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Muddle Suzanne Lilius



Centre for Continuing Education
Åbo Akademi University

Asha-Kin F. Duale

Reconstructing Life in the Diaspora: British Immigration Law and Policies and Somali Patterns of Adaptation

Introduction

Population movements on a large scale have been a prominent feature of modern society. Economic insecurity and personal safety are assumed to be the two major factors for such movements. The reality is that nearly fifty years after the establishment of the United Nations, with its mission to promote international peace and security, brutal conflicts between and within nations are more widespread than before. Somalia is no exception to the rule. In the past three decades, Somalia has been in the headlines with stories of horror, war, starvation and suffering.

War, particularly civil war, brutalises society. In Somalia, it has not only destroyed the institutional infrastructures and prospects for development but also forced an estimated population of two million to leave their homeland and seek refuge elsewhere (Toal 1997:3). They have continued to live under very difficult and increasingly marginalised circumstances in neighbouring countries and all over the world.

For the majority of Somalis in the Diaspora, the process of crossing physical boundaries and, in the case of refugees of suddenly becoming dispossessed of everything, are thought to be simply specific moments in the process of resettlement.

The full magnitude of their loss becomes apparent at a later stage, and that is when people realise that they must adjust to the exigencies of a new life in an alien, and sometimes unfriendly, environment. Survival skills are needed to cope with the daily reality of adapting to 'the law of the land' of the host country. The skill of keeping the right balance between their cultural 'baggage' and the need to integrate into the mainstream society is the most needed one.

This paper will attempt to give an insight into Somali experience in the UK and their quest for adaptation into an alien way of life and environment. However, due to the complexity and multi-faceted nature of the topic, which demands deeper multi-disciplinary research, I will confine myself to focusing on some of the special difficulties encountered by the Somali community in the UK as they were exposed to the British 'law of the land'.

This will relate to the response of the British Government to Somalis through continuous alteration of asylum and nationality legislation and the extent to which this hinders or facilitates the adaptation and settlement process.

The history of Somali emigration to the United Kingdom

It is estimated that there are some sixty thousand Somalis, with some form of legal status, accommodated on a temporary or permanent basis in the UK (Kahin 1997:3). The patterns and historical circumstances of Somali emigration to the UK have varied over time, but four distinctive periods can be identified:

1. Firstly, as one of the oldest black and ethnic minority groups, Somalis seem to have arrived to the British shores around 1880, mostly as seamen. Others served in the armed forces during the two World Wars (Summerfield 1993:89).

2. The second period occurred during the early 1960's and is marked by a cheerful influx of high-status Somali students. These were from the first generation to finish school in Somalia and to be sent to university in Britain (Summerfield 1993:89).
3. The third period coincides with the problems of civil unrest after Aden achieved its independence from Britain in 1976 when a substantial number of Somalis living in Aden were thrown out by the new government. Most preferred to come over to England and join their families, while others opted to return home.
4. Finally, since 1979, Somalia has begun to generate a completely different kind of emigrant. People begun to flee the torture and arbitrary killings of a war situation that had devastated all means of survival. Contrary to the hopes of Somalis themselves, the eviction of Barre's regime in 1991 was followed by catastrophic violations of basic human rights. At this time, it is the persistence of civil war and the uncertain progress of peace that are the most important contributing factors to the increase of Somalis in the Diaspora.

One primary purpose of identifying the distinctive periods within the history of Somali emigration is to illustrate the extent to which the British immigration and nationality legislation and policies have affected the adaptation and settlement process. One could argue that such laws and policies have developed over time in accordance with the Government's interest in either excluding or accepting black and non-western people (Bhabha and Shutter 1994:4). The treatment of Somalis in terms of immigration law should therefore be examined within the general context of British immigration and nationality law in relation to black people. However, we have witnessed how the growing Somali community in the UK has caused specific legislative procedure to be introduced, as a direct or indirect result of their presence.

British immigration legislation and policies in the Somali context

Immigration law represents one of the classic attributes of national sovereignty: a state is entitled to control entry into its territory by citizens or nationals of another state (Sacheva 1993:14). At common law, the Crown had power under the Royal Prerogative to prevent aliens from entering the UK, and an alien had no right to be admitted into a sovereign state's territories [Musgrove v Chun Teenoy Toy, 1891. AC 272]. This national discretion is clearly respected in International Law, which gives a power to the individual state to administer its immigration policies (Dummett and Nicol 1990:11ff).

The development of British immigration law is closely linked with the nationality law, the purpose of the latter being to define who does and who does not form part of a nation, while immigration law determines who is allowed to enter or stay in a country. This interaction of nationality and immigration legislation has clear implications in the British imperial domination. *The Nationality Act 1914* and *the Nationality Act 1948* had defined all inhabitants of the colonies and ex-colonies as British subjects; this was intended to legitimise British control over the colonies and indicate a relatively relaxed immigration approach towards the colonised peoples (Bhabha and Shutter 1994:31-35).

Early settlers and migrant workers

The first community of Somali settlers, as citizens of the British Protectorate of Somaliland, enjoyed less restricted immigration control and thus took residence in all the major ports in the UK and industrial centres such as Sheffield and Manchester.

After the First World War, with unemployment rising, black labour was no longer perceived to be needed and race riots broke out in 1919 in the seaports and dock areas (Bhavnani 1994:16). An Irishman and a black labourer were killed in Cardiff, both victims of racist attacks. Furthermore, the *1925 Special Restriction (Coloured Alien Seamen)* was

introduced. This was the first overt attempt to by the authorities to restrict immigration based on colour.

The history of Somali seamen in the early part of the 20th century has yet to be comprehensively documented. Undoubtedly, they suffered racism and exploitation at work as did other black labourers, which may have contributed to the negative attitude towards allowing them permanent residence in the UK. Despite the relatively relaxed immigration policies and legislation of the time, which may have facilitated the choice of permanent residence, the majority of the early settlers held dear the belief that they would return to Somalia, some day. Therefore, they maintained their families in Somalia instead of encouraging them to come over to a new environment, in contact with an unfamiliar culture (Summerfield 1993:91).

The prevailing view, of considering their stay in Britain to be only temporary, had clear implications within the mainstream expectations of their gradual adaptation to the values of British society. In fact, such a predominantly male community manifested limited interest for social interaction with mainstream society, and shared strong commitment to the preservation of the traditional lifestyle and values.

A policy of deliberate 'avoidance' of adaptation is reflected by the general trend of keeping family dependants in Somalia which worked as a preventive measure against any possible social interaction with the British society. In addition, the legal concept of domicile¹ remained for them their country of origin, no matter the length of their stay in the UK or the fairly relaxed immigration policies then. These early immigrants expressed an enduring emotional allegiance to their country of origin.

After the influx of the first Somali students, and the post-1967 emigrants from Aden, the picture of a close-knit and cohesive community, which had drawn a strict boundary between itself and the host country, became exposed to gradual change. Although the introduction of *1962 Commonwealth Immigrant Act* highly eroded the freedom of movement to the 'mother country' by introducing the requirement of an employment voucher, children under 16 still had the right to come to join either or both parents settled in the UK. This right included stepchildren and adopted children, which in the context of Somali traditional extended family patterns had a positive impact. Children between 18 and 21 could also be admitted if unmarried, and if sons, still fully dependent on their parents.

There is little record about the number of Somali families who travelled from Aden via the employment voucher scheme, however, a substantial number of Somali families headed to the major ports and industrial cities in the UK (Summerfield 1993:86).

Secondly, due to the presence of families rather than single male immigrants living in a hostel, the demand for more services, such as education for the children, proper housing, health and leisure services grew.

Finally, as social and cultural factors are intimately linked with legal matters, the community of new arrivals was faced with the dilemma of negotiating traditional values in a new socio-legal context. As a mainly Muslim community, some customary norms and values clashed head-on with definite requirements of the English law, as in certain areas of marriage and divorce law. In their quest for seeking harmony between two different rule systems that would otherwise be in conflict, one possible option might have been to establish a hybrid system. For example the case of marriage or divorce, it would have meant that a couple marries twice and divorces twice, to be sure that both sets of legal systems had been satisfied.

Moreover, as was true of many other ethnic minority groups in Britain, Somali customary law had traditionally relied on an informal process of dispute settlement. This meant that recourse to the official courts was not the first option in case of family disputes (Menski 1992:174-5).

Following the introduction of the *Immigration Act 1971*, the British Government committed itself to tightening immigration control. The Act replaced virtually all previous immigration legislation and has formed the basis of immigration control ever since. It introduced the concept of 'patrials' and 'non-patrials'. Under this provision, any Commonwealth citizen able to demonstrate that one of his/her grandparents had been born in the UK was entitled to entry clearance and indefinite leave to stay. The concession obviously had negative effects to most of the Asian and African descendants while favouring white British émigrés (Sacheva 1993:28).

The way the Immigration Act was administered was not contained in the Act itself, but it was set out in the Immigration Rules which also detailed 'the general conditions' which should be born in mind by Immigration officers in carrying out their work, such as the principle of non-discrimination.

Apart from the published Immigration Rules, there were also unpublished Instructions to Immigration Officers, for their use at ports, airports and by the Home Office staff. Such Instructions are constantly updated by the Home Office. It is apparent that, even though one is faced with a vast amount of primary legislation on immigration, there is also a profusion of secondary legislation, i.e. the Immigration Rules and Immigration Instructions (Sacheva 1993).

Somali refugees and asylum seekers

Refugees and displaced people have existed since time immemorial, however, the modern definition of a refugee was formulated as a response to a specifically European problem: the human displacements of the Second World War (Bhabha and Shutter 1994:232).

Art. 14 of the Universal Declaration of Human Rights (UNDHR) embodies 'the right to seek and enjoy in other countries asylum from persecution'. As the Declaration has no binding force, the main international instrument governing refugee protection remain the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol. It is important to mention that the Convention does not grant a *right to asylum* as per the Universal Declaration, but it regulates the status of those who have been accepted as refugees by a national authority. The most important requirement imposed by the Convention on signatory states is the obligation of 'non-refoulement' of applicants to countries where their life would be endangered.

The term *refugee* refers to a person who have fled her country because of a *well founded fear of being persecuted for reasons of race, religion, nationality, membership to a particular social group or for political opinion* (Art. 1(A)). Compared with the definition of refugee contained in the 1969 declaration of the Organisation of African Unity (OAU) which encompasses 'events seriously disturbing public order', the definition in the Convention does not contemplate the reality of civil upheaval.

Asylum refers to the legal status which may be granted to an individual refugee by a host country, while *asylum applicant* or *asylum seeker* is someone who applies for asylum.

Since 1996, the UK has been the largest recipient of Somali asylum applicants, before that (1992-1995), the Netherlands received the largest number (UNHCR 1998:1).

Recent years have seen successive laws aimed at restricting people's ability to claim asylum in the UK and effectively pursue the claim. Several strategies for discouraging asylum seekers were deployed such as the imposition of visas on nationals of refugee generating countries as well as introducing the 1987 *Immigration (Carriers' Liability) Act*. The latter imposes a £ 2,000 fine on airlines and shipping companies for each eligible passenger brought to Britain, even if the passenger is eventually allowed to stay.

As a further measure, the UK, along with other EC States, has signed the *Dublin*

Convention in 1990. Its major provisions are to limit responsibility for each asylum seeker to only one State and setting up a system of exchanging information to help determine which should be the responsible state.

As if these measures were not stringent enough, the UK passed two major laws: the *Asylum and Immigration (Appeals) Act 1993* and the *Asylum and Immigration Act 1996*. The 1993 Act introduced a 'fast track' procedure for asylum claims considered to be 'without foundation' and the process of fingerprinting applicants, including children (Bhabha and Shutter 1994). Immigration officers are instructed to take into consideration, in dealing with claims, factors such as the destruction of documents, failure to apply for asylum on arrival, and transit through a 'safe' third country.

However, more draconian measures were included in the 1996 Act which directly affect the social and economic circumstances of asylum seekers. Welfare benefits in terms of housing or subsistence benefits are drastically curtailed unless the applicant makes his/her claim at the port of entry. The same conditions apply if appeal against a refusal decision is turned down. Furthermore, the new legislation makes both entering into the UK 'by deception', and employing a person who does not have immigration entitlement, criminal offences.

It is interesting to note that Somalis do not arrive in Britain as part of a sponsorship programme, like the Vietnamese or Bosnian communities who enjoy access to a provisional reception centre for acclimatisation and help in terms of job training, some starting capital or induction programmes for school age children (Kahin 1997:32).

To date, the Home Office (HO) regards Somalia as a country to which asylum seekers should not be returned; however, very few applicants have succeeded to obtain in the first instance the recognition of full refugee status. Changes of law and shift of governmental policies represent major hurdles against any effort for reconstructing life in the UK. Such changes are clearly reflected in the way the HO has assessed the Somali asylum applications. In 1989, out of 1,850 applications, 815 obtained the full refugee status. In 1995, only ten applicants qualified as refugees out of a number of 3,465 applicants. Correlate with these figures, the HO granted in 1989 the Exceptional Leave to Remain (ELR) to a number of 260 applicants, and to 2,205 in 1995 (Home Office Statistics, June 1995).

There are a number of significant implications arising from a refusal of the refugee status, although the opportunity of challenging it at the Immigration Appellate Authority (IAA) exists. These may include the following:

- While being granted in the first instance the refugee status entails the right for Indefinite Leave to Remain (ILR) in UK within a period of four years, ELR is normally granted for one year in the first instance, which, on application, is usually followed by two renewals for two periods of three years each. In other words, an asylum applicant has to wait for a period of seven years before the ILR is granted. Clearly, the lengthy period of seven years in which one has to live with the omnipresent feeling of anxiety leads to extremely stressful and insecure living conditions.
- The refugee status entails the automatic right of family reunion while this cannot apply in the case of ELR. In the latter case, one can apply for family reunion only four years after the grant of the ELR status, and only when the rules relating to the maintenance and accommodation can be met. However, following the outbreak in 1988 of civil war in Northern Somalia and political pressure exercised by the settled Somali community in East London and elsewhere in England, the HO introduced a special policy for Somali family reunion. This included the lodging of the family reunion application directly to the HO on behalf of the applicant's dependants assumed to be displaced by the civil war. With the tighter immigration control introduced in 1993, this special rule was withdrawn.
- Holders of full refugee status enjoy the right to travel abroad without entry visa

restrictions. Those with ELR are subject to the discretionary authority of various Consulates when travelling abroad, thus making more difficult for Somalis, who have family members scattered around the world by the civil war, to fulfil their need to meet each other again.

- Except for children under 16, ELR does not provide the right to full time education. It should be only after the expiry of three years of ordinary residence that Somali asylum applicants could actually access further education. Meanwhile they can attend a part-time course of less than 21 hours per week or they forfeit benefit (Kahin 1997:33). By restricting the chances for continuing their education after years of disruption, this rule has the effect of intensifying the existing social and economic deprivation.
- ELR is an inferior immigration status compared with the refugee status as it is not covered by the 1951 Geneva Convention and granted only on humanitarian grounds. Although the Home Office has recognised Somalia as a country whose governmental infrastructures have collapsed, yet for the applicants who were granted ELR, it has not been possible to establish the 'fear' as defined by the Convention. The recently withdrawn report 'Somalia: A Background Briefing Paper, October 1995' prepared by the HO Asylum Division contends that the majority of Somalis would be technically safe if they lived in the area where their *clan or sub-clan* predominates.

The delineation of 'safe clan-area' described in the HO *Briefing Paper* conflicted greatly with the reality on the ground. The HO mapping exercise of the political geography of Somali clans in a situation of violent conflict between fragmenting clan based alliance raised the question of whether clans can provide adequate protection (Toal 1997:10).

An indication of the current climate of dealing with the problem of defining a refugee in the context of Somali clan warfare is reflected in the most recent ruling in *Adan*. On 2 April 1998, the House of Lords unanimously upheld the appeal by the Home Office Secretary against the Court of Appeal judgement in *Hassan Hussein Adan [1997] 1WLR 1107* which had held that *Adan* was a 'refugee'. The ruling narrowed the definition of refugee in relation to those fleeing civil war. In fact, the House of Lords held that:

'In a state of civil war between clans, an asylum seeker must be able to show that he is at greater risk of ill-treatment than other members of his clan. In other words, he must be able to show fear of persecution for (Geneva) Convention reasons over and above the ordinary risks of clan warfare'.

The ruling had devastating effects for the majority of Somali asylum seekers and those with ELR because little chance is given for the prospect of future change of immigration status. As the *status quo* remains for them, it is very hard to predict what the HO and Immigration Tribunals are going to do following the ruling in *Adan*.

Conclusion

Somalis in the UK have certainly undergone a process of adjustment during the past decades. It is interesting to note that the British immigration law and policies have had a great role in either facilitating or obstructing this process. However, the current climate on refugee issues indicates an overall aim of pushing Somali asylum seekers into self-exclusion. As the community continues to face the daily reality of living in an alien and sometimes unfriendly environment, the immigration status has the important role of determining one's rights and entitlements in terms of education, housing, employment and access to health services. The restriction of such rights by means of simply classifying people into a lower and higher immigration status has detrimental effects on the settlement process of the Somali community.

In line with this argument, Somalis in the UK, especially the refugee community, experience difficulties in interacting with public authorities in terms of welfare benefits, education and employment. Concerns arise from daily issues of children's education and the role of *Education Reform Act 1988* in terms of Religious Education, dietary needs, dress code and mother tongue. The same can be said on the understanding of *Children Act 1989* and the extent to which the concept of 'child protection' can be culturally accommodated by parents as they are exposed to a new notion of 'parenting'.

The response of the Somalis has been to organise themselves into voluntary organisations and fill the gaps with supplementary schools for Somali children, setting up culturally receptive services of health drop-in and leisure for Somali women, advice line, outreach work and social policy intervention. They also act as advocacy for individuals in relation to immigration, deputation to Home Office, child protection issues and school curriculum.

It is in my submission that, while the law formally outlaws discrimination, (*Race Relation Act 1976*) there are many areas in practice where issues relevant to the Somali community need to be looked at. The first generation of Somalis, especially from the refugee community, may continue to experience difficulties in their quest for resettlement, but the second generation of Somalis deserve a process of integration on their own terms. They may face different issues and may have different needs, therefore the way forward is an integration on equitable terms, where both the Somali and the British cultures could have equal value and recognition.

Notes

¹ To establish 'domicile' as opposed to 'residence', the Home Office sends out a lengthy questionnaire, one question being 'where would you like to be buried?' For the community of seamen the answer was simply the country of origin. (See Summerfield 1993:86-87.)

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