

**Migration and Asylum in Malta and the
European Union: Rights and Realities**
2002 to 2011

edited by
Peter G. Xuereb



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Contents

Preface	vii
Notes on Contributors	ix
Foreword.....	xv
List of Acronyms and Abbreviations	xix
Migration and Asylum in Malta and the European Union: Rights and Realities An Introduction and Overview <i>Peter G. Xuereb</i>	xxv
Part I EU Migration Law in Evolution up to 2011	
1. The EU Framework on Asylum: obligations and opportunities for Malta <i>Martin Watson and Mariya Shisbeva</i>	3
2. Building the CEAS: ad intra and ad extra - How to avoid <i>non-refoulement</i> and <i>neo-refoulement</i> <i>Cristina Gortázar Rotaecbe</i>	15
3. The Governance of Migration in the EU's Mediterranean and Neighbourhood Policies: meeting point of the EU's external and internal spheres? <i>Paul James Cardwell</i>	33
Part II The Case of Malta	
4. From Mogadishu to Malta: Travel Experiences of Somali Migrants <i>Derek Lutterbeck</i>	61
5. The Disembarkation of Migrants Rescued at Sea: where is the 'Solidarity'? <i>Patricia Mallia</i>	81
6. Fair Sharing of Asylum Responsibility within the EU: Addressing Malta's Scenario <i>Alison Gatt</i>	103

7. The Capacities of the Maltese Labour Market to Absorb Irregular Immigrants <i>Saviour Rizzo</i>	141
8. Irregular Immigrants in the Maltese Labour Market: Current Situation and Problems <i>Robert Suban</i>	163
9. The Politics of Integration in a Small Island Peripheral State: The Case of Malta <i>Isabelle Calleja Ragonesi</i>	191
10. The Elephant in the Room: a look at how Policies impact the Lives of Female Sub-Saharan African rejected Asylum seekers living in Malta <i>Maria Pisani</i>	217
11. Health Care for Migrants in Malta <i>Paul Pace</i>	237
12. "Human Rights for the Maltese First": Irregular Migration and Human Rights in Malta <i>Daniela DeBono</i>	257
Part III What is it all in aid of? What does, or could, the EU offer the third country Migrant?	
13. Who is a Migrant? EU Law and the Categorisation of People <i>Elspeth Guild</i>	279
14. From being an 'Illegal Immigrant' to becoming an EU Citizen: is the door too widely or too narrowly open, or what? <i>Ivan Sammut</i>	295
15. The Right for Asylum: between universality and sustainability, desert deaths and magic steps <i>Charles Pace</i>	327
Index.....	337

“Human Rights for the Maltese First”: Irregular Migration and Human Rights in Malta

Daniela DeBono

Introduction

In 2002 Malta, a small island state in the Mediterranean, witnessed a sudden increase in the arrivals of irregular immigrants. The vast majority of migrants arrived by boat from Libya and almost all were directed towards Italy (mainland Europe). The immigrants originate from 47 different countries. In tandem with this social development, Malta was severely reproached by authoritative human rights organisations for not meeting its obligations to safeguard the human rights of the irregular immigrants. This widespread criticism, which resonates with similar situations in Europe, stands in contrast to the relatively good, almost untainted, reputation of respect to human rights that Malta had so far enjoyed. The migrationist Russell King, using the case study of Malta, shows that in the contemporary era characterised by globalisation and increased mobility, small islands have a particularly uneasy relationship with migration – “being good at emigration...but bad at coping with new immigration”.¹ This echoes the notion of ambivalence which the anthropologist Jon Mitchell aptly observed in Maltese political culture following a period of fieldwork in the late 1990s.² Understandably Malta faced with such an unpredicted increase of irregular migrants needed time to set up a proper migration management system. This Chapter looks at these attempts from the point of view of human rights.

Malta's good record of human rights is particularly evident in the social and political achievements of vulnerable groups such as the disability rights movement.³ But if human rights were entrenched in the Maltese state and society, then why was a human rights approach not immediately extended to irregular immigrants? The Government and international human rights bodies often held radically opposing views on the application

1 King, R., “Geography, Islands and Migration in an Era of Global Mobility”. In *Island Studies Journal*, Vol. 4, No. 1, 2009, pp.75.

2 Mitchell, J., *Ambivalent Europeans: Ritual, Memory and the Public Sphere in Malta*, London: Routledge, 2002.

3 For more on the development and achievements of the disability rights movement, see J.M. Camilleri and A.M. Callus, ‘Out of the cellars - Disability, Politics and the Struggle for Change: The Maltese Experience’. In L. Barton, *Disability, Politics and the Struggle for Change*, London: David Fulton Publishers, 2001, Chapter 7, pp 79-92.

of human rights. This was seen, for example, when the Ministry for Justice and Home Affairs claimed that Malta is in line with human rights standards in the European Union and the European Convention of Human Rights (ECHR). The Ministry was responding to a statement by the local organization, the Jesuit Refugee Service (JRS) Malta, which brought to the attention of the Government the ECtHR ruling on excessive detention of immigrants on the *Khaled Loulad Massoud vs Malta* case.⁴ In those cases when the Government acknowledges the lack of human rights enjoyed by irregular immigrants, it often justifies its approach by making recourse to nationalistic discourse, or administrative issues.

This research reveals that one of the reasons behind irregular migrants' exclusion from 'human rights' in Malta is that a cosmopolitan approach is largely missing. Cosmopolitanism understood here in an essentialist form to refer to a universal global community is a requisite for the overall implementation of a human rights philosophy. People who practice cosmopolitanism feel that they are members of one global community and that this community should be nurtured. The universalist ethic leads cosmopolitans to question assumptions of 'us' and 'them', and this allows them to transcend ethnic differences and to morally include the other. A cosmopolitan political culture is often, and mistakenly, automatically attributed to Western developed countries.

This Chapter explores the recent phenomenon of irregular migration in Malta and identifies a lack of a cosmopolitan approach in Maltese political culture as one barrier to the full adoption of a human rights approach in this field. It is divided into six sections. Following this introduction, a brief snapshot of human rights reports will demonstrate that the common assumption that irregular migrants and foreigners did not face problems prior to 2002 is false. The third section will shift the focus to the period following 2002 when the number of irregular immigrants in Malta increased and when Malta's treatment of irregular immigrants became the subject of international human rights reports. This section will describe the situation of irregular immigrants through a review of international human rights reports. The fourth section presents the predominant position taken by the Government in response to international criticism. The fourth section will discuss the nexus between human rights and irregular migration from the point of view of people working with migrants, who identify a lack of a cosmopolitan approach in Maltese

⁴ For more on this: When JRS Malta brought up the ECHR judgement in a public statement the MJHA responded swiftly on the same day denying that Malta was not in line with international human rights standards. See JRS Malta, *Statement by Jesuit Refugee Service Malta on Human Rights Day 2010*, 10 Dec 2010. Available HTTP <http://www.jrsmalta.org/Press_Release_JRS_Malta_20101210.pdf> [Last accessed 27 Dec 2010], and the official response published in Maltese by the MJHA, Department of Information, Press Release No.2321, *Risposta ghal dak li inghal mill-Jesuit Refugee Service illum [Responding to the statement issued by JRS today (author's free translation)]*, 10 Dec 2010. Available HTTP: <http://www.doi.gov.mt/EN/press_releases/2010/12/pr2321.asp> [Last accessed 27 Dec 2010] and reported in the Times of Malta, *No Need to change detention policy Justice Minister insists*, 10 Dec 2010. Available HTTP <<http://www.timesofmalta.com/articles/view/20101210/local/malta-urged-to-update-migrants-detention-policy>> [Last accessed 27 Dec 2010]

political culture as one of the barriers towards the fullest adoption of a human rights culture. Finally, the fifth section makes a series of concluding remarks on the benefits of viewing the debate on human rights and irregular migration in Malta from a cultural perspective.

Most of the material for this paper was gathered during a period of fieldwork between 2008 and 2009, which is also when the interviews cited were carried out. The approach is interdisciplinary, using both standard academic literature from various disciplines and empirical reports on Malta. In addition, ethnographic material gathered through participant observation, the author's immersion in the field (even prior to the fieldwork period mentioned above) and in-depth interviews with a range of policy-makers and practitioners, are also drawn upon.

Malta and human rights prior to 2002

Malta's human rights record according to available international human rights reports prior to 2002 was generally good. This is evidence of the commitment and political will of both Maltese society and the official state structures. Typical of pre-2002 human rights reports is the following opening statement of the U.S. Department of State human rights country reports, which for successive years was:

The Government generally respected the human rights of its citizens, and the law and the judiciary provide effective means of dealing with individual instances of abuse.⁵

In addition, the Government of Malta was willing to consider and, on the whole, eventually take on board recommendations put forward in these reports, as seen in the two quotes below:

Violence against women was a problem, and societal discrimination against women persisted, but the Government has taken steps to address both issues.⁶

Domestic violence against women was a problem. As of October, 168 cases of domestic violence were reported to the Police Domestic Violence Unit. A special police unit and several voluntary organizations provide support to victims of domestic violence. There is a hotline to assist victims of abuse through counselling and through referrals to legal assistance shelters. The Government also maintains an emergency fund and subsidizes shelters. During the year, 59 women used the shelters, and another 93 used a church-run

5 U.S. Department of State, Malta Country Report on Human Rights, 2002. Available HTTP: <<http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8302.htm>> [Last accessed 27 Dec 2010].

6 U.S. Department of State, Malta Country Report on Human Rights, 2002. Available HTTP: <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8302.htm> [Last accessed 27 Dec 2010].

shelter that received financial assistance from the Government. In 1998 the Government set up a committee to review existing family legislation and propose amendments dealing with domestic violence, and in 2000, the committee presented a bill concerning domestic violence that was under consideration by the Government at year's end.⁷

This is not to say that Malta was fulfilling all its human rights obligations. In fact, generic human rights reports like the U.S. Department of State annual reports recommended action to be taken, for example, to enact a Maltese Children Act, to increase the age of criminal responsibility for children currently set at nine,⁸ to improve conditions in prisons, and to regulate the detention of minors, amongst others. However, all these appeared 'minor' (in the sociological sense, due to the difference in breadth and gravity of the collective violations) when compared to the violations against irregular immigrants that will be described in this chapter. The human rights reports show that even in those cases where direct action to rectify situations took a long time, at times years, the Maltese state presented a commitment, and the corresponding political will, to human rights principles and agreed standards. The overall impression one gets from reading the reports is that the issues that were being highlighted had to do with the normal development and amelioration of compliance by a State with its human rights obligations.

However, irregular immigration was already an exception. Prior to 2002, the number of immigrants in detention numbered at most a few tens. Notwithstanding this, in 1995 the Council of Europe's Committee for the Prevention of Torture, Inhuman and Degrading Treatment (CPT) reports appalling conditions and little progress since the previous report published in 1990. In Section III 'Recapitulation and Conclusions', articles 115 to 119 harshly criticised the conditions in immigrant detention centres. Below is a selection from these articles:

115. The cells in the lock-up at the Police Headquarters in Floriana, which were the subject of criticism in the CPT's 1990 report, were found to be virtually unchanged. Moreover, they were still being used to hold persons for extended periods of time (e.g. under the Immigration Act or because Corradino Correctional Facility could not provide appropriate accommodation). The Committee has stressed that the lock-up cannot be said to provide satisfactory conditions of detention for persons held for police questioning; at the very least, the lighting and ventilation in the cells should be improved and outdoor exercise offered in appropriate cases. Nor is it in a position to provide the material conditions or regime which Immigration Act detainees and prisoners are entitled to expect.

7 U.S. Department of State, Malta Country Report on Human Rights, 2002. Available HTTP: <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8302.htm> [Last accessed 27 Dec 2010].

8 *Laws of Malta*, Criminal Code, Chapter 9, Article 35 (1).

118. Ta' Kandja Police Complex provided appalling conditions of detention (filthy and dilapidated living quarters, defective sanitary facilities and nothing which resembled a programme of activities). These difficulties were exacerbated by the fact that the establishment was staffed by police officers from a special intervention group, who recognised that they were not qualified for the task of the care and custody of illegal immigrants.

The Committee has recommended a number of immediate measures designed to address the situation at Ta' Kandja Police Complex. Moreover, it has recommended that, as a matter of urgency, better premises be found in which to accommodate persons detained under the Immigration Act. It has also emphasised that such detainees should be supervised by suitably qualified staff and that a concerted effort should be made to provide them with a programme of activities.⁹

In 2001, the CPT reiterated that the conditions in the same detention centre were below acceptable human rights standards. In addition, it further highlighted that hardly any action had been taken in the six years between the 1995 report and the 2001 report:

Given the plans for an imminent transfer of the immigration detainees from the Ta' Kandja Police Complex at Siggiewi to the new Hal Far Detention Centre, the remarks on the former shall be kept to a minimum. Suffice it to say that, on 15 May 2001, a miserable situation scarcely different from the one observed in 1995 (cf. paragraphs 19 to 22 of CPT/Inf (96) 25) was found to prevail: premises - particularly the sanitary facilities - characterised by filth and disrepair, as well as an utter absence of purposeful activities for detainees whose stays at the complex could range from a few days to periods longer than two years.¹⁰

In spite of this evidence, the global perception of Malta as a country that respected and upheld human rights was retained. The official position of the state demonstrated a positive disposition to take action and follow recommendations wherever it fell short of agreed standards. However, irregular immigration was already an area distinguished by a reluctance by the authorities and Governments to follow recommendations and to take action to fulfill human rights obligations in all respects. Indeed, the lack of improvement of the conditions in detention prior to 2002 is further proof of the lack of willingness of the Government to improve the situation. Although the numbers of irregular migrants were very low, the criticism found in human rights reports prior to 2002 on this subject is uncannily similar

9 European Committee for the Prevention of Torture, *Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 21 July 1995*, Ref.: CPT/Inf (96) 25 [EN], Strasbourg: Council of Europe, 26 September 1996, Articles 115-119.

10 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Maltese Government on the Visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 13-18 May 2001*. Ref.: CPT/Inf (2002) 16, Strasbourg: Council of Europe, 27 August 2002.

to that found in reports post-2002. This shows that the commonly held assumption that the dire conditions in migrant detention centres post-2002 can be explained simply with reference to the increase in the number of immigrants is not entirely precise.

Malta, irregular immigration and human rights post-2002

Malta's human rights reputation changed drastically after 2002 when there was the sudden increase in irregular migrants. This reached a peak in 2008 with 2,775 immigrants. The vast majority of irregular immigrants either reach the country directly by boat or are intercepted and rescued while in distress at sea as they cross the Mediterranean, usually en route to Italy.¹¹ Under the Immigration Act of 1970,¹² all prohibited immigrants issued with a removal order were being held in migration detention centres until they could be removed from Malta (Articles 5 and 14 of the Immigration Act).¹³ This in practice affected the vast majority of asylum-seekers in Malta, since most irregular immigrants applied for asylum (for example in 2008, 98% of irregular immigrants applied for asylum). In practice irregular immigrants were detained either until their asylum application was processed, or until eighteen months had elapsed, as per a 2005 Government policy document entitled 'Irregular Immigrants, Refugees and Integration'.¹⁴

In 2002 the Government haphazardly set up makeshift detention centres under the auspices of the Armed Forces of Malta (AFM). The Government endeavoured to set up the basic required infrastructure to cope with the immigrants' humanitarian needs, their asylum applications and other issues raised by the lack of documentation and therefore identification of the immigrants. In 2009, there were three migrant detention centres on the main island – Lyster Barracks, Ta' Kandja, and Safi Barracks. They were run by the Detention Service which falls under the 3rd Regiment of the AFM. The Detention Service is composed of personnel seconded from Air Defence and Support Company under the 1st regiment (personnel wearing military uniform) and retired/boarded out ex-policemen, servicemen, and prison guards.

11 Malta's Search and Rescue (SAR) zone, based on its Flight Information Region, spans over 250,000 kilometres squared from Tunisia to Greece (roughly the size of Great Britain). It also effectively means that every boat leaving Libya must pass through the area. Malta's SAR area has recently become an object of diplomatic tension with Italy whose Foreign Affairs Minister Franco Frattini had insisted that Malta give up its SAR area. This proposal was put forward following a diplomatic spat known as the Pinar incident, involving 140 migrants who were left stranded at sea for three days, which drew international condemnation and accusations from Italy that Malta is unable to handle the illegal immigration problem effectively. The Government of Malta ruled out the possibility of shrinking Malta's SAR area – a short report of the debate can be found in an article in *The Sunday Times of Malta* of 26th April 2009 (Grech & Sansone, 2009)

12 Laws of Malta, Immigration Act, Chapter 217, 1970.

13 Detention has nothing to do with identification or status. Detention is an automatic consequence of the removal order issued by the Principal Immigration Officer (Commissioner of Police) who will issue any person who is liable to removal with a "removal order". Interesting to note that Article 5 has a list of people who are also prohibited immigrants, such as persons suffering from mental disorders or are mentally defective.

14 Ministry of Justice and Home Affairs (MJHA) & Ministry for the Family and Social Solidarity (MFSS), *Irregular Immigrants, Refugees and Integration Policy Document*, Valletta: MJHA & MFSS, Feb 2005.

Coinciding directly with the increase in migrants, in 2002, the infamous Eritrean incident took place, attracting the attention of the international human rights movement through the condemnation by Amnesty International (AI). Between 30 September and 3 October, up to 223 Eritreans (from 400 that had arrived in the preceding six months) were forcibly deported by Malta. Amnesty International (AI) claimed that they were immediately arrested upon their arrival in Asmara, taken to a military camp, and detained incommunicado. In a public statement AI brought this to the attention of the Government and asked for action on the following three points: a) an assessment of the safety of deportees to Eritrea should always be made; b) excessive force should not be used during forcible deportation operations; c) some Eritreans allegedly wanted to apply for asylum when faced with the prospect of deportation, but were denied the possibility of application.¹⁵ These allegations were challenged by the Government. However, the Government's response proved of little importance to the larger development of events and by the time of the publication of the inquiry, Malta's actions, with regard to the safeguarding of irregular migrants' rights, were being closely followed. The Eritrean incident is important, firstly, for the role it played in bringing about the international scrutiny of Malta's treatment of irregular immigrants. Secondly, the confrontational and defensive reaction to AI and subsequent criticism from other organisations on the Eritrean incident became the typical approach of the Government to subsequent criticism from various entities within the human rights system.

International criticism

The criticism of Malta's detention policy has been both forceful and internationally widespread. In an Annex to a Press Release issued in January 2009, the UN Working Group on Arbitrary Detention criticised the whole system and openly stated that "the detention regime [that] immigrants in an irregular situation are subjected to, falls far short of international human rights law"¹⁶ and characteristically quoted the article protecting individuals from arbitrary detention, which lays down that:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.¹⁷

Much criticism regularly targets the fact that none of the positive developments that have taken place in the last decade particularly, but not only, with respect to the release

15 Amnesty International, *The government should suspend deportations of Eritreans*, Press Release, Ref. EUR 33/001/2002, London: Amnesty International, 2002.

16 United Nations Working Group on Arbitrary Detention, *UN Working Group on Arbitrary Detention concludes visit to Malta*, United Nations Press Release, Geneva: United Nations, 26 January 2009, p. 3.

17 United Nations, International Covenant on Civil and Political Rights, Article 9 (4), 1976.

of immigrants from detention, is set in law. They remain, to date, only Government practice and can therefore easily be changed or even, although this should be unlikely, discontinued.

The 2005 Government policy document entitled 'Irregular Immigrants, Refugees and Integration' stipulated that vulnerable immigrants would no longer be detained. However the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) 2005 report, which stated that no written procedure for the identification of vulnerable individuals was made available, still holds. The UN Working Group on Arbitrary Detention picked this point up and condemned this practice of detention of vulnerable individuals:

...according to the Government it may take up to three months to free them into open centres and those who are considered a health risk for the community must stay in detention.¹⁸

Apart from the issues of arbitrary detention and deprivation of liberty, another separate set of complaints have been generated regarding the conditions of detention. The UN Working Group on Arbitrary Detention expressed shock at the abysmal conditions in detention centres. This would suggest that if progress had been made, it was still not enough or that the roots of the problem had not, as yet, been adequately addressed. It was reported that the conditions in detention were:

...appalling to the extent that the health, including the mental health, of the detainees is affected. This situation, in turn, affects their ability to properly understand their rights and to follow the legal proceedings related to them...The sub-standard closed centres of Safi and Lyster Barracks are overcrowded. At Lyster Barracks, families are not separated from men, women, including pregnant and nursing mothers, and children, including unaccompanied minors. Although the Government applies a fast track procedure for the release of vulnerable groups in administrative detention, the procedures may take several months and be in vain for those who are considered a health risk. Many dwell in tents and the Working Group notes with serious concern that 59 inmates do not even find a place to sleep in these tents at present.¹⁹

The conditions inside the migrant detention centres have been condemned for: a) the (almost) permanent overcrowding; b) an almost complete lack of privacy (both in sleeping/ living areas and in showers etc); c) no separation of female from male immigrants; d) no protection from abuse by staff or other immigrants, especially for female immigrants;

18 United Nations Working Group on Arbitrary Detention, *UN Working Group on Arbitrary Detention concludes visit to Malta*, p. 2.

19 United Nations Working Group on Arbitrary Detention, *Annex to the Press Release, UN Working Group on Arbitrary Detention concludes visit to Malta*, United Nations Press Release, Geneva: United Nations, 26 January 2009, p. 4.

e) unhygienic conditions;²⁰ f) difficulties accessing basic healthcare;²¹ g) mental health considerations;²² and h) the denial of information about rights as potential asylum-seekers.²³ These criticisms were reflected in a UNHCR-funded research project run by the JRS Malta on the experience of immigrant women.²⁴ This report deserves to be singled out because it is the first report focusing specifically on a vulnerable group in detention.

Among the difficulties they faced in Malta, the female migrants interviewed for the JRS Malta report mentioned the following with respect to detention: a) mixed-sex accommodation: "single women, single men and couples share the same quarters and at times, the same rooms, which tend to be overcrowded, particularly during the summer months."; b) the vast majority of Detention Service staff are men (three women out of 160 officers); c) daily problems related to lack of privacy and safety ranging from being watched while they shower, to actual rape by other immigrants (although JRS Malta specify that to their knowledge the latter cases were very few); d) Detention Service staff entering bedrooms, showers or toilets without prior notice, to conduct head counts; and e) physical and verbal abuse from some Detention Service staff members.²⁵

In contrast to detention, the asylum procedure in itself has not been the object of much criticism other than that of the length of proceedings. In a sense, these delays were symptomatic of a period of adjustment which was understandable, since the Office of the Refugee Commissioner was set up only in the year 2000 when the number of asylum applications was by far smaller. A typical comment by the former Council of Europe's Commissioner for Human Rights, Alvaro Gil-Robles, shows the stance, again pointing towards the ill-effects of detention that most international organisations have taken: "the length of proceedings would not be excessive, were it not for the detention of asylum-seekers".²⁶ Apart from this, Malta fares well in terms of numbers and protection granted,

20 Médecins du Monde, *Access to healthcare and human rights of asylum-seekers in Malta: Experiences, results and recommendations*, France: Médecins du Monde, 2007. Online. Available HTTP: <<http://www.medecinsdumonde.org/gb/Publications/Publications/Reports/A-I-international/Access-to-health-care-and-human-rights-of-asylum-seekers-in-Malta>> [Last accessed 27 Dec 2010].

21 Idem.

22 Idem.

23 A. Gil-Robles, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Malta 20-21 October 2003*, Office of the Commissioner for Human Rights, Strasbourg: Council of Europe, CommDH(2004)4, 12 February 2004; United Nations Working Group on Arbitrary Detention, *Annex to the Press Release*, European Commission against Racism and Intolerance, *Third Report on Malta*, Strasbourg: Council of Europe, CRI 2008(22), 29 April 2008; Committee on Civil Liberties, Justice and Home Affairs, *Report by the LIBE Committee Selegation on its Visit to the Administrative Detention Centres in Malta*, Brussels: European Parliament, 30 March 2006. Online. Available HTTP: <http://www.jrsmalta.org/LIBE_Malta_Report_2006.pdf> [Last accessed 27 Dec 2010]; Médecins du Monde, *Access to Healthcare and Human Rights of Asylum-Seekers in Malta*; International Federation for Human Rights, *International Fact-Finding Mission: Locking up Foreigners, Deterring Refugees, Controlling Migrant Flows in Malta*, no. 403/2, September 2004.

24 D. Vella, *Try to Understand: Outcomes of a project on sexual and gender-based violence against immigrants*, Birkirkara: Jesuit Refugee Service Malta, 2008.

25 Idem.

26 Gil-Robles A., *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Malta 20-21 October 2003*, Office of the Commissioner for Human Rights, Strasbourg: Council of Europe, CommDH (2004) 4, 12 February 2004, p7.

since the proportion of cases where asylum is granted is significantly superior to that of other European countries. International organisations tend to focus less on the whole procedure or the conditions under which the application for asylum takes place although JRS Malta has registered its concerns regarding lack of guidance in the making of asylum applications, inadequate or very limited access to legal aid and problems generated by the mere fact that the asylum applicants are in detention centres with no access to the outside world. However, there have been various developments in this regard and the Refugee Commissioner's Office in 2009 started a project whereby information is given to asylum seekers to help them complete the PQ form.

The Government of Malta's position and its responses to international criticism

Irregular migration is a global phenomenon driven by factors often beyond the control or influence of an individual state, let alone a small state like Malta. Based on this rationale, the Government has been consistent in its stance in dealing with irregular migrants. It has repeatedly called for assistance from the international community. The Government has defended its policies as necessary for safeguarding the broader national interest, including security issues, lack of jobs for all, and the retention of Maltese cultural values. The argument as proposed to the international community is perhaps best captured by the current Prime Minister's address to the United Nations (UN):

... the small size of Malta, our financial and human resources make it extremely difficult to cope with such a huge number of these unfortunate people to be accommodated in Malta... Notwithstanding the severe difficulties faced by Malta, we continue to honour our international obligations vis-a-vis genuine refugees and persons qualifying for humanitarian protection. Malta has featured as one of the countries, in proportion to its size and population, with the highest number of awards to asylum-seekers... For years we have insisted on measures of international solidarity, beginning with effective action at European Union level... Malta has always dealt with these situations with great responsibility, humanity and benevolence paying due respect to every human being without exception and will continue to do so. At the same time, the problem of illegal immigration is an international phenomenon driven by external factors which cannot always be prevented or even mitigated by the countries affected by this problem... My Government hopes that other countries would come forward to assist in alleviating the burden which Malta carries – a burden so acutely disproportionate to Malta's population, land size and population density.²⁷

27 L. Gonzi, *Statement by the Hon. Dr Lawrence Gonzi Prime Minister at the Sixty-fourth session of the United Nations General Assembly*, Permanent Mission of Malta to the United Nations, 24 September 2009.

The extent of the perceived problem for one of the most densely populated countries in the world is also made clearer in a report published by the European Parliament's LIBE group:

The Minister Tonio Borg focused on how difficult it is for a country such as Malta, with a surface area of 316 km² and a population of 400 000 people, to cope with the influx of migrants and asylum seekers arriving on the island [...] The average annual number of arrivals is equivalent to 45% of Malta's annual birth-rate. One person arriving illegally in Malta is equivalent, in terms of population, to 140 in Italy, 150 in France or 205 in Germany. On the basis of the country's size, the numbers are even larger: one immigrant would be equivalent to 953 in Italy and 1129 in Germany.²⁸

The Government has taken some steps to address the current situation, but these developments appear to be rather slow-paced and uncoordinated. In a 2010 report produced by the UN, out of a list of 66 points which criticise Malta's treatment of immigrants, only the last point notes some very limited progress:

The Working Group expressly notes the progress that the Government has made in endeavouring to bring the immigration detention regime into conformity with international human rights standards; for example, through the decriminalization in 2002 of illegal entry into the country and the adoption of measures aimed at reducing the time required for the processing of asylum applications.²⁹

These developments, such as the setting up of various open accommodation centres and residential units for unaccompanied minors and families, seem to suggest that the overall response has been triggered by a sense of emergency rather than a sense of responsibility. Moreover, the Government's attitude was influenced by a number of international geopolitical factors, foremost among which was the country's accession into the EU. As a Member State of the EU Malta was bound to abide by the Dublin System, which is a collection of laws set up to manage asylum applications in the EU.³⁰ Southern European Member States have claimed that the Dublin System puts an unfair and unjust burden on border EU states, particularly those making up the southern border since they receive the largest numbers of irregular migrants.

The argument here is that blaming post-2002 irregular migration for Malta's plummeting international human rights image is a misreading of the situation. The combination of the gravity of violations, the numbers involved and the shock of the

28 Committee on Civil Liberties Justice and Home Affairs, *Report by the LIBE Committee delegation*, p. 3.

29 UN Human Rights Council (13th Session) *Report of the Working Group on Arbitrary Detention Mission to Malta, 19-23 January 2009*, Ref.: UN Doc A/HRC/13/30/Add.2, 18 January 2010, p. 16.

30 European Council, *Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*, OJ 2003 L 50/1, 2003.

international media did contribute to attracting a greater number of investigations from various international human rights bodies. This in turn led to the construction of a partially incorrect and misleading picture of 'deteriorating' human rights, which would imply that prior to the advent of 'mass' migration Malta had a thriving human rights culture. In fact, the evidence provided earlier shows that irregular migrants, albeit few before 2002, were already identifiable as a group who were not treated in full accordance with human rights standards. Following 2002 however, the combination of three (or maybe five) factors contributed to the construction of this misconceived image of a 'deterioration' of human rights. These were:

- a) The gravity of the violations and magnitude of the issue: Malta's human rights reports started reporting various additional violations like arbitrary detention, and inhuman and degrading treatment. The difference was that these were incontestable violations of different human rights norms; and all the Government could do was admit that it was not meeting the desirable standards of treatment of irregular immigrants due to limited resources and administrative measures;
- b) Reaction of the Government: The reluctance by the Government to effect any deep changes. During my fieldwork several reasons were given for the Government's reluctance, most of which were unproven and solely based on anecdotes. However, there was a common thread amongst all explanations and this was that there appeared to be a lack of knowledge of deeper patterns present in Maltese political culture.
- c) International media and organisations: Possibly the greatest change came with the media coverage, in particular that of the international media, of the ill-treatment of irregular immigrants in Malta. The issue, for reasons which will not be analyzed in this paper, attracted one might say disproportionate international media attention. How did this come about? How did the authorities deal with it? Did this coverage by the international media influence the perception and awareness of other countries of Malta's situation and the humanitarian plight of the irregular migrants?

In addition, but to a lesser degree than the three previously mentioned, it is important to mention the following two features:

- d) The geopolitical situation: although possibly to a lesser degree, three geopolitical developments also contributed to this situation. The 11th September 2001 terrorist attacks in the U.S. produced a global "securitisation" of discourse with regard to immigration. In 2004, Malta became a Member State of the EU, and was particularly disadvantaged by the Dublin System. Finally, in the 1990s and

2000s widening global inequality, as well as an explosion of civil conflicts in Africa, exacerbated large scale migration from the global South to the global North.

- e) The ensuing public debate on what Maltese society's responsibility/obligations were towards non-Maltese swung very quickly to a neo-nationalist, or post-colonial one. This among others led to the formation of an extreme right-wing party, as well as a period of violence directed primarily at organisations and individuals who were speaking in favour of immigrants. The heated nature of the debate was so acute that Governments often had to appease xenophobic fears and public anti-immigrant sentiment by adopting a hard line of argument.

In brief, this paper started off by asserting that first, the ill-treatment of irregular immigrants in Malta at times fell below acceptable human rights standards. Second, the Government had adopted a by and large defensive position, which one cannot help but sympathize with in view of the size, population density and lack of significant power of the country in geopolitical affairs. Third, by exploring the issue in more depth, it was established that the neat 'prior- and post-' categorisation of human rights reports³¹, with the latter appearing to demonstrate a regression in the political will to fulfill Malta's obligations under international human rights law, is not entirely precise. This suggests that the ill-treatment of irregular immigrants is not a simple matter of cause and effect linked to the increase in the number of irregular immigrants and ensuing difficulties of management. In an attempt to understand the resistance to the adoption of a full human rights approach in the irregular migration field, the following section explores an aspect of Maltese political culture which is intrinsically linked to human rights. This is the concept of cosmopolitanism founded on the universal notion of human dignity.

Irregular migration demonstrates that human rights need a cosmopolitan orientation

The customary phrase, equally accepted and lauded in government circles, media articles and public discussions, 'Human rights for the Maltese first' is, from a human rights point of view, a contradiction in terms. The philosophy of human rights is constructed on the premise of universalism and as such an ethnocentric view of human rights is essentially a misconceived one. It supports the view that one of the barriers towards the mainstreaming of a human rights approach in the irregular migration field is the lack of a cosmopolitan orientation. In an interview with a government agency employee the ethnocentric view of human rights is mentioned as particularly problematic. She says:

31 I am aware that this is a generalisation. Human Rights reports even prior to 2002 had mentioned various legal and structural inconsistencies, as well as overt human rights violations. My point is that none of these were comparable to the gravity and magnitude of issues surrounding the human rights of irregular migrants as a vulnerable group.

"It's as though the absorption of the discourse of human rights has been selectively digested. Human rights exist – but for the Maltese and for those who are like the Maltese."³²

The interviewee does not deny that there has been a level of internalisation and appreciation of human rights, but that it was, at best, a misconceived one: the universal quality of human rights which requires that each human being is equal in dignity and worth appears all too often to be missing. What is missing is the deep cosmopolitan political culture, which at its core has the idea that all human beings, regardless of their political affiliation, nationality, legal status and so on belong (or at least can belong) to a single community, and that this community should be cultivated. In its simplest form, cosmopolitanism is best captured by Diogenes the Cynic's famous statement in classical Greek times - 'I am a citizen of the world'. This was a reaction to the idealised and dominant political culture of the time in which a man identified himself first and foremost as a citizen of a *polis* or city-state. The same government agency employee goes on to say:

"I still think that there isn't the concept of humanity, the everybody 'global' we don't have it: the Maltese, the majority, don't have a global outlook. They have the outlook that the world stops on the shores of Malta."³³

This view was supported in another interview with an NGO worker, who explained that what he found most difficult in his job was that Maltese people failed to empathise with the plight of irregular immigrants, in contrast to other vulnerable groups. He says:

"The idea that Somali, Maltese and Greeks are the same is very far...this is very closed-minded."³⁴

The human rights philosophy based on the concepts of universality and human dignity requires and produces a cosmopolitan political culture. It is inconceivable that a human rights philosophy endorses discrimination on the basis of nationality or ethnicity. The Preamble of the Universal Declaration of Human Rights (UDHR), wherein lies the basis of the human rights philosophy, according to the critical international lawyer Marti

32 J. Personal Interview - Government agency employee, 20 December 2008 (All 'personal interviews' used in this chapter have been conducted in Maltese, English or a mix of both. They were taped, transcribed and translated. Translations are literal except in a few cases where minor amendments were needed for the written format. Every effort was made to protect the anonymity of the interviewees, including the concealment of gender. Any reference to gender is only there to retain the flow of the text, but is purely fictional).

33 J. Personal Interview - Government agency employee, 20 December 2008, p14.

34 E. Personal Interview - NGO worker, 15 December 2008, p11.

Koskiennemi³⁵, opens with the following statement:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...³⁶

As well as Article 2, which lays down the principle of equality and non-discrimination and is a staple in every human rights treaty agreed upon after the UDHR. It states that:

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.³⁷

Another NGO worker interviewed explains how migrants are often stereotyped as Muslim, African, uncivilised and dangerous. Moreover, it is often assumed by Maltese people that immigrants are Somali, something which non-Somali migrants are often unhappy with. More significant for our purposes than the issues of stereotyping are the 'difficulties of the 'Maltese' to perceive immigrants and Somalis as human beings', articulated in the following quote:

"He [an immigrant friend of the interviewee] says people think everyone's Somali. Beyond the stereotyping which portrays every immigrant who is black as dangerous, as abusive, and it is implied practically in every conversation it's scary but there's also that we can't see them as human beings. If we saw them as human beings we wouldn't accept it."³⁸

Human rights and social justice are often used interchangeably in Malta. This is not incorrect since human rights and social justice share many common political principles, and human rights principles need to be applied in systems built to achieve social justice. However, social justice issues might go beyond basic requirements that constitute human rights. Social justice issues are often bound by conditions within nation-states and therefore they cannot be applied globally in the same way. One of my interviewees felt that this lies at the root of the misconception of human rights. The following quote goes some way to analyzing why 'Human rights for the Maltese first' achieved such resonance in this debate:

"The idea that these are rights that you have by virtue of your humanity, and they are not

35 For more on this see, Koskiennemi, M. "The Preamble of the UDHR". In G. Alfredsson, Asbjørn Eide (eds), *The Universal Declaration of Human Rights: a common standard of achievement*, The Netherlands: Kluwer Law International 1999.

36 United Nations, *Universal Declaration of Human Rights*, Preamble, 1948.

37 United Nations, *Universal Declaration of Human Rights*, 1948, Article 2.

38 L, Personal Interview - NGO worker, 11 January 2009, p8.

issues, like for example, to be paid in a just manner, that is, something that depends on a calculation. In a way one could say that being paid justly is also a human right, but if one is paid a certain sum and feels that it should be more...you cannot say that is a violation of human rights, it is an injustice. It is 'this kind of thing that is interpreted as a human right, so when there are issues that truly go against human rights, but in their perception is not unjust – for example, when they feel that it is fine to pay a black person without authorisation in Malta less than a Maltese worker. It doesn't even strike them as something that goes against human rights, rather they say that we are 'keeping' him here..."³⁹

The dominant idea of 'us against the world' is deeply imbued in the Maltese national consciousness. Whether a product of the newly acquired independence of the country, or a remnant of a post-colonial mentality, this attitude is not conducive to a cosmopolitan approach.

"I never looked upon myself as Maltese, but I'm proud to say I'm European...but the majority of people see themselves as Maltese only. Only. And it's us against the world...A cosmopolitan mentality has not even been absorbed by politicians."⁴⁰

Finally on this discussion of human rights and cosmopolitanism in Malta, it would be unfair to depict a situation in which all foreigners are considered an unwanted 'Other'. Tolerance and acceptance of the many groups of foreigners present in the country is in fact conducted selectively, and many foreigners are welcomed by Maltese society. This however leads us to the issues of racism and xenophobia which attack the universalist and egalitarian foundations of human rights. Maltese people, a government agency worker points out in the following quote, are 'selectively cosmopolitan':

"[The] Maltese, they would rather see the cosmopolitan aspect come in the way they want it. They have no problems, because I know all the problems we face at my workplace: they have no problems with Russian young people coming in, and Filipino women, they have no problem with that – but also people who come from Central European countries, if they can speak some English, they're accepted. Because basically they look like us, and if they're Central Europe many are Catholic/Christian and so on. So they start to accept them. It was the same when the British were here [referring to the pre-Republican era], the majority of Maltese women would dream of marrying an Englishman...because they're handsome and cute. It works like that...I remember the very few friends in Malta I've had who were black suffered a lot just because they were black. My friend, who was studying medicine at University, had unimaginable problems to marry a Maltese girl."⁴¹

The disturbing extent of xenophobia was revealed by a research project commissioned

39 E, Personal Interview – Academic, 3 December 2008, p1.

40 J, Personal Interview – Government agency employee, 20 December 2008, p18.

41 J, Personal Interview – Government agency employee, 20 December 2008, p17.

by *The Sunday Times of Malta* in 2005. The sociologist Mario Vassallo tested people's perceptions in August, the month when many boats with irregular immigrants arrive. While more than 90% of the respondents had no objection to a European neighbour, an equal number said that having an Arab or African neighbour was highly undesirable. Moreover, more than 75% of the individuals said they would not give shelter to persons who were trying to escape their native land because of political persecution, war or civil war, hunger or mass poverty.⁴²

Conclusion

The intention behind this paper was never to put forward specific solutions but to offer a different way of exposing the problem in the hope that by unpacking the issue and changing the way it is viewed the different aspects of this complex phenomenon can be addressed more effectively. Clearly to draw the conclusion that a cosmopolitan approach is missing in Malta's political culture, one would require further in-depth exploration. One could however tentatively pose the lack of a cosmopolitan orientation as a possible hindrance to the adoption of a human rights culture. Perhaps more confidently, this Chapter has served to advocate for greater attention to be afforded towards cultural issues in any attempt to bring about social change.

Conventional human rights investigations and reports serve to confirm that there are instances when the human rights of irregular migrants are not being properly upheld in Malta. Malta's stance with the international community of states and the EU, taking into consideration its particular characteristics, cannot be dismissed. More importantly, irregular immigration sheds light on gaps within human rights in Malta which need to be taken into account and addressed by broader policies (over and above the immigration field). It appears that Malta would need to make the philosophical and political cultural shift towards cosmopolitanism for the adoption of a full and deep human rights culture. This will militate towards the nurturing of a more humane society where irregular immigrants, as well as everyone else, would be treated with the respect to which they are entitled as human beings.

42 Vassallo, M. (2005) *A report on a study of racism prepared for Allied Newspapers Limited*, Malta: Unpublished complete report.

References

- Amnesty International, *The government should suspend deportations of Eritreans*, Press Release, Ref. EUR 33/001/2002, London: Amnesty International, 2002.
- Camilleri, J.M. and Callus, A.M., 'Out of the cellars - Disability, Politics and the Struggle for Change: The Maltese Experience'. In L. Barton, *Disability, Politics and the Struggle for Change*, London: David Fulton Publishers, 2001, Chapter 7, pp 79-92.
- Committee on Civil Liberties, Justice and Home Affairs, Report by the LIBE Committee Delegation on its Visit to the Administrative Detention Centres in Malta, Brussels: European Parliament, 30 March 2006. Available HTTP: <http://www.jrsmalta.org/LIBE_Malta_Report_2006.pdf> [Last accessed 27 Dec 2010].
- Dembour, M., *Who Believes in Human Rights? Reflections on the European Convention*, Cambridge: Cambridge University Press, 2006.
- Department of Information, Press Release No.2321, Risposta għal dak li ingħad mill-Jesuit Refugee Service illum [Responding to the statement issued by JRS today (author's free translation), 10 Dec 2010. Available HTTP: <http://www.doi.gov.mt/EN/press_releases/2010/12/pr2321.asp> [Last accessed 27 Dec 2010].
- European Committee for the Prevention of Torture, Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 21 July 1995, Ref.: CPT/Inf (96) 25 [EN], Strasbourg: Council of Europe, 26 September 1996.
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Maltese Government on the Visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 13-18 May 2001. Ref.: CPT/Inf (2002) 16, Strasbourg: Council of Europe, 27 August 2002.
- European Council, Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2003 L 50/1.
- Gil-Robles, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Malta 20-21 October 2003, Office of the Commissioner for Human Rights, Strasbourg: Council of Europe, CommDH(2004)4, 12 February 2004.
- Gonzi, L., Statement by the Hon. Dr Lawrence Gonzi Prime Minister at the Sixty-fourth session of the United Nations General Assembly, Permanent Mission of Malta to the United Nations, Malta: Department of Information, 24 September 2009.
- JRS Malta, Statement by Jesuit Refugee Service Malta on Human Rights Day 2010, 10 Dec 2010. Available HTTP <http://www.jrsmalta.org/Press_Release_JRS_Malta_20101210.pdf> [Last accessed 27 Dec 2010].
- King, R. "Geography, Islands and Migration in an Era of Global Mobility", in *Island Studies Journal*, Volume 4, No. 1, 2009.
- Koskiennemi, M. "The Preamble of the UDHR". In G. Alfredsson, Asbjørn Eide (eds), *The Universal Declaration of Human Rights: a common standard of achievement*, The Netherlands: Kluwer Law International 1999.
- Laws of Malta, Immigration Act, Chapter 217, 1970.
- Médecins du Monde, *Access to Healthcare and Human Rights of Asylum-Seekers in Malta*: International Federation for Human Rights, International Fact-Finding Mission: Locking up Foreigners, Detering Refugees, Controlling Migratory Flows in Malta, no. 403/2, September 2004.
- Mitchell, J., *Ambivalent Europeans: Ritual, Memory and the Public Sphere in Malta*, London: Routledge, 2002.
- Times of Malta, *No Need to change detention policy Justice Minister insists*, 10 Dec 2010. Available HTTP <<http://www.timesofmalta.com/articles/view/20101210/local/malta-urged-to-update-migrants-detention-policy>> [Last accessed 27 Dec 2010].
- United Nations, Universal Declaration of Human Rights, Preamble, 1948.
- United Nations, International Covenant on Civil and Political Rights, Article 9 (4), 1976.

"Human Rights for the Maltese First": Irregular Migration and Human Rights in Malta

- UN Working Group on Arbitrary Detention, UN Working Group on Arbitrary Detention concludes visit to Malta, United Nations Press Release, Geneva: United Nations, 26 January 2009.
- United Nations Working Group on Arbitrary Detention, Annex to the Press Release: European Commission against Racism and Intolerance, Third Report on Malta, Strasbourg: Council of Europe, CRI 2008(22), 29 April 2008.
- United Nations Human Rights Council (13th Session) Report of the Working Group on Arbitrary Detention Mission to Malta, 19-23 January 2009, Ref.: UN Doc A/HRC/13/30/Add.2, 18 January 2010, p16.
- U.S. Department of State, Malta Country Report on Human Rights, 2002. Available HTTP <<http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8302.htm>> [Last accessed 27 Dec 2010].
- Vassallo, M. (2005) A report on a study of racism prepared for Allied Newspapers Limited, Malta: Unpublished complete report.
- Vella, D., *Try to Understand: Outcomes of a project on sexual and gender-based violence against immigrants*, Birkirkara: Jesuit Refugee Service Malta, 2008.

Interviews

- E, Personal Interview - Academic, 3 December 2008.
- E, Personal Interview - NGO worker, 15 December 2008.
- J, Personal Interview - Government agency employee, 20 December 2008
- L, Personal Interview - NGO worker, 11 January 2009.

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