

# Rethinking the Discourse of *homo sacer* (Sacred Man) in the Context of Vigilante Operation Dudula in South African Low-Income Communities

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## Abstract

The article examines the role played by the anti-immigration militia group Operation Dudula in instigating and propagating black-on-black killings in low-income South African communities. It uses the recent killing of a Zimbabwean migrant, Elvis Nyathi, which stirred up the flames of xenophobia. Supplementary anecdotal evidence is also drawn from 12 in-depth interviews with participants who witnessed the cases of Elvis Nyathi and other victims of violence against foreign nationals. The article argues that Elvis Nyathi's case is an example of how migrants in South African low-income communities are exposed to murderous violence and stripped of political significance. Theoretical insights are gained from Giorgio Agamben's *homo sacer* concept to trace the extent to which Operation Dudula sees undocumented Zimbabwean migrants as persons outside the protections of the law who are to be expunged from mainstream South African society and deprived of all rights. The article lays bare the moralist position taken by this anti-immigrant group that migrants are to be treated as *homo sacer* (sacred man). The article augments Agamben's thoughtful ideas given Aristotle's insight that man is a social animal who cannot live in isolation. The main argument herein is that Operation Dudula does not exist in isolation. South Africans must create relationships with the migrants in their communities.

**Keywords:** Bare life, *Homo sacer*, Migrants, Operation Dudula, Elvis Nyathi, Vigilantism

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## 1 Introduction

The article examines the role played by an anti-immigrant militia group, Operation Dudula, in instigating and propagating black-on-black killings in low-income South African communities. This study aims to unpack how migrants are treated by vigilante groups in different political, geographical, and societal South African contexts. To the researcher's knowledge there is no study that has provided a theoretical framework for the recent black-on-black killings of African immigrants in low-income South African communities. To this effect, this article draws on Giorgio Agamben's discourse of *homo sacer* in explaining the role played by an anti-immigration militia group called Operation Dudula. The following key questions are addressed in this study:

- i. Why do South African anti-immigration militia groups instigate and propagate black-on-black killings in low-income communities?
- ii. What is the role played by Operation Dudula in perpetuating black-to-back killings of African migrants staying in low-income communities?
- iii. How does Giorgio Agamben's discourse of *homo sacer* and bare life explain the recent killings of African immigrants staying in South African low-income communities?
- iv. How can the lives of African migrants in low-income South African communities be improved through the elimination of incidents of anti-immigrant killings?

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This article covers the experiences of documented and undocumented Zimbabwean immigrants in South Africa, the challenges they face, and the factors behind xenophobia and attacks. Theoretical insights are drawn from Giorgio Agamben's concept of *homo sacer*. According to Maphosa and Ntau (2021), the notion of *homo sacer* is derived from ancient Roman law under which the citizen rights of a person who had committed certain kinds of crime or was involved in some form of deviant behavior were withdrawn. Maphosa and Ntau (2021:874) state that Giorgio Agamben developed the concept of *homo sacer* in 1995 to "describe an individual in ancient Roman law, who by having committed a certain kind of crime was excluded from society and had all his/her rights as a citizen withdrawn." The individual has been stripped of the right to live and can be killed by anybody without the killer being deemed a murderer. Borrowing from Downey (2009), a *homo sacer* does not have economic, political, and social rights as well as the right to be protected by the law. In other words, the individual has become a living dead reduced to a bare life (Lemke, 2005). A bare life does not have any political significance and is not protected by the rule of law (Downey, 2009). Agamben's political thought emphasizes the role of power which decides upon the inclusion and exclusion of any individual.

The article draws on different cases in South Africa to demonstrate how undocumented Zimbabwean migrants are in a position that fits Agamben's (1995, 1998) description of *homo sacer*. The accounts and reports discussed in this article show how undocumented Zimbabwean migrants are targets of brutality, violence, and harassment in South Africa.

## 2 Operation Dudula

In South Africa, xenophobia mainly takes the form of hatred and dislike of African immigrants. Many incidents of xenophobic violence are characterized by inhuman treatment and violence. It mostly targets African immigrants in low-income communities. According to Dixon (2015), in 2015 there was a nationwide spike in xenophobic attacks against African immigrants that led several foreign governments to begin repatriating their citizens (Dixon, 2015). Since then, there have been sporadic xenophobic attacks against foreign nationals. The recurrent waves of xenophobia in South Africa are a possible reaction to economic quagmire, high crime rates, unemployment, poverty, economic inequality, and lack of access to property (Chinomona & Maziriri, 2015; Crush & Ramachandran, 2014; Crush & Tawodzera, 2014; Misago, 2011). According to Human Rights Watch (2008), the first wave of xenophobia started in May 2008 in Alexandra Township. The violence claimed 44 lives and more than 20,000 people were displaced across South Africa.

Operation Dudula incited xenophobic sentiments and rhetoric owing to high unemployment and other challenges faced by native South Africans. Operation Dudula was formed in Soweto, a few months after the July 2021 unrest. According to the Foundation for Human Rights (2022), the first major action of Operation Dudula was a clean-up in Soweto in June 2021. It was formally established after July, but may have been active already in June. The clean-up targeted drug dealers and people who illegally occupy government buildings. In an attempt to address crime in low-income communities, the movement targets African migrants and blames them for taking their jobs, and for crime and drug dealing (Fihlani, 2022). It has been widely criticized for harassing immigrants, taking the law into its own hands, and promoting vigilantism and xenophobic sentiments in South Africa. Malinga (2022) alleges that Nhlanhla Lux claims that government ministers supported him and they were working together to make his actions legitimate. However, there is no proof to support this.

The movement has been involved in various anti-migrant campaigns, including the demand to remove migrant children from South African schools. Figure 1 shows Operation Dudula protesting in Parow, Cape Town outside the offices of the Department of Basic Education. The protest was advocating for the prioritization of South African teachers and pupils in public schools. According to the Foundation for Human Rights (2022:2), "Operation Dudula's activities are not only unlawful but are, in fact, in violation of rights guaranteed by both our Constitution and international law. The South African state or individuals involved could be held accountable for these violations before domestic courts or, arguably, international bodies."

Soon after its inception, this anti-immigrant movement was led by Nhlanhla 'Lux' Dlamini. Nkanjeni (2022) states that in July 2022, Nhlanhla Lux cut ties with the anti-immigrant movement owing to different



**Figure 1:** Operation Dudula members protest in Parow, Cape Town.  
Photo: Gallo Images / Brenton Geach (Source: Pongeni, 2023).

opinions on foreign nationals. In an interview with the Hustler Corner (2023), Nhlanhla Lux explained:

*I spearheaded the commercial operation of Dudula. . . The movement was fighting against undocumented foreigners committing crimes in South Africa because they cannot be held accountable. The movement was not subjected to only African foreigners. The people that are suffering the most are African foreigners. They are closest to home. You do not find a Chinese foreigner in Thembisa but you find a Mozambican, Malawian, Zimbabwean, and others. So as soon as you introduce that culture (of hatred to foreigners) and you condition our people to say to hell with foreigners all of them, then you are saying there must be a battle in our townships, fights and we must talk nonsense about each other. . . I have always addressed undocumented foreigners. (Nhlanhla Lux, 2023: Interview with Dj Sbu)*

In the same interview with Hustle Corner (2023), Nhlanhla Lux rejected allegations that he is xenophobic. He argued that the media was sponsored by external forces to make people think that he was xenophobic. He is no longer part of the Soweto Parliament, which is an institution that has attracted various industries to Soweto. According to eNCA (2022), the Soweto Parliament is a community leadership structure that seeks to hold local government accountable.

### 3 Zimbabwean migrants in South Africa

This section discusses the history of Zimbabwean migrants in post-Apartheid South Africa. Zimbabwe has a long history of sending undocumented migrants. According to the United Nations (2014:1), undocumented migrants are people who

*. . . live and work in the shadows, afraid to complain, denied rights and freedoms that we take for granted and disproportionately vulnerable to discrimination and marginalisation . . . more likely to face discrimination, exclusion, exploitation and abuse at all stages of the migration process. They often face prolonged detention or ill-treatment and, in some cases, enslavement,*

*rape or murder. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers and sexual predators, and can easily fall prey to criminal traffickers and smugglers. Rendered vulnerable by their irregular status, these men, women and children are often afraid or unable to seek protection and relief from the authorities in countries of origin, transit or destination.*

The extract above summarizes the life and experience of undocumented migrants in general. The study focused on undocumented Zimbabwean migrants in low-income communities. Literature provided by Mhandu and Ojong (2018) suggests that these migrants migrated to South Africa believing that it is a more 'liveable' space. Upon settling in South Africa, they fail to get documentation because most of them do not fulfil the requirements established by the South Africa Department of Home Affairs. In most cases, undocumented migrants are excluded from mainstream society. For example, Mhandu and Ojong (2017) concluded that undocumented Zimbabwean migrants in the informal sector in Durban face a plethora of challenges which act as barriers to achieving the goal of social development. In other words, the lives of undocumented Zimbabwean migrants in South Africa are characterized by physical and social suffering (Mhandu & Ojong, 2017). As noted by Mhandu and Ojong (2018:11678), these undocumented Zimbabwean migrants in South Africa lack "satisfaction, job security, self-actualization and representation of enjoyment that determines the absolute quality of life in the host country".

Borrowing from Crush and Tawodzera (2011), undocumented migrants are relegated to a space outside the workings of the law. Studies have shown that Zimbabwean migrants in low-income communities in South Africa are targets for xenophobic attacks. These are spaces where violence against foreign nationals is common (Crush & Tawodzera, 2011, 2014; Hungwe & Gelderblom, 2014). Hostility towards Zimbabwean migrants in South Africa is not a new phenomenon. Misago et al. (2015) note that xenophobia in South Africa started in 2008, killing approximately 350 immigrants by 2015. Other scholars are of the view that since 1994, non-South African citizens have been repeatedly attacked in South Africa for unknown reasons (Adjai & Lazaridis, 2013; Misago, 2011; Misago et al., 2015). This shows that attacks against foreign nationals have been a long-standing characteristic of post-apartheid South African society. Vanyoro and Ncube (2018) argue that irrespective of the nature and reasons for the attacks against non-South African citizens, young people are the majority of the perpetrators.

This implies that xenophobia against non-citizens has existed for some time due to several reasons. Literature has shown that xenophobic attacks against African immigrants occur mainly due to grievances over current socio-economic challenges such as unemployment, poverty, income inequality, access to property, and high crime rates (Crush & Tawodzera, 2014; Malinga, 2022; Misago, 2011). In addition, Scholars such as Bhengu (2019), Crush and Tawodzera (2011, 2014), and Maphosa (2011) are of the view that the attacks against foreign nationals in South Africa are caused by hunger, unemployment, lack of job opportunities for local citizens, the craziness of the mob, and negative attitudes towards foreigners. Samatar (2019) notes that what we have in South Africa is criminality and not xenophobia. Neocosmos (2008:587) maintains that "xenophobia must be understood as a political discourse [...] the result of political ideologies and consciousnesses — in brief, political subjectivities — which have been allowed to arise in post-apartheid South Africa, as a result of a politics of fear prevalent in both state and society." The different scholarly views outlined above show that xenophobia in South Africa can be expressed in different forms, either violent or institutional.

## 4 Methodology

This article uses stories published on various online platforms in South Africa as well as 12 in-depth interviews. Online published stories present not just facts but also various opinions. The use of multiple sources of data allowed the researcher to validate and cross-check the key findings. The published cases and in-depth interviews provide an understanding of how Zimbabwean migrants in low-income communities in South Africa are treated as homo sacer. Upon interaction with the witnesses, the researcher was able to identify potential participants of the study. A total of 22 participants who had directly witnessed the case of Elvis

Nyathi or some other victims of violence against foreign nationals were identified. However, 10 refused to be interviewed. Therefore, empirical evidence in this article is from 12 participants, that is, 12 undocumented Zimbabweans. In-depth interviews were conducted with undocumented Zimbabwean migrants who had witnessed the case of Elvis Nyathi.

A non-probability snowball sampling technique was used. The case study of Elvis Nyathi is used as a point of reference to explain how undocumented Zimbabwean migrants are killed without the killer being regarded as a murderer by local communities, relating this to Agamben's discourse of *homo sacer*. The case study is backed up by in-depth interviews conducted in Diepsloot township in Gauteng, South Africa, and other areas where violence against undocumented Zimbabwean migrants had been experienced. Research ethical principles namely voluntary participation, informed consent, anonymity, confidentiality, and potential for harm were observed by the researcher. Pseudonyms are used to protect the identity of participants. This means that the names used in the presentation of findings are not the real names of the participants except Elvis Nyathi. Data were coded manually, and thematic analysis was used.

## 5 Theoretical framework

The article draws on Agamben's discourse to locate Zimbabwean migrants, irrespective of their legal status, in the epistemology of political philosophy. The contribution of the ongoing discussion is that South African democratic principles and political inclusion should be redefined to fully embrace immigrant rights, including the right to life and the right of all humans to be recognized as legal subjects. Agamben's discourse of *bare life* fulcrums on his construal of the origins and magnitude of Aristotle's distinction between two forms of life: *zoe* and *bios*. According to Bagwell (2018:44), the former is a Greek word that refers to animal life and is the root of zoology while the latter insinuates "one's life, course or way of a living, lifetime" in the sense of biography. This article explains *bios* not only as a mode of life or how Zimbabwean migrants live, but it goes further to include the living and livelihoods of the discussed migrants. How Elvis Nyathi's life was taken affects the livelihoods and the kind of life for his surviving family. This presumption finds complementarity in Hannah Arendt's account of *bios* and *zoe*. Arendt's (1995) distinction between the two concepts is informed by the manner of life, lifetime, and the biography of human life.

Also, Elvis Nyathi's case shows how people are dependent on political forces which Arendt (1979) argues cannot be trusted to follow the rule of common sense. According to Arendt (1979:vii), human beings have divided themselves between those who can mobilize the masses and those for "whom powerlessness has become the major experience of their lives". The author further argues that desperate fear and powerlessness have become an experience of the lives of the powerless. This has been the case with undocumented Zimbabwean migrants in low-income communities in South Africa as discussed below.

The article concurs with Aristotle who is of the view that what distinguishes humans from animals is the capacity to speak and engage in political praxis. Also, as the article continues to discuss the *bare life* of Zimbabwean migrants, it draws on Christiaens' (2022:37) critiques to argue that *bare life* is "both too abstract and too individualistic". The author is of the view that Agamben's (1995) philosophical thought of *bare life* neglects the socio-historical context that has produced particular instances of it, overlooking the investigation into how to avoid future experiences of sovereign violence. What this article retains from Agamben's (1995:13) discourse is that the notion of sovereign power relates to the sovereign's capacity to decide on the "human victim that may be killed and not sacrificed". A growing number of Zimbabwean migrants in South Africa are victims or potential victims of this specific type of violence. The case of Elvis Nyathi is just one example. This violence is not unique to Zimbabweans. Other migrants such as Mozambicans and Malawians have also been killed. The creation of illegitimate torture of Zimbabwean migrants in low-income communities by Operation Dudula and the open-ended killings are clear examples of *homo sacer*. The forms of resistance by the vigilante groups to Zimbabwean and other African migrants reduce these migrants to *bare life*.

According to Agamben (1998b), the institutionalization of law is closely related to the exposure to *bare life*. To this effect, his theoretical concepts of *bare life* and *homo sacer* describe how certain human beings are excluded from the political community and not allowed to become full legal subjects.

Taking a cue from Agamben (1998), this article argues that life in modern cities is situated in “zones of indistinction”. This argument finds complementarity in Agamben’s discourse of spatial indistinction, the camp. Agamben (1998:174) locates the camp in such spaces as “the Stadio della Vittoria in Bari to which thousands of Albanian immigrants were consigned in 1991 before being forcibly deported, and the Vélodrome d’Hiver where in 1942 Jews were detained following mass arrests by the French police before being sent to Auschwitz.” Against this backdrop, the camp was originally an exceptional, excluded space, entrenched and surrounded by secrecy.

In its classical sense, Agamben (1998b:169) opines that “the camp is the space that is opened when the state of exception begins to become the rule.” The main argument herein is that whatever happened in the camps is outside of the juridical concept of crime and that the specific legal-political structure in which those events took place is often simply omitted from consideration. Agamben (1998b) argues that the state of exception has become generalized. This shows that the concept of the camp should not be limited to historic geographical instances but it should be understood as an existing condition in urban spaces where citizens appear as *homines sacri* (Agamben, 1998b).

## 6 Operation Dudula: The case study of Elvis Nyathi

The article uses the case of Elvis Nyathi to reconceptualize Agamben’s discourse of *homo sacer* and examine how the victims of Operation Dudula and black-on-black killings propagated by anti-immigration militias are reduced to ‘bare life’ and forced into a ‘state of exception’. In a ‘state of exception’, social laws are no longer deemed applicable. The concluding remarks of the article are that the ‘state of exception’ should be challenged. Taking a cue from Agamben (1998a), Elvis Nyathi was reduced to the state of bare life where killing was no longer seen as a punishable offense by members of the Operation Dudula vigilante group. This is equated to the state of exception, where the social life of a *homo sacer* is positioned as a “life unworthy of being lived” (Agamben, 1998b, p. 138). Other Zimbabwean migrants in Diepsloot who experienced the same situation felt dehumanized and excluded from South African mainstream society.

There are mixed reactions regarding the death of Elvis Nyathi. In a report by Nehanda Radio reporter Ndoro (2022), the Zimbabwean former Foreign Affairs Minister Walter Mzembi castigated the attack and stated that “Elvis is a martyr of a broken society with no empathy until the scourge of hate knocks on our doors! Our popcorn response to his abnormal demise is a national sickness requiring cure, leadership, and spiritual healing.”

### 6.1 Case study of Elvis Nyathi

Elvis Nyathi was a Zimbabwean national, a father of four, aged 43. Elvis worked as a gardener in Fourways residential hub in Sandton, north of Johannesburg, South Africa. He was killed by members of Operation Dudula in Diepsloot, South Africa, on the 7th of April 2022. Elvis was a victim of the indiscriminate raids by the vigilante group called Operation Dudula, which targets Zimbabweans and other African foreign nationals. The Operation Dudula vigilante group came door-to-door demanding to see the identity documents of all foreign nationals to check their legal status (Bosch, 2022). Knowing he had no papers, Elvis Nyathi hid until members of the vigilante group found him. He tried to run away but they caught him and started beating him, stoned and burnt him to death. According to Luvhengo (2022), Elvis Nyathi was assaulted, stoned, and burnt by members of Operation Dudula from Diepsloot, north of Johannesburg, who embarked on alleged acts of vigilantism attacking Zimbabwean nationals. Sihkakhane (2022:1) concurs and adds that “Nyathi was beaten, stoned, and burnt to death by about 30 Operation Dudula members who went around Diepsloot asking migrants to show their documents that permit them to be in South Africa legally.”

Bosch (2022) comments that Elvis’s brother, Godknows Nyathi, was shocked, devastated, and confused by the incident. Operation Dudula nevertheless denies its alleged connection to xenophobic motives. Many have described it as a xenophobic vigilante organization whose goal is to expel immigrants. Luvhengo (2022) opines that South African citizens accused Zimbabwean nationals, particularly those staying in low-income communities, of committing crimes. The South African citizens took the law into their own hands and

victimized Zimbabwean nationals, allegedly robbed some of their belongings, and demanded money from their relatives to release those they held in captivity (Luvhengo, 2022; Sikhakhane, 2022).

At the service held on 14 April, Tshuma sat, crying at her husband's coffin. The community did not see anything wrong in taking away the life of Nyathi. Instead, struggle songs were sung by community members while others burnt Elvis Nyathi with tires. Police Minister Bheki Cele and national police commissioner Gen Sehlahle Fannie Masemola visited the crime scene (Bosch, 2022). They condemned the attack and provided assurances that the law would deal with the perpetrators and that the situation was "not out of control". An additional more than 100 police officers were deployed in Diepsloot to maintain calm and restore order. According to Luvhengo (2022:1), "On 13 May 2022, 7 men were charged with murder, attempted murder, kidnapping, four counts of assault with intent to inflict grievous bodily harm, robbery with aggravating circumstances, and extortion." They were each granted bail of R3,000. Wicks (2022:1) reports that "the application was opposed by the State but the court ultimately found it had not been able to provide substantial evidence that proves the role each accused played." The case was postponed for further investigation.

## 7 Zimbabwean migrants in low-income communities as *homo sacer*

As the article continues to examine the life of Zimbabwean migrants as an exemplar of *homo sacer*, it examines the levels of inclusion and exclusion of Zimbabwean migrants in low-income communities. The article argues that some migrants in low-income communities are excluded from some essential services including healthcare facilities. The extracts below provide similar perspectives of how Zimbabwean migrants in low-income communities are being ill-treated and excluded from accessing healthcare facilities.

*The death of Mr. Nyathi shocked the whole world. This is just a reflection of how much we are ill-treated by our fellow South Africans, and the government is not saying anything to protect us. We no longer feel protected even in public spaces. Access to healthcare services is not a big problem. In my community today, we have Zimbabwean migrants who were prevented from accessing public clinics simply because they are foreigners. With no source of income, we are forced to become destitute [In-depth interview, Participant 3: August 2022].*

*Last month my cousin was chased away from a local clinic by these people from Operation Dudula. They accuse us of misusing their resources including healthcare services. This is not the first time things like this have happened. There are several cases where foreigners were victimized by these so-called Dudula. They forget that we are one African and must treat each other with respect. We are all humans, and no one has the right to take away someone's life. This is unacceptable. I have also heard that they now want to go into schools and chase away all foreign students. I do not know how true this is but that is what everyone is saying. This is very sad indeed. Recently in Limpopo and Joburg, there have been cases where foreign migrants were chased away from the hospital. My church fellow was also a victim [In-depth interview, Participant 6: August 2022].*

*The problem is that as Zimbabweans we are blamed for all the challenges faced by South Africa. Look at what is going on in the health system. Zimbabweans are being chased away from accessing health services. What we have seen in our community regarding the death of Elvis Nyathi is just an example, but Zimbabweans and other foreign nationals are being killed now and then and the police are not doing anything. In most cases, the police know the perpetrators, but nothing is done. I think the government should do something, otherwise, we are all going to perish. The situation is very tense, especially in our local communities [In-depth interview, Participant 8: September 2022].*

The above narratives show how Zimbabwean migrants in low-income communities are killed as a result of Operation Dudula and xenophobic attacks. The position taken by Operation Dudula to prevent them from accessing medical services is an example of how Zimbabwean migrants are reduced to a position of bare life.



According to Darling (2009:652), the ability to strip migrants of healthcare facilities and financial support “is thus predicated upon an Agambenian sovereign act of abandonment”. The theoretical explanation to this narrative is that the sovereign act of abandonment is a key relation to Agamben’s notion of bare life. Being reduced to a position of bare life means that Zimbabwean migrants in low-income communities live in isolation with no institutional support. This concurs with the views of Lewis (2007:6), who argues that migrants who are reduced to bare life are “made destitute” of life by the act of abandonment.

A closer introspection into the views of participants 3, 6 and 8 shows that the victimization of Zimbabwean migrants in low-income communities in South Africa is not new. Also, it is not something unique to South Africa only. Victimization of migrants has also happened in countries such as Britain. This is confirmed by a study conducted by Darling (2009:649) on migrant asylum seekers in Britain. The study concluded that migrant asylum seekers in Britain are seen as ‘the outsider par excellence’. This position is often associated with fear of victimization, and repression. In South Africa, it is often linked to xenophobic attacks as in the case of Elvis Nyathi.

The narratives of participants 3 and 6 are in unison with a report by Mthethwa (2023), who found that the attack on foreign migrants by Operation Dudula has made it dangerous for them to access public health. According to Mthethwa (2023), several migrants had been attacked at the Jeepe clinic in Johannesburg.



**Figure 2:** Members of Operation Dudula chasing away foreign nationals from a health facility in Johannesburg. Photo by Gallo Images/Sharon Seretlo:(Source: Mthethwa, 2023).

Figure 2 shows members of Operation Dudula protesting foreign nationals in front of a health facility in Johannesburg, South Africa. Mthethwa (2023) states that foreign nationals at Jeppe Clinic, Kalafong Hospital in Atteridgeville, and Hilbrow Community Health Centre in the Johannesburg city center were chased away from health facilities by Operation Dudula. Also, the Limpopo Health Member of the Executive Council (MEC), Dr. Phophi Ramathuba, publicly chased Zimbabwean migrants from accessing the health care system arguing that they are causing overcrowding and strain on the South African health system. The evidence provided herein confirms the narratives of participants 3 and 6. Against this backdrop, the article argues that Zimbabwean migrants have been made scapegoats for challenges bedeviling the South African health care system. They are blamed for the public health crisis in the country. As such, the article argues that there should be a collective voice against health xenophobia.

Access to health care services is a basic right that all migrants are entitled to, irrespective of their



legal status. This is a universal principle that exists beyond individual nations. Ramji-Nogales (2014:721) provides a complementary analysis arguing that “discrimination or exclusion based on immigration status — in particular, on the lack of lawful status — is not considered acceptable under domestic and international law.” The undocumented Zimbabwean migrants’ identity as non-South Africans makes them susceptible to what Crush and Tawodzera (2011, 2014) call ‘medical xenophobia’. According to these authors, medical xenophobia involves hostility toward migrants and negative practices of South African citizens, health sector professionals, and employers toward non-South Africans. Thus, what is depicted in the narratives of participants 3, 6 and 8 is ‘medical xenophobia’. The attack against Zimbabwean migrants in public hospitals violates the basic principle of human rights. The violation of human rights was also reiterated by participants 1 and 4:

*I think our rights are being violated. Since we are undocumented migrants, remember we also have a right to live and the right to have access to hospitals and medical facilities. It is our right to access medical facilities; no one should prevent us from doing so. Why is the South African government ignoring this yet they are aware that access to medical services is a right for everyone? [In-depth interview, Participant 1: August 2022].*

*The Dudula want to appear as if they do not know that access to medical facilities is a right for everyone. I once told one of the South African guys who are active in this movement and I was almost attacked for standing up for my right. Access to medical facilities is a right and no one can dispute that. So what we have witnessed in some parts of Johannesburg is not right at all. I heard that Zimbabweans are now being chased away from the hospital. I am not sure if this is correct but if yes then that is wrong. What I only know is that foreigners are now required to pay in public hospitals while local citizens enjoy free medical benefits in the same public hospitals [In-depth interview, Participant 4: August 2022].*

The narrative of Participant 4 shows some evidence of institutional xenophobia where foreign nationals pay for medical services while South African citizens do not pay for the same services in the same public hospital. This narrative shows that healthcare providers use policies that contradict the South Africa Health Act, which states that state-run primary healthcare facilities must provide free care to everyone (including undocumented migrants), except for people covered by private medical aid schemes (Vanyoro, 2022). Evidence from Participant 4 shows that undocumented migrants are required to pay the whole cost of medical services in healthcare facilities run by the state. This confirms a report by Chinsamy (2022:1), who states:

*Unlike the anti-migrant protesters outside hospitals and clinics, who use physical intimidation to turn migrants away, some Gauteng hospitals use policies that directly contradict the National Health Act, which stipulates free healthcare for pregnant women and children under six. . . . At some of the main tertiary hospitals in Tshwane, non-South African pregnant and lactating women, and children under six, regularly face challenges in accessing care if they lack the appropriate documentation and are unable to pay the higher fees for the services they need. At the root of these rejections is a document known as “Circular 27 of 2020”, issued by the Gauteng Department of Health, which contains ambiguous wording around the “scheduling of fees for hospital services”.*

The extract above shows an example of medical xenophobia of the health sector towards migrants. In addition to violence against the undocumented, which is propagated by vigilante militia groups such as Operation Dudula, the extract above shows considerable evidence that some hospitals harbor xenophobic attitudes. It shows how xenophobia manifests itself within public healthcare institutions.

## 8 Discussion

Building on the case study of Elvis Nyathi, the article sees Operation Dudula creating new forms of politics and a model of international relations that rejects the liberal effort to assimilate migrants into mainstream

South African society. There are clear limitations to societal and political philosophical representations of Zimbabwean migrants in low-income societies. The moralist position taken by Operation Dudula on fellow African migrants is an obvious political risk in the struggles for secular citizenship and appears anachronistic to the modern cosmopolitan mind. Different forms of violence against African migrants have been experienced for some time in South Africa, and this is a project attempting to deprive migrants of political representation. Against this backdrop, we argue that the assimilation of Zimbabwean migrants in the Republic of South Africa should be centered on the humanistic notion of a human whose life is valued and respected regardless of legal status. Such lines of thought are backed up by Owens (2009), who opines that people must not be reduced to bare life, nor should human beings be treated like animals without political freedom, as in the case of Elvis Nyathi.

Agamben's discourse of *homo sacer*, as applied in the context of this study, intersects juridical power and physical power constituted as a 'state of exception'. Agamben's focus is on modern concentration camps where inmates are living as political subjects declared dead and placed in the lingering state of 'bare life'. Equally so, anecdotal evidence provided in this article shows that undocumented migrants in low-income communities in South Africa are stripped of political rights and reduced to 'bare life' in the sense of Butler's (2004:67) notion of "suspended life and suspended death". A closer introspection into Elvis Nyathi's case shows an example of how undocumented migrants in low-income communities lack institutional and political support due to their legal status. South Africa does have laws that guarantee rights to immigrants, but these legal rights are ignored in many cases. The rights only exist on paper but not in real life. Low-income communities often take the law into their own hands. This culture needs to change.

Many Zimbabwean migrants in South Africa are victims of xenophobic violence. The case of Elvis Nyathi is just one example. This victimization of Zimbabwean migrants in low-income communities in South Africa is not new. Nor is it unique to South Africa. In the case of South Africa, the attacks on foreign migrants by Operation Dudula have made it dangerous for them to access public health. As such, the article advocates for a rights-based approach to be applied to undocumented migrants in low-income communities in South Africa. Drawing on Giorgio Agamben's political theory and his discourse of bare life, the article opines that non-governmental organizations (NGOs) and community-based organizations (CBOs) must increasingly align themselves with a rights-based approach and act out of universal human rights norms to address xenophobic challenges bedeviling low-income communities in South Africa.

## 9 Conclusion

The article has addressed the relevance of Agamben's work to the discourse of undocumented migrants. It examined the role played by an anti-immigrant militia group, Operation Dudula, in instigating and propagating black-on-black killings in low-income South African communities. Theoretical insights are drawn from Giorgio Agamben's *homo sacer* concept to trace the extent to which anti-immigrant groups see undocumented Zimbabwean migrants as persons to be expunged from South African mainstream society and deprived of all rights, including the right to work and live in the host country. The creation of illegitimate torture of Zimbabwean migrants in low-income communities by Operation Dudula and the open-ended killings are clear examples of *homo sacer*. The threat of violence by the vigilante groups reduces Zimbabwean and other African migrants to an existence of bare life.

The main idea herein is to unpack how migrants are treated by vigilante groups in different political, geographical, and societal South African contexts. The contribution of the ongoing discussion is that South Africa's commitment to democracy and political inclusion should embrace more immigrant rights, including the right to life, and the right of all humans to be recognized as legal subjects.

Evidence from the cases discussed in this article and the key findings of the participants confirm that many and perhaps most of the South African population in low-income communities do not care about human rights and want to deprive the immigrants of all rights and legal protection. It even raises the question of whether South Africa needs an autocratic ruler who enforces human rights against the will of the people. Although this is a contradiction of democracy, the case of South Africa demonstrates the importance of a political elite with a value system that is compatible with a just and harmonious society,

including the endorsement and enforcement of human rights. Furthermore, this value system has to “trickle down” to the masses. Education is key to this process. As such, the first thing to do is look at the school system, see to what extent it affects young people’s thinking and their moral values, and what kind of values children acquire in school.

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