

# Doctors for Human Rights

16 years fighting for human rights

please reply  
to:-

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**10/2/06**

Rt Hon Patricia Hewitt MP,  
Secretary of State for Health  
Richmond House,  
79 Whitehall,  
London,  
SW1A 2NL.

Dear Secretary of State

May we respectfully point out that by restricting their access to free healthcare the government is violating the right of failed 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)<sup>1</sup>. The ICESCR, along with the International Covenant on Civil and Political Rights and the Universal Declaration on Human Rights, forms the International Bill on Human Rights, and was ratified by the UK on 20 May 1976<sup>2</sup>.

May we remind you, Secretary of State, that the ICESCR, though not justiciable in the UK, is no less binding on state governments than international law that has been incorporated within domestic law, such as the Convention against Torture or the European Convention on Human Rights. The Committee on Economic Social and Cultural Rights (CESCR) which monitors states' compliance with the Covenant, in its Concluding Observations following the UK's fourth quinquennial periodic report in 2002, found no factors or difficulties that might impede full implementation of the Covenant by the UK<sup>3</sup>.

General Comment 14 of the ICESCR explains that state governments are under a specific legal obligation to refrain from denying or limiting equal access for all persons including prisoners, detainees, minorities, asylum seekers and illegal immigrants, to preventative, curative, and palliative health services<sup>4</sup>.

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<sup>1</sup> International Covenant on Economic Social and Cultural Rights <<http://www.ohchr.org/english/law/cescr.htm>>

<sup>2</sup> <<http://www.ohchr.org/english/countries/ratification/3.htm>>

<sup>3</sup> Para 10, Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland - Dependent Territories. 05/06/2002. E/C.12/1/Add.79. Geneva 2002.

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument)>

<sup>4</sup> Para 34, General Comment 14, 2000

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)>

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”

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”.

In 2002 Doctors for Human Rights (under its former name *Physicians for Human Rights-UK*) made both an oral presentation and submitted a written ‘parallel’ report to the CESCR in Geneva, criticising discrimination in UK healthcare provision and specifically naming asylum seekers and illegal immigrants as examples of vulnerable populations that must be protected<sup>5</sup>. The Summary Record of the dialogue between the CESCR and UK government delegates recounts a Committee member quoting the DHR report (in the text erroneously attributed to *Physicians for Health-UK*) and the delegation’s acknowledgement of receipt of their copy of the report<sup>6</sup>.

The Committee’s Concluding Observations expressed concern at “de facto discrimination in relation to some marginalised and vulnerable groups in society” and recommended the UK “strengthen its institutional arrangements, within the government administration, which are designed to ensure that its obligations under the Covenant are taken into account, at an early stage, in the Government’s formulation of national legislation and policy on issues such as poverty reduction, social welfare, housing, health and education”<sup>7 8</sup>.

1. Government policy as stated in Health Service Circular 1999/018 recommends that failed asylum seekers should not be registered on general practitioners’ lists, although it allows doctors discretion over registration<sup>9</sup>. The NHS document TABLE OF ENTITLEMENT TO NHS TREATMENT (correct as of January 2005) is more prescriptively discriminatory where it, inaccurately, states categorically that “failed asylum seekers should not be

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<sup>5</sup> PHR-UK. Report to CESCR : Response to the UK Government’s Fourth Report, Section 4.1.1 Accessible from <<http://www.doctorsforhumanrights.org/index.php?php=true&content=showitem&table=reports&item=8&previouscontent=reports&previousphp=true>>

<sup>6</sup> United Nations. Summary record of the 12th meeting : United Kingdom of Great Britain and Northern Ireland. 16/05/2002. E/C.12/2002/SR.12. Paras 51-53 and 69 <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f16224316865ea91c1256bc9004dd561?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f16224316865ea91c1256bc9004dd561?Opendocument)>

<sup>7</sup> Para 14, Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland - Dependent Territories. 05/06/2002. E/C.12/1/Add.79. Geneva 2002. <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument)>

<sup>8</sup> Para 25, Concluding Observations of the Committee on Economic, Social and Cultural Rights : United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland - Dependent Territories. 05/06/2002. E/C.12/1/Add.79. Geneva 2002. <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/619d3c786801bc2cc1256bbc00568cea?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/619d3c786801bc2cc1256bbc00568cea?Opendocument)>

<sup>9</sup> para 14, Health Service Circular 1999/018 <<http://www.bris.ac.uk/Depts/StudentHealthService/pdfs/overseas.pdf>>

registered”<sup>10</sup> .

2. Statutory Instrument 2004 No. 614, which came into force on 1st April 2004, denies failed asylum seekers seeking secondary healthcare in England, free NHS hospital health-care<sup>11</sup>.

3. The Government has stated it proposes to impose legislation barring failed asylum seekers from accessing free NHS primary healthcare in England.

Most failed asylum seekers are destitute and cannot pay for secondary healthcare, so that denial of access to free secondary healthcare is, de facto, denial of access to secondary healthcare. Denial of access to secondary 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.

Most failed asylum seekers have survived appalling experiences from which they have fled to seek asylum in the UK<sup>12</sup>. Many are unable to return to their countries of origin. None are allowed to earn money.

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 security<sup>13</sup>. 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 both inhumane because it jeopardises their health, and illegal because it violates international law.

yours sincerely

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Chair, Doctor for Human Rights  
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<sup>10</sup> <<http://www.dh.gov.uk/assetRoot/04/08/08/26/04080826.pdf>>

<sup>11</sup> <<http://www.opsi.gov.uk/si/si2004/20040614.htm>>

<sup>12</sup> Williams P. Failed asylum seekers and access to free health care in the UK. Lancet 2005. 365:1767.  
<<http://www.thelancet.com/journals/lancet/article/PIIS0140673605665762/fulltext>>

<sup>13</sup> Human Security. Commission on Human Security. p96 1993. New York.  
<<http://www.humansecurity-chs.org/>>