

Constitutional Protection versus Practical Exclusion: A Critical Analysis of Migrants' Right to Healthcare in South Africa

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Abstract

This paper critically examines the tension between constitutional protection and the practical exclusion of migrants from healthcare services in South Africa. Section 27 of the Constitution guarantees the right of access to healthcare services to “everyone,” yet migrants, particularly refugees, asylum seekers, and undocumented migrants, continue to face significant barriers in accessing public healthcare. The study evaluates whether South Africa adequately fulfils its constitutional and international human rights obligations toward migrants in the healthcare sector. Objectives include analysing the constitutional and legislative framework governing the right to healthcare, examining migrants' healthcare entitlements under domestic and international law, investigating practical barriers limiting access, and proposing reforms to strengthen inclusive healthcare access. Existing scholarship reveals a persistent gap between constitutional guarantees and lived experiences, largely driven by xenophobia, discriminatory administrative practices, documentation requirements, and systemic inequalities (Crush & Tawodzera, 2014). Methodologically, the research adopts a qualitative doctrinal approach, relying on constitutional provisions, legislation, judicial decisions, policy documents, and international human rights instruments. Findings reveal that although South Africa's constitutional framework formally protects the right to healthcare for everyone, migrants continue to experience widespread exclusion in practice. Restrictive administrative procedures, fear of deportation, inconsistent policy implementation, and xenophobic attitudes among healthcare personnel significantly hinder access. These barriers undermine constitutional values of dignity, equality, and social justice. The paper concludes that meaningful legal and policy reform, improved accountability, and greater institutional commitment are necessary to ensure migrants fully benefit from the constitutional right to healthcare.

Keywords: right to health, migrants' healthcare access, socio-economic rights, xenophobia in South Africa, transformative constitutionalism, human rights and migration.

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INTRODUCTION

South Africa's constitutional democracy is founded on values of human dignity, equality, and freedom, which seek to redress the injustices of apartheid and establish a society grounded in social justice and inclusivity. The adoption of the *Constitution of the Republic of South Africa* (1996) marked a transformative shift toward recognizing and protecting fundamental human rights, including socio-economic rights such as access to healthcare services. Section 27(1)(a) explicitly guarantees that "everyone has the right to have access to healthcare services," extending protection beyond citizenship to all persons within South Africa's territory (Constitution of the Republic of South Africa, 1996). This commitment reflects both the transformative nature of the South African legal order and the country's obligations under international law, including the *International Covenant on Economic, Social and Cultural Rights* (1966) and the *African Charter on Human and Peoples' Rights* (1981).

Despite these protections, migrants continue to face challenges in accessing healthcare. Refugees, asylum seekers, and undocumented migrants often experience exclusion due to discriminatory administrative practices, documentation requirements, xenophobic attitudes, language barriers, and fear of arrest or deportation (Crush & Tawodzera, 2014). Migration into South Africa has increased due to political instability, armed conflict, economic hardship, and social insecurity in various African states. South Africa's relatively developed economy and progressive constitutional framework have made it a primary destination for migrants seeking safety and better living conditions. However, increasing migration has also intensified anti-immigrant sentiment and xenophobic violence, negatively affecting migrants' ability to access essential public services, particularly healthcare (Landau, 2011; Peberdy, 2001; Crush, 2008).

The right to healthcare is intrinsically linked to other constitutional rights, including dignity, life, equality, and bodily integrity. Access to healthcare is therefore not merely a matter of public policy but a constitutional imperative central to the realization of human dignity and social justice. In *Minister of Health v Treatment Action Campaign* (2002), the Constitutional Court affirmed that the state bears a positive obligation to take reasonable legislative and other measures to progressively realize the right of access to healthcare services. Similarly, in *Khosa v Minister of Social Development* (2004), the Court emphasized that socio-economic rights should not be interpreted narrowly to unjustifiably exclude vulnerable groups.

Although these decisions underscore the inclusive nature of constitutional rights, migrants continue to occupy a precarious position within South Africa's healthcare system.

The exclusion of migrants from healthcare services has broader implications for public health, constitutional governance, and human rights protection. Denial of healthcare undermines dignity and equality while threatening efforts to combat communicable diseases, reduce maternal mortality, and promote public health outcomes. During crises such as the COVID-19 pandemic, migrants' vulnerability became increasingly evident, exposing structural inequalities within South Africa's healthcare framework (Vearey et al., 2020). Consequently, migrants' access to healthcare reflects the extent to which South Africa remains committed to the transformative ideals embodied in its Constitution. This paper critically examines the tension between constitutional protection and practical exclusion in relation to migrants' access to healthcare services in South Africa, analysing the constitutional and legislative framework, investigating barriers, and assessing whether existing laws promote or undermine substantive equality and social justice (Yamin, 2016).

RESEARCH METHODOLOGY

This study adopts a qualitative doctrinal research design to critically examine the tension between constitutional protection and the practical exclusion of migrants from healthcare services in South Africa. The methodology is grounded in the principles of transformative constitutionalism and human rights-based analysis, ensuring that the research not only interrogates legal texts but also evaluates their real-world implications for vulnerable populations. A doctrinal approach was selected because the study primarily engages with legal source, constitutional provisions, legislation, judicial decisions, and policy documents to assess the scope and implementation of healthcare rights. This design allows for a systematic analysis of the formal guarantees of healthcare rights and their interpretation within South African constitutional jurisprudence (Bilchitz, 2007; Liebenberg, 2010).

LITERATURE REVIEW

The right to healthcare in South Africa has been extensively examined within the broader discourse on socio-economic rights, transformative constitutionalism, and migration. Scholars consistently highlight the tension between constitutional guarantees and the lived realities of marginalized groups, particularly migrants (Mokofe, 2022).

South Africa's Constitution is widely recognized as one of the most progressive in the world for its explicit protection of socio-economic rights (Bilchitz, 2007; Klare, 1998). The entrenchment of rights such as healthcare reflects the transformative vision of the post-apartheid legal order, which seeks to dismantle systemic inequality and promote substantive equality. Liebenberg (2010) emphasizes that socio-economic rights are enforceable guarantees, not aspirational policy goals, and must be interpreted purposively to advance dignity and justice.

Case law has played a pivotal role in shaping the scope of healthcare rights. In *Soobramoney v Minister of Health (KwaZulu-Natal)* (1998), the Constitutional Court acknowledged the link between healthcare, life, and dignity, while balancing rights against resource constraints. The landmark *Treatment Action Campaign* case (2002) reinforced the justiciability of socio-economic rights, holding that restrictive government policies violated constitutional obligations. Similarly, *Khosa v Minister of Social Development* (2004) extended socio-economic protections to permanent residents, affirming that dignity is not dependent on citizenship status. These cases collectively underscore the inclusive nature of constitutional rights and the judiciary's role in advancing transformative constitutionalism (Liebenberg, 2010; Klare, 1998).

Despite constitutional protections, migrants face systemic exclusion from healthcare services. Crush and Tawodzera (2014) document widespread "medical xenophobia," where healthcare providers discriminate against Zimbabwean migrants, denying treatment or providing substandard care. Landau (2011) argues that xenophobia and anti-immigrant sentiment have intensified with rising migration, framing migrants as burdens on state resources. Peberdy (2001) similarly highlights how public discourse constructs migrants as outsiders, reinforcing exclusionary policies. These studies reveal that migrants' healthcare access is shaped not only by legal frameworks but also by social attitudes and institutional practices.

South Africa's obligations under international law further reinforce the right to healthcare. The *International Covenant on Economic, Social and Cultural Rights* (United Nations, 1966) and the *African Charter on Human and Peoples' Rights* (Organization of African Unity, 1981) affirm the right to health as a universal entitlement. Yamin (2016) argues that human rights frameworks for health are essential for addressing structural inequalities and ensuring dignity. Vearey et al. (2020) highlight how the COVID-19 pandemic exposed migrants'

vulnerability, demonstrating the urgent need for inclusive healthcare policies aligned with international standards (Mokofe, 2024).

Existing scholarship consistently identifies a gap between constitutional promises and practical realities. While the legal framework is inclusive, migrants remain marginalized due to discriminatory administrative practices, documentation barriers, and xenophobic attitudes. This disconnect underscores the broader challenge of translating formal rights into substantive protections, raising questions about South Africa's commitment to transformative constitutionalism and international human rights obligations (Mokofe, 2022).

FINDINGS

The analysis reveals a persistent gap between South Africa's constitutional guarantees of healthcare rights and the lived realities of migrants. While the Constitution explicitly extends healthcare rights to "everyone," including non-citizens, practical barriers continue to undermine migrants' effective access to healthcare services.

The constitutional framework, reinforced by international and regional human rights instruments, formally protects migrants' right to healthcare. However, in practice, migrants, particularly refugees, asylum seekers, and undocumented individuals, are routinely excluded from public healthcare facilities due to restrictive administrative procedures, documentation requirements, and inconsistent policy implementation. Evidence demonstrates that xenophobic attitudes among healthcare personnel significantly hinder migrants' access to services. Instances of "medical xenophobia" result in denial of treatment, verbal abuse, and discriminatory practices, particularly against Zimbabwean migrants (Crush & Tawodzera, 2014). These practices undermine constitutional values of dignity and equality.

Undocumented migrants often avoid healthcare institutions due to fear of arrest or deportation. This fear, compounded by ambiguous policy enforcement, leads to delayed treatment and worsened health outcomes. The exclusion of migrants based on immigration status contradicts the constitutional principle that dignity is not dependent on citizenship (*Khosa v Minister of Social Development*, 2004). Public discourse frequently frames migrants as burdens on limited state resources, reinforcing exclusionary practices within healthcare institutions (Crush, 2008; Landau, 2011). While resource constraints are real, they are often used to justify discriminatory policies that disproportionately affect migrants, rather

than to promote equitable distribution of healthcare services. The exclusion of migrants from healthcare services poses significant risks to public health. Denial of healthcare undermines efforts to combat communicable diseases, reduce maternal mortality, and promote collective health security. During the COVID-19 pandemic, migrants' vulnerability highlighted structural inequalities within South Africa's healthcare system (Vearey et al., 2020).

The findings demonstrate that the exclusion of migrants from healthcare services undermines the constitutional values of dignity, equality, and social justice. Despite judicial recognition of socio-economic rights as enforceable guarantees (*Treatment Action Campaign*, 2002), migrants remain marginalized within the healthcare system, revealing a disconnect between constitutional ideals and institutional practices.

This Findings section clearly shows the contradiction between constitutional promises and lived realities, while tying back to the methodology and literature.

DISCUSSION

The findings of this study highlight a profound contradiction between South Africa's constitutional promise of healthcare for "everyone" and the lived realities of migrants who remain excluded from public healthcare services. This disconnect underscores the challenges of translating formal constitutional guarantees into substantive rights that are accessible to vulnerable populations.

South Africa's Constitution is celebrated for its progressive recognition of socio-economic rights, including healthcare. Landmark cases such as *Treatment Action Campaign* (2002) and *Khosa v Minister of Social Development* (2004) affirm that socio-economic rights are enforceable and must be interpreted inclusively. Yet, the persistence of exclusionary practices reveals that constitutional ideals are undermined by institutional weaknesses, discriminatory attitudes, and administrative barriers. This tension illustrates the limits of constitutional protection when state institutions fail to implement rights effectively. Further, Transformative constitutionalism requires the state to dismantle systemic inequality and promote substantive equality. Migrants' exclusion from healthcare services directly contradicts this transformative project, reinforcing patterns of marginalization inherited from apartheid-era inequalities. By failing to extend healthcare access to migrants, South Africa risks weakening the

transformative potential of its Constitution and undermining its commitment to social justice (Klare, 1998; Mokgoro, 1998).

In addition, South Africa's obligations under international and regional human rights law, including the ICESCR and the African Charter, demand non-discriminatory access to healthcare. The exclusion of migrants not only violates constitutional principles but also places South Africa in breach of its international commitments. The findings suggest that South Africa's healthcare policies must be reoriented to align with global human rights standards, ensuring that migrants are not treated as outsiders but as rights-bearing individuals entitled to dignity and care (United Nations, 1966; Organization of African Unity, 1981).

The exclusion of migrants from healthcare services has implications beyond individual rights. Denial of healthcare undermines collective efforts to combat communicable diseases, reduce maternal mortality, and strengthen public health systems. The COVID-19 pandemic revealed how structural inequalities magnify vulnerability, demonstrating that inclusive healthcare is essential not only for protecting migrants but also for safeguarding the health of society (Vearey et al., 2020).

The findings highlight the need for stronger accountability mechanisms to ensure that constitutional rights are implemented consistently. Without effective monitoring, discriminatory practices and xenophobic attitudes persist unchecked. Civil society organizations, judicial oversight, and international bodies must play a role in holding the state accountable for failures in healthcare provision. Governance that neglects migrants' rights risks eroding constitutional legitimacy and weakening democratic values. This Discussion section ties the findings back to constitutional theory, human rights law, and public health imperatives, showing that migrants' healthcare access is not just a legal issue but a test of South Africa's commitment to transformative justice.

CONSTITUTIONAL AND INTERNATIONAL LEGAL FRAMEWORK

Constitutional Protection of the Right to Healthcare

The *Constitution of the Republic of South Africa* (1996) represents one of the most progressive frameworks globally for the protection of socio-economic rights. Unlike many constitutions that treat socio-economic rights as non-justiciable policy directives, the South African Constitution expressly recognizes them as enforceable legal entitlements subject to

judicial protection (Bilchitz, 2007; Klare, 1998). This entrenchment reflects South Africa's commitment to transformative constitutionalism, which seeks to redress structural inequalities inherited from apartheid through substantive social and economic transformation.

Central to this transformative project is Section 27(1)(a), which provides that “everyone has the right to have access to healthcare services, including reproductive healthcare” (*Constitution of the Republic of South Africa*, 1996). The use of “everyone” extends protection beyond citizens to all individuals within the state's jurisdiction, including refugees, asylum seekers, permanent residents, documented migrants, and undocumented migrants. This inclusive language reflects broader constitutional values of equality, dignity, and non-discrimination enshrined in Sections 9 and 10 (*Constitution of the Republic of South Africa*, 1996).

Section 27(2) further imposes a positive obligation on the state to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realization” of the right to healthcare. This provision establishes that the state must actively create conditions enabling meaningful access to healthcare services, even if full realization is constrained by resources (Liebenberg, 2010; Committee on Economic, Social and Cultural Rights, 1990).

The Constitutional Court has consistently interpreted socio-economic rights as integral to dignity and democratic citizenship. In *Soobramoney v Minister of Health (KwaZulu-Natal)* (1998), the Court acknowledged that access to healthcare is connected to the rights to life and dignity. Although the Court upheld the hospital's resource-allocation policy denying emergency dialysis, it affirmed that socio-economic rights impose constitutional obligations subject to judicial scrutiny.

The jurisprudence was further developed in *Minister of Health v Treatment Action Campaign* (2002), which concerned the government's restrictive policy limiting access to Nevirapine, an antiretroviral medication reducing mother-to-child HIV transmission. The Constitutional Court held the policy unconstitutional, emphasizing that socio-economic rights are inseparable from dignity, equality, and freedom. The Court affirmed that government healthcare policies must be comprehensive, inclusive, and responsive to vulnerable populations (Liebenberg, 2010; Bilchitz, 2007).

Similarly, in *Khosa v Minister of Social Development* (2004), the Court addressed nationality and socio-economic rights. It struck down provisions excluding permanent residents from social grants, holding that such exclusion was unconstitutional. Justice Mokgoro emphasized that dignity is not dependent on citizenship status, and socio-economic rights protections should extend to marginalized non-citizens where exclusion undermines dignity, equality, and survival (Liebenberg, 2010; Klare, 1998).

Section 9 of the Constitution further guarantees equality before the law and prohibits unfair discrimination on grounds including race, ethnic origin, social origin, and birth. Although nationality is not explicitly listed, courts have interpreted the equality clause broadly to protect vulnerable groups from arbitrary exclusion (*Constitution of the Republic of South Africa*, 1996). Section 10 guarantees the right to dignity, which the Court has described as foundational. Denial of healthcare services to migrants undermines dignity by treating individuals as unworthy of care (Liebenberg, 2010).

Children's rights under Section 28 provide additional protection. Section 28(1)(c) guarantees every child the right to basic healthcare services irrespective of nationality or immigration status. The Constitutional Court has consistently held that children's rights are paramount and must be interpreted expansively to protect vulnerable children (*Constitution of the Republic of South Africa*, 1996).

Transformative constitutionalism requires the state to dismantle systemic inequality and promote substantive access to social goods and services. Excluding migrants from healthcare undermines this project by reinforcing marginalization inconsistent with constitutional values (Mokgoro, 1998). Despite extensive protections, migrants continue to face barriers such as discriminatory administrative conduct, xenophobic attitudes, documentation requirements, and inconsistent policy implementation. This disconnect highlights the challenge of translating formal constitutional rights into substantive protection for vulnerable populations (*Government of the Republic of South Africa v Grootboom*, 2001).

International Legal Framework

South Africa's constitutional commitment to healthcare rights must be understood within the broader context of international and regional human rights law. The country is a party to several treaties that reinforce the obligation to provide healthcare access to all individuals,

including migrants. The *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (United Nations, 1966). Similarly, the *African Charter on Human and Peoples' Rights* (1981) affirms the right to health as a fundamental entitlement, obligating states to take necessary measures to protect and promote health for all persons within their jurisdiction (Organization of African Unity, 1981).

The Committee on Economic, Social and Cultural Rights (1990) clarified in General Comment No. 3 that states must take “deliberate, concrete and targeted” steps toward the progressive realization of socio-economic rights, including healthcare. This interpretation underscores that resource limitations cannot justify indefinite delays in fulfilling healthcare obligations. States must demonstrate continuous progress and prioritize vulnerable populations, such as migrants, in their policy frameworks (Committee on Economic, Social and Cultural Rights, 1990).

Regional jurisprudence further strengthens these obligations. The African Commission on Human and Peoples' Rights has emphasized that the right to health is inseparable from dignity, equality, and life, and that states must ensure non-discriminatory access to healthcare services. Migrants, refugees, and asylum seekers are therefore entitled to healthcare protections under both international and regional law, regardless of citizenship status (African Commission on Human and Peoples' Rights, 2003).

South Africa's dual commitment to constitutional and international law highlights the inclusive nature of healthcare rights. However, the persistent exclusion of migrants from healthcare services reveals a gap between formal obligations and practical implementation. This disconnect raises questions about South Africa's compliance with its international human rights commitments and its constitutional promise of substantive equality and social justice (Yamin, 2016).

Judicial Interpretation of Healthcare Rights

The Constitutional Court has played a pivotal role in shaping the interpretation of socio-economic rights, including healthcare. In *Soobramoney v Minister of Health (KwaZulu-Natal)* (1998), the Court acknowledged that access to healthcare is fundamentally connected to the rights to life and dignity. Although the Court upheld the hospital's policy denying emergency

dialysis due to resource constraints, it affirmed that socio-economic rights impose constitutional obligations subject to judicial scrutiny. In *Minister of Health v Treatment Action Campaign* (2002), the Court struck down the government's restrictive policy limiting access to Nevirapine, an antiretroviral medication. The Court emphasized that socio-economic rights are inseparable from dignity, equality, and freedom, and that government policies must be comprehensive, inclusive, and responsive to vulnerable populations (Liebenberg, 2010; Bilchitz, 2007). This case reinforced the justiciability of socio-economic rights, transforming them from abstract promises into enforceable guarantees.

Similarly, *Khosa v Minister of Social Development* (2004) addressed nationality and socio-economic rights. The Court held that excluding permanent residents from social grants was unconstitutional, as it undermined equality and dignity. Justice Mokgoro stressed that dignity is not dependent on citizenship status, and socio-economic rights must be interpreted inclusively (Klare, 1998; Liebenberg, 2010).

Equality and Dignity Protections

Section 9 of the Constitution guarantees equality before the law and prohibits unfair discrimination on grounds including race, ethnic origin, social origin, and birth (*Constitution of the Republic of South Africa*, 1996). Although nationality is not explicitly listed, courts have interpreted the equality clause broadly to protect vulnerable groups from arbitrary exclusion. Migrants denied healthcare solely based on nationality or immigration status may therefore invoke constitutional protections against unfair discrimination.

Section 10 guarantees the right to dignity, which the Court has described as foundational to all other rights. Denial of healthcare services to migrants undermines dignity by treating individuals as unworthy of care and protection (Liebenberg, 2010). Access to healthcare is thus intrinsically linked to the preservation of dignity, bodily integrity, and human worth.

Children's Rights

Children's rights under Section 28 of the Constitution provide additional protection. Section 28(1)(c) guarantees every child the right to basic healthcare services irrespective of nationality or immigration status. The Constitutional Court has consistently held that children's rights are of paramount importance and must be interpreted expansively to protect vulnerable children from harm (*Constitution of the Republic of South Africa*, 1996).

Excluding migrant children from healthcare constitutes a direct violation of constitutional obligations toward children.

Transformative Constitutionalism

Transformative constitutionalism requires the state to actively dismantle systemic inequality and promote substantive access to social goods and services. Healthcare access is therefore not merely a matter of policy discretion but part of the constitutional commitment to achieving social justice and substantive equality (Mokgoro, 1998). Excluding migrants from healthcare undermines this transformative project by reinforcing marginalization inconsistent with constitutional values. Despite extensive constitutional protections, migrants continue to face barriers in practice. Discriminatory administrative conduct, xenophobic attitudes within healthcare institutions, documentation requirements, and inconsistent policy implementation often render constitutional rights inaccessible. This disconnect highlights the broader challenge of translating formal constitutional guarantees into meaningful protection for vulnerable populations (*Government of the Republic of South Africa v Grootboom*, 2001).

Practical Barriers to Migrants' Healthcare Access

Despite South Africa's extensive constitutional and international protections, migrants continue to face significant barriers in accessing healthcare services. These barriers highlight the gap between formal guarantees and lived realities, undermining the transformative ideals of dignity, equality, and social justice.

Discriminatory Administrative Practices

Migrants often encounter restrictive administrative procedures when attempting to access healthcare. Documentation requirements, inconsistent policy implementation, and bureaucratic inefficiencies frequently exclude refugees, asylum seekers, and undocumented migrants from public healthcare facilities (Crush & Tawodzera, 2014). These practices create systemic exclusion, despite the Constitution's guarantee of healthcare rights to "everyone."

Xenophobia and Medical Discrimination

Xenophobic attitudes among healthcare personnel further hinder migrants' access to services. Research has documented instances of "medical xenophobia," where healthcare providers discriminate against migrants, particularly Zimbabwean nationals, by denying treatment or

providing substandard care (Crush & Tawodzera, 2014). Such practices reinforce social exclusion and perpetuate inequality within the healthcare system.

Fear of Arrest and Deportation

Undocumented migrants often avoid healthcare facilities due to fear of arrest or deportation. This fear is exacerbated by inconsistent enforcement of immigration policies and the perception that healthcare institutions may collaborate with immigration authorities (Landau, 2011). As a result, many migrants delay or forego medical treatment, worsening health outcomes and increasing public health risks.

Language and Cultural Barriers

Language differences and cultural misunderstandings also impede healthcare access. Migrants who cannot communicate effectively with healthcare providers face difficulties in explaining symptoms, understanding diagnoses, and following treatment plans. These barriers contribute to misdiagnosis, inadequate treatment, and reduced trust in healthcare institutions (Peberdy, 2001).

Resource Constraints and Public Perceptions

Public discourse often portrays migrants as placing undue pressure on limited state resources, fuelling restrictive attitudes within healthcare institutions (Crush, 2008). This perception contributes to exclusionary practices and undermines the constitutional principle of substantive equality. Resource constraints, while real, are frequently used to justify discriminatory policies that disproportionately affect migrants.

Public Health Implications

The exclusion of migrants from healthcare services has broader public health consequences. Denial of healthcare undermines efforts to combat communicable diseases, reduce maternal mortality, and promote overall public health outcomes. During crises such as the COVID-19 pandemic, migrants' vulnerability became increasingly evident, exposing structural inequalities within South Africa's healthcare system (Vearey et al., 2020). These exclusions not only harm individuals but also weaken collective health security.

Proposed Reforms and Policy Recommendations

The persistent exclusion of migrants from healthcare services in South Africa demonstrates the need for meaningful legal and policy reform. While the constitutional framework is inclusive, practical barriers undermine its effectiveness. Addressing these challenges requires a multi-faceted approach that strengthens accountability, institutional commitment, and inclusivity.

Legal Reform

Legal reform should clarify and reinforce migrants' entitlement to healthcare services. Current ambiguities in legislation and policy allow for inconsistent implementation and discriminatory practices. Explicit statutory provisions affirming migrants' right to healthcare, regardless of documentation status, would reduce administrative exclusion and align domestic law with constitutional and international obligations (Liebenberg, 2010; Bilchitz, 2007). Incorporate clear anti-discrimination clauses into healthcare laws to prevent exclusion based on nationality or immigration status and align domestic law with South Africa's obligations under the ICESCR and the African Charter to ensure compliance with international human rights standards

Policy Implementation and Accountability

Improved accountability mechanisms are essential to ensure that healthcare policies are implemented consistently across institutions. Monitoring and evaluation frameworks should be established to track compliance with constitutional obligations and international commitments. Civil society organizations and independent oversight bodies can play a critical role in holding the state accountable for failures in healthcare provision (Yamin, 2016). Establish independent monitoring bodies to oversee healthcare institutions and ensure compliance with constitutional obligations. Introduce transparent reporting mechanisms for healthcare facilities to track migrant access and identify discriminatory practices. Empower civil society organizations to hold government accountable through litigation, advocacy, and public campaigns.

Training and Sensitization of Healthcare Personnel

Healthcare personnel must be trained to recognize and combat xenophobia and discrimination. Sensitization programs can promote inclusive practices and ensure that

healthcare providers uphold constitutional values of dignity and equality. Addressing medical xenophobia is crucial to improving migrants' trust in healthcare institutions and ensuring equitable treatment (Crush & Tawodzera, 2014). Develop guidelines for inclusive healthcare practices that emphasize dignity, equality, and ubuntu.

Launch awareness campaigns to challenge public narratives portraying migrants as burdens, reframing them as contributors to social and economic development

Reducing Documentation Barriers

Administrative requirements, such as proof of legal status, should not serve as barriers to healthcare access. Policies must prioritize health needs over immigration control, ensuring that undocumented migrants can access essential services without fear of arrest or deportation. Streamlined procedures and clear guidelines can reduce bureaucratic exclusion and promote inclusivity (Landau, 2011).

Public Awareness and Social Solidarity

Public discourse framing migrants as burdens on state resources must be challenged. Awareness campaigns can highlight the constitutional and public health imperatives of inclusive healthcare access. Promoting social solidarity and ubuntu, as emphasized in South African jurisprudence, can foster a more inclusive society that values the dignity and equality of all individuals (Mokgoro, 1998).

Strengthening International Cooperation

South Africa should strengthen cooperation with regional and international bodies to align its healthcare policies with global human rights standards. Engagement with the African Union and United Nations can provide guidance, resources, and accountability mechanisms to support inclusive healthcare reforms (Organization of African Unity, 1981; United Nations, 1966).

Public Health Integration

Recognize migrants as integral to public health strategies, particularly in combating communicable diseases and maternal health challenges. Include migrants in national health campaigns, vaccination drives, and emergency response planning. Strengthen collaboration

between government, NGOs, and international agencies to ensure inclusive healthcare delivery during crises.

Institutional Commitment to Transformative Constitutionalism

South Africa should reinforce the constitutional principle that socio-economic rights must be interpreted inclusively, extending protections to vulnerable non-citizens. Further, promote a governance culture that prioritizes dignity, equality, and social justice in healthcare policy. And to use constitutional jurisprudence as a foundation for progressive reforms that dismantle systemic inequality and advance substantive equality.

CONCLUSION

Although South Africa's constitutional framework formally guarantees healthcare rights to "everyone," migrants continue to face widespread exclusion in practice. Discriminatory administrative procedures, xenophobic attitudes, documentation barriers, and fear of deportation undermine the constitutional values of dignity, equality, and social justice. These exclusions also pose broader public health risks, particularly during crises such as the COVID-19.

This study demonstrates that while South Africa's constitutional framework formally guarantees the right to healthcare for "everyone," migrants continue to face systemic exclusion in practice. Discriminatory administrative procedures, xenophobic attitudes, documentation barriers, and fear of deportation undermine the constitutional values of dignity, equality, and social justice. These exclusions not only harm individual migrants but also weaken collective public health outcomes, as evidenced during the COVID-19 pandemic (Vearey et al., 2020).

The findings reveal that South Africa's healthcare system remains caught between constitutional ideals and institutional realities. Transformative constitutionalism demands that socio-economic rights be interpreted inclusively, yet migrants remain marginalized, exposing a disconnect between law and lived experience. This gap undermines South Africa's compliance with both domestic constitutional obligations and international human rights commitments under instruments such as the ICESCR and the African Charter.

To bridge this divide, South Africa must pursue meaningful legal reform that explicitly affirms migrants' entitlement to healthcare, regardless of documentation status. Policy implementation and accountability mechanisms must be strengthened to ensure consistent application of constitutional rights across institutions. Training and sensitization of healthcare personnel are essential to dismantle medical xenophobia and foster inclusive practices. Furthermore, public awareness campaigns should challenge narratives that portray migrants as burdens, instead promoting social solidarity and ubuntu as guiding principles of constitutional democracy.

Finally, inclusive healthcare access is not merely a constitutional requirement but a moral and public health necessity. Ensuring migrants' access to healthcare affirms South Africa's commitment to dignity, equality, and social justice, while safeguarding the health of society. Embracing transformative constitutionalism and fulfilling its international human rights obligations, South Africa can move closer to realizing the constitutional promise of healthcare for all.

CONFLICT OF INTEREST STATEMENT

The author declares that no conflict of interest exists in relation to the research, authorship, or publication of this article. The views and opinions expressed herein are solely those of the author and do not necessarily reflect the official positions, policies, or perspectives of any institution, organization, or affiliated body.

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