an enhancement of capacities to address them properly. The dispensation permit that was granted Zimbabweans was ultimately a product of humanitarian actors who expressed concern for the lack of initial response from the DHA. Although the DHA continued to operate with under-capacity in the Musina show grounds (The Solidarity Peace Trust 2012: 13), important inroads were made in 2010 and Zimbabweans who enter from Beitbridge now have the opportunity to apply for asylum near the border, instead of traveling long distances to reception offices in the cities. Here we have outlined some initiatives that has led to a relative improvement of migrant management, especially with regard to Zimbabweans. However, in the broader context of migrant management in South Africa, measures that inhibit movement continue both within the law and through the DHA enforcement.

Given the current paradigm of control and deterrence, it is central to ask how alternative scenarios could play out in the contemporary regime. A more progressive

approach to Southern African migration should acknowledge the historical ties between South Africa and surrounding countries, since their contributions to the former's current economic position have been indispensable. Further, both public and political perceptions of migrants as welfare scroungers, and criminals per se, are simply misleading, and gloss over their potential for contributing to society. However, as Landau (2014) emphasizes: "By studying the policies and laws as outcomes alone, we often overlook the processes behind their production" (Ibid.: 5). In line with our conclusion in chapter 5.2.1, the DHA is representing South African nationals in their negotiations and law proposals, as the focus is on nation building and social coherence rather than the inclusion and integration of immigrants. With this knowledge it becomes evident, that the rights based approach, consisting of for example the legal status to live and work in South Africa, is only part of the solution to the challenge of protecting migrants. Further steps have to be taken, such as protection near borders, where Zimbabweans are known to face abuse and discrimination (The Solidarity Peace Trust 2012; Vigneswaran et al. 2010). Furthermore, several scholars and organizations advocate the strengthening of migrant networks (Dzingirai et al. 2014, Landau 2014), as an important way to empower individuals and their ability to contribute to both sending and receiving countries. In this way, the social security of migrants may indirectly facilitate the development of the region and, in prospect, help decrease the flow of people who move as a means to survive. Further, the widespread xenophobia in South Africa can be seen as a source of social insecurity and vulnerability. "Thus, when foreign nationals discuss xenophobia, they often speak of impunity and have little faith in the rule of law being upheld at the local and even the national level" (Morand 2015: 5). Events culminated in the attacks of 2008 where 60 people died, while more than 100.000 got displaced, and ongoing discrimination as well as minor attacks (CORMSA 2009 & Krönke 2015). This can also be seen in the open discussion with local participants regarding xenophobia: "they were in equal numbers ready to attribute violence against foreign nationals in the townships to severe, widespread poverty" (Morand 2015: 10). In this context, we view xenophobia, and the resulting discrimination of migrants, as the key concern for addressing the vulnerability of migrants in urban settings

Strengthening the social protection could be done by giving migrants a political voice, thereby granting them the possibility to address and challenge discriminatory obstacles, which constitute a fundamental basis for integration into society (Landau 2014: 6). Interestingly, a similar approach can be observed in 2015, when the Moral Regeneration Movement and UNHCR joined forces in order to facilitate a dialogue on social cohesion between spokespersons from variety of political actors such as the DHA, NGO workers, Refugee group representatives together with several local community groups. The meeting was centered around five elements: “social systems, economics, legal systems, government structures, culture and linguistics” (Morand 2015: 9), which indicates a comprehensive attempt to address xenophobia by enhancing dialogue between stakeholders. This meeting could be one ray of hope for improving circumstances for migrants in South Africa, but whether it is enough to overcome the widespread xenophobic tendencies remains to be seen and can be questioned due to the unabated xenophobic attacks. Nonetheless spending resources on border control and deportation seems to have little or even no effect on the total numbers of informal migrants streaming towards South Africa. Rather rights and protection based NGO’s such as LHR and UNHCR should continue working together with the DHA in order to create social and economic opportunities as well as increasing the accept of foreigners in order to honor the constitution, stating that “South Africa belongs to all who live in it, united in our diversity” (Republic of South Africa 1996a: 1).

5.3.1 Sub-conclusion

Summing up, the moratorium and the successive ‘special dispensation permit’ were introduced to gain control over the sudden influx of migrants, in the wake of electoral violence in Zimbabwe. As a consequence of pressure from UNHCR, together with civil society actors, these special regulations represented a progressive approach to address the sudden high amount of Zimbabwean asylum applicants. Nonetheless it only addressed a limited amount of Zimbabweans due to structural and bureaucratic obstacles, excluding the remaining migrants from access to legalization. Although the Special Dispensation Permit constituted an initiative for Zimbabweans and their opportunity to remain in South Africa legally, it remained a contemporary exception,

one that will eventually expire. Furthermore, UNHCR invited for discussion not only with the DHA, but with refugee group representatives and spokespersons from local communities as well. This we perceive as a promising start for more progressive bottom-up solutions to Zimbabwean migration. Migrants, to some degree, now have an actual voice in matters of migration and xenophobia, as humanitarian actors work towards social cohesion on community levels, rather than the exclusive preoccupation with rights and legal protection.

6 The Responses of Zimbabweans

Up until this point, we have shown that Zimbabweans face a range of obstacles for entering and staying in South Africa legally. The former part of the analysis has primarily been concerned with the field that has emerged around the massive amounts of migrants in South Africa, without taking into consideration the agency of migrants and the tactics they use to circumvent legal obstacles and anti-foreign attitudes. We have also clarified in our section about the context of Zimbabwe, that a majority migrate in order to achieve a basic standard of living. Thus, entering South Africa should not be seen as economical opportunity or conscious choice, but rather an attempt to overcome extreme destitution or direct state-sponsored violence. In the context of narrowing legal opportunities and DHA's aim for control with continuing arrests, detentions and deportation - this chapter inquires, in three parts, how Zimbabwean migrants navigate in unstable circumstances influenced and managed by actors of the field. To begin with practical dimensions of migrant agency is inquired, i.e. how legal and structural obstacles are circumvented. Moving on we analyze how migrant aspirations have changed over time, as modes of belonging are subject to change. Finally we examine how the reliance on social networks affects Zimbabweans and their ability to make a living once in South Africa.

6.1 The Persistency of Zimbabwean Migration

Zimbabweans migration is born out of necessity and the attempt to compensate for a lack of job opportunities, livelihoods and food supplies, and is in itself a form of agency - a risk-spreading strategy that mitigates the negative effects caused by displacement. Because economic, undocumented migration is conflated with illegality - an arguably criminality - in South African immigration law, Zimbabweans find themselves choosing between the lesser of two evils; staying and facing destitution or migrating despite the consequences of being labeled. The imperative to reach South Africa becomes clearer when we take into consideration the dangers and risks associated with crossing the border between Zimbabwe and South Africa. Entering between designated points of entry involves a potential encounter with wild and dangerous animals in the Limpopo

river. Further having made one's way through the barbed wire, so-called "magumaguma" gangs serve as unofficial border patrols looting, harassing and raping border jumpers (Crisp & Kiragu 2010: 15). In addition Zimbabweans have become rather skillful at finding ways to cross official border posts without required documentation. One way to do this is by use of "Malayishas" - vehicles that transport groceries and commodities between South Africa and Zimbabwe - who are usually willing to pick up fellow nationals for cash payments (Mail & Guardian 2013). For migrants in position of adequate resources, this is an efficient way of re-entering South Africa upon deportation, and underscores the importance of intermediary actors in facilitating migration.

In an interview in the South African newspaper Mail & Guardian, a female migrant personally described her immediate return to South Africa after being deported to Beitbridge: "When you get to the Zimbabwean side, they don't arrest you because you didn't commit any crime in that country (...) They let you free and you go wherever you want." (Female migrant cited in Mail & Guardian 2013). While the migrant reveals her ability to circumvent law enforcement, her articulation also elucidates the contested meaning of illegality. Contrary to the viewpoint that undocumented migrants are objectively illegals as defined by immigration law, and thus criminals *per se*, the migrant bases the notion of criminality on the perpetration of harmful actions. Having no moral issues concerning her whereabouts in South Africa, the migrant made her way back to Johannesburg on the same day she was deported (Ibid.). Being far from an isolated case the incident reveals the futility of deportation as a deterrent strategy that does little else than pushing migrants into new alternative and informal routes. It reveals unintended consequences, as DHA's efforts to deport undocumented migrants do little or nothing to deter re-entry into South Africa. Rather, what occurs is a kind of revolving door-effect with migrants returning within a few days following deportation. On the whole, control and deterrence appear to have limited effect on the absolute willingness to move to South Africa.

We want to discuss this observation in relation to Gibney (2013), who makes the convincing argument that deportation ought to be treated as a form of forced migration because it leaves people in a similar state of dispossession and aggravation as people

who flee conventional war. In his view, deportation has been treated as a separate process, because it is accepted as legitimate state practice. As such, it remains the sovereign prerogative of states to expel people who have no legal right to stay within its borders (Ibid.: 118). While Gibney is certainly right to question the general perception of deportation as a “just” and uncontested category of forced migration (Ibid.: 121), we argue that cases of intra-regional migration are neglected. Our empirical findings have, rather unambiguously, suggested that deportation of Zimbabweans creates a revolving-door effect that has no “profound effect” on migrants. The notion that deportation fails to deter is even shared among border officials in Limpopo:

‘[S]ometimes we just let them in because we feel that even if we deport them they will come tomorrow . . . they will never stop coming and we will never stop arresting them, it is like that here.’ (Police Officer as quoted in Vigneswaran et al. 2010: 473)

Thus, even if there are sound reasons to include deportation as a category of forced migration, in our case, it has not decreased the opportunities of Zimbabweans, leaving them free to re-enter upon arrival to Zimbabwe. Furthermore, deportation may be seen as one among many practices that can be interpreted as deterrent strategies. Such practices convey a message, although rather subtly, signaling aggressive and unwelcoming attitudes towards undocumented migrants, who may risk arrest and detention in degrading conditions. The control paradigm is ultimately a losing strategy for everyone involved in the social process of migration, imposing additional economic pressures on both migrants and the authorities in charge of managing migration (Mthembu-Salter et al. 2014).

To the frustration of the DHA and the state, corruption constitutes a further loophole through which migrants have the opportunity to bypass officials. Both in terms of entering border points and avoid arrest and deportation, migrants seem aware that bribery may take them a long way. In Limpopo and Gauteng, reports of corrupt police officers are common and migrants frequently pay lump sums to escape interference. Corruption constitutes a double-edged sword for migrants, as it may also target those who have the necessary papers to be processed in the legal system (The Solidarity Peace Trust 2012: 27). Vigneswaran et al. point to the fact that traders and migrants

transform borders into places of business rather than political or economical boundaries (Vigneswaran et al. 2010: 468). Thus, it is important to notice, that loopholes such as bribery and corruption are reconstituting places and that migrants are part of these transformations. More importantly though, it reveals the permeable nature of national borders and the ability of the Zimbabwean migrants to exploit this situation. It is by virtue of such tactics, that Zimbabwean migrants are not only helpless victims without any latitude but manipulators of law and structures.

The above empirical findings not only show how migrants are able to circumvent immediate obstacles, but also the extent to which migration to South Africa is informalized. By avoiding any form of contact with institutions and formal systems, undocumented migrants carry readies, which inevitably make them targets. Furthermore, in their capacity as street hawkers and vendors, migrants cannot avoid being seen by the wider public, despite the wish to limit exposure. Thus, for migrants, navigating in urban environments means aiming for the precarious balance between visibility and invisibility. Another important element for most undocumented Zimbabweans in South Africa is their inability to advocate for their rights. Reasons for this can be found in the “fear of deportation; lack of adequate resources and time; lack of strong social networks; (...); and mistrust of politics that impede effective and comprehensive collaboration” (Women’s Refugee Commission 2011: 10). Thus, mistrust and fear for South African officials drive Zimbabweans away from seeking rights, which implicate a coping tactic according to the repellent attitude and law enforcements from the Department of Home Affairs.

6.2 Changing Aspirations

The anti-foreign sentiments, especially towards Zimbabweans, that permeate South African society, engenders an environment in which migrants are marginalized and exposed to both physical and structural opposition. The outburst of violence recurring regularly on a street level creates a permanent sense of insecurity among migrants who may choose to limit their presence in the public sphere as much as possible. However, It

would be wrong to assume that exclusion is a one-way process that leaves migrants without a choice and suppressed like docile units incapable of coping with anti-foreign sentiments. Rather, migrants may favor self-exclusion towards South African society, by creating “counter-idioms” to the static mode of belonging that is associated with South African citizenship (Landau 2006). By depicting rootedness as an inferior mode of living, migrants of Johannesburg have actively abstained from settling, because they view their presence there as temporary - a stepping stone to a brighter future somewhere else (Ibid.: 127). In this way counter-discourses, i.e. the virtues of mobility vis-a-vis the static character of citizenship, help migrants cope with xenophobic attitudes and strengthen perceptions of their status as migrants. Further, it may be understood as the deterritorialization of belonging, because migrant lives and livelihoods play out in spaces between national borders and locations, in perpetual movement beyond the grasp of governments and institutions. For Zimbabweans, circulation is arguably an expression of agency, and a coping mechanism that helps mitigating the downsides of displacement and in many cases an inevitable option.

Interestingly, there are indications that the physical and emotional dissociation from South African society is changing over time as migrants readjust their future aspirations and expectations. As the ongoing socio-political crisis in Zimbabwe shows no signs of amelioration, the circulation and return migration of Zimbabweans appears to be decreasing. Contrary to Zimbabweans who have arrived in the 1990’s and beginning of the 2000’s looking for temporary livelihoods and income opportunities, “third wave” Zimbabweans tend to stay in South Africa for longer periods of time. Two-thirds of Zimbabweans who migrated after 2005, saw longer term stay in South Africa as a preferred scenario and as many as 46% had not returned to Zimbabwe since their arrival (Crush et al. 2012: 2-3). In other words, circulation - the defining trait of Zimbabwean migration in Southern Africa since former century - is waning and changing, as an increasing number of Zimbabweans reconsider the likelihood of a future in their former home. Consequently, some migrants may redirect all attention to their current situation, focusing on personal economy rather than household remittances: “I will not invest in Zimbabwe because home for me right now is here in South Africa, so that is where my energy and finances are focused on” (Zimbabwean migrant as cited in Dzingirai et al. 2014: 15). The young Zimbabwean male interestingly articulates the changing character

of home, as he perceives it “right now”, implying the possibility for future changes. Furthermore, age may be a defining factor in whether or not migrants feel committed to their home communities. This migrant expresses a tendency for decreasing investments according to the expected longer duration of residence in South Africa. Obviously, this is merely the words of one migrant, but in conjunction with the “third wave” survey, there are sound reasons to appreciate the above quotation as an expression of a general tendency. The potential consequences of such changing aspirations, is that a decline in cash flow remittances will push even more Zimbabweans across the border.

While Zimbabweans have indeed expressed a desire to return, answers seem contingent upon the restoration of economic security and the availability of livelihoods in Zimbabwe (Crush & Tevera 2010: 239). Thus, the preference of remaining in South Africa appears to be based on the availability of better income generating opportunities. Consequently, Zimbabwe enjoys higher estimation in every other domain, and research indicates, that if the situation improves they are likely to return (Crush & Tevera 2010: 239). This could be read as migrant pragmatism, as Zimbabweans remain committed to their home country, but are left with little other choice than staying in South Africa, while trying to accumulate savings and remittances. Ironically, migrants’ changing preferences of residence happen alongside the implementation of newer and harsher immigration regulations that are being designed to prevent their legalization. This is best exemplified in the 2011 amendments that introduced new hurdles likely to impact on employers of undocumented migrants together with increased penalties. These parallel and contradictory processes points once more to the inefficiency of deterrence policies on the one hand, and the persistency of Zimbabwean migration on the other.

6.3 Possibilities and Limitations of Zimbabwean Migrant Networks

In the context of Southern Africa, it is nothing new that migration is being mediated and facilitated by networks. What is relatively new, however, is the nature and function of networks. Under the old migration regime, networks were highly formalized and

allowed young able-bodied males to travel to South Africa to find work in mines or on farms. In this way networks functioned facilitated official access to South Africa, albeit for limited periods of time. With the abolition of the old labor contract system and the hardening of national borders, migrants have had to rely on informal and social networks as a means to enter South Africa *despite* regulations and not because of them.

Today, social and informal networks play a key role for Zimbabweans and their initial decision to migrate to South Africa. Although moving on an individual basis, Zimbabweans tend to make use of relatives and acquaintances in receiving areas, most often Johannesburg. Just over half of the respondents from the “third wave” survey had immediate family within South Africa before migrating, while an even larger proportion had connections based on extended family, community members and friends (Crush et al. 2012: 27). For Zimbabweans, social networks not only influence the decision to migrate, but may also facilitate housing in inner-city Johannesburg, while providing easier access to informal jobs. Due to the large amount of Zimbabweans without any legal documentation, social networks also play an important role in informing newly arrived about conditions on the ground. This, in turn, lowers the risk of being arrested, detained and deported. In other words, migrant societies function as a form of local network connections and assistance in order to help newly arrived migrants to get started (Kok et al. 2006: 231). Networks change character depending on ethnicity; while Somalis rely on religious affiliations and institutions, Zimbabweans differ since they primarily rely on family or direct acquaintances (Women’s Refugee Commission 2011: 13). The composition and characteristics of Zimbabwean social networks may also be a testimony to the history of Southern Africa, since post-colonial borders were placed between workers in South Africa and their relatives back home. In other words, Zimbabweans have relations to nationals in South Africa based on direct family connections and social ties due to the region’s historical interdependence.

However, while Zimbabweans make use of relatives to facilitate migration, it can be argued that networks create a degree of restraint. A main challenge can be identified in the informality, as these networks mainly grant access to the informal job sector, which may perpetuate economic and individual insecurity. Nevertheless, networks are an important facilitator and supporter of migration and can be viewed as a replacement for

the lack of governmental assistance. According to the Women's Refugee Commission (2011) it is evident that migrants with friends or relatives in Johannesburg have a considerably higher success rate finding jobs and housing (Ibid.: 12). The factor of social capital can clearly be viewed as a foundation for getting started in the urban metropolis of Johannesburg, though it has to be noted that migrant networks may indirectly consolidate social barriers. This can be seen in a channeling function, as networks introduce migrants to one particular place, while simultaneously limiting the possibilities of this particular location. In other words, migrant networks restrain the range of opportunities as much as they advance them (Kok et al. 2006: 233). This becomes empirically evident, since a majority of Zimbabweans appear to gain access to housing, cash and legal advice through social connections. However, the jobs acquired by Zimbabweans are primarily found within the informal job sector (Women's Refugee Commission 2011: 13), which testifies to the socially stratifying abilities of migrant networks. Thus, social protection enabled by migrant networks cannot solely be seen positively, as they capture newly arrived Zimbabweans in the same socially low-level positions as the ones before them. Nevertheless, to be granted the opportunity to accumulate investments, livelihoods and the opportunity to remit savings for the ones left behind in Zimbabwe, is not a small step forward with regard to Zimbabweans fleeing extreme destitution.

Although neither the economic nor the developmental aspect of remittances is within our analytical focus, it inevitably influence migration flows from Zimbabwe to South Africa. We find it noteworthy, that Dzingirai et al. (2014) discovered far greater investments of money from remittance into social rather than material welfare. One explanation can be found in the aspiration of increasing family status as well as social connections in the neighborhood (Ibid.: 23). Thus, in this case remittances can be seen less of a developmental factor, but rather as an element that attracts additional Zimbabweans to South Africa. In other words, in Zimbabwean communities there can be found a lot of prestige to have family in South Africa, thus creating further stimulus to migrate by representing a socially desirable scenario.

By now, our empirical findings have underscored the facilitative functions of informal networks as well as its limitations for the process. Migrant networks play a crucial role

for Zimbabweans who seek out work in South Africa in the attempt to overcome economic destitution. As pointed out theoretically, such observations stems from *a priori* assumptions about social networks and sees migration as a linear process. Indeed, many Zimbabweans seem to follow the footsteps of their relatives, and end up becoming inspired to migrate themselves. While there are strong indications of cumulative processes at work, Zimbabweans already residing in South Africa may be reluctant to receive additional relatives. For some Zimbabweans, the outcome of the decision to migrate to South Africa may have been disappointing leading to no further improvement of economic circumstances. In such cases, the only viable option is to deliberately cut contact to family members who seek out their assistance and help as newly arrived (Worby 2010). Migrants describe the situation themselves as “the burden of ubuntu”, which obliges them to provide for relatives and others in need (Ibid.: 419). As we have shown above, most Zimbabweans who migrate have some form of social connection to South Africa. Thus we see Zimbabwean migrants cutting economic and social ties to their home country and relatives, when their own economic resources are insufficient. What we can observe then, is that migrant networks, as a social structure, perpetuate additional migration against the will of those already residing. What may follow are strategies of disconnection, leaving newly arrived Zimbabweans to themselves (Ibid.: 420-421). It is by virtue of this disconnection, that networks can have an aggravating effect on migration as a social process. New arrivals are then faced with a deterioration of their socio-economic condition - alone in South Africa without access to neither public services nor the social capital provided by migrant networks. Contrary to the general public depiction of Zimbabweans as a burden for society, one may argue that it is not until such situations that migrants lose their actual ability to contribute to society. These dynamics underscore the social and economic importance of migrant networks.. Even though the facilitating functions of migrant networks, such access to housing and jobs opportunities, are helpful for getting migrants settled in an unfamiliar environment, the resources and possibilities of those networks are ultimately limited.

6.4 Sub-conclusion

Our empirical findings make it possible to develop three interrelated terms of Zimbabwean migration to South Africa. First, we have shown Zimbabweans to be persistent in finding ways to cross the border into South Africa. Zimbabweans are proving to be rather skillful in exploiting the limitations of South African border control and deterrence strategies. Second, Zimbabweans redefine their sense of belonging as the crisis in their home country continues unabated. Consequently, South Africa, despite its tightening immigration regulations, appears to be the preferred location for creating a better future. In other words, Zimbabweans migrate to South Africa and stay there, in the absence of livelihood opportunities near home, and can thus be viewed as a pragmatic solution. Third, we have emphasized that Zimbabwean migrant networks may ease off transition to South Africa, but may indirectly maintain newly arrived migrants in similar socio-economic low level positions. Further, the social and economic insecurity of residing migrants may compel them to disconnection, leaving newly arrived Zimbabweans in an even more vulnerable situation without any form of support or social security.

7 Conclusion

Within the content of this master's thesis, we have found the relationship between structure and agency to be mutually constitutive, giving birth to a peculiar dynamic; while the DHA seems keen on upholding a strategy of control and deterrence, Zimbabweans continue to find new ways into the country, effectively circumventing legal and practical obstacles. In other words, informalized migration engenders restrictions from above, while these same restrictions induce further informalization. As such all action is essentially reaction, continuing in a vicious circle that consolidates the artificial boundaries between South African citizens and foreigners. This, in turn, is neglecting the historical ties between black Africans across the region. By use of a historical analysis, we have emphasized the socio-economic relations that tied Southern Africa together. This enabled us to see continuity between formal and informal migration, in the wake of the democratic transition in 1994, rather than taken post-colonial borders for granted. An account of historical processes, and the consequences of former white ruled political economies, delegitimizes public discourse of 'illegal foreigners' as welfare scroungers by highlighting the deeper socio-economic inequalities underlying their contemporary presence in South Africa. Thus, the state's preoccupation with illegal foreigners can be traced back to the construction of a new nation, in which a South African citizenship became contingent upon a process of inclusion through exclusion.

Post-apartheid immigration law contains progressive components such as free movement and the right to work, while a mixture of new restrictions and relaxations are introduced continuously. However, the primary source of exclusion appears to stem not from the law itself, but rather the nationalist sentiments that stirs the extralegal conduct of immigration officials and the broader population. Other actors in immigration matters, such as LHR and UNHCR, have shown to possess limited bargaining power, but managed nonetheless to induce some progressive structural changes, such as the moratorium and the special dispensation permit. These legal exceptions to the dominating exclusivism of South African immigration practices have to be described as limited and temporary solutions. It has to be noted, that beside others, UNHCR further

opened up for discussions between state officials, as well as representatives for local communities and refugee groups. This signals a more direct representation of Zimbabweans and a previously unseen willingness to include them in political processes.

Finally, when we look at society from the point of view of migrants, shifting borders and changing political economies appear rather arbitrary; because historical processes have created the need for mobility, and indeed the perpetuation of mobility, migrants continue to cross borders and circumvent the barriers imposed by authorities. In their ability to overcome legal and social insecurity, migrants provoke and reinforce notions of South African nationalism. Paradoxically, it is in a time of enhanced immigration control, that an increasing amount of Zimbabweans seem to choose South Africa as a permanent future home. In order to facilitate these processes, social networks appear as structures both enhancing and limiting Zimbabwean migration to South Africa. Thus, legal restrictions and practices cannot control migration flows, as it would appear that the historical patterns of migration are too strong. Rather than seeing Zimbabweans as a burden to society, one could begin acknowledging the crucial role migration has played in the development of post-apartheid South Africa and its current economic position.

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