

*Dr Olufemi Amao, Brunel Law School, Brunel University, London*

Immigrants Awareness Day

Cork, Ireland

**“Immigrants' Integration, Rights and Privileges”**

*Dr Olufemi Amao, Brunel Law School, London*

I start this talk with my take on the migration process. In my opinion, migration is neither a good or bad thing. It is just one of the ways of humans. Before the advent of globalisation, people migrated but were limited to how far they can go by walking, swimming, riding a horse etc. Years of technological innovations have removed physical limitations. Now people can travel much further. Why do people go to particular places? As has been the case in all parts of the world, the major reason for migrating is the desire for a better standard or quality of life. Poor countries have fewer immigrants. So we can say that a high level of immigration to a particular country signifies some level of social and economic success in that country. It is therefore no surprise that the advent of the Celtic Tiger economy also brought about a high level of immigration into Ireland. And they came in different types: asylum seekers, workers, students, spouses etc. It must be noted that a large proportion of immigrants actually come from within the EU as compared to outside the EU. This is a reverse of the Ireland's reputation as a country of emigrants. The Irish nation witnessed an inflow of immigrants.

This change in trend is bound to throw up new challenges for the nation's policy makers and also the people generally especially in times of economic crisis as we have today. There is always the temptation to blame the 'outsiders' if things go wrong.

### **What has been the general attitude of the nation towards immigrants?**

A number of researches have been conducted in relation to this question. There are suggestions that the Irish attitude is more liberal to European migrants when compared with the attitude of other European countries.<sup>1</sup> However, the same cannot be said confidently of groups from outside of the EU. Commenting, on the experiences of Nigerians-and others, Prof. Joy White, an American academic said in a published paper:

“Overall, the experiences of Nigerians - and other Africans, for that matter -do not reflect a welcoming Irish society. If anything, their presence exposes a societal fear of heterogeneity. This is evidenced in the successful passage of a 2004 referendum in which a 79 percent majority voted to change the Irish constitution to end jus soli citizenship; believed to be a result of, inter alia, rhetoric about ‘baby scams’ in which Nigerian women would arrive in the country to give birth to Irish citizens and receive leave to remain (Brophy 2001; Lentin 2003; Sheahan 2004). In an examination of the paradoxes of Irish racism, migration history and multiculturalism in the context of ‘commonsense citizenship’ Una Crowley, Mary Gilmartin and Rob Kitchin interpret the constitutional change as representative of Ireland ‘embrac[ing] the neo-liberal, right wing and racist rhetoric of much of Europe and North America’ (Crowley et al. 2006, p. 20). Additionally, a 2006 study of a cross-section of migrants in Ireland reveals ‘more racism and discrimination’ experienced

---

<sup>1</sup> See for example Tom Turner, Why are Irish attitudes to Immigrants among the most Liberal in Europe? Testing structural determinants in a comparative context (2010) 12(1) European Societies 25

by 'Black South/Central Africans' and, particularly, Nigerians (McGinnity et al. 2006)."<sup>2</sup>

Others may disagree with the above assessment.

### **Eliminating/Managing immigration and immigrants**

I think what we can all accept is that it is difficult if not impossible to stop or eliminate migration especially because of the globalisation of the modern world. What can be done however is to properly manage all dimension of the process to achieve a fairer outcome for all concerned. It cannot be argued that any country has an obligation or duty to open its doors to all comers, but if another human arrive at the territory of another country, irrespective of how he gets there, our common human decency and values demand that we manage his or her presence by having in place a fair process to deal with his presence.

### **Integration**

It is widely acknowledge that the key to a successful management of migrant and immigration issues is having a coherent integration policy. Governmental policies in this respect largely shape a country's response to the challenges of immigration. In my experience, having lived here in Ireland for four years in the past, the Irish people at the individual level are very welcoming. The same cannot be confidently said of Irish institutions. It has been suggested in the literature that Ireland provides a textbook example of what has been called a "racial state".<sup>3</sup> Others may disagree with such assessment.

---

<sup>2</sup> E.J White, 'Paradoxes of Diaspora, Global Identity and Human Rights: The Deportation of Nigerians In Ireland' (2009)2 (1) African and Black Diaspora: An International Journal 67,72

<sup>3</sup> Piaris Mac Einri and Allen White," Immigration into the Republic of Ireland: A Bibliography of Recent Research" (2008) 41(2) Irish Geography 151, 161

For the purpose of this talk, I have chosen to substantially rely on a recent study which I believe, provide a fair assessment of the situation in Ireland. For this purpose I refer to the study published in February by the British Council and the Migration Policy Group.<sup>4</sup> The latter is an independent non-profit European institution. The group publishes the Migrant Integration Policy Index (MIPEX) which is a reference guide designed to assess, compare and improve integration policy. The index measures integration policies in all EU Member States, Norway, Switzerland, Canada and the USA. It uses over 200 policy indicators to do its measurement. The policy index project involves several participants including the British Council, 37 national organisations, NGOs, universities and state equality bodies. The report has gained attention in the Irish press in the last month including, the Irish Times, RTE etc. (I shall rely on this study to a great extent because of its currency and relevance to the discourse).

The key findings of the report are as follows:

- **“Labour market access is poor** unlike other countries of labour migration.
- **Non-EU family reunion worst of all countries and long-term residence 4th worst**, as Ireland opts out of EU law and fails to adopt the Immigration, Residence, and Protection Bill.
- Discretionary procedures and basic unequal rights set some of **most unfavourable conditions for non-EU residents to integrate**.
- **Political participation and access to nationality are still areas of strength** and among the highest in Europe, although these basic principles becoming the norm in many countries of immigration.

---

<sup>4</sup> See Migration Policy Group, Migrant Integration Policy Index (2011). Available at <http://www.integrationindex.eu/ireland>

- **Public bodies and initiatives that further the integration of migrants are severely affected by the crisis through closures and funding cuts.”**  
(emphasis added)

## **Employment**

The MIPEX correctly identify some of the shortcoming that have restricted access to or kept many non-EU residents out of the labour force (or forced to take jobs below their qualifications). These include: restriction on the ability to change jobs or start businesses, new restrictions on the ability of family members to work and become financially independent (more on this later on in this talk), non-recognition or downgrading of non-EU qualifications (It is acknowledge that the National Qualifications Authority is now tackling this). Limitation on ability to up-skill because of the difficulty in benefitting from reduced fees or maintenance grants.

Two issues that are outside the study are racism at work and limitation of progression at work. There are scant data on these issues but there are anecdotal evidence suggesting that immigrant workers are limited in progression opportunities and are more likely to be overlooked for promotion.

On a positive note there is now provision for a six month time allowance for work permit holders who have been made redundant to seek new employment.<sup>5</sup>

## **Family Reunion:**

This is an area of great concern because many of the non-EU workers in Ireland have families. According to the MIPEX study, Ireland has the least favourable reunion policies in Europe or North America. According to the study “Ireland

---

<sup>5</sup> See further Corona Joyce, European Migration Network: Annual Policy Report on Migration 2009: Ireland

shows little respect for the family of its non-EU residents and discourages their integration once they arrive.” There is no clear policy in relation to this issue and the rights and securities of families are not clearly enunciated. The problem is exacerbated by the fact that Ireland has opted out of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. The directive provides better security and rights which are now available in many European countries. Ireland has not set out its own standard to date. It is noted that three attempts have been made in the past to draft an Immigration, Residence and Protection Bill. It has been observed that the latest draft in 2010 sets high fees for applicants, includes no right to family reunion or full access to justice.<sup>6</sup> It is noted that the right to reunite is allowed for refugees but one wonders why Ireland excludes other categories especially migrant workers. Other categories apart from refugees’ ability to reunite are at the discretion of the Minister for Justice and Equality.

Furthermore, where families succeeded in reuniting they are still faced with unfavourable conditions for integration. The economic crisis has increased the problems for families.

If the spouse of a migrant worker loses or leaves their sponsor this may lead to the loss of their right to stay. This has led to the perverse situation where abused spouses are ‘forced’ to stay with their abusive sponsor. There are restrictions relating to their access to education, benefits and training. More restrictions have been introduced in recent times. Under a special scheme, family members of a migrant who applied for work permit before 1 June 2009 could apply for a work permit. Those coming after that date must apply for a work permit in their own right and they cannot apply for occupations that are

---

<sup>6</sup> MIPEX, 106

not listed on the official list. These restriction inhibits the ability of immigrant families to be economically self sufficient.

### **Irish Born Children and their status**

Since the 2004 referendum, the immigrant parents of Irish born children have no legal right to remain and work in Ireland based on the citizenship right of their children. The recent European Court of Justice Decision in *Zambrano v Office national de l'emploi*<sup>7</sup> appears to have changed this anomaly. According to the ECJ:

“Citizenship of the Union requires a Member State to allow third country nationals who are parents of a child, who is a national of that Member State, to reside and work there, where a refusal to do so would deprive that child of the genuine enjoyment of the substance of the rights attaching to the status of citizen of the Union. This requirement applies even when the child has never exercised his right to free movement within the territory of the Member State.”

This landmark judgement affirms the rights of EU citizen children under Article 20 TFEU. The judgment gives the child the right to live in the country, the right for the child’s parent to live with the child and the right for the child’s parent to work permit to enable them to work and support the child. This practically means that the parents have full access to the labour market and cannot be subject to deportation. This is a welcome clarification in this area.

### **Education**

According to MIPEX, Ireland is among the least prepared countries to help immigrants enter the school system and perform well in their studies. The

---

<sup>7</sup> [2011] All ER (D) 199 (Mar)

study stated that “Migrants with specific needs enjoy less favourable targeted measures than in most new immigration countries.” Even during the boom years no system was put in place to address the needs of this group. The crisis has made things more difficult in this area. Support for language support staff is declining.

Furthermore, the government has withdrawn funding for 12 not-for-profits Language and Training Centres. These centers help adult migrants and refugees to learn English and also provide schools with language teaching materials. The same fate befell National Consultative Committee on Racism and Interculturalism which closed in 2008. The body among other things work on interculturalism in schools. The government has indicated its willingness to find other ways of fulfilling the work of these bodies.

In relation to access to higher education, a 2008 report funded by the Higher Education Authority identifies several barriers to access to higher education.<sup>8</sup> The relevant ones for the purpose of this talk are:

- Lack of clear, consistent and relevant information for potential third level migrant students on entry requirements, educational rights and entitlements
- Inconsistent and confusing information regarding fee structures especially in relation to residency status of non-EU migrants and lack of clarity regarding who has the right to education in Ireland

---

<sup>8</sup> Dr Margaret Linehan and Eileen Hogan, “Migrants and Higher Education in Ireland” (CIT Press, 2008)

## **Political Participation**

One area where Ireland performed well in the MIPEX study is in relation to political participation. There is evidence of immigrant representation and participation at the local government level. Government funding is provided for some migrant community groups (e.g. AKiDWA an organisation for migrant women, New Communities Partnership etc). Significantly, non EEA (European Economic Area) immigrants are allowed to vote in local elections.

## **Path to Citizenship and Long-term residence**

The MIPEX study describes the path to citizenship in Ireland as “one of the most expensive gambles in Europe and North America, with fees rising to €950.” But that is the least of the problems. The process is undermined by long discretionary procedure. The Minister has absolute, wide and nebulous discretion to reject applications even where all apparent conditions are met. Despite this state of affairs, there are proposals to add new conditions such as language requirement.

The same ambiguities apply to long-term residence. Migrant without permanent residence have two options: a) permission to remain without condition as to time after 8 years residence in the country b) long-term residence for renewable 5 years periods for workers after 60 months. The two options are not favourable because of absolute ministerial discretion in granting applications. Other vague conditions such as evidence of reasonable integration are proposed under the 2010 Immigration, Residence and Protection Bill.

## **Anti-Discrimination**

Ireland has reasonably strong anti-discrimination protection. An efficient judicial service and good legal framework, which I have personally used to fight discrimination in my time as a student in Ireland, is a testimony to this. The Equality Authority and Equality Tribunal have done great work in this area. However, recent cuts to the funding of these bodies and other similar institutions such as human rights bodies may undermine the future effectiveness of these bodies

## **Asylum Seekers**

A recent report in the Irish Examiner stated that “Ireland has emerged as the country with the strictest regime for granting asylum seekers any sort of protection within the EU”<sup>9</sup> In 2010, only 25 out of 1,600 applicants received a positive outcome. A rate of 1.6%. The EU member states average is 24.8%. Appeals to the Refugee Appeals Tribunal are not any better. The Tribunal has a 90% rate of refusal.<sup>10</sup> This statistics indicates a bleak future for asylum seekers. As the Irish Examiners report correctly noted, controversy has surrounded the work of the Appeal Tribunal for its high refusal rates and lack of transparency about its procedures and decisions. The president of the Law Reform Commission, Ms Justice Catherine McGuinness was reported to have expressed concern about the lack of transparency in the immigration and asylum system. A writer summarised the situation of the asylum seeker in Ireland as follows:

“In addition to the mental and emotional trauma, that caused many of them to flee their homelands, they have generally arrived in Ireland with

---

<sup>9</sup> Irish Examiner, Wednesday, March 30, 2011.

<sup>10</sup> An applicant may appeal to the court for a judicial review.

negligible if any economic resources. ...they are entitled to only the most meagre of support from the Irish state during the asylum process. Yet for many in Ireland, asylum seekers are frequently judged in highly negative terms. They are regarded as being no better than 'illegals' who have come to scrounge off the domestic social welfare system, benefiting from government largesse that is in some inexplicable manner not available to the country's own citizens. However, even the most cursory of examinations is required to reveal the untruthfulness of these assertions. Since November 1999 and the introduction of the '**Direct Provision**' policy, adult asylum seekers receive a paltry allowance of €19.10 a week, on top of their basic food and accommodation needs. The even more derisory sum of €9.60 is provided for children... Furthermore, it is illegal for asylum seekers to seek employment or engage in any business, trade or profession to supplement their asylum seeker allowances...

Contrary to the malicious rumours that sadly appear to be still doing the rounds, asylum seekers have no access to local authority housing lists. Instead, they are placed in shared hostel type accommodation centres that suffer from severe overcrowding. Entire families can find themselves confined in this manner with little or no privacy for several years, as they wait for their asylum claims to run their course.

Asylum seekers are only allowed to spend the minimum of time outside these centres to visit friends or for any other reason. An overnight stay outside the centre must be approved by the accommodation manager while three nights away risks the loss of their residency rights."<sup>11</sup>

---

<sup>11</sup> Justin Frewen, *The Plight of Asylum Seekers in Ireland*, 24/02/2010

Additionally, asylum seekers have no right to access full time third level education or training irrespective of the length of time they have lived in Ireland. The asylum seeker may thus be trapped for years in isolation, poverty and in a state of limbo.

### **Looking to the Future**

The EU has given direction on best practice policy. I refer you to the EU Commission's communication "A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union" (COM (2005) 389). The Communication provides suggestions for action both at EU and national level. It outlines priorities which national integration policies should address which include employment, education, access to services, language and culture etc. The common basic principles established for immigrant integration under the communication are as follows:

- "1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.
2. Integration implies respect for the basic principles of the European Union.
3. Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible.
4. Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration.

5. Efforts in education are critical to preparing immigrants, and particularly their descendents, to be more successful and more active participants in the society.

6. Access for immigrants to institutions, as well as to private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration.

7. Frequent interaction between immigrants and Member States citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens.

8. The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law.

9. The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.

10. Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public policy formation and implementation.

11. Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.”

It is suggested that if adequate attention is paid to implementing these policies at the national level, greater success will be achieved in integrating immigrants. Institutional attitude to immigrants need to change. The institutional approach should be proper management and not elimination of immigration. It will be helpful if a code of conduct is developed to guide officials who deal with immigrant at different levels.

An area which needs urgent attention as noted by the president of the Law Reform Commission, Ms Justice Catherine McGuinness is transparency in the asylum and immigration process. The asylum process in Ireland at the moment seems not fit for purpose and urgent attention is needed to make it work well not only for the applicants but for the state. The situation where applicants stay in a state of limbo for years in penury and social isolation is not desirable in a western country.

I end this talk with a quote from the singer **Shane MacGowan**, an English man with Irish origins. He said and I quote leaving out the bad words:

"People are talking about immigration, emigration and the rest of the ... thing. It's all ... crap. We're all human beings, we're all mammals, we're all rocks, plants, rivers. ... borders are just such a pain in the ...."

Thank you for listening.