Comment & Analysis

Refugees have an equal right to healthcare

On the margins: Residents at a camp for people displaced by xenophobic violence outside Johannesburg in April 2015 wait in line to get a food voucher for dinner. Photo: Gustav Butlex

The health department recognises this but not everyone, including asylum seekers, knows this

REFUGEES
Bongani Majola

June 20 is World Refugee Day. There are about 65.6-million forcibly displaced people, and 22.5-million international refugees, the recent report by the United Nations High Commissioner for Refugees states.

South Africa is host to a refugee population from many parts of the African continent and beyond. They are fleeing persecution, civil conflict and wars that threaten life and limb. Refugees and asylum seekers here face a number of problems and access to healthcare is arguably one of the most pressing.

Under international human rights laws such as the 1951 Refugee Convention and its accompanying protocol, refugees and asylum seekers are entitled to adequate, accessible, timely and efficient healthcare.

This is echoed by another international human rights instrument, the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights establishes the right of everyone to the highest attainable standard of health possible. South Africa is party to all three international instruments.

The principles in these international treaties are embodied in the Constitution. Section 27 says "everyone has the right to access to healthcare". The provision requires that healthcare services be provided to people on the basis of nondiscrimination and in keeping with equality. This notion was reiterated by the courts in *Khosa and Others vs Minister of Social Development and Others* and in the matter of *Mahlaule and Another vs Minister of Social Development and Others*.

According to the Constitutional Court, the word "everyone" in this section "cannot be construed as referring only to citizens". Had the legislator intended to limit healthcare rights to citizens, it would have worded the section accordingly, as it did with political rights contained in section 19 and citizenship rights in section 20.

This Constitutional obligation is given effect to in section 27(g) of the Refugees Act, which says a refugee is entitled to the same basic health services and basic education that the citizens of the republic receive.

As with many facets of South African society, the realisation of the right of refugees to healthcare lags behind the constitutional provision. The Constitution provides for adequate healthcare for the indigent, mandating the state to actualise this right through publicly funded healthcare for the poor. In spite of this clear directive from the Constitution, many inhabitants of rural areas and residents of urban and peri-urban townships, including refugees and asylum seekers, continue to struggle to access adequate healthcare.

Refugees and asylum seekers face a peculiar disadvantage in accessing healthcare. This is partly owing to their lack of social and cultural capital, including language, familiarity with local bureaucracy and the requisite social cues, manners and behavioural patterns that locals of similar social locations possess. This is compounded by xenophobia and discrimination. Refugees and asylum seekers are often denied access to healthcare because of their nationality.

In cases where they were treated, refugees and asylum seekers were often charged international fees, according to a report by Human Rights Watch. This is despite the fact that the law provides for refugees and asylum seekers to be treated in the same manner as South Africans.

The department of health has tried to correct the structural barriers arising out of the lack of awareness of some healthcare facilities about the rights of refugees and asylum seekers. It issued a directive to public health facilities on September 19 2007 instructing healthcare practitioners of the legal obligation to provide services to refugees and asylum seekers, in keeping with their rights under the Constitution and the Refugees Act.

The directive says that asylum seekers and refugees — with or without permits — are entitled to: basic healthcare; are exempted from paying for antiretroviral treatment services, irrespective of the site or level of institution where these services are rendered; and should be charged medical fees in accordance with their financial means.

Notwithstanding the actions of the department of health, some structural barriers persist. One such barrier is the intersection of poverty, the status of refugees and asylum seekers as displaced persons and gender, which places refugee and asylum-seeking women at a far greater disadvantage in accessing healthcare.

There have been instances when non-national women, despite their immigration status, are denied access to reproductive healthcare. A tragic example is that of a Zimbabwean left to give birth unassisted at Rahima Moosa Mother and Child Hospital two years ago. She lost her baby.

It is the recognition of the peculiarity of the situation of refugees, and the need to fashion an equal and cohesive society, that necessitated the constitutional provision that grants refugees and asylum seekers the right to basic necessities for a decent life, such as the right to adequate healthcare. This right is limited only by resource constraints.

By obliging the state to give the same standard of healthcare to refugees and asylum seekers as it does to South Africans, the Constitution is envisaging a society free from inequality, discrimination and xenophobia.

Bongani Majola chairs the South African Human Rights Council

South Africans' stories tell how the country is changing

SOCIAL MOBILITY
Mike Brown

Ch-ch-ch-ch-changes? Street traders, labourers and others remain the lowest earners, preserving the status quo of inequality. Photo: Paul Botes

News that South Africa has entered a recession has added more uncertainty to the lives of many citizens.

Thirty-nine percent of South Africans who were not poor in 2008 experienced poverty at some point by 2015 (using a poverty line of R1283 a month at the time).

Those at the comfortable end of the middle class are not immune from this. At least 10% fell into poverty between 2008 and 2015.

Beyond this, 47% of people were stuck in income poverty and consistently found to be poor between 2008 and 2015.

On the upside, compared with their parents, children are successfully completing more years of schooling. But one of the biggest social problems highlighted by the National Income Dynamics Study is the overall improvement in educational attainment for the poor does not necessarily translate into upward income mobility.

Children of low-earning parents — domestic workers, day labourers and farm workers or those engaged in trade such as selling goods on the side of the road — remain the lowest earners. This is perpetuating South Africa's historical patterns of poverty and inequality.

To make the country work we need to know what is changing, what works and what does not, so that we can learn from successes and failures. South Africa is part of a select group of countries that collects hard evidence of the changes taking place in people's lives. It is to our country's credit that we undertake this huge task to feed into national policy alongside other nations such as the United Kingdom, Germany, the United States and Australia.

Since 2008, the National Income Dynamics Study has been tracking 28 000 South Africans who give up their time to tell their stories to give a robust and accurate picture of the changing nature of their lives. Every two years they get a knock on the door at wherever they are living now (South Africans move a lot) and describe their situation covering such topics as education, health, income, work and access to services.

By doing this repeatedly, it is possible to see what is really making a difference. For example, children who receive the child support grant are seen to be taller, complete more years of schooling and have a lower chance of having to repeat a school year. By collecting this data repeatedly (otherwise known as panel data), we can really see whether policy is making a difference, change what is not and address otherwise invisible social issues.

To tell the whole of South Africa's story properly, the National Income Dynamics Study needs to listen to the individual stories of citizens of all kinds. To keep on doing this, 8 000 new households are being approached this year and are being asked to join the 10 500 already being visited.

This is not an easy task; South Africa is a different place now than it was in 2008.

Many of the upper echelons of society — the middle class, upper-middle class and elites — are increasingly hidden behind security and high walls and becoming hard to reach and talk to. The danger is that the changing stories of those behind high walls will end up being diluted in South Africa's policy conversations.

Indeed, Afrobarometer data indicates a steep fall in a sense of belonging and a gradual decline in trust in institutions in South Africa since 2009.

To counter this, the National Income Dynamics Study has launched a "be part of the big conversations" marketing campaign to encourage the disheartened to open their doors and be heard.

To successfully build a country, solid evidence of change is needed rather than hearsay. The information that the National Income Dynamics Study gathers is the story of South Africa. It is the story of us. The study's fieldworkers are out on the streets conducting interviews at the moment. To ensure this vital national asset represents us all, we need to tell our stories when they come knocking.

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