MEDECINS SANS FRONTIERES
(DOCTORS WITHOUT BORDERS)

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Médecins Sans Frontières Belgium Trust South Africa IT 577/2011

MEDECINS SANS FRONTIERES/DOCTORS WITHOUT BORDERS SUBMISSION
on THE NATIONAL HEALTH INSURANCE BILL, 2019

26 NOVEMBER 2019

For attention: Ms Vuyokazi Majalamba, email vmajalamba@parliament.gov.za.

To the members of the Portfolio Committee on Health,

1. Introduction to the organization

1. Doctors Without Borders (also Médecins Sans Frontières, *hereinafter* "MSF") is an international medical humanitarian organisation that was founded in 1971. Today, MSF is a worldwide movement of more than 67.000 people. MSF is a non-profit, self-governed, member-based organisation.

2. MSF provides medical assistance to people affected by conflict, epidemics, disasters, or exclusion from healthcare in over 70 countries worldwide. Its teams are made up of tens of thousands of health professionals, logistic and administrative staff - bound together by the MSF charter. MSF's activities are guided by medical ethics and the principles of impartiality, independence and neutrality.

3. MSF teams conduct independent evaluations to determine medical needs and assess what assistance to provide. Different criteria determine what we do, such as the magnitude of a given crisis, the levels of illness and mortality in the population, the severity of exclusion from healthcare, and the added value MSF can bring to the affected people.

4. MSF has worked in South Africa since 1999 providing direct medical humanitarian assistance. Currently MSF has HIV and TB projects in Khayelitsha, near Cape Town, and King Cetshwayo district, KwaZulu-Natal. In Bojanala district, in South Africa's platinum mining belt, MSF is helping to expand access to care for survivors of sexual and gender-based violence through four dedicated clinics, known as Kgomotso Care Centres, which offer medical and mental healthcare, and social services. MSF is also supporting the Stop the Stock Outs Project, a civil society consortium which monitors the availability of essential drugs in clinics across the country and pushes for the rapid resolution of stock outs and shortages.

5. In 2019, MSF opened a new project in Tshwane offering free and confidential primary health care services, mental health care, and referrals for secondary or specialised care to refugees and migrants and vulnerable South Africans. Additionally, a hub or drop-in centre provides social and

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legal orientation services to assist people to better understand their rights and what services are available from other local supporting partners aiming at restoring people's dignity.

6. MSF has previously responded to the health needs of vulnerable migrants and refugees in the border town of Musina (2007-2013) and the inner city slum buildings of Johannesburg (2008-2012), as well as launching emergency responses to outbreaks of xenophobic violence.

2. Preliminary considerations

7. Globally, the number of displaced persons is increasing with currently more than 70 million people who are displaced either inside or outside of their country of origin. This due to a variety of causal factors including but not limited to armed conflict, extreme insecurity, climate related factors and economic or political hardships.

8. Like many other states, South Africa receives asylum seekers and migrants as it offers a conflict-free environment with constitutionally bound obligations towards asylum seekers and migrants, in addition to obligations South Africa must enforce as a signatory to international human rights instruments.

9. The South African Government, bound by the Bill of Rights in South Africa's Constitution -as further interpreted by South Africa's Supreme Court's decisions as well as the Refugee Act and the National Health Act, has a clear obligation of health service delivery towards any and all individuals that reside within its territory.

10. The notion of "Universal health coverage", as part of the Sustainable Development Goals (SDGs) to be achieved by 2030 is defined by the World Health Organisation (WHO) as a system whereby all individuals and communities can access the quality health services they need, without suffering financial hardship.

11. It is known that for the most part, undocumented migrants avoid public health facilities and hospitals, unless it is an emergency. This is largely due to fear of being detected, the high costs involved (when the type of treatment is not free of charge), and the high rate of refusal because valid identity papers are often required for registration. Uninsured patients admitted for emergency hospital treatment are often released as soon as possible to minimize the financial costs to the hospital, without due consideration for their condition and the possible health risks. Instead, they largely rely on self- and non-professional medical help, or else access private clinics where they can receive care without providing identification

3. Submissions on the Bill

12. MSF welcomes the opportunity to make submissions on the National Health Insurance Bill (*hereinafter* "the Bill"), B11-2019, as introduced in the National Assembly on the 26th of July 2019. With its submission MSF would like to share some of its observations and concerns in

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relation to the Bill. If requested, please note that a representative of MSF would be willing to make a verbal submission before the appropriate forum.

13. We further endorse the submissions of Section 27, South Africa Litigation Centre, Lawyers for Human Rights and Sonke Gender Justice, in so far as they further elucidate the need for greater protections for vulnerable groups here listed, and expound on the ambit of rights that ought properly to be available to them under the health insurance scheme envisaged by the proposed legislation.

POPULATION COVERAGE – EXCLUSION OF ASYLUM-SEEKERS AND UNDOCUMENTED MIGRANTS

14. Referring to Chapter 2: Access to health care services – Population coverage 4.(2), we note that an asylum seeker or illegal foreigner is only entitled to (a) emergency medical services; and services for notifiable conditions of public health concern. While the Bill states in its background that its aim is to achieve universal coverage for health services as a strategy for moving towards Universal Health Coverage (UHC) in the Republic of South Africa, we note with regret that the population coverage, as stipulated in Chapter 2 of the Bill, does restrict the access to health care services for certain groups.

15. In addition, we refer to the Memorandum on the objects of the National Health Insurance Bill 1.2 which states that the aim of universal health coverage is to provide South Africans with a) access to needed health care that is of sufficient quality to be effective; and b) financial protection from the costs of health care.

16. In contrary to the Bill's stated objective aiming to achieve universal health coverage MSF regrets to read that both the Memorandum of Objects only refers to South Africans and the Bill itself limits the population coverage in its Chapter 2.

17. Being an international medical humanitarian organisation, MSF advocates for health care policies that ensure and guarantee the well-being, safety and dignity of people, regardless their legal status in a given country.

18. Based on its operational experience, MSF bears witness to how many of the barriers in accessing health care faced by undocumented migrants and asylum seekers arise from financing systems related to their eligibility for schemes and out of pocket payments. This is also currently the care in South Africa.

19. Therefore, MSF stresses that universal health coverage commitments should include asylum seekers and undocumented migrants and not be limited to citizens and recognised refugees only. We demand that States commit to uphold the right to the highest attainable standard of health for all people, without discrimination based on legal status.

20. In this regards we would like to refer to the General Comment number 19 of the Committee on Economic, Social and Cultural Rights that monitors and interprets the 1966 Covenant on Economic, Social and Cultural Rights which states that: 'non-nationals should be able to access non-contributory schemes for income support, affordable access to health care and family

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support. Any restrictions, including a qualification period, must be proportionate and reasonable' and ''refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards'.

21. In addition, as acknowledged by the WHO's global action plan to promote the health of refugees and migrants, preventing inequities and public health considerations of host populations cannot be separated from those of refugees and migrants and broader determinants of health.

22. Excluding a part of the population from health care services is not only negative for the individuals concerned but can also have public health consequences and thus be negative for the entire society. Denying part of the population access to preventative and curative health services undermines efforts to control amongst others infectious diseases. It can also undermine efforts to improve infant and maternal mortality and the management of chronic conditions. Limiting access to services for a part of the population prohibits both to achieve Universal Health Coverage and to reduce health inequalities.

23. Excluding a part of the population from health care services is not only negative for public health reasons, as well as for moral, ethical and legal reasons, it is also not cost-efficient. Excluding people from accessing non-emergency care, based on residence status has potentially a damaging financial impact on health systems as shown by a study in 2015 by the EU Agency for Fumanental Rights (FRA).Their results, which looked at the examples of hypertension and prenatal care in Germany, Greece and Sweden, are consistent with peer-reviewed research published the same year concluding that the cost of restricting access to healthcare for asylum seekers and refugees in Germany is higher than granting them regular access to services

    https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-cost-healthcare_en.pdf
    Kayvan Bozorgmehr, Oliver Razum, "Effect of Restricting Access to Health Care on Health Expenditures among Asylum-Seekers and Refugees: A Quasi-Experimental Study in Germany, 1994-2013.," 22 July 2015).

24. Restrictive health policies also negatively affect health professionals, whose commitment to medical ethics is contradicted by requirements to sort their patients, based on complex immigration rules, into those who are and those who are not entitled to health care. In some cases, health professionals and other service providers have responded by mobilising to protest discriminatory rules and to provide basic health services to excluded populations, often working in difficult conditions.

REGISTRATION OF USERS OF THE FUND

25. Referring to Population coverage 4(2) (4) we also note that a person seeking health care services from an accredited health care service provider or health establishment must be registered as a user of the Fund as provided for in section 5, and must present proof of such registration to the health care service provider or health establishment in order to secure the health care service benefits to which he or she is entitled. Section 5 (5) explains that when applying for registration

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as a user, the person concerned must provide his or her biometrics and such other information as may be prescribed, including fingerprints, photographs, proof of habitual place of residence and - (a) an identity card as defined in the Identification Act, 1997 (Act No. 68 of 1997); (b) an original birth certificate; or (c) a refugee identity card issued in terms of the Refugee Act.

26. MSF is of the conviction that the provision of health care to individuals should not be subjected to the implementation of migration control. Obliging people to register as set out in Section 5(5) in order to access health care will create additional barriers to health care. People who are undocumented in a country and who require medical treatment may be afraid of this extensive registration as they might fear to being reported to the immigration authorities, detained and deported, which can deter them from seeking medical care at all. This in return can create mostly costly health requirement as waiting for care might result in emergency secondary health care at a later stage.

27. MSF therefore strongly recommends that any registration process must have the necessary safeguards in place to ensure that the confidentiality of patient's data, including their documentation status, guaranteeing that under no circumstances they are shared with third party stakeholders such as immigration authorities. Health care service providers whether public or private should never be expected to play any part in the work of immigration enforcements, as it further eradicates trust between patients and health care professionals.

CONCLUSION

28. This Bill as it stands today would appear to create financial barriers for vulnerable people and lead to situations where those who seek health care may not be able to afford it, especially when they can only access emergency health care or otherwise be subject to foreigner rates for medical fees. This can force already vulnerable families into making impossible choices, between health care, food or housing. Language barriers and access to information also impede from getting care.

    1. Limiting access to services for a part of the population both prohibits to achieve Universal Health Coverage and to reduce health inequalities. It is also contrary to medical ethics and states' human rights obligations, including the right to health.

    2. Health care should be provided on the basis of need, and not tied to or conditioned upon residence status. Proactive steps are rather needed to remove administrative barriers to accessing services, including discriminatory refusal of treatment and requirements for documents that residents living in an irregular situation are unable to provide.

    3. MSF therefore recommends rectifying any and all clauses that limit access to services provided by NHI for any and all vulnerable groups within South Africa, highlighting that specifically for asylum seekers, and undocumented migrants.