

"You can't just step from one place to another": The socio-politics of illegality in migration from Zimbabwe to South Africa¹

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Abstract

Drawing on anthropological fieldwork conducted in Musina and Cape Town, South Africa in 2010 and 2011, in this paper I present a qualitative analysis of the (largely illegal) means of entry of Zimbabwean research participants into South Africa, and their attempts to seek legal status once in the country. I present an ethnographic consideration of one woman's experiences crossing the border, augmented with quantitative data gathered from a sample of 45 migrants, in order to discuss the socio-political construction of 'illegality' in South Africa. I argue that while migrants may have entered the country illegally, this was in a large degree dictated by structural pressures. Migrants' attempts to legalise themselves are also structurally constrained: I, thus, argue that there is a need to unpack the socio-political process by which a category of illegality is made.

Keywords: Zimbabwe; South Africa; cross-border migration; illegality; borders.

Introduction

I don't think there is a town in the world where you wouldn't find a Zimbabwean connection. We are everywhere, we are stretched across the world. There is no family that does not have someone outside the country supporting them. Politics has made us into world travellers, but it hasn't been easy. You can't just step from one place to another.

(Excerpt from an interview with Tsitsi², a 24 year old Zimbabwean migrant to South Africa)

The South African town of Musina is the country's most Northern; situated a few kilometres away from the Limpopo River and the border post between

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² All names changed.



Zimbabwe and South Africa, it is hot in summer, warm in winter, and dry and dusty for most of the year; a town whose potholed streets are witness to a steady stream of traffic between the two countries. The main street features a mixture of low-end national food and clothing chain stores, and smaller local businesses selling food, bags, and clothing advertised at ‘discount’ prices. On the first morning of my visit in January 2011 the town was already busy at 8 am, and the heat was steadily rising. People loaded Zimbabwean cars with goods from wholesale shops, whilst buses arrived from the border and stopped to refuel before continuing towards Johannesburg. Musina, which lies in one of the poorer provinces in South Africa, was a bustling centre of trade and movement; the most active section of the main street, however, was not busy as a result of trade. Rather, the activity occurred outside the Department of Home Affairs building which houses the Musina Refugee Reception Office. Here, a long queue populated entirely by Zimbabwean men, women and children wound its way out of the property onto the street and around the corner.

I was in Musina in order to continue my anthropological fieldwork on how ideas of human rights were being mobilised in response to the Zimbabwean political and economic situation. As advocated by George Marcus’s seminal review of the rise of multi-sited ethnography (Marcus, 1995), I was following the people. Even a few minutes of observation showed Musina to be a space of transnational movement and migration: a place of mobility and of attempts at state control over that mobility. In this paper I present a qualitative case study of one woman’s experiences crossing the border, and augment this with my quantitative findings as regards the means of entry of Zimbabweans into South Africa, in order to discuss the socio-political construction of ‘illegality’ in South Africa. Data is drawn from participant observation in Musina in 2011, and in-depth interviews with a sample of 45 Zimbabwean migrants in Musina and Cape Town conducted in 2010 and 2011. Though 75% of the sample of 45 migrants entered the country illegally, only 24% remained undocumented once in the country: the rest attempted to legalise their status through asylum applications or, more rarely, work permits. Statistics on the extent of the success of asylum applications in South Africa indicate, however, that most people will be unsuccessful (FMSP, 2009). Attempts to secure legal status are therefore thwarted by the South African state. This is in opposition to popular perceptions amongst ordinary South Africans that migrant illegality somehow stems from the migrants themselves, such that they may be viewed as ‘criminals’.

In keeping with Heyman (2013:304) I thus argue that we need to examine illegalisation as a “process or socio-political project, rather than as a state of being.” By this, Heyman means that it is useful to unpack the ways in which legal classifications and the means of enforcing these classifications have come about, and how they might change over time. Such a position is useful for our purposes here as it reminds us that ‘illegality’ is not something which is fixed – the construction of legal versus illegal may change over time, even

where ideas and discourses of the ‘illegal immigrant’ as an immoral or criminal person persist. This is particularly relevant in the South African context, with its recent history of xenophobic violence, as the illegalization of Zimbabweans impacts upon migrants’ relationships with host citizens. Such illegalization is the result of structural pressures in Zimbabwe – such as poverty, politico-economic decline, and patriarchy- and in South Africa, where migrants encounter bureaucratic and legal barriers to documentation. Positioned as illegal, despite attempts to legalise their status, Zimbabwean migrants are at risk of stigmatisation and violence.

Migration from Zimbabwe

Over the last fifteen years, migration out of Zimbabwe has reached exceedingly high proportions, due to a volatile political climate that has been accompanied by an economic crisis that led to hyperinflation and the collapse of Zimbabwean currency. In this context the rise of migration was such that one informant commented, “Bob Marley’s Exodus should be our national anthem”, whilst another identified transnationalism as a central element of ‘being Zimbabwean’. Official statistics are hard to come by due to the extent of illegal movement. Even so, Zimbabwe has shifted from its historic position of having a migration profile mixed between origin and destination to being primarily one of origin (ZIMSTAT and IOM, 2010). South Africa is the primary destination country for these legal migrants, followed by Botswana. Many more migrants who leave the country without documentation are not captured in official Zimbabwean statistics. In 2010, the Forced Migration Studies Program estimated that there were between 1 and 1.5 million Zimbabweans in South Africa, with Zimbabweans making up the largest group of international migrants in the country (FMSP, 2010). The organisation also emphasised, however, that the illegal nature of much of the migration into South Africa ensures that “there are no reliable statistics regarding cross border migration” (FMSP: 2).

South African policy on Zimbabwean migration has shifted over time, in accordance with changes in social conditions. During the apartheid era Zimbabweans entered the country legally primarily as temporary labour (SAMP, 2002), in keeping with the South African need for labour on the mines of the Witwatersrand. However, unlike other countries in the southern African region, South Africa and Zimbabwe had no bilateral trade treaty, and as such there were limited opportunities for Zimbabweans to legally work in South Africa (ibid). Research done by the Southern African Migration Programme (SAMP) has shown undocumented migration between the two countries to have been steadily occurring since the 1980s. It was only in the post-2000 period, however, that fears of an ‘influx’ of Zimbabweans led to increased securitisation of the borders, and increases in popular discourses of Zimba-

bween illegality and criminality.³ Whilst it is undeniable that undocumented Zimbabweans began entering the country in increasing numbers in the early 2000s (in response to increasing poverty and political violence in Zimbabwe), the shifts in South African state policies and attitudes towards migrants have been central to the socio-political process of the illegalisation of Zimbabweans. Between 2000 and 2010 South Africa responded with increased securitisation, through measures such as increased border controls, restrictions upon entry, and the detention and deportation of undocumented migrants (ACMS, 2013). A brief respite was encountered in 2010 when South Africa introduced a Special Dispensation Permit for Zimbabweans in a bid to regularise undocumented migrants already in the country. When this short-lived program ended, however, the threat of deportations began anew. Various civil society organisations have been started by Zimbabweans and South Africans in response to this in the post-2000 period as a means of exerting pressure upon the South African state through litigation, protestation and media advocacy. Although the African Centre for Migration and Cities (ACMS) presented the argument to South African parliament in 2013 that increased securitization of migration management has been a failure (Parliamentary Monitoring Group, 2013), there have not as yet been significant changes in South Africa immigration policy. The socio-political positioning of most Zimbabweans as illegal thus continues.

70 There are of course some legal avenues to migration that are available. For most Zimbabweans, however, the structural facts of poverty, social class, educational qualifications and lack of access to documentation within Zimbabwe put these out of reach. Nonetheless, Zimbabwean passport holders are legally able to enter South Africa without a visa as long as their visit is less than 90 days long (Department of Home Affairs, 2012). To stay in the country longer term the migrant must access a work or study permit. In order to do this, Zimbabweans must apply at the South African High Commission in Harare (the capital city of Zimbabwe), providing stringent documentation of their available funds, health background, and letters of acceptance from institutions of study or employers. The 2002 Immigration Act provides no permits for job seekers (Polzer, 2010). The Zimbabwean Dispensation Project (ZDP) as mentioned above offered another avenue to legalisation until December 2010; this, too, however, was reliant upon an applicant already having a job in South Africa (Passop, 2011). Finally, the Refugee Act of 1998 provides for refugee status: the process begins with an application for asylum, which results in the routine generation of a temporary asylum seeking permit, followed by a series of interviews after which refugee status is either granted or denied. Refugee status is notoriously hard to access (Morreira, 2011) and is itself impermanent as permits have to be renewed.

³ While the state categorises Zimbabweans without papers as 'illegal', ordinary South Africans contribute to the construction of illegality at a social level through a discourse that positions the Zimbabwean migrant as 'criminal' regardless of their actual legal status in the country.

Movement in Practice

A consideration of migrants' actual experiences of movement highlights the gap between law and implementation. Passports are hard to access within Zimbabwe (Musarandega, 2009), and work or study visas expensive and dependent upon a certain level of education or expertise/work experience. This ensured that the majority (75%) of the migrants that I interviewed had been unable to enter the country through official channels, most usually because they did not have a Zimbabwean passport. Structural conditions such as social class and poverty effectively put legal entry out of reach. Informants were uncomfortable with criminality, however, and thus sought to legalise their status through the only avenue available: asylum seeking. Once in South Africa, most interlocutors had already begun the process of seeking asylum (55% of the entire sample) or were waiting in Musina in order to do so (17%). Thus, although structural pressures pushed migrants to enter the country illegally, most attempted to rectify this status upon arrival. Numbers can only tell part of the story, however: before returning to a wider consideration of the categorisation as illegal experienced by the sample of 45 migrants, let us turn to a case study in order to contextually examine the socio-political processes that lie behind illegal migration.

Rutendo's story

When I first arrived in Musina, I was taken on a tour of the town by the International Organisation for Migration (IOM). One of the places to which we went was a women's shelter that catered largely to newly arrived migrants. It was here that I met Rutendo. I present her migration history in detail as a description of the life events that had eventuated in our meeting in Musina allow for an unpacking of the structural inequalities that lie behind migration. Furthermore, while Rutendo's story is of course unique, elements of it echo the experiences of other Zimbabwean women with whom I spent time. Rutendo's story thus stands as an ethnographic illustration of the wider scale.

Rutendo was 22 years old when we met. She had spent most of her childhood in a rural area of Zimbabwe, attending school up until 2001, when, at the age of twelve she completed Grade Five (two years short of the end of primary school). In 2001 money had become too scarce for Rutendo to attend school. The family found the funds to send her two brothers but withdrew her and her older sister. She stayed at home with her mother for a time, working with her on their plot of land where they managed to grow enough vegetables and maize for subsistence, and sold their maize surplus each year. Her father had worked in town since she was a small child. He would return to the area where they lived at least once a year, but spent most of his time as a migrant labourer elsewhere in Zimbabwe. In 2002, following a change in the family's circumstances, her mother went to town to visit her father:

When she came back she said that he had said I must go to town to find work. So I went on a bus to Masvingo where he worked. He found me a job as a maid for this man and his wife there. I stayed there for four years, until I was 17. I sent most of the money I earned to my family so that my brothers could go to school. Things got very tight at that time... there was inflation and shortages.⁴ Sometimes my salary meant nothing by the time my father tried to pay things; sometimes there was no cash to pay me so I didn't get paid. But it was better to have a job so I stayed.

When I was in Masvingo I met a man... he was also working in the same area, and I liked him, you know? He worked as a gardener but he also did things on the side, selling things here and there, so he had extra money. He would buy me things, nice food, nice things. Times were very hard, then. There was not much food around. I knew he already had a wife and a child living elsewhere ... but it was necessary at that time, you know? It was very hard to be alone and have enough food. In the end though he didn't have enough for two wives. So that was the end of that.

Rutendo lost her domestic work job in late 2006: the family for whom she worked could no longer afford her salary. As she had been a live-in employee, she also lost her accommodation. She tried for a time to find formal work in Masvingo, but ended up, like the majority of Zimbabweans, working in the informal economy, buying and re-selling small items such as sugar, oil, or vegetables for small profits.⁵

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So, yes, that was from 2006. We had to be careful...the police could come and confiscate your goods, that happened a lot. At that time there was very little in the shops, but Masvingo is not that far from the border, only a few hours by bus. So a lot of women were doing crossings to buy things and then bringing them back...I bought from those people and then sold things on. By 2007 and 2008, things got very, very tight though. The country was crazy – no food, no water, no electricity, no jobs. Nobody had money for the things I was selling. That was when people started doing desperate things, crime, or selling sex, you know? People had to survive. And then 2008 was elections, so it started to get worrying with politics. Rallies and ZANU-PF⁶ youths and all of that. I had to go to some rallies; I had a [ZANU-PF] party card because it was safe that way, especially when I went to see my family, I had to have a card then. Otherwise they could accuse you of being a sellout and arrest you or beat you.

⁴ The economic crisis in Zimbabwe resulted in a period of hyperinflation (Hanke, 2008). In combination with the collapse of commercial farming and other industries, this resulted in widespread shortages of food, goods and even cash money (Morreira, 2010). In 2009, with the signing of the GPA, the Zimbabwe dollar was discontinued and hyperinflation came to an end, though shortages remained.

⁵ Formal unemployment levels stood at 70% by 2004 (Solidarity Peace Trust, 2004), a figure which increased over the ensuing years. In 1999, even before the worst of the economic meltdown, Zimbabwe's informal economy stood at 59.4% of the GDP (Schneider, 2002:5).

⁶ ZANU-PF refers to the dominant political party in Zimbabwe at the time.

In 2008, Rutendo decided to cross to South Africa for the first time. Once again, her younger brother's education was a motivating factor:

By then Batsirai was writing ZJC and I wanted him to go on to O level.⁷ But I was making no money, my father was making no money. We needed forex [foreign currency], it was the only way. So I thought to go to South Africa. I got a bus to Beitbridge that first time with some other women I knew. I thought they were all cross-border traders, but then when we got to Beitbridge two of them went to talk to the truck drivers and I realized they were prostitutes. The other women showed me who to pay to go across... that first time, I was bit frightened but not too much. I didn't know enough to be frightened. And we were fine, we walked all night but we made it across. I had some money saved to buy things. We did it together with the other women, and paid a man to take it back across in his truck. The business had worked. So I stayed at home for a while after that and then came back... I became a cross border trader.

Although Masvingo is the closest large city to the Beitbridge border, it is still a lengthy journey of approximately 250 kilometres. In order to travel this distance, Rutendo had to save enough money for a bus ticket at a time when the value of money deteriorated daily and when petrol was only intermittently available. Becoming a cross border trader, then, was no simple task. Although the particular set of economic pressures at work for Rutendo were specific to the period of hyperinflation, cross border trading has a longer history in Zimbabwe: it is work that is usually undertaken by women and is used to supplement family incomes. The first time Rutendo crossed she had done so illegally: the majority of traders she knew, however, used the formal border system. In order to do so, she knew she would need a passport. Between 2008 and 2011, Rutendo continued her work as an (illegal) cross border trader whilst waiting for her passport application to be processed in Zimbabwe:

So, the money I made from trading went on three things: food, transport and a place to stay for me; school for my brothers; and so, so much of it to the passport office. I needed to pay this guy for forms, that guy to hand the forms in, this other guy to make sure they were processed. It took a long, long time and cost a lot of money. But now I have my passport! Now this last time I came across legally! But it was too late for the business permit I wanted, so I am applying for asylum. But I really wanted to be able to get a ZDP permit.

During the process of frequent border crossings, Rutendo had come to dislike the impermanence of cross border trade. She now wished now to stay in South Africa in order to seek a more secure job. However, even though she had a passport she was finding it difficult to formalise her status. The long delays in accessing documentation within Zimbabwe meant that Rutendo had missed the deadline for the Special Dispensation Project of 31 December

⁷ ZJC refers to the Zimbabwe Junior Certificate, written at the end of the second year of high school, whilst O(rdinary) level exams occur at the end of four years of high school education.

2010 – by only ten days or so. Having entered on a 90 day visa, she now intended to apply for asylum in order to extend her stay. During the long wait for a passport, she continued to cross the border illegally multiple times. Her experiences provide an insight into the hazards women face in crossing the border:

There were lots of times that were not as easy as that first one. You know, you have to pay people to take you across if you go illegally, or else you will probably be robbed. Whilst I went across the border in the past, I was robbed a few times, even when I was travelling with men I had paid. It is especially hard to be a woman and go across, because you are not just afraid of losing your money but also of whether you will be hurt or raped. These things happen all of the time. It is a frightening place to be in, you usually cross at night and you have to deal with the river, the bush, and the other people: guards, or guma gumas or malayitsbas.⁸ It is not safe. Look around this shelter: most of these women here have just come across for the first time. I can tell because of the shock in their faces. But if you have no passport or no visa and you need to be here because there's no food, or money, or you need to get to a hospital and there's no medicine in Zimbabwe, what else must you do? You cross, by yourself or with your children. And you just put up with whatever happens to you. Because there isn't another thing for you to do.

Rutendo's case makes clear the structural inequalities that lie behind migration; and the socio-political processes that lie behind a status of 'illegality'. For example, in Rutendo's education history we see the dual effects of the structural violences of poverty and patriarchy. Unable to afford to send all their children to school, her parents and Rutendo herself chose to support her brothers. Instead of continuing her education, Rutendo entered the labour market at the (illegal) age of 13. As she grew older, patriarchy and poverty could be seen to impact upon the sexual choices she made. Women around her turned to prostitution in an increasingly constrained economic climate; Rutendo herself saw the economic advantages of a relationship with a married man. As the tensions of party politics impacted upon her daily life she took to carrying around a ZANU-PF party card in order that she might safely visit her family in the rural areas. Eventually, after a series of internal migration moves, socio-economic pressures pushed her to move across the border. And despite her desire to carry out her cross border trade legally, she was unable to access a passport for almost four years. When she eventually got a passport, the window for accessing a Special Dispensation Permit had passed; rather than remain illegal she decided to move permanently to South Africa and seek asylum. Given her history, it is unlikely she will be successful in this.

Rutendo's story is not unusual. Although her migration history is gendered and serves as a good example of the multiple (and violent) structural pressures faced by female migrants, male migrants' histories also showed structural pressures at work in migration that influenced the likelihood of their be-

⁸ *Malayitsbas* and *guma gumas* are terms for people who are paid to facilitate crossings. As Rutendo's words attest they are not generally trusted.

coming illegal, such as social class and poverty. The tables below, which present findings from the broader sample of 45 migrants, illustrate the frequency of illegal entry into South Africa for both men and women. Tables 1 and 2 indicate the avenues by which informants interviewed in Musina and Cape Town (over a thousand kilometres away) entered South Africa. I separate the two regions here as the Musina data reflected entirely illegal entry whilst the Western Cape data did not. This is most likely due to Musina interviews being conducted at shelters in the town: migrants who had entered legally would have already moved on.

Table 1: Modes of entry of Zimbabwean migrants interviewed in Musina

Gender	Modes of Entry		
	Work or study visa granted	90 day visa	Unofficial entry
Men (n=4)	0	0	4
Women (n=6)	0	0	6

Table 2: Modes of entry of Zimbabwean migrants interviewed in the Western Cape (n =35)

Gender	Modes of Entry		
	Work or study visa granted	90 day visa	Unofficial entry
Men (n= 15)	0	5	10
Women (n= 20)	0	6	14

Table 2 shows no legal entries, while Table 1 shows only eleven respondents to have entered the country legally. 75% of the sample thus did not enter the country via official routes. This finding is also in keeping with the trends presented in recent large scale research conducted by the African Centre for Migration and Societies (Elphick & Amit, 2012). The quantitative data indicate that legal avenues were seldom used by migrants; interview data showed that most migrants had not found it possible to enter the country by legal channels as they did not have passports.

The table below illustrates the legal status and time since arrival in South Africa for migrants interviewed in Musina and Cape Town.⁹

⁹ I have not collated this into one table as the migrants interviewed in Musina were newly arrived and as such most were undocumented; a few had received a temporary Asylum Seeking Permit. This was different to migrants who had travelled as far as the Western Cape, who had been in the country for longer and mostly had documentation of some kind.

Table 3: Zimbabwean migrants interviewed in Musina (n = 10)

Gender	Age (av.)	Time in SA (av.)	Legal Status*			
			U	AS	R	ZDP
Men (n= 4)	32	1 month	3	1	0	0
Women (n= 6)	25	3 weeks	5	1	0	0

*Legal Status and Employment Status: *U= undocumented; AS = asylum seeking permit; R = refugee permit; ZDP = Zimbabwean Dispensation Project permit.*

Asylum Seeking Permit does not ensure that the holder will be granted asylum or the right to stay in South Africa; it is a temporary permit routinely generated upon application. A refugee permit is more permanent; the holder may stay in the country for as long as the situation in the home country is considered a dangerous one. ZDP permits allow the bearer to work in South Africa for a maximum of four years.

Table 4: Zimbabwean migrants – In-depth interviews conducted (Western Cape) (n = 35)

Gender	Age (av.)	Time in SA (av.)	Legal Status*			
			U	AS	R	ZDP
Men (n= 15)	29	3 years 10 months	1	8	1	5
Women (n= 20)	27	4 years 2 months	2	12	2	4

The above tables show newly arrived migrants in Musina to either be undocumented or to have received a temporary asylum seeking permit from the Musina Refugee Reception Office; none had received refugee status or a ZDP work permit. The majority were undocumented; this reflects the length of time migrants had been in the country, which did not allow for time to access Home Affairs. Research conducted by the African Centre for Migration and Society suggests that Zimbabwean migrants spend their time in Musina awaiting asylum seeker documentation; ergo, many are undocumented for the duration of their stay (Elphick and Amit, 2012). The small sample of migrants I interviewed thus reflects a larger trend.

The data show that most migrants in the Western Cape had sought documentation of some kind, although again for the majority this was a temporary asylum seeking permit routinely generated on application. Like Rutendo, migrants were thus attempting to move away from a position of illegality through asylum application. It is worth emphasising, however, that this does not ensure future legal status in the country: indeed, for most Zimbabwean applicants, refugee status is denied (FMSP, 2009; Morreira, 2011). Contrary to popular perceptions of migrants as deliberately illegal, then, the evidence shows the majority of migrants who entered the country illegally to be actively

seeking legalisation. Further, the case study and other data show that illegality is structurally generated: it is a condition of the political system, not of the migrant him or herself. The fact that Zimbabweans are attempting to legalise their status and being thwarted by the state shows that they are not ‘criminals’ who are immoral in their behaviour, as perceptions of the migrant by ordinary South Africans suggest. Rather, they are attempting to become legal, but this move is blocked by state actions. The interpretations of illegality offered by the state and by ordinary South Africans are different, but intertwined. When the state positions a Zimbabwean as ‘illegal’ if he or she does not have papers, ordinary South Africans in Musina and elsewhere are able to perpetuate a discourse which posits Zimbabweans as ‘criminals’. State inability to legalise Zimbabweans gives credence to unfounded popular notions that migrants are law-breakers and responsible for other sorts of crime. This has severe implications in a country that has experienced sporadic bursts of xenophobic violence against migrants.

Conclusion: the politics of illegal migration

The November 2013 issue of *Political and Legal Anthropological Review* (PoLAR) challenges us to think of matters of legality and illegality in new ways. In this issue, Heyman (2013:304) argues that we need to take into account the socio-political implications of illegalization, asserting that *Illegalization as a process, for example, challenges us to ask how a particular set of classifications, justifications, and enforcement practices are originated, put into place, and reproduced or changed over time, and through what sorts of moral and political projects.*

The data presented above suggest that the illegal nature of Zimbabwean migration to South Africa is a result of such socio-political categorisation rather than a moral failing on the part of migrants themselves. Legality and illegality are social constructions; it is attendant upon us as scholars to unpack the process of that construction, and its social effects.

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