Health Consumers Council WA (Inc)

Opening of Public Forum on Refugee Health

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Refugee Health: Human Rights and the Role of the Community

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Ladies and Gentlemen,

I have been asked to speak to you about human rights and the role of the community, with respect to refugee health. I would like to speak to you not so much as Chief Justice, but as a longstanding member of the International Commission of Jurists and Chair as well as an Ambassador of the Western Australian Branch of the Red Cross with a particular focus on international humanitarian law. Both organisations have a history in relation to issues relating to refugees.

It is important that at the outset of this public forum we establish exactly who are refugees. The term "refugee" is defined in Article 1A(2) of the *United Nations Convention Relating to the Status of Refugees* as applying to a person who:

> *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable, or owing to such fear, unwilling to return to it."*

In essence this means that a refugee is a person who, for one reason or another, is denied the land of their ancestors.

Underlying many aspects of the lives of refugees is the issue of human rights. The concept of human rights has been recognised since early in the 17th Century. Political theorists of those times, such as John Locke and Thomas Paine, wrote extensively on the notion of rights. Thomas Paine, in his well-known work, *The Rights of Man*, explained the meaning of human rights. He said that humans have natural rights and civil rights.

Natural rights are those that humans have simply by virtue of their existence. Similarly, civil rights are those gained simply by virtue of being a member of society. The theories of philosophers such as Paine and Locke eventually formed the foundation of Western culture and political systems. Consequently, the idea of human rights is at the root of most countries' laws. Not only are human rights evident in the domestic laws of countries. They are also the subject of many international laws and conventions. Many instruments have now been established to ensure that human rights are not impinged upon.

All people enjoy the protection of these international laws, however refugees' rights are specifically and expressly protected by international law. The often dire circumstances of refugees create a special need to protect their human rights. In recognition of this, the international community agreed to the *United Nations Convention Relating to the Status of Refugees* 1954, to which Australia is a party. Many different rights, including the right to health, are protected by this Convention.

First a refugees' right to health is protected under the *Universal Declaration of Human Rights* adopted by the United Nations in 1948. The *Declaration* recognises a broad range of rights and includes, in particular, the right to seek and to enjoy in other countries asylum from persecution, the right to freedom from torture and degrading treatment, the right to life and the right to an adequate standard of living. Article 25 of the Declaration provides that:

> *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."*

Secondly, refugees are protected by the *International Covenant on Economic, Social and Cultural Rights,* which was inspired by the *Universal Declaration of Human Rights.* The United Nations Committee on Economic, Social and Cultural Rights has identified six core obligations arising from the right to health under Article 12 of this Covenant. These include access to health facilities, nutritionally adequate and safe food, basic shelter, sanitation and safe drinking water, essential drugs, equitable distribution of all health facilities and a public health strategy and plan of action.

Thirdly**,** refugees are afforded certain protections under the *United Nations Convention Relating to the Status of Refugees.*

The Preamble to this Convention provides that:

> *"… in recognising the social and humanitarian nature of the problem of refugees", the Member States who have signed the Convention are concerned "to assure refugees the widest possible exercise of their fundamental rights and freedoms".*

The Convention has twin aims. While the second aim relates to the legal status of refugees, the first aim relates to refugees' health. It seeks to preserve the welfare and safety of refugees, through the principle of non-return to the place where they have fled persecution (known as the principle of "non-refoulement' – Article 33) and the provision of welfare assistance by the host state (Articles 20 – 24). Such welfare assistance includes access to medical treatment and care.

Fourthly, the human rights of child refugees are protected under the *Convention on the Rights of the Child.* Many articles of this Convention protect the health of child refugees. Article 39 of this Convention provides that:

> *"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of*

neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Article 6 provides that:

"States Parties shall ensure to the maximum extent possible, the survival and development of the child."

Article 3(2) provides that:

"States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being…"

Article 24 provides that:

"States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

Further, article 24 provides that:

"States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures…to develop preventive health care, guidance for parents and family planning education and services."

A similar provision exists in the *International Covenant on Economic, Social and Cultural Rights.* Article 12 provides that:

"States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Article 12 also provides that:

> *"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 … the healthy development of the child"*.

It should be noted that World Health Organisation's definition of *"health"* in the Preamble to the *Constitution of the World Health Organisation* is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. According to the *Committee on Economic, Social and Cultural Rights, General Comment 14, 4 July 2000*, para 9, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

Under the *Convention on the Rights of the Child*, Australia must ensure that every child in Australia, regardless of nationality or immigration status and regardless of how the child arrived in Australia, survives and develops to the maximum extent possible, enjoys the highest attainable standard of health and rehabilitation and is allowed to recover from abuse or violence. Australia's obligations to ensure the healthy development of child asylum seekers includes preventing harm to them during their time in Australia, and promoting their physical and psychological recovery, if they are survivors of abuse or violence. Experiences of abuse or violence can create developmental harm in children. Symptoms in children who experienced abuse or violence can include poor sleep and nightmares, bedwetting, behavioural problems, either introversion or aggression, depression, problems with familial and other relationships, emotional numbness, learning difficulties, eating disorders and psychosomatic health problems.

Where a child has suffered such mistreatment, Australia is obliged to promote the child's recovery. States Parties to the Convention are required to report to the United Nations Committee on the Rights of the Child on the measures they have adopted to

ensure the physical and psychological recovery and social reintegration of a child who is a victim of neglect, exploitation or abuse, in an environment which fosters the health, self-respect and dignity of the child.
States Parties to the Convention have an ongoing obligation to ensure the child's right to healthy development, even where the child's parents are present.

In ensuring the mental health of the child, States Parties to the Convention and to related international instruments are required to "develop preventive health care", in addition to providing education and guidance to parents. Preventive health care means detecting and treating physical and mental illness in the child. This involves examination of the child by a physician immediately upon admission to a detention facility. The purpose of this is to record and identify any physical or mental condition requiring medical attention. Medical care, including the provision of dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated, where possible, should be provided to detained children through the appropriate health facilities and services of the community in which the detention facility is located. Mental health services in detention facilities should be adequate, including the provision of services by appropriately trained doctors and other medical personnel. Children who are assessed as suffering from mental illness should be treated in a specialized institution under independent medical management.

Australia is obliged to help maintain the child asylum seeker's culture, language and religion by virtue of Article 30 of the Convention. The United Nations High Commissioner for Refugees (UNHCR) stresses the importance of ensuring that children who suffer "emotional distress or mental disorders benefit from culturally appropriate mental health services and treatment". In addition to his or her cultural needs, the past experiences of the child and the child's family need to be understood when considering the child's present mental health and developmental well being. All actions concerning child asylum seekers must also be non-discriminatory (Article 2), ensure the best interests of the

child (Article 3) and enable the child to participate in decision-making affecting her or him (Article 12).

The health of child refugees is also protected under the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty.* Under Rules 50 and 51, every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention. The medical services provided to juveniles should seek to detect and treat any physical or mental illness, substance abuse, or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents, and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

Having outlined the rights of refugees and Australia's obligations, the next question is whether Australia is fulfilling these obligations and whether refugees' rights are being upheld.

On 31 January 2002, the Commonwealth Government invited the United Nations Economic and Social Council's Working Group on Arbitrary Detention to visit Australia in May and June of 2002. The Working Group's purpose was to look into human rights issues concerning the legality of the detention of asylum-seekers and the legal guarantees that apply to detention in Australia, as compared to international standards. The delegation visited the Immigration Reception and Processing Centres of Port Hedland, Woomera and Baxter, as well as the Immigration Detention Centres of Villawood, Maribyrnong and Perth.

A subject of concern to the Working Group was the relationship between the legal framework for detention and what was termed "collective depression syndrome". In its Report, the Working Group stated that officials publicly reproached the delegation for its concern about this "so-called" syndrome. The delegation found that behavioural anomalies existed in the refugees in detention, such as affective regression and infantilism, aggression against detainees and acts of self-mutilation going as far as suicide. The delegation found that factors that contributed to ill-health included the ongoing uncertainty in which detainees live concerning the length of their detention, inadequate information being provided on the status of detainees' applications, constant camera surveillance, and the practice of handcuffing detainees for trips outside the centre including, in particular, for the purpose of dental or medical treatment. Assuming they are correct, these findings suggest that Australia is not fulfilling its obligations.

Some of you may have seen a documentary which was aired last week on Thursday 8 May 2003 at 8.30pm presented on an SBS program called "Insight". The documentary investigated the case of Mohammed Saleh, the first man to die under the system of mandatory detention. The story highlighted the issue of health of refugees. Mr Saleh was kept in an accommodation block within the compound known as the "J-Block" notorious for its harsh conditions and which has now been closed down. Its occupants were kept in dark, small cells without toilets and were handed food through a slot in the door. Guards of the Australian Corrections Management Services who run the detention centres often neglected to take prisoners out of the cells for fresh air and to use the toilets.

Mr Saleh became sick, finding blood in his urine and suffering from stomach pains. His fellow detainees called for help. According to the detainees, they were told by the ACM officers that they were criminals and had no right to see a doctor or nurse. Mr Saleh descended into severe depression. When he was finally taken to hospital, a tumour was found in his stomach. He died from complications arising from surgery. Mr Saleh's

allegations of being denied medical treatment are now the subject of an official complaint being prepared for the Australian Human Rights Commission.

The findings of the United Nations Economic and Social Council's Working Group on Arbitrary Detention and stories such as this one of Mohammed Saleh, suggest that Australia may not be meeting its obligations with respect to refugees' right to health.

The cruel irony is that instead of providing special care for the most traumatised individuals fleeing persecution, Australia may be subjecting them to the very conditions that are likely to hinder psychosocial recovery. We need to reaffirm the principle that human rights begin at home.

The community can play a large part in achieving this. Community groups need to demonstrate to the government that convenience and administrative simplicity cannot justify the mistreatment of refugees. Independent refugee watchdog associations, the legal profession, humanitarian agencies and other community organisations have a valuable role to play. Without the interest of organisations like that of our host – the Health Consumers' Council – the hardships of many detainees may extend beyond what can properly be described as humane.

Community organisations play an important role not only in the direct administration of care to refugees in detention centres, but also by bringing the issue of refugee health into the public arena. It is hoped that public forums such as today's will bring the issue of refugee health to the full attention of the public and enlighten those who are ignorant or apathetic towards the refugee situation.

It is with pleasure that I open the Health Consumers Council's Public Forum on Refugee Health.

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