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The UK's exportation of asylum obligations to Rwanda: a challenge to mental health, ethics and the law

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The UK government has made a concerted decision to ramp up its 'hostile environment' policy towards asylum seekers and refugees(1). The original policy took the form of "a package of measures designed to make life so difficult for individuals without permission to remain in the UK that they will not seek to enter the UK to begin with or if already present will leave voluntarily"(2). The Nationality and Borders Act provides a new legislative framework for issues relating to nationality, asylum and immigration which makes asylum claims less likely to succeed and limits the rights available to many of those whose claims are successful(3). Critics of the policy have raised serious moral and ethical concerns relevant to both health and legal professionals. In addition, it appears that it will fail to deter those planning to make risky journeys to the UK for protection, as the government has argued in justification(4).

The increased hostility enshrined in the Act should be viewed within a global context. The last decade has seen a dramatic increase in the number of displaced persons: data for mid-2021 suggests there were 26.6 million refugees and 4.4 million asylum seekers worldwide(5). There is also rising geopolitical competition between global powers, undermining international cooperation through multilateral channels such as the United Nations and European Union(6). In response to these challenges and in pursuit of electoral interests, many political leaders are disregarding the needs and rights of the increasing number of people requiring protection - even if this corrodes international laws and institutions(7). What we are seeing in the UK reflects this global trend. In his 2021 report, the United Nations Secretary-General attempted to counter this direction of travel by championing multilateralism in an increasingly complex and divided world(8).

The most controversial elements of the new UK Nationality and Borders Act include provision for transferring asylum claims to another nation (Rwanda), the creation of a two-tier asylum system (where Tier 2 would need to renew their leave repeatedly and would not be permitted to have family members join them in the UK), and the formalisation of reception centres housing asylum seekers while their protection claims are processed.

While there are numerous potential objections to each of these elements, this editorial will focus on the first of these – what has been widely referred to as offshore processing of asylum claims. However, this term is a misnomer. The policy will not involve sending asylum seekers to Rwanda while their UK claims are processed but will instead make their claims 'inadmissible' in the UK and transfer all responsibility to Rwanda. Unlike other offshore processing schemes (including the widely decried Australian system)(9), it is not just the administrative process that is being outsourced, but all responsibility for providing protection to those seeking sanctuary. This has sparked moral concerns, with the Archbishop of Canterbury describing the policy as "sub-contracting out our responsibilities"(10). The UNHCR have declared the arrangements "evade international obligations" and that "people fleeing war, conflict and persecution deserve compassion and empathy"(11).

The policy has important implications for mental health. Refugees and asylum seekers have increased rates of some mental health conditions, particularly post-traumatic stress disorder (PTSD) and depression(12). The adverse impact of the new policy on such a population is likely to be substantial. In the face of extreme uncertainty and lack of hope, it risks provoking self-harm and suicide among

some of those affected(13). It is therefore necessary to ensure that healthcare services in Rwanda have sufficient capacity to identify and manage people with mental health difficulties. However, the current provision of mental health resources in Rwanda is extremely limited, with only 12 psychiatrists working in the country (0.10 per 100,000 people), no child psychiatrists, and only two psychiatric hospitals(14). Additionally, the people of Rwanda are themselves known to experience high levels of mental health morbidity, including PTSD and depression, reflecting the mass genocide that occurred there in 1994(15). Sending asylum seekers from the UK to Rwanda may further reduce the availability of already scarce specialist services to the people of Rwanda.

The new legislation is also likely to inflict moral injury on health professionals working with this patient group. Moral injury has been defined as moral distress (psychological unease generated when professionals are limited in their ability to take an ethically correct action) which is sustained over time, and therefore leads to impaired functioning or long-term psychological harm(16). A fundamental ethical principle which all doctors must adhere to in their clinical practice is non-maleficence(17). Clinicians who consider this legislation fundamentally wrong may suffer moral injury (as well as ethical conflict) from any participation in this process. This is likely to be worsened if they are required to make decisions about asylum seekers' vulnerability (for which the Home Office is likely to set a high threshold) and/or their fitness to fly as well as by their uncertainty regarding the available medical resources in Rwanda.

In addition to moral concerns, legal objections have also been raised. The new legislation is likely to breach the UK's international legal obligations. Concerns regarding Rwanda's recent human rights record must be considered(10, 11). Ongoing legal challenges should clarify whether the UK government's policy contravenes the law, including the 1951 Refugee Convention(18). Two avenues are currently being pursued. The first contests the legality of the parts of the Act against the terms of the Refugee Convention itself. The second challenges the Secretary of State for the Home Department's failure to disclose the criteria for dictating who will be chosen to go to Rwanda. These challenges might lead to delay in the scheme's implementation(19).

In the longer term, challenges to individual decisions to remove persons from the UK to Rwanda are likely to be the main route through which the law can have a real effect on policy. While details are unclear, the process of decision making will entail an asylum screening procedure whereby an individual's asylum claim will be found potentially inadmissible. A notice of intent will then be issued to that person. Once a safe third country (in this case Rwanda) has been confirmed, the individual's UK protection claim can be ruled inadmissible. At this point the person's legal advisors can make representations to the Home Office with reasons why that decision was wrong. A confirmation of the decision could then be challenged by way of judicial review.

A crucial legal issue is that the new legislation circumvents UK human rights law, which (even post-Brexit) needs to be compliant with the European Convention on Human Rights (ECHR)(20). By virtue of arriving on UK soil, asylum seekers are automatically protected under UK human rights legislation. It is therefore likely that some decisions to send asylum seekers to Rwanda may be contested on human rights grounds. Articles 2 and 3 of the ECHR (the 'right to life' and the 'prohibition of torture

and inhumane treatment’) may be especially applicable to asylum seekers with mental health conditions. Another point of possible legal action is that the Memorandum of Understanding between the UK and Rwandan governments does not mandate adherence to UK standards of protection, even with regards to survivors of human trafficking, and makes no reference at all to mental health(21).

One way that doctors and lawyers can work together is through medico-legal reports. In its guidance document on handling third country inadmissibility processes, the Home Office states that non-protection human rights-based claims must be fully considered, including medical claims under Articles 3 and 8 of the ECHR(22). Therefore, for vulnerable asylum seekers due to be sent to Rwanda, it is important their legal representatives instruct expert clinicians to identify and report clinical issues which affect the individual’s human rights. Key areas for judges to make decisions in such cases include information about physical injuries, mental health vulnerabilities and other factors such as sexual orientation(23) which would affect their mental health if sent to Rwanda. The specific requirements for reports may include an assessment of fitness (or otherwise) to fly. This could include an assessment of whether the flight environment would exacerbate their mental health condition and whether any behaviour arising from underlying mental health conditions could interfere with the safe conduct of the flight(24). We encourage lawyers to consider whether obtaining evidence in the form of a medicolegal report on such areas of relevance may help to reach a fair decision, and doctors to develop the skills and experience required to conduct such assessments.

Box 1: A real-world example of collaborative working between doctors and lawyers

An immigration lawyer representing a torture survivor with complex PTSD and suicidal ideation commissions an appropriately trained and experienced clinician to carry out an assessment. The resultant report raises serious concerns about risk of self-harm and suicide and anticipated mental deterioration in the context of impending removal. This new information prompts the Home Office to reconsider their decision to remove the individual and/or enables judicial review of the decision to be sought.

This is an evolving situation and the full extent of the implications of this new legislation is unknown. What is clear is that the inadmissibility process allows asylum claims to be circumvented and the UK to ignore its responsibility to protect those fleeing conflict and persecution. We consider this to be both immoral and inconsistent with the positive obligations of the UK under ECHR legislation. Never has it been more important for doctors and lawyers to work together to jointly navigate the challenges that arise from this new legislation, which has the potential to demean and humiliate people when they are most in need of support and protection.

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