



# Legal Aliens: Experiencing Civic Marginalisation in Entrepreneurship in South Africa

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This study focuses on the challenges faced by Zimbabwean migrant entrepreneurs in South Africa involved in agro-processing, transport, logistics, information technology, transport, education, accounting, and remittances among others. These challenges stem from the limits that temporary residence permits. These include delays in the adjudication of residence permits renewals which threaten the viability of migrant-owned businesses, access to finance, conditions of the temporary protected statuses of Zimbabwean permits xenophobia, and their experience with affirmative action laws. Based on data gathered through interviews in Cape Town, this study concludes that migrant entrepreneurs remain in positions of vulnerability and contribute disproportionately to the economy of South Africa because of the limitation of residence visas.

**Keywords:** marginalisation, legal alienation, temporary residence permit, xenophobia, citizenship

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## INTRODUCTION

South Africa is a host to many African migrants running away from poverty, economic, political crises, and those seeking entrepreneurial ventures. However, the entrepreneurial activities of migrants in South Africa do not seem to be prominent, thus, appearing not to be accorded the same degree of intellectual space as seemingly cognate areas of alterity such as gender and “family” businesses (Fatoki, 2014; Ram et al., 2017). In a review of journals, theses, recorded works, and dissertations on immigrant entrepreneurship from 1997 to 2014, Fatoki (2014) observes that studies on immigrant entrepreneurship in South Africa are qualitatively and quantitatively weaker. Crush (2011, p. 54–55) argue that African migrants in Africa have more to teach us about the theoretical and empirical dimensions of entrepreneurship, but their economic activities have been sidelined from the mainstream literature because they are not considered diasporas in favour of those that left the continent.

The fewer studies on migrant entrepreneurship in South Africa focus on the “informal economy” or marginal sectors of the economy (Kalitanyi and Visser, 2010; Crush and Ramachandran, 2014, 2017; Crush et al., 2015). This study focuses on entrepreneurs involved in the formal sectors of the economy. The research participants for this study are involved in sectors such as agro-processing, transport and logistics, information technology, education, accounting, and remittances among others. By focussing on migrants with ventures in these sectors, this study challenges established sociological and anthropological thinking that sees Africa as the cradle of the informal economy. In addition, the older literature on the informal economy “does not adequately examine economic activities wrought by people in the context of displacement” (Bracking, 2014, p. 16). This study also responds to the call for studies examining the various forms of diasporic transnational that have emerged in the context of the crisis faced by people displaced from Zimbabwe who are in South Africa (Mcgregor, 2010, p. 27).

This study focuses on the challenges that Zimbabwean migrant entrepreneurs with valid visas face in South Africa. The researcher argues that the challenges emanate from the limits of their visas which upgraded their status to legal personhood, but with limited rights economically resulting in civic marginalisation. Civic marginalisation occurs when a part of the population is precluded from enjoying a full range of political and economic rights enjoyed by the majority (Lockwood, 1996, p. 53). This is in contrast with some scholars who argue that national citizenship has been superseded by residence status which incorporates foreigners into the civil and social rights regimes when they become legal residents (Bloch, 2010). This article challenges concepts such as transnational citizenship and post-national citizenship which are based on universal notions of personhood and allow people to claim rights across borders. Post-national citizenship is the extension of rights and principles of political and social equality beyond nation-state boundaries, without being considered outsiders (Tambini, 2001). For example, legal Zimbabweans in South Africa could have access to the same rights, privileges, and benefits based on supranational discourses of human rights.

This study looks at the limitations of legal residence permits by demonstrating that it does not guarantee economic equality for foreign entrepreneurs in the host country. It is argued that while documentation of migrants matters in that it guarantees legal status, it does not account for full inclusion which results in migrant entrepreneurs facing challenges. The researcher demonstrates that other legal prescriptions determine company registration, business accounts, lines of credit, and business permits which affect migrant entrepreneurs differently. Attention is paid to the challenges migrant entrepreneurs face while waiting between renewal/replacements and adjudication of migrant visas. To demonstrate this argument, ethnographic research and unstructured interviews were done with Zimbabwean migrant entrepreneurs in Cape Town, South Africa.

Entrepreneurship entails bringing into existence new goods, services, and raw materials (Shane, 2000, p. 451). Cope et al. (2007, p. 214) argue that “the sustained interest in the subject of entrepreneurship by academics, practitioners, and policymakers demonstrates that it is unlikely to be a fad.” The word entrepreneur is said to have French origins in its use by Cantillon in an article posthumously published in 1734 (Kates, 2015). Its use by Jean-Baptiste Say in 1803 in his *Traité* is the landmark moment when the word and its associated concept crossed into use amongst economics in French. According to Say, the entrepreneur “shifts economic resources out of an area of lower and into an area of higher productivity and greater yield” (Dees, 1998, p. 1). Later, Schumpeter defined an entrepreneur as someone who creates new products and services (Baumol, 1968). In all these classical references to entrepreneurs, “the essential ingredient at the heart is the market process” (Kates, 2015, p. 4).

Migrant entrepreneurs are entrepreneurs from one country to another who venture into business in their currently adopted countries and communities. Portes et al. (1999, p. 217) argue that most migrant entrepreneurs are transnational in that their

business activities require frequent travel abroad or the success of their firms on their contact and associates in another country primarily country of origin. Chen and Tan (2009, p. 1080) note that transnational entrepreneurship may involve migrant’s border crossing entrepreneurial activities between the host country, the home country, and third area.

## Conceptualising Civic Marginality

Morris (2003) developed the concept of marginal citizenship from Lockwood’s (1996) concept of civic stratification. Civic stratification refers to the relative deprivation that arises from civic disqualification of a minority from enjoying a full range of political and economic rights enjoyed by the majority (Lockwood, 1996, p. 53). Drawing from this, Morris (2003) argues that marginal citizens are people who have full citizenship but do not enjoy full citizenship status economically because of relative poverty, and socially by racism. Meaningful political right is the right to share to the full in the social heritage and to live the life of a civilised being according to standards prevailing in the society (Somers and Roberts, 2008).

A large body of sociological theory and research views immigration status as a key determinant of immigrant inclusion or exclusion. Bean et al. (2015) demonstrate how the “membership exclusion” approach accounts for how immigration policy and legal status, in particular, affects immigrant integration. This view argues that immigration laws create undocumented status, which hinders immigrants’ integration and mobility by denying rights. The membership exclusion predicts that when migrants become legal, it will be “a life-course turning point, the attainment of which may mark the weakening, if not the end, of the inhibiting mechanisms of unauthorised status” (Bean et al., 2015, p. 14). There is no doubt that immigration status makes a difference, “not just in terms of limited avenues for protection and for accessing rights but also with regards to the economic and transnational lives” (Bloch, 2010, p. 245). It puts an end to a condition that makes migrants be vulnerable (Gordillo, 2006, p. 171). Having a residence permit is a prerequisite for migrants to make any claim against the state and other agencies such as banks (Gordillo, 2006).

While membership exclusion theory predicts legalisation will lead to socioeconomic mobility, the researcher argues that the case in South Africa may be different as it is characterised by civic marginality. This study demonstrates that South Africa determines spaces of aliens, residents, and citizens (Friese, 2010). Bauder (2008) drawing on Bourdieu’s theory of capital argues that citizenship constitutes a key distinction between a citizen and migrant. From this perspective, citizenship is a form of capital that manifests itself in formal (legal and institutional) as well as informal (practised and cultural aspects). When migrants receive only visas, the lack of formal citizenship acts as subordination. By denying the migrants’ citizenship rights and access to a shared identity, national communities and their nation-states ensure that migrants remain in positions of vulnerability and contribute disproportionately to the economy of the host nation. Abrego and Lakhani (2015) argue that marginal membership leaves migrants vulnerable to structural and symbolic violence. Structural violence refers to insecurity

in wages and general uncertainty that effectuates a slow death for vulnerable communities from thriving economically (Farmer, 2004). When migrants are repeatedly exposed to inequalities and violence, it becomes symbolic violence (Bourdieu and Wacquant, 1992). Citizenship as a form of capital helps reproduce economic privilege for the host nation's people and maintains vulnerability for migrants. Bauböck (2006) argues that citizenship is not only a device of sorting out desirable and undesirable migrants, but it establishes a second gate that migrants must pass. On a similar note, Ong's (1999, p. 215–16) framework on graduated sovereignty shows that nation-states group citizens in zones that are differently articulated to global production and financial circuits and subjected to different kinds of surveillance and in practise enjoy different sets of civil, political, and economic rights.

This study demonstrates that legal residency does not offer documented migrants' economic quality in their country of residence. Having valid permits for migrants in South Africa implies that people have to comply with new patterns of legibility because in South Africa "there is a particular kind of state politics; a politics of which reduce citizenship to indigeneity and to a politically passive conception of citizenship. The opposition citizen foreigner denotes the creation of a new community as well as the exclusion of some from the community. As this community is based only on a common identity but also on legal prescriptions (rights and duties) and socio-economic benefits (access to social services, bank loans), it is not certainly imagined, but materially experienced" (Neocosmos, 2006, p. 18). Peberdy (2001) argues that South Africa's exclusionary immigration and temporary residence policies indicate that the benefits of South African citizenship are only for citizens, not non-citizens who are also "here" or want to be "here." The bill of rights in the Constitution differentiates between the rights of citizens and non-citizens and therefore, signals entitlement to state resources by citizenship. Those who are documented migrants become marginal citizens in that they have political citizenship by virtue of being documented, but do not enjoy full citizenship status economically (Morris, 2003).

Achium (2013) notes that laws, policies, and practises cause civic marginalisation to fall into two categories. The first one contains laws and policies called "de jure alienage exclusive." These laws and policies for independent and legitimate reasons, explicitly exclude migrants, refugees, and asylum seekers from entire sectors of the industry on the basis of citizenship and immigration status. The second category contains laws, policies, and practises that are "de facto alienage exclusive." These policies do not explicitly or on their face exclude refugees and asylum seekers from formal economic opportunities. In principle, they are alienage neutral, but nonetheless subject foreigners to requirements or conditions that exclude them on the basis of their nationality or immigration status. Luu (2000) writing on the experience of migrants in London in the 1500s notes that foreigners did not face threats of violence or physical abuse in the streets, but it was parliamentary acts designed to limit the rights of aliens and their children.

The sections that follow explain the lived realities that Zimbabwean migrants go through by focussing on access

to finance, xenophobia, and their experience with affirmative action. The phenomenon of being (or becoming) marginal relative to the abstract norm of equal membership in the democratic state is "the civic marginalisation of migrants" (Owen, 2013). Issues highlighted in this article lend support to the scholarship that emphasises the enduring power of the nation-state as it shows how legal status can become an important axis of stratification (Menjívar, 2006). This research rejects that national citizenship is declining in favour of post-national citizenship.

## METHODOLOGY

This study was drawn from the researcher's Ph.D. work on Zimbabwean migrant entrepreneurs in Cape Town. Ethical clearance to do the study was obtained from the University of the Western Cape. Data were collected between February and May 2018 in Cape Town. The participants were selected using non-probability purposive sampling. All names used in this article are pseudonyms. The researcher interviewed a Zimbabwean community leader first, who is credited for starting the Zimbabwe Excellence Awards to celebrate Zimbabweans involved in entrepreneurship in the Western Cape in 2015. In 2018, the excellence awards were in their fourth edition. The participant referred included the researcher to Telegram Social networking platform, which hosted a number of Zimbabwean entrepreneurs. With a total of 60 members in the group, the researcher interviewed twenty-five (25) of them. For those that agreed to be interviewed, the maximum waiting period after making contact was not more than forty-eight hours. Some of them were available to be interviewed within the next hour. All names used in this article are pseudonyms/not real names of the participants.

The study utilised life history to approach and capture the experiences of Zimbabwean migrants. Dhunpath's (2000, p. 544) argues that life histories are probably "the only authentic means of understanding how practises reflect the intersection of institutional and individual experience in this postmodern world." The interviews were in the language of choice of the participants mainly English and Shona. Even though an interview guide with questions was used, participants were allowed to talk about their life histories in an open-ended way based on the following themes: demographic characteristics such as hometown, year of emigration, the reason for emigration; life in South Africa, how, when, and why they ventured into entrepreneurship; challenges they face in entrepreneurship; how they use social networks and whether they will return to Zimbabwe in future. Most of the interviews were done at restaurants, office workplaces, and homes. After collecting data, all interviews were transcribed in English. Data analysis was aided by a computer-assisted software called Atlas.ti version 8.1. Basit (2003) notes that qualitative data analysis software substitutes the slow process of manual searching and filing as the program takes over the marking up, cutting, sorting, reorganising, and collecting tasks qualitative researchers used to do with scissors and note cards.

## RESULTS

### Delays in the Adjudication of Permits Renewals

In 2010, the South African government regularised undocumented Zimbabweans through the Zimbabwe Dispensation Permit process (DZP) and the permits issued under this remit were valid from 2010 to December 2014. It was succeeded by the Zimbabwe Special Permit (ZSP) that was introduced from 2015 to December 2017; this, in turn, was replaced by the Zimbabwe Exemption Permit (ZEP), effective from 2018 to December 2021. The Zimbabwe documentation process legalised a large portion of Zimbabweans who were working, studying, or operating their own businesses. The permits expire on the same day, regardless of the day one got the permit. At the time of interviews in May 2018, some Zimbabweans were still waiting for their exemption permits to be adjudicated which they had submitted between September and November 2017. When one applies for renewal of a permit, the National Department of Home Affairs gives the applicant a receipt which allows one to continue enjoying services even if one's permit expires before the application has been adjudicated. In December 2017, the National Department of Home Affairs issued the following directive on Zimbabwe Exemption Permits.

“The Department of Home Affairs requests all Companies, Employers, Banks, and Learning institutions to note that applicants for the Zimbabwe Exemption Permit who are in possession of ZSP permits which expire 31 December 2017 must be allowed to continue giving and receiving services as necessary until such a time they get their new ZEP permits, effective 1 January 2018. The condition is that the applicants must provide proof of application either for a ZEP permit or mainstream visa. The proof of application may be a VFS receipt or proof of payment. The Department of Home Affairs has discussed this arrangement with the South African Banking Information Centre (SABRIC) so that ZEP applicants will be allowed to transact and have access to their bank accounts. This is to ensure that ZEP applicants continue to transact with banks while their applications are being adjudicated. The Department of Home Affairs has notified its officials in all Ports of Entry to allow those who wish to travel to Zimbabwe to do so without hindrance as long they provide the necessary proof of application or VFS receipt/proof of payment. In terms of the directive, ZEP applicants will not be marked as undesirable. We will allow all ZEP applicants with a ZSP visa or visitor visa to accompany parent on the ZSP to travel in and out of South Africa provided they submit required proof. The transitional arrangement is in light of the approval by the Minister of Home Affairs of a new 4-year permit (ending 31 December 2021) for all Zimbabweans in possession of ZSP permit. The submission of fully completed applications commenced 01 October 2017 and was extended until 31 January 2018. The closing date for submissions of online applications and payment of prescribed services was 30 November 2017. We look forward to the cooperation of all parties concerned” (Department of Home Affairs, 2017).

A general reading of the advisory above seems to be addressed to all potential service providers where most migrants may want

to get services. Banks, employers, and learning institutions were named in the advisory. In the advisory above, the National Department of Transport is missing and this came back to haunt Edward who has a driving school when he wanted to renew licence disks for his cars. Edward has two cars for code 08 licence, four trucks for code ten licence, and two haulage trucks for code 14 licence. All these vehicles were for cash. When a foreigner wants to renew a motor vehicle licence, the traffic department requires proof of residence, and a passport with a valid visa. The traffic department insisted to him that the advisory did not include the Department of Transport as it was only written to banks, learning institutions, employers, and therefore it was not obliged to render services to migrants whose permits would have expired. Edward narrated his challenge with the traffic services which is a division from the Department of Transport as follows:

*“I applied for ZEP business permit, it's not yet out. This is March 2018. I submitted in October 2017. I have a business to run. I need to renew my license disks for my vehicles to be on the road. I need to go to the bank to do transactions. You go to traffic department; they say we cannot help you without a permit. What am I going to do? I am in the country legally. I tried to explain to them that take me as an example. There is my permit, I applied for it. I have been on this permit since 2010. I had a DZP, moved to ZSP and now ZEP. I have vehicles on the road. They tell me you need to wait for your permit to be licensed. Those are regulations we work with. They should understand since I have got a receipt, and I have been in the system. They just make things difficult where it is not necessary especially for foreigners. Me as a foreigner, I go through this. I wanted to renew my license disks; they gave me hard time. You go to Home Affairs, and they say we gave them a letter, and if they do not want it, what do you think we must do. You go back to traffic department; they say the letter does not state traffic department. You have those situations. It does affect our clients who are foreigners as well. I personally as a foreigner gets such challenges from the traffic department because that is where we do our business. If people give you regulations that you must stick to this, if they cannot help you, there is nothing you can do”.*

What makes this situation more disturbing is that the traffic department also enforces laws on renewals of licence disks. By denying Edward the renewal of licence disks of his cars, he cannot continue with his business because the traffic department also administers driving testing. His permit eventually came out in July 2018. From February to July 2018, Edward was not able to practise his trade. Therefore, the waiting for adjudication of permits is a form of violence against migrants that harms their livelihoods and prevents them from thriving socioeconomically. While waiting Zimbabwean migrant entrepreneurs found themselves in extremely precarious conditions as their personhood was erased and their livelihoods affected affecting the chronological mobility of migrants' businesses. The High Court of South Africa previously dealt specifically with the consequences of legal violence caused by prolonged waiting for migrants in the case of Eisenberg and Others v Director-General Home Affairs and Others 2012 (3) SA 508 (WCC) at paragraph 85 of the judgment which reads:

For a foreigner in South Africa, these permits are the single most important document they can possess. It is the basis of their legal existence in this country. Every aspect of their lives—the ability to travel freely (s 21 of the Constitution); the ability to work and put food on the table for their families [a component of the right to dignity in s 10 of the Constitution, see *Minister of Home Affairs and Others v Watchenuka and Another* 2004(4) SA 326 (SCA) at 339B-C and F-G, 340G]; the ability to keep their children in school (ss 28 and 29 of the Constitution); and the basic right to liberty [s 21(1) of the Constitution]—is dependent on the physical possession of a valid permit. The acquisition of a valid permit is the primary prerequisite for any foreigner in South Africa.

The judgment makes it clear that without permits, migrants are subjected to legal violence. The waiting does not only disrupt livelihoods but it demonstrates how the South African government alienates and marginalises non-citizen resident entrepreneurs resulting in lost livelihoods and business opportunities (Nyakabawu, 2020). Migrants without permits become legal ghosts and are unable to interact with society in the normal channels as income opportunities are lost. Zimbabwe Exemption Permit came with conditions that: (1) do not allow change of status of a permit, (2) that they are not renewable, and (3) do not grant holders permission to apply for permanent residence regardless of the period of stay in South Africa. The DZP and its successor permits provided humanitarian relief to thousands of undocumented Zimbabwean migrants in South Africa, the South African government has opted not to replace them arguing that holders must migrate to other mainstream visas within twelve months after December 2021. Home Affairs gave a similar directive to the one shown above, meaning entrepreneurs within sectors not covered by the directive will likely experience the same issues as the ones Edward faced.

## Finance and Banking

For entrepreneurs, financial capital plays an important role in starting a business or expanding (Chatikobo, 2017). At the same time, banks adhere to international money laundering and anti-terrorism policies that require they have full details of clients such as housing and employment details (Hungwe and Gelderblom, 2014). Businesses in South Africa are governed by the Companies Act which requires all businesses to have a business banking account, pay tax, and that the company is registered. For migrant entrepreneurs in South Africa, the first challenge is opening a bank account before mentioning lines of credit. To open a business account, one needs a business permit. This requirement subjects foreigners to conditions that exclude them on the basis of their nationality or immigration status which is taken for the purposes of immigration. As a result, migrants face an uphill task opening a business bank account that enables them to transact. When these entrepreneurs start their ventures, they only have work visas. In legislation, they cannot operate businesses nor can they open business accounts. Below, Jack explains this challenge.

*“If you do not have a South African ID and you do not have a business permit, you cannot open business bank accounts. You will be just operating as a sole trader, the money getting into your personal account or you’re forced to work for someone. So, you’re*

*not supposed to open a business. So, to open a business bank account it’s difficult.”*

A sole trader is just a simple form of business and Jack highlights that it is the only furthest one can do without a business bank account. In other words, one cannot call themselves an entrepreneur or businessperson when operating as a sole trader. Jack now has a permanent residence permit. However, permanent residence permit holders and citizens do not have any capital requirements to open a business account. For foreigners, the Immigration Act requires a current minimum capital is R500 000 to apply for a business permit. However, the person is not required to have R500 000 to open a business account. This requirement assumes that all businesses require some capital injection and that all people who apply for business permits will come from outside South Africa.

To make matters worse, most of the participants had Zimbabwe Special/Exemption Permits work visas which have a provision that did not allow for a change of status from a work permit to a business permit. While the permits had been renewed twice, there were conditions; does not allow change of status and not renewable. Even if they had that money, the conditions in their permits acted as barriers to migrating to business permits. The minimum capital requirement may be necessary for people who are coming from outside to invest in South Africa. This study argues that there must be some flexibility for those in South Africa with work permits but would want to venture into business. It is a great setback for people with work permits to first have R500 000 in banks accounts, then apply for a business permit, and then start a business. When the DZP permits were introduced, the applicants intending to apply for a DZP business permit were required to produce proof of company registration and registration with the revenue authority. But migrants can only register businesses if they have a business visa.

For skill-based entrepreneurs like Farai, for example, who is a penetration analyst/hacker, that requirement is unnecessary. For him to do his work, all he needs is a laptop and some expensive software which all will cost below R80 000. Farai narrates his frustration with regards to the R500 000 capital requirement.

*“You have to be legal. You can’t do a business as a person; you have to be a company. I have a bit of a problem in South Africa. You can’t register a business if you’re on a work permit; and how do you go about it is you must come with 500 000 rands. They do not care about your intellectual property, or your skills set. It’s counterproductive, it puts us back as a nation and they do not respect what you have learnt; your brain is worthy everything. I sacrificed to live in South Africa, not because I had money, but I got a skill set. That is a problem with a lot of people. Fortunately, I have gone past it.”*

Farai highlights his existential risk of not protecting his intellectual property well. Farai initially worked as a penetration analyst for one of the biggest software companies in the world when he was studying and working in New Jersey. The company he worked for, provided military and intelligence software, corporate software, and data protection for banks. His job was

to break into firewall systems that the company he worked for would have built. The statement that he sacrificed comes from his decision to remain in South Africa after helping the company set up an office. He regrets taking that step.

Some people have business accounts with work permits, but it is not legal. Levitt and Schiller (2004, p. 1013) note that people living in transnational social fields experience multiple loci and layers of power and are shaped by them, but they can also act back upon them. Killian manoeuvred around the business permit requirement needed to open a business bank account by going from branch to branch.

*“Opening a business bank account for me though was a problem. They wanted a business permit and I had a work permit. However, what I realized is that here in South Africa they do not apply their policy consistently. I am not stopped by anyone. If they did not allow me here, I went to the next branch and next branch until I find someone who overlooks, and this is what happened. Right now, I have a business permit, but I opened it with a work permit.”*

Besides opening business accounts, the other challenge is accessing lines of credit. Even if one has a brilliant business idea, lines of credit are not easily accessible for foreign entrepreneurs. Edward narrates the challenge:

*“In terms of being a foreigner, you must buy everything cash. You just have a permit, where you’re given three years only. You go to the bank; the bank will not finance you. The businesses and everything you must fund yourself. If you were a local person, you go to the bank, they see your business plan, what you have achieved in a certain time, what is getting in and what’s getting out. They will sponsor you or get financed because you have the right papers. But for a permit expiring in three years you cannot get, imagine if I had this business in Zimbabwe and Zimbabwean economy was fine. I could do a lot of things and I could maneuver. I would have more cash. But because you’re foreigner, they’re challenges of always being a foreigner”.*

The lack of access to loans means that migrants have difficulties buying capital equipment since they have to pay cash for everything. Hungwe and Gelderblom (2014) note that while migrants in South Africa have the same access to credit facilities when it comes to buying clothes, they do not enjoy the same when it comes to buying capital equipment. Another example is Kativhu, a qualified chartered accountant running a peanut butter manufacturing company. His factory buys peanuts as raw materials, roasts them, cleans them up, and grinds them into a peanut butter paste. The peanut butter products come in different flavours. These include smooth which is made up of just grounded nuts; crunchy which is fused with some nuts, cinnamon raisins flavour, chop chip flavour, and then honey which is made from a mix of peanut butter and honey. Finally, there is a seed and nut flavour comprised of pumpkins seeds and other healthy seeds. At the time of the interview, Kativhu’s peanut butter was available in some of the big retail stores in South Africa namely Spar, Pick,n’Pay, Wellness, Know How, and Faithful to Nature. He explains the challenge of getting lines of credit from banks:

*“Some of the challenges that we face is because we are foreign nationals. It is very difficult to secure funding. It is very difficult. We are self-financed. The idea is we want to finance the operations as we want to get somewhere. Mostly those are the challenges in terms of business. Also being foreign nationals, you not regarded in terms of preference. You go to a bank; you’re not treated the same as South Africans. If I was a local person, I am sure we will have achieved more than we have achieved now. The progress and the rate at which we are growing is slower than our counterparts. What I still remember very clearly is we went to a bank. We wanted an overdraft and they began saying you’re foreign nationals you do not qualify blah blah. I know that foreign people qualify because I do accounting. I have some of my clients who are foreign nationals who do have overdrafts”.*

However, in 2017, Kativhu won a national award from the country’s power utility Eskom Business Investment Competition, coming first in that competition on agro-processing. He also won an award from the Western Cape Government as the second-best emerging business in the Western Cape Province and received a grant from the Western Cape Government. The awards make Kativhu seem included, but the denial of loan makes him an outsider confirming his marginal citizenship in South Africa. It seems that government agencies in South Africa only celebrate migrant businesses when they become successful while at the same time putting barriers to the incubation and growth of migrant businesses.

## Black Economic Empowerment

Zimbabwean entrepreneurs’ main challenge is the South African government policy of black economic empowerment (BEE). The BEE policy attempts to redress the effects of legacy systems of apartheid by redistributing resources to groups that were previously disadvantaged by the system of apartheid. Empowerment credentials of businesses in South Africa are assessed on management representation, employment equity, skills development, preferential procurement, enterprise development, and corporate social investment (Ponte et al., 2007). Among the aims of BEE is to promote black economic empowerment in a bid to deracialise the white-dominated economy through entrepreneurship and the occupation of all management levels (Hungwe and Gelderblom, 2014). The BEE policy categorises Africans, coloureds, and Indians as black people. In 2012, the policy was amended to define blacks as citizens of South Africa by birth or descent or those who became citizens of South Africa by 1994 through naturalisation. The provisions of the policy act as a double sword for migrants in that it hampers mobility at work as only black South Africans are promoted while it blocks opportunities for migrants when involved in entrepreneurship. Pardon said the following about BEE;

*“If you look at the way BEE is structured, it is structured in a way that if you’re a foreigner you’re deemed white. That is why you see most Zimbabweans who have ventured into entrepreneurship because of limitations on access to advance within a company just because you’re not a South African citizen and you fall outside the constructs of BEE. Therefore, you do not qualify to be promoted to*

*senior management or to be a CEO. Unless obviously you been here before 1994. If you're Zimbabwean and have been here before 1994 and you're naturalised and a South African citizen then you can have those kind of opportunities and you're exempted from BEE. Yes, we can register on BEE, but it only comes as BEE exempt but does not come as any other, it does not give you points."*

In the above extract, Pardon highlights that Zimbabweans are forced into self-employment because of the obstructions of the BEE in job promotions. While in entrepreneurship, BEE proves to be an impediment again. It is important to note that their businesses are potential sources of employment even for South African citizens. Research has established that migrants are not job takers, but job creators. Shumba, for example, employs five South Africans. Most Zimbabwean entrepreneurs employ South African people as clerks or receptionists or other forms of positions. Hungwe and Gelderblom (2014) note that if a state openly and elaborately puts in place legislation that makes it difficult for migrants to participate in the labour market and entrepreneurship, it is essentially telling them that they have no part to play. The potential customers of migrant businesses may avoid them because they get points for supporting BEE businesses. Jack highlights this:

*"Because you're black, some will ask for your BEE because they get some scoring because they have given a job to black person. Or this supplier who is BEE because most white guys are level 7, unfortunately that one we are just like white people. When you came into South Africa after 1994, you don't qualify to be considered black. The definition of black refers to someone who was here since 1994 who is African or Indian. Even if you are black but came after 1995, you're classified as other. So that one is a challenge when you're tendering or doing big jobs. But for some of us who do not depend on tendering, we are not worried. But if we are looking a growing, tendering in government, BEE will be a matter."*

In the above excerpt, Jack highlights that migrant businesses face difficult paths to growth as they rarely get support from other established businesses because they will not get any BEE points from supporting them. This will have been different should the business have belonged to South African citizen entrepreneurs. Farai highlights his frustration with the BEE policy as follows:

*"I think the issue of BEE is a little bit of wolf in sheep's clothing. It's a farce. They say BEE equals equal opportunities for everyone. They say you need to be level X to do business with government. They don't care whether you're qualified, you have to be black; black before 1994. While the idea was ok to give business to black regardless of how much experience you have. Government had to change their procurement system. Basically, when they say BEE, it means who you know. I had problems with it constantly. For a while we had to get a silent partner who was black. Currently we are level two. At the end of the day; I would say the South African market is a bit open. Some organisations have started looking at capacity regardless of BEE status. They constantly ignore our BEE status by saying if you guys can provide us with specific services; then we will go ahead"*

The BEE policy is discriminatory in that it is designed to exclude foreigners. Achiume (2013) notes that structural discrimination originates in laws, policies, and practises that fall into two categories. Some of the laws are "de jure alienage exclusive" in that for independent and legitimate reasons, they explicitly exclude foreigners from entire sectors of the industry on the basis of citizenship and immigration status. Citizenship is a more discriminating concept between insiders and outsiders. If one crosses the boundary of citizenship, status, rights, and obligations in relation to the political community change as a consequence (Bauböck, 2006). Bauder (2008) highlights that citizenship is a mechanism of distinction between migrants and non-migrants based on associations with place, origin, and national community. Nyasha also highlighted that the BEE policy is discriminatory in that it is designed to exclude foreigners and the only way he goes around it is to look for partnership with a South African citizen.

*"Definitely, they do not want us foreigners to be involved in business. Anything that involves BEE a foreigner should not get. The only way I could get into a tender is to enter into a partnership with a South African. I am actually forced to enter into a partnership with a South African on a 50/50 basis. In doing this, you need to be smart. As a foreigner, you need to play with the system and work with the system. For some, reasons, the foreigners know the opportunity, the South Africans do not. When you approach them, they do not want. They feel threatened. What I did is I approached my cousin who married a South African, gave them the opportunity, and said guys lets go 50 50. That is how I beat the BEE system. Anything I want to in South Africa, I am covered on that. The only shortcoming is I have to go 50 50 on profit."*

Civic marginality is about the denial of social rights and entitlements to strangers to the community, not just foreigners as conceived by the law (Neocosmos, 2006, p. 16). Tsitsi came to South Africa when she was 2 years old. She is now a naturalised South African citizen. She can vote in local government and national elections. Her business involves a feminine hygiene product that is used by women during their menstrual period. She migrated to South Africa in the late 1990s, she is therefore not eligible to get start-up funding opportunities by state institutions because she is not full a BEE citizen.

*"It is very hard to get into government without connection and it is very hard to get into government when your name reads Zimbabwean irrespective of whether you have papers or not. Often when you apply to government institution like the Industrial Development Cooperation or Technology Innovation Institute or Innovation Hub. I had to alter the equity of the company to ensure that we are more than 50% South African. I had to bring another South Africa. People prefer not seeing a Zimbabwean. When people read my name, they will ask whether I am South African. They assume I am not because of my name or they just prefer BEE people with South African names who are from their own country."*

Tsitsi's example shows that having citizenship did not give her equal social and economic rights as other South African citizens born to parents who were here before 1994. She is civically marginalised in that she has full citizenship, has South

African identity documents, can vote in elections, but does not enjoy full citizenship status economically (Morris, 2003). Fassin (2011) noted that the logic of inclusion and exclusion becomes more visible in naturalized people where the state constantly reminds its other citizens on how they differ from indigenous fellow citizens. Somers and Roberts (2008) argue that meaningful political rights which is the right to share to the full in the social heritage and to live the life of a civilised being according to standards prevailing in the society. Hage (1998, p. 49) distinguishes “between official citizenship which signifies a formal recognition of one national status by the state and practical national belonging which refers to everyday acceptance or non-acceptance as a subject of belonging by the dominant national community.” Tsitsi’s experience calls for the need to interrogate the concept of citizenship. It is not just official as “identity documents but is also social and practical (Hage, 1998, p. 49). In this lane, the concept of citizenship does not only denote whether one is either fully citizen or fully not a citizen. Practical citizenship by contrast has a cumulative logic. In the daily life of the nation, Hages argues that there are “nationals who on the basis of their class, gender or ethnicity, for example, feel and are made to feel to be more or less national than others” (1998, p. 49). Legal citizenship gives certain rights and privileges, but “it is only a pass of the game of achieving an embodied and performed citizenship that is recognized as legitimate by the dominant national community” (Carruthers, 2002, p. 427). Mcnevin (2006) argues that people can only claim full citizenship if they are part of the economy of that place (economic belonging), participating in everyday social relations (social belonging), and appeal to human rights (universal belonging). Thus, migrant entrepreneurship in South Africa remains marginal even after acquiring citizenship and does not enjoy economic belonging.

Mcgregor (2010, p. 5) notes that Zimbabweans maneuver within and around the constraints to influence the circumstances of displacement to their own ends thereby creating a sense of belonging to the new place and perpetuating attachments back home. Networks from the country of destination provide primordial affinity yielding social capital in the form of affection and trust which enhances business possibilities and cross-national practices, alleviating risks and uncertainty stemming from the complexity and unpredictability of global markets (Drori et al., 2009, p. 1012). This helps alleviate a phenomenon called the liability of foreignness. Liability of foreignness refers to the disadvantage that entrepreneurs or foreign firms from a different nationality, as compared to the locals based on account of his or her different national origin (Joardar and Wu, 2011). On a similar note, Elisha used the identity card of his girlfriend to open a business. Elisha said:

*“I wanted to start my own company as the expertise I was giving to the company did not tally up with what I was getting. In 2015, I then registered a company whose main target was outsourcing products and selling. I registered it with my girlfriend who had a South African ID. Things did not work out well later with my girlfriend in our relationship. I left the company even though it was making money. From my ex-girlfriend we used her ID to*

*register a business, open a business bank account and register on City of Cape Town procurement database to get direct tenders. People could trust our company more and especially it was owned by a black woman. When dealing with government departments, they will be supporting black business women. Currently, I have a friend Kenneth who is a South African. He stays in Johannesburg. I admitted him to my company so that I can benefit in terms of the BEE and some other credentials we can get using his experience and credentials. As a result, we can get funding on critical funding from the government. He is South African and he is compliant. Since Kenneth is a shareholder in our company, we are getting the finance from Industrial Development Cooperation.”*

In using her girlfriend’s identity, Elisha was demonstrating the logic of flexibility in circumventing limitations of the law. Elisha as a Zimbabwe passport holder is an apt contemporary figure who embodies the split between states’ imposed identity and personal identity (Ong, 1999, p. 2). Flexible citizenship refers to the cultural logics of capitalist accumulation, travel, and displacement that induce subjects to respond fluidly and opportunistically to changing political and economic conditions. Ong (1999, p. 19) notes that under transnationality, the new links between flexibility and the logics of displacement on the one hand, and capital accumulation, on the one hand, give valence to strategies of manoeuvring and positioning.

## Xenophobia

The ways in which migrants experience marginal citizenship will be incomplete without discussing xenophobia. Neocosmos (2006) notes that post-apartheid South Africa has experienced a massive problem of xenophobia which is shocking given the massive international support in its struggle against apartheid. The othering of foreigners is linked to feelings of superiority derived ironically from a sense of superiority and initiated by the celebration of the success of South Africa’s transition, but it simultaneously created another underclass around the same conceptual primitiveness upon which apartheid rested (Vale, 2002). Neocosmos (2006) on a similar note argues that xenophobia manufactured by the state under apartheid and post-apartheid indicate a transition between two forms of xenophobia simultaneously with continuity between state practises.

Everatt (2011) defines xenophobia as hostile attitudes and actions of South Africans toward African migrants. Dodson (2010, p. 5) notes that the lives of foreign Africans residing in South Africa whether recent arrivals or long-established, legally or illegally resident, economic migrant, asylum seekers, or refugees are marked by discrimination, exclusion, and fear. Some Zimbabwe migrant entrepreneurs experienced xenophobic discourses that assert South Africa’s superiority over Zimbabweans drawing upon western notions of modernity as well as apartheid supremacist ideologies (Muzondidya, 2010). For many South Africans, Africa is a dark continent that is underdeveloped while South Africa belongs to the developed world of Europe and Africa. Neocosmos (2008) notes this discourse sees Africa as a strange backward continent characterised by primitivism, corruption, authoritarianism, poverty, and failed state and its inhabitants wish only to partake



of South African resources and wealth at the expense of its citizens. South Africa has recorded xenophobic incidents in 2008, 2015, and most recently in 2022. It is believed that South African citizens are aggrieved by high levels of unemployment, with the belief that foreign nationals are “stealing” jobs from them. Betty says South Africans only think Zimbabweans can only be domestic workers. She said:

*“The moment people from South Africa hear that you’re from Zimbabwe. They just think everyone is a domestic worker. They just think everyone does not have documents. They think it is those Zimbabweans who just came running away from war. In one of the days, I went for a conference in Cape Town, things shifted when I said I am from Zimbabwe. We ended up talking about ZANU PF instead of business and for me sometimes it angers me”.*

On a similar note, Makanaka said South Africans refer to her boutique shop as belonging to a mukwerekwere; a term that means people who speak a language is not understandable. She said:

*“Last week, some ladies were passing by outside this shop saying this is a shop for mukwerekwere. You must not get sad over that because when you’re a foreigner, you must know that you’re not in your own country. You will get others that will support you.”*

In extreme cases, South Africans are involved in violent activities against foreign entrepreneurs. This can range from demonstrations or the destruction of property this has been the experience of Prince. Recently, in Johannesburg, a group of South Africans approached businesses in Hillbrow, under the auspices of Operation Dudula, a strategy of protesting against illegal immigrants. Shumba has got 10 tipper trucks. He said;

*“These people want to push us from here, they do not want us here. They tell us you came to make our area dirty. Why don’t you go to Zimbabwe? Sometimes they mount up, they come here marching and singing. You see all those taxi bosses, there are now my friends. When they were paid off their money from taxi finance. Remember when MyCiti came, it was paying them off taxi owners. When they were being paid off that money, they were building flats. You know South African law is different from Zimbabwean law. Community law goes above the nation’s law if I may set it that way. When they come here and march, those guys will go there and say you guys you are just being jealousy because he is making money. He is at his corner. He disturbs no one. He does his business. He is not like Nigerians who sell drugs. I have been called several times to meetings. The community leaders stood up for me. If this neighbours does not complain seeing my trucks parked here, why do you people come from ten houses afar and say he is making noise. It means you have another problem. They just say you’re making noise... They once came here with a petrol bomb to bomb a quantum and a truck<sup>1</sup>. The van was insured. The truck did not catch fire because it is made from diesel. When I was in Zimbabwe someone just started my truck, and went to smash the truck at that school there, and it was write off. There used to be a bill board here. It was smashed by*

*that truck. I do not know whether they wanted to steal the car or not. The lady from that house saw him starting the truck. He drove away for ten minutes. The lady was surprised why the car was being started at 3am. He drove away for ten minutes and came back to smash the car at that billboard at that school there”.*

Shumba parks his tipper trucks in an open area just in front of his house. The interesting thing here is that the community leaders who had often been accused of coordinating xenophobia in South Africa were coming to the defence of Shumba. However, this must be understood against a background of social capital. Shumba first attempted to have a quantum minibus, driving from Dunoon to Maitland as well as Dunoon Cape Town. However, things did not go well with fellow South African drivers and taxi operators as they were always arguing and fighting, at the taxi rank. He concluded that this business was not going to work for him as he did not like fighting. He sold the quantum to buy his first tipper truck. When the City of Cape Town introduced the My Citi bus rapid transport system, some of the taxi owners were bought out and built their houses adjacent to where Shumba currently stays. Most of them are now community leaders, so whatever happens, Shumba just reports the case to them and they always come to his defence. Xenophobic outbreaks have become a common occurrence in South Africa every year. Foreign-owned businesses and foreign employees are always targeted. Xenophobic violence will continue in South Africa in the foreseeable future as politicians blame economic challenges as precipitated by foreign migrants.

## CONCLUSION

This study demonstrated that the legal status of a migrant does not equal full social and economic rights in the country of settlement. It has been revealed in this study, that South African immigration laws are discriminative and are selectively applied against immigrants-illegal and legal. Legal residents in South Africa, including those with citizenship, are barred the right to share to the full the social heritage in the host nation. In addition, foreign entrepreneurs and others with full-time employment, do not really enjoy the freedom espoused in their legal status-permanent residence permits. The study does not lend support to arguments that legalisation will lead to the inclusion of migrants and enjoyment of rights *vis-a-vis* others. For example, civic marginality is evident in many communities of foreign nationals because there is a blatant denial of social rights and entitlements to immigrants, not just foreigners as conceived by the law. This study has shown the ways in which legal resident aliens are discriminated against through laws by the government which determines spaces for insiders and outsiders. Results from the interviews demonstrate that immigrant entrepreneurs are not provided with spaces to operate their businesses without hindrances. All the participants revealed that their entrepreneurial ventures are hampered by the prevailing immigration laws and policies, thus, do not have a level playing field to access lines of credit or other forms of business support. For instance, opening a business bank

<sup>1</sup> A quantum is a thirteen seater mini bus mainly used for public transport in South Africa.

requires the business owner to satisfy a number of immigration rules and Companies Act requirements. Documentation of migrants matters, but it does not account for full inclusion. The challenges that Zimbabwean entrepreneurs face are not mainly violence or physical abuse in the streets, but laws and policies designed to exclude them from participating in the mainstream economy. This study concludes that a review of South Africa's immigration laws is not envisaged in the near future. There seems to be a trend that the period toward national elections, contesting political parties signal intentions to repeal and amend immigration laws. At the end of February 2022, the South African government published a Labour Migration Policy that seeks to bar migrants' entrepreneurial ventures in certain sectors of the economy. Thus, evidence from this research does not lend support to postnational citizenship. It has been shown that legal migrants are prevented from enjoying the same rights as local citizens regardless of their immigration status.

## DATA AVAILABILITY STATEMENT

The original contributions presented in the study are included in the article/supplementary materials, further inquiries can be directed to the corresponding author/s.

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## ETHICS STATEMENT

The studies involving human participants were reviewed and approved by University of the Western Cape Ethics Committee. The patients/participants provided their written informed consent to participate in this study.

## AUTHOR CONTRIBUTIONS

The author confirms being the sole contributor of this work and has approved it for publication.

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