

Dialogue Online

"The elders sit under the big tree and talk until they agree... talking until you agree (or agree to disagree) is the essential (essence) of the traditional African concept of democracy..."
Julius Nyerere

Vaccinating Migrants is the Constitutional Thing to Do

By Tebogo Lekubu, SALO



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COVID-19 has affected South Africa and the world at large, with all sectors of society having had to deal with a myriad of unforeseen disruptions to daily life. Migrants are particularly affected, especially those who are undocumented. Refugee reception centres have been closed since the national lockdown began a year ago, adding to a huge backlog of asylum seekers and expired permit holders in the country. Already facing major obstacles with acquiring documentation, migrants have encountered problems accessing government assistance and have been arrested reportedly for violating lockdown measures. The rollout of the COVID-19 vaccine poses another challenge for migrants who already lack full access to the rights and privileges of refugee status.¹ As a result, the migrant community has had to contend with threats to their freedom, health, and livelihood.

The [vaccine rollout strategy](#) aims to achieve population immunity by vaccinating two-thirds of the population, around 40 million people. These are the necessary vaccination levels estimated by medical scientists to curb the spread of the virus and reduce the pressure on the already strained healthcare system. There are varying statistics on the number of documented and undocumented migrants living in South Africa. Stats SA puts the number at around 3.9 million in 2020 while the United Nations population division estimated 4.2 million (7% of the population) in 2019.²

President Cyril Ramaphosa has warned about the dangers of vaccine nationalism in the fight against the pandemic, noting how Western countries have reportedly been stockpiling vaccines. The exclusion of migrants in the vaccine rollout strategy would be no different from the concerns raised by the President and would be counterproductive if South Africa is to adequately weather a possible third wave of infections and overcome the pandemic. Considering that, just last year, the Pretoria High Court ruled it unconstitutional to exclude asylum seekers and Zimbabwean and Lesotho special permit holders from the government's COVID-19 social relief of distress grant³, and more importantly, that people residing in this country are all susceptible to the virus regardless of their nationality or status, it does not make medical sense to approach this from a political point of view. Furthermore, there are already many South Africans who are undocumented for various systemic reasons. It is therefore imperative that vaccines are not administered on the basis of having documentation. That said, President Ramaphosa assured the nation that all adults residing in South Africa would be vaccinated "regardless of their citizenship or residence status".⁴

The President also noted that the South African government will put in place measures to address the matter of undocumented migrants to properly track their vaccination history. The Department of Home Affairs launched the Asylum Backlog Project with the United Nations High Commissioner for Refugees to address the backlog in South Africa's asylum system by 2024. At the time of launch, there was already a backlog of over 153 000 asylum seekers, and this project aims to reduce the backlog in just four years, as opposed to the originally estimated 60 years, by bringing in technical and financial support to help the Refugee Appeal Authority of South Africa (RAASA). The RAASA is responsible for adjudicating appeals by previously denied asylum seekers. 36 new members of the RAASA will also be appointed and trained in the next six months

¹ News24. 2021. *Covid-19: SA Praised for Including Refugees, Asylum Seekers in Vaccine Programme*. Available at: <https://www.news24.com/news24/southafrica/news/covid-19-sa-praised-for-including-refugees-asylum-seekers-in-vaccine-programme-20210308> [March 17, 2021]

² Cliff Dekker Hofmeyr. 2021. *Undocumented Foreign Nationals/Persons in South Africa to also Benefit from the COVID-19 Vaccine Rollout: Nuances to be Alive to*. Available at: <https://www.cliffedekkerhofmeyr.com/en/news/publications/2021/Probono/pro-bono-and-human-rights-alert-15-february-undocumented-foreign-nationals-persons-in-south-africa-to-also-benefit-from-the-covid-19-vaccine-rollout-nuances-to-be-alive-to-.html> [March 17, 2021]

³ Ibid.

⁴ New Frame. 2021. *Getting Migrants Vaccinated is Critical*. Available at: <https://www.newframe.com/getting-migrants-vaccinated-is-critical/> [March 17, 2021]

and the IT system will be upgraded to support this endeavour. The UNHCR will fund around R108 million for this project in the next four years, while the Department of Home Affairs funds around R40 million.⁵

These policy changes are a deviation from the characteristically constrictive nature of South Africa's approach to migration issues. It is also in line with South Africa's constitutional values. Besides the fact that population immunity is the most logical way of decreasing the spread of the virus, it is only fair that undocumented persons are included in the vaccination strategy since it is documentation backlogs and other extraordinary circumstances that have resulted in millions of citizens and residents who are undocumented or have no "proof of legal identity".⁶ It is also crucial to note that, while these initiatives are a positive move, efficient implementation is not guaranteed. There is not much detail on the plan of the rollout of the programme, and the government has already experienced delays due to the reported inefficacy of the Oxford-AstraZeneca vaccine against mild to moderate disease of the B.1.351 variant of COVID-19, with data not yet available to assess efficacy against severe disease.⁷ Undocumented migrants have also reportedly been subject to discrimination, detention, and deportation in the past when trying to access health care and other government services in South Africa.

This is the time for the government to implement a constitutional approach and speak with a unified voice to encourage undocumented migrants to get vaccinated, as well as to actualise an efficient plan to safeguard the equitable administering of vaccines to undocumented persons without fear of being arrested or deported. One of the ways in which this can be achieved, according to Professor Jo Vearey, director of the African Centre for Migration and Society at the University of the Witwatersrand, is by ensuring that the information of undocumented migrants is not given to the Department of Home Affairs or the South African Police Service during the registration process.⁸ The rights of undocumented migrants need to be communicated across the board to government officials, and healthcare workers should be adequately trained and sensitised to the status of undocumented migrants in the country during the vaccination process.

Migrants, documented or undocumented, have the same constitutional rights as South African citizens to access health care services, including the COVID-19 vaccine, as they are considered part of the population. In line with South Africa's vaccination goals of achieving population immunity and considering that migrants make up a significant number of the population, it is essential for the government to use this as an opportunity to clear the documentation backlog, to show transparency, inclusivity, accountability and clarity in the vaccination process, and to create awareness around anti-xenophobia and the rights of migrants in this country.

⁵ South African Government News Agency. 2021. *Home Affairs Signs Agreement to Deal with Backlog of Asylum Seekers*. Available at: <https://www.sanews.gov.za/south-africa/home-affairs-signs-agreement-deal-backlog-asylum-seekers> [March 17, 2021]

⁶ EWN. 2020. *Fact Check: Are There Really 15 Mln 'Undocumented Foreigners' in South Africa?* Available at: <https://ewn.co.za/2020/11/26/fact-check-are-there-really-15-million-undocumented-foreigners-in-south-africa/amp> [March 17, 2021]

⁷ Discovery. 2021. *Understanding SA's Vaccine Rollout Plan: Where Do You Fit Into #VaccineRolloutStrategySA?* Available at: <https://www.discovery.co.za/corporate/covid-19-understanding-sa-vaccine-rollout-plan> [March 17, 2021]

⁸ New Frame. 2021. *Getting Migrants Vaccinated is Critical*. Available at: <https://www.newframe.com/getting-migrants-vaccinated-is-critical/> [March 17, 2021]

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Since SALO's central focus is peace and security, *Dialogue Online* articles focus primarily on this theme, but drawing attention to the nexuses with development, natural resource governance, human rights and gender, mediation, environment and climate change. Preference is towards articles that speak to international development and peace building policy and practice, raise awareness about conflict situations and the gender dimensions thereof and provoke fresh thinking and policy debate. Contributions are drawn from SALO's pool of experts, peace building and development practitioners, activists, academics, former and current diplomats and workshop participants.

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