



Analysis

UK: The real “immigration debate”

Frances Webber

This article provides an overview of the plight of refugees and migrants in Britain. This includes the devastating impact of legal aid cuts, the conditions of immigration detention, the growth of Islamophobia and the exploitation of undocumented migrants.

The political campaign against immigration and asylum seekers shows no signs of abating. It is seen by the Home Affairs Committee as a matter of regret that so many asylum seekers stuck in the system without a decision for (in some cases) up to 20 years are allowed to stay.[1] Prime minister David Cameron speaks out against multiculturalism [2] and the Labour Party is involved in a process of breast-beating, saying it was perhaps wrong to have allowed mass migration during its time in power. (This is rewriting history – my recollection is that Labour was doing all it could to stop mass migration, of asylum seekers at least.) Once again, it is time to rehearse the arguments.

Who are the asylum seekers?

The leaders of the ‘free world’ encourage and treat as heroes those people fighting for democracy and human rights in Burma, in Libya, in Egypt and Syria; those who fight women’s oppression and religious persecution in Pakistan, in Iran and Nigeria. But as soon as these heroes seek sanctuary in the same ‘free world’ – in the rich countries of Europe and north America and Australia – they are transformed into a hostile alien threat to our culture and our values, to be kept out by Frontex patrols and bilateral accords and e-borders and carrier sanctions and all the paraphernalia of modern immigration controls.

Then we discover that our government has been selling arms to repressive regimes including Libya, Bahrain and Saudi Arabia, Algeria, Egypt, Kuwait, Morocco, Oman, Syria and Tunisia, which have been used to suppress pro-democracy activists and minorities, and the Ministry of Defence (MoD) and British universities have trained soldiers from China, Sudan and Uzbekistan, as we have done in Sri Lanka and in Colombia. How many other repressive regimes is our government propping up? How many refugees have been created by British government policies?

But it’s not just the asylum seekers, but also the undocumented, the ‘irregulars,’ those who don’t fear persecution but who migrated because there is no land, no work, no possibility of livelihood, or of feeding, clothing and educating a family, no future at home. What does this have to do with us? As Sivanandan memorably said, ‘We are here because you are there.’ One way or another, most of those who come to these shores without official permission are refugees from globalisation, from a

poor world shaped to serve the interests, appetites and whims of the rich world; a world where our astonishing standard of living, our freedoms, the gobsmacking array of consumer novelties, fashions and foods available to us, and thrown away by us, are bought at the cost of the health, freedoms and lives of others. In the terms of trade and intellectual property agreements, in the imposition on poor countries by the global economic police of policies that remove food self-sufficiency and drive small producers off the land, in the substitution by agribusiness of biofuels for food production in the vast tracts of Africa and Asia bought up by corporations for profit, in the soaring food prices in the poor world which sparked riots in Egypt and Tunisia. This is the real immigration debate which the politicians never have: how the entire system of immigration controls, not just in the UK but in Europe, the USA, Japan, South Korea and the Gulf states is built, is predicated on massive global injustice.

Brave new world for whom?

At the heart of globalisation is a ruthless social Darwinism, which is reflected in and reinforced by immigration controls. The points based system for immigration introduced in the UK in 2008 awards points for youth, salary, qualifications and talent. If you don't have all these attributes you're not wanted. If you're not computer-literate and don't speak English in most countries you cannot even apply for a visa; the visa application service – now, in common with much else, run by commercial operators – requires forms to be filled in online and in English.

This brave new world, a wonderful world for the young, fit, educated, white and middle-class, is not open to the poor, the sick, the disabled, the old. In Cameron's Britain, as in Thatcher's and Blair's, and in the globalised, privatised, marketised world, those who can't work will find their lives squeezed out to mere existence – just like asylum seekers.

When we - as human rights activists, lawyers, detention visitors, volunteers at day centres – engage in debates and campaigns, our arguments must be informed by this global framework of massive injustice. It reminds us that our demands for asylum and migrant rights are not special pleading, but demands for basic justice.

Areas of concern – legal aid

So what are the areas of particular concern confronting refugees and migrants today? First on the list is proposed legal aid cuts which, despite objections from the overwhelming majority of the 5,000 respondents to the government's consultation process, will deny legal advice and assistance to those unable to pay for it, making justice once again as open to everyone as the Ritz hotel. The Bill will restrict legal aid in areas such as employment, housing, family, welfare benefits, community care, mental health and immigration to cases where people's life or liberty is at stake, or where they are at risk of serious physical harm, or immediate loss of their home. Justice for All, a coalition of charities, legal and advice agencies, politicians, trade unions, community groups and individuals, estimated that 650,000 people, the vast majority poor, will lose eligibility if the proposals, described by peers as "immoral, unconstitutional and crazy", become law. [3] In the immigration field, people facing removal or deportation, for example, will not get representation, or even advice on how to prepare and present their appeal. The Bill proposes removing legal aid for judicial review of immigration decisions where there have been previous court or tribunal proceedings in the past year, even if they were successful. This means that the first, but not the second attempt at an unlawful removal would be publicly funded. The result of the Bill will be the virtual exclusion of all

but wealthy migrants from legal redress for bad decision-making – a wholesale denial of justice. It is estimated that not for profit providers, such as law centres and the Citizens' Advice Bureaux (CAB), will lose 77% of their legal aid funding. Many will have to close their doors.

The government says the cuts will not affect asylum seekers and those in detention. But legal aid in these areas has already been cut to shreds in the past few years. Many legal aid immigration firms have been forced out of business by vicious cuts to legal aid in asylum and immigration, culminating in a flat-fee system which penalised conscientious preparation of claims and appeals and a change to retrospective payment which drove Refugee and Migrant Justice (formerly the Refugee Legal Centre), into administration when the Legal Services Commission (LSC) refused to pay the £2m it owed in fees in order to save the organisation. The government reassured thousands of stranded clients about 'alternative provision' and the LSC added insult to injury by refusing contract renewals to many more dedicated immigration and asylum solicitors.[4] In July 2011, the Immigration Advisory Service (IAS), the UK's biggest provider of immigration advice and representation, went into administration.[5]

Detention

Nowhere is legal advice and representation needed more than in detention. Yet for many held by the immigration authorities it is not there. In July 2006, a group of Pakistani women detained in Yarl's Wood wrote to the charity Bail for Immigration Detainees (BID): 'We are feeling like our hands are cut off, and we are terribly in the desperate situation and we can't do anything helpful, supportive in regard to our cases because we have not provided any solicitors and without solicitors we are unable to deal with our cases. We are very helpless here.' [6] An official inspection of Harmondsworth Immigration Removal Centre (IRC) in 2010 revealed that no information about legal rights and no up to date legal materials were available. The only legal help for detainees was a surgery open for just ten hours a week. In that time only 20 clients could be seen so the surgery was booked up a fortnight in advance. But unrepresented detainees in the fast track were not permitted to defer asylum interviews until they could get legal assistance. By the time legal help was available, their claims had been refused and appeals dismissed. [7]

The detained fast track is the biggest blot on the asylum system. A recent report from Detention Action (DA, formerly the London Detainee Support Group), *Fast track to despair*, is the latest to document how the fast track system is structured to operate to the maximum disadvantage of asylum seekers at every stage. [8] Introduced when asylum numbers were four times what they are now, supposedly to hive off and deal quickly with the 'straightforward' cases, (i.e. those which could quickly be refused), the detained fast track was set up to ensure failure. Claimants needing to recover from the odyssey of illegal travel – stuffed in airless lorries, or on the sea in leaky boats, or being bounced from country to country - have no time to compose themselves, no time to prepare a claim or to find and present evidence in support. The 99 per cent refusal rate is then quoted triumphantly by politicians to show how efficient the fast track is in rejecting groundless claims. The reality is that, as the DA report shows, the conditions and timescales make it impossible for many asylum seekers to understand, let alone actively engage with, the determination process.

Looking at immigration detention generally, an area where vast private corporations have made millions from the relentless growth in the number of people being detained over the past decade, [9] and where allegations of brutality and neglect, particularly during removal, are commonplace, [10] it is shocking that there is still no time limit on the maximum period of detention – and the

period deemed 'reasonable' for holding someone for deportation after refusal of asylum, or at the end of a criminal sentence, has gone up from around five months in 1984, when the leading case of *Hardial Singh* set out the principles and criteria for lawful detention, [11] to anything between two and four years now. Provided the Border Agency is using 'due diligence' in pursuing removal, periods of this length have been held lawful. Recent Supreme Court decisions have established that it is unlawful to have a secret policy, contradicting published policy, providing for the blanket detention of all foreign national prisoners, and that detention without proper monthly reviews in which the necessity of detention is considered, makes detention unlawful. [12] They are very welcome – but today's unforgiving climate makes it harder than ever to campaign for the rights of foreign national prisoners not to be detained unlawfully, and not to be separated from family members by deportation.

Deportation of young people

Many of those facing deportation are young men who came to the UK as children, often from horrific situations, having seen and experienced things no one, let alone a child, should be exposed to. Many found themselves isolated by language difficulties, mocked at school for their accent, without help or support to deal with the psychological consequences of their experiences. I represented some of these young men. One I recall particularly became a bully, threatening younger children, robbing them, and was sent to a Young Offenders Institution. Fair enough, one might say. But he and his family were from Rwanda; they had lost relatives in the genocide and his mother could not give him the help he needed because of the depression and trauma she was suffering. Yet he was sent back to Rwanda, where he had no one. His mother was beside herself with worry. This is double punishment indeed.

Another child who was enslaved in Somalia after separation from his family was finally reunited with them here. His mother tried to treat him as a child, but after his experiences he could not readapt to it and left home and soon became involved in crime. Young people like this desperately need help, not to be 'sent back' like defective goods. Yet the right-wing press campaigns remorselessly for the deportation of all 'foreign criminals' no matter how long they have been here, how strong their ties and how much deportation would damage them and their families - feeding public hysteria and creating a climate where judges fear to give effect to migrants' human rights because of the inevitable right-wing backlash.

Ten years ago it was unheard of to deport someone who had lived here for 20 or 30 years, or who arrived as a child. As judges in the European Court of Human Rights have said, it must be doubted 'whether modern international law permits a state which has educated children of admitted aliens to expel those children when they become a burden.' [13] British immigration judges deciding whether to deport foreign criminals used to weigh a large number of factors - the length of time spent in the country, the ties they had built up, with both family and others, their character, conduct and employment record, the nature of the offence(s), compassionate circumstances such as the effect of their deportation on others - to decide if the public interest required their deportation. But the media frenzy in 2006 surrounding the release of foreign prisoners without considering deportation, which forced Charles Clarke's resignation as Home Secretary, succeeded in getting the law changed to do away with the judicial balancing of factors for and against deportation. From 2007, deportation became mandatory for anyone sentenced to a year or more in prison, unless the Refugee Convention or the Human Rights Convention made their deportation unlawful. The Tory Right and its press, having achieved this dramatic narrowing of the grounds for avoiding the double

punishment of deportation, now seek to remove the last remaining obstacle to getting rid of all foreign offenders - international human rights law. [14]

Islamophobia

Islamophobia informs policy in a number of ways. The debate about Britishness instituted by the Labour Party and carried forward by Cameron in his critique of multiculturalism, suggests that you cannot be properly British and properly Muslim at the same time. Issues such as the rights of women and homophobia are taken up dishonestly and opportunistically by politicians – frequently at the invitation of the tabloids. Many of the attitudes and practices they condemn are equally prevalent in other faith communities, but we do not see anyone speaking out against these groups or suggesting they can not be properly British.

Muslims have become a ‘suspect community’ like the Irish in the 1970s. Risk-profiling computer programmes, written to select who gets body-scanned, searched and subjected to intensive questioning at ports, identifies specifically Muslim behaviour (e.g. regarding the use of ATMs and credit cards) so that ‘high risk’ equates with ‘practising Muslim.’ The security services build mosaics from disconnected fragments of information and end up targeting innocent people as terrorist suspects, imposing extraordinary restrictions on them for years on the basis of pure suspicion and secret evidence. Yes, control orders are being replaced by terrorism prevention and investigation orders (TPIMs) but bail in the context of proposed national security deportations which subject people to even tighter restrictions, e.g 16 and 18 hour curfews, a ban on all non-vetted visitors (including health visitors, doctors etc, who all need advance permission from the Home Office to visit patients at home), a ban on computers (seriously affecting children’s ability to do schoolwork) and on mobile phones – for years, while appeals crawl through the system. I started representing one man, a Jordanian, in 2006. He was arrested for deportation in July that year, three days after his wife gave birth to their first child by caesarian section. He was held in Long Lartin maximum security prison for two years, then released, forced to move first to an all-white area where his hijab-wearing wife was cursed, spat at and assaulted when she left the house, and then to a racially mixed area to a basement so damp that it ‘breathes’ out over four litres of water a day (a benefactor bought him a dehumidifier). There he tries to bring up his three children and look after his wife, who had a nervous breakdown after the racist attacks, while being allowed out of the house for only six hours a day. All of this on the basis of the most tenuous fragments of so-called intelligence (that is the information he and we were allowed to see). He and his family have faced and continue to face the most extraordinary pressures. This has been extensively written about. [15]

Undocumented migrants

Finally, let us consider the case of irregular or undocumented migrants. We are all familiar with the enforced destitution policies towards refused asylum seekers brought in by the last government and continued by this one, and the enormous hardship and misery they have caused. We are aware of the mega-exploitation of the undocumented by gangmasters, the massive waste of human talent with multi-lingual graduates working illegally as security guards or in petrol stations.

There were widespread campaigns for regularisation supported by the likes of London mayor Boris Johnson and Lib Dem leader Nick Clegg. But regularisation is now off the agenda, following the Lib Dems’ Faustian pact to attain power and the recantation of high-profile liberal organisations; instead

we are faced with an enforcement agenda in which the voluntary sector is called on to take part. [16]

It is a bleak landscape. The only point of light is the burgeoning army of migrant and refugee support groups, human rights groups, faith and community groups and trade unions working together to campaign against injustice – at an individual, national and global level. The coalition formed to fight the legal aid cuts seeks justice for all, refusing to get into a competition about who needs legal aid most. Campaigns such as the Living Wage Campaign, the campaign for the adoption in Europe of the Migrant Workers’ Convention which recently achieved the creation of a new ILO Convention for domestic workers, address the anti-immigration arguments that migrants undercut pay and conditions, and benefit all workers, not just migrant workers, encouraging solidarity, not competition. Such campaigns seek justice, not charity or special treatment, for migrants and asylum seekers, and they reject the social Darwinist politics underpinning global migration controls.

Frances Webber is Vice Chair of the Institute of Race Relations. This article was written in June 2011.

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