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Mulopo Lakika

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Between Informality and (Il)legality: Congolese Migrants' Survival Mechanisms in South Africa

By
DOSTIN MULOPO LAKIKA

Drawing on interviews with Congolese in Johannesburg, this research explains some of the impact of the discriminatory immigration laws in South Africa that expose refugees to various forms of precarity. I show that precarity becomes a driving force for these people to engage in illegal or unauthorized activities, and I analyze how Congolese refugees attempt to obtain legal status and adapt to intensified discriminatory immigration policies and practices. I argue that the criminalization of migration creates a paradox: it subjects migrants to increased vulnerability due to restrictive policies, but it also empowers them to assert their agency in response. Yet due to the generally illegal nature of their chosen activities, migrants are exposed to more exploitation, perpetuating their criminalization and vulnerability. I demonstrate the adverse outcomes of government antimigrant policies that push people into precarity without necessarily endorsing the illegal activities migrants may employ.

Keywords: restrictive policies; criminalization of migration; precarity; (il)legality; agency; work

In this article, I discuss how Congolese migrants, including refugees and undocumented migrants, navigate an immigration environment in South Africa that is often hostile to them. Discrimination against migrants is widespread, irrespective of their documentation status. While not all Congolese migrants in

Dostin Mulopo Lakika is a postdoctoral fellow at the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand, Johannesburg. He studies militarization, violence, and memories; (ir)regular migration, resilience, and (mental) health among refugees; as well as food and illness. Lakika is also a guest lecturer and a reviewer for various peer-reviewed academic journals.

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Correspondence: dostinlakika24@gmail.com

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South Africa are undocumented, their status can shift rapidly due to the short validity of many residency permits and the challenges associated with renewal. For that reason, I take a wider view on migrants with a precarious status, understood as "individuals who lack a regular immigration or residence status or, having a conditional or temporary status, are vulnerable to the loss of that status. They are therefore deprived of or run the risk of losing their most basic social rights and access to services" (Homberger et al. 2022, 96). My analysis thus sheds light on individual survival strategies in the face of circumstances exacerbated by fluctuating legal statuses between documented and undocumented and the ensuing precarity this situation creates.

I explore the ways in which these migrants grapple with discriminatory legal constructs, such as "illegality" or "irregularity," two terms used here synonymously, and demonstrate in particular how Congolese migrants react to often unfair stigmatizations as criminals who seemingly do not belong and who have wronged officials and local residents alike. I also rely on the terms "illegality" and "irregularity" to encompass not only (un)documented migrants but also the activities they engage in, which are sometimes labeled as illegal or unauthorized because they operate outside the boundaries of established state laws and regulations. My findings reveal that the restrictive definitions of legality and the documentation required to be deemed a legal migrant often lead to the exclusion of Congolese migrants from the provision of basic socioeconomic rights in South Africa (Alfaro-Velcamp 2017; Amit and Kriger 2014; Khan and Lee 2018; Landau and Freemantle 2010; Vigneswaran 2008). Being forced to live in the shadows by criminalization and marginalization and being exposed to precarity, some Congolese migrants, but by no means all, adapt to these constraints by adopting illegal practices as means for survival.

In this article, I contend that the criminalization of migration in South Africa engenders a self-perpetuating paradox. Restrictive immigration policies increase migrants' vulnerability, pushing them towards survival strategies that are often illegal (Bacon 2008; Palidda 2005; Vecchio and Gerard 2015; Vuilleumier, this volume). While these practices allow migrants to assert their agency and secure their livelihoods, they also unwittingly reinforce the cycle of criminalization. This dynamic not only exacerbates their marginalization but also entrenches their status as outlaws, creating a perpetual loop where survival strategies and criminalization feed into each other. The article will shed light on these dynamics by closely examining Congolese migrants' engagement with survival strategies in South Africa. Throughout my explanations, I remain cautious not to romanticize these survival strategies. I acknowledge the often ambiguous implications, including the exacerbation of social inequalities and the creation of resentment toward successful migrants.

Data Collection and Methodological Reflections

This work is grounded in two rounds of fieldwork with the Congolese community in South Africa.[1] I carried out the first fieldwork as part of my PhD work from

July 2015 to January 2016. During this fieldwork, I conducted interviews with 21 former soldiers living as refugees in South Africa about their military memories of violence. I also used participant observation during social gatherings involving former soldiers, where I saw how military identity was portrayed through their everyday actions and interactions with other community members. In August 2021, I returned to the Congolese community to do fieldwork for my postdoctoral research at the African Centre for Migration & Society (ACMS) for a research project on protracted displacement, conflict, gendered violence, and mental health.

The COVID-19 pandemic affected my work in various ways. During the lockdown, several interviews had to be conducted through digital channels. Moreover, the COVID-19 pandemic exacerbated the criminalization and marginalization of migrants in South Africa. Initially, pandemic-related shutdowns created obstacles for asylum claims or permit extensions, and government aid, such as the stress relief grant, was restricted to holders of Section 24 permits (refugees) and permanent residents. Legal actions later compelled the government to extend this aid to include asylum seekers with Section 22 permits and other migrants (Moyo, Sebba, and Zanker 2021; Moyo and Zanker 2022). Furthermore, stringent lockdown measures were employed to target foreign nationals engaged in unauthorized employment (particularly in the security sector) and also those lacking proper documentation. During the initial lockdown, the government deported 1,376 individuals to neighboring countries, including 705 Zimbabweans, 488 Mozambicans, 178 Basotho, and five from Eswatini (Moyo, Sebba, and Zanker 2021, 9). Many other migrants were apprehended and held in custody. Police officers seized the opportunity to subject migrants to harassment, extortion, and at times, forced closures of their businesses on the grounds that only South African citizens were allowed to operate businesses during the pandemic.

When the South African government relaxed the mobility restrictions, I conducted as many in-person interviews as possible while complying with the COVID-19 protocols. In total, I conducted 83 interviews with Congolese asylum seekers and refugees (44 males and 39 females) in Lingala and French. The interviews focused on the precarity of their immigration status and refugees' agency in a hostile environment.

My identity as a Congolese researcher and permanent resident in South Africa helped me to establish social networks with some community leaders. Employing snowball sampling, my initial interviews were conducted with individuals in close proximity to me; they subsequently referred me to additional respondents. Certain individuals unfamiliar to me exhibited reluctance or discomfort in sharing details about their living conditions, survival strategies, and personal experiences. This reluctance can be explained variously by their understandable lack of trust considering the sensitivity of the topic addressed, their unspoken desire for financial compensation in exchange for their participation, or their unwillingness to endanger their profitable undertakings.

Talking about certain illegal activities, such as people smuggling, also raised concerns about my own safety and theirs. Ethical research practices were paramount to safeguard my well-being and that of the interlocutors. In approaching

some people, I was met with reluctance and verbal attacks, as I was suspected to be an agent looking to expose them to law enforcement agencies. My attempt to clarify that I was an academic researcher, distinct from law enforcement or intelligence agencies, proved at times insufficient to persuade them. As a result, the majority of those who divulged details about smuggling were clients of smugglers, not the smugglers themselves.

Prior to commencing the interviews, I obtained verbal consent from participants for both the interview itself and the voice recording. The choice to opt for verbal consent was influenced by the significant concerns the interlocutors voiced regarding their safety, potential social stigma, and the fear of being identified. In accordance with ethical guidelines, I assigned pseudonyms to all participants to protect their identities.

I analyzed data using thematic analysis (Braun and Clarke 2006). Various themes emerged from the interviews, including challenges related to accessing asylum, residency permits, health care, and employment. However, gaining legal residence was by far the most crucial issue raised by most informants. The absence of proper documentation created significant obstacles for Congolese migrants, who already faced a hostile environment, and hindered their ability to access the social services entitled to those deemed legal in the country. To survive in this exclusionary environment, migrants resorted to crafting various strategies, some of which further exposed them to criminalization. These strategies included engaging in unauthorized business activities and planning to leave South Africa in pursuit of a better life in a third country—a plan that often involved smuggling.

South Africa's Migration Policies

South Africa's migration landscape is complex, with asylum seekers and refugees often at the forefront. These groups encounter numerous challenges, including social exclusion, discrimination, and the pervasive issue of xenophobia (Alfaro-Velcamp 2017).

Historically, the Department of Home Affairs (DHA) and the South African Police Service (SAPS) have consistently portrayed asylum seekers as individuals who have entered the country illegally, effectively framing them as criminals. This portrayal has perpetuated a recurring cycle of criminalization and contributes to the transformation of public perceptions concerning asylum seekers. Furthermore, the media has played a significant role in reinforcing this criminalization narrative. With impending elections in South Africa, political leaders vying for power have at times engaged in inflammatory rhetoric, potentially exacerbating the scapegoating of migrants and exposing them to an elevated risk of xenophobic attack. These hostilities are expressed through actions like *Dudula* (IsiZulu term meaning "force out" or "knock down") operations, led by South African community organizations. These campaigns use physical violence to restrict presumed nonnationals from accessing vital services, such as health care

facilities. Furthermore, this criminalization is manifested through frequent police raids, resulting in the arrest of migrants and the confiscation of their belongings. Over the years, South Africa has gained a reputation as one of the world's leading countries for deporting immigrants (Wilhelm-Solomon 2015).

From the outset, it is crucial to clarify that the key South African immigration legislation following apartheid includes the Refugees Act of 1998 and the Immigration Act of 2002. While South Africa is open to skilled professionals, it has restrictive policies for low-skilled foreigners, who make up most of the undocumented migrants. The Immigration Act of 2002 contributed to an already restrictive regime: by not regulating the influx of low-skilled migrants, it inadvertently encouraged irregular migration (Moyo and Botha 2022, 78).

The South African government issues various types of permits to foreign nationals; first among them is the asylum-seeker permit, which was designated as the Section 22 permit in the Refugee Act No. 130 of 1998. It has a six-month validity that allows temporary residence in South Africa pending a final decision on the asylum application. The Department of Home Affairs can extend this permit for an additional six months during the status determination process. However, in practice, many individuals remain on this permit for years without having their asylum applications determined.

Refugee status is conferred upon those granted asylum status and protection under the 1951 United Nations Convention and pursuant to Section 24 of Refugee Act No. 130 of 1998. This permit can be extended after four years and, theoretically, may lead to permanent residency if maintained for 10 years. Finally, permanent residency is applicable to foreigners residing in South Africa based on their refugee status, in accordance with Section 27(c) of the Refugees Act, for a minimum of 10 years or under work permits for at least five years. In theory, permanent residency permits unlimited living and working rights in South Africa and includes unrestricted employment, entrepreneurial activities, property ownership, education, and engagement in all activities permitted to citizens, except voting in South African elections.

While, on paper, South African immigration policy appears to advocate for freedom of movement and the seeking of asylum, its practical implementation reveals clear forms of criminalization and discrimination. South Africa's refugee management policies are marred by several amendments, which indicate the government's intention to restrict the rights and freedoms of people seeking asylum in South Africa (Carciotto 2021; Khan and Lee 2018). For instance, the amendment Act of 2017 discourages asylum seekers from entering the country by restricting their rights to work, study, and protection (Carciotto 2021). Furthermore, the closure of refugee reception centers and their relocation to border areas have created obstacles for individuals applying for asylum or trying to extend their existing permit. Notably, there is a discernible intention to curtail asylum seekers' rights, particularly in accessing health care and other services, even for those with valid permits. The Refugee Act has undergone frequent amendments aimed at limiting the rights of its beneficiaries to access services within the country. For instance, the minister of home affairs recently announced the development of a white paper aimed at reviewing the conditions for granting

refugee status. There are few to no policy provisions to facilitate the urban integration of migrants. Neither the government nor the UN High Commissioner for Refugees (UNHCR) offers assistance to refugees and asylum seekers (Belvedere 2007). Those unable to provide for themselves depend on nongovernmental organizations (NGOs) for support. Congolese refugees respond to their precarious situation by participating in various types of businesses, which may sometimes be irregular, unauthorized, or outright illegal. These livelihood activities are further discussed in the next section.

Congolese Migrants in South Africa

The Democratic Republic of Congo (DRC) has experienced consistent outmigration since the political turmoil of the 1960s, which led to decades of violence and civil war and prompted an estimated 800,000 Congolese to seek refuge abroad (Gusman 2018). Many fled to South Africa, a magnet for refugees and asylum seekers, largely due to its refugee policy, which—at least on paper—allows for freedom of movement and the right to livelihood (Carciotto 2021; Kenge 2017; Mulu and Mbanza 2021).

The migration trends between the DRC and South Africa remain inadequately documented (Steinberg 2005), but it is estimated that around 60,000 Congolese citizens have sought asylum in South Africa (Alfaro-Velcamp 2017), often relying on smugglers for their journey (Tshimpaka and Inaka 2020). In the country, many of these people remain in a protracted state of uncertainty as they attempt to obtain or renew their legal permits. Overpriced rents push them into overcrowded and poorly maintained properties. Many Congolese have found homes in the peri-urban suburbs of Johannesburg, such as Yeoville, a neighborhood heavily populated by Congolese migrants engaged in petty trading. While many possess valuable skills, a lack of documentation often impedes access to formal employment, thus forcing many into casual jobs, such as security work, the service industry, or the retail of goods imported from the DRC. Due to the lack of long-term prospects, many Congolese consider South Africa a country of transit, but as I show later, their dreams of relocating to a Global North country are often impeded.

With more than 184,200 pending asylum claims from people hailing from many different African countries, including Congo (Schockaert et al. 2020, 28), the South African asylum system has been criticized for poor management and the violation of basic rights. These official numbers are most likely too low: there are doubtlessly many more cases of undocumented migrants in South Africa. The South African government has consistently argued that many people seeking asylum lack legitimate claims and thus denounces them as economic migrants who manipulate the asylum system.

Furthermore, the ongoing backlog in processing asylum claims reflects inadequacies within the Department of Home Affairs and fosters an environment conducive to corruption, in which many officials are implicated. With the COVID-19 outbreak in 2020, the system was shut down, and all those who

entered the country during the pandemic were not registered and thus remained undocumented. The system resumed operations after the lifting of the COVID-19 lockdown measures, although it relies primarily on online procedures. Many people who have applied for asylum or the renewal of their residence permits have been left waiting for extended periods of time.

Refugees in South Africa have frequently expressed that they experience a heightened level of stress about renewing their legal permits. Many attempting to extend their permits have encountered situations where their applications were denied or the validity of their four-year permits was reduced to just a few months. Despite clear indications—even on the department's noticeboards—that individuals granted refugee status should not be subjected to a second interview during permit renewal, officials from the Department of Home Affairs often disregard this stipulation and subject individuals seeking renewals to additional interviews (Alfaro-Velcamp 2017; Alfaro-Velcamp et al. 2017). This has given rise to various forms of corruption and abuse within the system. Also, in some cases, individuals have been arrested while attempting to renew their permits and later detained (Amit 2010, 2022). In certain instances, refugees seeking permit extensions received "must leave the country" orders without clear grounds provided (Klaaren and Ramji 2017). Even possessing refugee status, which typically has a validity of four years, does not guarantee legal status within the country, as it can be revoked or confiscated at any time. Jane, a Congolese woman in her late 40s who had been living in South Africa since 2002, described the challenges of extending her asylum-seeker permit.

> In any case for the documentation, I cry morning, noon, and night, and I am not the only one in this situation. I pray that I can get the right paper. I don't have good permit until today. I lost the money for the transport. I gave money to the Home Affairs officers to get the permit. They [would] only give me a three-month or six-month permit. I still have the asylum-seeker permit. Recently, I went to Home Affairs, and they confiscated my document on the grounds that my file had never been found since I arrived in this country in 2002. They asked me to start afresh with a new file. I had to give R1,700 to this officer to help me. I cried because I didn't have that money. The officer told me that, without money, he would not assist me. I finally gave him R1,000, and he gave me three months' extension. When these months expired, I went back to Home Affairs, and they asked me for R2,000 to renew my permit. As I had no money, they refused to help me, and I never went back until COVID-19 started. I did the online renewal for myself and my child. My paper was renewed but my child's paper has not been renewed until now. They only returned us to the three-month or six-month permits. They don't give us a permanent solution regarding the residence permits. Despite the new online renewal system, we are not out of the woods yet.[2]

The picture that emerges from this quotation is of a precarious life in a context where, even though immigration laws may not explicitly criminalize migrants, they face daunting bureaucratic challenges. Jane points to the need of a "good permit" because her asylum-seeker permit offers less legal protection and hinders access to basic rights (Dhupelia-Mesthrie 2014, 20).

Initially, there were six Refugee Reception Offices (RROs) in the major urban centers of Johannesburg, Pretoria, Cape Town, Durban, and Port Elizabeth, and

in Musina (along the border with Zimbabwe). However, the government's plan to locate all the refugee reception facilities at the borders led to the closure of RROs in Johannesburg, Durban, Port Elizabeth, and Cape Town starting in 2010; recently, the court found this unlawful and ordered the home affairs department to reopen them. In response, the government now imposes designated locations where refugees must apply for or extend their legal permits. These designated places bear a resemblance to detention centers. The closure of the RROs contributed to the increase of undocumented asylum seekers.

The current situation forces many asylum seekers to extend their legal identity every three to six months (Carciotto 2021). This "protracted temporariness" hampers their likelihood of getting and keeping employment, particularly in the formal sector (Carciotto 2021, 9). Losing one's job and income inflicts considerable emotional, psychological, and financial hardship. Mado, a Congolese woman in her 40s, provided extensive insight into the difficulties associated with acquiring or renewing a valid permit:

> If you lose your paper and you go to report it at Home Affairs, they will require a R1,000 fine to print a new one for you. As a foreigner in this country, I am not working, but you are not helping me to get a job, [and] you are asking [of] me a fine of R1,000. Where will I find it? If you tell them you don't have money, no one will listen to you.[3]

Similar hardship was experienced by Bora, a qualified nurse from the DRC with refugee status, who was employed in a public hospital in Johannesburg. When her refugee status expired, Bora spent several months away from work attempting to extend her permit. Although she eventually succeeded in renewing her permit, her employer, unable to accommodate her prolonged absence, had already hired another individual to fill her position. She explained,

> I'm a professional nurse who used to work in a public hospital. When my refugee status expired, they suspended my contract and told me to first renew my permit. Unfortunately, I struggled to extend my permit. I spent more than a month looking to extend my permit. I finally managed to give a bribe to get the permit renewed. When I went back to work with the extended permit, I was told that, due to the prolonged absence, they [had] offered my job to someone else. Since that time, I never got another job in the public health care hospital.[4]

Numerous studies have documented the labyrinthine process of obtaining asylum or extending refugee status in South Africa (Amit and Kriger 2014; Khan and Lee 2018; Klaaren and Ramji 2017; Landau and Freemantle 2010). Those who are unable to apply for or extend asylum permits in specific cities, either due to the closure of refugee reception centers or their inaccessibility, or who lack the financial means to engage in corrupt practices with officials to expedite the process, face the risk of arrest, detention, or deportation.

"Forging Paths"

The subsequent sections of this study delve deeply into the economic survival strategies of the Congolese diaspora in South Africa. Through a series of

compelling personal accounts, I explore the distinct economic niches that Congolese migrants have carved out for themselves in a climate where they face persistent unemployment and systemic exclusion. These stories bring to light the myriad barriers that Congolese individuals face in their pursuit of a livelihood—barriers that often leave them little choice but to engage in activities such as document forgery, unauthorized entrepreneurial endeavors, and other illicit activities.

This study highlights the paradoxical effects of stringent anti-immigrant policies: while such policies are designed to regulate and limit the activities of migrants, they often drive them to devise alternative survival strategies. These strategies, though resourceful and indicative of the migrants' agency, can perpetuate a cycle of criminalization. This investigation aligns with Paret and Gleeson's (2016) assertion that the precariousness inherent in migrants' lives is twofold: it propels them into the shadows of irregularity while simultaneously binding them in a web of vulnerability (282). The lived experiences of the Congolese in South Africa exemplify a broader trend observed among many migrant communities worldwide (see also Achilli, this volume; Vuilleumier, this volume). It is a trend where the pressure to survive collides with the pressure to conform to often inaccessible legal and social norms, forcing a constant renegotiation of boundaries between legality and survival.

Private security companies in South Africa

The Institute for Security Studies reports that about 11 percent of South African households rely on a private security service (Davis 2019). The high rate of criminality and the lack of trust in the South African police justify the growth of the industry. The Private Security Industry Regulatory Authority (PSIRA), which was established by Act No. 56 of 2001, has the mission of regulating "the private security industry and to exercise effective control over the practice of security service providers in the public and national interest and in the interest of the industry itself" (Taljaard 2008, 84). PSIRA reported that in the 2017–2018 financial year, there were 8,916 registered private security companies operating across the country, with approximately 498,435 private security officers employed. In comparison, the estimated number of police officers stood at approximately 190,000 (Davis 2019). However, PSIRA's regulations exclude noncitizens from being employed in the industry (Carciotto 2021, 7).

A significant portion of skilled migrants face considerable challenges in obtaining the necessary documentation for registration with PSIRA. Consequently, many of these migrants find employment with unauthorized security firms (Bosch and Maritz 2011). Operating covertly, these companies hire primarily undocumented migrants. Employees in these firms endure poor conditions, including underpayment, excessively long working hours, a lack of social protections, and inadequate training (Diphoorn 2016; Jinnah 2010).

The registration process requires that candidates first undergo basic training in guarding and then obtain the certificate that allows them to be employed in the security industry. To secure a low-paying job in this industry, refugees who

are unable to gather these documents create counterfeit or fake documents that appear to be genuine and legitimate. John, a Congolese participant in his 50s employed as a security guard, described his method for obtaining the necessary documents:

> We use the *ngunda*[5] of the duplicating paper. This document has no value. Even to look for work in guarding or other sectors, we make false papers to be accepted. If we don't do this, it is difficult to work in this country.[6]

The supporting evidence for this statement can be seen in the fact that in 2014, for instance, out of the initial 110,000 security officers who sought the new certificate, PSIRA detected 9,000 instances of fraudulent registration. Given the ongoing expansion of the private security sector in South Africa, it can be presumed that these numbers have increased substantially since then.

Another Congolese participant, Moses, who was about 40 years old, even believed that the illegal practice of duplicating documents to access employment was something permissible to Congolese migrants.

> Congolese citizens are allowed to use false documents to access work—for example, producing false documents to allow people to get work, especially in security companies or selling medicines from the Congo that are prohibited here.[7]

Here, the word "allow" denotes the necessity for specific documents in a security company, including the security officer board certificate, security training certificate, and PSIRA registration certificate—all of which must be printed on special paper typically provided by officials from these institutions in exchange for a bribe. Moses employed the term "allow" to rationalize the creation of counterfeit documents, which serve as a means for refugees to enhance their sense of empowerment and influence in a country where they are unwelcome.

Petty trading

In South Africa, the number of precarious migrants engaged in informal activities is significant. Specifically, they constitute an estimated 20 percent of the informal sector (Crush, Chikanda, and Skinner 2015). Since they are often denied access to legal employment and social assistance, they feel forced "to choose between working illegally, resorting to crime or being left destitute" (Carciotto 2021, 11).

Many create their own businesses in the informal sector, which encompasses small stores and street-based ventures like crafting, sewing, operating hair salons and hair-braiding services, and selling handmade jewelry (Tshishonga 2015). Activities that form the livelihood of Congolese refugees in Johannesburg are mainly car-guarding, security-guarding, hairdressing or styling, and operating small retail shops and small restaurants known as *malewa* (Inaka 2014). The migrant street traders in the Johannesburg Central Business District (CBD) face challenging working conditions, low incomes, and extremely long hours (Lalthapersad-Pillay 2004). A substantial portion generates income through the import of goods from their countries of origin for subsequent resale in South

Africa (Crush, Williams, and Peberdy 2005, 15). On multiple occasions, migrants, especially street vendors, have been targets of police raids, during which their merchandise is seized.

According to Pako, a Congolese refugee in his 50s who used to run a business, legal activities cannot sustain people's lives in the long run. He argued that, in order to sustain themselves, migrants use their stalls to also sell illegal items that are much more lucrative than the authorized range of items.

> I did the small business, but it didn't work. . . . The shops that you see here are not making a profit. The people you see running the shops for five years, 10 years, 20 years without going bankrupt have what is called "under cover," something that they sell in that shop that you don't see, which are prohibited things. A lot of people buy stolen goods from warehouses and sell them cheaper than the big stores that are famous. I would say that in South Africa, apartheid is very present on the economic side. As people, especially foreigners, are denied opportunities, they develop illegal means for their survival.[8]

A recent report by the Parliamentary Monitoring Group (PMG; 2019) on irregular immigration in South African cities singled out migrants as being responsible for selling expired and counterfeit goods and engaging in unfair transaction competition by the sale of products at lower prices. As an illustration, the PMG (2019) reported that counterfeit goods estimated at a worth of R40 million were seized by the SAPS during four raids jointly conducted by different law enforcement agencies on nine different properties within the Johannesburg CBD.

These cases illuminate the challenges faced by migrants as they endeavor to adapt to a hostile environment. The hurdles they encounter in accessing opportunities in the host country, driven by an anti-immigrant sentiment, compel them to resort to various survival strategies. However, some of the activities in which migrants engage are unauthorized and lead to their subsequent criminalization. The difficulties migrants encounter in accessing essential services within the host country create opportunities for corruption, making them targets of exploitation by immigration officials and law enforcement agencies.

Frappeurs

The term *frappeur* originates from the French and translates to "hitter." It typically has a negative undertone. *Frappeurs* frequently operate within networks engaging in various unauthorized activities such as check fraud (commonly referred to as *chekula*, with its perpetrators called *chekuleurs*), counterfeiting, and scamming, among others. The rise in these activities appears inextricably linked to the adverse living conditions migrants endure in South Africa. The challenges faced in securing proper documentation not only hinder their opportunities for legal employment but also constrain their movement. Due to South Africa's stringent migration policies and limited opportunities, many migrants aspire to migrate to more prosperous regions like Europe or the Americas. Congolese citizens often describe the process of emigrating from South Africa to

a European nation as challenging, metaphorically referring to South Africa as "the pit of the python—*libulu nguma* or aquarium," signifying the difficulty of departure (Inaka 2014, 57).

Such aspirations explain the emergence of smugglers who provide services for leaving the country under counterfeit documents. Thus, the terms *frappeur* and "smuggler" can be used interchangeably to describe individuals who facilitate illegal migrations. *Frappeurs* are not restricted to one sector; their operations span various domains. When aiding individuals in migrating to third countries, they often navigate and liaise with relevant authorities to expedite processes. Feza, a Congolese woman, provided an example of their capabilities without delving into specific details:

> All I know is that I didn't travel with a Congolese passport. They [*frappeurs*] modified someone else's passport with my picture. I presented myself under the name on that passport. I won't disclose its country of origin, but it was counterfeit.[9]

Anthony, a former Congolese soldier, offered insights into the operations of *frappeurs*:

> In South Africa, they have a term for them: *frappeurs*. They might engage in bank fraud, produce counterfeit checks, or misappropriate identity documents. Their network is extensive, even encompassing certain officials. While some get apprehended, many are released due to their affiliations with corrupt law enforcement personnel.[10]

This sentiment highlights *frappeurs*' connections within the immigration and law enforcement sectors, which can lead to their swift release when detained. Moke, another Congolese national, opined that *frappeurs* were among the few migrants who achieved tangible success in South Africa:

> Life is challenging here. Only the *frappeurs* seem to break through, resorting to illegal means like producing counterfeit checks. They flaunt their success, but for those trying to stay within legal boundaries, life in South Africa remains difficult.[11]

Contrary to the general impression, not all *frappeurs* operate with impunity. Some face legal repercussions and, when detained, often exhaust their financial reserves on legal proceedings. The effectiveness of a *frappeur* largely hinges on their connections within the immigration department. These insiders can furnish various documents that simplify legal departures from South Africa (United Nations Office on Drugs and Crime [UNODC] 2011). During my research, I interacted with Mambo, an ex-soldier who claimed to assist people in emigrating securely. However, multiple sources hinted at his fraudulent activities. Mambo described his operations as follows:

> I consider myself an influential intermediary. I liaise effectively with the home affairs department and the UNHCR. I understand the nuances of facilitating migration to developed nations. All I seek is a nominal fee for my services.[12]

Despite his claims, numerous accounts indicated that Mambo frequently failed to deliver on his promises, taking money without assisting his clients. The

perception of a *frappeur* can swing between approval and condemnation, contingent on the success of their operations. Successful endeavors earn them titles like *tindikeur* or *passeur* (literally "push-men" or "smugglers"). In contrast, failed operations see them branded as deceitful.

The consequences of failed operations by *frappeurs* are often severe for their clients. These individuals not only lose financial resources but also face bureaucratic hurdles, pushing them further into poverty. A significant number of migrants who invest in *frappeurs* without achieving their migration goals are profoundly disillusioned. The financial loss, coupled with unfulfilled aspirations, can take a toll on their psychological well-being. Pauline's account provides a glimpse into this ordeal:

> I sought to relocate. I entrusted a considerable amount to the *frappeurs*, hoping they'd facilitate my departure. They betrayed my trust, taking my money and leaving me in a dire state, which I believe contributed to my stroke.[13]

This narrative accentuates the compounded challenges Congolese refugees face in South Africa. Both smugglers and their clients, already marginalized, further undergo criminalization due to their unauthorized activities.

Conclusion

The primary focus of this article is the examination of the criminalization of Congolese asylum seekers and refugees residing in South Africa. The analysis explores the meanings that specific forms of agency take in criminal(ized) contexts and provides insights into how crime provides new spheres of possibilities and action, even as migrants contend with exploitation, constraints, or dependency.

The data reveal the prevailing condition of Congolese migrants: they are compelled to operate within the realm of illegality as a means of survival. The imperative to survive drives them toward increasing engagement in (il)legalized activities, which include counterfeiting documents, selling unauthorized or prohibited goods, and participating in *frappeur* activities aimed at facilitating unauthorized border crossings.

Their agency arises from the ways in which migrants' exclusion is mediated through a system where asylum permits can oscillate between documented and undocumented, regular and irregular, legal and illegal. Nonetheless, migrants' agency is an inversion of this vulnerability. Inasmuch as the possession of a precarious legal permit leads to forms of criminalization and exclusion, migrants imagine alternative ways to access employment in the security industry with fraudulent documents, menial trading involving stolen or prohibited goods, and smuggling.

The primary objective of this article is not to commend the migrants for engaging in activities officially designated as illegal by the South African government. Rather, it aims to elucidate the strategies employed by these individuals to

harness and leverage their precarious circumstances, which are exacerbated by the government's exclusionary policies. By preventing them from succumbing entirely to marginalization, criminalization, or victimization by the state, these strategies enable these people to assert a degree of agency within their circumstances.

At the same time, it is essential to acknowledge that certain South African citizens and public officials have played a pivotal role in either facilitating or perpetuating these illicit practices. Their involvement underscores the complex dynamics at play within the broader sociopolitical landscape and warrants further examination.

The escalation of control measures, as manifested by policing strategies in South Africa, places migrants in a vulnerable position, subjecting them to exploitation by both the state and the wider society. Consequently, migrants' agency remains precarious, liable to collapse at any moment. Their reliance on South African citizens to acquire fraudulent documentation for their business operations may, when successful, engender the resentment of the local population, who may perceive migrants as having access to resources unavailable to citizens.

Despite their efforts to mobilize agency in response to the challenges of integration, the persistent enforcement of repressive immigration policies leaves Congolese refugees susceptible to criminalization, marginalization, victimization, and abuse. During police raids conducted in migrant-heavy areas of Johannesburg, for example, foreign nationals often find themselves targeted by law enforcement officers, who confiscate their goods on the grounds that these vendors have been engaging in the sale of stolen or prohibited merchandise. While migrants' agency serves as a coping mechanism in the face of these criminalizing immigration policies, it also exposes them to heightened risks of violence, threats, and further exploitation.

Notes

1. Both studies received ethical approval from the University of Witwatersrand Research Ethics Committee (nonmedical) under protocol numbers R14/49 for the current study on mental health and H15/05/17 for the PhD thesis.

2. Interview with Jane, a Congolese asylum seeker in her late 40s, Johannesburg, November 2021.

3. Interview with Mado, a Congolese asylum seeker in her 40s, Johannesburg, November 2021.

4. Interview with Bora, a Congolese nurse with refugee status, Johannesburg, November 2021.

5. *Ngunda* is a Lingala term that means "asylum-seeker permit" or "refugee status."

6. Interview with John, a Congolese asylum seeker in his 50s working as a security guard, Johannesburg, November 2021.

7. Interview with Moses, a Congolese refugee about 40 years old, Johannesburg, November 2021.

8. Interview with Pako, a Congolese refugee in his 50s, Johannesburg, November 2021.

9. Interview with Feza, a Congolese woman, Johannesburg, September 2021.

10. Interview with Anthony, a Congolese former soldier, Johannesburg, November 2021.

11. Interview with Moke, a Congolese national, Johannesburg, November 2021.

12. Interview with Mambo, a former soldier and alleged *frappeur*, Johannesburg, January 2016.

13. Interview with Pauline, a migrant, Johannesburg, November 2021.

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