



Briefing Paper 532

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Migrants, Refugees and Displaced persons

1. Introduction

The Roman Catholic Church traditionally observes the last Sunday in September as the World Day of Migrants and Refugees; 2021 marks the 107th year of this observance. It is on a different date from the United Nations Day for Refugees, which is in June, and it also parts company with its secular equivalent by deliberately merging the attention on refugees and migrants into a single focus. This makes a significant point in that it argues that the same rights and benefits that automatically accrue to refugees in terms of international protocols and domestic legislation, should be granted to migrants. The Church argues that the push factors that force migrants to leave their homelands and seek better opportunities are as compelling as the reasons that premise the access of refugees to certain rights and support structures. Thus, the Church holds that grinding poverty and the vicissitudes of the economy, for example, should be considered as seriously as the consequences of war and religious persecution as a ground for relief.

This year the theme of the World Day of Migrants and Refugees is *'Towards an Ever Wider We.'*¹ This is an obvious call to build solidarity with migrants and refugees not because of their status, but because of their dignity. It is a call to view them not as others, but as part of the greater human community with the same hopes, dreams and dignity as any other person. This teaching is practically expressed in the four central verbs – welcome, promotion, protection and integration – that have formed the basis of Pope Francis' praxis on mobile people.

It is also significant that in this September message with its emphasis on solidarity with mobile people, also in September, the African countries held the first African Regional Review on the Implementation of the Global Compact for Safe, Orderly and Regular Migration.² Thus there is a value for policy makers to critically engage both events as part of the ongoing search for just policies for those caught up in the reality of displacement. In a recent article³ Carolyn Gottardo points to this nexus and says that the Global Compact draws us to an ever more inclusive 'we' because it:

- calls on the whole of society to respond to the plight of vulnerable migrants;
- protects the safety, dignity and human rights of all migrants whatever their status;
- balances the needs of migrants and the needs of receiving communities;
- combats racism and discrimination towards all migrants;
- supports countries rescuing, receiving and hosting large number of refugees and migrants; and
- develops guidelines for the treatment of migrants in vulnerable situations.

A close reading of these criteria underlines their applicability to South Africa, especially with regard to xenophobia, the marginalisation of mobile people amongst already economically vulnerable groups, and the creeping curtailment of the rights of mobile people through a series of regulations.⁴

2. The Pope's Message: 'Towards an Ever Wider We'

Pope Francis begins his message by stating his concern that

"Once this health crisis passes, our worst response would be to plunge even more deeply into feverish consumerism and new forms of egotistic self-preservation. God willing, after all this, we will think no longer in terms of 'them' and 'those', but only 'us'."⁵

"The present time, however, shows that this 'we' willed by God is broken and fragmented, wounded and disfigured. This becomes all the more evident in moments of great crisis, as is the case with the current pandemic. Our 'we', both in the wider world and within the Church, is crumbling and cracking due to myopic and aggressive forms of nationalism and radical individualism. And the highest price is being paid by those who most easily become viewed as *others*: foreigners, migrants, the marginalized, those living on the existential peripheries. I also make this appeal to journey together towards an ever wider 'we' to all men and women, for the sake of renewing the human family, building together a future of justice and peace, and ensuring that no one is left behind. Ours must be a personal and collective commitment that cares for all our brothers and sisters who continue to suffer, even as we work towards a more sustainable, balanced and inclusive development. A commitment that makes no distinction between natives and foreigners, between residents and guests, since it is a matter of a treasure we hold in common, from whose care and benefits no one should be excluded."⁶

The Pope's message is a fundamental call for inclusivity, revealing a deep understanding that the institutions that shape our society, such as the economy, our political culture, and our lifestyle choices, must be more inclusive and respectful of the other. Anything short of this will always mean that some are left out, and in the Pope's narrative this is unacceptable. He also provides an overview of the overarching theological paradigm that supports the call for inclusivity and justice as a norm in all societies.

3. The Pope's Message Contextualised in our Situation

Archbishop Buti Tlhagale of Johannesburg has contextualised the Pope's message, speaking very practically about the need for inclusion regarding access to health-care, education and sport.⁷ Applying the Pope's message to South Africa, Botswana and eSwatini, and underlining the implications of solidarity with mobile people in a time of pandemic, the Archbishop said:

"World Refugee Day 2021, like last year, is commemorated at a time when the world is still battling with the COVID-19 pandemic. Last year, as Bishops of the Catholic Church, we raised concerns regarding the exclusion and marginalisation of refugees during this time of the pandemic that has ravaged many lives all over the world, exposed many inequalities and injustices and our broken humanity. We have over the past year noticed with concern how, during this time of the pandemic, many countries and governments, especially the rich ones, have been responding to the challenges imposed on all of us by COVID-19. Many have opted for the 'citizens first' and 'vaccine nationalism' approach. These selfish responses have displayed the deep-seated crisis of solidarity or lack thereof that prevails in our international political system and community. Pope John Paul II articulates in his *Sollicitudo Rei Socialis* the virtue of solidarity as a firm and enduring commitment to the common good that may often entail personal sacrifice by some members of the community to protect the basic rights of other, more vulnerable members. Exclusion of refugees from COVID-19 responses and vaccinations shows that we still have not fully appreciated or understood the wisdom in the saying, "none of us is safe until we are all safe".

The SACBC Migrants and Refugees Office is, however, seriously concerned with how over the years many countries, especially countries with more resources, have conveniently and egoistically neglected their responsibility of sharing in the burden of welcoming, offering protection and integrating refugees in their host communities. According to the UNHCR, 86 per cent of the more than 82 million refugees worldwide are hosted in developing countries. We call upon all countries and nations to make their fair and just contribution in protecting and helping

refugees relive their lives with dignity. We encourage all countries to play their ethical and moral role in the protection of refugees. Without their support the lives of 82.4 million forcibly displaced people will be forever shattered. We reiterate Pope Francis' appeal for an ever-inclusive world "journeying towards an ever wider 'WE' to all men and women for the sake of renewing the human family." Let us all commemorate the World Refugee Day with a commitment to solidarity with refugees by protecting their dignity and helping them enjoy access to health-care, education and sports programs."⁸

An article in the *International Journal for Equity in Health* supports the analysis offered by Archbishop Tlhagale that economic inequalities, and unequal treatment generally, already present in our society, is greatly exacerbated by the pandemic; and that the most deprived groups are the mobile communities. This reality seriously undermines any attempt to create a 'WE' or to build solidarity or strengthen social cohesion. It reinforces division, injustice and inequality.

"Structural and practical xenophobia has driven asylum-seekers, refugees, and undocumented migrants in SA to abject poverty and misery. The Coronavirus Disease 2019 (COVID-19) containment measures adopted by the SA government through the lockdown of the nation have tremendously deepened the unequal treatment of asylum-seekers and refugees in SA. This can be seen through the South African government's lack of consideration of this marginalized population in economic, poverty, and hunger alleviation schemes. Leaving this category of our society out of the national response safety nets may lead to negative coping strategies, causing mental health issues and secondary health concerns. An effective response to the socioeconomic challenges imposed by the COVID-19 pandemic should consider the economic and health impact of the pandemic on asylum-seekers, refugees, and undocumented migrants."⁹

On the positive side, there have been cautious steps to a more inclusive response to mobile peoples during the pandemic. The most obvious of these has been the government's insistence that the vaccine is available to all people living in South Africa, irrespective of their status.¹⁰ In addition, some of the very blatant exclusionary regulations published at the beginning of the national

lockdown in South Africa have been modified so that, for example, Angolan, Zimbabwean and Lesotho Special Permit holders could benefit from the Social Relief of Distress Grants.¹¹ The government has also granted Angolan Special Permit holders a more generous dispensation while they continue to live in South Africa.¹² These represent small, very cautious steps towards expanding the notion of 'WE' as asked for by the Pope; but it is abundantly clear that much more needs to be done if we are to move from small steps to significant steps in expanding the 'WE'.

4. The African Regional Review on the Implementation of the Global Compact for Safe, Orderly and Regular Migration

In December 2018, the United Nations General Assembly adopted the Global Compact for Safe, Orderly and Regular Migration, signed by 152 states, 25 per cent of which were in Africa, South Africa included.¹³ On that occasion then Minister Siyabonga Cwele said:

"We are committed to embracing international migration for development while guarding the core principles of national sovereignty, peace and security. South Africa is committed to working with other African countries and like-minded nations to ensure that migration will be a choice instead of a necessity – as is currently the case. For migration to be a choice, the root causes of involuntary migration, such as underdevelopment which manifests itself through inequality, poverty and unemployment, have to be fully and comprehensively addressed. In this regard, we urge the international community to collectively commit to address the fundamental root causes of forced migration as proclaimed in the New York Declaration. Moreover, it is important that predictable and sustainable resources be availed in order to advance the fundamental principles of international co-operation as well as burden and responsibility sharing, consistent with the level of development of states, as enunciated in the New York Declaration."¹⁴

This has rightly become the benchmark for holding South Africa accountable in its migration policy and practices.

The Compact is generally regarded as a "significant milestone in global commitment to protect the rights of migrants, reduce the risks and

vulnerabilities they face, and improve systems, policies, and practices responding to migration.”¹⁵ Amongst the requirements for member states is a commitment to the following:

- protect the safety, dignity, human rights and fundamental freedoms of all migrants, regardless of their migratory status, and at all times;
- support countries rescuing, receiving and hosting large numbers of refugees and migrants;
- integrate migrants, addressing their needs and capacities as well as those of receiving communities, in humanitarian and development assistance frameworks and planning;
- combat xenophobia, racism and discrimination towards all migrants;
- develop, through a state-led process, non-binding principles and voluntary guidelines on the treatment of migrants in vulnerable situations; and
- strengthen global governance of migration, including by bringing IOM into the UN family and through the development of a Global Compact for Safe, Orderly and Regular Migration.¹⁶

In an interesting submission by Human Rights Watch, the organisation offered an analysis of six countries (South Africa, Nigeria, Mauritania, Senegal, Cameroon and Tanzania) in terms of the Global Compact on Migration’s objectives 4, 10, 13 and 21.¹⁷ South Africa was assessed in terms of ‘migrant detention’ and ‘discrimination, xenophobia, access to services and documentation.’ While both areas are critically important, given South Africa’s history and the bottlenecks in the bureaucracy and ambivalent political will when it comes to foreign nationals, it is fitting to quote the results of the second of these categories. (This also speaks directly to the Pope’s understanding of the ‘ever expanding WE.’)

In the submission, South Africa was assessed according to the following objectives: ‘State actions contravening GCM Objective #17 (“Eliminate all forms of discrimination” and “condemn... violence, xenophobia and related intolerance against all migrants”); Objective #4 (“Ensure that all migrants have proof of legal identity and adequate documentation); and Objective #15 (“Provide access to basic services for migrants”)’. The submission states:

“4 (a) Xenophobia, violence and discrimination

South Africa, with a population of 59.6 million, is home to an estimated 4.2 million migrants, refugees and asylum seekers. During 2020 and 2019, there were widespread incidents of xenophobic harassment and attacks against migrants and foreigners by mobs and ordinary members of the public, as well as by law enforcement officials. Authorities throughout the country largely failed to ensure justice for xenophobic violence and operated in discriminatory and abusive ways against non-nationals. Some officials exacerbated xenophobia through inciting rhetoric, while police used counterfeit goods raids as a cover to target foreign-owned shops and businesses, beating shop owners and ransacking their shops. In co-ordination with the Department of Home Affairs (DHA), police conducted abusive ‘documentation raids’ in areas where many non-nationals reside, including by entering foreigners’ homes to verify documents and legal status while administering beatings. The police also carried out arbitrary and abusive arrests and detention of migrants, as described in Section III of this submission.

While the March 2019 adoption of a National Action Plan (NAP) to combat xenophobia marked an important step forward, a September 2020 Human Rights Watch report nonetheless documented numerous xenophobic incidents in the year after the government adopted the NAP. These included killings, serious injuries, forced displacement, discrimination, and barriers to justice and basic services, including education. Problems identified included indifference, denial and tacit approval of xenophobic actions by authorities, and barriers to legal representation.

4 (b) Documentation

Migrants interviewed by Human Rights Watch also reported difficulty in acquiring and renewing permits and identification documents from the DHA in order to maintain legal status. Many said they found it difficult to find accurate information about their options and to stay informed of DHA policy changes, and some cited inconsistencies in policy application. Asylum seekers faced a massive DHA backlog of cases, appeals, and renewals, forcing some to remain

undocumented for years. Some asylum seekers reported that having legal documentation made no difference, as police still harassed them and banks or hospitals often rejected permits they had taken pains to renew.

4 (c) Access to services

The documentation difficulties cited above have also impacted migrants' access to basic public services, including education and health care. One Congolese man with permanent residence said that after two of his children born in South Africa received permanent residence status, a DHA worker told him the policy had changed, and his last two children, born in South Africa, received birth certificates stating they are 'aliens.' The two children's public schools warned them to acquire identity documents without the word 'alien' to continue enrolment, but the man said DHA told him that there were no alternative forms of documentation for his children. An asylum seeker living in South Africa for 17 years said even though he regularly renews his permit, his status appears fraudulent due to an administrative error. "I cannot do anything. They have robbed me of my life," he said.

During the Covid-19 pandemic, South Africa has seen one of the highest rates of confirmed cases and deaths on the continent, with over 1.9 million cases and 59 000 related deaths reported as of June 2021. Following the first shipment of Covid-19 vaccines, President Cyril Ramaphosa stated that his government aimed "to make the vaccine available to all adults living in South Africa, regardless of their citizenship or residence status." However, his remarks contrasted with a statement by Health Minister Dr Zweli Mkhize that only registered South African citizens would be eligible to receive the vaccine. South African authorities have an obligation to fully respect the right to health of everyone within their borders, without discrimination, regardless of migration status or nationality. This should include ensuring equitable access to Covid-19 vaccines and related care for both documented and undocumented migrants, asylum seekers and refugees, in line with the vaccine roll-out plan for others in the country.

4 (d) Recommendations

The South African government should increase the urgency with which it responds to violence and discrimination against migrants and non-nationals. Crucially, it should hold perpetrators of xenophobic harassment and attacks accountable and ensure justice for victims. Potential measures to do so include creating a hotline to report xenophobic incidents and standardizing how instances of xenophobia are recorded and responded to. President Ramaphosa should fully implement the NAP, including by articulating actionable items and objectives that reflect contemporary discrimination and inequalities. Xenophobia should be acknowledged to manifest not only as violence, but also as discrimination against migrants and barriers in accessing employment, education, health care, and housing. As part of the national response to Covid-19, authorities should ensure non-discrimination in response plans and vaccine distribution, embark on awareness raising and information campaigns so people understand when they are eligible and how to access a vaccine, and ensure undocumented migrants can travel safely to vaccination centres."

It should be noted for purposes of accuracy that the President has reiterated the commitment to offer vaccinations to all people living in South Africa irrespective of migration status. He repeated this as recently as 30th September 2021.¹⁸ This has been confirmed by the Acting Director-General of Health, Dr Nicholas Crisp, on several platforms. It is also to be noted that Dr Mkhize is no longer Minister of Health. In October special pilot projects are being run to ensure that such people are vaccinated and their details registered for follow-up care. There is also a commitment that this information will not be shared with those departments of government concerned with arrests and deportation of undocumented migrants.

5. Conclusion

Both September events foreground personal, attitudinal and structural solidarity as cornerstones for policies on mobile people. They call for vigilance against those who seek to diminish such solidarity, and especially those who use extraordinary events such as the pandemic as

an excuse for pushing back on fundamental policies that give expression to the dignity of all people irrespective of migration status. This solidarity is further evidenced in human rights frameworks. The two are intricately linked. The Pope's four verbs – to welcome, protect, promote and integrate – provide a benchmark for developing solidarity. Both documents articulate a radical praxis, but also acknowledge that far-reaching results can be achieved in part by small, strategic steps.

In an earlier statement, Pope Francis urged politicians and lawmakers to respect the rights of migrants, arguing that human rights should trump national security concerns. "The principle of the centrality of the human person... obliges us to always prioritize personal safety over national security."¹⁹ That principle seems to be a fundamental starting point for any thinking in terms of policies in this area.

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 - ¹⁹https://www.globalcitizen.org/en/content/pope-francis-migrant-asylum-refugee-rights/?gclid=CjwKCAjwzOqKBhAWEiwArQGwaFA4Nmhkdcfh55bv5OL-xPARlnHcjSilKUDayMQopj49Qj81fOx2RoCwBQQAvD_BwE

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