THE DEPORTATION PROCESS OF ZIMBABWE AND SUB-SAHARAN AFRICA

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1. INTRODUCTION

The history of irregular migration and deportation is tied to the emergence of formalised states and the notions of statehood and citizenship. In sub-Saharan Africa, historical accounts distinguish between pre-colonial Africa, colonial Africa, and post-colonial Africa trends when tracing human migration and its consequences (Crush and Chikanda, 2014). This chapter outlines the deportation process of post-colonial Zimbabwe and selected countries in Sub-Saharan Africa. Zimbabwe, with an estimated population of 16 million, is a landlocked country in Southern Africa. Previously colonised by the British, the country gained political independence in 1980 and has in recent years experienced political instability and a massive flight of both skilled and unskilled labour. Sub-Saharan Africa on the other hand, as the name suggests, denotes the part of Africa south of the Sahara desert, a geographical area which covers all African countries except the Arab North. Consequently, the chapter does not comprehensively cover the regulatory frameworks of all sub-Saharan countries but simply highlights noteworthy provisions vis-à-vis the Zimbabwean deportation regime. The selection of countries for this purpose is guided by two factors. First, the country's attraction as a place of work, a factor which is a reflection of the performance of its economy. Second, the number of forcibly displaced persons hosted. As a result, although the chapter makes reference to other countries, a deliberate bias is placed on Ghana and Nigeria in West Africa, Kenya, Tanzania and Uganda in East and Central Africa, and South Africa, Botswana and Namibia in Southern Africa. Also included are Gabon and Ivory Coast, this to ensure representation of the francophone block.

2. WHY A COMPERATIVE APPROACH TO DEPORTATION IN SUB-SAHARAN AFRICA

When UN Member States gathered for a summit on the plight of refugees and migrants in New York in September 2016, the world looked on and waited with anticipation for far reaching common positions on the management of migrants and migration. Although the resultant declaration recorded Member States' acknowledgement that the management of "large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner" is their shared responsibility(para.16), the generality of the statement did little to conceal the fact that the declaration, and indeed the summit, were inspired and driven by the influx of migrants into Europe. Dubbed the 'migrant crisis', the voyaging of hundreds of thousands across the Mediterranean had become the 'poster boy' of migrant crises, eclipsing migrant crises elsewhere in the world, particularly on the African continent. The drowning of more than 360 migrants off the Italian Island of Lampedusa in October 2013 only served to heighten the gravity of Europe's challenge, cementing its characterisation as the 'mother of migrant crises'.

Because Libya was viewed as merely an 'exit point' into Europe, and the composition of migrants was largely from sub-Saharan countries, the role of the African continent and its people in the European migrant crisis was framed as that of the 'source' of migrants. This characterisation perpetuated the study of African countries in the context of measures to prevent departures or intercept journeys. Where deportation was relevant, its analysis was limited to the deportation of Africans from Western countries. This bias persists to this day. Studies have been conducted on the integration of Africans post deportation in Ghana (Dako-

Gyeke and Kodom, 2017), Mali (Schults 2021), Nigeria (Ratia and Notermans 2012; White 2009), Zimbabwe (Galvin, 2015) and several other countries, particularly in West Africa.

Sub-Saharan Africa's migration and forced displacement crisis is well document. Conflict and natural disaster induced human displacement has become a permanent feature of the discourse on refugees and asylum seekers on the continent, albeit, always in the context of humanitarian assistance and peace and security. Studies on immigration in the region have thus neglected the deportation frameworks of individual countries. Where these have been attempted, they are limited to countries with perceived irregular migration challenges such as South Africa (Cote 2018), and even so, none are comparative in nature. Adopting reactions similar to North-South deportations, studies on deportations from one African country to another have also tended to focus on post-deportation integration (Galvin 2015; Sylla and Cold-Ravnkilde 2021).

According to the International Organisation for Migration's (2022, 24) latest World Migration Report, although Europe is the largest destination for people on the move across international borders, Africa is home to 25 million migrants. However, this is not the most telling statistic. The Report further estimates that in 2020, 21 million Africans were living in an African country other than their country of birth (IOM 2022, 64). This underscores the importance of South-South migration and the consequences thereof. Crush and Chikanda (2014, 563) note the increasingly tighter immigration controls within African countries, a phenomenon which has led to "considerable undocumented migration and irregular migration". Notably, the journeys are undertaken with full knowledge of the dangers of high-risk migration, including deportation (Kleist 0000, 174). For Zimbabwe, its relevance in migration studies has also been reduced to that of a source of migrants. Consequently, there has been very little attention paid to the country's deportation process, with the focus – since the 2000s – being on the plight of

Zimbabweans who have been deported from other countries or those faced with uncertain futures away from their country of birth.

Despite a biased focus on South-North migration in the literature, inter-Africa migration continues at a significant scale. As economic migrants move in search of 'greener pastures' in other African countries, destination countries have, in response, tightened immigration controls and resorted to deportation as a control measure. As attitudes towards migrants shift, it has increasingly become necessary to scrutinise the legal frameworks through which migrants are expelled. While a focus on individual national processes cannot be faulted, there is value in a comparative approach. In the main, a comparative approach to deportation in sub-Saharan Africa is important for a number of reasons, not least the potential to influence government policy and the need for international benchmarking. Further, it provides non-governmental organisations, civil society organisations and other human rights-based organisations with credible data for advocacy and lobbying.

3. WHO MUST LEAVE?

The act of deportation, which has been defined as "an administrative act or a judicial decision ordering the removal or deportation of a non-national" (IOM 2019, 46) is understood to be an exercise of a sovereign right by states to decide who may remain in their territory and who may be expelled (Cote 2018, 222). Although there are legal constraints emanating from international legal instruments–most of whom have been reflected in national legislation–on who can be expelled, in the main, states enjoy a wide discretion in deciding who stays and who must leave. The principle of non-refoulment remains the single most accepted constraint on this discretion under the refugee and asylum legal framework. In the sub-Saharan region, grounds for

deportation are found in immigration legislation as well as legal frameworks regulating the regularization of refugees.

3.1. The Prohibited/illegal Foreigner

Zimbabwe, just like Uganda, uses the term prohibited foreigner to describe those who must be expelled from its territory. In other countries like South Africa, the legislation refers to illegal foreigners instead. In Nigeria, Ghana and Kenya, its prohibited immigrant. This distinction is however immaterial because in all instances, the consequences for designation as one to be expelled are the same. Across sub-Saharan Africa, national legislations distinguish between a 'prohibited/illegal foreigner' and 'an alien'. While the former denotes one to be deported, the latter, as defined in the IOM Glosary on Migration, is simply used to describe "An individual who does not have the nationality of the State in whose territory that individual is present" (IOM 2019, 8). Consequently, it is an alien who is an illegal/prohibited foreigner who faces deportation. The terms illegal foreigner, prohibited foreigner and prohibited person are used interchangeably in this chapter. Another term found in the legislation across the region is 'undesirable migrant'. This simply refers to one who has been barred from entering the country for either a stipulated period of time or indefinitely. In some jurisdictions (Zimbabwe), the distinction between an undesirable migrant and prohibited/illegal foreigner is not clear. For one to escape the illegal foreigner tag, they ought to either obtain one of the various certificates/permits/visas that countries issue, or obtain refugee status. Even then, one can still be deemed an illegal foreigner if their permit/visa is cancelled, or where their refugee status is revoked.

3.2. Grounds for Removal Under Immigration Laws

For an alien to enter or remain in Zimbabwe, they ought to be in possession of one of the various permits that the country's Immigration department issues in accordance with the state's immigration laws. This is standard across all sub-Saharan African countries. However, in addition to the requirement that one needs a permit or visa, immigration laws further contain provisions that specifically list categories of individuals who are prohibited from entering or remaining in any country. In Zimbabwe, the list of prohibited persons is found in Section 14 of the country's Immigration Act as read with Sections 44 and 45 of the Immigration regulations. This list includes individuals who have severe physical or mental disabilities and therefore risk being a public charge. In such instances, the said person can only be permitted to enter the country if the one accompanying them gives security to the satisfaction of the Minister of Home Affairs guaranteeing their upkeep and welfare while in the country or their removal should this become necessary. Even where one has already been admitted, Section14(3) empowers an Immigration officer to approach the same minister for an order declaring the said individual a prohibited immigrant if they suspect that the person may become a public charge by reason of infirmity of body or mind.

Similarly, individuals suffering from contagious diseases–as prescribed–are barred from entering the country (section 14(d).). While the Immigration Act simply refers to prescribed diseases, the regulations go on to list tuberculosis, trachoma, favus, framboesia or yaws, syphilis, scabies and leprosy as infections that would justify an immigration officer's refusal to allow a traveller into Zimbabwe. This only applies at ports of entry and does not affect a migrant who gets infected while already in the country. However, provision is also made for the admission of individuals infected with prescribed diseases, provided that they comply with

certain conditions as deemed necessary by an immigration officer (Section14(d).). The Immigration regulations expand on this provision, adding that the said permit shall be in the form I.E 16 and shall be issued by the Chief Immigration officer (Section 39) indicating the conditions upon which the infected migrant was admitted into the country.

Also listed as prohibited persons are individuals who have been convicted of serious crimes, whether in their country of residence or elsewhere (Section 14(1)(e).) This provision adds that such individuals ought to have been sentenced to a direct term of imprisonment and whether the said sentence was suspended or not is immaterial. Similarly, in terms of section 14(h), persons previously deported from Zimbabwe are prohibited from entering the country, as are individuals who are found to be in the country in violation of its Immigrations laws. The prior violation of immigration laws is almost a universal ground for deportation and in some instances exclusion (undesirable).

Zimbabwe's laws also prohibit the admission of one who is a homosexual (Immigration Act, S14(1)(f).). This falls under exclusions on 'moral' grounds and conforms to the country's position on same sex relationships. Malawi also adopts a similar position. In contrast, South Africa has no such provision as same sex relationships are not criminalized in the country (Civil Marriages Act). Exclusions on moral grounds also include individuals who are prostitutes, those who knowingly live off or have lived off earnings of prostitution, as well as individuals who are in the business of procuring persons for immoral purposes. Immigration laws cross sub-Saharan Africa all contain exclusions on moral grounds – except for South Africa. Just like Zimbabwe, Nigeria also denies admission to prostitutes, keepers of brothels, individual who allow the seduction or defilement of children, persons convicted of rape or other serious sexual offences and those who live off proceeds of prostitution (Immigration Act, Section 44(1)(h)(i),

(iii), (iv).). On its part, Uganda prohibits individuals who are drug traffickers as well as those who live off earnings of drugs or drug trafficking (Immigration Act, Section 52(f).). In Ghana, on the other hand, prohibition is directed at those who procure or attempt to bring into Ghana any person for purposes of prostitution (Immigration Act, Section 8(1)(g).). However, the Act also adds a general provision on morality, directing that those intending to bring any person into Ghana for any immoral purpose are prohibited persons. On its part, South Africa has no 'morality' clause, choosing instead to prohibit those who advocate for discrimination or engage in serious crimes. These are individuals who belong to organisations that advocate for racial hatred or social violence, as well as members of organisations that utilise crime or terrorism to pursue their ends (Immigration Act, section 29(1)(d) and (e).). An almost similar provision is found in Rwanda's Law No. 17/99 of 1999 on Immigration and Emigration, which includes on the list of prohibited persons "any person who fosters or visibly spreads ideas about any kind of discrimination" (Section 13(3).). Also noteworthy, is Malawi's prohibition of individuals on account of illiteracy.

Zimbabwe also denies entry and deports "any person who, from information received from any source, is deemed by the Minister to be an undesirable inhabitant of or undesirable visitor to Zimbabwe" (Section 14(1)(g).). This provision appears in various forms in immigration legislation across sub-Saharan Africa. In Nigeria, the minister's opinion is informed by national security and interest (Immigration Act, Section 44(1)(e).), in Ghana it is the country's 'public good' (Immigration Act, section 35(1)(e).), in Kenya, it is 'national interest' (Immigration Act, section 3(1)(g).), while in Uganda the discretion is wide, allowing the minister to declare one a prohibited immigrant "as a consequence of information received from the government of any State, or any other source considered reliable by the Minister or the commissioner" (Citizenship and Immigration Control Act, Section 52(g).). Although the legislation across the region frames the ministers' discretion as very wide and not subject to challenge, courts in various countries

have subjected the exercise of this power to constitutional principles on just administrative action. The Kenyan High Court has commented in this regard that "to hold that the Minister is the sole judge when it comes to the exercise of discretion would be to throw the rule of law out of the window" (*Republic v Minister of State for Migration and registration of Persons*, para.33)

Finally, also subject to deportation from Zimbabwe are individuals whose permits have been cancelled. Cancellation in this regard happens for two reasons. First, where the permit in question was issued as a result of the holder furnishing information that is materially incorrect. Second, where the permit holder has violated or failed to comply with the conditions under which the permit was issued. Such cancellation transforms the status of the 'permit' holder to that of an illegal immigrant and extends this consequence to every other person who was authorised to enter and remain in the country on the strength of that applicant. This position is also standard in all sub-Saharan countries.

3.3. Grounds for Removal Under Refugee Laws

Refugees and asylum seekers enjoy international protection. This international framework consists of the 1951 UN Convention on Refugees as well as its 1967 Protocol. For African countries, the OAU Convention Governing the Specific Aspects of Refugees in Africa (1969) also finds application. In Zimbabwe, the reception and processing of refugees and asylum seekers is regulated by the country's Refugees Act (2001) as well as the Refugees Regulations (1985). However, just like other countries in sub-Saharan Africa who are party to the international framework referred to above, the grounds for denial or termination of refugee status are modelled along article 1C and 1F of the UN Convention. Consequently, according

to Section 3(4) and (5) of Zimbabwe's Refugees Act, an individual is not recognised as a refugee and therefore subject to expulsion if:

- he has committed a crime against peace, a war crime or a crime against humanity; or
- he has committed a serious non-political crime outside Zimbabwe prior to his admission to Zimbabwe as a refugee; or
- he has been guilty of acts contrary to the purposes and principles of the United Nations or the African Union; or
- having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national; or
- he voluntarily re-avails himself of the protection of the country of his nationality; or
- having lost his nationality, he voluntarily re-acquires it; or
- he becomes a citizen of Zimbabwe, or acquires the nationality of some other country and enjoys the protection of the country of his new nationality; or
- he voluntarily re-establishes himself in the country which he left, or outside which he remained owing to a fear of persecution; or
- he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist - continue to refuse to avail himself of the protection of his country of nationality.

In Nigeria, South Africa, Kenya, Uganda, Ivory Coast, Namibia and many other countries, the Refugee frameworks reflect similar grounds, in some instances verbatim. This standardization underscores the value in states ratifying international and regional treaties. With the exception of non-refoulment, which has become part of international customary law, individuals who would otherwise enjoy protection are left exposed when in states that are not bound by the

international framework, or those who simply do not have policies on the management of refugees.

The UN convention is binding on all sub-Saharan countries except Cape Verde, while the Protocol has been ratified by all states bar Mauritius. The Mauritian situation has far reaching consequences. Because the Protocol is excluded, only those who fit the original definition of a refugee as described in art 1A(2) of the Convention (individuals who find themselves displaced as a result of events occurring before 1 January 1951) can rely on its provisions. As Mujuzi (2019, 326) observes, the Convention is in essence not available as an instrument of protection in Mauritius because it is near impossible to find an individual who still claims protection under its limited definition. In relation to the OAU Convention, countries that have not ratified it are Eritrea, Djibouti, Madagascar, Mauritius, Sao Tome and Principe, Namibia and Somalia. In total, 46 of the 55 African countries (including the Arab countries) have ratified the instrument. Eritrea, Sao Tome and Principe, Madagascar, and Mauritius have no domestic framework for regulating refugees. Somalia on the other hand is in the process of adopting a Refugees Act, aided and supported by the UNHCR, this after drafting a National Policy on Refugee-Returnees and Internally Displaced Persons only in 2019.

Under its refugees framework Zimbabwe also expels individuals who are deemed by the Minister to be undesirable "on grounds of national security or public order" (Refugees Act, Section15(1).). This mirrors article 32(1) of the UN Convention and appears in various forms in refugee legislation across the region (Uganda's Refugees Act, section 40; South Africa's Refugees Act, Section 28; Nigeria's Refugees Act section 16). Because the exercise of discretion under this provision is susceptible to abuse, both the UN and OAU Conventions add that states must follow due process and must avail opportunities to affected persons to make

representations in an attempt to clear themselves. Acting on a similar worded provision in its Refugee Act, Malawi has in the past expelled 'protected' persons who were deemed to be a threat to the country's security *(Kambiningi Khazi Jones & 14 others v Ref u gee Committee)* and so has Kenya, Uganda, Rwanda and the Democratic Republic of Congo. Over the years, the tension between the rights of displaced persons and the security of states has been a subject of debate not only in Western countries but in sub-Saharan Africa as well (Mogire 2018). In the Horn of Africa, the prevalence of conflict and cross boarder displacements has turned refugee protection into a security issue.

Nearly all sub-Saharan countries party to the international framework limit the grounds of expulsion to those prescribed in the Conventions. However, some have introduced additional grounds through national legislation. In 2014, Kenya adopted a new law (Security Laws (Amendment) Act 2014) which limits the number of refugees to be accommodated in the country at any given time to 150 000. Although this number can be varied by the national assembly, the provision introduced a new ground for expulsion as deserving individuals can be deprived of protection on the basis that the quota has been reached. Kenya's neighbour, Tanzania, also excludes asylum seekers who have transited through one or more countries and are unable to show reasonable cause why asylum was not sought in those countries (Refugees Act, Section 4(4)(e).). In South Africa, the Refugees Act denies protection to individuals who, without good reason, entered the country through undesignated points of entry (Section 4(1)(h).). South Africa's position contrasts with that in the majority of states where an individual's illegal entry is overlooked if their stated intention is to apply for asylum (Zimbabwe Refugee Act, Sections 7(1) and 9; Nigeria Refugee Act, Section 1(3); Ghana Refugee Law Section 2).

4. THE REMOVAL/DEPORTATION PROCESS

4.1. Deportation Under the Immigration Framework

The process of one's deportation or removal from Zimbabwe begins with the issuance of form No. I.F. 20, which is a notice communicating one's designation as a prohibited immigrant and the date before or upon which they must leave the country. According to the Immigration Act (Section 8(4).), the notice of deportation must be in writing, and must state with clarity, the provisions under which leave to enter or remain in Zimbabwe has been refused. This conforms to the standard set in article 13 of the ICCPR. At ports of entry, individuals who have been refused entry are immediately sent back to the country from which they would have come. However, the majority of deportations at ports of entry occur at land boarders and these affect migrants who are apprehended while using illegal points of entry (in the vicinity of the border) or simply crossing into the country without the necessary documentation, the so-called 'border jumpers'[1]. These are particularly prevalent at Forbes (boarder with Mozambique), Chirundu (boarder with Zambia) Nyamapanda (border with Mozambique) and Southern Africa's busiest land boarder, Beitbridge, which separates Zimbabwe and South Africa. The Forbes border post is a gateway for migrants from Mozambique. On the other hand, Chirundu, Nyamapanda and Victoria falls are used by migrants from the Horn of Africa as well as East Africa as they journey towards South Africa (Matseketsa 2019, 13). Across sub-Saharan Africa, deportations at ports of entry are the most common. Commenting on the treatment of migrants in South Africa, Sutton and Vigneswaran (2019, 631) observe that "many informal migrants do not get far past the border" as the majority of deportations in the country are "repatriations of recent

[1] This term is used to describe an individual who has crossed into Zimbabwe or from Zimbabwe to one of its neighbours using illegal points of entry or through official points of entry but without the necessary documentation. (Often through corruption and bribery).

informal entrants in the immediate vicinity of its land borders" where authorities "repatriate foreign nationals quickly, without much deliberation, and en masse".

Where an individual is being deported pursuant to being refused entry, Zimbabwe's Immigration authorities together with the Zimbabwe Republic Police (at land Borders) immediately transport such individuals to immigration authorities in the country where the migrants' journey would have begun. In such instances, passenger lists become key, as states will ordinarily refuse to receive migrants in the absence of proof that they originated from their territory. Section 7(1)(e) of Zimbabwe's Immigration Act requires the captain of an aircraft, the master of a boat, the guard or conductor of a train or the person in charge of a motor vehicle intending to enter the country to furnish a list of all persons onboard. The 'passenger list' requirement is a standard provision in immigration laws across all states in sub-Saharan Africa (Nigeria's Immigration Act, Section 16(1); Uganda's Citizenship and Immigration Control Act, Section 51(1)(d); and Kenya's Citizenship and Immigration Act Section 16(2), (3) and (4).).

For deportations other than at ports of entry, the process occurs in two forms. The first is where there is no need for the arrest and detention of the prohibited immigrant (for example, where a permit has been cancelled or an extension has been denied). As stated above, in such instances, the prohibited person is informed of a date by which they must voluntarily leave the country. The second is where the arrest and detention of the illegal immigrant is necessary. This typically occurs where a migrant successfully evaded authorities in gaining entry through an illegal point of entry or where one's deadline to exit the country–as indicated in Form I.F No. 20–has lapsed and they have not departed.

Zimbabwe's immigration laws provide for the detention, without a warrant, of a prohibited immigrant for purposes of deportation (Section 8 and 9). Once detained and informed of the reasons for such detention, an illegal immigrant can be held for up to fourteen days to allow immigration officials to investigate the individual's particulars and national status (Immigration Act Section 8(1).). Once one's details have been established and they have also chosen not to appeal their deportation, authorities proceed to make arrangements for their removal (for example, obtaining temporary travel documents from their embassy, where the immigrant is not in possession of a passport). While awaiting deportation, illegal immigrants are held in police cells, prisons, or what the Immigration Act refers to as a 'convenient place' (section 9(1).). Effectively, once detained and served with a notice of deportation, prohibited immigrants are handed over–by immigration authorities–to the Zimbabwe Republic Police (ZRP) who, in turn, hand them over to the Zimbabwe Prisons Services (ZPS).

Detention pending deportation is standard practice across all sub-Saharan countries. However, vast differences exist in relation to the periods for which an individual can be detained without appearing before a court of law as well as the maximum detention period permitted before deportation. As stated above, section 8(1) of Zimbabwe's Immigration Act allows for an initial detention period of up to 14 days before one is taken to court. In contrast, South Africa's laws provide that an immigrant must appear before a judicial officer within 48 hours after an arrest (Immigration Act, section 34). This position is similar to what is prescribed in Tanzania's Immigrations Act (Section 25(1).). In Nigeria, this period is 21 days, while in Kenya it is 14. Zimbabwe's 14-day period has been criticised by the International Organisation for Migration (2020) for contradicting section 50(2) of the country's constitution which stipulates that all arrested or detained persons must appear in court within 48 hours. Similar averments have been made before the country's High Court (*Zucula v Officer in Charge – Harare Remand Prison;*

Shabbir v Commissioner of Prisons and Others). In relation to the maximum period for which an individual can be detained pending deportation, Zimbabwe's laws are silent. Similarly, Ghana's Immigration Act (Section 21(2) also authorises detention for "such a period as may be necessary". This presents an area of concern, as it opens the door for indefinite detentions. Across sub-Saharan Africa, immigration laws generally limit this period to 60 days (Uganda) or 90 days (Nigeria; South Africa). In Namibia, however, a detained immigrant should appear before an immigration tribunal within 14 days and thereafter, their detention should be renewed by a court at 14-day intervals (Immigration Control Act 1993, Section 42(1)(a)(ii).) with no limit to such renewals. This is also the position in Botswana.

Also included in immigration legislation vis-à-vis the deportation of illegal immigrants is the liability of carriers. In Zimbabwe, the Immigration Act was amended in the year 2000 to introduce Section 38A which places civil liability upon any 'air carrier' that brings into the country an individual who has no visa or passport. According to this provision, the minister may seek compensation (from the carrier) for costs incurred in the detention and deportation of the said individual. While the country limits this to air carriers, in Tanzania (Section 26(1).), Nigeria (Section 27); Kenya (section 9); Ghana (section 8(5) and several other countries, the liability extends to captains of ships, air carriers and motor vehicle drivers. In these countries, the carriers, as defined, may also be directed by the relevant authorities (in most cases Ministers responsible for the administration of immigration laws) to detain the individuals denied entry and thereafter facilitate their deportation. Just like Zimbabwe, Botswana also limits liability to air carriers, however, this is not confined to civil liability as the country also extends the duty to detain and deport individuals who have been denied entry (Immigration Act, Section 53).

Unlike Zimbabwe where the decision to deport is a prerogative of the Chief Immigration Officer or the Minister, Namibia's Immigration Act establishes immigration tribunals to hear and determine applications for the authorization of removal (section 43(1).). Consequently, where a suspected illegal immigrant has been detained, authorities cannot issue a notice of deportation or effect deportation in the absence of a decision of the tribunal.

Where an individual has chosen not to contest their deportation or where they have appealed and failed, immigration authorities proceed to make arrangements for their removal. The position that individuals must be deported to the country from which they would have come is standard in all countries in sub–Saharan Africa. However, these laws add that immigration officials or the responsible minister may decide or direct the route by which, and the place to which such person shall be removed. (Zimbabwe Immigration Act, Section 8(3)(a).). Uganda's Citizenship and Immigration Control Act (section 62) adds that a prohibited person can be deported to "any place to which he or she consents to be deported, where the Government of that place consents to receive that person". This is identical to section 8(2)(a) of Kenya's Immigration Act. Although Nigeria's Immigration Act includes deportation to a third country, unlike Uganda and Kenya where prior consent by the said country to receive the migrant is required, the act provides for deportation to a third country based on a strong belief that they will be admitted. (section 27(1)(c)(iv).)

4.2. The Expulsion Process Under the Refugees Framework

The expulsion process under Zimbabwe's refugee framework depends largely on the reason why an individual is being expelled. In the main, there are three distinct processes. The first applies pursuant to a failed application for protection, the second applies following the withdrawal of refugee status by the Commissioner for Refugees and the last is expulsion on

the basis of a ministerial order withdrawing refugee status on national security considerations. In relation to a failed application for refugee status, the Act provides that the affected individual and their family, if any, must be notified of the decision on Form ZR 3A, a copy of which must also be made available to the UNHCR country office. Once an individual has been notified of the Committee's decision and they do not wish to appeal, they are handed over to the Zimbabwe Republic Police who in turn hand them over to the Zimbabwe Prison Services for detention pending deportation. In all sub-Saharan countries with established refugee laws, the deportation process after a failed application for protection is identical. Where an applicant is unsuccessful, they are treated as an illegal foreigner. South Africa's Refugee Act makes this point in section 22, adding that provisions of the Immigration Act relevant to deportation apply.

On the other hand, expulsion following the withdrawal of refugee status by the Commissioner commences with a referral of the affected individual's case to the Refugees Committee (by the Commissioner) for reconsideration. Prior to reconsidering the matter, the Committee notifies the affected person of the Commissioner's intention and further invites them to make representations within 14 days. After reassessing the application, the committee makes a recommendation to the Commissioner, who thereafter decides the individual's fate. If the decision to withdraw protection is confirmed and the said refugee elects not to appeal, the withdrawal of protection takes effect 7 days after the decision is communicated, after which the same process of detention and deportation as outlined above applies. Lastly, in instances where withdrawal of status is based on national security considerations by the Minister, the process begins with a notification to the affected individual highlighting the intention to revoke their status, the reasons for withdrawal and the country to which they intend to be expelled. Once notified, an individual can, again within 14 days, make representations himself or appoint a legal practitioner to make submissions on his behalf. If unsuccessful, detention and

deportation follow. However, under this ground, an individual can request an opportunity to seek admission to a country other than the country to which they are to be expelled.

The processes outlined above reflect the standard practice across sub-Saharan Africa. In all countries, the process of removal commences with the issuance of a notice to the affected person informing them of the decision or intention to deport them. In Uganda and Nigeria, the removal pursuant to a withdrawal of status by the commissioner is identical to that outlined in Zimbabwe's laws, including the 14 days within which to make representations (Refugee Act, section 39). However, in Kenya and Ghana, the intention to withdraw is not communicated and there is no provision for making representations. In these countries, a refugee is only notified of the revocation of their status, which takes effect 7 days thereafter. Similarly, in Kenya, withdrawal of refugee status by the Minister on the basis of national security has no stated procedure, as the Act only directs the Minister to decide "in accordance with the due process of law" (Refugee Act, Section 21(2).). Overall, the deportation processes under refugee frameworks can be said to be identical where an application for protection has been denied, while variations exist in relation to withdrawal of status either on grounds that it should never have been granted or where national security demands that it be revoked.

5. APPEALING AGAINST REMOVAL/DEPORTATION

5.1. Appeals Under Immigration Laws

Once a decision for one's deportation from Zimbabwe has been communicated as prescribed (form No. I.F. 20), the Immigration regulations add that the affected person 'may' be provided

with a Notice of appeal form -form No. I.F. 21. This part of the regulations is problematic, as it does not use peremptory language. The word ‘may’, suggests that an Immigration officer has a discretion and as such may choose not to provide the affected person/s with the necessary documents to prosecute an appeal. In contrast, the South African Immigration Act directs that the option to challenge detention for purposes of deportation ‘must’ be communicated to an illegal foreigner and this communication ‘must’ be in a language that the affected individual understands (S34(1)(c).). Even more, the Act provides that upon detention, an illegal foreigner can request to have their detention confirmed by a warrant of a court (S34(1)(b), which if not issued within 48 hours of the request will lead to the release of the illegal foreigner.

The procedure for appealing against deportation from Zimbabwe is set out in section 21 of the Immigration Act, as well as sections 50, 52, 53 and 54 of the Immigration regulations. Upon being informed of the decision of their pending deportation, an individual must, within three days, (excluding weekends and holidays) approach the nearest magistrates court if they wish to note an appeal. Thereafter, a copy of the notice of appeal must be delivered to the immigration officer concerned. The said notice of appeal must state with clarity, the grounds upon which the appeal has been lodged. At this stage, the Act (section 9(2).) and the regulations (section 50) allow for the release of an appellant on such conditions as will be indicated on a temporary permit, form No. I.F 9 and subject to their payment of the stipulated bond, if any. However, where the appellant remains in custody, the immigration officer is obliged to arrange for their presence at the hearing of the appeal (if they desire to be present). After hearing an appeal, a magistrate can do one of three things. They can confirm the decision of the immigration officer (paving the way for deportation), set it aside and order the release of the appellant (if they are in custody), or reserve a point of law and adjourn the hearing so as to transmit a record of the proceedings to the Supreme Court of Appeal for it to make a

determination. Once the Supreme has pronounced itself on the question of law, the magistrate will resume the hearing and subsequently make a finding (Immigration regulations, section 58(2).)

The appeal process outlined above is not available to individuals who are declared prohibited persons pursuant to the Minister's discretion as well as those convicted of serious crimes and are therefore prohibited persons by operation of law. The former, are those who from "information received from any source", are deemed to be undesirable inhabitants or visitors. In such cases, the affected individuals can only make representations to the Minister within 24 hours of receiving his decision (Immigration Act, Section 23(1).). Even then, the Minister may, if he is of the opinion that it is not in the public interest, decline to provide reasons his decision. for these categories of persons, the jurisdiction of the courts is expressly excluded. In instances of deportation pursuant to a criminal conviction and sentence, one can only approach the courts if they intend to argue that they have been wrongly identified and are therefore not the criminal that the country seeks to expel (section 22(1)(a).)

Although not stated in the immigration Act and the Regulations, an individual who is aggrieved by a decision of a magistrate (to confirm deportation) can approach the country's Constitutional Court where they allege a violation of fundamental rights (*Edwards v Chief Immigration Officer; Berry and Berry v The Chief Immigration Officer and Another*). However, once detained but before a decision has been made by immigration officials, an individual can also approach the High court to challenge the legality of their detention. If unsuccessful at the high court, they can proceed to appeal to the Supreme Court of Appeal (*Anueyiangu v Chief Immigration Officer and Others*).

Across sub–Saharan Africa, appeal processes vary greatly. In Ghana, a repatriation order issued by an immigration officer is not appealed to the courts but to the minister, this within seven days (section 46(1)(c).) In determining such an appeal, the minister is assisted by a committee of three, namely; representatives of the Attorney-General and the Minister of Foreign Affairs, and a third individual appointed by the Minister who must not be an employee of the immigration service. (Immigration Act, section 46). Similarly, South Africa's Immigration Act also provides that an individual who has been denied entry or has been declared an illegal foreigner can approach the Minister for the review of the decision (8(1)(b).). Once the decision is confirmed by the Minister, a person can proceed and approach the courts for redress. Because decisions of the department of Home Affairs constitute administrative action, they can be reviewed on any one of the grounds listed in the Promotion of Administrative Justice Act (3 of 2000). Unlike Zimbabwe which excludes the jurisdiction of courts where a deportation order is issued by the Minister, Uganda provides for an appeal to the country's high court within 15 days, and thereafter to the Court of Appeal if necessary (Citizenship and Immigration Control Act, section 60(7).). Finally, laws across the region do not permit admission into a country for purposes of lodging an appeal or making representations.

5.2. Appeals Under Refugee Frameworks

Appeals under Zimbabwe's refugee framework, just like the expulsion processes, are tied to the reason for the threatened deportation. Where one's application for refugee status has been declined by the Commissioner, the Act provides for an appeal to the Minister (Refugee Act, section 7). The appeal under this section must be lodged within 7 days. This process is also applicable to appeals against a decision of the Commissioner to withdraw one's refugee status. In deciding these appeals, the Minister may invite the UNHCR to make oral or written

submissions, refer the matter back to the Committee to conduct an investigation, undertake an investigation or do all three. However, the Act and the Regulations are both silent on the period within which the Minister must respond. Once the Minister has made a determination, the outcome is final. Deportation orders on grounds of national security on the other hand are simply not appealable.

While Zimbabwe provides for appeals to the Minister, most states in sub-Saharan Africa have in their institutional frameworks an appellate body to which individuals denied refugee status can appeal. Nigeria, Kenya, Uganda, Namibia and Ghana all have a Refugee Appeal board. In South Africa, it's a Refugee Appeals Authority. However, unlike the other countries, South Africa provides for an automatic review of a rejected application by the Standing Committee, after which if the rejection is confirmed, an individual can still proceed and approach the Appeals authority. In the main, national frameworks in the region provide an opportunity for aggrieved individuals to appeal against decisions that deprive them of protection. Distinctions only exist in relation to who or what organ one appeals to. States also prescribe different time periods within which appeals must be lodged, while the period is 7 days in Zimbabwe, in Kenya it is 10 days (section 10), in Namibia it is 14 days, in Uganda it is 30 days, and late appeals may be entertained with good cause shown. The same period also applies in Nigeria. Further, just like Zimbabwe, frameworks across the region provide for the participation of the UNHCR. No doubt this is to give effect to article 35(1) of the Convention, which places an obligation upon member states to cooperate with the UNHCR and enable it to monitor the implementation of its provisions. In relation to expulsions on the basis of national security, all states do not provide for an appeal, although the decision may be challenged in courts as it constitutes administrative action.

5. POLICY AND PRACTICE IN THE DEPORTATION PROCESS

In February 2022, Rwanda signed an agreement with the United Kingdom (UK) to receive asylum seekers from that country. This widely condemned agreement is the latest of many measures that states across the world have resorted to in an effort to keep 'outsiders' out, in a 'them' versus 'us' approach to managing immigration. However, at the same time, the death of more than 200 African migrants at the Morocco-Spanish border in June 2022 served as evidence that despite the dangers inherent in irregular migration, as well as the tough policies being put in place, those resigned to migrating are not deterred. As noted above, South-South migration occurs at a greater scale than migration out of the continent. Unfortunately, only a handful of countries within the sub-Saharan region are destinations of choice, a phenomenon which has hardened anti-immigrant sentiments amongst their populations and further fermented the adoption of exclusionary immigration policies by their governments. Consequently, immigration officials and law enforcement officers routinely act ultra vires without repercussions, a reality which has given rise to situations where there is law and policy on one hand and practice on the other.

The international refugee protection framework as well as national immigration laws are generally viewed as sufficient for the protection of people on the move. However, there is evidence that across sub-Saharan Africa, government departments and law enforcement agents often act outside the law when arresting, detaining, or deporting illegal or prohibited immigrants. In Zimbabwe, the country's high court has heard and decided cases in which immigrants were severely assaulted upon arrest (*Zucula v Officer in Charge, Harare Remand Prison and Others*), or simply deported notwithstanding the existence of a court order interdicting deportation (*Okeke v The Chief Immigration Officer and another*). These

procedural irregularities and the general disregard for human rights are enabled and encouraged by a lack of consequences for such conduct, a reality that is not limited to Zimbabwe. In a comprehensive study detailing irregularities in the treatment of migrants in South Africa, Sutton and Vigneswaran (2011, 631) observe that these are "widespread and multifaceted". Similarly, in a paper examining "public officials' construction of migratory flows to South Africa as a crisis", Hiropoulos (2020, 115) reports non-compliance in amongst other things, sentencing, the issuance of notices of deportation, detention, extension of detention and the provision of interpreters. Other studies have made similar observations (Vigneswaran and Duponchel 2009; Amit 2010a, p. 44).

Kenya's enactment in 2014 of a law (Security Laws (Amendment) Act 2014) that limits the number of refugees who can be accommodated in the country at a given time to 150 000 (although this number can be varied by the national assembly) is often singled out as a textbook example of xenophobic attitudes finding expression in the law. Coupled with its decision to close the Dadaab refugee camp and repatriate its inhabitants, Kenya's attitude towards migration betrays the entrenchment of perceptions of refugees and migrants as an inconvenience. In *Moumouni Ali v The Director General Kenya Citizens and Others*, a case in which an immigrant was challenging his deportation and exclusion, the Kenyan High Court expressed concern that "the petitioner was not informed of any reasons why he was being deported neither was he given a chance to be heard as provided by the constitution and the statutes". (para.23). South Africa's Supreme Court has also expressed similar concerns (*Jeebhai and Others v Minister of Home Affairs and Another*), emphasizing that it is imperative that authorities act within the confines of the law at all times. In relation to refugees and asylum seekers, because their protection has "increasingly come to be dictated by security consideration" (Mogire 2018) and xenophobia (Wood 2014), they do not benefit from the rights

to which they are entitled. The incongruency of policy and practice in Zimbabwe, for example, is evident in how officials have almost eliminated the granting of permanent residence or citizenship as a durable solution (Sniderman 2015, 618), limiting such conversion of status to instances where a refugee has married a local. Far from stemming migration, increased controls on immigration as well as pervasive restrictions on migrant rights have simply resulted in the increase of undocumented migrants (D'orsi 2011, 3). Further, as Flahaux and De Haas (2016, 18) observe, intra-African migration is lower than it should be, and this can be attributed to xenophobia and immigration restrictions.

6. CONCLUSION

Zimbabwe's deportation processes are outlined in its laws governing immigration and refugees. In these frameworks, grounds for admission and expulsion are clearly stated. Juxtaposed with some jurisdictions in sub-Saharan Africa, the country's laws do not attract scathing criticism. The Immigration Act and the Regulations are comprehensive. The refugees framework on the other hand, is a reflection of the international framework, an influence which is evident in all jurisdictions in the region that are party to the UN Refugee Convention and its 1967 Protocol as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. The twin principles of offering protection and non-refoulment are entrenched. Zimbabwe's grounds for expulsion in the immigration framework are also identical to many across sub-Saharan Africa. Its exclusion of homosexuals, though identical to Malawi, is unfortunate and remains a blemish that needs to be addressed as it is unreasonable. Equally concerning is the absence of a clear distinction between prohibited persons and undesirable immigrants. Currently, a person previously deported or found in the country without the necessary permit or visa will be denied entry, and this applies indefinitely. In contrast, other countries stipulate a separate process for declaring one an undesirable immigrant and this presents an opportunity

for the affected individual to have clarity on the period for which they are undesirable and therefore will be denied entry. The provision of appeal mechanisms is standard in laws across the region. Although there are differences in the manner in which an immigrant must prosecute an appeal, the laws demonstrate a desire to remain faithful to due process and uphold human rights. Unfortunately, in some countries the influx of illegal immigrants, coupled with shrinking economies and ballooning unemployment has given rise to xenophobic attitudes and with it deliberate violations of migrants' rights in arrests, detentions, or deportations.

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