

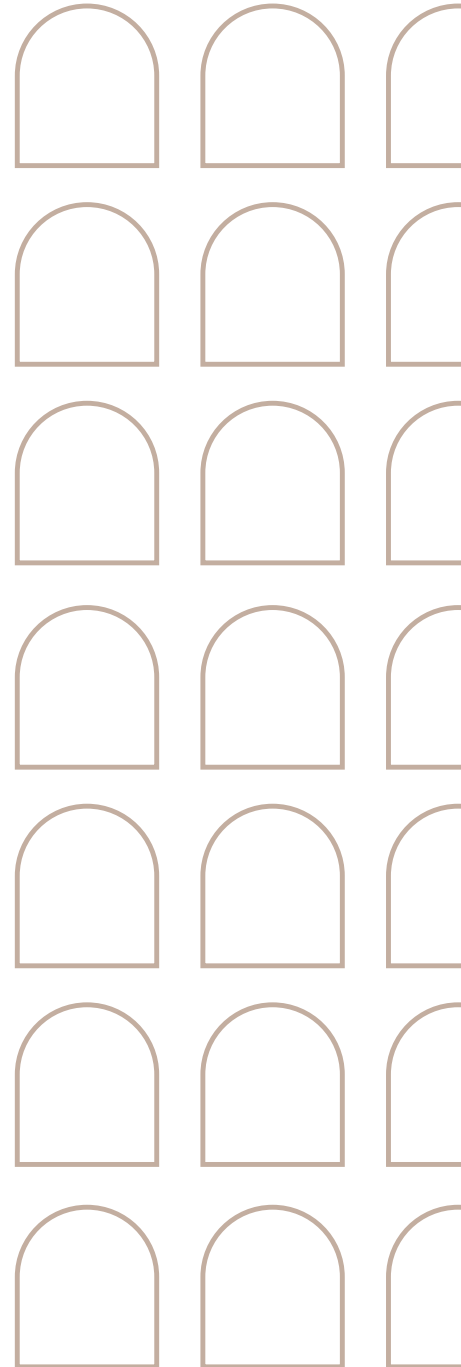
STG Policy Papers

# POLICY BRIEF

## POLICY DECISION-MAKING PANDERING TO POLITICAL POPULISM? THE NON-RENEWAL OF ZIMBABWEAN EXEMPTION PERMITS (ZEPS) BY SOUTH AFRICA

**Author:**

Silindile Nanzile Mlilo



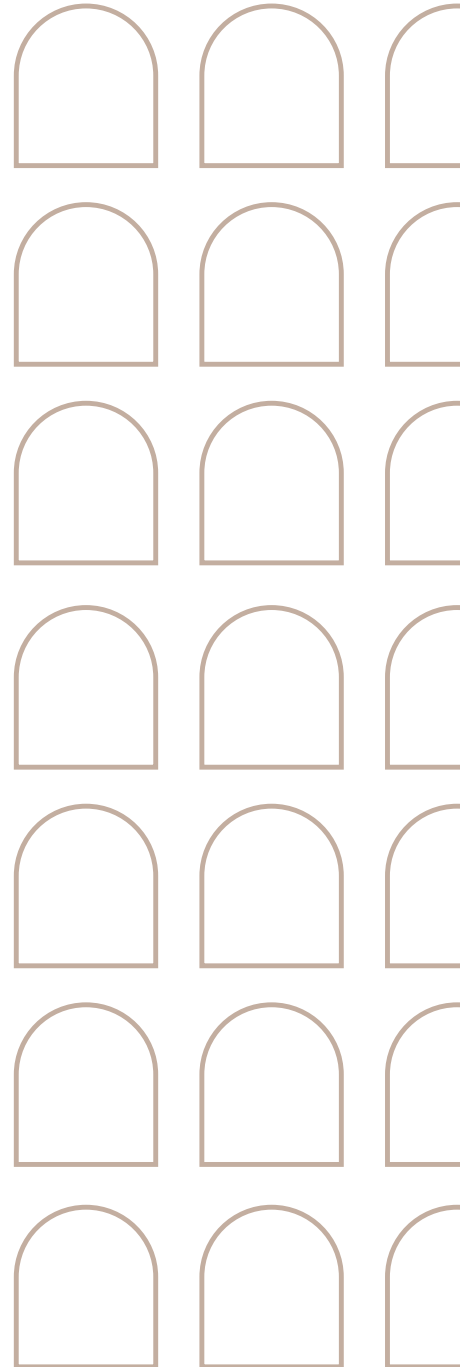
## EXECUTIVE SUMMARY

Proceedings in the Zimbabwe Exemption Permit holders (ZEPHs) court case commenced at the High Court in Pretoria on 11 April 2023. The Helen Suzman Foundation (HSF) and other civil society organisations were appealing against a decision by the Department of Home Affairs (DHA) to not renew Zimbabwe Exemption Permits (ZEPs), which will affect about 178,000 holders. These permits are now set to expire at the end of December 2023 after a further extension on the validity of the permits was granted on the 7 of June 2023. First introduced in 2009, the permits enabled the holders to live, work and study in South Africa. Previously, the DHA renewed the permits but in November 2021 the Minister of Home Affairs announced that they would no longer be renewed. It goes without saying that this decision will have far-reaching socio-economic consequences for multiple ZEPHs, possibly leaving the majority of them in precarious situations.

This policy brief discusses this issue and contends that the decision taken by the DHA was a populist move that failed to address the wellbeing of those affected. Furthermore, the policy brief advances the views of civil society organisations and others who have urged the state to seek a more long-term coordinated solution that results in regularisation of permit holders based on the length of time they have been in South Africa and the obvious implications the decision will have for their livelihoods and wellbeing. Furthermore, revoking ZEPs has the potential to create additional irregular migration and non-documentation issues, a result counter to the reason the permits were introduced in the first place.

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# 1. BACKGROUND AND INTRODUCTION

Political populism and anti-migrant attitudes have become prevalent in society. This phenomenon is not limited to the developing world. Tunisian President Kais Saied has recently been widely condemned [for making xenophobic and racist remarks](#) about black African migrants in the country, prompting states to charter flights for their nationals to return. Following the [President's speech](#), there was an increase in anti-black violence, with mobs taking to the streets and attacking black migrants, students and asylum seekers. In Southern Africa countries such as South Africa and Botswana are further examples. South Africa, in particular, has become an epicentre of anti-immigrant discourse, with a rise in xenophobic violence directed at non-nationals, the majority of whom are Africans living in the country.

According to [scholars at the African Centre for Migration & Society](#) who research xenophobic discrimination in South Africa in the [Xenowatch project](#), this form of violence has been a feature of post-apartheid society [since 1994](#). Xenophobic discrimination manifesting in violence not only endangers the lives and livelihoods of people considered foreigners but it has resulted in targeted individuals being killed, assaulted, injured and displaced, and their property and assets being destroyed and damaged.<sup>1</sup> In 2008, at least 150 incidents were reported in the country,<sup>2</sup> and in particular in May 2008 xenophobic incidents led to over 100,000 people being displaced and at least 62 people killed.<sup>3</sup> As of May 2023, Xenowatch had documented at least 1011 occurrences around the country with at least 124,706 people displaced and 659 killed.<sup>4</sup> The various justifications by the perpetrators for their crimes include migrants being responsible for

the country's failing socioeconomic situation, poverty, unemployment and inadequate service delivery,<sup>5</sup> but the real aim of these allegations is to force non-national residents out of communities.<sup>6</sup>

These appeals to remove non-nationals are despite South Africa's progressive constitution, which emphasises that South Africa belongs to all who live there.<sup>7</sup> In practice, however, this has not been effectively realised at the local and government levels. Furthermore, since the COVID-19 pandemic, there has been an increase in anti-migrant vigilante groups such as Operation Dudula, All Truck Drivers Forum and the #PutSouthAfricaFirst movement, all of which want undocumented migrants to leave the country and jobs currently held by foreign nationals to be given to South Africans. Several Ministers and political leaders have also embraced populist political rhetoric, with some making migrants scapegoats for the [country's failing health-care system](#) and high unemployment rate. All this is happening despite evidence that the numbers of migrants are not as high as is claimed. Various researchers, advocacy groups and policymakers have worked hard to [dispel myths about migrants](#) but they have not been successful. Instead, despite ample evidence to the contrary, political populism and anti-migrant sentiments that feed the disgruntled and frustrated emotions of poor and marginalised South Africans have gained significant traction.

This is becoming even more apparent in public rhetoric and national political decision-making. In November 2021 the Minister of Home Affairs decided [not to renew ZEPs](#). This decision will leave over 178,000 Zimbabweans not only vulnerable but also unemployed and undocumented. Furthermore, it may exacerbate the problems of undocumented migrants and irregular migration into the country. This decision is counterproductive

1 Misago, J.P, Bule, K & Mlilo, S.N (2021). Xenophobic Violence in South Africa: An Analysis of Trends, Causal Factors and Responses, December 2021, African Centre for Migration & Society, University of Witwatersrand, <https://www.xenowatch.ac.za/xenophobic-violence-in-south-africa-an-analysis-of-trends-causal-factors-and-responses/>

2 Ibid - Misago, J.P, Bule, K & Mlilo, S.N (2021).

3 IOM. 2009. Towards Tolerance, Law and Dignity: Addressing Violence against Foreign Nationals in South Africa. IOM Regional Office for Southern Africa, <https://www.xenowatch.ac.za/towards-tolerance-law-and-dignity-addressing-violence-against-foreign-nationals-in-south-africa/>

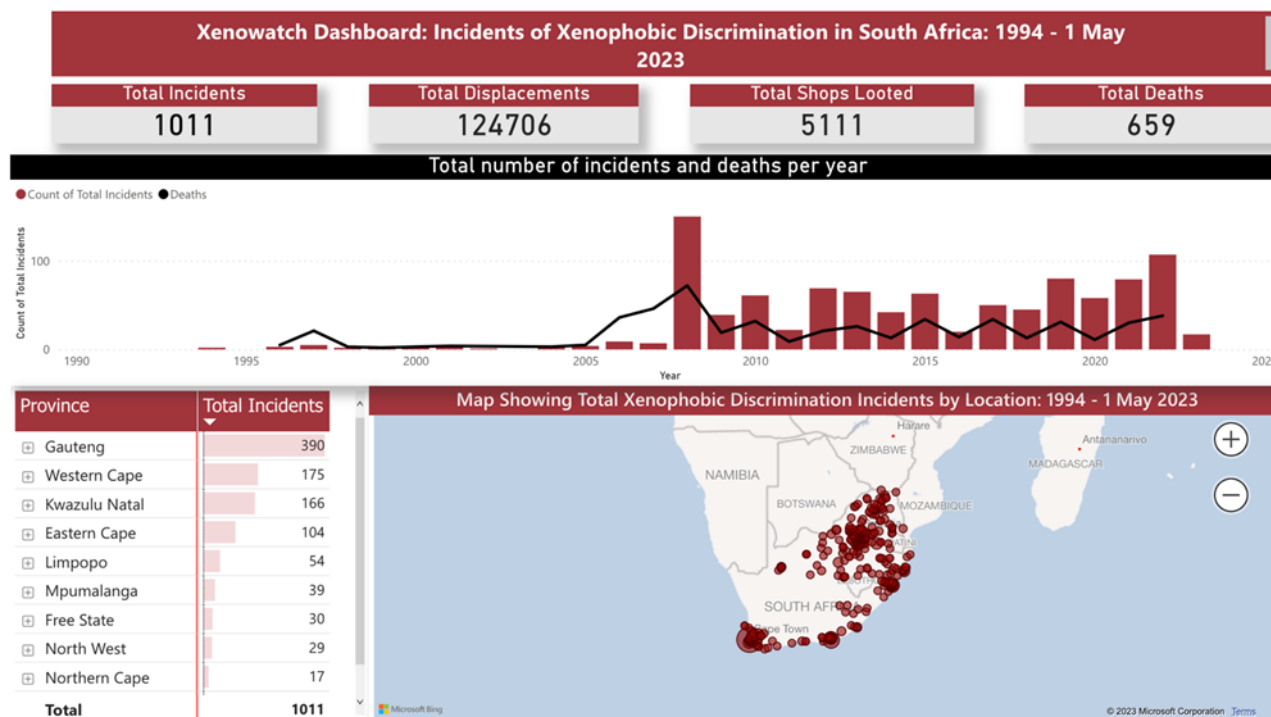
4 Ibid - [www.xenowatch.ac.za](http://www.xenowatch.ac.za)

5 Khumalo, T (2020) South Africa: Hatred of migrants on the rise, DW, 29 August 2020, <https://www.dw.com/en/south-africa-hatred-of-migrants-reaches-new-heights/a-55093941>

6 Misago (2017) Politics by Other Means?: The Political Economy of Xenophobic Violence in Post-apartheid South Africa. *The Black Scholar*, 47 (2), 40-53

7 South African Government (1996). Constitution of the Republic of South Africa, <https://www.gov.za/documents/constitution-republic-south-africa-1996-preamble>

**Figure 1: Xenowatch Dashboard: Incidents of Xenophobic Discrimination in South Africa: 1994 – 1 May 2023**



**Source:** [www.xenowatch.ac.za/statistics-dashboard/](http://www.xenowatch.ac.za/statistics-dashboard/) (Note that the dashboard is updated regularly and so figures are likely to change over time. The figures shown have been verified and are recorded on the Xenowatch platform).

given that the fundamental aim of the permits was to document and regularise migrants in the country so as to partly address the problem of lack of documentation.

## 2. ZIMBABWEAN EXEMPTION PERMITS (ZEP)

The Director-General of the Department of Home Affairs (DHA) issued a directive on 29 November 2021 reaffirming a decision by the cabinet that no further extensions would be granted to Zimbabwean nationals who held ZEPs. These permits were set to expire on 31 December that year. The South African government first issued ZEPs in 2009 in the form of Dispensation of Zimbabwe Permits (DZPs) to regularise numerous Zimbabweans who were already living and working in the country. When the DZP regime expired, the then-Minister extended the permits by means of the Zimbabwean Special Permit (ZSP)

regime, which specifically allowed those who had previously applied unsuccessfully for the DZP to reapply and those who were already in possession of the permits to renew them.<sup>8</sup>

A third extension was granted, which resulted in the ZEPs regime and around 178,000 permit holder applicants in the system, although it then expired at the end of December 2021 after the decision not to renew the scheme. The current Minister then granted another year's extension, extending the validity of the permits to 31 December 2022.<sup>9</sup> The permit holders were granted the extra 12-month special exemption period to explore other migration pathways to legalise their stay. This included the ability to apply for additional visa alternatives according to the status of ZEPs. Those who are not eligible must leave the country or face deportation when the validity of the ZEPs extension ends. This alternative is not realistic for the majority of ZEPs

<sup>8</sup> South Africa: North Gauteng High Court Pretoria (2023) Helen Suzman Foundation and Another v Minister of Home Affairs and Others (32323/2022) [2023] ZAGPPHC 75 (10 February 2023), <http://www.saflii.org/za/cases/ZAGPPHC/2023/75.pdf>

<sup>9</sup> Ibid - South Africa: North Gauteng High Court Pretoria (2023).

because most are low wage workers who do not qualify for mainstream work permits and their prospects of being granted a regulatory waiver – an exemption that would override the standard visa requirements – appear to be slim for most of them.<sup>10</sup>

In September 2022, the Minister issued a directive in the form of a grace period, extending the validity of ZEPs for another 6 months until 30 June 2023. This decision was made in response to recommendations made to the Minister of Home Affairs by the head of the Departmental Advisory Committee because of limited evidence of applications by ZEPHs for alternative visa options or waivers. After several months of waiting with uncertainty, the DHA announced on the 7 of June 2023 that the validity of the ZEPs had been extended by an additional six months until 31 December 2023.<sup>11</sup> The DHA said in a statement that this decision was made in light of the rise in waiver requests it had received from impacted ZEPHs, as the department was receiving on average, 1000-1500 applications per day.<sup>12</sup> While this interim decision offered a temporary solution for ZEPHs to organise themselves, it does not address the long-term effects of the decision on the state and most importantly on the 178,000 individuals that will be negatively affected.

### 3. THE LINK BETWEEN POPULISM AND NON-RENEWAL DECISION

Given the current economic situation in Zimbabwe, the chances of ZEPHs returning to Zimbabwe are highly unlikely. In the last 15 years, the majority of these individuals have established homes, families and businesses in South Africa. Some even have children who were born in the country and consider South Africa their home, while a majority of those affected are the primary breadwinners for their

families back in Zimbabwe. These reasons have been used as arguments against the non-renewal of ZEPs by opponents. However, the government has remained steadfast in its decision, arguing that because the regime was always intended to be temporary, the Minister is justified in only extending ZEPs until 30 June 2023.<sup>13</sup> As mentioned however, the extension has now been pushed back by another 6 months as of 7 June 2023.

Although South African laws allow an individual who has been residing and working in the country for at least 5 years the right to apply for permanent residency (PR), ZEPHs are not eligible due to the nature of their permit which was not designed for integration as the eventual aim. Given the current anti-migrant climate, it is not likely that the state would want to consider this route. Although there is no direct evidence of a correlation, an increase in anti-migrant rhetoric as the country gears up for the 2024 election comes as no surprise, especially with such decisions being taken.

There is ample evidence of an increase in scapegoating, xenophobic and anti-migrant rhetoric before and during South African elections as a means to attract votes.<sup>14</sup> This type of politicking creates an atmosphere of a state in crisis due to high numbers of immigrants. This is not only untrue but it saves leaders from holding themselves accountable for their failure to address the real issues that the country is facing. Moreover, the decision not to renew the ZEPs came after the ANC performed poorly in local government elections, while anti-migrant parties such as Herman Mashaba's Action SA party, which is known for making unfounded anti-migrant statements, did fairly well.<sup>15</sup> Finally, in January 2023, the ANC announced that the country's immigration policy would be updated and made note of concerns that, although this might result in the party being accused of

10 Mhaka, T (2023). Zimbabwean migrants are part of South Africa's fabric, Aljazeera, 14 April 2023, <https://www.aljazeera.com/opinions/2023/4/14/zimbabwean-migrants-are-part-of-south-africas-fabric>

11 Department of Home Affairs, Republic of South Africa, (2023) Press Statement on the Issuing of Minister's Immigration Directive No.2 of 2023, Extending the Validity of the Exemption Permits Issued to the Zimbabwean Nationals, 07 June 2023, <http://www.dha.gov.za/index.php/statements-speeches/1682-press-statement-on-the-issuing-of-minister-s-immigration-directive-no-2-of-2023-extending-the-validity-of-the-exemption-permits-issued-to-the-zimbabwean-nationals>

12 Ibid

13 Ibid – South Africa: North Gauteng High Court Pretoria (2023).

14 Heleta, S (2019). Xenophobia and party politics in South Africa, 2 September 2019, Mail & Guardian, <https://mg.co.za/article/2019-09-03-00-xenophobia-and-party-politics-in-south-africa/>

15 Fane, B (2022). Where do we go from here? Uncovering the story behind ZEPs Cancellation, Scalabrini Institute for Human Mobility in Africa, 26 July 2022, <https://sihma.org.za/Blog-on-the-move/where-do-we-go-from-here-uncovering-the-story-behind-zep-cancellation>

xenophobia, the current worries over ‘illegal’ immigration may lead to political instability in the country.<sup>16</sup> The reasons provided are not supported by evidence and have the potential to create unfounded fear and, as in the case of ZEPs, lead to anti-migrant policy decisions based on popular rhetoric instead of evidence-based research and findings.

#### 4. THE IMPLICATIONS FOR ZEPHS

Over 178,000 ZEPHs are currently in a [state of uncertainty](#). Some have lost their jobs due to uncertainty about their legal status, and others are having difficulty opening new bank accounts or replacing stolen cards, despite the fact that the banks are aware of the grace period. Toward the end of last year and early this year some schools prohibited students from registering due to concerns about their parent’s uncertain legal status. The ZEPHs Association (ZEPHA) filed an [urgent lawsuit with the Pretoria High Court](#) after this and the state did not support the prohibition, but instead instructed the schools involved to register the pupils who had been denied registration.

Simultaneously, Operation Dudula, a group that claims to be a civil rights movement with the sole aim of fighting crime and criminality through legal means but instead is notorious for targeting and harassing African non-nationals, allegedly planned a campaign to remove migrant students from Diepsloot schools in Johannesburg but they were strongly warned against this by civil rights organisations.<sup>17</sup> Since late last year, the group has been stopping undocumented African migrants from accessing Johannesburg public health institutions, a serious and callous infringement that could result in many preventable diseases or even deaths.<sup>18</sup>

#### 5. THE ZEP COURT CASE

Despite civil society and activist efforts to advocate and lobby for a withdrawal of the

decision, including the court case against the government brought by organisations and associations such as the Helen Suzman Foundation (HSF), the Consortium for Migrants and Refugees in South Africa (CORMSA), the Zimbabwe Immigrants Forum (ZIF) and ZEPHA, there seems to be no move to withdraw the decision. The HSF has asked the Pretoria High Court to find Minister Motsoaledi’s decision to abolish ZEPs and his limited extension of the permit to be illegal, unconstitutional and invalid. Furthermore, in court documents, the HSF has expressed concern about the lack of notification and consultation of affected ZEPs holders, and the lack of public input prior to the Minister’s announcement to [discontinue ZEPs in November 2021](#).

In a bid to oppose the application, the All Truck Drivers Forum (ATDF), Allied South Africa and Operation Dudula requested permission to intervene in the application. Operation Dudula did not succeed, but the ADTF and Allied South Africa did. Therefore, ATDF joined the case as the third respondent and requested permission to participate in the legal proceedings, claiming that the extension of ZEPs had contributed to an increase in “illegal” and undocumented drivers in the trucking industry in South Africa.<sup>19</sup> The Gauteng High Court rejected Operation Dudula’s bid due to their unfounded claim that ZEPs and the “large number of illegal immigrants” worsened the nation’s crime problem as justification for joining the constitutional appeal against termination of the permit.<sup>20</sup>

On 11 April 2023, court proceedings commenced at Pretoria High Court with civil society organisations challenging the decision by the Minister of Home Affairs to discontinue ZEPs. The [final outcome](#) is pending as the Court reserved its ruling until a date that is yet to be communicated. This was despite the fact that ZEPs expire at the end of June 2023. The reason the court provided for reserving its right

16 Mani, L (2023). Enhancing South Africa’s Immigration Policy for Global Competitiveness, Creamer Media Engineering News, 21 February 2023, <https://m.engineeringnews.co.za/article/enhancing-south-africas-immigration-policy-for-global-competitiveness-2023-02-21>

17 Pongweni, T (2023). Operation Dudula threat to remove children from schools sparks warning from activists, Daily Maverick

18 Ibid – Mhaka, T (2023).

19 Ibid - Ellis (2023). n. 23

20 Ibid - Ellis (2023). n. 23

to rule was that it needed time to do justice to the merits of the application considering its importance to the parties concerned and its urgency.<sup>21</sup>

## 6. RECOMMENDATIONS

As has been outlined in this policy brief, the failure of the South African government to withdraw the decision to not renew ZEPs will greatly impact the livelihood and social security of those affected. This brief, therefore, proposes that granting ZEP holders permanent residence would be a more sustainable policy direction that would guarantee the more long-term sustained aim of ensuring integration and reducing the vulnerability of ZEPHs. Furthermore, the following recommendations are made:

- In the short term, to renew ZEPHs' permits for another three to five years until a long-term viable solution is established. Individuals who decide to leave will be able to better prepare their exit strategy and resettlement arrangements as a result.
- In the medium term, to grant permanent regularisation pathways for ZEP holders such as offering the possibility of permanent residency documentation if citizenship is not a viable option. This will ensure that these individuals are documented, that they continue to contribute to the development of the state by paying taxes and they are not left in vulnerable situations.
- More long-term solutions should include the South African government making a more concerted effort to develop and implement effective policies that address the socio-economic situations of its citizens, such as job creation and effective service delivery to help deal with the challenge of xenophobic violence and discrimination against foreign nationals. This will also help hold political leaders who are underperforming in their ministries accountable and limit them using migrants as scapegoats.

- The DHA must address backlogs that have left some migrants and refugees with expired documentation as a result of delays, as this makes them vulnerable to attacks by groups such as Operation Dudula.

## 7. CONCLUSION

The non-renewal of ZEPs is motivated by populist rhetoric with no evidence to support the decision. In addition, there is no effective policy in place on how any challenges that may arise during the process will be dealt with. The decision to not renew ZEPs is counterproductive and will contribute to the vulnerability of the ZEPHs affected. As ZEPHs await the eventual outcome of the court case, it can be hoped that sound decisions that are supported by evidence and advance the human rights and protection of individuals will be made. Moreover, should the court rule in favour of ZEPHs, it is important for the state to ensure that vigilante groups such as Operation Dudula and the ATDF do not take the law into their own hands and attack foreign nationals in retaliation. A day before the court case was to be held, there were already threats targeted at the HSF director and her family on Twitter in response to the role of the organisation in efforts to stop the scrapping of ZEPs.<sup>22</sup> This is already an indication that there is potential for further escalation should the court decide to rule against the DHA's decision to not renew ZEPs.

21 Oodashe, Z (2023). High Court reserves ruling in Zimbabwe Permit Case, 14 April 2023, <https://www.sabcnews.com/sabcnews/high-court-reserves-ruling-in-zimbabwe-exemption-permit-case/>

22 Hendricks, A (2023). Twitter threats sent to Helen Suzman Foundation director in Zimbabwean Exemption Permit Court Case, Daily Maverick, 18 April 2023, <https://www.dailymaverick.co.za/article/2023-04-18-twitter-threats-sent-to-helen-suzman-foundation-director-in-zimbabwean-exemption-permit-court-case/>

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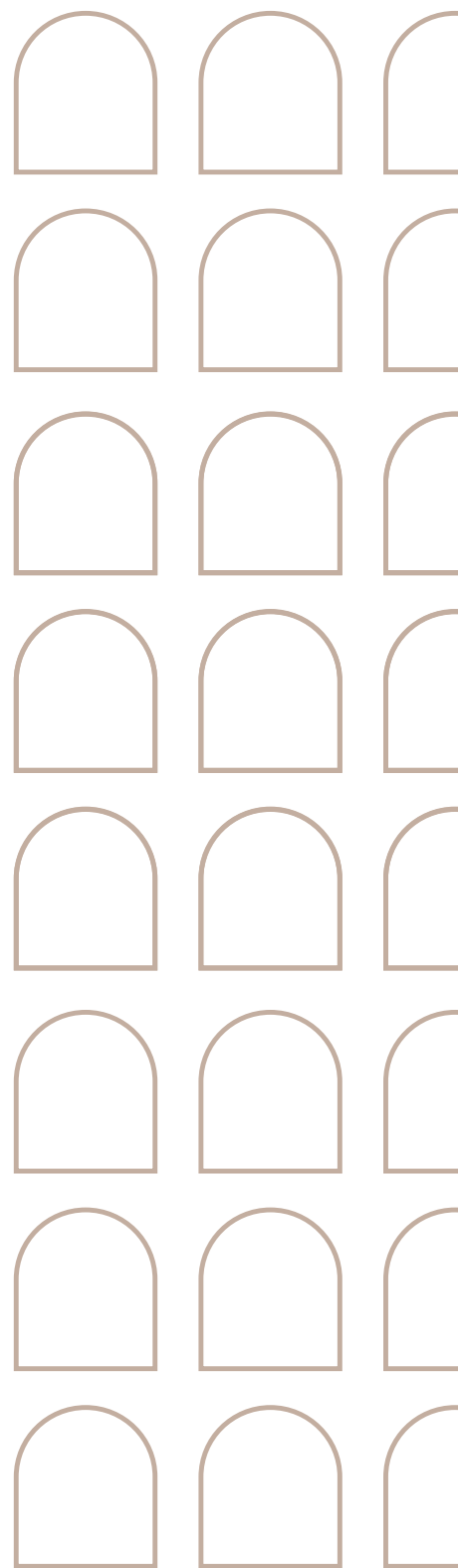
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