



## The Zimbabwe Exemption Permit

### 1. Introduction

During the first few days of 2022 holders of the Zimbabwean Exemption Permit (ZEP) were issued with a letter dated 31<sup>st</sup> December 2021, from the Director General of the Department of Home Affairs, confirming the Cabinet decision of 24<sup>th</sup> November 2021 not to renew these permits.<sup>1</sup> The DG explained that he was writing on behalf of the Minister, Dr Aaron Motsoaledi. 31<sup>st</sup> December 2021 was the date on which the ZEPs expired but, as the letter points out, there will be a grace period of one year to enable holders of the permit to explore the possibility of using other visas to anchor their stay in South Africa, or to return voluntarily to Zimbabwe. The letter stresses that the Minister has issued specific instructions that no punitive action should be taken against any holder of the ZEP during this grace period, but those who stay on without a new visa after 31<sup>st</sup> December 2022 face the possibility of deportation.

Several times since the announcement of the suspension of the ZEPs, the Minister has tried to position the decision as a helpful possibility for people to expand the choice of visas. He has pointed out that when they accepted the ZEP they forfeited the right to apply for any other visa or to pursue any alternative means to regularise their stay in South Africa. The Minister cited the example of a Zimbabwean married to a South African who would have recourse to a visa on the grounds of the marriage, being prevented from doing so because they held a ZEP.<sup>2</sup> This decision was made to sound like a positive, generous encouragement for the holders of ZEPs and a potential widening of the grounds for continued stay in South Africa. However, despite his regular citing of this reason, it was not included in the list of official reasons.

### 2. Some Other Considerations

Amongst the visas listed in the Immigration Act are business visas; work visas (granted to those filling jobs where no South African is available); relatives' visas for the immediate families of South African citizens, or those with permanent residence, who are able to provide financial support for the person making the application; medical visas; and scarce skills visas.<sup>3</sup> Even a superficial reading of the list will indicate that many of the gainfully employed ZEP holders will not be eligible for the other types of visas which, amongst other issues, will result in profound family and social disruption.

(As a side note: the ZEP, or the Zimbabwean Special Permit as it was first known, made the point that the permit allowed the holder to work, but it did not provide a basis for permanent residence, no matter how long the holder had been in the country. It also emphasised that the permit was not renewable, and that the holder could not change the conditions of the permit.<sup>4</sup>)

In its letter the DHA spelt out definitively for the first time the reasons behind the decision to suspend the ZEPs. It is interesting to note which of several possible grounds the Minister decided to use as a basis for the decision, and by implication which he chose to omit. Also noteworthy is the Minister's decision to set up a special team to deal with the applications for various visas by Zimbabwean nationals.

On 7<sup>th</sup> January a number of South African media outlets quoted government sources as clarifying that the grace period gave full legal protection to those holding the permit. These reports noted that the original decision was that the permits expired

on 31<sup>st</sup> December 2021, but that the holders could remain and work in South Africa, and cross its borders, but without formal legal status. It was further reported that this lack of formal legal status was raising a number of difficulties for ZEP holders, especially with financial institutions wanting to close their accounts and employers not renewing their contracts for 2022.<sup>5</sup>

On 6<sup>th</sup> January the government felt obliged to put out a communique condemning various attacks on social media on Dr Motsoaledi with regard to the suspension of the ZEPs, an indication of the rigorous contestation around the issue. It pointed out again that the decision was not that of the Minister individually, but a collective one by the executive.<sup>6</sup>

### 3. The Four Grounds for the Suspension

The grounds given by the DG on the Minister's behalf are as follows:

- The ZEP was never intended to be anything but temporary, to assist Zimbabweans during a specific period of economic decline in their country. (He makes no mention of the political meltdown that occurred at the same time, and which precipitated the various forms of insecurity and fear that stalked that country and led to many fleeing to South Africa.) He points out that, at the time of the first exemptions in 2008 and 2009, 200 000 and 207 000 migrants, mostly Zimbabweans, sought asylum in South Africa. These numbers overwhelmed the asylum process. In subsequent years this process has also been further stretched by an accumulation of appeals.
- The DHA has limited capacity to deal with these processes and this capacity could not be enhanced because budget cuts left the DHA unable to employ more staff in its immigration services. It has chosen instead to concentrate its services in areas that deal with the rights of South Africans. The letter indicates the amounts in the various budget reductions.
- In a very bland, short paragraph, the letter states that StatsSA has indicated that in the second quarter of 2021 unemployment in

SA increased by 1.8%, bringing the overall figure to 34% of the population.

- In the last of the four reasons offered, the DG says that 1 900 holders of the ZEP in some way violated the conditions on which they held the exemption. Most of them applied for waivers which were rejected.

## 4. Critiques of the Grounds for the Suspension

### 4.1. The return to the status quo ante

The letter to the holders states firstly (and it might be assumed that it is thus the most important reason) that the exemptions were issued during a time of economic (and presumably political) crisis and that the exemptions were only meant to last for as long as the economic crisis lasted. The plain implication of the suspension of the ZEPs is that that crisis has passed and thus the need for the ZEP no longer exists. This is simply factually untrue, as the following excerpts show:

- A December 2021 report in *The Economist* gives this summary of the situation in Zimbabwe: "The coronavirus is exacerbating long-standing structural issues, and Zimbabwe's economy will remain weak while poverty rates are high, despite headline economic growth in 2022. Power shortages are frequent, and present a risk to mining-led economic growth. Protests over shortages of essential goods, high levels of food insecurity and endemic corruption, as well as declining real wages amid high inflation, highlight the risk of wider political instability."<sup>7</sup>
- The economic headline growth referred to above is expected to be 3.8%, after a two year contraction during the pandemic of minus 11%.<sup>8</sup>
- On the economic front the following is instructive: "In 2019, the new Finance Minister, Mthuli Ncube, presided over the conversion from foreign currency to a new Zimbabwean currency, and the resultant return of hyperinflation. It was estimated that inflation reached 500% during 2019. According to *Trading Economics*, the annual inflation rate in Zimbabwe was

540% in February 2020. The annual inflation rate had risen to 676% in March 2020 with a bleak economic outlook due to the effects of a drought in 2019 and the COVID-19 pandemic.”<sup>9</sup>

- On the important issue of human capital, a World Bank report of November 2021 states: “The health system is challenged by issues including doctor strikes, staff attrition, particularly nurses, and inadequate quantities, and slow access to, personal protective equipment. Reduced frequency and timing of antenatal care visits may cause further deterioration in maternal and infant mortality. Households’ loss of access to basic social services and deepening of negative coping strategies risks undermining Zimbabwe’s relatively high human capital and the pace and inclusivity of economic growth.”<sup>10</sup>

These assessments show that the core reason the Minister relies on for his decision is rather hollow. To all intents and purposes the situation in Zimbabwe is as dire as it was in 2008 when the SA government took the humane decision to support – in a spirit of solidarity and regional concern and compassion – those who had to rely on migrating in order to find some means of livelihood. In doing so the government was adhering to the spirit of several protocols, international and continental. So, for example, the 2018 African Union Migration Policy Framework speaks of the long history of hospitality between African states in this regard, and underlines that such hospitality is a sure way of enhancing stability and safety.<sup>11</sup> All the evidence points to the need to extend the validity of the visa or, as some would argue, to allow this to be a stepping stone to permanent residence, since most holders would have been here for a minimum of twelve years, and very many for considerably longer.

#### **4.2. Loss of jobs due to immigrants**

The second point the Minister raises is around the very vexed issue of job unavailability and loss due to immigrants taking such jobs. This rhetoric has found a strong echo in local political narratives, as was shown in the November local elections. Some would suggest that the gains made by smaller parties espousing xenophobic sentiments, in constituencies previously held by the ANC, could be an underlying, possibly sub-conscious, reason

for the retraction of the permits. However, study after study shows that there is no wholesale loss of jobs because of immigration. To the contrary, studies show that immigrants are more likely to create jobs, especially in the areas of manual labour, factory work, cleaning, and in many areas of low-skilled work. It is sometimes true that there is contestation around jobs in the more skilled and professional sectors, but again the overall effect is small.<sup>12</sup>

A 2018 study by the World Bank showed that immigrants had a major positive impact on jobs and wages in the period 1996-2011. The study highlighted data showing that immigrants and South Africans were most likely to hold jobs that complemented each other, rather than competing with each other. The study also showed that immigrants were more likely to start businesses which, if successful, increased opportunities for locals and contributed to SA’s economy.<sup>13</sup> There is little if anything to suggest that these outcomes have changed over the past three or four years.

This argument, while having a strong emotional, rhetorical or even political pull, is not at all as strong as the letter would have us believe and is very much open to debate. The following abstract to an important academic article makes the relevant point clearly:

“The economic impact of migration has several dimensions. These include positive economic consequences for the host country, such as a possible effect on economic growth, an improvement in the labour market through job creation and on the prices consumers pay for goods and services. Many economists, journalists and politicians have been very verbal on whether immigrants have a positive or negative impact on a host country’s labour market and its economy as a whole. In addition, there exists a stream of literature which argues that, in terms of the labour market, citizens and immigrants will never be perfectly substitutable. The purpose of this article is to arguably dispel the myth that a high level of immigrants causes unemployment and it explores the impact of migration on the labour market in general. It argues that presuming a general equilibrium, immigrants do not only affect labour supply, but also labour demand. This is because immigrants do not only serve as additional workers available to the labour supply, but also as additional consumers, and

consequently provide a boost for the local labour market by increasing demand for unskilled and semi-skilled labour. This paper concludes that immigrants do not only have a positive effect on labour markets but also contribute to the wellbeing of the host country's citizens' wage. Furthermore, policy implications are highlighted and suggestions for quantitative research on the topic are made."<sup>14</sup>

#### **4.3. Capacity and financial constraints at DHA**

The DHA's capacity constraints is a disturbing ground to raise, for the simple reason that extending the permits would be in fact ease the Department's burden and be a cost-effective and practical alternative. Past experience has led to scepticism about the DHA being able to follow through on its processes during the prescribed time periods, and it is common knowledge that backlogs at the DHA are unbelievably high. The Auditor General's *Report on a Follow-up Performance Audit of the Immigration Process for Illegal Immigrants of DHA* found that there was a backlog in the Standing Committee for Refugee Affairs of 40 226, compared to 475 in 2007; and at the Refugee Appeal Board there was a backlog of 147 794 cases compared to 893 in 2007. It would take the latter 68 years to process, even if done without taking on extra work!<sup>15</sup> The same report found that it sometimes took asylum seekers 19 months to secure a confirmed interview.

The report also highlighted the low functioning of the information services, the unreliability of systems, and a failure of communications which resulted in poor decision making. All of this has been exacerbated by the closure of the DHA offices during the COVID-19 lockdown. It is therefore hard to be confident, with that backlog in mind, that the processing of the 200 000 Zimbabwean applicants could realistically take place within the grace period. This would remain a concern even with the extra capacity promised by the Minister, the details and extent of which are unclear. It is thus a well-founded worry as to whether the holders will indeed receive just outcomes within the prescribed period of grace.

One particularly disturbing line in the letter is the declaration that, in pruning the work of DHA due to its various constraints, preference must be given to the requirements of citizens. This is from any angle a xenophobic sentiment which is contrary to the mandate of the Department to care without discrimination for all within its borders; it also reveals a blatant disregard for the values of our Constitution and for the philosophy of *ubuntu*.

#### **4.4. Abuse of the system**

It is inexplicable that the fact that 1 900 people attempted to change the conditions of their permits, which is clearly not allowed, should now be held against the 181 000 who did not. This has the feel of a collective punishment. The 1 900 cases should have followed the course of the law and been dealt with accordingly.

#### **5. Conclusion**

It is very difficult to believe that the suspension of the ZEPs is the best or most just option going forward. It is equally hard to believe that the reasons offered in the letters to the holders are in fact the most cogent and just reasons. Each of them is demonstrably weak, combative, and even punitive for the holders, especially since all of them have been in South Africa for a minimum of twelve years, most of them even longer. It is hard not to believe that at some level base political considerations have had a hand in shaping the Cabinet's response.

Pope Francis has again emphasized the urgent need for "a co-ordinated and effective response" by the political community, civil society and the Church to the challenges arising from the massive wave of migration across the world that has created the greatest humanitarian crisis of the 21<sup>st</sup> century.<sup>16</sup> He went on in his speech to say that "defending their inalienable rights, ensuring their fundamental freedoms and respecting their dignity are duties from which no one can be exempted."<sup>17</sup> That, rather than the summary withdrawal of the permits, is surely a more acceptable starting point for thinking about and advocating around the ZEP issue.

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- <sup>1</sup> <https://www.gov.za/speeches/statement-cabinet-meeting-wednesday-24-november-2021-25-nov-2021-0000>
  - <sup>2</sup> <https://ewn.co.za/2021/12/30/scrapping-of-zep-will-benefit-some-permit-holders-motsoaledi>
  - <sup>3</sup> <http://www.dha.gov.za/index.php/types-of-visas>
  - <sup>4</sup> <https://www.chronicle.co.zw/south-africa-extends-work-exemption-permits-for-zimbabwean-nationals/>
  - <sup>5</sup> <https://www.chronicle.co.zw/south-africa-extends-work-exemption-permits-for-zimbabweannationals/>
  - <sup>6</sup> <https://www.gov.za/speeches/government-condemns-attacks-minister-aaron-motsoaledi-6-jan-2022-0000>
  - <sup>7</sup> <https://country.eiu.com/zimbabwe>
  - <sup>8</sup> <https://www.worldbank.org/en/news/press-release/2021/06/10/zimbabwe-s-economy-is-set-for-recovery-but-key-risks-remain>
  - <sup>9</sup> [https://en.wikipedia.org/wiki/Hyperinflation\\_in\\_Zimbabwe](https://en.wikipedia.org/wiki/Hyperinflation_in_Zimbabwe)
  - <sup>10</sup> <https://www.worldbank.org/en/country/zimbabwe/overview#1>
  - <sup>11</sup> [https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/other\\_documents/35316-doc-au-mpfa\\_2018-eng.pdf](https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/other_documents/35316-doc-au-mpfa_2018-eng.pdf)
  - <sup>12</sup> <https://www.groundup.org.za/article/do-immigrants-steal-jobs-south-africa-what-data-tell-us/>
  - <sup>13</sup> <https://www.worldbank.org/en/country/southafrica/publication/new-study-finds-immigrants-in-south-africa-generate-jobs-for-locals>
  - <sup>14</sup> [https://www.sobiad.org/eJOURNALS/journal\\_IJSS/archieves/IJSS2016\\_2/Paper58B\\_Niyimbanira\\_Madzivhandila.pdf](https://www.sobiad.org/eJOURNALS/journal_IJSS/archieves/IJSS2016_2/Paper58B_Niyimbanira_Madzivhandila.pdf)
  - <sup>15</sup> [https://static.pmg.org.za/200204AGSA\\_report.pdf](https://static.pmg.org.za/200204AGSA_report.pdf)
  - <sup>16</sup> <https://www.americamagazine.org/politics-society/2017/02/21/pope-francis-protecting-worlds-migrants-and-refugees-moral-imperative>
  - <sup>17</sup> <https://www.americamagazine.org/politics-society/2017/02/21/pope-francis-protecting-worlds-migrants-and-refugees-moral-imperative>

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