

Doctors for Human Rights

WRITTEN EVIDENCE TO THE JOINT COMMITTEE ON HUMAN RIGHTS 3/10/06

INQUIRY INTO THE TREATMENT OF ASYLUM SEEKERS

Failed asylum seekers and healthcare - current regulations flout international law

In restricting the access of failed asylum seekers to free secondary healthcare the British government is violating the right of failed asylum seekers to the highest attainable standard of health, guaranteed by the International Covenant on Economic, Social and Cultural Rights¹. This covenant, along with the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights, forms the International Bill of Human Rights and was ratified by the UK in 1976. Although not yet justiciable (liable to court trial or legal decision) in the UK, the International Covenant on Economic, Social and Cultural Rights is no less binding on governments than international law that has been incorporated in domestic legislation, such as the Convention against Torture or the European Convention on Human Rights. The Committee on Economic, Social and Cultural Rights, which monitors states' compliance with the covenant, found no factors that might prevent full implementation of the covenant at its last review of the UK in 2002².

The International Covenant on Economic, Social and Cultural Rights puts governments under a specific obligation not to limit equal access to health care for all people. This obligation arises from the combination of article 2.2, which says that parties to the covenant guarantee that its rights will be exercised without discrimination of any kind, and articles 12.2 (c) and (d), which cover "The prevention, treatment and control of epidemic, endemic, occupational

¹ United Nations. International Covenant on Economic Social and Cultural Rights Geneva: UN 1976 <http://www.ohchr.org/english/law/cescr.htm> (accessed June 30, 2006)

² United Nations. Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom. 05/06/ 02. E/C.12/1/Add.79. Paras 10, 14, 24, 25, 30, 44, Geneva: UN, 2002 [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument) (accessed June 30, 2006)

and other diseases” and “The creation of conditions which would assure to all medical service and medical attention in the event of sickness.¹”

At the time of the Committee on Economic, Social and Cultural Rights’ monitoring report on the UK in 2002 Doctors for Human Rights named asylum seekers as a vulnerable population that must be protected from discrimination and criticised the UK’s continuing failure to make the covenant justiciable by incorporating it within national law in conformity with Article 2.1³. The monitoring committee’s final report criticised “de facto discrimination in relation to some marginalised and vulnerable groups” and asked the UK to ensure that its obligations under the covenant were taken into account in national legislation and policy on health and education². Yet within two years the government had blocked access to free NHS hospital health care for most failed asylum seekers and expressed an intention deny them access to free NHS primary care.

A large though difficult to quantify proportion of failed asylum applicants are, despite having faced appalling experiences, rejected by an evaluation process that the United Nations, Amnesty International, and the House of Commons Home Affairs Committee have judged inadequate^{4,5,6}. Because failed asylum seekers are not allowed to work and earn money denial of access to free secondary health care is, de facto, denial of access. Health security is one of the core elements of human security⁷. Given that many of these people have faced the insecurity of physical harm, are by definition denied security of residency, and as a result of government policy have no economic security, denial of access to health care by one of the richest countries on earth is inhumane because it jeopardises their health and illegal because it violates international law.

Where do these regulations leave doctors? Conforming with legislation that denies access to health care goes against the instincts of many doctors, affronts common decency, and infringes international and domestic ethical codes. But it is in its violation of international

³ Physicians for Human Rights-UK. Report to CESCR : Response to the UK Government’s Fourth Report. Sn 4-5. St Albans: PHR- UK, 2002. <http://www.doctorsforhumanrights.org/en/pages/RptRHASH1.html> (accessed June 30, 2006)

⁴ UN Refugee Agency. Quality Initiative Project ; Third Report to the Minister. London March 2006 <http://www.ind.homeoffice.gov.uk/aboutus/reports/unhcr> (accessed June 30, 2006)

⁵ Amnesty International. Get it right: how Home Office decision making fails refugees. London: Amnesty International, 2004. <http://www.amnesty.org.uk/content.asp?CategoryID=838&ArticleID=838> (accessed June 30, 2006)

⁶ House of Commons Home Affairs Committee. Asylum Applications Second Report of Session 2003-04, Vols 1 and 2. Paras 118- 149. London 2004. <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm> (accessed June 30, 2006)

⁷ Commission on Human Security. Human Security. p96. New York: UN, 2003. <http://www.humansecurity-chs.org/> (accessed June 30, 2006)

law that the regulations offend most. The intentions of the authors of the International Covenant on Economic, Social and Cultural Rights, that no discrimination should exist in health care provision and that national legislation should be enacted that render it unlawful, have been, as a matter of policy illegally frustrated^{1,8}. The UN General Assembly, commenting on each individual's responsibility to protect human rights, concluded that everyone has the right to the lawful exercise of his or her profession and an obligation to comply with relevant national and international standards of occupational and professional conduct or ethics⁹.

In its 2002 report the Committee on Economic, Social and Cultural Rights, the world's most authoritative body on health rights, urged the UK government to ensure that health professionals be educated in economic, social, and cultural rights and the public be informed of the requirements of the covenant, but neither recommendation has been followed². The government needs to observe its obligations under the International Covenant on Economic, Social and Cultural Rights. In the meantime health professionals who have cooperated in limiting access should understand they have unknowingly been made complicit in the abuse of a fundamental human right¹⁰.

⁸ United Nations. The domestic application of the Covenant: E/C.12/1998/24, CESCR General comment 9. UN. Geneva. 1998. [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument) (accessed 7th July 2006)

⁹ United Nations. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Art 11. Adopted by General Assembly December 1998. Geneva:UN, 1998 <http://www.ohchr.org/english/law/freedom.htm> (accessed June 30, 2006)

¹⁰ United Nations. Final report on the question of the impunity of perpetrators of human rights violations. Para 133-6. Commission on Human Rights. Geneva:UN 1997 <http://www.hri.ca/fortherecord1997/documentation/subcommission/e-cn4-sub2-1997-8.htm> (accessed June 30, 2006)