



MSF STATEMENT TO THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS ON BILL C-41

April 19, 2023 – For the past 52 years, and today in over 70 countries, Doctors Without Borders or Médecins Sans Frontières (MSF) has alleviated suffering through medical care consistent with the fundamental principles of humanitarian aid: humanity, impartiality, neutrality, and independence, and in line with medical ethics. MSF has no other purpose than fulfilling this social function. Here in Canada, more than 180,000 Canadians support MSF based on their trust and confidence in what we do. This allowed us to send 267 Canadians and more than 84 million dollars to our programs around the world in 2022.

Principled humanitarian work is recognized and protected by International Humanitarian Law (or IHL). Humanitarian organizations such as MSF providing essential services impartially with no commercial, political, or other objective, must be afforded the protection of IHL. Under IHL, humanitarian assistance cannot be considered support to any party to conflict, even one deemed “terrorist.” In other words, providing humanitarian aid cannot be considered a crime.

IHL is integral to Canadian law. As party to the Geneva Conventions, Canada has an obligation to uphold IHL and must, according to recent United Nations Security Council resolutions, ensure that domestic counterterrorism legislation is compatible with IHL. Canada’s Supreme Court has similarly affirmed that the Criminal Code must be interpreted such that “innocent, socially useful... acts” with no criminal intent are not criminalized.

MSF acknowledges that Bill C-41 aims to

facilitate rather than curtail humanitarian action. Unfortunately, Bill C-41 and the counterterrorism parts of the Criminal Code it relates to are, in their current formulation, inconsistent with IHL and Canadian law, and will undermine Canadian humanitarianism.

Bill C-41 would require humanitarians to seek case-by-case permission for what they already have the legal right to do under IHL. But this is not simply duplication. The process itself – in which authorization would be required from at least 2 Ministries and up to 9 governmental agencies – would severely erode the practical agility as well as the principles enshrined in IHL that enable effective humanitarian aid delivery.

Bill C-41’s potentially onerous authorization process would divert humanitarian resources and delay our responsiveness in emergencies, like the recent Syria/ Türkiye earthquake, where lives hang in the balance and every hour counts. The process would also create an intelligence windfall for Canadian security agencies, including access to employee personal data that they would otherwise not have reason to collect, and which could be used for purposes beyond the scope of Bill C-41. This will deter Canadians from working for humanitarian organizations.

Further, by placing humanitarians under unprecedented government scrutiny and control, Bill C-41 would compromise our independence as well as the neutrality upon which we depend to

negotiate access and gain security assurances from armed groups. Moreover, denying authorization or



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directing where and what activities are permitted would profoundly undermine the fundamental principles of humanity and impartiality which guide our response on human needs alone.

Bill C-41, in its current form, would embed a presumption of criminality in the Criminal Code, including for humanitarian action, by shifting the burden of proof of non-criminality to the humanitarian actor.

MSF believes this must and can be changed through a standing humanitarian exemption clarified through relatively straightforward amendments to Bill C-41 that effectively remove humanitarian action from the scope of criminality within the Criminal Code. A standing exemption would be consistent with IHL, UN Security Council

resolutions, other States' counterterror laws, Canadian common law, and Canada's reputation for humanitarianism.

Members of the Committee, MSF worked in Afghanistan before the Taliban take-over and continued after on the same basis that we work all over the world where State and non-State armed groups operate: International Humanitarian Law. MSF's purpose is solely humanitarian; for this we should neither be criminalized nor subject to the burden of continually seeking authorization for doing precisely what we exist to do.

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