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Mediterranean Journal of Migration

About the Journal

The *Mediterranean Journal of Migration* is a multidisciplinary refereed open access online journal with a special focus on migration in the Mediterranean region. The Journal is produced by the Platform for Migration, based within the University of Malta.

The University of Malta Platform for Migration was set up to offer a dialogical space in which researchers from different academic disciplines can work towards understanding all the evolving aspects of international migration, with a focus on the Mediterranean region, with a view towards contributing to an equitable, more sustainable and more inclusive society.

Accordingly, the *Mediterranean Journal of Migration* aims to facilitate the dissemination of academic research related to migration. The journal is interested in accepting submissions which are research-based, including reviews of the relevant literature grounded in empirical research, and theoretical contributions (i.e., conceptual models, frameworks, etc.).

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Foreword

Andrew Azzopardi (Chair of the UM Platform for Migration)

The *Mediterranean Journal of Migration* is another loop in the initiatives of the relatively new and innovative Platform for Migration, set up only a few years ago, within the University of Malta. This Platform is a melange of scholars who come from diverse entities, namely Faculties, Institutes, Centres and Schools and who share a common interest in having a better understanding of the complexities surrounding migration.

This Journal is an attempt at another space to converge the different angles and optics of these nuances and slowly but surely craft an understanding of the multifarious narrative and demography of what is happening. This would in turn help us predict and construe possibilities which could lead us to more effective policy making and scholarship. I am hopeful knowing well enough that the Platform and the Journal are becoming a staple contributor in this debate.

The focus here is indeed the Mediterranean region, which remains an amorphous area in terms of migration research, not clearly delineated or defined, with specificities of its own. Indeed, the Mediterranean basin, whilst experiencing land migration, has also repeatedly acted as a stage to tragedies related to sea migration. It is therefore pertinent to try and bridge this gap and provide a space whereby research related to migration and belonging within this area is explored and shared.

Whilst welcoming research regarding migration in the Mediterranean indiscriminate of where the authors and researchers might be based, the fact that the University of Malta is the home of this journal has an important historical value. Due to its geographical position, Malta has for thousands of years been home to various conquerors and their people, a safe port for sea farers and an important trade route; all of which have left an inextricable mark on the Maltese identity. Migration remains a highly controversial and important topic for the local community up to this day, as it takes different shapes and forms in the contemporary world.

All in all, the *Mediterranean Journal of Migration* is a tool that will help us peel another layer in the democratising of knowledge. I am hopeful knowing well enough that the Platform and the journal are becoming a staple contributor in this debate. Kudos to the editorial team led by Professor Helen Grech and closely supported by Maria Giulia Borg, the Platform's Research Support Officer.



Editorial

Russell King (Sussex Centre for Migration Research, University of Sussex)

The launch of a new journal is always a significant and exciting event and is especially welcome in the burgeoning field of migration studies. The *Mediterranean Journal of Migration* will play a major role in showcasing scholarship on migration in a region of global significance for contemporary (and past) population movements.

Let me reflect for a moment on the publishing landscape for journals on migration. Five journals stand out as well-known outlets with a global remit for papers on migration. Three of these are long-established: the *International Migration Review*, the *Journal of Ethnic and Migration Studies* and *International Migration* (all of them going since the 1960s or 1970s). Two, *Migration Studies* and *Comparative Migration Studies*, are more recent (both since 2013). Then there are two important journals which do not have the word 'migration' in their titles but which have the majority of their papers on migration topics – these are *Ethnic and Racial Studies* and *Population, Space and Place*.

Zooming in on Europe, we note the fairly recent foundation of two regional migration journals: the *Nordic Journal of Migration Research* (in 2011) and the *Central and Eastern European Migration Review* (2012). Therefore, an obvious gap in geographical coverage exists for Southern Europe and the wider realm of the Mediterranean countries. Of course, it remains to be defined as to exactly what constitutes 'Mediterranean' in the context of this new journal but I can imagine that the editor and her advisory board will take a flexible view.

The above listing of key migration journals is not meant to be exhaustive, not least because it is limited to English-language journals. We should not overlook, therefore, important migration journals published in other languages. Three examples which pertain to countries bordering the Mediterranean Sea are *Migraciones*, the *Revue Européenne des Migrations Internationales* and *Studi Emigrazione*, all of which publish some articles in English.

Turning now to the six articles which make up the first issue of 'MJM', we see an understandable focus on Malta in most of them. The papers are otherwise an eclectic mix, which reflects the interdisciplinary nature of migration as a social, spatial, economic and political process. Human rights is a critical issue with migrants and, in fact, most papers have at least a partial human-rights perspective.

At a time when so many migration papers are single-country case-studies, it is good that this inaugural issue kicks off with a duo of countries. Despite their vastly different sizes, Italy and Malta are locked together in terms of their geographical positionality in the face of cross-Mediterranean flows of asylum-seekers and irregular migrants. Omar Grech and Monika Wohlfeld extend this comparative link to the context of Covid-19 and the pandemic's restrictions of the movement of refugees and undocumented migrants, who suffered both 'pushback' (prevented from landing from the sea) and 'pullback' (prevented from returning to their home countries). The authors show that the pandemic led to an excessively securitised response which had a significant negative impact on (irregular) migrants' human rights. This impact derived from actions at two levels. The first was Covid measures put in place for the general population but which impacted especially on irregular migrants: loss of work, inability to access social welfare support, deterioration of living conditions in reception centres, difficulties for children to access online education when schools were closed etc. The second level consisted of measures which more specifically targeted migrants' mobility on sea and land: suspension of international travel, closure of ports and refusal of entry to vessels carrying migrants, detention of rescue boats, offshore quarantining of migrants on boats etc.

The second paper, by Mary Grace Vella, focuses on Malta and the phenomenon of ‘cimmigration’ – or ‘the intertwining and integration of the immigration and criminal spheres’ of legal rules and behaviours. The result is that cimmigration leads to harsher consequences for immigrants and non-citizens in legal adjudications and enforcement practices. This is set within an evolving demographic landscape wherein the number of foreign nationals as a share of the Maltese population leapt from less than 5% in 2011 to more than 22% in 2021 (and to 27% of the country’s workforce), and yet foreign inmates account for 56% of the incarcerated population in 2021. Using documentary data and scrutinising official statistics sourced from the police department, the courts of justice and the prison system, Vella exposes an increasingly hostile environment, characterised by an over-reliance on criminalisation and incarceration as opposed to community-based solutions to what are essentially ‘bureaucratic’ crimes such as the possession of false papers. Such punitive measures raise important moral and social questions and can have devastating practical and psychological consequences on those affected. Fiscal costs are also out of proportion due to the overburdening of the prison and detention system.

The focus on Malta continues in the third paper, by Alexis Galand, which is about the contradiction between the proposed acceleration of asylum procedures in the EU and the preservation of asylum-seekers’ human rights. Malta already implements such accelerated procedures whereby asylum-seekers coming from countries deemed ‘safe’ are subject to a rapid cycle of rejection, detention and removal to their countries of origin, with only three days to appeal. Whilst some might endorse these proposed mechanisms on the grounds of speed and efficiency in migration management/control, others point to the erosion and violation of the human rights of those affected. The increased automation of asylum application decisions based largely on country of origin and taking limited account of personal circumstances and protection needs puts the burden of proof entirely on the applicant. The wider context includes rising asylum numbers, heavy workload pressure on assessors and a long list – longer than for most other EU countries – of ‘safe’ origins, including countries like Ghana, Morocco and Bangladesh, which criminalise same-sex relationships and persecute LGBTIQ+ individuals. Malta provides a clear example of the shortcomings of such a system and the human-rights abuses it can lead to. However, as the author’s conclusion shows, Malta is not alone in these infringements.

The next paper, by Ted Bikin-kita, Nefertiti Bikin-kita and Néhémie Bikin-kita combines ideas from previous papers in the set by utilising a legal perspective and the ‘cimmigration’ theoretical framework to interrogate the continuing relevance of the 1951 Convention on Refugees. Two further neologisms are proposed: the ‘inquisitorialisation’ of asylum procedures, leading to the outcome of ‘crimasylisation’, which is the trend towards the criminalisation of asylum-seekers during the very process by which they seek protection and sanctuary. France and Malta are taken as the main case-studies, with some reference also to Switzerland following the latter’s adhesion to the Schengen and Dublin processes and that country’s adoption of explicitly inquisitorial techniques, defined as ‘harsh, difficult and prolonged questioning’. Whilst some have argued that the 1951 Convention has become outdated in the contemporary era, the authors suggest that it is as relevant today as it ever was, in fact even more so. The problem has been its interpretation and implementation, using aggressive inquisitorial techniques and the normalisation of human-rights violations such as pushbacks at sea and prolonged detention in inadequate conditions.

And then, for something completely different. John Vella’s paper on a museological perspective on Mediterranean migrations takes us in a different direction. It breaks new ground in its coverage and develops new perspectives on how migration is represented. The paper is not just about contemporary migrations or even those in recent history but follows some of the museums in tracing population movements in the ancient past, including prehistory. In ancient, classical, medieval and early-modern times, the Mediterranean served as a theatre, conduit and stepping-stone for expansive colonising activities with their attendant migrations of colonisation and displacement. The point here is that colonial authorities and nation-states often influenced the content of the museums under their jurisdiction. More recently, the field of sociomuseology seeks to adjust the museum to present-day realities, including migration, refugee movements, the formation of new identities and the growth of inequalities, the last of which can lead to migration to escape poverty. Empirically, the study by Vella surveyed 14 migration

museums in 11 Mediterranean countries. Data were collected from museum websites, social media, press reports and scholarly literature on the museums. In the analysis, attention is given to how museums choose to include and represent migration and the realities facing migrants. A description is given of each museum in turn and tabulated classifications are made of types of migration (internal, emigration, immigration), migrant artefacts and various kinds of display material. An interesting tension is discussed between presenting 'objective' information on migration to the general visiting public and giving the migrants represented a voice and making them feel included rather than 'spoken for'.

The final paper, by Justin Spiteri and Heathcliff Schembri, is a preliminary study of Syrian refugee children's experiences in Maltese schools, based on semi-structured interviews with four such pupils aged 11–13 years. Although the children faced barriers such as language and occasional bullying, overall their experiences were positive. The paper is set within wider debates about developing a more complete policy of multicultural education in Maltese.



The impact of COVID-related emergency measures on the human rights and human security of migrants in Italy and Malta in the context of the Central Mediterranean Route

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Abstract

This paper analyses the consequences of COVID-related emergency legislation enacted in Italy and Malta for irregular and undocumented migrants as well as refugees. The study focuses on two issues: (i) identifying key emergency laws in Italy and Malta; and (ii) assessing their impact on these migrants' human rights and human security. Many states, including those in the Mediterranean, have securitized their pandemic response. The context of pre-existing legal, political and social-economic structures Italy and Malta is essential to understand the implications of these measures for these migrants. The paper suggests that Italy and Malta implemented emergency measures which were not specifically aimed at irregular migrants, yet had a significant impact on their human security and human rights. It also argues that in parallel, Italy and Malta targeted specific measures to limit migratory movements. These included: the closure of ports, restrictions on the work of humanitarian NGOs along the Central Mediterranean Route, pushbacks and 'pull backs', and detention at sea, leading to human rights violations and unsafe conditions. Finally, the paper also argues that the latter emergency measures were used as a tool to press for greater solidarity from the EU partners and influence EU's policy-making on migration controls. The paper concludes by highlighting the need for inclusive and rights-based approaches to crisis management.

Keywords: COVID-19, migration, human rights, Italy, Malta

1. Introduction

This paper examines the impact, in human rights and human security terms, of COVID-related emergency legislation on irregular and undocumented migrants² as well as refugees in two EU Mediterranean states: Italy and Malta, both of which lie at the heart of the migratory flows along the Central Mediterranean Route (CMR). It should be clarified that for our purposes the term irregular and undocumented migrants includes migrants who apply for refugee status at some point after entering such territory (thereby becoming asylum seekers). The primary reason for focusing on these three categories of migrants relates to the geographic scope of our examination, which relates to the CMR. Migrants who travel along this route and arrive in Italy and Malta fall mostly within these categories of

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² By irregular and undocumented migrants, we refer to migrants who (i) have entered or are in the process of entering the territory of a state without the required authorisation from the state concerned and (ii) those migrants who are on the territory of a state without a valid visa or other valid immigration documentation (such as a valid residence permit).

migrants. Having clarified the categories of migrants which this study relates to, they will be referred to henceforth as migrants for reasons of expediency.

One of the main conduits through which the management of COVID-19 has impacted on the migrants being examined in this paper is the adoption of emergency legislation by a significant number of countries. It has been noted that in numerous states and regions, including the Mediterranean region, the pandemic response has been heavily securitized. In settings such as Italy and Malta human rights violations directly related to special measures adopted in the context of the management of the pandemic and related to migration management have been registered. The hypothesis upon which this paper is based is that Italy and Malta's pandemic responses have negatively impacted upon the human rights and human security of migrants both directly and indirectly. Furthermore, both countries have utilised the pandemic to up the ante within the EU in relation to the management of migratory flows in the Mediterranean.

Both Italy and Malta form part of the so-called CMR through which significant numbers of migrants move through and from Libya and Tunisia towards the European Union. Likewise, both countries have been vocal within the EU in stressing that a combination of their geographical location, sea borders and existing EU mechanisms relating to processing of asylum claims expose them to unsustainable migrant pressures. Furthermore, Italy and Malta have both adopted COVID-related emergency laws in their respective territories in the wake of the spread of COVID in their respective territories and the WHO pandemic declaration of March 2020. These have had a significant negative impact on human security and human rights of migrants along the CMR.

The literature on the relationship between COVID and migration has grown exponentially in the past three years. Already in 2020 initial investigations on the impact of COVID on migrants and migration were published. In 2020, International Organization for Migration (IOM) published a study entitled *Migrants and the COVID-19 pandemic: An initial analysis* (Guadagno, 2020). While acknowledging the study's exploratory nature, it served a useful purpose in mapping the various dimensions through which COVID impacted upon the lives of migrants. The dimensions include living conditions, access to health services, work and working conditions, border closures and the risks stemming from immigration policies. All of these dimensions have continued to form an integral part of the analysis which has developed in terms of the impact of COVID on migrants and migration. Our article follows a similar map in terms of dimensions albeit it focuses on a narrower group of migrants (only refugees and irregular and undocumented migrants) while it also examines the impact on a specific migratory route (the CMR).

Since 2020, the literature relating to COVID and migration has expanded dramatically. The variety of perspectives is particularly striking. Including, the examinations of the medical impact on migrant workers in Singapore (Koh, 2020), the prospect of increased conflict between migrant and host communities (Grech, 2021), the impact on the human security of migrants at the US-Mexico Border (Garrett & Sementelli, 2022), the impact on the human rights of forced migrants (Libal et al., 2021) and countless other perspectives. These perspectives vary both in geographical scope (one or more states ranging from Europe to Asia to the Americas), in the category or sub-category of migrants examined (migrant workers, forced migrants, asylum seekers etc) and the specific dimension being examined (health outcomes, economic impact, mobility, security impact etc). This article falls within the same broad parameters with a geographical scope (Italy and Malta), a specific group of migrants (irregular and undocumented migrants as well as refugees) and a focus on the impact of COVID-related emergency measures on human security and human rights of these migrants.

At the outset it is important to clarify that this paper does not examine the legality or desirability of COVID-related emergency legislation (and exceptional measures adopted in this context) per se. It also does not focus on the overall picture of migration management policies and measures implemented in this context, unless they have been affected by the pandemic. The paper also does not aim at analysing the impact of emergency measures on migrants in North African countries of origin and transit for migrants who set out on their journeys across the Mediterranean. Finally, the paper does not focus on the situation of third country nationals working in Italy and Malta.

Our aim is instead two-fold: (i) to identify the main emergency laws adopted in the two cases in response to the COVID pandemic; (ii) to examine the extent to which such laws impacted migrants as

particularly vulnerable individuals in terms of their human rights and human security more generally. In the first part of this paper, the main emergency measures adopted by Italy and Malta are presented with a view to distinguishing between: 1. Measures of general application which impact upon migrants in specific ways and 2. Specific measures designed to impact primarily on migrants. The impact of the general measures on migrants is then explored in order to illustrate the specific impact on the human security, human rights and in some cases fundamental rights of migrants. The second part of the paper examines the impact of emergency measures adopted by both countries which targeted migrants and migratory flows across the CMR.

Before examining the impact of emergency measures on migrants in the two countries it is important to recall that the imposition of these measures did not occur in a historical vacuum. Both Italy and Malta have for years been struggling to deal with the management of irregular migratory flows. Indeed, it has been suggested that both countries contributed to a process of securitisation of migration in the Mediterranean. Securitisation theory, first put forward by the so-called Copenhagen School in the 1980s, suggests that defining an issue to be a security issue and therefore making it subject to extraordinary measures brings with it a number of consequences (Buzan, 2008). These include a militarization of responses and negative implications on human security and human rights of vulnerable groups. Numerous works have been written in the past years on securitisation of migration in the Mediterranean (Bello & Léonard, 2023; Koser, 2011).

The emergency measures adopted in the COVID context should therefore be understood and examined within the perspective of pre-existing legal, political and socio-economic structures that created a system that negatively impacted on human security and human rights of the migrants being examined.

2. General exceptional measures and emergency legislations related to the Covid-19 pandemic in the Central Mediterranean and their impact on migrants

2.1. Italy

Italy was one of the first European states to experience the spread of COVID throughout its territory. The Italian Council of Ministers issued a declaration of a state of emergency on the 31 January 2020 with a view to enabling the government to take appropriate action once the virus was confirmed on Italian territory. The declaration of a state of emergency is a prerequisite under Italian constitutional law to allow the Italian government to adopt measures which may limit personal freedoms guaranteed in the constitution for the purpose of safeguarding public health (La Costituzione, 1947). The state of emergency was finally lifted on the 31 March 2022.

In the intervening period there were numerous decrees and ordinances issued by Italian governmental entities (central government and regional governments) which adopted regulations intended to deal with the COVID emergency. The regulations addressed to various matters pertaining inter alia to health (such as hospital management), travel (closures of airports and ports), education (closure of schools and adoption of distance learning methods) and economic measures (such as financial assistance to business establishments closed as a result of the pandemic).

Initially, Italy adopted emergency measures on a regional basis rather than country-wide. From late February 2020 the northern regions of Friuli-Venezia-Giulia, Piemonte, Lombardia, Emilia-Romagna and Veneto were subject to emergency decrees issued under the authority of the Prime Minister to limit the spread of COVID. The first decrees were issued on the 23 February and were followed by other decrees on 1 March. These were designed to limit the spread of the pandemic in specific zones by limiting social interaction and then denying entry and exit into those localities. Amongst the measures adopted in these zone-specific decrees, were the closing of schools, cancellation of sporting events, limitations imposed on catering establishments and other such measures.

The first nation-wide decree was adopted on the 4 March (Ulteriori disposizioni attuative del decreto-legge 23 febbraio, 2020) and prohibited the holding of public gatherings, sporting events and ordered the closure of museums, galleries, theatres, cinemas, schools (of all types and at all levels) and

universities across the whole of Italy. This decree was followed by a succession of decrees that gradually increased restrictions in all aspects of life. In particular, the decrees of 9, 11 and 25 March severely limited the freedom of movement within the national territory of all individuals except for cases of proven work requirements or emergency situations (such as medical emergencies) (Gazzetta Ufficiale, 2020). Furthermore, they closed down most commercial activities and catering establishments except for essential services such as grocery-stores and pharmacies. These decrees, and especially the decree of 25 March (article 2 (a) of *Ulteriori disposizioni attuative del decreto-legge del 23 febbraio, 2020, 25 marzo 2020*) effectively introduced lock-down throughout the Italian territory. Further provisions were adopted and consolidated in other decrees such as the one dated 10 April. This decree included inter alia provisions limiting access to health centres, hospitals and care homes as well as listing procedures to be followed for persons hospitalised for COVID. Provisions on entry into detention centres and prison facilities were also adopted as part of these measures.

In terms of entry into Italy the first nation-wide decree was adopted on 17 March which introduced the obligation on all persons entering Italy to notify their arrival to the appropriate department of the relevant national health service and undergo a 14-day quarantine period. International travel into Italy by air, sea and rail was also severely restricted through decrees adopted in the early stages of the pandemic starting from the decree of 11 March which authorised the Ministry of Transport to restrict/prohibit flights, trains and cars into Italy (see article 5 of the decree of 11 March 2020).

Particularly noteworthy given its nature is the inter-ministerial decree of 7 March 2020, which addressed a very specific issue, namely the designation of all Italian ports as not safe for the purposes of search and rescue of migrants at sea. This matter shall be discussed in detail in section 3.

2.2. Malta

In Malta's case the government relied primarily on the Public Health Act 2003 to adopt measures to address the spread of the COVID pandemic. The Act provides sweeping powers to the Superintendent of Public Health (hereinafter the Superintendent) to adopt measures for the protection of public health. The most relevant provisions in this context are articles 14 and 27. Under article 14 the Superintendent has the power to declare a public health emergency and once such a declaration is made may issue certain orders including an order to segregate or isolate any person. In this context the Superintendent is empowered to issue any other order (Public Health Act, 2003).

Irrespective of any declaration of public health emergencies, article 27 allows the Superintendent to "prescribe measures to guard against or to control dangerous epidemics or infectious disease". Amongst the measures that may be adopted, the Act includes a general power to prescribe "such other matter as the Superintendent may deem expedient for the prevention or mitigation of such disease". This broad power was used extensively in the context of the COVID pandemic. Furthermore, the Act also defines the powers of the Superintendent with respect to regulating the procedures of immunisation in Malta and the procedures for the issuing of vaccination certificates. This latter power was the legal basis for the administration of COVID vaccines and issuance of COVID Vaccine certificates in Malta.

The initial legal responses to the spread of COVID in Malta were adopted on 12 March 2020 as a variety of Orders issued by the Superintendent of Public Health. These Orders took the form of Legal Notices promulgated under the provisions of the Public Health Act referred to above. These Orders may be categorised into three types: (i) those affecting travel and persons returning to Malta; (ii) those intended to limit social interaction through closures and other social restrictions and (iii) those intended to control the spread of the virus by confining persons with symptoms and confirmed cases to their homes. Travel related orders were initially Legal Notices 40 and 42 of 2020 issued on 12 March 2020. The first established a 14-day quarantine period for arrivals from a designated list of countries, which was later extended (Period of Quarantine Order, 2020). The list of countries reflected those territories where COVID cases were reported in significant numbers in late February and early March.

The second order adopted the Travel Ban Order whereby the Superintendent of Public Health banned travel to and from a designated list of countries ((Travel Ban Order, 2020). This order was later extended and transformed into a general travel ban to and from all countries except if travel was specifically authorised by the Superintendent of Public Health at her absolute discretion (Travel Ban

(Extension to All Countries) Order, 2020). The travel bans in some form remained in place until 1 June 2021, with a relaxation of its provisions over the early summer months of 2020. Beyond the matter of travel restrictions, the Maltese government ordered the closure of all places open to the public including catering establishments, cinemas, gyms, museums, exhibitions, casinos and gaming premises (Closure of Places Open to the Public Order, 2020). On the same date, the government ordered the closure of all schools and other educational establishments (Closure of Schools Order, 2020) as well as the closure of the Courts of Law (Closure of the Courts of Justice Order, 2020). On 23 March, the restrictions were intensified and Malta effectively entered a lockdown phase with the closure of all non-essential retail shops and services (Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Order, 2020) as well as the prohibition of the holding of events of a cultural, sporting or religious nature (Suspension of Organised Events Order, 2020). Moreover, the Superintendent also prohibited gatherings of more than 3 persons in any public space (Number of Persons in Public Spaces Order, 2020).

The third type of Orders issued by the Superintendent concerned the imposition of quarantine or segregation requirements on a variety of persons beyond the initial requirements for persons returning to Malta from travel. The new orders issued on 23 March and 17 March respectively required (i) any person who was diagnosed with COVID to receive a written or oral order to remain in self-isolation until such order was reversed (Self Isolation of Diagnosed Persons Order, 2020); (ii) an order requiring all vulnerable persons (such as anyone over 65, immunosuppressed persons or pregnant women) to stay within their residences (Protection of Vulnerable Persons Order, 2020); and (iii) a mandatory 14-day quarantine period for any person coming into contact with an infected person (Period of Quarantine (Contact with other persons) Order, 2020).

As the trajectory of the pandemic progressed new measures were adopted which concerned the mandatory wearing of masks ((Mandatory Use of Medical or Cloth Masks Regulations, 2020); limits on the number of persons who could gather in residential properties (Groups of Persons in Residential Properties Regulation, 2021); vaccination and certificates of vaccination (Vaccination against COVID-19 Certificate Order, 2021); and the imposition of conditions for persons travelling into Malta (Conditions to be imposed on Persons Travelling to and from Malta Order, 2021). All of these measures were subject to amendments and modifications throughout the period under review but remained in place in some form throughout the same period.

Apart from the orders and regulations cited above, it is relevant to point out that Malta decided to close its ports to migrants rescued at sea on the 9th of April 2020, just one day after a similar decision was taken by Italy ('Malta shuts its ports to asylum seekers', 2021). As for Italy, this matter is examined in section 3 of the paper.

3. An assessment of the emergency measures of general application

The emergency laws of general application did not specifically target migrants but it is relevant to assess the extent to which such migrants were affected by these laws. In doing so it is relevant to keep in mind that especially asylum-seekers, refugees and irregular migrants are liable to appertain to the lowest socio-economic groups. Within the EU as a whole 48.4% of non-EU citizens faced the risk of poverty or social exclusion in 2021 as opposed to 19.5 % of nationals and 27.5 % of citizens of other EU Member States. Moreover, EU statistics also show that "the risk of poverty or social exclusion in 2021 was almost twice as high for foreign-born persons (36.1 %) as it was for native-born persons (19.0 %) and was particularly concentrated among those born outside of the EU (41.0 %)" (Eurostat, 2022).

Classifying the emergency laws into the three categories referred to above may be of assistance in this context i.e. (i) laws restricting travel to and from Italy/Malta and imposing conditions of entry; (ii) laws intended to limit social interaction through closures of public offices and private businesses and other social restrictions and (iii) laws intended to control the spread of the virus by mandating mask-wearing or confining persons with symptoms and confirmed cases to their homes.

3.1. Travel restrictions and closures

The migrants subject of this study have severe limitations in travel in all circumstances, irrespective of the COVID-related emergency measures. However, refugees (especially minors) who may have been entitled to relocation on the basis of family reunification schemes, were impacted by the COVID related travel bans. In this context, any returns of migrants who had failed in obtaining asylum were also halted.

The closure of public offices including law courts likewise had an impact on everyone with pending legal proceedings in any court or tribunal in Malta or Italy. In this context one may refer to the delays in the processing of asylum applications, especially the appeals procedures for applications that are rejected. In the case of Italy, it has been reported that COVID restrictions led to a slowing of administrative procedures for migrants and that with the closure of public offices and of the desks responsible for the issuance and renewal of residence permits to migrants, many of them found themselves in a regulatory/administrative limbo. The report stated that the net effect of the closures was that “many migrants lack the necessary instruments to access online services or have difficulties with sites in the Italian language. This impeded registration and access to essential services: firstly, school registrations and registration to the national health service” (*‘L’effetto deflagrante Della pandemia sulla gestione dei migranti in italia: “long covid” sociale tra confini sbarrati E regolarità in caduta’*, 2021). In Malta, as the NGO Aditus remarked at the time, the Office of the Refugee Commissioner was closed from mid-March to July 2020 and all pending applications remained pending during the period of closure. Likewise, during the same period the Refugee Appeals Board was closed and thus no appeal decisions were taken (Aditus Foundation, 2021).

The school closures present a similar difficult scenario in terms of their impact on the children of migrants, who are more likely to live in poorer households. With the move to remote schooling in both Italy and Malta, migrant families had to provide devices enabling children to connect to their online classes as well as a stable internet connection. That school closures impacted children living in disadvantaged households is hardly surprising.

A major issue that seems to have emerged from the hasty transition to remote learning is that the gap in educational experiences and achievement, for learners coming from disadvantaged families or home environments that are not supportive or conducive to study and learning, may be potentially widened (Busuttill & Farrugia, 2021, p. 219).

In Malta, the CEO of the Agency for the Welfare of Asylum Seekers accepted that children of asylum seekers living in their accommodation suffered particularly from COVID-19 school closures and that “it was difficult for students in the centres to cope with remote education” (MOAS, 2020, para. 4). In Italy similar difficulties were evident. In a report compiled by ISMU Foundation with respect to the first lockdown with its attendant school closures in Lombardy (the first Italian region that was hit hard by the pandemic) it was noted that one out of two migrant families faced difficulties in coping with remote learning. Furthermore, one in three migrant families lacked adequate technological infrastructure required for remote learning and almost 30% stated they did not have an adequate space in their accommodation for remote learning (Papavero & Menonna, 2021)

3.2. Medical measures

Even mask-wearing requirements had brought specific challenges to migrants. The costs associated with procuring adequate masks for those migrants living in poverty were a financial burden they could ill-afford. This was especially true in Italy where during the latter stages of the pandemic the more expensive FFP2 type face masks were mandatory on all public transport and in hospitals. The difficulties raised by the costs associated with the mask-wearing requirements were acknowledged by the Maltese and Italian government which imposed a fixed maximum price for face masks to soften the impact on those least able to pay (*“Mascherine Ffp2 verso prezzo calmierato: come funzionerà”*, 2021; Sansone, 2020). In Malta an NGO also stepped in to assist refugees who had particular difficulties in acquiring face masks by having volunteers produce facemasks which were then distributed for free to refugees (UNHCR Malta, 2020).

Another measure designed to limit the spread of the disease and taken very early on in the pandemic was the imposition of quarantine on persons who tested positive to COVID or who had been in contact with a confirmed COVID case. These quarantine requirements were obviously more complicated to adopt for those living in crowded accommodation. This was especially so for irregular and undocumented migrants living in reception centres where living accommodation are often overcrowded. In the case of Malta, the situation in migrant detention centres during the COVID pandemic was particularly grim. A report of the Council of Europe's Committee for the Prevention of Torture (CPT) found *inter alia* that migrants being held in detention centres were in some cases not adequately separated from confirmed COVID cases.

The CPT's delegation found at least 25 persons who had previously been identified as Covid-19 positive and who had not been separated from other migrants, thus facilitating the spread of the virus throughout the closed and overcrowded environment of Floors 1 and 2 of the IRC (Council of Europe, 2021 p.31).

Moreover, the report noted that persons who tested positive were then isolated and were locked in an isolation unit without any possibility of any form of exercise. In this context, the report called upon the Maltese authorities to ensure that "Covid-19 positive detained migrants and/or those migrants suspected of having Covid-19, even in quarantine and/or isolation should have the right to at least one hour of access to outside exercise" (Carabott, 2021, para. 14).

Overall, it is evident from the brief assessment above that while the special measures adopted in both Italy and Malta were largely dictated by medical exigencies, the impact on the migrants being examined was especially hard. The reason for this appears to be twofold. Firstly, migrants tend to be poorer than the national average in both countries. Thus, they suffer disproportionately from restrictions which aggravated their poverty. Small, overcrowded accommodation, lack of access to educational resources for remote learning, fewer savings to tap into for loss of earnings are all examples of how their economic disadvantage aggravated the impact of certain COVID measures.

Secondly, irregular and undocumented migrants or those whose asylum applications are rejected are less able to be protected by the social safety net available to citizens, persons with refugee status or those benefitting from a humanitarian protection status. For example, undocumented migrant workers employed in the black market without a valid work permit were unable to benefit from governmental subsidies that were provided to soften the business closures. The lack of access to social safety nets in times of emergency like the COVID pandemic leads to violations of economic and social rights. In particular, one may refer to article 11 (1) of the International Covenant on Social Economic and Cultural Rights which stipulates the "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." (article 11.1)

The Maltese and Italian governments, in undertaking emergency measures of general application in response to the Covid pandemic did not take corresponding steps to alleviate the hardship that these measures created for vulnerable migrants. The United Nations High Commissioner for Refugees (UNHCR, n.d.) and civil society organizations provided recommendations, feed-back, best practices and criticism in order to highlight that while exceptional measures were necessary and legitimate, international refugee law and standards should have been respected.

The next section focuses on approaches and measures adopted by Italy and Malta that specifically targeted some of the migrants who are the subject of this study. These measures were remarkably similar for both states and are thus being examined jointly.

4. Specific exceptional measures and emergency legislations related to the Covid-19 pandemic aimed at addressing and restricting irregular migration flows along the Central Mediterranean Route

Apart from emergency legislation and various exceptional measures put into place by Italy and Malta and aimed at responding to the Covid-19 pandemic, which affected the human rights and human security

of migrants, both Italy and Malta put into place specific measures related to the Covid-19 pandemic that were intensifying already pre-existing restrictive measures or created measures specifically aimed at addressing and restricting migrants' flows. This paper will now focus on the following measures of this type: closure of ports, restrictions on the work of humanitarian NGOs along the CMR, pushbacks and 'pull backs' and detention at sea.

4.1. Closure of ports

The emergency laws described in section 2 did not specifically target irregular migrants but were addressed to the whole of the respective populations of Italy and Malta. A measure which targeted specifically irregular migrants was the decision to designate the ports in Italy and Malta as 'not safe' on the 8th and 9th of April 2020 respectively. While very similar, the two countries' measures adopted were not identical.

The Italian decree designated Italian ports as not safe for any migrants rescued outside Italy's Search and Rescue (SAR) zone by vessels not flying the Italian flag. Thus, Italy did not formally exclude the disembarkation of irregular migrants rescued within its SAR zone or of irregular migrants rescued by vessels flying the Italian flag outside the Italian SAR zone. The Italian government's decree specified that for the entire duration of the health emergency, due to the outbreak of the Coronavirus, Italian ports could not be classified as 'safe places' for the landing of people rescued from boats flying a foreign flag. The decree stated that for the entire period of the national health emergency related to the spread of COVID, Italian ports did not meet the requirements to be designated as Place of Safety under the Hamburg Convention with respect to its provisions related to maritime search and rescue for any rescue effected by vessels flying a foreign flag outside the Italian SAR zone.

The Maltese measure stated that Malta would not allow any migrants to disembark in Maltese ports even if rescued in Malta's SAR zone. Moreover, it declined Malta's obligation to save lives at sea within its own Search and Rescue zone.

The declared reasons for these decisions were that the pandemic had created a public health emergency in both states and that consequently they were unable to fulfil their obligations under international law in terms of the duty to offer a safe harbour to rescued migrants and in the case of Malta the duty to render assistance in its SAR zone.

Prime Minister Robert Abela in announcing the Maltese Cabinet's decision in this regard stated: "We have taken a unanimous decision; our plan has three principles: our ports do not offer a safe port of entry for migrants; we will not allow migrants into Malta; we cannot guarantee their rescue" (Vella, 2020a, para. 4) In making the announcement the Maltese government also made it very clear the decision was intended to act as a deterrent to migrants from attempting the journey across the Mediterranean: "It is in the interest and responsibility of such people not to endanger themselves on a risky voyage to a country which is not in a position to offer them a secure harbour" (Reuters, 2020, para. 4). In a communication to the European Commission the government after citing the public health emergency which was then in place, stated that;

In the light of the magnitude of these pressures, it is considered that the Maltese authorities are not in a position to guarantee the rescue of prohibited immigrants on board of any boats, ships or other vessels, nor to ensure the availability of a "safe place" on the Maltese territory to any persons rescued at sea. ("Malta shuts its ports to asylum seekers", 2020)

The Italian decree was less draconian than the later Maltese decision in that it did not exclude Italy's responsibility to effect rescue operations in its own SAR zone. According to the Italian Ministry of the Interior was inspired by the principles of safeguarding the health of the passengers and of equality of treatment with Italian nationals who as per the COVID emergency laws could not move from one locality to another and were unable to travel to and from Italy. However, in both cases Italy and Malta were breaching international law norms relating to safety of lives at sea and the duty to provide a safe harbour to rescued individuals. The impact of this migrant-specific measure adopted by both countries will be assessed in greater detail in the next section.

4.2. Restrictions of the work of humanitarian NGOs along the CMR

The decisions on the closure of ports further impacted on the ability of NGOs to provide rescue missions in the Mediterranean. Restrictions on NGOs (and other related measurers), operating rescue activities along the CMR predate the pandemic (Amnesty International, 2017). The clamp down on NGO search and rescue operations began in 2017, when FRONTEX accused NGOs of acting as a "pull factor" for irregular and undocumented migrants and indirectly helping smuggler networks. In 2018, the Italian interior minister Matteo Salvini initiated a closed port policy (2018-2019) (Politico, 2019). NGOs providing assistance at sea came under intense political and operational pressure, especially in Italy and Malta (Galaski, 2018). Extraordinary measures, in particular the closure of ports for disembarkation added on a layer of restrictions on the work of NGO vessels. As a consequence of the closure of ports by Italy and Malta to disembarkation, boats with rescued migrants were not able to land and have been at times left at sea for days or even weeks (European Council on Refugees and Exiles, 2022).

These restrictions have to be seen against the background of further measures. Maltese search and rescue operations in its SAR area were further reduced in response to the pandemic. The Maltese NGO Aditus reported that since May 2020 and throughout 2021, Malta drastically reduced its resources at sea in its Search and Rescue zone (Aditus Foundation, 2021). It has also been reported that during the pandemic, distress calls from migrants' boats or rescue ships have been met with lack of response, substantial delays in response or refusal to provide assistance following distress calls from SAR coordinating centres in Italy and Malta.

Parallel scaling back and/or withdrawal of other search and rescue assets took place, with the EU naval mission IRINI (Operation EUNAVFOR Med irini: Mission, 2023) launched on 31 March 2020, not actively engaging in search activities and operating away from the areas of the Mediterranean where migrant boats are mostly encountered.

Concurrently, NGO vessels' operations have been severely curtailed. In Italy, the Decreto-Legge 130/2020 (Decreto Legge 130, 2020) introduced a new provision which gave a legal basis for Italy to ban transit or stops of ships engaged in rescue at sea. It criminalised the relevant sanctions which had until then been administrative in nature. The law required that rescue ships immediately communicate the rescue operation to the coordination centre and to the flag state of the ship and they conduct the rescue operation according to instructions received from the search and rescue authority. This had implications such as the inability of rescue vessels to intervene if told to stand down.

In addition, Italy pursued administrative detention of rescue vessels, based on technical irregularities, which were often criticized as based on pretexts (Asylum Information Database, 2023). This measure was applied to some rescue vessels in the period from May until October 2022, and then simultaneously to several NGO rescue vessels from October until December 2020 (Asylum Information Database, 2023).

By the end of 2020, civil society organisations operated four rescue vessels and two aircraft in the Mediterranean. Six vessels were blocked in ports because of ongoing legal proceedings (...). The European Commission clarified that EU law does not permit the criminalisation of non-governmental organisations (NGOs) that carry out search and rescue operations at sea if they comply with the relevant legal framework. It encouraged Member States to exempt humanitarian action from sanctions against migrant smuggling, as EU law allows. (European Union Agency for Fundamental Rights (FRA), 2021, p.162).

The EU Agency for Fundamental Rights noted in December 2020 that since 2018, national authorities initiated some 50 administrative and criminal proceedings against vessels or their crews and also seized vessels. It also reported that vessels were blocked due to flag issues or technical or safety issues (European Union Agency for Fundamental Rights (FRA), 2020).

The lack of search and rescue assets in the Central Mediterranean – what has been termed a “deadly rescue gap” (Reidy, 2020, para.3)- has reportedly resulted in smugglers demanding higher prices, changing their methods (for example by using ‘mother ship’) and arguably also made the route more dangerous for migrants. While rescuing migrants along the CMR has been a politicized, and some claim securitized issue since the so called ‘migration crisis’ and 2017 clamp downs, the pandemic measures,

especially the closure of ports provided for an escalation of previous policies of Italy and Malta restricting the ability of humanitarian NGOs to operate along the CMR.

4.3. Pushbacks and 'pull-backs'

In parallel to closing ports and restricting the work of humanitarian NGOs along the CMR, Italy and Malta increased their use or support of direct active arrival prevention measures such as pushbacks and pull-backs of irregular migrants during the pandemic.

Pushbacks have been defined by the UN as;

proactive operations aiming to physically prevent migrants from reaching, entering or remaining within the territorial jurisdiction of the destination State through direct or indirect exercise of effective control over their movement. At sea, "pushbacks" essentially involve the interception of vessels carrying migrants inside or outside territorial waters, followed by immediate repatriation to their port of origin without, or with only summary, on-board screening for protection needs (Human Rights Council, 2018, para.51).

As the UNHCR states, pushback operations may also leave migrants adrift at sea (Office of the High Commissioner for Human Rights, 2021).

Pushbacks were used rather extensively during the pandemic. A Guardian investigation on such practices in Europe suggests that "with the onset of Covid-19, the regularity and brutality of pushback practices has grown" (Tondo, 2021b, para 3). That observation applies also to the CMR. It has been argued that the absence of NGO vessels along the CMR due to restrictive policies discussed above, contributed to a situation in which such pushback actions could take place largely unobserved (Barnes, 2022).

Documented cases during the pandemic included pushbacks of migrant boats by private fishing boats hired for this purpose by the Maltese government and by Maltese Armed Forces ship. On one occasion during the initial period of the pandemic, three trawlers sailed out of Malta, believed to have been instructed by the Maltese government. The trawlers intercepted a migrant vessel on course to reach Malta and returned migrants to Libya. The trawlers were reportedly guided by a Maltese Armed Forces helicopter (Vella, 2023). In November 2020, asylum seekers filed constitutional proceedings against the Maltese authorities due to an alleged breach of rights they suffered in a pushback to Libya in April 2020 (Aditus Foundation, 2021).

Although data is not easily available, it appears that Italy pursued pull-backs rather than pushbacks. Pull-back operations "are designed to physically prevent migrants from leaving the territory of their State of origin or a transit State (retaining State), or to forcibly return them to that territory, before they can reach the jurisdiction of their destination State" (Human Rights Council, 2018). Some literature dubs these as indirect pushbacks, refolement-by-proxy or indirect refolements (Associazione per gli Studi Giuridici sull'Immigrazione, 2023). There have also been legal challenges filed within the European Court of Human Rights accusing Italy of being in breach of its European Convention on Human Rights obligations through its involvement in pull-back practices (Ciliberto, 2018; Pijnenburg, 2018). In this context, it is worth noting that such pull-backs are likely illegal under international law and may engender the international legal responsibility of states which aid and abet such practices. It has been argued that "Third country pull-backs would constitute push-backs for the EU member state, violating non-refoulement and the prohibition of collective expulsion" (Markard, 2016, p.616) and that:

Most importantly, EU member states cannot exonerate themselves from their international obligations by engaging countries of origin and transit in migration control. If they require, support or even participate in a third country's internationally wrongful acts, they can be complicit or jointly responsible. (Markard, 2016, p.616)

It is worth noting that since December 2017, Libya has a search and rescue region of its own (European Parliament, 2018). Since 2017, the EU, but also Italy and Malta directly, have been funding, training and supporting the Libyan Coast Guard in order to interfere with smuggling networks and migration patterns. Italy and Malta both concluded agreements with Libya to intercept migrant boats in

the Mediterranean. Data clearly indicates that at the height of the pandemic and associated measures, the Libyan Coast Guard pulled-back a large proportion of irregular migrants embarking on the journey across the Mediterranean back onto shore, as IOM data (Table 1) indicates. While FRONTEX language suggested that the 'Libyan Coast Guard rescued migrants' (FRONTEX, 2021, p.16), the UN and civil society organizations such as Amnesty International referred to well documented cases of inhumane detention, torture, extortion, slavery, rape, and unlawful killings of returned migrants in Libya (Barnes, 2022). It is more difficult to obtain information on pull-backs to Tunisia, but it is reported by the Mixed Migration Centre that the Tunisian Coast Guard intercepted approximately 4,000 migrants per year in 2018 and 2019, but 13,500 in 2020. This would imply a similar interception rate to Libya in 2020 (Forin & Frouws, 2022).

Pushbacks and pull-backs employed by Italy and Malta in cooperation with Libya and Tunisia intensified during the pandemic and have been criticized by civil society organizations, international NGOs, and the United Nations as *violating national, European and international laws and norms* (United Nations High Commissioner for Human Rights, 2021).

4.4. Detention at sea

At the height of the pandemic, in April 2020, when Italy and Malta declared ports closed, both countries decided to establish so called "quarantine boats" – ferries or pleasure boats moored out at sea on which rescued migrants were placed under quarantine offshore upon their arrival (ANSA, 2022). The stated purposes of such measures ranged from easing pressure on the healthcare system and on detention and open centres for migrants on land, to not being able to divert resources due to the exigencies of the pandemic. ("Migration: EU must act now – Bartolo", 2020) Both countries have also linked their practice of detention at sea to their EU partners' lack of solidarity and support on the migration issue. It has been reported that in a letter to the European Commission, Malta's Foreign Minister and Home Affairs Minister suggested that migrants will be held on vessels "pending their relocation to other European countries" and demanded a more effective, fair and systemic European mechanism of relocation, indicating a more far-reaching goal than just protecting the migrants or the Maltese population from Covid (Borg, 2021, para.3).

During this period, five or six ships (although some reports indicated that at some stage there were 9 such vessels) were in service in Italy to isolate migrants, with each carrying hundreds of people (Urbina, 2021). When protests were reported onboard quarantine vessels in Italy, the practice was not abandoned (Tomlinson, 2022). The use of such vessels continued in Italy well into the summer of 2022, despite the fact that the state of emergency ending in March 2022. In fact,

on Friday, May 27 [2022], the Guarantor for the rights of detained persons, Mauro Palma, called for their abolition as soon as possible. Quarantine ships, he said, were "a transitional and exceptional solution connected to the state of sanitary emergency. The state of emergency however ended on March 31 (nearly two months ago!) and they have not been written off yet," he noted (ANSA, 2022, para.6).

In Malta, after all quarantined migrants had to be brought on land following a deterioration of conditions and the possibility of outbreak of violence on board in June 2020, the practice was discontinued, despite reports that the government had called for bids for such quarantine services during the summer of 2020.

While the European Commission refused to comment on the legality of Italy and Malta's use of quarantine vessels for migrants arriving along the CMR, civil society in both countries and international human rights groups protested the practice ("Migrants held on Captain Morgan boats denied their basic human rights", 2020; Reidy, 2020; Vella, 2020b). Various political forces in Italy declared that the practice was both unsustainable and discriminatory (D'Ignoti, 2021).

Given that large outbreaks of Covid happened on cruise ships and boats in other settings, it appears counterintuitive to use them for quarantine measures. Mario Affronti, physician in charge of monitoring the health of migrants at Palermo's Policlinico hospital, said: "These so-called quarantine ships serve

the purpose of allaying Italians' unjustified fears. These vessels aren't only useless but they can also become very dangerous for the health of migrants." (Tondo, 2020, para.11).

The vessels have been criticised as harmful to the physical and mental health of people rescued at sea, as well as lacking the proper medical equipment (Tondo, 2020). While the quarantine time was set for 14 days, in some cases migrants reported having been quarantined on board for several weeks (Tondo, 2021a). Poor conditions on board of such private vessels led to desperation, hunger strikes or attempted suicides (Galani, 2021). There have been reports that migrants held on boats swallowed chemicals and razor blades in order to be able to leave the boats before the end of the quarantine (Foroudi & Marsi, 2021). There have been reports of young migrants dying after falling ill and being cared for on quarantine ferries in Italy (D'Ignoti, 2021).

Indeed, one could argue that the use of boats and ferries for quarantine purposes in Italy and Malta did not protect migrants from Covid. In Italy Covid-negative irregular migrants were quarantined on vessels together with Covid-positive persons and in some cases Covid-positive migrants were forcibly brought from land to ship (D'Ignoti, 2021). An inquiry eventually led to the suspension of the practice of forcibly removing irregular migrants from reception centres on land on to vessels when they tested positive. In Malta, recent court case proceedings on detention on boats divulged that irregular migrants detained on vessels for weeks in 2020 had all tested negative for Covid before they were transferred into quarantine on a boat (Brincat, 2022).

In summary, the detention of irregular migrants on these boats may have constituted multiple violations of fundamental human rights protected in the domestic laws of both Italy and Malta, as well as in the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The potential violations include illegal detention as well as inhuman and degrading treatment. The prohibitions against illegal detention and inhuman and degrading treatment are both absolute ones. This means that unlike most other rights they may not be suspended in cases of emergency. While "the lawful detention of persons for the prevention of the spreading of infectious diseases" (Council of Europe, 1950, article 5.1 (e)) is permitted, if it is proved that the reasons for detention were not, in fact medical, the detention would then be considered unlawful. The conditions of detention described above may very well qualify as degrading and inhuman. In this case, neither Italy nor Malta would be able to plead in their defence the pandemic, given that the duty not to inflict on any person conditions that amount to inhuman and degrading treatment may not be derogated from in any circumstances.

The use of offshore quarantine for irregular migrants was criticized as illegal, resulting in ill-treatment and impeding such migrants from being able to ask for asylum by civil society organization, international NGOs and the United Nations (Office of the High Commissioner for Human Rights, 2021).

5. Impact of migrant-specific Covid-19 measures undertaken by Italy and Malta

One of the declared goals of the EU's policies on migration since 2017 was to prevent the loss of life along the CMR. While the overall number of people drowning during 2020 dropped considerably (see Table 1), it is possible to say that the route continued to be dangerous when comparing numbers of arrivals and those missing or assumed dead. The IOM reported 1000 dead and missing migrants recorded and documented in the Central Mediterranean in 2020 (see Table 1) (IOM Missing Migrants Project, data for Central Mediterranean Route in 2020, n.d.). This was out of total 2,326 dead and missing migrants along all of the migration routes into Europe in 2020 (see Table 1). One has to keep in mind that this does not reflect the numbers of those who have gone missing or died along the transit routes towards North African countries, which would have been much more difficult to navigate during the pandemic, or in Libya.

The table below provides month-by-month documented IOM statistics on irregular migration including the numbers of deaths and disappearances along the CMR in the year 2020, the most relevant year for our discussion. It is significant to note that various other organizations and civil society organizations may provide differing and indeed mostly higher estimates of numbers.

Month (2020)	Attempted Crossings	Interceptions at Sea	Irregular Arrivals Europe	Deaths/Disappearances
January	3037	1388 (46%)	1643 (54%)	6 (less than 1 %)
February	3689	1680 (46%)	1899 (51%)	110 (3%)
March	1174	767 (65%)	387 (33%)	20 (2%)
April	1244	494 (40%)	737 (59%)	13 (1%)
May	3736	2017 (54%)	1708 (46%)	11 (less than 1%)
June	5452	3107 (57%)	2256 (41%)	89 (2%)
July	11456	4061 (35%)	7328 (64%)	67 (1%)
August	8490	2983 (35%)	5397 (64%)	110 (1%)
September	8224	3502 (43%)	4536 (55%)	186 (2%)
October	5604	1924 (34%)	3571 (64%)	109 (2%)
November	8152	2591 (32%)	5385 (64%)	176 (2%)
December	2521	843 (33%)	1591 (63%)	87 (3%)
Total	62779	25357 (40%)	36438 (58%)	984 (2%)

Table 1.³ Comparison of attempted crossings, interceptions at sea, irregular arrivals in Europe and deaths/disappearances along the Central Mediterranean Route in the year 2020 (month by month)

Although it is difficult to assess to what degree, it is possible to say that various measures, especially closure of ports and associated restrictions have contributed to the sudden and temporary drop in numbers of migrants crossing on the CMR, especially in the second quarter of 2020 and therefore with limitation on freedom of movement of migrants, including those who required protection. At the same time, they appear to have had an impact on how dangerous the route became as well as the composition of flows. In particular, FRONTEX reported that “there was a decrease in the share of vulnerable groups. Women and children represented a smaller share of the overall migrant population arriving on EU shores in 2020” (FRONTEX, 2021, p.14).

According to IOM, “most female migrants and refugees arrived along the various sea routes in 2019 (44%) and 2018 (38%) and less in 2020 (18%).” (International Organization for Migration, 2021, para. 4). In addition, it has been reported that “Most women and girls registered at arrival [2018-2020] reached Europe through the Eastern Mediterranean route (70%), ..., while the rest arrived in Spain via the WMR and WAAR (21%) and in Italy and Malta through the CMR (9%)” (International Organization for Migration, 2021, para. 3). In fact, IOM reported that the increase in arrivals registered in Italy in 2020 (+198%, compared to 2019) was made mostly of adult men travelling alone, including through the CMR (International Organization for Migration, 2021).

Data for children arriving along the CMR is somewhat unclear – while the numbers of children arriving in Italy (along all routes) has been expanding (from 2232 in 2019 to 6252 in 2020 and 13203 in 2021), numbers of children arrivals have been falling during the same period of time in Malta. The vast majority of children arriving in both countries 2019-2021 have been unaccompanied, and the proportion of boys among children arriving was in 2020 95 % in Italy and 94% in Malta, and in 2021, 97% in Italy and 90% in Malta (UNHCR, 2021; UNHCR, 2022; UNHCR Nordic and Baltic Countries, 2020)

As EU FRA (2020) emphasizes:

Children in migration are more vulnerable than adults, particularly when they are unaccompanied. Their vulnerability makes them more exposed to violence, exploitation and trafficking in human beings, as well as physical, psychological and sexual abuse. The UN Convention on the Rights of the Child (CRC) obliges states to protect children from violence, exploitation and abuse (p.3).

³ By irregular and undocumented migrants, we refer to migrants who (i) have entered or are in the process of entering the territory of a state without the required authorisation from the state concerned and (ii) those migrants who are on the territory of a state without a valid visa or other valid immigration documentation (such as a valid residence permit).

It is important to recall that the detention of children on vessels for quarantine reasons is especially worrying in terms of violations of children's rights protected by the Convention.

Women and children have traditionally been considered as the most likely migrants to be fleeing conflict and to qualify for refugee status (UN Economic and Social Council, 1991). In the context of the FRONTEX statistics quoted above, it is probable that the various measures adopted discouraged these most vulnerable migrants from effecting the crossing across the CMR and thus prevented them from availing themselves from the right to asylum under international law. The fate of these women and children who were unable to make the journey is unknown.

It is thus possible that pandemic measures related to port closures outlined above and related dangers played a role in contributed to making the CMR more dangerous for all those attempting to cross and reduced the ability of vulnerable groups to reach countries that could provide such protection. The closure of ports to NGO boats providing rescue services hindered rescue operations and made it harder for boats in distress to receive assistance. The uncertainty and danger of the journey, the risk of being stranded at sea or turned away, and lack of access to healthcare certainly also took a toll on the well-being of migrants along the route.

5.1. Assessment of the impact of extraordinary measures on human security of migrants

Port closures in Italy and Malta and measures such as restrictions on operations of NGO vessels, pushbacks and 'pull-backs' and detention at sea resulted in a short-term dip in numbers of arrivals, made the route more dangerous and effected changes in demographic makeup of irregular migration along the CMR which indicate that they likely made it more difficult for those requiring protection to reach states that could provide such protection.

These measures have negatively affected the human security of irregular and undocumented migrants and have put unknown numbers of such migrants at risk.

They called into question the extent to which they are able to enjoy their fundamental rights, which have been severely restricted, including in cases engaging the right to life, the prevention of ill-treatment, the right to repatriation, the right to medical care, PPE and much else besides. Such rights are afforded significant protection in international law, [...] and States should not overlook their duty to respect them (Galani, 2021, p.633).

Humanitarian organizations too suggested that such measures have created huge challenges to their work with irregular migrants during the pandemic.

The measures have also contributed to the pandemic situation being linked to an alleged health threat posed by irregular and undocumented migrants, further escalating anti-immigrant rhetoric in countries such as Italy and Malta. Finally, they broke down a semblance of norm-based policies and vestiges of supremacy of international law when formulating responses to irregular migration along the CMR.

Significantly, it has been argued that pandemic measures, including port closures in both Italy and Malta, as highlighted above, were specifically directed at deterring irregular and undocumented migrants from entering Italy and Malta which are the two main entry points on the CMR. In fact, it is quite evident that Italian and Maltese authorities conflated control of the disease with control of mobility of irregular and undocumented migrants and their ability to reach the countries of destination and also to file a claim for protection. The tougher stance may have been motivated in part by trying to contain the spread of the Coronavirus, but was also in line with a general hardening on the issue of migration across Europe. The Foreign Policy Research Institute suggested that

[i]n many ways, [...] the tone of the recent past has set the parameters of the response in the present. An examination of that history [...] and future Mediterranean migration, shows us that any immediacy related to the pandemic must be understood as an outgrowth of a feeling of seemingly continuous crisis over immigration that has featured in European discourse for years.' (Schumacher, 2020, para.2)

6. Conclusion

This paper highlighted a number of issues that derive from the COVID-related emergency measures imposed by Italy and Malta in the wake of the greatest public health emergency in living memory. The first issue relates to the impact of these emergency measures on irregular and undocumented migrants. Notwithstanding the fact that the vast majority of the measures were not targeted specifically at migrants, they had a particular impact on their human security and human rights. The impact on these migrants of these generally applicable exceptional measures was threefold: (i) their socioeconomic security was further imperilled by additional costs such as the acquisition of facemasks, loss of work and in the case of undocumented migrants the inability to access social welfare; (ii) the fundamental right to education was challenged for children of these migrants who faced difficulties in accessing the technical resources and spaces required for online learning; and (iii) for migrants living in reception centres and detention centres their living conditions were aggravated (in what was already a difficult context) and they faced challenges to their right to health with impossible quarantine conditions and were forced to live in inhuman and degrading conditions.

The second set of issues that emerge from this analysis relate to emergency measures which targeted specifically migratory movements across the CMR. In this context, the measures adopted sought to utilise the pandemic to adopt even more draconian measures to prevent irregular migration into their territories. The measures included the reclassification of Maltese and Italian ports as unsafe in order to refuse entry to vessels carrying migrants and the detention of irregular and undocumented migrants on vessels at sea. The consequences of these measures on the human security and human rights of irregular migrants were various.

The measures clearly made crossings more problematic, costly and difficult with the pushbacks and pullbacks leading to human rights violations against those found on the intercepted vessels. The detention of migrants on vessels at sea was perhaps the most evident violation of fundamental rights which created inhuman and degrading conditions which cannot be condoned nor explained on medical grounds. It is evident that these detention conditions were imposed for reasons of public opinion and to create a hostile environment for irregular migrants.

The extraordinary measures outlined above were accompanied by criticism by Italian and Maltese politicians of the migration management framework in Europe as well as appeals for greater solidarity from EU partners. The most explicit statement of this kind was provided by Malta's then Minister for Foreign and European Affairs, who pointed out that Malta carried a disproportionate burden being on the forefront of managing irregular migration along the Central Mediterranean and who linked the issues of disembarkation and relocation. *Politico* reported the following:

The European Commission confirmed last week that it will present a proposal to reform asylum laws but “unless the two issues are tied together, the issue of disembarkation and relocation, no proposal will address our needs,” Bartolo said. Relocation pledges have to be made first, he said, because otherwise “we do get promises, but then they are not kept.”

But Bartolo didn't rule out other asylum seekers being returned to Libya in a similar manner: “The biggest pushback in the Central Mediterranean is coming from the European Union,” he said, because the EU is pushing all the responsibility on to Italy and Malta.

We do not like to do this, but if we are not helped and we are left to our own devices, what do you want us to do? ... If other countries do not help us, we have to look after ourselves. (Barigazzi & Eder, 2020, para. 9)

Indeed, partly in response to the pressure by Italy and Malta, a New Pact on Migration and Asylum was proposed in 2020 in the context of the EU. Furthermore, in 2022, the European Commission presented an EU Action Plan on the Central Mediterranean.

Whilst emphasising that structural solutions will only be found through agreement on the full set of asylum and migration reforms currently being negotiated, the Commission is proposing a series

of operational measures to address the immediate and ongoing challenges along the Central Mediterranean migratory route (European Commission, 2022, para.1)

Thus, the human security and fundamental rights of migrants were used as pawns in political games both for internal political reasons and in the quest by Italy and Malta to force the EU's hand in terms of migration policies with which they had long contested. While Italy and Malta may have been successful in drawing attention to their situation, they contributed to what Shada Islam calls 'falling taboos' in dealing with migration in the EU (2023, para.4).

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Detention by sea, imprisonment by air: An analysis of the get-tough policy approach to the infringement of migration law in Malta

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Abstract

This article contributes to existing theoretical and empirical work on the criminalisation of migration by examining elements of crimmigration within Maltese legal frameworks and Criminal Justice institutions and practices. Drawing on domestic legal provisions, processes and secondary data analysis of official immigration statistics by the three branches of criminal justice; the police, courts of justice, and the correctional system, the study sheds light on the treatment of immigration law violators in Malta with particular focus on the sanctions meted out by the Criminal Courts in the penalisation of these offences. Despite the fact that Malta has moved away from the automatic criminal prosecution of undocumented migrants who enter Malta irregularly by boat in search for asylum, it continues to formally criminalise and harshly penalise those who use fraudulent documentation in their attempt to enter or leave the country through formal channels of arrivals and departures. The harsh penalisation of migration law violations arising from the use of fraudulent travel documentation for asylum seeking purposes denotes that empowered through legal provisions and wide judicial discretion, the Maltese Criminal Courts of Justice adopt a get-tough punitive approach, typified by over-reliance of incarceration over community-based sanctions. Fuelled by populist rightist discourse, migration policy in Malta is becoming progressively characterised by crimmigration through the tighter intertwinement of criminal and migration law, furthering the criminalisation of migrants and asylum seekers. This carries significant ramifications on the socio-economic and politico-cultural spheres with huge moral and fiscal costs on both the macro-structural and micro-individual level. The excessive and blanket use of imprisonment for the violation of migration law infers the use of punishment as a form of symbolic politics and a spectacle of a get-tough policy approach offering rehabilitation and reintegration to the native insider, but retribution, deterrence and incapacitation to the non-native outsider, redolence of an institutionalised form of racism.

Keywords: crimmigration, imprisonment, migration, Malta, passport fraud

1. Introduction

The study aims to complement existing theoretical and empirical research on the criminalisation of migration and the impact of race and citizenship on criminal justice processes within the Maltese context. By examining the penalisation of migration law violations for attempted inbound entry and outbound departure into and from Malta through the use of fraudulent documentation, it analyses the involvement and impact of migration control by the Maltese criminal justice system.

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Drawing on domestic legal provisions, processes and secondary data analysis of official immigration statistics by the three branches of criminal justice; the police, courts of justice, and the correctional system, the study aims to shed light on the treatment of immigration law violators in Malta with particular focus on the sanctions meted out by the Criminal Courts in the penalisation of these offences.

The study is thus guided by the following research questions:

How does the Maltese criminal justice system deal with violations of immigration law in relation to offences of irregular entry to and attempted departure from the country through the use of fraudulent travel documents? What is the relevance of race and citizenship on sentencing practices? In what ways does sentencing act as a form of symbolic politics which reflects, maintains and reinforces institutionalised forms of racism?

Following the consideration of crimmigration within the context of the bordered penalty of the Maltese Islands, including an overview of the over-representation of foreigners within the Maltese penal system, the subsequent sections will elucidate Malta's existing legal provisions for migration related offences of irregular entry and attempted departure through the use of fraudulent travel documentation and provide an analysis of the punitive sanctions meted out by the Criminal Courts. In conclusion, the paper presents a discussion of the moral and fiscal costs, as well as the wider socio-political and cultural implications arising from this state of affairs and calls for further analysis and remedial action in the area.

2. Crimmigration: A binary fusion

Immigration detention is the deprivation of liberty for migration-related reasons...This is an administrative or civil power that operates separately to the powers given to the police and criminal courts. In contrast, criminal incarceration is the deprivation of liberty of a citizen or non-citizen due to criminal charges or convictions (International Detention Coalition, 2022, para.1).

Civil vs Criminal, Immigration vs Criminality, Detention vs Imprisonment, Migrant/Asylum Seeker vs Offender. All false dichotomies! The merger of both: Crimmigration!

Denoting the amalgamation of immigration and criminal law in both substance and procedure, crimmigration, a term introduced by Juliet Stumpf (2006) displays itself and shapes various spheres of activity. Apart from framing the legislative and administrative field "where substantive criminal law and immigration law are increasingly merged", it also acts on the level of "political and public discourse", as the phenomena of crime and immigration are often merged indiscriminately in political discourse and decision-making (Van der Woude & van Berlo, 2015, pp. 62-63).

Indeed, despite the different definitions and understanding of the crimmigration phenomenon, a main feature of this recently emerging trend is its widening strata of outcasts, turning "criminals into aliens and aliens into criminals" (Van der Woude and van Berlo, 2015, p.62). As aptly denoted by Stumpf (2013, pp.75-76), this process is twofold and self-sustaining, "[a]s criminal sanctions for immigration-related conduct...continue to expand, aliens become synonymous with criminals. As collateral sanctions for criminal violations continue to target the hallmarks of citizenship and community membership, ex-offenders become synonymous with aliens".

A main outcome of the intertwinement and integration of the immigration and criminal spheres is that crimmigration leads to harsher consequences, more restricted protections, and further segregation between citizens and non-citizens in adjudication and enforcement practices (Stumpf, 2013). These "unique or uniquely harsh law enforcement methods" (García Hernández, 2017, p.24) of non-citizens has led to a decisive shift in the correctional arena, such that any understanding of carceral trends need to take into account the increasing significance and treatment of non-citizens within the Criminal Justice System (Brandariz, 2021).

Traditionally, the criminal justice system of European countries primarily targeted male citizens, often from impoverished backgrounds engaged in criminal activities. However, over the years, fuelled by greater transnational movement arising from wider globalisation trends, non-citizens, mostly employed in illegal markets, are progressively substituting the traditional demographic cohort of offenders (Brandariz, 2021). The impact of this transformation is especially remarkable on the penal system as it

is significantly shaping the profile of those incarcerated (Melossi, 2015) and the arena of “bordered penalty” (Brandariz, 2021, p.105) of many jurisdictions.

Across most European countries, this evolution is “noteworthy” (Brandariz, 2021, p.100) as rates of foreign nationals are significantly higher than those of national prison populations. Foreign inmates accounted for 15% of the general prison population in Europe in 2020, with a variation of between 2% to 70% in different jurisdictions (Aebi & Tiago, 2021). The nature and extent of this overrepresentation thus remains a contested concept, since while the proportion of non-native as compared to native inmates has risen in many European countries,² it has remained stable³ and even experienced a decline in others⁴ since 2000 (Aebi & Tiago, 2021). On this basis, it has been argued by Brandariz (2021) that this phenomenon cannot be positively ascertained when one takes into account the number of imprisoned non-citizens in comparison to the proportion of foreigners residing in the country.

Another issue of contention is whether and to what degree is the rate of incarcerated foreign nationals in a particular country influenced and impacted by the immigration control and enforcement mechanisms in place. Declining rates of foreign national inmates and the decreased functions of correctional systems in the administration of immigrant populations in certain jurisdictions has indeed been explained through the “increasing scale of immigration enforcement devices” (Brandariz, 2021, p.103). Yet, evidence on the nature and extent of immigration detention is also ambiguous (Brandariz, 2021) as longitudinal data (spanning from 2000 to 2010) by the Global Detention Project (2022) shows diverse trends, ranging from substantial increases and escalation,⁵ to significant declines⁶ in detention rates across different EU jurisdictions. In the absence of common European trends for migrant and foreign national detention and imprisonment rates, any attempts at explanations of the representation of non-citizens in prison populations thus need to reflect and take into account the different socio-political realities and crimmigration processes in different jurisdictions, in this particular case, Malta.

3. Malta’s evolution towards a multiracial prison

Malta has over the years increasingly become a multiracial and multicultural society, registering a fivefold increase in the number of foreign nationals over a decade -from 4.9% of the population in 2011, to 22.2% of the population in 2021 (National Statistics Office, 2023)⁷. Indeed, more than one in every five Maltese residents is of foreign nationality, with only around 40% of this population comprising of EU citizens or European countries outside the EU (National Statistics Office, 2023). In terms of race, this non-Maltese population comprised of 58.1% Caucasian, 22.2% Asian, 6.3% African, 6% Arab, 4.5% Hispanic or Latino, while 2.9% upheld multiple racial origins (National Statistics Office, 2023). This increase in multiracial and multicultural diversity is mainly attributed to the attraction of foreign work by Malta’s thriving economy (Debono & Vassallo, 2019). Indeed, 27% of the Maltese workforce in 2020 were foreigners (Debono, 2021) who, attracted by labour demand and economic prospects find themselves employed at either the upper or the lower strata of the labour market spectrum, where “EU migrants tend to occupy high skilled jobs for which there are insufficient trained Maltese people, [and] third country nationals often do low skilled jobs that are unattractive to Maltese people” (Debono & Vassallo, 2019, p.65). Apart from these economic pull factors of migration, the Maltese migration scenario is also characterised by inbound asylum-seeking forms of migration.

A historical overview of the nationality status of non-citizens in Malta’s prison suggests that the prevalence of foreigners within the incarceration system at a given point in time reflects the nature of Malta’s political and socio-cultural ties with other countries. Indeed, having formed part of the British empire since its Independence in 1964, the Maltese Islands “saw its prisons hosting a number of

² e.g. in Austria, Bulgaria, Denmark, Estonia, Finland, Latvia, Norway, Romania and Spain.

³ e.g. in Belgium, Cyprus, France, Hungary, Ireland, Luxembourg, the Netherlands, Slovakia and Switzerland.

⁴ e.g. in the Czech Republic, Poland, Sweden; Cyprus, Portugal, Spain and Sweden.

⁵ e.g. in Bulgaria, Estonia, Hungary, Latvia, Luxembourg and Sweden.

⁶ e.g. in the Czech Republic, Germany, Ireland, Italy, the Netherlands, Slovakia, Spain and Switzerland.

⁷ Translating to a total of 20,289 non-Maltese living in Malta in 2011 to 115,449 in 2021 (NSO, 2023).

residents/dependents from that power”, mainly from England, Wales and Gibraltar⁸ (Formosa et al., 2012, p.107), whereas the closer political ties of Malta with North African countries following Independence, led to a greater prevalence of inmates from these jurisdictions, particularly from Libya and Tunisia.⁹ As a result, a “spatio-temporal flow from a Northern European to a heavily African component is very evident” (Formosa et al., 2012, p.107) within the Maltese carceral system. Since the refugee crisis, this trend has been sustained through a significant increase in the number of foreigners from asylum seekers’ countries of origin within the Maltese penal system.

Corresponding to the aforementioned increase in the number of foreign nationals residing in Malta, a longitudinal examination of Malta’s prison population indicates that the percentage of foreign prisoners (as compared to those having a Maltese nationality) has also experienced an incremental growth in the last number of years. Averaging 6.3% between the 1950s and 1980s, the rate of foreign offenders in prison as compared to the total prison population, experienced a consistent growth to 24.4% in the 1980s, 30.6% in the 1990s, to 36.3% in 2010 (Formosa et al., 2012, p.107). Indeed, the number of foreign inmates exhibited a linear increase from 2005 to 2015 (Aebi et al., 2019). More recent data highlights that as per February 2021, foreign nationals comprised 55.7% of the total incarcerated population (821 inmates comprising both sentenced and those under preventive arrest), indicating a significant increase in the number of non-citizens, particularly third-country nationals within the Maltese penal system (Institute for Crime & Justice Policy Research, 2021). Given this significant growth, thus one cannot uncritically accept the view that “the astonishingly high incarceration rates of over 1,000 foreign prisoners per 100,000 non-citizen inhabitants witnessed in the early 2000s in...Malta¹⁰...are long over” (Brandariz, 2021, p.103). A significant proportion of these foreign inmates have been handed an imprisonment sentence due to an immigration related offence. Thus, “with so many people being prosecuted for immigration-related crimes, it should come as no surprise that the number of migrants imprisoned is also substantial” (García Hernández, 2017, p.24).

This trend has coincided with an increasing concern over the association between migration and crime. While criminal conduct has interminably been used to exclude and remove ‘unwanted’ foreigners from Malta, it is only in the latter twenty years or so that the relationship between migration and crime has taken centre stage in local political and public discourse, fuelling “increasing assumptions regarding migrants’ danger to society, threat to national security, and overall propensity to engage in criminal behavior” (Vázquez, 2017, p.1115), which in turn have led laws to be enacted and policies to be established to target “those [noncitizens] who pose the greatest threat to public safety or national security” (Vázquez, 2017, p.1115). Whilst this discourse and practice is particularly evident with regards to asylum seekers who arrive to Malta irregularly by boat, resulting in their ‘indiscriminate’ confinement in special detention facilities which largely resemble prisons in both form and structure, it is also clearly reflected in the gross overrepresentation of foreigners, including migrants seeking asylum, within the Maltese penal system.

But, is this overrepresentation of non-natives within the Maltese penal system due to their higher propensity to engage in more crime of a more serious nature, are more easily apprehended, charged and sentenced, or because they are unequally or disproportionately processed by a racialised criminal justice system? May this overrepresentation simply be the result of crimmigration?

3.1. Malta: Existing legal provisions

“Crimmigration law lays the foundations for the system. It is an umbrella term for the interweaving of administrative immigration law and criminal law” (Bowling & Westenra, 2017, p. 253), “under conditions of interchangeability and mutual reinforcement” (Aas, 2014, p.525). According to Bowling and Westenra (2017), there are four main features to crimmigration law: immigration offences, deportation, accessorial liability and creative civil exclusions. The following provides a brief overview of existing international and

⁸ 96% of foreign inmates were from England, Wales and Gibraltar in the 1950s (Formosa et al., 2012).

⁹ 59% of foreign inmates were from North Africa, with 38% from Libya and Tunisia in the 1990s (Formosa et al., 2012).

¹⁰ As well as the Czech Republic, Italy and Poland.

domestic legal provisions regarding violations of immigration law arising from undocumented entry and/or attempted departure from the Maltese territory through the use of forged/fake/stolen travel documents or imposture use of such documents.

Malta's irregular migration flow has traditionally taken place primarily by sea across the Mediterranean, through dangerous and often deadly routes with the unfortunate cost of hundreds of human lives annually. The estimate number of dead and missing persons in their trajectory across the Mediterranean Sea during 2022 stood at 1,940 (UNHCR, 2023). In more recent years, migration flows to Malta are shifting from irregular entry by sea to regular or irregular entry by air or other formal entry/departure checkpoints. Indeed, it is estimated that "the majority of the asylum-seekers now reaching Malta arrive by plane" (Aditus Foundation, 2018, p.32). Despite being significantly safer, this form of entry for asylum seeking purposes leads to more severe legal consequences for those lacking the necessary legal travel documentation.

In the initial years of the boat refugee phenomenon, all those who entered Malta irregularly by sea for purposes of asylum, were detained and formally charged and prosecuted in Court for violating the provisions of the Immigration Act. This procedure, being in clear violation of Article 31 of the Geneva Convention,¹¹ was subsequently repealed, and asylum seekers stopped being criminally prosecuted for their irregular entry into the country.¹²

Yet, despite the official 'decriminalisation' of irregular entry, asylum seekers continued to be automatically detained for a lengthy and largely indiscriminate period of time in specialised detention centres with a maximum detention period of eighteen (18) months until their asylum application is processed. This procedure, being in violation of UNCHR provisions and the Optional Protocol to the Convention against Torture¹³ was subsequently amended and the period of detention more stringently regulated.

Following the adoption of the 'Strategy for the Reception of Asylum Seekers and Irregular Migrants' (Ministry for Home Affairs and National Security, 2016), whose main aim was "to take into account the European Court of Human Rights (ECHR) rulings against Malta" (National Audit Office, 2021, p.29), provisions were set in place to mitigate against automatic detention and ensure greater protection of the rights of detainees. The detention policy was further amended such that arrivals are now placed in initial reception centres until their asylum application is processed. The 'Reception of Asylum Seekers Regulations'¹⁴ lay down the criteria justifying detention,¹⁵ and stipulate that unless their application has been rejected and subject to a repatriation, asylum seekers shall not be held in detention in excess of six months.¹⁶

Despite the developments sustained in the decriminalisation and the reception of asylum seekers, it remains the case that "hundreds of asylum-seekers are currently illegally detained in Malta's squalid detention centres" (Falzon, 2020, para. 1). The lengthy period of time pending the asylum decision and the conditions at these centres have been repeatedly condemned by various international bodies and

¹¹ Which stipulates that: "Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in the territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

¹² Irregular entry was decriminalised on 8th November 2002 as per Act No.XXIII of 2002 – Immigration (Amendment) Act.

¹³ Article 4 of the Optional Protocol to the Convention against Torture defines deprivation of liberty as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."

¹⁴ Subsidiary Legislation 420.06 and Subsidiary Legislation 217.12.

¹⁵ Such criteria include: a) in order to determine or verify his/her identity or nationality; b) in order to determine elements on which the application is based which could not be obtained in the absence of detention; c) in order to decide on the applicant's right to enter Maltese territory in terms of the immigration act; d) when the applicant is subject to return procedure and is delaying or frustrating the enforcement of the return decision; e) for reasons of national security or public order; and f) when an asylum seeker is to be returned to another Member State to determine his/her asylum application as there is a risk of absconding (National Audit Office, 2021).

¹⁶ With a possible added 12-months extension in case of lack of cooperation by the applicant or delays in the procurement of relevant documentation from the country of origin.

humanitarian NGOs for their arbitrary deprivation of liberty, inadequacy, overcrowding, staff shortages, and general inhumane conditions. As a result, as also acknowledged by the Auditor General, due to the lack of adequate standards, the detention experience and process of asylum is “being rendered more taxing” and “severely hampered” (National Audit Office, 2021, p.45).

This is the fate of undocumented migrants who reach Malta irregularly by sea until their asylum application is processed and decided. Those who are granted refugee and subsidiary protection mostly arrive from conflict and war-torn countries such as Eritrea, Sudan, Syria and Libya, while applications from Bangladesh, Morocco, Ghana, Egypt, Ivory Coast and Nigeria are generally considered as manifestly unfounded due to these being considered as safe countries of origin.¹⁷

The situation of those migrants who come to Malta seeking asylum through formal travel channels but making use of fraudulent documentation is similar to those crossing by boat, yet with fundamentally different legal implications. This, despite the fact that international protection is not only sought by those arriving irregularly by sea, but also by those incoming through other ir/regular pathways, including the use of fraudulent documentation. Indeed, out of 6,067 applications for international protection between 2018 and 2019, 3,231 were of persons arriving by boat (National Audit Office, 2021) with the others arriving through other channels.

Those caught attempting to enter or depart from the country through the border crossing points of the Malta International Airport or any other official crossing point are arraigned with criminal proceedings instituted in front of the Magistrates Court (acting as a Court of Criminal Judicature). The typical charges brought against the violators are generally based on a number of provisions in the laws of Malta, mainly Articles 183, 184 and 188 of the Criminal Code (Chapter 9 of the Laws of Malta), Article 32(1) (d) (f) of the Immigration Act (Chapter 217 of the Laws of Malta) and Articles 3-7 of the Passports Ordinance (Chapter 61 of the Laws of Malta), which proscribe the possession and use of fraudulent documentation and establish the penalty imposed for such violations. The punitive sanctions under these offences, range from a term of 13 months to 4 years imprisonment or to a fine under the Criminal Code; a term of imprisonment of less than 6 months or of more than 6 months but not exceeding two years, and/or a fine up to 11,646.87 euros under the Immigration Act, and a maximum period of 2 years imprisonment under the Passports Ordinance. These existent legal provisions regarding the possession and/or fraudulent use of documents invariably constitute a criminal offence, “with no exception” for the consideration of the circumstantial situation of asylum seekers and refugees “in law, practice or jurisprudence” (Camilleri, 2021, para.12).

Nevertheless, Maltese law does not preclude such custodial sanctions from being handed in their suspended form through the provisions of the suspended sentence (with or without supervision) under Article 28 of the Criminal Code (Chapter 9 of the Laws of Malta), as long as the eligibility criteria are met. Nor is there any legal impediment to the allocation of community-based sanctions in lieu of imprisonment, which are provided for under the Probation Act (Chapter 446 of the Laws of Malta) for offences which are punishable with imprisonment for a term not exceeding seven years and in exceptional cases for offences carrying up to ten years imprisonment.

The implications of these punitive elements go beyond the term of sanction handed out, since a conviction of imprisonment enlisted in the person’s criminal record, may adversely impact a person’s integration prospects in the long-term through affecting ensuing requests for work and residence permits or access to benefits and services in Malta and other EU countries. It may also significantly affect one’s prospects of asylum if attached with a removal or deportation order.

The Convention relating to the Status of Refugees (1951) under Article 31 acknowledges the reality, “difficulty, and at times the impossibility, of refugees...to flee war and persecution in a legal manner, recognising that the process of seeking asylum may oblige refugees to resort to irregular means of entry, including a breach of immigration rules” (Aidit Foundation, 2018, p.62). Yet, despite this recognition,

¹⁷ In 2021, 14 (1%) of applications were granted refugee status, 145 (6%) were granted subsidiary protection, 21 (1%) were granted temporary humanitarian protection, 491 (20%) were rejected, while a total of 1,729 cases (72%) were considered closed cases due to administrative process, Dublin closure, implicitly or explicitly withdrawn applications or inadmissible applications (UNHCR, 2021).

criminal prosecutions of those seeking asylum following entry into the country through official channels but making use of fraudulent travel documents or attempted departure from Malta to seek resettlement in another, often EU country, continue to surge the criminal court and penal system. Indeed, as will be explored further below, a sizable segment of the Maltese prison population comprises of third-country nationals who have been charged with the possession/use of fraudulent travel documentation. Apart from being sentenced to a term of imprisonment as a result of criminal conviction, they may also be subjected to the additional ‘punishment’ of removal and deportation after serving their sentence. This despite the fact that, existing legal provisions do not preclude the Criminal Courts from issuing an alternative community-based sanction in lieu of imprisonment.

4. Crimmigration: A case of institutionalised racism?

A longitudinal analysis of cases involving the use of fake/forged/stolen or imposture use of genuine travel documents for attempted entry into or departure from Malta, shows that the number of persons charged over these violations under the Immigration Act and other criminal legal provisions have increased drastically, though not consistently over recent years. As per Figure 1, these cases have risen from 92 in 2017, 73 in 2018, 229 in 2019, 486 in 2020 and 457 in 2021.

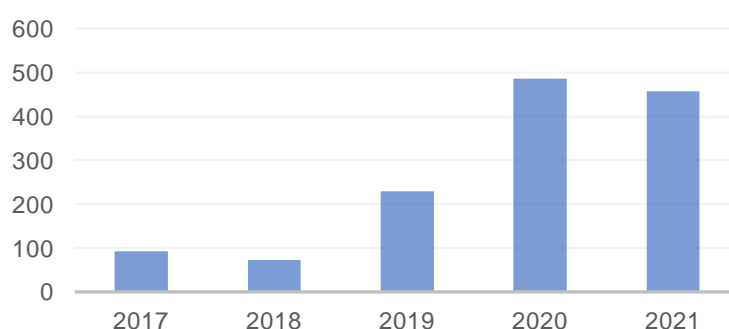


Figure 1. Number of prosecuted cases

Over this same period, the large majority of these cases (a total of 882 cases constituting 66% of all cases) involved the use of counterfeit, followed by imposture by impersonification (385 cases constituting 28.8% of all cases) and lastly the use of forged travel documents (70 cases constituting 5.2% of all cases). No cases involved the use of stolen documents (Figure 2).

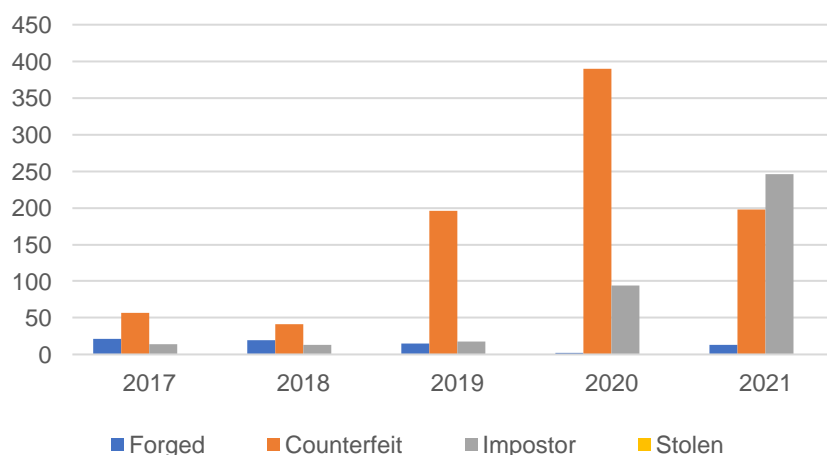


Figure 2. Fraudulent travel documentation by type

The nationality of the large majority of those detected and prosecuted with fraudulent travel documentation were from Sudan, followed by Eritrea, Ivory Coast, Mali and Albania (Figure 3). During the same time-period, 99 cases of stowaway interceptions were also recorded, with most coming from Sudan, followed by Morocco and Libya (Figure 4).

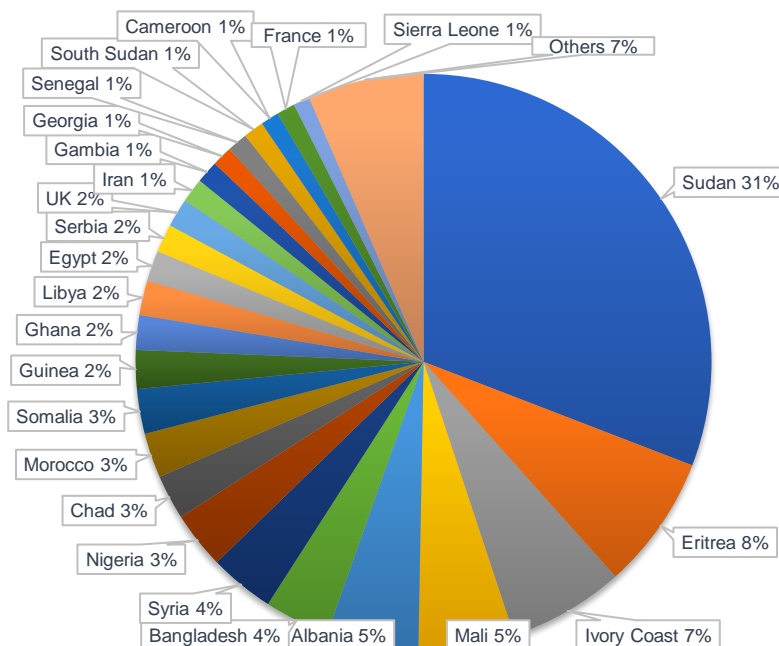


Figure 3. Fraudulent travel documentation by nationality¹⁸

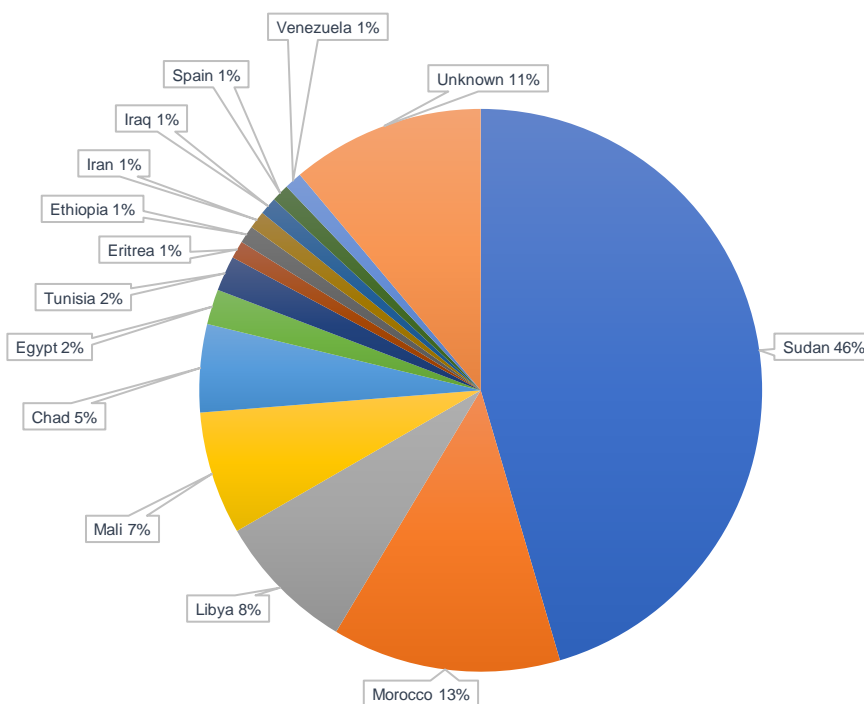


Figure 4. Stowaways by nationality

¹⁸ Others: Afghanistan, Macedonia, Burkina Faso, Italy, Nepal, Niger, Pakistan, Tunisia, Turkey, Algeria, Ethiopia, Iraq, Togo, Yemen, Central Africa Rep., Uzbekistan.

In line with this increase in the number of prosecutions, from 2015 to 2022, the total number of people who were sentenced for a term of imprisonment due to immigration offenses relating to fraudulent travel documentation stood at 827. These cases have drastically contributed to the prison population growth over the last number of years, from a total of 230 inmates in 1999 to a total of 821 in 2021 (Institute for Crime & Justice Policy Research, 2021). Indeed, Malta's correctional facility between 2019 and 2020 experienced one of the highest increases in the incarceration rate amongst European countries and ranked fifth in terms of the highest proportion of foreign inmates (Aebi & Tiago, 2021). Between 2020 and 2021, inmates charged with fraudulent travel documentation made up the highest category of those sentenced to an imprisonment sentence at the Correctional Services Agency and the second highest category in 2019 and 2022.

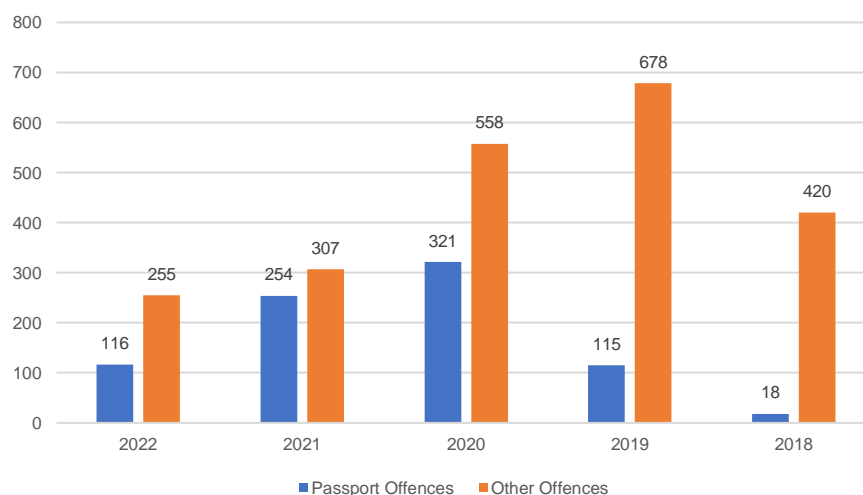


Figure 5. Proportion of fraudulent travel documentation versus all other criminal offences

Figure 5 presents the distribution of fraudulent travel documentation custodial sentences issued during the respective years as compared to all other criminal offences, including amongst others; arson, theft and aggravated theft, assault, conversion of fines and breaches of probation and supervision orders, domestic violence, fraud and misappropriation, drug possession and trafficking, homicide, grievous bodily harm, traffic and sexual offences.

A distribution of the length of the custodial sanctions meted out (as per Figure 6) between 2018 and 2022 shows that the large majority of these cases (60%) were handed an imprisonment sentence of 6 months followed by 12 months and 9 months at 7% each. 4.9% of those who were handed an imprisonment sentence during the same period were also subjected to a deportation order on termination of their sentence. In addition to the term of imprisonment, 1.8% were also subjected to a financial penalty. Only 1.4% of those held at the correctional facility awaiting trial were granted bail during criminal proceedings. No recorded collated data exists on the number of suspended sentences handed by the Courts of Justice during this time period for fraudulent travel documentation offences, however Correctional Services Agency data indicates that 0.9% of those who entered the penal facility whilst awaiting trial on these charges or appealed a verdict of imprisonment, were given a suspended sentence on the adjudication of the case. No cases whatsoever were handed a community-based sanction with supervision, provided for under the Probation Act as an alternative-to-imprisonment for these type of offences during the same period.

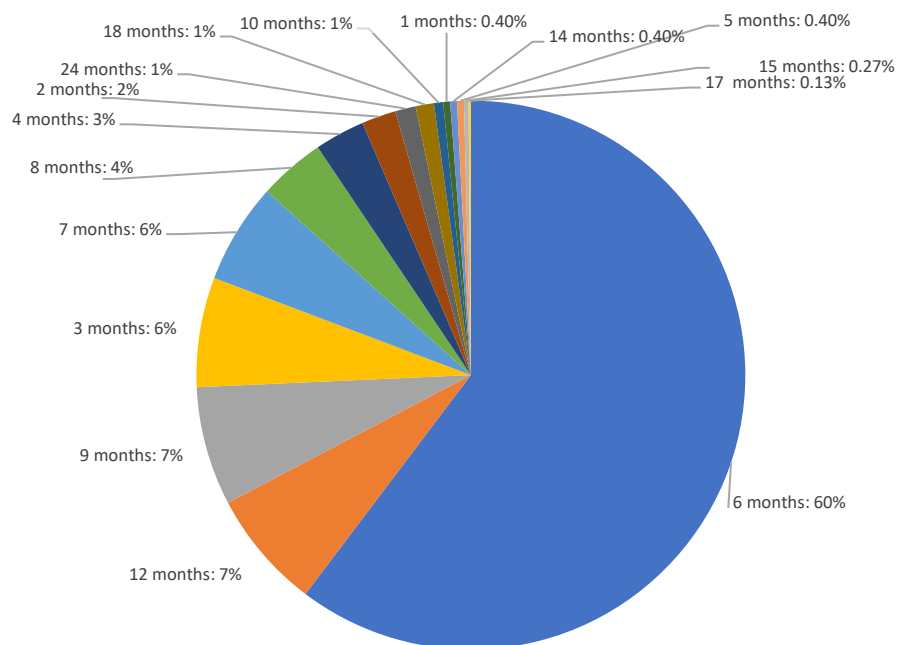


Figure 6. Length of custodial sanction

The application of carceral penalties by the Criminal Courts for the use of fraudulent travel documentation has become progressively entrenched over the years. Wherein the initial period of the occurrence of these types of offences (2016-2018), the majority of those charged were handed a suspended sentence, with only some receiving a carceral penalty (Aditus Foundation, 2018), in more recent years, for the same offence, the majority received a sentence of imprisonment. The imprisonment sentence in its suspended form is usually limited to minors and women who bear parental responsibilities, whereas male adults, who constitute the largest segment of those accused of fraudulent travel documentation are generally granted an effective sentence of imprisonment.

Existing legal provisions provide a lot of discretionary powers to the judiciary presiding over the adjudication of fraudulent travel documentation cases, such that the penalty meted out for equivalent charges may range significantly from the maximum and minimum terms established by law. As observed from the analysis of custodial sanctions meted out, the length and terms of these sanctions also vary widely, from a minimum term of 1 month imprisonment to a maximum term of 2 years imprisonment. Similarly, the terms of the suspended sentence also vary widely, from a minimum term of 6 months imprisonment suspended for 18 months, to a maximum term of 2 years imprisonment suspended for a period of 4 years. The average term of a sanction of imprisonment between 2018 and 2022 stood at roughly 7 months.

The standard sentencing practice in recent jurisprudence has indeed developed to one of 6 months imprisonment. Whilst underscoring the need to consider and decide each case on its own merit, in ‘The Police vs Hanok Amanuel, Hanif Rahman Nayan and Monsiur Bepari’, the Court of Criminal Appeal (2022) presided by Judge Aaron Bugeja reiterated that such cases;

come as rule, sentenced to the penalty of six months effective imprisonment. This has over time developed as a form of unofficial sentencing policy, but which turns out to be consistent. This Court... does not see why this line of sentencing should be disturbed (Court of Criminal Appeal, 2022, para. 39).

The standard application of custodial penalties by the Criminal Courts in lieu of the application of a suspended sentence or a community-based sanction points to the adoption of a more punitive approach in the resolution of these cases. Indeed, in the referred judgement, the Court itself emphasised the use of imprisonment as a form of deterrence and retribution, stating; “it is evident that in these cases, the

Courts of Criminal Justice in Malta consider the retributive and preventive aspects of the punishment as acquiring greater importance than in cases of other crimes” (Court of Criminal Appeal, 2022, para.36).

Indeed, the severity of punishment meted out for offences of possession/use of fraudulent travel documentation are comparable to sanctions handed out for charges of predatory and violent crime; such as aggravated theft, bodily harm, wilful damage and white-collar crime, despite the fact that such type of offenses are neither predatory nor violent in nature.

5. Crimmigration: Costly, unjust and ineffective

The study aimed to shed more light on the overrepresentation of migrants, including asylum seekers within the Maltese penal system by examining the criminalisation of migration through the processing and sentencing of immigration law violations.

The analysis presents that processing migration violators through the criminal justice system as opposed to other administrative asylum processes, leads to more severe outcomes for those asylum seekers who attempt to enter or depart from Malta through formal travel channels using fraudulent documentation, as compared to undocumented migrants who arrive irregularly by sea. This is mainly due to the overreliance of punitive imprisonment sanctions by the Criminal Courts.

This state-of-affairs poses wide-ranging implications for the impartial and efficient administration of justice but also for the construction and reproduction of migrants as criminals. This situation carries strong fiscal and moral costs which have long-term effects on both the macro-structural, and the micro-individual level by impacting on the wellbeing, integration and human rights protections of migrants, and on social solidarity and cohesion on the community level. As will be explored further below, the state of affairs also infers an institutionalised form of racism, where retributive sanctions are utilised as a form and spectacle of symbolic politics.

5.1. Moral and social costs

The deployment of criminal justice measures to address the immigration phenomenon consolidates socio-economic exclusion in violation of fundamental rights. The moral and social impact is devastating as it extends beyond the individuals who enter the penal system. These consequences ripple long-lasting and collateral damage to significant others and the general community, for both the country of origin and the country of destination. Still, the cost is disproportionately borne by asylum seekers and individuals of colour, the majority of whom are poor and black.

A number of those imprisoned carry parental and other caring responsibilities. The number of children separated from their parentages due to an imprisoned father or imprisoned mother (based on 1.3 parenting rate) within the Maltese correctional facility stood respectively at 991.9 and 75.4 (Children of Prisoners Europe, 2021). In such cases, especially when the parent has sole responsibility and no other family ties in the country, dependents are forced to enter the child welfare system, in violation of the UN Convention on the Rights of the Child (1989), which under Article 9 specifies that children should not be separated from their parents against their will unless it is in their best interests.

Apart from its wide-spread impact beyond the incarcerated, imprisonment traverses various aspects of the person's life, encompassing: the financial and material including income, employment and housing; health, both physical and psychological, as well as the social dimension, by impacting on relations, participation and inclusion. These consequences sustain reincarceration long after the individual is released from custody, as it significantly impacts one's prospects of integration. Indeed, asylum seekers leaving detention and imprisonment;

still perceived Malta as a prison after being released. It was thus not only actual walls and fences that produced the prison spatiality, but it also emerged through various forms of (bureaucratic) control, through infrastructural impediments of social participation and through granting unequal access to rights and social services (Otto et al., 2019, p.149).

The carceral environment adds on to the uncertainty of the asylum status, since it hinders communication and contact with the outside world, isolating the individual and furthering them away

from community integration. Moreover, by placing asylum seekers under the same roof with persons who have a criminal record, the prison environment waxes a criminogenic influence on the incarcerated. As recalled by Sudanese community leader Abbass Mussa Jameah, within the prison setting, it is more difficult to;

know anything about what's happening. In the detention centre, you know you have six months. In prison, you don't know what's going on. Maybe there is trauma and fear, because some people, especially younger ones, would be finding themselves with criminal people in prison for the first time in their lives (Delia, 2021, para. 6).

The incarceration process thus significantly impinges on all dimensions of well-being as it considerably encroaches on the economic, social and cultural life of the individual, and "their sense of agency, humanity and security" (Côté-Boucher, 2014, p.75). It also hinders and delays one's integration prospects, thus impinging on social cohesion and community well-being.

5.2. Fiscal Costs

The number of people who were sentenced for a term of imprisonment for immigration offenses grew significantly over the last number of years, leading to substantial administrative and financial burden, as well as overcrowding of the carceral facility.

Apart from its moral implications, the incarceration of hundreds of individuals comes at exorbitant fiscal costs by a system that overburdens the carceral facility, yet fails to make the country safer and more secure. The total expenditure of the Correctional Services Agency has experienced an exponential growth in the last number of years, rising from a total of 9.2 million in 2010 to 24 million euros annually in 2020, translating to the cost of 100 euros for each individual inmate on a daily basis (Azzopardi, 2021b). This, in addition to the annual expenditure of detention, which stood at around 5.5 million euros in 2019, translating to 58 euros per day per detainee (National Audit Office, 2021). Persons, who are made dependent on the state but who could effectively be financially autonomous and contributing members of society.

Due to the significant share of incarcerated non-citizens, a number of European jurisdictions have adopted "innovative correctional arrangements" such as the establishment of 'foreign nationals-only' facilities and specific wings for non-nationals (Brandariz, 2021, p.105). Foreign nationals within the Maltese penal system are not-segregated but housed within the main correctional facility, which has come under scrutiny due to poor conditions, inadequate divisions and "multiple allegations of abusive treatment of prison inmates" (US Department of State, 2021, p.2). Mainly due to an increase in the number of incarcerations related to fraudulent travel documentation, overcrowding has also become an issue of concern in recent years compelling the Maltese government to examine the expansion of current facilities (Azzopardi, 2021a, para 14). Yet, evidence suggests that overpopulation can only be effectively and lastingly addressed through "the reform of policies and laws and the use of alternatives to imprisonment" (Penal Reform International & Thailand Institute of Justice, 2018, p.9).

As observed from the analysis, those found guilty of the possession and use of fraudulent documentation are rarely sanctioned to a community-based order in lieu of imprisonment. Unless the case is decided on its first sitting in court, they are also generally denied bail and subjected to preventive arrest until the case is adjudicated. While there is nothing in the Maltese law which precludes the court from granting bail or community-based sanctions on the basis of nationality or migration status, other criteria may affect the decision of the court. This may be based on the lack of fixed address, perceptions of the migrant's risk of flight, as well as automatic presumption of risk to society regardless of the seriousness of the offence for which they are being charged. Non-citizens are indeed less likely to benefit from community-based sanctions for any other type of offence committed (Hammond, 2017), which factor may partially explain the overrepresentation of foreigners within the Maltese carceral system. As stated by Formosa et al., (2012) the fact that "foreigners are rarely given community-based alternatives might explain why a disproportionate number of 'foreigners' end up in prison" (p.103). This is in clear violation of Principle 6 of the 'Recommendation on the European Rules on community sanctions and measures' which decrees that "there shall be no discrimination in the imposition and implementation of

community sanctions and measures” on any grounds, as well as Principle 7, which emphasises access to community sanctions to foreign national suspects and offenders (Council of Europe, 2017, p.6).

Other discriminatory practices which asylum seekers and those entering irregularly may be subjected to, go beyond the discretionary powers of the courts by being specifically entrenched in law. This is for example the case with regards to the eligibility criteria for parole which under Art 10 (1.3) of the Restorative Justice Act (Chapter 516 of the Laws of Malta) specifies that; detainees under the provisions of the Immigration Act; prisoners subject to extradition proceedings and third-country nationals who are to be deported at the end of their sentence shall not be eligible for parole. This proviso thus indiscriminately excludes migrants, including asylum seekers from benefiting from early release from imprisonment on parole.¹⁹

Another justification for the often-blanket exclusion from community-based alternatives to foreigners, resides in the fact that those serving an imprisonment sentence may be subjected to a removal/deportation order following their release from imprisonment. In reality, this order is rarely enforced, for a significant proportion of those who apply for asylum become beneficiaries of a temporary or humanitarian protection order. Due to diplomatic and bureaucratic challenges to effect return (National Audit Office, 2021) as well as due to humanitarian grounds, removal orders are also rarely executed in the case of those whose refugee application has been rejected, underlining the futility of meting out deportation sanctions and the lack of differentiation between asylum seekers and non-asylum violators of immigration law.

6. Punishment: Tough on crime – tough on immigration

In recent years, the Maltese criminal justice system has tentatively shifted its punitive and retributive approach to one more focused on rehabilitation and reintegration, in the recognition that those who committed offences deserved a second chance to reform and redeem themselves. This evolution is reflected in various legal provisions, including: the expansion of community-based sanctions as per ‘The Probation Act’ (Chapter 446 of the Laws of Malta) which in 2003 was amended to provide for community service orders and combination orders in addition to its existing provisions of probation orders and conditional discharges; the enactment of other legislative frameworks such as ‘The Drug Dependence (Treatment not Imprisonment) Act’ (Chapter 537 of the Laws of Malta) in 2004 which amongst others, provides for more leniency for the possession of drugs for personal use, rehabilitation from substance abuse and the institution of Drug Courts to facilitate drug rehabilitation and the ‘Restorative Justice Act’ (Chapter 217 of the Laws of Malta) which provides for victim-offender mediation, remission and parole. Another recent initiative, as proposed in the ‘Electronic Monitoring Bill’ (Motion No.68:1st Reading 26 September 2022) includes the implementation of electronic monitoring for those subjected to a short imprisonment sentence in lieu of incarceration. Throughout recent years, various rehabilitative programmes and services, both on a community and residential basis were also set in place and consolidated for juvenile delinquents and adult offenders focussing on substance abuse and other forms of addictive behaviour, mental health issues and challenging behaviour. These developments “to divert criminal career development” (Formosa Pace, 2017, p.47) were primary led in acknowledgement that in removing the individual from society, imprisonment may have a criminogenic, rather than a rehabilitative and reformatory impact.

Yet, when it comes to immigration offences, the criminal court system tends to over-rely on punitive sanctions inscribed on justifications of deterrence, retribution and incapacitation. Crimmigration indeed challenges liberal, benign and human-rights based models of penalty (Aliverti, 2015).

This state of affairs highlights the contradictory, incongruent and binary processes of the Maltese criminal justice system. On the one hand, promulgating rehabilitative and restorative approaches for

¹⁹ Other exclusionary criteria for parole in addition to prisoners sentenced to a term of imprisonment of less than one year, include prisoners who are being detained for subverting or attempting to subvert the Government of Malta, or conspiring against the State, prisoners sentenced for acts of terrorism, funding terrorism, and ancillary offences and prisoners sentenced to life imprisonment.

Maltese citizens who breach the law, whilst becoming increasingly characterised by overcriminalisation and hypercarceration for asylum seekers who, for reasons of escape from persecution and violence infringe migration law. This situation, which speaks a lot of racial disparities and the impartial application of the law, “is ultimately leading to the division of the criminal justice system into two different penal subsystems, separated by membership criteria” based on citizenship (Brandariz, 2021, p.102). As a result, when viewed from this perspective, as in the case of other “penal power arrangements of the European Union” (Brandariz, 2021, p.102), the Maltese criminal justice system is “revealed as much less tolerant, welfarist and humanitarian than is generally assumed. The inclusive traits of these systems are largely restricted to national populations, whereas non-citizens are managed in a much more punitive and exclusive way” (Brandariz, 2021, p.102). This disparity in pardoning and sentencing practices by the Criminal Courts between Maltese and foreigners, was indeed noted by Formosa et al. to decrease the “longer the foreigner stays on the islands” (2012, p.109). Moreover, this “differential and preferential treatment reflected the status outside prison” (Formosa et al., 2012, p.103).

This state of affairs is thus giving way to the “gradual consolidation of a dual” (Brandariz, 2021, p.107) domestic criminal justice system which serves the discriminatory role of offering rehabilitation and integration to the offenders ‘within’, whilst imposing a punitive deterrent to ‘the other’ - “to put it bluntly, today being tough on crime means above all being tough on immigration and vice versa” (Brandariz, 2021, p.106). More specifically, being tough on crime means being tough on certain forms of immigration, personified by asylum seekers and vulnerable economic migrants. At the same time that deterrence and retribution is applied for those entering irregularly, Malta adopted the golden passport scheme for the very rich and wealthy, irrespective of their dubious background; a case where “the commercialisation of citizenship” (Parker, 2016) - citizenship by commodity and investment (Vella, 2020) - overrides citizenship as a human right. The granting of citizenship hence bequeaths “a state-sanctioned form of discrimination” (Pisani, 2012, p.189), where some are excluded while others “given priority and fast-tracked” (Parker 2016, p.206). Additionally, as the removal of internal borders within the EU has led to more restrictive external borders (Pisani, 2012), migration flows have become increasingly defined through the “the citizen/noncitizen dichotomy”; those who belong and those who don’t (Pisani & Grech, 2015, p.434). Thus, within this context, “moral orders currently seem to be less based on crime and punishment issues than on (renovated) racial and xenophobic boundaries and stratifications” (Brandariz, 2021, p.106).

By virtue of such unjust laws and practices, complementing the mandatory detention policy for asylum seekers reaching Malta by sea, the Criminal Court sentencing practices apply penal incarceration as a deterrent only to certain forms of migration. Through the adoption of “detention as a deterrent [and] the use of mandatory incarceration, Malta situates itself as a space of patrol and control of those they believe do not belong” (Fonseca, 2020, para.1). Apart from the fact that the ‘tough on crime’ approach founded on the belief that higher rates of imprisonment and longer sentences “can reduce crime in the short run but cause off-setting harm in the long run” (Roodman, 2017, p.1), such practice “completely misses the point that people migrate to survive, often fleeing war and other forms of violence” (Akkerman, 2021, p.2). It also totally overlooks the structural reasons that are impelling people - whether by pushing and pulling them - to leave their country of origin. Indeed, “beyond its effectiveness and the ethics of incarcerating people to dissuade others from undertaking journeys that are their legal rights to pursue, international law expressly prohibits using detention as a deterrent” (Mainwaring & Silverman, 2017, p.7). Moreover, this deterrence and retributive model may inadvertently or not, lead to diverting irregular entry to more dangerous and illegal routes augmenting the humanitarian crisis of migration. On this basis, one questions the validity of the deterrence, incapacitation and retribution thesis. Deterrence, incapacitation and retribution for what? For trying to save one’s life?

In view of the above, the current domestic practice lacks and ultimately undermines fairness on all its various dimensions and meaning, - “that the penalty imposed should be proportionate to the crime committed... whether similarly situated individuals should receive similar punishments for the crime for which they have been convicted [and whether] the criminal justice system itself is ‘fair’” (Vázquez, 2017, p.1130).

As stated above, the Convention on the Rights of Refugees and the 1967 protocol decrees under Article 31(1) that entry into a country irregularly for asylum purposes should not be criminalised. Yet, infringement of immigration law through the use of fraudulent travel documentation in Malta invariably constitutes a criminal offence, with no exception for refugees and asylum seekers. This practice thus discriminates amongst different strata of asylum seekers, based on their mode of arrival and entry into Malta's territory, underscoring "the inconsistency of an approach that saves some refugees from punishment due to irregular entry, whilst sending other refugees to prison for a period between 6 months to two years" (Camilleri, 2021, para.9). In view of this, the inclusion of an exception for asylum seekers using fraudulent documentation to enter Malta should constitute a significant and immediately called-for reform of the current Immigration Act and other regulatory migration frameworks, whilst calling for due measures to ensure equality of access to non-custodial sentences. As echoed by Camilleri (2021, para.14), "providing safe and legal ways to reach a place of safety is the most effective way to prevent refugees from resorting to unsafe and irregular means of travel to access Europe, thereby saving lives."

Until the emergence of the refugee crisis, immigration law and the process of admission and removal was primarily an administrative process based on managing the movement of noncitizens into and out of the country, and not on punishment. Through these processes, the Maltese scenario is increasingly being characterised by crimmigration, whereby through mandatory detention, those entering irregularly are being cast as criminals within the immigration system, and the immigration system is increasing becoming similar to the criminal justice system, leading to "a symbiotic relationship between immigration and criminal law" (Vázquez, 2017, p.1118).

Crimmigration is attributed to have led to both the integration of immigration and criminal law (Legomsky, 2007; Sklansky, 2012; Stumpf, 2006, 2020), resulting in the "criminalisation' of immigration law and an 'immigrationisation' of criminal law" (Brandariz, 2021, p.101), but also to the "permanent differentiation" between the two (Brandariz, 2021, p.102). Indeed, in reference to the consolidation of both migration incarceration and migration detention, as in other contexts, it may be the case that in Malta "no substitution or transcarceration effect is underway" such that whilst being linked through crimmigration, "prison systems and immigration enforcement systems are evolving in disparate ways" (Brandariz, 2021, p.106). Yet, both "converge at points to create a new system of social control" (Vázquez, 2017, p.1118) widening and reinforcing crimmigration's punitive and retributive reach.

7. Crimmigration discourse: Criminalising migrants

Through crimmigration processes, dominant and hegemonic discourses on migration and crime which portray criminality as intrinsically linked to immigration are consolidated and reproduced, nurturing far-right discourse and reactionary populist rhetoric. The criminalisation of migrants, including "all the discourses, facts and practices made by the police, judicial authorities, but also local governments, media, and a part of the population that hold immigrants/aliens responsible for a large share of criminal offences" (Palidda, 2011, p.23), occurs both through overt direct ways, but also through subtler indirect forms. For example, apart from "being inaccurate" (Brouwer et al., 2017, p.102), the prolific use of the term 'illegal' for asylum seekers "stresses criminality" and "defines immigrants as criminals" (Lakoff & Ferguson, 2006, p.1). A main consequence of this labelling and stigmatisation is the fuelling of "social anxieties and collective concerns, ultimately transforming public punitiveness perceptions and demands" (Brandariz, 2021, p.107).

Indeed, the legislative framework underlying crimmigration does not exist in a "vacuum, but is the result of inter-relational discursive processes" (Brouwer et al., 2017, p.101), which construe migrants as dangerous to the community and to social stability and social order.

The mediatization of migration (Maneri, 2011) plays a significant role in crimmigration, creating media panic through discourses of national security, which in turn generate and create pressure for stricter border regulation and control. As a result, through the "social representations of human mobility and the narratives designed to draw political gains from migration issues" (Brandariz, 2021, p.106) noncitizens, particularly asylum seekers arriving to Malta irregularly, are increasingly viewed with growing scepticism. Rather than perceived as coming in search of a better life, and as offering

contribution to Maltese society, they are increasingly depicted as illegals coming to commit crimes and endanger the safety of the community. This migration paradigm which has become prevalent in various “liberal states, including...Malta, characterizes unmanaged migration flows and the presence of irregular migrants as a problematic anomaly rather than an increasingly normal feature of society encouraged by state policies and labour market needs” (Doty & Wheatley, 2013, p.429).

This in turn justifies and legitimises increased scrutiny, control and punitiveness, characteristic of a carceral state (Gottschalk, 2013), which uses ‘detention-as-spectacle’ to “project an image of sovereign power, control, and order over non-citizens” (Mainwaring & Silverman, 2017, p.15). By acting as a spectacle for different audiences, detention

- (i) signals the vulnerability of irregular migrants living in the state to their potential detainability and deportability; (ii) projects out from state borders to would-be migrants, to discourage them from attempting to reach a particular border; (iii) works to assure the local population that their government holds the monopoly of power over territorial borders and mobility; and (iv) demonstrates to other states and international organizations that the sovereign is in control of its borders (Mainwaring & Silverman, 2017, p.15).

As the migrant detention policy represents a central feature of “Malta’s symbolic politics, despite its financial and human costs and its failure to deter arrivals or lead to deportation” (Mainwaring, 2018, para. 6), similarly, the criminalisation and incarceration of migrants for immigration law violation constitutes an important instrument for consolidating Malta’s ‘get-tough’ spectacle, in spite of its great fiscal and moral costs, its unfairness, and vicious cycle of exclusion and demonisation. Indeed, as cited by Mainwaring and Silverman (2017, p.15), the Maltese scenario can be succinctly explained through Mountz et al.’s tautology (2013, p.527): ‘migrants might be criminals, necessitating detention; migrants must be criminals, because they are detained’” (Mainwaring & Silverman, 2017, p.15).

In the context of this vicious cycle and concatenation of discourse/practices, emphasised by the small size of the island and the number of unsolicited arrivals, Malta managed to weave a crisis chronicle whilst taking fiscal advantage of such calamity (Fonseca, 2020, para.7). Through such proceedings, “failures are interpreted as opportunities for better management. True reform is stymied” (Doty & Wheatley, 2013, p.429).

7.1. Crimmigration: Fields for further study

Since its relatively recent birth, crimmigration has become quickly embedded in legislative frameworks, discourse and practices. Yet, despite its rapid development, it “remains in its infancy” (Zubata, 2021, para. 19), as it is projected to increasingly shape and integrate migration and criminal processes in the coming years through its symbiotic binary fusion. This study, being specifically based on the adjudication of cases involving violations of immigration law through the use of fraudulent travel documentation in Malta, offers a limited and partial view of crimmigration processes.

Further research encompassing the wider dimensions and ramifications of crimmigration in different areas, such as ethnic profiling, detention, pushbacks and deportations is warranted for presenting a more holistic and comprehensive analysis of the crimmigration phenomenon within the local context. Consideration also needs to be given to the impact of crimmigration on other areas of civil, political, socio-economic and cultural life and its impact on access to fundamental rights and services.

Further research needs to locate crimmigration within the wider context of Malta’s EU and international human rights frameworks, obligations and commitments. Comparative analysis of the nature and extent of crimmigration in different contexts and jurisdictions would enhance understanding of Malta’s role and contribution to the wider globalised trend towards transnational crimmigration (Bowling & Westenra, 2020).

Further analysis of the ‘imccarceration’ (Bowling, 2013) phenomenon is warranted in terms of the relationship and impact on the wider ‘transcarceration’ trends (Brandariz, 2021) of migrants across different forms of regulatory institutions; detention centres, correctional facilities, mental asylums, half-way houses and other forms of ‘total’ and ‘semi-total’ institutions across and beyond national governance.

By expanding its “gaze on the penal power” (Brandariz, 2021, p.107) and its influence beyond the physical dimension of detention and imprisonment, crimmigration demands analysis of the public discourses and narratives proffered by political elites and competent institutions, but also the media and civil society. Crimmigration and ‘bordered penalty’ (Franko, 2020, pp.81-82) also demands scrutiny of its differential impact on diverse non-citizen categories to explore racial, ageist and gendered stratifications, and how these interact with other structural discriminants such as religion, culture and social class.

Such investigation could shed further light on the racial stratifications underpinning border enforcement policies and how crimmigration targets differently those who do or “do not question Maltese identity” (Otto et al., 2019, p.149), whilst also examining further the nature and extent of judicial discretionary powers. Moreover, “the current focus on punishment, retribution and disparagement must be critically scrutinised” (NGO Coalition, 2021, para.6) and assessed in terms of diversionary, rehabilitative and reintegrative measures. Indeed, a better understanding of the crimmigration phenomenon and how to prevent and address its moral and fiscal costs on both the micro and macro-level could only be achieved through further questioning its ontological, epistemological and primarily, its axiological nature.

Questioning and investigating crimmigration through theoretical and pragmatic analysis is vital and should inform any evidence-based “future and comprehensive expanded national strategy that delves into issues affecting international protection seekers which so far have not been discussed thoroughly within the strategies” (National Audit Office, 2021, p.32).

7.2. Crimmigration: In whose interest?

The tough-on-immigration crime policy projected by existing legal frameworks and Criminal Justice practices for those who have attempted to enter and leave Malta irregularly using fraudulent documentation, should be evaluated within the broader processes of crimmigration.

Whilst the issues emerging from the study are just a tip of the iceberg of the crimmigration phenomenon, they point to massive moral and financial implications for both the individual and society. The current system in place “from detention’s inherent and everyday violence to its financial costs and its failure to meet its own policy goals of deterrence and deportation” (Mainwaring & Silverman, 2017, p.16) is beneficial neither to migrants, the host community, nor to the nature of justice. Its resolution thus calls for a more efficient, effective, and fair administration of justice, which reduces the moral and financial costs, while ensuring greater equity and fairness.

The findings point to overt forms of institutionalised racism, empowered by law and facilitated through wide judicial discretion, which speak a lot of the impartiality of the Criminal Justice System. Legislative, executive and judicial power and crimmigration shape and consolidate one another as through this institutionalised form of racism, “‘crimmigration’ restructures the criminal justice system to incorporate immigration status as a method of managing the functioning and structure of the organizations within it” (Vázquez, 2017, p.1097), shaping law enforcement, adjudication and penalty.

Crimmigration defines asylum seekers’ entire migration experience as through ‘imprisonment’ (Bowling, 2013), the pursuit for a better future transforms into an incessant “interplay between [the] visibility and invisibility” (Mainwaring & Silverman, 2017, p.34) of a ‘carceral archipelago’ (Foucault, 1977), which extends beyond the geographical and time-bound confines of the bordered penalty of detention and incarceration.

Crimmigration indeed shapes asylum seekers themselves as through “othering of the refuge-seeking individual” (Otto et al., 2019, p.149) through “tagging, defining, identifying, segregating, describing, emphasizing, making conscious and self-conscious; it becomes a way of stimulating, suggesting, emphasizing, and evoking the very traits that are complained of” (Tannenbaum, 1938, p.19); illegality. “Illegality, which limits possibilities, ultimately constrains the self” (Le Courant, 2019, p.11) as asylum seekers are constrained to concurrently “live in the shadow of the state” (Le Courant, 2019, p.3) yet in ‘spaces of nonexistence’ (Coutin, 2003).

In this “spectre of the ‘illegal alien’, cast to “demonstrate and reinforce sovereign power” (Mainwaring & Silverman, 2017, p.16), migrants and asylum seekers become clandestines, irregulars, illegals,

criminals, each dehumanising label carrying with it added prejudices and discriminations, alienating and furthering people away from inclusion, integration and a meaningful sense of being. As recounted by the lived experience of Sudanese community leader Abbass Mussa Jameah;

All of this makes people desperate; people don't want to go from prison to prison, from detention centre to open centre to the prison. They want to work, learn, marry, have a house and start their lives like other people (Delia, 2021, para.7).

Yet, despite its hegemonic destructive powers, embodied in rightist retributive discourses, laws and penalties, inimical to life and well-being, crimmigration cannot, and will never succeed in destroying “the strong hope of people who have plunged into the unknown, just to seek peace and freedom and to save life” (Jesuit Refugee Service Europe, 2016, p.3).

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Accelerated procedures and the impossibility to reconcile them with human rights: What the practice in Malta has taught us

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Abstract

After lengthy negotiations, the European Union (EU) is nearing an agreement on key components of the New Pact on Migration and Asylum, particularly the controversial Asylum Procedures Regulation (APR). Critics argue that the APR fosters “an unworkable and unjust system focused on border containment, potentially leading to increased pushbacks” (European Council on Refugees and Exiles (ECRE), 2023). Currently, the APR proposes to create a precarious nexus between asylum, detention, and returns with the increased use of detention and fast-paced asylum procedures for categories of asylum seekers presumed unworthy of international protection. This system mirrors practices in some EU Member States, notably Malta, which employs an aggressive approach to asylum. Malta’s contentious implementation of EU directives involves an accelerated procedure which targets applicants from a list of alleged safe countries of origin followed by an automatic review carried out by a tribunal which severely lacks independence from the executive. This review almost always leads to a definitive rejection and the continuation of the person’s detention for the purpose of forced returns without any form of individual assessment whatsoever. This article provides a brief overview of the proposals for an Asylum Procedures Regulation debated at EU level and delves into the practice which has been adopted in Malta, as the precursor of the dire consequences these can have on the fundamental human rights of asylum seekers.

Keywords: removal, asylum, Malta, detention, right to an effective remedy, non-refoulement, human rights

1. The unfairness of accelerated procedures

On the 8th of June 2023 the European Council reached a general approach on the Asylum and Migration Management Regulation (AMMR) and the Asylum Procedures Regulation (APR), key proposals of the New Pact on Migration and Asylum, which are currently being negotiated with the aim of reaching an agreement on the final text by February 2024 (European Parliament, 2023). Therefore, until these are adopted, the directives which comprise the Common European Asylum System (CEAS) remain in force. Asylum procedures are regulated by, the “Asylum Procedures Directive (APD)” (Directive 2013/32/EU). Detention pending the asylum proceedings is regulated by, the “Reception Directive” (Directive 2013/33/EU) and the return procedures are regulated by the “Return Directive” (Directive 2008/115/EC).

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The Return Directive allows Member States to link asylum and return procedures under its article 6(6). In Member States where the procedures are linked, decisions are generally taken in the context of accelerated asylum procedures carried out while applicants are detained. A negative asylum decision will trigger a return decision in a single or two separate administrative decisions, issued concurrently, and detention will be prolonged until the removal is carried out or fails. This procedure requires the authorities to conduct a broader assessment on matters which fall outside the scope of asylum such as the prohibition of refoulement, humanitarian reasons, the best interests of the child, family life and integration (European Council on Refugees and Exiles (ECRE), 2021).

Inspiring itself from the Return Directive, the Pact on Migration and Asylum will merge asylum procedures with return procedures, mostly in the context of applications filed at the borders of Member States. According to the proposed Asylum Procedure Regulation (APR), which is a component of the Pact, Member States should issue a return decision at the same time and together with the decision rejecting the application for international protection. The proposal foresees the use of an accelerated asylum procedure with reduced procedural safeguards and timeframes which can take the form of an asylum and return border procedure in transit zones and crossing points at the border. This would allegedly, “increase the efficiency of procedures” and, “reduce the risk of absconding and the likelihood of unauthorised movements” (European Commission, 2020b, Recital 31a).

These accelerated procedures will principally target applicants coming from countries with a low asylum recognition rate across the EU (currently set at below 20%) and countries listed as “safe countries of origin” (European Commission, 2020b).

Applicants with special needs who cannot be provided with the adequate support within these procedures and those with a medical condition should be exempted. Minors below the age of twelve and their family members will also be exempted unless they are considered to be a threat to national security and public order (European Commission, 2020a). This means that applications from all minors above twelve years of age are also likely to be channelled through these procedures.

The APR foresees a single level of appeal which must be filed within at least one week of the rejection decision. The appeal procedures against the asylum rejection and the return decision are merged into a single judicial procedure to be heard by the same appeal body. The right to remain in the host country pending appeal proceedings is not automatic and must be requested to the appeal body in a separate request, appellants could thus potentially be returned to their country of origin before the appeal is decided (European Commission, 2020b).

The accelerated procedure should last for a maximum of 2 months while the Border procedure should last for no more than 16 weeks. Detention is foreseen to be applied throughout and maintained in case of rejection, to carry out the removal of the applicant to his country of origin. A new 12-week border return procedure will follow the asylum border procedure, whereby the rejected applicant will be maintained in detention at the border or in transit zones. Relying on the legal fiction of “non-entry”, the proposal provides that applicants channelled through the asylum and return border procedure are not considered to have been granted entry on the territory of the Member State (European Council on Refugees and Exiles (ECRE), 2020).

The APR thus endorses a containment approach which prioritises the expedient processing and return of rejected applicants. While this approach is likely to please most Member States, it appears to be based on several flawed presumptions which may be difficult to reconcile with the practical reality on the ground and Member States’ obligations under international law, in particular the European Convention on Human Rights (ECHR) and the European Union Charter of Fundamental Rights (“the Charter”).

2. Prejudicing protection needs

The APR clearly states that “the increased pressure resulting from the arrivals of mixed flows with a high proportion of those with low chances of receiving international protection needs to be addressed with new and effective migration management tools” (European Commission, 2020b).

This creates an uneasy link between asylum, detention and return where the applicants are distinguished according to their country of origin. Undeserving applicants will be detained and channelled through an accelerated or border procedure with limited procedural safeguards in a quasi-automatic manner. A clear presumption is therefore established between the country of origin and the need for international protection at the outset.

The approach endorsed is likely to completely shift the burden of proof on the applicant, whereas the principle in asylum procedures has always been the shared burden of proof between the asylum seeker and the determining authority, the latter being required to carry out a full and thorough examination of all the elements of the applicant's case regardless of the procedure applied (*J.K. and Others v. Sweden*, 2016; *S.H. v. Malta*, 2022).

While one could argue that the implementation of border and accelerated procedures based on the country of origin should not prejudice this principle in theory, practice will likely show otherwise. It appears rather idealistic to believe that the individuals responsible for the examination of asylum applications will not suffer from the same biases as the law. Since the law implies that those people are not in need of protection, this will likely impact the view of the assessor on the credibility of the applicant. A bias that will be exacerbated by heavy workloads and the pressure to decide applications in short timeframes.

This in turn is likely to lead to an automatization of accelerated procedures with an increase in standardised decisions taking limited account of the applicant's personal situation and protection needs. Detained applicants will face additional obstacles to convince the authorities of their claim due to their limited ability to gather evidence and be provided with neutral information and legal advice on time.

Practice in Member States has shown that bias already exists against applicants coming from several countries deemed safe by national authorities. Here, the accelerated procedure as applied in Malta provides a clear picture of how the procedures foreseen by the APR could be applied in practice.

The accelerated procedure has reportedly been increasingly utilised by the Maltese asylum authorities since 2018. In 2021, Malta had a 74% first instance rejection rate on roughly 690 decisions. It is reported that on this number, at least 482 applications were channelled through the accelerated procedure and rejected, with at least 303 based on the safe country of origin concept. This number includes rejections for nearly all applicants from countries listed as safe (Aditus Foundation & ECRE, 2022). In 2022, at least 246 applications were channelled through the accelerated procedure and rejected, with at least 161 based on the safe country of origin concept (Aditus Foundation, 2023).

It is further reported that regardless of their claim for international protection, applicants which are passed through the accelerated procedure are invariably rejected within a few weeks from their disembarkation to Malta, without being provided with legal assistance or neutral information on the procedure, all throughout which the applicants are detained in severe conditions (Aditus Foundation & ECRE, 2023). Moreover, the examination of accelerated applications by the national authorities appears to rely heavily on credibility assessments for rejecting applicants, thus failing to address the substance of these claims. The standardised decisions irremediably conclude that the case is manifestly unfounded on the basis that the applicant is from a safe country of origin (Aditus Foundation & ECRE, 2022).

Following the first instance rejection, applications are automatically sent to the International Protection Appeals Tribunal (IPAT), in lieu of the appeal. The review generally confirms the rejection decision within a few days and its one-page decision is then notified together with a Return Decision and a Removal Order to the asylum seeker (Aditus Foundation & ECRE, 2023).

According to NGOs, this procedure has disproportionately impacted LGBTIQ+ applicants who have been reported to fall through the gaps of the national asylum system whenever accelerated procedures were implemented (Aditus Foundation & ECRE, 2023). Countries like Ghana, Bangladesh or Morocco for instance are considered to be safe by many Member States despite persecuting LGBTIQ+ individuals. Malta has one of the longest lists of safe countries of origin among Member States, currently holding 10 countries which criminalise same sex relationships, in the absence of any regard for the severe conditions these individuals could face upon return (Aditus Foundation, 2023).

The shortcomings of systemised accelerated procedures were highlighted in the recent decision of *S.H. v. Malta*, whereby the European Court of Human Rights (ECtHR) found that the assessment carried

out by the Maltese authorities within the accelerated procedure was in breach of the ECHR. The terminology used by the Court was unusually clear, condemning the assessments of the asylum authorities and the appeal body as superficial, brief, and stereotypical. (S.H. v. Malta, 2022). Concerning the appeal procedure, the Court noted that, based on statistics from the appeal body, “the Tribunal tended to automatically confirm the Agency’s decision within a short timeframe” (S.H. v. Malta 2022, para. 90-93).

The Court unanimously concluded to a violation of Article 3 taken in conjunction with Article 13 of the Convention, declaring that the applicant would be subjected to inhuman and degrading treatment if removed to his country of origin, that the authorities failed to assess his claim for international protection and that they did not provide him with an effective remedy to challenge the decisions of the national authorities. It identified numerous deficiencies in the domestic procedures, “in particular in relation to the failures in the communication system, the provision of legal assistance and particularly the procedure and scope of the Tribunal’s review in accelerated procedures, in the light of which general measures could be called for.” (S.H. v. Malta, 2022, para.108). The Court thus made it clear that it did not consider the applicant’s case to be an isolated incident but rather one of several in the flawed asylum system implemented in Malta.

The Court found the whole asylum procedure to be “disconcerting” and observed that,

from an examination of the interview of the applicant, during which he was unrepresented, it is apparent that the inconsistencies and lack of detail highlighted in the report are not flagrant, as claimed by the Government. For example, it would appear that the authorities expected the applicant, a 20-year-old Bangladeshi who claimed to be a journalist and whose journalistic academic studies consisted of two trainings of three days and three months respectively, to cite the titles of relevant laws, as the reference to the relevant provisions and their content had been deemed insufficient. Also, the authorities seem to have expected the applicant to narrate election irregularities which were mentioned in COI (Country of Origin Information) documents, despite the applicant not having witnessed them. Normally detailed descriptions were repeatedly considered brief and superficial and even the applicant’s replies about his very own articles (concerning other matters of little interest) were deemed insufficient. Clearly spelled out threats were also considered not to be detailed enough. (S.H. v. Malta 2022, para. 84).

The Court also found that the Agency completely disregarded the evidence provided by the applicant without providing any reasoning for such:

No reasoning was provided as to why the evidence presented by the applicant (press card, copies of articles, and other evidence of the applicant performing as a journalist) had not been taken into account. Importantly, at no point did the authorities express the view that the material was false, they limited themselves to noting that their authenticity had not been established as they were only copies. (S.H. v. Malta, 2022, para. §86).

The depth of the Court’s assessment of the first instance procedure is rather unprecedented but this was warranted in view of the severity of the violations observed and their apparent systemic nature. While the Court reiterated that there exists a legitimate interest in maintaining a system of accelerated procedures in respect of abusive or clearly ill-founded applications, this decision reminded Member States that this does not give them *carte blanche* to disregard the fundamental human rights of asylum seekers.

It is therefore foreseen that the accelerated procedures envisaged by the APR will likely lead to a systematisation of first instance rejections, based on the presumption that applicants are not in need of protection, and to the removal of individuals who are at risk in their country of origin, in contravention of the non-refoulement principle.

3. Detention as a migration management tool

The procedures foreseen by the APR are intended to be applied concurrently with detention to, “reduce absconding and unauthorised movements” (European Commission, 2020a, para. 2.5)).

The use of accelerated and border procedures will therefore require the creation of prison-like “reception centres” on the model of the centres recently built on the Greek islands of Samos, Kos, and Leros, with highly advanced multi-purpose centres which were entirely funded by EU at the cost of €121 million of euros (European Commission, 2020c).

Beyond the significant cost of such an approach, it remains to be seen how a detention regime based on the country of origin can be consistent with the ECHR and the EU Charter of Fundamental Rights. Both require that detention must be strictly proportional and necessary, that it can be ordered after an individual assessment has been carried out and only when less coercive measures could not be applied. Detention solely based on the applicant’s country of origin, even if concealed under other grounds is likely to be discriminatory and disproportionate.

Maltese authorities already apply a detention policy which unfairly targets applicants from countries listed as safe and countries where returns are feasible (Aditus Foundation & ECRE, 2023). Due to the Government’s flexible interpretation of domestic legislation on health, asylum seekers who arrive in Malta by boat are routinely detained on health grounds upon disembarkation until cleared by the health authorities, several weeks or months later. Applicants from the listed ‘safe’ countries of origin as well as individuals coming from countries where the return is feasible are then issued with a detention order and transferred to another detention centre (Aditus Foundation & ECRE, 2023).

Vulnerabilities are generally not taken into consideration and the authorities maintain detention as long as possible. The detention conditions in Malta are arguably among the worst in the EU, with alarming reports from several institutions such as the European Committee for the Prevention of Torture (European Committee for the Prevention of Torture and Inhuman or Degrading Treatments or Punishments (CPT), 2021) and the Commissioner for Human Rights (European Commissioner for Human Rights, 2022).

In *S.H. v. Malta* (2022), the Court noted that it had previously found the Maltese asylum procedure to be characterised by its insufficient access to legal assistance and representation, especially for those placed in detention and in prison, and made the same observation in regard to the applicant who was deprived of any legal support during his first asylum procedure).

Concerns regarding the systematic use of detention without any individual assessment by the Maltese authorities have been consistently expressed since 2016 by local NGOs (Aditus Foundation & ECRE, 2023). Three recent cases filed in 2023 are likely to put pressure on the government to review its policies.

In first one, *A.D. v. Malta* (2023), the ECtHR did not stop at finding violations of the Convention regarding the prolonged and arbitrary detention of a minor suffering from tuberculosis, PTSD and depression, but also required Malta to take general measures to align its detention regime with the requirements of the Convention.

In another case filed before the ECtHR, a group of minors are complaining of their unlawful detention in degrading living conditions (*J.B. and others v. Malta*, 2023). The minor’s situation was flagged by local NGOs which obtained an urgent interim measure from the Court ordering Malta to provide them with adequate reception conditions. It transpired that the minors had declared to be underage very early in the procedure during a hearing before the Immigration Appeals Board, the body entrusted with reviewing the detention of asylum seekers and this was disregarded by the national authorities which treated them as adults for several months until they were identified by a local NGO (Balzan, 2023, January 12; International Committee of Jurists, 2023).

Finally, it will be interesting to follow the outcome of a similar case filed before the First Hall Civil Court of Malta by Aditus Foundation (*Fona Ayoubah vs. Ministeru Għall-Intern, Sigurta, Riforimi u Ugwaljanza*, 2022).

Those cases highlight that, besides the expensive implementation of such procedures, the provisions foreseen by the APR are likely to lead to the increased use of automatic detention wherever the accelerated procedures are applied. In that regard, the vaguely defined exemption for vulnerable applicants and the possibility to apply accelerated procedures to all individuals above 12 is far from reassuring.

With specific regard to the detention of minor children, it must be noted that the proposed provision runs absolutely contrary to the current consensus at international level which tends to prohibit the detention of migrant children in all circumstances. Indeed, several United Nations bodies adopted the following view:

Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children (United Nations Human Rights Council, 2015, para. 80; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Committee on the Rights of the Child, 2017, para. 9).

The Inter-American Court of Human Rights adopted such views in 2014, considering that "States may not resort to the deprivation of liberty of children [...] because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority" (Inter-American Court of Human Rights, 2014, para. 160).

Whilst the European Court of Human Rights has not yet fully endorsed this position (*Popov v. France*, 2012), the recent case of *A.D. v. Malta* (2023) shows how strict the Court is when it comes to assess the lawfulness of detention measures imposed on minors.

4. An expedient return is (not) always possible

The Pact foresees the expedient removal of rejected applicants to their country of origin. This is under the presumption that rejected asylum seekers are always returnable, which is far from being the case. Despite some notable success in negotiating non-binding readmission agreements (Statewatch, 2022), the EU's efforts to negotiate further agreements has yet to yield concrete results (European Court of Auditors, 2021). The likelihood of a successful return is consequently somewhat relative, with a significant gap reported between the number of return decisions issued and successful returns across all Member States (European Council on Refugees and Exiles (ECRE), 2019; European Court of Auditors, 2021).

Bearing this in mind, it appears perilous to implement a system which puts the emphasis on return and foresees protracted durations of detention to achieve this purpose.

As previously mentioned, international law requires detention to be ordered following an individual assessment and only when less coercive measures cannot be applied. In the context of return proceedings, detention can only be maintained if there exists a prospect of return. The Return Directive provides for maximum timeframes of detention, this being 6 months which can be extended by a further period of 12 months in exceptional circumstances.

Malta once again provides a clear example of the shortcomings of such a system and the abuses it can lead to. Many individuals are detained for extended periods beyond the 6 months prescribed by the Return Directive, the exceptional circumstances of the Directive being applied to all individuals who have not been returned after the initial 6 months period. Most people are detained until their return is carried out or they are released, once the maximum period of 18 months lapses (Aditus Foundation & ECRE, 2023).

Unless assisted by NGOs, rejected asylum seekers will rarely have their detention reviewed by the responsible body. In fact, to date, there is no evidence which indicates that the national appeals body has decided detention to be unlawful or that it has ordered the release of detainees following a review of detention pending removal (Aditus Foundation & ECRE, 2023).

The extensive use of detention coupled with a steady flow in arrivals overwhelmed the whole system and led to the protracted detention of individuals who are not returnable, most of those asylum seekers being detained for two to three years. This is due to the distinct timeframes applied by the Maltese authorities initially under the health regime (about 2 to 4 weeks), the Reception Directive (up to 9 months) and the Returns Directive (up to 18 months) which time limits are subject to the presumption that they are notified in a timely manner to the applicants. The example of the applicant in *S.H. v. Malta* (2022) is

striking, the applicant remained in detention for 2 years until he was released following the interim measure ordered by the ECtHR.

The Maltese return policy has been found to be in contravention of the ECHR on numerous occasions, whereby the Court found that detention was enforced in an automatic manner without evidence that the return could be carried out at all (Louled Massoud v. Malta, 2010; Suso Musa v. Malta, 2013; Feilazoo v. Malta, 2021).

In the case of Louled Massoud v. Malta of 2010, the Court found

it hard to conceive that in a small island like Malta, where escape by sea without endangering one's life is unlikely and fleeing by air is subject to strict control, the authorities could not have had at their disposal measures other than the applicant's protracted detention to secure an eventual removal in the absence of any immediate prospect of his expulsion. ((para. 68). In the more recent case of Feilazoo v. Malta (2021) where the applicant was detained in view of his deportation for the period of fourteen months, the Court decided that "With one *note verbale* over fourteen months, the authorities can hardly be regarded as having taken active and diligent steps with a view to deporting him" (para.108).

As a result of this, the Court concluded that the return could not be feasible and that thus detention was unlawful finding a violation of the Convention.

Putting the emphasis on return is therefore likely to lead to further abuse where authorities will continue to invest in expensive measures to ensure the return of few while ineffectively maintaining the arbitrary detention of many.

Moreover, it must be pointed out that some applicants who do not qualify for international protection are still non-returnable due to what is commonly referred to as "barriers to return" (European Council on Refugees and Exiles (ECRE), 2021).

Firstly, international protection is oftentimes mistaken for the principle of non-refoulement, which prohibits the removal of individuals who may be exposed to inhuman or degrading treatment. The latter concept is broader and protects a significant number of individuals who may not qualify for international protection. Some Member States may grant other forms of national protection such as humanitarian protection, but others have no specific policy to deal with those rejected asylum seekers, who oftentimes remain in legal limbo.

Secondly, health considerations may also constitute a barrier to removal as was recently confirmed by the Court of Justice of the European Union (CJEU) which stated that EU law:

precludes a Member State from adopting a return decision or removing a third-country national who is staying illegally on the territory of that Member State and suffering from a serious illness, where there are substantial grounds for believing that returning that third-country national would expose him or her, on account of appropriate care not being available in the receiving country, to a real risk of a significant reduction in his or her life expectancy or a rapid, significant and permanent deterioration in his or her state of health, resulting in intense pain" (Staatssecretaris van Justitie en Veiligheid(2022), para. 66).

Finally, the return of family members and children in breach of the right to private and family life will also constitute a barrier to removal as was evidenced in numerous cases brought before the ECtHR (European Council on Refugees and Exiles (ECRE), 2021).

Whilst both the Reception Directive and the APR foresee that Member States should carry out an assessment in the above-mentioned circumstances before ordering the removal, this is reported to be done in a superficial and non-individualised manner in most Member States (European Council on Refugees and Exiles (ECRE), 2021).

Despite implementing accelerated procedures linked to the return procedure, Malta has consistently failed to assess those barriers to removal as exemplified by the above-cited case of S.H. v. Malta (2022) where the Court granted an interim measure to the applicant and stated that,

in the absence of an adequate assessment, by the domestic authorities, of the applicant's claim that he would risk ill-treatment if returned to Bangladesh based on his activity as a journalist, it

was in the interests of the parties and the proper conduct of the proceedings before it to indicate to the Government of the Malta, under Rule 39 of the Rules of Court, that he should not be removed to Bangladesh (para. 29).

In its final decisions, the Court noted quite ironically that,

a third attempt at having his asylum claim examined – following the indication of an interim measure by the ECtHR which had precisely referred to the absence of an adequate assessment – was also rejected by the Agency without any further assessment, and, with no surprise, the decision was confirmed by the Tribunal (para. 65).

This trend was confirmed by another case in January 2023, where the ECtHR ordered Malta to stay the removal of a Uyghur couple to China following the rejection of their appeal against the return decision (Safeguard Defenders, 2023). This last example shows that even cases where the applicants have a *prima facie* claim for international protection are likely to fall through the gaps.

The accelerated procedure as foreseen by the APR is therefore likely to further exacerbate these pre-existing shortcomings and lead to the unlawful removal of many individuals.

5. Member States will apply the APR faithfully

The Commission must trust that Member States will apply these rules in full compliance with fundamental rights and the rule of law. This appears untimely given the current political climate in Europe clearly pointing to the contrary. The Maltese practice reveals that Member States which are already implementing accelerated asylum procedures linked to return procedures are likely to instrumentalise these to guarantee the expedient return of asylum seekers without taking full consideration of their need for protection.

Some Member States may be tempted to interpret the law in line with their political interest rather than in compliance with EU law and the ECHR. The convenient transposition of the Asylum Procedure Directive by Malta is arguably one of the boldest examples, whereby the appeal procedure in the accelerated asylum procedure is replaced by a 3-day automatic review carried out by the Chairperson of the appeal body during which, applicants are not given the opportunity to submit their views or to present written pleas (Camilleri, 2022). The Tribunal's review lacks legal consideration, as well as an assessment on the merits and the substance of the claim in subject. This is thus largely considered to be in breach of EU law and the ECHR which requires a full *and thorough* examination of both facts and law before a court or tribunal of first instance (Camilleri, 2022; Aditus Foundation & ECRE, 2023).

The CJEU has indeed consistently held that access to an effective remedy requires actual access within a reasonable period to a court or tribunal which provides sufficient guarantees of independence and impartiality (JP v. Commissaire général aux réfugiés et aux apatrides, 2020) and that the short national time-limits for bringing proceedings may undermine the effectiveness of this right (Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg, 2006). Furthermore, the appeal body must be able to carry a thorough review of the reasons which led the asylum authorities to reject the application (Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration 2011).

With regard to the independence and impartiality of the Tribunal, it must be highlighted that the appointment procedure of its members, by decree of the Minister for Home Affairs, raises serious doubts regarding whether the Tribunal may be considered at par with EU standards. In its 2022 Rule of Law Report, the European Commission expressed concerns over the independence of specialised tribunals like the Tribunal (European Commission, 2022).

In S.H. v. Malta (2022), the Court found,

it hard to believe that anything but a superficial assessment of all the documentation presented could have been undertaken by the Tribunal within such a timeframe. The brief stereotype decision, confirming the incongruous conclusions reached at first instance and providing no further reasoning, support such a conclusion (para. 90).

The Court first noted that to prove the effectiveness of the remedy, the Government could only rely on one situation whereby the Tribunal overturned the Agency's decision and, in reference to the AIDA report (Aditus Foundation & ECRE, 2023), noted that in the remaining reviews undertaken in 2021, the Tribunal confirmed the first-instance decisions.

In view of this, the Court concluded that, "the Tribunal tended to automatically confirm the Agency's decision within a short timeframe" and therefore, "the first asylum procedure undertaken by the applicant and examined under the accelerated procedure, *ab initio*, did not offer effective guarantees protecting him from an arbitrary removal." (S.H. v. Malta, 2022, para. 90-93).

The Court underlined that the present case identified various shortcomings in the domestic system in place, "particularly the procedure and scope of the Tribunal's review in accelerated procedures, in the light of which general measures could be called for." (para. 108) The Court however did not order such measures "at this stage" noting that this is the first case of its kind and that the parties referred to legislative amendments in process, "which may improve the system and ensure the existence and effectiveness, in practice, of a remedy for the purposes of Article 13 in conjunction with Article 3 in the context of asylum requests" (para. 108).

In stating such, the Court unequivocally indicated to the Maltese Government that it must implement measures to bring its asylum system in line with the law, while also inviting lawyers to file additional cases which are similar in substance. There are no procedural obstacles in this regard since the Court also decided that applicants do not need to exhaust domestic remedies following the Tribunal's review since none of these remedies were considered to be effective, including constitutional redress proceedings (S.H. v. Malta, 2022).

This case illustrates the fact that gaps in transposition are likely to arise with domestic systems existing in parallel and in contravention with EU law. Strengthening the use of accelerated procedures may increase these gaps rather than harmonise the practice at EU level. When seen from the Maltese context, the minimum timeframe for appeals proposed by the APR (European Commission, 2020b) is welcomed, since the review is currently not an appeal. However, a one-week timeframe to file an appeal remains very short to ensure that all those who wish to appeal are provided with an effective remedy. Moreover, no provision contained in the proposal addresses the growing influence exerted by some Member States over the decisions of their appeal bodies despite the enhanced risks of being instrumentalised due to the single procedure foreseen by the APR (European Commission, 2020b).

The proposal may close the gaps for those Member States who like Malta implement an overtly abusive system. However, the proposal fails to adopt a consistent approach to address these issues since it is lacking a strong human rights-based approach. In many aspects this will lead to the harmonisation of lower standards across all Member States rather than improve the current asylum system.

6. Conclusion

Even though European institutions regularly refer to the CEAS as the "European asylum acquis", it appears that this might not be the case for other Member States besides Malta. Hungary has faced five infringement procedures for its failure to comply with the CEAS and has also neglected to observe a ruling of the CJEU (European Council on Refugees and Exiles, 2020; European Commission, 2021). Infringement procedures were opened against Belgium, Greece, Spain, Portugal, and Finland in January 2023 for their failure to correctly transpose and implement provisions of the Reception Directive and the Qualification Directive (European Commission, 2023).

Lithuania's migration and asylum laws which prevent irregular migrants from applying for asylum and allowing mass detention in times defined as "migrant influx" were found to be in breach of EU law by the CJEU in June 2022 (European Council on Refugees and Exiles (ECRE), 2022). Greece, Belgium, and Poland were subject to an increasing number of interim measure orders by the ECtHR throughout 2022 and France, Malta and Italy were found to be in breach of the Convention in cases which reveal potential systemic breaches of the directives (European Court of Human Rights (ECtHR), 2022; Border Violence Monitoring Network, 2022).

This paper has attempted to convey the shortcomings of the proposed EU solutions to migration and asylum, drawing on the practice in Malta as an example of how the procedures foreseen by the APR could be applied to the detriment of asylum seekers' fundamental rights. The enhanced use of detention and accelerated procedures is likely to lead to further restrictive measures while addressing some of the shortcomings observed within the current system. In that regard, the ECtHR decision in *S.H. v. Malta* shows the limits of an asylum system relying on accelerated procedures and the safe country of origin concept and illustrates that some Member States are more than willing to disregard their international obligations when it comes to migration management.

In such a context, one could argue that it is rather dangerous to create a whole new set of rules which are more permissive with accelerated procedures and detention. Negotiators have sacrificed safeguards for the sake of efficiency in their hastiness to find a common solution to the so-called migration crisis. The EU institutions should have been mindful not to create the conditions for further violations and should have instead sought to enhance human rights compliance across Member States.

Access to an effective remedy should not have been limited but strengthened beyond one single judicial procedure with reduced timeframes to appeal. Current issues on the lack of independence and impartiality should have been addressed with detailed provisions on the structure and the method of appointment of the members of the appeal body. Collegiality should have been the rule and one 'judge' automatic reviews such as the one practiced in Malta should have been clearly prohibited.

The detrimental effects of automatic detention, pending asylum or return could have been avoided by supporting Member States to strengthen alternatives to detention. The possibility to detain children and other vulnerable people, which clearly runs counter to the current interpretation of international law by courts and international bodies, should have been strictly prohibited.

The return of rejected people should be carried out in full compliance with their rights and following a thorough individualised examination of their situation and alternatives to access regularisation and employment should be explored when the return appears unlikely.

Looking forward, the impact of the new APR could be detrimental to persons seeking asylum in the EU. The implementation of accelerated procedures based on arbitrary criteria and the limitation of the right to appeal will irremediably lead to the increased use of standardised asylum rejections and the unlawful removal of people at risk of harm in their country of origin. Beyond the massive financial and human resources needed to accomplish the foreseen policies, the institutionalised use of detention will undoubtedly lead to further human suffering.

The EU leaders, however, seem to be convinced of this course of action and an agreement is likely to be reached by the end of the year. Sadly, the political imperative therefore appears to overshadow the need to comply with fundamental human rights.

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The 'inquisitorialisation' of asylum procedures: Are States (still) conforming to the spirit and the letter of the 1951 UN Convention on Refugees?

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Abstract

The recent so-called refugee crises have sparked controversies over the 1951 UN Convention on Refugees. For some, the Convention is outmoded whilst for others, it is problematic at its core, thus justifying the toughening up of its implementation. This paper explores the concept of 'inquisitorialisation', drawing on some aspects of the crimmigration theoretical framework and using France and Malta as case studies, looking at what 'inquisitorialisation' may look like in the future for Mediterranean countries. It also alludes to Switzerland, particularly after its adhesion to the Schengen arrangement and the Dublin association agreement, as prefiguration of what 'inquisitorialisation' may look like in the future for Mediterranean countries. The paper posits the following points; i) at its very core, the 1951 Convention on Refugees is still relevant and probably even more so than at its inception; ii) often times, the nation states' interpretation and implementation are problematic. The paper comes up with the concept of 'crimasyllisation', that is, the criminalisation of asylees (US expression) or the criminalisation of asylum seekers during the asylum process.

Keywords: Crimmigration; crimasyllisation; inquisitorialisation; refugee law; 1951 UN Convention on Refugees

1. Introduction

In recent years if not decades, there has been a trend towards a toughening of the implementation of the 1951 Convention on Refugees and the associated 1967 New York Protocol. Behind such continuous toughening of the said Convention's implementation by various governments globally lies the premise that it has been seemingly abused and diverted from its original purpose - or in other words, violated. In this regard, the dominant narrative states that a large proportion of those who seek asylum violate the 1951 UN Convention on Refugees by (ab)using it in lieu of legal immigration routes. Hence the necessity to isolate these so-called 'bogus asylum seekers' to protect the integrity of the Convention on refugees.

In response to the perceived abuse of immigration processes in general, and asylum procedures in particular, states, through various government policies, have increasingly criminalised immigrants and asylum seekers alike, both on a rhetorical as well as practical levels. The practice of criminalising immigrants has given birth to the concept of crimmigration, that is the merger of criminal law and immigration law. Since the 1980s a substantial body of literature has been developed in this regard. The fusion of criminal law and immigration law (Stumpf, 2006) has manifested itself through governments using more and more coercive means, including detention (García Hernández, 2014). These coercive practices have resulted in state-generated injustices (Woolard, 2002).

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While crimmigration generally refers to the fusion of criminal law and immigration law, this paper specifically touches on the (con)fusion between criminal law and refugee law, drawing on some elements of the crimmigration theoretical framework, particularly in relation to international protection (Rosenberg-Rubins, 2023). More specifically, this paper focuses on the criminalisation of some aspects of the asylum process leading up to the granting (or not) of Convention Refugee status. As such, this paper aims at filling a gap in the existing literature and as a result, comes up, with the concept of 'crimasyllisation', that is the criminalisation of asylees or asylum seekers during the asylum-seeking process.

Whilst one cannot rule out the possibility that asylum seekers might misuse and/or abuse of the 1951 Geneva Convention, one also cannot overlook the fact that some states breach this same Convention. Whilst certain breaches are blatant and outright contrary to the Convention, such as detention (including detention of children in all forms possible) pushbacks on land, pushbacks at seas, etc. other breaches might be more insidious. Such is the case of what this paper calls 'inquisitorialisation', i.e., the process of using inquisitorial methods in determining asylum cases. According to Collins dictionary (Collins Online Dictionary, n.d.), an inquisition is 'any severe or intensive questioning'. Taking this definition a step further in reference to what the dictionary names the 'American sense' of the word, 'inquisition' is said to be 'any harsh, difficult, and prolonged questioning'. The notions of harshness, difficulty, and prolonged process are at the heart of what this paper means when referring to the 'inquisitorialisation' of the asylum procedures. In the wake of calls in favour of toughening up asylum procedures, such notions conjure up and convey the idea that the asylum procedure has to be made cumbersome, at best, and harsh, at worst.

By focusing on the 'inquisitorialisation' of asylum procedures, this paper firstly argues that signatory states of the 1951 UN Convention on Refugees that choose to go down such path undermine the integrity of the said Convention to a greater degree than what asylum seekers violators could be accused of. Secondly, whilst possible misuses of the Convention by asylum seekers, if and when they occur, can be readily curbed or remedied, violations by States have much graver consequences not just in respect of the 1951 UN Convention, but also with regards to the greater body of Human Rights Law, underscoring a more adverse and disproportionate impact of such violations. Finally, in addition to the legal dimension of the issue at hand, the violations of the 1951 UN Convention on Refugees by signatory states in general, and the 'inquisitorialisation' process in particular, bear very concrete psychological consequences on people seeking asylum, especially on vulnerable groups of the population such as children and women. The psychological consequences of the practice of 'inquisitorialisation' cannot be overlooked nor downplayed and certainly not in the name of the 'expediency' arguments which are generally used. This paper is structured around these three premises.

2. Some preliminary conceptual considerations

Whilst crimmigration focuses on the criminalisation of immigrants in general, Rosenberg-Rubins' work (2023) narrows down the perspective to asylum seekers and refugees. In essence, Rosenberg-Rubins offers a specific brand of crimmigration as asylum seekers and refugees, *stricto sensu* talking, should not technically fall under the category of ordinary migrants. Indeed, asylum seekers and refugees are entitled to avail themselves of a particular form of international protection, i.e, the 1951 UN Convention on Refugees and the 1967 New York Protocol, which ordinary migrants cannot avail themselves of. In light of this topic we witness a (con)fusion of criminal law and refugee law. While giving credit to Rosenberg-Rubins for dedicating a specific reflection on the criminalisation of asylum seekers and refugees, the notion of crimmigration will continue to be used here for lack of a better term. Yet, when referring to the criminalisation of the asylum procedures, 'crimasyllisation', i.e., the criminalisation of asylees or asylum seekers, would be a more accurate description and expression.

By addressing the issue of criminalisation in terms of governmentality (Foucault, 1978), with an emphasis on territoriality and state power (Bauder, 2016), Rosenberg-Rubins' analysis still remains at a macro-level. In contrast, by focusing on the procedural aspects of the asylum process through the

concept of 'inquisitorialisation', this paper aims at assessing the criminalisation of asylum seekers at a micro-level, thus seeking to fill the gap in the current literature.

3. Why include Switzerland into the list?

One may question the relevance of mentioning Switzerland alongside two *stricto sensu* Mediterranean countries, such as France (partly Mediterranean) and Malta (totally Mediterranean). Two reasons preside such choice.

Firstly, since its adhesion to the Dublin Regulation and its inclusion into the Schengen Arrangement, Switzerland is part of the FRONTEX mechanism. Secondly, of the three countries chosen, Switzerland is undoubtedly the one that has taken the process of the 'inquisitorialisation' of asylum procedures the farthest. As such, it could signal the direction towards which Mediterranean countries could head for in terms of 'inquisitorialisation'.

4. International legal instruments first: the 1951 UN Convention and the 1967 Protocol on Refugees

At the universal level, the status of refugees is fundamentally governed by two international legal instruments. These legal instruments are the 1951 Convention relating to the status of Refugees, which will be subsequently referred to in this paper as the 1951 Convention on Refugees, and the 1967 Additional Protocol relating to the status of Refugees, which broadens the geographic scope of the erstwhile Convention, and which will be subsequently referred to in this paper as the 1967 Protocol on Refugees.

How does one become a refugee according to the 1951 Convention on Refugees and the 1967 Protocol on Refugees? This apparently simple question is fraught with a certain degree of legal complexity. The verb 'to become' clearly conjures up the idea of a process by which one moves from a status of non-refugee to that of a refugee.

How does this process occur? Who determines the passage from not (yet) being a refugee to becoming one? Or, what determines the passage from one status to the other? The question of 'who' or 'what' is not merely a grammatical one. It is at the core of our questioning. Indeed, if the emphasis is put on the 'who' question, then the fate of those claiming the benefit of the 1951 Convention on Refugees heavily rests on governments of states that have signed up to the Convention. If the emphasis is put on the 'what' question, then while governments still retain some leverage on the asylum process, more strictures are on their actions, nonetheless.

In principle and in practice, 'who' and 'what' are not diametrically opposed. In an international system based on nation-states, individual rights are exercised through the mediation of the latter. So, the 'who' question is readily sorted and the answer is: the States that have signed up to 1951 UN Convention are the ones who determine, in practical terms, the process leading to the granting of refugee status. Likewise, the 'what' question is also solved by the fact that the 1951 Convention on refugees, by defining what is a refugee in its article 1, somehow sets the perimeter within which governments implement the said Convention. The question therefore lies in determining the right equilibrium between the 'who' and the 'what' in the actual procedures.

Given the nature of the 1951 UN Convention on Refugees, i.e., an international text, experts trying to tackle the refugee question from a legal perspective have resorted to international law concepts. Two schools of thought pitch one against the other. The first school of thought posits that the refugee status is constitutive. According to the constitutive theory of international law (Oppenheim, 1912), for a status to exist legally, it has to be formally recognised by other states. Applied to refugee status, the constitutive theory holds that in order to qualify as a refugee, the applicant has to be formally recognised as such by the host country, meaning that a refugee has to be validated by the state that receives his/her application. The opposing school of thought holds the view that refugee status is declaratory (Hathaway & Foster, 2014), i.e., it suffices for an applicant to meet objectively, almost *prima facie*, the minimum criteria set by the 1951 UN Convention on Refugees for him/ her to be considered a refugee. In other

words, the 'what' consideration (what determines the access to refugee status) prevails over the 'who' consideration, meaning that states would be reduced to a quasi-secretarial function of merely just taking stock of the situation. So much so that according to Hathaway and Foster (2014) if states do not conduct the verification process, over time they are supposed to give status to declaratory refugees in their territory. Reverting to the notion of statehood in international law, by way of comparison, the declaratory stance posits that the moment a state meets the minimum requirements that qualify it as a state (Montevideo Convention on the Rights and Duties of States, 1933, art. 1), that state does not need the formal recognition of other countries to exist as a legal entity (article 3 of the same Convention). This applies to the status of refugee, *mutatis mutandis*, and is illustrated by the concept of 'mandate refugee'. As an *obiter dictum*, it is worth highlighting that when it comes to statehood the declaratory approach has supplanted the constitutive approach in international law from a *lex lata* perspective.

The UN High Commissioner for Refugees (UNHCR) seems to hold a clear position on the issue. The UNHCR is the guardian of the 1951 UN Convention on Refugees according to article 39 (2) of the Convention. Its interpretation of the Convention is not superfluous and cannot be overlooked in the absence of a jurisprudence being produced by the International Court of Justice (ICJ). Furthermore, article 35 (1) entrusts the UNHCR with a supervisory task in relation to the implementation of the Convention. Therefore, the UNHCR must interpret the Convention, in order to be able to supervise it.

In this regard, the UNHCR's Note on determination of Refugee Status under International Instruments/EC/SCP/5 unequivocally holds the view that refugee status is declaratory. In its fifth point the Note states that,

From an analysis of the international legal instruments relating to refugees, it is obvious that determination of refugee status can only be of a declaratory nature. Indeed, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not (UNHCR, 1977, point 5).

The declaratory nature of the refugee status could not be more clearly asserted. And in the absence of a jurisprudence developed by the ICJ, the UNHCR's stance bears a degree of authoritative weight¹.

In practice, as Cherem (2020) states: "refugee status is both declaratory and potentially verified by a formal status assessment" (p.36). Except in the case of group-based asylum, the refugee status is actually verified by a formal assessment.

5. National and European (EU) legislations

In terms of national laws, this paper refers to the French Code on the entry and stay of foreigners and the right of asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA in short, 2021) and the 1998 Swiss federal law on asylum. They are used to illustrate the 'inquisitorialisation' of asylum procedures in each of these countries.

5.1. Asylum procedure under French Law

Why is France chosen as a case in point? Three reasons underpin the choice of the French law on asylum. The first reason is subjective and owes to the authors' knowledge of the French legal system. The second reason owes to geographical factors as France is partly a Mediterranean country, thus facing some of the same issues that Greece, Italy, or Malta do face, for example. The third reason is the fact that, as an EU country, France has to align its asylum policy to EU legislation.

The French Code on the entry and stay of foreigners and the right of asylum will hitherto be referred to as CESEDA, its French acronym. The section of CESEDA dealing with asylum is to be found in Book VII (Livre VII), organised around four Titles (Titres), themselves organised around Chapters (Chapitres). We will focus on Title 2, Chapter 3 as this deals with the treatment of asylum applications. Applications for asylum are dealt with by French Office for Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides), OFPRA as it will be referred to hereafter in this paper.

According to Title 2, chapter 3, article L723-3, OFPRA invites the asylum seeker to attend an interview. However, there is no need for an interview when OFPRA is in a position to grant refugee

status on the basis of evidence that it has, or if the application is manifestly baseless, or if the asylum seeker has a medical condition that would not be conducive to an interview.

CESEDA does not mention how interviews are to be conducted in the eventuality that they have to take place. One has to rely on practice to know how interviews are generally conducted. A look at OFPRA's material relating to interviews would tend to present the process as being straightforward and stress free. This is not, however, the opinion of some experts in the field based on their experiences as case officers. This is the case of Kohler (2015) who subtly alludes at what this paper labels as the 'inquisitorialisation' of asylum procedures.

According to Kohler (2015), 'L'instruction se fait donc principalement à charge et rarement à décharge, mettant ainsi le demandeur d'asile en déséquilibre face à l'égalité des armes, condition absolue d'un procès équitable.' (p.34), which can be roughly translated to: 'The investigation is therefore mainly conducted on an incriminating basis and seldom on an exonerating basis, thus putting the asylum seeker on an unequal footing with regards to the equality of arms, which is an absolute condition for a fair trial' (authors' translation). This statement seems to perfectly illustrate the core issue of 'inquisitorialisation' being hereby analysed. At least, two observations can be drawn from this statement made by a person who is both a legal expert and an asylum case officer at OFPRA, providing us with a privileged view and an insider's perspective. The first observation, is that Kohler uses the word 'trial' ('procès', in French), as opposed to 'interview' ('entretien' in French), thereby comparing the process to a trial.

Although the asylum interview is not formally a trial, the use of the word 'trial' by a legal expert and practitioner is not an innocent allusion, particularly as the asylum interview is said to be more incriminating than exonerating. A trial involves a contradictory procedure, a prosecutor, a judge, a defense attorney, and of course, the 'accused', particularly in a criminal proceeding. As Kohler points out, the presence of a defense attorney is optional. An asylum seeker can be assisted by an NGO. But the NGO's role is limited to being present during the 'interview' to make sure that the formal conditions are respected (the presence of a translator when needed, for example). But representatives of the NGOs are prohibited to intervene in the course of the 'interview'. Should an asylum seeker need to be assisted by a lawyer, he or she would have to pay for the lawyer's services. However, the lawyer will not be allowed to speak for or on behalf of his/her client, which is basically contrary to any principle of a trial, not even to mention a fair trial. We have to keep in mind that, as Kohler puts it, the case officer, who embodies the State, fulfills at the same time the function of prosecutor (he /she is supposed to investigate the case and examine the evidence, if any) and the function of a judge by 'adjudicating' the case and deciding whether or not to grant asylum. There is obviously an asymmetry of power that is not present in a regular criminal case. On the one hand, the roles of both the 'prosecutor' who examines the case on an incriminating basis more than on an exonerating basis, and the 'judge' who decides the verdict, are personified by a single individual vested with the authority of the state. On the other hand, the asylum applicant, cannot avail himself/ herself of an effective defense attorney who would be able to intervene during the 'interview' when necessary. This creates an obvious imbalance that can be detrimental to the asylum applicant.

The second observation made by Kohler (2015), is that 'la charge de la preuve pèse sur le demandeur' (p.35), meaning that 'the onus of substantiating one's claim falls on the asylum seeker', confirming thus the incriminating nature of the process mentioned earlier and the 'inquisitorialisation' that ensues. This issue of the onus falling on the asylum seeker will be further discussed in the mention of the Switzerland case study as well.

The 'rationale' for the procedure to be inquisitive enough is 'expendiency'. The asylum seeker must be probed for 'the truth' to manifest, 'beyond any reasonable doubt', in line with criminal law approach. As will be outlined further on in this article, this process of an excessive inquisitive approach ('inquisitorialisation') is fundamentally at odds with the 1951 Convention on Refugees.

5.2. Asylum procedures under Swiss law

The next law on asylum to be examined is the 1998 Swiss Federal Law on Asylum. Regarding the granting of asylum, verifying Refugee status by a formal process of assessment is not the issue; the problem lies in the scope of the assessment.

In Swiss law, the asylum-seeker is treated like a suspect, a priori. The 'inquisitorialisation' process is obvious in the following modalities: body search, identification, and interview. A special emphasis is be put on body search and interview.

The 1998 Swiss Federal Law on Asylum establishes the right to body search asylum seekers and search their belongings (Article 9). This routine act in criminal cases once arrest is ordered, is applied to asylum seekers based on the rationale to look for 'travel documents, identity papers or dangerous objects, illicit substances, and property and goods of dubious origin'. The list looks a bit disparate and the lining up of 'illicit substances' and 'property and goods of dubious origins' adds to the general suspicion and contributes to the process of criminalisation in relation to asylum seekers.

As far as interviews are concerned, it is necessary to assess the place they hold in the Swiss Federal law on asylum. In practical terms, in the Swiss system an asylum seeker undergoes a minimum of two interviews, in standards cases, and sometimes three, if felt necessary. The interviews are not necessarily undertaken all in a short span of time, which could be problematic in relation to the memory of the applicant. Should the asylum seeker 'contradict himself on essential points', this will probably be held against him/her possibly making his/her application seem dubious. Therefore, the slightest omission, 'incoherence' or lack of accuracy would cast doubts on the applicant's account, which might result in the application for asylum to be rejected. This features a reversal of the legal reasoning, a stance even stricter than the provision of the Swiss criminal law whereby doubts play out in favour of the accused (Article 10, Section 3 of the Swiss Federal Code on Criminal Procedure). This is undoubtedly at odds with the declaratory nature of the refugee status which should rest on the principle of *in dubio pro refugio*, i.e., doubts should benefit the refugee. The 1998 Swiss Federal Law on Asylum illustrates the rampant criminalisation of the asylum procedures and the obvious weakening of the declaratory nature of the refugee status.

The key provisions debated above are not necessarily specific only to the 1998 Swiss Federal Law on Asylum. To a varying degree of forcefulness, we find those provisions in statutes across countries. Therefore, one can find more of a difference in degree of 'harshness' between different national legislations, than differences in nature of the law. For example, in the Maltese law, the provisions on body search, identification and interview are to be found in the International Protection Act (2001), and more specifically, in the Procedural Standards on Granting and Withdrawing International Protection Regulations (2015). These pieces of legislation aim at transposing four European Union directives: Directive 2005/85/EC, Directive 2011/95/EU, Directive 2013/32/EU and Directive 2013/33/EU, in a move towards the Common European Asylum System (CEAS). Articles 13 and 24 of the International Protection Act state that a person seeking international protection shall be interviewed by the International Protection Agency 'as soon as practicable' (Article 13, paragraph 1) and, in the case of an accelerated procedure, in order to establish the admissibility of an application (Article 24, paragraph 3). The International Protection Act does not go into much detail. The details are to be found in the Procedural Standards on Granting and Withdrawing International Protection Regulations, 2015. However, the International Protection Act Article 2, paragraph (e) already states that an application for international protection would be considered 'manifestly unfounded if 'the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information, thus making his claim unconvincing, etc.'. This mirrors, quasi verbatim, the 1998 Swiss Federal Law on Asylum on the same issue.

Beneath 'inquisitorialisation' and other mentioned 'diversions' from the 1951 UN Convention and the 1967 Protocol on Refugees lie broader considerations and concerns pertaining to the realm of Human Rights.

6. Beyond 'inquisitorialisation': the criminalisation of asylum seekers and what law has to do with it - challenges to the 1948 Universal Declaration of Human Rights

The 'inquisitorialisation' of asylum procedures is the tree that hides the forest of a broader attempt at poaching potential refugees' (human) rights to seek asylum. Without even referring to the different arrangements catering for refugees prior to World War I (Nansen passports, for example), a special mention should be made of the 1948, Universal Declaration of Human Rights (UDHR). Although not legally binding in theory, it is worth reminding that the UDHR has been adopted by a United Nations General Assembly's resolution (UNGA resolution 217 A), which in itself shows the importance of the UDHR's moral significance and legitimacy. In addition, the UDHR is incorporated into the preambles of many countries' constitutions, making it binding at national level. In its Article 14, the UDHR states that 'Everyone has the right to seek and to enjoy in other countries asylum from persecution' (para 1). In essence, and without going back to times immemorial, the individual human right to seeking asylum deriving from the UDHR predates the 1951 Convention and the 1967 Protocol on Refugees. So, in the beginning was the UDHR, and the UDHR begat the 1951 Convention on Refugees, firmly anchoring refugees' rights into the realm of universal human rights.

6.1. A normalisation of certain human rights violations

Moving from principles to practices, this paper poses the question of how do states through government policies, try to abide by their international obligations regarding refugees, whilst being under the pressure to take a tougher stance on migration in general. This question is asked in the light that the refugee issue is often unduly subsumed within the broader migration issue. Migration and migratory flows have been a constant worry for countries and especially for countries in the Mediterranean. This has strengthened many countries' resolve to find ways to curb migration, even if this implies making deals with countries that cannot guarantee the safety and the good treatment of migrants in general, and asylum seekers and refugees in particular. In this respect, deals with Libya, i.e. Libya agreements ('Italy reups funding to force migrants back to Libya', 2023), Sudan, i.e. Khartoum Process (Hannun, 2023) or Morocco have clearly normalised, or at least downplayed, human abuses. The rhetoric from governments towards people using irregular routes of migration has also contributed to the banalisation of violent acts against migrants, including those among them who could qualify as refugees in the light of Article 1 of the 1951 Convention and the 1967 Protocol on Refugees. For instance, after the death of 37 asylum seekers on 24th June 2022, who were trying to cross the Spanish border from Ceuta and Melilla, Prime Minister of Spain at the time, Sanchez, praised the 'extraordinary cooperation' Spain had with Morocco and the need for more cooperation (Pinedo & Eljehtimi, 2022), overlooking the fact that genuine asylum seekers, who could have been among the people who had been killed, shouldn't be criminalised for choosing an irregular route. Indeed, in relation to potential refugees seeking entry into a country for the purpose of asylum, in its Article 31 the 1951 UN Geneva Convention on Refugees states that signatories of the Convention 'shouldn't impose penalties on account of their illegal entry or presence'. Likewise, Article 19 of the EU Charter of Fundamental Rights prohibits collective expulsion, which is what Spain and Morocco were doing in Ceuta and Melilla. Such policy which prevents people from even applying for asylum and having their cases heard is equivalent to pushbacks, whether this happens at sea or not. In recent years a case like that of *Hirsi Jamaa & others v. Italy* (2012), confirmed the illegality of such pushbacks. In this latter case, 24 people from Somalia and Eritrea were intercepted at sea and forced to return to Libya. The illegality of such pushbacks was again confirmed in the December 2020 by the European Court of Justice (ECJ) ruling with the case *Commission v. Hungary* (2020), forcing FRONTEX to stop its operation in Hungary.

These are just a few examples which illustrate how hostile countries have become towards asylum seekers. This hostility is so normalised that States are ready to forego their human rights responsibilities for a stronger but more violent response to irregular migration, a concept that wrongly includes the those seeking asylum. Pushbacks and migration deals are becoming more and more common and are seen as necessary despite being a violation of human rights. This stands in a continuum with a poor understanding of the 1951 UN Convention on Refugees and/or a complete disregard for it.

This worry of migration flows doesn't only inform countries' first-hand response, which is to stop people from entering their territories at all costs and make sure that asylum seekers do not apply for asylum. It also informs how the asylum procedures are conducted and how the 1951 Convention on Refugees is interpreted. This creates a system whereby the starting point is that asylum seekers are ipso facto guilty and in breach of the law. When an asylum seeker starts the procedure, governmental authorities take an inquisitorial approach that requires asylum seekers to prove that they are genuine refugees. A whole system is then put in place to support this asylum procedural approach. This approach, as discussed earlier, does not only go against the letter and the spirit of the 1951 Convention and the 1967 Protocol on Refugees; it enhances and normalises human rights violations.

6.2. Inquisitorial asylum procedure and detention

There is one feature of the procedure for asylum that symbolises the inquisitorialisation process and epitomises the criminalisation of asylum seekers: detention. This is outrightly at odds with the spirit and the letter of the 1951 UN Convention and the 1967 Protocol on Refugees. Detention, which have been defined as the "deprivation of liberty in confined places such as a prison, or a purpose-built closed reception or holding centre" (Edwards & UNHCR, 2021, p.8) has now become integral to the functioning of the asylum procedure around the world. Yet, detention is not only limited to prison-like or proposed built places. The UNHCR, for example, defines detention as any place that deprives of liberty 'or confinement in a closed place which asylum-seeker is not permitted to leave at will, including through not limited to prisons or purpose-built detention...it can take place in a range of locations, including at land and sea borders, in the "international zones" at airports, on island, on boat' (2012, p.9). This means that practices such as those adopted in Australia, whereby asylum seekers are held on a specific island, e.g. Nauru, amounts to detention. Similarly, airport transit areas are also to be considered detention centres, according to the UNHCR. This is in line with a judgement from the European Court of Human Rights in *Amuur v. France* (1996) which notes that holding people in a restricted area of an airport amounts to a restriction of liberty in practice. That restriction should not be prolonged lest it turns into deprivation of liberty sanctioned accordingly in Article 5 of European Convention of Human Rights (1950). Likewise, holding 300 people on charter boats for a month, without allowing them to make a formal request for asylum and limiting their access to lawyers, as was done by the Maltese authorities in 2020, is not only a form of detention it is also a prolonged arbitrary detention which goes against Articles 2 and 5 of the European Convention of Human Rights (1950) and against Article 3 of the Universal Declaration of Human Rights (1948).

Other international conventions like the Optional Protocol against Torture and other forms of cruel, inhuman or degrading treatment or punishment, are in line with the UNHCR's definition of detention as any place "where persons are or may be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence" (2002, p.2). The European Union Reception directive (Directive 2013/33/EU) defines detention as the 'confinement of an applicant by a member state within a particular place, where the applicant is deprived of his or her freedom of movement'. This is to say that many of the centres put in place for asylum seekers are essentially detention centres, a common tool used by state parties to the aforementioned international legal instruments.

There exists a lack of accurate statistical data with regards to the use and adoption of detention practices around the world. However, the Asylum Information Database (Aida) published a brief overview of the use of detention in terms of asylum seekers (Aida, 2017). Detention may be used at different points of the asylum process, including i) when the person first applies for asylum on arrival (front-end detention), ii) during the asylum procedure and processing, and/or iii) for those individuals whose asylum application was unsuccessful (back-end detention). In 2016 in Greece, about 4000 people were detained but only half had started their formal asylum application whilst in detention (European Council on Refugees and Exile (ECRE), 2017). Many of those asylum seekers were moved from reception and identification centres (RIC) to pre-removal detention centres as part of the EU-Turkey deal. The RIC part of the transfer would also be considered detention since there is some deprivation of liberty, even if it is not noted as such (ECRE, 2017). In countries like Germany, detention numbers

increased in 2016 in comparison to other years because of the use of detention for purposes of deportation (ECRE, 2017). In Poland, 292 children were detained making up about half of the asylum seekers detained in Poland (ECRE, 2017).

Similarly, in Malta, reports have been showing that there has been an increase in the use of detention to accommodate new policy (Aida, 2017). In 2021, 333 people were held in detention in October (Aida & ECRE, 2022) in Malta. Out of the three detention centres operated in Malta (Aida & ECRE, 2023), the people sent to Safi center are mainly young men who are immediately detained upon arrival. In many cases the asylum seekers have been detained for 'weeks or months' before an assessment is conducted (Aida & ECRE, 2022, p. 66).

The problem with the normalised used of detention in asylum process and procedure is that the use of detention is against the spirit and the letter of the 1951 Convention (Article 31) and the 1967 Protocol on Refugees. Fleeing war and persecution is a valid reason to enter a country "illegally" as one's safety and ability to ask for asylum is more important than how they have entered the country. This is in addition to the second part of Article 31 that mentions there should not be any restrictions on refugee unless absolutely necessary.

The reception directive in its preamble section 15 states 'applicant should not be held in detention for the sole reason that they are seeking asylum' and can be detained 'only through very defined, exceptional circumstances, subject to the principle of necessity and proportionality' (Directive 2013/33/EU, para. 15). This is in addition to Article 8 of the directive. However, in practice countries have continuously disregarded the convention and the directive, such as the aforementioned case of 300 people being held on a boat in Malta in 2020 (Malta Independent, 2021), where the government limited their access to lawyers and essentially stopped them from being able to apply for asylum.

The detention length for asylum seekers is often longer than is lawful. In 2021, the ECHR, in the case *Feilazoo v. Malta*, found Malta in violation of Article 3 and 5(1) of ECHR, in that not only was that detention time too long, but the conditions of plaintiff's detention were not adequate. He was also unlawfully detained because of COVID regulations and he was kept in isolation for long periods of time during detention. In addition, his deportation had not been made in an adequate manner. Cases such as these are not rare but, rather common in the treatment of asylum seekers in detention.

In 2021 the Council of Europe commissioner was alerted by the conditions of asylum seekers in detention centers such as Safi in Malta. The report showed that the conditions were inhumane. They not only deprived asylum seekers of their freedom, but asylum seekers were kept in overcrowded facilities and not much access to sunlight they were unable to have contact with the outside world (Conditions in Detention Facilities, 2023). Moreover, the facilities lacked clean water and adequate sanitation (Conditions in Detention Facilities, 2023). The CPT report of September 2020 talks of poor detention conditions that is akin to mass institutional neglect by authorities (Conditions in Detention Facilities, 2023, para 23). This goes explicitly against Article 3 of the ECHR, which prohibits the use of torture or inhumane or degrading treatment. This also goes against a number of directives such as the European Union Reception directive in Article 10(2)(3)(4) (Directive 2013/33/EU).

It is also mentioned that children (unaccompanied minors) were held in detention before their age could be assessed and therefore detained with adults (Conditions in Detention Facilities, 2023). This goes against Article 22 of the Convention on the Rights of the Child (1989). Children seeking refuge must receive adequate protection. Article 37 of this said Convention prohibits torture or cruel treatment of children, as well as deprivation of liberty unless otherwise necessary according to the law and as a last resort. The European Union Reception Directive (Directive 2013/33/EU), in its Article 21, demands that states take into account specific situations such as unaccompanied minors, this further affirming Articles 23 and 24, the latter making sure that unaccompanied minors are in suitable accommodation not detention.

Such conditions of the detention centres also add to 'use of excessive force and other questionable forms of punishment' (Conditions in Detention Facilities, 2023, para 49). There are reports 'from migrants detained at Lyster and Safi detention centre that mentions physical torture, beatings, solitary confinement, denial or delay of medical care and also electrocution' (Conditions in Detention Facilities, 2023, para 56). Again, this goes against several of the conventions and directives mentioned above.

The right of liberty is enshrined in other conventions and international documents. Articles 3 and 9 of the UDHR provide that everyone has the right to liberty and security and prohibit “arbitrary arrest, detention and exile” (1948, para 1). Article 9 of the International Covenant on civil and political rights (ICCPR) (1966), also prohibits arbitrary detention and deprivation. This arguably includes detention for immigration purposes (Edwards & UNHCR, 2021). Moreover, although the ICCPR leaves spaces for detention if it is authorized by national law, the same covenant cautions that “this discretion is limited by human rights guarantees” (Edwards & UNHCR, 2011, p.21). Yet, at the time of writing, this is not the case in many countries that detain asylum seekers.

The UNHCR's guidelines encourage the use of alternatives to detention and repeats that detention shouldn't be arbitrary or habitual. The vast majority of people comply with the procedure imposed to them and do not abscond, thus proving that not only is detention not necessary (Edwards & UNHCR, 2021), but it also does not need to be a feature in asylum procedure. Detention goes against the spirit and the letter of the 1951 Convention on refugees and should always be the last resort.

7. Expedited asylum procedure and 'safe countries'

In 2021, Ahmed's case was brought to the ECHR, after being held in detention for 2 years by the time his case went to court (*S.H. v. Malta*, 2022). Given the fact that he originated from a country that was considered as 'safe', his asylum claim was rejected and he only had three days to get the International Protection Appeals Tribunal (IPAT) to review his case. In this review system one is not allowed 'to present their views or be represented by a lawyer' (Galand, 2022, para 6.). Despite the fact that Ahmed was going to be persecuted if he was sent back to Bangladesh, IPAT refused to review other documentations to substantiate his claim. The ECHR confirmed that he couldn't be sent back to Bangladesh and Malta had failed to properly look at the risk of harm. The ECHR noted that the review system in place by IPAT for 'safe countries' wasn't sufficient nor was the review to be considered an appeal. Coincidentally, even the Constitutional Court of Malta confirmed that the review system wasn't an appeal and that the review system breached Malta's constitution' (Galand, 2022).

Ahmed's case is emblematic of another system that is being normalised in the asylum procedure, but which forgoes asylum seeker rights and human rights: the premise of safe countries. This is now being used by several states to conduct expedited asylum procedures. Again, the goal is to reduce the time spent on cases and reduce the number of asylum seekers.

In 2018, Greece implemented a specific border accelerated procedure based on Article 60(4) L4375/2016 in implementation of the then EU-Turkey deal applied for those seeking asylum from the islands of Lesbos, Chios, Sampos, Leros, and Kos (4.4. Special Procedures: Admissibility, Border and Accelerated Procedures, n.d.).

The Council of Europe noted that there was a worry that expedited procedures may lack quality of decisions. Italy, like Malta and other countries in Europe, has adopted the concept of 'safe countries' with the decree No.113/2018. The European commission proposed a list of 'safe countries' of origin on September 2015 and this was later mentioned as one of the many key measures in the European Agenda on Migration (AEDH, EuroMedRights & FIDH,2016). This was 'presented as an essential tool supporting swift processing of application (AEDH, EuroMedRights, & FIDH, 2016, p.11). This means that if one comes from any of the supposedly 'safe countries' their asylum request is ipso facto unfounded and therefore the applicant would have to go through the expedited procedure. The concept of safe country is enshrined in the (Directive 2013/32/EU) on procedures for granting and withdrawing international protection. Under this directive people coming from safe countries only get accelerated procedure.

There are three main problems with this concept of a 'safe country', a concept that goes against asylum seekers' rights. First, the safe country concept is not based on the 1951 Convention and the 1967 Protocol on refugees. Article 1 of the 1951 Convention mentions well founded fears of persecutions and has little do with the overall safety of a country. A country can be safe for one person or one group and not for others. Ahmed's case in Malta is a clear example of the failure of this concept. Secondly, the list is not the same in every country in the EU. Some countries may just have one country on their list,

as is the case with Ireland, and others, like Malta, have a list of 23 safe countries, proving that there's no precise definition nor definite criteria of what is considered safe. Thirdly, the expedited procedure means that asylum seekers from so-called safe countries do not get their asylum requests sufficiently looked at and examined. The concept of safe country puts the burden of proof on the asylum seeker, who can be seen as guilty until proven otherwise. This also goes against Article 3 of the 1951 Convention on refugees that states that 'contracting states should apply the provision of this convention without discrimination founded on race, religion, or country of origin'.

In this section we have noted that states continually circumvent the 1951 Convention and the 1967 Protocol on Refugees which they are parties to on their own free volition, and that this puts the rights of asylum seekers at risk. When visiting Lampedusa in June 2023, Dunja Mijatović, the Commissioner for Human Rights of the Council of Europe declared: 'I am struck by the alarming level of tolerance to serious human rights violations against refugees, asylum seekers and migrants that has developed across Europe'. (Council of Europe, 2023, para 1).

Let it be reminded that the Council of Europe, of which all EU States are members and to which Switzerland adhered in 1974, is the guardian of the 1950 Europe Convention on Human Rights (ECHR). The Commissioner goes on to say that:

despite many warnings, the lives of people at sea remain at risk in the face of insufficient rescue capacity and coordination, a lack of safe and legal routes and solidarity, and the criminalisation of NGOs trying to provide life-saving assistance. Elsewhere in Europe, pushbacks at land and sea borders, violence against refugees and migrants, denial of access to asylum, deprivation of humanitarian assistance and the harassment of refugee rights defenders, are widely documented'. (2023, para 2).

In an unequivocal way, she adds that

reports of human rights violations against refugees, asylum seekers and migrants are now so frequent that they hardly register in the public consciousness. For their part, Council of Europe member states' governments, rather than holding each other accountable on the basis of commonly-agreed standards, have far too often silently tolerated or openly supported the adoption of laws and policies that have progressively stripped human rights protections from people on the move. Their collective focus on deterrence and shifting responsibility to third countries has created a breeding ground for practices that routinely violate refugees' and migrants' rights. (2023, para 3).

8. The 'inquisitorialisation' of asylum procedures: the psychological impact

An issue that is important to raise when discussing asylum seeking is the psychological impact that this has on a person. As our societies increasingly stress the importance of a person's mental health and raise more awareness on the topic, this awareness and understanding should also be extended to asylum seekers - who are human beings just the same - and are in fact more likely to experience poor mental health than people who have not experienced forced migration (Tomasi et al., n.d.). Asylum seekers and refugees are likely to experience higher rates of depression, anxiety and Post-Traumatic Stress Disorder (PTSD) (Fazel et al., 2005; Tempany, 2009) - this is linked to both their experiences before migrating to another place (e.g., experiencing war or persecution) as well as their experiences after having migrated (e.g., the trauma incurred during the journey, the stress of the asylum procedure, etc.).

There exists a circular relationship between mental health disorders and the asylum seeking process. Insecure asylum status and the stress of the asylum seeking procedure, which are some of the major stressors that asylum seekers face, can have a negative effect on PTSD, anxiety and/or depression symptoms in refugees. Studies have shown that the majority of stress factors which negatively impact asylum seeker's mental health are directly related to post-migration living conditions and restrictions - this includes the asylum-seeking process, being moved between asylum centres, an insecure legal status, and social isolation (Womersley et al., 2017). Being held in detention has also been found to

worsen the mental health of asylum seekers: depression, anxiety and PTSD have been commonly reported both during and following detention, due to factors associated with detention such as loss of freedom, loss of agency, violations of their human rights, and the perception of detention as a punitive measure (von Werthern et al., 2018). This point is of particular relevance to countries such as Malta, that has been repeatedly urged by the Council of Europe to change its approach towards immigration detention, as the "conditions of detention...verged on institutional mass neglect by the authorities" (Council of Europe, 2021, p.6) and the:

living conditions, regimes, lack of due process safeguards, treatment of vulnerable groups and some specific Covid-19 measures were found to be so problematic that they may well amount to inhuman and degrading treatment contrary to Article 3 of the European Convention on Human Rights (Council of Europe, 2021, p.6).

Other research has shown that factors such as torture and poor housing conditions can have a harmful impact on asylum seekers' mental health (Song et al., 2015; von Werthern et al, 2018). Therefore, it is no wonder that in conditions such as these, asylum seekers' mental health degrades over time.

On the other hand, the symptoms of PTSD and depression can hinder the articulation of an effective asylum claim. PTSD is a disorder that results from direct or indirect exposure to a traumatic event, series of events or set of circumstances (for example death, or actual or threatened violence). The traumatic event that was experienced is then re-experienced in multiple different ways. The symptoms of PTSD can fall into four categories: intrusion, i.e., flashbacks, nightmares, uncontrollable thoughts about the traumatic event; avoidance (of trauma related thoughts, feelings or reminders); alterations in cognition and mood (negative alterations in mood, thoughts or feelings); and alterations in arousal and reactivity, i.e. angry outbursts, or recklessly or self-destructive behaviour (American Psychiatric Association, 2022). Depression, otherwise known as major depressive disorder or clinical depression, is a mood disorder that causes a persistent feeling of sadness and loss of interest. The symptoms of depression (which include a depressed mood, fatigue or loss of interest or pleasure in activities) can interfere with a person's daily life, causing clinically significant distress or impairment in social, occupational, or other important areas of functioning (American Psychiatric Association, 2022). The dissociative aspects of the PTSD symptoms (i.e., distortion) and the alterations in mood and cognition (i.e. the tendency towards non-linear narratives, the inability to recall the key features of the trauma) can therefore hinder the articulation of an effective asylum claim, as can some of the symptoms of depression - which can include trouble in thinking, concentrating, making decisions and remembering things (Hitchcock et al., 2018). If the investigative process that states undertake in order to double check the applicant's asylum claim, requires the applicant to give a detailed and consistent account of the traumatic experience which caused them to flee, this could potentially clash with some of the symptoms of PTSD and depression. Research shows that an estimated 31% of refugees and asylum seekers (1 in every 3) suffer from PTSD, anxiety and depression (Blackmore et al., 2020), this begs the question of whether and how this is being taken into account by states in the asylum-seeking process.

This question is an important one to pose, since trauma narratives are not always linear, neatly structured or coherent but, rather, can often be blurry or fractured. Both depression and PTSD have been shown to be associated with over general memory, i.e., a lack of specificity in one's autobiographical memory (Sumner, 2012; Valentino, 2011). The idea that an asylum seeker's account of a traumatic experience must be false if it is not coherent (in the manner that the authorities would prefer it to be) therefore, shows a lack of understanding of the realities of the state of many asylum seekers' mental health and how this may affect their recollection of the traumatic event experienced. When dealing with a group of people who have suffered from trauma and who require time and a sufficient level of trust to be able to speak openly about their traumatic experience, it is vital to ensure that they are treated with empathy during their asylum interview. However, what is experienced is often the contrary: interviews that trigger post-traumatic intrusions in the interviewee (Schock et al., 2015), and questioning techniques that not only have legal but also psychological implications. One such example would be the officers who are likely to conduct the asylum interview from a place suspicion and

doubt about the claims made by the interviewee - however, individuals who have suffered psychological trauma and have PTSD often have negative beliefs and expectations about oneself or the world (American Psychiatric Association, 2022), which can be expressed in various ways including the belief that other people (or even themselves) cannot be trusted. Being thrust into an interview setting in which they are treated like a suspect rather than as an individual seeking refuge may reconfirm this negative world view and cause further difficulties in opening up about their trauma. As a result of this, it has been found, that asylum seekers with PTSD might be more likely to be refused refugee status (Herlihy et al., 2002) however a person's diagnosis should not result in them being refused the protection that they need. Instead, the authorities should ensure that appropriate accommodations are put in place, such as giving asylum seekers the opportunity to read pre-written statements or to respond to questions in writing if unable to speak (Sarangi et al., 2021) so that, instead of being penalised for their mental health issues, they may be put at ease and be in a position where they can recount their traumatic experiences in a safe space and to the best of their abilities.

The best way to improve asylum seekers' mental health would be to release them from (or avoid putting them in) detention (Triggs, 2013). Yet, not only are asylum seekers often kept in detention for longer periods than is allowed even by national laws, they often also encounter barriers when it comes to accessing mental health care - such as language barriers, lack of proper therapeutic environment, problems with continuity of care, and more (Taylor-East et al., 2016) - meaning that their mental health problems go unaddressed or are not adequately addressed. A particularly egregious example of the many barriers faced by asylum seekers in accessing mental health services is the Malta Union of Midwives and Nurses' claim that asylum seekers (who were described as "illegal immigrants" in the union's statement) were "abusing from the system" by purposefully self-harming in order to be transferred from detention centres to Mount Carmel Hospital (the state-run mental hospital in Malta) - this prompted the union to instruct their nurses to refuse to admit and treat these "illegal migrants" who were there under "false pretexts" (Francalanza, 2021). As correctly underscored by the ECRE, the union made these claims and gave such instructions "without clarifying procedures for determining abuse of the system or documentation of the extent of this alleged problem" (2021, para 3). This refusal of care - and denial of access to a basic right - is especially harmful considering the numerous reports on the horrible conditions of Maltese detention centres and the ample research on the psychological effects of such conditions on asylum seekers (Verhülsonk et al., 2021; World Health Organisation, 2022).

From this non-extensive and general overview of the mental health of people seeking asylum it is clear that the lack of regard and lack of accommodation for asylum seekers' pre-migration trauma as well as the lack of action taken to address their post-migration trauma (trauma which is a direct result of states' insensitive and harmful laws and practices) and the adverse effect that this has on their mental health - the current asylum seeking processes tend to completely disregard the asylum seekers' mental health and thereby violate their human rights.

9. Conclusion

Recent refugee-bashing threatens to undermine, and has in some instances undermined, the 1951 Convention and the 1967 Protocol on Refugees. Attacks levelled at these two international legal instruments were based on two premises. The first premise was that the 1951 Convention on Refugees and its associated 1967 Protocol are no longer relevant. Yet, the war between Russia and Ukraine seems to have woken up public opinions from the northern shores of the Mediterranean to the fact that positing the irrelevance of the 1951 Convention was a hasty conclusion. As long as wars, conflicts, persecutions or any other type of catastrophes will exist, and this seems to be the reality of the human condition so far, the 1951 will still be relevant. *Quod erat demonstrandum*. The second premise was that the 1951 Convention and the 1967 Protocol on Refugees are being abused and violated by asylum seekers. Whilst not excluding the temptation that some asylum seekers might not abide by the Convention on Refugees, this paper has highlighted and underscored an even greater danger and risk: the violation of the spirit and sometimes the letter of the 1951 Convention on Refugees by an increasing number of its signatories. This is probably more worrying than the violations from asylum seekers for at

least two reasons. First of all, according to the principle of *pacta sunt servanda*, state parties to a treaty have to abide by it. Secondly, should a state party to a treaty or a convention consider that the circumstances have changed (*rebus sic stantibus*), unlike asylum seekers, the state in question has the liberty to withdraw from the treaty or convention. This would have at least the merit of clarity. Violations of the 1951 Convention on Refugees have been blatant in some cases (e.g., detention and pushbacks) or insidious in other cases. Such is the case of the process of inquisitorialisation which illustrates an imperceptible and yet real attempt at 'deconventionalising' certain aspects of the 1951 Convention relating to the Status of Refugees.

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Mediterranean migrations: A museological perspective

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Abstract

Museums had earlier presented historical narratives about migrations and migrant communities in the Mediterranean region portraying and presenting them as deemed fit to the colonial and nation-state agenda. This article presents different museological approaches which aim to include communities like migrant communities, not normally included in the museum. Examples of fourteen museums on Mediterranean countries presenting migrations and migrant communities tend to make choices of inclusion or exclusion of migrations, both within their territory and from or within other regions, such as the Mediterranean. Mediterranean migrations gain importance and focus depending on the objectives of the museum and the message it wishes to convey to the public. Two Mediterranean grassroots museums focus particularly on Mediterranean migrations and migrants, even if migrants are transitory. The discussion revolves around the museums' intentions and activities to raise awareness and empathy among visitors and the public. The article concludes that as educators and activists, museums have the potential to change the present and future of migrations, particularly within the Mediterranean region. Their collective practices inside and outside the museum can inform the public, raise awareness, promote understanding and empathy, enhance opportunities for dialogue and inclusion, help improve well-being, and exert pressure on those in power positions to change the status quo.

Keywords: community, Mediterranean, migration, museum

1. Introduction

This study presents the theme of migrants and migrations in the Mediterranean from a museological perspective, that is, by analysing the approaches adopted by a number of museums about migrants and migrations in the Mediterranean. Migration is the seasonal or total movement from one part of a place to another. From the human perspective, migration is associated with the permanent or temporary change of residence by an individual or group, excluding transient types such as 'nomadism, migrant labour, commuting, and tourism' ('Human Migration', n.d.) Human migrations can occur within the same region, or country, or over long distances such as across countries or continents. It could involve individuals, families and sometimes entire communities. Since antiquity, people migrated in search of a better life, either owing to natural causes and disasters such as drought, floods and seismic activities or because of man-made concerns such as wars, persecution, human rights issues and other injustices.

1.1. Historical Mediterranean migrations in museums

The Mediterranean in its complexities of cultures and communities was and is a dynamic place of migration. Migrating and receiving communities reacted differently to each other. Some were welcomed and seen as liberators, opportunity creators and friendly, while others were considered hostile to a point

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which led them into conflict with receiving communities. The westward movement of the Bronze Age from the Levant caused cultures to meet, settle, colonise, or expel each other. Historiographers and traditional museums presented such arrivals as the start of a new era and higher culture with which to eradicate earlier less advanced cultures. Contrarily, migrants escaping religious, racial, or ethnic persecutions were presented as undesired rebels or threats, as those in authority sought only to secure their position and support from other powers. The imposition of power-based decisions, justified by religious belief or political creed, was always conducive to forced migrations. The medieval and modern age movement of communities like the monks escaping iconoclast persecution in the Byzantine Empire; the Knights Templar escaping the French monarch and papal authorities in Roman Catholic Europe; the Jews escaping persecutions by the Al Andalus Muslims, the Aragonese and Church authorities, Nazism and Fascism; Christians and Muslims escaping the threats of extremism and fundamentalisms in Asia and Africa; and others escaping dictatorial Communist regimes; the Amazon and jungle tribes fleeing capitalist greed aided by neoliberal governments, are examples of migrations featured in historical and current news, but not so much in museums and their narratives.

1.2. Colonial perspectives of migration in museums

Colonialism features amongst the four major types of migration: invasion, conquest, colonisation and emigration/immigration (Caves, 2004). In ancient and classical times, the Mediterranean served as a stepping-stone for colonial military and commercial activities across continents. In the modern age, the Mediterranean felt the influence of the New World, but migrants from or to those lands were higher among the monarchies touching the Atlantic Ocean than in the Mediterranean (Altman & Horn, 1991; Altman, 2014; Klooster & Padula, 2005). Colonial times provided different opportunities for migration. While colonisers consider colonised territory an opportunity for exploitation, a new adventure and leisure travel destination, the colonised saw the coloniser's territory as an opportunity for work, commerce, further education, and other opportunities unforeseen in their land. The nineteenth and early twentieth centuries facilitated the movement of more people from inland Africa and distant Asian lands. The passage of troops and crews on maritime fleets, passengers and merchandise enabled the discovery of new opportunities elsewhere, even in the Mediterranean, giving birth to migrant groups from Asia and northern Europe. Meanwhile, Mediterraneans colonised southern European maritime harbours and settled on the Maghrebi coasts and other Mediterranean islands ruled by the power colonising or governing their homeland.

Colonial authorities influenced whatever was presented in museums as they aimed to promote their identity. With the arrival of the nation-state and independence, the colonised turned to present national identity in ways which mimicked the colonial image and identity of homogeneity and stability. Since the twentieth century, most of the developed and developing countries had quickly become centres of change, multicultural, and accommodating heterogenous communities. Similar changes bind museums to become more intrigued in preserving the cultural heritage of communities which are fast changing or disappearing by the impacts of globalisation. By prioritising the economy, governments had increased divisions and exclusions of many who could not cope (Gurria, 2019; Pugno, 2022). Such differences felt across continents led to wars, revolts, racial hatred, and discrimination, forcing entire communities out of their ancestral homelands.

Mediterranean migrations may seem distant to non-Mediterranean countries, however, such movements of people could reach and impact societies far away from the Mediterranean region. The Mediterranean migrations which mostly come to one's mind among Mediterranean Europeans are those which led many to migrate and seek job opportunities in, for example, North America, Australia and New Zealand: mainly countries which were underpopulated and whose development required colonialism to encourage a multitude of human resources to meet the objectives of investors, developers and exploiters in those distant continents. Although some did find paradise in the opportunities presented, others met death, poverty, hardships, unexpected degradation of human rights, disease, labour exploitation, anti-immigrant sentiments and hostilities (Chambers, 2019b; Farrugia, 2016): memories and experiences which the visitor expects to experience in migration museums and displays.

2. Literature Review

For if modernity – from voyages of discovery, foreign conquest, global trade and planetary financial flows – is all about mobility and the perpetual movement of goods and capital, it is equally, and inevitably, also about the migration of bodies, lives, cultures and histories. One comes with the other. (Chambers 2019b, p. 6)

Migrations are frequently caused by anything deemed as an abnormal course of nature or human life. The globalisation of capital and transnational political economies contributed to an ongoing movement of people across Mediterranean waters: north to south as European nations colonised the Levant and African territories and south to north as perceptions of a wealthier north grew worldwide (Chambers, 2019a). With such changes occurring in daily life and society, museums and museology were not excluded from the impacts of globalisation.

2.1. Sociomuseology and migration

As an evolution of New Museology (Vergo, 1989), the birth and practices of Sociomuseology known also as Social Museology ('Theory and Practice of Sociomuseology', n.d.), sought to respond to modern changes and scenarios of society and a globalised world (Freire, 2001a). It aimed to make museums adapt to modern-day realities and help communities normally set aside or at a disadvantage by the ever-growing divide between the wealthy and privileged and the common people who must struggle to survive. Recent studies of grassroots micro museums maintained that:

Sociomuseology seeks to adjust the museum to present-day realities, mostly resulting from neoliberal policies leading to migration, refugees, the formation of new identities, the growth of inequalities and ever-increasing poverty: matters all relevant to the Mediterranean. (Vella, 2020, pp. 46-47)

The Sociomuseological concept, like grassroots museology, seeks to give voice to marginalised and disadvantaged groups and communities (Vella, 2020) who are frequently depicted as inferiors or intruders, like migrants coming from third-world countries or other facets of poverty. This is however unreal, as often people are forced to migrate because no one dares to raise a voice or act to combat the inequalities and injustices they suffer from those in authority and their 'legitimate' mechanisms: most of which are highly corrupt, discriminatory and manipulated by a wealthiest few. Ignorance contributes largely to such situations and eases the efforts of those in power to manipulate populations, providing them with occasional monetary or tangible tokens to secure their support and easily divide communities for their own political and capital interests. Museums can do wonders whenever they engage in combating ignorance. They create space and place for different forms of learning. They present tangible and recognisable objects and displays with which people may associate and connect, thus, bringing the visitor into the museum and presenting the 'other' as an equal, not as an inferior (Vella, 2022). Such connections may not be easily realisable in most institutional or state museums which promote a homogenous national identity and the superiority of those in power positions. It is the museums that dare, care, and act to bring about change (Candlin, 2016; Freire, 2001b; Ledwith, 2005; Stevens, 2007; Vella, 2020), that may allow space and be inclusive of migrations and migrants within their spaces, displays and narratives.

2.2. Islands

Mediterranean islands are differently perceived by various people; however, the two most prominent sources of attraction for nonlocals are tourism and immigration (Tozy, 2010). Such contacts occur in the Mediterranean as Europeans north of the Mediterranean seek to explore the south and the east Mediterranean, while those to the south and east of the Mediterranean move north and west perceiving Europe and the West as a better place (Chircop, 2015; Fogu, 2010; Malta Tourism Authority (MTA), 2018; National Statistics Office (NSO), 2018; UNHCR, 2020). It is however not only perceptions that encourage migration, but also incentives and opportunities offered by Mediterranean islands and countries which intend to strengthen their workforce with more talent and qualified human resources. Within such a scenario, migrants cannot be placed in one basket, and assuming that all are the same is an incorrect approach.

Greed for wealth and power destroyed nations and communities through wars, genocides, and other negative actions, like the appropriation of natural resources, justified by those in power as legitimate and supported by the ignorance of those seeking favours and preferences from the powerful. Migrants, whether from other continents, countries or communities, are frequently presented as intruders, hostile, criminals, inferiors, outsiders, and undesired people (Arrocha, 2019), but it is rarely contemplated that the rich Mediterranean culture is the product of similar historical migrations, about which most national and institutional museums boast. Examples in Mediterranean history abound with connections created through similar events. Three types of migration, “invasion, conquest and colonialism” (Caves, 2004, p. 461), were synonymous with Mediterranean history for millennia and migrating communities were depicted under different titles: like earlier settlers, first colonisers, and cultures with which Mediterranean peoples proudly associate their roots and identity, or sometimes as the invader who did not gain much sympathy from the natives or inhabitants of the place. Emigration and immigration were intensified as colonial times of the nineteenth and twentieth centuries allowed people to travel easier and faster.

Museums, influenced by colonial images and the longing to associate their national identity with ancient cultures and civilisations, frequently present the Mediterranean through artefacts recovered from the region. Museums in Mediterranean islands or representing coastal cities present artefacts and historical narratives inspiring pride in past connections with cultures like Pharaonic Egypt, Phoenicia (Canaan), Carthage, Greece, the Aegeans, and peoples like the Trojans, Etruscans, Romans, Byzantines, Arabs, Jews, and Ottomans among others. Such museum narratives, frequently miss or purposefully ignore the fact that communities from such cultures reached Mediterranean islands or locations when circumstances forced them to migrate. Invasions, persecutions and sufferings imposed by those in power, added to natural calamities, scarcely spared anyone.

Maltese museums, for example, proudly present the island’s earliest connections with the Phoenico-Punic culture. Till the modern age, it was thought that they were the first people to settle, inhabit the Islands and build megalithic structures, nowadays known to be neolithic. There is no national museum narrative which tells that the Canaanites, whom the Greeks called Phoenicians, migrated westwards as others took their lands (Cell Press, 2020; Fenton, 2014; Pinkstone, 2020; Sauter, 2022) Pride about Phoenician lineage increased with the British colonial perception that British monarchs had Phoenician progenitors (Quinn, 2019). The British colonial presence in Malta and its education system favoured perceptions of common ancestry and presented the Phoenicians not as migrants, but as traders and navigators who dominated the seas, who were indispensable, and among other taught writing, navigation and sea vessel building.

The Mediterranean has long experienced what Bauman (2000) describes as liquid modernity and liquid life owing to constant changes occurring in social relationships, identities, economics and ways we travel (Bauman, 2000, 2005). Fogu (2010) likewise, claims that perceived imaginaries of the Mediterranean are strongly intertwined with current events in the region and are being further eroded, impacted and becoming more liquid in the identity, resulting from the end of colonialism and the Cold War, and accession to the European Union. Bauman (2000, 2003) maintains that the present events are caused by globalised capitalism which intends to erode the connections between work (labour) and wealth (capital), in order to weaken social and collective ties, by consequently instilling doubt in self and others and wide insecurity: thus the failure of supposedly democratic governments to protect and guarantee support to their people, as they are also hijacked by capitalist interests and objectives in opposition to the common good and wellbeing.

3. Methodology

The study introduces the theme of migration as interpreted and presented through literature, traditional museums, historical narratives, and colonial imaginaries. It intends to show distinctions existing among museums which present different migrations. The objectives of museums may, however, approach the theme of migrations and migrants in diverse ways and choose how to present them to the public with different intentions. Through the lens of critical social theory, this study is grounded within the social and grassroots museological approaches where museums may seek to raise awareness,

emotions, memories or even empathy and call for action or omit and avoid references to them, trying not to get tangled in such issues and debates.

The study identified fourteen migration museums in eleven Mediterranean countries, presenting their theme, focus, objectives, collections and methods applied to present migrations and connect with migrants, communities and visitors. The museums focus mainly on internal migrations, immigrations or emigrations, including or even excluding Mediterranean migrations. Museums in Mediterranean countries and central Mediterranean islands, where migration is a daily concern, are compared to other museums, what they present to the visitor and how they include, if they do, Mediterranean migrations (see Appendix – Information about the museums mentioned).

The data was collected through an analysis of the museums' own web-content and social media pages, scholarly articles published in academic journals, and reports and interviews which appeared in the printed and online news media,

The discussion opens on different issues concerning the presentation of migrations and migrants in museums, and how museums may choose to deal with the theme and realities faced by migrants, particularly in Mediterranean countries. The analysis of museums affording space for migrants and migrations in different countries presents ways museums seek to represent different migrations, perspectives of migrations and Mediterranean migrations, and how Mediterranean museums present migrations and migrants to the public, to visitors and to the same migrant communities represented. Comparisons with museums in non-Mediterranean countries and continents are briefly made. In conclusion, the study presents factors which facilitate acceptance, inclusivity and understanding of Mediterranean migrations, and promote dialogue between the museum, migrants, communities and visitors, in an effort to raise voices and lead to actions at higher levels as envisioned by social and grassroots museological perspectives.

4. Findings

4.1. Migration museums and Mediterranean countries

Fourteen museums in eleven Mediterranean countries were studied. Spain, France, Italy, Malta, San Marino, Greece, Turkey, Lebanon, Israel, Tunisia and Morocco have some sort of migration museum. None was traced in the remaining eleven Mediterranean countries: Algeria, Libya, Egypt, Syria, Cyprus, Albania, Montenegro, Bosnia and Herzegovina, Croatia, Slovenia and Monaco (Monte Carlo) (See Figure 1).

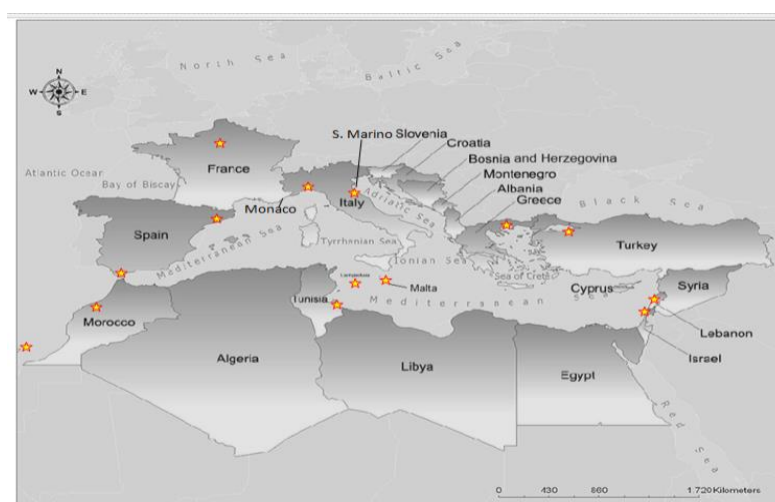


Figure 1. Location of Museums studied in Mediterranean countries (starred)²

² Base Map retrieved and adapted from <http://mapping.co/>

Syria was at the time of this study in a state of internal instability brought on by its authoritarian regime and its alliance with Russia, against its own people. The Ex-Yugoslavian states and Albania are ex-Communist states struggling to overcome and recover from impacts and divisions sown by former political regimes and war. Cyprus is divided owing to the ethnic, economic and political interests of factions seeking power, nationalistic integrations and affiliations with Greece or Turkey, political unrest which further divided the islanders and an invasion considered illegal and monitored by a United Nations buffer zone, and the British still keeping their military bases ('How Cyprus became divided', 2021; Imperial War Museum, 2023). Despite political or historical divisions, these countries have no migration museum celebrating migrants or migrations like those crossing to or from the Maghrebi coast, the Levant shores, the Aegean or the Adriatic. Cypriot migrants, for example, are presented in the Migration Museum in London (MML, 2022) but not in their country. The Albanians and nearby peoples who, for example, migrated to the Italian peninsula since, at least, the fourteenth century (ItalyHeritage, 2004) are also not recalled in their country.

Museums are borne out of the need to tell the public what other institutions omit or do tell in unacceptable ways. The findings show how museums in Mediterranean countries present migrations and act about them with the resources they own. Some museums exclude migrations because their theme or collection is scarcely or not at all associated, or because migrations could be associated with or portrayed as dark and negative events in the history of their community. Exclusion or minimal reference is sequentially employed by museums following traditional approaches and promoting what the establishment considers as valuable to tell, which instils pride and fits for promoting the homogenous nation-state identity: an illusory statement in today's cosmopolitan world. Some migration museums, even in Mediterranean countries, choose to totally exclude Mediterranean migrations and focus on selected immigrations and emigrations concerning their people.

Museums representing smaller communities exceed the geographic boundaries of place to define their community inclusive of those who left the geographic boundary through distinct types of movements such as a change of residence, emigration, immigration or changing relationships (Vella, 2020). Studies shows that grassroots museums may include community members who for some reason or another, migrated away from or joined the represented community (Vella, 2020). Practices of grassroots museums endeavour to bring community members together, voice their concerns and bring about desired changes even by becoming political and activist in society (Vella, 2020,). The element of community is strong in the successes of museums practising social, grassroots and community-oriented types of museology. Their bottom-up approaches and practices tend to produce displays and narratives closer to reality than any top-down subjective interpretation, display, and narrative met elsewhere. Similar objective approaches may not feature in museums subjected to the dictate of the establishment or those in power positions. Content and displays depicting Mediterranean migrations are almost or completely absent from museums in countries from where large migrations originate (Cimoli, 2013). While museums far from the Mediterranean, like the *Museum of Movements* (Sweden) aim to create a free place for the understanding of the movement of people and ideas, national museums in African and Asian nations torn by wars, civil strife, hatred and divisions fuelled by those in power, are less keen to present displays and narratives which remind of and represent the histories, voices, identities and cultures of migrants to and from such places. Other museums, however, seek to restrict displays and mentions of Mediterranean migrations or use them simply to meet their goals, such as presenting the Mediterranean as a region from where people migrated into their country or to locate past connections and ancestry.

4.2. Migration museums in Mediterranean countries³

4.2.1. *Clandestine Immigrations and Naval Museum, Haifa, Israel*

Run by the Ministry of Defence, the museum calls itself *The Museum of Enlistment and the Navy*. It features “the story of immigration and the struggle for immigration to the Land of Israel between 1934-1948” during the British Mandate of Palestine (Clandestine Immigrations and Naval Museum, 2018). While focusing on Israeli military naval history, it presents the irregular immigration of Jewish refugees from Europe taken into British Palestine, detention camps in Cyprus, and the attempt of Palestinian refugees, and Holocaust survivors to reach Palestine (1947). It displays historical documents, press cuttings, photographs, battle charts, weapons, ship models, audio-visual models, and video testimonials of life on board the refugee ships, and survivors’ experiences of fears and hopes. The central exhibits are a British World War Two landing craft used to intercept the Palestinian refugees mentioned, a deportation ship, and two submarines. The rest of the museum is about the navy, considered an important player in Israeli immigration history (The Council for Conservation of Heritage Sites in Israel (TCHSI), 2020; page titled *Clandestine Immigrations and Navy Museum, Haifa*, n.d.). No reference to other Mediterranean migrations is made. Migration is used as a political tool with which to pride oneself of the nation and its common identity.

4.2.2. *Bursa Göç Tarihi Müzesi, Bursa, Turkey*

Located in an old textile factory in the industrial city of Bursa, and the main socio-cultural centre, the museum intends ‘to study and revive the migration history of the city’ (Bursa Göç Tarihi Müzesi (BGTM), 2022). Its geographic position on the Sea of Marmara which connects the Black Sea to the Mediterranean gives no importance to Mediterranean migrations but focuses on migrations from the Balkans, the Caucasus, Crimea and Asia (BGTM, 2022; Autonoumnews, 2020). It presents migrations as a consolidation of the nation-state identity (Manke, 2016). Such an approach is criticised as other routes of movement and migrations are absent from the Turkish migration museum (Karadeniz & Okvuran, 2021). Its displays consist of mannequins wearing traditional attire, craft items, and other objects supported with large printed images and narratives.

4.2.3. *Ben M’sik Community Museum, Hassan II University, Casablanca, Morocco.*

This flourishing museum, housed within a university, collects objects connected to traditions, crafts and life in Morocco in the past. It aims to build stronger ties with a community defined as ‘the largest, poorest, and most densely populated of Casablanca’s six districts’ and a ‘holding-room for successive waves of migrants’ from other Moroccan regions. It intends to provide a shared gathering space for the cultural and ethnic diversities of the neighbourhood, to allow different voices and views ‘to improve conditions by establishing cultural and social institutions in the area.’ The displays include artefacts, old kitchen utensils, old carpet weaving and clothes-making instruments, traditional musical instruments and photographs (Ben M’sik Community Museum (BMCM), 2022). Despite the awareness of internal migrations, it excludes migrations from Morocco to other parts of the world and other Mediterranean countries. For some reason, it seems to disregard Mediterranean migrations, frequently ending in tragedy, from its shores to Spanish territory (UNHR, 2022).

4.2.4. *Museo Territorio de las Migraciones, Llano Amarillo, Algeciras, Spain.*

Located in a modern multilevel building within the Plaza de la Cultura, the museum lies close to the parking from where African emigrants cross to Africa mostly in Summer. The original intent of the museum is to ‘Tendria varias partes, entre salas con informacion sobre migraciones de aves, cetaceos y humanos’ (have several parts, including rooms with information on migrations of birds, crustaceans and humans,’ and to boost tourism and ecotourism in Algeciras area (Selva, 2009). The museum aims

³ Some text in this section is reproduced from the websites or social media pages of the museums studied so as to remain faithful to their own descriptions and objectives. It may therefore contain grammar or spelling which is not British English. The sequence of the museums is in no particular order.

to show the prospective visitor how the city's community and culture were weaved by the cultural diversity it embraces and experiences, inclusive of the present migration issues occurring in that part of the Mediterranean.

4.2.5. Museo Atlantico, Lanzarote, Canary Islands, Spain.

A different and one of only three underwater museums in the world is considered a commemoration of 'forgotten' refugees crossing the Mediterranean in search of a better life. The exhibit, which can be classified as a monument, consists of thirteen sculptures by British artist Jason deCaires Taylor (Perrone, 2018; The Guardian, 2016). At a depth of around fourteen metres, over two-hundred figures, a thirty-metre-long wall, a botanical garden and a ring of bodies, all spread over an area of sand are an attraction to divers and others. Although the Canaries may not experience frequent migrations, mainland Spain has a long shore along the Mediterranean most of which is close to the Moroccan-Algerian coast. It offers no artefacts or narratives, but a visual representation of Mediterranean migrations and a mnemonic of migrants' lives lost at sea, which between 2014 and 2018 amounted to at least 15,000 (Robins, 2019).

4.2.6. Malta Virtual Emigrant Museum, Valletta, Malta.

The museum intends 'to collect information relating to issues of interest to migrants and migration [and] to provide the most comprehensive collection of such information' (Malta Virtual Emigrant Museum (MVEM), 2022). It is currently limited to the emigration of Maltese persons and families during the nineteenth and twentieth centuries to countries like America, Canada, Australia and New Zealand. Although Maltese emigration also reached other Mediterranean coasts along the Maghreb, East Mediterranean islands, and southern European maritime cities, to a point of almost colonisation, such migrations are absent in the collection.

Despite the fact that the same Migrants Commission has for long assisted and still supports immigrants, asylum seekers and refugees who reach, seek work and residence in the Maltese Islands, or relocation in Europe (Migrants table Commission tries not to murk the waters which sustain it and its efforts to help regular and irregular migrants reach the Islands safely.

4.2.7. Musée de la Mémoire de la Mer et de l'Homme, Zarzis, Tunisia.

The museum, an initiative by eco-artist Mohsen Libidheb, stands in his own private garden (Frana, 2020). Since migrants rarely carry much of their possessions with them, it aims to collect, catalogue and display such objects (Cimoli, 2013), and is the only museum telling Africans about migration out of Africa (Musée de la Mémoire de la Mer et de l'Homme (MMMh), 2022).

The museum was the focus of a photographic and video exhibition titled *La memoria del mare. Oggetti migranti nel Mediterraneo* (The memory of the sea. Migrant objects in the Mediterranean), forming part of a European Commission-financed project titled *MeLa*,⁴ *European museums in an age of migrations* which intended to reach European museums without forgetting the experiences of the southern Mediterranean shores, in search of material and tangible objects, forms of representation, places of consciousness, and memorials which narrate the phenomenon of migration to future generations (Cimoli, 2013). MeLa intended to identify methods, approaches, and innovative museum practices relevant to the conditions forced by the migration of persons, cultures, ideas, information, and acquaintances formed in a globalised world (Cimoli, 2013). MeLa also aimed to design policies for museums to enrich the European cultural heritage which they present to the visitor, by turning tangible and intangible heritage into "an effective agent of shared forms of citizenship and identity building" (Cimoli, 2013), and intercultural encounters which facilitate community building.

⁴ 'Mela' is a Sanskrit word for 'gathering' or 'meeting', today used as a reference to intercultural encounters, intended as opportunities for community building.

4.2.8. PortoM, Lampedusa, Province of Trapani, Sicily, Italy.

The museum and cultural centre is an initiative of Giacomo Sterlazzo, a Lampedusan artist and activist, in collaboration with the cultural association *Collettivo Askavusa* (Barefoot Collective) (Nightingale, 2015). It claims its creation as a tribute to “people, who risk their lives in search of safety and better opportunities” and to tell their story (Caselli, 2019, para. 1). The M in the name refers to memory, the Mediterranean, migration and militarisation (Nightingale, 2015). Giacomo started with the finds in a garbage bag: ‘letters, photographs, religious texts, music CDs’ which belonged to migrants who reached the island. Such finds at a local dump, help him collect and present objects to an audience interested in the passage of migrants leaving their African homeland via Lampedusa to Italy. The objects seized vary from small personal belongings to sea vessels used by migrants. Giacomo and the local Mayor complain that bureaucracy and disposal expenses make it difficult to get rid of the hundreds of boats and belongings seized and then abandoned on the island by the Italian Coast Guards. Both agreed on the creation of a migration museum, but circumstances forbid them from taking further steps and objects from the ‘cimiteri dei barconi’ (boat cemeteries), or other dumping sites (Askavusa, 2019). Hundreds of boats and items are discarded on the island, but the recovered objects are important despite the destroyed items.

Giacomo maintains, “we want to actively engage with memory as a political act” (Nightingale, 2015, para. 14) and that “it is fundamental to keep alive the memory of something that is still happening, with a critical perspective” (Askavusa, 2019, para. 9). He seeks to make the visitor interact with exhibits highlighting “the political reasons that push people to take the irregular route to reach Italy” and complains that the “militarized border” practices in Italy and the EU result in migrants ending “closed up in migration centers or are returned home or end up working like slaves” (Askavusa, 2019; Caselli, 2019, para. 15). Giacomo concludes that the objective behind such an art exhibition or museum is to remind the visitor of his/her historical and political context, “to fight off sentimentalism and turn art into something more useful”, as exhibitions like PortoM create spaces for reflection on realities like that of migration (Caselli, 2019, para. 16).

The Lampedusa exhibits show how personal items can help the visitor experience the horrors of forced or inevitable migrations but also lead to a sharing of meaningful objects which can generate other ways of communication between the migrant and receiving communities. An example is an Ethiopian wooden statuette of a woman holding a child in her arms, found in a migrants’ boat by fishers, and which was donated to the *Collettivo Askavusa* organisation (Askavusa, 2019). Believed to be a religious figure, it found itself in the local *santuario* (church): a place of worship which like the museum presents objects connected to experiences of slavery, shipwrecks, and interreligious dialogue. Likewise, the migration exhibit of PortoM has the potential to grow and become a centre of dialogue and serve various purposes among which the political.

Although the PortoM exhibits happen to be common things used by most of us every day, they have the potential to raise strong emotions in the visitor. They are the only witnesses to men, women and children lost their lives in search of a better life away from wars, persecution and other undesired and unbearable circumstances. They are the symbolic souvenirs of humans escaping other man-made cruelties before facing the sea, and consequently, the thousands lost at sea who transform the welcoming blue sea into a sea of death and tomb of forgotten souls.

4.2.9. The Museum of Greek Refugees, Kavala, Greece – Μουσείο Προσφυγικού Ελληνισμού της Καβάλας.

The three-room museum, temporarily located in a small house, is an initiative of the Asia Minor Association of Kavala: a branch of the Association formed in Lesbos in 1914-1936 (Pelteki, 2020), and synonymous with refugees and refugee facilities in Northern Greece. Its objective is restricted to the forced migration of Greek communities from their former homelands. It highlights “heirlooms and archival material of the refugees” of the region (Zacharopoulos, 2009, About section). The Association calls for support from the community represented and its authorities “to keep alive the memory of the lost homelands and the adventure of the “exit” of our ancestors, from their uprooting to the settlement in their new refugee homelands” (Zacharopoulos, 2009, About section). The museum maintains that

all kinds of heirlooms are precious material: costumes, images and items of worship, items of daily use, embroideries, household equipment, etc., which with the passion and care of some people came to exist until today, almost ninety years after the great uprooting (Zacharopoulos, 2009, about section).

Despite the effort to minimise potential loss or destruction of such objects, the Association also recognises that “many of them have enormous sentimental value and are kept as precious talismans by their owners” (Zacharopoulos, 2009, About section). The museum intends even to collect anything of worth such as any “document and photographic material from the refugees’ places of origin”. It gives special attention to original “documents and photographs from the first years of their lives in their new homelands”, while offering the possibilities of digitization to allow owners to keep the original objects (Zacharopoulos, 2009, About section).

4.2.10. MEI Museo Nazionale dell’Emigrazione Italiana, Genova, Italy.

Housed in the Commandery of San Giovanni di Prè, the museum spreads over three floors and is divided into sixteen sections. It helps the visitor retrace the *stories* of Italian migration, from before the Unification of Italy (1848-1871) to the contemporary era. It works closely with *Mu.Ma – Istituzione Musei del Mare e delle Migrazioni* (Institution of Sea and Migration Museums) (Mu.MA - Istituzione Musei del Mare e delle Migrazioni, 2022)⁵ and particularly with the nearby *Galata Museo del Mare* (Galata Museum of the Sea) (Galata Museo del Mare (GMM), 2022) which presents the sections ‘Memory and Migrations’ on transoceanic voyages, and ‘Italian too’ on immigration. It is situated in Genoa, the port city synonymous with the emigration of millions of Italians leaving for the Americas, Africa, Asia and Australia, and to men, women and children arriving from all parts of Italy leaving everything (work, home, relatives, friends and affections) to embark on a risky voyage of no return. It presents ‘stories of migrants’ narrated through autobiographies, ‘diaries, letters, photographs and newspapers and archival documents’ (MEI, 2022, para. 3-4). It offers “compelling and empathic, multimedia and interactive” media with which to gain ‘experience, see, hear, learn and get involved’ putting yourself to the test, in the scenography of one of the oldest medieval buildings in the city, which originally gave ‘hospitality to pilgrims’ (Museo Nazionale dell’Emigrazione Italiana (MEI), 2022, para. 3-4).

4.2.11. Musée national de l’histoire de l’immigration, Paris, France.

Situated in a Palace, the museum presents historical migrations by means of “Files, online articles, portraits of migrants’ as an ‘approach to the history of immigration by different entries: thematic entries (work, integration and xenophobia, migratory characteristics according to the country of origin, etc.) allowing to see how historians write history, but also through individual stories” (Musée national de l’histoire de l’immigration (MNHI), 2022, History of Migrations, para. 1). In view of contemporary migrations, the museum presents “texts in the form of questions/answers deal[ing] with contemporary issues related to migration” and “answers [which intend to] provide information and synthetic definitions, making it possible to take stock of current debates in French society around migration issues and to deconstruct some received ideas” (MNHI, 2022, Contemporary migrations, para. 1). The online material offers a strong introduction to the museum’s themes and content. Besides the interior exhibitions and content, the museum aims to reach out, disseminate knowledge and educate people about migrations by means of a social science journal titled ‘Hommes & Migrations’ (Men & Migrations).

4.2.12. Museo dell’Emigrante, (Emigrant Museum), San Marino.

The museum, located in an ancient monastery, is run by the *Permanent Study Center on Emigration*. It acknowledges that “the more recent history of San Marino has inherited one of its most essential characteristics from the migratory phenomenon”. It is promoted as a “place of memory to allow the resident and non-resident population, young and old to work on a common project” and thus facilitate “a meeting between cultural research and civil and social commitment.” (MESM, 2022, Ugolini, para. 2).

⁵ Mu.Ma. as an institution is a cultural pole linked to the themes of the sea, travel and dialogue between peoples, knowledge and religions. <https://www.museidigenova.it/it/muma-istituzione-musei-del-mare-e-delle-migrazioni>

Divided between displays and research spaces, it seeks to establish a “permanent research center to collect and analyze the various aspects of San Marino emigration” and an exhibition to ‘narrate’ the San Marinense emigration, but also to show the paths of emigration and be a tool for understanding and welcoming” (MESM, 2022, Ugolini, para. 2).

It intends to act as an “interdisciplinary laboratory which, by linking historiographical research and material culture, is useful for building a historical discourse and proposing new approaches and interests for the history of San Marino” (Museo dell’Emigrante (MESM), 2022). The exhibition flows through eight rooms presenting nine themes, following an imaginary timeline and tells, through texts, images, three-dimensional graphics, documents and objects, the history of the city-state’s emigration, economy and society. The route shows stages of the migratory phenomenon, that is, the departure and escape from economic and political situations no longer acceptable, the search for work, the approach to the new, attempts at integration, the difficulties of maintaining family ties, nostalgia, and racism. All this reappears in people’s behaviour and in the succession of migratory cycles (MESM, 2022).

The museum project succeeded owing to contributions made by public and private entities, the UNESCO Commission of San Marino, and the active collaboration and participation of the whole population. School and university students held interviews with locals and other twenty-five emigrant communities (MESM, 2022).

4.2.13. Museo de historia de la inmigración de Cataluña (Museum of the History of Immigration of Catalonia), Spain.

Aiming to become “a center for research and dissemination of the migratory memory of Catalonia”, the museum presents the visitor with a permanent exhibition using “modern, interactive and didactic museographic resources”. By means of a section titled *Humanos en movimiento* (Humans in motion), it presents historical movements and behaviours of humans from prehistory to the twentieth century. Inside an old mid-twentieth-century train wagon, the *el Sevillano*, the museum pays tribute to the protagonist generation: the internal migrations of the twentieth century in Catalonia, wrapped up with testimonies and memories of those who travelled in it. The last section presents the migrations of the twenty-first century taking place in a globalised world and in continuous transformation (Museo de historia de la inmigración de Cataluña (MHIC), 2022). The museum includes a documentation and resource centre, and a collection of oral memory recorded in questionnaires filled out by migrants. The Mediterranean and its common issues feature in activities the museum holds occasionally but not in the displays focusing on migration from other regions of Spain. It offers also the services of a documentation centre, a temporary exhibition hall, and an online virtual museum.

4.2.14. The Lebanon Migration Nucleus Museum, Notre Dame University, Kesrwan, Lebanon .

The museum, which glass walls permit a “panoramic view of Mount Lebanon” (LMNM, 2008, Museum, para. 2), is the first to be dedicated to the unique cultural heritage of the Lebanese diaspora and a member of the International Network of Migration Institutions (INMI) of the United Nations Educational, Scientific and Cultural Organization (UNESCO). It “protects, preserves and presents a growing collection dedicated to the Lebanese emigrant” (LMNM, 2008, Museum, para. 2). It looks into “the historical and contemporary experience of emigrants to very different parts of the globe.” (LMNM, 2008, Museum, para. 1) The museum forms part of the Lebanese Research Center for Migration and Diaspora Studies (LERC) of Notre Dame University (NDU). It provides the visitor with “photographs, artwork, documents, and a variety of cultural items [which] lend colour and personal detail to the stories of communities and families in the diaspora” (LMNM, 2008, Museum, para. 1), and rare objects coming from the LERC Archives, the Lebanese National Archives, and private collections. The museum calls for the contribution of more objects of all kinds as it values them as “resources for academic and genealogical researchers” (The Lebanon Migration Nucleus Museum (LMNM), 2008, Museum, para. 4).

4.3. Comparisons and contrasts outside the Mediterranean

Most museums in non-Mediterranean countries, like the *Immigrantmuseet* (Denmark) limit themselves to presenting material concerning the emigration of their compatriots, or the immigration of

communities from their region or country. Others widen their scope to immigrants from other countries or continents. Few museums tend to showcase irregular or clandestine migrants, refugees or asylum seekers, except to show pride in their own roots and identity. Beyond the Mediterranean, museums like the *MigratieMuseumMigration* (Belgium), present the Mediterranean through testimonials published on their website alongside those of migrants from other world regions (*MigratieMuseumMigration* Belgium (MMMB), 2022). Objects, photographs, testimonials and audio-visual material featuring the Mediterranean are also displayed defining it as “a museum in progress, participative and interactive” (MMMB, 2022, About: Historical, paras, 2-4). Less is the Mediterranean featured in museums like *DOMiDLabs* (Germany), where the Mediterranean features as a provider of human resources for labour in the 1950s. Likewise, Mediterranean migrants feature as a new workforce and population in the *Immigration Museum* of Melbourne (Australia) (*Immigration Museum*, Melbourne, Victoria, Australia (IMMVA), 2022). Far from the Mediterranean, the *Canadian Museum of Immigration at Pier 21*, features the Mediterranean in transcribed records narrating the experiences of people migrating, travelling and escaping the war on board ships in a section named ‘Escape by Sea’ in *Refuge Canada* (Canadian Museum of Immigration at Pier 2, 2022). There are museums, like the Horniman Museum and Gardens (London) and the Migration Museum (London) which went on to acquire and present authentic exhibits coming from experiences of Mediterranean migrations such as the remains of a prow from a boat upon which African migrants crossed the sea (Horniman Museum and Gardens (London) (HMGL), 2022) and objects recovered from such scenes of death and misfortune like life jackets (MML, 2022). Both British museums went further than the exhibits as they also partnered with other organisations involving and inviting migrants to tell their stories, participate and express themselves in different museum events and activities. It is however surprising that migration museums in countries receiving thousands of refugees and asylum seekers from Mediterranean countries exclude Mediterranean migrations in their museums.

5. Discussion

Migration museums are one way of reminding the visitor and the public about migrations. It is museums focused on migrant communities, specific historical migrations, and diasporic history which specifically present movements of communities and their experiences, but not all migrant communities possess resources and opportunities to have a museum or display space of their own. They may frequently seek space and voice through inclusive museums within their reach. Where resources are found, diaspora museums or displays focus deeper on migrations and present narratives which are more acceptable to the represented. Objectivity is, however, crucial and what museum professionals present may conflict with, or not always be fully accepted as authentic by either the migrants, receiving communities, or the visitor, as they may feel shocked about it. Negotiation and participation are therefore important if museums wish to present migrants and migrations. The museum visitor expects true migration stories from migration museums or connected displays, as such museum experience has the potential to raise emotions and empathy; a matter acknowledged by the *FENIX Museum of Migration* (The Netherlands). Findings demonstrate that migrations gain importance in a museum according to the theme and objectives of the same museum, its degree of agency to depart from subjectivities, and the message it wishes to convey to the public.

Political objectives and interests of owners and curators may exclude, hinder or minimise the intensity or presence of displays and narratives concerning migrations. State-run museums may restrict the scope or even manipulate content to suit political interests. Museums act in diverse ways and some, even if institutional or national, take opportunities to present their own and other migrations within or far away from their location or region. Being themselves promoters of formerly excluded identities and communities, museums enjoying agency find it easier to focus on theme and objective, and simultaneously include displays about Mediterranean migrations. Despite their scope, the museums studied found ways to practice inclusivity and integration of migrant communities and extending such practices to other museums may be easier for them. The practices presented in the following paragraphs derive from the qualitative analysis of the sources studied inclusive of literature discussing such museums.

5.1. Practices – Migration type, visual and tangible objects

A quantitative analysis shows that out of the fourteen museums in Mediterranean countries studied (see Table 1), five (35.7%) mention and present Mediterranean migrations besides those of their compatriots. Four (28.6%) focus on emigrations of their own people. Three (21.4%) focus on immigration to their country. Two (14.3%) present internal migrations alone. The presentation of authentic artefacts of migrants and migrations is found at eight museums (57.1%). This is preceded by the use of photographs in ten museums (71.4%). Following, in seven museums each, are the display or use of any other material or media, like documents, printed matter, or other objects symbolising migrants and migrations. Some museums intend to raise awareness and build empathy by presenting authentic objects reminiscent of challenges faced by migrants, particularly connected to Mediterranean migrations. Besides displaying artefacts, some museums use their resources to back up with life experiences and testimonials on audio-visual and interactive media, however, the use of photographs of real events is the most used medium to reach the visitor. The grassroots museums of Zarzis and Lampedusa collect objects left behind, lost by migrants or seized by coast guards in the central Mediterranean and display them as valuable mnemonics of the past and present history of Mediterranean migrations and challenges faced by migrants. These exhibits represent the hardships and experiences of migrants in search of a perceived paradise, which success or failure also impacts the social fabric, culture, politics, economy and future of receiving communities.

	Country / State	Ownership / Institution	What the museum represents				Display content			
			Internal migrations only	Emigrations	Immigrations	Other than their own / Mediterranean migrations	Artefacts of migrants	Photographs	Documents, printed matter	Other display material
1	Israel	local or central government, State or national entity			✓		✓	✓	✓	
2	Turkey	local or central government, State or national entity			✓		✓			✓
3	Morocco	University	✓				✓	✓		
4	Spain	local or central government, State or national entity				✓		✓		✓
5	Spain	Independent/Individually owned				✓				✓
6	Malta	Private religious initiative		✓				✓	✓	
7	Tunisia	Independent/Individually owned				✓	✓			
8	Italy	Independent/Individually owned				✓	✓			
9	Greece	Cultural NGO / association			✓		✓	✓	✓	✓
10	Italy	local or central government, State or national entity		✓				✓	✓	
11	France	local or central government, State or national entity				✓		✓		✓
12	S.Marino	educational or research institution/organisation		✓			✓	✓	✓	✓
13	Spain	local or central government, State or national entity	✓					✓	✓	
14	Lebanon	University		✓			✓	✓	✓	✓

Table 1. What the Mediterranean countries' museums represent and their display content

Some museums (see Appendix – Information about the museums mentioned) like *The Ellis Island National Immigration Museum*, and the *Canadian Museum of Immigration at Pier 21* in North America,

the Horniman Museum and Gardens and the Migration Museum in the United Kingdom, the *Immigrantmuseet* and the *DOMiDLabs* in North Europe, and the *Immigration Museum* in Australia, intend to be inclusive and integrative of migrants, particularly immigrants, by offering services which help migrants trace ancestors and relatives who earlier migrated to the receiving country. This was absent in the museums of the Mediterranean countries studied, possibly owing to the provision of such services by other entities or as emigration in some countries is more common than immigration. Curators may also believe that the visual and tangible can be more effective on the visitor and the public.

5.2. Practices – Inclusion, integration and community wellbeing

Museums can help build self-confidence and develop skills and self-esteem in individuals and communities (Deakin, 2022). Likewise, they can help migrants overcome the challenges of starting anew in an alien place, culture and community. By means of their collections, displays, activities and knowledge, museums can alleviate the inclusion and integration process. Migrants can be introduced and helped to understand facets of the receiving community and integrate into that society and its culture. Museums may also help migrants to actively contribute to receiving communities, by sharing experiences, customs and knowledge, but without losing their own identity and culture. Museums can be effective, within their walls, as much as they can be outside, by being practitioners of inclusivity, integration and acceptance within their communities, and furthermore, by actively speaking on behalf and defending the rights of their communities, inclusive of migrants. As globalisation is frequently presented as beneficial for economic reasons, museums can help generate globalisation as a humanitarian practice to flatten separating walls and suppress political decisions and practices which divide humans, communities and their societies. Museums can help build more and stronger bridges which serve and benefit humanity for ages. An ordinary understanding among most migration museums is that migrations helped build and design cultures, identities, traditions, rituals, cities, nations and much more which make the present cultural heritage and identity of different communities in for example Europe, North America, and Australia.

Despite such recognition, some migration museums tend to dismiss or completely exclude the natives or 'first people' of their own lands. For example, *The Ellis Island National Immigration Museum* (ENIM) (USA) aims to instil pride in one's own roots for being or becoming American, which some consider the start of American identity (Nigro, 2015). It presents immigration before and after the internal migration forced on Native Americans, who fled their lands and homes to survive or died defending them from arriving colonialists, immigrants and their projects. While displaying objects and documents from different countries, the museum excludes Native Americans and African Americans justifying its action by maintaining that they are "two groups that don't tie their ancestry to Ellis Island" (ENIM, 2021). In contrast, the *Immigration Museum* (Australia) invites the visitor to explore "the histories, stories and contemporary issues of Victoria's diverse communities, and what connects us all as humans" and acknowledges the natives and works in partnership with them "to place First Peoples living cultures and histories at the core of our [the museum's] practice" (IMMVA, 2022). It also refers to migrants of the eighteenth century and the late twentieth century from Mediterranean countries in *Journeys to Australia* (IMMVA, 2022) and *The Journey to Station Pier* (IMMVA, 2022). Thus, inclusion or exclusion does not depend on location or proximity to an event, a region (such as the Mediterranean) or own migrations, but mostly on the museum's own agenda, policies and practices: factors which dictate what a museum intends to communicate and how.

While trying various forms of communication with the public, migration museums create channels with which to facilitate migrant participation and inclusivity, inviting them to contact, interact and participate in the museum and its activities. Museums intend to facilitate integration and acceptance, between migrant and receiving communities, as the intention is not to erase or subdue one's culture, identity, or traditions to another, but to build mutual understanding and cooperation between them for a better future together. Several studies propose museum projects and practices addressing migration issues, contributing to partnerships and social inclusion by means of exhibitions and educational programmes which encourage intercultural dialogue between the museum, its staff, visitors, and different communities (Sholokhov, 2020). Such examples and practices help illuminate museums to

adopt practices which enable them to fulfil objectives, with their own resources, or in partnership with other institutions, groups or organisations implicated to make a difference in society, particularly with migration issues. Truly, it is hard to overcome centuries of images portrayed by ruling authorities, cultures, religious and social beliefs, and subjective histories subsequently taught and promoted by education systems and the media. The first step in such a museological journey is to depart with the least strings attached, like migrants who leave everything behind to reach a much-desired destination.

5.3. Practice – Giving voice

No source knows the histories and experiences of migration as migrants themselves. Curators aim to present interpretations and narratives based on true experiences and free from preconceptions, discriminations and exclusions which deform the truth. For most who attempt to cross the Mediterranean Sea, the sea is not the only hurdle to overcome, but it is one in a series of other perils, like giving most of your life earnings to irregular 'service providers', stealthily crossing borders, crossing the desert rolling a water tank for survival, waiting on shore to embark on a questionable sea vessel, confronting the waves and the sun, spending days and nights at sea, hoping to reach paradise and possibly succeed to pass the checks of the receiving land. In view of such experiences, some museums are disposed to give voice to migrants inviting them to tell personal stories which are consequently presented to the visitor as text or audio-visual material. Other museums invite migrants to become active participants discussing text narratives, information accompanying exhibits, and interpreting displays concerning the experience, or even acting as guides to help the visitor understand and interact with migration displays.

As grassroots museums, devoid of institutional and hegemonic restrictions and subjectivities "adopt a bottom-up approach, engaging community members through various activities, giving them the space and voice to re-negotiate representation of the community in which they are embedded" museums have the capability to include, represent and present migrants, related displays and hold integrative activities. (Vella, 2020, p. ii). Although such approaches are scarce, it is encouraging to find that different museums are adopting similar practices. Migration museums within places of immigration may contribute significantly to migrants, particularly with emotional, health and mental well-being issues faced after migration experiences (Vella, 2020). Migrant contribution, participation and negotiation are however remote, although not impossible, in the grassroots museums of Zarzis and Lampedusa, as they lack resources and an actual presence of a participative community identifying itself with the museum and its objective. The difference between most migration museums and those in Zarzis and Lampedusa, is that migrants are only transitory and frequently clandestine. Even if both museums had to offer space and place to migrants in transit, it would be hard to achieve since such migrants are not left free to roam around during their transition.

By allowing space and place for migrants and migration displays, museums provide channels for communication and mutual cooperation, between migrants and local communities. It helps them come closer, better understand each other, and acknowledge that both were once forced to migrate for some reason. Museums, mainly those within communities, must be supported to hold activities which allow migrants to meet local communities and socialise in diverse cultural, artistic, educational and entertainment activities inside and outside the museum. Such museums can achieve more and simultaneously save costs to local and central governments. Once such collaboration between migrant and local communities succeeds, the museum has the duty to raise awareness about issues concerning migrants and migrations at higher levels of society and with government authorities implicated. Still, political governments, institutions and authorities in power may not favour such activities and deliberately ban grassroots and non-establishment museums from accessing resources to help communities, including migrants. The reason is that the prohibition of resources to such museums will consequently inhibit the production of educational material and activities for communities and cause a major setback to the museum and its beneficiaries.

5.4. Education, dialogue and activism

Horton and Freire (1990) maintain that education is not neutral as it has directiveness; thus, pedagogic and educational objectives which are not manipulative as intended by authoritarian systems.

Museums as educators have similar instructive objectives and cannot be neutral if they intend to present the realities of migrations, chiefly in the Mediterranean. Museums must stand out of the crowd, voice the voice of the voiceless, oppose injustices and have the courage to side with unpopular sides to defend the truth and promote righteousness (Horton & Freire, 1990). They are obliged to share their knowledge for the well-being of society, and as agents of pedagogy, they carry the responsibility to bring about social change, and not be neutral. (Freire, 2010).

Ways curators and museum staff behave and describe collections, displays and narrate histories, can attract or detract people from understanding the phenomenon of migrations, consequences and impacts on exiting and receiving countries, communities, cultures and identities in history and today. Migrations were beneficial to cultures as they came together and inspired each other, enriching each other's wisdom, language, and practices, such as agriculture, shipbuilding and art. They alternatively presented hardships to those obliged to leave their homes, relatives and possessions to navigate the unknown. Certainly, positives and negatives are on each side, but objectivity is mandatory. Educational activities are means by which the museum, as a space and place for dialogue, can reach different audiences, and reach out in schools and places shared by the community, to educate on what could cause migrations and ways to prevent repetition.

5.5. Political – Museums as activists for change

Mediterranean museums like those of Zarzis and Lampedusa are just a drop in an ocean capable of bringing about much-desired changes in the Mediterranean region. Political will and intentions may help or hinder actions in museums and at higher levels of society, but museums shall not remain blindfolded, dumb and deaf where human lives are at risk, openly abused by criminals and traffickers, and exploited by employers or those in authority. Not taking action about such occurrences may be assumed as becoming accomplices in crime. Inhibiting coerced migrations is also possible by putting pressure on the political sphere and power structures to desist from repeating events and practices which cause migrations and force them to take concrete actions against abusers and exploiters.

Differences among the Mediterranean shores are wide and heavily influenced by politics which care more about the economy and capital than about humans (Adragna, 2014), cultural heritage and the environment in which people live. Migration is nowadays not simply a change in the culture of communities, but an imminent death to many even before they set their first step to migrate (Fundacion ACM, 2017). It is nothing different from migrations forgotten or excluded by traditional museums and historical narratives of the colonial era. Rivalries about territories are ongoing in European, Asian and African countries surrounding the Mediterranean Sea and nonetheless in Mediterranean islands serving as stepping-stones to the perceived better north and west. Migrations from other lands become habitual and an exploitation opportunity supported by those who place economic interests before humanitarian, social or environmental needs is nowadays evident (Arrocha, 2019). In such a vacuum and silence, museums become significant spaces and vehicles for the voices of victims of such occurrences frequently discarded by the political and economic elite. Both left- and right-wing politicians embracing neoliberal principles, design laws and measures which suppress the oppressed by migration further down the tracks of modern slavery and exploitation (Casciani, 2015). In opposition to such a scenario, museums have become the voices and activists for the oppressed: migrants or not. Museums are therefore not solely acting pedagogically within the community where they function and with communities seeking representation in them. They have also become awareness raisers and political activists for human rights and freedom. Within such scenarios, museums may face threats or be forced to close, but as Freire (1985, p. 122) maintains "silence and neutrality" can only help continue oppression and injustices and maintaining neutrality in matters of the struggle between the powerful and the powerless is supporting the powerful against the powerless (Freire 1985, p. 122).

Likewise, the PortoM's curator maintains that "Memory is not neutral. It is a political act: you decide what to remember and what to forget" (Caselli, 2019, para. 8). An argument which shows how museums make choices according to their subjectivities and eliminate Mediterranean migrations or other migrations, even if located in a Mediterranean country. Museums which choose to be neutral do not help solve problems, like migration, but mostly aggravate them.

5.6. Politics - The major problem lies within

Migration is not simply a phenomenon of people leaving a continent or country to seek a better life elsewhere. Supposedly democratic governments, including those of Mediterranean countries, have been practising politics and new forms of coerced migration even within their own cities and localities. Communities have been gentrified and forced out of cities and villages to transform waterfronts into yacht marinas, luxury accommodations, businesses and services for the wealthier classes who care less about local communities, their culture, their heritage or their environment (Cutajar, 2008, 2020; Cutajar & Vella, 2018). Politicians and governments at all levels who endorse such projects and practices leading to discrimination, suppression, and victimisation of their own communities, would care less about migrants from other countries or continents since these can only be exploited for economic reasons, which sequentially help their parties gain or remain in power.

Museums are just one sand granule in this whole social desert, but their contributions can have positive effects and make huge differences. Museums of all sizes and ownership can unite and voice the concerns of society about migrants and migrations. Life matters to museums because it is life that museums celebrate. Death, injustices, oppressions and similar circumstances are unacceptable to museums. Curators, museum staff and professionals, volunteers, visitors, audiences and supporters shall combat circumstances which bring oppression, exploitation and death. Migration museums, in their efforts and programmes for acceptance, appreciation and integration, seek to help migrant and local communities continue with their lives, freedom and rights, not to collect and boast with statistics of deaths and sufferings: which truly bring shame upon all who cause or permit them.

6. Conclusion

The study shows that the presentation of Mediterranean migrations in museums depends on several factors. The acceptance, inclusion and presentation of migration issues, and consequently, migrants in the museum content are dependent on the objectives, practices and educational objectives of the same museum. In more detail these can be explained as (i) the type or theme of the museum, its objectives and the message it wishes to convey to the visitor and the public; (ii) the practices adopted by the museum professionals and staff, such as the curatorial approach to the inclusivity of immigrants, that is migrants arriving within the represented community, and the ways adopted to help migrants integrate within a community, a society, its identity and its culture, without losing their own identity and culture; and, (iii) the pedagogy and educational methods used to help visitors, community and migrants understand, collaborate and accept each other as equal human beings living on one planet. All these practices tend to give voice to migrants as much as the museum gives or intends to give to its represented communities, thus becoming a socio-political actor in society, and a policy influencer capable to bring about change for the welfare of communities, who like migrants, wherever it is the case, may seek representation in them.

The presentation of Mediterranean migrations in museums, like any other migrations experienced around the globe, can spark various emotions and reactions from the public. The frequency and loss of lives wrapped in Mediterranean migrations are often countered with xenophobic assumptions and political motives which enshrine the phenomenon and vest it under different shades of imaginaries (Arrocha, 2019). From extreme negation to extreme empathy are possible, however, most reactions can be encountered in the ways museums present their artefacts, displays and narratives about Mediterranean migrations in history and today. Mostly, it is the presented migration and migrants that make the difference in how museums and their audiences perceive and understand the presented. The origins, causes and effects of migration, inclusive of those in the Mediterranean, may determine such reactions, but propinquity is not so much the factor which determines inclusion or exclusion in a museum. Preconceptions built by earlier narratives of history and society may discriminate even about the most objective view of an event and are capable to position the migrant either as an evil opportunist or a poor fellow suffering from injustices and unnecessary persecutions. It is hard for any visitor to empathise with whom the museum presents as an actor in a historical or current event, and it is even harder if the actor is in sufferance. The museum's ability to use its resources and tools can either ensure success or failure

to make the visitor knowledgeable, aware of the challenges and risks brought over by different forms of migration, and able to empathise with the presented migrant or community.

Empathy, as much as the nurture of dialogue between migrants and receiving communities, is an important ingredient in the interpretation and presentation of material concerning migrations at museums. It is what museums should communicate to the visitor and the public so that together with different audiences, they can discern, raise voices, act and bring about change. Another factor significant to the presentation of objects and displays representing migrants and migrations is their contextualisation, in a chronological and spatial way, as such factors facilitate the representation and construction of identities (Brysaert, 2012), to which visitors can consequently connect their own experiences and understand historical and present migration experiences. Likewise important for success is the use of understandable languages for communication, as the visitor and the represented may not share similar meanings, values and understandings of the presented context. This is particularly significant in the case of Mediterranean migrations or migrations specific to similar regions around the globe.

Understanding and empathy are reached as much as the museum facilitates such feelings, irrespective of preconceived assumptions or prejudices portrayed by earlier subjective media, historiographies and publications. Religious beliefs, race, ethnicity, background, appearance and other factors which had through the ages been abused to divide people, nations, communities, continents, families and close friends. Disseminating divisions, hatred and violence are much easier than building camaraderie and collaboration between different people, especially during turbulent times causing coerced or inevitable migrations. Museums have the tools to overcome such undesired responses in society. In a world which is gradually becoming a cosmopolitan globe, it is much more important that museum professionals and staff are trained to convey such a message inside and outside of the museum. Eventually, it is the lack of resources available to some museums, like grassroots museums, which restricts their activities and initiatives for communities such as those of migrants and communities within their reach. Museums cannot be spectators to an unfolding history today, or they will be blamed for not acting on behalf of the voiceless. Besides educators, museums have the responsibility to become activists, even at a political level, to create pressures for actions by those in power structures, to change matters and reduce circumstances which coerce people into migration. A collective effort can, therefore, reach the most remote places from any museum in the world and change the future of unnecessary migrations, particularly within the Mediterranean region and its continents.

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APPENDIX – Information about the museums mentioned

Museum	Location	Opened	Ownership	Main Objective	Collections / Services	Who is represented	Exclusions	Presence of Mediterranean migrations (and artefacts)	Method (tangible objects, etc) related to Mediterranean migrations
Ben M'sik Community Museum,	Hassan II University, Casablanca, Morocco	1980s	Private	Internal migrations	Attire, personal belongings, utensils, objects	Migrants from other Moroccan regions	All other migrations	None	None
Bursa Göç Tarihi Müzesi, (Bursa Museum of Migration History)	Bursa, Turkey	2014	National (Metropolitan municipality)	Immigrations	Displays representative of various migrations, historical material culture, educational activities with children, material culture, mannequins with traditional attire	Mainly Balkan, Caucasian, and Asian immigrants	All other migrations	None	None
Canadian Museum of Immigration at Pier 21	Halifax, Nova Scotia, Canada	1999 (New exhibition opened 2015)	National	Immigration	Records, oral histories, photographs, artefacts	Immigrants	N/A	Section narratives, and exhibits	Two life jackets worn by children rescued from an inflatable boat
Clandestine Immigrations and Naval Museum,	Haifa, Israel	1969	National	Immigrations in post-War years	Naval and clandestine / illegal migrations	Jews and Palestinians (legal and clandestine), naval history	All other migrations	Jewish and Palestinian in post-War years only	Sea vessels, documents, photographs, testimonials, texts, newspaper cuttings
DOMIDLabs (Documentation Centre and Museum of Migration in Germany)	Köln, Germany	1998 (Ruhrland museum Essen - today the Ruhr Museum) (2006 Opened in Köln)	Private association	tell the story of migration during three periods, and show how migration has shaped history and continues to shape society and lives together	Objects, photographs and virtual content	Labour migration to Germany	N/A	history of formal labour migration from Mediterranean countries to Germany since the 1950s	Photographs and virtual content

Museum	Location	Opened	Ownership	Main Objective	Collections / Services	Who is represented	Exclusions	Presence of Mediterranean migrations (and artefacts)	Method (tangible objects, etc) related to Mediterranean migrations
	New York, USA	1976	Federal government (national)	Immigration	Photographs, heirlooms, ancestor records	Immigrants	Native Americans, African Americans	None	None
FENIX Museum of Migration	Rotterdam, The Netherlands	To open in 2024	Private foundation	the movement of people and all the emotions that are involved	art, photography, historical objects and personal items'	Migrations to, from and through Rotterdam	N/A	Not yet	None
Horniman Museum and Gardens	London, UK	1901	Private charitable association	rethink the Mediterranean as a bridge rather than a barrier between three continents and to challenge our modern understanding of national borders and communities	inviting and involving migrants (refugees and asylum seekers) to tell their experiences of migration and perceptions of the Mediterranean	Refugees and asylum seekers	N/A	Exhibit, video about the boat's experience	Prow of Boat representing migrations in the Mediterranean
Immigrantmuseet	Farum, Copenhagen, Denmark	2012	Private institution	documenting the cultural history of immigration and telling about 500 years' of migration history in Denmark since the 16 th century	archive	Immigrants	N/A	None	None
Immigration Museum	Melbourne, Victoria, Australia	1998	National	Immigration	Collections, displays, digital content and pedagogic activities	Immigrants and First Peoples	N/A	Articles about the journeys	
Malta Virtual Emigrant Museum	Valletta, Malta	2001	Private	Emigration	Photographs, documents, text testimonials	Maltese emigrants	Immigration (legal and clandestine)	None	Limited to Maltese emigrations

Museum	Location	Opened	Ownership	Main Objective	Collections / Services	Who is represented	Exclusions	Presence of Mediterranean migrations (and artefacts)	Method (tangible objects, etc) related to Mediterranean migrations
MEI Museo Nazionale dell'Emigrazione Italiana, (MEI National Museum of Italian Emigration)	Genova, Italy	2022	National	Emigration of Italians	autobiographies, diaries, letters, photographs and newspapers; offers 'compelling and empathic, multimedia and interactive' media	Italian migrations	N/A	Only that related to Italian migrations	None
MigratieMuseumMigration	Brussels, Belgium	2019	Private foundation	tell the story of migration to the city, honour the migrants 'who have shaped' the city	objects coming from migrants and migrations experienced by the city, boat wrecks, life jackets, personal life experience testimonials	Migrants and migrations in Brussels	N/A	Objects and photographs featuring the Mediterranean	Mediterranean through testimonials
Migration Museum	London, UK	2013 (New exhibition opened 2020)	National	Migration as the movement of people which made Britain	Space, place and activities for migrants' participation, pedagogic and artistic events displays, temporary exhibitions, networking, political displays, culinary, film	Various	N/A	Exhibits and narratives	Objects recovered from scenes of death and misfortune
Musée de la Mémoire de la Mer et de l'Homme	Zarzis, Tunisia	2013	Grassroots	Migrants and migrations in the Mediterranean	Personal objects, sea vessels	Migrants and migrations in the Mediterranean	Non-Mediterranean migrations	Yes	Objects left / lost by migrants
Musée national de l'histoire de l'immigration (MNHI)	Paris, France	2012	National	Immigration and current migration debates	files, online articles, portraits of migrants'	Migrants	N/A	Indirect through contemporary migrations	Publication
Museo Atlantico,	Las Coloradas, Lanzarote, Canary Islands, Spain	2016	National	Migrants and migrations in the Mediterranean	Artistic sculptures	Lives lost at sea in the Mediterranean	Non-Mediterranean migrations	Artistic representation	Representative statues

Museum	Location	Opened	Ownership	Main Objective	Collections / Services	Who is represented	Exclusions	Presence of Mediterranean migrations (and artefacts)	Method (tangible objects, etc) related to Mediterranean migrations
Museo de historia de la inmigración de Cataluña (Museum of the History of Immigration of Catalonia), (MHIC)	Barcelona, Spain	2004	Provincial Council	Immigration	modern, interactive and didactic museographic resources; documentation and resource centre, and a collection of oral memory recorded in questionnaires filled out by migrants; a temporary exhibition hall, and an online virtual museum	Catalonian emigrants and immigrants	N/A	None	None
Museo dell'Emigrante (Emigrant Museum),	San Marino	1997	National	Emigrant communities from San Marino around the world	texts, images, three-dimensional graphics, documents and objects, the history of the city-state's emigration, economy and society	San Marinese migrants	N/A	None	None
Museum of Movements	Malmö, Sweden	2018	Private company & Charity	Migrants and Democracy, a free place for understanding the movement of people and ideas	Oral history (so far)	Migrants	N/A	None	None
PortoM,	Lampedusa, Province of Trapani, Sicily, Italy	2005	Grassroots	Migrants and migrations in the Mediterranean	Personal objects, sea vessels	Migrants and migrations in the Mediterranean	Non-Medit. migrations	Yes	Objects left / lost by migrants
The Lebanon Migration Nucleus Museum	Notre Dame University, Kesrwan, Lebanon	2005	Lebanese Research Center for Migration and Diaspora Studies (LERC)	the historical and contemporary experience of emigrants to very different parts of the globe	photographs, artwork, documents, and a variety of cultural items of communities and families in the diaspora, and rare objects; resources for academic and genealogical researchers	Lebanese diaspora (emigrants)			
The Museum of Greek Refugees,	Kavala, Greece	2018	Grassroots volunteers	Remembering forced migration of Greek communities	all kinds of heirlooms, precious material, photographic material and various types of documents	Greek refugees	N/A	None	None



Syrian migrant students' academic and social experiences in Maltese state schools: An exploratory study

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Abstract

The ongoing civil war in Syria is one of the biggest humanitarian crises of our time. Since the beginning of the conflict in 2011, millions of Syrians have fled to neighbouring countries as well as other countries afar. The Syrian crisis has resulted in the highest number of refugees in recent years, and many Syrians are now trying to build a new life in other countries, including many in Malta. Since education is a vital component of any humanitarian response, educators have a crucial role in ensuring physical and psychological security. This paper, rooted in inclusive educational practices, explores the perspectives of students from a migrant background in government-run middle schools in Malta. This qualitative study is based on four semi-structured interviews with Syrian students aged between 11 and 13 years who arrived in Malta after the start of the civil war. It explores the provision of educational support from the viewpoint of the participants, and it also investigates the barriers they face in Malta, with the hopes that these are outlined and worked upon in schools. The participants reported having positive experiences despite the challenges they faced when receiving an education in a different country than the one in which they were born. However, they also note negative experiences such as bullying and language barriers. It is recommended that educators in schools in Malta are provided with professional development opportunities where they identify ways to incorporate multicultural education within their pedagogical strategies. It is also recommended that a national policy for the integration of all students from a migrant background, including those in senior school, is introduced to smoothen such processes. Ultimately, schools in Malta should provide holistic, meaningful and authentic learning experiences for students from a migrant background as a first step towards instilling a sense of belonging.

Keywords: language barrier, Maltese schools, migrants, multiculturalism, multicultural education, Syrian migrant students

1. Introduction

Since the onset of the civil war in Syria in early 2011, involving various factions, including the government forces led by President Bashar al-Assad, opposition rebels, extremist groups like the Islamic State of Iraq and the Levant, as well as interventions by foreign powers (Khan, 2017), a significant number of Syrians have fled their homeland. Over 5.6 million individuals have sought refuge in numerous European and Middle Eastern nations, including Turkey, Lebanon, Jordan, and even Malta. At the same time, another 6.6 million have been internally displaced within Syria to find safer havens (Syria Emergency, 2020). The UNHCR has characterised the situation in Syria as the most pressing humanitarian crisis of our era, given the staggering number of people struggling to access basic

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necessities like food, shelter, healthcare, and education. The impact on children has been particularly severe. While Palestinians still constitute the largest global population of displaced refugees, Syrians have recently become the second largest group (Rabia, 2016). Located strategically in the heart of the Mediterranean Sea and bridging the continents of Africa and Europe, Malta has emerged as an accessible destination for immigrants seeking a more promising future. By the end of 2019, 429 Syrians had sought asylum in Malta (National Statistics Office, 2020). Consequently, the country's demographic makeup has become more diverse than ever, with numerous schools across Malta enrolling students from Syria and the broader Middle East.

Based on the experiences of four Syrian students in Malta, this qualitative study seeks to open the door for educators, policymakers, and scholars to recognise the barriers and positive experiences faced by refugee and migrant students in the classrooms. This exploratory study had two aims. First, to investigate the relationship between the Syrian migrant students' experiences of living through a civil war in their home country and their academic successes and failures in Maltese state middle schools. Secondly, this study aimed to explore how these students are socially included at school (with their peers, their educators and within the system) and identify the barriers they face within the Maltese education system.

To fulfil these aims, the objectives of this study were to investigate whether there is a relationship between the Syrian migrant students' experiences of living through a civil war and their educational attainment in Maltese state middle schools and to investigate how Syrian students are being included and what barriers they face in these schools.

2. Review of literature

2.1. Multiculturalism and migration

The progress in technology and the effects of globalisation have created a sense of global interconnectedness. In the present day, people find it more convenient to travel between countries, leading to diverse cultures coexisting (Celik, 2019). Throughout the 21st century, society has experienced rapid advancements in fields like science, art, and technology, fostering increased interaction among nations (Aslan, 2018). European societies, as a whole, have seen a rise in multiculturalism in recent times (Janta & Harte, 2015). While countries like the United Kingdom, Germany, and France have a long history of immigration dating back to the Second World War, the phenomenon of migration to countries like Spain, Sweden, and even Malta is relatively new (Janta & Harte, 2015).

Multiculturalism pertains to the presence of multiple cultural groups within a society, resulting in a blend of perspectives and practices that contribute to a distinct collective identity. Additionally, it celebrates the unique cultural aspects of various ethnic groups and enables students to uphold their community's cultures and traditions within educational institutions. Moreover, it serves as an opportunity to educate all students about their school's diverse cultures and traditions (Taylor & Sidhu, 2012). According to Banks (2013), multiculturalism encompasses groups with varying backgrounds, including race, ethnicity, language, religion, geography, history, and political beliefs.

As individuals engage with diverse cultures, they become more attuned to each other's cultural attributes, leading to mutual influence over time (Aslan, 2018). Here, culture encompasses the elements of everyday life within a specific community at a particular time and place. Sensoy and DiAngelo (2017) suggest that some of these characteristics are readily noticeable to community members due to their visibility, while others remain beneath the surface and are not easily discernible. To address the challenges arising from the potential difficulties of cultural diversity in the political and social spheres, multiculturalism policies have been instituted (Paksoy & Celik, 2019). Neglecting these issues can lead to problems that initially manifest in educational institutions and may persist in society at large. The latter also assert that various factors influence and mould society, and multiculturalism is evidently one of them. Consequently, it is imperative to analyse these social phenomena and occurrences within their historical and social contexts in sociology and education (Paksoy & Celik, 2019). This underscores the

significance of multiculturalism in many countries, particularly those that have witnessed significant waves of migration in recent times (Aslan, 2018).

Scott and Safdar (2017) highlight that multiculturalism is a philosophy that advocates for cultural diversity and encourages immigrants to preserve their native culture while also allowing them to integrate into the broader society without being required to adopt the dominant group's culture. They further note that the integration of immigrants can give rise to conflicting sentiments within the host community. Some view it as an opportunity for equality and collective unity, while others perceive it as a potential threat (Scott & Safdar, 2017). In multicultural communities, maintaining equal opportunities enables individuals to grow up in an environment rich in cultural heritage and to raise their children within the same community without division (Paksoy & Celik, 2019). The influence of multiculturalism is evident in various aspects, including arts, literature, and, notably, education. This influence has led to the establishment of multicultural education (Aslan, 2018).

Wars that have been taking place since the beginning of the 20th century have led individuals to migrate to other, safer countries (Aslan, 2018). Migration encompasses the significant movement of people, often driven by factors such as weather conditions, socio-economic circumstances, fear of persecution, and other challenges in their homeland (Arabaci et al., 2014). This relocation can occur either across international borders or within a single state, involving the departure or resettlement of individuals or groups from one place to another (Tosten et al., 2017).

This phenomenon has a history as ancient as humanity itself, with people historically seeking better resources like food and favourable climates (Baban et al., 2016). In recent years, particularly in Europe, media representations of migration have been highly diverse and sometimes conflicting. These narratives emerged in response to events like the Syrian refugee crisis and the Mediterranean migrant crisis. The media extensively covered the human toll of wars and the perilous journeys of millions of people striving for survival (Moore, 2015). According to the UNHCR, the past five years have witnessed around 15 conflicts displacing an increasing number of people, with children constituting more than half of the world's refugees (Moore, 2015). Upon arrival in the host country, many displaced individuals seek asylum, a form of protection for foreign nationals who present themselves as refugees and require safeguarding from the circumstances they initially fled. An asylum seeker formally requests this protection, with the distinction between refugees and asylum seekers primarily involving procedural matters (Almadani, 2018).

A report by UNESCO (2003) indicates that the globalisation of skilled labour markets and the expansion of multinational corporations have led to a significant global circulation of highly skilled professionals from various fields. Policies regarding migration play a pivotal role in determining the number of migrants who move to specific locations. Other influencing factors include the safety of the journey, the legal status of the migrants, and various elements affecting their reception, along with social policies that impact their economic, political, and social integration (Bartlett, 2015).

2.2. Multicultural education

Multicultural education has undergone significant transformation and continuous evolution in theory and practical application since its inception in the 1960s (Gorski, 2010). While it encompasses various essential dimensions, Banks and McGee Banks (2010) assert that multicultural education consists of three core components: it is an idea or concept, an initiative in educational policy, and a methodology. Moreover, introducing multicultural education is founded on the belief that students, regardless of their diverse racial, ethnic, gender, cultural, and social backgrounds, should all have equal access to education and opportunities within schools. This is primarily aimed at fostering societal transformation and promoting equality and social justice (Banks & McGee Banks, 2010; Gorski, 2010).

Multicultural education and the inclusion of diverse students create harmony and remove prejudices (Sidhu, 2012) against migrants and diverse students. Gay (2004) stresses that it reduces cultural conflicts between students because when unfamiliar groups of people are not well understood by the nationals of the host country, anxieties, prejudices, and racist behaviour can easily occur. This is of utmost importance because many times, when situations are not comprehended, problems are created at personal and social levels. The furthestmost goal is that multicultural education teaches students to

be empathetic towards each other and to look at diversity as richness (Paksoy & Celik, 2019). Multicultural education provides all students with equal opportunities to aim for academic success (Banks & McGee Banks, 2010), especially since social class status is also strongly related to academic achievement (Banks, 2013).

Such theorists have implied that multicultural education is a vital component of quality education; in practical terms, educators often perceive it as either a crisis-induced addendum or a luxury. Gay (2004) additionally implies that multicultural education is integral to improving the academic success of all diverse students and prepares all young people for democratic citizenship in a pluralistic society.

Gorski (2010), a prominent figure in multicultural education, contends that the primary objective of this educational approach is to drive enhancements in individuals' awareness, school policies, and procedures while also rectifying disparities in access and opportunities within the broader community. He asserts that achieving this goal involves three crucial aspects of transformation: personal growth, changes in educational institutions, and shifts in societal paradigms.

Sensoy and DiAngelo (2017) acknowledge that defining social justice can be a complex task, but they suggest that it fundamentally pertains to upholding people's fundamental human rights with fairness and equity. Consequently, as demographics, social conditions, and political landscapes evolve, multiculturalism in both schools and society is acquiring new layers of intricacy (Gay, 2004). Educators play a pivotal role in ensuring that all students in their classes have the capacity to maximise their potential as learners, enabling them to excel (Gorski, 2010). Since 2016, the European Commission has assisted European Union (EU) Member States in their attempts to incorporate refugees into their schooling and training frameworks, from Early Childhood Education to Higher Education. The Commission Action Plan on integrating third-country nationals established three education priorities: integrating newly arriving migrants into conventional education systems as quickly as possible, preventing the underachievement of migrants, preventing social isolation, and promoting intercultural dialogue (European Commission, 2016). In addition, the Commission provides tailored expert guidance via peer advice to promote policy changes in Member States. These activities are held at the invitation of each Member State and include decision-makers from other national administrations and independent experts who are brought together to identify solutions to national problems in a participatory workshop (Public Policy and Management Institute, 2017). This has also been written in the Policy on Inclusive Education (Ministry for Education and Employment, 2019), where it is suggested that students from ethnic minorities, students whose first language is not Maltese or English and asylum seekers must be included in all aspects of school life and that all educators must be aware of this.

2.3. Education for students with a migrant background

In light of the unprecedented levels of human mobility witnessed worldwide, education systems in affected countries must adjust to meet the specific needs of their diverse student populations (UNESCO, 2018). The classification of students with a migrant background can vary widely based on their legal status, which may range from residents and citizens to refugees, asylum seekers, or irregular migrants. Their stay in the host country may be either long-term or short-term. However, their eligibility for full participation in the formal education system of the host country may be contingent on their legal status (Eurydice, 2019). According to a report by UNESCO (2018) on migration and education:

Migration and displacement can profoundly affect education, requiring systems to accommodate those who move and those left behind. Countries need to recognise migrants and refugees' right to education in law and fulfil this right in practice. They need to tailor education for those cramming into slums, living nomadically or awaiting refugee status. Education systems need to be inclusive and fulfil the commitment to equity... (p. 1)

When students with a migrant background are part of a classroom, it is essential for educators to create a welcoming environment that nurtures their self-esteem, fosters teamwork and empathy through classroom and at-home activities, and instills a positive outlook for their future (Adelman, 2018). This approach can help promote an inclusive and accepting atmosphere and facilitate meaningful connections between refugee students and local peers (Adelman, 2018). Bartlett's research (2015) on

migrant students underscores the significant impact of school-level structures on their education. This includes aspects such as funding for early childhood education, the effects of grouping students, and the accessibility of curricula and teaching methods. Various factors, including residential segregation, systemic structures, and income disparities, often restrict migrant students' access to high-quality education. Furthermore, their presence in the education system can be disrupted, leading to a higher incidence of dropping out and leaving school prematurely compared to native students (Nusche, 2009).

Standardised tests like the Programme for International Student Assessment (PISA) consistently reveal a significant performance gap between migrant students, especially first-generation migrants, and their native counterparts. Interestingly, this same report on educational equity suggests that many migrant students might be classified as having special needs, potentially leading to their placement in separate institutions rather than mainstream schools (Nusche, 2009). Students with migrant backgrounds face a variety of difficulties that can impact their learning and development. Three types of problems that can be differentiated according to academic research literature are problems related to migration, challenges pertaining to socio-economic and political context, and the challenges of students' participation in education (Eurydice, 2019). The latter refers to students with a migrant background doing their schoolwork and homework because, compared to their native peers, migrant student populations face significant challenges in educational achievement (Bartlett, 2015). Other difficulties that students from a migrant backgrounds face in the host country are bullying and bigotry, which disrupt the well-being of the students. Guo et al. (2019) have found that post-migration stressors, such as violence or hostile peer-to-peer interactions, can have a much more significant influence on the psycho-emotional well-being of refugee children relative to pre-arrival trauma. Furthermore, they imply that discrimination among young refugees from the Middle East is related to mental health issues and the weakening of social adaptation, and bullying, in particular, can exacerbate acculturation challenges and lead to low self-esteem, stress, depression, poor academic performance, school dropout, substance abuse, and behavioural problems among refugee children (Guo et al., 2019).

To ensure that students from a migrant background receive a stable and quality education, their integration into established national schools is crucial. This integration, which brings together refugees and national students in the same educational system, helps streamline funding activities to direct resources toward sustainable education systems (Adelman, 2018). International agreements and national policies can serve as valuable indicators of the host country's commitment and capacity to include refugees (Taylor & Sidhu, 2012). The Eurydice report (2019) highlights that in most European education systems, students from a migrant background tend to lag behind their native-born peers. However, those who are well-integrated both academically and socially within the school system have a greater likelihood of realising their full potential. The report also emphasises that primary school students who do not speak the language of instruction at home may experience a reduced sense of belonging and a higher incidence of bullying at school (Eurydice, 2019). Therefore, local schools must possess the capabilities to support migrant youth in keeping up with their native peers, ensuring their effective integration into the economic and social fabric of their receiving communities.

Past experiences may also influence how children perceive school, and the relationships they develop with their teachers and peers, and this is particularly relevant for students from a migrant background whose pre-settlement background could have major implications on their academic futures (Dryden-Peterson, 2015). Parnis & Schembri (2023) also note various ways to reach and teach students from ethnic minorities in secondary schools in Malta.

2.4. Education for students with a Syrian background

Since the start of the conflicts in Syria, especially in Aleppo, only 6% of students attended school or received some form of education (Akbarzadeh & Conduit, 2016). This suggests that educators in the host countries must understand the background of these students when they first come into class. Furthermore, many of these students come to the host countries with varying English levels, affecting their academic and social experiences in their new schools (Kilic & Gokce, 2018). Thus, the new curriculum, lack of language and new school can affect students' academic experiences. This can even happen when students from a Syrian background migrate to a country which is very close and similar to

Syria, such as Turkey, because, in this case, Syria and Turkey are both very different countries with very different cultures and social and historical differences (Baban et al., 2016).

In their research, Kilic and Gokce (2018) identified four key challenges commonly faced by students of Syrian background. These include struggles with comprehending lessons taught in languages other than Arabic or Kurdish, leading to academic difficulties. Additionally, they encounter issues with local students and among their peers of Syrian background, particularly if there are political or ethnic differences, such as between supporters of different groups or those from distinct ethnicities like Kurdish or Yazidis. Lastly, they contend with financial difficulties within their families.

One major hurdle for migrants in their host countries is education. This is primarily because children are required to learn to read and write in a different language and may face differences in dominant religious beliefs, especially in Western countries (Almadani, 2018). Many students from a Syrian background arrive in the host country without basic English language proficiency (Kilic & Gokce, 2018). These students bring unique experiences, cultures, backgrounds, and histories to the classroom, and it is important for all students, including Syrians, to explore and understand these perspectives (Almadani, 2018). Taylor and Sidhu (2012) argue that the successful inclusion of refugees hinges on creating a welcoming environment for all students, free from racism, which can be challenging for educators. They also emphasise the importance of including students from a migrant background, particularly addressing their psychosocial needs, especially if they face language barriers or have experienced trauma. Schools play a pivotal role in the inclusion and success of refugees, but this requires effective leadership and support from education authorities (Taylor & Sidhu, 2012). The inclusion of diverse students not only benefits their academic progress but also positively impacts the broader community. Dryden-Peterson (2015) suggests that four main factors influence migrant students' academic experiences, including language barriers to educational access, inadequate quality of instruction, contested educational opportunities, and discrimination in school environments.

Almadani (2018) conducted extensive research on students from a Syrian background. It was found that all the participants in her study were very ambitious to learn and dreamt of achieving high academic performances to have a better life than the one they had during the first few years of their lives. Furthermore, they did their best to cope with living in a new society. Moreover, all the students said that their teachers in their school played a pivotal role in their lives. However, Adelman (2018) noted that even though students from a Syrian background have heard the school bell all year, it still frightens them when it rings. She also adds that one of the major issues of having students from a Syrian background in public schools is their behaviour because, especially during break times, they act like they are fighting an enemy.

This review has discussed current research about students from a migrant, specifically Syrian, background, mainly referring to their positive and negative social and academic experiences. It has presented research studies from countries similar to Malta that have recently experienced a number of students from a migrant background, such as Turkey, Lebanon and the United States. Most importantly, this is all being done so that all students, regardless of their origins and where they are, would feel a sense of belonging.

In light of the aforementioned aims and objectives and the review of literature, the research questions underpinning this study were:

- What relationship is there, if any, between the Syrian migrant students' life experiences and their academic achievements in Maltese state middle schools?
- How are Syrian migrant students interacting socially within the school system and with their peers and educators?
- What are the barriers that Syrian migrant students are facing to be fully socially included within Maltese state middle schools?
- What type of support are Syrian migrant students being given by the professionals at their respective schools to thrive academically?

3. Methodology

3.1. The research design

It is not easy to reduce social reality to variables. This is why it was deemed important to understand and portray the meaning constructed by the participants in a particular social setting (Ary et al., 2010) through an exploratory qualitative study. The latter was used because it is an approach for understanding and exploring the meaning individuals or groups give to a human or social problem. Rather than gathering a numeric analysis of data, its purpose is to provide a deep and holistic understanding of the social experience (Ary et al., 2010). A qualitative approach can be interpreted by looking at three dimensions: its ontology (i.e. the way truth is perceived), its epistemology (i.e. the questions it deems important), and its methods (i.e. the techniques it uses to answer the earlier-mentioned questions) (Cropley, 2019). Moreover, qualitative researchers are interested in discovering the nature of a phenomenon for those concerned, and the ultimate aim is to understand how people make sense of their lives and experiences. This phenomenological research has allowed for a deeper understanding of the experiences of migrant students in Malta related to their educational and social experiences, with the hope that the study can act as a changing agent (Schembri & Sciberras, 2022), in a small island state such as Malta (Schembri & Sciberras, 2020).

3.2. Sampling and data collection

Once the Ethics Board at the education institution where this research was carried out and the MFED Research Ethics Committee (MREC) approved this research, a detailed email was sent to the various Heads of School. Considering that the latter were the gatekeepers, their approval and assistance were necessary for the study to take place while conforming to an ethical recruitment process. Gatekeepers are persons formally in charge within institutions and have the power to grant or deny access to persons or situations during research into their organisation. In this instance, the Heads of Schools were contacted to seek their permission to conduct the interviews with students from their schools. The students and their parents/legal guardians were given a participant information sheet. Moreover, the students were given assent forms, and their parents/legal guardians were given consent forms (to ensure informed consent).

Recruiting participants was not easy, and after numerous attempts, a total of four students from a Syrian background who live in Malta and attend Maltese middle schools participated in this research. All four participants were born in Syria and were all in Syria at some point during the war. Some of them have even said that they recall the bombings and shootings. Table 1 summarises some demographic information about the participants.

Student Pseudonym	Gender	Age	Year Group	Place of Origin
Sara	Female	12 Years	Year 7	Homs, Syria
Ahmed	Male	13 Years	Year 8	Ma'Saran, Syria
Rana	Female	11 Years	Year 7	Homs, Syria
Hana	Female	12 Years	Year 7	Homs, Syria

Table 1. Participant demographic information

3.3. Research instrument: Semi-structured interviews

In this study, audio-recorded, in-depth, semi-structured interviews were used as the research tool. In the four different interviews, participants were asked similar questions, however, other relevant questions were also asked depending on what the students were saying. This was done as the researchers were aware of the 'observer's paradox' and wanted to ensure that the data collected was as authentic and real as possible. This has helped in gaining a better understanding of the students' unique experiences. The interview guide for the semi-structured interview consisted of 13 questions by which the students recalled their personal experiences, namely the positive and negative schooling experiences in Syria as well as in Malta. Furthermore, other questions addressed any other issues in

Maltese state middle schools that hindered the students from being fully included in the school system. The participants were given ample time to express themselves, and the dignity and respect of the research participants were prioritised, while privacy and protection were ensured. Ultimately, semi-structured interviews were used because they offer more flexibility to the interviewer and keep the interview flowing, especially since, in this case, it involved children. The interview guide is available (in Maltese and English) as an appendix. Transcripts were written verbatim, and thematic analysis followed.

3.4. Ethical issues

A number of ethical considerations had to be addressed in this study, which included the responsibility to inform the children (together with an assent form) and their parents or guardians (together with a consent form) about everything they agreed to. Before the parents/guardians and the children signed the consent form, it was explained that participation was voluntary, that they could stop the interview at any time, that the interviews would take place in a safe place and that the interviews were confidential. These ethical considerations were highly important because this research explores the personal lives of these children.

The participants' real names were not used, and the study does not mention the schools the participants attended. No details which could lead to identifying the children or their families were included. Schembri and Sciberras (2020) explain that although researchers do their utmost to comply with the ethical principle of confidentiality, it is often difficult to maintain adequate confidentiality in studies conducted in small island nations. Apart from respecting that research participants should not be subject to harm in any way, the children's vulnerability was considered throughout this research. The fact that migrant and refugee children might be more vulnerable than others (Dryden-Peterson, 2015) was also taken into account.

4. Analysis and discussion

To answer the previously outlined research questions, the findings and the respective discussion were organised into the different themes that emerged, namely:

- Syrian migrant students' life experiences and their academic achievements in Syria and Malta;
- The social interaction and barriers for students from a Syrian background; and
- The support (provided and needed) for students from a Syrian background.

4.1. The experiences in Syria

The first emerging theme poses the relationship between students from a Syrian background and the experiences that they had in their country, especially the negative ones, since negative experiences such as fear, trauma, poverty, inadequate health care, exhaustion, and over-experience during the conflict and migration period adversely impact their cognitive systems and decrease academic performance.

Upon commencing the interviews, the students did not take long to recall positive moments from their homeland. Sara fondly recalled her most cherished memory in Syria: swimming in pools with other children. Despite the pools being far from lavish, they still derived much enjoyment. Ahmed, Hana, and Rana emphasised that their fondest memories in Syria were centred around playing outdoors with relatives and other village children. These observations align with Almadani's (2018) extensive study, which also found that socially, students with a Syrian background commonly had positive experiences in their home country, particularly in terms of having many friends to play with and fostering meaningful family connections. In fact, Ahmed recalls finding many flowers and green areas in his village as something he will never forget. Furthermore, he alluded to playing ball outside without fear and how all the inhabitants assisted each other in his village. This was also pointed out by Sara when she said, "a nice memory is when everyone used to help each other, where we used to live in Homs", and even though she comes from a city, everyone in her community still helped each other, especially when in need.

Given the recent turmoil in Syria, reflecting on their experiences and the negative incidents they endured there was profoundly emotional for the participants. Ahmed vividly remembered a particularly harrowing moment when his village was subjected to aerial bombings. In the ensuing chaos, civilians scrambled for safety, desperately hoping to avoid harm. Many of his neighbours sought shelter in his home before making their escape. They were often uncertain of their destination, but the paramount concern was ensuring their survival, regardless of where they ended up. Moreover, Rana stated that “when we went out of Syria and did not know where to go”, it was a negative experience for her, and Hana went into more detail and stated, “we were beaten before we were able to flee”. Sara recalled that the moment she learnt that their house had been destroyed was the worst part of it all, and this has had a negative effect on all her family members. These answers are similar to what Almadani (2018) found when she implies that all the students in her research had experienced positive and negative encounters in Syria before they, together with their families, had moved to the United States.

4.2. The experiences in Malta

Another notable theme revolved around the positive and negative encounters that students of Syrian background undergo in Malta. There was a common sentiment among the participants that having their parents with them in Malta was a positive experience. Hana, in particular, expressed her joy at reuniting with her father, who was already in Malta when she arrived. She further stated, “when we arrived, we all lived with my uncle, and the experience was very good, before my father bought a home, and that was one of the happiest moments in my life”. The participants in this study held a positive view of Malta, much like Almadani’s participants, who expressed positivity towards America, the country they immigrated to, despite the challenges they have encountered and continue to face in schools (Almadani, 2018). Sara reminisced about the positive experience when they arrived in Malta and were shielded from news about the war in Syria. Ahmed also highlighted the positivity he experiences in Malta, particularly in his schooling, expressing great satisfaction with his education. This is crucial, as students need positive experiences in Maltese schools to achieve full inclusion, which is only possible in an environment free from prejudice and characterised by harmony for all the diverse individuals in attendance (Taylor & Sidhu, 2012).

Although three participants could not recall any negative experiences in Malta, Hana did have negative encounters, particularly at her primary school. She revealed that she had been subjected to bullying on numerous occasions, a topic that will be discussed further under another theme. Additionally, Rana and Hana recounted negative experiences during their journey to Malta by boat, with Hana’s boat even stopping, requiring them to swim before being rescued. Further to this theme, Sara stated, “we spent a week on the boat until we arrived in Malta.” Rana similarly recalled that “we were 90 people on the boat” and that, at one point, they were going to fall out of it.

The students continue to grapple with these traumas (Adelman, 2018) despite now leading settled lives here in Malta. For all the participants, arriving in Malta and being confronted with news about the ongoing events in Syria was a distressing experience, especially when they heard distressing reports about their hometowns or villages. This aligns with findings in the Eurydice report (2019), which highlights the various challenges faced by students from migrant backgrounds that can impact their overall development. However, the participants, on the whole, expressed positive sentiments, possibly because they were contrasting their experiences in conflict-ridden environments with the relatively peaceful lives they now lead in their host country (Almadani, 2018).

4.2.1. Social interaction with peers

Throughout the interviews, it was evident that all the students at the time of the interviews had no issues with their friendships. However, Sara mentioned that she only had two close friends, which she is content with. As Rana and Hana shared the same class, they had a common group of Maltese friends. They mentioned that they enjoyed conversing in both Maltese and English with their friends to practice, and importantly, they always managed to understand each other even if they were not fully proficient in both languages.

Even though Ahmed was in a new school in a different country, all the students in his class were his friends, and everyone helped him when he needed it. Sara liked to go out with their friends in the mornings when they were not at school and go to "Sliema to eat and play together". Moreover, Hana and Rana liked to play with their friends during break times at school as well as with all their other classmates. This affirms that schools offer a myriad of options for refugee children to socialise and make friends (Guo et al., 2019), possibly also because the participants feel safe in their current schools. All the participants agreed that they made new friends from diverse cultures, and these social interactions became the key to getting back a sense of normality in their lives. This finding confirms what Taylor and Sidhu (2012) found in their research, that the integration of refugees would be successful if the climate were to be welcoming to all students whilst being free from bias, which may be a struggle for educators.

4.2.2. Language barriers

A prominent theme that surfaced in these interviews was the challenge of language barriers faced by students from a migrant background. Dryden-Peterson (2015) has noted that language barriers are a widespread issue experienced by refugee students. Similarly, the findings of this study underscore that language barriers are a significant concern for Syrian children and their families, as they encounter difficulties with language and communication in both school and social settings (Dryden-Peterson, 2020).

Learning a new language is a pivotal experience that holds significant importance in the lives of students from migrant backgrounds, facilitating their full integration into the host society (Guo et al., 2019). Nonetheless, this process is often challenging, as all the students in this study arrived in Malta with either no or very limited proficiency in Maltese or English. This aligns with the findings of Almadani (2018) and Kilic and Gokce (2018), who suggest that migrant students typically arrive in the host country without a foundational grasp of English, and in this case, Maltese. Even though Ahmed initially came to Malta at a young age and learned Maltese, his subsequent return to Syria posed a challenge in reacquiring proficiency in the language upon his recent return to Malta. At the time of the interview, he faced difficulties primarily in writing and reading, which were being addressed in school. Sara recounted that she did not speak Maltese when she first arrived in Malta. She has received substantial support within Maltese schools to accelerate her learning of the language. This assistance has proved highly effective, as she is now studying Maltese and English at the Track 3 level, the highest level offered in middle schools. Rana, along with her siblings, initially had no knowledge of Maltese. However, their father was proficient in the language, and they gradually learned it from him.

She further stated, "at school, a specific teacher comes to help me to learn even more." Hana admitted that she still does not know how to speak Maltese, and when the researchers told her that she was speaking well and that he could understand her, she surprisingly said, "I know how to speak?" These findings show that it is a struggle for all the students to learn these new languages, especially English. However, Hana stated that she would like to learn more English, which she barely understands, as she knows that in Malta, the English language is very important. In fact, all four students shared the belief that learning English would have a positive impact on their social and academic lives.

Since the Maltese language is analogous to Arabic, it has been easier for all the participants to learn the basic ways of communicating in Maltese schools and ultimately adapt to their new lives as much as possible. Because of the language barrier, Ahmed, Rana, and Hana were all in Core Curricular Programme (CCP) classes, which are classes where students have knowledge of only some basic language skills and, therefore, are the lowest level at which Maltese and English can be studied in Maltese middle schools. This corresponds with findings by Baban et al. (2016) when they imply that the lack of language, the new curriculum, as well as the new school, all affect the migrant students' academic performance.

4.2.3. Bullying

Another emerging theme was that of bullying, as this is a sensitive topic amongst children, and this topic was taken very seriously by Sara and Hana, who both were bullied at school when they came to Malta. The study by Guo et al. (2019) found that the children interviewed recalled cases of ethnic-

religious persecution where they were battered and ordered to return to their *own* country. Sara specifically said, "they called me a boy," which is particularly offensive, especially in the Arabic culture.

Tensions that involve prejudice often occur not in the standardised curriculum or textbooks but in classroom conversations and activities (Dryden-Peterson, 2015). Hana, another participant who has been bullied, stated that, "in Year 5 and 6, the children called me names, beat me and grabbed me by my head." She went further to state that the children used to tell her, "go back to Syria, Syria is ugly, why did you come here?" However, Hana's teachers have always tried to stop the bullying and supported her. She remembers the teacher saying, "you cannot call Hana that." This poses a critique to Guo et al.'s (2019) study when they assert that in terms of social inclusion, what was more disturbing for children was the lack of help from teachers while Syrian children were exposed to bigotry and abuse. This confirms that while some teachers become ardent supporters of refugee children and can work beyond their academic position to help refugee families, others are hesitant to do so. While all kinds of harassment can be distressing, race and religion-related harassment is especially troubling. On the other hand, Ahmed and Rana have never experienced bullying within Maltese schools or by Maltese students.

4.2.4. The support for students from a Syrian background

The students discussed the plethora of support they have at and out of school. The participants all agreed that they have continuous support, particularly related to their academics, where they were being supported in literacy and numeracy. Sara said that mainly the French, Maltese and English teachers support her to improve in languages and ultimately get good grades in the exams, especially since she is studying them at the Track 3 level. About the support that she received at school, Sara stated,

We are happy when we hear that someone loves us because people from other countries, for example, the United States of America, do not want us. We were going there, but they told us 'no, we do not want Arabs here'.

Ahmed, Hana, and Rana all express gratitude for the support they receive, primarily from their teachers. They appreciate the extra effort teachers put in to explain lessons or specific tasks whenever they face difficulties, especially considering that they are in CCP classes focused on basic skills, where teachers play a crucial role in helping them with reading and writing. All three of them also agreed that when migrant students follow the same curriculum as their peers, those from a Syrian background face a higher risk of struggling, often due to differences in religious practices. With a Learning Support Educator (LSE) assistance, Ahmed emphasised that he received continuous support in class, enabling immediate resolution of any challenges he encountered. On the other hand, Hana stated, "I want to have an LSE, but I don't know why they don't give me one." From the interviews, it has emerged that all the participants were being supported in many ways by different professionals, which asserts that the schools are including migrant students and catering to their psychosocial and academic needs (Adelman, 2018).

Amac and Yasar (2018) emphasise the critical role of inclusive education strategies and support for students from a migrant background. While educators should certainly aim to understand the students' backgrounds and cultures, it is equally important for the students to learn about the culture and geography of their host country, which is now their new home (Akbarzadeh & Conduit, 2016). An interesting observation from the interviews was that Hana and Rana's school provided specific lessons for migrant students, focusing on Maltese culture and points of interest. This initiative played a significant role in helping them integrate more effectively into Maltese society. They mentioned that they always look forward to these lessons, and Hana admitted that "the teacher helps us a lot." On the contrary, Ahmed and Sara did not have these lessons in their school.

4.2.5. Future Aspirations of Syrian Migrant Students

The final theme from the participants' interviews centred on the future aspirations of Syrian migrant students. This theme holds significant importance in this research, as one of its primary aims was to support students from a Syrian background in achieving a better future. Gaining insight into their future

goals will assist educators in setting achievable objectives for these students. Additionally, it may guide policymakers in making necessary adjustments to existing policies.

Ahmed's ambition is to work with his father in construction when he finishes school, especially since Ahmed's father told him he would. On the other hand, Sara aspires to become a doctor for the elderly so as "to give an example of the good life in Malta". Hana is also an ambitious student who would like to be a doctor or hairdresser. Finally, Rana stated, "I wish to work as a teacher to help my family." The girls' aspirations and hopes were suggestively more ambitious than the boy's. All the students answered the question about their future aspirations with their family members in mind so that they could all make them proud because, as Baban et al. (2016) imply, cultural traditions and societal differences remain strong even when Syrians are living in another country. In conclusion, Sara, Hana and Rana have very high future aspirations, which affirms what Almadani (2018) outlined in her extensive study. On the contrary, Ahmed's future aspiration is that of working with his father in the construction industry. This might show that boys are meant to have their father's job and help the family, especially if they are the firstborn.

5. Conclusion

This research delved into the topics of inclusion, barriers, challenges, and support for students from a Syrian background, especially within the context of the increasing relevance of multicultural education in Maltese schools. A parallel study on the integration of Syrian students in Turkish schools highlights the critical nature of their education, emphasising that a delay in schooling could lead to a generational gap. To prevent this, continuous education is imperative. Additionally, education serves as a means to prevent radicalisation and aids in the social integration of asylum-seekers into the host community (Amac & Yasar, 2018). While multicultural education is crucial for providing equal opportunities for academic success, some institutions and schools may still fall short in providing equitable opportunities, underscoring the influence of social class status on academic achievement.

In the case of the participants in this study, a sense of identity within the school environment has facilitated openness and the sharing of relatively positive sentiments. Teachers, educators, and other school practitioners play a pivotal role in the students' learning and establishing connections with other diverse individuals for meaningful interactions. The four participants expressed gratitude for their teachers who motivate and encourage them to learn. Despite initial hardships, migrant students were collectively appreciative of their present circumstances and strived for academic excellence with the hope of securing a better future for themselves and their families. Overall, the research also indicated that Syrian migrant students face challenges adapting to Maltese schools' current curriculum, attributed to language barriers and gaps in their earlier education. That being said, the Maltese Inclusion Policy of 2019 (MEDE, 2019) is a step in the right direction when it comes to diversity and multicultural education in Malta.

The findings comprehensively addressed the research questions. Firstly, it is evident that the conflict and disrupted education in Syria continue to significantly impact the students' educational journey, both in the past and present. Secondly, while two participants experienced bullying, overall, they managed their interactions fairly well. However, it is notable that the girls tend to have a relatively small circle of friends. Thirdly, it is apparent that bullying and language barriers emerge as the primary challenges impeding the full inclusion of students from a Syrian background within schools. Finally, in response to the last research question, all participants expressed receiving support from their teachers and other professionals. Nevertheless, there appears to be some uncertainty among the participants regarding the roles and identities of these professionals.

5.1. Limitations of the Study

The main limitation of this study was extraordinary since the interviews were carried out during the COVID-19 pandemic, and schools were not accepting in-person research. It was also difficult to conduct interviews online as many students did not know how to use a computer. Furthermore, other students were not permitted by their parents to participate in this study. Initially, the study aimed to interview

students with a Syrian background from middle and secondary state schools. However, since many students were not attending school during that scholastic year, the research had to be limited to state middle schools.

Since having students with a Syrian background as part of the school population is a recent phenomenon within schools of developed countries around the world, there is ample research that could be carried out. However, research about migrant students and, even more so, students from a Syrian background was very limited. It seems that this topic is being developed as time goes on, and clearly, there are now more students from a Syrian background in Maltese schools. Finally, another limitation was that different Syrian students have different realities, and the findings from this study do not necessarily reflect the realities of all Syrian students in Malta, hence cannot always be generalised.

5.2. Implications and Reflections

The perceptions of students from a Syrian background in this study not only shed light on the current challenges and difficulties that migrant students presently face, but also detail suggestions as to what practitioners can do. This research opens up opportunities for further study about migrant students in Maltese schools. The implications of this study's findings lead to educating not only the students themselves but also the local students about the ways of life of migrant students.

It is hereby recommended that all educators who are working within Maltese schools have Community of Professional Educators (CoPE) sessions where they are given the correct information about how to incorporate multicultural education within their lessons because educators need the pedagogical skills to teach children who come from foreign or war-torn countries (Adelman, 2018). This should be mandatory because, at some point, all educators will experience a multicultural classroom. In this way, they would have the basic skills to deal with this ever-growing situation and ensure their students thrive. They would also be assured that they receive the training needed to do their job authentically and in the best way possible. Specific schools should also offer on-premises training as part of their professional development, informing all educators about the specific cultures and traditions present within their school. This would benefit everyone involved in that school, and ultimately, it would create a more harmonic environment where everyone would feel comfortable coming to school while lessening xenophobia (Banks & McGee Banks, 2010).

It is hereby further recommended that a national policy is introduced with clear guidelines regarding the language barriers faced by students from a migrant background at all levels. Although the Maltese policy 'A Language Policy for the Junior Years' briefly mentions that "all migrant learners are to be provided with opportunities to develop their bilingual and plurilingual competences" (Ministry for Education, Sport, Youth, Research and Innovation, 2023, p.19), we acknowledge that this policy is aimed at students within the Junior school cycle and does not include students in the Middle or Secondary school cycle. Furthermore, it would be greatly beneficial if a programme is introduced for migrant students about Maltese cultural heritage, especially for students who do not attend the Migrant Learners' Unit. Therefore, introducing a specific policy involving all migrant students is essential for Malta to continue working hard as a nation so that all students succeed no matter what. If educators can effectively manage the situation, social and cultural issues will be avoided. This policy could also include some recommendations provided by Schembri (2020), which were mainly aimed at students in primary education in Malta.

In conclusion, it is in the hands of all educators working within Maltese schools to create a positive, supportive environment and a harmonic learning community where all students feel a sense of identity and can succeed academically. The individual efforts of the school leadership team, the teachers and the LSEs are vital and need to be encouraged to ensure academic and social inclusion, and support for both local students and students from a migrant background, in order to provide quality education for all students.

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APPENDIX – Interview guide**English:**

1. Where are you from?
2. How long have you been in Malta?
3. How was your journey from Syria to Malta?
4. Think about your life in Syria. Can you tell me one happy memory and one not-so-happy memory?
5. Think about your life in Malta. Can you tell me one happy memory and one not-so-happy memory?
6. What were the first problems, if any, that you faced at school in Malta?
7. Were there any language problems that you had to face?
8. Who are your friends at school, and in what way do you interact with them?
9. Have you ever had any problems with your peers at school?
10. Who are the people who have supported you at school?
11. How did they help you?
12. In what ways do the educators in class support you?
13. What are your aspirations for the future, and what would you like to achieve when you finish secondary school?

Malti:

1. Minn fejn int eżatt?
2. Kemm ilek Malta?
3. Kif kien il-vjaġġ tiegħek mis-Sirja għal Malta?
4. Aħseb fuq il-ħajja tiegħek fis-Sirja. Tista' tgħidli memorja sabiħa u memorja mhux daqshekk sabiħa li tiftakar sew?
5. Aħseb fuq il-ħajja tiegħek f'Malta. Tista' tgħidli memorja sabiħa u memorja mhux daqshekk sabiħa?
6. X'kienu l-ewwel problemi, jekk kellek, li kellek tiffaċċja fl-iskola f'Malta?
7. Kien hemm xi problemi fil-lingwi li sibt hawn Malta?
8. Min huma l-ħbieb tiegħek l-iskola u x'tagħmlu flimkien bħala ħbieb?
9. Ġieli kellek xi problemi ma' sħabek l-iskola?
10. Min huma l-professjonisti li jissaportjaw l-iskola?
11. U kif tawk support?
12. L-edukaturi fil-klassi tiegħek kif jgħinuk?
13. X'inhuma l-aspirazzjonijiet tiegħek għall-futur u x'tixtieq li tikseb meta tispiċċa l-iskola sekondarja?