

SOUTH AFRICAN NATIVES' CONDUCT TOWARDS ILLEGAL MIGRANTS: A HUMAN RIGHTS APPROACH

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ABSTRACT

South Africa has the largest number of migrant populations in Africa due to its relatively stable economy as compared to other African countries. A considerable number of these migrants are living in the country without proper documentation. This study sought to determine how migrants are treated by native South African citizens. Data for this body of work was collected following the COVID-19 regulations by way of focus group and semi-structured individual interviews. Five African-born foreigners from Southern Africa were interviewed in a focus group to solicit the treatment that they receive from South African citizens and authorities. A further two foreigners were individually interviewed to obtain their experiences. A thematic analysis was utilised to analyse data obtained from the participants. It emerged from the themes that undocumented migrants tend to live in isolation. This stems from a lack of trust by locals. The status of foreign nationals in the country makes it difficult for them to access basic services such as healthcare, safety and security services, and education. This obstacle makes it challenging for migrants to enjoy good quality life, which is an inherent human right. There is a need to protect human rights of foreign-born nationals, including undocumented migrants.

Keywords: South Africans; conduct; illegal migrants; human rights, public servants

INTRODUCTION

South Africa is home to a heterogeneous nation comprising both citizens and foreign-born nationals. The majority of migrants in the country are from impoverished, politically and economically unstable African countries (World Bank, 2018). The unfavourable conditions in the sending regions propel human mobility to places deemed favourable by migrants. South Africa is politically and economically more stable in comparison with other countries in the Southern African Development Community (SADC) region. Consequently, it has seen a spike in the flow of people from African countries in the recent past (Blaauw, 2012; World Bank, 2018). With an estimated five million immigrants living in the country (World Bank, 2018), South Africa is a host to various foreign-born nationals from Central, Eastern and Southern Africa, Europe, South Asia and China, making it an African country with the largest population of foreigners.

Migration can be voluntary or involuntary, and occurs between continents, countries, provinces or regions. Migration of foreign-born nationals is categorised into legal or regular, and illegal or irregular migration (RSA, 2002). Regular migrants are foreign-born nationals who have legal documents permitting them to work, live or access education in the country. They are issued with documents that indicate the nature of their activities and the duration they need to be in the country (Marschall, 2017). People who violate immigration laws when push

factors in the sending country outweigh the possibility of imprisonment in the receiving country are categorised as irregular migrants. This means that the person does not possess a valid passport, visa, work permit or any legal document that grants them permission to stay. The lack of official documents translates into an illegal entry into the country.

LITERATURE REVIEW

The presence of migrants in South Africa has, over the years, caused resentment from natives. This stems mainly from the notion that they are taking away jobs from South Africans (Blaauw, 2012). It is this perception that breeds the maltreatment of migrants, not only by civilians, but authority figures as well. Misago, Freemantle and Landau (2015) indicate that law enforcement agents are infamous for extortion, harassment, random detention and selective enforcement of laws as far as migrants are concerned. Furthermore, Pineteh (2017) adds that public figures such as political, religious or traditional leaders may lead citizens to make statements that can incite violence against migrants. The resentment of foreigners by citizens is attributed to the high employment rate amongst them as compared to natives (ILO, 2018). Migrants are in turn blamed for providing cheap labour, the invasion of spaces of local businesses and reluctance to invest in the development of the local economy, thereby undermining the local labour market. They are also blamed for a wide variety of social problems, including substance abuse, fraud and corruption, crime and moral degeneration (World Bank, 2018). The negative experiences of migrants when interacting with South African natives ultimately impact on their quality of life in a country in which they believe that their lives would take a different course.

There seems to be a general negative image about migrants as they are seen as parasites whose intentions are to suck the already weakened South African economy dry and draining its financial resources (Pineteh, 2017). The assertions by political and traditional leaders about migrants in a way facilitates this nativist agenda amongst poor South Africans. For instance, Alfaro-Velcamp and Shaw (2016) draw attention to King Goodwill Zwelithini's 2015 statement about migrants which led to another outbreak of xenophobia, leaving migrants displaced and others losing their lives. It is the opinion of these authors that the incitement of violence against migrants is orchestrated in such a way that it takes the attention of natives away from government's failure to deliver on its promises of the betterment of the lives of its citizens. African-born migrants thus become scapegoats and endure abuse by natives despite the fact that their human rights are protected by the supreme law of the country.

The South African constitution affords everyone the right to life and to have access to healthcare services, dignity, sufficient food and water, social assistance and social security (World Bank, 2018). However, migrants have limited liberties in exercising these rights. For instance, Ngwara (2019) notes that in accordance with the Refugee Act No. 130 of 1998, the South African government is not obligated to ensure specialised care for persons living with disabilities and unaccompanied minors, thus leaving these vulnerable groups exposed to human rights violations. The limitations to rights should not, however, afford natives and civil servants reason to treat migrants in such a way that these rights are compromised. The South African government is constitutionally mandated to provide legal protection to all persons within its borders (Pineteh, 2017). The objective of this article is to assess whether the human rights of migrants are acknowledged and protected during their interactions with both South African civil servants and civilians.

RESEARCH METHODOLOGY

The researchers opted to use the qualitative approach because it enabled them to gain first-hand experience from illegal migrants regarding the treatment that they receive from South Africans (Creswell, 2003). Additionally, an exploratory and descriptive design was used to gain a broader understanding of the lives of irregular migrants in South Africa (Bless, Higson-Smith & Sithole, 2013). Using a snowball sampling technique, seven migrant youths between the ages of 20 and 35 were interviewed. Five of them participated in a focus group discussion, and two were individually interviewed with the use of a semi-structured interview schedule. The sampling technique was appropriate given that undocumented migrants are, to a certain extent, an isolated population and would not easily talk to people outside their circle (Maree, 2007). Data was collected in Gauteng Province in South Africa while following COVID-19 regulations. Data obtained from the focus group and interviews was analysed thematically with the use of Nvivo software programme. By using thematic analysis, researchers were able to examine commonalities, differences and relationships between the themes (Harding, 2013).

RESEARCH FINDINGS

This section of the paper presents findings of the study in terms of themes that emerged from the focus group as well as individual interviews.

Demography of Participants

Table 1: Demography of Participants

Participants no.	Gender	Age	Nationality
1.	Male	20	Mozambique
2.	Male	20	Mozambique
3.	Male	20	Zimbabwe
4.	Female	32	Zimbabwe
5.	Female	26	Lesotho
6.	Male	32	Malawi
7.	Male	26	Mozambique

As depicted in the table above, there were seven participants with the majority being male (n=5: 71.4%) aged 20 (n=3), and two were female (n=2: 28.6%) aged 26 (n=2) and 32 (n=2). Moreover, the majority of migrants were from Mozambique (n=3), followed by those from Zimbabwe (n=2). Lesotho and Malawi had one representative apiece. This was to be expected as most migrants come from countries that neighbour South Africa.

Encounters with Police Officials

The first encounter by undocumented migrants with law enforcement officers is usually at the sovereign borders through which they gain entry. With or without solicitation from police at the borders in both sending and receiving countries, illegal migrants without proper documentation would offer bribes in order to be granted access to the country of destination. This is the case when they return home. A 20-year-old man narrates how he first got into the country:

'I gained access to South Africa from Ponta do Ouro which borders the Kwa-Zulu Natal Province. I paid R70.00 on the Mozambican side and R80.00 on the South African side of the border. When my travel companions and I got arrested, the police demanded that each of us pay R50.00 so they can let us continue with our journey.' (Participant 1)

The process is repeated when the migrants visit their countries of origin. Bribe solicitation is not an unusual phenomenon as far as irregular migrants are concerned. Hungwe (2013) notes that the phrase mostly used by South African officials during the solicitation of a bribe is "*Ingwenya ihlala emanzini*," literally meaning "a crocodile lives in water". This denotes that the police are crocodiles, and in order for them not to strike, the migrant has to calm the waters by giving them money.

Once in the country, irregular migrants have to be vigilant not to have more encounters with the police. In instances where they do, some are threatened with deportation and detention when they fail to produce proper documentation upon request. They would then have to give up whatever little money they have on their person to avoid arrest. Those who eventually get arrested can buy their freedom with as little as R200.00, ultimately avoiding going from police holding cells to Lindela Repatriation Centre (Mawadza, 2008). The presence of undocumented migrants fuels the level of corruption in the police department.

'I feel like police are harassing us. I think when they want quick money they come to us. Not all of us came to the country illegally. For example, when I first came here, I had a passport but it got stolen. Now I do not have any form of identification. They always stop us and ask to see our papers. When they see that you do not have any, they say you must give them money or go to prison.' (Participant 2)

Alfaro-Velcamp and Shaw (2016) believe that migrants are unfairly targeted by government strategies of addressing illegal migration such as the infamous Operation Fiela-Reclaim, which resulted in the detention and deportation of African-born foreigners without proper documentation. The way in which the arrests are effected undermines the dignity of the migrants as they are also broadcast on media. The relationship between migrants and police officials is an intricate one. When migrants need services from police officials such as when they are victims of crime, they rather would not report the incident fearing that they will end up being the ones arrested for being in the country illegally.

'We are unable to report criminal acts committed against us as we ourselves are breaking the law due to the fact that we are undocumented. This exposes us to the risk that criminals can do as they please with us and have no recourse.' (Participant 3)

Encounters with Other Government Services Providers

Accessing government services is challenging for migrants as they have to manoeuvre the system without official documents. Understandably, this makes them feel apprehensive about seeking help from public institutions such as schools and health facilities due to their status in the country.

Education facilities

Despite the right to basic education being enshrined in the constitution, not all persons residing in South Africa get an opportunity to exercise this right. This is even more so true for undocumented migrant children. The following is how one of the participants experienced rejection by the education system:

'I came to South Africa in 2010 when I was 10 years old with my mother whom I jumped the border with. When I wanted to enrol in school, I was told to present a birth certificate which I could not. When I went to Home Affairs, they demanded to see my South Africa-born father, who had passed away by then. I had not been able to enrol in any school until I gave up trying. It pains me to not have went to school because I believe my life would have been different had I been given a chance to go to school.' (Participant 4)

The inability by migrant children to enrol in schools while they continue to stay in the country has a potential to create a vicious cycle of marginalisation, poverty, stigmatisation and humiliation. These children will grow up to be adults that have limited to no chance of participating in the formal labour market. Acknowledging the plight of illegal migrant children, Selimos (2017) notes that those who are allowed to enrol in schools often face social exclusion and have difficulty accessing the labour market later in life despite having some form of occupational training.

Generally, migrant children rely on the intervention of Non-Government Organisations (which were not established to specifically address the rights of children) to access their rights, which means they have limited direct access to government institutions (Palmary, 2009). Equally, this exposes the gap that exists in the capacity of government to intervene in matters relating to migrant children. Spreen and Vally (2012) attribute the inability of the South African government to integrate migrants into the education system to non-implementation of policies and legislation.

Health facilities

By virtue of being undocumented, illegal migrants face challenges with regards to accessibility of services. They tend to self-isolate and are reluctant to seek services that they need such as healthcare. Kiwanuka and Monson (2009) emphasise that the fear by migrants of deportation is the biggest obstacle preventing them from accessing healthcare services.

'I prefer going to the pharmacy rather than going to the local clinic for medical treatment because I think nurses will want an Identity Document (ID) so they can open a file for me.' (Participant 5)

A differing view was expressed in this way:

'Where I used to stay in Mpumalanga Province, healthcare professionals did not want to know the status of the migrant when they sought medical assistance. They helped everyone.' (Participant 7)

It would seem that the health sector is responsive to the plight of migrants despite their status. It carries out their ethical and constitutional obligation to provide medical care to patients that present themselves to them. However, the World Bank (2018) warns that having

proper documentation does not guarantee that migrants will be able to access services without any glitches. Migrants' experiences with government institutions can be summed up in this way:

'The South African government is treating its citizens well, unfortunately the same courtesy is not extended to foreign-born nationals.' (Participant 6)

Life in the communities

This theme relates to migrants' experiences in their interactions with the locals as well as how they are treated by the natives in the communities in which they reside.

(i) Interaction with the natives

Migrants from the African continent are perceived negatively by South African citizens. This negative image stems from the narrative that they (migrants) are an inconvenience that negatively affects the lives of citizens (Pineteh, 2017).

'As outsiders, we do not live freely. People will just beat you and kill you for no particular reason. During the xenophobic attacks, people whom I am acquainted with entered my place of residence and wanted to take my possessions. There is also a lot of mistrust from the natives towards us. I also think we are hated because we are not lazy and are able to make a living without depending on handouts from government. I for one did not take anyone's job. I use my own hands to make money.' (Participant 2)

The drive for migrants to work hard stems from the fact that they want to mitigate their home circumstances. They also have more skills (Mangu, 2019), while South Africans experience a high level of unemployment which makes it easier for them to blame foreigners for their joblessness (Pineteh, 2017). These circumstances compromise the quality of life for migrants in that it results in resentment and the blame game, making it difficult for social cohesion. As shown in these excerpts, it is also important to note that some citizens have good relationships with foreign nationals:

'When we could not work during the hard lockdown due to Covid-19, and we were not eligible to get the free food parcels that were issued by government, there were people who helped us. Since we are reliant on other people to employ us for an income, there are people whom we go to, who give us grocery on credit. They trust that we will pay when we get the money.....some of these people are South Africans and others are not.' (Participant 3)

Another migrant said:

'We have a good relationship with some people whom we ask to keep money for us as we are afraid of it being stolen. My income is erratic and I cannot approach the banking institutions to keep the money for me. I could at a time get about R20 000.00 in three weeks. So that kind of money needs to be kept safe. I do not want to keep money with me as the house can be broken into. I cannot afford to have my money stolen as I need to remit to my wife and children back home. I do not live a fancy life here as I have to take care of my wife and children back home' (Participant 5)

(ii) Criminal suspicions

The ‘us versus them’ notion held by natives towards migrants’ shows that the latter are associated with negative things, including criminal activities.

‘I was once accused of stealing a television (TV) from my neighbour’s. A group of men stormed into the house I live in and demanded that I give them the TV back. Luckily one of them recognised me and convinced the group not to attack me saying he knows I would not steal’. (Participant 1)

Generalising foreigners as criminals is detrimental to efforts of integrating them back into society. It also creates mistrust between them and citizens and can easily facilitate acts of violence towards them (Potgieter & Moosa, 2018). As depicted below, this is despite the fact that foreigners are not the only people who engage in criminal activities:

‘We also are victims of crime. I also had items of value stolen from me. They rob us of our belongings, phones, tools of trade and food. We are not saying it is only South Africans who commit crime. Some of our brothers do not want to work and would engage in criminal activities.’ (Participant 7)

Crime is committed by both citizens and foreign nationals. Hungwe (2013) points out that some acts of crime are committed by gangs that are a combination of both citizens and foreign-born nationals. Thus, Pineteh (2017) warns against the stereotypical positioning or labelling of migrants as prime suspects in criminal activities. This subsequently redirects anger and frustrations that people have on government to migrants, leading to the latter’s deportation or removal from communities.

DISCUSSION

Unfavourable conditions in the sending countries facilitate the mobility of migrants to South Africa. These indigents are willing to spend the little money that they have to gain entry into the country. Life in the destination country is, however, not how they imagined it to be as they have to grapple with political and socio-economic challenges. The state of living for poor South Africans makes them believe that the presence of migrants is bringing with it additional burden on the country’s resources, which are currently not adequate to sustain them. With the country already experiencing a high percentage of unemployment, migrants are blamed for competing for the scarce resources (Mangu, 2019), and are therefore, putting a strain on the ailing economy. The blame is inappropriately apportioned to the migrants because as the findings showed, they use the skills learned from various labour markets to generate income. In essence, they create their own employment.

Migrants do not go about their daily lives freely for fear of being accused of criminal activities in the townships. For those living in the city, police harassment was cited as the most uneasy occurrence. Migrants are uneasy about requests by police for identification, indicating that having no valid documentation makes them easy targets for corrupt police officials who solicit bribes or threaten to arrest and deport them. Those who get deported make efforts to return as soon as they can. The outbreak of the Covid-19 pandemic and the subsequent lockdown further exposed the country’s weakness in border control. This was evidenced by the

emergency erection of a fence at the border between South Africa and Zimbabwe (Zanker & Moyo, 2020), which did little to prevent irregular border crossing. Crush, Williams and Peberdy (2005) observed uncoordinated efforts by governments in addressing issues of migration between SADC countries, resulting in a more increased unregulated human mobility in the region. This calls for action by stakeholders such as government institutions at all levels, academic institutions as well as non-governmental civil society organisations (Pugh, 2014) to assist in the regulation and understanding by natives of the irregular movement of migrants.

Knowing that their presence in the country is not permissible, migrants find themselves having a complicated relationship with law enforcement officers, which is characterised by harassment, extortion, bribe and threats. It is this complexity in relationships with the police that hinders them from seeking their (police) help when they become victims of crime.

The quality of life of migrants in the host country remains very low due to lack of human rights protection (Kiwauka & Monson, 2009). Being an undocumented migrant brings with it an element of criminality. Accordingly, this group of people try by every trick in the book not to be detected by officials, be it either law enforcement officers or other civil servants. This is done in order to evade arrest and/or deportation. For these migrants, being sent back to their countries of origin is not a desirable option as the conditions that made them to emigrate have not improved, hence they see no reason to go back to their home countries. Strategies used by migrants to avoid detection include learning the local language and changing how they dress and walk to mimic the citizens (Hungwe, 2013). In addition, many undocumented African migrants do not seek professional medical help because of fear of deportation (Idemudia & Boehnke, 2020), despite their right of access to healthcare services.

Findings of this study show that there are a few South African citizens who empathise with migrants and with whom they (migrants) have formed trustworthy relationships. Having no documents means that income generated by migrants comes in the form of cash. But keeping cash on their persons turns them into targets of robbery as they are unable to open bank accounts. They ask trusted citizens to keep their earnings for them for fear of being targeted by criminals. The chosen confidants keep their money safe until such time that they need to remit it back home. This is a risky option because there is no legal document that binds the two parties involved in this agreement. There is a risk of migrants losing their hard-earned money with little or no recourse available to them.

Despite the establishment of institutions that seek to protect the rights of people in the country, the rights of migrants as humans continue to be violated. The treatment that they receive from citizens make it difficult for them to be integrated into the mainstream society, which exacerbate the negative stereotypes already formed about them. Due to this unfair treatment, and fear for their lives, they resort to self-isolation and secretive existence. Their limited rights impede them from seeking help from government institutions that could help enhance their social functioning. The difficulty in integration is mostly attributable to resentment and language barriers that they encounter in host countries (Idemudia & Boehnke, 2020). These are some of the factors that impede them from attaining good quality life.

CONCLUSION

The South African constitution affords everyone residing within its borders the right to be treated with dignity and in a humane way irrespective of their status or demographic characteristics. As the biggest host of migrants in Africa, South Africa is overwhelmed by the flow of illegal migrants who cross its borders in order to escape undesirable conditions in their

home countries. Effective control of human mobility requires all actors involved in this issue to play their part. The porousness of South African borders is an issue that needs to be addressed by all stakeholders, including sending countries and law enforcers in both sending and receiving countries.

It emerged from the study that the influx of illegal migrants is facilitated by corruption within law enforcement agencies, which needs to be properly addressed. Most importantly, border control should be reinforced to regulate entry into the country. Migration should factor in poverty reduction strategies by government. These strategies should be integrated in policies aimed at improving the lives of the poor. Migrants are unable to access formal financial service providers. They have to rely on other forms of keeping money and remitting to their home countries. Financial institutions should cater for migrants by facilitating the use of formal channels for remittances that would boost the local economy while helping migrants to refrain from using unorthodox and less-reliable channels.

The suspicion of criminality on migrants calls for awareness that both migrants and citizens find themselves in circumstances that may propel them to engage in criminal activities. The commission of crime should thus not be unevenly apportioned to migrants. Their status as migrants should be seen as an opportunity for engagement in seeking solutions that are needed by locals. Migrants need to be made aware of various organisations and institutions that they can contact when they need help.

The Human Rights Commission and human rights lawyers should play a visible and active role in minimising the negative backlash directed at illegal migrants who find themselves in South Africa. The lawyers should facilitate the implementation of policies that respond to the plight of migrants in order to reduce their vulnerability, thereby improving their access to services.

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