



Submission to the

Department of Home Affairs

on the

Green Paper

On

International Migration

30th September 2016

1. Introduction

The Southern African Catholic Bishops' Conference (SACBC), through its Parliamentary Liaison Office, welcomes the opportunity to contribute to the discussion on the Green Paper on International Migration issued in the Government Gazette of 24th June 2016.

The SACBC realises that this document will have far-reaching effects in defining policy for an increasingly large category of vulnerable people. At present it is estimated that about 65.3 million people find themselves displaced around the world, the highest number recorded since WWII. Roughly 68% of this population is located in the developing world, and 50% are under the age of 18. South Africa, as the Green Paper points out, is not immune from this phenomenon. The National Development Plan noted that migration both within the country and across borders will be part of the country's profile for the next 18 years. [#98]

2. The Catholic Church and Migrants

The SACBC has had a long engagement with issues pertaining to refugees, asylum seekers and migrants over many years. In its official structure as a Conference, it has had a desk dealing with the pastoral issues of the refugee and migrant community since the 1970s. In recent times, the Conference has taken on an additional focus of advocacy around policy issues, and it has an official advisory board and working group under the direction of Archbishop Buti Thlagale of Johannesburg that facilitates work in this area. It meets twice a year in plenary to determine policy. In between times, it is active in sharing information, keeping an inventory of services rendered, and monitoring its impact in this area. Further, many church organisations operating in South Africa under the auspices of the SACBC, have been specifically set up to deal with this particularly vulnerable group. In this regard we acknowledge especially the Jesuit Refugee Services and the Scalabrini Movement, both of which have a strong presence in South Africa and a formidable international footprint. The Catholic Parliamentary Liaison Office (CPLO) has continued to engage the Portfolio Committee and other political stakeholders in these and related discussions. CPLO also monitors evolving policy and legislation in this regard.

Thus we believe that we have had a long and in-depth experience in this area that justifies our participation in this process.

The importance of itinerant persons including migrants, people seeking asylum, and refugees, has received particular attention during the pontificate of Pope Francis. He recently issued a directive indicating that, as a sign of the importance of this phenomenon for the Church worldwide, he is taking personal leadership for the Roman Catholic Church's advocacy and the development of its pastoral praxis in this matter. In church language such priorities are called 'signs of the times.' In Pope Francis' decision we see an affirmation of the importance of this area.

The RC Church interrogates policy in this area through a lens, or hermeneutic, captured in Pope Francis' 2014 message for International Refugee Day. He said: 'In our globalised world, we need to approach and manage the reality of migration in a new, effective and equitable manner. It calls for a spirit of solidarity and compassion, including the adoption of rules and policies aimed at promoting and protecting the human person.'

A close reading of this paragraph underlines the key elements or values for assessing policy on this issue. These values include justice, solidarity, human dignity, the option for the poor and most vulnerable, the universal destination of goods, human rights and protection of the vulnerable.

Indeed, the Catechism of the Catholic Church, which elucidates official Roman Catholic Church teaching, states that: 'The more prosperous nations are obliged, to the extent of their ability, to welcome the foreigner in search of the security and the means of livelihood which they cannot find in their own country of origin.' [CCC#2241.]

3. The Green Paper

We are aware that this Green Paper, and South Africa's purported direction on migrant and refugee issues, are deeply contested. In our discussions with various groups during July and September, we heard criticisms of this direction. These ranged from the Green Paper's values being intrinsically pro-rich and anti-poor, in that it opens easily the path for legal entry into South Africa for those with money and with high-end skills. We have heard criticism from various groups of the treatment in various offices of DHA where questionable practices, and the prevalence of corruption, demean the dignity of those seeking the services of the Department. We heard criticisms regarding the failure of the Green Paper to take into account that others, besides the two categories mentioned, contribute to the social capital of the country in diverse ways, and that these are as important to social cohesion as the factors which the Green Paper privileges.

We also heard concerns around the fact that this call for comment on the Green Paper, with its stated aim of ‘receiving inputs and building a consensus around key issues to be addressed in the policy area’, is running parallel to other legislative processes such as the Refugees Amendment Bill [B12-2016] and the Border Management Authority Bill [B9 -2016] which could potentially lead to both policy confusion and a pre-empting of issues that are meant to be open to discussion in the Green Paper. We are also aware that there has been criticism with regard to what has been seen as a growing use of the language of securitisation, risk and threat, and that some feel that this has defined the outlook of the SA government with regard to migration. We have noted these concerns and pledge to assist in resolving them should the opportunity arise.

We have noted the positive statements of the Minister of Home Affairs and accept them in good faith as part of the ‘value base’ framing an understanding of the contents and direction of the Green Paper. Minister Gigaba said that ‘SA should embrace international migration for the development of the country, that SA was committed to offering sanctuary to refugees, and that this was not merely a matter of international obligation but a moral imperative, and that our commitment to refugees is unwavering. That it is neither possible nor desirable to stop international migration and that all persons residing in SA – citizens and foreigners alike – should feel safe. The Green paper is by its nature a discussion about how we can do this within a framework that respects human rights and advances the National Development Plan.’ [The Star 199/2016 p.4]

We also acknowledge and take for granted that a positive, human rights approach to understanding the Green Paper is further undergirded by SA being a signatory to 1951 UN Convention Relating to the Status of Refugees and the 1948 UN Universal Declaration of human Rights, both of which impose on SA a commitment to a human rights and justice-orientated practice. There is also a commitment domestically to the National Development Plan adopted by the SA government, which notes in #105 that ‘If properly managed, migration can fill the gaps in the labour market and contribute positively to SA’s development. Energetic and resourceful migrant communities can contribute to local and national development, and diverse cosmopolitan populations are often the focus of cultural, economic and intellectual innovation. If poorly managed, however, the skills and potential of migrants will be neglected. Migration will remain a source of conflict and tension, and migrants will be increasingly vulnerable, subject to continued abuse, exploitation and discrimination.’

Accordingly, besides the framework of the SACBC’s own faith-based understanding of these issues, the SA government’s own foundational documents, echoed in the Minister’s statements, help to frame our assessment, endorsement and critique of the Green Paper.

4. Specific Comments

For purposes of this submission, and acknowledging that there will be further opportunities to contribute to this discussion, the SACBC would like to offer one comment/example under each of the following categories.

a) the need for further clarification of terms;

b) areas which we feel are positive;

c) those areas which we sense to be negative and incompatible with established wisdom in this area; and

d) issues which we think ought to have been under the purview of the Green Paper and which should be incorporated into any further discussions, and ultimately into the White Paper.

4a) The Need for Further Clarification

Under this heading we wish to raise the issue of **incomplete or impoverished definitions**. Since definitions are important in terms of the scope they provide for interpretation of later law and for the protection they offer vulnerable people, we deem it important that the Green Paper is accurate in these matters.

For us the most glaringly incomplete definition is that of the core category of this Green Paper, namely, 'refugee'. The definition offered in the Green Paper (p6) lacks the breadth given to the definition in both domestic and international instruments: internally, the Refugees Act 1998 and internationally, the OAU definition offered in the Convention Governing Specific Aspects of Refugee Problems in Africa (1969), to which SA is a signatory. The definition in the Convention is repeated in the Refugee Act. We believe that this somewhat wider definition is in keeping with the values and standards of contemporary understandings of the refugee phenomenon. It also provides the congruity necessary between various domestic and international obligations. We are particularly concerned that the provision of the Refugee Act in 3(c) is not included in the definition in the Green Paper. This section provides for the recognition of dependents of refugees to be recognised as refugees. Without this inclusion an important area of protection would be omitted and this would be contrary to our understanding of the State's moral duty to enhance protection for the vulnerable, rather than diminish it.

Our tradition has paid special attention to the issue of dependents in such matters. Pope John XXIII said: ‘And among man’s rights we must include his right to enter a country in which he hopes to provide more fittingly for himself and for his dependents.’ [*Pacem in Terris* #106]

In the light of this principle we also concerned that there is an unwillingness in the Green Paper to link **family applications** of those dependents arriving in SA after the refugee’s application is made. Mention is made of practices in other countries that only document dependents if they arrive at the same time as the principal applicant. Our experience is that it is seldom possible that the entire family can arrive at the same time. We would suggest following our principles that a time period be stipulated for the main applicant to add or declare dependents on their applications.

In addition to the definition of ‘refugee,’ others have noted that there is ambiguity and a lack of clarity around the term ‘illegal immigrant’ and also what exactly is meant by a ‘risk-based approach’.

Allied to this is a more general concern that we have around the **lack of supporting evidence** for assertions made in several places in the Green Paper. This results in a lack of transparency around sources of information or evidence for claims. One is therefore unable to verify claims being made in the Green Paper, or to review the original sources that underlie positions taken in the Green Paper. One such unhelpful broad assertion is the link asserted between refugees and criminality.

We believe that openness about sources, and evidence for claims, can be easily remedied and should be included in any documentation going forward. We recall that the 1997 Green Paper was a model of openness and transparency in this regard. A survey of written material would indicate a huge volume of scholarly work in this area which would enhance arguments for particular claims. It is not as if the work does not exist to support claims. We are thus mystified as to why there is no reference to it. It would allow greater debate and a more robust conversation around key concepts and claims in the Green Paper. It would also assist readers in drawing their own conclusions as to the veracity of claims. It is difficult to escape the nagging feeling that non-disclosure in this regard plays into suspicions of claims serving ideological or political ends.

4b) Areas Which We Feel Are Positive

We would point to several positive areas in the Green Paper.

Included under this heading, we laud the openness to **redressing the colonial legacy** of preferment of European immigrants, and the opening of migration paths to Africans. We appreciate the SADC-

centeredness and its link to regional development. We acknowledge that the long held claim that ‘foreigners are taking our jobs’ is debunked, as the Green Paper acknowledges that 90% of jobs are held by South Africans. We are also heartened that the reality of xenophobia is also acknowledged.

One area that we would like to underline positively is the discussion around the **flow of migrant labour**, including unskilled labour, into SA from the SADC countries. We agree that we need, as the Green Paper points out, to adopt a regional approach to economic growth and integral development. We support initiatives that will effectively and efficiently regularise the presence of migrants in SA, acknowledging that a legal status is necessary at a number of levels, not least to be able to access the rights and protection offered under SA law. We further support the **special dispensations** used to regularise the status of irregular migrants in the country. This seems to have proven to be an effective way to deal with managing complex migration flows and regularising the stay of migrants who do not have an asylum claim. We would support granting SADC visas of the right sort to those who hold special dispensations.

The SACBC endorses the idea of **freer regional mobility**, especially labour mobility, for SADC citizens. We endorse the sentiment contained in ‘Option 3’ which opens the possibility of SADC special work visas, trader’s visas and SME visas for SADC citizens. We understand that if these options are properly managed they will contribute to sustainable regional development. It is also our understanding that such options could be instrumental in deterring citizens from these countries from trying to gain entry to SA using the asylum route. We know well from the pastoral situations we are in touch with that migration is a key strategy for survival in the region and that such visas would not only provide for safe migration, but would benefit all the countries in the region economically, and thus contribute to the security of the region. We would also like to see such freer regional migration being coupled with stringent compliance with the normal rights and protections offered by various pieces of **labour legislation**, so that we do not end up with a situation of easy access to the country, only for migrants to be caught up in practices of exploitation and abuse.

Our tradition posits two important principles in this regard which strengthen our support for the above option: firstly, the duty of the developed country to be hospitable; and secondly, the centrality of employment as a reason for migration. With regard to the first principle Pope John Paul II said: ‘Although developed countries are not always able to absorb the entire number of those who intend to migrate, it should be noted however that the criterion for determining the thresholds of sustainability cannot be only that of the simple protection of one’s own welfare, without taking into account the needs of those who are forced to ask for hospitality.’ [World Migration Day Message

1992]. The same Pope also asserted that ‘the more prosperous nations are obliged, to the extent of their ability, to welcome the foreigner in search of security and the means of livelihood which he cannot find in his own land.’ [*Ecclesia in Europa* #101]

With regard to the second principle, Pope Benedict XVI spoke of a migrant as ‘a human being coming from a different background, culture and traditions, but a person to be respected with rights and duties, in particular in the area of employment, where it is easier to follow the temptation of exploitation, but also within the concrete conditions of life.’ [Angelus Message 10/1/2010]

More to the point here is the comment of Vatican II, a Council of the Roman Catholic Church, which held: ‘When workers come from another country or district and contribute to the economic advancement of a nation or a region by their labour, all discrimination as regards wages and working conditions must be carefully avoided. All people, moreover the public authorities, must treat them not merely as tools of production but as persons and must help them bring their families with them....and see that they are incorporated in the social life of the country or the region that receives them.’ [Vatican II: *Gaudium et Spes*#66]

4c) Areas Which We Feel Are Negative

There are several areas which we feel to be problematic and which we feel would either benefit from further discussion or which we are opposed to.

One such area is the issue of **permanent residence and naturalisation**. The Immigration Act 13 of 2002 says very clearly that permanent residence is linked to three criteria, namely length of stay; the contribution which the person makes to the country in terms of skills, capital or qualifications; and spousal or parental relationships. We hold that these should remain the criteria for granting permanent residence and naturalisation. While agreeing that those who the Green Paper wishes to fast-track for permanent residence should indeed be allowed, it should not be used as an alternative to the present status quo, but rather as a way of broadening the means to acquire permanent residence. It is an established principle of basic justice that the longer people have stayed in a country the stronger their entitlement to share in the civil, economic and social rights of that country. This principle is applied in many countries of the world. We note, for example, that the EU issued a recommendation in 2003 to member states to grant long term resident status to those who have resided legally and continuously within its territory for five years. [Article 4, Council Directive 2003/109/EC 25/11/2003.] Our own observations in pastoral situations that we are familiar with show clearly that there is no evidence that

migrants who have been granted permanent residence through marriage or through length of stay in the country, do not contribute to the well-being of the country.

Likewise, we are convinced that those who have spent five years in the country, and who have in various ways contributed to the life of the country as workers, at the very least by paying VAT on purchases and by contributing to informal sectors, have in fact developed a *prima facie* moral right to stay in the country. In our view this trumps the notion that refugees are by their very nature temporary sojourners. Not only have they made a contribution but, indeed, many find it difficult to return for a host of reasons including the fact they have formed attachments in this country. This approach was a recommendation of the 1997 Green Paper [p36] and we cannot see any reason for a change of approach. We hold that the option of permanent residence should be open to those who have lived in SA for five years, have no criminal record, and are either employed or self-employed, or who can show that they have contributed in some way that enhances social cohesion. We believe that the quote above from Vatican II makes the same case.

While not included in our comments, we would like to register our concern about introducing **asylum seekers detention facilities**. We are concerned that they could easily be turned into full-blown detention centres which would negate the policy of non-encampment; and that they have potentially negative outcomes which could offend our human rights tradition, such as long-term detention without adequate support. We are concerned that they are being suggested without any indication of costing. We would propose that financial outlays for such a scheme could be better used to improve DHA's existing facilities for migrants. We fear that detention centres will raise further obstacles to an already overburdened process.

As a church we are committed to a **culture of 'welcoming'**, which means a culture of respect, equality and the promotion of diversity, accepting migrants as bearers of values and resources. Pope Paul VI admonished: 'We can never insist too much on the duty of giving foreigners a hospitable reception. It is a duty imposed by human solidarity and by Christian charity and it is incumbent on families and educational institutions in the host countries.' [*Populorum Progressio* # 67] We hold that 'a pedagogy of acceptance involves the protection of migrants and [the provision of] services for the most vulnerable, particularly immigrants in irregular status.' We fear that detention centres would hinder, not help, the process of welcoming. We are not sure that a move away from the policy of non-detention of asylum seekers and allowing them to live in communities while awaiting the outcome of their determinations is to be preferred. We are also concerned that such centres might have the effect of stigmatising those detained, and create an impression that seeking asylum is in itself a criminal

activity, which it obviously is not. In an environment that seems prone to xenophobia and stigmatisation, this is a particular trap to avoid.

4d) Issues Which Deserve Further Attention

Two issues which we feel should be discussed are **issues relating to children** and **issues of statelessness**. On the aspect of children, we have a grave concern that the Green Paper only mentions children (amongst the most vulnerable in society) twice.

We note that it is fallacious to assume that children necessarily enter the country as part of a family group or that they are otherwise accompanied; it also cannot be assumed that they have the necessary documents and have passed through borders. Children are vulnerable due to their size and lack of physical strength, and it is easy for children to get lost when large groups of people are on the move. It is also noted that they are often most vulnerable to the lures of organised crime.

The UN Draft Resolution on the Rights of Child Migrants of 2014 expresses concern ‘about the large and growing number of migrants, especially women and children, including those unaccompanied or separated from their parents, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents.’ⁱ The ‘Destination Unknown’ campaign cautions about ‘children moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers, and whose movement, while it may open up opportunities, might also place them at risk (or at an increased risk) of economic or sexual exploitation, abuse, neglect and violence.’ⁱⁱ

Efforts may be made to trace and locate the child’s family so that reintegration can take place. This requires capacity, resources and dedication on the part of the authorities. Children may be unable to communicate in one of our official languages spoken in their point of entry, so translators may be required. The child may be unable to say where ‘home’ is or describe whence they have come. These children have experienced trauma and are frightened and specialist child care experts may be required. The Department of Social Development can assist as these children are clearly ‘in need of care and protection’, and proper intervention programmes must therefore be in place.

5. Conclusion

We are grateful for the call to engage in this discussion and, given its importance for both the future of the country and for our pastoral praxis, we want to endorse the process of public consultation, affirm the centrality of a human rights approach, and offer the hope that a greater continuity with the values of the previous Green Paper [1997] and those of the Refugee Act of 1998 will prevail. We caution extreme hesitance in moving away from these approaches into some of the areas suggested in the Green Paper. We urge our government to take seriously the viewpoints raised by voices critical of the tone of this document in order to enhance the good of itinerant peoples and, indeed, to strengthen the common good.

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ⁱ The UN Draft Resolution on the Rights of Child Migrants

ⁱⁱ ‘Destination Unknown : Campaign to protect children on the move’