



Liaison, Dialogue and Research

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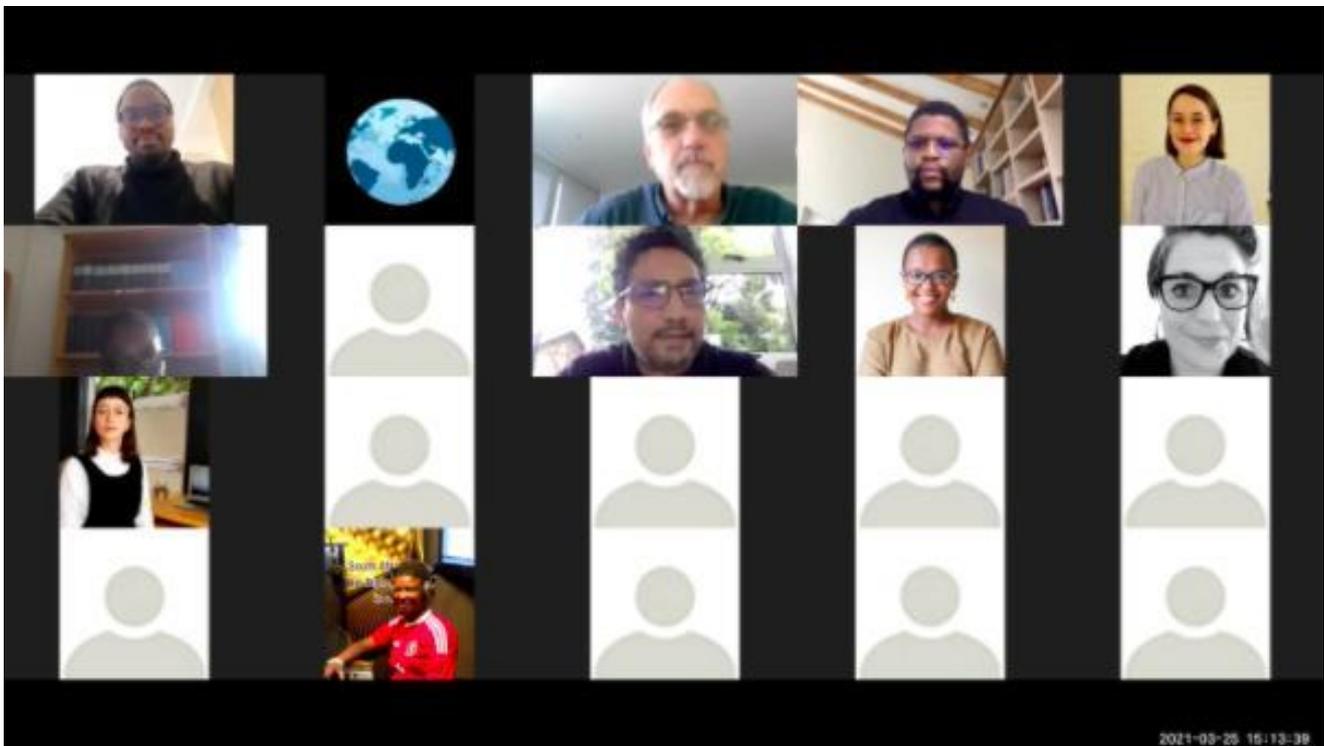
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Policy Dialogue Report

25 March 2021, Zoom Platform

Access to the Covid-19 Vaccine for Migrants in South Africa



Executive Summary

On the 25th of March 2021, the Southern African Liaison Office (SALO) in partnership with the Norwegian People's Aid, hosted a dialogue titled *Access to the COVID-19 Vaccine for Migrants in South Africa*. The dialogue was chaired by SALO board member Dr. Rob Moore. It aimed to highlight the importance of opening up the discussions around migrants to include a focus on public health, challenges with granting equitable vaccine access to migrants within South Africa, and building consensus on the importance of both the right and the necessity for vaccines to be available for all. The dialogue was attended by members of the public, ANC Alliance members, academics, and civil society and was livestreamed on Facebook. The panelists were Professor Jo Vearey and Special Advisor Zane Dangor.

Summary of the Presentations

Zane Dangor, Special Advisor to the Minister of the Department of International Relations and Cooperation

In an address to the nation, President Cyril Ramaphosa stated that South Africa intends to make Covid-19 vaccines accessible to all those living in South Africa, regardless of citizenship or residence status. Zane Dangor notes that this statement is the lodestar for all policy, law and administrative action regarding whether or not, and to what extent, migrants have access to the Covid-19 vaccination. Dangor argues that the policy position made clear by the statement, specifically that migrants are not to be excluded in the national vaccine rollout programme, is not only compliant with domestic and international law but is also scientifically and morally sound. Further, the inclusion of migrants in the Covid-19 vaccination programme is a policy that aligns well with South Africa's leading role in the global campaign against vaccine nationalism. An exclusion based on citizenship or residence status would result in South Africa implementing its own domestic variation of vaccine nationalism, marring the integrity of its global efforts against such practices.

A Legally Compliant Stance

Section 9 of the South African Constitution prohibits unfair discrimination by the state on one or more grounds, including those grounds that are expressly listed. One such ground is social origin. This right applies to anyone on South African soil. Thus, this right applies to, amongst others, undocumented migrants, refugees and asylum seekers. Further, the State not only has a negative duty not to infringe this right, but it also has a positive duty to promote and protect this right. Any exclusion of migrants in the vaccination programme would result in a breach of the State's duty to protect and promote the right to equality. Thus, the President's statement, which sets the precedent for inclusion and accessibility, is in compliance with the Equality clause and is therefore sound in domestic law.

Not only does the President's statement comply with domestic law, but so too does it adhere to and promote the values within the soft and hard instruments of international law. Dangor notes that these instruments include:

- The African Charter on Human and Peoples' Rights which prohibits discrimination on the grounds of social origin and birth;

- The International Convention on the Elimination of All Forms of Racial Discrimination in which the term racial discrimination is defined to include distinction, exclusion restriction or preferences based on national or ethnic origin; and
- The ‘International Bill of Rights’ constituted by the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

A Scientifically Sound Stance

Dangor explains that the prevailing science suggests that vaccinations are most effective in curbing the spread of a virus when global population immunity is achieved. Without global population immunity, the Covid-19 virus is able to spread more easily and, in doing so, there is a larger chance that it may mutate to become resilient to the mitigation measures put in place to curb its spread. Thus, by ensuring that no group is excluded from the vaccination rollout programme, South Africa is more likely to achieve the population immunity that is required to curb the transmission of the virus.

A Morally Sound Stance

Zane Dangor argues that the moral grounds on which an inclusive vaccination policy stands cannot be overemphasized. An inclusive vaccination policy demonstrates a value for life, equality and justice.

A Stance Aligned with South Africa’s Global Leadership in Fighting Vaccine Nationalism

Dangor states, *“There’s a fear that not only will migrants and other vulnerable people be put at the back of the vaccination campaigns, [but that] they will be completely excluded”*. This fear is widely felt, on a domestic and global scale, and is legitimised through the practice of vaccine nationalism. Dangor notes that when the Covid-19 pandemic began, the virus was blind to state lines – spreading fast and impacting people in all parts of the world. Thus, nations worked together in solidarity to endeavour to flatten the curve. However, this camaraderie began to subside as vaccines were manufactured and wealthier states began to hoard vast quantities of vaccines at the expense of the global South. Dangor references the People’s Vaccine Alliance (PVA), which stated:

“Even though rich nations represent just 14% of the world's population, they have bought up 53% of the most promising vaccines so far, according to data from eight leading vaccine candidates in Phase 3 trials that have done substantial deals with countries worldwide.”¹

In other words, whilst wealthy countries have a surplus of vaccinations, the other side of the coin is that the global South endures vaccination shortages and the continued spread of the Covid-19 virus.

He comments that:

¹ *Rich Countries Hoarding Covid Vaccines, Says People’s Vaccine Alliance* (2020) BBC, found at [<https://www.bbc.com/news/health-55229894>]

“We should not be blind to the likelihood... that the very reason there was such efficiency in developing these vaccines so quickly was because people in rich Western countries were badly affected by Covid-19.”

In order to understand vaccine nationalism and its consequences, it is important to unpack its definition as well as the history behind the phenomenon. Dangor defines vaccine nationalism as, “A situation where governments sign agreements with pharmaceutical companies to supply their own populations ahead of vaccines becoming available for others”. The practice of vaccine nationalism casts an unfavourable light on the solidarity and cooperation between nations that was seen at the outset of the pandemic. It suggests that solidarity is outweighed by the notion that, where there is competition over resources, some lives will take precedence over others. Dangor suggests that it is a variant of racism that stems from the prejudicial ideologies that have historically determined and shaped North-South relationships. Further, he points out that vaccine nationalism is not a new phenomenon and has been seen during the breakout of the SARS and H1N1 viruses.

South Africa has taken a strong and vocal stance against the practice of vaccine nationalism and has joined other states in an international campaign which advocates for equitable vaccine distribution and solidarity-based policies and practices. This campaign argues that ‘No one is safe until everyone is safe’. In other words, it is vital to vaccinate a majority of the population in order to halt the transmission of the virus. Dangor asserts that for South Africa to deny migrants access to the Covid-19 vaccine would be for the nation to implement its own domestic variation of vaccine nationalism. This would mar the integrity of South Africa’s international fight for equitable access to vaccines. He further notes that vaccine inequality creates tension between regions and thus poses a threat to stability and peace between nations. In summary, Dangor states:

“If we have our own version of differentiated access based on whether you've got a green ID book, whether you are an asylum seeker, whether you are a refugee, [or] whether you're undocumented, we are only replicating the vaccine apartheid and the consequences that we complain about at the global level - we are replicating that at the national level and the kinds of social instabilities that may emerge from that.”

Suggested Solutions to Curb Vaccine Nationalism

- The formation of a global vaccine strategy where implementation, policy and practice are monitored by member states who work together under the common purpose of breaking the chain of transmission.
- The waiver of intellectual property (IP) rights over medicine, vaccines and medical equipment which may be used in support of the global Covid-19 effort. Dangor states that the response to the pandemic cannot be left in the hands of the private sector and thus, individual rights must be limited for the greater good. To this end, South Africa is a signatory to the proposal that was submitted to the World Health Organisation (WHO). The proposal argues that certain provisions of the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement should be temporarily waived in order to ensure affordable and equitable access to vaccines as well as diagnostic and therapeutic technology. Dangor contends that this waiver supports the right to life and is, at its heart, a human rights issue.

- The creation of an efficient vaccination rollout programme, in compliance by the WHO guidelines, in which migrants are integrated into the already existing priority groups rather than being seen as a separate category of peoples. To this end, Dangor suggests that the Department of Home Affairs is required to implement a system in which it is possible to track the vaccination history of those migrants that are undocumented.

In conclusion, Dangor warns that should efforts to reach population wide immunity be hindered by excluding large groups of people from access to vaccines, *“new variants of Covid-19 will emerge, and economies will continue to be decimated”*.

Associate Professor Jo Vearey, African Centre for Migration and Society at the University of the Witwatersrand

Professor Jo Vearey notes that we have found ourselves in a key moment in time. As the planning for a vaccination program is still underway, she states that this is the moment to ensure that *“...issues around migration, mobility, and ensuring a solid public health response are incorporated into the development of our plan”*. Further, she urges participants to keep in mind that South Africa is at a stage where:

“We are sitting waiting for vaccines. There is a lack of transparency around what is happening in terms of procurement and planning and this is creating a whole range of additional barriers to what would already be a difficult conversation around the inclusion of different migrant groups in any health plan, but particularly in the middle of a crisis.”

Whilst on the one hand, there are pre-existing tensions around issues of migration, on the other hand, this moment could also be an opportunity. Professor Vearey began with some essential background, contextualising the debate around how migrants fit into a national vaccination programme:

The contextual setting of the migrant-vaccine debate:

- The global context, before the pandemic, showed promise of a renewed interest in migration and health through structures and initiatives such as the sustainable development goals, ideas of universal healthcare coverage, and thinking around *“migration-aware and mobility-competent health responses”*.
- The national context prior to the pandemic was one in which, alongside inequality and challenges to accessing services, issues around health were compounded by growing nationalism, racism, and xenophobia, which are a significant hindrance to reaching a solution.
- The legal framework is also significant in contextualising the current situation of health and migration, consisting of important instruments such as the Constitution, the National Health Act, alongside the various legal definitions of ‘migrant’.
- South Africa is currently in the process of changing the legislation and infrastructure around international migration, heading in a direction which Vearey suggests is increasingly restrictive to an extent that *“...the rights that exist currently for asylum seekers and refugees are being further eroded... [The] challenges faced in accessing the documentation required to be in the country legally, are becoming ever more difficult”*.

- Around half of the population of Gauteng were born in a different province. Thus, alongside thinking about migrants from other countries, the conversation should be wider to include thinking about movement more generally. Professor Vearey gives the example of a two-dose vaccine, highlighting the issues of movement both provincially and internationally - if one needs to move for work, what are the implications?

Vearey explains that therefore, most importantly, a vaccination programme *“is not only about ensuring the right to access, it's about how we enable and enact that.”*

Other broader tensions that have come to the fore, which have hindered the focus on the right to a vaccine for all, include:

- Increasing securitization
- Fear of ‘the other’
- Border management and ‘keeping people out’
- Control of infectious diseases
- Global health security

These types of rhetoric and concerns, Vearey points out, are often co-opted to justify certain responses to conversations around the right to access vaccines. She states:

“What we're seeing are responses being put into place that are not scientifically proven, don't make public health sense and, unfortunately, are... getting in the way of a public health... response.”

She emphasises that ‘the public health argument’ should be at the centre of the conversation, the basic principle of public health being: *‘nobody benefits unless everybody is involved’*. Whilst one can make a strong case about the right to health and the right to dignity for all, the public health argument is a more effective one as it is likely to get more buy-in from stakeholders.

The migrant experience during pandemic- research findings

Keeping in mind the background and context of the global and local health and migration landscape, Professor Vearey discussed findings from ongoing research on the experiences of migrants during the Covid-19 pandemic. She stated, *“COVID has already amplified ranges of existing inequities... and injustices across South Africa”*. This applies to citizens and non-citizens alike, and those who are not permanent residents have experienced further challenges, such as with access to food aid, challenges at borders, and the expiration of their documents. In addition, issues around xenophobia continue, and within the context of the pandemic there have been instances of increased xenophobic violence. Language around ‘sanitising’ is also being mobilised to justify xenophobic violence.

Another significant burden on migrants is the way in which documented migrants are, as Vearey states, *“made to have an irregular status”*. She notes that there are within the region of around 220 000 000 asylum seekers whose permits have expired during the lockdown period and that there is still no concrete plan in place for supporting the renewal of their permits. Additionally, the regulations around automatic renewal

are not being recognised by officials ‘on the ground’. By not being able to renew their documents, Vearey explains that *“people are made to have an irregular status.”*

Opportunities

Whilst there is clearly a myriad of challenges to a just and equitable distribution of vaccines, particularly to the migrant population, Vearey then moved on to talk about whether, within the context as discussed, this moment could also present opportunities and tools for *“advocacy and actions”*. Whilst recognising the problems and limitations of organisations such as the WHO, there are still a range of promising processes taking place within the global governance sphere:

- An action plan is being developed by the UN through the WHO, which looks at the health of refugees and migrants. This began prior to the pandemic and continues to present opportunities.
- Professor Jo Vearey and others have been involved in recent initiatives with the African Commission on Human and People's rights including a resolution which seeks to protect refugees, migrants, internally displaced people, and asylum seekers in the fight against Covid-19.
- At the level of the AU, there has been a focus on trying to support states and Regional Economic Communities (RECs) to ensure that their Covid-19 responses take non-citizens into account within their vaccination plans and in their broader approaches to health.
- The UN Committee on Migrant Workers, along with other organisations, produced a guidance note *“recognising the importance of migrant workers and migrant labour and what this means in terms of vaccine rollout”*.

With regards to the guidance note, Professor Vearey noted the lack of public discussion around important questions regarding migrant workers, such as:

- *“What is going to happen to the bilateral [arrangements] that bring workers from Lesotho [and] Mozambique to work in the gold mines in South Africa”?*
- What role might those arrangements play in terms of ensuring access to vaccines?
- Whilst it is the private sector, such as in the case of mines, who *“benefit off [of] cheap labour”*, do they not have a responsibility to ensure their workers are vaccinated in the same way that they are responsible for providing access to Tuberculosis and other health services?

She stresses the importance of starting to have conversations around those questions and argues that this has begun in South Africa and Southern Africa. Notably, a coordinating group called the Migration and Coronavirus in Southern Africa Coordination Group (MiCoSA) have begun having such conversations and have made connections with other parts of the continent to learn and engage in alternative types of responses. Rwanda, for example, have included refugees in their public vaccination programme. Vearey notes that this raises relevant questions such as - *“Is this politicking? Is this something important? Is there something we can learn here?”*

Vearey argues that the process of creating a vaccination programme, and having these important conversations around it, need to include civil society, research communities, international organisations, and supranational structures.

The importance of the structural context

In closing, she reiterated that the reason that she has spoken in depth about the broader issues, is that:

“I don't think we can talk about vaccination programming and access for all if we're not reminding ourselves of the real structural challenges. Those structural challenges are why, pre-pandemic, foreign-nationals struggle to access the basic health care they have the right to access.”

For instance, whilst asylum-seekers and refugees had the right to access free HIV and tuberculosis health services, Vearey states that these rights *“only materialised after a long fight... to ensure that a financial directive was produced from the Department of Health that clearly articulated [that] these services needed to be provided”*. In addition, health fee-schedules and the structuring of co-payments often means that refugees are being charged the fee of tourists, and whilst they officially have the same right to access those services as citizens, they are unable to.

Issues such as these point to the salience of the need to not only think about vaccinating people, but as Vearey states, *“To think about how to do that in a way that is going to encourage individuals who are treated so badly by the state and are often afraid to access services”*. She presents an option for how this can be done, namely a firewall. A ‘firewall’ is a formal structure that would keep the individuals and their information separate and protected from *“anything to do with the management of immigration”*.²

Firewalls and border walls:
protecting undocumented migrants is essential if South Africa's (anticipated) Covid-19 vaccination programme is to succeed

PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON UNDOCUMENTED MIGRANTS

HEALTH CARE SECTOR

THE FIREWALL:
Clear separation of roles

MIGRATION AUTHORITIES

COVID-19
Getting migrants vaccinated is critical

Migrants without documents may be justifiably hesitant to get the Covid-19 vaccine and need assurance that their information will be protected and not used against them.

By Jan Sorensen
Illustrator: Janettevicki Elomaa
8 Feb 2021 Analysis

NEW FRAME

https://picum.org/wp-content/uploads/2020/02/Firewall_Health_ENG_WEB.pdf

<https://www.newframe.com/getting-migrants-vaccinated-is-critical/>

Professor Vearey ends on a note of warning:

“Unless we move into clear recognition that this is essential in our response, I fear that we're going to have a version of vaccine hesitancy which is not about a fear of a vaccine, but is about a fear of engaging with the state”.

² https://picum.org/wp-content/uploads/2020/02/Firewall_Health_ENG_WEB.pdf

Contributions and Questions from the Floor

- What are the ways of resolving the disjuncture between the government's stated intentions and legislation, and the intransigence of the migration authorities on the ground?
- Has there been government collaboration? Not just cross country, but between regional governments, especially between South Africa and Zimbabwe?
- One of the things that we would like to see is regional collaboration - one united and loud regional voice from ordinary people and civil society. A voice that speaks to issues of access to vaccines, but also testing equipment, medical support and the follow-ups. In other words, support throughout the Covid-19 process.
- If we are going to abide by international conventions that we are signatories to, we should recognise the importance of campaigning outside of government - some of the issues may be too broad to explain in a boardroom.
- What is civil society doing in terms of speaking to the issues of access to vaccines for migrants, and also other vulnerable groups within South Africa? The system that the government of South Africa uses to register people and access information is also not available to everyone. Civil society should try to broaden the issue beyond just an exchange between government and civil society, to finding a way whereby there is fair and equal engagement between the two.
- Is there not a golden opportunity here? If one leverages the reality that migration is inevitable and that Covid-19 is an opportunity for people to look at regional and continental, if not international solutions. Covid-19, rather than being a divisive issue could be a unifying issue. This would require the government to come on board as well as a strong advocacy campaign.
- Could more light be shed on the system that the United Kingdom is using where they have specific centres for vaccinating migrants, especially undocumented migrants, whereby they don't have to fill in the same forms as others?
- Could more be said by Zane Dangor around the issue of the conflicting views or positions by the Minister of Health and the President, specifically as to why there should be such discrepancies? Taking into account that despite having beautiful laws, what we see on the ground and in practice is very different and how this difference has been exacerbated by Covid-19.
- One of the biggest challenges that I think we have is to come up with a way to tackle vaccine nationalism - as a country, as Southern Africa and as a continent. There is insufficient dissemination of information to the public regarding the issue. Further, while we point fingers at wealthier countries, we are our own worst enemy because we engage in behaviour that promotes the same concept that we appear to be fighting.
- We need the discussion to broaden and link all the other issues that we have been struggling with as people, challenges that have been exacerbated by Covid-19. We see this in the autocratic overreach and corruption that's emerging in the vaccination programme and also a clear lack of a regional programme.

Responses from Panel

Dr Rob Moore

Dr Moore makes the point that the ethical values that have come out of the discussion are very important for framing these conversations going forward. He states, *“We will need to saturate the public realm with the values that we have been discussing today”*. In addition, he emphasises the vital need for clear communication regarding how the vaccination programme will unfold.

“So long as people know what's happening, they will be able to live with it. It's [the] not knowing, I think, that is a destabilising influence”.

He noted that professor Vearey's point about the need for a firewall is very important in order to allow migrants to participate. Finally, he emphasised the need to include local structures in the planning process for the vaccination rollout programme and argued that the programme should be guided by local knowledge as well as local community-based structures.

Associate Professor Jo Vearey

In response to the question about the disjuncture between government intentions and the circumstances that occur on the ground, Vearey points out that this is a key yet seemingly unresolvable question. However, in her opinion it comes down to convincing people that:

“People who were born in other countries... are not something to be concerned about. These are people who are [a] part of South African social fabric, they're part of the region's social fabric, whereby migration and mobility are such an established part of our social norms and strategies.”

She notes that there are two main challenges:

- Legislation that protects migrants is often not implemented; and
- There is a recent move towards *“increasingly restrictive regimes and management of migration”*.

Therefore, she argues that we need to be better at holding people to account through various existing channels. She states that some ways in which this is possible include:

- Better economic analysis where using wider metrics on existing national data can *“assist the State in acknowledging the contribution that foreign nationals make to the South African fiscus, that people can work irregularly or informally and are still contributing”*. This would make clear that migrants should not be regarded as a burden on national resources.

- Civil society and the electorate should be holding politicians to account and not allowing them the ‘easy win’ of using foreign nationals as scapegoats for state failures as a way to avoid responsibility and gain votes.
- Bodies such as the Human Rights Commission and various ombudsmen should be used to increase accountability and should be utilised to deal with cases of xenophobia and hate speech.
- Ensure that the State acknowledges xenophobic violence rather than pushing a narrative in which it is framed as ‘illegal activity’.

Regarding the procedure that the UK uses when vaccinating migrants, Vearey explains that that case was indeed an example of a firewall such as mentioned in her presentation. A firewall means ensuring that *“there are formal protective interventions in place”*. It therefore should not be up to the individual healthcare workers or person in charge of registration, rather, Vearey suggests that *“It’s about the ways that all systems are set up [that] means that individuals’ information isn’t shared with immigration officials”*.

On the issue of whether Covid-19 could in fact be seen as a unifying opportunity, Vearey agrees. She notes that this is a key point, particularly the way in which the ideas of borders, the importance of movement, and the safe movement of goods and services across borders, has brought issues of migration and movement to the fore.

“There’s something about people beginning to realise the interconnectedness of the continent in ways that they haven’t reacted to before.”

Yet at the same time, the legal protection of migrants continues to be eroded and therefore whilst thinking of the opportunities presented by the current moment, the challenges should remain clearly on the agenda.

Special Advisor Zane Dangor

Dangor notes that where systemic challenges result in scarcity of resources and inequality, there is a tendency to attribute this scarcity to the “other” - in this case, migrants. He argues that this is not the solution and, instead, what should occur is an open conversation about systemic challenges in our health system and how to address them. He further states that one should acknowledge the implications of the scarcity rhetoric, namely a rise in xenophobic sentiment and action, as well as call out those who promote it. He relates this to vaccination scarcity on an international level, arguing that the global South should work together in solidarity to create access to vaccinations for *all* and not just one’s own nation. He states, *“What we advocate for on the international stage must be exactly what we practice at the national level”*.

Regarding turning intention into practice, Dangor explains that this has always been a difficult challenge but that it is vital that the South African government work quickly to ensure that they align. He suggests that one way in which to do this is to educate public servants on the current policy position and their responsibility to not discriminate against migrants. He notes that, in the UK, there is a specially appointed Minister who is in charge of vaccinations and suggests that South Africa could learn lessons from the UK. He argues that by appointing a minister whose sole mandate is the creation of a vaccine strategy, it would help to ensure greater dissemination of information, transparency and certainty. Dangor explains that, just as was done

during the HIV/Aids pandemic, governments should take special note of and cater to ‘bridging populations’ - populations that are at risk due to systemic oppression and may not come forward and communicate their experiences of their own volition.

On the topic of COVAX, Dangor notes it needs to be located within a system of multilateralism. He states that the intention behind the system was to create a means of equitable distribution of vaccines based on WHO guidelines. Dangor states, “COVAX is now squarely part of what we call this philanthropy-centred approach to multilateralism”. Such an approach does not attempt to correct systemic issues. Further, the intention behind COVAX is being frustrated by the emergence of vaccine nationalism. Issues that have arisen within the COVAX system include:

- The cost of vaccines are not very different from those rates that are found in bilateral engagements;
- There is much secrecy regarding the negotiation process. Non-disclosure agreements hinder transparency between the government and the public and also create distrust between governments;
- The extent to which a government benefits from COVAX is largely dependent on how well one can negotiate; and
- COVAX is still largely driven by the private sector, a sector which works on a first come first serve basis rather than a needs basis.

A solution to this, Dangor suggests, is for African countries to band together, purchase vaccines in bulk and distribute equitably based on need. In this sense, COVAX can be seen as an opportunity of unification. Lastly, Dangor re-emphasises the importance of waiving IP rights so as to allow South African to increase its own production of vaccines as well as booster shots.

The analysis and recommendations included in this Report do not necessarily reflect the view of SALO or any of the donors or conference participants, but rather draw upon the major strands of discussion put forward at the event. Participants neither reviewed nor approved this document. The contents of the Report are the sole responsibility of SALO, and can under no circumstances be regarded as reflecting the position of the donors who provided financial assistance for this policy dialogue session.

About the Southern African Liaison Office:



The Southern African Liaison Office (SALO) is a South African-based not-for-profit civil society organisation which, through advocacy, dialogue, policy consensus and in-depth research and analysis, influences the current thinking and debates on foreign policy especially regarding African crises and conflicts.

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