

JOINT STATEMENT

Spain fails to comply with international recommendations and deepens exclusion from health services among undocumented migrants

1 September. Two years since the coming into force of the health reform

Two years have passed since the coming into force of Royal Decree 16/2012 (RDL), regarding “*urgent measures to guarantee the sustainability of the National Health System and to improve the quality and security of its services*”. On the occasion of this anniversary, Amnesty International, the Center for Economic and Social Rights, Medicos del Mundo and Red Acoge denounce the Spanish state’s failure to comply with the recommendations of diverse United Nations human rights mechanisms and the Council of Europe, which have called for the RDL to be reformed, and which have reminded the Spanish state that it has obligations with regard to the right to health and the respect for undocumented migrants.

Even before the coming into force of the RDL, the UN Committee for Economic, Social and Cultural Rights called for the legislative reform not to limit access to health services, regardless of the legal situation of the persons in question, and asked the government to evaluate the impact of said reform on the most vulnerable collectives.

In June 2013, the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance classified the health reform as a “lamentable” and expressed his concern over the imposition of economic barriers to access.

In April 2014, six UN Special Rapporeurs and Independent Experts, led by the Special Rapporteur on Extreme Poverty and Human Rights, reminded the Spanish government that basic human rights norms cannot be ignored because of fiscal pressures.

Similarly, in January 2014, the Committee on Economic and Social Rights of the Commission of Europe, emphasized that this reform contravened the European Social Charter, of which Spain is a State party.

Despite the existing consensus among international bodies, their repeated calls and expressions of concern and the reiterated petitions for reform of the RDL, the Spanish government has not taken these into account. On the contrary, the authorities have continued to implement the health reform and have continued to adopt norms that deepen yet further exclusion from health care, such as is the case of Order SSI/1475/201, of July 29, which regulates the special agreement on the delivery of health care.

The undersigned organizations warn that the economic cost imposed by the agreement could present a barrier to access to health care for persons in positions of greatest vulnerability. In this sense, the organizations emphasize that international standards regarding the right to health demand economic accessibility as one of the essential elements of this right. These agreements require a payment that is sometimes higher than that of private insurance, in many cases for very limited service which does not include access to specialists and which obliges a patient to pay for the entirety of any medication. At present, only two communities (Cantabria and the Valencian Community), and the autonomous cities of Ceuta and Melilla, de facto permit subscription to these agreements.

In these two years, the Ministry of health has withdrawn the health cards of some 873,000 people. In this time it has not made public any analysis of the dissuasive effect of the health reform on undocumented migrants, nor on the identification of women who are victims of gender violence or trafficking. Similarly, it has not explained the possible irregularities in the application of the RDL, such as may be billing for emergency medical attention, which has been denounced by medical

organizations and Amnesty International.

Access to medication is another of the issues of particular concern to the undersigned organizations, as the raising of pharmaceutical copayments, on one hand, and the fact that persons excluded from the National Health System now have to pay for the entirety of their medication, on the other, may impact the continuity of treatment among vulnerable persons, and thereby have serious repercussions on their health, especially among those who have serious illnesses. Moreover, it may actually lead to increased expenditure on health when these people require more complex attention due to the evolution of their illness (emergency care, hospitalization etc). The undersigned organizations commend the positive discourse that Spain maintains in international forums concerning commitment with the human rights protection mechanisms of the United Nations. With this in mind, and through a [joint letter to the Ministry of Health, Social Services and Equality](#), the organizations call on the government to act in accordance with its stated position by complying with its international human rights obligations and the recommendations of the United Nations, reforming the Royal Decree, assuring the universality of the right to health and urgently guaranteeing access to health care to migrants, regardless of their administrative status.

Background information

On 1 September 2012, Royal Decree Law 16/2012 came into effect. With this RDL, Spain has incurred human rights violations by limiting the right to health, which may affect the right to life among some of the most vulnerable groups in our society, and by enacting a retrogressive and discriminatory measure.

Persons without a health card will only be attended to in the following circumstances: emergencies; pregnancy, birth and post-natal; minors; asylum seekers and victims of trafficking during the period of 'reestablishment and reflection'. However, persons with chronic illnesses such as cancer and diabetes will not have access to free health care.

One case that is illustrative of the negative impact of the health reform is that of Alpha Pam, a 28-year-old Senegalese man without a health card who died of tuberculosis on 21 April 2013, despite the fact the free treatment for his illness was considered in the general criteria on health care services for migrants in the Balearic Islands. Alpha Pam was diagnosed with bronchitis at the Inca Hospital without the use of an x-ray nor his admission. According to information received by the organizations, the health center refused to carry out diagnostic tests on up to three occasions and they even warned that, given his situation as a migrant, he would have to pay for the visit. In the face of this, the Health Council carried out a "reserved investigation", the conclusions of which included an order for the manager of the hospital to be dismissed and for three disciplinary procedures to be opened. The report recognized administrative errors in the management of health care of Alpha Pam.

This communication is signed by Amnesty International, the Center for Economic and Social Rights, Medicos del Mundo and Red Acoge. ///ENDS

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