THE CRIME AND PUNISHMENT OF SOMALI WOMEN’S EXTRA-LEGAL ARRIVAL IN MALTA

ALISON GERARD* and SHARON PICKERING

This article looks at Somali women’s experiences of extra-legal border crossing of the European Union’s southern border. Based on qualitative interviews with women who have travelled irregularly to Malta, and key state and non-government organization stakeholders, this article considers the layers of exile and vulnerability engendered by Malta’s attempts to secure the EU border. The article traces the gendered and racialized processes of immobilizing irregular migrants through legal and administrative policies of mandatory detention and the Dublin II Regulation, and through social and economic policy in Malta. The article concludes that border control operating at the point of arrival both contains and punishes women, even when they are legally accepted and released, keeping women suspended in a constant ‘state of arrival’.

Keywords: women’s irregular/illegal migration, Dublin II, detention, border control, punishment, Malta

Introduction

Malta has assumed a critical role in the European Union (EU)’s efforts to ‘solve’ irregular migration from North Africa. Under a series of interlocking legal and administrative, social and economic policies, Malta effectively warehouses the mobile but undesirable populations of North Africa who are ‘rescued’ in the country’s maritime search-and-rescue zone. Upon arrival, asylum seekers are detained in large facilities on Malta. During processing of their application for humanitarian protection and subsequent to their receiving humanitarian protection, the entire island acts as a warehouse for their ongoing containment and exclusion from Europe. The process of immobilizing irregular migrants results in highly gendered and racialized practices that criminalize extra-legal border crossing and enact the punishment/containment of irregular migrants to Europe. Based on qualitative interviews we conducted with women who have travelled irregularly to Malta, and key state and non-government organization (NGO) stakeholders, this article considers the layers of exile and vulnerability engendered by Malta’s attempts to secure the external EU border. Border control operating at the point of arrival both contains and punishes women, even when they are legally accepted and released. Border control practices are consequently sustained by acts that keep women suspended in a ‘state of arrival’.

Border Control

Far from the image of diminishing borders noted by commentators (Reich 1992; Ohmae 1995), borders and border control in the EU are now more widely viewed as being politically constructed and their enforcement intensified for undesirable groups

* PhD Candidate, School of Political and Social Inquiry, Monash University, Clayton 3800, Australia; Alison.Gerard@monash.edu

© The Author 2012. Published by Oxford University Press on behalf of the Centre for Crime and Justice Studies (ISTD).
All rights reserved. For permissions, please e-mail: journals.permissions@oup.com
In Europe, the framing of ‘the link between frontiers and control was and still is constructed as a security issue, as a well-balanced organization between freedom of movement and necessary measures to protect the insiders from people entering from the outside’ (Bigo 2005: 54). Policing extra-legal migration has become a priority for the EU on a par with policing terrorism and drug trafficking (Huysmans 2000; Loader 2002; Kapur 2005). Additionally, avenues for legal migration have shrunk dramatically (Guild 2005; Dauvergne 2008).

Bosworth and Guild (2008) have argued that the expanding mechanisms of border control increasingly depend on the criminalization of non-citizenship. This is discernible not only in Europe, but also in Australia and North America (Green and Grewcock 2002). Criminalization has largely been enacted through extensive or, in the case of island nations such as Australia, total visa regimes in which all non-citizens require a visa. Its impact has been to immobilize those deemed racially or economically dangerous (Calavita 2003; Melossi 2003), preventing them from ever arriving ‘legally’. The introduction of tighter visa controls and carrier sanctions—also termed ‘policing at a distance’—is now a cornerstone migration policy for EU member states (Bigo and Guild 2005). Betts (2010) argues that this approach exacerbates people smuggling and trafficking, leads to human rights abuses and promotes instances of refoulement. These policies and practices have increased exposure to risk and harm for transnational migrants at various ‘migratory fault lines’ (Grant 2011) around the globe (Weber and Pickering 2011). The criminalization of non-citizens because of their unauthorized arrival has been realized not only through efforts to prevent arrival, but also through forms of containment upon arrival to which we later return (Malloch and Stanley 2005; Welch and Schuster 2005; Hailbronner 2007; Khosravi 2010).

Within the EU, migration and security have come to form a powerful nexus that has resulted in restrictionist migration and asylum policies (Bigo 2001; Koslowski 2001; Huysmans 2006; Dauvergne 2008). European integration has led to the ‘harmonisation’ of these policies amongst member states. Scholars argue the most restrictive approach has been ‘enshrined as a possible approach for all’ (Bhabha 2004: 222; see also Bigo et al. 2009). Indeed, short of withdrawing from the 1951 Convention Relating to the Status of Refugees (‘the Refugee Convention’), EU member states have ‘virtually exhausted the repertoire of feasible restrictions to asylum systems’ (Boswell 2006: 99). Using women’s experiences of mandatory detention, social and economic survival in Malta and of the Dublin II Regulation, this article examines how women are contained and punished as a corollary of EU restrictions on refugee protection.

The Dublin II Regulation (EC 343/2003) (‘Dublin II’) and its predecessor, the Dublin Convention 1990, pool the refugee determination procedures of each member state and, in theory, orchestrate a ‘one-size-fits-all’ approach to adjudicating refugee protection. Dublin II forms one of the main legal instruments of the common EU asylum system and is aimed at reducing the secondary movement of asylum seekers and avoiding what is termed ‘asylum shopping’, or people making claims in more than one member state (Hurwitz 1999; Papadimitriou and Papageorgiou 2005; Freedman 2008: 426). Under the arrangements, an asylum seeker is permitted to apply for asylum in only one member state, and Dublin II stipulates how that member state is determined (Guild 2005). With few exceptions (see Articles 6–10), responsibility will fall to the member
state through which the asylum seeker first enters the EU. Dublin II places great emphasis on countries at the border, like Malta.

The implementation of Dublin II is facilitated through the introduction into community law of a system for tracking people who arrive into the EU and apply for asylum, known as Eurodac (Garlick 2006; Guild 2006). The fingerprints of all applicants for asylum over 14 years of age must be recorded in the Eurodac central database (Hayes 2006). Eurodac is accessible to law enforcement officials all over the EU. Once a person makes an asylum application, the authorities will check whether they have been fingerprinted in another member state and, if they have, their claim will be expedited, judged as unfounded and they will be deported to the member state that originally took their fingerprints. This occurs without a substantive review of their asylum claim.

Border control can be understood as a constellation of practices occurring prior to departing countries of origin through to post-arrival (Weber 2006). Indeed, the term ‘border control’ in some ways may be a misnomer because it conjures up an idea of control being enacted proximate to a border (historically conceived as geographic or at least cartographically defined), whereas borders are increasingly assuming a mobile character—both extra- and intra-territorially (Weber and Gelsthorpe 2000; Guild 2005; Rumford 2006; Weber 2006). Importantly, borders are also increasingly regarded as individualized, such that a border is not policed at a place or time of border crossing, but rather through an individual, wherever that individual may be situated at the time of contact. This increasingly mobile border has received considerable research interest from criminologists (Green and Grewcock 2002; Wonders 2006; Michalowski 2007; Wonders 2007; Weber and Bowling 2008; Weber 2010; Pickering 2011), yet most of this critical consideration of unauthorized border crossing, and its policing, has focused on the male subject.

Despite an absence of accurate quantitative data detailing the nature, size and scope of women’s unauthorized border crossing (Kapur 2005),


1

there is a nascent body of theoretical and empirical work that considers the gendered impact of border control. This has largely focused on sexualized violence along militarized border zones. A significant proportion of research on gender has focused on the gendered nature of border control along the United States–Mexico border (Falcon 2001; Luibheid 2005; Carpenter 2006), such as Falcon’s study of the systematic and racialized use of rape along that border. Important theoretical work has considered some of the gendered implications of escalating border control in the post-9/11 environment (Kapur 2002; 2005; Grant 2006; Dauvergne 2008). Our earlier work explored how both opportunistic and systematic gender-based violence fundamentally shapes women’s ability to cross borders (Pickering and Gerard 2011). Women have been historically regarded as positioned outside the power and protection of refugee law (Kelley 1993; Charlesworth 1995; Kelley 2001; Edwards 2010), discursively excluded in relation to the drafting and operation of the Refugee Convention. This is not to overlook the significant gains in the recognition of women’s claims under the Refugee Convention, but rather to acknowledge that

1

Even the UN High Commissioner for Refugees (UNHCR) generates limited gender-disaggregated data and often relies on self-report studies in refugee camps, which remain notoriously unreliable (Author 2011). The only available reasonably reliable datasets are based on successful claims made for refugee status, which excludes large groups of women involved in unauthorized border crossing. The data on women moving across borders, whether authorized or unauthorized, for the purposes of trafficking are routinely held up as an example of some of the worst attempts in the disciplines of social science and demographics at a ‘moral crusade’ (see Weitzer 2007; Segrave et al. 2009).
women are still routinely viewed apart from the central purpose of Convention protection (Macklin 1995; Crawley 2001; Freedman 2008). Moreover, there is a dearth of empirical studies of women’s irregular border crossing for the purposes of claiming asylum or other migration outcomes. Criminological and sociological theorizing of the border can therefore benefit from a more rigorous analysis of the role of gender in this context. Banerjee (2010) has argued that grand accounts of security, similar to those frequently offered in relation to border control, can be effectively ‘stood on their head’ when women’s stories are included. Theoretically, we seek to examine how the increasingly mobile character of the border—including, most notably, how its control is enacted through practices that can be regarded in terms of containment and rejection—is experienced by women, and thereby to contribute to the gendered analysis of border control in Europe.

Malta

Malta, a member state of the EU since 2004, is on the front line of policing and securing Europe’s Central Mediterranean borders to unauthorized arrivals (Gil-Bazo 2006; Klepp 2010). In the first half of 2010, this region received 90 per cent of all asylum applications lodged in Europe (UNHCR 2011a). This proportion is predicted to increase substantially in light of the unrest in Libya and other parts of North Africa (UNHCR 2011b). Arrivals in Malta began to increase in the early 2000s, reflecting a change in migration patterns along Europe’s southern border (Andreas 2003; Betts 2006; Lutterbeck 2009). Malta’s considerable maritime boundaries increase its exposure to the phenomenon of extra-legal migration by sea. In stark contrast to its tiny land mass of 316 square kilometres, the search-and-rescue zone surrounding Malta’s five islands extends for 250,000 square kilometres (Lutterbeck 2009: 128). In 2001, 57 people arrived by boat in Malta, increasing to 1,686 in 2002, and peaking at 2,775 in 2008 (NSO 2011). The Central Mediterranean Italian islands of Sicily and Lampedusa, the closest in proximity to Malta, recorded a corresponding increase in arrivals during this period (Lutterbeck 2009: 122; Tennant and Janz 2009: 11).

Bilateral cooperation on border security with North African states has become a distinct priority for the EU, and for individual member states (Betts 2006; Gil-Bazo 2006). In 2009, Italy and Libya ratified an agreement that intensified Italy’s involvement in border security in Libya (Ronzitti 2009; Klepp 2010). The ‘Treaty of Friendship’ implements a scheme whereby the 2,000 kilometres of Libyan coastline is patrolled by ‘mixed crews’ on Italian patrol boats (Ronzitti 2009: 130). In addition, arrangements have been formalized to police land borders in Libya by satellite—a detection system financed jointly by Italy and the EU, which effectively pushes the patrol of EU borders further back into Africa. Enhanced border security cooperation between Mediterranean EU member states and Libya is credited for the sharp drop in the numbers of people arriving in the Central Mediterranean throughout 2010. Forty-seven people arrived in Malta by sea in 2010—the lowest number in a decade (NSO 2011). These arrangements have had significant human rights implications: not least of all, the agreement has allowed boats carrying migrants to be returned to Libyan shores upon arriving in Italy, without processing claims for asylum (HRW 2009b).

The EU has provided increased resources to the Armed Forces of Malta through the operations of Frontex—the European Agency for the Management of Operational
Cooperation at the External Borders of the member states of the EU. Despite initial cooperation, the Maltese Government has opted out of participating in Frontex’s operations for the past two years. Frontex must be allowed to bring the boats it intercepts to the ports of participating member states and it is this stumbling block that reportedly has Malta declining to participate (Camilleri 2011).

Methodology

To better understand women’s experiences of asylum in Malta, we chose to focus on refugee women, defined as having been recognized as in need of some form of humanitarian protection—subsidiary, temporary or Convention refugee status. Malta was chosen for several reasons. First, at the time it was selected, the country was experiencing an increasing number of female migrants arriving by boat and seeking asylum. Second, one of the official languages of Malta is English, the native language of the researchers. Finally, as part of the EU, Malta is obliged to apply the common European asylum system. These procedures have been largely developed over the past decade and their impact on women has received limited academic attention.

We interviewed 26 women with humanitarian protection status in Malta, using qualitative methods aimed at drawing out women’s daily lived experience following their arrival in Malta. To further contextualize the research, we also interviewed two representatives from the Maltese Government and two representatives from non-government organizations operating in Malta. Qualitative methods are better suited to fostering a narrative and developing a contextual understanding of participants’ experiences (Silverman 2000). They are a preferred format for exploring attitudes, particularly when dealing with sensitive topics, as was the case in our research. This unstructured method fostered flexible engagement with the subject matter and was useful in this setting, in which English was not the first language of the women who participated (Riessman 1993; May 2001). It also minimized the potential for hazards in structured or semi-structured interview formats, whereby respondents may provide ‘socially desirable’ responses (Fontana and Frey 2003: 69).

We contacted women through an NGO that provides support and advice to refugee populations in Malta. All interviews were conducted in English and on a one-to-one basis. These interviews were audio-taped if the participant agreed, and transcribed or written up from notes. These data were then coded and key themes identified and analysed. The majority of the women interviewed were from Somalia. Somali migrants represent the majority of female migrants who arrive in Malta and seek asylum (NSO 2010). Of the 2,387 people who made an asylum claim in 2009, 439 were female, or just over 18 per cent (NSO 2010). The number of Somali female applicants was 297, or 67 per cent of all female asylum applicants. The situation in Somalia is routinely described as one of the world’s worst humanitarian and security crises (Menkhaus 2004: 4; HRW 2008; ICG 2008: Executive Summary). All respondents in this research were over the age of 18, with an average age of 29 years. The majority had children, although mostly these children were not with the women in Malta. The majority were married but did not live with their partners. For many respondents, their partners resided in other countries in Europe or in transit countries near their country of origin.
Punishments of Arrival

Women talked to us about their life before leaving Somalia, on their journey from Somalia to Malta, and following their arrival in Malta. While their experiences cannot be understood outside the context of this lengthy, often non-linear migration, this article focuses on the ways these women experienced border protection after arriving in Malta. Conceptually, this is important for understanding border control as enacted and effective beyond the point of arrival. Women’s experiences of arrival in Malta coalesced around three main themes of ‘enforcement rituals’ that produce ‘illegality’ and exacerbate women’s ‘ever-present vulnerability’ (Portes 1978; De Genova 2002: 246–8). The first was their experience of mandatory detention, particularly as mothers and/or of pregnancy while in detention. The second was their experience of survival in Malta, notably employment and conditions of accommodation. The final focus of their stories was the impact of the Dublin II Regulation, and their consequent exclusion from familial or social networks, or simply better reception conditions in other member states. Collectively, their stories evidence layers of internal exclusion and insecurity that have particular gendered inflections.

Detention

Malta operates a comprehensive detention policy designed to deter and punish asylum seekers for their arrival (MSF 2009; Abela 2011; Pickering and Gerard 2011). However, the nature and circumstances of detention alter if a woman is pregnant or has children. NGOs and others have detailed the deplorable detention conditions in Malta, which, in 2009, gave Médecins Sans Frontières grounds to suspend in protest its delivery of medical services into Malta’s Detention Centres (MSF 2011).

NGO respondents estimated that over half the women in detention in Malta at any one time are pregnant. However, the Refugee Commissioner in Malta does not keep official records of how many women are pregnant or become pregnant while in detention. Many of the women arriving in Malta had experienced rape or other sexual violence in Somalia while en route, in transit in Libya, or throughout other parts of their journey (HRW 2009a; 2009b; MSF 2009; Pickering and Gerard 2011). Consequently, some women are already pregnant upon their arrival in Malta:

People tell you and I’ve come across some children and I ask them where is the father of this child, and they say, ‘I don’t know’. I say ‘What do you mean you don’t know?’. ‘I remember it must’ve happened in Libya’. They must have been raped because they came here when they were pregnant. I don’t know how you could live when you come over here and you are pregnant and you have no way of sustaining yourself. (NGO B respondent)

Pregnancy and childbirth raised a cascading series of issues for women in detention. Two women interviewed for this research said they were pregnant when they arrived in Malta. Two more became pregnant either in Detention or Open Centres in Malta, although we expect the numbers were higher than suggested because of the reluctance of women to discuss what some refer to as ‘forced pregnancies’. The lack of mainstream health care services in detention makes the conditions untenable for pregnant women:

Detention Centres in Malta are not focused on vulnerable groups. There are a lot of rape cases. Some try to convince women to have a baby and then they will be more vulnerable, and whether willingly or
not they genuinely think they can get out of detention if they have a baby. There is a lack of privacy, safety issues, not separated [from men], there is sexual assault and rape. Pregnancy can be the result. [There is a] lack of access to abortion. Female Genital Mutilation\(^2\) is then a big issue—95 per cent of Somali women have had the procedure and this is an issue for pregnancy in terms of delivery. Women do not want a Caesarean. There are lots of consequences—urination, painful, vaginal discharge, itching, painful for intercourse and can obstruct normal outflow. Gynecologists here are not aware of the issues. (NGO B respondent)

Up until mid-2009, women were forced to share living quarters with men (MSF 2009). Government and NGO respondents attest to significant rates of pregnancy in detention and often referred to ‘forced pregnancies’. One respondent told us:

I come from Somalia and I arrived in Malta eighteen months ago. This centre, Hal-Far, has been open since February 2008. Before that, single women were kept at the Hal-Far tent village along with men. The number of women who arrive in Malta is uncountable. Some come as part of a family and others come as single women. There are a lot of single mothers. There are a lot of women in detention. This is very uncomfortable for them because of overcrowding, sleeping in the same place as men, the sexual violence and forced pregnancies. (Merla)

The perpetration of sexual violence and forced pregnancies in Detention Centres has been compounded by the extensive system of gendered social control in Malta. The people of Malta are intensely Catholic (Scicluna and Knepper 2008)—as one NGO B respondent commented, ‘we are more Catholic than the Pope’. Divorce has only been legal since October 2011 (BBC 2011). Abortion is illegal and there is questionable access to sexual health education (HRC 2009: 19). An NGO respondent complained the government do not distribute condoms in detention. Malta has one of the lowest employment rates for women: 2006 statistics show employment at 34.9 per cent, compared to 74.5 per cent for men (Eurostat 2008: 253). The significant emphasis placed on the family unit has meant that women are largely confined to, and defined by, that context. To illustrate, in Malta’s Criminal Code, rape falls under the title ‘Of Crimes against the Peace and Honour of Families and Morals’ (HRC 2009: 6).

Some NGO and law enforcement respondents have suggested that women have resorted to pregnancy as a way to gain release from the Detention Centres and be relocated to Open Centres, as single women are not classified as vulnerable. Those categorized as ‘vulnerable persons’ may be released from Detention Centres into Open Centres. The term ‘vulnerable persons’ refers to ‘elderly persons, persons with a disability, lactating mothers and pregnant women’ (ECRE 2008: 13). Hence, respondents often contended that pregnancy was a strategic decision in relation to both detention and future settlement:

They make themselves pregnant. It’s a strategic decision. There is a rumour that it can help your status. They get pregnant and they think that you can get citizenship that way but it doesn’t work like that. You get the citizenship of your parents. (Law Enforcement A respondent)

Not only are women contained by the physical conditions of detention, but also their everyday experience of negotiating these conditions is sexualized. This involves actual or

\(^2\)FGM is used here as an abbreviation for Female Genital Mutilation, also known as ‘female genital cutting’ and ‘female circumcision’ (see Gruenbaum 2005).
threatened sexual victimization, as well as a continuum of practices that includes the management of their reproductive status.

**Survival**

The women’s accounts in our research made constant reference to the difficulty of ‘surviving’ in Malta after they had been released from detention. Survival was discussed largely in terms of the social and economic rejection of women who are legally permitted to live and work in Malta while awaiting a decision or following a positive determination in relation to their case. The women faced a range of policies, practices and general conditions that were at best ambivalent and at worst openly hostile to migrants. The political climate in Malta is charged, as one NGO B respondent told us:

The discourse they use on both sides, they use ‘clandestine’, ‘illegal immigration’, ‘asylum seekers’ and ‘refugees’—there is no differentiation. Pardon the pun, but they are put in the same boat literally. I get the general idea that if you are African then you are Muslim and if you are Muslim then you are a terrorist and that’s the way things go. And you are HIV positive as well. That is the general public view. But then they will say, ‘poor things’—there is this other charity feel to it. And the average Maltese when they hear about the conditions in detention so often and say this isn’t right. But there is so much fear and so much misinformation out there that they tend to take a half stand.

The practice of the Maltese Refugee Commissioner of awarding more people subsidiary protection in place of refugee status furthers the sense of isolation and uncertainty experienced by women. In 2008, for example, 19 people received refugee status whereas 1,394 received subsidiary protection (NSO 2011: 4). This amounts to 0.07 per cent of applicants receiving refugee status, and 50 per cent of applicants receiving subsidiary protection. While a gender breakdown of these statistics is not publicly available, one NGO B respondent remarked:

I haven’t ever come across a woman with refugee status. The vast majority of women would be granted subsidiary protection in order to bring humanitarian protection.

Subsidiary protection provides a formula for humanitarian protection that is temporary and brings fewer entitlements or rights than does refugee protection (McAdam 2005). Importantly, it precludes rights to family reunification. Diluted legal protection exacerbates vulnerability with gendered consequences for women, as one NGO B respondent described:

Those people with subsidiary protection have permission to work unlike a refugee who has a right to work. Then there are issues around xenophobia and racism, which inhibit access to the labour market. Also, many people are reluctant to employ them on a legal basis so we have the situation of the black market as well . . . one of the key issues for women is prostitution. There are particular areas in Hal-Far in particular and around Marsa which was always a red light district. Marsa was placed in the middle of the red light district, so it’s never been the prettiest or most welcoming of venues, [and] we’ve been told there is prostitution.

Even after being released, and in some cases where migration status had been ‘regularized’ through the granting of subsidiary protection, these women had to survive social and political forces that effectively functioned to contain and reject them.
As they are often separated from significant male others, women’s survival is dependent on access to paid work. This access is only possible once women are released from the Detention Centres and, even then, discrimination often prevents them from gaining employment in the regular economy. One woman respondent said:

I have humanitarian protection here in Malta. I work as a care worker but I am not full time. No sick leave, no holiday. I work on a roster. When they employed us they employed six: one Eritrean, four Maltese and me. They say to us that we will become full time. After one year we contact the union. They interview us again for the job and they say because of your status, you are not European, we cannot give you full-time employment. They give the four Maltese full time. I am still not full time. (Bifa)

Service sector employment in Malta’s booming tourism industry was the most common area of employment in which the women respondents in this research engaged. Employers from hotels would contact the asylum seeker accommodation centres directly to find potential employees. We witnessed the following interaction between an employer from a hotel and two refugee women at an Open Centre:

Employer: I want two cleaners to start, 7am–3pm.
Woman 1: How much for?
Employer: 600 per month.
Woman 2: With or without papers?
Employer: Both. You would have to not wear the head thing [and physically gestured to their head scarf].

For successful employment as a cleaner, this clothing is deemed as unacceptable in the workplace. This denotes the gendered economic and social rejection by employers of women of a distinct racial and religious group on Malta.

The lack of access to childcare was a barrier that prevented women from gaining suitable employment in a narrow market. As previously outlined, there are a large number of single mothers in the transnational migrant population community in Malta. The lack of childcare made it difficult for mothers to find work and, in the absence of public childcare, private arrangements were pursued:

I am a single mother with one child who is four years old. I have to take him to school in the morning and pick him up at 1pm. I cannot work hotel cleaner hours of 7am–3pm. (Marlo)

My baby was going to childcare but that cost 200 euro per month. The childcare was also bad because she smoked. I do not like that. Some women do childcare [in the Open Centre] for 6 euro per day. (Keiv)

The accommodation provided to women upon their release consists of several Open Centres. Malta’s refugee population is clustered in Hal-Far, a part of Malta that conforms to Bauman’s (2004) imagery of a ‘wasteland’. As one female respondent said: ‘The area Hal-Far is difficult. When we gather we forget but when we are alone we think back and think of our accommodation and it is really difficult in Hal-Far.’ Showing the reliance placed on this form of subsidised accommodation in Malta, a staggering 76 per cent of all transnational migrants live in Hal-Far. Hal-Far is a former military area located about 40 minutes by bus from the capital, Valetta. The closest village to Hal-Far is 3 km away
Respondents complained of the lack of shops and that limited public transport, with only one bus serving the area and no public transport at night making access to employment challenging.

The largest Open Centre for women is the Hal-Far Immigration Reception Centre. The Open Centre was surrounded by a huge fence, the buildings were run down and dirty, and residents appeared unhappy and unhealthy. The women complained of overcrowding, unsanitary conditions, limited access to facilities and not having sufficient space to store their basic belongings:

We have five people living in the one room, even more sometimes. We don’t have enough toilets for the people. We don’t have a cupboard to put our things, like a scarf or clothes. We can’t always keep it clean because we have so many people. (Azziza)

The kitchen is only one for all these people. All the people want to cook before they go out to work. We have to wait because it’s full and sometimes we go outside and wander around for a bit, and then when we come back when it is finally our chance, they have locked the kitchen. So we go to bed hungry because they have closed the kitchen. (Nadifa)

Upon release from detention and even following legal recognition of humanitarian status, women faced a kaleidoscope of social and economic conditions that punish and reject their arrival in Malta, producing isolation, destitution and continued insecurity.

Dublin II Regulation

Principles of containment and rejection are intertwined in women’s experiences of Dublin II, through which Europe uses the border state of Malta to indefinitely contain asylum seekers. The act of other EU member states returning and often repeatedly returning women to Malta highlights the gendered nature of the ongoing European rejection of women with legal status because of their original mode of arrival in Malta:

Lamlya walked in and came right up to me asking who I was. She sat down next to me and said very quickly, ‘Malta not fair’. She had no job and had not received the allowance paid to asylum seekers in Malta for six months. This meant she had no money and was reliant on charity. She had been in Sweden and was returned to Malta as a Dublin II returnee. ‘Sweden is much better’, she said, ‘It is much better for school’. She said even Holland is good and so is Greece, but ‘Malta is not good’. Lamlya kept pointing to the finger on her hand, saying, ‘Had to come back’. Her fingerprints, taken upon her arrival to Malta in 2006, were entered into the Eurodac database, an information system developed to facilitate the Dublin Conventions. Her fingerprints became the evidence relied upon by Sweden to send her and her children back to Malta. Upon her return to Malta she had her financial allowance reduced and eventually suspended. Lamlya left Somalia in 2005 and travelled to Libya. She was on a boat with 25 people including six women. She spent one year at a Detention Centre. (Field notes)

Approximately one in five of the women interviewed for this research had been returned to Malta, some more than once, by the operation of Dublin II. Many were as keen as Lamlya to talk about how they experienced the punitive application of this law, although, for divergent reasons, law enforcement respondents were similarly vociferous in their criticisms of the operation of Dublin II. They felt the regulation placed undue pressure on the resources of member states geographically located along the external EU border to address onward migration by both punishing and containing arrivals.
Women interviewees who were affected by Dublin II were frustrated at having their onward migration decisions undermined. Of the five women who had been sent back to Malta under the regulation, two had been sent back twice:

I went abroad for two years and just came back. I ran away. (Raya)

Their reasons for leaving Malta were several. Some had concluded, like Lamlya and Raya cited above, that conditions in Malta were poor, as various NGO reports on Malta have similarly found (MdM 2007; MSF 2009; AI 2010). Lamlya believed education and health care services were better in other countries. Many knew from friends, families and other networks that all member states were not like Malta, and had experienced that reality themselves. Despite reforms aimed at harmonizing reception conditions across member states,\(^3\) conditions still differ widely (OAN 2006). This variation in conditions for those with special needs—a category that includes pregnant women—has been found by the European Council on Refugee and Exile to be of particular concern (ECRE 2008). In leaving Malta, the women were exercising decisions about where they might best be able to access support and protection, and determining that this was not Malta.

Family reunification is disrupted by Dublin II. All of the women described leaving Malta for other member states in the EU because they had family or other networks in those countries:

Raya had arrived in Malta by boat in 2006. She did not want to go to Malta but instead wanted to go to Italy. She had cousins in the United Kingdom and after receiving humanitarian protection, applied for travel documents to visit them. To her disappointment, she was sent back to Malta after living in the United Kingdom for two years, because of Dublin II. (Field notes)

Fewer female asylum seekers than male actually reach the EU (Eurostat 2009), so the presence of networks to support their transition is of heightened importance (Bhabha and Shutter 1994; Bloch et al. 2000). Greater access to pre-established networks has the potential to minimize the marginalization experienced by women in their social, economic, financial and political life as female migrants. Agency exercised in making these decisions is undermined by the operation of Dublin II, which returns them to Malta and frustrates family reunification.

Disruption is particularly acute for women with families who are all sent back to Malta under Dublin II. According to NGO respondents, it is common for women to leave Malta to be with their families in other member states and to have children there:

My husband, child and I left Malta to go to the United Kingdom. I had my second child in the United Kingdom before going to Sweden. I gave birth to my third child in Sweden before being sent back to Malta. (Amina)

The implications of return in this context are innumerable. For example, it makes continuity of medical care impossible and strains social networks. Moreover, access to childcare in Malta is limited. One NGO respondent was of the view that women have babies in other member states as a strategy to migrate, believing that the child will obtain the citizenship of the country in which it is born and therefore not have to return to

Malta. The two women who had families and had been Dublin II returnees said it was the presence of family in other member states that motivated their movement.

This research supports the contention that Dublin II’s impact on asylum seekers is gendered (Bloch et al. 2000; Freedman 2008). Freedman’s research contends that the regulation prevents people from making important decisions about which country may have more gender-sensitive refugee determination procedures, such as the existence of gender guidelines and directives in the United Kingdom and Sweden. Although it is no panacea to the problem of persecution as understood only in reference to the male subject (Freedman 2008: 142), such recognition of gender may still influence the likelihood of success for the asylum claims of women. As Schuster (2011a) points out, there are significant disparities in recognition rates across the EU. This research does not seek to contribute on this point, but it does affirm the findings of earlier research by Bloch, Galvin and Harrell-Bond (2000) that the Dublin II arrangements disproportionately impact on women through disruption to family reunification.

The implications of Dublin II for the mental health of those returned to Malta warrant further examination. Respondents frequently told us they never intended to reach Malta, and instead hoped to arrive in Italy. The respondents perceived the overarching psychological impact of being forced to remain in Malta as contributing to depression and experiences of isolation among refugee women. NGO B respondent reported that asylum seekers on Malta struggle psychologically with the burden of ‘not knowing when their journey is to end’. Dublin II exacerbates this tension by making onward migration unpredictable and uncertain. Previous studies have identified such insecurity and uncertainty as stressors in the post-migration context (Silove et al. 1997; 2000).

The women we interviewed perceived Dublin II as punishing them upon their return to Malta. In Greece, such punishment includes failing to have their claim for asylum assessed, raising the obvious risk of refoulement4 (Garlick 2006). Claims for resettlement, relocation or protection, all constitutive of pathways out of Malta, are also potentially terminally affected by the operation of Dublin II:

Some people leave to go to Europe and returned to Malta two or three times as a result of Dublin II. If people do not return in time for their interviews, they will not be resettled. (Law Enforcement A respondent)

If women go to other parts of Europe and are sent home, they will lose their place in the queue for resettlement and relocation programs to other parts of the EU and the United States, as the above statement from the law enforcement respondent makes clear. According to one respondent, at the very least, their unplanned return causes delays in the assessment of their claim. In addition, if they leave the member state by illegal means, they may be subject to criminal charges. A law enforcement respondent we interviewed reported that, in Malta, people receive a suspended six-month jail term for this conduct. Punishment for using illicit methods to leave Malta results in the actual criminalization of refugee women.

Respondents understood the reduction in financial benefits for those who return to Malta under Dublin II as particularly punitive. ‘They get 80 euros per month. After four

4Article 33(1) of the Refugee Convention provides: No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
months this is cut off’ (Aida). Women would ordinarily be entitled to a per diem of 130 euros per month, but this is dramatically reduced if they are returned as a result of Dublin II and therefore lose their protection status. Lamlya’s statement above captures the frustration of living without an income for a protracted period. NGO respondents also spoke of the heightened vulnerability of women who have their benefits cut off. Unable to join the formal economy, they are exposed to greater risk and harm by being forced to participate in the informal economy.

An uncertain future awaits those who lose their place in the queue. One NGO respondent described women in this position as ‘stuck’—not able to go forward to other resettlement countries and not able to go back to their country of origin as a result of protection concerns or a lack of diplomatic connections between Malta and their country of origin. The women respondents who were in this position were hopeful that their application for resettlement or relocation would be viewed favourably, but also believed that their options were limited.

The operation of Dublin II has a questionable ability to prevent secondary movement (Levy 2010). The law enforcement, NGO and women respondents we interviewed said that, every day, two or three people are leaving their accommodation in Malta and obtaining travel documents to go to other parts of Europe. Dublin II punishes not only the asylum seeker, but also the member state in which the asylum seeker arrives (Hurwitz 1999; Guild 2005: 637; 2006). The onus of responsibility on member states that border the EU has caused a great deal of tension between northern and southern member states (Betts 2006; Garlick 2006; Gil-Bazo 2006; Guild 2006). The figures confirm a bias: that Northern European countries rely most on Dublin II to deport people back to the receiving countries on the southern EU borders (Garlick 2006). It is reported that Sweden and Finland use Dublin II to close 50 per cent of their claims (Garlick 2006). In the case of France, return is effected in a mere 32 per cent of Dublin II cases, raising doubts over the efficacy of the regulation when balanced with the burden of its administration (Schuster 2011a). Dublin II is operating as an internal deportation system from many northern and western member states to less well-resourced member states along the southern border.

The numbers of people being sent back to Malta under Dublin II are a strain on the country’s resources. Recently, Malta was criticized by the Commissioner for Human Rights for the Council of Europe for housing vulnerable groups, including families and pregnant women, in ‘totally inadequate conditions’ of accommodation after they were sent back as Dublin II returnees (Hammarberg 2011: 10). The ineffectiveness of Dublin II in preventing secondary movement is confirmed by this research. The numbers who are sent back return abruptly, creating added pressures on resources and services in Malta. According to one Law Enforcement A respondent:

Approximately one person a day is sent back to Malta as a result of Dublin II. Last year [2010] the total was 472. Some people will go and are sent back four or five times. It is like every week there is a new boatload of arrivals but they are at the airport and they are Dublin II returnees.

The Maltese Government has lobbied for an exemption from Dublin II to address the challenges associated with handling the anticipated large numbers of asylum seekers arriving in the densely populated country (LIBE 2006). However, these pressures impact most profoundly and directly on asylum seekers who are forced to return to Malta.
Asylum seekers fear returning to member states of the EU in which they have already experienced poor reception conditions (Fekete 2011). This was the subject of a recent challenge to the European Court of Human Rights as to the compatibility of Dublin II with the European Convention on Human Rights. The Court fined Belgium for returning an asylum seeker to Greece, where conditions for asylum seekers were found to be degrading and inhumane. Given the criticism of Malta’s reception conditions, which, for some asylum seekers, include living in tents (MSF 2009), this ruling is likely to have reverberations for those countries that send asylum seekers back to Malta.

A Journey that Never Ends

In listening to women’s experiences of arrival, we come to regard border protection in Malta as being organized around the principles of containment and rejection, even when women have been physically released and legally accepted by the Maltese and indeed European asylum processes.

Border control practices enacted by Malta at the behest of the EU shield other member states and keep women suspended in a state of perpetual arrival. Legal and administrative, social and economic policy coalesce to produce continued insecurity and a failure to meet basic protection needs. The legal and policy context ensures that, for most of these women, the journey in search of protection from persecution never ends. The women interviewed in this research sought to manage their containment in Detention Centres in relation to both pregnancy and raising children. The conditions in detention, assessed as being inhumane (MSF 2009), form the context in which forced pregnancies occur, and the use of pregnancy as a way to be transferred to another, albeit relatively improved, form of containment. Management of reproductive status sees many women become primary care-givers of children.

Receipt of humanitarian protection fails to guarantee adequate protection for refugee women in Malta. With refugee status so rarely awarded, normative questions need to be asked such as whether women have a proper chance of having their claims of persecution adequately adjudicated. Subsidiary protection equates to illusory protection; women receive diluted rights and entitlements that preclude family reunification, a right to work and promote future instability. As primary carers and often isolated from family or social networks, women face gendered challenges in obtaining employment and securing economic protection. For refugee women, surviving in Malta is shaped by a hostile political and social environment that militates against integration and participation in the formal economy and daily life in Malta. As criminologists, we need to probe whether the greater harm lies in containment on Malta or onward migration to other member states of the EU where recognition rates and living conditions are more humane.

Knowledge of improved conditions in other member states, combined with the attraction of family and social networks outside of Malta, propels people towards onward migration. Women respondents found these conditions more suitable. Here, border control enacted through the operation of Dublin II usurps these opportunities for protection elsewhere and returns women to Malta and a cycle of containment/punishment ensues. Schuster (2011b) argues Dublin II is turning refugees into undocumented

---

migrants. Rejection in the Maltese context is pushing people into illicit methods to exist in Malta or leave, making criminals out of refugee women’s survival. The constellation of practices that make up border protection continue to be enacted post-arrival and have heavily gendered inflections.

Border control practices enacted by Malta are primarily focused on containing and rejecting asylum seekers through the use of the punitive tools usually associated with criminal justice—imprisonment and criminalization—coupled with social and political stigmatization. Attempts to contain and reject populations at the edges of the EU remain even when women are physically released from detention and legally accepted under humanitarian protection provisions. The social and political context that makes it difficult to survive in Malta, coupled with Dublin II, render it almost impossible to transition from illegal to legal status, or to ever transcend the act of arriving extra-legally in Europe. For refugee women in Malta, the journey of extra-legal border crossing never actually ends.

Funding

Research partly supported by the Australian Research Council FT100100548 Border Policing: Security, Human Rights and Gender

REFERENCES


LIBE (2006), Report by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Delegation on Its Visit to the Administrative Detention Centres in Malta. Brussels: Committee on Civil Liberties, Justice and Home Affairs.


