justfair

January 2018

Submission to the Health Committee
Memorandum of understanding on data-sharing inquiry

Introduction

1. Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating the protection of economic and social rights. Just Fair is committed to increasing public awareness of international human rights law and the capability to use it. Just Fair is also devoted to the advancement of high-quality thinking, training and practice to ensure that economic and social rights are respected, protected and fulfilled.

2. This submission is based on the briefing *Right to Health for All* published by Just Fair and Doctors of the World in June 2017.

3. Just Fair supports the written evidence submitted by the National AIDS Trust and Doctors of the World.

4. In addition to the concerns raised by these organisation in the mentioned piece of evidence, Just Fair wants to draw to the Committee's attention that **the transfer of non-clinical personal data between the NHS and immigration authorities can seriously impair the enjoyment of the right to the highest attainable standard of health for thousands of people living in the UK**. This constitutes a breach of the international human rights obligations of the UK.

The human right to the highest attainable standard of health

5. The UK has set an example by subscribing to a number of human rights treaties that protect the right to health. In particular, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the UK in 1976, reads as follows:

> *1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
> *2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
> *(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
> *(b) The improvement of all aspects of environmental and industrial hygiene;*

> *(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
> *(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

6. As a Party to this treaty, the United Kingdom must guarantee that the right to health is exercised without discrimination of any kind (Article 2(2) ICESCR), and in particular the UK must ensure that men and women enjoy this right equally (Article 3). Furthermore, UK statutes must be interpreted by UK courts in a manner consistent with its international obligations.[1]

7. The UN Committee on Economic, Social and Cultural Rights (CESCR), which monitors States' compliance with the ICESCR, has been clear: The rights contained in the ICESCR *"apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation"*.[2]

8. The principle of non-discrimination is essential for the accessibility of the right to health, and healthcare services must be affordable for all, especially most disadvantaged groups.[3] Ensuring the access to health facilities on a non-discriminatory basis is a minimum core obligation derived from international human rights law.[4] In other words, it is an obligation that must be immediately and fully secured for everyone.

9. Governments must ensure that nationals and foreigners have access to *"preventive, curative and palliative health services"*, regardless of their immigration status.[5]

10. As observed by the UN Special Rapporteur on the Right to Health in his global study on the enjoyment of this right by migrant workers:

> *"Policies linking access to health systems with immigration control discriminate against irregular migrants. In some countries, health-care providers are required, under threat of criminal sanction, to report irregular migrants to immigration authorities, which may*

[1] *A v Secretary of State for the Home Department (No2)* [2005] UKHL 71; [2006] 2 AC 221 *per* Lord Bingham.
[2] CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, 2009, UN doc: E/C.12/GC/20, para. 30.
[3] CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, 2000, UN doc: E/C.12/2000/4, para.12.b.
[4] Id, para. 43.a.
[5] Id, para. 34.

> *lead to detention and deportation. As a result, instead of seeking formal channels of care, irregular migrant workers resort to unsafe and illegal options. This renders them vulnerable to abuse, exploitation and increased health risks."*[6]

11. As pointed out by the UN CESCR, *"strict walls should exist between healthcare personnel and law enforcement authorities"* because the opposite may deter undocumented migrants away from seeking medical healthcare when they need it.[7]

12. The European Committee of Social Rights has established that *"legislation and practice denying entitlement to medical assistance from* [undocumented] *foreign nationals"* are contrary to the European Social Charter, which was ratified by the UK in 1962; access to sufficient healthcare is *"a prerequisite for the preservation of human dignity"*.[8]

13. Public authorities must assess the different effects that policies may have on men and women given the structural inequalities within society. Discrimination on the basis of the immigration status affects women to a different degree and in different ways. For example, the unfair deterrence derived from law enforcement officials having access to patients' personal information is likely to have an aggravated impact on pregnant women, who would be cumulatively discriminated against for being a woman, being a migrant and lacking an authorisation to reside in the country.

14. In this regard, the UN Committee on the Elimination of Discrimination Against Women has reminded States of the need to *"recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them,* [as well as the] *need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures"* aimed at accelerating de facto equality between men and women.[9]

15. As recommended by the UN CESCR, UK authorities must *"take steps to ensure that temporary migrants and undocumented migrants, asylum seekers, refused asylum seekers, refugees and Roma, Gypsies and Travellers*

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[6] Special Rapporteur on the Right to Health, *Report on the right to health of migrant workers*, 2013, UN doc. A/HRC/23/4, para. 41.
[7] CESCR, *Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights*, 2017, UN doc: E/C.12/2017/1, para. 12.
[8] ECSR, *FIDH v. France*, Complaint No. 14/2003, Decision on the Merits of 8 September 2004, para. 31-32; and *CEC v. The Netherlands*, Complaint No. 90/2013, Decision on the Merits of 1 July 2014, para. 125.
[9] CEDAW Committee, *General recommendation No. 28: Core obligations*, 2010, UN doc: CEDAW/C/GC/28, para. 18; Article 4(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, ratified by the UK in 1986.

have access to all necessary health-care services and […] *that health facilities, goods and services should be accessible to everyone without discrimination"*.[10]

Conclusion

16. Migration law and policy must be in line with human rights as proclaimed in international law. Under international human rights law, which is binding for the UK, everyone is entitled to the right to health. Public authorities are not allowed to discriminate against migrants because of their nationality or their immigration status. They must have due regard to the cumulative and intersectional effects that their policies, actions and inactions, have on equality and human rights. Public authorities must respect undocumented migrants' access to adequate healthcare, including preventive, curative and palliative services. Hospitals and healthcare professionals should not be required to report data on the immigration status of their patients to immigration officials. Everyone should be reassured that they will not be reported if they seek medical help.

[10] CESCR, *Concluding Observations: UK*, 2016, UN doc: E/C.12/GBR/CO/6, para. 55-56.