



Response

June 23rd, 2017

World Refugee Day 2017.

In a statement issued jointly for the annual observance of World Refugee Day on 20th June, the Department of Home Affairs (DHA) and UNHCR in South Africa spoke of the day as honouring “the courage and resilience of families forced to flee war: violence or persecution.”¹ It is noted that this day was observed at exactly the same time as the National Council of Provinces was considering civil society’s comments on the Refugee Amendment Bill [B12B-2016]. It is also worth noting that in many parts of the world the entire week in which 20th June falls is observed as Refugee Week; and that since 1914 the Roman Catholic Church observes World Refugee Day in January of each year.

The global theme for 2017 World Refugee Day is ‘We stand together #WithRefugees.’ It is a noble sentiment. Regrettably, however, several aspects of the Refugee Amendment Bill, especially with regard to family issues, are at odds with the sentiments of the joint statement of the DHA and UNHCR. As a lens for reviewing the Bill with regard to the resilience of the family, the Catechism of the Catholic Church posits: “The importance of the family for the life and wellbeing of society entails a particular responsibility for society to support and strengthen marriage and the family. Civil authority should regard it as a grave duty to acknowledge the true nature of marriage and the family, to protect and foster them, and to safeguard public morality and promote domestic prosperity.” [CCC 2210]

In the first place, DHA’s praise for the resilience of families rings somewhat hollow since the Refugees Amendment Bill sets out policies that arguably undermine family life. For example, in sec 1(b) it defines ‘dependants’ in a restrictive way which violates the principle of ‘the unity of the family’ enshrined in many of the conventions South Africa is a signatory to, such as the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. These hold implicitly that the definition of dependant should include relationships of informal care where the refugee or asylum seeker is clearly the key care giver, even if no formal adoption regime applies either because it is impossible to apply such procedures in the country from which they come, or because the informal arrangement is culturally acceptable. The Bill also wrongly excludes, as dependants, children over the age of 18 who, because they are students for example, remain dependent on the person applying for refugee status. It also excludes children who have been separated from their parents in the course of leaving their home country; such children should be recognised as dependants of the care givers who accompany them into SA.

We would also hold, in this regard, that asylum seekers who marry after their arrival in SA should be allowed to add their spouses and children to their asylum applications, and that they should be included in the definition of dependant. The time taken for adjudication of applications is often extremely long, up to ten years in some instances.

The present backlog is conservatively estimated to be in the region of 200 000.² It is therefore logical to expect that applicants would marry in the meantime, have children, and thus acquire new dependants during the adjudication period.

We also argue that the word ‘immediate’ (s 1(b)) in the definition of ‘immediate family’ should remain, since this includes family members who, in terms of most of the cultures in SA and beyond, have a natural dependency on the applicant, such as grandparents and minor siblings.

The Catechism states in #2211, that ‘in keeping with the countries’ institutions, the right to medical care, assistance for the aged and family benefits’ should be guaranteed; and it makes the point that benefits to people should always enjoy a wide interpretation. In our comments on the Green Paper on International Immigration we noted that there seemed to be an unwillingness to allow for family applications linked to the main applicant if those family members arrived after the applicant. It is surely evident, though, that given the complexities of escape from difficult situations, it is rare for families to arrive in the country together. These indications all point to a situation where family life is in fact being eroded, or at least put into jeopardy, by DHA, thus seemingly contradicting its praise for the ‘resilience of families’ in the World Refugee Day Message.

In the same vein, removing the right to work(s 22) and the impact of that on asylum seekers’ ability to provide for themselves and their dependants, is both a threat to dignity and to the families’ wellbeing. Certainly, the right to work is not absolute, but where employment is the only means of sustaining a person and their dependants with dignity, that option should be open, especially while the application is being adjudicated or an appeal is pending. Catholic Social Teaching has long recognised that seeking employment in order to exercise the duty of care with dignity is a legitimate reason for crossing borders. And the Catechism teaches that ‘the more prosperous nations are obliged, to the extent of their ability, to welcome the foreigner in search of security and means of livelihood which they cannot find in their country of origin.’ [CCC#224] The only fair and effective way of separating asylum seekers from economic refugees, if this is necessary, is through adjudicating the claims according to the UNHCR’s ‘Procedural Standards for Refugee Status Determination’ and not by denying access to the asylum process, nor by limiting basic human rights.³

Strengthening the family remains one of the proven ways of building social cohesion and stability. Therefore, anything that makes families vulnerable must be opposed. In this regard we are concerned that the Bill lengthens the required years of continuous residence from five to ten before a recipient of asylum can apply for permanent residence. This means that asylum seekers are in limbo for ten years. It has obvious negative effects such as hindering social integration, undermining family stability, and limiting work and educational progress due to uncertainty about the possibility of a long-term stay. In line with international practice, the five-year period should be maintained, especially where there is proof of continuous residence, employment, and a contribution to the wellbeing of the community, and there is no serious threat to the security of the country.⁴

In conclusion it is true to say – and here the joint declaration is correct in what it praises – that the family unit is a community of persons where moral values are taught and the spiritual and cultural heritage of society are passed on. The family is also essential in ensuring that people are strong in their commitments, and it promotes both social responsibility and solidarity. Policy and legislation should thus be resolutely in the family’s service. World Refugee Day thus constitutes a moment for all those supportive of families to raise their voices in favour of bringing government’s policies in line with its declarations.

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¹ Cape Times 19/6/17 p.6

² Cape Times 21/6/17 p.1

³ SIHMA submission on Refugee Amendment Bill. 13th June 2017.