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Kevin Schembri<sup>1</sup>

# The Dignity and Rights of Migrants in Catholic Canon Law

## Introduction

This study investigates the role of canonical norms in the mission of the Catholic Church to promote, protect and ensure respect for the dignity and rights of refugees and migrants.<sup>2</sup>

The motivation behind this objective is two-fold. On one hand, the definition and guarantee of the rights of individual persons constitute one of the primary

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<sup>1</sup> Kevin Schembri is a lecturer in canon law at the Faculty of Theology at the University of Malta. He received his academic formation at that University and at the Pontifical Gregorian University in Rome, and is currently promoter of justice and defender of the bond for the Archdiocese of Malta.

<sup>2</sup> The term “refugees” refers to those persons whose situation is often so dangerous and unbearable due to persecution or armed conflict, that they flee and cross national borders to seek safety in neighbouring countries. For such persons, denial of asylum has potentially deadly consequences. Amended by the Protocol of 1967, article 1 of the 1951 UN Refugee Convention (*The Convention Relating to the Status of Refugees*) defined a “refugee” as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” On the other hand, the term “migrants” refers to those persons who choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, education, family reunion, or other reasons. Unlike refugees, migrants usually face no impediment to return home. See UNHCR, “Convention and Protocol Relating to the Status of Refugees,” accessed June 21, 2017, <http://www.unhcr.org/3b66c2aa10>; Adrian Edwards, “UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’; Which is right?,” accessed April, 18 2017, <http://www.unhcr.org/news/latest/2015/8/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

goals of Catholic canon law.<sup>3</sup> On the other hand, the experience of millions of refugees and migrants who often undergo violation or loss of their proper dignity and rights is one of the most dramatic human realities of our times,<sup>4</sup> and raises a powerful echo in the heart of the Church.<sup>5</sup> In 2016, around 65.6 million individuals - that is, around six million more than two years earlier - were forcibly displaced worldwide as a result of persecution, conflict, violence, and other factors; among them, more than 22 million were refugees, over half of whom were under the age of eighteen.<sup>6</sup> Faced with these realities, the Catholic Church recognizes her call to be “a vigilant advocate,” ardent in her defence of migrants from any unjust restriction of their natural right to move freely, and respectful of their proper dignity and rights, even in cases of non-legal immigration.<sup>7</sup>

This study will cover a three-stepped analysis: it will first offer a very brief introduction to Catholic canon law; secondly, it will outline the canonical norms that deal with the dignity and rights of refugees and migrants at large; and thirdly, it will present the rights of Christian migrants, that is, the rights that arise from the sacrament of baptism.

## Catholic Canon Law

Like all other organized groups or societies, the Catholic Church has its own order, structures, discipline and procedures. This whole system is called canon law. Due to the mystical nature of the Church, canonical legislation is different from that of other civil or political communities; its fundamental nucleus is constituted by divine and natural law, to which all the other sources of law must correspond.

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<sup>3</sup> See Pope John Paul II, “Apostolic Constitution *Sacrae Disciplinae Leges*, 25 January 1983,” *Acta Apostolice Sedis (AAS)* 75/II (1983), vii-xiv.

<sup>4</sup> See Pope Francis, “Apostolic Exhortation *Evangelii Gaudium*, 24 November 2013,” *AAS* 105 (2013), 1019-1137, par. 210.

<sup>5</sup> See Vatican Council II, “Pastoral Constitution *Gaudium et Spes*, 7 December 1965,” *AAS* 58 (1966), 1025-1115, par. 1; Pope Francis, “Apostolic Exhortation *Amoris Laetitia*, 19 March 2016,” *AAS* 108 (2016), 311-446, par. 46. For a historico-theological overview of the Church’s concern for refugees and migrants, see Pontifical Council for the Pastoral Care of Migrants and Itinerant People, “Instruction *Erga Migrantes Caritas Christi*, 3 May 2004,” *AAS* 96 (2004), 762-822, par. 12-33.

<sup>6</sup> See UNHCR, “Global Trends. Forced Displacement in 2015,” 2, 5-8, accessed June 25, 2016, <http://www.unhcr.org/statistics/country/576408cd7/unhcr-global-trends-2015.html>; UNHCR, “Global Trends. Forced Displacement in 2016,” 2, accessed June 21, 2017, <http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>.

<sup>7</sup> Pope John Paul II, “Apostolic Exhortation *Ecclesia in America*, 22 January 1999,” *AAS* 91 (1999), 737-815, par. 65.

For this reason, “what is just (or unjust) in the ecclesiastical society is primarily determined in consideration of the origin, structure, finality, goods, and means given by God to His Church. All of these elements reflect the complex unity of the divine and the human that exists within the Church, and the same is also found within the juridical relations which are derived from these elements.”<sup>8</sup> Hence, any reference made to Catholic canon law must always take into consideration the teaching of the Second Vatican Council on the nature of the Church, namely, that the earthly and visible assembly (structured with hierarchical organs), and the spiritual community (enriched with heavenly things as the Mystical Body of Christ), are not to be considered as two realities; rather they form one complex ecclesial reality.<sup>9</sup>

Throughout the centuries, this system of laws and norms has been shaped by numerous legislative or judicial acts of ecclesial authorities, by customs that have expressed a sense of justice among the Christian faithful, and by the commentaries of renowned jurists. In the last century, its development was defined by the process of codification, as well as by the directives of Second Vatican Council that were received into the two Codes that currently govern the Catholic Church: the *Code of Canon Law (CIC)*, which was promulgated on the 25 January 1983 by Pope John Paul II and forms the central compilation of rules for the Latin (Western) Church, and the *Code of Canons of the Eastern Churches (CCEO)*, which was promulgated by the same Roman Pontiff on the 18 October 1990 to regulate the discipline of the Eastern Catholic Churches. Over the last three decades, a small number of canons have been modified, to reflect better certain theological truths or pastoral needs of the Church. With regard to our study, the changes brought about by the *motu proprio De Concordia Inter Codices* are of particular relevance.<sup>10</sup> Moreover, the canonical legislation contained in the two Codes has been supplemented with specific regulations and instructions issued by the competent ecclesial authorities. This study will make frequent references to the *Juridical Pastoral Regulations (JPR)* that are included in the Instruction *Erga Migrantes* and were issued by the Pontifical Council for the Pastoral Care of Migrants and Itinerant People in May 2004.

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<sup>8</sup> José Tomas Martín de Agar, *A Handbook on Canon Law* (Montréal: Wilson & Lafleur, 2007), 4-5.

<sup>9</sup> See Vatican Council II, “Dogmatic Constitution *Lumen Gentium*, 21 November 1964,” *AAS* 57 (1965), 5-75, par. 8.

<sup>10</sup> Pope Francis himself acknowledges that one of the reasons behind the issue of the *motu proprio* is the reality of migration, particularly among Christians: “in our day in which the mobility of the population has effected the presence of a large number of Eastern faithful in Latin territories. This new situation generates many pastoral and legal issues, which need to be resolved with appropriate standards.” Pope Francis, “*Motu Proprio De Concordia Inter Codices*, 31 May 2016,” *AAS* 108 (2016), 602-606.

## Canon Law and Rights of Migrants at Large

Notwithstanding the fact that canon law is more focused on matters pertaining to the reality and experience of baptized persons, it contains several norms that can be easily applied to the reality of all migrants, including those who are not Christians.

It is true that the two Codes make only one direct reference to refugees and migrants, that is, when they request Catholic parish priests and clerics to be especially attentive towards those who live far from their own country (cf. *CIC* can. 529, §1; *CCEO* can. 381, §1). Nonetheless, through other canons, they oblige the Christian faithful to assist the poor - and very often, refugees and migrants fall within this group - from their own resources, promote social justice, and help with the needs of the Church so that she can proceed with her works of charity (cf. *CIC* can. 222; *CCEO* can. 25; *JPR*, art. 2, §1). In fact, canon law explicitly considers the exercise of works of apostolate and charity, especially those towards the needy, as one of the three proper purposes of the temporal goods of the Church (cf. *CIC* can. 1254, §2; *CCEO* can. 1007). The canons also state that Christians, in exercising their own rights, must always take into account the rights of others, as well as their duties towards other individuals (cf. *CIC* can. 223; *CCEO* can. 26).

On the same lines, Church legislation binds diocesan and eparchial bishops to be charitable and show themselves concerned not only for the Christian faithful entrusted to their care, but also to those who are not baptized and are present in their territory (cf. *CIC* can. 383; *CCEO* 192). On their part, clerics are requested to adopt measures to foster peace, unity and harmony based on justice among all people (cf. *CIC* can. 287, §1; *CCEO* can. 384, §1). Furthermore, the two Codes contain three practical rules that present clerics with a possibility to show solidarity with deprived migrants on a very practical level: members of the clergy are to foster simplicity of life, refrain from all things that have a semblance of vanity, and use for works of charity those superfluous goods which have come to them on the occasion of their exercise of ecclesiastical office (cf. *CIC* can. 282; *CCEO* can. 385, §1).

In addition to this, canon law also speaks of canonical rights that pertain to those who are not baptized but have a particular relationship with the Church, such as catechumens (cf. *CIC* cann. 206, §2; 788, 1170, 1183; *CCEO* cann. 9, §2; 587; 875) and those non-baptized persons who are married to Catholics (cf. *CIC* can. 1135; *CCEO* can. 777).

The canonical norms which touch upon the experience of refugees and migrants who are not necessarily baptized are based on various principles. First and foremost, one finds the principle of *justice*. In 2003, Pope John Paul II stated

that “the service of the Gospel also requires the Church, in defending the cause of the oppressed and excluded, to call on the political authorities ... to grant refugee status to those who have left their country of origin because of threats to their life, to help them return to their countries, and to create conditions favouring respect for the dignity of all immigrants and the defence of their fundamental rights.”<sup>11</sup> Secondly, such norms are based on the principles of *mercy* and *inclusion*, for the reason that the Catholic Church considers herself a Church without frontiers and mother to all.<sup>12</sup> In being merciful and inclusive with refugees and migrants, the Church also benefits since “human mobility, which corresponds to the natural historical movement of peoples, can prove to be a genuine enrichment for both families that migrate and countries that welcome them.”<sup>13</sup> Thirdly, the principle of *reciprocity* is also significant in this regard, because reciprocity enables different persons “to live together everywhere with equal rights and duties” and urges each one “to become an ‘advocate’ for the rights of minorities when his or her own religious community is in the majority.”<sup>14</sup> Fourthly, such canonical norms are also driven by the principle of *evangelization*, since the Church “must be constantly concerned to provide for the effective evangelization of those recent arrivals who do not yet know Christ.”<sup>15</sup> While affirming that the right to religious freedom must be respected, and that it is strictly forbidden to compel or allure someone in an inappropriate way to join the Church (cf. *CIC* can. 748, §2; *CCEO* can. 586), the two Codes affirm that the Gospel message needs to reach equally all human beings in every age and in every land (cf. *CIC* can. 211; *CCEO* can. 14). Finally, these norms are motivated by the principle of *education*, because one of the functions of Church legislation is to spell out and remind everyone of the values and standards of the community.<sup>16</sup>

## Canon Law and Rights of Baptized Migrants

Having outlined the canonical norms that deal with the rights of refugees and migrants at large, let us now turn our attention to those aspects of canon law that concern the rights of baptized migrants.<sup>17</sup> This is important because

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<sup>11</sup> Pope John Paul II, “Apostolic Exhortation *Ecclesia in Europa*, 28 June 2003,” *AAS* 95 (2003), 649-719, par. 103.

<sup>12</sup> See Pope Francis, “Apostolic Exhortation *Evangelii Gaudium*,” no. 210.

<sup>13</sup> See Pope Francis, “Apostolic Exhortation *Amoris Laetitia*,” no. 46.

<sup>14</sup> Pontifical Council for the Pastoral Care of Migrants and Itinerant People, “Instruction *Erga migrantes*,” no. 64.

<sup>15</sup> Pope John Paul II, “Apostolic Exhortation *Ecclesia in America*,” no. 65.

<sup>16</sup> See James A. Coriden, *An Introduction to Canon Law* (New York: Mahwah, 2004), 6.

<sup>17</sup> Many of these norms are found in the two lists of canons that are found in the two Codes

a relative majority of refugees and migrants around the world are baptized. In 2012, Christians comprised nearly half (49%) of the total number of persons (around 214 million) who reside permanently in a country other than where they were born<sup>18</sup>.

### Three Key Notions: Baptism, Communion and Domicile

The notion of “baptism” is fundamental in Catholic canon law. Through baptism, an individual is not only incorporated into Christ and starts sharing in His priestly, prophetic, and royal functions; he or she is also incorporated into the Church and is thus constituted a person with the duties and rights that are proper to Christians. For this reason, canon law states that there exists among all the baptized a true equality regarding dignity and action by which they all cooperate in the building up of the Church according to one’s own condition and function (cf. *CIC* cann. 96; 204, §1; 208; 849; *CCEO* cann. 7, §1; 11; 675).<sup>19</sup>

At the same time, Church legislation speaks of different levels of “communion” among Christians. It states that the Church of Christ, constituted and organized in this world as a society, “subsists” in the Catholic Church (cf. *CIC* can. 204, §2; *CCEO* can. 7, §2), and hence proclaims that the Catholic Church is “one embodiment of that greater gathering made up of all those baptized into Christ.”<sup>20</sup> The distinction between those members of the Christian faithful who are in full communion with the Catholic Church (i.e., Latin and Eastern Catholics) and those who are in partial communion with her (i.e., non-Catholic Christians) is based on the bonds of the profession of faith, of the sacraments, and of ecclesiastical governance (cf. *CIC* can. 205; 840; *CCEO* can. 8).<sup>21</sup> This

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and which speak of the rights and duties of a) the Christian faithful in general (cf. *CIC* cann. 208-223; *CCEO* cann. 7-26) and b) the lay members of the Christian faithful (cf. *CIC* cann. 224-231; *CCEO* cann. 399-409). It is important to point out that these lists constitute a new feature in canon law and do not follow a clear systematic order; at times, they do not even distinguish between those rights that are purely human and those that arise from baptism. Moreover, these canons are not exhaustive because they express a set of rights that is relevant to a particular historical moment. See Adolfo Longhitano, “Il popolo di Dio,” in *Il diritto nel mistero della Chiesa*, 3 vols., ed. Gruppo Italiano Docenti di Diritto Canonico (Roma: Pontificia Università Lateranese, 2001), 2: 35.

<sup>18</sup> See Pew Research Center, “Faith on the Move: The Religious Affiliation of International Migrants, March 2012,” 11-12, accessed June 25, 2016, <http://www.pewforum.org/files/2012/03/Faithonthemove.pdf>.

<sup>19</sup> See Vatican Council II, “Dogmatic Constitution *Lumen Gentium*,” no. 32.

<sup>20</sup> James A. Coriden, *Introduction to Canon Law*, 60.

<sup>21</sup> See Gianfranco Ghirlanda, *Il diritto nella Chiesa mistero di comunione: Compendio di diritto ecclesiale* (Roma: G&B Press, 2014), 40-43; Vatican Council II, “Dogmatic Constitution *Lumen*

distinction is very relevant and significant for our study because around 51% of the two billion Christians worldwide are Catholic, while 37% are Protestant and 12% are Orthodox.<sup>22</sup>

Since this study deals with the reality of migrants, it is also important to present briefly the understanding of the notions of “residence” and “domicile” in Church legislation because these have several juridical effects and make migrants part of a parish, diocese or eparchy (cf. *CIC* cann. 12, §3; 13; 105; 107; 1115; 1408; 1409; 1413; *CCEO* cann. 831; 915; 916; 1491, §2; 1074; 1075; 1079; *JPR* art. 1, §2). According to Catholic canon law, a person is said to be a “resident” in the place where he or she has a domicile; a “temporary resident” in the place where he or she has a quasi-domicile; a “traveller” if the person is outside the place of a domicile or quasi-domicile which is still retained; and a “transient” if the person does not have a domicile or quasi-domicile anywhere (cf. *CIC* can. 100; *CCEO* can. 911). Canonical domicile is acquired by that residence within the territory of a certain parish or at least of a diocese or eparchy, which is either joined with the intention of remaining there permanently unless called away, or has been protracted for five complete years. The same conditions apply for the acquirement of canonical quasi-domicile, except that in this case, the period related to the intention of remaining there, or to the protraction, is three months (cf. *CIC* can. 102; *CCEO* can. 912).

### Rights Related to the Quest of Holiness

In virtue of their duty, that arises from baptism, to direct their efforts to lead a holy life (cf. *CIC* cann. 210; 217; *CCEO* cann. 13; 20), Christian refugees and migrants have the right and duty to worship God according to the prescripts of their own rite and to follow their own form of spiritual life (cf. *CIC* can. 214; *CCEO* can. 17, 40). For this reason, canon law binds diocesan and eparchial bishops to show concern for all the Christians faithful entrusted to their care, including those who are baptised but are not in full communion with the Catholic Church (cf. *CIC* can. 383; *CCEO* 192; *JPR* art. 16-18).

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*Gentium*,” nos. 8, 13-15; “Decree *Unitatis Redintegratio*, 21 November 1964,” *AAS* 57 (1965), 76-89, par. 1, 3, 4, 13; Congregation for the Doctrine of the Faith, “Responses to Some Questions Regarding Certain Aspects of the Doctrine of the Church, 29 June 2007,” *AAS* 99 (2007), 604-608.

<sup>22</sup> See Pew Research Center, “Global Christianity: A Report on the Size and Distribution of the World’s Christian Population, December 2011,” 10, 21, accessed June 25, 2016, <http://www.pewforum.org/files/2011/12/Christianity-fullreport-web.pdf>.

Speaking of Catholic migrants who are members of a different rite or *sui iuris* Church, canonical legislation requests diocesan and eparchial bishops to provide for the spiritual needs of such faithful who are present in their territory; do their best in order that these faithful retain, cultivate and observe the rite of their own Churches; and foster relations with the higher authorities of these Churches. On the other hand, Eastern patriarchs have the duty to follow their faithful who reside outside the territorial boundaries of their Churches, in order to provide them with protection and spiritual good (cf. *CIC* can. 383; *CCEO* cann. 38; 148; 193; *JPR*, art. 1, §3).<sup>23</sup> It is also the duty of the hierarchy to make sure that those who have frequent contacts with the faithful of another rite are instructed in the knowledge and practice of that rite (cf. *CCEO* can. 41). In 2003, Pope John Paul II stated that “specific pastoral care needs to be given to the integration of Catholic immigrants, with respect for their culture and their distinct religious traditions.”<sup>24</sup> A year later, the Pontifical Council for the Pastoral Care of Migrants and Itinerant People pointed out that the large number of Eastern Catholics who were moving into Western countries “raises the question of their pastoral care” and presents the Church with “an urgent matter to examine the pastoral and juridical consequences of the growing number of these faithful living outside their traditional territories and of the contacts being established officially or privately at various levels.”<sup>25</sup>

In this spirit, Church legislation also requests that in order to better assist refugees and migrants who are unable to avail themselves of the ordinary care of pastors, the competent authorities should consider the possibility to erect personal parishes, exarchies or eparchies (cf. *CIC* can. 518; *CCEO* cann. 148; 280, §1; 311, §1; 315; *JPR*, art. 6), establish particular pastoral structures and spiritual missions (cf. *CIC* cann. 294; 516; *JPR*, art. 7), and create specific figures, such as episcopal vicars, syncelli, and chaplains, with this specific mission (cf. *CIC* cann. 383; 476; 568; *CCEO* cann. 193; 246; *JPR*, art. 4-5, 8-11).<sup>26</sup> The juridical norms

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<sup>23</sup> See Pope John Paul II, “Apostolic Exhortation *Pastores Gregis*, 16 October 2003,” *AAS* 96 (2004), 825-927, par. 72.

<sup>24</sup> Pope John Paul II, “Apostolic Exhortation *Ecclesia in Europa*,” no. 103. To this end, the Roman Pontiff had also encouraged contact and cooperation between the Churches in their native countries and those to which they have migrated, in order to study forms of assistance which could even include the presence among immigrants of priests, consecrated men and women, and properly trained pastoral workers from their own countries.

<sup>25</sup> Pontifical Council for the Pastoral Care of Migrants and Itinerant People, “Instruction *Erga Migrantes*,” nos. 25-26.

<sup>26</sup> See Vatican Council II, Decree *Christus Dominus*, 28 October 1965,” *AAS* 58 (1966), 673-696, par. 23, 27; Pope John Paul II, “Apostolic Exhortation *Ecclesia in America*,” no. 65; “Apostolic Exhortation *Ecclesia in Europa*,” no. 103. At the same time, the Pontifical Council for



of the Church also outline the requirements and conditions related to the help offered by religious institutes towards the apostolate among migrants (cf. *JPR*, art. 12-15), as well as the duties of the Migration Commission or the bishop promoter (cf. *JPR*, art. 20).

Christian migrants have also the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the Sacraments and the Word of God (cf. *CIC* can. 213; *CCEO* can. 16; *JPR*, art. 1, §1). It must be remembered that the reception of the sacraments by Catholics according to the rite of another Catholic Church *sui iuris*, does not entail enrolment in that Church (cf. *CIC* can. 112, §2). On the other hand, canon 844 of the *CIC* and canon 671 of the *CCEO* present the fundamental principles concerning any exceptional reception of the sacraments of penance, Eucharist, and anointing of the sick by Catholics from non-Catholic ministers in whose Churches these sacraments are valid. These canons, along with canon 116 of the *CIC* as modified by the motu proprio *De Concordia Inter Codices*,<sup>27</sup> also regulate the exceptional administration of the sacraments by Catholic ministers to members of the faithful who are not Catholics, while differentiating between Orthodox and other non-Catholic Christians.<sup>28</sup>

Moreover, canonical legislation states that, within the confines of their territory, the local ordinary, hierarch and pastor validly assist or bless marriages not only of their subjects but also of those who are not their subjects, provided that one of them is ascribed to their Latin or *sui iuris* Church (cf. *CIC* can. 1109; *CCEO* 829). With regard to the right of individuals who wish to petition the Church to investigate the validity of their marriage, the changes brought about by *Mitis Iudex Dominus Iesus* (*MIDI*) and *Mitis et Misericors Iesus* (*MMI*)

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the Pastoral Care of Migrants and Itinerant People upholds that when the canonical erection of such stable structures for pastoral care appears difficult or inopportune, pastoral assistance must still be offered to Catholic immigrants pastorally “in whatever manner seems best in view of circumstances, even without specific canonical institutions.” In such circumstances, “informal, perhaps spontaneous, pastoral arrangements deserve to be recognized and encouraged within ecclesial circumscriptions, independently of how many people benefit from them, if only to avoid the danger of improvisation and isolated and unsuited pastoral workers or even of sects.” See Pontifical Council for the Pastoral Care of Migrants and Itinerant People, “Instruction *Erga Migrantes*,” no. 92.

<sup>27</sup> See Pope Francis, “Motu Proprio *De Concordia inter Codices*, 31 May 2016,” no. 10.

<sup>28</sup> See Vatican Council II, Decree *Orientalium Ecclesiarum*, 21 November 1964,” *AAS* 57 (1965), 76-89, par. 27; Pope John Paul II, “Encyclical Letter *Ecclesia de Eucharistia*, 17 April 2003,” *AAS* 95 (2003), 433-475, par. 45; Pontifical Council for Christian Unity, “*Directory for the Application of Principles and Norms on Ecumenism*, 25 March 1993,” *AAS* 85 (1993), 1039-1119, par. 122-136.

have granted migrants a better and increased possibility to present their case. Nowadays, cases regarding the nullity of marriage that are not reserved to the Apostolic See can be also adjudicated in the tribunal of the place in which either or both parties have a domicile or a quasi-domicile (cf. *MIDI* can. 1672; *MMI* can. 1358).<sup>29</sup>

In matters regarding assistance with the Word of God, baptized migrants have a right to a Christian education and to engage in the sacred disciplines, with a just freedom of inquiry and with the opportunity to express freely and prudently their opinion on those matters in which they possess expertise (cf. *CIC* cann. 217-218; 299; *CCEO* cann. 20-21; 404).

On the same lines, bishops, along with clerics and members of the laity, are bound to make themselves available to Christian migrants, since these too must have the possibility to make known to the pastors of the Church their needs and desires, especially spiritual ones, and to manifest to them and to the rest of the Christian faithful their opinion on matters which pertain to the good of the Church (cf. *CIC* can. 212; *CCEO* can. 15).

### ***Rights Related to the Apostolate and Mission***

Since all Christians have the duty and right to promote the growth of the Church and to engage in her apostolate and mission of evangelization (cf. *CIC* cann. 210-211; 781; *CCEO* cann. 13-14; 584), Catholic canon law obliges clerics to go beyond any temptation of clericalism and to respect, promote and protect the mission of the laity in the Church and in the world (cf. *CIC* can. 275, §2; *CCEO* can. 381, §3; *JPR*, art. 3). In virtue of their baptism, and without prejudice to the conditions laid out in Church legislation, Catholic migrants have the right to establish and govern associations of the faithful for purposes of charity, piety or evangelization. According to their own state and condition, they too have the right to promote or sustain apostolic action even through their own undertakings (cf. *CIC* cann. 215-216; *CCEO* cann. 18-19; *JPR*, art. 3). This is especially the case with lay persons who are bound by a particular duty to imbue

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<sup>29</sup> See Pope Francis, "Motu Proprio *Mitis Iudex Dominus Iesus*, 15 August 2015," *AAS* 107 (2015), 958-970; "Motu Proprio *Misericors et Mitis Iesus*, 15 August 2015," *AAS* 107 (2015), 946-957. With regard to the domicile or quasi-domicile of the parties, prior to this modification, only the following tribunals were competent for cases concerning the nullity of marriage: the tribunal of the place in which the respondent had a domicile or quasi-domicile, and the tribunal of the place in which the petitioner had a domicile, provided that both parties lived in the territory of the same conference of bishops or nation, and provided that the judicial vicar of the domicile of the respondent gave consent after hearing the respondent (cf. *CIC* 1673; *CCEO* 1359).

and perfect the order of temporal affairs with the spirit of the Gospel (cf. *CIC* can. 225, §2; *CCEO* cann. 401; 406).<sup>30</sup>

Canon law also calls upon the whole ecclesial community to manifest particular care, assistance and support towards migrant families, in particular spouses, parents and godparents, since these have a special role in the building of the people of God and the education of their children, even in matters of faith (cf. *CIC* cann. 226; 774, §2; 793, §1; 872; 1136; *CCEO* cann. 407; 618; 627; 684; 783). For this reason, Pope Francis has recently insisted that, in accompanying migrant families, the Church needs to create a specific pastoral programme that respects the culture of these persons, their human and religious formation, as well as the spiritual richness of their rites and traditions.<sup>31</sup>

### ***Rights Related to Ecclesiastical Offices and Functions***

The Catholic Church must also strive to include and engage more Catholic migrants in her internal structures. This is particularly true to those ecclesiastical offices, functions and services which, in one way or another, touch upon the reality of migration; in such cases, migrants can offer, thanks to their own experience, a most valuable contribution as experts and advisors (cf. *CIC* can. 228; *CCEO* can. 408). Moreover, and without prejudice to the conditions laid out in canonical and liturgical legislation, baptized migrants should also be allowed to fulfil certain liturgical functions and ministries (cf. *CIC* can. 230; *CCEO* cann. 403; 709, §2).

Like all members of the Christian faithful, migrants who devote themselves permanently or temporarily to special service of the Church must be given the opportunity to acquire the appropriate formation required to fulfil their function properly. With the prescripts of civil law having been observed, they too have the right for their social provision, social security, and health benefits to be duly provided, as well as to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family (cf. *CIC* can. 231; *CCEO* can. 409).

### ***Rights Related to Penal Matters***

The ecclesial community must do all that is necessary to ensure that no one is permitted to tarnish illegitimately the good reputation of migrant persons, nor

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<sup>30</sup> See Vatican Council II, “Decree *Apostolicam Actuositatem*, 18 November 1965,” *AAS* 59 (1966), 837-864, par. 23-24.

<sup>31</sup> See Pope Francis, “Apostolic Exhortation *Amoris Laetitia*,” no. 46.

to injure their right to protect their own privacy (cf. *CIC* can. 220; *CCEO* can. 23). Moreover, Catholic canon law requires that all members of the Christian faithful have the right to legitimately vindicate and defend their rights in a competent ecclesiastical forum, be judged according to the prescripts of the law if they are summoned to a trial by a competent authority, and not be punished with canonical penalties except according to the norm of law (cf. *CIC* can. 221; *CCEO* can. 24).

## Conclusion

This brief study has drawn attention to the expression, promotion and protection of the dignity and rights of refugees and migrants in Catholic canon law. Such a presentation is needed not only because the canonical norms surrounding these rights “remain largely unknown” even within ecclesial circles,<sup>32</sup> but also because, over the last years, Pope Francis has placed the pastoral care of refugees and migrants among the most important dimensions of the mission of the Catholic Church. In July 2013, just four months after his election, he dedicated his first trip outside of Rome to visit Lampedusa, the small Italian island that hosts thousands of immigrants. In October 2013, he used harsh words about migrant tragedies at sea, and a month later, exhorted all countries “to a generous openness which, rather than fearing the loss of local identity, would prove capable of creating new forms of cultural synthesis.”<sup>33</sup> He has also taught that Christians should respect and embrace with affection Muslim immigrants in the same way that they themselves hope and ask to be received and respected in countries of Islamic tradition.<sup>34</sup> In September 2015, the Pontiff called upon every parish, religious community, monastery, and shrine in Europe to welcome one family of immigrants, while in February 2016, he stopped to pray in Ciudad Juarez for all those who had lost their lives trying to cross the border between Mexico and the United States. Two months later, he joined Patriarch Bartholomew of Constantinople and Archbishop Ieronymos II of Greece on an emotional and deeply symbolic journey to the Greek island of Lesbos and took twelve Syrian refugees with him to Rome. In the statutes of the newly-established Dicastery for Promoting Integral Human Development, Pope Francis stated that the dicastery’s section which dealt specifically with matters regarding refugees and migrants was to be temporarily (*ad tempus*) placed under the direction of the Supreme Pontiff, who would oversee it in the manner he deems appropriate.<sup>35</sup>

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<sup>32</sup> James A. Coriden, *Introduction to Canon Law*, 62.

<sup>33</sup> See Pope Francis, “Apostolic Exhortation *Evangelii Gaudium*,” no. 210.

<sup>34</sup> See *ibid.*, no. 253.

<sup>35</sup> See Pope Francis, “*Statutes of the Dicastery for Promoting Integral Human Development*,” 17

Catholic canon law can play an important role in the evolving circumstances surrounding the reality of refugees and migrants around the world. At a time when official institutions and legislative bodies around the world are grappling with political, economic and humanitarian solutions to the drama of migration, and when public opinion - including the outlook of several members of the Christian faithful - seems to be evolving in the direction of self-protection and hostility toward refugees and migrants, canonical legislation can be rediscovered as a powerful tool, both within the Church and on a socio-political level, that can facilitate the promotion and protection of the dignity and rights of refugees and migrants, as well as help in the education and formation of communities regarding this dramatic human reality.

Kevin Schembri  
Faculty of Theology  
University of Malta  
Msida MSD 2080  
Malta

[kevin.m.schembri@um.edu.mt](mailto:kevin.m.schembri@um.edu.mt)