

Legal Analysis of Citizenship and Immigration Laws in Somalia

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Abstract

Concerns about Somalian citizenship were present throughout the last century and remain on the agenda today. The study's goal is to provide a more comprehensive picture of citizenship arrangements and to illuminate the connections between the colonial period, post-colonial discourses, and contemporary discourses. The study relies on doctrinal methods whereby the two primary pieces of legislation governing these requirements are the 1962 Somali Citizenship law and 1963 Somali Citizenship regulations; the Constitution of Somalia 2012 as amended; and the Civil Code of 1865 of Italy, among others, in addition to secondary materials, textbooks, etc. The study found that no rights were given to anyone born in the territory of Somalia to Jus soli, or birthright citizenship, as part of the English common law, in contrast to Jus sanguinis, or right of blood, from Roman law. The study concludes that the citizen is one of the cornerstone pillars of the sovereign state. If citizenship did not exist, then there would be no country. The study recommends that the government of Somalia should abrogate and re-organize the citizenship regime once and for all since it creates a substantial and consequential choice about responsibility, governing, and their actions on a daily basis.

Keywords: Somali, Citizenship, Nationality, Ethnicity, Immigration, Constitution

Introduction

In Somalia, as in several other African countries, citizenship developed in the modern state during the colonial milieu. In the aftermath of the western colonial period, Somalia has become one of the few countries in the world that has a citizenship law based on kinship groups and racial restrictions. The vast majority of Somalis consider citizenship as an ethnicity and have nothing to do with colonial borders (Ahmed Kheir, 2021). The colonial masters divided the native Somalis, who share a common ancestry, language, culture, history, and religion, into five colonial zones. However, this notion of citizenship is an essentially contested concept and sensitive issues among Somalis since the independence of 1960's up-to present time. The concept of citizenship and its legal justification have resurfaced in recent years as a source of political debates and legal issues pertaining to the definition of who is a Somali in a significant way *vis-a-vis* non-Somalis. The current reform of legislation on citizenship, which determines who is, or is eligible to be, a Somali citizen, is still before the House of Parliament of Somalia since 2016.

Citizenship can be traced back to Ancient Greece; it was commonly referred to those in possession of the wealthy, taxpayers, and military personnel, but it was denied to women, slaves,

and people in poverty (Tikkanen, 2020). In legal terms, citizenship is a legal relationship between an individual and a state. Typically, the country is the one in which they were born, live, support, and receive protection. In *Lavoie vs. Canada* [2002] 1 SCR 769, 2002 SCC 23 “Citizenship is a juristic and political status in which an individual enjoys full, legally sanctioned membership in a state and owes full allegiance to it”

Nonetheless, the contradiction between Citizenship and all Somalis as ethnic groups that had been separated into five colonial borders were renewed interest in question of citizenship. It has been promoted to an egalitarian perspective and belonging throughout in the vicinity of collective personal identity especially Somalis as holism and in crude interpretation its character may be called one that refers to ‘ethnic-religious classification’. However, the reason behind egalitarianism originates from a notion of citizenship to have generally an equal opportunities, and therefore do not pertain across boundaries (Arneson, 2013). Many of the foremost defenders of distributive egalitarianism hold that its scope should be limited to co-citizens. (Nagal, 2005).

Somalia adopted a policy under the independence Constitution of 1960s which reinforces commitment of unification of all Somalis ethno-cultural identity that had been divided into five different colonial zones (Nagal, 2005). Such commitment would put a fundamental impact within the meaning of citizenship because every citizen has rights and responsibilities within the boundaries of their national state; non-citizens and denizens do not have the same (The Law Commission of Canada 2006). Similarly, current immigration and refugee influx associated with globalization, the movement of persons within areas of free trade and economic communities all raise fundamental issues about who is in and who is out within the meaning of national borders. According to the International Organization for Migration estimated that 281 million people live outside their country of birth in 2020 (World Migration Report, 2020). Making declaration to a broader citizenship involves calling for most powerful protection and wider recognition or denouncing the legitimate status of existing rationales for exclusion. In real sense, a full citizenship status has always implied and still implies a membership of community within a common territory (World Migration Report, 2020).

Literature Review

Somalia Citizenship Law during the Colonial Period

According to literature, in 1889, Italy acquired the southern Somalia which extended from the four protectorates on the eastern edge or the mountainous region to the northern coast over the Sultanate of Obbia, the Sultanate of Migiurtini and the territory of Nogal to the fifth commercial concessions on southern coast or Banadir region (over the seaports of Barawa, Merca, Mogadishu and Uarscheich) The entire area took the official name of Somalia Italiana (Podder et al; ‘2008). The citizenship law has gone through different regimes and the amalgamation of the two territories of former British-Somaliland and the Italian-Somaliland into the independent Somali Republic.

The author perceives appropriate and compatible to use all citizenship law from the Italian-Somaliland in the following three reasons;-

1. Despite the fact that the two colonial masters were dissimilar in their laws of citizenship but again there was a special consideration for native Somalis since all Somalis enjoyed ethnic and religious homogeneity;
2. After the unification between the Italian-Somaliland and the British-Somaliland and form the independent Republic of Somalia, then the Republic of Somali administered and integrated the legal and institutional framework of the British-Somaliland with those of the other part of the Republic (Permanent Advisory Commission for the integration of the legislation and institutions of the Italian-Somaliland and British Somaliland, 1960). The government of Somalia by then complied with all the Italian legal system including the citizenship laws which is now enforceable throughout the country together with the former British-Somaliland.
3. Above all, there is a little scholarly source for academic research and reports from research institutions available on the Somalian colonial citizenship law and even generally in the horn of Africa from point of view.

Somali citizenship law in the colonial era especially in 1907, subject-hood was mainly regulated by local customary laws in accordance with the religious affiliation of the people and the colonizers accepted the importance of the clan among the Somalis (Podder et al; 2008). The Italian colonizers based their rule in Somalia on two cardinal principles: the preservation of the dominant clan/ethnic configuration and the respect of local religion. Hence, Italy recognized Islam as the religion of the colony and did little to assist Catholic and other Christian denominations from the colony (Podder et al; 2008). The historical and cultural context of the Italian colonizer started categorizing people by introducing into the national vocabulary and additional distinct concepts that is, the phrases of citizenship and subject-hood which are essential for this study particularly the Italian Colonial Master. The word *Cittadinanza* or citizenship was first emerged Italy in the fourteenth century. The phrase citizenship was specified automatically for Italians, while subject-hood or colonial subject was referred to a person who was non-Italian citizen or within an autochthon of the colony (Sabin, 1861–1950). However, these two practices of citizenship and subject-hood are thereby gained its full significance and were to be used to distinguish between the white Italian citizens and the black African subjects, or between the colonized and the colonizers. As a general rule, the two categories of Citizens and Subjects were distinct in many important respects but united under a common political allegiance (Podder et al; 2008).

The first law regarding Italian citizenship can be found the 1865 Civil Code. Thus this law stressed on patrilineal system. Under this principle of paternal transmission of nationality were applied only as the first norms and of maternal as the second-class status. Children born in the territory were presumed to have an Italian father and were granted nationality. The principles of *Jure sanguinis* (right of blood) was praised in the context of Italy and were seen as the ‘Hyphen’ uniting the-child-the-father-the-family-and-the-nation (Podder et al; 2008).

According to the Italian deputy parliament 1865 was very eloquent on this point by commenting that:- *Man is born member of a family and, since the nation is an aggregate of families, man is a citizen of the nation to which belongs his father, his family. The place where a person is born, the one where a person has domicile or residence has no value or meaning. And worthy of praise be the novel Code which has paid homage to this great principle by proclaiming Italian the person born in whichever place to an Italian father, namely to an Italian family.'*

Moreover, should both parents be unknown, Italian citizenship was conferred exceptionally *Jure Soli* (right of soil) in order to avoid *Apolidia* or statelessness. Italian women were required to follow the nationality of their husband, they enjoyed a *sui generis* status neither do they also pass nationality to their children (Capecchi, 2019). Italian women married to foreigners lost their Italian nationality and could only reacquire it if the marriage terminated and they established residence in Italy. Foreign women who married Italian men gained Italian nationality and retained it even after termination of the marriage. On June 1935, Italian's unified juridical status for all the natives of subject-hood of the Italian East Africa, the *Sudditanza Dell'Africa Orientale Italiana*, and henceforth (SAOI). These territories, however, includes the territories of (Somalia), Eritrea and later Italy annexed Ethiopian territory on October 1935, while it only occupied Ethiopia for five or six years (Giovanna, 2012) A rapid overview of the relevant citizenship provisions introduced into the Italian East African "where the line of separation passed between the colonizers and the colonized or between the white Italian citizens and the black African subjects". This was a 'Grey Area' as the children of mixed race or *meticci* or half-caste raised an issue within the Italian colonial settings. In fact, the *Meticci* born from a regular marriage were automatically Italian metropolitan citizens by law (Giovanna, 2012). However, the relationship between an Italian citizen and a native woman of colonialized land preferred generally the so-called *Madamato* which designated, initially in Eritrea and subsequently in other Italian colonies. A number of *Madamato* children were born in Somalia during the Italian colonial period (Danial, 2010) which even existed after the birth of the new independent state of Somalia 1961 (Alessandro et al; 2011). Later, all of them acquired Italian citizenship. Italians used the terms *madamato* only to refer to the Horn of Africa, while the term *Mabruchismo* may have been applied to the much rarer form of concubinage that existed in colonial Libya (Giulia, 1996).

Citizenship Regime in Somalia

Citizenship is about belonging and about the boundaries of belonging: it is about demarcating who we are, who is part of us, and who is not. Nationalism and the nation-state are both intimately connected to citizenship (Joyce al et; 2017). For example in America, the classification of national membership is straightforward: it goes hand in hand with citizenship. If

you are an American citizen, you are an American by nationality too. The same applies to the Kenya, Uganda, and many others. (Ruderman al et; 2014). In Somali, citizenship and nationality are and should be different. Citizenship is granted based on ancestry or ethnicity and is related to the concept of a nation-state. The citizenship of all Somalis is listed as Somalians. Meaning that any person who is by origin (Somali-Ethiopia, Somali-Kenya, Djibouti or even those in abroad) language or tradition belongs to the Somali Nation shall be considered as Somalis. (article 2 of the Somali Citizenship Law 1962)

Acquisition of Somali Citizenship under the 2012 Constitution

The determination of Somali citizenship is complex by the fact that Somalia has lacked functioning governing institutions for the past three decades. The interim constitution of Somalia 2012 does not set the boundaries or limits of who qualifies as Somali citizen. According to article 8 of the said constitution is just generics and non-specific. It provides that the people of Somalia are one, indivisible and comprises all citizens (The constitution of Somalia, 2012). As most academicians in this field agrees that, citizenship is a concept that involves three cardinal considerations, namely conferring legal status on individuals, enabling individuals to be political agents, and membership of a community and identity (Kymlicka et al., 2000). Under article 8 (4) of the Somali constitution took a different instant, where it also states that the denial, suspension or any deprivation of Somali citizenship shall not be based on political ground. Prior to the 2012 Somali constitution, citizenship was based on patrilineal system. (Ruderman al et; 2014). No any *Grundnorms* which became enforce within the territory of Somalia since its inception after sixty two years ago, quite remarkably, recognized acquisition of citizenship as a basic right or indeed the right to have rights (Carol et al., 2005).

Somali Citizenship Law 1962

The first citizenship law was enacted on December 22, 1962, laying down formally for the first time the qualifications of becoming a Somali citizen. The law specified that the following persons born in Somali; persons whose father was born in Somali; and persons with permanent residence living within the territory of the Somali Republic for a period of at least seven years could acquire the citizenship of Somali (Somali citizenship law, 1962). Citizenship by family is one and it was based on fatherhood. Citizenship by descent has been further categorized into Four types:-

i. Citizen of Somali by descent

Citizen of Somali by descent, who has acquired the citizenship before the commencement of the Somali citizenship law 1962, shall remain his/her citizen as Somali by descent as per article 18 of the said law.

ii. Children to Somali Father

Any person whose father was a citizen of Somali at the time of birth of the person has been deemed to be a citizen of Somali by descent. With those succinct statements, with article 2 (a) any person whose father is a Somali citizen. In many respects, Somalian Citizenship policy was similar to that of colonizing power of Italy. Under article 1 (4) of the Civil Code of Italy 1865 said; A citizen is the child of father who is a citizen. The principles of *Jure sanguinis*, could be attenuated through some concessions to *Ius soli* or the mother's citizenship in some specific cases (Bussotti, L. 2016). Today, almost all states apply some combination of *jus soli* (literally, the law or right of the soil) and *jus sanguinis* (the law or right of blood), in their nationality laws to varying degrees (William, 2016). The Italian citizenship law was a biased against women and only men could pass down citizenship and the same applies to Somalis.

iii. Somali people living outside the country or diaspora

Under article 2 paragraphs 2 of the Somali Citizenship law 1962, permits that any Somali residing on abroad who's willing to renounce any status of citizen from a foreign country has been deemed to be a citizen of Somali by descent. It should be remembered that every country on the world have significant part of their people abroad and dependent on them greatly as a source of foreign exchange and there is no exception for Somalia. For example, the Somalis in diaspora that fled the country during the last three decades of conflict were estimated to have been remitted 1.3 billion dollars annually.

iv. Foundlings in the territory of Somali whose parents are unidentified

A child found in the territory of Somali can acquire citizenship by descent. According to article 15 of the said law provides that any minor or child of unknown parents who was born in the territory of Somali shall be considered as Somali citizen by descent.

Citizenship Type

This study will focus on three different types of citizenship put in practice in Somalia, which include: citizenship by registration, citizenship by naturalization, and dual citizenship.

I. Citizenship by Registration

Two classes of people may acquire citizenship by registration in Somalia: (a) any woman who is or has been married to a citizen of Somalia. Though no writ law that stipulated the requirement for procuring a special license between the Somali citizen and the foreigners: (b) any foreign women who marry a stateless person who had already acquired Somali citizen shall be recognized as citizen by registration. (*See*, Article 13 clause 1 and 2 of the Somali Citizenship Law 1962). The Constitution or any other laws in the country does not place some restrictions on the rights and privileges of a citizen by registration e.g. hold any elective office of the president and the speaker of parliament of Somali or appointive offices.

II. Citizenship by Naturalization

Naturalization is the legal act or process by which a non-citizen of a country may acquire citizenship or nationality of that country. (Madubuike-Ekwe, 1999) Any person may be granted a Somali nationality or citizenship, provided that: (a) he has established his residence in the territory of the Somalia, for a period of at least seven years; (b) he is of good civil and moral conduct and he declares to be willing to renounce any status as citizen or subject of a foreign country. (Article 4 of the Somali citizenship law, 1962). A person who desires to obtain Somalian Citizenship through naturalization shall apply to the President for the grant of a certificate of naturalization. Provided that he can satisfy the president that he is of full age and capacity, has a good character and has shown a clear intention to be domiciled in Somalia as per the article 3 of the Somali Citizenship Regulations 1963. The applicant must also, satisfy the President that he has taken the Oath of allegiance prescribed under article 10 of the Somali Citizenship Regulations. Naturalization is not a right but a privilege, which may or may not be granted by the President in his discretion even to an applicant who satisfied all the conditions set out under the Somali Citizenship Regulations. Consequently, the power of the President is basically absolute and not controllable by judicial process; nor is it enforceable by *mandamus* (Madubuike-Ekwe, 1999)

III. Dual Citizenship

Under the nationality law, dual citizenship is forbidden in Somalia, but under article 8 (3) of the Constitution of Somalia permits Somalis to retain their citizenship status, even when they become nationals of other states. Moreover, dual nationality status does not avert them from becoming president. The former president of Somalia H.E Mohamed Farmajo was elected when he holds a U.S citizenship on 2017 and the majority of his Council of Ministers including the head of Government 'Prime Minister' were all holding a western passports. Nonetheless, both U.S and Somali laws allow dual nationality, Americans are critical of dual nationals holding political positions abroad and would be reluctant to accord diplomatic protocol should they visit. By this reason, the president of Somali Mr. Farmajo, after two and a half years in office, announced that he renounced his U.S. citizenship. (Aggrey, 2019).

Renunciation of Citizenship in Somalia

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish or resign Somali citizenship. Surrender and Renunciation of Somali Citizenship applies to applicants of Somali origin as per article 10 of the Somali citizenship law 1962.

Conclusion and Recommendation

Evidence from findings indicates that citizenship is linked to the privileges of membership of a particular kind of political community. The western phenomenon of citizenship consciousness, as well as the rights and duties of Somali citizens encoded in law, were transplanted from the western phenomenon. Citizenship is one of the dominant pillars of the country and part of identity. The existence of a state is based on the availability of citizenship. All states have sovereignty and jurisdiction. Under the 2012 Somali constitution, a list of the rights and duties of Somali nationals

was stipulated, which included the right to protection of life and property, the right to a good education, the right to free speech, the right to access to the courts and quasi-judicial bodies, the duty of obedience to law, the duty to pay taxes, the duty of military service, and the duty of voting, among others. When it was ensured all these rights and duties from the citizens, then the government of Somalia should in return protect the nationals. In line with the findings, the study recommends that the government of Somalia should abrogate and re-organize the citizenship regime once and for all in time since it creates a substantial and consequential choice about responsibility, governing and their actions on a daily basis.

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