

Doctors for Human Rights

18 years of fighting for human rights

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**Rt Hon Alan Johnson MP,
Secretary of State for Health
Richmond House,
79 Whitehall,
London,
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Dear Secretary of State,

In February 2006 we wrote the Mrs Hewitt explaining how the 2004 Charging Regulations violates the human rights of refused asylum seekers. To our surprise her office informed us the letter had been forwarded to the Home Office - from whom twenty months later we still await a reply. As the Joint Parliamentary Committee on Human Rights points out, "legislation concerning provision of healthcare for asylum seekers and refused asylum seekers in England is a matter for the Department of Health"¹. The stakes have now been raised immeasurably by the prospect that the review of access to the NHS by foreign nationals to be completed by the Department of Health and the Home Office might limit their access to free primary as well as secondary care².

May we respectfully emphasise that any restriction in their access to free healthcare by the government violates the right of refused asylum seekers to the highest attainable standard of health guaranteed by Articles 2 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR)³. May we remind you, Secretary of State, that although ICESCR is not justiciable, it is no less binding on government than international law that has been incorporated within domestic law.

This obligation arises from the conflation of Article 2.2 of ICESCR:

States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

¹ House of Lords, House of Commons, Joint Committee on Human Rights. The treatment of asylum seekers: tenth report of session 2007–07: volume 1: report and formal minutes. March 22, 2007. p43. www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf

² The Joint Committee on Human Rights. Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers.p17 The Stationery Office. London 2007 www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/134/134.pdf

³ United Nations. International Covenant on Economic, Social and Cultural Rights 1966. www.ohchr.org/english/law/cescr.htm

and articles 12.2 (c) and (d) of ICESCR:

The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Furthermore, in 1997 the CESCR reminded the UK government that it is required to incorporate the treaty within domestic law⁴, only to be compelled to reiterate the admonition in 2002⁵. The ICESCR requires the UK to take whatever steps are necessary to prevent violations of the Covenant. Given that the UK Government has itself violated the ICESCR by discriminating against refused asylum seekers, making non discrimination justiciable would be the only effective preventative mechanism, given that the Government can hardly break its own laws - or at least the House of Lords would not allow the Government to break its own laws.

Thus, in 2004 when access to free hospital care was withdrawn, refused asylum seekers were not only illegally denied their right to the highest attainable standard of health, but also their right to judicial remedy. Whilst theoretically, access to free primary care was retained because family doctors have a discretion to enrol anyone, NHS guidelines illegally stigmatise applications from refused asylum seekers as ineligible and charging is encouraged⁶. Furthermore, every application takes place against a backdrop of repeated threats from the Government to withdraw the discretionary status.

In the UK's recent fifth periodic report to the CESCR, the government defends its failure to incorporate the ICESCR into domestic law on the basis that the courts are expected to interpret the law taking the Covenant into account⁷. It also claims in para 52 that "the rights contained in the Covenant receive protection and are progressively being realised under domestic legislation". Clearly this is false as the 2004 Charging Regulations are a retrogressive step given that refused asylum seekers previously had free access to all healthcare.

Most failed asylum seekers are destitute and cannot pay for healthcare, so that denial of access to free healthcare is, de facto, denial of access to healthcare. Denial of access to healthcare risks unnecessary suffering, and an illness that might have proved relatively easy to treat at an early stage becoming more grave, possibly life threatening. Crucially, barring access to free primary care has a much greater potential for treatable conditions remaining untreated, because so many more people consult primary care services over so many more conditions than is the case for secondary care. Further, much secondary care is referred from primary care.

⁴ United Nations. Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland. Dec 4, 1997. [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/c54abb67971c31c78025656b0054b9d8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/c54abb67971c31c78025656b0054b9d8?Opendocument)

⁵ United Nations. Concluding observations of the Committee on Economic, Social and Cultural Rights: United Kingdom. June 5, 2002. [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument)

⁶ National Health Service. Overseas visitors' eligibility to receive free primary care. Feb 1, 1999. www.dh.gov.uk/en/PublicationsAndStatistics/LettersAndCirculars/HealthServiceCirculars/DH_4004148

⁷ UK fifth periodic report to the United Nations under the international covenant on economic, social and cultural rights. p33. 27 July 2007 <http://www.justice.gov.uk/publications/fifthperiodicreport270707.htm>

The UN Commission on Human Security, which assessed the relative importance of different kinds of threat to individuals, concluded that health security is at the vital core of human security⁸. Given that most failed asylum seekers have experienced the insecurity of physical danger, are by definition denied security of residency, and as a result of government policy have no economic security - de facto denial of access to healthcare by one of the richest countries on earth is not only inhumane because it jeopardises their health, but illegal because it violates international law.

As the Joint Committee on Human Rights sums up "All asylum seekers including those whose claims have been refused and the Home Office intends to remove from the UK are still 'within the jurisdiction' and therefore beneficiaries of the rights set out in the panoply of international human rights treaties that the UK has adopted"⁹. Finally, Department of Health policy acknowledges both that health professionals are obliged to respect human rights and that the Government has a responsibility to comply with international treaties¹⁰.

yours sincerely

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⁸ Commission on Human Security. *Human security*. New York: UN, 2003. www.humansecurity-chs.org/

⁹ House of Lords, House of Commons, Joint Committee on Human Rights. The treatment of asylum seekers: tenth report of session 2007–07: volume 1: report and formal minutes. March 22, 2007. p9. www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf

¹⁰ Equality and Human Rights Group . Human Rights in Health – A Framework for Local Action. Sn 1.3a Department of Health. London. March 2007. http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073473