Mr Rodrigo Maia
PRESIDENT OF THE HOUSE OF REPRESENTATIVES
Brazil

21 May 2020

Letter of support regarding bill #1462/2020 that accelerates compulsory licenses during COVID-19 pandemic

Your Excellency Rodrigo Maia,

Médecins Sans Frontières (MSF) Access Campaign is writing to express our support of the important initiative undertaken by Brazil through bill #1462/2020 that accelerates compulsory licenses during the COVID-19 pandemic. The COVID-19 pandemic poses serious public health challenges to all countries. Ensuring the availability and accessibility of any effective medical tools requires the effective use of legal and policy interventions to rapidly remove any barriers impeding access. The proposed bill is an important step towards this objective and a relief for all those affected by COVID-19 in Brazil.

Compulsory licensing is one of the key public health safeguards that allows governments to use, produce, and import or export patented technologies in the public interest. The public health benefits of making use of compulsory licenses for access to medicines and other medical tools are undeniable. When facing intellectual property barriers that hindered access to more affordable treatment options for people suffering from HIV/AIDS, hepatitis C and cancer, the governments of Brazil, India, South Africa, Thailand, Malaysia and other countries have effectively used compulsory license in the past.[1] These actions have enabled local production or the importation of generic medicines and effectively diversified supply options, decreased prices and expanded access to treatments that saved millions of lives. Thanks to compulsory licenses, our teams were able to treat thousands of people affected by the HIV/AIDS pandemic in several countries. MSF welcomed these efforts in the past and believes these experiences substantiate the importance of the current efforts undertaken in Brazil to pass the new bill.

The rapid spread of the pandemic requires efficient and expedited actions to remove barriers that may impede efforts to ensure access to effective medical tools for anyone in need. In this context, no time should be wasted, and we cannot afford to risk the time it takes for the normal procedure of issuing a compulsory license under the existing legislation. Adapting the existing legal framework for compulsory licensing into one that is more expedited and automatic is necessary and legitimate to respond to this pandemic. The bill #1462/2020 proposes a temporary compulsory license for any and all health technologies needed for the COVID-19 response, includes appropriate royalty compensations and legal assurances for patent owners, and establishes the

procedure to allow its application in any future pandemic upon the declaration of a public health emergency. This will support Brazil in responding to the pandemic more effectively and provide a positive example to the rest of the world on how to prioritise public health in intellectual property policies.

Securing the sustainable production and supply of effective medical tools and equipment at a sufficient scale to ensure uninterrupted and timely access for all is essential. Otherwise, the effectiveness of responding to the COVID-19 pandemic will not be guaranteed. In this regard, voluntary measures and donations offered by patent-holding pharmaceutical companies are not reliable solutions. Recently, pharmaceutical corporation Gilead has ignored the request by more than 150 global civil society organisations to not enforce its patents on remdesivir,[2] a candidate therapeutic for COVID-19 being studied in clinical trials. Given Gilead's limited manufacturing capacity, this would have enabled early development and rapid availability of generic remdesivir in many more countries. Instead, Gilead has confidentially negotiated and signed bilateral voluntary licensing agreements with a small number of generic companies in India and Pakistan and committed their current supply to the United States (US) government through donations.[3] These voluntary licensing agreements exclude most South American countries (including Brazil) and many other low- and middle-income countries who are in the midst of responding to the COVID-19 outbreak. This sets a disturbing precedent, whereby a voluntary license negotiated during a pandemic has actually denied timely access to possible treatments to almost 50% of the world's population. The business-as-usual approach taken by these companies demonstrates the critical need for mandatory legal measures to safeguard access to COVID-19 medicines, diagnostics and vaccines.

Adapting compulsory licensing laws to be more expedited and automatic during the pandemic will strengthen countries' capacity to respond more effectively, both at the national level and through international collaborations. Compulsory licensing will prevent only a handful of companies from controlling the global supply chain of COVID-19 medical tools, enabling diversification of suppliers and economies of scale. With more supply options, countries can be better equipped to implement the necessary policies to deliver treatment, ensure prevention and provide care. The claim that the use of a compulsory license will discourage innovation is also unfounded. Compulsory licenses are temporary, serving the central objective of public health, for instance when market forces are not able to do so. Furthermore, it is a legitimate mechanism that has been used by both developed and developing countries, with the US and Canada leading the ranking of compulsory licenses issued. Furthermore, the industry's claim that market exclusivity through patents are necessary to stimulate innovation is increasingly contested. A large part of the research and development for medical tools is publicly funded.[4] There is no conclusive evidence to demonstrate that more monopoly rights will incentivise more innovation for public health needs.[5] There is also no evidence to suggest that the use of compulsory licenses would reduce said innovative activities. We sincerely encourage Brazil to denounce these claims and stand firm on protecting public health.

Overall, we strongly support the important steps taken by the House on bill #1462/2020 and anticipate the successful passage of the bill to provide a concrete legal guarantee in improving access to COVID-19 medical tools. We are at your disposal for further discussion.

Sincerely yours,

Ana Lemos, General Director
MSF Brazil

Sidney Wong, Director
MSF Access Campaign

Joan Tubau, Co-Director
MSF Access Campaign

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