



# **GAPS IN PROTECTION: UNDOCUMENTED ZIMBABWEAN MIGRANTS IN SOUTH AFRICA**

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## **GAPS IN PROTECTION: UNDOCUMENTED ZIMBABWEAN MIGRANTS IN SOUTH AFRICA**

**Alice Bloch**

### ***Introduction***

This paper sets out to explore the position of undocumented migrants in South Africa from the perspective of three areas or frameworks. First are the current debates in refugee and forced migration studies about whether refugee studies should remain a separate field of study or whether the more recent trend of merging refugee studies with forced migration studies is problematic due to its potential negative impact on the protection of refugees. Secondly, the paper is concerned about the ways in which undocumented migrants, though in theory protected by the human rights framework are in fact falling outside of any protection disempowering them and leaving them vulnerable. Finally, the paper will see how structural barriers within South Africa as a receiving country impact on undocumented migrants both in terms of their position within that country but also on their transnational capacities which will impact on the wellbeing of families in Zimbabwe subjecting them to greater poverty and fewer options for mobility.

In order to explore the lives of undocumented Zimbabwean migrants in South Africa, the paper will draw on a sub-sample of 500 Zimbabwean migrants living in South Africa of which 156 (32 per cent) were undocumented migrants. The data is extrapolated from a larger survey of 1000 Zimbabweans living in South Africa and the UK. The survey data was collected using mixed data collection modes: self-completion paper; web based and interviewer administered surveys. Snowball sampling was used and respondents were located through a number of different networks<sup>1</sup>.

### **Refugee and forced migration studies**

There has been a greater recognition in recent years through the work of Stephen Castles and others on the migration-asylum nexus and migration-development nexus that the categorization of migrants which is bureaucratically useful for governments does not necessarily reflect the reality of people's lives, motivations and experiences (Castles, 2003).

Refugee motives for flight relating to persecution and those in response to violations of human rights are not always clear cut (Grant, 2005). While violations of social and economic rights and extreme poverty are not grounds for refugee status, human rights violations often drive migratory movements. UNHCR observe that people migrate from countries that, '...are simultaneously affected by human rights violations, armed conflict, ethnic discrimination, unemployment and deteriorating public services' (2007: point 33). Migration, as a consequence of human rights violations, is also associated with undemocratic and/or corrupt regimes and underdevelopment (Castles *et al.*, 2004).

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<sup>1</sup> For discussion of the methodology see Bloch (2007)

Migration from Zimbabwe is motivated by a collapsed economy, lack of jobs, hyper-inflation and human rights violations. McGregor notes how violence from the state has become directed at the political opposition and others deemed as 'disloyal'. The consequence is, that 'families of all social classes have increasingly been compelled to send members abroad to ensure basic survival, escape brutal attacks or meet aspirations for accumulation and education'(McGregor, 2007: 806). This has resulted in more Zimbabweans living in South Africa and Botswana but also elsewhere.

Research in the South African border province of Limpopo has found that economic reasons and more recently displacement and persecution explain the motivations for migration from Zimbabwe (Rutherford and Addison, 2007). Many Zimbabweans were engaged in seasonal agricultural work during picking season (April – September) on farms where the majority of workers were Zimbabwean. With the different potential migration push factors, flows of migration and motivations for migration are often mixed and as a consequence can be difficult to categorize.

Increasingly refugees comprise mixed migrant flows – that is refugees migrate with migrants who are not refugees for many of the same reasons - and often have mixed motives for migration. UNHCR in the recent document *Agenda for Protection* notes that 'refugees often move within broader migratory flows' (2007: 46) and within its document *Refugee Protection and Mixed Migration: A 10 point plan* is mindful of refugees being at risk of *refoulement* and human rights violations. UNHCR are concerned to ensure that refugees and asylum seekers are protected within mixed flows but also recognizes that some migrants moving in mixed flows will have protection needs that may not include a Geneva Convention reason – that is a well founded fear of persecution on the basis of race, religion, nationality, social group or political opinion - but that this should not deter from their need for protection.

Within the field of refugee studies and forced migration studies – forced migration studies includes for example internally displaced people (IDPs) and stateless people – two points of view have emerged. First are the arguments put forward by among others James Hathaway who argues for keeping 'refugee studies' separate from 'forced migration studies' because he maintains a refugee '...means being a person who deserves protection *and* being a person who can, in practical terms, be guaranteed the substitute or surrogate protection of the international community' (2007: 353).

By collapsing the legal categories the risk is that scholars are less able to contest what he describes as 'protection reducing efforts' such as states 'migration management goals' (2007: 355). Moreover, Hathaway (2007) argues that refugees are 'uniquely deserving' moving to avoid 'serious harm' and to 'avoid risk to basic rights'. By bringing refugees into the forced migration framework the danger is that the uniqueness of their situation and the consequent access to international protection outside of government immigration controls will be jeopardized.

Others maintain that the focus on refugees leaves others who are vulnerable and persecuted particularly IDPs, outside of any international protection framework and therefore particularly vulnerable. DeWind (2007) for example advocates a merging of the fields with international law.

While Hathaway's arguments may be true theoretically, and certainly any attempts by states to compromise the right to seek asylum through ever restrictive border controls and migration management systems must be resisted, when considered empirically, the uniqueness argument alongside state obligations to protect are not so evident in reality. Moreover, not all potential refugees will choose to seek asylum or be able to do so.

In this research, only 4 per cent of respondents had refugee status and a further 14 per cent were asylum seekers. The migration routes and strategies people use are often fluid with people moving in and out of statuses and making decisions based on necessity or expedience (Jordan, and Düvell, 2002). When immigration status is considered in relation to the main reason for migration it demonstrates that migrants will use routes that are open and accessible. For example, 12 per cent of those on student visas said that their main reason for leaving Zimbabwe was economic while 16 per cent on working visas said their main reason for leaving was political. Likewise among asylum seekers, the main motivation for migration did not always reflect their immigration status. Half of asylum seekers gave economic and employment reasons as their main motivation for migration.

An examination of the main reason for migration, in Table 1, demonstrates the greater likelihood for undocumented migrants to leave Zimbabwe for economic or employment related reasons than others.

**Table 1:**  
**Main and Additional Reasons for Leaving Zimbabwe by Status**

	Main reason		All of reasons	
	<i>Undocumented</i>	<i>Documented</i>	<i>Undocumented</i>	<i>Documented</i>
Economic	41	32	30	44
Lack of employment	38	12	38	36
Work abroad	8	8	24	18
Study abroad	0	19	3	7
Political	9	21	34	39
Join family	4	3	10	7
Join friends	0	0	6	5
Other	0	2	8	4
Not applicable	0	2		
None			13	12
<b>Total number</b>	<b>128</b>	<b>305</b>	<b>156</b>	<b>338</b>

The complexity of migration and migration decision making means that many migrants, have mixed motivations for their migration. Systems approaches to migration explore the interaction between macro and micro structures that are linked by meso or intermediate structures. Macro structures

pertain to the global and the nation state level and incorporate economics, politics, demography and geography including global markets, income differentials, immigration controls and the relationship between sending and receiving countries. Micro structures are the networks developed by migrants themselves and these pertain strongly to households and communities. Meso structures often take the form of intermediaries in the migration industry such as smugglers, lawyers and agents (Faist, 2000).

Macro factors relating to the economy were key to decision making though the political situation in Zimbabwe, the sending country, was also an important factor. Among undocumented migrants, reasons relating to the economy and employment were given most frequently as the main reason for leaving Zimbabwe. However, nine per cent said their main reason for leaving was political. In addition to the main reason for leaving, most people (87 per cent) had one or more additional reason and among undocumented migrants, 34 per cent who had an additional reason for leaving Zimbabwe gave the political situation in Zimbabwe as an additional reason for leaving.

The motives and immigration routes among migrants in the sample were very blurred and certainly did not fit into the bureaucratic categorization that governments employ as part of their immigration regimes. For example, among refugees and asylum seekers in the study, more than half (52%) said their main motive for migration was related to economic or employment factors; 16 per cent on working visas said their main motive was political and as we have already seen, 9 per cent of undocumented migrants said their main motive was political. Similar patterns of migration from Zimbabwe to the UK were also evident where people used routes that were open to them and did not necessarily reflect their main motive for migration (Bloch 2008). Moreover, immigration status is not static. People move in and out of statuses when necessary or expedient so for example, 5 per cent of the undocumented migrants had at some point been an asylum seeker.

One of the empirical problems with Hathaway's (2007) arguments is that the notion of refugee status relies on a series of pre-determined events and opportunities. For example, to seek asylum and be granted refugee status, a cross-border migrant needs to realize that they may have a case to be considered as a refugee. Research with refugee women in particular, demonstrates the ways in which some women do not recognize that their activities may in fact make them refugees under the 1951 Convention and that women asylum-seekers do not benefit equally from international refugee protection because of the interpretation of the Convention, the emphasis on proof of persecution and the procedural and evidential barriers that affect women's access to the asylum process (Tuitt, 1996; Crawley 2001). The consequence is that women are much less likely to be principle asylum applicants than their male counterparts (Crawley and Lester, 2004).

Within the South African context access to the process of asylum can be problematic. Recent research suggests that misunderstandings by officials about the asylum process and assumptions about Zimbabweans as 'economic migrants' may well compromise the opportunities that Zimbabweans have to seek asylum (Vigneswaran, 2007). Moreover, as Landau *et al* (2005) note, there have been occasions when the Department for Home Affairs has refused to accept any asylum claim made by a

Zimbabwean. The prohibitive costs of seeking asylum including reaching the Refugee Reception Office to make a claim, translation costs and fees to file claims – though they are meant to be free – mean that some who might try to seek asylum end up dropping out of the system and staying in South Africa as undocumented migrants instead (Landau, 2005; Consortium for Refugees and Migrants in South Africa, 2007). Others too might decide not to seek asylum but instead focus on the urgency to earn money for remittances. Until a legal case in 2003, asylum seekers were not allowed to work legally in South Africa (Landau, 2004) which might also have acted as a deterrent to seeking asylum for those arriving prior to this. Therefore, even in cases where an individual might fear persecution the process of seeking asylum in South Africa can be very difficult and few apply.

Hathaway (2007) assumes that it is always in the best interest of an individual to seek asylum and that refugees are doubly deserving of protection. Such an argument fails to acknowledge is that some of those people who cross borders may in fact meet the 1951 Geneva Convention criteria but may be unable or chose not to seek asylum in a receiving country due to structural barriers that include bureaucracy and costs but alongside that, transnational obligations that involved sending food and money back to a country of origin might also come before protection needs (Garica and Duplat, 2007 <http://www.refugeesinternational.org/content/article/detail/10281/>). Being a refugee or asylum seekers means being unable to return to the country of origin.

### ***The Human Rights Framework***

While some can not or chose not to access the asylum system or are not refugees, in theory, the international human rights framework should protect them as people regardless of whether they are citizens or non-citizens. The principle that underlies the treaty regime is universality and included in this are children's rights, women's rights as well as political, civil, economic, social and culture rights.

What distinguishes refugees is their lack of protection by their own government hence both the separate protection 'regime' and protection against *refoulement*. For other migrants, human rights' protection is much less well developed though nevertheless exists and are articulated in a number of instruments and treaties.<sup>2</sup> Undocumented migrants have rights too with the principle of non-discrimination reoccurring in the core human rights treaties. For example, Article 2 of the

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<sup>2</sup> UDHR 1948; • The International Covenant on Economic, Social and Cultural Rights (entered into force in 1976); • The International Covenant on Civil and Political Rights (entered into force in 1976); • The International Convention on the Elimination of All Forms of Racial Discrimination (entered into force in 1969); • The Convention on the Elimination of All Forms of Discrimination against Women (entered into force in 1981); • The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entered into force in 1987); • The Convention on the Rights of the Child (entered into force in 1990); • The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the migrant rights convention)

International Covenant on Civil and Political Rights (ICCPR) states that ‘The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

Specifically focusing on migrants, and consolidated into one Convention, is the International Convention on the Protection of All Migrant Workers and Members of their Families. In December 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to establish the rights of migrant workers and to ensure that those rights are protected and respected. It entered force on July 1<sup>st</sup> 2003 following Guatemala’s ratification of the Treaty. Parts of the Convention include the rights of undocumented migrant workers although to date it has only been ratified by 37 countries and this does not include South Africa. Though the Migrant Workers Convention is binding, significantly it is states of emigration that have ratified the convention and no developed country has either ratified or is a signatory of the Convention.

Prior to the Convention, undocumented migrants had been either ignored from coverage or excluded as a distinctive class and so the Convention is the most ambitious statement for the rights of undocumented migrant workers and their families. The Convention recognizes that undocumented migrants are more likely to be employed in less favourable conditions than others and problems involved in migration more likely to be serious. The

Convention affords legal protection across the human rights regime and extends a range of employment and civil rights to all migrants and their families. However, the Convention has been criticized because undocumented migrants are excluded from a number of the provisions and because it protects state sovereignty to govern and administer the exclusion of aliens from its territory which undermines the usefulness of the Convention (Bosniak, 2004).

By virtue of being undocumented, migrants are particularly powerless, being subject to removal and possible persecution for immigration violations. As a result, Bosniak notes that ‘They usually lack access to many, if not most, civil and labour rights and social benefits, and they are afraid to avail themselves of the rights they may enjoy for fear of exposure to immigration authorities’ (2004: 323). Therefore, while the Convention might at least seek to specifically protect the human rights of undocumented migrants, these rights can be hard or impossible to access.

In addition to the Human Rights framework, The International Labour Organizations 1998 Declaration on Fundamental Principles and Rights at Work binds all ILO members and this includes South Africa. The ILO Declaration commits member states to respect and promote principles and rights in four areas: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. The Declaration is universal and includes migrant workers and so is another route through which migrant workers should have

their human rights safeguarded. However, in reality, as Grant notes, migrant workers are ‘...frequently subjected to unequal treatment and unequal opportunities, as well as discriminatory behaviour’ (2005: 7).

Discrimination can take a number of forms and the extent to which a migrant is discriminated against might also be related to their immigration status with undocumented migrants most vulnerable to potential abuses. UNHCR note that States need to ensure that all people, regardless of their legal status, are able to benefit from the human rights to which they are entitled under international law (UNHCR, 2007, point 14) though as this paper will demonstrate through the case study, this is not in fact that case.

### ***Undocumented Migrants in South Africa***

South Africa is the main migrant receiving country in the Southern African region and as Black *et al* note, ‘migration to South Africa is a well-established household poverty reduction strategy (2006:116). Zimbabwe shares a land border with South Africa and migration from Zimbabwe has been described by the media as a ‘revolving door syndrome’ where migrants are deported and then return (Waller, 2006). Migrants cross illegally into South Africa because it costs money to obtain visas but also because there is a demand for the cheap and easily disposed of labour that undocumented migrants can offer in certain sectors of the economy. As the Global Commission for International Migration observed in its final report, ‘In some parts of the world, certain sectors of the economy, including agriculture, construction...have come to rely to a significant extent on migrants with irregular status, who are prepared to work in difficult, dangerous and dirty jobs with little security and low wages’ (2005: 36).

Of the 156 undocumented migrants in this study nearly two thirds (64 per cent) lived in Limpopo, which borders Zimbabwe, while a third (34 per cent) lived in Gauteng. Just 2 per cent lived elsewhere in South Africa. These areas are situated in the north of South Africa and are therefore relatively near to the border with Zimbabwe. Moreover, there is a difference in terms of region of residence by immigration status. Documented migrants are more geographically spread across South Africa although the largest cluster is in are in Gauteng (64 per cent).

South Africa has a long history of cross border migration from surrounding countries and is characterized by both highly regulated contract employment in the mining industry and informal, unregulated and undocumented migration (Crush, 2003). Current government policy is very focused on undocumented migrants or ‘border jumpers’ and certainly efforts are made to fence and wire off the borders. Though impossible to quantify the numbers crossing the borders, Human Rights Watch documented the increasing numbers of deportations from South Africa to Zimbabwe rising from 17,000 in 2001 to nearly 97,000 in 2005 (HRW, 2007). Research has noted the extreme xenophobia present in South Africa, directed against other Africans and also the extortion and victimization of undocumented and other migrants by the police (Klaaren and Ramji, 2001; Landau *et al*, 2005).

However, police brutality and deportations will not prevent South Africa being attractive in the Southern Africa region due to its long porous borders and economic dominance in the region.

Farms in Northern Limpopo tend to use migrant labour from Zimbabwe and they provide cheap and readily available seasonal workers so there is a demand and a supply that deportations are not quelling. The concern is though, that although people potentially leave Zimbabwe for a number of reasons, even where they fear persecution, for a Convention reason, their chances to seek asylum might be limited by assumptions and stereotypes as well as costs and so the asylum/ refugee route is not pursued. As a result, some would be refugees, if their circumstances were different, are vulnerable to arrest and deportation. One of UNHCR (2007) stated concerns is to ensure that border controls are not applied in such a way as to lead to *refoulement* though it is likely that in this context those with protection needs are being returned.

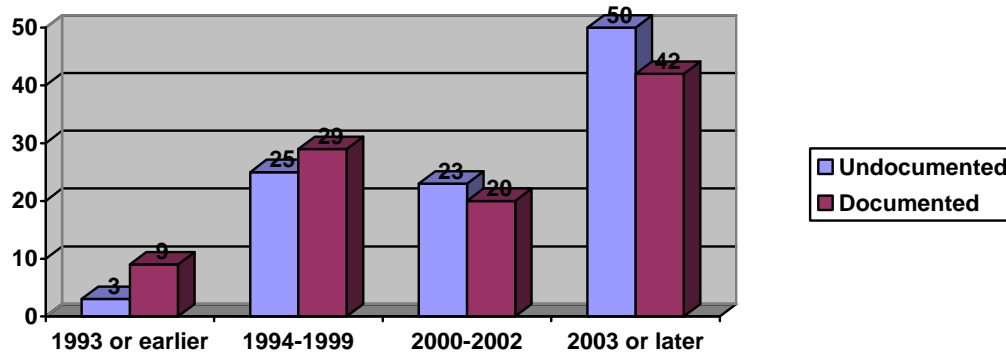
#### Cross border movements

There is much cross- border activity between South Africa and Zimbabwe and in this study, over two thirds had returned since last living there (68 per cent) of which nearly two thirds returned to Zimbabwe at least every six months (63 per cent). Not surprisingly, people living in the province of Limpopo that were much more likely to return to Zimbabwe than those in Gauteng Province which might be due in part to their geographical proximity to the border but also as we shall see later, as a group they were most likely to return to Zimbabwe with remittances.

Women were more recent migrants to South Africa and returned more regularly to Zimbabwe than men. Among those women that returned to Zimbabwe, 15 per cent returned at least once a month compared with 5 per cent of men. The greater likelihood of women making frequent visits to their country of origin in the Southern African context has been noted by others. Crush and Williams observe that there has been a feminization of poverty and migration in the region alongside a South African labour market that is 'highly stratified by gender' (2005:15) resulting in an increase in female labour in commercial agriculture.

On the whole, the undocumented migrants in the study were young – younger than other Zimbabweans in the sample. More than half (58 per cent) of undocumented migrants were aged under 30 compared with 43 per cent of documented migrants. Only 9 per cent of undocumented migrants were aged 40 and older compared with a quarter (24 per cent) of documented migrants. Figure 1 shows undocumented migrants tended to be more recent migrants than others with a larger proportion last living in Zimbabwe in 2003 or later and a smaller proportion last living in Zimbabwe before 1999.

**Figure 1:**  
**Length of Time Last Lived in Zimbabwe by Legal Status**



Base number: 464; Percentages

For many, the consequence of migration was to live apart from children, partners and spouses. Half the men in the sample had children living in Zimbabwe and just under half (47.5%) of the women did. In terms of partners and spouses 57 per cent of men and 28 per cent of women were living apart.

#### Livelihoods: Surviving in South Africa?

Construction, commercial farms and small businesses in the informal sectors are key areas of work for undocumented migrants coming to South Africa (Crush and Williams, 2005). Not surprisingly, in this study there was a similar pattern of casual work among undocumented migrants with low pay and long hours. At the time of survey, 59 per cent were working as employees and a further 5 per cent were self-employed. Nearly a third – 32 per cent – were unemployed and looking for work. Among those who were not working at the time of the survey, an additional 17 per cent had worked in South Africa in the past.

Among those who were working at the time of the survey, 57 per cent were working as agricultural labourers while 73 per cent of those who worked in the past but were not working at the time of the survey had worked as agricultural labourers meaning that 61 per cent of undocumented migrants were either working or had worked in this type of employment. This is in contrast to pre-migration work where only 14 per cent of those who had been working in Zimbabwe had been employed as agricultural labourers.

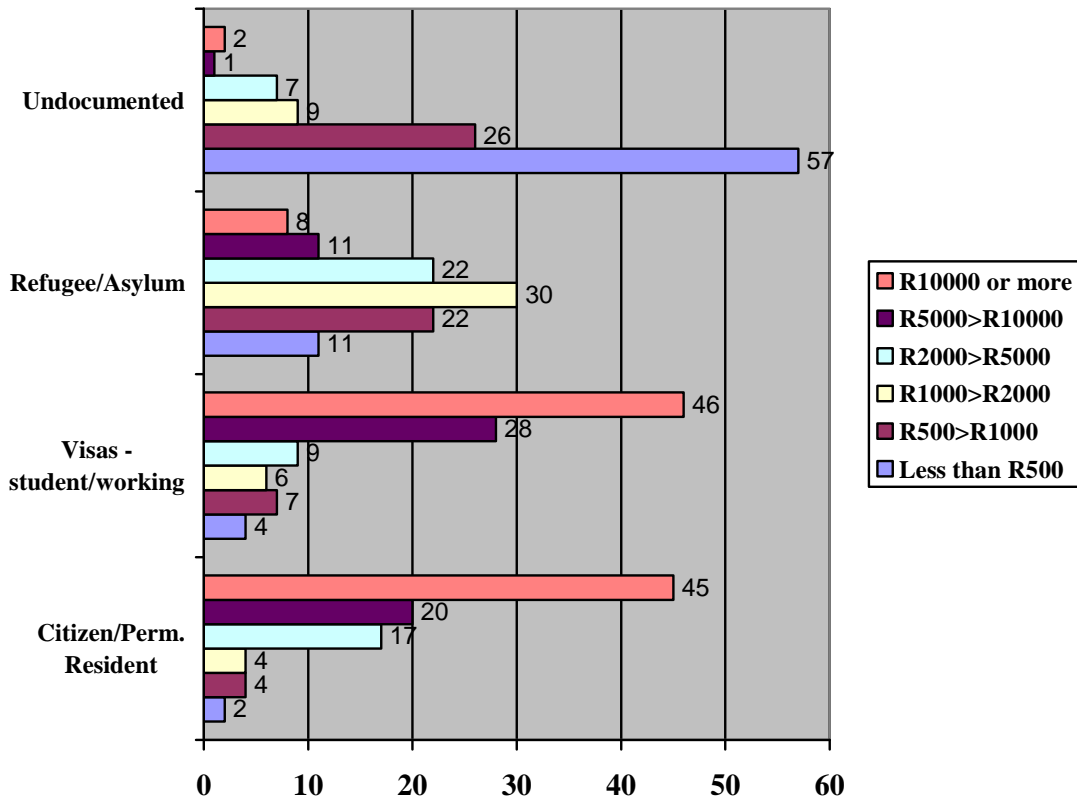
The position of migrant agricultural labourers in South Africa is precarious and vulnerable. Work is uncertain and is often seasonal in nature. There is little or no control over pay and conditions and income is below the minimum wage. Moreover, though there have been efforts to improve the situation of migrant workers under the Corporate Work Permit scheme introduced under the 2002 Immigration Act they have not been successful. The Corporate Work Permit enables private sector organizations to employ foreign workers without needing to apply for separate permits for each

employee. Under this Permit, like all work permit schemes in South Africa, the Department of Labour has to verify that remuneration and benefits is the same for all workers regardless of their status (Williams *et al*, 2006).

In spite of the 2002 Act, research by Rutherford and Addison (2007) identify violations against Zimbabwe farm workers. The contraventions are blamed on the farmers themselves and the lack of enforcement and include pay below minimum wage, unlawful deductions and overtime without consent. The findings in this study also revealed a similar pattern of long hours and low pay in the commercial farming sector.

Figure 2 shows the impact of immigration status on earnings. On average undocumented migrants are much less well paid than others though it is difficult to ascertain whether this is because of their status or because of the nature of their employment which is clustered in low paid, low skilled secondary sector jobs - due in part because of their status - while those with secure statuses have a much wider range of employment experiences. However, the income disparities by status are clear at both the highest and lowest levels of earning.

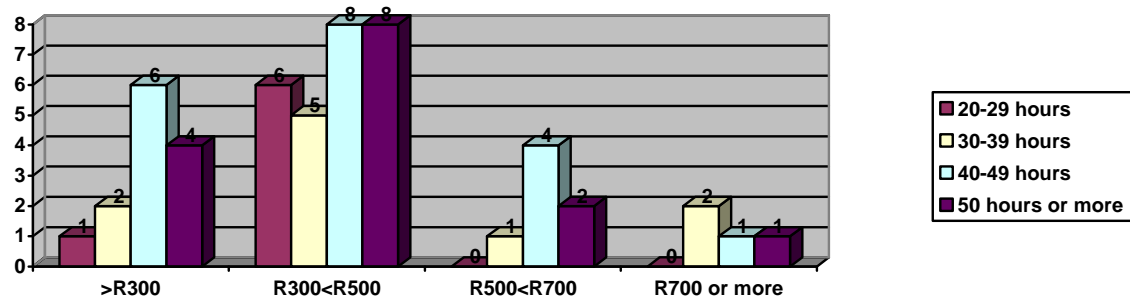
**Figure 2:**  
**Average Monthly Pay by Immigration Status (Percentage)**



Base number: 305

Although pay is linked to the number of hours worked, which is not disaggregated in Figure 2, the majority (84%) worked 30 hours or more a week. Nearly three quarters (65 per cent) of those who worked as farm labourers worked more than 40 hours a week of which with 27 per cent were working 50 or more hours a week. Pay was very poor and very far short of the minimum wage of 785 rand a month. The median pay among agricultural labourers was R306 and the mode was R300. Figure 3 explores the relationship between hours worked and wages among agricultural labourer showing clearly that farm labourers were paid far short of the minimum wage for long hours.

**Figure 3:**  
**Average Number of Hours Worked by Agricultural Labourers per Week by Last Monthly Pay (Frequencies)**



Base number: 51; Missing: 4

In order to see whether undocumented migrants were paid less and/or worked longer hours than documented migrants a comparison was carried out. The first key point to note is that only 2 people with regulated status were working as agricultural labourers so this kind of employment really was the domain of a particular kind of migrant. This renders any comparison over employment conditions meaningless other than to observe that they were paid more than R300.

The main areas of work among undocumented migrants outside of the agricultural sector were security guards and bar or restaurant work and these too were characterized by low pay and long hours. Women routinely were paid less than men. For example, while 22 per cent of male agricultural labourers earned R700 or more a month among women the proportion was 14 per cent. Research with Zimbabwean farm workers, carried out by Rutherford and Addison (2007) in 2004 and 2005 also found a gender differential with men earning more than women.

Qualitative work carried out by Rutherford and Addison (2007) found that Zimbabweans 'felt that employers took advantage of their desperation and the fact that their legality was unclear' (2007: 627). Moreover, they had little recourse to make complaints because they were vulnerable and of course undocumented migrants complaining to the police can easily find themselves detained and deported. Accessing rights under South African law let alone an international human rights

framework would be almost impossible. Given that Zimbabweans maintain strong transnational linkages with family members sometimes dependent on them, deportation would jeopardize a family's livelihood survival strategy and this creates further barriers to any potential for equal treatment.

### *Transnational linkages*

Zimbabweans in South Africa are active transnational actors including economically through remittances and other non-monetary kinds of support. Migration is often part of a household livelihood survival strategy and that brings with it commitments to send remittances to family members in Zimbabwe but also elsewhere. Experiences in the country of residence, especially structural barriers to the labour market or the regular labour market which is the position of undocumented migrants, can and does have a negative impact on an individual's capacity to earn money and in turn this affects their transnational capabilities.

Drawing on the on the work of Portes *et al* (1999) and Al-Ali *et al* (2001), transnational activities in this research were divided into economic, political, social and cultural activities and the ways in which they related to the country of origin, the country of residence and to a lesser extent elsewhere. Key determinants of all transnational activities are the social relations that connect migrants and others (Levitt and Nyberg Sørensen 2004) as well as the transnational capabilities of migrants determined by an identification with the country of origin and by practicalities that facilitate transnational activities like the migrants' social capital and their economic opportunities in the host country which are in part a function of structural barriers (Al-Ali *et al* 2001).

Nearly everyone (90 per cent) in this study had close family members in Zimbabwe. Not surprisingly, due to the difficulties crossing borders without documentation, documented migrants were much more likely to return to Zimbabwe for visits than undocumented migrants (61 per cent and 34 per cent respectively).

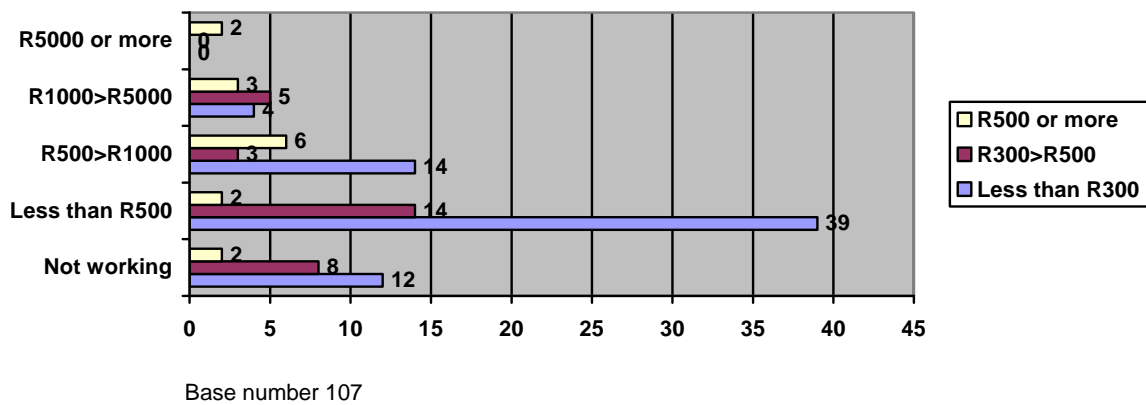
Though similar proportion of undocumented migrants and documented migrants send monetary remittances to Zimbabwe (69 per cent and 68 per cent respectively), having close family members, especially children in Zimbabwe increased the likelihood of sending remittances. Paid work was also a key determinant of remittance activities with those working much more likely to send remittances than those who were not working (84 per cent and 44 per cent respectively).

Social networks and transnational capabilities were affecting remittance sending though significantly nearly half of those who were not working at the time of the survey but had close family members still sent monetary remittances. Men were more likely to send remittances than women (73 per cent and 63 per cent respectively) though women with children in Zimbabwe were slightly more likely to send remittances than men with children (84 per cent and 80 per cent respectively). Little is known about the interaction of gender and remittances and Ramírez *et al.* (2005) maintain that the limited research that does exist does not offer conclusive evidence about gender differentials. Data from this study suggests that supporting children correlates with women's remittance activities.

Most remittance money is sent to support family members. Eighty-six per cent said that their main reason for sending remittances was to support family members, eight per cent sent money specifically to buy food, three per cent to pay for education and two per cent to invest in business. Those who sent remittances, tended to either take these to Zimbabwe personally (44 per cent) or use family and friends (44 per cent) travelling back and forth between the two countries. For the most part then transnational linkages focus on remittances with some migrants perhaps choosing not to seek asylum so that they can cross and re-cross the border between South Africa and Zimbabwe to deliver money and basics (Garcia and Duplat, 2007).

Immigration status affected the amount that people were able to remit. Half of undocumented migrants remitted less than R250 a month compared with 17 per cent of citizens and permanent residents, 16 per cent of those on visas and 19 per cent of refugees and asylum seekers. In contrast, half of citizens and permanent residents remitted more than R450 a month, as did 61 per cent of those on visa and 35 per cent of refugees and asylum seekers while the proportion among undocumented migrants was just 16 per cent. Linked to immigration status is the correlation between earnings and remittances. Figure 4 shows the monthly pay by remittances among undocumented migrants.

**Figure 4:**  
**Monthly Pay by Remittances, Undocumented Migrants (Frequencies)**



Certainly low pay – below the minimum wage - impacts on the capacity to remit and the amount remitted but even those not working were sending remittances somehow. The impact of unemployment, irregular employment and low pay affects remittances and therefore the support that they provide to family members.

In addition to sending money, 60 per cent were also sending non- monetary gifts and of those who sent non-monetary gifts the basics - food and clothes - were sent most often. Once again immigration status was a determinant of sending capacities with 60 per cent of undocumented migrants sending non-monetary remittances compared 67 per cent of documented migrants. Although food and clothes were sent most often, documented migrants were sending more costly items such as

medicine (35 per cent against 13 per cent respectively) and electrical goods (38 per cent and 15 per cent respectively) than undocumented migrants.

A minority of undocumented migrants were engaged in other transnational activities including political activities which are relevant to the overall consideration of undocumented Zimbabweans as having representing a mixed migratory flow with mixed motives for migration. In the study, a small proportion was involved in political activities either with people in Zimbabwean (5 per cent), other Zimbabweans in South Africa (12 per cent) and Zimbabweans elsewhere in the diaspora (7 per cent). In fact the survey data shows undocumented migrants as a group of people, who had with the exception of social contact with family members and remittances, had very few connections with Zimbabwe, with the wider Zimbabwean diaspora and with other Zimbabweans in South Africa certainly when compared with documented migrants.

### ***Conclusion***

This paper shows that undocumented Zimbabwean migrants in South Africa are a mixed migrant flow and include people with mixed motives for migration. Garcia and Duplat (2007) argue that because the migration flow and motives are mixed, trying 'to categorize the outflow ultimately obstructs the humanitarian response' (2007, <http://www.refugeesinternational.org/content/article/detail/10280/>).

Some of these migrants will be refugees but the immediacy of their situation, political and economic, including the lack of economic livelihood rights and opportunities in Zimbabwe means that for many, working to send money and food to family members would be a priority over and above entering into the asylum system. There are also difficulties accessing the asylum system in South Africa and the restrictions on travel inherent in the asylum system means that those with a claim for refugee status will not necessarily pursue that as an option. The consequence is that this group of migrants lack protection in any aspect of their lives and the risk of *non-refoulement* for those who have not claimed refugee status is a real one with South Africa focusing on deportation and with deportees released to the custody of the police on return to Zimbabwe (Garcia and Duplat, 2007). The risk of deportation means that undocumented migrants are not in a position to exercise any rights and have no choice but to take what is offered to them without visibility through complaint. While the human rights framework does exist, in reality this group of migrants is not in a position to gain any protection from such a framework.

Undocumented status also affects transnational activities and so impacts on contributions to development through remittances to the country of origin. Low pay and/or unemployment reduce transnational capacities. The data showed the impact of pay on remittances and linked to this is the link between pay and documented and undocumented status. The lack of protection offered to undocumented migrants in terms of pay therefore reaches back to dependents in Zimbabwe and to a lesser extent elsewhere in the diaspora.

While all migrants should have their human rights protected the analysis put forward in this paper finds currency with the idea that Hathaway's focus on the refugee category fails to acknowledge the sociological reality of people's lives, the human rights abuses that force people to flee and the violations that can take place in receiving countries. Nor does it address the difficulties in seeking asylum or decisions not to seek asylum.

DeWind argues that effort needs to be put into a human rights approach that would 'strengthen protections for both refugees and other forced migrants' (2007: 383). Certainly a wider and more inclusive approach to rights needs to be explored to ensure that undocumented migrants are not exploited and can access protection outside of the refugee system. However, this should not be as a replacement to the protection offered under the 1951 Geneva Convention, but instead to protect those who fall outside the refugee definition, are unable to access it or chose not to.

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