



Conflict between National Interest and Human Rights: Britain's Policy towards African Immigrants, 1960 – 2013

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Abstract

Since time immemorial, national interest has been the plank of inter-group and inter-State relations. In the modern contemporary international system, national interest has become the cornerstone of foreign policy formulation and actions of sovereign states. However, in pursuing and advancing national goals and objectives, each state is expected and required to conform to certain norms and standards of behaviour. One such is the respect for and observance of fundamental human rights, including freedom of movement, association, and other socio-economic self expressions. Experience has shown that the pursuit of national interest and preservation of fundamental human rights concurrently can be a daunting task for the state due to political, security, economic and social considerations. This article is a historical analysis of the conflicting postures of Britain's African policy which in one breath, advocates and affirms commitment to human rights including those of free movement and association, but in another, undermines these same rights through certain immigration policies and practices. Pointedly, the article seeks to interrogate the basis, manifestations and implications of British immigration policy towards African immigrants between 1960 and 2013.

Keywords: National Interest, Human Rights, British Policy, African Immigrants.

Résumé

Depuis bien longtemps, l'intérêt national reste fondamental dans les relations intergroupes et interétatiques. Dans le système international moderne contemporain, l'intérêt national est devenu la pierre angulaire de la formulation de la politique étrangère et des actions des États souverains. Toutefois, dans la poursuite des objectifs nationaux, chaque État est sensé se conformer à certaines normes et standards de comportement. L'un d'eux est le respect des droits humains fondamentaux, notamment la liberté de mouvement, d'association et d'autres

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expressions socio-économiques. L'expérience a montré que la défense de l'intérêt national tout en préservant les droits humains fondamentaux peut constituer une tâche ardue pour l'État en raison de considérations politiques, sécuritaires, économiques et sociales. Le présent article est une analyse historique des postures conflictuelles de la politique africaine britannique qui, d'une part, défend et affirme un engagement en faveur des droits de l'homme, notamment la liberté de mouvement et d'association, mais d'autre part, sape ces mêmes droits à travers certaines politiques et pratiques d'immigration. L'article cherche à interroger la base, les manifestations et les implications de la politique d'immigration britannique sur les immigrants africains entre 1960 et 2013.

Mots clés : Intérêt national, droits de l'homme, politique britannique, immigrants africains.

Introduction and Background

The Second World War of 1939-1945 marked a watershed in the history of migration of peoples from other parts of the world to Europe. The upheavals unleashed by the war coupled with the long post-war European economic boom, which was facilitated by the United States-inspired reconstruction and recovery programme, ultimately led to the emergence of substantial immigrant communities in most Western European countries. With respect to Britain, military mobilization, expansion of the Merchant Navy and the deployment of industry and agriculture towards the war efforts brought about a severe shortage of labour. Due to the inadequacy of the women, young people and Irish workers that were engaged to fill the vacuum, the British government had to resort to the recruitment of colonial workers to Britain, while some others came of their own volition. In addition, the number of colonial passengers and stowaways to Britain increased substantially after 1941. These comprised mainly of people from West Africa and the West Indies. In 1942, it became easier for colonial subjects to enter Britain due to the government's removal of restrictions on landing without documentary evidence of British nationality; this was following representations from colonial governments on the grounds that since all British subjects were part of the war efforts there should not be restrictions on some groups (Henry 1985; Solomos 1993). However, a modern era immigration control policy emerged in Britain in 1962 via the Commonwealth Immigrants Act which was trailed by another one under the same name in 1968. The name of these laws indicates that their prime objective was to restrict immigrants from newly independent ex-British colonies in Africa, Asia and the Caribbean Islands, as opposed to Irish and/or other white immigrants. The fact was underscored in a public speech by the former Labour Immigration Minister, Barbara Roche, that 'Limiting Immigration by non-white Commonwealth citizens was the principal aim of both the 1962 and 1968 Commonwealth Immigrants Acts...' (Rahman 2013). It must be stated that this new British attitude towards

immigration was largely fuelled by the popular hostility to coloured immigration epitomized by a political campaign for control, as well as racial discrimination and occasional violence. As an illustration, the race riots in Notting Hill and Nottingham in 1958 served to reinforce arguments by anti-black and minority immigration for even more stringent immigration legislations because the increasing black migrant population was viewed as a growing British predicament (Henry 1985; SRPE 2014). As later events proved, the 1962 and 1968 immigration laws were signposts of increasingly stricter immigration restrictions that would emerge in subsequent decades. Against this background, this paper seeks to investigate the basis, manifestations and implications of the discriminatory British immigration policy on Africa and people of African descent from 1960, when most African states attained national independence, up to 2013.

Conceptual Consideration

National interest and human rights are the dominant concepts involved in this study. National interest is the fulcrum of the foreign policy principles and actions of modern states. National interest is a very broad term such that it is very difficult to define. The global community of scholars has been unable to create a generally accepted definition of the concept of national interest, thus the perception and understanding of the meaning and significance of national interest in inter-state relations varies among the many users of the term. The Italian thinker, Niccolo Machiavelli, pioneered the advocacy of the primacy of the national interest in state affairs. During the Thirty Years War (1618-1648) the French Chief Minister Richlieu argued that national interest (concept of reason of state) is 'a mean between what conscience permits and affairs require' (Church 1973). Shortly afterwards, the notion of national interest became the dominant force in European politics and diplomacy that became fiercely competitive in the subsequent centuries. National interest is a form of reason 'born of the calculation and the ruse of men' and makes of the state 'a knowing machine, a work of reason'; the state ceases to be derived from the divine order and is henceforth subject to its own particular necessities (Thuau 1966; Wikipedia the free encyclopedia).

The Merriam-Webster Dictionary defines national interest as 'the interest of a nation as a whole held to be an independent entity separate from the interests of subordinate areas or groups and also of other nations or supranational groups' (Merriam-Webster 2013). National interest has also been defined as 'any action that gives advantage to the state' (Isakuwa 2013). In another sense, national interest connotes the 'vital interest' of a state, a phrase that sometimes accommodates nearly everything in the world. A good illustration of this perception of national interest is the widespread

view that the United States of America (USA) must provide leadership in virtually every crisis and conflict on account of the numerous interests the country supposedly has in the surrounding region that the conflict threatens. We may go on and on with an endless rendition of the different shades of definition of the concept, but the bottom line is that today, each government has its own definition of the national interest. Quite often, this definition is premised upon the notion of political realism which discourages 'idealistic' policies that seek to infuse morality into foreign policy or advance solutions that rely on multilateral institutions which may erode the independence of the state. That definition may be correct or not, it however determines the kind of foreign policy the country operates. Above all, the interest of a nation is to satisfy national needs, and therefore national interests are objective, and there are as many national interests as national needs (Larison 2013; Kaplan 1961; Nuechhterlein 1976). This indeed provides the breeding ground for conflict of interests over diverse issues between and amongst nation states within the international political system.

The term human rights, though commonplace, is also mired in controversy regarding definition. The 'common' perception of human rights is from the standpoint of freedom from specific abuses or restrictions that are under proscription (forbidden). As an illustration, the United States Bill of Rights precludes (except in extreme cases) the government from breaching the individual rights of Americans to practice their religion or express free speech, and from committing a number of other violations. In addition, 'proscriptive rights' also cover certain things which the government is not allowed to do to groups, such as discrimination on account of race, sex, ethnicity, etc. It must be noted that private individuals and entities are also under obligation to abide by many of these rights. As an example, employers in the United States are not allowed to decide to employ only white males (Rourke 2007).

On the other hand, a large cross-section of observers opine that beyond proscriptive rights, human beings are entitled to another category of rights tagged 'prescriptive rights', which essentially are the basic necessities a government is prescribed (arguably) or obligated to provide in order to ensure a certain standard of qualitative life for all inhabitants of the community. Prescriptive rights required that everyone has the right to existence in tolerable conditions, at least. These cover rights to adequate education, shelter, feeding, healthcare, sanitation, dignity, security and individual productivity (Rourke 2007).

In Obaseki's own view,

Human rights – (are) the rights of man of fundamental freedoms. They are claimed and asserted as those which should be or sometimes stated to be those which are legally recognized and protected to secure for each individual the fullest and freest development of personality and spiritual, moral and other independence. They are

conceived as rights inherent in individuals as rational free willing creatures, not conferred by some positive law nor capable of being abridged or abrogated by positive law (Obaseki 1992).

In other words, human rights are inalienable rights of man by virtue of his humanity and therefore should be guaranteed to everyone (Enemuoh 1999).

For Galtung, the most appropriate way to conceptualize human rights is from the perspective of 'serving basic human needs'. This is the notion that ultimately, human rights are supposed to serve basic human needs. Such needs, which generate corresponding rights, include survival needs (the need to avoid danger and the right to freedom from individual or collective violence); identity needs (the need to avoid alienation and the right to self-expression, realization of individual potential, association and preservation of cultural heritage, etc.). Others include freedom needs (the need to avoid repression and the right to receive and express opinions, to assemble with others, and to choose in such matters as spouses, jobs, lifestyle and place of residence); well-being needs (the need to avoid misery and the right to biological wants like food, water, movement, sleep and sex, as well as the right to protection against diseases and negative climatic and environmental effects (Galtung 1994). Whichever conceptual perspective one adopts, what remains true is that human rights are 'generally' desirable basic human freedoms, some of which can be undermined by excessive immigration regulation by the state.

Article 1 of the United Nations (UN) charter, a document that was adopted by Britain and 49 other countries in San Francisco in 1945, states that one of the goals of the UN is to achieve international cooperation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion' (Flowers 1998). To achieve this objective, the Commission on Human Rights was created to draft an International Bill of Human Rights. The resultant bill comprises the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights with its optional Protocol, and the International Covenant on Economic, Social and Cultural Rights. In 1948, the UN General Assembly adopted the UDHR, which essentially defines the basic human rights and freedoms that all persons are entitled to. The rights encapsulated in the UDHR were subsequently codified into two covenants (conventions), namely in the International Covenant on Civil and Political Rights (ICCPR) which expresses the specific liberty-oriented rights that a state may not deny its citizens and inhabitants such as freedom of movement, freedom of expression, etc., and in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which deals with those articles in the UDHR that define an individual's rights to basic necessities, like food, housing and health services, which a state should provide (Flowers 1998). With the adoption of

both covenants by the UN in 1966, their provisions became binding on all the signatories, including Britain. It is within this context that we shall now proceed to examine Britain's immigration policy with respect to African immigrants between 1960 and 2013, with a view to determining the extent to which the country has adhered to the spirit and letters of International Human Rights norms and standards as enunciated in the above covenants.

British Immigration Policy on Africa: An Overview

The 1968 Act subsisted for about three years before the Immigration Act of 1971 was instituted by the Heath administration. The core motive of this legislation was to ensure tight control of the number of immigrants to Britain, and enforce proven patriality as a requirement for admission to Britain. In addition, the law required immigrants without British patriality to possess a work permit subject to annual review. In effect, the 1971 Act eventually stripped black Commonwealth immigrants of the rights to settle, and this set the stage for the institutionalization of racist immigration controls. In fact, by 1971 the bedrock guarantee of British citizenship once promised to the citizens of all Commonwealth countries had paled into insignificance (SRPE 2014; Solomos 1993).

It must be said that the 1971 Immigration Act laid the foundation of contemporary British Immigration controls because since its inception various governments, Conservative and Labour alike, have adopted the restrictive principles created by the legislation through the introduction of a legion of primary and secondary laws on entry and exit enforced according to the discretion of successive secretaries of State for the Home Department (Rahman 2013; MPI 2009). After Heath's government, the subsequent Labour administration stepped up the tempo of deportations and even went as far as imposing virginity tests on Asian women (Seymour 2010). Margaret Thatcher's government's British Nationality Act of 1981 put paid to the centuries-old common-law tradition by denying persons born on British soil the right to automatic citizenship, for example (MPI 2009). It is interesting to note that Thatcher had earlier asserted in 1978 that:

People are really rather afraid that this country might be swamped by people with a different culture and you know, the British character has done so much for democracy, for law, and so much throughout the world that if there is any fear that it might be swamped people are going to react and be rather hostile to those coming in (Thatcher 1978).

In addition, Thatcher had declared during her electioneering campaign in 1979 that blacks constituted a threat to British cultural and social values (SRPE 2014).

This mindset reflected in the 1981 Act, which defined British citizenship in a narrow, post-imperial sense, and emphasized the imposition of visa regimes and carrier sanctions in a bid to curtail the influx of asylum-seeking migrants (Hampshire 2009). The collapse of the defunct Soviet Union, as well as conflicts in the former Yugoslav federation in the early 1990s and the attendant humanitarian flows to Britain and other European states reinforced the resolve of policy makers to strengthen legislation against asylum-seeking migration. As an illustration, the Asylum and Immigration Appeals Act of 1993 was particularly restrictive in character. It created new rapid dispatch procedures for asylum applications, giving room for detention of asylum seekers awaiting the outcome of their applications and cutting down access to social security and legal assistance for claimants. The Immigration and Asylum Act of 1996 followed the same path and even introduced new measures and concepts meant to limit access to employment, public services and general welfare benefits (MPI 2009; Seymour 2010).

The emergence of the Tony Blair-led Labour government in 1997 marked another watershed in the history of British immigration policy. During this period, the government's immigration policy had a twin focus, namely, commitment to economic immigration on one hand, and a tough security and control framework on the other. The security perspective, in particular, which intensified in the aftermath of the September 11, 2001 terrorist attacks in the USA is anchored upon increased efforts to fight illegal immigration and prune back asylum seeking via various means, especially new visa controls. To actualize this new policy direction, the government enacted six key legislations on immigration and asylum between 1997 and 2009 (MPI 2009). As from 2001, government began to expand economic migration, and for the first time, introduced visas for highly skilled economic immigrants to enter Britain without a job offer, but on the mere basis of their individual skills, under the newly created Highly Skilled Migrant Programme (HSMP). Government also embarked upon a conscious expansion of the existing work permit system by lowering the criterion required for a permit. In addition, low-skilled migration was promoted through the Seasonal Agricultural Workers Scheme (SAWS) and the newly established Sector Based System (SBS). These policy changes, no doubt, recorded noticeable effects on economic migrations to Britain. To elucidate, the number of migrants through the HSMP increased so rapidly that it reached 17,631 in 2005, while the number of immigrations with approved work permit, dependants inclusive, rose from 62,975 in 1997 to 137,035 in 2005. Furthermore, the SAWS attracted 15,455 immigrants in 2005, while the SBS which was specifically devoted to the hotel and food-processing sectors, drew 7,401 migrants (Hampshire 2009;

MPI 2009). These were indeed landmark policy changes, however, it must be stated that their effect on migration from Africa/Caribbean to Britain was weak in relation to the effect of the government's opening up of the British labour market to citizens of the A8 member states in the wake of the 2004 European Union (EU) enlargement.

By 2008, it became apparent to the government and dominant political parties in Britain that aside from skilled workers like scientists, engineers, computer specialists, doctors, teachers and nurses, the country also needs low-skilled persons to fill vacancies in places such as the agricultural, hospitality and building industries which cannot be filled from the internal labour force. Thus, the Labour government initiated the Points-Based System (PBS) to control inward primary immigration from countries outside the EU (Rahman 2013). The PBS enunciated five layers of primary immigration routes to Britain depending on the type of immigrants; namely: 1. High-skilled workers, 2. Sponsored skill workers, 3. Low-skilled workers, 4. International students and 5. Various categories of temporary workers. Under this system, applicants seeking entry clearance via any of the above categories are required to garner a certain number of points which are awarded on the basis of different criteria within each category. In effect, the PBS resulted in the stratification of immigrant workforce into entrepreneurs, workers, students and others, with a varied degree of rights and privileges. This, in turn, has created a highly complex system that is difficult for both the public and workers themselves to comprehend. The migrant workers are particularly disturbed about their limited immigration and social rights within British society. They are also worried that the entire scheme is lopsided in favour of employers thereby making the immigration status of immigrants temporary in nature and prone to exploitation (Hampshire 2009; Rahman 2013).

Labour government policy expanded economic immigration to Britain, but was more restrictive to other categories of immigrants, particularly those seeking asylum. The government reinforced the above immigration policy framework with a number of institutional changes. These include initiatives to discourage baseless asylum claims, reduce the claim-processing time, and expel more failed asylum seekers. Aside from pruning asylum seekers' benefits, the government also stepped up its use of controversial punitive measures, such as the use of detention centers and deportation, to remove unsuccessful asylum seekers. Tougher border controls were also introduced. In order to curtail asylum claims and tackle unauthorized border-crossings, the administration expanded surveillance at ports of entry, imposed carrier sanctions, and extended the visa regime. A key component of this initiative was the establishment of an enlarged arms-length border surveillance outfit, the UK Border Agency (UKBA) in 2008, with greater powers and functions

than its predecessors, the Immigration and Nationality Directorate (IND) and the Borders and Immigration Agency (BIA). The UKBA has operational autonomy from the Home Office, covers visa responsibilities from the Foreign Office and detection responsibilities from Customs. In addition, government created the e-Borders programme which has adopted biometric and information system technologies to strengthen border security (MPI 2009; Hampshire 2009).

The incumbent coalition government led by Conservative David Cameron sustained the British 'tradition' of restrictive immigration policy with its introduction of the draconian Family Reunion Rules presented to Parliament on 9 July 2012. By this policy, the government seeks to implement harsher and more restrictive measures, such as a far higher income level requirement for sponsor spouses, civil partners and family members who are not EU citizens. By the provisions of this legislation, a British citizen or a person settled in Britain is bound to demonstrate evidence of a minimum annual income of 20,000 British pounds in order to obtain authorization to sponsor a single spouse or a civil partner, while families with children are required to earn at least 39,000 pounds, depending on the number of children. Such a couple will also have to pass a strict 'Britishness' test to ascertain their common genuine loyalty to Britain alone, and will be placed on a five-year probation as against the current two. These new rules are meant primarily to address claims that non-British citizens are marrying British citizens in order to exploit the generous social welfare system of Britain. The proposals are targeted towards a reduction of immigration, currently 250,000 annually, by 25,000. Justifying this fresh clampdown on non-EU immigrants, British Home Secretary, Theresa May during a television show declared: 'I think it is important that if people are bringing people into the UK to create a family here in the UK that we say that you should be able to support yourselves and not be reliant on the state' (Walters and Bond 2013; Rahman 2013; Immigration Act 2014). In addition, Mrs. May warned judges that their powers to prevent the deportation of foreign criminals on human rights grounds must be streamlined in spite of the provision of the European Convention on Human Rights with regards to such cases (Walters and Bond 2012). Given its potential for instigating family break-ups, this new clampdown is a renewed assault on the rights of Africans, Caribbeans and Asians etc. to family life without molestation.

The net outcome of increasingly restrictive British immigration control regimes is a legion of challenges and adversities for immigrants, especially of African-Caribbean and Asian origins. First, these set of immigrants find it very difficult to get employment as it is much easier for whites to secure

jobs in Britain. Available evidence shows that unemployment rate among Africans is 27 per cent, while among the white population it is a mere 10% (Mitton & Aspinall 2010; Vasilenkov 2013). Second, African immigrants are confronted by the greatest obstacles in the procurement of housing and education loans. Indeed, it is commonplace for black immigrants to reside in cheap sections of big cities, while their children attend schools of very poor quality of education. Third, ethnic minorities, especially black youths, are currently subjected to haphazard, brutal and traumatizing security checks by British services as if the former are less than human. A few examples would suffice. In July 1993, 40-year old Joy Gardner was murdered by the British police in her house in the full glare of her children because her visa was no longer valid for stay in the country. The police operatives had restrained her with a body-belt and 13ft of tape around her head so as to enforce her ejection from Britain, thereby making her suffer a coma leading to her eventual death. In 2011, Mark Duggan was killed by the police in Tottenham in another show of brutality inflicted on the everyday lives of black peoples. In July 2013, an inquest jury established that Jimmy Mubenga, a father of five children ordered to leave his family and return to his home country Angola (after serving time in prison) for his involvement in a nightclub fight, was killed unlawfully by British security escorts on his deportation flight. The inquest indeed revealed that some of the G45 Deportation Custody Officers contracted to eject Mubenga from Britain had racist text messages saved on their phones and widely distributed among UKBA personnel (Qasim 2013; Vasilenkov 2013). These and many other violations of the human rights of African peoples in Britain are principally products of the British government's resolve to maintain national socio-political and economic order regardless of the dictates of international human rights conventions to which she is signatory.

Conclusion: National Interest vs Human Rights

The key point arising from the preceding analysis is that there exists an apparent conflict between Britain's national interest and her human rights policy with respect to immigration from Africa and the Caribbean. Although since the 1960s there has appeared to be a conscious effort by British authorities to balance restrictive immigration policy with the need for good race relations and integration, the overriding consideration behind Britain's policy towards African immigrants is the determination to safeguard her citizens' socio-economic well-being and national cultural identity against what many Britons perceive as the predatory and corrosive influx of foreigners. Unlike during the Second World War years when all British Commonwealth subjects, including Africans, enjoyed British citizenship

rights due to their important role in Britain's war effort, today citizens of ex-British African colonies are largely seen as undesirable elements in Britain. It is therefore not surprising that current British immigration policy makes it far easier for highly skilled Africans to enter Britain, than for their low-skilled and unskilled counterparts to do so.

This article has demonstrated the dilemma that confronts nation states in their quest to sustain national prosperity and stability vis-a-vis their obligation under international law and agreements. The discourse further indicated that whenever there is conflict between national interest and human rights, national interest takes precedence. British immigration policy changed because of changes in British national interest over time. Thus, the attitude of British policy makers became that of 'Britain first, anything else afterwards'. This is why Britain's immigration policies increasingly assault the fundamental rights of African peoples in utter disregard for the spirit and letters of international agreements such as the 1951 Geneva Convention, International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1966), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), Convention on the Rights of the Child (1989), and Convention on the Rights of Migrants Workers and Members of their Families (1990). While we concede that it is legitimate for Britain, like any other sovereign state to advance and promote its national interest, it is equally important for her to respect and honour her international commitments on the protection of the fundamental human rights of all peoples regardless of race or origin. It is unacceptable for Britain to pay mere lip service to human rights of all peoples while in reality she continues to violate the rights of Africans with impunity under the guise of immigration control in the national interest.

In all these, the vital lesson for African states is that there is a crucial and urgent need for self-admonition that would culminate in positive transformations of their national fortunes. African leaders, policy makers and citizens must collectively, at both national and continental levels, begin to tackle seriously the historical challenges of chronic corruption, bad governance, acute unemployment, abysmal poverty, underdevelopment and political instability in order to stem the current frenetic rush to live abroad in search of greener pasture almost at any cost. If the overall African image improves substantially in the eyes of the outside world, this would compel countries like Britain to be more humane and receptive to the continent's peoples.

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