

FUNDAMENTAL CHALLENGES DERIVING FROM THE DIFFICULTY TO CONTROL UNDOCUMENTED FOREIGN NATIONALS

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ABSTRACT

1 Problem statement

This systematic review paper argues that the South African poor record management system of foreign nationals is the major cause of an increasingly alarming figure of 5 million immigrants who are without appropriate citizenship documentation from which a burgeoning 3 million is referred to as a number of people who are below the age 18 years (minors). The presence of illegal immigrants has strong negative effects on the South African economy in respect of aspects such as employment opportunities, health, education and housing.

2 Methods

The data mining included reviews using United Nations High Commissioner for Refugees (UNHRC) website as an illustrative instance, including the scientific insights from different social scientists who wrote about foreign nationality Undocumentedness. A qualitative paradigm was used to investigate the perceptions of employment opportunities, health, education and housing insofar as undocumented foreign nationality is concerned.

3 Results

The investigation discovered that majority of undocumented nationals are denied numerous human rights while the South African government incur huge debts resulting from the attempts to control illegal foreign nationality varying status-quo. The evidence from this study implies that quite a number of undocumented foreign nationals are not undocumented by choice but as a result of poor South African foreign nationality record management system which fails to issue renewals on time, including other administrative issues caused by the flawed system.

4 Conclusion

The value of this study contribution lies in creating an awareness to SA government that having documented foreign nationals in South Africa is important for several reasons, including enabling proper integration into society, facilitating access to essential services, protecting human rights, managing the economy effectively, and mitigating social tensions by ensuring that foreign nationals are contributing legally and transparently to the country; while also allowing the government to accurately track and monitor migration patterns.

Key words: undocumented, foreign, nationals, control, challenges

INTRODUCTION

There has been an increased recognition that more attention needs to be paid to the area of undocumented foreign nationals in South Africa. These issues are well documented in the scientific literature where a significant portion of about (2.5 million to 5 million) is representative of a population of illegal foreign nationals who are hovering over scarce socio-economic resources of the country (Human Rights Watch, 2024). This remain as an adverse burden to the South African government that keeps fighting a losing battle which originate from the presence of undocumented foreign nationals whose existence keeps placing the country economy under severe strain. By the same token, the challenge of controlling the undocumented foreign nationals pose a greater risk of statelessness in that a lack of birth registration often put newborn (s) at risk of statelessness given the fact that the South African government uses the birth certificate as proof to show where a person was born including parentage, and this becomes the key information that is needed to establish a nationality. In recent years there has been renewed interest in article 1(1) of the 1954 Convention, which declares a stateless person as someone who is 'not considered as a national by any State under the operation of its law'. The Mail & Guardian written by Masoka Dube on the 13 November 2021 reported on the limbo faced by Vusi and Mandla that have been to three home affairs offices to get documentation stating that they are born in South Africa yet are stateless. Citizenship remains a constitutional right which obligate the government to account regarding cases limited thereto (Citizen Act, 1995). The impact of undocumented foreign nationals is further evidenced in the

phenomenon of: ‘operation dudula’, that others perceive as a let off for xenophobic attack which is clearly perpetuating violence and division. As can be observed in Figure 1.1, chaos ensued when a certain group of concerned citizenries gathered and decided to take the law into their own hands as they formed a mass refusal group called: ‘operation dudula’ which means (chase away), that is aimed at driving out of the country a particular group of undocumented foreign nationals. Particular activists are convinced that undocumented foreign nationals form a part of the country statistics which the SA government is finding very difficult to control, and that is despite the fact that some are born in South Africa (Mojela, 2023).

Figure 1.1: Operation Dudula protesters in action



Source: African News (2022)

The alleged incidents show that, a considerable number of undocumented nationals are entitled to citizenry benefits, and they use special identity documents that are arranged by government to help them to have access to certain government benefits which includes, employment (cheap labour), health benefits, government houses for citizens, social grants, just to name a few, while they are waiting for the issuing of official documents that makes them to have a permanent residency status.

It is important to note that, the action of this nature takes place whilst the nationals in question are already having full access of all the country citizenry benefits that the government has to offer (Alimohammadi & Muller, 2019). The corroborated evidence specific to (Lakika, 2023) showed that, a significant percentage of undocumented nationals came from foreign nationals who arrive in the SA as asylum seekers during the peak (s) of violence in their own countries. Subsequently, they sometimes give birth to undocumented children who somewhat grow up to become adults in SA that are without the proper citizenship documents. This immediately places a great concern on government and to a certain extent becomes a constitutional undermine as the pronouncement in the Citizenship Act 88 of (1995) clearly stipulates that: ‘Citizenries are to be born in South Africa, and should have, at least one of their parents as a South African citizen, if such a parent does not have an SA permanent residency holder permit’ before they are classified as citizenries. This manuscript is aimed at introducing a more critical approach towards controlling the challenges of undocumented foreign nationals in South Africa. Currently, the South African government lack ways to effectively relegate the status-quo whereas literature shows that there is very little that is being done to encourage effective acquisition of nationality. It is not valueless to mention that there are no strong ties between the SA country and the UNHCR, whose responsibility is to work with different governments to help them make changes in their legislation as well as procedures, and to deal with the recognition of undocumented foreign nationals who eventually become stateless people. This approach helps different governments that struggle with controlling foreign nationals to rebuild or modernise their citizenry management systems. Other challenges can be observed on the impact of covid-19 wherein specific undocumented nationals had fallen victims of not getting government associated benefits that an ordinary SA citizen should get due to their undocumented state. Work on covid-19, that pertains to the experiences of undocumented foreign nationals, proliferated greatly during the year 2020 to 2022, as discussed in the paragraphs to follow.

LITERATURE REVIEW

COVID 19 EXPERIENCES OF UNDOCUMENTED NATIONALS IN SOUTH AFRICA

The scourge of covid-19 evidently brought about an even bigger concern on the group of undocumented nationals, and this is not only in South Africa but across the globe.

Figure 1.2: Who is the rightful government of the right to citizenship in South Africa?

Source: Rojas (2021)

Following President Ramaphosa's announcement who declared South Africa to be immediately under the regulations of a state National Disaster Act as of 21 March 2020, this move clearly came with very strict restrictions that were imposed to South African citizens, and needless is to say that this was a double blow to invisible populations such as the (foreign nationals without documents). It is to be born in mind that this South African announcement was informed by the worldwide announcement, which was made on March 13, 2020, placing the European countries as the epicentre (s) of the COVID 19 pandemic.

It is of particular significance to state that this was a directive that came from the World Health Organisation (WHO) executive director (Dr. Michael Ryan) who was calling out on different governments to assist invisible populations, which the ultimate purpose was to avoid deprivation of nationality on discriminatory grounds. This approach prompted for government (s) help to be inclusive of migrants, undocumented workers as well as prisoners in mind (Blessed-Sayah and Griffiths, 2024). This paper immediately subjects the reader to then view this issue as one of the most problematic civil societies challenges the South African government have had to face given the fact that invisibility remained as a recurrent match to the virus. Inter-alia, the reader's attention be drawn to these questions: how was the government to classify causes of death? How were undocumented foreign nationals going to be traced? How were the covid-19 victims going to apply for special help that country citizens were entitled to? Most importantly, how were they going to access health facilities? It is common logic that for help to be rendered by any health facility on anyone-they will require necessary documentation which becomes a prerequisite of health assistance. Subsequently, undocumented nationals were heat the hardest and remained decimate weak during the scourge of covid-19 era to date the situation is not resolute (Ramoshaba, 2024). This challenge also means that the South African government faces a threat of undocumented nationals dying from the virus which generally will be because of the fear of seeking help due to citizenship non-compliance issues, which obviously touches on illegality implications. The risks borne by the South African government is that they may not be able to record such deaths which immediately form part of unrecorded statistics of the country. How does then the South African government account for deaths of invincible populations in the country? Could invisibility mean death for undocumented nationals who disappeared during covid-19? How does the SA state tell between natural deaths and covid-19 deaths of undocumented nationals? Undocumented nationals do not only pose a threat to the country economy, nonetheless, they also create an opportunity for many other crimes such as state security fraud, substance abuse, theft, murders and so forth to exist. The repatriation of foreign nationals' corpse to their country of origin is another costly exercise borne by the South African government. Hereinafter, the papers address the issues of demarcations experienced by undocumented foreign nationals on health benefits in consequence of scarce health resources that is allocated based on provincial headcount for SA citizens only which confirms some of the legitimate challenges the government faces when it comes to undocumented nationals.

MISCELLANY OF CHALLENGES SPRUNG FROM THE EXISTENCE OF UNDOCUMENTED FOREIGN NATIONALS

This section is an overview of the different issues facing the South African government as a result of undocumented nationals.

Figure 1.3 Zimbabweans cross the border into South Africa illegally



Source: Ntsako Shivambu (2022)

The news24 article dated 24 August 2022 reported on the scandal of then health MEC, now the Premier of the Limpopo province (Phophi Ramathuba) which allegedly sparked a storm of dissension following the emersion of a video flaunting her speaking to a woman who is a Zimbabwean asylum seeker that their existence becomes a huge burden for the South African government health care system which is budgeted for using the STATSA headcount information of the Limpopo province which considers only the South African citizens. The ineffective control measures which regulates undocumented immigrants create a huge burden on taxpayers as not only do they provide for health care services, nonetheless they also have to provide social grants, congestion in schools, among other pertinent issues which becomes bottle necks to several government citizenry management systems such as prisons, headcounts, and so forth. More recently, Miss Chidimma Adetshina who was Miss South Africa 2024 finalist has been at the center of controversy where most SA citizens were questioning the credibility of her nationality, whereas most Nigerians came to her defence saying the issue of nationality is not as important-arguing that we are all Africans, which this debate was later defused by Home Affairs that Chidimma's state of citizenship is mounted with fraud and dishonesty in that her mother bribed some corrupt officials to gain her citizenship (City press, 2024). Meanwhile, Chirau, Shirinde and McCrindle (2024) also reported on the recent seeking of medical health challenges that was faced by one of the undocumented nationals who is from Zimbabwe who was denied health access.

This patient apparently faced a difficulty from the clinic nursing staff of Nellmapius Pretoria who claimed not to understand him when he speaks whenever he seeks for medical assistance, and he was told that he is wasting citizenry medication. With the difficulty to control health situations of undocumented immigrants the country faces a difficulty of increased deaths of these nationals. Hence, of late, the South African repatriation of body of undocumented nationals is another growing impact which the government faces (Dlulane, 2021). The challenge of undocumented nationals further makes the health system of South Africa overwhelmed as undocumented migrants place reliance on the government to help treat them when confronted by issues stemming from non-communicable as well as communicable diseases, surgeries, including emergency medical services. As of the 21 March 2024, Home Affairs confirmed an adverse event that took place at Lindela repatriation centre, whereby a burgeoning number (n=69) of undocumented foreign nationals who were awaiting deportation escaped from the Lindela Repatriation Centre in Krugersdorp which this incident took place around 11:50 on Sunday, 17 March 2024 (Qoza, 2024). Another important constraint on all the work discussed in this area is the issue of illegal shipping of state medicines to own country to support families and for the purposes of black-market reselling (SAHPRA, 2022). The work of the South African Health Products Regulatory Authority (SAHPRA) offers an improvement on medicinal management through its set guidelines on the importation and exportation of medicine which somewhat regulates public hospitals on the effective issuing of medicine to rightful documented citizenry of the country of South Africa. This paper argues that practices of this nature ridicules the ultimate purpose of the South African Pharmacy Council (SAPC) which is legislatively mandated to protect the public's right to quality pharmaceutical care and the upholding of the good image of the pharmacy profession.

Various authors such as Dugato and Sidoti (2023) highlighted the several struggles faced by different governments, which South Africa is party to that have to do with organised theft of medicines, reselling medicines and medical devices in the black market. These illicit trade in pharmaceutical products may be viewed as small-scale thefts that are committed for personal usage, however, they part of the organised criminal networks which are now increasingly targeting high-priced medical products for the purposes of reintroducing them into the legal supply chain if not selling these medicines on the black market. It is dumb founded that the severity of implications do not only hinge on the value of such stolen goods, but the act also suggests a harmful impacts on citizens' health, legitimate companies, and national health systems. The online evidence of this article included data from some Durban public hospitals which indicated how it is that some of the undocumented nationals pretend to be sick, which is usually about the whole family coming to visit the hospitals for different medical reasons, only to collect all those medicines and ship them to their countries for either relative consumption or for reselling purposes (Niyukuri, 2024). The issue of undocumented foreign nationals has also been considered by recent work of the News24 dated 17 November 2021 that is an article written by Kimberly Mutandiro which reported on the difficulty of accessing health care services by undocumented immigrants in Joburg. This article highlighted a challenge faced by most Joburg hospitals which keep experiencing problems that related to controlling undocumented immigrants who come to seek for medical health services using unverified addresses. These hospitals are reported to lack means to verify patient addresses which makes the medical health care system vulnerable to undocumented nationals, including asylum seekers who tend to exploit the medical facilities for either their own personal benefit or resell such medicines to corrupt South African doctors at a cheaper price. The provisions encapsulated in the Constitution of the Republic of South Africa invokes a Refugees Act, which provides for the rights of refugees and asylum seekers towards having a constitutional rights to dignity and equality, and to access healthcare. This act is riddled by the occurrences and misunderstandings on patient treatments experienced in different public hospitals which requires all the patients to present their residential addresses before receiving any form of medical treatment. Other challenges connected thereto issues of undocumented foreign nationals included new born (s) who were without a trace which also where the Department of Social Welfare and Development noticed an increase of child abandonment during the year 2020 when covid-19 was still very active as some foreign national parents would die while giving birth and the details supplied to the hospital during patient registration were either not a true reflection of the deceased actual place of resident or they did not exist at all (Whittaker and Manderson, 2024).

The Department of International Relations and Cooperation (Nkuma, 2020) reported on the cases of abandoned body corpse (s) that needed repatriation to country of origin which delayed because the family of the deceased could not be traced and in some instances could not afford to send a family member that will supply the correct details of the deceased prior to government releasing the body to the deceased country of origin which costs government millions of Rands to remedy the situation. The issue of selling of counterfeit goods by illegal foreign nationals, according to Legoabe and Seolonyane (2023), has been another dilemma which the South African government have had to deal with for a very long time. Recently, the National Counterfeit Unit police seized over R30 million worth of fake goods which included a burst of illicit drugs which these were cases between Gauteng and Limpopo. This riddles the Counterfeit Goods Act 37 of 1997 which intends "to introduce measures aimed against the trade in counterfeit goods so as to further protect owners of trademarks, copyright, and certain marks under the Merchandise Marks Act 1941, against the unlawful application, to goods, of the subject matter of their respective intellectual property rights and against the release of goods of that nature (called "counterfeit goods") into the channels of commerce". Another article dated 13 March 2022 written by Pumza Fihlani also highlighted a big clash between the South African street vendors and undocumented foreign nationals whereby a self-appointed group of South African vendors from Alexandra who felt marginalised by such undocumented foreign nationals who have turned themselves into street vendors opted to violently push them away through "Operation Dudula". Other gaps have been noticed in the South African education law which has pronounced in Section 29 of the South African Constitution the right to education and defines the positive responsibilities of the state in this respect. This section states that, "Everyone has the right to a basic education, including adult basic education." Subsequently, this has led to an overwhelmed Basic Education schooling systems as the chaos erupts every time beginning of the year where the children of undocumented foreign nationals competes with the South African citizenry children for education (Blessed-Sayah and Griffiths, 2024). The pronouncement which grants "everyone" a right to education appears as a loophole which allows undocumented foreign nationals to temper with the right to education in the basic education system. More burgeoning evidence on using undocumented foreign nationals as cheap labour by corrupt employers is mushrooming in South Africa.

The Sunday star newspaper article by Siyabonga Sithole dated 23 March 2024 has raised an alarm on the planned actions by the minister of Employment and Labour (Thulasi Nxesi) who have decided to take serious legal action against the companies that exploit illegal immigrants by employing them on a low-cost salary scales as a way to save funds for their companies by giving them fines for noncompliance. Meanwhile, the

Employment and Labour's Inspection and Enforcement Services unit has noted with concern the number of undocumented foreign nationals employed in the Wholesale and Retail sector (Sithole, 2024). This practice contravenes the Employment Services Act which demands that an employer have a responsibility to make sure that a person employed in South Africa from a foreign country have the relevant work permit and a certain skill that is not found in the country.

CONCEPTUALISATION AND THEORETICAL FRAMEWORK

This paper used two theoretical frameworks, namely: the World System Theory and Migration Theory. The purpose of using world-systems theory (WST) had to do with explaining the complex economic relationships between South Africa and other African countries with unequal development and wealth distribution which has brought about increased illegal foreign nationality to most SA societies (Peet, 2024). This paper further used the WST to understand the cyclical patterns of expansion and contraction that characterize the world system insofar as undocumented foreign nationality is concerned. Moreover, the paper uses Migration Theory (MT) to view the migration of undocumented foreign nationals as an act of human capital investment, where particular individuals move in their country of origin due to the lack of government benefits which outweighs the cost of living (Galli and Garip, 2024). The aim of using MT approach can be traced in trying to show the reader how it is that both the internal and external migration models can assist the SA government to incorporate the dynamic elements of undocumented foreign nationality into a strategy of enhancing the understanding of wrongful migration decisions which proves to be the primary source of undocumented foreign nationality.

METHODOLOGY Sampling and data collection

This paper used a qualitative method as an effective way to answer questions about experience, meaning and perspective, which most often was from the standpoint of the participant insofar as undocumented foreign nationality is concerned (Kuehn and Rohlfing, 2024). The manuscript therefore set out to use literature review, in the field of foreign nationality, as a strategy to gain an understanding of the existing research and debates relevant to this particular topic, and thereafter presented that knowledge in the form of a written scientific report. The researcher systematically undertook data mining using the reports and publications of the United Nations High Commissioner for Refugees (UNHRC) which is available in this organisation's website as an illustrative instance, that which included the scientific insights from different social scientists who wrote about issues of foreign nationality insofar as Undocumentedness is concerned. Therefore, this paper's qualitative paradigm was used to investigate the challenges brought by undocumented foreign nationality when it comes to employment opportunities, health, education and housing and so forth. This analysis implied gaining critical insights into secondary research from previous scholars in the field of foreign nationality. The researcher further used this desktop paper method as a more practical way for showing the reader what the research community in this field is up to in terms of researching about the state of undocumented foreign nationality which the key aim was to highlight the gaps in existing research.

Purpose

The major objective of this paper was to investigate, using the secondary data in the field of foreign nationality, the fundamental perceptions of undocumented foreign nationality in the current societal standing of South Africa. The approach helped this paper to clarify several aspects of undocumented foreign nationality challenges which the SA government is facing and struggle to resolve. Part of the aim of this paper had to do with the essentiality of (a) identifying what has been written on a subject undocumented foreign nationality; (b) determining the extent to which this specific research area reveals any interpretable trends or patterns; and (c) to use obtaining literature review to place this particular research within the context of existing literature on undocumented foreign nationality.

RESULTS

There has been an increase of undocumented foreign national who faced several frustrations associated with being unable to renew their citizenship documents on time due to delays from the Department of Home Affairs, thereby adding to the high statistics of illegal immigrants. The evidence from this paper implies that quite a number of undocumented foreign nationals are not undocumented by choice but as a result of poor South African foreign nationality record management system which fails to issue renewals on time, including other administrative issues caused by Home Affairs flawed system. Interestingly, the issue of illegal refugee movement which contributes to undocumented nationality was further observed to poverty and dense populations from countries of origin which perpetuate job scarcity and also fuel crime in South Africa. This discovery suggests that most undocumented foreign nationals were labour migrants who are individuals that leave their home countries in search of better employment opportunities, which this act is often driven by factors such as poverty, unemployment, political instability, or discrimination. Simply put, most immigrants in SA moved due to reasons related to family and work. There was also correlation between refugees who arrive in SA as a result of Civil war, famine and drought in countries such as Mozambique, Angola, Rwanda and Zaire and a combination of refugees and illegal aliens entering South Africa and high crime rate. The most striking result to emerge from the data is that South Africa is a preferred destination for various categories of migrants and faces a host of migration-related challenges, including, inter alia: increased prevalence of irregular migration, including

women and unaccompanied minors; inadequate migration management policies and border management processes; rising identity theft and fraudulent marriages which is used as a tactic to unduly gain citizenship.

IMPLICATIONS

These findings have important implications for developing adequate migration management policies geared towards assisting the government to control the scourge of undocumented foreign nationals. Some of the issues emerging from this finding relate specifically to the effects of migration in South Africa which include increased stress on housing, political and social tension, increased costs, overcrowding, transmission of disease, and marginalization of migrants into low status and low paid jobs. Several questions remain unanswered at present. There is abundant room for further progress in determining issues relating to Lesotho illegal migrants in South Africa whose remittances are a major source of national wealth. Particular migrants eventually induce social, economic, and political problems in receiving countries, including 1) increases in the population, with adverse effects on existing social institutions; 2) increases in demand for goods and services; 3) displacement of nationals from occupations in the countryside and in the cities.

CONCLUSION

This research extends our knowledge insofar as the impact of undocumented foreign nationality is concerned to the South African government. Therefore, the value of this paper contribution lies in demonstrating how is effectively controlling the undocumented foreign nationals in South Africa is important for several reasons: 1) the approach enables proper integration into society, 2) prompt facilitation of access to essential services, 3) protection of human rights, 4) the effective management of the economy, and 5) the mitigation of social tensions by ensuring that foreign nationals are contributing legally and transparently to the country; while also allowing the government to accurately track and monitor migration patterns.

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